Hybrid

Colker, Ruth

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The point of this book is not that we should abandon categories. A legal system without categories is impossible, and a society without a legal system invites anarchy. If one thing is clear about American society, it is that it always will be dependent upon a legal system that relies heavily on categories.

The point of this book is not that categories are inherently harmful and destructive. Categories can be very important to self-identity as well as to political coalition-building. In addition, the formal use of categories within the legal system can provide a foundation of fairness and justice by insuring that decisions are not made in an entirely subjective and biased manner.

The point of this book is that the legal system is overly reliant on bipolar categories. By focusing our intention on hybrids, we can see the awkwardness, unfairness, and injustice caused by such a bipolar legal system. We can break down this needless bipolarity by adding more individualized decisionmaking to the legal system while not entirely displacing the use of categories. Sometimes, breaking down this bipolarity will cause us to add new categories such as bisexual, transsexual, or multiracial. At
other times, it will help us to focus our attention on whom we want to devote our attention or resources within such a category as African-American or female. Yet at other times, it will cause us to see the stark differences in justice that are accorded to people who lie on one end of the bipolar spectrum (e.g., whites, men, or heterosexuals) and to people who lie on the other end (e.g., blacks, women, or homosexuals). A focus on the bipolarity of our legal system can therefore broaden our vision enormously.

A current political issue that can illuminate the central themes of this book is the controversy concerning the inaccuracy and even disrespectful nature of the U.S. census data collection on race. A census has been with us since the founding of our country. Article I, Section 2 of the Constitution requires an enumeration of all “free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.” The U.S. decision to require a census followed a well-established European tradition of gathering statistics about its people. Statistics and state come from the same root, because statistics were historically a means of “ascertaining the political strength of a country.”¹ The power to collect statistics can include the power to dominate a citizenry; thus, the story of a census is important to understanding the power of the state.

The first enumeration in the United States took place in 1780, and every ten years thereafter. It inquired whether individuals were free white males over sixteen, free white males under sixteen, free white females, all other free persons, or slaves.² The questions concerned status rather than race. Enumeration occurred on a family basis; individuals were enumerated as they related to the head of the household.³ Beginning in 1850, the Census began enumerating individuals rather than families.
Slowly, all persons began to be counted without regard to status. In 1870, pursuant to the ratification of the Fourteenth Amendment, there was no longer any special designation for "slaves." "Indians not taxed" were enumerated for the first time as persons in the census of 1890.4

Beginning in 1870, the Census tried to gather information about "the new free man of color" by adding racial categories for the first time—"black" (for those of more than three-fourths African descent), "mulatto" (three-eighths to one-half African descent), "quadroon" (one-quarter to three-eighths African descent), and "octoroon" (one-eighth or less of any African descent).5 These determinations were made solely on the basis of personal observation; no questions were asked to the respondents concerning their race.6 The 1890 Census inquired for the first time whether people were "Chinese" or "Japanese."7 The mixed-race categories were dropped in 1900; mulatto was reintroduced for the 1910 and 1920 enumerations. Census enumerators were instructed to designate, by visual observation, whether people were white, black, mulatto, Indian, Chinese, or Japanese.8

The census of 1910 began asking questions about nationality, country of origin, mother tongue, and language spoken at home in response to the large influx of immigrants around the turn of the century.9 But these questions created more confusion than precise data:

The Austro-Hungarian Empire was then called a "prison-house of nations." What nationality then was a Serbian who had come from there, or a Finn or Pole who came from Czarist Russia? If a family left Poland and stopped in England for a while, as many did, before continuing to the United States, what was its "country of origin"? What was learned about a Jewish family whose "language spoken at home" was Yiddish?10
In 1930, four new categories were added: Mexican, Filipino, Hindu, and Korean. The designation of “Mexican” as a race, however, had a very brief history. Beginning in 1940, “Mexican” was eliminated as a separate race. In 1950, Hindu and Korean were omitted and the “Indian” category was modified to read “American Indian.” The move to a smaller list was short-lived; in 1960, eleven racial classifications were used. The categories Hawaiian, Part Hawaiian, Aleut, and Eskimo were added. Census takers also were instructed that people of Latin descent were to be considered white unless they were “definitely Negro, Indian, or some other race.” Although the Hindu category had been formally eliminated, enumerators were instructed to write in “Hindu” for the race of Asian Indians. The 1970 Census modified the categories again, deleting the categories of Part Hawaiian, Aleut, and Eskimo. Most importantly, for the first time, the instructions were that the respondent should complete the Census form, although enumerators were still given permission to write in the race based on personal observation if this was possible.

In the 1970s, racial questions on the Census also began to reflect broader race-based record-keeping in society. "Directive No. 15" was issued in 1977; it provides for the racial categories used on all government recordkeeping. Instead of racial designation being an event that occurred once a decade, racial designation became a routine part of filling out applications for employment and enrollment in school. The move toward this widespread and uniform racial recordkeeping was to monitor enforcement of the recently enacted Civil Rights laws. Ironi-
cally, racial categories grew to have a more sweeping impact on American life. Americans soon became used to being racially categorized as part of many life activities.

Directive No. 15 also ended enumerator designation of race.
In 1980, even in cases where enumerators had to do follow-up interviews, they were instructed to designate race solely on the basis of respondents' statements. Fifteen options were used for the racial question in 1980 and 1990: white, black or Negro, Indian (American), Eskimo, Aleut, Asian-Pacific Islander—Chinese, Filipino, Hawaiian, Korean, Vietnamese, Japanese, Asian Indian, Samoan, and Guamanian. Alternatively, individuals could check the category "other." If an individual wrote in "brown" or "Mexicano," they were not reassigned to another category, such as white. Instead, they were counted as "other."

The term "other" has been on the Census form since 1910 but really has never been a separate category. When a respondent checks "other," the census enumerator is instructed to write down the person's race based on observation, ask the respondent to choose which one of the listed race he or she identifies with, or to write in specifically what he or she considers to be his or her race. When an individual writes in a racial category, the response is reassigned to one of the listed racial classifications so that the person is still classified as monoracial. Before 1980, a mixed-race person was assigned the father's race but, since 1980, a mixed-race person is assigned the mother's race.

Various rules govern how people who identify as multiracial are currently classified. People who designate they are biracial or multiracial are left in the "other" racial classification. People who respond "black-white" are designated as "black" and people who respond "white-black" are designated as white. Finally, data collected elsewhere on the form, or from similarly situated households, also sometimes is used to impute race for individuals who check "other" race.

In sum, the Census has not always employed racial categories. But we have used five categories without interruption for
the last one hundred years—white, black or Negro, American Indian, Chinese, and Japanese. We have moved from recognizing multiracial blacks to only recognizing monoracial categories. We have also moved from enumerator observation to self-identification. We have added an “other” category but never used its results to permit multiracial designation.

Although the current debate about whether a “multiracial” category should be added to the racial categories in Directive No. 15 focuses on whether such an addition would be a more respectful way to categorize people, a historical analysis of racial designations shows no correlation between respecting a group and designating it separately. In the first several census enumerations, we counted the number of slaves in order to determine the representation of the white community in Congress. These slaves, of course, were not even counted as whole persons for that purpose. The move toward multiracial categories in the late nineteenth century with the highly ambiguous categories of mulattos, quadroons, and octoroos was described as an “heroic attempt” to “prevent racially mixed individuals from crossing the racial line into the White population.”17 This enumeration reflected an attempt to keep tabs on the degree of racial mixing as part of an anti-miscegenation political effort.18 (This data was also collected from visual identification, not self-identification.) Similarly, the separate enumeration for Chinese and Japanese populations must “be interpreted within the context of prevailing anti-Chinese and anti-Japanese sentiments and restrictive immigration and other policies directed at these groups.”19 The increase in the number of Asian racial classifications since 1980 also reflects “political and social reactions to the growing Asian presence in U.S. society.”20 There has been no similar move to have white Ameri-
cans designate their country of origin in the Census race question.

Given the peculiar history of our Census race questions, it is not surprising that the question of whether our current classification scheme is appropriate is contentious. For some reason, however, the current controversy has been a rather confined one. No one seems to be questioning whether we should collect race data on a national level at all. (Canada, as we will see, does not inquire about "race" on its census; it only inquires about the ethnic or cultural identities of one's ancestors.) Racial questions on the census were historically really "status" questions—whether one was free or black. The initial movement toward "race" questions was motivated by attempts to keep people out of our society or to deter interracial marriage. The impetus behind Directive No. 15 in the 1970s, however, was arguably ameliorative. The Secretary of Health, Education, and Welfare, Caspar Weinberger, had deplored the lack of useful data on racial and ethnic groups in 1973 to assess how the federal government could improve educational opportunities for Chicanos, Puerto Ricans, and American Indians.21 The coordinated development of common definitions for racial and ethnic groups soon emerged as a recommendation. An Ad Hoc Committee on Racial and Ethnic Definitions was created in 1974 to fulfill that recommendation; three years later, Directive No. 15 emerged as the solution.

The impetus behind Directive No. 15 was twofold: to find a consistent definition for minority groups other than blacks and to have definitions that would be used uniformly throughout society. The definition of "black" has not undergone change as a result of this evaluation whereas other minority groups have been added or deleted from the categories. The issue today of
whether a "multiracial" category should be added again primarily reflects the experiences of minority groups without a significant African-American heritage, because the most common group to intermarry with whites is Asian-Americans. Thus, in recent years, modification of the categories has not reflected dissatisfaction with the way "blacks" are counted. Nonetheless, as we will see, adding the category multiracial might affect the way "blacks" are counted.

The changes in the census since 1974 also have assumed that uniform racial and ethnic data best could answer the kinds of questions that were being asked by Secretary Weinberger. Weinberger's highly centralized approach, however, may have been flawed. We assume that we should have one model for asking race-based questions in all walks of life rather than fine-tuning the questions as appropriate. For example, if we wanted to know how many children in a school district might need special English classes if English is not the language spoken in their home, then it might make sense to ask people in that school district with children of school age what language they speak at home. But is it really helpful to know how many of those children (or their parents) identify as Hispanic? Are we asking race or ethnicity questions in some situations instead of the real questions that we want answered? Until we address the issue of what is the purpose of all of these racial and ethnic questions, it will be difficult to assess whether the given categories are useful.

Finally, few people acknowledge the gross inaccuracy of census data. The census has been collecting information about "whites" and "slaves" since the first census, yet the enumeration of the African-American population has always been considered extremely inaccurate. "The error in counting the black population of the country has often exceeded that of the white
by as much as ten times! In the details of the census—for example, Negro men from 25 to 34 years of age—the differences in the size of the error between black and white become even more extreme." If we want answers to the kinds of questions posed by Secretary Weinberger, sophisticated sampling of targeted populations might make much more sense. The census notoriously undercounts poor people because census collection requires an individual to have a street address. If a major purpose of the census is to provide us with information about the most disadvantaged members of our society, then a census would seem to be a particularly inappropriate form of data collection.

Although one might expect that basic questions about why we have a census and collect racial data at all would be a basic part of the current debate about modifying Directive No. 15, they are not. Instead, everyone assumes that Directive No. 15 will continue to exist indefinitely and that the real challenge is to figure out how to improve Directive No. 15. Reluctantly accepting that assumption, we therefore should consider how Directive No. 15 could be improved.

The current proposal to improve Directive No. 15 is to add a separate category of "multiracial." The addition of a multiracial category is quite controversial within some black civil rights organizations. Because nearly all blacks who have been in the United States for several generations have some white ancestry, a multiracial category could virtually wipe out the monolithic category of "black." They argue that it makes little sense to reclassify these people from "black" to "multiracial" since the one drop of blood rule predominates American life. Reclassification will not eliminate racism although it might permit government data collectors to hide or distort its existence.

Their argument has a strong historical foundation because
the modification in data collection for African-Americans has never been for the purpose of serving their interests. White slave owners and proponents of anti-miscegenation have dominated the racial classification system in the past. With the recent onslaught against affirmative action, they have every reason to be skeptical that this multiracial data would be in their interest.

Deborah Ramirez summarizes the implications of moving from monoracial classification to multiracial classification:

Creating a multiracial category would dilute the statistical strength of established minority groups. As the number of people claiming multiracial identity increases, membership in existing minority groups would necessarily decrease. This statistical change would have an enormous impact on matters immensely important to minority communities: electoral representation, the allocation of government benefits, affirmative action, and federal contracting rules. Certain districts created under the Voting Rights Act of 1965 to encourage minority representation might have to be redrawn as minority group numbers decrease. This statistical shift would also affect local school boards and civil rights agencies that utilize traditional minority categories. The federal government relies on monoracial categories to monitor a wide array of programs and entitlements, including: minority access to home mortgage loans under the Home Mortgage Disclosure Act, enforcement of the Equal Credit Opportunity Act, public school desegregation plans, minority business development programs, and enforcement of the Fair Housing Act. Creation of a multiracial category also has the potential to disrupt equal employment opportunity recordkeeping and affirmative action planning on the part of employers who are required to collect ethnic data under Title VII of the Civil Rights Act of 1964.23

Ramirez’s exhaustive list of the implications of changing our definitional scheme is daunting. The list, alone, should cause us not to be surprised that abandoning a monoracial classification system is contentious. Interestingly, the consequences flow be-
cause everyone assumes that it will be people who are currently labeled as minorities who will become multiracial rather than people who are currently classified as whites. That assumption flows from the pervasive "one drop of blood rule."

Other civil rights organizations that represent parents in multiracial marriages, however, favor the multiracial category. In their case, a multiracial lineage is not a distant past plagued by the knowledge of slave masters and rape of young black women. Their multiracial lineage is the result of a consensual, contemporary marriage. The multiracial community is composed of many households with a mixture of Asian-Americans and Caucasians who may not feel tainted by the one drop of blood rule in the same way that the children of African-American and Caucasian parents are tainted. They may feel that they can help construct their children's identities by calling them multiracial. More fundamentally, they feel that their children's basic rights are invaded by forcing them to favor one parent over the other in choosing a monoracial designation.24

The search for a solution that can satisfy all of these different communities is difficult, especially if we think that a monolithic solution is required. Although Ramirez examines many areas of life in which interracial conflict is occurring over definitional questions, such as who should qualify for affirmative action, she offers no solution to the thorny census issue. I suggest that we could revamp the race questions entirely to satisfy the interests of the diverse communities with multiracial backgrounds. In order to do so, we need to ask some basic questions.

First, we have to ask: why do we need this information at all? It is odd to try to improve Directive No. 15 without a clear answer to that question. On a general level, it seems that we want racial designation information for three separate purposes: (1) to determine how people self-identify, (2) to deter-
mine how the *community* classifies people, and (3) to determine people's backgrounds.

Historically, we have asked each of these questions at different times. When census enumerators determined race, we asked the second question. Since 1980, we have asked the first question through self-enumeration. And for those people who have checked "other" since 1910, we have classified them based on the third question. Our historical census data on race is therefore virtually meaningless because we have conflated each of those three questions. Census data is infamous for its inaccuracy on racial questions; the shifting perspectives embodied in prior census data perpetuates such inaccuracy.

It is therefore time to ask why we have this confusing color and ethnic topography that will not permit recognition of multiple or hybrid categories, and that does not separate self-identity from social identity from country of origin. In Canada, for example, the topography is not structured around race. Instead, the Canadian Census form indicates that an individual should check *all the categories that apply*. Moreover, the categories are based on country of origin, not race. All Africans are not alike under the Canadian scheme, nor are all Europeans alike. People have an identifiable country of origin rather than meaningless "race." There is no separate category for "multiracial." It is presumed that a large portion of the population is "multi-ethnic"; the forms therefore reflect that presumption. In the United States, by contrast, we have constructed our forms around the false presumption of monoracial backgrounds.

The Canadian model, however, does not appear to respond to the purported purposes of the U.S. census. Secretary Weinberger proposed that we collect more consistent race and ethnic data to help us track the status and needs of minority communities in the United States. An inquiry limited to country of origin
would not provide us with that information. For example, an individual who indicated that her ancestors were from South Africa might be white or black.

The Canadian model also does not adequately respond to the conflicting concerns raised by multiracial and black civil rights organizations. Multiracial organizations want an opportunity to indicate their self-identity irrespective of how society might categorize them visually. Black civil rights organizations want to make sure that their numbers are not diluted so that we can continue to recognize that people who are "pure" black as well as multiracial "black" face racism in our society. They are concerned with the community definition of their race rather than self-definition. The Canadian model might induce some people to report that their racial background includes European and African ancestors without an opportunity to indicate that the community nonetheless regards them as black. In other words, the Canadian approach is not designed to collect useful data in a society that has been dominated by the legacy of slavery.

To overcome these problems, we could modify the Census forms by asking three different types of questions:

1. What is your self-identity?
2. If your self-identity is different than your community identity, what is your community identity?
3. What are the countries of origin of your parents, to the extent that you are aware of them?

For each of these questions, we could allow individuals to list as many categories as apply (including the category "multiracial" for people who prefer to think of themselves in that way). Asking the questions in this way would allow us to separate out people who are aware of a multiracial background,
people who visibly look multiracial, and people who identify as multiracial. Then, we could use the data in ways that conform to people's actual lives. If the question is whether there is a large percentage of people in an area who are treated as if they are "black," then we would have that answer. But if the question is whether a particular area consists of people with varied, multiracial backgrounds, we would also have that information. In other words, we would recognize the social construction of race in the ways that we asked the questions. We would not assume that race is a static category.

The problem with this solution is that it requires a degree of trust in our government and society that may not be appropriate. Why should an individual who self-identifies as an African-American but who knows that he or she has a white ancestor trust our government by acknowledging his or her multiracial background? The consequences of moving away from monoracial categories may be wide-ranging as catalogued by Ramirez. Our historical experience suggests that that information will be misused. Our contemporary politics provides no reason for positive reassurance. But, of course, changing the census questions will not force anyone to admit to having ancestors from different racial groups. It will simply provide them with the opportunity to do so. By making that opportunity available, many parents of multiracial children will feel as if their ethnic heritage has obtained more respect.

When I read the testimony of parents in interracial marriages, I deeply understand their desire to transform the society in which their children will grow up. They want their children to share in the culture and heritage of both parents, and not to be judged by the "one drop of blood rule." I hope that adding new categories to the census will help in the achievement of that objective. But I also know that history tells us that these parents
face an insurmountable challenge. No matter how frequently they tell their children that they are multiracial, their children will be identified and classified on one end of the bipolar spectrum in many aspects of their lives. But if we do not begin to embark on the journey of honoring the values of these parents, we will never take any steps toward erasing the “one drop of blood” rule. Thus, we should embrace the attempt to move toward a multicultural society while recognizing that it will be a slow and difficult process.

By examining one series of questions on the census concerning race and ethnic identity, I have tried to show how we could separate out questions of self-identity, community identity, and ancestry. These distinctions might allow us to recognize people’s multiracial backgrounds while respecting people’s self-identity and understanding the history of oppression in our society. The same insights might benefit our categorization system for gender, sexual orientation, and disability on the census. In each of these areas, we also use highly bipolar categories that fail to reflect hybrids and the distinction between self-identity, community identity, and background. A post-operative transsexual is given a monolithic gender category which hides the fluidity of gender categories in that person’s life. Why ask about gender on the census if the gender of some people is not counted?

In this book, I have tried to render hybrids visible although the official census may still render them invisible. I hope that we will have such individuals in mind in the future as we create ameliorative programs to redress a history of group-based subordination in our society. I hope that we will do a better job in the future of considering how the life histories of individuals make them deserving of ameliorative treatment. We need to be
less stereotypical and bipolar in our thinking about how race, sexual orientation, gender, and disability matter in people’s lives.

Aside from these legal discussions, I also hope this book has helped each of us learn more about the hybrids within us. As I was finishing this book, I was playing with my three year old daughter. She said to me, “Mommy, today I am going to be a boy. Tomorrow, I am going to be a girl.” She then smiled mischievously and said, “No, today I am going to be a girl. Tomorrow I am going to be a boy. You’re always going to be a girl because you’re a mommy.” I wonder when society will socialize her into believing that she can only conform to female gender roles. I hope, instead, that she can grow up to see the hybrids within each of us, including herself.