CHOOSING TO BE MULTIRACIAL IN AMERICA:
THE SOCIOPOLITICAL IMPLICATIONS OF THE “CHECK ALL THAT APPLY” APPROACH TO RACE ADOPTED IN THE 2000 U.S. CENSUS

Alaina R. Walker*

"The personal is political."¹

I. INTRODUCTION

Race in America has long been a contentious subject, especially when the government has been involved. Race can mean something different to everyone, and yet, it is widely understood as having real implications and consequences. Many scholars understand that race is "a social construct[:] a social artifact, which results from a process through which social significance is attributed to some contingent attributes like skin color, and whose emergence, salience and influence can be studied and analyzed."² The government’s use of race has ranged from the horrific to the admirable, but has always been controversial. Analyzing the U.S. Census provides an interesting opportunity to discuss some of the significant roles race has played and continues to play in America. Racial data collected from the U.S. Census is currently used for the controversial purpose of furthering civil rights objectives, but some people worry that these objectives are now in danger. Due to the implementation of the “check all that apply” approach to the U.S. Census (the ability

* University of Southern California Gould School of Law, J.D. Candidate, 2011. University of California, Santa Barbara, B.A., 2008. I would like to thank Professor Ariela Gross of USC Law for her guidance throughout the writing process. I would also like to extend special thanks to my mom for her constant love and support, without which this paper wouldn’t be possible.

¹ It is not clear who first said this, but it became a sort of slogan for the feminist movement meant to refer to the shared oppression of women. It essentially means that one’s personal issues are political issues. See Caitlin Cahill, The Personal is Political: New Subjectivities in a Participatory Action Research Process, GENDER, PLACE AND CULTURE Vol. 14 No. 3, pp. 267-292, 268 (2007) (describing how the women’s movement encouraged women to turn their private oppression into political and social action), available at http://www.justiceplanbook.com/research/papers/the-personal-is-political-developing-new-subjectivities-in-a-participatory-action-research-process/. It was also publicized by Carol Hanisch’s 1969 essay, which featured the slogan as its title.

to select all races with which one identifies), critics are concerned that racial data will become convoluted and that civil rights objectives will be hindered. What is lacking from the conversation and arguably the civil rights agenda is the importance of the official recognition of multiracial identity, which the “check all that apply” approach acknowledges.

Although multiracial identity should be recognized on the U.S. Census, it is necessary to analyze how its recognition in the form of the “check all that apply” approach affects civil rights objectives, given that they are purportedly put at risk. The first part of this paper briefly addresses the history of race and the census in the United States. The second part addresses the change in racial categorization adopted in the 2000 U.S. Census that permitted individuals to identify as more than one race for the first time. The third part of this paper addresses the benefits and disadvantages of allowing people to select more than one race on the U.S. Census. The final part analyzes the current and potential impact of the “check all that apply” approach on civil rights objectives through the evaluation of federal affirmative action programs. This paper does not attempt to determine all effects of the “check all that apply” approach, but instead initiates a critical analysis of its effects and reveals the difficulty in making such an assessment.

It is important to note that those in the multiracial movement who demanded the creation of a separate multiracial category did not want a “check all that apply” approach to the U.S. Census. A significant number of the arguments regarding the creation of a multiracial category overlap with the arguments regarding the “check all that apply” approach though since both involve allowing people to identify as more than one race on the census. It was ultimately the advocacy of a separate multiracial category that led to the development of the “check all that apply” approach. Throughout this paper, several references are made to multiracial identity (the racial identity individuals have when they self-identify with more than one race). These references should not be confused with references to a separate multiracial category on the U.S. Census.

II. BRIEF HISTORY OF THE U.S. CENSUS

The U.S. Constitution established the U.S. Census by stipulating that an “actual Enumeration” of the United States population be done every ten years. The U.S. Census was created to supply the information needed to apportion seats among the states in the House of Representatives so that the distribution of legislative power would reflect changes in the population. The U.S. Census is now not only seen as the instrument that supplies us with a snapshot of the United States population, but as a tool that helps execute anti-discrimination laws and

7. Id.
"redistribut[e] political and monetary capital to communities suffering from the effects of past racial discrimination." This is the fundamental reason why civil rights groups emphasize the need to obtain accurate racial data from the U.S. Census.

III. RACE AND THE U.S. GOVERNMENT

Although race is socially constructed, it has long been something the U.S. government has recorded, for it is seen as a valuable tool for social and political institutions. Race plays an important role in society because it influences how society and its social and political institutions interact with people, affecting their opportunities for success in America. Along with this comes the concern that race has become too meaningful in America; some still see race as biological despite this theory having been largely disproved. In fact, race has been found to have no genetic basis. Researchers have discovered that there is far greater variation in the genes of people within the same racial group than between those of different races. Most scientists and scholars agree that "race is purely a social construct."

U.S. Census racial data has been used for a wide range of purposes, everything from limiting the political and social rights of racial minorities in America to executing federal affirmative action programs. At the beginning of the Civil Rights Movement, the government’s purpose in collecting racial data changed from oppressing racial minorities to pursuing civil rights objectives that benefitted them. Racial categories were once used as a tool to inflict "race-based oppression," but are now used to rectify the effects of such mistreatment. The U.S. Census has a significant role in the success of the civil rights agenda because it helps allocate political and monetary resources to those affected by racial discrimination and helps “monitor race-based, anti-discrimination legislative efforts.” For example, information about race collected from the U.S. Census is used to implement Title VII employment discrimination actions, discern the racial make-up of voting jurisdictions in accordance with the Voting Rights Act of 1965, and guarantee equal educational opportunities pursuant to the Civil Rights Act of 1964.

10. See generally Pomeroy, supra note 4, at 69.
11. As part of the Human Genome Diversity Project, geneticists have been working to map out the human genome. The chair of the Human Genome Diversity Project said that “the more we learn about humankind’s genetic differences ... the more we see that they have almost nothing to do with what we call race.” In fact, they believe that the only variation between human beings due to race is skin color. Deborah Ramirez & Jana Rumminger, Race, Culture, and the New Diversity in the New Millennium, 31 Cumb. L. Rev. 481, 483-84 (2000, 2001).
12. Pomeroy, supra note 4, at 69.
13. Id.
14. Linehan, supra note 8, at 53.
15. See id.
16. Id. at 70.
17. Id. at 53.
18. Pomeroy, supra note 4, at 68.
19. Linehan, supra note 8, at 53.

The U.S. Census has collected information on race\(^\text{20}\) for more than 150 years.\(^\text{21}\) Over the course of its existence, the U.S. Census has undergone significant modifications. At first, individual respondents were not permitted to select their own race on the U.S. census form, but instead had their race chosen for them by census administrators based solely on their appearance.\(^\text{22}\) This practice did not change until 1960 when individuals were able to fill out the census forms themselves and self-identify.\(^\text{23}\) Furthermore, racial categories have been modified and added to the U.S. Census throughout its existence.\(^\text{24}\) For example, in 1850, a new category for “[M]ulattoes” was created in an effort to have the categories on the census correctly reflect the new American landscape and population.\(^\text{25}\) The addition of this new category marks the first time that the U.S. Census recognized multiracial identity.\(^\text{26}\) This category was later removed though. Categories for “Quadroons” and “Octoroons” were also added at one point and then later removed.\(^\text{27}\) From 1920 until 2000, the U.S. Census did not recognize mixed-race individuals.\(^\text{28}\) In 1930, the U.S. Census officially adopted the “one drop rule” (the idea that once white blood is mixed with non-white blood in an individual, that individual ceases to be white and is instead solely non-white) and individuals of mixed race (historically those of black and white ancestry) were to be classified as “Negro” regardless of the presence of white ancestry, forcing those who were multiracial to have their mixed heritage go unrecognized.\(^\text{29}\)

In 1977, the federal government adopted Statistical Directive No. 15 to develop “a uniform standard of race definitions and classifications for all federal, state, and local programs that require data.”\(^\text{30}\) It was created for private use, such as medical research, and for federal initiatives like the Voting Rights Act of 1965 and the Civil Rights Act of 1964.\(^\text{31}\) Pursuant to Statistical Directive No. 15, individuals were allowed to select one race from the following five categories: “American Indian or Alaskan Native; Asian or Pacific Islander; Black; Hispanic; or

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\(^{20}\) The Office of Management and Budget is charged with setting the federal guidelines for the collection of race-based information. The U.S. Census Bureau has to adhere to these guidelines. U.S. Census Bureau, Questions and Answers for Census 2000 Data on Race, (2001), (previously available at http://www.census.gov/Press-Release/www/2001/raceqandas.html) (on file with author).


\(^{22}\) Pomeroy, supra note 4, at 71.


\(^{24}\) Pomeroy, supra note 4, at 71.

\(^{25}\) Id.


\(^{27}\) Id.

\(^{28}\) Id.

\(^{29}\) Brown & Bell, supra note 23, at 1258.

\(^{30}\) Pomeroy, supra note 4, at 72.

\(^{31}\) Id.
White. These classifications, developed as a result of research conducted in 1975 by the Ad Hoc Committee on Racial and Ethnic Definitions, were created to ensure federal agencies' uniform application of racial data. Statistical Directive No. 15 stated that the racial classifications it set forth were not based upon science, but were instead a matter of social policy and should be seen as facilitating the gathering and use of uniform racial data by federal agencies. It advised individuals to consider how their racial identities were viewed in their communities when choosing the racial category they belonged to.

V. THE MOVEMENT FOR THE RECOGNITION OF MULTIRACIAL IDENTITY

In the movement for the recognition of multiracial identity, multiracial individuals and their parents began calling for the creation of a separate multiracial category on the U.S. Census, citing the need to recognize the existence of those who do not fit neatly into one of the established racial categories. Nonetheless, such a category never came to fruition. To make an informed decision about how to address the desire for a multiracial category, the Office of Management and Budget established the Interagency Committee for the Review of the Racial and Ethnic Standards, which was tasked with exploring the merits and potential consequences of such a category. Feedback from the Committee led to the decision to not create a multiracial category, but to instead allow individuals to identify as more than one race on the census. The Committee feared that the creation of a separate multiracial category "would create another population group, and no doubt add to racial tension and further fragmentation of our population." It should be noted that some multiracial individuals likely have a favorable view of the "check all that apply" approach to the U.S. Census because it allows them to better document their complete racial identity. In fact, on the 1990 Census where respondents were instructed to choose a single racial category that best described them, more than 500,000 people still chose more than one race.

VI. RACE AND THE 2000 U.S. CENSUS

In 1997, the Office of Management and Budget decided to allow those who identified as multiracial to select all of the racial categories that applied to them.
This new approach was first put into effect for the 2000 U.S. Census. The previous rule was changed to allow individuals to self-identify and select the racial categories that best described their identity. The Office of Management and Budget did not want respondents to base their racial designation on certain "criteria or qualifications (such as blood quantum levels)." Henceforth, the U.S. Census Bureau ceased to support, validate, and use the "one drop rule." Franklin M. Raines, Director of the Office of Management and Budget, said that the new "check all that apply" approach would "permit people to express more of their heritage than if we had simply a category of 'multiethnic' or 'multiracial." The Office of Management and Budget decided this change was necessary given the growing number of multiracial people in America and the "need to measure the increased diversity in the United States."

On the 2000 U.S. Census, respondents could select one or more of the following racial categories: "White; Black, African American, [or] Negro; American Indian or Alaska Native; Asian including Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, and other Asian; Native Hawaiian, Guamanian or Chamorro; Samoan and other Pacific Islander; [or] some other race." Given the various combinations of races a person could select, the 2000 U.S. Census allowed for sixty-three possible racial identities.

Data from the 2000 U.S. Census is reported in a variety of ways. Some reports feature sixty-three racial categories, including: "White alone, Black or African American alone, American Indian and Alaska Native alone, Asian alone, Native Hawaiian and Other Pacific Islander alone, Some other race alone, and [fifty-seven] possible combinations of the above six categories." Other "reports will collapse all the [fifty-seven] combinations of two or more races into a category called 'Two or More Races,'" leaving the following categories: "White alone, Black or African American alone, American Indian and Alaska Native alone, Asian alone, Native Hawaiian and Other Pacific Islander alone, Some other race alone, and Two or more races." Racial data can also be reported by showing those who selected "a race either alone or in combination with one or more other races." For example, "people who reported only White or who reported combinations such as 'White and Black or African American,' or 'White and Asian and American Indian and Alaska Native' are included in the White alone or in combination category." With this method of reporting the data, there are six alone or in combination groups.

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42. Pomeroy, supra note 4, at 68.
43. Id.
44. Id.
45. Id.
46. Id. at 66-67.
47. U.S. Census Bureau, supra note 20.
48. Another issue the U.S. Census deals with is whether people identify as Hispanic or Latino. That is considered an ethnicity question though (and not a question about race), so it is addressed separately. Id.
50. Id.
51. U.S. Census Bureau, supra note 20.
52. Id.
53. Id.
54. Id.
55. Id. The six alone or in combination categories are: "White alone or in combination[...]

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2003, all federal agencies have been required to follow the 1997 guidelines for reporting racial and ethnic data.\textsuperscript{56}

\section*{VII. ADVANTAGES AND DISADVANTAGES OF THE "CHECK ALL THAT APPLY" APPROACH}

Although every objection to the "check all that apply" approach is not presented, this section puts forth various authors' critiques of the "check all that apply" approach. Additionally, several arguments supporting the "check all that apply" approach are advanced in order to conduct a more complete evaluation of its appropriateness. Supporters of the multiracial movement are concerned that the "check all that apply" approach is not sufficient to recognize multiracial identity because it fails to "reflect an official recognition of multiracial existence."\textsuperscript{57} They want a separate "multiracial" category added, believing that it would create a definite concrete space for multiracial individuals on official documents, such as the census form and, ultimately, in society.\textsuperscript{58} They contend that since there is no separate distinct category for multiracial people, the government is not acknowledging being multiracial as a legitimate racial identity.\textsuperscript{59} Some scholars and civil rights groups are not satisfied with this change in racial categorization either. These scholars and civil rights groups are concerned that the "check all that apply" approach supports the notion that race is biological and that it might be damaging to the enforcement of anti-discrimination laws and the accomplishment of civil rights objectives.

\subsection*{A. Challenging the Idea that the "Check All That Apply" Approach Supports the Notion that Race is Biological}

Some scholars and civil rights groups argue that allowing citizens to claim more than one race on official documents, such as the U.S. Census form, is harmful because it supports the idea that race is biological.\textsuperscript{60} They believe that those who choose to identify with multiple races are just "perpetuat[ing] a scientifically invalid system of classifying people,"\textsuperscript{61} because their selections are building upon the established racial categories, reinforcing the notion that pure races exist.\textsuperscript{62} This seems irrelevant to some extent given that the five traditional racial categories already support that idea. Additionally, this argument is weakened given that a number of Americans already believe that race is not biological, but merely something that has been socially constructed.\textsuperscript{63}

\begin{itemize}
\item Black or African American alone or in combination, American Indian and Alaska Native alone or in combination, Asian alone or in combination, Native Hawaiian and Other Pacific Islander alone or in combination, and Some other race alone or in combination." Id.
\item Minn. Dep't of Admin., \textit{supra} note 49.
\item Linehan, \textit{supra} note 8, at 67.
\item See id.
\item Id.
\item Id. at 69.
\item Id. at 51-52.
\item Nancy Leong, \textit{Multiracial Identity and Affirmative Action}, 12 UCLA ASIAN PAC. AM. L.J. 1, 25 (Fall 2006/Spring 2007).
\end{itemize}
The arguments advanced in this paper do not mean to suggest that the traditional racial categorization system is legitimate. In fact, the argument here is not that the current system should not be improved, but instead that recognizing multiracial identity with the “check all that apply” approach helps ameliorate America’s rigid racial categorization system. Nevertheless, this paper does not attempt to resolve the issue of whether racial data should even be collected or categorized in the first place.

B. This Approach Serves Social Justice Interests

Although proponents of a “multiracial” category and civil rights activists do not believe that the “check all that apply” approach is a suitable way of recording racial identity, it advances social justice interests by recognizing and validating multiracial identity. The “check all that apply” approach bestows upon multiracial individuals the same right other individuals have enjoyed for years, the right to officially express their complete racial identity. This is a social justice issue because the “check all that apply” approach finally gives multiracial individuals the same social and political validation, and ultimately power, that other racial groups have had. The idea here is that the misrecognition of one’s identity is “social subordination” and “redress[ing] this injustice requires a politics of recognition,” which would allow the misrecognized group members to become “full member[s] of society.” It would be unfair to allow other racial groups to identify themselves on the census, but force multiracial individuals to leave a part of themselves behind, a necessary result of having to choose between the races with which they identify. Being able to publicly record one’s racial identity is a way to have one’s identity validated. Moreover, it is a way to have one’s identity recognized in the larger society.

The U.S. Census is the appropriate venue for recognizing multiracial identity because it can alter the political landscape and influence the societal understanding of race. The census has the power to legitimize one’s mixed racial identity because it “plays a vital role in defining and changing societal perceptions of race.” Society comes to understand the breadth of racial identities from the census because it dictates how society describes certain racial groups. Those who argue that official documents, like the U.S. Census, are not the appropriate place for asserting one’s multiracial identity overlook the influence and role the government has in forming racial identity. After all, “the personal is political,” and multiracial individuals deserve “both personal and political” recognition. Moreover, they

64. See Nancy Fraser, Rethinking Recognition, 3 New Left Review 107, 107 (May-June 2000) (discussing how the politics of recognition seemed to have the potential for emancipation) [hereinafter Rethinking Recognition].
65. Id. at 113.
67. Id.
68. Linchan, supra note 8, at 51.
69. See Paredes, supra note 66, at 149, 155.
70. Cahill, supra note 1, at 268.
71. Shalini R. Deo, No School Left Behind: Providing Equal Educational Opportunities: Where Have All the Lovings Gone?: The Continuing Relevance of the Movement for a Multiracial Category and Racial Classification After Parents Involved in Community Schools v. Seattle School
deserve personal, social, and political liberation, which is achieved once the 
“difference” of multiracial identity is recognized. This recognition can occur after 
dismantling the traditional racial classification system, thereby deconstructing the 
structure in which their lack of recognition was developed.

Claiming one’s personal existence in society is a remarkably powerful 
political act. Making a place for one’s identity in a rigid classification structure is 
also political and can rectify cultural injustice because it demands a change in the 
traditional power relations between the government and the people and between 
different social groups. Self-identification is seen as an important virtue of American 
society for it reaffirms society’s commitment to democracy and personal 
autonomy. Some authors believe that the notion of self-identification is found in an 
individual’s right to privacy. Jed Rubenfeld argues that the right to privacy is the 
“fundamental freedom not to have one’s life too totally determined by a 
progressively more normalizing state.” He specifies that the “right to privacy 
guarantees people’s ability to meaningfully govern themselves by protecting them 
against being ‘pervasively molded into standard, rigid, normalized roles.’

Multiracial individuals’ demand for recognition is also political in nature 
because it changes the traditional, social, and institutional definition of race, a 
definition created by the dominant racial group. The “drawing of categories and the 
[choosing] of classification criteria” is an “inherently political exercise,” thus 
changing these categories and the modes of classification is undoubtedly political as 
well. In fact, “[h]istory has shown that the most valuable political asset of the Black 
community has been its ability to assert a collective identity and to name its 
collective political reality.” Therefore, it follows that another racial group, such as 
multiracial individuals, could also find it politically empowering to assert their racial 
identity.

The recognition of multiracial identity is also a social justice issue because 
it helps equalize people who have different racial identities by acknowledging them 
and making them peers fully able to participate in social life. This in turn helps 
eliminate the stigmatization and alienation of multiracial individuals. Multiracial 
people have long been regarded as not fitting neatly into society’s racial 

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72. See Rethinking Recognition, supra note 64, at 107.
73. See Nancy Fraser, Social Justice in the Age of Identity Politics: Redistribution, 
Recognition, and Participation, Professor of Philosophy and Political Science at the New Sch. for Soc. 
Research, The Tanner Lectures on Human Values, 10 (1996) [hereinafter Social Justice], available at 
74. See Rethinking Recognition, supra note 64, at 115.
75. See Social Justice, supra note 73, at 10.
76. Bhatnagar, supra note 9, at 99.
77. Ringelheim, supra note 2, at 95-96.
78. Id. at 96.
79. Id. at 97.
80. Id.
81. Id. at 141.
82. Hernandez, supra note 36, at 1153.
83. Social Justice, supra note 73, at 3.
84. Rethinking Recognition, supra note 64, at 113.
85. Id. at 109.
classifications. Hence, they have been largely ignored and not seen as a legitimate group of people with a distinct set of experiences or as peers capable of fully participating in social life.\textsuperscript{86} Therefore, allowing multiracial people to correctly and completely record their identity is a social justice issue because it recognizes their distinctiveness and thus provides a way for them to overcome their social subordination.\textsuperscript{87} To truly understand the significance of their previous lack of recognition, one needs to understand that “[i]n earlier censuses people could be only one race.”\textsuperscript{88} This of course did not, and does not, reflect the true nature of racial identity in America. Multiracial individuals deserve the same right of self-identification other groups have received. Their right to self-identify should be supported because it is a way for those who are similarly situated “to turn experiences of alienation, racism, and marginalization into positive experiences of shared cultural identity.”\textsuperscript{89} Furthermore, society practically owes them this opportunity given America’s history of mistreating and rejecting non-whites and prohibiting interracial marriage.

Although some people might dismiss their desire for recognition as mere identity politics and a narcissistic quest for political power, the symbolic power of recognizing those of mixed race on the census is significant and can rectify past injustice\textsuperscript{90} given the United States government’s past attempts at monitoring and restricting racial mixing. Multiracial individuals have a special interest in the recognition of their identity because of a past filled with alienation and mistreatment. The “census does more than facilitate a body count; it also tells us whose body counts, and for how much.”\textsuperscript{91} This is why the census is an appropriate venue for the recognition of multiracial identity. The census racial categories have historically “served to recognize and affirm group identity while simultaneously excluding others by denying recognition”\textsuperscript{92} because the census racial classifications provide the “categories we think in.”\textsuperscript{93} The government’s decision to recognize those who live between the categories is powerful and important because it helps dismantle racial hierarchy in America by recognizing multiracial people’s distinct racial identity.

Looking at the context in which multiracial people’s demand for recognition is being made sheds light on why this recognition promotes social justice.\textsuperscript{94} Although the United States is becoming increasingly more racially diverse, historically it has been viewed as a biracial nation with a “white majority and a black minority, along with a small American Indian population.”\textsuperscript{95} Racial categories have been used to “segregate and oppress.”\textsuperscript{96} The “check all that apply” approach provides an opportunity for them to liberate and unite. For a long time, whites, the power-wielding majority, were the only group who could define themselves and other racial groups. This forced racial categorization helped facilitate atrocities, such as Japanese
internment and slavery. The marginalized groups in America’s racial caste system should determine how they will be seen and how they see themselves. The right of self-identification is a positive result of the adoption of the “check all that apply” approach because it seeks to rectify social injustices by deconstructing America’s traditional racial classification system.

C. The Supposed Lack of Historical Discrimination Against Multiracial Individuals

Some critics of the “check all that apply” approach argue that recognition of multiracial identity on the census is problematic because it provides new racial data that is difficult to compare to traditional racial data, and thus difficult to use in achieving civil rights objectives. These critics worry that allowing people to identify as more than one race creates new convoluted data, which will affect how racial information is used to enforce civil rights policies. Critics are concerned that it will become more difficult to determine if racial discrimination has occurred. Additionally, they argue that for the enforcement of civil rights policies it does not matter how individuals see themselves, but how they are seen by others and consequently treated by society.

Critics also argue that recognizing those who identify as more than one race would hamper civil rights objectives because there is “no legal record of historical discrimination” against multiracial individuals. This could potentially pose a problem for courts’ acceptance of discrimination claims by multiracial people given that there is no record of past discrimination to rely on as evidence of a present motive to discriminate against them. In addition, they argue that advantageous anti-discrimination court rulings have all been based on the traditional racial categories. This seems to suggest that multiracial individuals should not receive the same protection from anti-discrimination laws as those who identify with only one minority race, or at least should not “rock the boat” for minorities protected by traditional anti-discrimination court rulings. Another problem with this argument is that it does not take into account that more and more multiracial children are being born in America. And society must adjust to this new reality. Moreover, it would be presumptuous to assume that multiracial individuals never suffer the ill effects of discrimination. A significant number of multiracial individuals who identify with at least one minority race are seen as non-white, so it follows that they can also be victims of discrimination. Even if they are not seen as a member of one minority race, their racially ambiguous identity can lead to racial discrimination. Going forward, more data needs to be compiled on the discrimination faced by multiracial

97. Bhatnagar, supra note 9, at 99.
98. See Rethinking Recognition, supra note 64, at 110.
100. Linehan, supra note 8, at 51.
101. Id.
102. Id.
103. Id.
104. Id.
105. Pomeroy, supra note 4, at 67.
106. See Hernandez, supra note 36, at 1156.
107. Deo, supra note 71, at 426.
individuals.

D. The Policy Implications of This Change in Racial Categorization

Multiracial identity should be recognized on the census because the census plays a pivotal role in shaping policy. Documenting multiracial identity on the census provides an opportunity to analyze the position of multiracial individuals in America and track how their position changes over time, in the same way that the census provides data allowing for the examination of other racial groups. Permitting people to identify as more than one race encourages the advancement of policies for multiracial people because they have been identified as a legitimate group with unique needs, desires, and experiences. This is important because multiracial individuals might face specific problems they would like to mobilize around in order to lobby for legal protection. For example, Professor Christopher Uggen suggests that multiracial individuals might disproportionately face victimization. The 2004 National Crime Victimization Survey showed that those who self-identified as “two or more races” disproportionately experienced violent crime. The same held true according to the 2008 National Crime Victimization Survey, in which it was discovered that the 1 percent of the population that identified as “two or more races” was subject to violent crime at “rates [two to three] times higher than whites, blacks, or persons of other races.” This data is compelling evidence of the need for targeted policies that address the unique problems faced by multiracial individuals.

The “check all that apply” approach to the census facilitates multiracial individuals’ mobilization and their exploration of how certain policies and issues affect them. Exploration of these issues can begin if society allows individuals to identify as multiracial and acknowledges that their multiracial identity may subject them to specific problems. One unique experience multiracial people frequently share is being victims of prejudice due to their mixed heritage. But, as previously mentioned, multiracial individuals might have difficulty proving their discrimination claims. Perhaps the formal collection of data regarding multiracial people in America will assist multiracial individuals in proving their discrimination claims.

E. The Psychological Benefits of Selecting More Than One Race

The “check all that apply” approach is valuable because it provides significant and meaningful psychological benefits for multiracial people by helping

108. Paredes, supra note 66, at 151.
110. Respondents were asked to self-select their race and were categorized as either black, white, “other race,” or “two or more races.” “Other race” includes those who are Native Hawaiian, Other Pacific Islander, American Indian, Asian, and Native Alaskan. Violent crimes evaluated by the survey include robbery, sexual assault, rape, and both simple and aggravated assault. See Michael R. Rand, National Crime Victimization Survey: Criminal Victimization, 2008, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics Bulletin, (Sept. 2009), http://bjs.ojp.usdoj.gov/content/pub/pdf/cv08.pdf.
111. Uggen, supra note 109.
112. Rand, supra note 110.
113. Knuckenberg, supra note 26, at 55.
114. See Deo, supra note 71, at 429.
them develop a positive multiracial identity. Because they do not have a place in the
traditional racial classification system in America, multiracial people are forced to
face unique racial issues, which make “race salient for [them] in a way that it is not
for members of monoracial groups.” If the Supreme Court considered the shared
experience of black children who developed low self-esteem as a result of racial
segregation in Brown v. Board of Education, then it follows that the government’s
effect on its citizens’ well-being and identities should be taken into account in other
situations as well. For example, if the government’s action, or inaction, has a
negative effect on the identity or psychological well-being of multiracial individuals,
then surely that should be considered in context of the U.S. Census. The
psychological benefits of allowing multiracial people to identify as more than one
race have been well-documented. This suggests that multiracial individuals should
get to choose their own racial identities. Why should the government tell people
how they should identify? People should have the option of rejecting a narrow
categorization of their identity, especially when there are legitimate reasons for
doing so, like reaping the psychological benefits of claiming their complete racial
identity.

There are various theories and studies that provide insight into the
development of a positive multiracial identity, and how the “check all that apply”
approach can foster its development. One such theory is Poston’s Model, which
proposes five stages of biracial identity development. In the first stage of
development, Personal Identity, children’s identity is not based on their race, but on
the confidence they gain from their family. In the second stage, Choice of Group
Categorization, children feel forced to select their racial identity. They must either
choose to be multiracial or to align themselves with one of their parents’ races. In
Enmeshment/Denial, the third stage, children experience “feelings of confusion and
guilt at having to assume a single aspect of [their] identity at the expense of the
others” and the “feelings of self-hatred and lack of acceptance that accompany this
stage force the individual to resolve this tension and learn to appreciate both parental
cultures, or otherwise stay at this level of development” and leave those feelings
unresolved. The next stage is Appreciation, in which multiracial people learn to
appreciate all of their racial backgrounds. During the last stage, Integration,
multiracial people acquire a positive self-identity by appreciating, acknowledging,
and integrating their mixed-race background. Under Poston’s Model, a positive
multiracial identity comes from integrating and valuing all components of one’s
racial background.

117. See id.
118. Linehan, supra note 8, at 56-57, 61-63.
119. Id. at 50.
120. Id. at 56.
121. Id.
122. Id.
123. Id.
124. Id.
125. Id.
126. Id. at 56-57.
127. Id. at 57.
Elaine Pinderhughes notes the special role that institutions, such as schools, the government, and churches, can play in the development of children's positive multiracial identities. Robin Miller agrees that social institutions and structures, such as governmental bodies, impact the growth of a positive multiracial identity because through their interactions with multiracial people and their families, they convey messages about identity and race that influence people's beliefs and opinions. It has become clear that “[i]f the institutions that surround the multiracial individual, his family and community, fail to recognize racial identities beyond the limitations of the hypodescent racial scheme, they will inevitably transmit a devaluation of his multiracial identity.”

Various studies support the arguments of Elaine Pinderhughes and Robin Miller and detail how institutions, such as the government, can help foster the development of a positive multiracial identity by allowing multiracial individuals to identify as more than one race. The “Brown Study,” a study performed by Ursula Brown that featured 119 biracial young adults, discovered that most of the participants would identify as interracial if presented with that option. Some of the participants revealed that they could not form a harmonized positive racial identity without being seen as interracial. Brown determined that “the inability to openly embrace and express both parts of their racial heritage was a constant underlying emotional irritant for many” of the participants “and that ‘the lack of social and institutional sanction for their dual racial heritage imposed a heavy emotional burden on [them] and rendered their journey toward a clear racial identity difficult.’” Therefore, it is quite clear that institutional recognition of multiracial individuals’ diverse racial heritage can contribute to their development of a positive multiracial identity.

Another study, which is referred to as the “Johnson Study” and featured sixty-nine multiracial participants, indicated that multiracial individuals preferred identifying as multiracial on official documents and “expressed negative emotional reactions to ‘forced categorization into a single racial group or relegation to a residual other-specify category.’” The study discovered that “relatively simple changes in question wording [could] . . . have profound effects on the self-reported identities provided by multiracial people in the United States.” Both the “Johnson Study” and the “Brown Study” are important because they show the conflict multiracial people feel when forced to align themselves with only one part of their racial identity. In addition, they show that there is merit to addressing multiracial people’s desire for recognition, and that social institutions, like the government, can foster positive multiracial identities by “assign[ing] a positive value to multiracial identity.” The government can contribute to people’s development of a positive multiracial identity by recognizing and supporting the development of positive multiracial identities. 

128. Id. at 61.
129. Id. at 62.
130. Id.
131. Id.
132. Id.
133. Id. at 63.
134. Id.
135. Id.
136. Id.
137. See id. at 63-64.
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multiracial identity by allowing individuals to select more than one race on official forms, such as the U.S. Census. The "check all that apply" approach allows multiracial individuals to acknowledge all aspects of their racial identity on the census, so it follows that this official recognition of their multiracial background can lead to their development of a positive multiracial identity.

F. The Rejection of the "One Drop Rule" and the Dominant Society's Racial Categories

Although some might argue that allowing individuals to select multiple racial categories on the census supports the notion that race is biological, it actually rejects that idea by renouncing the "one drop rule." Furthermore, it subverts America's hegemonic system of racial classification because the "more powerful group" is no longer stripping the "racial Other of its self-definition." The United States has long based the racial categorization of people on the "one drop rule," the idea that once white blood is mixed with non-white blood in an individual, that individual ceases to be white and is instead solely non-white. Previously, there was no room in America's racial categorization system for those who existed between the lines of white and non-white. The dominant group in society established this system of racial classification and embedded its ideas into our laws and collective consciousness. Because the 2000 U.S. Census allowed people to assert their multiracial identity for the first time, people were able to reject the oversimplification of their racial identities that persisted for years. They were able to reconceptualize racial categories and create a place for themselves by claiming the entirety of their identity and not choosing between equally important parts of their racial identity. This creation of a new space, which allows multiracial people to exist between the rigidly defined lines of racial categories, rejects the "one drop rule" because, for example, people who are black and white can claim both as part of their identity and not be identified solely as black. The "check all that apply" approach embraces the notion that inclusion in one racial group does not mean exclusion from another.

On the other hand, a number of scholars have argued against rejection of the "one drop rule." Although it has largely been seen as a tool for racist categorization, these scholars argue that around the Civil Rights Movement the "one drop rule" began to serve "important civil rights objectives by identifying populations at risk from societal and institutional discrimination." These scholars regard the "one drop rule" as a tool to help combat racism by helping identify those individuals who are likely to be discriminated against because they look like racial minorities. They believe that "the current one-drop rule system, while scientifically unsound, is a political necessity to counter the unofficial one-drop system embedded in American culture." Moreover, they view it as a tool to determine if civil rights policies are being implemented correctly.

138. See id. at 64.
139. See Ramirez & Rumminger, supra note 11, at 485.
140. Linchan, supra note 8, at 43-44.
141. Id. at 44.
142. Id. at 52.
143. Id. at 53.
The “one drop rule” should not be relied on, however, to advance civil rights objectives because it has been used, and can still be used, to perpetuate race-based atrocities. Instead, civil rights activists and “the racial justice movement will have to be particularly attentive to unveiling all of the ways in which race hierarchy and privilege can thrive in a racially diverse population with a facially fluid approach to race.” The “check all that apply” approach is beneficial because it does not utilize the “one drop rule” to further civil rights objectives and because it subverts America’s hegemonic racial classification system.

G. The Need for Accurate Racial Data

Some critics believe that the “check all that apply” approach to the U.S. census does not provide accurate racial data, which they argue is needed to achieve civil rights objectives. Allowing people to select more than one race on the census raises the concern that the collected racial data will be too vague to be useful because people are not accurately choosing which race they belong to. Furthermore, there is concern that compliance with federal anti-discrimination laws will be thwarted due to the “sudden redefinition of race.” However, newer racial data collected from censuses using the “check all that apply” approach could ultimately be more useful because it is more accurate than past racial data, and accurate racial data is needed to achieve civil rights objectives. Additionally, these critics’ arguments are based on the false assumption that being more than one race cannot be an accurate characterization of one’s racial identity. Multiracial individuals would likely argue that their ability to select more than one race on the census allows them to more accurately represent their racial identity.

VIII. THE IRONY IN DISAPPROVAL OF THE “CHECK ALL THAT APPLY” APPROACH

Many civil rights groups and advocates tend to disfavor the change in racial categorization adopted in the 2000 Census, claiming that it hinders civil rights objectives. Given their struggle for the recognition of minority groups that have been silenced, ignored, and mistreated, one would think that civil rights advocates would sympathize with multiracial individuals and their desire for official recognition of their existence. Nevertheless, many scholars and civil rights activists are concerned that as the lines between races get blurred, race will no longer be seen as a debilitating factor in people’s lives—even when it still is. Therefore, there is concern that anti-discrimination efforts will be seen as unnecessary and consequently abandoned.

Nevertheless, “the psychosocial benefits of positive multiracial identity

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144. Hernandez, supra note 36, at 1154.
145. See Linehan, supra note 8, at 71.
146. Pomeroy, supra note 4, at 77.
147. It warrants mentioning that it cannot be said with certainty that all civil rights groups oppose this change in racial categorization and do not sympathize with multiracial people’s desire for recognition.
148. See Pomeroy, supra note 4, at 68-69.
149. See id. at 74.
150. See id.
development should not be so quickly detached from the overall objectives of civil rights policy."¹⁵¹ In fact, "the rise of a new ‘multiracial consciousness’ should be construed as representing ‘the next logical step in the progression of civil rights, the expansion of our notion of affirmative action to include strategies not only for achieving economic equality, but also for affirming a nonhierarchical identity that embraces a ‘holocentric’ racial self.’"¹⁵² The desire for the recognition of multiracial identity is in line with the traditional objectives of civil rights groups, for civil rights groups have fought for the freedom of racial self-identification.¹⁵³ In fact, “[o]ne of the core purposes of civil rights organizations is to seek recognition of the shared personal experiences of their members, and by devaluing the experience of multiethnic people, civil rights advocates ignore their own historical struggle to show that their group experience was a matter of concern for all Americans.”¹⁵⁴ Kamaria Kruckenberg argues that the “multiracial movement is literally and figuratively the child of the civil rights movement.”¹⁵⁵ Accordingly, civil rights groups should consider fighting for the recognition of multiracial identity as part of the civil rights agenda.

One would expect civil rights groups to support the “check all that apply” approach because they, too, have favored the right to self-identify. But tension between civil rights activists and those who seek recognition of multiracial identity exists, likely due to the misconception that multiracial individuals (assuming they are members of a nonminority race and a minority race) are only choosing to be multiracial to attach themselves to white privilege.¹⁵⁶ Some activists fear that multiracial individuals want to escape blackness and are claiming multiracial identity in order to do so. For example, a black member of the U.S. Commission on Civil Rights argued that with the “check all that apply” approach an individual can conveniently claim, “I am something other than black.”¹⁵⁷ This individual fails to realize that asserting one’s multiracial identity is not about claiming white privilege, but about having one’s complete racial identity more accurately reflected. Furthermore, recognizing one’s multiracial identity is not about choosing one race over another; rather, it is about embracing all the races with which one identifies. Multiracial individuals deserve an identity that better reflects their unique experiences.

Most people, including civil rights activists, would likely support the recognition of multiracial identity were it not for the potential costs they foresee it incurring. Several scholars and civil rights groups believe that recognizing multiracial identity by allowing people to select more than one race on the U.S. Census undermines civil rights policies. These fears have yet to be realized. This paper will analyze the effect of the “check all that apply” approach on civil rights objectives, specifically federal affirmative action programs.

¹⁵¹ Linehan, supra note 8, at 72.
¹⁵² Id.
¹⁵³ Kruckenberg, supra note 26, at 55.
¹⁵⁴ Id. at 52.
¹⁵⁵ Id.
¹⁵⁶ See id. at 54.
¹⁵⁷ Id.
¹⁵⁸ See id. at 55.
IX. TAKING STOCK OF THE EFFECT OF THE “CHECK ALL THAT APPLY” APPROACH

In this section, I evaluate the theory that the “check all that apply” approach to the 2000 Census began the decline of a successful civil rights agenda. Although the “check all that apply” approach is an improvement over the traditional racial categorization used on the census, it is nonetheless a form of racial categorization, and therefore should be subjected to a continuous evaluation of its “effects, operation and appropriateness,” similar to the kind of consistent evaluation that traditional racial categorization undergoes. Recognition of multiracial identity is important, but the “check all that apply” approach’s effect on civil rights objectives should be examined since these objectives are important and purportedly put at risk. This paper examines the effect of the “check all that apply” approach on one aspect of the civil rights agenda, federal affirmative action programs, by analyzing racial data from the 2000 Census and earlier censuses and by analyzing the creation and federal funding of affirmative action programs. This paper does not attempt to determine all effects of the “check all that apply” approach, but is instead attempting to initiate analysis of its purported effect on civil rights objectives. This section also addresses the various factors that make it difficult to accurately and completely assess the effect of the “check all that apply” approach. It is important to note that racial data gathered from the 2000 Census is not directly comparable to the racial data collected from previous censuses because the 2000 Census allowed people to identify as more than one race for the first time. The data cannot be compared because it is not known how people who identified as more than one race on the 2000 Census would have identified on previous censuses when they could only choose one race.

A. An Insignificant Number of People Take Advantage of the Option to “Check All That Apply”

It is unlikely that the “check all that apply” approach has had a significant negative impact on federal affirmative action programs because only a small percentage of the population actually identified as more than one race on the 2000 U.S. Census. According to the U.S. Census Bureau’s 1996 National Content Survey and the Bureau of Labor Statistics’ 1995 Current Population Survey Supplement on Race and Ethnicity, fewer than 2 percent of people indicated they were multiracial. The following comparison of data from the 2000 Census and earlier censuses will similarly suggest that the percentage of people who selected more than one race on the census is too insignificant to negatively impact federal affirmative action programs.

159. Ringelheim, supra note 2, at 127.
160. Minn. Dep’t of Admin., supra note 49.
161. Id.
163. U.S. Census Bureau, supra note 20.
This chart shows the racial and ethnic composition of the United States population according to the 1980 Census, the 1990 Census, and the 2000 Census. The data shows that less than 5 percent of the American population, when given the opportunity on the 2000 Census, identified as belonging to "Two or More Races."
Table 1

<table>
<thead>
<tr>
<th></th>
<th>1980</th>
<th>1990</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
<td>Number</td>
</tr>
<tr>
<td>Total Population</td>
<td>226,545,805</td>
<td>100.00%</td>
<td>248,709,873</td>
</tr>
<tr>
<td>Total Hispanics</td>
<td>14,608,673</td>
<td>6.45%</td>
<td>22,354,059</td>
</tr>
<tr>
<td>White*</td>
<td>180,256,103</td>
<td>79.57%</td>
<td>188,128,296</td>
</tr>
<tr>
<td>Black*</td>
<td>26,104,285</td>
<td>11.52%</td>
<td>29,216,293</td>
</tr>
<tr>
<td>American Indian and Eskimo*</td>
<td>1,417,110</td>
<td>0.63%</td>
<td>1,793,773</td>
</tr>
<tr>
<td>Asian*</td>
<td>3,489,835</td>
<td>1.54%</td>
<td>6,968,359</td>
</tr>
<tr>
<td>Hawaiian and Pacific Islander*</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other*</td>
<td>669,799</td>
<td>0.30%</td>
<td>249,093</td>
</tr>
<tr>
<td>Two or More Races*</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

* Non-Hispanic only; in 1980 and 1990 "Asians" includes Hawaiians and Pacific Islanders.

This table shows that the percentage of people who see themselves as members of the traditional racial groups in America has not drastically changed since 1980. A comparison of the data from the 1990 and 2000 Censuses makes it clear that the option to identify as more than one race in 2000 did not significantly change the percentage of people who identified with only one traditional racial group.
This chart details which people identified as multiracial on the 2000 Census. Only .15 percent of the total population identified as “Black and Some Other Race,” which is important given the concern of civil rights groups, particularly black civil rights groups, that the number of people identifying as black would be reduced as a result of the “check all that apply” approach. The graph shows that only about 2.4 percent of people in America identified as belonging to two or more racial categories, indicating that over 95 percent of people in the United States continued to choose a single race. Furthermore, the number of people exercising their newfound right to identify as multiracial is considerably decreased when one takes into account the number of people who wrote in a “term denoting Hispanic origin for their second race.” As previously mentioned, whether someone identifies as Hispanic or Latino is not officially considered a race issue in the census; rather, it is considered an ethnicity issue, and therefore is addressed separately in an ethnicity


170. Id.

171. Id.

172. Id.

173. Farley, supra note 3, at 58.
question on the census form. Thus, if those people are not counted as having more than one race, then only about 1.6 percent of the population selected two or more races on the 2000 Census. The data suggests that not enough people are taking advantage of the option to identify as more than one race on the census to pose any threat to federal affirmative action programs. To test this hypothesis, this paper analyzes two federal affirmative action programs to see if there has been any significant change in their allocation of federal funding attributable to the “check all that apply” approach.

B. The Reassignment of People to Traditional Racial Categories

Although most people fill out the census with the belief that their selections will be honored, this is not always the case since the government sometimes reassigns people to one of the traditional racial categories. The Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Enforcement and Monitoring, issued by the Department of Justice and referred to as Bulletin No. 00-02, was adopted in 2000 and calls for the reorganization of racial data when two or more races are chosen. Bulletin No. 00-02 was issued in order to execute the Voting Rights Act and to “ensur[e] that agencies can continue to monitor compliance with laws that offer protections for those who have historically experienced discrimination and [so] that reporting burdens are minimized for those reporting aggregate data on race to federal agencies.” According to Bulletin No. 00-02, those people who select more than one race should be reassigned to only one of the traditional racial categories in order to maintain and ensure consistency among agencies that enforce civil rights laws. Individuals who select one of the single racial categories do not have their responses recategorized. Individuals who select a minority race and white automatically get recategorized as the minority race and will be “classified as [the minority race] by federal agencies using that data.” In the case of an individual selecting two or more minority races, Bulletin No. 00-02 provides guidelines that are favorable to civil rights enforcement.

Responses that include two or more minority races are allocated as follows: If the enforcement action is in response to a complaint, allocate to the race that the complainant alleges the discrimination was based on. If the enforcement action

174. U.S. Census Bureau, supra note 20.
175. It is worth noting that some participants in the 2000 Census selected up to the maximum of six racial categories that they identified with, which demonstrates that some individuals see the merit in identifying all their races, no matter the amount. Multiracial Profile, supra note 169.
176. U.S. Census Bureau, supra note 20.
177. Bhatnagar, supra note 9, at 106.
180. Id. at 61.
181. Id.
182. Id.
183. Bhatnagar, supra note 9, at 107.
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requires assessing disparate impact or discriminatory patterns, analyze the patterns based on alternative allocations to each of the minority groups.

Bulletin No. 00-02 essentially facilitates the enforcement of civil rights laws when people select more than one race because the racial data is recategorized to give traditional minority racial categories special consideration and also because responses are reallocated to one traditional minority racial category with the selection of the particular category dependent on the type of enforcement action. Ultimately, “by recategorizing mixed race respondents as members of the protected group under the civil rights laws, the data will be tabulated in a light most favorable to the alleged victim of a civil rights violation.” One author argues that this guidance could even “strengthen the claims of small racial groups, such as American Indians or Native Hawaiians, by adding to their numbers those with some white ancestry.” Another author argues that Bulletin No. 00-02 “appears to eliminate any transformational or deconstructive potential of a ‘check all that apply’ option.” Ultimately, the process of recategorization means that the “check all that apply” approach has no negative consequences in practice. Bulletin No. 00-02 acts to contradict, or at least to minimize, the potential negative effects of the “check all that apply” approach. The government’s recategorization of census racial data is likely the strongest evidence against civil rights activists’ claims that the “check all that apply” approach hinders civil rights objectives.

The practice of racial recategorization is, however, contradictory to the modern notion of self-classification and reinforces the “one drop rule” because, for example, someone who identified as white and black on the census ceases to be both and is instead determined to be solely black by federal agencies. Although this process of recategorization undermines an individual’s right to self-identify it does, however, mean that there is little impact on civil rights objectives due to the “check all that apply” approach.

C. The Disregard of Census Data

Much of the debate regarding the effect of the “check all that apply” approach on anti-discrimination policies and affirmative action programs assumes that census data will actually be taken into account, but sometimes it is disregarded. If census data is disregarded, the change in racial categorization adopted in the 2000 Census that allowed people to select more than one race will have no effect. John Sullivan and George LaNoue argue that census data has been “simply ignored in the implementation of affirmative action, particularly in the designation of relevant categories.” For example, the Small Business Administration displayed a “stunning disregard for census data in decisions about which groups to include as

184. PROVISIONAL GUIDANCE, supra note 179, at 62.
185. Persily, supra note 21, at 931.
187. Deo, supra note 71, at 442.
188. Bhatnagar, supra note 9, at 107.
eligible for affirmative action programs." Needless to say, the "check all that apply" approach to the census only has an effect to the extent racial data is used.

Nevertheless, allowing people to identify as more than one race on the census is valuable, even if the racial data collected from the census is disregarded, because the public is still made aware that people can and do select more than one racial category and thus can be more than one race. The "check all that apply" approach enables people to "move beyond simple concepts of whiteness and blackness." The census ultimately constructs race and publicizes what racial identities are legitimate and worthy of recognition. Regardless of how census data is used, the "check all that apply" approach is still beneficial because it provides official recognition for multiracial individuals, rejects the "one drop rule," subverts the hegemonic system of racial classification, and enables multiracial individuals to form a positive multiracial identity.

D. The Effect Generally

Because the execution of anti-discrimination laws and affirmative action programs is based on rigid monoracial categories, some individuals believe they will cease to be effective given the blurring of such categories due to individuals selecting more than one race on the census. Although letting people select which races they identify with is in line with the popular notion of self-identification, civil rights groups believe that this should be cast aside because "discrimination occurs by observers." One of the biggest concerns of civil rights groups is that allowing people to select more than one race will diminish the number of minorities, and that "[a]ny reduction in these numbers . . . would undermine the very civil rights policies that combat the racial discrimination to which bi- and multiracial individuals may themselves be subject."

This is particularly distressing to civil rights groups and other similarly concerned critics of the "check all that apply" approach because the census already routinely undercounts minorities. The accurate count of minorities is important because this data is used to redraw district lines for elections. If minorities are undercounted, their voting power will be diminished. People's ability to report two or more races on the census though "has not, apparently, had a significant consequence for the drawing of congressional or legislative districts." Most places saw little effect when it came to drawing districts due to the small percentage of

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190. Id. at 781-82.
191. See Hernandez, supra note 36, at 1113.
192. Bhatnagar, supra note 9, at 90.
193. Id. at 87.
194. See Linehan, supra note 8, at 64.
196. Id. at 54.
197. Id. at 53.
198. Id. at 54.
199. Bhatnagar, supra note 9, at 95.
200. Paredes, supra note 66, at 158.
201. Id.
202. Farley, supra note 3, at 58.
people that selected more than one race and because the U.S. Census Bureau recategorized those who selected a minority race and white as members of the minority race.\(^{203}\)

Since census data has real consequences for how the federal government allocates its funds, there is concern that the “check all that apply” approach will affect the federal funding of programs that benefit racial minorities. Every year the federal government uses census data to allocate around $200 billion to fund various programs, proving that federal agencies rely heavily on census data to determine the allocation of federal funds.\(^{204}\)

**E. The Effect on Select Federal Affirmative Action Programs**

This section examines the effect of the “check all that apply” approach on select federal affirmative action programs, such as the Minority Science and Engineering Improvement Program and the Native Hawaiian Vocational Education Program, by analyzing federal funding. Racial data from the census is used by federal agencies to allocate funding to various racial groups that have traditionally been the victims of discrimination.\(^{205}\) Some people fear that this funding could be in jeopardy, and that the ability to identify as more than one race on the census will negatively affect federal programs designed to aid these groups.\(^{206}\) There is concern that affirmative action policies will be hindered because of ambiguous census data resulting from people being allowed to select more than one race. This is a valid concern because traditional monoracial categories are used to carry out federal affirmative action programs\(^{207}\) and now racial data is taken from censuses that allow nontraditional racial categorization. As previously mentioned, civil rights activists worry that allowing people to self-identify as more than one race on the census reduces the number of people who identify as belonging to one minority race.\(^{208}\) This is problematic because “[t]he larger the minority’s count, the greater advantage all its members have in affirmative action programs.”\(^{209}\) This paper evaluates two federal programs that benefit racial minorities to see if there have been any significant changes in their funding since the “check all that apply” approach was adopted in the 2000 U.S. Census. Although this is not a comprehensive evaluation of the “check all that apply” approach’s effect on federal affirmative action programs, it is a start and will hopefully generate more analysis of its effect.

The first affirmative action program this paper considers is the Minority Science and Engineering Improvement Program, which is supported by the Department of Education and “assists predominantly minority institutions in effecting long-range improvement in science and engineering education programs and increasing the flow of underrepresented ethnic minorities . . . into science and engineering careers.”\(^{210}\)

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203. *Id.* at 38.
204. Persily, *supra* note 21, at 1084.
205. Paredes, *supra* note 66, at 158.
206. See *COUNTING ON THE CENSUS*, *supra* note 195, at 53.
207. Pomroy, *supra* note 4, at 85.
208. See Kruckenberg, *supra* note 26, at 54.
209. *COUNTING ON THE CENSUS*, *supra* note 195, at 76.
Table 2
Consolidated Federal Funds Report: Minority Science and Engineering Improvement Program, Fiscal Years 1994-2008\textsuperscript{211}

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>$8,321,287</td>
</tr>
<tr>
<td>2006</td>
<td>$8,737,365</td>
</tr>
<tr>
<td>2004</td>
<td>$8,836,842</td>
</tr>
<tr>
<td>2002</td>
<td>$5,231,384</td>
</tr>
<tr>
<td>2000</td>
<td>$7,436,284</td>
</tr>
<tr>
<td>1998</td>
<td>$4,909,170</td>
</tr>
<tr>
<td>1996</td>
<td>$5,276,054</td>
</tr>
<tr>
<td>1994</td>
<td>$5,827,067</td>
</tr>
</tbody>
</table>

This table details the total federal expenditure for a given fiscal year for the Minority Science and Engineering Improvement Program and shows that there has been no clear overall reduction in federal funding to this program in the wake of the 2000 Census. The data shows that federal funding for this program decreased significantly between 2000 and 2002. But the specific reason for this reduction in federal funding is unknown. In 2004, however, federal funding increased considerably to an amount above that which was received in 2000. Although no clear pattern exists in the funding of this program, the data shows that funding fluctuates from year to year, which is true of funding even before the 2000 Census. For example, funding decreased between 1994 and 1996 and between 1996 and 1998. It is not clear from this data that the federal funding for this program was reduced due to the “check all that apply” approach to the U.S. Census. Also, it is important to note that this program received $885,003 more in 2008 than in 2000 and $3,089,903 more than in 2002.

The next federal program this paper evaluates is the Native Hawaiian Vocational Education Program, which is supported by the Department of Education and used to “provide career and technical education opportunities for Native

\textsuperscript{211} U.S. Census Bureau, Consolidated Federal Funds Report Online Query System (October 2009), http://harvester.census.gov/cffr/asp/Reports.asp [hereinafter CFFR].
Hawaiians" in order to "ensure that [N]ative Hawaiian students participate in and benefit from vocational education to the same degree as other ethnic groups in the state."

Table 3
Consolidated Federal Funds Report: Native Hawaiian Vocational Education Program, Fiscal Years 1994-2008

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Federal Funds ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>2,953,883</td>
</tr>
<tr>
<td>2006</td>
<td>2,985,828</td>
</tr>
<tr>
<td>2004</td>
<td>2,980,500</td>
</tr>
<tr>
<td>2002</td>
<td>2,750,000</td>
</tr>
<tr>
<td>2000</td>
<td>2,576,625</td>
</tr>
<tr>
<td>1998</td>
<td>2,590,488</td>
</tr>
<tr>
<td>1996</td>
<td>2,477,499</td>
</tr>
<tr>
<td>1994</td>
<td>2,528,708</td>
</tr>
</tbody>
</table>

This table details the total federal expenditure for a given fiscal year for the Native Hawaiian Vocational Education Program and demonstrates that there has been no clear overall reduction in the federal funding of this program since the 2000 Census. This paper is most concerned with analyzing federal funding after fiscal year 2000. The data shows that federal funding only changed significantly from 2000 to 2002 and from 2002 to 2004. In both instances, funding only increased. There was a modest decrease in funding between 2006 and 2008, but the program maintained a steady upward trend in funding overall. The program received $203,883 more in federal funds in 2008 than in 2002 and $377,258 more than in 2000. This data suggests that although funding has fluctuated over the years, it has not decreased overall since the "check all that apply" approach was adopted in the 2000 Census. This arguably demonstrates that the "check all that apply" approach has not negatively affected the funding of this program. Funding can decrease from year to year for various reasons, as it did here even before the 2000 U.S. Census was administered. Of course one cannot tell for certain the effect the "check all that apply" approach had on the funding of this program, and one will likely always have great difficulty in trying to determine the overall effect of the "check all that apply" approach, but that will be discussed more later.

214. CFFR, supra note 211.
The aforementioned data on the federal funding of the Minority Science and Engineering Improvement Program and Native Hawaiian Vocational Education Program is not conclusive. However, it does not show a significant downward trend in federal funding in the wake of the 2000 Census. If nothing else, the data demonstrates that federal funding fluctuates. It also begins to illustrate the difficulty in assessing the actual effect of the “check all that apply” approach on federal affirmative action programs. This difficulty is largely due to the fact that specific reasons are not often given as to why there have been changes in the federal funding of these programs, leaving analysts to deduce possible factors.

It is unlikely that the “check all that apply” approach has hindered civil rights objectives, such as the implementation of affirmative action programs, given that new affirmative action programs have been created since the 2000 Census. The creation of these new programs shows that the federal government still recognizes a need for affirmative action programs to help racial minorities in America. One’s ability to identify as multiracial on the 2000 Census has seemingly not changed this. For example, the Higher Education Multicultural Scholars Program, which is supported by the Department of Agriculture, and the Strengthening Minority-serving Institutions Program, which is supported by the Department of Education, were both put into effect after the 2000 U.S. Census. The Higher Education Multicultural Scholars Program is a federal assistance grant program designed to “increase the ethnic and cultural diversity of the food and agricultural scientific and professional work force, and to advance the educational achievement of minority Americans, by providing grants to colleges and universities.” The Higher Education Multicultural Scholars Program received $772,000 in federal funds for fiscal year 2008. The Strengthening Minority-serving Institutions Program was established to “strengthen Predominantly Black Institutions (PBI); Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI); and Native American-Serving Non-tribal Institutions (NASNTI) that propose to carry out activities to improve and expand such [institutions’] capacity to serve ... minority students.” The Strengthening Minority-serving Institutions Program received $22,581,291 from the federal government for fiscal year 2008.

F. The Difficulty in Determining the Effect on Federal Programs

It will likely always be difficult to determine the effect of the “check all that apply” approach on federal programs, such as affirmative action programs, because there are so many confounding factors, especially when it comes to the allocation of federal funds. This difficulty is augmented because specific reasons are not often given as to why there have been changes in the allocation of federal funding for these programs.
programs. Various factors (besides those already mentioned) such as who is President, which political party controls Congress, the success of a previously funded program, and the state of the economy can affect the allocation of federal funds to affirmative action programs. The President of the United States of America can affect the allocation of federal funds to social programs, and the President’s stance on funding such programs likely depends on his personal goals, political views, and political party. Congress can also influence the allocation of federal funds, and how it does so likely depends on which party holds the majority in each house. Republicans tend to disfavor allocating federal funds to social programs. It follows that having a Republican-controlled Congress and/or a Republican President could be a significant factor in the reduction of federal funding for social programs like affirmative action programs. If affirmative action programs are deemed ineffective or at least deemed less worthy of funding than other more successful governmental endeavors, they will likely receive fewer federal funds. In addition, the state of the economy likely influences the allocation of federal funds because when the economy is bad there is less money to allocate to social programs. Basically, federal funding is influenced by a variety of factors. This not only makes it difficult to determine the effect of census data on federal funding in general, but also makes it even less likely that one’s ability to identify as more than one race on the census had a significant effect. Nathaniel Persily argues that, for the short term anyway, there will be nominal legal and political effects due to the change in racial categorization adopted in the 2000 U.S. Census. This supports the aforementioned theory that the multiracial response rate is currently too low to have an impact. Nonetheless, the “check all that apply” approach to racial categorization on the census should be continuously evaluated to determine its effect and appropriateness. The arguments put forth in this section highlight the great difficulty in assessing the effect of the “check all that apply” approach on affirmative action programs due to the various factors that influence federal funding and that influence how, and to what extent, racial data from the census is used.

X. CONCLUSION

Although the dangers are purported to be too great to allow multiracial people to claim their multiracial identity on the U.S. Census, evidence of the negative effect of the “check all that apply” approach has not been found. Even though various civil rights groups and scholars are concerned that the “check all that apply” approach hinders civil rights objectives, it likely has no negative effect in practice because the nontraditional racial data gathered from the census is

222. See id.
225. Persily, supra note 21, at 927.
226. Ringelheim, supra note 2, at 127.
recategorized as traditional racial data. Moreover, the funding of the select federal affirmative action programs analyzed in this paper overall showed no evidence of being negatively affected in the wake of the 2000 Census. Ultimately, more research needs to be done in the future regarding the effect of the “check all that apply” approach on civil rights objectives. It is important to bear in mind though that Bulletin No. 00-02 features guidelines advising that nontraditional racial data be recategorized as traditional racial data, which surely mitigates any potential damage the “check all that apply” approach could cause in the future. Although the overall potential costs will have to continue to be looked at, it seems like a negative impact on the civil rights agenda has not materialized at this time. Because society continues to evolve, it is essential that the “check all that apply” approach, like other modes of racial categorization, be continuously evaluated to determine its effect and appropriateness. The future role of race in the U.S. Census is not clear, but one thing certainly is: “[t]he intersecting issues of racial identity and policy purposes behind racial categorization will become more and more complex as America’s multiracial population continues to increase.” What must not be overlooked is the strong desire multiracial individuals have to claim their multiracial identity. They are tired of being told who they are and that there is literally no space for them in America’s “either/or” racial classification system. They likely do not want their goals to hinder civil rights objectives, but they are also probably tired of the psychological costs of having their multiracial identity suppressed. One author describes this tension best by declaring, “I do think that civil rights groups would prefer that we remain ‘black’ even if such a false unitary racial category midgets us mentally, enslaves us intellectually, and bankrupts us spiritually.” Although multiracial individuals’ right to self-identify as more than one race is extremely important and highly coveted, multiracial individuals should not be essentialized and the differences between them ignored, for individuals are certainly more than their racial identity.

It might seem like the achievement of civil rights objectives and the recognition of diverse racial identities are destined to be in conflict with one another because “the more the state refines categories and extends the range of possible responses and combinations, so as to enable individuals to express their sense of identity, the more difficult it becomes for anti-discrimination programs to use the data.” More research needs to be done on the consequences of abandoning traditional racial categorization and allowing people to identify as more than one race on the census, for it is not certain that the achievement of civil rights objectives and the recognition of multiracial identity are truly at odds with one another. One author argues that “creating conflict between an individual’s needs and the group’s needs has the effect of placing such needs in false opposition.” Perhaps these two objectives are not inherently at odds with one another, but are just constructed that way in American society. Achieving civil rights objectives and recognizing multiracial identity are both important and one endeavor should not have to be sacrificed for the other.

227. Id.
228. Linehan, supra note 8, at 70-71.
229. Deo, supra note 71, at 433.
230. Ringelheim, supra note 2, at 134.
231. Deo, supra note 71, at 419.
Those who desire recognition of their multiracial identity should not be accused of wreaking havoc on the civil rights agenda. The attention must shift to discovering and solving the problems posed by America's racial classification system. There is "no perfect and universally valid model" for racial classification systems so innovation, evaluation, and diversity of opinion are necessary if racial categorization is going to continue to occur.\textsuperscript{232} What must not be lost in this discussion is the undeniable relevance of race in American society. Even though society's characterization of race is complex and volatile, race truly does affect our life opportunities and impact the way we see ourselves and the way others see and treat us. Race still matters, and as such, must not be ignored.

\textsuperscript{232} Ringelheim, \textit{supra} note 2, at 141.