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THE INTERESTS AND *RIGHTS* OF THE INTERRACIAL FAMILY IN A “MULTIRACIAL” RACIAL CLASSIFICATION

Tanya Katerí Hernández*

I. INTRODUCTION

The public dissemination of census data invites battles over how human beings will be known.¹ One census battle that has been at the forefront of the public debate is the demand for a “multiracial” category.² The multiracial classification, as proposed, would be one of the race categories a respondent could choose in lieu of those currently listed by the Office of Management of Budget (OMB): American Indian or Alaskan Native, Asian or Pacific Islander, Black, White, or Other.³ The stated aim of the new racial

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¹ Melissa Nobles, *Responding With Good Sense: The Politics of Race and Censuses in Contemporary Brazil* 25 (1995) (unpublished Ph.D. dissertation, Yale University) (comparison of racial classification disputes in Brazil and U.S. reveal census bureaus as sites of battle over how human beings will be known); Bijan Gilanshah, *Multiracial Minorities: Erasing the Color Line*, 12 LAW & INEQ. J. 183, 203 (1993) (multiracial movement has chosen the decennial census as its first battleground).

² The organized demand for a multiracial category on the decennial census dates back to the 1980’s. See Linda Jones, *Mixed Race and Proud of It*, GANNETT NEWS SERV., Nov. 20, 1990 (mixed race proponents lobbied unsuccessfully for a separate racial category on the 1990 census). Thus far, the lobbying for a multiracial category has resulted in congressional hearings before the Subcommittee on Census, Statistics and Postal Personnel in 1993 to explore the sufficiency of the current racial classifications and the possible need for a multiracial category. See *Review of Federal Measurements of Race and Ethnicity: Hearings Before the Subcomm. on the Census, Statistics and Postal Personnel of the House Comm. on Post Office and Civil Serv.*, 103d Cong., 7 (1993) [hereinafter *Multiracial Hearings*]. Thereafter, the United States Office of Budget and Management held its own set of public hearings in 1994.

³ The aforementioned racial and ethnic classifications were instituted in 1978 by the United States Office of Management and Budget in cooperation with the Minority Advisory Committees of the U.S. Census Bureau for standardized collection of racial data by the U.S.

classification is to obtain a more specific census count of the number of mixed-race persons in the United States. Yet, the recent governmental recommendation to count mixed-race persons, by authorizing for the first time the checking of more than one racial category,⁴ is viewed as unacceptable to Multiracial Category Movement (MCM) spokespersons, because of the absence of an actual multiracial category.⁵ Thus, an OMB decision to permit multiple box checking as a mechanism for counting mixed-race persons will not terminate the MCM census battle. After analyzing what interests interracial families have in a multiracial category itself, this commentary will address the question of whether the MCM has any legal recourse for demanding an actual multiracial category.⁶

II. THE INTEREST OF THE INTERRACIAL FAMILY IN A MULTIRACIAL CATEGORY

The movement for the recognition of a "multiracial" racial classification on all data collection forms⁷ is one that has been dominated by parents of

Bureau of Census and all other government agencies. The intent of the instituted classification system was to meet the obligations stated for data in federal civil rights laws. See Office of Management and Budget, Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, 43 Fed. Reg. 19,260, 19,269 (1978). The OMB classification system also includes a separate Hispanic-Origin ethnicity question to reflect the fact that Latinos and Latinas can be of White racial ancestry, Black racial ancestry, or Native American ancestry. *Id.*

⁴ As this commentary goes to press, OMB is evaluating a federal Interagency Committee for the Review of Racial and Ethnic Standards recommendation to permit national counting of mixed-race persons by having respondents check as many racial categories as are appropriate, rather than adding a multiracial category. See Recommendations from the Interagency Committee for the Review of Racial and Ethnic Standards to the Office of Management and Budget Concerning Changes to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 36,874, 36,906 (1997).

⁵ "We need the terminology of 'multiracial' in there . . . as it is, my children cannot be multiracial children. My children can be 'check-all-that-apply' children, and I do not consider that fair." Elizabeth Shogren, *Panel Rejects "Mixed-Race" Census Category*, L.A. TIMES, July 9, 1997, at A1 (interview of Susan Graham, national MCM leader and President of Project RACE).

⁶ For a comprehensive analysis of the legal ramifications of a mixed-race census count, see Tanya Katerí Hernández, *"Multiracial" Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence*, 57 MD. L. REV. (forthcoming 1998).

⁷ State level lobbying for implementation of a multiracial category on local data collection forms has been successful. GA. CODE ANN. § 20-2-2041 (1994); 105 ILL. COMP. STAT. ANN. 5/2-3.111 (West 1994); IND. CODE ANN. § 5-15-5.1-6.5 (West 1995); OHIO REV. CODE ANN.

mixed-race children, as opposed to self-identified biracial persons.⁸ Furthermore, the multiracial classification movement is also characterized by a preponderance of “monoracial”⁹ Black and White parents of biracial children, with White parents as the most vocal spokespersons.¹⁰ The

§ 3313.941 (West 1996). See also Doug Stanley, *Census Bureau to Test Revised Race Categories*, TAMPA TRIB., June 4, 1996 (multiracial category administratively added to Florida’s school enrollment forms and computers during a routine Department of Education update in 1995). Similar legislation is also pending in Maryland, Massachusetts, New Hampshire, and Texas. 41 MD. CODE ANN. § 18-310 (1996); S. 252, 181st Gen. Ct., Reg. Sess. (Mass. 1997); H.R. 259, 1997 Reg. Sess. (N.H. 1997); S. 851, 75th Legis., Reg. Sess. (Tex. 1995). In addition, Harvard University applications for admission included a multiracial category for the 1992-93 academic year. See Elizabeth Atkins, *Multiracial Students Object to Choosing Sides*, MONT. GAZETTE, June 30, 1991, at D41.

⁸ See *Multiracial Hearings*, *supra* note 2, at 262 (testimony of Norma Cantú, Assistant Secretary for Civil Rights, U.S. Dept. of Education) (“I think that adding a [multiracial] category would be a positive response to the biggest customer our office serves, and that is the parents of children.”). See also Linda Mathews, *Beyond “Other”: A Special Report: More Than Identity Rides On A New Racial Category*, N.Y. TIMES, July 6, 1996, at A1 (“It’s the parents of many multiracial children who have the identity problem, not the children themselves.”). In fact, of the five persons testifying before a congressional committee in favor of the multiracial category, three were self-identified mono-racial parents of mixed race children. See Joyce Price & Maria Koklanaris, *Mixed Families Seek Category in Next U.S. Census*, WASH. TIMES, July 1, 1993, at A3.

⁹ The term “monoracial” is utilized by the multiracial category proponents as presumably describing persons who are not of mixed-race backgrounds. See, e.g., Kenneth E. Payson, *Check One Box: Reconsidering Directive No. 15 and the Classification of Mixed-Race People*, 84 CAL. L. REV. 1233, 1238 (1996); *Multiracial Hearings*, *supra* note 2, at 126 (Carlos Fernández, President of the Association of Multiethnic Americans). Yet, the term is a misnomer in the sense that few residents of the United States can claim a “pure” ancestral background. See JOEL WILLIAMSON, *NEW PEOPLE: MISCEGENATION AND MULATTOES IN THE UNITED STATES* 111 (1980) (in 1918 the Census Bureau accepted the estimate that at least seventy-five percent of the Black population were of mixed ancestry); Mathews, *supra* note 8, at A7 (reporting that at least seventy-five percent of Blacks today are multiracial).

¹⁰ My own examination of 67 news articles discussing the demand for a multiracial category and published between January 1990 and August 1996 demonstrated that the multiracial category movement is dominated by persons concerned with the issues particular to Black/White biracial persons, as opposed to other racial combinations. For example, sixty-four percent of the multiracial category proponents interviewed in these news articles were persons concerned with Black/White biracial needs. Another twenty percent were combinations of Black with another non-white racial group, and only the remaining sixteen percent were combinations of various races other than Black/White, such as Native American and Asian American. See, e.g., Ramona E. Douglass, *Voice of the People: Census and Race*, CHICAGO TRIB., Apr. 21, 1996, at 20; Jan Breslauer, *Hues and Cries*, L.A. TIMES, July 7, 1991, at 3.

A similar survey of literature from the 1980’s demonstrated that eighty-nine percent of

discomfort many White-Black interracial parents felt when choosing racial classifications for their mixed-race children on educational data collection forms mobilized the MCM.¹¹ In fact, the MCM has been described as “a movement that is not entirely based upon the question of racial mixture *per se*” because its focus is upon the presumed classification needs of Black biracial persons and not all multiracial persons.¹² Accordingly, this article focuses upon the particular ramifications a multiracial category will have in a Black and White racial hierarchy.

The perspective of biracial persons, with respect to issues of racial identification, generally, and the presumed need for a multiracial category, specifically, can vary greatly from that of the White parents who lead the movement for a multiracial category.¹³ The White parental interest¹⁴ in the multiracial classification centers upon what I term the “symmetrical identity demand”—the appeal for all racial aspects of a child to be acknowledged in that child’s racial identity, best exemplified by the statement: “I’m part of this kid, too, no matter who he looks like.”¹⁵ One parent of multiracial children

the persons calling for recognition of their biracial identity were mixed-race Black/White persons. Only the remaining eleven percent of biracial spokespersons were rooted in other race combinations, such as Native American and Latino. *See, e.g., No Place for Mankind*, TIME, Sept. 4, 1989, at 17; Linda Mahdesian, *It’s Not Easy Being Green*, U.S. NEWS AND WORLD REP., Nov. 23, 1987, at 8; Eileen Keerdoja et al., *Children of the Rainbow*, NEWSWEEK, Nov. 19, 1984, at 120.

¹¹ *Multiracial Hearings*, *supra* note 2, at 126 (testimony of Carlos Fernández, President of the Association of Multiethnic Americans).

¹² Lewis R. Gordon, *Critical ‘Mixed Race’?*, 1 SOC. IDENTITIES 381, 382 (1995).

¹³ *See* LISE FUNDERBURG, BLACK, WHITE, OTHER: BIRACIAL AMERICANS TALK ABOUT RACE AND IDENTITY 27, 48, 320, 341 (1994) (relating experiences of parents who defy racial conventions by entering interracial relationships not parallel to those of biracial children navigating their identities in racially-stratified society). “It took until I was twenty for my mother to understand that I identified black. That was very hard for her. She looked at it as these were her *kids*, and so we were Jewish and we were black. . . . It was very hard for her to understand that.” *Id.* at 112 (interview of René-Marlene Rambo).

¹⁴ Michael K. Frisby, *Black, White, or Other*, EMERGE, Jan. 1996, at 51 (Susan Graham, a White mother of a biracial child “leads the crusade” for multiracial classification); Carol R. Goforth, “*What is She?*” *How Race Matters And Why It Shouldn’t*, 46 DEPAUL L. REV. 1, 6, 10 (1996) (Author, the White mother of an adopted White-Black biracial child, utilizes the multiracial category to describe her child but prefers the abolition of all racial classifications.). Note that not all White parents of biracial children ascribe to the views delineated herein. The “White parental” interest described is limited to the demonstrated interest of the White parental proponents and leaders of the multiracial movement.

¹⁵ Mathews, *supra* note 8, at A7. *See also* FUNDERBURG, *supra* note 13, at 331.

has testified before a congressional subcommittee that, without a multiracial category, biracial children are forced to “choose one parent over the other.”¹⁶ The symmetrical identity demand stems from the innate parental concern in having themselves publicly reflected in their children. Reflecting one’s parents encompasses the “inheritance” of whatever the parents have to pass on to their children. White parents of mixed-race children want to pass on to their children the privilege of not thinking about race that accompanies whiteness.¹⁷

Whites’ ability to think of themselves in non-racial terms is a benefit of whiteness, insofar as whiteness is cognitively viewed as the norm, hence, not a race.¹⁸ Thus, multiracial category proponents want to pass on to their children the ability not to think about race.¹⁹ For instance, one White mother of mixed-race children has related her desire to impart to her son her privilege of walking about the world without concern that others will find him threatening because of his race and thereby presume him criminal.²⁰ The multiracial category has been characterized by the MCM as an instrumental step toward the “dream of racial harmony rather than creating one more divisive category”²¹ with multiracial persons as the “unifying force.”²² MCM

¹⁶ *Multiracial Hearings*, *supra* note 2, at 160 (testimony of Maj. Marvin C. Arnold, Ph.D.).

¹⁷ Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 41 n.155 (1994) (Those in a “violently racist society” who wish to “envelop . . . their loved ones” in the “protective mantle of Whiteness” should not be “condemned.”).

¹⁸ Barbara J. Flagg, “*Was Blind, But Now I See*”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 969 (1993).

¹⁹ A parallel exists in the transracial adoption movement’s desire to treat biracial children as other than Black when White people seek to adopt them in part to reflect and validate the White “cultural” contributions the adoptive parents make to their adoptive children. *Cf.* Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33, 81 n.219 (1993-94) (Social reality is that children who are part Black are considered Black in the United States and it would thus be an anomaly to treat biracial children as Black only when Whites seek to transracially adopt them.).

²⁰ See MAUREEN T. REDDY, *CROSSING THE COLOR LINE: RACE, PARENTING, AND CULTURE* (1994).

²¹ *Multiracial Hearings*, *supra* note 2, at 169. See also Payson, *supra* note 9, at 1233 (noting mixed-race persons embody the answer to harmonious race relations and should thus be accorded a separate racial classification).

²² See *Multiracial Hearings*, *supra* note 2, at 171 (testimony of Carlos Fernández). See also Mathews, *supra* note 8, at A7 (noting multiracial category proponents often express desire that racial distinctions themselves would disappear for a color-blind society); Marilyn Reinhardt, *Multiracial People Must No Longer Be Invisible: Diminishing Us All*, N.Y. TIMES, July 12,

views biracial persons “as a group [that] may be the embodiment of America’s best chance to clean up race relations.”²³ Thus, interracial parents value the multiracial category for its perceived shift away from the rigidity of racial classifications, which in themselves promote racial hostility.

Yet parents’ desire to resolve their discomfort with racially labeling their children in a racially stratified society often diverges from the interests of biracial persons themselves. For political reasons, a number of biracial persons have less interest in the proposed classification.²⁴ Specifically, the personal experience of many biracial persons, with racism based upon others’ visual perception²⁵ of them as Black, has influenced them to view race as a social construct in which their African ancestry alone is relevant for the census data collection purposes of monitoring instances of discrimination.²⁶ Thus, unlike their White parents, who may view race as a cultural or

1996, at A26 (“The logical extension of challenging our existing systematic racial categorization is to press for its elimination.”).

²³ See Ramona E. Douglass, *Multiracial People Must No Longer Be Invisible*, N.Y. TIMES, July 12, 1996, at A26.

²⁴ See, e.g., LISA JONES, BULLETPROOF DIVA: TALES OF RACE, SEX, AND HAIR 19 (1994); JAMES MCBRIDE, THE COLOR OF WATER: A BLACK MAN’S TRIBUTE TO HIS WHITE MOTHER 79 (1996); Deborah Waire Post, *Reflection on Identity Diversity and Morality*, in CRITICAL RACE THEORY: THE CUTTING EDGE 419, 419-20 (Richard Delgado ed., 1995); JUDY SCALES-TRENT, NOTES OF A WHITE BLACK WOMAN: RACE, COLOR, AND COMMUNITY 63-65 (1995); *Multiracial Hearings*, *supra* note 2, at 134; Lise Funderburg, *Boxed In*, N.Y. Times, July 10, 1996, at A15 (“I fear this proposal simply creates another category which multiracial people must force themselves into. I don’t think of myself as multiracial; I think of myself as black and white.”); FUNDERBURG, *supra* note 13, at 39. In fact, very few self-identified biracial persons attended the first demonstration on Washington, D.C. by and for biracial persons, which aimed at calling attention to the need for a multiracial census category. Eunice Moscoso, *Mixed-race Americans Want New Census Category*, ATLANTA CONSTIT., July 21, 1996, at A12 (Although thousands were expected at the July 20, 1996 demonstration, only two hundred mixed race persons turned out.). Yet, not all biracial persons view the multiracial category with disdain. See, e.g., Luther Wright, Jr., Note, *Who’s Black, Who’s White, and Who Cares: Reconceptualizing the United States’s Definition of Race and Racial Classifications*, 48 VAND. L. REV. 513 (1995).

²⁵ The racism biracial persons experience is not limited to a prejudiced reaction to their non-white phenotype, in that those biracial persons with a white phenotype also experience racism once they reveal their non-white ancestry. See FUNDERBURG, *supra* note 13, at 219 (“In my own experience, I’ve seen dating relationships turn off as a result of prejudice once someone realized I was black.” (interview with Paul Whitaker)).

²⁶ For these biracial persons, their Black political racial identity coexists with their social acknowledgement of the diversity of their ancestral background.

biological concept, their racial identity stems from the political meaning of race.²⁷

The divergence in interests between children and their biological parents is not uncommon in family law.²⁸ Yet the parent-child conflict is especially charged in the context of personal identity. The issue underlying the implementation of a multiracial category then becomes a question of who should be able to formulate the parameters of a child's racial identity, which is arrived at, in part, by experiences the White parent will never encounter.²⁹

²⁷ In demanding a separate mixed-race category, multiracial category proponents misconstrue race as solely a cultural identification by presupposing that there are "pure-Black" experiences that make one authentically Black, and inversely, that the lack of such authenticating cultural experiences makes one less Black, thereby creating the need for another cultural-race category that can more accurately reflect the experiences of biracial Blacks. Although there may be a cultural component to the identification of persons who have been socially segregated into insular communities, such cultural manifestations are not uniform.

Living with my mother's people I absorbed their cultural patterns and these were not African so much as Dutch and New England. The speech was an idiomatic New England tongue with no African dialect; the family customs were New England, and the sex mores. My African racial feeling was then purely a matter of my own later learning and reaction; my recoil from the assumptions of whites; my experience in the South at Fisk. But it was none the less real and a large determinant of my life and character. I felt myself African by "race" and by that token was African and an integral member of the group of dark Americans who were called Negroes.

W.E.B. DUBOIS, *DUSK OF DAWN: AN ESSAY TOWARD AN AUTOBIOGRAPHY OF A RACE CONCEPT* 115 (Transaction Publishers 1995) (1940). The uniformity of Black social identification throughout the Black diaspora is in that of being viewed as distinct because of appearance and/or ancestry. ("But what is this group; and how do you differentiate it; and how can you call it 'black' when you admit it is not black?" I recognize it quite easily and with full legal sanction; the black man is a person who must ride 'Jim Crow' in Georgia."). *Id.* at 153.

²⁸ For instance, in the context of children in foster care, biological parents may have an interest in being reunited with their children, while the children may have an interest in maintaining the continuity of a foster care placement. Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 627 (1996) (repealed 1994) (requiring states to reunify children in foster care with their natural families whenever feasible). These competing interests are not easily resolved when extraordinary circumstances have transformed the examination from one of a parents' rights doctrine to a best interests of the child standard. See *Bennett v. Jeffreys*, 356 N.E.2d 277 (N.Y. 1976) (natural mother loses right to eight-year-old child entrusted at birth to former schoolmate of child's grandmother); Mary D. Ainsworth & Mary Boston, *Psychodiagnostic Assessments of a Child After Prolonged Separation in Early Childhood*, 25 BRIT. J. MED. PSYCHOL. 12 (1952).

²⁹ Post, *supra* note 24, at 420.

Why, [a White mother of biracial children] asked me, did I think of myself as black

The conflict reflects the dichotomy between the view of race as biologically determined and race as a social construct.³⁰ A basic precept of family law is the overarching concern with the best interests of children, yet the application of such a standard to the context of the identity interests of biracial persons does not easily resolve the parent/child conflict. When it comes to so personal an issue as identity, however, the interests of biracial individuals should take precedence over those of their parents.³¹

III. FAMILY LEGAL RIGHTS TO DEMAND A MULTIRACIAL CATEGORY

Even if one were able to resolve the divergence in perspectives for an interracial family consensus regarding the need for a multiracial category, such a consensus would not result in a legal right to demand the category on the census. The legal standing to demand a multiracial category is thus far nonexistent because the Census Bureau is under no obligation to make a race count at all.³² The Census Bureau is subject to limited judicial review in its

when my mother was white? Didn't I see that she was hurt when I encouraged her children to ignore their white identity? If they were to choose to be black, she explained, they would be rejecting her culture. If they rejected her culture, they rejected her. I fell back on an easy answer. I told her that they did not have a choice. She accepted the truth of what I said when her eldest son was called "nigger" for the first time.

Id. Accordingly, the choice of many biracial persons to identify as Black is connected to their direct experiences of racism as Blacks, as opposed to a blinding adherence to the rule of hypo-descent, in which persons with any Black ancestry are deemed Black. F. JAMES DAVIS, WHO IS BLACK?: ONE NATION'S DEFINITION 5 (1991).

³⁰ A complete analysis of the sociological versus scientific views of race can be found in Lopez, *supra* note 17.

Race, then, is a kind of social fiction; popular misconceptions about genetics assert a fictive biological basis for genetically arbitrary social groupings. And yet these groupings do indeed have the status of fact: 'race' may not be a meaningful biological or genetic concept, but it certainly is a powerful political and social construct. The Los Angeles cops who stopped Rodney King probably didn't muse about scientific designations or social mythology before beating him bloody, nor do such thoughts even fleetingly cross the minds of the legions of white women who clutch their purses tighter when black men stand near them at crosswalks.

REDDY, *supra* note 20, at 9.

³¹ Anita L. Allen, *Does a Child Have a Right to a Certain Identity?*, 15 RECHTSTHEORIE 109, 112 (1993).

³² U.S. Const. art. I, § 2, cl. 3 ("The actual Enumeration shall be made . . . every subsequent Term of ten Years, in such Manner as [Congress] shall by Law direct."); 13 U.S.C. § 5 (1994) ("The Secretary [of Commerce] shall prepare questionnaires, and shall determine the inquiries

conduct of the decennial census because of its wide latitude in deciding how best to conduct the census.³³ Where census enumeration methods are deemed fairly suited to bringing maximum enumeration, and anticipated harms to respondents are speculative or de minimis, persons suing the Department of Commerce Census Bureau have not been able to enjoin the Census Bureau from using enumeration methods that might miss them.³⁴ For instance, the failure of the Census Bureau to specifically provide for a Mexican-American category on the 1970 census short forms was held not to constitute invidious discrimination where the court was satisfied that Mexican-Americans would otherwise be counted in the White race category and their rights thereby safeguarded by Census Bureau community outreach efforts regarding the available racial categories.³⁵ Applying this legal standard to the multiracial category context, it is clear that the MCM cannot enjoin the Census Bureau from utilizing census forms that lack an actual multiracial category, when mixed-race persons can otherwise be counted in the "Other Race" category. In reviewing the enumeration methods of the Census Bureau, the fear that social service programs aimed at certain groups (like Mexican-Americans) would be underfunded because of the failure to specifically count the group members as such has not been dispositive.³⁶

....").

³³ 13 U.S.C. § 141 (1994) ("The Secretary [of Commerce] shall . . . every 10 years . . . take a decennial census of population . . . in such form and content as he may determine . . ."). Judicial review of Census Bureau actions is limited to those actions that are arbitrary and capricious pursuant to the Administrative Procedure Act. 5 U.S.C. §§ 701(a), 706(2)(a) (1994).

³⁴ See *Quon v. Stans*, 309 F. Supp. 604 (N.D. Cal. 1970) (recounting indigent non-English speaking Chinese residents of Chinatown attempted to enjoin Census Bureau from using a mail-out/mail-back method of enumeration, which would likely leave out the many residents of Chinatown without mailing addresses).

³⁵ See *Prieto v. Stans*, 321 F. Supp. 420 (D.C. Cal. 1970) (class action by Mexican-Americans challenging 1970 census short form exclusion of ethnic-origin question because of uncertainty which category Mexicans of indigenous ancestry—but not U.S. Native Americans—should choose). OMB Directive 15 instituted the Hispanic-Origin question used as of the 1980 census. See Directive 15, *supra* note 3.

³⁶ *Prieto*, 321 F. Supp. at 422. In demanding a new racial classification, the multiracial movement has not asserted a need to be accurately counted for special program funding. The demand has been centered on the visceral need to be recognized as a community distinct from other races. But see Michael C. Thornton, *Is Multiracial Status Unique? The Personal and Social Experience*, in *RACIALLY MIXED PEOPLE IN AMERICA* 321, 324 (Maria P.P. Root ed., 1992) ("There is little evidence indicating other than some superficial basis for commonality between groups of different racial mixture.").

In the absence of a legal right to demand a multiracial category, the multiracial movement might consider not responding to the race question at all, in order to pressure the federal government to modify its classification method.

The refusal to answer census questions on one's own behalf or that of one's family is punishable under the law by a fine of \$100.00³⁷ for each unanswered question.³⁸ The willful submission of false answers is punishable by a fine of \$500.00.³⁹ Furthermore, if that erroneous information is submitted with the intent to cause an inaccurate enumeration of the population, the fine is \$1,000.00 and/or one year imprisonment.⁴⁰ A respondent may withhold only information relative to his or her religious beliefs or membership in a religious body.⁴¹ Such statutory prohibitions upon the refusal to answer census questions might chill a multiracial census resistance movement.

Prosecution for failure to answer the race and ethnicity question on the census is not likely, given the Census Bureau's past treatment of such non-responses. Those census forms that omit an answer for the race and ethnicity question are allocated the race of another household member. In the absence of any household member racial identification information, the respondent is allocated the race of a neighboring household that is similar in other demographic factors.⁴² In the Census Bureau's random veracity checks on a small percentage of submitted census forms, those forms that lacked a race and ethnicity response were subject to follow-up telephone inquiries in which the respondents were asked which OMB Directive 15 racial classification they

³⁷ 13 U.S.C. § 221(a) (1994). Yet, in all of census history only two respondents have ever been fined for failing to answer a census question. D.S. HALACY, *CENSUS: 190 YEARS OF COUNTING AMERICA* 11 (1980).

³⁸ *United States v. Little*, 317 F. Supp. 1308 (D. Del. 1970).

³⁹ 13 U.S.C. § 221(b) (1994).

⁴⁰ 13 U.S.C. § 222 (1994).

⁴¹ 13 U.S.C. § 221(c) (1994).

⁴² U.S. GEN. ACCT. OFF. REP., *CENSUS REFORM: EARLY OUTREACH AND DECISIONS NEEDED ON RACE AND ETHNIC QUESTIONS*, Jan. 28, 1993, at 6. Similarly, when a write-in response to the "Other Race" category elicits "biracial" or "multiracial," a modified race file is created in which the Census Bureau redistributes the write-in responses to one of the Directive 15 race categories. For example, where a respondent writes in two racial categories, the respondent is reassigned to the first listed race, so that a Black-White write-in response is reassigned by the Census Bureau to the Black category. *Id.* at 28.

most closely resembled.⁴³ Furthermore, in recent history only two persons have been fined for generally failing to respond to the census questions as required by law.⁴⁴

In short, despite the strong social interest some interracial families have in a multiracial category, the MCM has no legal right to demand an actual multiracial category on the decennial census. Given the lack of a legal right to demand a multiracial category, the MCM may continue to lobby for the category. The resulting debate will affect the continuing national discussion of race and its meaning.⁴⁵

⁴³ U.S. DEP'T OF COMMERCE BUREAU OF CENSUS, CREW LEADER'S MANUAL 1-3, F1 (July 1989); U.S. DEP'T OF COMMERCE BUREAU OF CENSUS ECON. & STAT. ADMIN., 1990 CENSUS OF POPULATION & HOUSING EVALUATION & RESEARCH REPORTS CONTENT REINTERVIEW SURVEY: ACCURACY OF DATA FOR SELECTED POPULATION AND HOUSING CHARACTERISTICS AS MEASURED BY REINTERVIEW 21 (1990).

⁴⁴ HALACY, *supra* note 37, at 11.

⁴⁵ Hernández, *supra* note 6. Multiracial discourse as expressed within the MCM has undermined the approach to race by making race meaningless except as a socio-political issue.

