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# Cato's Letter

## The Sordid Business of Divvying Us Up

DAVID E. BERNSTEIN

Racial classifications by law have been as American as apple pie, since at least the 19th century. Modern Americans tend to shake their heads with revulsion when they think about or read about the lengths that government authorities went to back in the day to determine who was black for purposes of Jim Crow laws, or who was Asian for purposes of racist immigration and naturalization laws. But the irony is that while we don't really think about it very often, racial classification dictated by government rules is more common today than probably ever before in American history.

So many common activities—when you register your kid for school, when you apply for a job, when you apply for a mortgage and many other everyday occurrences—involve checking a box saying first whether you're Hispanic or not and then which racial group you consider yourself to be a member of.



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**T**hese modern racial classification norms did not arise spontaneously but are a product of maybe one of the most consequential government rules you've never heard of, a rule called Statistical Directive No. 15, which was promulgated by the Office of Management and Budget (OMB) in 1977. At the time, this was considered a rather modest rule change, because federal agencies had already been gathering data about various groups in the United States, but the data were inconsistent.

For example, there were at least eight ways of identifying the groups that we now call Hispanic back in the '70s, so you had apples and oranges. You couldn't compare data from one agency to another because there were no consistent classifications and definitions of the classifications. So the OMB said, "Okay. We just have to regularize this." They formed a committee to do so, to which very little attention was paid, and eventually they came up with our modern classifications.

And when OMB put these into the Federal Register, they warned, "By the way, just so we don't have any misunderstandings here, they're not supposed to be anthropological classifications. They're not supposed to be racial classifications. . . They're not supposed to be scientific in any way. They're not to be used for eligibility for any government programs. They're really just to have consistent statistics among agencies."

“These modern racial classification norms did not arise spontaneously.”

Nevertheless, in a very short time, they became used for all sorts of government programs and government-mandated disclosure rules ranging from affirmative action, one area most of us are very familiar with, to some areas that we probably don't recognize, that I didn't even know existed. For example, the National Institutes of Health and Food and Drug Administration, by government mandate, require all researchers under their jurisdiction to classify the people who are subjects of scientific and medical research according to these unscientific racial categories.

Have you ever wondered what role tribal membership plays in determining whether someone gets the legal status of American Indian to be eligible, for example, for Bureau of Indian Affairs programs? Or why, if you're an Amer-

ican of mixed racial heritage, there's no multiracial category to check and, in fact, until 1987, you were allowed to check only one category? Or why the U.S. government will classify a person of South American ancestry whose family moved to Asia and then came to the United States as being solely Hispanic, but if you're from an Asian background and you moved to Latin America and then to the United States, you are both Asian and Hispanic? Or why the government classifies immigrants from Pakistan as Asian, but their literal first cousins, who may live across the river and across the border in Afghanistan, are classified as white? Or why, as noted, researchers are required to categorize their subjects by crude racial divisions even though, as everyone acknowledges, those categories have no scientific validity?

“ These are the legal divisions we deal with. ”

My book *Classified: The Untold Story of Racial Classification in America* addresses those questions and more. I dive into the complex and sometimes surreal world of government-imposed racial categorization. In the book, I explore how the groupings developed; really, the easy way to avoid controversy was just to use classifications similar to what people were already familiar with. Therefore, and somewhat ironically, these classifications, which were made with good intentions, were actually direct lineal descendants of the racist classifications that anthropologists had come up with in the 19th century. They follow the general black, yellow, brown, and white categories, which, again, have no scientific basis, are based purely on skin color and physiognomy, and are still in use today.

Some of these classifications, such as Asian American, combine groups that are incredibly internally diverse and distinct. I mean, imagine one category that includes everyone from the western border of Pakistan to the Philippines. That's 65 percent of the world's population. There are groups that don't look alike, don't have the same religion, don't have the same culture, and, perhaps most importantly, don't think of themselves, even in the United States, as belonging to the same category. Only about 35 percent of so-called Asian Americans accept that classification even as a secondary identity. However, these are the legal divisions we deal with.

You might say to yourself, “We don’t have what they used to have in the 19th and early 20th century race trials,” in which it might have been debated whether someone was white or not. And then we’d have a whole trial to determine on a variety of pseudo anthropological and pseudoscientific bases what race they really are. It all ultimately comes down to self-identification, right? No. Unfortunately, not right. It’s true that for the most part, no one will question your self-identification when you fill out a form. But there are cases, especially those involving people who want to qualify as minority business enterprises for government affirmative action programs, where the government says, “Wait a second. Your name is Smith and you don’t look like you’re Hispanic,”—whatever that’s supposed to mean. “Prove to us that you’re Hispanic or Asian or whatever the case may be.”

And then there are, in fact, hearings or trials or appeals in which judges decide in pseudo anthropological ways what makes someone Hispanic. And even if we have official definitions, for example, if it says you have to be of Spanish descent or



culture to be considered Hispanic under the federal rules, how far back could that Spanish origin go? Is one-quarter enough? Is one-eighth enough? Do we use the one-drop rule, the way we did for race in the Jim Crow South?

Disturbingly, the way courts go about this bears a striking and disturbing resemblance to the way courts went about having race trials in the 19th century. The official classifications can be especially troubling for people who

come to the United States from foreign countries because the United States’s idiosyncratic racial classification scheme is unique.

In one incident, when our Peruvian nanny was applying for a green card, I was helping her. She had a form to fill out at the immigration office. She had no trouble checking Hispanic as opposed to non-Hispanic, but then it asked for race. And she goes, “What do I put down?” She said she’s mestiza, mixed Spanish and Indian, but of course there’s no mestiza category on American forms, even though that’s a very common identity in Latin America.

Now, you might say, “Well, she’s part Indian. Can’t she put down that she’s Native American or Indian?” No; because of lobbying from American Indian groups who don’t want to share the resources of the Bureau of Indian Affairs,

American Indians or Native Americans are defined as being of Canadian or U.S. tribal origin. Latin American Indians don't count. One reason these classifications are so crude and arbitrary is that no one thought too much about them at the time they were made, in the 1970s. If you go back to 1970, the last census year before Directive 15 came into being, the United States still had a largely black-white binary population. About 12 or 13 percent of the population was African American. Over 80 percent was non-Hispanic white, and the 5 percent of the population that was Hispanic (although it wasn't called that then) was generally classified as also white.

Basically, you had a large majority of whites, a significant minority of blacks, and then you had less than 1 percent of the population identified as Native American or Asian. So no one was paying much attention to those categories. All they wanted to do was regularize the statistic-keeping by the government.

“ We have a lot more borderline cases than we used to. ”

Today, thanks to a massive amount of immigration and intermarriage, we have a much larger Hispanic population. They have been, in effect, removed from the generic white category and have their own category, even though it's a separate question based on ethnicity instead of race. In practice, everyone just counts Hispanics as another racial group and limits the other racial categories to non-Hispanics. And now Hispanics comprise about 18 percent of the population. Asian Americans constitute about 7 percent of the population. The numbers of self-identified Native Americans have gone up somewhat. We also have a Pacific Islander and Native Hawaiian classification. In any event, these together make up a population about twice as big as the African American population.

We have a lot more borderline cases than we used to. Even within the African American community, there's a lot more immigration from places like Africa and the Caribbean, and there are always questions about how the immigrants should be classified. There's also a lot more interracial marriage than there used to be, an increase from less than 5 percent to 22 percent in the latest statistics.

Once these classifications come into being, interest groups form around them and are very protective of their boundaries. That's why this system be-

came so entrenched and there's very little ability to reform it.

My book addresses the following questions about official racial and ethnic classifications in the United States: Are the standard racial categories coherent? Does it make sense to place all people who have origins in Spanish-speaking countries in the same Hispanic classification regardless of skin hue, race, national origin, culture, and even whether their ancestors ever spoke Spanish? Because some such people, such as Basques from northwestern Spain and indigenous people in various countries, never spoke Spanish as a first language, if at all.

Is there a defensible reason to classify European Hispanics from Spain but no other European national or ethnic group as a minority group? Do South Asians, East Asians, and Austronesians belong in the same singular Asian American classification even though they have different appearances, cultures, religions, and ancestry? If so, why? How should bi- and multiracial people be classified? If a parent who is black-identified and a parent who is white-identified have a child, should that child be classified as black, white,

“Are the standard racial categories coherent?”

biracial, or something else?

Consider our history of sometimes violent religious conflict, often with heavy ethnic and racial overtones. Cases such as the anti-Mormon riots in the 19th century or the history of Protestant hostility toward Catholics. Those led, among other things, to a vigorous rebirth of the Ku Klux Klan in the 1920s. Later, various government authorities tried to suppress Jehovah's Witnesses, which resulted in many of our major First Amendment cases in the 1940s.

These conflicts have only the faintest echoes today, and I think most younger Americans in particular think of them as fairly ridiculous. No one cares that we have a Catholic president, Catholic speaker of the House, six Catholic Supreme Court justices.

In the future, perhaps we will look back on racial conflicts similarly as a vestige of a less sophisticated and more intolerant past. How the U.S. government handles racial classification will play a major role in whether we reach that outcome. Law played a significant role in establishing racial divisions in the United States, and law, or its absence, can play a significant role in maintaining or abolishing or at least diminishing those divisions in the future. ■



# Hope for America

**A**s a former certified public accountant (CPA) with decades of experience—including 3 years at the IRS following his graduation in the 1970s and 18 years currently the Tax Partner with a private investment company comprised of angel investors—Cato Sponsor Ken Criss understands the importance of Cato’s prudent stewardship of the assets entrusted to it by the Institute’s community of Sponsors. Cato celebrates the Institute’s financial stability thanks to the incredible generosity of its Sponsor community and is committed to using its resources to continue the fight against government intrusions against our liberty.

“For the past 30 years, I have been contributing to Cato annually and have attended many of the Cato Sponsor, education, and celebration events,” Ken says. “My wife, Terry, and I have seen the difference that Cato has made in bringing to congressional and public eyes the validity of libertarian ideals and have provided for Cato in our wills. Cato has accumulated a large endowment, but we want it to be even larger to advance its promotion of liberty to the forefront of American values where it belongs.”

Like many Cato Sponsors, Ken’s encounters with politics pushed him toward libertarianism. But few Sponsors can speak from the direct experience of having worked at the IRS.

“Upon graduation from college, I had faith in government policies and went to work for the IRS in 1970,” Ken explains. “When Nixon tasked my division with audits and enforcement of his

wage and price controls in 1973, I was unable to do this job in good conscience. I left the IRS and developed a CPA practice with a new skepticism toward government policies.”

Of course, the next president, Democrat Jimmy Carter, in 1976 replaced the Republican administration and brought record-high inflation and interest rates along with a recession, not to mention exercising the unenumerated power of creating a brand-new Department of Education. Disenchanted by the left and right, Ken “began pursuing a libertarian alternative to government.”

“In a world of governments that thrive on compromising citizen liberty for a higher good, Cato has been steadfast in fighting against these liberty incursions for all of these years of my support,” Ken observes. “I do not know of anyone whom I do not respect at Cato. In this changing world, by contrast, I cannot name 5 out of 535 federal politicians I admire and 20 of 535 that I respect.

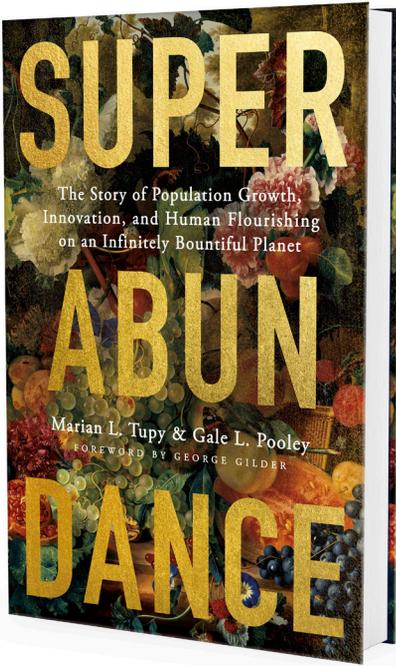
“There is very little in my life of which I am more proud than being a Sponsor of Cato. The best hope for America is that Cato, the Institute for Justice, and a few others will ultimately win over the minds of the collectivist populace,” Ken concludes.

Everyone at Cato is honored to have Ken and Terry as active Sponsors. We thank all our Sponsors for partnering with Cato to defend the ideas that will create a freer, more prosperous world. ■

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“ This book demonstrates that population growth is not a problem; it is the solution—the most important resource.”

— GEORGE WILL



Generations of people have been taught that population growth makes resources scarcer. However, after analyzing the prices of hundreds of commodities, goods, and services spanning two centuries, authors Marian Tupy and Gale Pooley found that not only did resources become more abundant as the population grew, but that resource abundance increased faster than the population—a relationship they call superabundance. But large populations are not enough to sustain superabundance. To innovate, people must be allowed to think, speak, publish, associate, and disagree. In a word, they must be free.

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