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ARTICLE

Multiracial Identity and Affirmative Action

Nancy Leong*

I. INTRODUCTION

Affirmative action programs have sparked controversy for decades, and the use of race in college and university admissions has proved particularly polarizing. However, the heated affirmative action debate routinely overlooks one of America's fastest-growing demographics: the multiracial population.¹

In *Grutter v. Bollinger*, the Supreme Court held that enhancing diversity is a constitutional justification for an affirmative action program.² However, the idea of diversity is abstract and, at times, elusive. Because multiracial students defy easy classification, evaluating them under the diversity rationale raises a series of difficult questions. How should multiracial students designate their race for the admissions process? How should schools evaluate multiracial students? And exactly how do multiracial students contribute to diversity? Despite these thorny questions, little research has examined how multiracial students fit into affirmative action

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1. It is difficult to select terminology to discuss the idea of racial mixing. Modern science has discredited the idea that there is a biological basis for race; rather, the categories we employ are in fact arbitrary social constructs. See Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 11-16 (1994). In some sense, therefore, it is misleading even to talk about "multiracial people" because to do so implies the existence of "pure" races. Michael Omi, *Racial Identity and the State: The Dilemmas of Classification*, 15 LAW & INEQ. 7, 19 (1997). The term "monoracial" is problematic for the same reason, particularly since most people have ancestors who are members of what we might call different races. John A. Powell, *The Colorblind Multiracial Dilemma: Racial Categories Reconsidered*, 31 U.S.F. L. REV. 789, 798 (1997). However, despite these misgivings, "racial" categories retain force as a means of characterizing how society classifies individuals. Thus, to the extent that the idea of racial mixing embodies these prevailing notions of racial categorization, the terms "multiracial" and "monoracial" have social, if not scientific meaning, and for that reason, they will be used throughout this Article.

2. 539 U.S. 306, 343 (2003). The Court also allows a university or other government institution to use affirmative action to remedy the direct impact of its own past discrimination. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989). However, the Court has considered and rejected other rationales for affirmative action, including "reducing the historic deficit of traditionally disfavored minorities[.]" . . . countering the effects of societal discrimination," and increasing professional services to disadvantaged communities. *Regents Univ. of Cal. v. Bakke*, 438 U.S. 265, 306 (1978). Throughout this Article, I will refer to the goal of increasing diversity as the "diversity rationale."

programs. As a result, the subject has almost entirely escaped notice in the scholarly literature.

In this Article, I hope to initiate a discussion about the intersection of multiracial identity and affirmative action by highlighting the most vexing issues that arise in evaluating multiracial individuals under affirmative action programs founded on the current diversity rationale. These issues will become even more critical as the multiracial population increases. Our ability to move towards racial equality in higher education depends in part on developing a system flexible enough to accommodate applicants of all racial backgrounds.

Many of the issues surrounding multiracial applicants in the affirmative action context stem from the broader challenge of classifying multiracial individuals for *any* purpose. As background, Part II provides a historical overview of how multiracial individuals have been categorized. It then examines the variety of ways in which schools currently attempt to classify multiracial students in the admissions process.

Part III turns to affirmative action. After briefly summarizing the diversity rationale propounded in *Regents of the University of California v. Bakke* and reaffirmed in *Grutter v. Bollinger*, I draw on sociological research in an attempt to evaluate whether and how multiracial individuals might contribute differently to diversity. Many multiracial people do not identify with a single racial community, and, as a result, face certain unique issues regarding their racial identity. Like any other racial group, however, the multiracial community is heterogeneous, and we should not assume that individual members contribute to diversity in the same way.

Part IV examines the interaction of multiracial identity and race-conscious admissions policies. I consider how multiracial applicants identify themselves on applications as well as how admissions committees evaluate such information. The admissions process is secretive by nature, but, where practicable, I suggest methods for gathering additional information and conclusions we might draw if we found that applicants and committees behaved in certain ways. I also highlight important areas for future research to explore the implications of affirmative action for the multiracial community.

Throughout this Article, I hope to raise some of the larger issues implicated by the concept of multiracial identity in the context of affirmative action. Rigid classification systems constrain applicants, preventing them from fully describing their racial identity. Admissions committees likewise struggle to create guidelines for affirmative action while maintaining respect for the way applicants perceive themselves. Multiracial identity does not fit comfortably within the current paradigm of race sensitive admissions, yet we must acknowledge the difficulties that it presents as we strive to create viable affirmative action policies for the future.

II. CATEGORIZING MULTIRACIAL INDIVIDUALS

Racial mixing has been a divisive issue through American history: even as prominent leaders and scientists expressed concerns about racial purity, many members of their communities quietly engaged in interracial relationships.³ Partly as a result of this underlying contradiction, categorizing multiracial people has provided demographers with an ongoing challenge. This section will provide a brief overview of how the census has classified multiracial people during the past 150 years and show how these classifications both shape and reflect attitudes toward racial mixing in society. The historical classification of multiracial people continues to inform the categories used on college application forms today.

A. Historical Background

Government institutions have formally attempted to monitor the nature and extent of racial mixing since 1850, when the census began to include a category for Mulatto, designed to encompass individuals with Black/White and Black/Native American parentage.⁴ At this point, individuals' races were determined by a census enumerator making "common sense judgments" based on the individual's physical appearance, although in some cases the enumerator may have asked the individual for clarification.⁵

The census designers apparently attributed considerable importance to the proper categorization of individuals by race. In 1870, the instructions to census enumerators cautioned: "Be particularly careful in reporting the class Mulatto. The word is here generic, and includes quadroons, octo-rooms, and all persons having any perceptible trace of African blood. Important scientific results depend upon the correct determination of this class. . . ."⁶ By 1890, the Bureau of the Census further subdivided the Mulatto population into Quadroon and Octaroon,⁷ thereby increasing the level of perceived scientific precision in the categorization of multiracial

3. For a detailed history of racial mixing in America from the time of the first colonists, see Christine B. Hickman, *The Devil and the One-Drop Rule: Racial Categories, African Americans, and the U.S. Census*, 95 MICH. L. REV. 1161, 1171-87 (1997).

4. C. Matthew Snipp, *Racial Measurement in the American Census: Past Practices and Implications for the Future*, 29 ANN. REV. SOC. 563, 566 (2003).

5. Census enumerators visit individual homes to collect census data. For the most part, census enumerators relied on visual inspection in making judgments about people's races. Hickman, *supra* note 3, at 1186. However, in some cases we can conjecture that the enumerators may have asked people about their racial background. To the extent that individuals did have some say in reporting their background, enumerators retained the power to police racial identity: they were instructed not to accept answers that they "know or have reason to believe are false." See DAVID THEO GOLDBERG, *RACIAL SUBJECTS: WRITING ON RACE IN AMERICA* 40 (1997).

6. Snipp, *supra* note 4, at 567.

7. *Id.* Efforts to categorize mixed race individuals separately from Blacks appear to have been motivated by a desire for greater scientific and statistical precision, not from a desire to change the legal or social status of "Mulattos." Hickman, *supra* note 3, at 1182-84.

people. As Christine Hickman comments, "enumerators were instructed to become, in effect, clairvoyant gene counters."⁸

Although these categories were abandoned in 1900 and the Mulatto category by 1920, awareness of mixed race populations persisted during the next several decades, as did the desire to classify them with accuracy. For example, the census recorded the exact fraction of White ancestry for each Native American individual through the early 1900s,⁹ and the 1930 census essentially institutionalized the one-drop, or hypodescent, rule for Blacks.¹⁰

As of 1967, sixteen states still had laws on the books that prohibited interracial marriage; however, that same year, the Supreme Court held that such laws were inconsistent with the Fourteenth Amendment in *Loving v. Virginia*.¹¹ In the decades following *Loving*, intermarriage between people of different races increased dramatically, and with it, the number of people born who might describe themselves as multiracial. Around the same time, an important change occurred in the taking of the census: to counteract the problem of identification error, the Bureau of the Census asked the head of the household to fill out the census form, rather than having a census enumerator do so.¹² This procedural change caused a shift in the meaning of racial categorization, from race as a feature of how outsiders (such as census enumerators) perceived an individual to race as a product of how the individual (or, at least, the head of the individual's household) saw himself or herself.

The simultaneous increase in interracial marriage and shift to racial categorization as an individually constructed phenomenon set the stage for the multiracial identity movement, spearheaded by groups such as the Association of MultiEthnic Americans (AMEA).¹³ Increasingly, individuals who considered themselves mixed race and, perhaps to an even greater degree, their parents, demanded the ability to classify themselves in a unique multiracial category.¹⁴ By 1990, although the census still instructed

8. Hickman, *supra* note 3, at 1186.

9. Snipp, *supra* note 4, at 568. The 1920 census stated that "[a] person of mixed White and Indian blood was to be returned as an Indian, except where the percentage of Indian blood was very small or where he or she was regarded as White in the community." BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 200 YEARS OF CENSUS TAKING: POPULATION AND HOUSING QUESTIONS, 1790-1990 60 (1989).

10. Snipp, *supra* note 4, at 568. The instructions for the 1930 census stated that "[a] person of mixed White and Negro blood was to be returned as Negro, no matter how small the percentage of Negro blood." *Id.*

11. 388 U.S. 1, 6 (1967).

12. Snipp, *supra* note 4, at 569. The first self-reported census was administered in 1960.

13. In the United States, the multiracial lobby began as a grassroots effort to provide a multiracial option on official forms, including the census. The AMEA itself grew out of a number of local multiracial organizations, including Interracial Intercultural Pride (I-Pride), which formed in the late 1970s to convince the Berkeley public schools to include an interracial category on official forms. For a comprehensive history of this movement, see Naomi Mezey, *Erasure and Recognition: The Census, Race and the National Imagination*, 97 Nw. U. L. Rev. 1701, 1749-52 (2003).

14. For example, a letter from the president of AMEA, Carlos Fernandez, to Congressman Thomas Sawyer, the Chairman of the House Subcommittee with jurisdiction over the census, states:

people to check one box that best described their race, over half a million people explicitly disobeyed these instructions by picking two or more races.¹⁵

To the disappointment of multiracial identity advocates, census officials decided not to include a multiracial option on the 2000 census. However, the 2000 census did allow official acknowledgement of multiracial heritage in some sense by allowing people to check more than one box to describe their race.¹⁶ Nearly seven million people identified themselves as being of two or more races, amounting to about 2.4% of the total population, or one out of every forty people.¹⁷ Four point two percent of Blacks, 16.4% of Latinos, 12.4% of Asians, and 2.3% of Whites identified themselves as members of at least two races.¹⁸

The census data mirror other sources that suggest a dramatic increase in the multiracial population. Interracial unions, including marriages and domestic partnerships, increased from 500,000 in 1970 to two million in 1990.¹⁹ For some groups, the interracial marriage rate approaches 50%,²⁰ and the multiracial birth rate reflects this increase. In 1990, for example, there were 39% more births of Japanese/White children in the United States than there were births of children with two Japanese parents.²¹ Between 1990 and 1998 alone, there was an increase of 41% in the number of

Among the many issues of interest to our members, perhaps none is of more concern than racial classification on official forms. . . . The process of gathering racial and ethnic data by government must also be conducted in a manner that demonstrates respect for the dignity of the individual, an essential aspect of which entails truth and integrity of identity. There is, for example, no compelling state interest of which we are aware that justifies asking a child on a form at school to deny one of their parents at the same time they are asked to deny their specific identity as a multiethnic/interracial individual.

Letter from Carlos A. Fernandez, Esq., President, Association of MultiEthnic Americans, to Congressman Thomas Sawyer, Chairman, Sub-Committee on the Census and Population (Sept. 15, 1989), available at <http://www.ameasite.org/classification/sawltr89.asp>.

15. Wendy D. Roth, *The End of the One-Drop Rule? Labeling of Multiracial Children in Black Intermarriages*, 20 Soc. F. 35 (2005).

16. In addition to allowing individuals to check more than one box, the census also provided a "some other race" category, a decision that some officials have acknowledged as having created ambiguity. Census officials indicated that 97% of the 15.4 million people who checked this box were Hispanics who ignored instructions to indicate their Hispanic origin in the ethnic category. Eric Schmitt, *For 7 Million People in Census, One Race Category Isn't Enough*, N.Y. TIMES, Mar. 13, 2001, at A1.

17. U.S. CENSUS BUREAU, 2000 CENSUS DATA (2002), http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=01000US&-qr_name=DEC_2000_SF1_U_QTP4&-ds_name=DEC_2000_SF1_U&-_lang=en&-_sse=on; see also Jennifer Lee & Frank D. Bean, *America's Changing Color Lines: Immigration, Race/Ethnicity, and Multiracial Identification*, 30 ANN. REV. SOC. 221, 229 (2004).

18. Lee & Bean, *supra* note 17, at 231-32.

19. Schmitt, *supra* note 16.

20. See Patrick F. Linehan, *Thinking Outside of the Box: The Multiracial Category and Its Implications for Race Identity Development*, 44 HOW. L.J. 43, 46-47 (2000) (collecting data).

21. Michael Omi, *Foreword* to THE SUM OF OUR PARTS: MIXED-HERITAGE ASIAN AMERICANS, at ix (Teresa Williams-León & Cynthia L. Nakashima eds., 2001).

intermarried couples.²² The National Academy of Science has indicated that the multiracial population could rise to 21% by the year 2050.²³ Regardless of the exact numbers, the dramatic increase in racial mixing in American society indicates that the issue of multiracial classification will become increasingly prominent over the next several decades.

The debate over whether multiracial identity warrants a multiracial category has occurred most prominently in the context of the census. However, the debate is relevant wherever racial classification occurs. The next section examines our attempts at racial classification in the context of university admissions.

B. *Racial Categorization in University Admissions*

Race categories on most college admissions forms remain broad. Most reveal some variation on the five traditional categories that David Hollinger has described as the "ethno-racial pentagon": African American/Black, Native American/Alaska Native, Asian American, Hispanic/Latino, and White.²⁴ However, beyond this basic structure there are almost as many different versions of race categories as there are schools.²⁵ Some schools ask applicants to "check one box" that describes their "racial/ethnic heritage,"²⁶ while others invite them to "check all that apply."²⁷ Some schools provide a "multiracial" option,²⁸ while others offer the designation "other," with an invitation to specify further.²⁹ Some schools offer a host of more detailed categories.³⁰

22. James P. Allen & Eugene Turner, *Bridging 1990 and 2000 Census Race Data: Fractional Assignment of Multiracial Populations*, 20 POPULATION RES. & POL'Y REV. 513, 514 (2001).

23. Lee & Bean, *supra* note 17.

24. DAVID A. HOLLINGER, *POST ETHNIC AMERICA: BEYOND MULTICULTURALISM* (1995).

25. I looked at applications from the top ten public and top ten private schools on the U.S. News & World Report rankings. *America's Best Colleges 2007*, U.S. NEWS & WORLD REP., Aug. 28, 2006, available at http://www.usnews.com/usnews/edu/college/rankings/brief/t1natudoc_brief.php.

26. See, e.g., UNIV. OF WIS., APPLICATION FOR UNDERGRADUATE ADMISSION 2 (2007), available at <http://apply.wisconsin.edu/uws2007-08app.pdf>.

27. See, e.g., THE COMMON APPLICATION, INC., COMMON APPLICATION 2005-2006 AP-1 (2005), available at http://www.haverford.edu/admissions/PDFs/common2006_app.pdf [hereinafter COMMON APPLICATION].

28. See, e.g., UNIV. OF COLO. AT BOULDER, UNDERGRADUATE APPLICATION OF ADMISSION 3 (2006) (on file with author); see also UNIV. OF MICH., 2007 APPLICATION FOR FRESHMAN UNDERGRADUATE ADMISSION 8 (2007), available at <http://www.admissions.umich.edu/applying/2007UMapplication.pdf>.

29. See, e.g., COMMON APPLICATION, *supra* note 27; UNIV. OF CAL., APPLICATION FOR FRESHMAN ADMISSION AND SCHOLARSHIPS 2007-08 8 (2007), available at http://www.universityofcalifornia.edu/admissions/undergrad_adm/apply/pdf/Application_FR.pdf.

30. For example, the University of California at Berkeley provides the following fourteen options, of which one or more may be checked: African-American/Black, American Indian/Alaska Native (specify tribe), Chinese/Chinese-American, East Indian/Pakistani, Filipino/Filipino-American, Japanese/Japanese-American, Korean/Korean-American, Mexican/Mexican-American/Chicano, Pacific Islander, Vietnamese/Vietnamese-American, White/Caucasian (includes Middle Eastern), Other Asian (specify), Other Spanish-American/Latino (includes Cuban, Puerto Rican, Central American, South American; please specify), and Other (please specify).

The Common Application, which was accepted by more than 250 schools for the class of 2006, includes ten options with an invitation to check all that apply: African American/Black, Native American/Alaska Native, Asian American (specify country of family's origin), Asian including Indian Subcontinent (specify country), Hispanic/Latino (specify country), Mexican American/Chicano, Native Hawaiian/Pacific Islander, Puerto Rican, White/Caucasian, and Other (specify).³¹ The Common Application does not include a multiracial category.

The idiosyncrasies of the Common Application categories, which differ somewhat from most schools' classification systems, raises the question of how schools that accept the Common Application as well as their own application deal with discrepancies between the two sets of categories. Another potential issue is the discrepancy between the Common Application's "check all that apply" approach and the approach of the schools that instruct applicants to pick one category that best describes them.³² Such differences might lead to inconsistent processing of applications.³³

The fact that different schools treat race differently is not inherently problematic. In fact, courts have suggested that it is legitimate and, indeed, desirable for schools to tailor race-conscious admissions to their individual needs.³⁴ As a purely administrative matter, however, schools must report the demographics of their admitted students to the Department of Education, and the wide range of categories that schools employ invites the question of how they regroup their students' responses into the standardized, national categories. Until recently, the issue was particularly unclear because the Department of Education required each student's race to be reported in only one of five categories.³⁵ Now, according to the National Counsel for Educational Statistics, individuals should first classify their ethnicity as either "Hispanic or Latino," or "Not Hispanic or Latino."³⁶ Then they should "indicate all races that apply" among five choices: American Indian or Alaska Native, Asian, Black or African American, Native

31. THE COMMON APPLICATION, INC., 2006-2007 FIRST-YEAR APPLICATION AP-1 (2007), available at http://www.commonapp.org/common2007_PrintApp.pdf.

32. See Scott Jaschik, *On Ethnicity, Thinking Out of Box: Colleges Vary in Letting Applicants Pick More than One Racial Option*, BOSTON GLOBE, Oct. 10, 2004, at B8.

33. For example, a spokeswoman for Holy Cross, which asks students to pick one of ten options on its own application but also accepts the Common Application, could not explain why the forms differ or whether the difference results in variations in the way applications are processed. See *id.*

34. See, e.g., *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003) (deferring "to a university's academic decisions, within constitutionally prescribed limits"); *Regents Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978) ("The freedom of a university to make its own judgments as to education includes the selection of its student body.").

35. See NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., INTEGRATED POSTSECONDARY EDUCATION DATA SYSTEM (IPEDS) GLOSSARY 57, available at <http://nces.ed.gov/ipeds/glossary/pdf/IPEDSglossary.pdf> (last visited Mar. 14, 2007) (listing the "old definition" for race/ethnicity: "A person may be counted in only one group. The groups used to categorize . . . are as follows: Black, non-Hispanic, American Indian/Alaska Native, Asian/Pacific Islander, Hispanic, White, non-Hispanic").

36. *Id.*

Hawaiian or Other Pacific Islander, or White.³⁷ These changes resolve some of the issues that might arise, but the options that many schools offer on their application forms still do not map neatly onto these categories. For example, there is no multiracial option in reporting data to the federal government. Consequently, it remains unclear how schools recategorize the data they gather through the admissions process to fulfill the Department of Education's reporting requirement: if a student selects the multiracial option on an application form, how does the school classify the answer?

To summarize, schools use a range of categories to ask students about their race, allowing multiracial applicants to identify themselves in a range of ways during the application process. Variations in the way schools inquire about an applicant's race raise issues relating to how students identify themselves, how schools view these students for purposes of affirmative action, and how demographics are ultimately reported to the government. Due to the inherent secrecy of the admissions process, little is known about what happens between the time a student confronts the racial categories listed on an application and the time a school returns an admissions decision. However, the fact that affirmative action is, to some degree, based on students' responses to the race question implies that schools use the categories for substantive rather than merely administrative purposes.

III. MULTIRACIAL STUDENTS AND THE DIVERSITY RATIONALE

The broad racial categories utilized by most schools contrast sharply with the nuanced, flexible approach to race-conscious admissions mandated by the Supreme Court. In *Regents of the University of California v. Bakke*, a deeply divided Court upheld race-conscious affirmative action programs in institutions of higher education.³⁸ Although universities could not institute quotas—programs that reserved a certain number of slots for minority applicants—they could consider race or ethnicity more flexibly as a “plus” factor in the context of an individualized consideration of applicants.³⁹

However, Justice Powell's opinion, which announced the judgment of the Court, also held that this tailored consideration of race could be constitutionally justified only by the school's interest in “obtaining the educational benefits that flow from an ethnically diverse student body.”⁴⁰ Underlying the diversity rationale is the argument that a racially and ethnically diverse university class will contribute “experiences, outlooks and ideas that enrich the training of its student body” and promote the “robust exchange of ideas” critical to intellectual growth.⁴¹

37. *Id.*

38. 438 U.S. 265 (1978).

39. *Id.* at 315-16.

40. *Id.* at 306.

41. *Id.* at 313-14. In the process of endorsing the diversity rationale, Justice Powell rejected other justifications for affirmative action, including “reducing the historic deficit of traditionally

The Court reaffirmed the diversity rationale in *Grutter v. Bollinger*, upholding an affirmative action program at the University of Michigan Law School that involved an “individualized, holistic review of each applicant’s file” and considered “all the ways an applicant might contribute to a diverse educational environment.”⁴² Although the program emphasized “racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers,”⁴³ it also sought “a mix of students with varying backgrounds and experiences who will respect and learn from each other.”⁴⁴ In upholding the program, the Court emphasized the benefits of diversity in promoting interracial understanding and breaking down stereotypes, ultimately better preparing students for participation in the workforce and in society at large.⁴⁵

Thus, in determining whether and to what extent students should be the beneficiaries of affirmative action, the Supreme Court seems to require that schools ask how such students might contribute to diversity. However, the Court has never directly addressed the unique position of multiracial students.⁴⁶ Do multiracial students contribute in ways similar to monoracial students? Or do the life experiences unique to multiracial indi-

disfavored minorities, [or] countering the effects of societal discrimination,” and increasing professional services to disadvantaged communities. *Id.* at 306.

42. *Grutter*, 539 U.S. at 337. The diversity rationale has attracted its share of criticism. *But see, e.g.*, ROBERT LERNER & ALTHEA K. NAGAI, CTR. FOR EQUAL OPPORTUNITY, A CRITIQUE OF THE EXPERT REPORT OF PATRICIA GURIN IN *GRATZ V. BOLLINGER* (2000), available at <http://www.ceousa.org/pdfs/Gurin1.pdf>; THOMAS E. WOOD & MALCOLM J. SHERMAN, NAT’L ASS’N OF SCHOLARS, IS CAMPUS RACIAL DIVERSITY CORRELATED WITH EDUCATIONAL BENEFITS? (Apr. 4, 2001), available at http://nas.org/reports/umich_diversity/umich_uncorrelate.pdf.

43. *Grutter*, 539 U.S. at 316.

44. *Id.* at 314.

45. *Id.* at 330-31.

46. At oral argument in *Gratz v. Bollinger*, counsel for the plaintiffs pointed to mixed race individuals as an example of why the University of Michigan’s affirmative action program is problematic, noting that the extent to which affirmative action is available depends on how the applicant identifies himself or herself during the application process. *See* Transcript of Oral Argument at 10-11, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (No. 02-516), available at 2003 WL 1728816 (U.S. Apr. 1, 2003). However, the Court did not ultimately discuss the issue of multiracial identity in its opinion.

In *Hunter v. Regents of the University of California*, 971 F. Supp. 1316 (C.D. Cal. 1997), one district court confronted mixed race categorization in a case involving the denial of admission to a state “laboratory” elementary school to a student who was one-quarter Asian and three-quarters White. The school was created as a forum for state research on education in urban areas, and its administrators considered race in admissions only “to obtain an adequate cross-sample of the general population for the purpose of maintaining the scientific credibility of its educational studies.” *Id.* at 1320. Towards this end, the school sorted its students into six categories: African-American, Asian-American, Native American, Latino, Caucasian, and Other (Mixed Race). *Id.* at 1321. The student’s parents classified her as mixed race, and she was subsequently denied admission. *Id.* at 1319. In holding that the school’s unique mission justified its use of racial categories and thus withstood strict scrutiny, the court was notably silent on the suitability of racial categories themselves, and did not comment on whether it was appropriate to group all mixed race students together without regard to their specific background. *Id.* at 1332. On appeal,

viduals mean that people with racially mixed backgrounds are likely to contribute to diversity in a unique way, and therefore deserve separate consideration?

In asking these questions, I hope to avoid suggesting that multiracial students contribute to diversity in one particular way. Rather, the issue is how schools should consider multiracial status in assessing diversity. In Part III.A, I will explore the extent to which multiracial students identify with the minority community (or communities) that comprise part of their background. In Part III.B, I will consider whether multiracial identity itself fosters the ability to make a contribution differently from monoracial identity.

A. *Identification with Minorities*

Research on the extent to which multiracial individuals identify with monoracial groups has yielded conflicting results. One possible explanation is that multiracial people identify themselves differently in different contexts. For example, some multiracial individuals have noted that their decision to identify themselves only as members of a minority group on the 2000 census stemmed from a desire to avoid reducing the apparent number of minorities and hence the political power of the minority group.⁴⁷ Thus, in examining studies relying on self-reported racial data, it is important to remember that individuals may have motives aside from simply reporting their racial background.

With this caveat in mind, some studies do suggest that different subgroups of the multiracial population appear to identify monoracially to different degrees. One analysis of data from the 2000 census found that 36.4% of those who identified as Native American, 12.4% of those who identified as Asian, 16.4% of those who identified as Latino, and 4.2% of

the Ninth Circuit was similarly silent on the issue. See *Hunter v. Regents of the Univ. of Cal.*, 190 F.3d 1061 (9th Cir. 1999).

Relatedly, the Supreme Court has acknowledged in other contexts that racial categories are not as rigid as traditionally believed but rather are fluid. In *St. Francis College v. Al-Kazraji*, 481 U.S. 604 (1987), a unanimous Court held that a person of Arab ancestry was eligible for protection under a statute barring discrimination on the basis of race, further explaining:

Many modern biologists and anthropologists, however, criticize racial classifications as arbitrary and of little use in understanding the variability of human beings. It is said that genetically homogeneous populations do not exist and traits are not discontinuous between populations; therefore, a population can only be described in terms of relative frequencies of various traits. Clear-cut categories do not exist. The particular traits which have generally been chosen to characterize races have been criticized as having little biological significance. It has been found that differences between individuals of the same race are often greater than the differences between the "average" individuals of different races. These observations and others have led some, but not all, scientists to conclude that racial classifications are for the most part sociopolitical, rather than biological, in nature.

Id. at 610 n.4.

47. See, e.g., Diana Jean Schemo, *Despite Options on Census, Many to Check 'Black' Only*, N.Y. TIMES, Feb. 12, 2000, at A1.

those who identified as Black also identified themselves as White.⁴⁸ Of course, these data tell only part of the story, because they do not take into account the percentage of individuals in a given group who might have “qualified” as multiracial but who chose to check only one box.⁴⁹ Other studies suggest that the extent to which various subgroups identify as minorities is more ambiguous.⁵⁰ While multiracial Black students were still more likely to choose a minority identity than were members of other multiracial subgroups, the results were less dramatic than those implied by the 2000 census study described above.

Research focusing on Asian/White identification has found some connection between certain variables and the degree of monoracial identification. For example, studies found that phenotype (physical appearance),⁵¹ exposure to Asian cultural heritage,⁵² and generation (how long the participant’s Asian parent has been in the United States) all affected the extent to which a participant identified as multiracial.⁵³ The largest study conducted to date, involving 110 Asian/White individuals, found that “a respondent’s phenotype and the level of cultural exposure to her or his Asian heritage [were] the most important factors influencing racial identity.”⁵⁴ The impact of phenotype—measured as “how respondents felt that *others* perceived

48. Jennifer Lee & Frank D. Bean, *America’s Changing Color Lines: Immigration, Race/Ethnicity, and Multiracial Identification*, 30 ANN. REV. SOC. 221, 232-33 (2004).

49. Interestingly, other studies have estimated that about 70% of the Black population in the United States is ancestrally multiracial, so by this measure, Blacks should be much *more* likely to check multiple boxes. JON MICHAEL SPENCER, *THE NEW COLORED PEOPLE: THE MIXED-RACE MOVEMENT IN AMERICA* (1997). The authors of the 2000 census study conclude that “[t]he tendency of black Americans to be less likely to report multiracial identifications undoubtedly is due to the legacy of slavery” which “more forcefully constrains the identity options for blacks compared with other nonwhite groups.” Lee & Bean, *supra* note 48, at 233. In contrast, the authors claim, multiracial Asians, Latinos, and Native Americans have more “room for exercising discretion in the selection of racial/ethnic identities.” *Id.* Moreover, the question of who “qualifies” as multiracial is itself a complicated one. One answer is that multiracial people are those whose parents have different racial identities, although in some cases this answer merely pushes the inquiry back one generation—what if one’s parents are themselves multiracial? For how many generations does multiracial identity extend? If one is only 1/16 Native American, can one still identify as Native American? These difficult questions have no obvious answers.

50. One group of researchers found that when biracial Black/White subjects were offered a wide array of identity options, only 16.7% adopted a “singular identity,” considering themselves either exclusively Black (13.1%) or exclusively White (3.6%). David L. Brunsma & Kerry Ann Rockquemore, *What Does “Black” Mean? Exploring the Epistemological Stranglehold of Racial Categorization*, 28 CRITICAL SOC. 101, 110 (2002). Another study involving a large sample of multiracial youth ages 14 to 19 found that, when forced to choose one race, 68% of Black/White students, 52% of Hispanic/White students, and 43% of Asian/White students chose the minority race rather than White. Melissa Herman, *Forced to Choose: Some Determinants of Racial Identification in Multiracial Adolescents*, 75 CHILD DEV. 730, 736 tbl.2 (2004).

51. See Teresa Kay Williams, *Prism Lives: Identity of Binational Amerasians*, in RACIALLY MIXED PEOPLE IN AMERICA 280 (Maria P. P. Root ed., 1992).

52. See Cookie White Stephan & Walter G. Stephan, *After Intermarriage: Ethnic Identity Among Mixed-Heritage Japanese-Americans and Hispanics*, 51 J. MARRIAGE & FAM. 507 (1989).

53. See B.E. Aguirre, Rogelio Saenz & Sean-Shong Hwang, *Discrimination and the Assimilation and Ethnic Competition Perspectives*, 70 SOC. SCI. Q. 594 (1989).

54. Nikki Khanna, *The Role of Reflected Appraisals in Racial Identity: The Case of Multiracial Asians*, 67 SOC. PSYCHOL. Q. 115, 122 (2004).

their looks”—was particularly powerful.⁵⁵ According to one logistic regression model, respondents were 481% more likely to identify as Asian if they felt that others perceived their looks as Asian.⁵⁶

Little research on the racial identity of multiracial individuals has been conducted specifically in the university context. One study conducted at a predominantly White university found that multiracial students who are both Black and another race do not identify as strongly with other Blacks as do monoracial Black students.⁵⁷ Biracial Black students have 80% lower odds of feeling “close” to other Black students compared to monoracial Black students, even after controlling for differences in socioeconomic status and “preadult integrative experiences.”⁵⁸ The discrepancy extended to close friendships: while 54% of monoracial Black students reported that all or most of their good friends on campus were other Black students, no biracial Black students made the same claim.⁵⁹ Twenty-seven percent of biracial Black students reported extreme or considerable alienation from other Black students on campus, as compared to only 18% of monoracial Black students.⁶⁰ Similarly, 40% of biracial Black students described having negative experiences with other Black students, as compared to only 12% of monoracial Black students.⁶¹ The study only involved the students of one school, and thus supports only tentative conclusions, but it does provide some evidence that multiracial Black students in the aggregate do not identify completely with the Black community.⁶² However, it offers little positive insight as to which communities these students do identify with; for example, there is no evidence that multiracial Black students identify primarily with other multiracial Black students.⁶³

55. *Id.*

56. *Id.*

57. Sandra S. Smith & Mignon R. Moore, *Intraracial Diversity and Relations Among African-Americans: Closeness Among Black Students at a Predominantly White University*, 106 AM. J. SOC. 1 (2000).

58. *Id.* at 23-24. Smith and Moore’s measure of “closeness” incorporates students’ answers to questions about “closeness to individual black students; closeness to the black community on campus; the extent of intimate association with other black students; and quality of experiences with other black students.” *Id.* at 11.

59. *Id.* at 25.

60. *Id.* at 24. The feelings of alienation may have resulted in part from the fact that multiracial students also seem to differ from monoracial students in their attitudes about various issues. An obvious example is interracial dating: the previous study found that 14% of monoracial Black students disapproved of interracial friendships and 23% disapproved of interracial dating, but no biracial Black student reported disapproval of either. *Id.* at 27.

61. *Id.* at 24.

62. *Id.* at 10. The study had a good response rate, obtaining responses from 76% of students.

63. Of course, there is also no evidence that multiracial Black students are representative of the experience of multiracial Asian students, multiracial Latino students, and multiracial Native American students. In fact, as previously discussed, available research suggests significant differences among multiracial subgroups. See *supra* text accompanying notes 43-49. However, since this research also suggests that Black/White individuals are *more* likely to identify as Black than are other minority/White subgroups, it seems logical that members of other multiracial subgroups would be even less likely to experience “closeness” to members of the minority race than the multiracial Black students in the Smith & Moore study. See *supra* text accompanying note 50.

Ultimately, research suggests that multiracial people experience both race and race-based communities differently from monoracial members of the minority group. While multiracial people do identify (although to differing degrees) with their minority background, some feel alienated from the minority community. These differences suggest that multiracial students will not necessarily make the same contribution to diversity as monoracial minority students. The next section will explore the idea of multiracial identity as a discrete concept and discuss how multiracial students might contribute uniquely to diversity.

B. *Unique Multiracial Identity*

Research indicates that many multiracial individuals identify themselves in ways that cannot be expressed via traditional monoracial categories. For example, studies reveal that multiracial people often do not identify fully with a single race category. One survey of 177 Detroit college students, each of whom had one Black parent and one White parent, found that by far the greatest number of students, 61.3%, developed what one sociologist has called a “border identity;” they viewed themselves as neither Black nor White, but instead felt that they occupied a unique hybrid category.⁶⁴ However, among these students who described themselves as biracial, more than half, and 38% of all respondents, suggested that they actually held multiple identities simultaneously; although they considered themselves biracial, they experienced the world as if they were Black.⁶⁵ Another study found that 50% of Asian/White individuals asked to identify themselves as either Asian, White, or Other on the census chose the “Other” category.⁶⁶ A third study, which relied on detailed interviews with multiracial individuals with a variety of racial backgrounds, found that most participants identified with one race more than the other, but, at the same time, viewed multiracial identity as a personally meaningful label.⁶⁷ Some interviewees suggested that it was the “lack of a visible or accessible multiracial community” that restricted the multiracial label to personal rather than public significance.⁶⁸

Research also highlights the unique fluidity of multiracial identity. For example, in the study of Detroit college students, nearly 5% viewed them-

64. Brunsma & Rockquemore, *supra* note 50, at 108-09. It is not completely clear from the description of the study whether the sample included only students with one Black parent and one White parent, or whether a few students had one Black parent and one parent who was neither Black nor White. The term “border identity” was proposed by Maria P. P. Root. See, e.g., Maria P. P. Root, *The Multiracial Experience: Racial Borders as a Significant Frontier in Race Relations*, in *THE MULTIRACIAL EXPERIENCE: RACIAL BORDERS AS THE NEW FRONTIER* xiii (Maria P. P. Root ed., 1996).

65. See Brunsma & Rockquemore, *supra* note 50, at 108-09. See also KERRY ANN ROCKQUEMORE & DAVID L. BRUNSMAN, *BEYOND BLACK: BIRACIAL IDENTITY IN AMERICA* 44 (2002).

66. Khanna, *supra* note 54, at 120 n.3.

67. Marie L. Miville et al., *Chameleon Changes: An Exploration of Racial Identity Themes of Multiracial People*, 52 J. COUNSELING PSYCHOL. 507, 511, 514 (2005).

68. *Id.* at 511.

selves as having a "protean identity," meaning that their race was fluid and changed depending on the situation, while a large number "refus[ed] to have any racial identity whatsoever," rejecting race as "a socially constructed category that is utterly meaningless to their individual sense of self."⁶⁹ Similarly, the study of Asian/White individuals mentioned in the previous paragraph found that when asked, "With what race do you most identify (feel a part)?," participants divided evenly, with 50.9% choosing White and 49.1% choosing Asian.⁷⁰ However, when asked, "If filling out the 1990 U.S. Census, in which you had to choose one racial category, which would you choose?," approximately 34% of respondents who stated that they identified as White in the first question would have chosen to label themselves as Asian on the census.⁷¹ A series of structured interviews with eight Korean/White individuals found similar fluidity. One participant noted that to "most everyone" he identified himself as Asian American, but "to other Asian Americans, probably hapa."⁷² Other participants also acknowledged that they identified themselves differently in different situations; for example, they were more likely to identify as Korean when they were with their Korean family members.⁷³

Data collected from students in grades seven through twelve during the National Longitudinal Study of Adolescent Health also conveys this

69. Brunsmas & Rockquemore, *supra* note 50, at 111.

70. Khanna, *supra* note 54, at 119-20.

71. *Id.* at 119.

72. Brian Chul Soo Standen, *Without a Template: The Biracial Korean/White Experience*, in *THE MULTIRACIAL EXPERIENCE: RACIAL BORDERS AS THE NEW FRONTIER* 245, 253 (Maria P. P. Root ed., 1996).

73. *Id.* Parental influence also may play an important role in shaping multiracial individuals' identification. Wendy Roth conducted a comprehensive analysis of how parents classify their multiracial children using a nationally representative sample drawn from 1990 and 2000 census data. Wendy D. Roth, *The End of the One-Drop Rule? Labeling of Multiracial Children in Black Intermarriages*, 20 *SOC. F.* 35, 37 (2005). Roth hypothesized that the parents of multiracial children who selected "Other" on census forms had some sort of "interracial identity" in mind for their children. *Id.* at 52. She notes that responses changed significantly in 2000, the first year that parents could check multiple boxes. *Id.* at 51. Roth's research is most emphatic on the point that parents vary widely in how they describe their children's racial identity. However, particularly with respect to multiracial children with one Black parent, she suggests that the trend to identify children by checking the exact combination of races or even more so by checking "Other" indicates a movement toward a unique multiracial conception of identity via rejection of traditional categories. *Id.* at 54.

Other factors influence parents' classification of their children. Both Roth and other researchers have found evidence that highly educated parents are more likely to assign their children an interracial identity. *Id.* at 54. However, another study found that for biracial children with one Asian parent, an increase in the level of parental education correlates with an increased likelihood that the child will be identified as Asian. See Yu Xie & Kimberly Goyette, *The Racial Identification of Biracial Children with One Asian Parent: Evidence from the 1990 Census*, 76 *SOC. FORCES* 547, 562 (1997). The same study notes that "dynamics within families, both between parents and between parents and children, may affect how their biracial children become identified." For example, children are more likely to be identified as Asian when the father is Asian, perhaps resulting from the convention of identifying an individual's ethnicity by her surname. Families may also use more arbitrary methods for identification, such as alternating between races, assigning siblings randomly to different races, or deciding that a child "looks Asian." *Id.* at 565.

fluidity. Analysis found considerable discrepancies in how participants identified themselves during interviews conducted at school versus interviews conducted at home.⁷⁴ Although there were some differences in identification patterns among subgroups, overall the data indicated that, for many multiracial people, identity shifts depending on context.

Thus, multiracial identity is unique in its fluidity and its transcendence of traditional race categories. Yet multiracial identity is not monolithic. Its uniqueness results from the variety of ways that multiracial people can and do choose to identify themselves. Under the diversity rationale, such heterogeneity brings to bear perspectives unlike any others. In *Grutter*'s language, multiracial students contribute to the desired "mix of students with varying backgrounds and experiences."⁷⁵

In light of the uniqueness of multiracial identity, we should question admissions practices that box multiracial students into the monoracial categories that continue to appear on many college admissions forms. We should also question the assumption that multiracial and monoracial minority students make interchangeable contributions to diversity. Affirmative action policies that automatically identify multiracial applicants with members of the minority group are troublingly reminiscent of hypodescent, and suggest that all variations within a non-White minority group are indistinguishable. Such practices *minoritize* multiracial students by imposing racial identity, foreclosing the possibility of more nuanced self-identification.⁷⁶

However, we should also acknowledge that delving too deeply into how multiracial students contribute to diversity risks imposing some overarching vision of "multiracial identity," when in fact the most clearly correct conclusion to be drawn from the data is that multiracial students are extremely heterogeneous.⁷⁷ Assuredly, multiracial students contribute to diversity differently from their monoracial counterparts, but the argument that multiracial students contribute to diversity in one specific way wrongly

74. David R. Harris & Jeremiah Joseph Sim, *Who is Multiracial? Assessing the Complexity of Lived Race*, 67 AM. SOC. REV. 614, 619-20 (2002). For example, only 59.5% of students who identified themselves as White/Black at home described themselves the same way at school; instead, 20.8% identified themselves as Black at school, 7.4% described themselves as belonging to three or more racial groups, and 4.7% simply described their race as "other." *Id.* at 620. Asians were even less likely to identify themselves similarly: of those who identified themselves as Asian/White at home, 45.9% described themselves the same way at school, while 13.4% described themselves as White, 21.8% described themselves as Asian, and 9.1% described themselves as belonging to three or more racial groups. *Id.* Finally, only 24.1% of students who identified themselves as Native American/White at home continued to identify themselves the same way at school; the remainder identified themselves in a host of other ways. *Id.*

75. *Grutter v. Bollinger*, 539 U.S. 306, 314 (2003).

76. See generally Janet E. Halley, *Gay Rights and Identity Imitation: Issues in the Ethics of Representation*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (David Kairys ed., 3d ed., Basic Books 1998) (1982).

77. For example, there are considerable differences in the way society tends to view people of different interracial mixtures, and consequently there are likely to be variations in the experiences of members of these subpopulations.

suggests that conclusions can be drawn about an individual student's experiences based on her multiracial status.

One might contend—as people do in making the case for affirmative action more generally—that, although no single conclusion may be drawn about multiracial people, existing racial paradigms in American society require multiracial people to confront certain fundamental issues of race and identity.⁷⁸ This confrontation makes race salient for multiracial individuals in a way that it is not for members of monoracial groups. Multiracial students resolve these issues of racial identity differently, but *any* way in which they do so would contribute to the diversity of experiences on campus.

Yet even this argument is troublesome because it suggests that multiracial students inevitably translate their mixed race background into some unique contribution to diversity. Although more mild than traditional forms of stereotyping, this suggestion nonetheless imposes a certain vision of multiracial identity that does not necessarily describe a universal experience. The problem with defining a unique multiracial identity is that “there will be expectations to be met, demands to be made.”⁷⁹ Multiracialism privileges one aspect of identity—the fact that an individual's parents are of different races—above the other ways that an individual might actually identify herself.

Research suggests that many multiracial students have experiences and beliefs relating to their racial identity that are unique to them. However, the heterogeneity and fluidity of the multiracial experience makes it difficult to develop a neat and concise expression of its contribution to diversity. Ultimately, although schools should not view multiracial students as indistinguishable from monoracial minorities, viewing them as a homogenous multiracial mass does little to resolve the issue.

IV. MULTIRACIAL STUDENTS AND THE ADMISSIONS PROCESS

The preceding section of this Article discussed the problems with assuming either that multiracial students essentially make the same diversity contribution as some category of monoracial students or that multiracial students inherently make their own unique contribution.⁸⁰ Given the diffi-

78. See, e.g., Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 STAN. L. REV. 855, 862 (1995) (“[P]eople of different races and ethnicities often have different life experiences that affect their relations with members of other groups and influence their views on issues of legal doctrine and policy.”). See generally JOHN A. POWELL, *The Colorblind Multiracial Dilemma: Racial Categories Reconsidered*, 31 U.S.F. L. REV. 789, 802 (1997) (suggesting that a socially constructed argument for multiracial categories would involve a realization that “the life experience of those designated mixed race in our society is qualitatively different than other groups designated as a single race.”).

79. Kwame Anthony Appiah, *Identity Against Culture: Understandings of Multiculturalism*, Doreen B. Townsend Center for the Humanities, Occasional Papers, Paper 1 (Sept. 14, 1994) at 26, available at <http://repositories.cdlib.org/townsend/occpapers/1>.

80. Patricia Gurin draws on social and cognitive psychology to provide a theory that translates diversity into “deep and complex thinking” on the basis of evidence that “discontinuity,”

culty of classifying multiracial students, this Part explores how multiracial students fare under existing affirmative action programs and discusses some of the issues that arise as a result.

Admissions decisions are the result of the interaction between two variables: student input and admissions committee processing. The intelligent formation of affirmative action programs requires information about both variables.

First, in order to determine whether the questions on applications capture information relevant to assessing diversity, we need to know how multiracial applicants answer the race question. Do they check the race most advantageous to them, check the race with which they identify most, or check the boxes that describe the exact combination of their parents' races? More importantly, do any of these approaches to answering the question provide information relevant to evaluating how multiracial applicants would contribute to diversity? Part IV.A will discuss some of the possible responses to the race question and their implications, focusing on how box-checking limits some applicants' ability to explain how they would contribute to diversity.

Second, in order to determine whether applicants' answers allow admissions committees to admit more diverse student bodies, we need to know what admissions committees do when they evaluate applications. If applicants check more than one box, do committees consider these applicants multiracial? Do they consider them members of the most under-represented race among those checked? Does it vary depending on other indicators in the application? Are there fixed guidelines, or are decisions based on a nuanced reading of each individual's application? Part IV.B will address some of the implications of different admissions frameworks. As noted previously, the admissions process is shrouded in secrecy at various stages, and empirical research has yet to address certain relevant questions. In such places, I will explore hypothetical outcomes and highlight the issue as one in which further information would assist in making informed policy decisions.

"incongruity," and "dissonance" can trigger more sophisticated intellectual functioning. Patricia Gurin, *Expert Report Submitted on Behalf of the University of Michigan: The Compelling Need for Diversity in Higher Education*, reprinted in 5 MICH. J. RACE & L. 363, 369-71 (1999). She suggests that "higher education will be especially influential when its social milieu is *different* from the home and community background, and when it is diverse enough and complex enough to encourage intellectual experimentation and recognition of varied future possibilities." *Id.* at 369 (emphasis added). Thus, the diversity rationale suggests that the presence of students from diverse backgrounds, including multiracial students, enriches the academic environment both in and out of the classroom by encouraging complex thinking, promoting a more varied exchange of ideas, and dismantling stereotypes. See generally Justin Pidot, *Intuition or Proof: The Social Science Justification for the Diversity Rationale in Grutter v. Bollinger and Gratz v. Bollinger*, 59 STAN. L. REV. 761 (2006).

A. *Applicants*

College applications raise complex questions with respect to multiracial applicants. On most applications, the race question consists of some variation on the five traditional categories with boxes for applicants to check, which does not provide multiracial applicants with options that adequately characterize their racial identities. However, the issue is not simply one of insufficiently nuanced categories. Since many multiracial applicants have more than one racial identity, or different identities at different times, a single question with boxes to check will fail to capture the complexity of such applicants' racial identities, even if detailed categories are provided and the applicant can check multiple boxes. Thus, while traditional box-checking categories risk imposing identities on applicants and inviting fraud, simply adding a multiracial category raises other problems. I conclude that, given the diversity rationale for affirmative action, box-checking does not provide applicants with a way of meaningfully conveying how they would contribute to diversity.

1. Do Current Box-Checking Questions Capture Multiracial Identity?

As discussed in Part II, sociological inquiry reveals subtleties unique to multiracial identity that rigid box-checking categories cannot capture. Unsurprisingly, available data suggest that in many cases there is a discrepancy between an applicant's own view of her racial identity (either individual or social) and the box she actually checks on the application. The study of Asian/White individuals mentioned in Part III.A demonstrates this possibility.⁸¹ When subjects were asked whether they identified more as Asian or White, they split about evenly, but when they were asked whether they would choose to declare themselves "Asian," "White," or "Other" on the census, fifty percent of all respondents labeled themselves "Other."⁸² This result suggests that, although it is important to note that racial identity can change from one situation to another, it is even more critical to realize that the *expression* of racial identity may be constrained by the options that are offered.

Thus, it is possible that the set of categories, in itself, may dictate whether the question ends up capturing individual or social identity. Richard Ford suggests that the traditional crude categories on the census reflect the way Americans have been conditioned to think about race, while allowing people to "check all that apply" (or, by extension, adding other categories) introduces a layer of subjectivity.⁸³ According to Ford, the former approach measures "socially ascribed identities," while the latter measures "subjective self-identification."⁸⁴ Although Ford correctly states that the

81. See *supra* text accompanying notes 51-56.

82. Khanna, *supra* note 54, at 119-20.

83. Richard T. Ford, *Race as Culture? Why Not?*, 47 UCLA L. Rev. 1803, 1808 (2000).

84. *Id.* However, after making this distinction, Ford points out that how people see themselves is also a product of social influence—there is no such thing as a completely individual identity that is insulated from the influence of society.

traditional categories do generally approximate social conceptions of race, it also seems possible that some multiracial people are usually identified by society as multiracial based on how they look—thus, inviting these people to “check all that apply” would not necessarily shift the question to measure individual identity.

Along slightly different lines, external variables present in a particular situation may also shape the expression of racial identity. In the college admissions context, the American Council on Education recently reported that the number of college applicants who decline to answer the race question more than doubled between 1991 and 2001, to about 938,000 students, or about 6% of all students.⁸⁵ Even more striking trends are seen at selective institutions.⁸⁶ Although it remains unclear what accounts for this large increase, one might propose a variety of theories: White students may think their odds of admission will be improved if they don’t check White; minorities may be fearful that stereotypes will hurt their chances; Latino students, who are sometimes asked whether they are Latino in a different question, may simply reject the race question.⁸⁷ However, some incentive present in the admissions process must be at least partially responsible for eliciting a relatively large number of refusals.

Unfortunately, there is little information about how people answer the race question on college applications. The critical questions are to what extent, and why, applicants might present their race differently on an application. Are people affirmatively choosing different racial identities, or are racial identities being imposed upon them due to some feature of the application?

A hypothetical, idealized study might compare students’ responses to the following open-ended questions:

1. With which race(s) do you identify?⁸⁸
2. With which race(s) do other people identify you?

85. Press Release, American Council on Education, ACE Releases its Annual State Report on Minorities in Higher Education (Feb. 14, 2005), *available at* <http://www.acenet.edu/AM/PrinterTemplate.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=3701>.

86. Twenty-nine percent of students offered admission to Texas’ 1998 freshman class did not reveal their race; similarly, more than one in seven students accepted at the University of California did not check any racial identification box. See T. Vance McMahan & Don R. Willett, *Hope from Hopwood: Charting a Positive Civil Rights Course for Texas and the Nation*, 10 STAN. L. & POL’Y REV. 163, 165 n.15 (1999) (collecting sources).

87. Some students may also be making a political point by refusing to disclose their identity, either expressing opposition to affirmative action or support for race-blind admissions.

88. Interestingly, the responses of multiracial individuals with very similar backgrounds still may differ substantially on this question. In a series of structured interviews with eight individuals with Korean mothers and White fathers, the question “What term would you use to identify yourself, in terms of racial, ethnic, cultural background, and/or nationality?” produced at least six different responses: Jewish Korean American, Asian American, Asian American more specifically Korean American, half-Korean and half-white, half-Korean and half-Caucasian, and “hapa.” Standen, *supra* note 72, at 250-51.

3. What box(es) did you check on your college application? (This question would be followed by a list of the options on the application for the school at which the student matriculated.)
4. How *would* you have identified your race on the following college application question? (This question would be followed by a comprehensive list of every conceivable option listed on *any* application.)⁸⁹

Comparing the responses to these four questions would help determine the underlying reason for discrepancies between participants' self-supplied individual or social identities and their responses to the application questions.

If we find that people tend to define their identities (both individual and social) in more nuanced ways than they did on the *actual* application forms, it might cause us to question whether the constraints imposed by the race categories on a particular application are justified. This would most likely happen at schools whose applications featured some variation on the five standard categories with either "check one" or "check all that apply." For example, suppose that multiracial students at two different schools tend to describe themselves as multiracial at about the same rate when asked an open-ended question in our survey. Also suppose that one school offered a multiracial option on its application while the other did not. If students who described themselves as multiracial on the open-ended question also tended to pick the multiracial option when it was offered, we would probably conclude that they felt that it described them more accurately than the categories at the other schools.

Aside from these concerns about *imposing* an identity on multiracial individuals due to the limitations of available categories, researchers might also examine to what extent people *choose* to assert an identity that is different from either their individual or social identity. In other words, applicants' decisions to choose categories that do not correspond to their individual and social racial identities may result from other motivations specific to the application process.⁹⁰ For example, suppose that in response to Question 1 an Asian/White person identified herself as multiracial, and in Question 2 indicated that she believed that others also identified her this way. If she consistently identified herself as Asian on application forms, regardless of the array of options associated with the question, we could probably conclude that factors other than the answer categories shaped her

89. In practice, such a study might raise both reliability and validity issues because it requires people to hypothesize how they would have answered an application question without actually being in an application situation. However, my purpose in describing this study is merely to highlight the sort of information that would be useful in learning more about applicants' responses to different questions about race.

90. See Nathaniel Persily, *The Legal Implications of a Multiracial Census*, in *THE NEW RACE QUESTION: HOW THE CENSUS COUNTS MULTIRACIAL INDIVIDUALS* 161, 170 (Joel Perlmann & Mary C. Waters eds., 2002) ("One might also expect that the decision as to whether multiracial individuals 'count' for affirmative action purposes might also have an effect on the propensity of at least some individuals to identify with one race as opposed to multiple races on an admissions or employment form.").

response, and that considerations specific to the application process were causing applicants to present their identity in a certain way.

Given the sociological research discussed in Part III, it seems likely that there would exist substantial discrepancies between the way multiracial people think about their racial identity and the way they identify themselves on application forms. It also seems likely that multiple explanations may explain this discrepancy. Without further research, we cannot draw firm conclusions about the constraints imposed by the categories on box-checking questions. Moreover, as the next section will discuss, the larger question is whether *any* race question which requires box-checking as a response can fully capture the nuances of multiracial identity.

2. Can Any Box-Checking Capture Multiracial Identity?

Even the most nuanced box-checking question will likely fail to capture multiracial identity in some circumstances. First, such questions fail to acknowledge the fluidity of many multiracial applicants' identities. Although there have been relatively few empirical assessments of the extent of this fluidity,⁹¹ the evidence discussed in Part III.A suggests that the race category with which multiracial people identify with can shift depending on setting and context.⁹² For example, one study found that a significant percentage of Asian/White adults stated that their individual identity differed from the way they would categorize themselves on the census;⁹³ another found wide discrepancies in the way multiracial adolescents identified their race in interviews at home as compared to interviews at school.⁹⁴

Likewise, box-checking on college applications fails to recognize the multifaceted nature of multiracial identity.⁹⁵ Multiracial people may view themselves differently than others see them. For example, someone might identify more strongly with one race despite possessing the phenotype of another.⁹⁶ Sociological research supports the idea that many multiracial individuals experience a "chasm" between their self-identification as multiracial and society's identification of them as members of a minority race.⁹⁷ However, because most monoracial people do not experience this dissonance between their individual and social racial identities, questions designed to collect racial data generally do not contemplate such differences.

91. See Harris & Sim, *supra* note 74, at 616.

92. See *supra* text accompanying notes 47-63.

93. See Nikki Khanna, *The Role of Reflected Appraisals in Racial Identity: The Case of Multiracial Asians*, 67 SOC. PSYCHOL. Q. 115, 122 (2004).

94. See Harris & Sim, *supra* note 74.

95. Nancy A. Denton, *Racial Identity and Census Categories: Can Incorrect Categories Yield Correct Information?*, 15 LAW & INEQ. 83, 87 (1997).

96. *Id.* Other sociologists have proposed a similar distinction between an individual's "internal racial identity"—what the individual believes about his or her own race—and "external racial identity"—observers' beliefs about an individual. Harris & Sim, *supra* note 74, at 615.

97. KERRY ANN ROCKQUEMORE & DAVID L. BRUNSMA, *BEYOND BLACK: BIRACIAL IDENTITY IN AMERICA* 44 (2002).

Finally, box-checking questions often fail to capture multiracial identity because the admissions process has a strategic element. Many applicants perceive that declaring oneself an underrepresented minority provides an advantage in the admissions process, and thus applicants who identify themselves in one way on the census or in a health survey might have incentives to choose a different race on an admissions form.⁹⁸ Moreover, multiracial individuals of different racial backgrounds may tend to classify themselves differently in the admissions process. For example, multiracial Asians, who are not underrepresented in higher education, may not identify themselves the same way as multiracial Blacks and Latinos.

A survey of box-checking questions indicates that most fail to address the fluid, multifaceted, and strategic aspects of multiracial identity. Many applications perfunctorily instruct applicants to “check one,”⁹⁹ “check all that apply,”¹⁰⁰ or even provide the race categories and boxes to check without any instructions.¹⁰¹ Others ask applicants to “select one category that most accurately reflects your ethnic background”¹⁰²—this phrasing suggests that the question attempts to capture some “objective” version of race as an outsider, or society as a whole, might characterize it. Still other applications instruct applicants to “indicate your ethnic identity,”¹⁰³ or

98. Anecdotal evidence supports the logical intuition that multiracial people identify strategically on applications. In a series of eight structured interviews with Korean/White individuals, participants were asked how they identified themselves on school applications, job applications, or census forms. The researcher found that, “[i]nterestingly, these were often seen in terms of potential benefits to the individual, especially school applications.” While six out of the eight participants said that they put down Asian American or Asian/Pacific Islander on the forms, several participants felt that the category “did not describe their racial identity accurately, but they put it down for scholarship purposes.” Others felt that the category did not describe anything, or that it was insufficiently specific. Standen, *supra* note 72, at 255.

More broadly, there is a remarkable amount of speculation with regard to the advantage that checking a particular box provides, and admissions consultants frequently advocate box-checking as a means of gaining an advantage. For example, the website of one such consultant directs: “First, there’s the difficult question of which box to check. If a school lets you identify only one racial category, check the box that indicates the most disadvantaged group.” The consultant advocates that applicants “make clear the extent to which you identify with each culture in your background. . . . [E]vidence of ties to one community or another . . . should be highlighted in your essay, on your resume, or both.” Apparently, such evidence is critical: “A Chicana who speaks no Spanish may be Hispanic enough for Northwestern or Duke, but not for Georgetown or Stanford.” See DeLoggio Admissions Achievement Program, *Race and Ethnicity*, <http://www.deloggio.com/diversty/race.htm> (last visited Jan. 4, 2006). While a little beyond the scope of this Article, such admissions advice seems to validate Richard Ford’s concern that the diversity rationale for affirmative action is problematic because it requires cultural performance. See Ford, *supra* note 83, at 1809-10.

99. UNIV. OF WIS., APPLICATION FOR UNDERGRADUATE ADMISSION 2 (2006), available at <http://apply.wisconsin.edu/uws2007-08app.pdf>.

100. See, e.g., STAN. UNIV., BASIC INFORMATION FORM FRESHMAN 2007 2 (2007), available at http://www.stanford.edu/dept/uga/pdf/Freshman07_Forms_1-7.pdf.

101. THE UNIV. OF N.C. AT ASHEVILLE, APPLICATION FOR ADMISSIONS 1 (2006), available at <http://www.unca.edu/admissions/forms/application.pdf>.

102. UNIV. OF COLO. AT BOULDER, UNDERGRADUATE APPLICATION OF ADMISSION 3 (2006) (on file with author).

103. UNIV. OF CAL., APPLICATION FOR FRESHMAN ADMISSION AND SCHOLARSHIPS 2007-08 8 (2007), available at http://www.universityofcalifornia.edu/admissions/undergrad_adm/apply/pdf/Application_FR.pdf.

state, "if you wish to be identified with a particular ethnic group, please check all that apply."¹⁰⁴ Such phrasing seems to invite applicants to characterize themselves as *they* see themselves.¹⁰⁵ Perhaps most ambiguously, the Department of Education defines its race/ethnicity categories as groups "to which individuals belong, identify with, or belong in the eyes of the community," thereby leaving open the alternative of either individual or social identity.¹⁰⁶

The hypothetical, idealized survey described in the previous section would also provide information about the extent to which box-checking questions fail to capture the nuances of multiracial identity. One question is whether multiracial students' descriptions of their individual and social identities differ. Most schools have probably given little thought to the problem of multiple racial identities, simply because most applicants' individual and social identities are the same. However, if many multiracial students experience an identity discrepancy, schools should think carefully about what they are trying to capture when they ask about race.

More importantly, we would want to know whether students' answers to Question 1 and Question 2 could be translated into a box-checking question. The sociological research discussed in Part III.B suggests that, for at least some individuals, racial identity is a more complex issue than simply having the right categories available. As just one example, 38% of the respondents in one study of Black/White individuals suggested that they actually held multiple identities simultaneously; although they considered themselves biracial, they experienced the world as Black.¹⁰⁷ Moreover, nearly 5% viewed themselves as having a "protean identity," meaning that their race was fluid and changed depending on the situation.¹⁰⁸ This nuanced version of racial identity cannot be captured by an array of boxes to check, no matter how comprehensive.

In short, the unique features of multiracial identity render it difficult to capture in a single box-checking question. It remains unclear whether any categories, no matter how diverse or flexible, can adequately capture the many facets of multiracial identity.

104. THE COMMON APPLICATION, INC., COMMON APPLICATION 2005-2006 AP-1 (2005), *available at* http://www.haverford.edu/admissions/PDFs/common2006_app.pdf.

105. See also BROWN UNIV. APPLICATION, APPLICATION FOR ADMISSION 1, *available at* <http://www.brown.edu/Administration/Admission/appforms/secure/Form1.pdf> ("How do you identify yourself (your race and ethnicity)?"); NW. UNIV. APPLICATION, SUPPLEMENT TO THE 2006-07 COMMON APPLICATION SUP-2 (2007), *available at* <http://www.ugadm.northwestern.edu/pdf/supplement-only.pdf> ("How would you describe yourself?"); DUKE UNIV., STUDENT SUPPLEMENT-2007 1 (2006), *available at* <http://www.admissions.duke.edu/jump/applying/PDF/FormAmodUSE.pdf> ("How would you describe yourself? (Check all that apply)").

106. See NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., INTEGRATED POSTSECONDARY EDUCATION DATA SYSTEM (IPEDS) GLOSSARY 57, *available at* <http://nces.ed.gov/ipeds/glossary/pdf/IPEDSglossary.pdf> (last visited Mar. 14, 2007) [hereinafter IPEDS GLOSSARY].

107. See David L. Brunsma & Kerry Ann Rockquemore, *What Does "Black" Mean? Exploring the Epistemological Stranglehold of Racial Categorization*, 28 CRITICAL SOC. 101, 108-09 (2002). See also Rockquemore & Brunsma, *supra* note 97.

108. Brunsma & Rockquemore, *supra* note 107, at 111.

3. Implications

Above, I have discussed the inadequacy of the categories on many box-checking questions that ask multiracial students to identify themselves. Moreover, I have questioned whether *any* box-checking scheme, no matter how nuanced, can capture the unique multifaceted nature of multiracial identity. These issues have substantial implications for multiracial applicants and the admissions process. In this section, I will discuss three issues which arise from the current reliance on box-checking, then explore the potential of and problems with a multiracial category.

First, the race question introduces an element of performance into the affirmative action process for multiracial people. Providing boxes to check compels applicants to identify themselves in a certain way if they wish to benefit from affirmative action and demands that they *choose* to associate themselves with other members of a certain group. In some sense, the race question compactly embodies Richard Ford's criticism that cultural identity rights, as embodied in the diversity rationale, impose a "regulatory effect":¹⁰⁹ the race question forces applicants to declare their allegiance to an underrepresented minority group, perhaps at the expense of other aspects of their racial identity, if they wish to gain a certain benefit.

The issue of box-checking as a type of performance also raises the unappealing specter of race fraud. The fact that an applicant's answer to the race question likely will have some impact on their eligibility for affirmative action creates undeniable incentives in the admissions process. To the extent that people identify themselves as underrepresented minorities on applications, yet do not identify with these groups in other contexts, we might wonder whether affirmative action really yields increased diversity by benefiting members of disadvantaged groups.¹¹⁰ However, unless there is really an epidemic of apparent misrepresentation, our distaste for the idea of policing who is and is not an underrepresented minority would probably prevent us from looking too deeply into this issue. Stronger measures would bear an undesirable resemblance to the role of the nineteenth century census enumerators in screening out racial misrepresentations.

Finally, imposing a singular identity on students who would prefer to choose a multiracial option risks reaffirming racial boundaries, thereby calcifying the existing racial paradigms that affirmative action is intended to destabilize. If an affirmative action program must "remain flexible enough

109. Richard T. Ford, *Race as Culture? Why Not?*, 47 UCLA L. REV. 1803, 1811 (2000).

110. Lani Guinier has expressed concern that:

[s]ome students' decisions to 'check the boxes' in order to gain admission under affirmative action is purely instrumental in that a small but growing number of these beneficiaries privately express disdain for the group with which they have temporarily identified, a distancing they may believe is necessary to achieve as individuals. One admissions officer with whom Professor Guinier spoke admitted that some affirmative action beneficiaries express outright hostility for the race they are presumably to lead.

Lani Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113, 155 n.166 (2003).

to ensure that each applicant is evaluated as an individual,”¹¹¹ it seems inherently problematic to limit applicants to a set of categories that they may feel are inadequate to characterize their individuality.

A potential solution to these three issues is for schools to provide a multiracial category on applications. For students who do identify strongly with the multiracial label, this option would alleviate some of the short-term psychological stress of not knowing how to identify themselves. Some universities already offer the option,¹¹² and admissions officers at others have proposed it.¹¹³

However, offering a multiracial category would invite certain consequences that might not, in the long run, ameliorate any of the concerns associated with the current categories. First, giving a name to a group inherently has subtle consequences for both members and non-members. Sharon Lee has observed, “One function of official race classifications is to create a sense of group membership or even community where there had been none before.”¹¹⁴ Acknowledging multiracial identity on application forms would thus create a group of people who would implicitly be compared with those in the traditional monoracial categories. This comparison creates a troubling conundrum. Recognition of a multiracial category solidifies the other race categories: for someone to be multiracial reinforces the idea that “pure” races exist in the first place.¹¹⁵ Thus, although a multiracial category would provide acknowledgement of racial fluidity, it is simultaneously problematic because its very existence is premised on the existence of the other five categories.

Other commentators have questioned whether, despite underlying good intentions, the use of a multiracial category might exacerbate current racial tensions. Tanya Kateri Hernandez has argued that the acknowledgement of a multiracial class in fact reinforces the existing racial hierarchy, with White at the top and Black at the bottom, by allowing members of the “middle-tier categories” to disassociate themselves from the most disadvantaged “pure” races.¹¹⁶ Ironically, of course, affirmative action programs

111. *Grutter v. Bollinger*, 539 U.S. 306, 337 (2003).

112. See, e.g., UNIV. OF MICH., 2007 APPLICATION FOR FRESHMAN UNDERGRADUATE ADMISSION 8 (2007), available at <http://www.admissions.umich.edu/applying/2007UMApplication.pdf>; PRINCETON UNIV., APPLICATION FOR ADMISSION TO FRESHMAN CLASS ENTERING SEPTEMBER 2006 1 (2005), available at <http://www.princeton.edu/pr/admissions/u/appl/05/pdf/applicationR.pdf> [hereinafter PRINCETON UNIV.].

113. Tanya Schevitz, *Connerly Wants Multi-Race Box on University Admission Applications*, S.F. CHRON., Nov. 15, 2004, at B2.

114. Sharon M. Lee, *Racial Classifications in the U.S. Census: 1890-1990*, 16 RACIAL & ETHNIC STUD. 75, 84 (1993). Similarly, Naomi Mezey points to the census designations of “Asian” and “Hispanic,” each of which “coalesce[d] a group that may not have understood itself as a group before, or at least was not commonly understood to be a group.” Naomi Mezey, *Erasure and Recognition: The Census, Race and the National Imagination*, 97 Nw. U. L. REV. 1701, 1747-48 (2003).

115. See John A. Powell, *The Colorblind Multiracial Dilemma: Racial Categories Reconsidered*, 31 U.S.F. L. REV. 789, 797 (1997).

116. Tanya Kateri Hernandez, “Multiracial” Discourse: Racial Classification in an Era of Color-Blind Jurisprudence, 57 MD. L. REV. 97, 126 (1998). Hernandez cites Brazil and South

actually create the opposite incentive by encouraging applicants to identify with the most disadvantaged category. However, the broader implications are the same: to some extent, simply separating "multiracial" from "Black," "Latino," "Asian," "Native American," or "White" does suggest that "multiracial" occupies a point on a continuum extending between these "pure" races, thus reinforcing the notion of races as discrete categories.

Aside from these broad policy concerns with the use of a multiracial category, we must remember that even widespread use of such a category would fail to address the larger issue of whether this category can do justice to the nuanced and highly individualistic nature of multiracial identity. Importantly, the complexities of multiracial identity highlight a difficult question: what aspects of racial identity are relevant for purposes of increasing diversity through affirmative action?

In addressing this question, admissions committees should start by thinking about the disparity between multiracial applicants' individual and social identities. In an affirmative action program geared towards increasing diversity, a case might be made for consideration of either individual or social identity, or even both together. On the one hand, people's self-described racial identities might allow for insight into their attitudes and hence what sorts of contributions to diversity they might be likely to make. On the other hand, information about how others are likely to view the applicant might be relevant insofar as the rationale involves the impact of diversity on other students and its potential to break down stereotypes.

While interesting in the abstract, speculation about the relative diversity benefits that could flow from information about individual or social identity ultimately raises unattractive questions. Regardless of what is permissible under *Grutter* and *Gratz*, do we want admissions committees debating whether to apply affirmative action to students who *consider* themselves Latino or students who other people would *perceive* as Latino? Either question seems intrusive in its own way. The former interrogates people's highly personal, subjective perceptions of themselves; the latter forces applicants to make judgments about how outsiders see them. Some have argued that it is a useful exercise for people to contemplate the discrepancy between individual and social identities with respect to race;¹¹⁷ however, it seems coercive to mandate this contemplation on an application form.

Africa as examples of societies in which a complex system of mixed race categories has left the poles of White privilege and Black disadvantage essentially untouched. This argument may seem somewhat paranoid, and other commentators have proposed less insidious explanations. See, e.g., Mezey, *supra* note 114, at 1749-50 (explaining that those who lobbied for a multiracial category "did not stand to gain any legal or political entitlements they could not get from simply checking a single race category" and instead primarily sought official recognition on grounds of "respect for the dignity of the individual").

117. Denton, *supra* note 95, at 94-95.

One might argue that it does not matter which question applicants think they are answering or which question schools think they are asking. Given the generality of the diversity rationale, both people who consider themselves a particular race and those who would be perceived as that race could enhance diversity. Thus, allowing applicants to answer either version of the question would still yield information that schools could consider in the course of their affirmative action program.¹¹⁸

However, if it is really up to each multiracial applicant to determine whether to assert her individual or social identity, schools should question why people that we consider "monoracial" do not have the same choice.¹¹⁹ Acknowledging fluidity only with respect to the racial identity of multiracial people subtly legitimates the idea of racial essences: it suggests that because someone has some Asian "blood," the option to assert that identity is available to him, regardless of whether others consider him Asian or he considers himself Asian. This unspoken idea validates discredited science by suggesting that arbitrary racial categories reflect some underlying biological reality.¹²⁰

We should not overstate the significance of checking a box in response to a race question on a college application. For multiracial students, however, box-checking questions present complicated issues. Educational policymakers should confront whether premising race-based affirmative action programs on responses to box-checking questions continues to capture the original goals of such programs.

B. *Admissions Committees*

Evaluating multiracial students in the affirmative action context also presents unique conundrums for admissions committees. Temporarily setting aside issues of how students classify themselves, this section will focus on what admissions committees do with the information students provide. The first problem is one of accounting: how should admissions committees tabulate data about their student bodies, given that the Department of Ed-

118. More than anything, this possibility highlights the vagueness of the diversity rationale at its outer limits. If it is really irrelevant whether an applicant expresses her individual or social identity on an application, it calls the vitality of the diversity rationale into question. While critiquing the diversity rationale is not the goal of this Article, the issue of multiracial individuals' multiple racial identities does force a closer examination of the diversity rationale's utility.

119. By describing the responses of her students to questions about racial self-identification, Professor Deborah Ramirez raises the possibility that monoracial people may in fact have fluid racial identities. For example, one student commented, "I am White, but I have an Asian soul. I love Asian food, speak Chinese, and have lived in China for many years. . . . I feel that I am, in fact, more Asian than White." Deborah Ramirez & Jana Rumminger, *Race, Culture, and the New Diversity in the New Millennium*, 31 CUMB. L. REV. 481, 489 (2001). Similarly, a study involving data from the National Longitudinal Study of Adolescent Health found that even for students whose parents were ostensibly of the same race, 6.8% identified themselves as having a different racial identity in different contexts and 6% stated that they were multiracial in at least one context. See David R. Harris & Jeremiah Joseph Sim, *Who is Multiracial? Assessing the Complexity of Lived Race*, 67 AM. SOC. REV. 614, 619 (2002).

120. powell, *supra* note 115, at 798.

ucation requires schools to report demographics in a certain format? The second problem is one of self-determination: how can committees develop stable criteria for affirmative action programs while respecting the way multiracial students describe their racial identity?

1. Classifying Applicants

Many schools offer students one set of racial categories on applications, yet publicize the demographics of the resulting classes using a different set of categories. Notably, many schools list "biracial" or "multiracial" as a category on their applications, yet do not report such a category in their student body profiles.¹²¹

The Department of Education requires schools to report their demographics in certain categories, which may influence how the schools subsequently publicize the racial composition of their student bodies. According to the National Counsel for Educational Statistics, individuals should first classify their ethnicity as either "Hispanic or Latino," or "Not Hispanic or Latino."¹²² Then they should "indicate all races that apply" among five choices: "American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White."¹²³

The discrepancy between the racial categories on application forms and the categories in which colleges report student demographics suggests that, in some cases, schools might reclassify multiracial students. However, we do not know what methods schools use to reclassify students, or whether this reclassification takes place before students are considered for admission, or after they are admitted.

A small amount of anecdotal evidence suggests that admissions committees tend to categorize multiracial students as members of the minority group, although it is unclear when in the admissions process this categori-

121. For example, the Princeton University undergraduate application provides a "bi-racial or multi-racial" option for students to check. See PRINCETON UNIV., *supra* note 112. However, the school's registrar's office reports students' race and ethnicity in the following categories for the 2004-05 school year: White (62.9%), Black (8.2%), Hispanic (6.8%), Native American (0.7%), Asian American (13.0%), and Foreign (8.4%). Although the percentages reported by the registrar's office total to 100, there is no multiracial category; it is an open question how the school determined to which of its six categories students who checked "multiracial" on the application were assigned. See PRINCETON UNIV., UNDERGRADUATE ENROLLMENT BY RACE/ETHNICITY (2004), available at http://registrar1.princeton.edu/data/oe_items/ug_by_race_ethn.pdf. Similarly, the University of Michigan undergraduate application asks students to indicate if they are multiracial or multi-ethnic, but the "Enrollment by Racial/Ethnic Category" table published in their 2004-2005 Common Data Set does not include a multiracial category. Although the table does include a category for "Race/ ethnicity unknown," there is no indication that multiracial students are routed to this category, and it is unclear why they would be so routed. UNIV. OF MICH. - ANN ARBOR, COMMON DATA SET 2004-2005 3 (2005), available at http://sitemaker.umich.edu/obpinfo/files/umaa_cds2005.pdf.

122. IPEDS GLOSSARY, *supra* note 106. IPEDS is the core data collection program for the National Center for Educational Statistics. The IPEDS Glossary definition of race/ethnicity adopts the categories endorsed in 1997 by the Office of Management and Budget.

123. *Id.*

zation takes place. In a series of interviews that Lani Guinier conducted with admissions officers of elite colleges, one officer commented that “when students check multiple boxes, the admissions committee is instructed to ‘count the group we need currently.’”¹²⁴ Similarly, a regent for the University of California system stated that students who check more than one box are “put into the category that has the lower representation at the school.”¹²⁵ Since many applicants value diversity, schools have incentives to maximize reported figures for minority enrollment.

Data about the resulting compositions of classes also suggests some tendency to reclassify multiracial students as minorities. In a survey of twenty-eight selective colleges and universities, one group of researchers found that substantial numbers of students classified as minorities by their schools were in fact multiracial: 7.4% of Asians, 28.2% of Latinos, and 17.0% of Blacks.¹²⁶ The researchers specifically noted that “racially mixed origins are substantially overrepresented among black freshmen at elite institutions.”¹²⁷ Relatedly, one of Professor Guinier’s interviewees stated that “for at least one Ivy League institution, less than ten percent of students admitted as ‘Latinos’ have been in the United States for more than ten years, and less than thirty percent of those admitted as ‘black’ have four African-American grandparents who were born in the United States.”¹²⁸

While suggestive, this evidence provides limited information about the type and extent of racial reclassification that schools employ. To learn more, future researchers could poll students about what box they checked on an application form, then compare the demographic breakdown of the poll against that released by the school. More qualitatively, researchers could expand on Professor Guinier’s work and interview admissions officers at a range of schools to learn more about how schools categorize the race of students who check more than one box or otherwise indicate that they are multiracial.¹²⁹

If our research suggested that schools do, in fact, tend to reclassify multiracial students as members of the most underrepresented applicable minority group, we should be concerned that certain aspects of intraracial diversity would be obscured. Reclassifying multiracial students into a blanket minority category has the potential to mask which types of experiences are actually represented—and underrepresented—at schools.

124. Guinier, *supra* note 110.

125. Schevitz, *supra* note 113. Regent Ward Connerly also explained that the UC system offers applicants thirteen racial or ethnic categories on its application, but then collapsed their answers into five categories and assigned each applicant a single category.

126. DOUGLAS S. MASSEY ET AL., *THE SOURCE OF THE RIVER: THE SOCIAL ORIGINS OF FRESHMEN AT AMERICA’S SELECTIVE COLLEGES AND UNIVERSITIES* 39 (2003).

127. *Id.* at 40.

128. Guinier, *supra* note 110. Similarly, a survey of 70% of Black undergraduates at Harvard conducted by the university’s Black student organization found that only about a third of students had four grandparents who were born in the United States. See Sara Rimer & Karen W. Arenson, *Top Colleges Take More Blacks, but Which Ones?*, N.Y. TIMES, June 24, 2004, at A1.

129. This qualitative approach would also help to identify whether multiracial students are reclassified before being evaluated for admission or after being admitted.

My point is not that diversity is somehow diminished if it turns out that affirmative action benefits multiracial students. Some data do suggest that, in the aggregate, certain aspects of multiracial students' experiences and values differ from those students in the monoracial categories under which they are subsumed, but it seems highly undesirable for admissions committees to debate internally whether a particular student is "enough of a minority" to deserve consideration under an affirmative action program. Such conversations insinuate that those admitted under affirmative action have a responsibility to perform in a certain way, and that one way of performing is not as good as another.

Rather, my point is that if certain types of experiences are grossly underrepresented, some of the benefits presupposed by the diversity rationale may not ensue. This is particularly true if those losing out in the process are the students for whom affirmative action was initially designed. For example, monoracial Black, Latino, and Native American students from particularly disadvantaged backgrounds may feel isolated, or as though they have little in common with the vast majority of other students at the school,¹³⁰ thus undermining the "critical mass" rationale espoused by courts.¹³¹

If future research suggests that schools in fact reclassify multiracial students as minorities, it also seems problematic from an accounting standpoint. By simply reporting the range of minority experiences, including multiracial experience, under the broad headings of "Black" or "Latino," schools might inflate the number of students in higher education who identify with these communities. Such inflation may paint a rosier picture of minority enrollment in higher education than reality warrants. Inflated minority counts may fail to motivate schools to scrutinize their admissions processes to ensure that they are actively seeking applicants from all backgrounds and evaluating these applicants fairly. Moreover, overstating minority enrollment may mask the bleak prospects of advancement for students from certain backgrounds, and may likewise obscure the reality that drastic measures are needed to combat such entrenched social disadvantage.

Investigating the potential racial reclassification of multiracial students raises painful issues that should be examined with great sensitivity. As new information emerges, we should continue to ask whether certain topics are even worth pursuing. For example, even if we found that many affirmative action beneficiaries are in fact multiracial, we still should question seriously

130. See, e.g., Sandra S. Smith & Mignon R. Moore, *Intraracial Diversity and Relations Among African-Americans: Closeness Among Black Students at a Predominantly White University*, 106 AM. J. SOC. 1, 28-29 (2000) (explaining that students with lower socioeconomic status often feel alienated from the Black communities at their colleges because the majority of Black students are in fact relatively advantaged from a socioeconomic standpoint; also suggesting that multiracial Black students tend to be more socioeconomically advantaged than those who identify monoracially).

131. *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003).

whether such information should be publicized if it risks casting multiracial students as overly opportunistic or monoracial students as less qualified or less motivated. Engendering new stereotypes is hardly the goal of affirmative action. However, as long as diversity remains the rationale for affirmative action, it remains important in certain contexts to ask questions about the intragroup variation among students subsumed under the same broad racial category.

2. Evaluating Applicants as Individuals

The Supreme Court has emphasized that admissions committees should evaluate applicants as individuals, rather than “in a way that makes an applicant’s race or ethnicity the defining feature of his or her application.”¹³² For admissions committees to impose a different racial identity upon an applicant than the one the applicant has chosen for herself when applying for consideration in an affirmative action program would offend this notion of individualism.

Since the internal deliberations of admissions committees are so closely guarded, there is only the minimal evidence described in the previous section to suggest that reclassification might take place in determining offers of admission.¹³³ To learn more about when and how committees classify multiracial students, the type of qualitative research described in the previous section would be particularly useful, since more concrete information about students’ demographics is unlikely to provide much insight. Although it would be of interest whether schools have concrete and specific policies about how to classify multiracial students, it would be even more edifying if we could somehow probe how the members of admissions committees make informal or even subconscious judgments about the race of multiracial students. Do they think of multiracial applicants as “basically minorities” as they read their applications, regardless of which boxes applicants check?

Realistically, collecting this type of information would be challenging and perhaps impossible given its subjectivity and the difficulty of measurement. However, awareness that admissions committees are composed of human beings who are likely to possess the same biases as the rest of society is an important backdrop to the discussion of multiracial individuals and affirmative action. Thus, my intent in the remainder of this section is to identify issues that might arise in the process of considering multiracial students, while at the same time acknowledging the inherent difficulty of obtaining precise information about this process.

If we knew that some committees tend to reclassify multiracial individuals as minorities, either officially or informally, we might find it troublingly reminiscent of hypodescent. The “one-drop” rule has a long history in American society, and continues to shape the way many people think

132. *Id.* at 337.

133. *See supra* text accompanying notes 121-29.

about race. To the extent that a multiracial student is attempting, on some level, to undermine this notion by fashioning a more flexible identity for herself, the admissions committees frustrate her attempt by reclassifying her.

More broadly, any formal or informal process of reclassification suggests insensitivity to an individual's self-determination. A school that chooses to subsume multiracial students under the admissions rubric of the underrepresented minority group overrides the multiracial student's conception of her own race, asserting a right to claim and categorize the student as it sees fit.¹³⁴ Janet Halley has theorized that "[t]he categorical lines drawn in the discourse of equivalents around protected groups erase or distort the identities of people who are part of more than one group."¹³⁵ Halley is more concerned with the intersection of social status groups, such as race, gender, and sexual orientation, but her claim resonates with individuals who transcend categories within one of these dimensions. As the evidence in Part III suggests, many multiracial individuals have strong feelings about their racial identities, and would likely find it intrusive for a school to reshape their presentations of their own identities into university-created categories.

Some university officials have argued that the problem of classifying multiracial students for purposes of affirmative action can simply be avoided by evaluating them without classifying them. Derek Bok explains that universities can avoid "treating [multiracial applicants] as fungible members of a monolithic racial group" by considering "the racial characteristics of individual applicants, together with other relevant qualities of background and experience, to determine how much their presence will contribute to the overall diversity of the entering class."¹³⁶ As a result, each applicant would be evaluated on his or her own terms.

This idealistic vision of truly individualized affirmative action is appealing, but one might question how well admissions committees will be able to implement this vision in practice. Opponents of affirmative action often argue that the evaluation of an applicant's contribution to diversity is

134. Some strong proponents of affirmative action also seem to feel entitled to adopt this practice in a variety of situations. William Bowen and Derek Bok describe a meeting at which a Black professor whose son was being considered for a prestigious award stated that his son was so talented that he needed no special consideration. "Your son will do fine," another person present at the meeting said, "but that isn't the issue. *He may not need us, but we need him!*" WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* 283 (1998). Imposing identity on multiracial students via classification performs a similar claiming function, albeit more subtly.

135. Janet E. Halley, *Gay Rights and Identity Imitation: Issues in the Ethics of Representation*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 137 (David Kairys ed., 3d ed., Basic Books 1998) (1982).

136. Derek Bok, *The Uncertain Future of Race-Sensitive Admissions* 21 (Jan. 20, 2003) (revised draft, available at http://nacua.org/documents/Uncertain_Future_of_Race_Sensitive_Admissons_Revised.pdf).

entrusted to the “standardless discretion of educators.”¹³⁷ Similarly, even strong proponents of affirmative action have pointed out that the broad discretion granted to committees under the current affirmative action model entails a risk that they will be drawn subconsciously to the candidates who are most like them.¹³⁸ The risks inherent in the kind of truly individualized evaluation that Bok envisions include the problem of bias: without fixed standards for applying affirmative action, we cannot evaluate whether it is being implemented fairly.

Although it would be easy to criticize committees for reclassifying applicants, it is difficult to conceive of a better alternative. Standards of some sort are necessary, both for purposes of accounting and for purposes of ensuring a fair admissions process. At the same time having standards requires some categorization—and possibly some recategorization—of multiracial applicants. Ultimately, the problem of classifying multiracial students is really the same theoretical quandary that arises in any discussion of groups: the group must be delineated in order to discuss existing social inequality, but the act of delineation inevitably warps the identities of those on the margins of the group.¹³⁹

V. CONCLUSION

The challenge of categorizing multiracial applicants highlights the difficulty of implementing diversity-based affirmative action on the basis of box-checking, and translates to a host of issues ranging from the purely logistical to the intensely personal. Perhaps the best response to these difficulties is a scheme that allows all applicants—multiracial and otherwise—to emphasize the parts of their identities that they believe will contribute diversity, without relying on racial box-checking. One risk, which should not be minimized, is that more extended inquiry risks intrusiveness by requiring a performance from applicants to demonstrate their uniqueness and ability to contribute to diversity. However, this risk needs to be balanced against the different intrusion of imposing a racial category on applicants who may believe that categories fail to capture the nuances of their racial identity.

137. Transcript of Oral Argument at 10, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (No. 02-516), available at 2003 WL 1728816 (U.S. Apr. 1, 2003).

138. See Guinier, *supra* note 110, at 154 (arguing that current affirmative action policy “perpetuates reliance on the same admissions processes that enabled the current decisionmakers to succeed. Not only do the decisionmakers sponsor students who look like or remind them of themselves, but they also sponsor students who succeeded under the same criteria they faced”); Charles R. Lawrence III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928, 962 (2001) (“I am the ideal diversity candidate because I am different, but not too different from my White colleagues.”).

139. See, e.g., Kwame Anthony Appiah, *Identity Against Culture: Understandings of Multiculturalism*, Doreen B. Townsend Center for the Humanities, Occasional Papers, Paper 1 (Sept. 14, 1994) at 26, available at <http://repositories.cdlib.org/townsend/occpapers/1>; Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585-86 (1990).

Rutgers Law School, long a bastion of affirmative action, employs an admissions process that requires applicants to choose one of two application tracks.¹⁴⁰ The first allows applicants to be evaluated primarily on the basis of their grades and test scores; the second gives more weight to their “experiences and accomplishments.”¹⁴¹ Although the second track is designed to benefit underrepresented minorities, the school opens this process to applicants of any race who believe that numerical factors do not adequately convey the contribution they would make. While not without its flaws, such an admissions regime preserves individual autonomy by allowing applicants of all races to make a decision about how they wish to be evaluated.

Affirmative action is a well-intentioned policy. Thoughtfully crafted and administered affirmative action programs provide richer experiences for members of the academic community and remedy centuries of racial oppression and injustice. As we implement this well-intentioned policy, however, we must remain vigilant, so that we do not unthinkingly undermine our efforts with the categories that we use to monitor our progress.

140. See THE STATE UNIV. OF N.J. RUTGERS NEWARK, RUTGERS SCHOOL OF LAW-NEWARK 2006 ADMISSION APPLICATION 1 (2006), available at <http://law.newark.rutgers.edu/rutapp2006.pdf>.

141. *Id.*