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Racial Identity and the State: The Dilemmas of Classification

Michael Omi*

Introduction

The February 1995 *Chronicle of Higher Education* featured an article on racial classification and the sciences which highlighted an interesting dilemma facing scientists in the United States.¹ On one hand, scientists routinely use racial categories in their research and regularly make comparisons between the races with respect to health, behavior, and intelligence.² On the other hand, many scientists feel that racial classifications are meaningless and unscientific.³ For example, Professor Kenneth Kennedy of Cornell University is quoted in the article as saying, "In the social sense, race is a reality. In the scientific sense, it is not."⁴ It is the reality of race "in the social sense" that I want to explore by focusing on the racial categories used by the federal government, the problems associated with these categories, and their deeply political character.

My initial interest in state-defined classifications of race was inspired by a Louisiana case from the early 1980s.⁵ In 1977, Susie Guillory Phipps, who was then forty-three years old, found herself in need of her birth certificate to process a passport application.⁶ Believing all her life that she was White, she was stunned when a

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1. David L. Wheeler, *A Growing Number of Scientists Reject the Concept of Race*, CHRON. HIGHER EDUC., Feb. 17, 1995, at A8.

2. *Id.* at A8.

3. *Id.*

4. *Id.* at A15. Professor Kennedy's view is shared by many scientists who believe that there are no meaningful biological differences between members of different races. In a social context, however, racial differences are often dramatic.

5. *Doe v. Department of Health and Human Resources*, 479 So. 2d 369 (La. Ct. App. 1985).

6. Calvin Trillin, *American Chronicles: Black or White*, NEW YORKER, Apr. 14, 1986, at 62 (recounting the details of Ms. Phipps' experience).

clerk at the New Orleans Division of Vital Records showed her that she was designated as "colored."⁷ As Mrs. Phipps told reporters, "It shocked me. I was sick for three days."⁸ The only person apparently aware of Mrs. Phipps' racial designation on her birth certificate was the mid-wife who wrote it down.⁹ "I was brought up white, I married white twice."¹⁰

Mrs. Phipps' racial classification was assigned under an old Louisiana state law which allowed anyone with "any traceable amount" of black ancestry to be legally defined as "black."¹¹ According to the state's genealogical investigation, Mrs. Phipps great-great-great-great grandmother was a black slave named Margarita.¹² Given this information, state stood by the designation of "colored" on Mrs. Phipps' birth certificate.¹³

The logic of Louisiana's racial classification is consistent with what anthropologist Marvin Harris calls the principle of *hypodescent*.¹⁴ This rule provides that any "White" person who is known to have had a black ancestor is classified as black.¹⁵ Therein lies a particular kind of racial logic commonly deployed, that anyone with a black ancestor, however distant, is also black.

Ms. Phipps sued the state of Louisiana to change her racial designation from "colored" to "White."¹⁶ She lost.¹⁷ In 1986, the

7. *Id.* at 62.

8. *Id.*

9. *Id.* at 63.

10. *Id.*

11. *Id.* In 1970, the classification was changed to require a person with more than 1/32 black blood to be legally defined as "black." *Id.* The 1970 statute read, in relevant part:

In signifying race, a person having one thirty-second or less of Negro blood shall not be deemed, described, or designated by any public official in the state of Louisiana as 'colored,' a 'mulatto,' a 'black,' a 'Negro,' a 'griffe,' an 'Afro-American,' a 'quadroon,' a 'mestizo,' a 'colored person,' or a 'person of color.'

Doe v. Department of Health and Human Resources, 479 So. 2d 369 (La. Ct. App. 1985) (quoting LA. REV. STAT. 42:267). This statute was repealed in 1983. Trillin, *supra* note 6, at 63.

12. *Id.* at 71.

13. After complicated calculations, the state investigator was ready to prove Ms. Phipps was actually 5/32 black. *Id.* at 76.

14. MARVIN HARRIS, PATTERNS OF RACE IN THE AMERICAS 56 (1964).

15. *Id.* Brian Bégué, Ms. Phipps' attorney also classifies this type of thinking as an issue of denial of equal protection. "If you're a little bit black, you're black. If you're a little bit white, you're still black." Trillin, *supra* note 6, at 78.

16. *Doe v. Department of Health and Human Resources*, 479 So. 2d 369 (La. Ct. App. 1985).

17. *Id.* at 371. The Louisiana Court of Appeals affirmed the trial court's decision which held that the defendant state officers had no legal duty to alter the birth certificates unless the appellant could show that white was the correct racial

Louisiana Supreme Court denied her motion to appeal.¹⁸ Later that same year, the U.S. Supreme Court refused to review the case and thus left standing the lower court's decision.¹⁹

The *Phipps* case dramatically illustrates the disjuncture between state-imposed definitions of race and how individuals perceive their own racial identity. A thorough analysis of state definitions of race reveals their deeply problematic construction and highlights the difficulty—if not impossibility—of defining and utilizing coherent and consistent categories over time. The discussion which follows examines some of the problems.

I. State Definitions of Race

A. How the State Classifies Race

The designation of racial categories and the determination of racial identity is no simple task. Over the last several centuries, it has provoked numerous debates in this country, including intense disputes over natural and legal rights, who could become a naturalized citizen and who could marry whom.²⁰

Racial and ethnic categories in the U.S. historically have been shaped by the political and social agendas of particular times. The first U.S. census in 1790 distinguished holders of the franchise, namely White males, from the general population.²¹ The

designation. *Id.* at 372. The court stated, “[t]he voluminous record before us contains fascinating evidence of race as a matter of physical appearance, heredity, self-perception, community recognition, and cultural bias The intriguing . . . issues raised by this evidence belie simple legal questions—the only questions courts of law are authorized, or indeed able, to answer.” *Id.* The court acknowledged that the repealed statute which provided the original basis for the racial classification “was based upon wholly irrational and scientifically insupportable foundations.” *Id.* at 372. Nonetheless, the court also recognized that the Louisiana Supreme Court had found the statute constitutional. *Id.* at 373 (Armstrong, J., concurring in part, dissenting in part) (citing *State ex rel. Plaia v. Louisiana Bd. of Health*, 296 So. 2d 809 (La. 1974)). The court concluded, “[w]hile our present opinion should not be interpreted to imply that we are bound today by social and cultural precedent, we are nonetheless bound by legal precedent.” *Id.* at 372.

18. *Doe v. Department of Health and Human Resources*, 485 So. 2d 60 (La. 1986).

19. *Doe v. Department of Health and Human Resources*, 479 U.S. 1002 (1986) (dismissing appeal for want of a substantial federal question).

20. It was not until 1967 that all state anti-miscegenation laws were ruled unconstitutional. See *Loving v. Virginia*, 388 U.S. 1 (1967).

21. COMMISSION OF BEHAVIOR AND SOC. SCIENCES AND EDUC., COMMITTEE ON NAT'L STATISTICS, SPOTLIGHT ON HETEROGENEITY: THE FEDERAL STANDARDS FOR RACIAL AND ETHNIC CLASSIFICATION 5 (Barry Edmonston et al. eds., 1996) [hereinafter SPOTLIGHT ON HETEROGENEITY]. This first census was largely concerned with political apportionment and taxation. In addition to noting slaves, American Indians were counted separately for taxation purposes. *Id.* The census

practice of slavery motivated changes in categorization such as grouping blacks into free and slave populations.²²

The current categories of racial classification were assigned and implemented by the U.S. Office of Management and Budget (OMB) in response to the anti-discriminatory and equal opportunity laws of the 1960s and 1970s.²³ Statistical Directive No. 15 (Directive 15), issued in 1977 by the OMB, fosters the creation of "compatible, nonduplicated, exchangeable racial and ethnic data by Federal agencies."²⁴ Directive 15 defined the basic racial and ethnic categories to be utilized by the federal government for three reporting purposes: statistical, administrative and civil rights compliance.²⁵

distinguished U.S. inhabitants by five classes: "[1] Free white Males of sixteen years and upwards, including heads of families; [2] Free white Males under sixteen years; [3] Free white Females including heads of families; [4] All other free persons; [5] Slaves." CENSUS OF 1790, *reprinted in* FIRST CENSUS OF THE U.S., 1790, No. 1 (1990).

22. See SPOTLIGHT ON HETEROGENEITY, *supra* note 21, at 5. The editors concluded that racial and ethnic categorizations "have always been closely associated with the politics and the social agendas of the times . . ." *Id.*

23. As federal and state governments enact anti-discrimination and equal opportunity laws, governmental determination of minority status and the collection of racial and ethnic data becomes essential. *Id.* at 6. An example of these enactments includes the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1964), which provides that no person may, "on ground of race, color, or national origin, be excluded from participation in, or denied the benefits of . . . any program receiving federal financial assistance." *Id.* Additionally, the Equal Opportunity Act, 42 U.S.C. § 2000e (1964), makes it an unlawful employment practice to discriminate on the basis of "race, color . . . or national origin." *Id.* § 2000e-2(a)(1).

24. OFFICE OF MANAGEMENT AND BUDGET, STATISTICAL DIRECTIVE NO. 15 (May 12, 1977) [hereinafter DIRECTIVE 15]. Directive 15, entitled "Race and Ethnic Standards for Federal Statistics and Administrative Reporting," provides:

1. Definitions

The basic racial and ethnic categories for Federal Statistics and program administrative reporting are defined as follows:

- a. *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
- b. *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.
- c. *Black.* A person having origins in any of the black racial groups of Africa.
- d. *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- e. *White.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

25. *Id.*

B. *The Problems in Directive 15 Classifications*

An investigation of Directive 15 classifications reveals significant problems in their construction and meaning. While most of the categories rely on a concept of "original peoples," only one of the definitions is specifically racial, only one is cultural and only one relies on a notion of affiliation or community recognition.²⁶ There are few comparable criteria deployed across the categories. For example, Directive 15 defines a black person as one having her or his "origins in any of the black racial groups of Africa," but it does not define a White person with reference to the White racial groups of Europe, North Africa, or the Middle East.²⁷ Indeed "Black" is the only category which is defined with an explicit racial designator²⁸—one which is quite problematic. What, we might ask, are the "black racial groups of Africa"?

Hispanics are not considered and classified as a race but as an ethnic group.²⁹ The Hispanic category is, in fact, the only ethnicity that the state is interested in explicitly identifying and classifying. The category is defined through cultural designators—a person of "Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin."³⁰ In this definition, Hispanics can be of any race.³¹

The category of "American Indian or Alaskan Native" reveals another intriguing definitional issue. Individuals who are to be counted in this category not only must have their origins in any of the original peoples of North America, but must also maintain "cultural identification" through "tribal affiliation or community recognition."³² Directive 15 does not impose the requirement of cultural identification on any of the other groups.³³

In addition to these facially apparent problems associated with these definitions, there are cracks in this system of classification in that particular groups cannot be situated within its framework. For example, the native peoples of Central and South

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Existing data collection efforts tend to assume that persons of Hispanic ethnicity are either black or white, rendering affiliations with other racial categories nonexistent. See, e.g., SPOTLIGHT ON HETEROGENEITY, *supra* note 21, at 28.

32. DIRECTIVE 15, *supra* note 24.

33. *Id.*

America do not fall within any category, and Brazilians, although South American, are not of Spanish culture or origin.³⁴

C. Challenging Federal Definitions

These problems and concerns have led to a serious questioning of the existing federal standards for racial and ethnic classification. The obvious inconsistencies and omissions in the current classifications warrant analysis and may need corrections. In February 1994, I participated in a two-day workshop convened by the National Research Council at the request of the OMB.³⁵ The purpose of the meeting was to assess the existing racial and ethnic categories as defined in Directive 15, to isolate problems in its use as a research and administrative tool and to consider options for a revision of Directive 15.

During the sessions, we heard directly from and about different groups who were advancing political claims for recognition and change in the existing standards. Some argued for a Hispanic category which would combine race and ethnicity and be mutually exclusive of the other four race categories.³⁶ Groups of native Hawaiians expressed the desire to move from the category of "Asian and Pacific Islander" to "American Indian or Alaskan Native."³⁷ They argued that because of history and current sovereignty claims they have much more in common with other indigenous peoples than, for example, East Asians.³⁸ Some Arab American groups are currently lobbying for a Middle Eastern category.³⁹

34. SPOTLIGHT ON HETEROGENEITY *supra* note 21, at 25.

35. The workshop is summarized in SPOTLIGHT ON HETEROGENEITY, *supra* note 21.

36. *Id.* at 28.

37. *Id.* at 31. This suggestion was met with resistance at the workshop from some groups representing American Indians. While native Hawaiians may have more cultural or social experiences in common with American Indians as native people in land taken by Americans, these groups argued that the legal relationship between the U.S. and American Indians differs significantly from that of the U.S. and Hawaiians. *Id.* The rationale for including native Hawaiians with American Indians could also be extended to members of groups currently classified under "Asian and Pacific Islander." The inclusion of native Hawaiians and possibly other Pacific Islanders in a new "Indigenous People" category is an example of a possible new panethnic formation and demonstrates some of the conflicts related to the concept. See discussion *infra* notes 57-66 and accompanying text.

38. *Id.* at 31.

39. *Id.* at 33. A "Middle East" or "Arab American" panethnic identity currently is being encouraged by some groups to aid in the fight against discrimination and to fill other special needs of Arab Americans, totaling over one million at the time of the 1990 Census. *Id.* The issuance of new racial categories in the census, however, is done cautiously, taking size, social, economic and legal factors into consideration. *Id.*

Noting that they are now classified as White, they argue that the data Arab Americans need in order to address issues such as discrimination are not available due to the lack of a specific racial designator.⁴⁰

Perhaps the most controversial proposal was to add a multi-racial category to the next census.⁴¹ Much of the momentum for this idea comes from school districts which have seen a dramatic rise in children of "mixed race."⁴² Their visible presence has led to questions regarding how to classify them for reporting and planning purposes.

Proposed changes to the existing standards, emanating from various political claims, have left some demographers and statisticians unsettled. They would prefer to remove the determination of categories from the realm of politics, and transfer it to the arena of academic research. Such a move, in their view, would allow more precise and scientifically determined categories to be constructed and utilized for administrative reporting and the collection of data.

Any attempt to frame such structured categories, however, immediately confronts a range of contradictory choices and gaps in our understanding about racial classification and identity. The following discussion surveys some of these problems.

II. The Problems in Racial Classification

A. *The Conflict Between State Definitions and Individual/Group Identities*

The first significant problem in racial classification is the gap between administrative requirements and popular consciousness. The government's interests in identifying and tracking individuals by race and ethnicity compel limitations that fail to acknowledge the nuances of racial identity in reality.

The federal, state and local agencies involved in compiling and analyzing racial and ethnic data do so with the intent to track socio-economic progress, assess health trends, and determine patterns of discrimination, well-being and life chances. Because tracking such data requires longitudinal analyses, agencies want relatively static categories which can be objectively determined. Ideal racial and ethnic categories for such purposes would be conceptually valid, exclusive and exhaustive, measurable and reliable

40. *Id.*

41. *Id.* at 38.

42. *Id.* at 13.

over time. The Census Bureau and most government agencies currently uses three different questions and concepts to describe and categorize individuals: race,⁴³ ethnicity⁴⁴ and ancestry.⁴⁵

Such categories contrast sharply with conceptions of race and ethnicity which recognize their dynamic nature and their "slippery" subjective indicators such as identity. Partially because of these limitations, administrative definitions may not be meaningful to the very individuals or groups they purport to represent. This is evident in Clara Rodriguez's study of Latinos which reveals a strong group rejection of the dominant mode of conceptualizing racial categories in the United States.⁴⁶ For example, the Census Bureau reports that 40% of Hispanic respondents in 1980 and 1990 answered the race and ethnicity questions "wrong." That is they failed to check both a race box and an ethnicity box.⁴⁷ In addition, it is estimated that over 97% of persons reporting in the "other race" category were Hispanic.⁴⁸

Part of the problem lies with individual and group differences in conceptualizing race. With respect to new immigrant populations, for example, it is important to examine the shifts in racial self-identity as immigrants move from a society organized around specific concepts of race, to a new society with a different mode of conceptualization.

43. The 1990 Census asked the respondent to fill in one circle indicating the race that person considered himself or herself to be. BUREAU OF THE CENSUS, OFFICIAL 1990 U.S. CENSUS FORM (1990). There were sixteen racial categories as options: White, Black or Negro, Indian (American), Eskimo, Aleut, one of the identified Asian or Pacific Islander groups (Chinese, Filipino, Hawaiian, Korean, Vietnamese, Japanese, Asian Indian, Samoan, or Guamanian), other Asian or Pacific Islander, or other race. *Id.* at 2. American Indians were also asked to note their enrolled or principal tribe. *Id.*

44. The ethnicity question asked whether the person was of Spanish/Hispanic origin. *Id.* If so, the respondent was asked to note one of three categories: Mexican, Mexican-American, Chicano; Puerto Rican, Cuban; or other Spanish/Hispanic. *Id.*

45. The ancestry question was open-ended with no precoded categories, but listed examples such as German, Italian and Afro-American. BUREAU OF THE CENSUS, 1990 CENSUS OF POPULATION F-7 (1993). In 1980, the question asked, "What is this person's ancestry?" and in 1990 asked, "What is this person's ancestry or ethnic origin?" SPOTLIGHT ON HETEROGENEITY, *supra* note 21, at 22. The ancestry question is given only on "long form" questions, which are administered to one-sixth of the population. *Id.* at 21.

46. Clara E. Rodriguez, *Race, Culture, and Latino "Otherness" in the 1980 Census*, 73 SOC. SCI. Q. 930, 930 (1992).

47. SPOTLIGHT ON HETEROGENEITY, *supra* note 21, at 21. Approximately 9.8 million people reported identified as "Other race." *Id.* See also Rodriguez, *supra* note 46, at 932.

48. "In no state—including Hawaii—did more than 2 percent of the non-Hispanic population indicate that they were of 'other race.'" *Id.*

B. Changing Self-Identification

The second significant problem in racial classification is the ever-changing character of racial identification, stemming both from changes in state definitions and from shifts in how individuals or groups identify themselves. These constant changes frustrate the needs and intentions of the government institutions that seek to clearly assign racial categories.

A fascinating example of changing self-identification is the dramatic increase in the American Indian population. The number of American Indians increased from 552,000 in 1960 to 1,959,000 in 1990—a 255% increase in thirty years.⁴⁹ This rate of increase is virtually impossible demographically, but much of the increase is explained by changes in racial self-identification. These changes are driven by shifts in attitudes toward American Indians,⁵⁰ a romanticization of the past and tangible benefits tied to American Indian identification.⁵¹

Researchers are likely to elicit different responses on racial and ethnic identification in different historical periods. They are also likely to elicit different responses from the same individual at different points in her or his life cycle. Given the contextual nature of racial and ethnic identification, it may be difficult or perhaps impossible to achieve the necessary reliability and consistency in time series data and analysis.

C. Life Cycle Effects

Another problem surfaces in that race is often identified by third parties whose only basis for the racial assignment is the individual's outward appearance. Since 1989 births have been categorized by the race of the mother.⁵² Racial classification at death,

49. Jeffrey S. Passel, *Racial and Ethnic Differentiation in the United States: Comments and Observations*, Address at the Workshop on Race and Ethnicity Classification, 17 (Feb. 17-18, 1994) (transcript on file with *Law and Inequality: A Journal of Theory and Practice*). In addition to the rise in self-identified American Indians, the number of Americans claiming American Indian ancestry increased from 6.8 million in 1980 to 8.8 million in 1990. *Id.*

50. *Id.*

51. *Id.*

52. Robert A. Hahn et al., *Inconsistencies in Coding of Race and Ethnicity Between Birth and Death in US Infants*, 267 *JAMA* 259, 260 (1992). A somewhat complex system was used prior to 1989. In the previous system, newborns were classified according to the race of the parents, if both were the same race; by the race of the non-white parent, if one parent was white and the other was not; and if both parents were non-white, the baby was classified according to the race of the father (except if one parent was Hawaiian, in which case, the baby was classified as Hawaiian). SPOTLIGHT ON HETEROGENEITY, *supra* note 21, at 26 n.6 (citing

by contrast, is designated by a third party, either a physician or funeral director.⁵³ This has led to a peculiar situation where a person may be born one race, and die another. In fact, studies have suggested that there is an over-assignment of deaths to the white category, a small under-assignment of deaths to the black category and significant underassignment of deaths to American Indian and Asian categories.⁵⁴

This systematic discrepancy has led to significant errors in statistical analysis and record keeping. For example, Robert Hahn, an epidemiologist at the Centers for Disease Control and Prevention, found that established infant-mortality rates for some groups are fraught with error.⁵⁵ Linking birth and death certificates, he found that the infant-mortality rates were 46.9% higher than previously reported for American Indians, 48.8% higher for Japanese Americans and 78.7% higher for Filipinos.⁵⁶ From birth to death, current systems of racial classification are arbitrary and inconsistent.

In addition to the apparent problems with existing classifications above,⁵⁷ there is also the temporal effect of evolving racial and ethnic labels. New labels come into vogue, old groups dissolve through assimilation and new groups emerge as a result of changes in civil status or patterns of immigration. Two particular historical trends have emerged as significant causes of changed racial designations: panethnicity and multiracial consciousness.

D. Panethnicity

The reorganization of old groups and the creation of new groups are features of changing political and social contexts.⁵⁸ The rise of panethnic consciousness and organization is a dramatic political development in the post-Civil Rights era.⁵⁹ Groups whose

NATIONAL CTR. FOR HEALTH STATISTICS, U.S. DEPT OF HEALTH AND HUMAN SERV., VITAL AND HEALTH STATISTICS 21 (1995).

53. Hahn, *supra* note 52, at 260. Racial classification at death typically is assigned by the person or official who fills out the death certificate. Often this classification is based on the statements of the next of kin.

54. *Id.* at 261. Whites were over-assigned at death by 2.5%, while blacks were under-assigned by 1.9% and Filipinos were underassigned 44.5%.

55. *Id.* at 262.

56. *Id.* at 261.

57. See *supra* notes 24-42 and accompanying text (discussing OMB's Directive 15 which set guidelines for racial classifications by the federal government).

58. See generally David Lopez & Yen Le Espiritu, *Panethnicity in the United States: A Theoretical Framework*, 13 ETHNIC & RACIAL STUD. 198 (1990) (discussing the historical process of panethnic association).

59. *Id.* at 198 ("[P]anethnicity . . . is an essential part of ethnic change.").

previous national or ethnic identities were quite distinct became consolidated into a single racial (or in the case of Latinos, ethnic) category.

Prior to the late 1960s, for example, there were no people who identified as "Asian American."⁶⁰ In the wake of the civil rights movement, distinct Asian ethnic groups, primarily Chinese, Japanese, Filipino and Korean Americans, began to frame and assert their "common identity" as Asian Americans.⁶¹ This political label reflected the similarity of treatment that these groups historically encountered at the hands of state institutions and the dominant culture at large.⁶² Different Asian ethnic groups had been subject to exclusionary immigration laws,⁶³ restrictive naturalization laws,⁶⁴ labor market segregation⁶⁵ and patterns of "ghettoization" by a polity and culture which treated all Asians as alike.

The panethnic organization of Asian Americans involved the muting of profound cultural and linguistic differences and significant historical antagonisms, which existed among the distinct nationalities and ethnic groups of Asian origin. In spite of diversity and difference, Asian American activists found the political label a crucial rallying point for raising political consciousness about the problems in Asian ethnic communities and in asserting demands on political institutions.

Panethnic formations such as this are not stable. Conflicts often occur over the precise definition and boundaries of various panethnic groups as well as their adequate representation in census counts, reapportionment debates and minority aid programs. Panethnic consciousness and organization are, to a large extent, situationally and strategically determined. There are times when it is advantageous to be in a panethnic bloc, and times when it is seen as more desirable to mobilize along particular ethnic lines.

Lumping various groups together may result in a flattening of important distinctions we, as researchers and policy makers, may wish to discern and analyze. Some groups may "all look alike," but they are not homogeneous. How meaningful, for example, is an Asian American category for analysis when both Japa-

60. See YEN LE ESPIRITU, *ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES* 19-20 (1992) ("[I]mmigrants from Asian countries did not think of themselves as Asians.").

61. *Id.*

62. See *id.* at 14.

63. *Id.* at 19.

64. *Id.* at 54.

65. *Id.* at 10.

nese and Laotian Americans are subsumed under it? Such categorization ignores significant differences between these two groups of people.⁶⁶ The conflation of important "differences" is a hazard with the construction and use of particular categories.

E. Multiracial Identification

An important emerging issue is the inability of existing state definitions to encompass people of "mixed racial descent." While the number of such individuals is unclear and contingent on self-definition, the 1990 Census counted two million children under the age of eighteen whose parents were of different races.⁶⁷

In response to these demographic changes, there has been a concerted effort from school boards and organizations such as Project RACE (Reclassify All Children Equally) to add a "multiracial" category to the Census.⁶⁸ This proposal has been opposed by many civil rights organizations.⁶⁹ Some groups fear a reduction in their numbers⁷⁰ and worry that such a multiracial category would spur debates regarding the protected status of groups and individuals.⁷¹ According to the Census Bureau, 75% percent of those who currently identify themselves as black could identify themselves as multiracial.⁷² Though it is impossible to know whether these qualifying people would so identify, complex issues

66. Among Japanese Americans, only 28.4% are foreign born, the median family income is 137% of the national average, the poverty rate is 4.2%, and 55.9% speak English at home exclusively. At the same time, among Laotians, 93.7% are foreign-born, the median family income is 26% of the national average, the poverty rate is 67.2% and 3.4% speak English at home exclusively. BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, WE, THE ASIAN AND PACIFIC ISLANDER AMERICANS 11-16 (1988).

67. Michael Marriott, *Multiracial Americans Ready to Claim Their Own Identity*, N.Y. TIMES, July 20, 1996, at Y1.

68. Linda Mathews, *More Than Identity Rides on a New Racial Category*, N.Y. TIMES, July 6, 1996, at Y1.

69. See, e.g., Raul Yzaguirre, *Multiracial Census Category Would Undercount Hispanics*, (July 10, 1996), press release distributed by the Progressive Media Project, Madison, Wisconsin, (on file with *Law & Inequality: A Journal of Theory & Practice*) Yzaguirre argues that a multiracial category would lead to inaccurate data collection and undermine the data's purpose of profiling the economic and social status of groups of people who have something in common.

70. Mathews, *supra* note 68, at Y1.

71. "Clear and consistent federal data collection on race and ethnic groups has gone a long way in ensuring civil rights, due-process protections and equal allocation of federal resources to minority groups and economically disadvantaged communities." Yzaguirre, *supra* note 69; see also Mathews, *supra* note 68, at Y1.

72. Lawrence Wright, *One Drop of Blood*, NEW YORKER, July 25, 1994, at 46, 48.

of identity would emerge from the institutionalization of a multi-racial category.⁷³

The debate over a multiracial category reveals an intriguing aspect about how we conceptualize race. The very terms "mixed race" or "multiracial" imply the existence of "pure" and distinct races. Drawing attention to the socially constructed nature of this category and the meanings attached to it reveals the inherent fluidity of our concepts of race.

F. The Shifting Meaning of Racial/Ethnic Identification for White Americans

The meaning of racial/ethnic identification for specific groups and individuals varies enormously. Recent research on White Americans suggest that they do not experience their ethnicity as a definitive aspect of their social identity.⁷⁴ Rather, they perceive it dimly and irregularly, picking and choosing among its varied strands that allows them to exercise—as sociologist Mary Waters suggests in her study—an "ethnic option."⁷⁵ Waters found that ethnicity was flexible, symbolic and voluntary for her White respondents in ways that they were not for non-Whites.⁷⁶

Jeffrey Passel's analysis of the open-ended question on ancestry or descent which first appeared in the 1980 Census underscores the fluid nature of white ethnic identification.⁷⁷ The question, "What is this person's ancestry?" was followed by an open-ended, write-in box. Below the box a group of more than a dozen options were listed. What is intriguing is that the examples provided below the question had a dramatic influence on responses. For example, in 1980 English was listed as an option but was dropped in 1990.⁷⁸ As a result the English population of the United States declined by 34%.⁷⁹ French was listed in 1980 and when dropped in 1990, the French population fell by 20%.⁸⁰ By contrast, the Cajun population grew by more than 6,000% between

73. For a detailed discussion of this debate, see Wright, *supra* note 72.

74. See *infra* notes 75-85 and accompanying text.

75. See generally, MARY C. WATERS, *ETHNIC OPTIONS: CHOOSING IDENTITIES IN AMERICA* (1990) (analyzing socioeconomic differences based on ethnicity as reported in the 1980 census).

76. *Id.* at 147-50.

77. See Passel, *supra* note 49, at 21.

78. *Id.* at 21.

79. *Id.*

80. *Id.*

1980 and 1990 as a result of the group's addition to the 1990 set of examples.⁸¹

The loose affiliation with specific European ethnicities does not necessarily suggest the demise of any clear group consciousness and identity. The twilight of European ethnicity may in fact signal the growth of a White racial identity. In an increasingly diverse workplace and society Whites are increasingly wondering what it means to be "White." What was previously a transparent and "natural" category has now been rendered problematic as Whites experience a profound racialization.

The racialization process for Whites is very evident on many university campuses as White students encounter a heightened awareness of race which calls their own identity into question. Interviews with White students at the University of California-Berkeley produced responses such as these:⁸²

Many whites don't feel like they have an ethnic identity at all and I pretty much feel that way too. It's not something that bothers me tremendously but I think that maybe I could be missing something that other people have, that I am not experiencing.⁸³

Being white means that you're less likely to get financial aid It means that there are all sorts of tutoring groups and special programs that you can't get into, because you're not a minority.⁸⁴

If you want to go with the stereotypes, Asians are the smart people, the Blacks are great athletes, what is white? We're just here. We're the oppressors of the nation.⁸⁵

Here we see many of the themes and dilemmas of White identity in the current period: the absence of a clear culture and identity, the perceived disadvantages of being White with respect to the distribution of resources and the stigma of being perceived as the oppressors of the nation. Such comments underscore the new problematic meanings attached to the category of White. The debates about Whiteness will deepen in the years to come.

81. *Id.*

82. INSTITUTE FOR THE STUDY OF SOC. CHANGE, *THE DIVERSITY PROJECT: THE FINAL REPORT 37* (1991).

83. *Id.*

84. *Id.*

85. *Id.*

III. Assigning Race: The Debate's Meaning for Social Research and Social Policy

In the midst of all of this uncertainty, however, there is one indisputable conclusion: state definitions of race have inordinately shaped the discourse of race in the United States. Originally conceived solely for the use of federal agencies, Directive 15 has become the *de facto* standard for state and local agencies, the private and nonprofit sectors, and the research community. Social scientists use the Directive 15 categories because they are the data codings that are available.

Among scholars there is a continuous temptation to think of race as an *essence*, as something fixed, concrete and objective. There is also an opposite temptation: to imagine race as a mere *illusion*, a purely ideological construct which masks some other more fundamental division, such as class.

Much of sociological research, though firmly committed to a social as opposed to biological interpretation of race, nevertheless slips into a kind of objectivism about racial identity and racial meaning. There is a marked tendency to treat race as an independent variable and to downplay its own variability and historically contingent character. Thus, sociologists can correlate race and residential patterns, race and crime, as well as race and intelligence (as *The Bell Curve*⁸⁶ controversy⁸⁷ dramatically reminds us), without problematizing the concept of race itself.

There is no discussion among scholars about the constantly shifting parameters through which race is considered—how group interests are conceived, status is ascribed, agency is attained and roles performed. Although abstractly acknowledged to be a socio-historical construct, race in practice is often treated as an objective fact: one simply *is* one's race.

Sociologists have debated the validity of race and have questioned whether to eliminate the concept, scale it back in usage to

86. RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994). This book created a storm of controversy by arguing that intelligence is largely a genetic trait, and that significant differences in I.Q. scores exist between racial or ethnic groups and between social classes. The policy implications are that most forms of social intervention to raise I.Q. scores are doomed to fail.

87. See generally *THE BELL CURVE DEBATE: HISTORY, DOCUMENTS, OPINIONS* (Russell Jacoby & Naomi Glauberman eds., 1995); *THE BELL CURVE WARS: RACE, INTELLIGENCE, AND THE FUTURE OF AMERICA* (Steven Fraser ed., 1995). Both works examine the concept of intelligence in detail, repudiate the claim that it is genetically inherited and stress the social context in which racial and class differences in intelligence and economic performance should be considered.

specific and verifiable applications, or leave it alone. David Decker argues that a proper sociological protocol requires that:

[T]he use of race be defined explicitly when it is used in research so that it is clear whether the term is being used to refer to a mythical but perceived relationship between superficial anatomical characteristics and specific social groups, or pointing to patterns and processes of discrimination, or to the history of the use and abuse of the term in human societies. It should not be used in a haphazard manner to seek correlates between race as a variable and other variables. It should not be used when researchers have not explained how and why the concept has been defined and is being used.⁸⁸

As an example, Decker states that there is little basis for presenting criminal arrest rates by race without explicitly explaining the meaning of race.⁸⁹ Is race being used to indicate the inequity of arrest procedures? Or is it being used to show how processes of racial discrimination and its socio-economic consequences have an impact upon the likelihood of criminal involvement? Or is it suggesting that some groups are by genes or culture more predisposed to criminal activity?

A few central questions continue to haunt policy-oriented research: What is it that we are trying achieve in defining racial and ethnic categories? What do we want to know and why? The federal government is currently grappling with these questions.

Some political conservatives have seized upon the difficulty of establishing coherent racial categories as an excuse to call for the abolition of all racial classification and record keeping.⁹⁰ Such a move, they argue, would save federal dollars and minimize racial/ethnic distinctiveness, consciousness and divisive politics. Yet accurate racial classification and record keeping is essential to systematically track patterns of discrimination and to gather data useful for evaluating policy with respect to racial inequality.⁹¹

Other social scientists and statisticians want to retain a system of classification, but are arguing for categories which are conceptually valid, exclusive and exhaustive, measurable and reliable over time. The discussion above, however, illustrates the problems

88. David L. Decker, *The Use of Race in Social Research* 13 (1994) (unpublished paper presented at the 65th Annual Pacific Sociological Association Meeting, San Diego, Cal., April 12-17, 1994) (on file with *Law & Inequality: A Journal of Theory & Practice*).

89. *Id.* at 13-14.

90. See, e.g. Clint Bolick, *Discriminating Liberals*, N.Y. TIMES, May 6, 1996, at A15; *Black? White? Asian? Why Not American?* GREENSBORO NEWS & REC., Jul. 10, 1994, at F2.

91. "Let's Keep Black Folks in the Dark": *Proposed Restrictions on Collecting Census Information*, 10 J. BLACKS HIGHER EDUC. 20, 20, (Winter 1995/1996).

in defining and maintaining such an "objective" system of classification.

Race and ethnicity will continue to defy our best efforts to establish coherent definitions over time. The real world is messy with no clear answers. Nothing demonstrates this convolution better than the social construction of racial and ethnic categories.

Conclusion

The strange and twisted history of the classification of Asian Indians in the United States provides an instructive note in conclusion. During and after the peak years of immigration, Asian Indians were referred to and classified as "Hindu" though the clear majority of them were Sikh. In *United States v. B.S. Thind*,⁹² the U.S. Supreme Court held that Thind, as a native of India, was indeed "Caucasian," but he was not "White" and therefore was ineligible to become a naturalized citizen.⁹³ "It may be true," the Court declared, "that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them today."⁹⁴

Asian Indians' status was revised after World War II when they were allowed to naturalize as a consequence of the favorable postwar environment.⁹⁵ The Asian Indians' classification story, however, further demonstrates the problems associated with rigid classification efforts. In the post-Civil Rights era, Asian Indian leaders sought to change their classification in order to seek "minority" group status.⁹⁶ The 1980 Census added the category "Asian Indian" to include immigrants from India and their descendants.⁹⁷ Currently, young Asian Indian activists prefer the term "South Asian" in order foster panethnic identification with those from Pakistan and Bangladesh among other countries.

The point of this discussion is that racial and ethnic categories are often the effects of political interpretation and struggle and that those categories in turn have political effects. This understanding is crucial for the ongoing debates around the federal standards for racial and ethnic classification.

92. 261 U.S. 204 (1923).

93. *Id.* at 213.

94. *Id.* at 209.

95. Sucheta Mazumbar, *Race and Racism: South Asians in the United States*, in *FRONTIERS OF ASIAN AM. STUD.* 25, 30 (1989).

96. *Id.* at 35.

97. BUREAU OF THE CENSUS, OFFICIAL 1980 U.S. CENSUS FORM (1980).

