

BACKGROUND

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Eliminating Identity Politics from the U.S. Census

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Abstract

In the 1970s, progressive interest groups pressured the Census Bureau to divide the entire country into often artificial ethnic and racial categories. This result, in turn, gave the Census's racial and ethnic taxonomy an unjustified relevance that was previously absent. It also gave birth to what is today often called "identity politics" by providing official "approval" of the notion that the country is divided into adversarial identity groups. The Trump Administration's decision to reinstate a question about citizenship in the 2020 Census is the right step because citizenship, unlike race, is an important category in a constitutional republic. This step can begin weakening identity politics—a destructive force that is now racializing all of society.

The U.S. Constitution provides that an "actual enumeration" of persons be made every 10 years.¹ Since it was first conducted in 1790,² the U.S. Census has asked a question about race that was incidental to apportionment and taxation—the purposes of enumeration. For much of its history, however, the Census has also asked an uncontroversial question on citizenship, which is a more legitimate classification in a civic republic than race.

For almost 200 years, questions about race might have been of demographic interest but were no more necessary for Census purposes than questions about professions, deafness, or blindness. Rather, it was a series of 20th-century judicial misinterpretations of laws such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965 (VRA) that gave questions on race in the Census relevance. In so doing, those court decisions have made laws intended to implement the equality provisions of the Reconstruction Amend-

KEY POINTS

- By emphasizing citizenship (but not ethnic ties) in the Census, the government tells all people, but especially immigrants and their children, that it is concerned with their relationship not with the land of their ancestors but with the land to which they now belong, an important and inclusive message to send.
- Other specific measures include rescinding the 1997 Office of Management and Budget (OMB) Standards for Classifying Race and Ethnicity and the 1977 OMB rule, known as Directive 15, that it had revised, which originally crafted pan-ethnic groups; terminating both explicit racial and ethnic preferences and unofficial quotas in federal hiring and contracting; and eliminating the faux ethnic classifications in the Census itself.
- Finally, President Trump should issue an executive order ending all race-based and ethnic-based decision making in the federal government.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3327>

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ments—the Thirteenth, Fourteenth, and Fifteenth Amendments—the basis for doing the *opposite* of implementing color-blind justice.

In addition, also with judicial approval, state and federal governments have been requiring that race be taken into account through racial preferences in employment, contracting, college admissions, and other areas. As a result, over the past four decades, organizing the population by race has taken on real—and legal—salience.

Ironically, the original rationale for accentuating race in this manner was to fight racism. Some Southern jurisdictions, for example, actively sought to circumvent the Voting Rights Act in the 1960s by diluting the strength of black voters. In response, courts ordered jurisdictions to explicitly consider race in redrawing congressional districts. The result, despite language in the Voting Rights Act to the contrary, has been a trend toward using the law as if it required that districts be drawn to ensure that minorities hold office in numbers proportional to the relevant population.³

Meanwhile, progressive interest groups twisted a genuine interest in tracking how policies affected peoples of different races to pressure the Office of Management and Budget (OMB) and the Census Bureau to divide the entire country in 1977 into five ethnic and racial groups. Some of these, such as Hispanics and Asians, were synthetically engineered entities that were divorced from any biological or other anthropological basis. For example, the term “Hispanic” was created by a committee in 1975 and put on the Census form for the first time in 1980. It was derived from the Roman term for the Iberian Peninsula, and by extension all things of Iberian origin or culture.

The intention behind many of these measures—to counter racism—was laudable, but the means to that

end introduced for the first time the idea of proportional representation and race- and ethnic-based districting. This result, in turn, gave the Census’s racial and ethnic taxonomy an explicit racial focus that was previously absent. It also gave birth to what is today often called “identity politics” by providing a legal basis for the notion that the country is divided into adversarial identity groups.

The Trump Administration’s decision to include a question about citizenship in the 2020 Census is the right step because citizenship—unlike race—is an important category in a constitutional republic. This step can begin weakening identity politics, a destructive force that is now racializing all of society. By emphasizing citizenship (but not ethnic ties), the government tells all people, but especially immigrants and their children, that it is concerned with their relationship *not* with the land of their ancestors but with the land to which they now belong, an important and inclusive message to send.

Other specific measures that President Trump should consider include rescinding the 1997 OMB Standards for Classifying Race and Ethnicity, as well as the 1977 OMB rule, known as Directive 15, that it had revised, which crafted pan-ethnic groups in the first place;⁴ terminating both explicit racial and ethnic preferences and unofficial quotas in federal hiring and contracting; and eliminating the *faux* ethnic classifications in the Census itself. Finally, and more broadly, the President should issue an executive order ending all race-based and ethnic-based decision making in the federal government.

As Chief Justice John Roberts of the U.S. Supreme Court said in 2007, “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”⁵

1. U.S. Constitution, Art. I, Sec. 2, Cl. 3.

2. The Census Act of 1790 directed census takers to distinguish “free persons, including those bound to service for a term of years, from all others; distinguishing also the sexes and colours of free persons.” “An Act Providing for the Enumeration of the Inhabitants of the United States,” First U.S. Congress, Sess. II, Ch. 2, 1790, https://www.census.gov/history/pdf/1790_Census_Act.pdf (accessed June 11, 2018).

3. Abigail Thernstrom, “Redistricting, Race, and the Voting Rights Act,” *National Affairs*, Spring 2010, <https://www.nationalaffairs.com/publications/detail/redistricting-race-and-the-voting-rights-act> (accessed June 11, 2018), and Roger Clegg and Hans A. von Spakovsky, “‘Disparate Impact’ and Section 2 of the Voting Rights Act,” Heritage Foundation *Legal Memorandum* No. 119, March 17, 2014, <https://www.heritage.org/election-integrity/report/disparate-impact-and-section-2-the-voting-rights-act>.

4. U.S. Office of Management and Budget, “Race and Ethnic Standards for Federal Statistics and Administrative Reporting,” Directive No. 15 (May 12, 1977), https://transition.fcc.gov/Bureaus/OSEC/library/legislative_histories/1195.pdf (accessed June 11, 2018), and The White House, “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,” October 30, 1997, https://obamawhitehouse.archives.gov/omb/fedreg_1997standards (accessed June 13, 2018).

5. *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 748 (2007).

The Census: 1790–1970

Why the Census? The Constitution states that the required enumeration of the country’s inhabitants is to be used for apportioning taxes and determining the number of each state’s representatives in the House of Representatives.⁶ Drawing electoral districts according to population⁷ can be an incentive to inflate numbers in order to maximize both House representation and votes in the Electoral College.⁸ On the other hand, the fact that the tax burden may increase on the more populous jurisdictions may help restrain and neutralize the temptation to inflate population numbers, as does the requirement for an actual enumeration rather than self-reporting by the state.

Slavery and Census Data. The legal status of the people in each state was the most important factor in determining representation in the House of Representatives.⁹ The early decades of our republic saw a preference for giving the franchise to free adult men who met the property and tax qualifications in each state. The original Constitution included a compromise for determining the size of electoral districts.

Non-slave states sought to limit the representation and influence of the slave states by insisting that slaves be counted as “three-fifths” of a person for purposes of determining a state’s House representation and number of electoral votes.¹⁰ It was *not* a demand by slave states to view African-Americans as only

three-fifths of a person, as some erroneously claim.¹¹ In fact, “the 60,000 or so free blacks in the North and the South were counted on par with whites.”¹²

In order to determine the total number,¹³ therefore, the Census takers asked questions about who was a “free white person,” the “number of all other free persons,” and the “number of slaves.”¹⁴ The other, albeit indirect, mention of race in both the Constitution and in the Census Act of 1790, was that “Indians not taxed” would be omitted from the enumeration.

Free blacks who met the tax and property requirements initially could vote in many states. They were officially enfranchised in New York, New Jersey, Pennsylvania, and North Carolina, and disenfranchised officially only in Virginia, South Carolina, and Georgia. In all other states, free black adult males who met the property or tax requirements were still able to vote.¹⁵ The result was that, as Harvard’s Jennifer L. Hochschild notes, “strictly speaking, the initial Census takers needed only to distinguish free citizens from slaves.”¹⁶

Citizenship and Census Data. Changes sought by Thomas Jefferson in the Census of 1800 focused on citizenship rather than race. “For the purpose also of more exactly distinguishing the increase of population by birth and immigration,” Jefferson sought another Census question that would present “the respective numbers of native citizens, citizens of foreign birth, and of Aliens.”¹⁷ These distinctions sought by Jeffer-

6. U.S. Const., Art. I, Sec. 2, Cl. 3: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.” See David Forte and Matthew Spalding, eds., *The Heritage Guide to the Constitution* (Washington, DC: The Heritage Foundation and Regnery Publishing, 2014), <https://www.heritage.org/constitution/#/>. See also Carroll D. Wright, Commissioner of Labor, “The History and Growth of the United States Census,” report prepared for the U.S. Senate Committee on the Census, February 24, 1900, <https://www.census.gov/history/pdf/wright-hunt.pdf> (accessed June 11, 2018).

7. See U.S. Const., Art. I, Sec. 2, Cl. 3, and Fourteenth Amendment, Sec. 2.

8. U.S. Const., Art. II, Sec. 1, Cl. 2.

9. Donald Ratcliffe, “The Right to Vote and the Rise of Democracy,” *Journal of the Early Republic*, Vol. 33 (Summer 2013), p. 232, <https://jer.pennpress.org/media/26167/sampleArt22.pdf> (accessed June 11, 2018).

10. David Azerrad, “What the Constitution Really Says About Race and Slavery,” *Heritage Foundation Commentary*, December 28, 2015, <https://www.heritage.org/the-constitution/commentary/what-the-constitution-really-says-about-race-and-slavery>.

11. *Ibid.*

12. *Ibid.*

13. U.S. Census Bureau, “History: 1790,” <https://www.census.gov/history/pdf/1790overview.pdf> (accessed June 12, 2018).

14. *Ibid.*, and “1790 United States Federal Census,” Ancestry.com, <https://search.ancestry.com/search/db.aspx?dbid=5058> (accessed June 11, 2018).

15. Ratcliffe, “The Right to Vote and the Rise of Democracy,” pp. 229–230.

16. Jennifer L. Hochschild and Brenna M. Powell, “Racial Reorganization and the United States Census 1850–1930: Mulattoes, Half-Breeds, Mixed Parentage, Hindoos, and the Mexican Race,” *Studies in American Political Development* (Spring 2008), <https://scholar.harvard.edu/jlhochschild/publications/racial-reorganization-and-united-states-census-1850-1930-mulattoes-half-br> (accessed June 11, 2018).

17. Julian Parks Boyd, ed., *The Papers of Thomas Jefferson, Volume 31: 1 February 1799 to 31 May 1800* (Princeton University Press, 1958), p. 293.

son were instituted in the 1820 Census, when marshals, who were the Census takers at the time, began to ask a question about “foreigners not naturalized.”¹⁸

Today, as in those early decades, citizenship or voter eligibility should be more important than race or ethnicity for legislative apportionment, and states are free to take these factors into account. Maine and Nebraska, for example, “authorize the exclusion of non-citizen immigrants” from the total population apportionment base.¹⁹ In 2016, in *Evenwel v. Abbott*, the Supreme Court held that the Constitution allows states to draw their legislative districts based on total population, and that states are not required to equalize the number of voter-eligible citizens in each district.²⁰ In his concurring opinion in *Evenwel*, Justice Clarence Thomas noted that “the Constitution does not prescribe any one basis for apportionment within States. It instead leaves States significant leeway in apportioning their own districts to equalize total population, to equalize eligible voters, or to promote any other principle consistent with a republican form of government.”²¹

On March 26, 2018, the Trump Administration announced that, at the Justice Department’s request, the Census would again include a citizenship question. It would be the same question currently used by the Census Bureau in its American Community Survey, given to approximately 3.5 million households every year.²² Both the Census Bureau and Department of Commerce have determined that this citizenship question is necessary for “obtaining complete and accurate data.”²³

A question about citizenship, therefore, merits inclusion in the Census for the same reasons that a question about race does not, namely salience and relevance it should have in the drawing of legislative districts. In addition, the Census does not just collect data, it also helps forge perceptions about the reality those data describe. While a question about race in the early Census may have reflected certain popular views about race at the time, simply asking it reinforced the view that racial differences (and perhaps their pernicious stereotypes) matter. The very fact of classifying makes a difference. The Census does not just collect data on reality but helps forge perceptions about that reality.

Paradoxes. The so-called “Hawthorne Effect” says that individuals change their behavior when they know they are being studied.²⁴ Or, as social scientist Nathan Glazer puts it, “[O]ne encourages what one recognizes and dissuades what one does not.”²⁵ The Indo-European root of the word “census” means “to evoke in speech, almost to call a thing into existence by naming it.”²⁶ As Professor Hochschild describes it, “Censuses provide the concepts, taxonomy, and substantive information by which a nation understands its component parts as well as the contours of the whole.”²⁷

It is also important to note another unhappy paradox. In the early decades of the 18th century, as property and tax qualifications for voting were abandoned and the franchise was extended to all adult white males, cultural beliefs in inherent racial differences spread, resulting in the disenfranchisement of free blacks. Prior to then, property qualifications,

18. National Archives and Records Administration, “1820 Federal Census,” <https://www.archives.gov/files/research/genealogy/charts-forms/1820-census.pdf> (accessed June 11, 2018).

19. *Evenwel v. Abbott*, 136 S.Ct. 1120, 1124 (2016), fn 3.

20. The Court did recognize, however, that on “rare occasions, jurisdictions have relied on the registered-voter or voter-eligible populations of districts.” *Ibid.*, at 1124. See also *Burns v. Richardson*, 384 U.S. 73, 95 (1966) (Hawaii can use “registered-voters” as a “permissible population base.”).

21. *Evenwel v. Abbot*, at 1133 (Thomas, J., concurring).

22. U.S. Census Bureau, “American Community Survey (ACS): Top Questions About the Survey,” <https://www.census.gov/programs-surveys/acs/about/top-questions-about-the-survey.html> (accessed June 11, 2018).

23. U.S. Department of Commerce, “Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire,” Memorandum from Wilbur Ross, Secretary, to Karen Dunn Kelley, Under Secretary for Economic Affairs, March 26, 2018, https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf (accessed June 11, 2018) [emphasis in original].

24. “The Hawthorne Effect,” *The Economist*, November 3, 2008, <http://www.economist.com/node/12510632> (accessed June 11, 2018).

25. Nathan Glazer, “Do We Need the Census Race Question?” *National Affairs*, No. 35 (Spring 2018), https://nationalaffairs.com/public_interest/detail/do-we-need-the-census-race-question (accessed June 11, 2018).

26. Claude Nicolet, *The World of the Citizen in Republican Rome* (University of California Press, 1980), p. 50.

27. Hochschild and Powell, “Racial Reorganization and the United States Census 1850–1930.”

it seems, had “permitted some Americans to think of radically extending the franchise in demographic terms,” leading to the enfranchisement not just of propertied African-American freedmen but also of white women in some parts of the country. As Andrew W. Robertson of the City University of New York puts it, the late 1810s marked the turning point.²⁸

This growing belief that immutable racial characteristics determined behavior and destiny may have elicited other changes in the Census. In 1820, for example, it asked for the first time about a race other than white with a question about “free colored persons.”²⁹ In 1850, Census marshals were instructed to combine the race question into one: “Color (White, Black or Mulatto).”³⁰

Census Innovations. Census innovations began around 1850, the first year that the Census Bureau sought input from groups outside government, and continued for decades.³¹ Because of a rise in immigration by mostly Catholic Irish and Germans, a question about place of birth was included in 1850.³² In 1870, “Chinese” and “Indian”—meaning Native Americans—were added as options.³³ That year was also the first in which Census takers were instructed to inquire whether either of that individual’s parents was foreign-born. This question remained, and was not considered controversial, for the next century.

The 1890 Census added “Japanese” and, infamously, “quadroon” and “octoroon,” which were supposed to designate people who were, respectively, one-fourth and one-eighth black.³⁴ The instructions to Census takers also added an entire section on the naturalization of immigrants, not surprising in the midst of the largest immigration expansion in U.S. history. In 1910, the Census added questions about the language spoken by residents.³⁵

Events that may have contributed to this period of Census changes include the end of slavery after the Civil War; the presence in U.S. territory of former citizens of Mexico after the Mexican–American War in 1848; the start of large-scale immigration after the Irish potato famine of 1845–1849; the influx of Chinese workers in the West starting in the 1850s; and, finally, the addition of America’s first and only colony, the Philippines, in 1898.

The 20th century also saw Census innovations. In 1920, with immigration raising the percentage of foreign-born residents to an all-time high, the Census asked about the language spoken not only by individuals, but also by their parents.³⁶ Most immigrants came from four large European empires—Austria-Hungary, Prussia, Russia (later the Soviet Union), and the Ottoman Empire.

The practice of door-to-door Census takers seeking to identify members of a national Mexican “race”³⁷

28. Andrew W. Robertson, “Jeffersonian Parties, Politics, and Participation: The Tortuous Trajectory of American Democracy,” in Daniel Peart and Adam Smith, eds., *Practicing Democracy: Popular Politics in the United States from the Constitution to the Civil War* (Charlottesville & London: University of Virginia Press, 2015).

29. National Archives, “1820 Federal Census.”

30. An Act Providing for the Taking of the Seventh and Subsequent Censuses of the United States, and to Fix the Number of the Members of the House of Representatives, and Provide for Their Future Apportionment Among the Several States, 31st Congress, 1st Sess., <https://www.census.gov/history/pdf/1850instructions.pdf> (accessed June 11, 2018).

31. This practice of reliance on outside “stakeholders” has been a revival in the past three decades, a development that has significantly politicized the Census.

32. U.S. Census Bureau, “History: 1850,” https://www.census.gov/history/www/through_the_decades/index_of_questions/1850_1.html (accessed June 11, 2018).

33. U.S. Census Bureau, “History: 1870,” https://www.census.gov/history/www/through_the_decades/index_of_questions/1870_1.html (accessed June 11, 2018).

34. U.S. Census Bureau, “Eleventh Census of the United States: Family Schedule-1 to 10 Persons,” https://www.census.gov/history/pdf/1890_questionnaire.pdf (accessed June 11, 2018).

35. U.S. Census Bureau, “Thirteenth Census of the United States: Instructions to Enumerators,” <https://www.census.gov/history/pdf/1910instructions.pdf> (accessed June 11, 2018).

36. U.S. Census Bureau, “History: 1920,” https://www.census.gov/history/www/through_the_decades/index_of_questions/1920_1.html (accessed June 11, 2018).

37. D’vera Cohn, “Census History: Counting Hispanics,” Pew Research Center, Social and Demographic Trends, March 3, 2010, <http://www.pewsocialtrends.org/2010/03/03/census-history-counting-hispanics-2/> (accessed June 11, 2018). See also U.S. Bureau of the Census, “1930 Census: Enumerator Instructions,” paragraph 154, <https://usa.ipums.org/usa/voliii/inst1930.shtml> (accessed June 11, 2018), and U.S. Census Bureau, “Fifteenth Census: Instructions to Enumerators,” <https://www.census.gov/history/pdf/1930instructions.pdf> (accessed June 11, 2018).

was discontinued soon after it began in 1930 after strong complaints from the Mexican government and criticism by Mexican-Americans. One leading Mexican-American organization complained that declassifying Mexicans as white was an attempt to “discriminate between the Mexicans themselves and other members of the white race, when in truth and fact we are not only a part and parcel but as well the sum and substance of the white race.... Jim Crow did not apply to us.”³⁸

Racial categories expanded in 1950, when the Census asked about whether individuals were white, negro, American Indian, Japanese, Chinese, Filipino, or another race.³⁹ In 1960, after Alaska and Hawaii attained statehood, new options included “Hawaiian, Part Hawaiian, Aleut, Eskimo (etc.)?”⁴⁰ Ten years later, “Korean” was included while Aleuts and Eskimos were deleted.⁴¹ Along the way, the Census has asked other questions that would today be considered unseemly, such as one starting in 1840 whether residents were “Deaf and Dumb,” or “blind.”⁴²

The Census: 1970 to the Present

From 1790 to 1970, then, the Census has collected statistics on race, with specific questions at particular times reflecting changing social and political views and fads. These race questions, however, were—at most—ancillary to the stated purpose of the Census. That changed with the drive to implement both the 1965 Voting Rights Act and the 1964 Civil Rights Act. Court interpretations and administrative decisions introduced for the first time pol-

icy reasons for collecting racial data in the Census.⁴³ Black voter registration soared following the signing and implementation of the VRA, which eliminated literary tests and other means used to prevent black registration and voting.

In response, some jurisdictions found ways to continue discriminating and diluting the black vote, including at-large voting districts, redrawing district lines, and turning some elected positions into appointed ones.⁴⁴ In *Allen v. State Board of Elections*,⁴⁵ the Supreme Court held in 1969 that such tactics hurt “voters who are members of a racial minority.”⁴⁶

The Voting Rights Act of 1965. Unfortunately, in 1982, Congress amended the Voting Rights Act to make the standard for finding a violation of Section 2 of the VRA a disparate “result” instead of “actual discriminatory intent.”⁴⁷ The “results” language was a response to a 1980 Supreme Court decision, *City of Mobile v. Bolden*, in which a plurality of the Court, led by Justice Potter Stewart, held that the prior text of Section 2 prohibited only state actions undertaken with discriminatory intent.⁴⁸ Something akin to “disparate impact” was thus introduced into Section 2 of the Voting Rights Act by Congress in reaction to that opinion, although the Supreme Court has yet to illumine exactly what this standard means. All these disparate results would need to be measured in terms of the race or ethnicity of the voters affected.

According to noted political scientist Abigail Thernstrom, this rewording of the law and activist decisions by federal courts gave black Americans “a new entitlement: the ability ‘to elect a candidate of their choice.’”⁴⁹ Justice Department officials began

38. Benjamin Marquez, *LULAC: The Evolution of a Mexican American Political Organization* (Austin: University of Texas Press, 1993), p. 33.

39. U.S. Census Bureau, “1950 Census of Population and Housing,” https://www.census.gov/history/pdf/1950_population_questionnaire.pdf (accessed June 13, 2018).

40. U.S. Census Bureau, “Notice of Required Information for the 1960 Census of Population and Housing,” <https://www.census.gov/history/pdf/1960censusquestionnaire-2.pdf> (accessed June 11, 2018).

41. U.S. Census Bureau, “1970 Questionnaire,” https://www.census.gov/history/pdf/1970_questionnaire.pdf (accessed June 11, 2018).

42. U.S. Census Bureau, “1840 Federal Census,” <https://www.archives.gov/files/research/genealogy/charts-forms/1840-census.pdf> (accessed June 13, 2018).

43. U.S. Census Bureau, “1980 Questionnaire,” https://www.census.gov/history/pdf/1980_short_questionnaire.pdf (accessed June 11, 2018).

44. Thernstrom, “Redistricting, Race, and the Voting Rights Act,” p. 55.

45. *Allen v. State Board of Elections*, 393 U.S. 544 (1969).

46. *Ibid.*, at 569.

47. Thernstrom, “Redistricting, Race, and the Voting Rights Act,” p. 60.

48. *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

49. Thernstrom, “Redistricting, Race, and the Voting Rights Act,” p. 56.

to demand “that at every level of government, blacks held office in numbers proportional to the relevant black population”—despite the fact that Section 2 of the VRA specifically provided that the law does not establish “a right to have members of a protected class elected in numbers equal to their proportion in the population.”⁵⁰

At the same time, the Voting Rights Act also became untethered from its original focus on remedying a century of disenfranchisement of black voters following the end of Reconstruction. In 1975, the Mexican-American Legal Defense and Education Fund (MALDEF) sought and obtained the same protection for Mexican-Americans from Congress, thereby enabling them to assert their own claims to proportional representation. MALDEF, a liberal special interest organization created by the Ford Foundation in 1968,⁵¹ made the case that English-language ballots were tantamount to literacy tests. This was a reversal of the position taken in the 1930s by the leading Mexican-American organization of its time, LULAC, which made clear that Jim Crow did not apply to Mexican-Americans.

Congress extended VRA coverage in 1975 to four “language-minority groups”: Asian-Americans, American Indians, Alaskan Natives, or those of Spanish heritage.⁵² And in 1977, the OMB ordered the Census Bureau and all other government agencies to divide the country into five groups: whites, blacks, Hispanics, Asian or Pacific Islanders, and American Indian or Alaskan Native Census.⁵³ But the origin of these five groups went back at least a decade, when, in 1966, the Equal Employment Opportunity Commission—created by the Civil Rights Act—began asking companies with more than 100 employees to collect information through the EEO-1 form on “Negro, American Indian, Oriental and Spanish-surnamed” employees.

The Civil Rights Act of 1964. One ostensible reason the OMB decided to have the Census divide

the entire country into these five groups and created Hispanics, an artificial pan-ethnicity, was to enforce the Civil Rights Act of 1964. In reality, however, heavy lobbying by liberal special interest groups pushed OMB and the Census into, for example, creating a Hispanic identity. A leader among these was the National Council of La Raza, also created by the Ford Foundation, in 1969.

As UCLA sociologist Cristina Mora describes it in her history of the period:

[T]he only research that systematically examines U.S. Census Bureau records reveals that census officials were reluctant to create a Hispanic pan-ethnic category, in part because they judged that persons of Latin American descent were quite diverse and would eventually assimilate and identify as white. It turns out in fact that Mexican American activists played an important role in pressuring hesitant state and census officials to institutionalize the Hispanic census category.⁵⁴

While the measures inspired by the Voting Rights Act, including creating a racially proportional representation mentality in electoral districting, were new to the American public’s mindset, the measures inspired by the Civil Rights Act transformed the Census into an adjunct of government programs and the system of racial preferences. By 2003, Kenneth Prewitt, who had been Director of the Census Bureau under President Bill Clinton, could rightly declare in a paper for the Russell Sage Foundation that “[e]very question asked in the U.S. Census connects to a specific government program or purpose.”⁵⁵

An “Interest Group Society.” By 2017, the Census itself could boast that 132 federal programs used Census Bureau data “to distribute more than \$675 billion in funds during fiscal year 2015,”⁵⁶ a figure which by the 2020 Census will have grown to

50. Ibid.

51. Ford Foundation, “A Legacy of Social Justice,” <https://www.fordfoundation.org/about-us/a-legacy-of-social-justice/> (accessed June 11, 2018).

52. 52 U.S.C. § 10310(c)(3).

53. U.S. Office of Management and Budget, “Race and Ethnic Standards for Federal Statistics and Administrative Reporting.”

54. G. Cristina Mora, *Making Hispanics: How Activists, Bureaucrats, and Media Constructed a New American* (Chicago: The University of Chicago Press, 2014), p. 9.

55. Kenneth Prewitt, “Politics and Science in Census Taking,” Russell Sage Foundation, 2003, p. 1, http://www.washingtonpost.com/wp-srv/politics/documents/Pol_Sci.pdf (accessed June 11, 2018).

56. Marissa Hotchkiss and Jessica Phelan, “Uses of Census Bureau Data in Federal Funds Distribution,” U.S. Census Bureau, September 2017, <https://www.census.gov/library/working-papers/2017/decennial/census-data-federal-funds.html> (accessed June 11, 2018).

more than \$800 billion.⁵⁷ With this much money at stake, it is little wonder that special interest groups have sought, and largely succeeded, in controlling the Census. In recognition of this reality, Professor Alice Robbin wrote in 2000 that the United States has devolved into “an ‘interest group society’ and federal statistical policy, like all other aspects of contemporary American political life, is dominated by well-organized interest groups.”⁵⁸

Sociologist Nathan Glazer recognized the same phenomenon in a 2002 essay in which he states that “on the *noble* side of the equation, the Census questions about race are in part the result of major civil rights legislation. But that legislation was interpreted by the courts and by administrative agencies, both under the pressure of ethnic groups. As we follow this process further and further into the details that have shaped the Census, the element of nobility declines.”⁵⁹

Identity Politics. Today the racial questions have run out of all “nobility.” They have not only turned America into an “interest group society,” but have fanned the flames of an invidious form of identity politics that is robbing America of a sense of unity. In the past, even an actual interest in demographic data did not justify questions about who was partially African-American to the fourth and eighth degree; today, there exists no legitimate justification for an interest in who is “Asian” or “Hispanic.” Just as it did in the 19th century, by asking questions about race, the Census merely codifies bigotry and a racist mentality.

Questionable Ends. Finally, the government made the racial data it collected available for questionable ends. In the 19th century, for example, Secretary of State John C. Calhoun sought to use data from the 1840 Census that showed that freed blacks suffered insanity at a higher rate than enslaved ones

to prove that upon achieving their freedom, “the condition of the African, instead of being improved, has become worse.”⁶⁰ A century later, the Census Bureau in 1943 provided the U.S. Secret Service with the names and addresses of Japanese Americans so President Franklin D. Roosevelt could intern them during World War II.⁶¹

We can, and should, start to dismantle this entire edifice.

Recommendations

The executive branch should stop collecting data on artificially created ethnic groups and recognize that we are increasingly a mixed-race society. Calling someone “Hispanic” because they have a Spanish surname, for example, makes no sense when his family has been in the United States since the Spanish settlement of southern California three centuries ago.

Neither does classifying someone as black when he is born of mixed-race parents, who may themselves have come from mixed-race parents or may have had a “black” ancestor somewhere back in their family’s past. Classifying someone as “Asian,” given the wide array of countries, cultures, societies, and tribal and ethnic groups throughout the Asian continent, also makes no sense.

The 1977 OMB Directive 15 should be voided and the collection of *faux* racial and ethnic data by all executive agencies and departments through the Census and forms such as the EEO-1 issued by the Equal Employment Opportunity Commission should cease, with the exception of classifications relevant to medical research and criminal records.

Directives are exempted from the requirements of the Administrative Procedure Act (APA), which covers the promulgation of interpretive rules and regulations by the executive branch and federal agencies.⁶² In any event the OMB is not subject to the

57. The George Washington University, “Counting for Dollars 2020: The Role of the Decennial Census in the Geographical Distribution of Federal Funds,” <https://gwipp.gwu.edu/counting-dollars-2020-role-decennial-census-geographic-distribution-federal-funds> (accessed July 13, 2018).

58. Alice Robbin, “The Politics of Representation in the U.S. National Statistical System: Origins of Minority Population Interest Group Participation,” *Journal of Government Information*, No. 27 (2000), p. 431, <http://eprints.rclis.org/11385/1/RobbinPoliticsOfRepresentationJGI2000.pdf> (accessed June 11, 2018) [emphasis added].

59. Glazer, “Do We Need the Census Race Question?”

60. Melissa Nobles, *Shades of Citizenship: Race and the Census in Modern Politics* (Redwood City, CA: Stanford University Press, 2000), cited in Hochschild and Powell, “Racial Reorganization and the United States Census 1850–1930.”

61. J. R. Minkel, “Confirmed: The U.S. Census Bureau Gave Up Names of Japanese-Americans in WWII,” *Scientific American*, March 30, 2007, <https://www.scientificamerican.com/article/confirmed-the-us-census-b/> (accessed June 11, 2018).

62. 5 U.S. Code § 500 et seq.

Language for an Executive Order Ending Race-Based and Ethnicity-Based Decision Making

A possible executive order along these lines could include the following language:

Section 1. (a) It is the policy of the Executive Branch not to discriminate or give preferential treatment on the basis of race, color, national origin, or ethnicity in any of its programs or activities. Unless there are statutes or regulations requiring such discrimination or preferential treatment, no Executive Branch program, activity, or official shall engage in it.

(b) Each agency shall, no later than [date], examine its regulations and relevant statutes to determine if any of them contain such requirements or permitting of discrimination or preference. Where such regulations are found, the agency shall prepare, no later than [date], an amendment to such regulation ending the requirement or permitting of such discrimination or preference and forward it to the Attorney General for his review prior to publication in the Federal Register. Where such statutes are found, the agency shall, no later than [date], prepare a proposed amendment ending the requirement or permitting of such discrimination or preference and forward it to the Attorney General for his review prior to submission to Congress.

(c) Classifications on the basis of race, color, national origin, or ethnicity may be used for purposes of epidemiological research, identification of specific criminal suspects, and such other limited purposes if and only if the Attorney General determines that those classifications are consistent with the Constitution and the President has determined that they are necessary for the furtherance of a compelling public policy.

Section 2. (a) It is the policy of the Executive Branch not to use the disparate-impact approach in the enforcement or application of any civil-rights law. Unless there are statutes or regulations requiring the approach, no Executive Branch program, activity, or official shall use it.

*(b) Each agency shall, no later than [date], examine its regulations and relevant statutes to determine if any of them contain such requirements or permitting of that approach. Where such regulations are found, the agency shall prepare, no later than [date], an amendment to such regulation ending the requirement or permitting of such approach and forward it to the Attorney General for his review prior to publication in the Federal Register. Where such statutes are found, the agency shall prepare, no later than [date], a proposed amendment to such statute ending the requirement or permitting of such an approach and forward it to the Attorney General for his review prior to submission to Congress.**

* The authors thank Roger Clegg, President and General Counsel of the Center for Equal Opportunity, for this language.

APA, which means the OMB can change the directive at will.

The legitimate Census question that can be asked is one based on ancestry, the place of birth of an individual's parents. In order to "create statistics about ancestry groups in America," the Census Bureau currently asks for such information in question 13 of the American Community Survey: "What is this person's ances-

try or ethnic origin?" It then gives examples of "Italian, Jamaican, African Am. [sic], Cambodian, Cape Verdean, Norwegian, Dominican, French Canadian, Haitian, Korean, Lebanese, Polish, Nigerian, Mexican, Taiwanese, Ukrainian, and so on."⁶³ This question should be modified to take out "ethnic," however.

In addition to eliminating racial or ethnic qualifications, the government should also state that none

63. U.S. Census Bureau, "American Community Survey: Why We Ask Questions About Ancestry," <https://www.census.gov/acs/www/about/why-we-ask-each-question/ancestry/> (accessed June 13, 2018).

of the data on countries of descent should be used to favor any particular groups in funding, employment, or contracting. The President should issue an executive order ending all race-based and ethnicity-based decision making in the federal government.

Following issuance of this executive order, it should be established that federal jobs should go to the most qualified individuals regardless of their race or supposed ethnicity. Federal contracts should be awarded to the lowest qualified bidder—regardless of the so-called “identity” of the bidder’s employees and owners. Universities that receive taxpayer dollars should adhere to these practices in their admissions, contracting, and employment.

All Americans, no matter their race or ancestry, should be protected equally from discrimination and from the divisive identity politics that undermine our unity as a culture and a nation.

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