

Professor Jennifer Clarke (Rm. 360)
Professor Bryan K. Fair (Rm. 332)

Spring 2004
TWTh 3:00-5:30 p.m.

**COMPARATIVE PERSPECTIVES ON RACIAL CLASSIFICATIONS
AND RIGHTS OF INDIGENOUS PEOPLE**

General Information

1. TEXT: We will use Juan F. Perea et al., Race and Races: Cases and Resources for a Diverse America (2000) and Australian material provided by way of handouts.
2. ATTENDANCE: It is important that you attend class and participate in our discussions. We will meet for only five weeks.
3. PARTICIPATION: This class will not be conducted in the traditional Socratic Method. Instead, you will be responsible for reading the assigned materials and we will discuss those materials each day. Class members will participate in the discussion by raising questions and/or by sharing their thoughts on any aspect of the reading materials. Some classes will begin with brief lectures, followed by discussion.
4. EXAMINATION and GRADING: You will have an examination, due 30 days from the end of our class, on or before Friday, March 12, 2004. The Australian students should email their exam papers to Prof. Clarke at clarkej@law.anu.edu.au. The Alabama students should submit their papers to Prof. Fair.

You will have the option to answer one of several set questions, in essay format. You must type your essay and you are limited to ten (10) normal pages.

Your essay should discuss the question comparatively and critically, in light of the materials covered. We expect an introduction, an argument and a conclusion.

We will provide you with exam questions by Thursday, January 29.

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Syllabus

Classes 1-2

Topic: Indigeneity, Ethnicity, and Racial Classifications

Questions: What is race? Why is race a categorizing tool? What do racial classifications obscure? What would happen if racial classifications were eliminated? Does the law construct racial classifications? What benefits or burdens have sometimes been assigned by race under Australian and American laws? What are the contemporary legacies of the historical assignment of race-based rights? What rights, if any, do native, indigenous people hold in Australia and the U.S.? What is racial privilege? What can the law do to eliminate racial privilege?

Activities:

C Review Syllabus
-- Privilege exercise
C Video: A Class Divided

Readings:

Perea et al., pp. 1-15, 429-441, 445-460, 471-477, 489-492
Ghassan Hage, *White nation: fantasies of White supremacy in a multicultural society* (1998) chapters 1, 2 and 3.
The following documents relating to the 'White Australia policy'
'White Australia policy' - Wikipedia
Immigration Restriction Act 1901 (Cth) section

Classes 3-5

Topic: Race, Colonization, and Rights of Native Peoples

Questions: What is the legal status of indigenous people in Australia and the U.S.? Are there significant differences between:

- indigenous Australians and native Americans?
- the historical patterns of their legal administration?
- the outcomes of that administration?

Readings:

Perea et al., pp. 173-245
'"Indigenous" people in constitutional law' in Hanks, Keyzer and Clarke, *Australian constitutional law: materials and commentary* (7th ed) (forthcoming)

Classes 6-7

Topic: Race and Territorial Imperialism

How did independent Australia and the United States justify the takeover of territory (occupied by culturally different people)

outside of their boundaries? For what purposes were these territories acquired? Were they treated as contemplated by the international community? Does it matter now?

Readings:

Perea et al., pp. 246-264, 326-355

Tony Anghie, "'The heart of my home: colonialism, environmental damage and the Nauru case' (1993) *Harvard International Law Journal*.

Agreement between Australia and the Republic of Nauru for the Settlement of the Case in the International Court of Justice concerning Certain Phosphate Lands in Nauru

Australian Treaty Series no 26/1993

<http://www.austlii.edu.au/au/other/dfat/treaties/1993/26.html>

and

Rehabilitation and Development Co-operation Agreement between the Government of Australia and the Government of the Republic of Nauru
Australian Treaty Series 15/1994

<http://www.austlii.edu.au/au/other/dfat/treaties/1994/15.html>

Classes 8-10

Topic: Race, Labor, and Economic Caste

Questions: What has been the impact of historical labour demand on the ethnic composition of Australia and the United States? On its spatial distribution? On what terms was that labour recruited, retained and remunerated? What structures contemporary Australian and United States migration intake? Are these countries open to 'Third World Looking People'? Which ones? On what terms?

C Video: Jim Crow (extracts)

Readings:

Perea et al., pp. 91-119, 310-321, 367-377, 397-406

Pacific Islands Labourers Act 1901 (Cth)

Case study on Aboriginal 'protection' laws of Western Australia in the late 19th and first half of the 20th century.

'Labour force characteristics' in Australian Bureau of Statistics, *Population characteristics: Aboriginal and Torres Strait Islander Australians* (paper 4713.0), accessible via www.abs.gov.au, 'Main features', 'Indigenous statistics'.

Catherine Dauvergne, 'Challenges to Sovereignty: Migration Laws for the 21st Century', paper presented to the 13th Commonwealth Law Conference, Melbourne, 2003.

Class 11

Topic: Race, Citizenship, and Political Caste

Questions: Did the classification of indigenous Australians as subjects and indigenous and African Americans as non-citizens produce substantially different outcomes in the two countries? How did citizenship law (as opposed to migration law) produce 'White' nations?

Readings:

Perea et al., pp. 91-111, 152-156, 583-590
Commonwealth Franchise Act 1901 (Cth) section 4
Commonwealth Electoral Act 1918 (Cth) section
Naturalisation Act 1903 (Cth) section 5
Nationality Act 1920 (Cth) section 7

C Video: Rabbit of the Moon

Class 12

Topic: The Color of Criminal Justice

Questions: Is there such a thing as 'indigenous' or 'ethnic' crime? Who are its victims? How does the 'criminal justice system' impact on particular groups? Why? Who occupies Australian and United States prisons? Why?

Readings:

Perea et al., pp. 1017-1026, 1035-1045
McNamara, chapter 10 in McRae et al, *Indigenous Legal Issues*, Law Book Co (2003)

Classes 13-14

Topic: Race and Social Caste

Questions: To what extent are ethnic groups segregated spatially in Australia and the United States? What produced this phenomenon? To what extent is education segregated? What underpins this? What would need to be done to overcome this entrenchment of social caste?

Readings:

Perea et al., pp. 646-654, 678-697
Cowlshaw, 'Where is racism?' in Cowlshaw and Morris, *Race matters*
Other Australian reading to be advised.

C Video: The Road to Brown