

Marking “MENA”: Civil Rights legislation as a catalyst for racial institutionalization

Extended Abstract

Introduction

Especially since 9/11 and the state-directed “War on Terror,” scholars have documented increased instances of discrimination towards people who have been forcibly identified or associated with the Middle Eastern and North African (MENA) region (Bayoumi 2015; Omi and Winant 2015). Some scholars have turned to theories of race and racialization to explain this type of particularization as evidence of an emerging MENA racial identity (Cainkar 2009; Grewal 2014; Naber 2000; Cainkar and Selod 2018). Yet questions of what exactly racialization *is*, and whether racialization, as such, can serve as an adequate explanatory theory for these instances of discrimination remain unsettled (Goldberg 2005; Gonzalez-Sobrinio and Goss 2019; Rattansi 2005).

This paper contributes both empirically and theoretically to this debate by examining how several prominent pieces of legislation, passed during the Civil Rights Movement in the 1960s, may have shaped the terrain on which people understand and advocate for state-recognized Middle Eastern and North African (MENA) racial categorization. I compare Census-produced reports and documents, as well as advocate testimony for a new MENA racial category with secondary and primary documents relating to major civil rights legislation—the Civil Rights Act of 1964 and the Immigration, and the Nationality Act of 1965 in particular—to examine how the critical historical juncture shaped and constrained the bounds of a potentially new racial designation. Given the profound and novel remediation structure introduced through civil rights reforms, coupled with a change in how the state both collects and uses demographic and race-

based statistics, I argue that the movement to add a new MENA race category to the census must be further contextualized by the legacy of the civil rights era.

The movement for MENA recognition

Efforts at state sanctioned recognition of the Middle Eastern and North African population have been long-running (Kayyali 2013; Beydoun 2016). The current debates involving the creation of a new MENA race category are sparked by several federal policy decisions regarding categories of race and ethnicity. In 1977, the Office of Management and Budget issued Directive 15, an official set of race and ethnicity standards to be used for statistical measurement on the census (Humes and Hogan 2009). This directive stipulated that “a person having origins in any of the original peoples of Europe, the Middle East, or North Africa,” would be considered White (“Revisions to the Standards” 62 Fed. Reg. 210, 1997). Scholars, Arab American organizations, and activists argued that this designation did not reflect the lived experience of people who were identifiable by others as being from the Middle Eastern or North African region. Beginning in the 1980s they embarked on a campaign to add a MENA race category to the census that would help gather data of discrimination on this group, as well as track this group for potential federal assistance and resources (Kayyali 2013; Samhan 1999; Cainkar and Selod 2018).

In 2015, the U.S. Census Bureau began testing for the addition of a new Middle Eastern or North African (MENA) race and ethnicity question in the 2020 decennial census (Buchanan et. al. 2016). After three years of alternative testing questionnaires, public comment periods, forums for expert feedback, and race and ethnicity analyses reports, all signs pointed toward the inclusion of the new MENA category in the upcoming census. And yet, in a 2018 memorandum, the bureau’s chief of population division announced that the category would not be added, and

that the bureau felt “that more research and testing is needed” before the new race category could be incorporated (Fontenot, Jr. A. E. 2018). Despite this postponement advocates are continuing to engage with the Census Bureau, in hopes that the designation will be taken up once again.

Historicizing racial classification on the Census

The current debates about adding a new MENA category can be traced directly back to the OMB’s 1977 Directive 15, but a longer-view of racial categorization is required to fully understand the social and political context of institutionalized racial designation. Of specific concern for the MENA population is a set of cases in the late 19th and early 20th century concerning efforts of immigrants petitioning for naturalization. One of the most pivotal cases was that of *Dow v. United States* regarding the efforts of a Syrian immigrant living in the U.S. who petitioned for naturalization in 1914. After initially being denied on the grounds that naturalization was reserved for “aliens being free white persons, and to aliens of African nativity and to persons of African descent,” the Court of Appeals eventually overturned the decision in 1915, finding that “it seems to be true beyond question that the generally received opinion [is] that the inhabitants of a portion of Asia, including Syria, [are] to be classed as white persons” (*Ex parte Dow*, 1914; *Dow v. United States*, 1915).

Scholars have advanced several competing explanations for the seeming shift in the court’s metrics for racial standards. Some argue that this shift resulted from the triumph of the common-knowledge test—which made determinations about racial categorization that relied on the common-sense understandings of racial belonging—over the scientific-evidence inquiry model—which relied on supposed objective and scientific appeals, which eventually became too empirically contradictory (Haney López 1996). Others argue that the shift should instead be conceptualized as the emergence of a performative approach to whiteness—one that subjected

immigrants to a case-by-case evaluation of their ability to assimilate, and dolled out “white privilege [as] a quid pro quo for white performance (Tehrani 2009: 40). But even as the *Dow v. United States* case may anchor racial classification schemes within the early 19th century juridical realm, concerns from the state regarding proper classification, categorization, and enumeration were not taken up by the courts absent a larger social and political context. In other words, while the law is unquestionably involved in the construction of racial categories, legal classifications are often reflective of labels already legible within a particular social order (Handlin 1950; Emigh et. al. 2015; Husain 2017). Thus, pegging the *Dow v. United States* case as originating loci for MENA racialization, as some scholars have done, in part obscures the broader considerations of the political, social and economic order into which new immigrants populations were arriving to the U.S. at the turn of the 20th century.

[Anticipated headings]

The pressure of the reform era

Current stakes for legal recognition

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