

Multiracial Identity and Affirmative Action

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INTRODUCTION

Affirmative action is perhaps the most controversial race-related issue currently facing policymakers in America. The use of race in admissions to institutions of higher education is routinely subjected to intense judicial, academic, and public scrutiny. However, in the affirmative action debate, one of America's fastest-growing demographics is routinely overlooked: individuals of multiracial background.¹

The appropriate treatment of multiracial students under the current affirmative action regime raises a series of difficult questions. How should such students designate their race in the admissions process? How should schools evaluate multiracial students in the context of an affirmative action program? Despite the theoretical quandary that the classification of multiracial students seems to present, there is scant empirical evidence about the interaction of multiracial identity and affirmative action, and the subject has escaped notice in the scholarly literature.

¹ It is difficult to select terminology to discuss the idea of racial mixing. My understanding is that 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 Haney Lopez, *The Social Construction of Race: Some Observations of Illusion, Fabrication, and Choice*, 29 Harv. C.R.-C.L. L. Rev. 1, 11-14 (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. 1789, 1793 (1997). However, despite these misgivings, the categories that we typically consider "races" 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.

This Article attempts to highlight some of the issues that arise in this unique situation. Part I provides background on the way multiracial individuals have been categorized in the past, then examines the variety of ways in which schools attempt to categorize them in the current admissions process.

Part II turns to affirmative action. After briefly summarizing the diversity rationale propounded in *Bakke* and reaffirmed by *Grutter* and *Gratz*, I draw on sociological research in an attempt to evaluate whether and how multiracial people might contribute differently to diversity. Many multiracial people do not identify completely with any monoracial community, and, as a result of their background, face certain unique issues regarding their racial identity. Like any other racial group, however, multiracial people are also quite heterogeneous, and individual members should not be regarded as contributing to diversity in any particular way.

Finally, Part III discusses some of the ways in which multiracial identity interacts with race-conscious admissions. I consider both the process by which multiracial applicants identify themselves and the process by which admissions committees evaluate the information applicants give them. Since relatively little is known about the behind-the-scenes admissions process, in places I suggest possible methods for gathering additional information as well as the conclusions we might draw if we found that applicants and committees behaved in certain ways. Given the lack of empirical evidence, it is difficult to make firm conclusions about the most appropriate policy choices; instead, this Note attempts to highlight important areas for future research.

In the process, I also hope to raise some of the larger issues that result from attempting to categorize multiracial people in the admissions process. For applicants, the racial categorization schemes found on most college applications are unable to capture the fluidity of multiracial identity, creating internal tension for many applicants who wish to describe important aspects of their racial identity yet are constrained by the protocols of the admissions process. For admissions committees, the case of multiracial applicants also highlights the challenge of creating guidelines for affirmative action while maintaining respect for applicants' individual racial identities. Multiracial identity does not fit comfortably within the current paradigm of race sensitive admissions, yet it is important to acknowledge the difficulties that it presents and explore their implications in creating affirmative action policies for the future.

I. CATEGORIZING MULTIRACIAL INDIVIDUALS

Racial mixing has long been a divisive issue in America. In 1632, only twelve years after the Pilgrims landed on Plymouth Rock, Captain Daniel Elfrye was reprimanded by his employer for "too freely entertaining a mulatto."² In the ensuing centuries, even as prominent leaders and scientists expressed concerns about racial purity, many members of their communities quietly engaged in interracial relationships.³

Meanwhile, categorizing multiracial people has provided demographers with an ongoing challenge. As a way of examining social attitudes toward categorization, this Part will provide a brief overview of how multiracial people have been classified on the census during the last 150 years, then discuss how they are currently categorized on college application forms.

² WINTHROP D. JORDAN, *WHITE OVER BLACK* 137 (1968).

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, 1171-1187 (1997).

A. 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, octoroons, 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 “Octoroon,”⁷ thereby adding an additional degree of perceived scientific precision to the categorization of multiracial 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 (“hypodescent”) rule for Blacks.¹⁰

Following *Loving v. Virginia*,¹¹ which legalized interracial marriage, the number of marriages between people of different races has 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 others (such as census enumerators) perceive an individual to race as a product of how the individual sees himself or herself.

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

⁵ 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 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.

⁸ Hickman, *supra* note 3, at 1186.

⁹ Snipp, *supra* note 4, at 568.

¹⁰ *Id.* 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”

¹¹ 388 U.S. 1 (1967).

¹² Snipp, *supra* note 4, at 569. The first self-reported census was administered in 1970.

The simultaneous increase in interracial marriage and shift to racial categorization as an individually constructed phenomenon set the stage for the multiracial identity movement. 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.¹³ By 1990, although the census still instructed 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.¹⁴

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.¹⁵ As a result, nearly 7 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.¹⁶ Five percent of Blacks, 6% of Latinos, 14% of Asians, and 2.5% of Whites identified themselves as members of at least two races.¹⁷

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 1990.¹⁸ For some groups, the interracial marriage rate approaches 50%,¹⁹ and the multiracial birth rate reflects this increase. In 1990, for example, there were 39% more births of Japanese/White in the United States than Japanese American births.²⁰ Between 1990 and 1998 alone, there was an increase of 41% in the number of intermarried couples.²¹ The National Academy of Science has indicated that the multiracial population could rise to 21% by the year 2050.²² 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, it is also salient wherever racial

¹³ In the United States, the multiracial lobby began as a grassroots effort to provide a multiracial option on official forms, including the census. See Naomi Mezey, *Erasure and Recognition: The Census, Race and the National Imagination*, 97 Nw. U. L. Rev. 1701, 1749-51 (2003).

¹⁴ Wendy D. Roth, *The End of the One Drop Rule? Labeling of Multiracial Children in Black Inter marriages*, 20 Sociol. Forum 35 (2005).

¹⁵ 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.

¹⁶ U.S. Census Bureau, 2000 Census Data, at http://factfinder.census.gov/servlet/QTTTable?_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 Annu. Rev. Sociol. 221, 229 (2004).

¹⁷ *Id.* These data appear to count people as members of both categories.

¹⁸ Schmitt, *supra* note 15.

¹⁹ 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).

²⁰ Michael Omi, *Forward*, THE SUM OF OUR PARTS: MIXED-HERITAGE ASIAN AMERICANS ix (Teresa Williams-León & Cynthia L. Nakashima eds., 2001).

²¹ *Id.*

²² Lee & Bean, *supra* note 16.

classification occurs. University admissions are one context in which we continue to classify by race; the next section examines our attempts to do so.

B. Categorization in University Admissions

Race categories on most schools' application 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. However, beyond this basic structure there are almost as many different versions of race categories as there are schools.²³ Some schools ask applicants to check one box that best describes their race,²⁴ while others invite them to check all that apply.²⁵ Some schools provide a "multiracial" option,²⁶ while others offer the designation "other," with an invitation to specify further.²⁷ Some schools offer a host of more detailed categories.²⁸

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). The Common Application does not include a multiracial category.

The idiosyncrasies of the Common Application categories, which differ somewhat from most schools' classification systems, raise the question of how schools that accept both the Common Application and their own application deal with discrepancies between the sets of categories. Another potential issue is that of discrepancy between the Common Application's "check all that apply" approach and that of schools who instruct applicants to pick one category that best describes them.²⁹ Such differences might lead to inconsistent processing of applications.³⁰

There is nothing inherently problematic about different schools treating race differently. In fact, courts have suggested that it is perfectly legitimate and indeed desirable for schools to

²³ In a very non-exhaustive survey of college applications, I looked at applications from the top ten public and top ten private schools on the U.S. News and World Report rankings. Despite my general dislike for ranking systems, I felt this would be an appropriate starting point to the extent that more selective schools tend to have more vigorous affirmative action programs.

²⁴ See, e.g., University of Wisconsin Undergraduate Application.

²⁵ See, e.g., Common Application 2005-2006.

²⁶ See, e.g., University of Colorado Undergraduate Application; University of Michigan Undergraduate Application.

²⁷ See, e.g., Common Application 2005-2006, University of California at Berkeley Undergraduate Application.

²⁸ 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).

²⁹ See Union College, *On Ethnicity, Thinking Out of Box: Colleges Vary in Letting Applicants Pick More than One Racial Option*, available at <http://www.union.edu/N/DS/s.php?s=4781>.

³⁰ 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 variation in the way applications are processed. See *id.*

tailor race conscious admissions to their individual needs.³¹ However, as a purely administrative matter, 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.³² 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."³³ 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."³⁴ While this resolves some of the issues that might arise, the options that many schools offer on their application forms still do not map neatly onto these categories: notably, there is no multiracial option in reporting data to the federal government.

To summarize, there are a range of categories that schools use to ask students about their race, and hence a range of ways that multiracial applicants may identify themselves 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 them for purposes of affirmative action, and how their 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 the categories a school uses to ask that question have substantive rather than merely administrative significance.

II. DIVERSITY AND MULTIRACIAL INDIVIDUALS

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 *Bakke*, a deeply divided Court approved of race conscious affirmative action programs in institutions of higher education.³⁵ 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.³⁶

The rationale given to support this tailored consideration of race is that of furthering diversity. The idea is that a racially and ethnically diverse university class will promote interracial understanding and help break down stereotypes, ultimately better preparing students

³¹ See, e.g., *Bakke*, 438 U.S. at 312 ("The freedom of a university as to education includes the selection of its student body."); *Grutter*, 539 U.S. at 329 (deferring "to a university's academic decisions, within constitutionally prescribed limits).

³² See Integrated Postsecondary Education Data System (IPEDS) Glossary at 57, available at <http://nces.ed.gov/ipeds/glossary/pdf/IPEDSglossary.pdf> (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.").

³³ *Id.*

³⁴ *Id.*

³⁵ *Bakke*, 438 U.S. 265.

³⁶ *Id.* at 315-16.

for participation in the workforce and in society at large.³⁷ Reaffirming the diversity rationale, the Court recently held in *Grutter* that the University of Michigan Law School’s affirmative action program was constitutional because it involved an “individualized, holistic review of each applicant’s file” and considered “all the ways an applicant might contribute to a diverse educational environment.”³⁸

In determining whether and to what extent multiracial students should be the beneficiaries of affirmative action, the Supreme Court seems to require that we ask how they might contribute to diversity. Do they contribute in ways similar to monoracial members of one race? If so, which race? Or do life experiences unique to multiracial individuals 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 any particular way – rather, the issue is how schools should think of multiracial status in assessing diversity. A few possibilities worth exploring are the extent to which multiracial students identify with the minority community (or communities) that comprise part of their heritage, as well as the extent to which multiracial identity in itself fosters the ability to make a unique contribution.

A. Identification with Minorities

Various studies of the extent to which multiracial students identify with minority groups have yielded conflicting results. One possible explanation for this phenomenon is that multiracial people may 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.³⁹

Some studies 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 checked the Native American box, 12.4% of those who checked the Asian box, 16.4% of those who checked the Latino box, and 4.2% who checked the Black box also identified themselves as White.⁴⁰ Census data is limited because it does not take into account the percentage of individuals in a given group who are “actually” multiracial but only checked one box. However, other studies have estimated that at least three-quarters of the Black population in the United States is ancestrally multiracial, so by this measure, Blacks should be much *more* likely to check more than one box.⁴¹ 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

³⁷ *Grutter* 539 U.S. at 330 -331.

³⁸ *Id.* at 337. The Court’s justification for the diversity rationale has attracted its share of commentary. See, e.g., Justin Pidot, *Intuition or Proof: The Social Science Justification for the Diversity Rationale in Grutter v. Bollinger and Gratz v. Bollinger* (unpublished seminar paper; copy on file with author) (critiquing the Court’s use of social science data in the University of Michigan affirmative action cases).

³⁹ See, e.g., Diana Jean Schemo, *Despite Options on Census, Many to Check ‘Black’ Only*, N.Y. Times, Feb. 12, 2000, at A1.

⁴⁰ Lee & Bean, *supra* note 16, at 232-33.

⁴¹ JON MICHAEL SPENCER, *THE NEW COLORED PEOPLE: THE MIXED-RACE MOVEMENT IN AMERICA* (1997).

compared with other nonwhite groups.”⁴² In contrast, the authors claim, multiracial Asians, Latinos, and Native Americans have more “room for exercising discretion in the selection of racial/ethnic identities.”⁴³

Although this explanation might seem plausible in the context of that particular study, other studies suggest that the extent to which various subgroups identify as minorities is even more ambiguous. 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%).⁴⁴ 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.⁴⁵ While multiracial Black students were still more likely to choose a minority identity than other subgroups, the results are less dramatic than those implied by the census.

Little research on multiracial identity 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.⁴⁶ Biracial 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.”⁴⁷ The discrepancy extended to close friendships: while 54% of monoracial Black students reported that all or most of their good friends on campus were black, no biracial students made the same claim.⁴⁸ Twenty-seven percent of biracial students reported extreme or considerable alienation from other Black students on campus, as compared to only 18% of monoracial students.⁴⁹ Similarly, 40% of biracial students described having negative experiences with other Black students, as compared to only 12% of monoracial students.⁵⁰ Obviously, only limited conclusions may be drawn from this study, since it involved only the students of one school.⁵¹ Nonetheless, the study does provide some evidence that multiracial Black students in the aggregate do not identify completely with the Black community, although it provides little positive insight as to which communities multiracial students do fit into: for example, there is no evidence that multiracial students identify primarily with one another.

⁴² Lee & Bean, *supra* note 16, at 233.

⁴³ *Id.*

⁴⁴ David Brunnsma & Kerry Ann Rockquemore, *What Does “Black” Mean? Exploring the Epistemological Stranglehold of Racial Categorization*, 28 *Critical Sociol.* 101, 110 (2002).

⁴⁵ Melissa Herman, *Forced to Choose: Some Determinants of Racial Identification in Multiracial Adolescents*, 75 *Child Development* 730, 736 (2004).

⁴⁶ 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. of Sociol.* 1 (2000).

⁴⁷ *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.

⁴⁸ *Id.* at 25

⁴⁹ *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, no biracial Black student report disapproval of either. *Id.* at 27

⁵⁰ *Id.* at 24

⁵¹ *Id.* at 10. Also, responses were obtained from only 76% of students.

Ultimately, while many multiracial people seem to identify with their minority background to some extent, or at least to a greater extent than with their White background, it seems inaccurate to argue that they are indistinguishable from monoracial members of the minority group with respect to the contribution to diversity they might make. However, that is not to say that they would not make some contribution. The next section will explore the idea of multiracial identity as a discrete concept and discuss how multiracial students might consequently contribute to diversity.

B. Unique Multiracial Identity

Some research suggests that multiracial individuals have a unique racial identity that cannot be expressed via monoracial categories. A study conducted in Detroit of 177 college students with one Black parent and one White parent found considerable variation in the way these students conceptualize their racial identity.⁵² 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.⁵³ 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 Black.⁵⁴ Nearly 5% viewed themselves as having a “protean identity,” meaning that their race was fluid and changed depending on the situation.⁵⁵ Interestingly, a large number “refus[ed] to have any racial identity whatsoever,” essentially rejecting race as “a socially constructed category that is utterly meaningless to their individual sense of self.”⁵⁶ Thus, although multiracial people in this study identified themselves in a variety of ways, it seemed clear that the majority felt that traditional monoracial classification did not capture their racial identities.

Other studies have also suggested that multiracial individuals have a unique concept of racial identity that transcends traditional race categories. One 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.⁵⁷ Another 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.⁵⁸ Some interviewees suggested that it was the “lack of a visible or

⁵² Brunnsma & Rockquemore, *supra* note 44, at 108. It was not completely clear to me from the description of the study whether the sample included only students with one Black parent and one White parent, or whether some students had one Black parent and one non-Black (possibly white) parent. However, it did seem clear that the vast majority of participants had one Black parent and one White parent.

⁵³ *Id.* at 109. The term “border identity” was proposed by Maria P.P. Root. See, e.g., MARIA P.P. ROOT, *THE MULTIRACIAL EXPERIENCE: RACIAL BORDERS AS THE NEW FRONTIER* (1996).

⁵⁴ See Brunnsma & Rockquemore, *supra* note 44, at 108-09. See also KERRY ANN ROCKQUEMORE & DAVID BRUNNSMA, *BEYOND BLACK: BIRACIAL IDENTITY IN AMERICA* 44 (2002).

⁵⁵ Brunnsma & Rockquemore, *supra* note 44, at 111.

⁵⁶ *Id.* at 111.

⁵⁷ Nikki Khanna, *The Role of Reflected Appraisals in Racial Identity: The Case of Multiracial Asians*, 67 *Soc. Psychol. Q.* 115, 119-20 (2004).

⁵⁸ Marie L. Miville, et al., *Chameleon Changes: An Exploration of the Racial Identity Themes of Multiracial People*, 52 *J. of Counseling Psychol.* 507, 511, 514 (2005).

accessible multiracial community” that limited the multiracial label to personal rather than public significance.⁵⁹

Finally, some research has highlighted that the uniqueness of multiracial identity lies in its fluidity. For example, 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.⁶⁰ 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.⁶¹ This result implies that, in at least some situations, people answer questions about their race differently depending on the phrasing and context of the question.

Another study, drawing on data collected from students in grades seven through twelve during the National Longitudinal Study of Adolescent Health, found considerable discrepancies in how participants identified themselves during interviews conducted at school versus interviews conducted at home.⁶² 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.”⁶³ 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.⁶⁴ 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. Thus, although there were some differences in identification patterns among subgroups, the overall point is the same: for multiracial people, identity shifts depending on context.

In addition to research that directly interrogates how multiracial people identify themselves, a few studies have also examined how parents categorize their multiracial children. Although this does not necessarily indicate anything in particular about how multiracial children think about themselves, it seems possible that in some cases parental identification might provide insight into how multiracial children grow up thinking about their racial identities.⁶⁵

⁵⁹ *Id.* at 511

⁶⁰ Khanna, *supra* note 57, at 119.

⁶¹ *Id.*

⁶² David R. Harris & Jeremiah Joseph Sim, *Who is Multiracial? Assessing the Complexity of Lived Race*, 67 *Am. Sociol. Rev.* 614, 619-20 (2002).

⁶³ *Id.* at 620.

⁶⁴ *Id.*

⁶⁵ Of course, other factors may influence how children are labeled by their parents. One study of how children with one Asian parent are labeled 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.” Yu Xie & Kimberly Goyette, *The Racial Identification of Biracial Children with One Asian Parent: Evidence from the 1990 Census*, 76 *Social Forces* 547, 565.

In 2005, Wendy Roth published the most comprehensive analysis of how parents classify their multiracial children.⁶⁶ Her research uses a nationally representative sample drawn from 1990 and 2000 census data to evaluate the possible options for racial designation available for multiracial children.⁶⁷ Roth hypothesizes that the parents of multiracial children who selected “Other” on census forms had some sort of “interracial identity” in mind for their children.⁶⁸ In 1990, before the census allowed the checking of more than one box, the parents of Black/White children were much more likely to identify their children as “Other”: Fourteen percent of such parents chose “Other” for their children, as compared to less than 1% of parents of Asian/White and Native American/White children.⁶⁹ Responses changed significantly in 2000, when parents could check multiple boxes: 53.1% of Blacks/White and 54.7% of Asians/White children were designated as the exact combination of their parents’ races.⁷⁰ 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.⁷¹

Given the distinctive ways in which both multiracial people and their parents approach racial classifications, it seems particularly problematic to attempt to box multiracial students into the monoracial categories that continue to appear on many schools forms or to make blanket assumptions that multiracial and monoracial minority students are interchangeable. The practice is reminiscent of hypodescent in its suggestion that all variations within a non-White minority group are indistinguishable, thus minoritizing multiracial students by imposing a specific version of racial identity on them.⁷²

The problem is 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

⁶⁶ Wendy Roth, *The End of the One-Drop Rule? Labeling of Multiracial Children in Black Inter marriages*, 20 *Sociol. Forum* 35 (2005).

⁶⁷ *Id.* at 37. Roth uses a large data set from the Integrated Public Use Microdata Sample (IPUMS).

⁶⁸ *Id.* at 52. Although Roth focuses on parents who may be attempting to designate some sort of “interracial identity” for their children, a considerable amount of other research has examined the question of which race multiracial parents select for their children when forced to choose one, or on whether multiracial children are identified with one race more than the other. Such research suggests fairly substantial differences among races. For example, an analysis of data extracted from the Public Use Microdata Sample (PUMS) of the 1990 census revealed that 38.8% of children with one Asian parent were identified as Asian. Xie & Goyette, *supra* note 65, at 558. The researchers concluded that “racial identification of biracial children with an Asian parent is, to a large extent, optional.” *Id.* at 564.

⁶⁹ Roth, *supra* note 66, at 49.

⁷⁰ Black/White children were still twice as likely to be identified as “Other” (9.6% versus 4.4%), but it is worth noting the considerable increase in the number of Asian/White children designated as “Other” between 1990 and 2000. *Id.* at 50.

⁷¹ *Id.* at 51. As a side note, both Roth and other researchers have found some evidence that increases in the level of parental education correlates with a greater likelihood of children being given an interracial identity. *Id.* at 54. However, other researchers have actually found that for biracial children with one Asian parent, an increase in the level of parental education actually correlates with an *increased* likelihood that the child will be identified as Asian. Xie & Goyette, *supra* note 65, at 557, 562.

⁷² See generally Janet Halley, *Gay Rights and Identity Imitation: Issues in the Ethics of Representation*, *The Politics of Law* (D. Karys, 3d ed. 1998).

heterogeneous.⁷³ A claim that multiracial students contribute to diversity in a specific way is thus problematic because it suggests that conclusions can be drawn about the individual multiracial student whose application is being evaluated, when in fact tentative conclusions can only be drawn about groups of multiracial students in the aggregate.

One might argue – as people do in making the case for affirmative action more generally – that although there is no single conclusion that can be drawn about multiracial people, given existing racial paradigms in American society, there are fundamental issues of race and identity that multiracial people will almost certainly have to confront at some point in their development.⁷⁴ As a result (the argument goes) this confrontation would make race salient for multiracial individuals in a way that it is not for other racial groups. Multiracial students might not all resolve these issues of racial identity in the same way, but *any* way in which they did so would contribute to the diversity of opinions on campus.

But even this argument is troublesome because, although it does not presume any particular perspective, it does presume the existence of a unique perspective – that multiracial students *must* have something unique to offer by reason of their mixed race background. Although superficially this seems far more mild than the more traditional forms of stereotyping, it nonetheless imposes a certain vision of multiracial identity that might describe some or most students' experiences, but does not necessarily describe everyone's. The problem with defining a unique multiracial identity is that “there will be expectations to be met, demands to be made.”⁷⁵ It 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, attempting to develop an overarching concept of the diversity contribution that multiracial people make as a result is problematic. 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.

III. THE ADMISSIONS PROCESS

The preceding section of this Note showed that is problematic either to assume that multiracial students essentially make the same contributions as some category of monoracial students or to assume that multiracial students inherently make their own unique contribution. Given the difficulty of classifying multiracial students, this Part will explore how affirmative action might play out with respect to multiracial students in the current admissions process, highlight areas where further information would be helpful, and discuss some of the issues that might arise as a result.

⁷³ 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.

⁷⁴ 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, *supra* note 1, at 802 (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.”).

⁷⁵ K. Anthony Appiah, *Identity Against Culture: Understandings of Multiculturalism*, Avenali Lecture, Sept. 12, 1994 at 26.

As noted previously, the admissions process is shrouded in secrecy at various stages. First, we don't know what multiracial applicants do when they answer the race question. Do they check the race most advantageous to them, check the race they identify with, or check the boxes that describe the exact combination of their parents' races? Although there is little information and so many different versions of the race question on different applications that it's probably impossible to generalize, Part III.A will discuss some of the possible alternatives and their implications.

Second, we don't 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 underrepresented race among those checked? Does it vary depending on other indicators in the application? Are there fixed guidelines, or are decisions really based on a nuanced reading of each individual's application? Again, although there is a wide range of admissions protocols, Part III.B will address some of the possible consequences, and larger implications, of different combinations of student input and admissions decisions.

A. Applicants

College applications create at least two dilemmas for multiracial applicants. First, the applications fail to contemplate the possibility that an applicant might have more than one racial identity, or different identities at different times. Second, the applications might not provide applicants with options that they believe will adequately characterize their racial background. These two issues ultimately create a disconnect between how multiracial applicants might choose to describe their race and how they project their race onto the application form.

1. *Fluidity of Racial Identity*

Like the census, college applications fail to recognize the potential discrepancy between individual and social conceptions of race.⁷⁶ Particularly for multiracial people, there may be a difference between “how I see myself” and “how others see me” – for example, someone might identify more strongly with one race despite possessing the phenotype of another.⁷⁷ Sociological research supports the idea that for many multiracial individuals, there is frequently a “chasm” between their self-identification as multiracial and society's identification of them as members of a minority race.⁷⁸ However, because most monoracial people do not experience this dissonance between their individual and social racial identities, many questions designed to collect racial data do not contemplate these differences.

The U.S. Department of Education defines its race/ethnicity categories as groups “to which individuals belong, identify with, or belong in the eyes of the community,” a rather

⁷⁶ Nancy Denton, *Racial Identity and Census Categories: Can Incorrect Categories Yield Correct Information?* 15 LAW & INEQ. 83, 87 (1997).

⁷⁷ *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. David R. Harris & Jeremiah Joseph Sim, *Who is Multiracial? Assessing the Complexity of Lived Race*, 67 AM. SOCIOLOGICAL REV. 614, 615 (2002).

⁷⁸ Rockquemore & Brunson, *supra* note 54, at 44.

ambiguous definition that leaves open the alternative of either individual or social identity.⁷⁹ Although it seems unlikely that admissions committees give a lot of thought to which conception of race they are seeking to identify with the race question on their application, it is interesting to note the variations in phrasing that result. Many applications perfunctorily instruct applicants to “check one,”⁸⁰ “check all that apply,”⁸¹ or even provide the race categories and boxes to check without any instructions.⁸² Others ask applicants to “select one category that most accurately reflects your ethnic background”⁸³ – this phrasing suggests that the question is getting at some “objective” version of race as an outsider, or society as a whole, might characterize it. Still others instruct applicants to “indicate your ethnic identity,”⁸⁴ or state, “if you wish to be identified with a particular ethnic group, please check all that apply”⁸⁵ – such phrasing seems to invite applicants to characterize themselves as *they* see themselves.⁸⁶

It is also possible that the set of categories available to the applicant may in itself dictate whether the question ends up capturing individual or social identity. Richard Ford has suggested that the availability of the traditional crude categories on the census tracks 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.⁸⁷ According to Ford, the former approach measures “socially ascribed identities,” while the latter measures “subjective self-identification.”⁸⁸ While Ford is correct that the 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.

In addition to the ambiguity about whether applications are tracking individual or social race, applications may also fail to acknowledge the fluidity of some multiracial applicants’ racial identities. Although there have been relatively few empirical assessments of the extent of this fluidity,⁸⁹ the evidence already discussed in Part II.B suggests that the race category that multiracial people identify with can shift depending on setting and context.⁹⁰ 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;⁹¹ another found wide discrepancies in the way multiracial adolescents identified their race in interviews at home as compared to interviews at school.⁹²

⁷⁹ See National Council for Educational Statistics Website, IPEDS Glossary, at <http://nces.ed.gov/ipeds/glossary/pdf/IPEDSglossary.pdf>.

⁸⁰ University of Wisconsin Application.

⁸¹ See, e.g., Stanford University Application.

⁸² University of North Carolina Application.

⁸³ University of Colorado Application.

⁸⁴ University of California Application.

⁸⁵ Common Application 2005-2006.

⁸⁶ See also Brown University Application (“how do you identify yourself (your race and ethnicity)?”); Northwestern University Application (“How would you describe yourself?”); Duke University Application (“How would you describe yourself? (Check all that apply)”).

⁸⁷ Richard T. Ford, *Race as Culture? Why Not?*, 47 UCLA L. REV. 1803, 1808 (2000).

⁸⁸ *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.

⁸⁹ See Harris & Sim, *supra* note 62, at 616.

⁹⁰ See *supra* text accompanying notes 60-64.

⁹¹ See Khanna, *supra* note 57.

⁹² See Harris & Sim, *supra* note 62.

Obviously one cannot automatically import the results of these studies to the context of declaring race on an admissions application. There is a widespread perception among applicants 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 stronger incentives to choose a different race on an admissions form.⁹³ Moreover, individuals of different racial backgrounds may tend to classify themselves differently in the admissions process – multiracial Asians, who are not underrepresented in higher education, may not identify themselves the same way as multiracial Blacks and Latinos.

To learn more about how multiracial identity interacts with the race categories on college applications, it would be useful to examine how multiracial people identify their race in different contexts. We might create a survey that measured how recent multiracial college applicants answered the race question on applications, as compared to how they or society normally identified their race. Three questions seem relevant: “With which race(s) do you identify?” “With which race do other people identify you?” “What box(es) did you check on the application?” There are a variety of ways that one could construct the answer prompts, but I think it would be most interesting if the first two questions were open-ended rather than multiple choice in order to capture the full range of self and social categorization that specific categories might obscure.⁹⁴ Constructing the last question would be more difficult simply because different schools’ applications vary so widely, and many multiracial applicants probably ended up describing themselves slightly differently on different applications. We could get at these differences by administering the survey to frosh at various schools. On the surveys administered at each school, the options for the third question would be the same as those on a particular school’s application, and the instructions would tell students to answer the question as they did during the application process. By choosing schools that posed the race question in different ways, we could examine how multiracial students respond to a variety of question formats, and how their responses mapped onto their racial identities.

Our response to the survey would vary considerably depending on the results. Perhaps the most basic question is whether multiracial students’ descriptions of their individual and social identities differed. Most schools have probably given little thought to the problem of multiple racial identities, simply because for most applicants the answers are the same. If the identity discrepancy is considerable for multiracial students, at the very least it might encourage schools to think carefully about what they are getting at when they ask about race.

⁹³ 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. . . . evidence 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 website, *Race and Ethnicity*, at <http://www.deloggio.com/diversty/race.htm> (last visited Jan. 4, 2006). While a little beyond the scope of this Note, 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 87, at 1809-10.

⁹⁴ Of course, this would make it harder to categorize people’s responses. But I think that most responses would probably still fall into several predictable categories, and those that did not would provide interesting information. I also recognize the problem with asking people to answer a question about how outsiders see them, although I think that most college students will have a fairly good sense of how they are perceived.

The distinction among different forms of racial identity is particularly salient to multiracial applicants, and seems to beg the question of which identity – individual or social – is more relevant to affirmative action. Under the diversity rationale, a case might be made for either, 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, 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.

In the abstract, it might be interesting to speculate about the relative diversity benefits that could flow from information about individual or social identity. However, some of the questions that would be asked in the process are quite unattractive. Regardless of what is permissible under *Grutter* and *Gratz*, do we want admissions committees debating whether they want to apply affirmative action to students who *consider* themselves Latino, or whether they want 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;⁹⁵ however, it seems coercive to mandate this contemplation on an application form.

Another answer might be that it doesn’t matter which question applicants think they are answering or which question schools think they are asking – since the diversity rationale is so general, both people who consider themselves a particular race or who would be perceived as that race could benefit 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.

However, if it is really up to each multiracial applicant to determine whether to assert his individual or social identity, schools should question why people that we consider “monoracial” don’t have the same choice.⁹⁶ 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.⁹⁷

Ultimately, if our survey revealed only minimal variation in multiracial applicants’ identities, the potential conflicts discussed in this section are admittedly trivial. If the discrepancies among multiracial applicants’ various identities are considerable, however, schools

⁹⁵ Denton, *supra* note 76, at 94-95.

⁹⁶ 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 Harris & Sim, *supra* note 62, at 619.

⁹⁷ Powell, *supra* note 1, at 798.

should, at a minimum, discuss openly what construct they hope to capture with the race question and examine whether the phrasing and categories they have chosen in fact matches their goal.

2. *Declaring Race in Admissions*

Regardless of whether multiracial applicants experience tension among various racial identities, available data suggest that there might be discrepancies between applicants' descriptions of their identities (either individual or social) and the box they actually checked on the application. The study of Asian/White individuals mentioned in Part II.B demonstrates this possibility.⁹⁸ 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."⁹⁹ This result suggests that, although it is interesting to note how racial identity can change from one situation to another, it is even more important to realize that how racial identity *appears* to be defined in one situation actually may be constrained by the options that are offered.

Along slightly different lines, external variables present in a particular situation may also shape disclosure. 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.¹⁰⁰ Even more striking trends are seen at more selective institutions.¹⁰¹ Although it is unclear what accounts for this large increase, various educational stakeholders have proposed 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.¹⁰² However, some aspect of the admissions process must be responsible for eliciting a relatively large number of refusals.

Building on the hypothetical study described in Part III.A.1 could help us better evaluate to what extent, and why, applicants might present their race differently on an application.¹⁰³ Are people affirmatively choosing different racial identities, or are racial identities being imposed upon them due to some feature of the application? We could gain some insight into this question by first comparing participants' descriptions of their individual and social identities with how they actually answered the race question on their school's application. We could then compare these responses with participants' responses to a hypothetical question: "How would you have answered the following question on a college application?" followed by a comprehensive list of every conceivable option listed on *any* application. Comparing responses to the actual and

⁹⁸ See *supra* text accompanying notes 52-75.

⁹⁹ Khanna, *supra* note 57, at 119-20.

¹⁰⁰ Inside Higher Ed News, *None of the Above*, Feb. 15, 2005, available at <http://www.acenet.edu/AM/PrinterTemplate.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=3701>

¹⁰¹ 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 (collecting sources).

¹⁰² *Id.*

¹⁰³ See *supra* text accompanying notes 94-95.

hypothetical application questions would help us determine the underlying reason for discrepancies between participants' self-supplied individual or social identities and their responses on the application questions.

First, if we found that people tended 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 be most likely to 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.

Imposing a singular identity on students who would prefer to choose a multiracial option risks implying that racial boundaries are rigid, thereby calcifying the existing racial paradigms that affirmative action is supposedly intended to destabilize. If an affirmative action program must "remain flexible enough to ensure that each applicant is evaluated as an individual,"¹⁰⁴ it seems inherently problematic to limit applicants to a set of categories that they may feel are inadequate to characterize their individuality.

However, while it is easy enough to criticize application forms that confine applicants to a narrow set of race categories, it is more difficult to think of a preferable alternative. If many students seem to think of themselves as multiracial, an obvious solution would be to add that category to the options on most applications. This would certainly alleviate some of the short-term psychological stress of "I don't know how to identify myself." Some universities already offer the option,¹⁰⁵ and officers at others have proposed it.¹⁰⁶ However, to offer a multiracial category would be to invite certain consequences that might not, in the long run, ameliorate any of the concerns associated with the current categories.

Giving a name to a group in itself 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."¹⁰⁷ 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.¹⁰⁸ Thus, although theoretically the idea of a multiracial category is appealing because it would provide acknowledgement that race is more fluid than the traditional five categories allow, it is simultaneously problematic because its very existence is premised on the

¹⁰⁴ *Grutter*, 539 U.S. at 338 (2003).

¹⁰⁵ See, e.g., University of Michigan Application; Princeton University Application.

¹⁰⁶ Tanya Schevitz, *Connerly Wants Multi-Race Box on University Admission Applications*, S.F. Chronicle, Nov. 15, 2004.

¹⁰⁷ Sharon M. Lee, *Racial Classifications in the U.S. Census: 1890-1990*, 16 RACIAL & ETHNIC STUD. 75, 85 (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." Mezey, *supra* note 13, 1747-48.

¹⁰⁸ See Powell, *supra* note 1, at 797.

existence of the other five categories. 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.¹⁰⁹ This argument may seem somewhat paranoid – other commentators have proposed less insidious explanations,¹¹⁰ and in any case it is difficult to argue that one question on a college application will have such an explicitly stratifying impact. However, to some extent simply separating “multiracial” from “Black,” “Latino,” “Asian,” 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 concerns about *imposing* an identity on multiracial individuals due to the limitations of available categories, we might also examine to what extent people *choose* to assert an identity that is different from their self-supplied identity. If we found that people tended to give identical responses to the actual and hypothetical application questions – in other words, having a larger set of options didn’t change their responses – yet their application responses differed from their self-supplied individual and social identities, we could probably conclude that considerations specific to the application process were causing them to present their identity in a certain way.

Obviously, students’ knowledge that their answer to the race question will probably have some impact on their eligibility for affirmative action is one influence to consider. To the extent that the survey suggests that people are identifying themselves as underrepresented minorities on applications, yet do not identify with these groups in other contexts, we might wonder whether affirmative action is really yielding increased diversity by benefiting members of disadvantaged groups.¹¹¹ The more widespread were the trends of checking underrepresented minority boxes without corresponding minority self-identification, the more concerned we would be. 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.

A slightly different concern is the extent to which the race question introduces a certain element of performance into the affirmative action process. Providing boxes to check compels multiracial students to identify themselves a certain way if they wish to benefit from affirmative action: it demands that they *choose* to identify themselves with other members of a certain group. For most people, this is probably not an extremely taxing kind of performance, but the act of

¹⁰⁹ 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 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.

¹¹⁰ See, e.g., Mezey, *supra* note 13, 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”).

¹¹¹ 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 & fn. 166.

providing, for example, a Black race category does demand that students choose whether to identify with this category. 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" on individuals:¹¹² it forces them to declare their allegiance to an underrepresented minority group, perhaps at the expense of other aspects of their racial identity, if they wish to achieve a certain benefit.

It is important not to overstate the significance of checking a box in response to a race question on a college application. For most applicants, the act is not likely to trigger either deep identity issues or to facilitate exploitation of the opportunity for affirmative action. However, for some, notably multiracial students, the question may be problematic. As a larger policy question, it seems important to question whether premising race-based affirmative action on responses to this question in fact captures the original goals of the policy.

B. Admissions Committees

Evaluating multiracial students in the context of affirmative action also presents unique conundrums for admissions committees. Bracketing issues of how students classify themselves, this section will focus on what admissions committees do with the information students provide. The first problem is simply one of accounting: how should admissions committees tabulate data about their student bodies, given that the Department of Education requires schools to report demographics in a certain format? The second problem involves balancing the need for having some standards in evaluating applicants for purposes of affirmative action with the importance of respecting the way multiracial students describe their racial identity.

1. *Classifying Applicants*

There is a discrepancy between the categories that many schools offer students on application forms and the categories in which they report the demographics of the resulting classes. As but one example, many schools list "biracial" or "multiracial" as a category on their applications, yet do not report such a category in their student body profiles.¹¹³

The Department of Education's reporting requirements provide a partial explanation for the way most schools report demographics. According to the National Counsel for Educational Statistics, individuals should first classify their ethnicity as either "Hispanic or Latino," or "Not

¹¹² Ford, *supra* note 87, at 1811.

¹¹³ For example, the Princeton University undergraduate application provides a "bi-racial or multi-racial" option for students to check. See Princeton University Application, *available at* <http://www.princeton.edu/pr/admissions/u/appl/05/pdf/applicationR.pdf>. 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%), and Foreign (8.0%). 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 which of its six categories students who checked "multiracial" on the application were assigned to. See Undergraduate Enrollment by Race/Ethnicity, *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 multi-racial 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," it is unclear why students who indicate they are multiracial would be routed to this category. University of Michigan – Ann Arbor, Common Data Set 2004-2005 at 3, *available at* http://sitemaker.umich.edu/obpinfo/files/umaa_cds2005.pdf.

Hispanic or Latino.”¹¹⁴ 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.”¹¹⁵

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, it is unknown 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. 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.’”¹¹⁶ 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.”¹¹⁷ Since diversity is valued highly by many applicants, schools have incentives to maximize reported figures for minority enrollment.

Some data about the resulting compositions of classes also suggests some tendency to reclassify multiracial students as minorities. In a survey of 28 selective colleges and universities, one group of researchers found that substantial numbers of many students classified as minorities by their schools were in fact multiracial: 7.4% of Asians, 28.2% of Latinos, and 17.0% of Blacks.¹¹⁸ The researchers specifically noted that “racially mixed origins are substantially overrepresented among black freshmen at elite institutions.”¹¹⁹ 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.¹²⁰ And 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.”¹²¹

This very limited evidence available about the methods by which admissions committees internally categorize multiracial students is merely suggestive as to the type and extent of reclassification that takes place. To learn more, we 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. A more qualitative approach could expand on Professor Guinier’s research and interview admissions officers at a range of schools to learn more about how they

¹¹⁴ Integrated Postsecondary Education Data System (IPEDS) Glossary, *available at* <http://nces.ed.gov/ipeds/glossary/pdf/IPEDSglossary.pdf>. IPEDS is the core data collection program for the National Center for Educational Statistics. The IPEDS Glossary definition of race/ethnicity essentially adopts the categories endorsed in 1997 by the Office of Management and Budget.

¹¹⁵ *Id.*

¹¹⁶ Guinier, *supra* note 111.

¹¹⁷ Tanya Schevitz, *Connerly Wants Multi-Race Box on University Admission Applications*, S.F. Chronicle, Nov. 15, 2004. Regent Ward Connerly also explained that the UC system offers applicants 13 racial or ethnic categories on its application, but then collapsed their answers into five categories and assigned each applicant a single category.

¹¹⁸ DOUGLAS S. MASSEY ET AL., *THE SOURCE OF THE RIVER* 39 (2003).

¹¹⁹ *Id.* at 40.

¹²⁰ See Sara Rimer & Karen W. Arenson, *Top Colleges Take More Blacks, but Which Ones?*, N.Y. TIMES, June 24, 2004 at A1.

¹²¹ Guinier, *supra* note 111.

categorize the race of students who check more than one box or otherwise indicate that they are multiracial, and at what point such recategorization takes place.¹²²

If our research suggested that schools do, in fact, tend to reclassify multiracial students as members of the most underrepresented applicable minority group, we might 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.

The point is not that diversity is somehow decreased if it turns out that affirmative action may be benefiting multiracial students. Some data do suggest that, in the aggregate, some aspects of multiracial students' experience and values may be different from those of students in the monoracial categories they are subsumed under, 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, the point is that if certain types of experiences are grossly underrepresented, it seems legitimate to worry that some of the benefits of 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, some 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,¹²³ thus calling into question the “critical mass” rationale espoused by courts.¹²⁴

If our research suggested that schools are in fact reclassifying multiracial students as minorities, it also seems problematic from a pure accounting standpoint. By simply reporting the range of minority experience, 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 is actually warranted, provoking a variety of other consequences. 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 also 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 should still question seriously whether it is worth publicizing this information 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 is the rationale

¹²² This qualitative approach would also help us identify whether multiracial students are reclassified before being evaluated for admission or after being admitted.

¹²³ See, e.g., Smith & Moore, *supra* note 46, at 28-29 (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).

¹²⁴ *Grutter*, 539 U.S. at 333.

for affirmative action, it remains important in at least some 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.”¹²⁵ Because the process is so closely tied to notions of individual merit, it would be something of an affront to this individualism for admissions committees to impose a different racial identity than the one an applicant has chosen for herself for purposes of consideration in an affirmative action program.

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.¹²⁶ 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 humans who make up admissions committees make informal or even unconscious 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, it would be virtually impossible to collect this type of information because it is so subjective and difficult to measure. However, an 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 people and affirmative action. My intent in the remainder of this brief section is therefore only to raise 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 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 individuals’ self-determination. If a school chooses to subsume multiracial students under the admissions rubric of the underrepresented minority group, they essentially override the multiracial student’s conception of her own race, asserting a right to claim and categorize her as they see fit.¹²⁷ Janet Halley has theorized that “[t]he categorical lines drawn in the discourse of

¹²⁵ *Id.* at 337.

¹²⁶ *See supra* text accompanying fn. 113-21.

¹²⁷ Some strong proponents of affirmative action seem to feel entitled to do this 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*

equivalents around protected groups erase or distort the identities of people who are part of more than one group.”¹²⁸ Halley is more concerned with the intersection of social status groups, such as race, gender, and sexual orientation, but her claim has salience in the context of individuals who transcend categories within one of these dimensions. It seems at odds with the idea of a fair admissions process to reshape students’ 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.”¹²⁹ 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 it in practice. One of the criticisms raised by opponents of affirmative action is that the evaluation of an applicant’s contribution to diversity is based upon the “standardless discretion of educators.”¹³⁰ Similarly, even strong proponents of affirmative action have nonetheless 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.¹³¹ The risks inherent in the kind of truly individualized evaluation that Bok envisions seems to carry with it the problems of bias: if there are really no fixed standards for applying affirmative action, it is too difficult to evaluate whether it is being implemented fairly.

Although it would be easy to criticize committees for reclassifying applicants, it is difficult to think of a better alternative. It does seem clear that some sort of standards are necessary, both for purposes of accounting and for purposes of ensuring a fair admissions process. At the same time it is almost impossible to have such standards without doing 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.¹³²

CONCLUSION

IN COLLEGE AND UNIVERSITY ADMISSIONS (1998). Imposing identity on multiracial students via classification performs a similar claiming function, albeit more subtly.

¹²⁸ Halley, *supra* notes 72, at 346.

¹²⁹ Derek Bok, *The Uncertain Future of Race-Sensitive Admissions*, Revised Draft, Jan. 20, 2003.

¹³⁰ *Gratz v. Bollinger*, Transcript of Argument of Kirk O. Kolbo for Petitioners, 2003 WL 1728816, at 10.

¹³¹ See Guinier, *supra* note 111, 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.”).

¹³² See, e.g., Appiah, *supra* note 75; Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585-86 (1990).

Uncertainty regarding racial categorization translates to a host of issues in the admissions process, ranging from the purely logistical to the intensely personal. The example of multiracial people highlights the difficulty of implementing diversity-based affirmative action on the basis of box-checking.

Perhaps the best answer is a scheme that allows applicants – multiracial and otherwise – to emphasize the parts of their identities that they believe bring diversity, without necessitating reliance on racial box-checking. One risk, which should not be minimized, is that more extended inquiry will be intrusive: it risks 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 people who may believe that categories cannot capture their identity.

Rutgers Law School, long a bastion of affirmative action, employs an admissions process that requires applicants to choose one of two application tracks.¹³³ 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.” 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, one important aspect of such an admissions regime is that it allows applicants of all races to make a decision about how they wish to be evaluated, thereby allowing them to preserve a degree of individual autonomy in the process.

Affirmative action is a well-intentioned policy. Intelligently designed and administered programs can provide richer experiences for members of the academic community and can help to remediate centuries of racial oppression and injustice. However, as we implement this well-intentioned policy, it is vitally important that we do not unthinkingly undermine our efforts with the categories that we use to monitor our progress.

¹³³ See Rutgers School of Law – Newark, 2006 Admission Application, *available at* <http://law.newark.rutgers.edu/rutapp2006.pdf>.