The Fordham Law Review and the Center on Race, Law & Justice presents

Fifty Years of Loving v. Virginia and the Continued Pursuit of Racial Equality

Friday, November 3, 2017 | 9:30 a.m. - 5 p.m.
CLE Materials & Speaker Biographies

Fordham Law School, 150 West 62nd Street, New York City

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FORDHAM UNIVERSITY
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Fifty Years of Loving v. Virginia and the Continued Pursuit of Racial Equality

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Kahn, Jonathan. *Race in a Bottle: Drugmakers are eager to develop medicines targeted at ethnic groups, but so far they have made poor choices based on unsound science*. Scientific American. (August 2007)

Speakers

Aziza Ahmed
Aziza Ahmed is Professor of Law at Northeastern University School of Law. Professor Ahmed is an internationally renowned expert in health law, criminal law and human rights. Her scholarship focuses on health law and policy, criminal law, race, feminist theory, and development and human rights. Professor Ahmed has been selected as a fellow with the Program in Law and Public Affairs (LAPA) at Princeton University. She will be combining her sabbatical and her fellowship to spend the 2017-2018 academic year developing her work on law, feminism and science into a book with particular emphasis on legal and policy responses to HIV.

Taunya Lovell Banks

Kevin Brown
Professor Brown has been on the faculty of the Indiana University Maurer School of Law since 1987. From August 2004 to August 2008, he was also the Director of the Hudson & Holland Scholars Programs. Hudson & Holland is a scholarship program that recruits the high achieving underrepresented minority students to the undergraduate student body on the Bloomington campus.

Professor Brown joined the faculty of the Indiana University Maurer School of Law in 1987. He teaches Torts, Criminal Law, Law and Education, Sports Law, and Race, American Society, and the Law. Brown has been a visiting professor at the University of Texas School of Law, University of Alabama School of Law, and University of San Diego School of Law. He has been affiliated with universities on four different continents including the National Law School of India University in Bangalore, India; the Indian Law Institute in New Delhi, India; the Law Faculty of the University of Witwatersrand in Johannesburg, South Africa; the Law Faculty of the University of Capetown in Capetown, South Africa; Adilet Law School in Almaty, Kazakhstan; and the University of Central America in Managua, Nicaragua.

His research interest is primarily in the area of race, law and education where he has published over 80 articles or comments. Carolina Academic Press published his 2005 book entitled, Race, Law and Education in the Post Desegregation Era and they published his 2014 book entitled, Because of Our Success: The Changing Racial and Ethnic Ancestry of Blacks on Affirmative Action. A frequent speaker at scholarly conferences, Brown has also spoken on issues of race, law and education to groups at annual Convention of the NAACP, the Congressional Black Caucus Braintrust Meetings, the National Bar Association, the American Bar Association and the Justices of the Indiana Supreme Court and at several leading law schools including Harvard, NYU, Virginia, Duke, Cornell, Northwestern, UCLA and Texas.
Tanya Hernández
Tanya Katerí Hernández, is the Archibald R. Murray Professor of Law at Fordham University School of Law, and an internationally recognized comparative race law expert and Fulbright Scholar who has visited at the Université Paris Ouest Nanterre La Défense, in Paris and the University of the West Indies Law School, in Trinidad. Professor Hernández’s scholarly interest is in the study of comparative race relations and anti-discrimination law as displayed in the book Racial Subordination in Latin America: The Role of the State, Customary Law and the New Civil Rights Response,” (Cambridge Univ. Press). Her next book “Multiracials and Civil Rights: Mixed-Race Stories of Discrimination” is forthcoming from NYU Press.

Leah Hill
Leah A. Hill is associate dean for experiential education and associate clinical professor at Fordham University School of Law. Dean Hill teaches the Family Advocacy Clinic and poverty law. She specializes in interdisciplinary approaches to family law problems. Dean Hill is the recipient of the prestigious Fulbright Scholar Teaching award and has lectured and consulted extensively in the United States and abroad. She has also served on numerous local and national committees and boards, including, the New York City Children’s Cabinet Advisory Board, the Advisory Board for the Violent Crimes Against Women on Campuses Technical Assistance Program and the National Child Custody and Visitation Focus Group.

Upon graduating from law school Professor Hill was awarded a Reginald Heber Smith Community Lawyer Fellowship. She later served as a staff attorney with Legal Services for New York and the Legal Aid Society’s Civil Division. Prior to joining the Fordham Law faculty in 1996, Professor Hill was an acting assistant professor at New York University School of Law.

Selected Publications
Do You See What I See? Reflections on How Bias Infiltrates the New York City Family Court — the Case of the Court Ordered Investigation, 40 Colum. J.L. & Soc. Probs. 527, Summer 2007
Professional Mandate for the Use of “Strategic Collaborations” by Lawyers and Social Workers In Child Maltreatment/Intimate Partner Violence, with Virginia Strand, Ann Moynihan and Mary Ann Forrey

Education
Professor Hill obtained her BA in sociology from Brooklyn College in 1982 and her JD from Rutgers University School of Law-Newark in 1985, where she was a staff member of the Women’s Rights Law Reporter.

Jonathan Kahn
Jonathan Kahn is the James E. Kelley Professor of Law at Mitchell | Hamline School of Law. He holds a Ph.D. in U.S. History from Cornell University and a J.D. from the Boalt Hall School of Law, University of California, Berkeley. His current research focuses on how intersections of law and biotechnology shape broader understandings of race and racism in American society. He received a three year grant from the National Library of Medicine to support the writing of his book, Race in a Bottle: The Story of BiDil and Racialized Medicine in a Post-Genomic Age (Columbia University Press, 2013), which was awarded Honorable Mention for the 2013 Best Book Award, by the Race, Ethnicity, and Politics Section of the American Political Science Association. His most recent book, Race on the Brain: What Implicit Bias Gets Wrong About the Struggle for Racial Justice has just been published by Columbia University Press: https://cup.columbia.edu/book/race-on-the-brain/9780231184243.

Terence Keel
Dr. Terence Keel is an Associate Professor at the University of California, Santa Barbara where he serves as Vice Chair to the Department of History and holds an appointment in the Black Studies Department. He earned is PhD from Harvard University. Dr. Keel is an interdisciplinary scholar with training in religious studies, the history of science, African American history, as well as science and technology studies. He has written widely about the history of racism and its connections to the modern biological sciences, religious intellectual history, law, medicine, and public health. His research has explored these issues in the United States, Europe, and Mexico. His book, Divine Variations (Stanford University Press, January 2018) is a study of how Christian thought facilitated the development of scientific racism and shaped the epistemic commitments of the modern study of human biodiversity.
Robin Lenhardt
Robin A. Lenhardt is a Professor of Law and the Founder and Faculty Director of the Center on Race, Law & Justice at Fordham Law School. Professor Lenhardt specializes in matters pertaining to race, civil rights, family, and citizenship. In addition to Fordham, she has held teaching positions at Columbia Law School, the Georgetown University Law Center, and the University of Chicago Law School. Before entering legal academia, Professor Lenhardt held a number of positions in the private and non-profit sectors. A law clerk to U.S. Supreme Court Justice Stephen G. Breyer and Judge Hugh Bownes of the U.S. Court of Appeals for the First Circuit, Professor Lenhardt was formerly a Counsel in the Washington, D.C. office of Wilmer, Cutler & Pickering, where she was a member of the litigation team that defended the University of Michigan in the Grutter v. Bollinger and Gratz v. Bollinger affirmative action lawsuits. Professor Lenhardt received a Skadden Foundation Fellowship to work as a staff attorney for the National Lawyers’ Committee for Civil Rights and was employed as an attorney advisor in the U.S. Department of Justice’s Office of Legal Counsel. She later returned to DOJ to review civil rights issues as part of President Barack Obama’s transition team. Professor Lenhardt’s scholarship has appeared in numerous books and journals, including the California Law Review, the Iowa Law Review, the New York University Law Review, and the UCLA Law Review. Professor Lenhardt is currently co-editor of a book entitled Critical Race Judgments: U.S. Opinions on Race and Law that will be published by Cambridge University Press. She holds an A.B. degree in English from Brown University; a J.D. from Harvard Law School; an M.P.A. from Harvard University’s John F. Kennedy School of Government; and an L.L.M. from the Georgetown University Law Center.

Minkah Makalani
Minkah Makalani is associate professor of African and African Diaspora Studies at the University of Texas at Austin. He is the author of the book, In the Cause of Freedom: Radical Black Internationalism from Harlem to London, 1917-1939, and co-editor (with Davarian Baldwin) of Escape from New York: The New Negro Renaissance beyond Harlem. His work has appeared in the journals Souls, Social Text, Journal of African American History, Women, Gender, and Families of Color, and South Atlantic Quarterly, as well as in the collections White Out: The Continuing Significance of Racism, Outside In: The Transnational Circuitry of U.S. History, and C.L.R. James’ Beyond a Boundary Fifty Years On. He is currently at work on a study of C. L. R. James’s return to Trinidad in 1958, and his work on West Indies Federation. It is tentatively titled, Calypso Conquered the World: C.L.R. James and the Politically Unimaginable in Trinidad.

Linda McClain
Linda C. McClain is Professor of Law and Paul M. Siskind Research Scholar at Boston University School of Law, and affiliated faculty with BU’s Kilachand Honors College and Women’s Gender and Sexuality Studies Program. She teaches family law, feminist legal theory, and gender and law. In 2016-2017, she was a Laurance S. Rockefeller Faculty Fellow at the University Center for Human Values, Princeton University. Her current book project, Bigotry, Conscience, and Marriage: Past and Present Controversies (under contract with Oxford University Press), examines the rhetoric of bigotry and conscience in controversies over interracial, interfaith, and same-sex marriage and controversies over religious and “conscience-based” exemptions from antidiscrimination laws. Her scholarship addresses the respective roles of the institutions of civil society and government in fostering persons’ capacities for democratic and personal self-government, as in The Place of Families: Fostering Capacity, Equality, and Responsibility (Harvard University Press, 2006), and the relationship between constitutional rights and responsibilities, as in Ordered Liberty: Rights, Responsibilities, and Virtues (Harvard, 2013) (with James E. Fleming). Other books include: Gay Rights and the Constitution (Foundation Press, 2016) (co-authored with Fleming, Sotirios A. Barber, and Stephen Macedo); Gender Equality: Dimensions of Women’s Equal Citizenship (Cambridge University Press, 2009) (co-edited with Joanna Grossman); and What is Parenthood? Contemporary Debates About the Family (NYU Press, 2013 (co-edited with Daniel Cere).

Jasmine Mitchell
Jasmine Mitchell is an Assistant Professor of American Studies and Media Studies at the State University of New York–Old Westbury. Her book manuscript, Imagining the Mulatta: Managing Blackness in U.S. and Brazilian Media argues that contemporary popular media representations of the mulatta (a woman of African and European descent) function as contested symbols of multiracial harmony in the United States and Brazil while simultaneously masking anti-blackness in the Americas. She is an active member of the Critical Mixed Race Studies Association.
Melissa Murray
Melissa Murray is the Alexander F. and May T. Morrison Professor of Law at the University of California, Berkeley. From March 2016 to June 2017, she served as interim dean of Berkeley Law from March 2016 to June 2017. Her research focuses on the roles that criminal law and family law play in articulating the legal parameters of intimate life, and encompasses such topics as marriage and its alternatives, the legal regulation of sex and sexuality, the marriage equality debate, and reproductive rights and justice. Her publications have appeared (or are forthcoming) in the California Law Review, Columbia Law Review, Michigan Law Review, Pennsylvania Law Review, Virginia Law Review, and Yale Law Journal, among others. She is the co-author (with K. Luker) of Cases on Reproductive Rights and Justice, the first casebook in the field of reproductive rights and justice. Murray is a graduate of the University of Virginia and Yale Law School. Following law school, Murray clerked for Hon. Stefan R. Underhill and Hon. Sotomayor.

Osagie Obasogie
Osagie K. Obasogie, J.D., Ph.D., is Haas Distinguished Chair and Professor of Bioethics at the University of California, Berkeley, in the Joint Medical Program and School of Public Health. He is also a Senior Fellow at the Center for Genetics and Society. Obasogie's scholarly interests include Constitutional law, bioethics, sociology of law, and reproductive and genetic technologies. His writings have spanned both academic and public audiences, with journal articles in venues such as the Law & Society Review, University of Pennsylvania Journal of Constitutional Law, Stanford Technology Law Review, and the Journal of Law, Medicine, and Ethics along with commentaries in outlets including the New York Times, The Atlantic, Slate, the Los Angeles Times, Boston Globe, San Francisco Chronicle, and New Scientist. His first book, Blinded By Sight: Seeing Race Through the Eyes of the Blind (Stanford University Press) was awarded the Herbert Jacob Book Prize by the Law and Society Association. His second book, Beyond Bioethics: Towards a New Biopolitics (co-edited with Marcy Darnovsky), examines the past, present, and future of bioethics and is forthcoming with the University of California Press. Obasogie received his B.A. in Sociology and Political Science (with distinction in both majors) from Yale University, his J.D. from Columbia Law School where he was a Harlan Fiske Stone Scholar, and his Ph.D. in Sociology from the University of California, Berkeley where he was a fellow with the National Science Foundation.

Chinyere Osuji
Chinyere Osuji is an Assistant Professor of Sociology at Rutgers University (Camden) with affiliations in Africana Studies and Latin American and Latino studies. Before coming to Rutgers, she was a Postdoctoral Fellow at the University of Pennsylvania Center for Africana Studies. Her first book, Boundaries of Love: Interracial Marriage from the United States to Brazil (Under contract, NYU Press), takes a novel approach to race relations by centering the experiences of black-white couples in the two sites. Based on 103 qualitative individual interviews with spouses in black-white couples in Los Angeles and Rio de Janeiro (in Portuguese), Boundaries of Love is among the first systematic comparisons of how non-elite Americans and Brazilians, both black and white, give meaning to race and color in their everyday lives. Examining the family as a key institution for dissolving, reinforcing, bridging and blurring ethnoracial boundaries, Boundaries of Love is also among the first studies of comparative race relations taking an intersectional approach. Research from this study has garnered awards from the American Sociological Association’s Section on Racial and Ethnic Minorities (ASA-SREM) and the Population Association of America (PAA).

Kimani Paul-Emile
Kimani Paul-Emile is an Associate Professor of Law, Associate Director and Head of Domestic Programs and Initiatives at Fordham Law School’s Center on Race, Law & Justice, and faculty co-director of the Fordham Law School Stein Center for Law & Ethics. Dr. Paul-Emile specializes in the areas of law & biomedical ethics, anti-discrimination law, and health law. Her scholarship has been published widely in such journals as the Virginia Law Review, Georgetown Law Journal (forthcoming 2018), UCLA Law Review, George Washington Law Review, and the New England Journal of Medicine. Dr. Paul-Emile’s scholarship has appeared in or been covered by over 30 national and international news organizations, including the New York Times, National Public Radio, CBS News, MSNBC, CNN, Al Jazeera America, and The Guardian.

Dr. Paul-Emile was selected by the Greenwall Foundation to receive a Faculty Scholar Award in Bioethics for 2013-2016: an award intended to enable outstanding junior faculty members to conduct original research to help resolve important policy and clinical dilemmas at the intersection of ethics and the life sciences. She was also awarded a Public Health Law Research grant from the Robert Wood Johnson Foundation, the nation’s leading philanthropy on health and health care.

Prior to pursuing her doctoral degree, Dr. Paul-Emile served as associate counsel at the Brennan Center for Justice at New York University School of Law, and practiced civil rights law at the Center for Constitutional Rights, where she was a National Association for Public Interest Law (now Equal Justice Works) Fellow and later the William Moses Kunstler Fellow for Racial Justice. She also served as senior faculty development consultant at the New York University Center for Teaching Excellence. Dr. Paul-Emile holds an A.B. degree in Political Science and in American Civilization, with honors, from Brown University; a J.D. from Georgetown University Law Center; and a Ph.D. in American Studies from New York University.

Reginald Oh
Reginald Oh is Professor of Law at Cleveland-Marshall College of Law at Cleveland State University. He teaches Constitutional Law, Civil Procedure, and Legal Profession. His scholarship focuses on issues of race, racism, and equal protection.
Russell Robinson


Rose Cuisin Villazor
Professor Rose Cuisin Villazor is Professor of Law and Martin Luther King, Jr. Hall Research Scholar at the University of California at Davis School of Law. In the Fall of 2017, she is Visiting Professor of Law at Columbia Law School. Professor Villazor teaches, researchers and writes in the areas of immigration and citizenship law, property law, Asian Americans and the law, equal protection law and critical race theory. Her research agenda explores legal structures and systems that determine membership and sense of belonging in the United States.


She obtained her LL.M from Columbia Law School, where she served as a Human Rights Fellow, and her J.D. from American University Washington College of Law, where she was a Valentin Fuentes Fellow.

William Zabel
Bill Zabel is founding partner of Schulte Roth and Zabel. He practices in the areas of estate planning, wills, trusts, charitable foundations, income-and gift-tax planning, estate administration, and family law.

Bill graduated summa cum laude and Phi Beta Kappa from Princeton University and cum laude from Harvard Law School. Bill has received numerous awards, including a Lifetime Achievement Award from The American Lawyer, an Eleanor Roosevelt Val-Kill Award, the Brandeis University Distinguished Community Service Award, the Distinguished Service Award (conferred by The New School), the Lawyers Committee for Human Rights Extraordinary Leader Award, and the Champion for Change Award from the Harry and Jeanette Weinberg Center for Elder Abuse Prevention. In 2014, Bill won the inaugural Robert F. Kennedy Justice Prize from the Lawyers’ Committee for Civil Rights Under Law.

Bill is a member of the American Law Institute and the Council on Foreign Relations, a Fellow of Brandeis University, American College of Trusts and Estates Counsel and the American Bar Foundation, and an Academician of the International Academy of Estate and Trust Law. His civic and philanthropic activities have included, among many others, chair of Human Rights First, trustee or director of New York University, The New School, Mailman School of Public Health, The Lymphoma Foundation, The JPB Foundation (vice chairman), Doctors of the World, Princeton University Planned Giving Committee, Sakharov Archives, Lincoln Center Theater, and The Academy of American Poets.
Interrace marriages in the U.S. 50 Years After Loving v. Virginia

One-in-six newlyweds are married to someone of a different race or ethnicity

BY Gretchen Livingston and Anna Brown

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Terminology

The term “intermarriage” refers to marriages between a Hispanic and a non-Hispanic, or marriages between non-Hispanic spouses who come from the following different racial groups: white, black, Asian, American Indian, multiracial or some other race.¹

In the racial and ethnic classification system used for this report, individuals are classified first by ethnicity (defined as whether someone is Hispanic or not) and then by race. As such, all references to whites, blacks, Asians, American Indians, multiracial persons or persons of some other race include those who are not Hispanic; Hispanics may be of any race. So, for instance, in the 2015 American Community Survey, 4% of black newlyweds reported that they are also Hispanic. These people are categorized as “Hispanic” in this analysis, and if they are married to someone who identifies as a non-Hispanic black, both are counted as being in an intermarriage. By the same token, if a Hispanic black person marries a non-Hispanic white person, their marriage would be classified as one between a Hispanic and a white person rather than a black and a white person.

Beginning with the 2000 census, individuals could choose to identify with more than one group in response to the race question. In this analysis, these multiracial people are treated as a separate race category, different from those who identify as a single race, including those who identify as “some other race.” (As with single race individuals, a multiracial person who also identifies as Hispanic would be classified as Hispanic.)

In the secondary data analysis, the term “Asian” includes native Hawaiians and other Pacific Islanders; “American Indian” includes Alaska natives. In the analysis of the Pew Research Center surveys and the General Social Survey, Asian includes anyone who self-identifies as Asian.

“Newlyweds” or people who are “recently married” or “newly married” include those who got married in the 12 months prior to being surveyed for 2008 to 2015 data. In all other years, newlyweds are those who married in that same year. Data analyses for 1967 through 1980 are limited to newlyweds who married for the first time, while analyses for subsequent years include people marrying for the first time and those who have remarried.

People born in one of the 50 states or the District of Columbia or who were born abroad to at least one American parent are classified as “U.S. born.” All others are classified as “foreign born,”

¹ This marks a change from prior Pew Research Center reports regarding intermarriage, which classified couples including one multiracial spouse and one spouse of “some other race” (who didn’t identify as white, black, Hispanic, Asian or multiracial) as being in a same-race marriage. Because there are very few people who fall into the “some other race” category, the fact that these couples are now classified as intermarried has a minimal effect on estimates.
including those born in Puerto Rico or other United States territories. While these individuals are U.S. citizens by birth, the convention of categorizing persons living in the U.S. who were born in U.S. territories as foreign born has been used by the United Nations. The terms “foreign born” and “immigrant” are used interchangeably.

In the analysis of educational attainment, “some college” includes those with an associate degree or those who attended college but did not obtain a degree. “High school or less” includes those who have attained a high school diploma or its equivalent, such as a General Education Development (GED) certificate.

“Metro areas” in this report are classified based on metropolitan statistical areas (MSA), which consist of at least one large urban core with 50,000 people or more, as well as neighboring areas that are socially and economically linked to the core area. They are a proxy for urban and suburban areas.

For Pew Research Center survey data, references to urban, suburban and rural are based on the respondent’s ZIP code. Urban residents are those who live within the central city of an MSA. Suburban residents are those who live within an MSA county, but are not within the central city. Rural residents are those who do not live in an MSA county.
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Interrace marriage in the U.S. 50 Years After Loving v. Virginia

One-in-six newlyweds are married to someone of a different race or ethnicity

In 2015, 17% of all U.S. newlyweds had a spouse of a different race or ethnicity, marking more than a fivefold increase since 1967, when 3% of newlyweds were intermarried, according to a new Pew Research Center analysis of U.S. Census Bureau data. In that year, the U.S. Supreme Court in the Loving v. Virginia case ruled that marriage across racial lines was legal throughout the country. Until this ruling, interracial marriages were forbidden in many states.

More broadly, one-in-ten married people in 2015 – not just those who recently married – had a spouse of a different race or ethnicity. This translates into 11 million people who were intermarried. The growth in intermarriage has coincided with shifting societal norms as Americans have become more accepting of marriages involving spouses of different races and ethnicities, even within their own families.

The most dramatic increases in intermarriage have occurred among black newlyweds. Since 1980, the share who married someone of a different race or ethnicity has more than tripled from 5% to 18%. White newlyweds, too, have experienced a rapid increase in intermarriage, with rates rising from 4% to 11%. However, despite this increase, they remain the least likely of all major racial or ethnic groups to marry someone of a different race or ethnicity.

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2 In keeping with the U.S. Census Bureau definition, ethnicity refers to whether an individual is of Hispanic origin or not. Intermarriages are defined as marriages between Hispanic and non-Hispanic persons, or marriages between white, black, Asian, American Indian or multiracial persons, or persons who report that they are some other race. Among all intermarried couples in 2015, 54% were in interethnic (Hispanic/non-Hispanic) marriages, and the remainder was in interracial marriages.

www.pewresearch.org
Asian and Hispanic newlyweds are by far the most likely to intermarry in the U.S. About three-in-ten Asian newlyweds (29%) did so in 2015, and the share was 27% among recently married Hispanics. For these groups, intermarriage is even more prevalent among the U.S. born: 39% of U.S.-born Hispanic newlyweds and almost half (46%) of U.S.-born Asian newlyweds have a spouse of a different race or ethnicity.

For blacks and Asians, stark gender differences in intermarriage

Among blacks, intermarriage is twice as prevalent for male newlyweds as it is for their female counterparts. While about one-fourth of recently married black men (24%) have a spouse of a different race or ethnicity, this share is 12% among recently married black women.

There are dramatic gender differences among Asian newlyweds as well, though they run in the opposite direction – Asian women are far more likely to intermarry than their male counterparts. In 2015, just over one-third (36%) of newlywed Asian women had a spouse of a different race or ethnicity, compared with 21% of newlywed Asian men.

In contrast, among white and Hispanic newlyweds, the shares who intermarry are similar for men and women. Some 12% of recently married white men and 10% of white

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3 Asian Americans are an incredibly diverse group, with varying histories in the U.S. and very different demographic and economic profiles. For a more detailed look at Asian American subgroups and their intermarriage patterns, see “The Rise of Asian Americans”.

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**About three-in-ten Asian newlyweds in the U.S. are intermarried**

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<th>% of newlyweds who are intermarried</th>
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Note: Whites, blacks and Asians include only non-Hispanics. Hispanics are of any race. Asians include Pacific Islanders.
"Intermarriage in the U.S. 50 Years After Loving v. Virginia"

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**Black men are twice as likely as black women to intermarry**

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<th>% of U.S. newlyweds who are intermarried</th>
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"Intermarriage in the U.S. 50 Years After Loving v. Virginia"
women have a spouse of a different race or ethnicity, and among Hispanics, 26% of newly married men and 28% of women do.

A more diverse population and shifting attitudes are contributing to the rise of intermarriage

The rapid increases in intermarriage rates for recently married whites and blacks have played an important role in driving up the overall rate of intermarriage in the U.S. However, the growing share of the population that is Asian or Hispanic, combined with these groups’ high rates of intermarriage, is further boosting U.S. intermarriage overall. Among all newlyweds, the share who are Hispanic has risen by 9 percentage points since 1980, and the share who are Asian has risen 4 points. Meanwhile, the share of newlyweds who are white has dropped by 15 points.

Attitudes about intermarriage are changing as well. In just seven years, the share of adults saying that the growing number of people marrying someone of a different race is good for society has risen 15 points, to 39%, according to a new Pew Research Center survey conducted Feb. 28-March 12, 2017.

The decline in opposition to intermarriage in the longer term has been even more dramatic, a new Pew Research Center analysis of data from the General Social Survey has found. In 1990, 63% of nonblack adults surveyed said they would be very or somewhat opposed to

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Dramatic dive in share of nonblacks who would oppose a relative marrying a black person

% saying they would be very or somewhat opposed to a close relative marrying someone who is ___ among U.S. adults who are not that race or ethnicity

![Graph showing the decline in opposition to intermarriage](https://example.com/graph.png)

Note: Due to changes in question wording, the universe of nonblacks prior to 2000 includes anyone who reported a race other than black; in 2000 and later, the universe of nonblacks includes those who did not identify as single-race, non-Hispanic blacks (and so may include Hispanic blacks and multiracial blacks).

Source: Pew Research Center analysis of General Social Survey.

“Interracial Marriages in the U.S. 50 Years After Loving v. Virginia”

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a close relative marrying a black person; today the figure stands at 14%. Opposition to a close relative entering into an intermarriage with a spouse who is Hispanic or Asian has also declined markedly since 2000, when data regarding those groups first became available. The share of nonwhites saying they would oppose having a family member marry a white person has edged downward as well.

**Intermarriage somewhat more common among the college educated**

In 1980, the rate of intermarriage did not differ markedly by educational attainment among newlyweds. Since that time, however, a modest intermarriage gap has emerged. In 2015, 14% of newlyweds with a high school diploma or less were married to someone of a different race or ethnicity, compared with 18% of those with some college and 19% of those with a bachelor’s degree or more.

The educational gap is most striking among Hispanics: While almost half (46%) of Hispanic newlyweds with a bachelor’s degree were intermarried in 2015, this share drops to 16% for those with a high school diploma or less – a pattern driven partially, but not entirely, by the higher share of immigrants among the less educated. Intermarriage is also slightly more common among black newlyweds with a bachelor’s degree (21%) than those with some college (17%) or a high school diploma or less (15%).

Among recently married Asians, however, the pattern is different – intermarriage is far more common among those with some college (39%) than those with either more education (29%) or less education (26%). Among white newlyweds, intermarriage rates are similar regardless of educational attainment.
Other key findings

- The most common racial or ethnic pairing among newlywed intermarried couples is one Hispanic and one white spouse (42%). Next most common are one white and one Asian spouse (15%) and one white and one multiracial spouse (12%).

- Newlyweds living in metropolitan areas are more likely to be intermarried than those in non-metropolitan areas (18% vs. 11%). This pattern is driven entirely by whites; Hispanics and Asians are more likely to intermarry if they live in non-metro areas. The rates do not vary by place of residence for blacks.

- Among black newlyweds, the gender gap in intermarriage increases with education: For those with a high school diploma or less, 17% of men vs. 10% of women are intermarried, while among those with a bachelor’s degree, black men are more than twice as likely as black women to intermarry (30% vs. 13%).

- Among newlyweds, intermarriage is most common for those in their 30s (18%). Even so, 13% of newlyweds ages 50 and older are married to someone of a different race or ethnicity.

- There is a sharp partisan divide in attitudes about interracial marriage. Roughly half (49%) of Democrats and independents who lean to the Democratic Party say the growing number of people of different races marrying each other is a good thing for society. Only 28% of Republicans and Republican-leaning independents share that view.
1. Trends and patterns in intermarriage

In 1967, when miscegenation laws were overturned in the United States, 3% of all newlyweds were married to someone of a different race or ethnicity. Since then, intermarriage rates have steadily climbed. By 1980, the share of intermarried newlyweds had about doubled to 7%. And by 2015 the number had risen to 17%.

All told, more than 670,000 newlyweds in 2015 had recently entered into a marriage with someone of a different race or ethnicity. By comparison, in 1980, the first year for which detailed data are available, about 230,000 newlyweds had done so.

The long-term annual growth in newlyweds marrying someone of a different race or ethnicity has led to dramatic increases in the overall number of people who are presently intermarried – including both those who recently married and those who did so years, or even decades, earlier. In 2015, that number stood at 11 million – 10% of all married people. The share has tripled since 1980, when 3% of married people – about 3 million altogether – had a spouse of a different race or ethnicity.

4 Interracial and interethnic relationships are about as common among the growing share of cohabiters as they are among newlyweds. In 2015 about 6% of people were in a cohabiting relationship, and 18% of these cohabiters had a partner of another race or ethnicity.
Interrace marriage is a topic that has been explored by the Pew Research Center. The center has conducted research on the topic, including the intermarriage rates among different racial and ethnic groups in the United States. The research shows that overall increases in intermarriage have been fueled in part by rising intermarriage rates among black newlyweds and among white newlyweds. The share of recently married blacks with a spouse of a different race or ethnicity has more than tripled, from 5% in 1980 to 18% in 2015. Among recently married whites, rates have more than doubled, from 4% up to 11%.

At the same time, intermarriage has ticked down among recently married Asians and remained more or less stable among Hispanic newlyweds. Even though intermarriage has not been increasing for these two groups, they remain far more likely than black or white newlyweds to marry someone of a different race or ethnicity. About three-in-ten Asian newlyweds (29%) have a spouse of a different race or ethnicity. The same is true of 27% of Hispanics.

For newly married Hispanics and Asians, the likelihood of intermarriage is closely related to whether they were born in the U.S. or abroad. Among the half of Hispanic newlyweds who are immigrants, 15% married a non-Hispanic. In comparison, 39% of the U.S. born did so. The pattern is similar among Asian newlyweds, three-fourths of whom are immigrants. While 24% of foreign-born Asian newlyweds have a spouse of a different race or ethnicity, this share rises to 46% among the U.S. born.

The changing racial and ethnic profile of U.S. newlyweds is linked to growth in intermarriage

Significant growth in the Hispanic and Asian populations in the U.S. since 1980, coupled with the high rates of intermarriage among Hispanic and Asian newlyweds, has been an important factor driving the rise in intermarriage. Since that time, the share of all newlyweds that were Hispanic rose 9 percentage points, from 8% to 17%, and the share that were Asian grew from 2% to 6%. At the same time, the share of white newlyweds declined by 15 points and the share of black newlyweds held steady.

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Dramatic increases in intermarriage for blacks, whites

% of U.S. newlyweds who are intermarried

<table>
<thead>
<tr>
<th>Year</th>
<th>Whites</th>
<th>Blacks</th>
<th>Asians</th>
<th>Hispanics</th>
</tr>
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<tbody>
<tr>
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<td>4</td>
<td>5</td>
<td>26</td>
<td>27</td>
</tr>
<tr>
<td>2015</td>
<td>11</td>
<td>18</td>
<td>33</td>
<td>29</td>
</tr>
</tbody>
</table>

The size of each racial and ethnic group can also influence intermarriage rates by affecting the pool of potential marriage partners in the “marriage market,” which consists of all newlyweds and all unmarried adults combined. For example, whites, who comprise the largest share of the U.S. population, may be more likely to marry someone of the same race simply because most potential partners are white. And members of smaller racial or ethnic groups may be more likely to intermarry because relatively few potential partners share their race or ethnicity.

But size alone cannot totally explain intermarriage patterns. Hispanics, for instance, made up 17% of the U.S. marriage market in 2015, yet their newlywed intermarriage rates were comparable to those of Asians, who comprised only 5% of the marriage market. And while the share of the marriage market comprised of Hispanics has grown markedly since 1980, when it was 6%, their intermarriage rate has remained stable.

Perhaps more striking – the share of blacks in the marriage market has remained more or less constant (15% in 1980, 16% in 2015), yet their intermarriage rate has more than tripled.

**For blacks and Asians, big gender gaps in intermarriage**

While there is no overall gender difference in intermarriage among newlyweds, starkly different gender patterns emerge for some major racial and ethnic groups.

One of the most dramatic patterns occurs among black newlyweds: Black men are twice as likely as black women to have a spouse of a different race or ethnicity (24% vs. 12%). This gender gap has

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5 This represents a rough proxy for the pool of potential spouses available in the recent past.

6 This is almost by definition: Among people in opposite-sex marriages, there will be no variation in the likelihood of men and women being intermarried. Overall gender differences in intermarriage could emerge as a result of differing rates of intermarriage among man-man and woman-woman marriages, but same-sex marriages account for less than 1% of all marriages so have little effect on the overall number.
been a long-standing one – in 1980, 8% of recently married black men and 3% of their female counterparts were married to someone of a different race or ethnicity.

A significant gender gap in intermarriage is apparent among Asian newlyweds as well, though the gap runs in the opposite direction: Just over one-third (36%) of Asian newlywed women have a spouse of a different race or ethnicity, while 21% of Asian newlywed men do. A substantial gender gap in intermarriage was also present in 1980, when 39% of newly married Asian women and 26% of their male counterparts were married to someone of a different race or ethnicity.

Among Asian newlyweds, these gender differences exist for both immigrants (15% men, 31% women) and the U.S. born (38% men, 54% women). While the gender gap among Asian immigrants has remained relatively stable, the gap among the U.S. born has widened substantially since 1980, when intermarriage stood at 46% among newlywed Asian men and 49% among newlywed Asian women.

Among white newlyweds, there is no notable gender gap in intermarriage – 12% of men and 10% of women had married someone of a different race or ethnicity in 2015. The same was true in 1980, when 4% of recently married men and 4% of recently married women had intermarried.

As is the case among whites, intermarriage is about equally common for newlywed Hispanic men and women. In 2015, 26% of recently married Hispanic men were married to a non-Hispanic, as were 28% of their female counterparts. These intermarriage rates have changed little since 1980.
A growing educational gap in intermarriage

In 2015 the likelihood of marrying someone of a different race or ethnicity was somewhat higher among newlyweds with at least some college experience than among those with a high school diploma or less. While 14% of the less-educated group was married to someone of a different race or ethnicity, this share rose to 18% among those with some college experience and 19% among those with at least a bachelor’s degree. This marks a change from 1980, when there were virtually no educational differences in the likelihood of intermarriage among newlyweds.7

The same patterns and trends emerge when looking separately at newlywed men and women; there are no overall gender differences in intermarriage by educational attainment. In 2015, 13% of recently married men with a high school diploma or less and 14% of women with the same level of educational attainment had a spouse of another race or ethnicity, as did 19% of recently married men with some college and 18% of comparable women. Among newlyweds with a bachelor’s degree, 20% of men and 18% of women were intermarried.

Strong link between education and intermarriage for Hispanics

The association between intermarriage and educational attainment among newlyweds varies across racial and ethnic groups. For instance, among Hispanic newlyweds, higher levels of education are strongly linked with higher rates of intermarriage. While 16% of those with a high school diploma or less are married to a non-Hispanic, this share more than doubles to 35% among those with some college. And it rises to 46% for those with a bachelor’s degree or higher.

7 During this same period, the educational profile of newlyweds has changed dramatically: In 1980 29% had a bachelor’s degree or more, and by 2015 this share grew to 40%. This change has been driven both by increasing levels of educational attainment in the U.S. in general and by the fact that a marriage gap by educational attainment has emerged: the more education a person has, the more likely they are to marry.
This pattern may be partly driven by the fact that Hispanics with low levels of education are disproportionately immigrants who are in turn less likely to intermarry. However, rates of intermarriage increase as education levels rise for both the U.S. born and the foreign born: Among immigrant Hispanic newlyweds, intermarriage rates range from 9% among those with a high school diploma or less up to 33% for those with a bachelor’s degree or more; and among the U.S. born, rates range from 32% for those with a high school diploma or less up to 56% for those with a bachelor’s degree or more.

There is no significant gender gap in intermarriage among newly married Hispanics across education levels or over time.

**For blacks, intermarriage has increased most among those with no college experience**

For black newlyweds, intermarriage rates are slightly higher among those with a bachelor’s degree or more (21%). Among those with some college, 17% have married someone of a different race or ethnicity, as have 15% of those with a high school diploma or less.

Interrmarriage has risen dramatically at all education levels for blacks, with the biggest proportional increases occurring among those with the least education. In 1980, just 5% of black newlyweds with a high school diploma or less had intermarried – a number that has since tripled. Rates of intermarriage have more than doubled at higher education levels, from 7% among those with some college experience and 8% among those with a bachelor’s degree.

Among black newlyweds, there are distinct gender differences in intermarriage across education levels. In 2015, the rate of intermarriage varied by education only slightly among recently married black women: 10% of those with some college or less had intermarried compared with 13% of those with a bachelor’s degree or more. Meanwhile, among newly married black men, higher education
is clearly associated with higher intermarriage rates. While 17% of those with a high school diploma or less had a spouse of a different race or ethnicity in 2015, this share rose to 24% for those with some college and to 30% for those with a bachelor’s degree or higher.

### Asians with some college are the most likely to intermarry

While intermarriage is associated with higher education levels for Hispanics and blacks, this is not the case among Asian newlyweds. Those with some college are by far the most likely to have married someone of a different race or ethnicity – 39% in 2015 had done so, compared with about one-fourth (26%) of those with only a high school diploma or less and 29% of those with a bachelor’s degree.

This pattern reflects dramatic changes since 1980. At that time, Asians with a high school diploma or less were the most likely to intermarry; 36% did so, compared with 32% of those with some college and 25% of those with a bachelor’s degree.

Asian newlyweds with some college are somewhat less likely to be immigrants, and this may contribute to the higher rates of intermarriage for this group. However, even among recently married Asian immigrants with some college, 33% had intermarried, compared with 22% of those with a high school diploma or less and 23% of those with a bachelor’s degree or more.8

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8 Rates of intermarriage by education level among U.S.-born Asian newlyweds are not shown due to small sample size.
There are sizable gender gaps in intermarriage across all education levels among recently married Asians, with the biggest proportional gap occurring among those with a high school diploma or less. Newlywed Asian women in this category are more than twice as likely as their male counterparts to have a spouse of a different race or ethnicity (36% vs. 14%). The gaps decline somewhat at higher education levels, but even among college graduates, 36% of women are intermarried compared with 21% of men.

**Among whites, little difference in intermarriage rates by education level**

Among white newlyweds, the likelihood of intermarrying is fairly similar regardless of education level. One-in-ten of those with a high school diploma or less have a spouse of another race or ethnicity, as do 11% of those with some college experience and 12% of those with at least a bachelor’s degree. Rates don’t vary substantially among white newlywed men or women with some college or less, though men with a bachelor’s degree are somewhat more likely to intermarry than comparable women (14% vs. 10%).

**Dramatic decline in intermarriage among least-educated Asians**

<table>
<thead>
<tr>
<th>% of Asian newlyweds ages 25 and older in U.S. who are intermarried</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
</tr>
<tr>
<td>High school or less</td>
</tr>
<tr>
<td>Some college</td>
</tr>
<tr>
<td>Bachelor’s degree+</td>
</tr>
</tbody>
</table>

Interrmarriage is slightly less common at older ages

Nearly one-in-five newlyweds in their 30s (18%) are married to someone of a different race or ethnicity, as are 16% of those in their teens or 20s and those in their 40s. Among newlyweds ages 50 and older, many of whom are likely remarrying, the share intermarried is a bit lower (13%).

The lower rate of intermarriage among older newlyweds in 2015 is largely attributable to a lower rate among women. While intermarriage rates ranged from 16% to 18% among women younger than 50, rates dropped to 12% among those 50 and older. Among recently married men, however, intermarriage did not vary substantially by age.

Interrmarriage varies little by age for white and Hispanic newlyweds, but more striking patterns emerge among black and Asian newlyweds. While 22% of blacks ages 15 to 29 are intermarried, this share drops incrementally, reaching a low of 13% among those ages 50 years or older. Among Asian newlyweds, a different pattern emerges. Intermarriage rises steadily from 25% among those ages 15 to 29 years to 42% among those in their 40s. For those 50 years and older, however, the rate drops to 32%.

A closer look at intermarriage among Asian newlyweds reveals that the overall age pattern of intermarriage – with the highest rates among those in their 40s – is driven largely by the dramatic age differences in intermarriage among newly married Asian women. More than half of newlywed Asian women in their 40s intermarry (56%), compared with 42% of those in their 30s and 46% of those 50 and older. Among Asian newlywed women younger than 30, 29% are intermarried.

Among recently married Asian men, the rate of intermarriage doesn’t vary as much across age groups: 26% of those in their 40s are intermarried, compared with 20% of those in their 30s and those 50 and older. Among Asian newlywed men in their teens or 20s, 18% are intermarried.
Though the overall rate of intermarriage does not differ markedly by age among white newlyweds, a gender gap emerges at older ages. While recently married white men and women younger than 40 are about equally likely to be intermarried, a 4-point gap emerges among those in their 40s (12% men, 8% women), and recently married white men ages 50 and older are about twice as likely as their female counterparts to be married to someone of a different race or ethnicity (11% vs. 6%).

A similar gender gap in intermarriage emerges at older ages for Hispanic newlyweds. However, in this case it is newly married Hispanic women ages 50 and older who are more likely to intermarry than their male counterparts (32% vs. 26%). Among black newlyweds, men are consistently more likely than women to intermarry at all ages.
In metro areas, almost one-in-five newlyweds are intermarried

Interrmarriage is more common among newlyweds in the nation’s metropolitan areas, which are located in and around large urban centers, than it is in non-metro areas, which are typically more rural. About 18% of those living in a metro area are married to someone of a different race or ethnicity, compared with 11% of those living outside of a metro area. In 1980, 8% of newlyweds in metro areas were intermarried, compared with 5% of those in non-metro areas.

There are likely many reasons that intermarriage is more common in metro areas than in more rural areas. Attitudinal differences may play a role. In urban areas, 45% of adults say that more people of different races marrying each other is a good thing for society, as do 38% of those living in suburban areas (which are typically included in what the Census Bureau defines as metro areas). Among people living in rural areas, which are typically non-metro areas, fewer (24%) share this view.

Another factor is the difference in the racial and ethnic composition of each type of area. Non-metro areas have a relatively large share of white newlyweds (83% vs. 62% in metro areas), and whites are far less likely to intermarry than those of other races or ethnicities. At the same time, metro areas have larger shares of Hispanics and Asians, who have very high rates of intermarriage. While 26% of newlyweds in metro areas are Hispanic or Asian, this share is 10% for newlyweds in non-metro areas.

The link between place of residence and intermarriage varies dramatically for different racial and ethnic groups. The increased racial and ethnic diversity of metro areas means that the supply of potential spouses, too, will likely be more diverse. This fact may contribute to the higher rates of intermarriage for white metro area newlyweds, since the marriage market includes a relatively larger share of people who are nonwhite. Indeed, recently married whites are the only major group for which intermarriage is higher in metro areas. White newlyweds

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Intermarriage more common in metro areas

<table>
<thead>
<tr>
<th>% of U.S. newlyweds who are intermarried</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metro area</td>
</tr>
<tr>
<td>18</td>
</tr>
</tbody>
</table>

1980 2015


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* A **metro area** is based on a “metropolitan statistical area” (MSA) which is a region consisting of a large urban core with a population of 50,000 or more, together with surrounding communities that have a high degree of economic and social integration with the urban core. For about 13% of newlyweds in the American Community Survey, it can’t be determined whether they are living in a metro area or not; these people are excluded from the place of residence analysis.
in metro areas are twice as likely as those in non-metro areas to have a spouse of a different race or ethnicity (12% vs. 6%).

In contrast, for Asians, the likelihood of intermarrying is higher in non-metro areas (47%) than metro areas (28%), due in part to the fact that the share of Asians in the marriage market is lower in non-metro areas. The same holds true among Hispanics. About one-third (32%) of Hispanic newlyweds in non-metro areas are intermarried compared with 25% in metro areas.

Among black newlyweds, intermarriage rates are identical for those living in metro and non-metro areas (18% each), even though blacks are a larger share of the marriage market in metro areas than in non-metro areas.

The largest share of intermarried couples include one Hispanic and one white spouse

While the bulk of this report focuses on patterns of intermarriage among all newly married individuals, shifting the analysis to the racial and ethnic composition of intermarried newlywed couples shows that the most prevalent form of intermarriage involves one Hispanic and one white spouse (42%). While this share is relatively high, it marks a decline from 1980, when more than half (56%) of all intermarried couples included one Hispanic and one white person.

The next most prevalent couple type in 2015 among those who were intermarried included one Asian and one white spouse (15%). Couples including one black and one white spouse accounted for about one-in-ten (11%) intermarried couples in 2015, a share that has held more or less steady since 1980.

That intermarriage patterns vary by gender becomes apparent when looking at a more detailed profile of intermarried couples that identifies the race or ethnicity of the husband separately from the race or ethnicity of the wife. A similar share of intermarried couples involve a white man and a Hispanic woman (22%) as involve a white woman and a Hispanic man (20%).
However, more notable gender differences emerge for some of the other couple profiles. For instance, while 11% of all intermarried couples involve a white man and an Asian woman, just 4% of couples include a white woman and an Asian man. And while about 7% of intermarried couples include a black man and a white woman, only 3% include a black woman and a white man.
2. Public views on intermarriage

As intermarriage grows more prevalent in the United States, the public has become more accepting of it. A growing share of adults say that the trend toward more people of different races marrying each other is generally a good thing for American society. At the same time, the share saying they would oppose a close relative marrying someone of a different race has fallen dramatically.

A new Pew Research Center survey finds that roughly four-in-ten adults (39%) now say that more people of different races marrying each other is good for society – up significantly from 24% in 2010. The share saying this trend is a bad thing for society is down slightly over the same period, from 13% to 9%. And the share saying it doesn’t make much of a difference for society is also down, from 61% to 52%. Most of this change occurred between 2010 and 2013; opinions have remained essentially the same since then.

Attitudes about interracial marriage vary widely by age. For example, 54% of those ages 18 to 29 say that the rising prevalence of interracial marriage is good for society, compared with about a quarter of those ages 65 and older (26%). In turn, older Americans are more likely to say that this trend doesn’t make much difference (60% of those ages 65 and older, compared with 42% of those 18 to 29) or that it is bad for society (14% vs. 5%, respectively).

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10 This question asked only about interracial marriage, not interethnic marriage. All other measures in this report include both.
Views on interracial marriage also differ by educational attainment. Americans with at least a bachelor’s degree are much more likely than those with less education to say more people of different races marrying each other is a good thing for society (54% of those with a bachelor’s degree or more vs. 39% of those with some college education and 26% of those with a high school diploma or less). Among adults with a high school diploma or less, 16% say this trend is bad for society, compared with 6% of those with some college experience and 4% of those with at least a bachelor’s degree.

Men are more likely than women to say the rising number of interracial marriages is good for society (43% vs. 34%) while women are somewhat more likely to say it’s a bad thing (12% vs. 7%). This is a change from 2010, when men and women had almost identical views. Then, about a quarter of each group (23% of men and 24% of women) said this was a good thing and 14% and 12%, respectively, said it was a bad thing.

Blacks (18%) are more likely than whites (9%) and Hispanics (3%) to say more people of different races marrying each other is generally a bad thing for society, though there are no significance differences by race or ethnicity on whether it is a good thing for society. 11

Wide gaps in U.S. on views of interracial marriage by age and education
% saying more people of different races marrying each other generally ___ for our society

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<thead>
<tr>
<th>Category</th>
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<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Ages 18-29</th>
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<td>Is a bad thing</td>
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<td>12</td>
<td>6</td>
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</tbody>
</table>

Note: “Don’t know/Refused” responses not shown. Whites and blacks include only non-Hispanics. Hispanics are of any race. “Some college” includes those with an associate degree and those who attended college but did not obtain a degree.
Source: Survey conducted Feb. 28-March 12, 2017.

“Intermarriage in the U.S. 50 Years After Loving v. Virginia”

11 In the survey, conducted among Pew Research Center’s American Trends Panel, Hispanics are primarily English speaking and U.S. born.
Among Americans who live in urban areas, 45% say this trend is a good thing for society, as do 38% of those in the suburbs; lower shares among those living in rural areas share this view (24%). In turn, rural Americans are more likely than those in urban or suburban areas to say interracial marriage doesn’t make much difference for society (63% vs. 49% and 51%, respectively).

The view that the rise in the number of interracial marriages is good for society is particularly prevalent among Democrats and Democratic-leaning independents; 49% in this group say this, compared with 28% of Republicans and those who lean Republican. The majority of Republicans (60%) say it doesn’t make much of a difference, while 12% say this trend is bad for society. Among Democrats, 45% say it doesn’t make much difference while 6% say it’s bad thing. This difference persists when controlling for race. Among whites, Democrats are still much more likely than Republicans to say more interracial marriages are a good thing for society.

**Americans are now much more open to the idea of a close relative marrying someone of a different race**

Just as views about the impact of interracial marriage on society have evolved, Americans’ attitudes about what is acceptable within their own family have changed. A new Pew Research Center analysis of General Social Survey (GSS) data finds that the share of U.S. adults saying they would be opposed to a close relative marrying someone of a different race or ethnicity has fallen since 2000.

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**Dramatic dive in share of nonblacks who would oppose a relative marrying a black person**

% saying they would be very or somewhat opposed to a close relative marrying someone who is ___ among U.S. adults who are not that race or ethnicity

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Note: Due to changes in question wording, the universe of nonblacks prior to 2000 includes anyone who reported a race other than black; in 2000 and later, the universe of nonblacks includes those who did not identify as single-race, non-Hispanic blacks (and so may include Hispanic blacks and multiracial blacks).

Source: Pew Research Center analysis of General Social Survey.

“Interrace marriage in the U.S. 50 Years After Loving v. Virginia”
In 2000, 31% of Americans said they would oppose an intermarriage in their family. That share dropped to 9% in 2002 but climbed again to 16% in 2008. It has fallen steadily since, and now one-in-ten Americans say they would oppose a close relative marrying someone of a different race or ethnicity.

These modest changes over time belie much larger shifts when it comes to attitudes toward marrying people of specific races. As recently as 1990, roughly six-in-ten nonblack Americans (63%) said they would be opposed to a close relative marrying a black person. This share had been cut about in half by 2000 (at 30%), and halved again since then to stand at 14% today.

In 2000, one-in-five non-Asian adults said they would be opposed to a close relative marrying an Asian person, and a similar share of non-Hispanic adults (21%) said the same about a family member marrying a Hispanic person. These shares have dropped to around one-in-ten for each group in 2016.

Among nonwhite adults, the share saying they would be opposed to a relative marrying a white person stood at 4% in 2016, down marginally from 7% in 2000 when the GSS first included this item.

---

12 Respondents were asked four separate questions about whether they would favor or oppose (or neither) a close relative marrying someone who is white, black, Hispanic or Asian. Estimates of the share of Americans who would oppose a close relative intermarrying are based only on respondents who are Hispanic or non-Hispanic single-race white, black or Asian and represent the share who say they would oppose their relative marrying at least one of the races/ethnicities asked about (besides the respondent’s own race/ethnicity). Asians not shown separately due to small sample size.

13 The GSS questionnaire changed in 2000 to allow respondents to select more than one race and to ask a question about Hispanic origin. Prior to 2000, the universe of nonblacks includes anyone who reported a race other than black; in 2000 and later, the universe of nonblacks includes those who did not identify as single-race, non-Hispanic black (and so may include Hispanic blacks and multiracial blacks).
While these views have changed substantially over time, significant demographic gaps persist. Older adults are especially likely to oppose having a family member marry someone of a different race or ethnicity. Among those ages 65 and older, about one-in-five (21%) say they would be very or somewhat opposed to an intermarriage in their family, compared with one-in-ten of those ages 50 to 64, 7% of those 30 to 49 and only 5% of those 18 to 29.

Whites (12%) and blacks (9%) are more likely than Hispanics (3%) to say they would oppose a close relative marrying someone of a different race or ethnicity. Men are somewhat more likely than women to say this as well (13% vs. 8%).

Americans with less education are more likely to oppose an intermarriage in their family: 14% of adults with a high school diploma or less education say this, compared with 8% of those with some college education and those with a bachelor’s degree, each.

There are also large differences by political party, with Republicans and those who lean toward the Republican Party roughly twice as likely as Democrats and Democratic leaners to say they would oppose a close relative marrying someone of a different race (16% vs. 7%). Controlling for race, the gap is the same: Among whites, 17% of Republicans and 8% of Democrats say they would oppose an intermarriage in their family.
Acknowledgments

This report is a collaborative effort based on the input and analysis of the following individuals.

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Anna Brown, Research Analyst
Jeffrey S. Passel, Senior Demographer
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Juliana Menasce Horowitz, Associate Director, Social Trends Research
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Molly Rohal, Communications Manager
Michael Keegan, Information Graphics Designer
David Kent, Copy Editor
Travis Mitchell, Digital Producer
Danielle Alberti, Web Developer

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Methodology

Secondary data

Analyses are based primarily upon the American Community Survey (ACS), as well as the 1980 decennial census, both of which were obtained from IPUMS-USA. Since 2008, the ACS, which is an annual, nationally representative survey, has included a question asking if the respondent married within the past 12 months, which is used to classify people as newlyweds for those years.

The 1980 census, which was the first to collect reliable data on Hispanic origin, also collected data allowing for the identification of first-time newlyweds. The questionnaire asked people to list the age at which they first married. For this analysis, anyone whose age at first marriage was the same as their age at the time of the survey was identified as a newlywed, as was their spouse. As a result, only those newlyweds who are part of a couple where either the bride or groom (or both) recently married for the first time are identified as newlyweds in 1980. About 90% of the married population in 1980 included people who were in a first marriage, or who were married to someone in a first marriage, and the intermarriage rates for those in “first marriage” couples differed little from the rates among all married couples.

For the estimates of intermarriage in years other than 1980 and 2008 to 2015, a retrospective or “look-back” method was used. The 1980 census data were used to estimate intermarriage among newlyweds from 1967 to 1979. Using the 1980 census data regarding respondent age at the time of survey and age at first marriage, the year of first marriage among couples who were still in their first marriage was established. Then, annual estimates of newlywed intermarriage were calculated. For instance, all couples who were first married in 1967 were identified as newlyweds in that year and were classified as either being intermarried or not intermarried. This same approach was used for subsequent years through 1979.

The same general approach was used to estimate intermarriage rates for the years 1981 to 2007 using the 2008 to 2015 ACS data. However, for these years, all married couples were included, regardless of whether they were in their first marriage or a subsequent marriage. To establish intermarriage rates among newlyweds in 1981, for instance, a combined file of 2008 to 2015 data was used to identify all people who had wed in that year. These 1981 newlyweds were then classified as either being in an intermarriage, or not. This same procedure was used to calculate intermarriage rates for newlyweds in subsequent years.

While using census and ACS data to create estimates for prior years would be problematic if intermarriages break up more often than other types of marriages, a number of additional analyses
suggest that using this retrospective approach produces reliable estimates of intermarriage rates. See Chapter 3 of “Marrying Out: One-in-Seven New U.S. Marriages Is Interracial or Interethnic” for more details.

While statistics regarding overall intermarriage rates are based on single year estimates, more detailed analyses using ACS data combine multiple years of data in order to increase sample size. Analyses examining age patterns or patterns by metro status are based on a combined sample of 2011-2015 ACS data. All other detailed analyses are based on a combined sample of 2014 and 2015 ACS data.

Estimates regarding the total share of presently married people who are intermarried are based on data from the 1990 and 2000 decennial census, as well as the 1980 decennial census and 2008-2015 ACS data.

In analyses that are based on presently married people, only those who are married and living with a spouse are included, since data regarding the racial and ethnic profile of spouses living apart are not available through the ACS or census. The vast majority (95%) of people who state that they are married in the ACS are married and living with their spouse.

Since 2013, it has been possible to identify most same-sex married couples in the ACS. For almost all analyses regarding 2013 and later, individuals in a same-sex marriage are included. The only exception occurs for the couple-level analysis, which is limited to other-sex couples in order to highlight the interaction of gender and race.

Beginning with the 2000 census, individuals could choose to identify with more than one group in response to the race question. In this analysis, these multiracial people are treated as a separate race category, different from those who identify as a single race, including those who identify as “some other race.” (As with single-race individuals, a multiracial person who also identifies as Hispanic would be classified as Hispanic.) Since the introduction of the multiracial option on the census, the share of individuals who identify as such has grown substantially, and this has likely contributed to the increases in the share of married couples who are classified as intermarried.14

**Survey data**

The survey data in this report come from two sources. The question on whether more people of different races marrying each other is a good thing or bad thing for society comes from Pew Research Center telephone surveys conducted between 2010 and 2017. Data reported for 2017 are

14 See Appendix 1 of “The Rise of Intermarriage” for more on this.
drawn from a mode experiment conducted Feb. 28-March 12, 2017, on the American Trends Panel (ATP). In order to avoid any potential mode effects, only data from the telephone portion of the mode experiment are used in this report. A total of 1,778 panelists were interviewed by phone and the margin of error is plus or minus 4.0 percentage points. Interviews are conducted in both English and Spanish, but the Hispanic sample in the ATP is predominantly native born and English speaking. For more information, see the Methodology for that survey.

The series of questions on favorability of a close relative marrying someone of a specified race or ethnicity is drawn from NORC’s General Social Survey (GSS).

Sampling errors and statistical tests of significance take into account the effect of weighting. In addition to sampling error, one should bear in mind that question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of opinion polls.
Appendix: Survey topline questionnaire

PEW RESEARCH CENTER
2017 INTERMARRIAGE TOPLINE
FEBRUARY 28-MARCH 12, 2017
N=1,778

NOTE: ALL NUMBERS ARE PERCENTAGES. THE PERCENTAGES LESS THAN .5% ARE REPLACED BY AN ASTERISK (*). ROWS MAY NOT TOTAL 100% DUE TO ROUNDING.

ADDITIONAL QUESTIONS HELD FOR FUTURE RELEASE

ADDITIONAL QUESTIONS PREVIOUSLY RELEASED

SOCTRNDs Next, please tell me if you think each of the following trends is generally a good thing for our society, a bad thing for our society, or doesn’t make much difference? (First/Next) [READ LIST] [RANDOMIZE] [READ IF NECESSARY: Is this generally a good thing for our society, a bad thing for our society, or doesn’t it make much difference?]

ITEMS A AND B HELD FOR FUTURE RELEASE

c. More people of different races marrying each other

<table>
<thead>
<tr>
<th>Dates</th>
<th>Good thing for society</th>
<th>Bad thing for society</th>
<th>Doesn’t make much difference</th>
<th>DK/Ref (VOL.)</th>
</tr>
</thead>
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<tr>
<td>Feb 28-Mar 12, 2017</td>
<td>39</td>
<td>9</td>
<td>52</td>
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</tr>
<tr>
<td>Feb 14-23, 2014</td>
<td>37</td>
<td>9</td>
<td>51</td>
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<tr>
<td>Mar 21-Apr 8, 2013</td>
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<tr>
<td>Mar 8-14, 2011</td>
<td>25</td>
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<td>64</td>
<td>2</td>
</tr>
<tr>
<td>Oct 1-21, 2010</td>
<td>25</td>
<td>14</td>
<td>60</td>
<td>2</td>
</tr>
<tr>
<td>Jan 14-27, 2010</td>
<td>24</td>
<td>13</td>
<td>61</td>
<td>3</td>
</tr>
</tbody>
</table>

15 This item was included in a list of other societal trends in current and past surveys. The other items used at least once in the trend were: more gay and lesbian couples raising children, more mothers of young children working outside the home, more children being raised by a single parent, more young adults living with their parents, more people continuing to work beyond age 65, more people who are not religious, more people practicing religions other than Christianity, more single women deciding to have children without a male partner to help raise them (an earlier version asked about “more single women having children without a male partner to help raise them”), more people living together without getting married, more women not ever having children, more unmarried couples raising children, more people living together without getting married, and more elderly people in the population.
16 The February 2017 survey was administered by web and telephone. Results reported here are from telephone mode only.
17 Trends from March 2011 to February 2014 asked about “American society” instead of “our society.”
Now I’m going to ask you about another type of contact with various groups of people.

**MARWHT** What about having a close relative marry a white person? Would you be very in favor of it happening, somewhat in favor, neither in favor nor opposed to it happening, somewhat opposed, or very opposed to it happening?

<table>
<thead>
<tr>
<th>Year</th>
<th>Very in favor</th>
<th>Somewhat in favor</th>
<th>Neither in favor nor opposed</th>
<th>Somewhat opposed</th>
<th>Very opposed</th>
<th>DK/Ref (VOL.)</th>
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<td>15</td>
<td>48</td>
<td>2</td>
<td>1</td>
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</tr>
<tr>
<td>GSS: 2014</td>
<td>37</td>
<td>14</td>
<td>46</td>
<td>2</td>
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<td>1</td>
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<tr>
<td>GSS: 2012</td>
<td>38</td>
<td>12</td>
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<td>2</td>
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<tr>
<td>GSS: 2010</td>
<td>39</td>
<td>15</td>
<td>42</td>
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<td>*</td>
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<tr>
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<td>15</td>
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<tr>
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<td>39</td>
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<tr>
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<td>11</td>
<td>29</td>
<td>2</td>
<td>1</td>
<td>7</td>
</tr>
</tbody>
</table>

**MARBLK** What about having a close relative marry a black person (would you be very in favor, somewhat in favor, neither in favor nor opposed, somewhat opposed or very opposed)?

<table>
<thead>
<tr>
<th>Year</th>
<th>Very in favor</th>
<th>Somewhat in favor</th>
<th>Neither in favor nor opposed</th>
<th>Somewhat opposed</th>
<th>Very opposed</th>
<th>DK/Ref (VOL.)</th>
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<td>53</td>
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<tr>
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<td>14</td>
<td>51</td>
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<td>12</td>
<td>52</td>
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<td>9</td>
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</tr>
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<td>48</td>
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<td>8</td>
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<tr>
<td>GSS: 2008</td>
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<td>15</td>
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<tr>
<td>GSS: 2006</td>
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<td>16</td>
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<td>4</td>
<td>31</td>
<td>25</td>
<td>32</td>
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</tr>
</tbody>
</table>

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18 There have been minor changes to General Social Survey question wording and order over the years. The 2016 question wording and order is shown here. For more information, see the full questionnaires for each year.
## MARASIAN
An Asian American person (would you be very in favor, somewhat in favor, neither in favor nor opposed, somewhat opposed or very opposed)?

<table>
<thead>
<tr>
<th>Year</th>
<th>Very in favor</th>
<th>Somewhat in favor</th>
<th>Neither in favor nor opposed</th>
<th>Somewhat opposed</th>
<th>Very opposed</th>
<th>DK/Ref (VOL.)</th>
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<td>55</td>
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<td>GSS: 2004</td>
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<td>17</td>
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<td>6</td>
<td>47</td>
<td>26</td>
<td>14</td>
<td>2</td>
</tr>
</tbody>
</table>

## MARHISP
A Hispanic or Latin American person (would you be very in favor, somewhat in favor, neither in favor nor opposed, somewhat opposed or very opposed)?

<table>
<thead>
<tr>
<th>Year</th>
<th>Very in favor</th>
<th>Somewhat in favor</th>
<th>Neither in favor nor opposed</th>
<th>Somewhat opposed</th>
<th>Very opposed</th>
<th>DK/Ref (VOL.)</th>
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</tbody>
</table>
In this essay, I make two main points: First, I call for a focus on the impact of structural conditions on preferences regarding intimacy. We tend to think our preferences are natural and fixed when, in fact, they may be more plastic and susceptible to structural influences than we imagine. To illustrate this theme, I examine a few structures that channel our preferences, namely, racial screening mechanisms on Internet dating web sites and sex segregation in queer social spaces. Second, I provide a warning against uncritical celebrations of increasing interracial intimacy as a sign of reduced prejudice and social progress. Our celebrations should be tempered by the awareness that race structures even our most intimate relationships. Although two people have crossed racial lines and may have even committed to spending their lives together, we cannot easily conclude that they have transcended race. Because race and gender intersect to determine an individual’s value in the romantic marketplace, the two partners are unlikely to be similarly situated in terms of their options for leaving the relationship should it become unhappy. For instance, black heterosexual men enjoy greater options for interracial coupling than do black heterosexual women.\footnote{\textit{Further, people of color who are in interracial relationships may have to suffer racialized microaggressions in order to maintain the relationship. Yet these subtle insults may escape the awareness of the white partner in the relationship, who might not intend to cause any harm or see the comments as racially offensive. One source of such racialized harms is likely to arise from racial disagreements in perceiving discrimination. Because black people and white people tend to view allegations of discrimination through fundamentally different lenses,}}
they are likely to disagree as to the existence of discrimination, even when they are in an intimate relationship.

This essay allows me to extend the analysis from three of my prior publications and explore their intersections. First, I consider whether a proposal I made regarding expressions of racial preference in casting advertisements² might be applied to such preferences in the online dating context. Second, I extend to the romantic arena a phenomenon that I identified as "perceptual segregation," previously examined primarily in the workplace.³ Third, I have previously argued that, in predominantly white and gay romantic marketplaces, men of color face pressure to conform to certain racialized sex roles, such as the "aggressive black top" and the "submissive Asian bottom."⁴ In the final part of this essay, I present an empirical study of online dating trends that tests this argument.

I. THE INFLUENCE OF STRUCTURE

A. Race, Segregation, and the Numbers Game

Law and social norms create structures that channel and limit our interaction with people of various identities. This structuring of our social environments determines, in part, the romantic possibilities and inclinations we imagine, express, and pursue. However, the presence of such structures and their influence on our romantic choices is often overlooked. People often report that they just like what they like, expressing little awareness of the structural influences that might account for their preferences.⁵

Residential segregation is a primary influence on romantic preferences.⁶ For many, living and/or working in a neighborhood or workplace in which one race predominates makes it difficult to connect romantically with a person of a different race. As a race-conscious African American who is often in predominantly white settings, residential segregation has impacted my romantic preferences in a more complex fashion. I grew up in a mostly white neighborhood in the Midwest and attended a mostly white religious school. As an upper-middle-class adult professional, I continued to find

⁵. Consider the following examples from an article on Asian-white interracial dating: "'I just don't find Asian girls attractive,' says Reesa, a 32-year-old Filipina American who lives in Northern California. 'I don't know why. I just never have been. I've just always dated white or European guys.'" Tony, a Japanese-American man interviewed for the same article, says: "'I've never been attracted to Asian women . . . . My type is a blonde-haired girl . . . . Blondes have caught my eye for some reason.'" Helen E. Sung, Dating Outside the Color Lines: Is It Just Innocent Color-Blind Love, or Asian Evasion?, Audrey, Aug./Sept. 2005, at 54, 56, available at http://www.audreymagazine.com/Sep2005/Features03.asp.
myself in mostly white environments, where similarly situated black partners were few and far between. Although my parents raised me to prefer blacks (women, that is), it was difficult to act on this preference since I was often in work and social settings that offered few options in terms of black romantic partners. The pickings became even slimmer once I identified as queer. Consider the numbers game: A heterosexual white person who lives in a mostly white neighborhood and wants to date only white people faces few limitations. If, say, eighty percent of the neighborhood is white, almost half of that number (either the male or female half) is available for partnering. Even if ten percent of the whites identify as gay or lesbian (a generous assumption), the white heterosexual still has ample options for same-race partnering. The black heterosexual, by contrast, is limited to half of the black population, which is twenty percent of the community. Black heterosexual women are likely to face a further disadvantage—and black heterosexual men, a relative advantage—because of the sex ratio imbalance in black populations in the United States. In part because of the mass incarceration of black men, the number of eligible black women significantly outstrips that of eligible black male partners.

The romantic market for the black queer man is even worse. He is subject to the same diminution of the black male population that impacts black women. Yet he also is limited to the fraction of black men who engage in sex with men. If he identifies as openly gay and prefers to date only other openly gay black men, his market is further reduced because black men appear less likely than white men to identify as gay. He may

7. See Brad Sears, *Diff'rin Strokes*, Village Voice, June 22-28, 2005, at 28 (citing statistics suggesting that there are six million queer-identified Americans and 281 million heterosexual-identified Americans—in other words, two percent of Americans identified themselves as queer).
8. This stylized scenario assumes that only blacks and whites exist in the neighborhood or that, to the extent that Asians, Latinos, and Native Americans are included, the black person has a preference for blacks rather than all people of color.
10. Id. at S118 (stating that “[t]he shortage of [black] men places [black] women at a disadvantage in negotiating and maintaining mutually monogamous relationships, because men can easily find another relationship if they perceive their primary relationship to be problematic”).
11. According to one Centers for Disease Control and Prevention (CDC) study of young men in six major cities, eighteen percent of black men who have sex with men reported that they did not disclose their sexuality generally, while just eight percent of white men failed to disclose. See Ctrs. for Disease Control & Prevention, *HIV/STD Risks in Young Men Who Have Sex with Men Who Do Not Disclose Their Sexual Orientation—Six U.S. Cities, 1994–2000*, 52 Morbidity & Mortality Wkly. Rep. 81, 82 (2003). The survey was conducted from 1994 to 2000 and focused on men aged fifteen to twenty-nine who lived in Baltimore, Dallas, Los Angeles, Miami, New York, and Seattle, and who attended a men-who-have-sex-with-men-identified venue. *Id.* Other men of color were also less likely to disclose than whites. *Id.*
choose to deal with men who have sex with men but do not identify as gay, bisexual, or queer, yet if he is seeking a long-term committed relationship, this may very well be an exercise in frustration. The preferences of an out black professional who lives and works in predominantly white settings are thus impinged by at least three structural constraints that do not similarly restrict white gay men: (1) his racial group is in the minority; (2) men of his race are less likely to identify as openly gay, which may make it harder to spot and connect with black men who have sex with men; and (3) there is a substantially smaller proportion of black men who are not incarcerated or otherwise under the supervision of the criminal justice system and would be eligible in terms of having a similar educational and socioeconomic background.

Looking back at my own romantic trajectory, I can now see how place and structure, and these specific aforementioned structural constraints, have influenced my choices. The pivotal development in my decision to come out was my move from Los Angeles to Washington, D.C. While clerking at the U.S. Court of Appeals for the Ninth Circuit, I lived in Pasadena, a small, mostly white suburb north of Los Angeles. I did not discern a significant gay community in Pasadena, which made it easy for me to avoid attending to my own growing interest in men. Occasionally, I would hang out in West Hollywood with a fellow law clerk who lived there. "Weho," as they call it, is, of course, very visibly gay. But it is also overwhelmingly

There are a number of reasons why some black men do not identify with the term "gay," which I explore more fully in a work-in-progress, tentatively titled Racing the Closet. Although homophobia in the black community is often cited as the sole explanation for black men not identifying as gay or bisexual, a more in-depth analysis reveals that other factors include white exclusion of blacks in the representational arena. See Devon W. Carbado, Black Rights, Gay Rights, Civil Rights, 47 UCLA L. Rev. 1467, 1472 (2000). Other expressions of racism in the gay community include policies excluding blacks from access to gay clubs. See, e.g., Rona Marech, Panel Finds Bias at Castro Bar: Owner Denied Entry to Black Patrons, Commission Reports, S.F. Chron., Apr. 27, 2005, at B2. Black men also may be particularly impacted by the erasure of bisexuality and the norm that holds that any man who admits having had sex with a man is automatically classified as gay.

12. Another structural aspect of many large urban environments is the "gay neighborhood." Many view these communities as "natural," although they are fairly recent innovations and, according to a recent New York Times article, there are signs that they are dying in part because they do not resonate with younger generations of queer people. See Patricia Leigh Brown, Gay Enclaves, Once Unique, Lose Urgency, N.Y. Times, Oct. 30, 2007, at A1. Such enclaves are usually gay male dominated. The number of lesbian public spaces is typically dwarfed by the numerous opportunities for men to meet and mate. The separation of spaces by gender within the lesbian, gay, bisexual, transgender community—and the broader demarcation of "straight" and "gay" meeting places—are structures that implicate romantic preferences. As I describe more fully below, rigid separation of men and women into distinct sex-designated spaces frustrates the potential for sexuality to develop in ways that do not neatly map onto our artificial sexual categories. Studies show that despite labels suggesting that people are entirely monosexual, a significant number of people, including self-identified gay men and lesbians, sometimes engage in sex that is inconsistent with such labels. See Michael W. Ross et al., Concordance Between Sexual Behavior and Sexual Identity in Street Outreach Samples of Four Racial/Ethnic Groups, 30 Sexually Transmitted Diseases 110, 110 (2003). Sex segregation then, although said to facilitate sexual liberation, may actually stunt certain affiliations.
white, and the performances of gay identity that I saw there struck me as strange and inaccessible. I do not recall being approached by men (white, black, or other) or meeting anyone that I wanted to date. Moreover, I quickly learned that the black men in these spaces seemed not to be looking for another black man. They were in this white-dominated neighborhood, in most cases, because they wanted to date white men. I could not relate because I neither preferred white men, nor did I think I was the “type” of black man typically preferred by white men. Another factor that alienated me from others was my feeling that I did not have much in common with the black, white, and other men in West Hollywood, because of the centrality of their sexual identity and immersion in a particular sexual culture. By contrast, my sexual identity almost always seems less relevant to me than my racial identity. These differences made it easier to avoid acknowledging what I did have in common with these men—we all desired to have sex with men.

After my Ninth Circuit clerkship, I accepted a job at the Office of Legal Counsel in the U.S. Department of Justice, which required a move to Washington, D.C., a city I did not expect to like. However, D.C. provided precisely what West Hollywood lacked. For the first time in my life, I was surrounded by attractive black men on a regular basis, when walking down the street, riding the metro, and going to the gym. These men seemed like me, and some of them seemed to like me, instead of preferring white men. The exposure to a more diverse and relatable gay community prompted me to recognize my sexuality, finally act on it, and ultimately reconfigure my identity. Although I have since learned that similar black men exist in Los Angeles, the structure of the city, with racially distinct communities separated by long, intractable freeway rides, rendered black men largely invisible to me at the time and delayed my romantic development.

B. Internet Design and Romantic Preferences

A structure of increasing importance in romantic marketplaces is the Internet. This is especially the case in cities like Los Angeles where online personals sites can help people navigate the city’s unwieldy landscape. When I moved back to Los Angeles, I turned to the Internet to find the black men that had largely eluded me during my first stint in Los Angeles. During that first stay, I was unaware that the Internet was emerging as a primary means of connecting men who have sex with men.

13. See Voon Chin Phua & Gayle Kaufman, The Crossroads of Race and Sexuality: Date Selection Among Men in Internet “Personal” Ads, 24 J. Family Issues 981, 992 (2003) ("Preferences for minorities often are tinted with stereotypical images: Asians as exotic, docile, loyal partners; Hispanics as passionate, fiery lovers; and Blacks as ‘well-endowed,’ forbidden partners."); Robinson, supra note 4, at 1822 (discussing social pressure on men of color in white gay spaces to play up racial stereotypes such as black hypermasculinity and Asian passivity).

14. For an enlightening overview of racial discrimination and the Internet, see Jerry Kang, Cyber-race, 113 Harv. L. Rev. 1130 (2000).
(MSM). Although I lived on the wealthy, predominantly white west side of the city, the Internet created opportunities for me to interact with men in Inglewood, Compton, or Long Beach—men I almost certainly would not meet randomly while going through my daily routine on the west side. Even as the Internet increases romantic opportunity, it also channels interactions, either making it easier or more difficult for us to avoid those who are inconsistent with our perceived preferences. Like many dating web sites, Match.com prompts the user to indicate which races he will and will not date. Match.com’s search engine asks the user which of nine alphabetically organized “ethnicities” he will date. Interestingly, this part of the search engine is listed under the heading “Background/Values,” which implies a conflation of racial ancestry/appearance and certain moral or cultural “values.” Because these search engines facilitate racial discrimination (which may or may not be problematic, as I discuss further below), if a white user is interested only in white romantic partners, he can easily structure his screen so that he never even has to view nonwhite profiles.

Web site designers face a range of options with regard to eliciting and managing racial information. Subtle structural differences in design might very well influence the likelihood that the user expresses and acts on a racial preference. Rather than simply passively permitting people to specify their racial preferences, some web sites demand that users identify their race and/or the races of the people they are willing to date. Such web sites thus require users who prefer not to state their race or other traits to provide information that others may then use to discriminate against them. The Ninth Circuit recognized this insight recently in Fair Housing Council v. Roommates.com, LLC, a housing discrimination case brought against the web site Roommates.com. The question presented was whether the Communications Decency Act (CDA) shields web sites for their involvement in expressions of roommate preference based on sex, sexual orientation, and other protected traits. The Ninth Circuit held that while Congress intended generally to protect web sites for passive transmission of illegal material, that protection stops when a web site directs the illegal conduct. Roommates.com shapes preferences by prompting heterosexuals
to think about sexual orientation and giving them an opportunity categorically to exclude self-identified queer people.

Similarly, we might view website design that forces people to think about race and express racial preferences in romantic decisions as problematic. Of course housing discrimination is different because no federal statute presently bans racial discrimination in dating or marriage. Nonetheless, it is valuable to think through whether the housing context provides a helpful framework for curbing racial discrimination in dating through structural mechanisms. We should think carefully about the legal and moral implications of website design decisions, which are hardly neutral, and we should seek to understand their impact on channeling personal preferences. In this part, I imagine some possibilities that few have recognized, but I do not advocate a particular legal intervention. My tentative approach reflects the immense complexity of racial preferences in dating and mating decisions and any potential legal intervention. Although I describe racial preferences in dating as "racial discrimination," I do not mean to suggest that all such preferences are wrong. Indeed, as suggested by my discussion of perceptual segregation in Part II, I believe that a person of color who has experienced persistent racial conflict in romantic relationships might legitimately adopt a preference for people of his or her own race. In this short essay, I cannot resolve the difficult question of when it is legitimate to take race into account in making dating and mating decisions. However, I do maintain that many racial preferences rest on nothing more substantial or legitimate than rank stereotyping (for instance, men of a certain race are aggressive or effeminate or dirty). Recognizing the complexity of various justifications animating racial preferences, and that I am treading on new ground, my goal here is simply to explore some fresh possibilities and illuminate dimensions of a rather challenging issue.

One such possibility is that a government concerned with racial preferences in dating and mating might focus on structural mechanisms instead of regulating individual decisions, which most people would...
oppose. Lawmakers might consider regulating web site design decisions that produce, exacerbate, or facilitate racial preferences. With respect to employment and housing, federal law generally bans printing or posting notices that express a preference based on race or another protected trait. While I do not expect Congress or any state to extend such laws to dating web sites in the near future, my hope is that at least people involved in designing and maintaining web sites will think critically about the racial implications of their choices as they establish the infrastructure of a dating web site. Whether compelled or encouraged by law or adopted voluntarily, the designers of a web site might reduce users' consideration of race in assembling a pool of potential dates. This move would track the proposal I made in the context of casting film. In an article considering the legal implications of race and sex discrimination in the casting process, I argued that casting decision makers should avoid including race and sex classifications in casting announcements (unless the nature of the storyline requires the actor to appear as a particular race and/or sex). Declining to use race to screen people at the outset of the casting process, or when a user is initially constructing a pool of potential dates, does not mean that people must be colorblind. But it does require them to see the people who do not fit their preconceived notions of what “black” people or “white” people are like. As a result of this expanded pool of options, many people might very well find that the stereotypes that guide their racial preferences are unfounded, or at least that there are plenty of people whom they perceive as exceptions to the stereotype.

There is a spectrum of potential policies for managing racial information and racial preferences, ranging from those that heighten the salience of race to those that attempt to obscure it. The following list illustrates some options ranging from the most race salient to the least:

- require users to state racial preferences;
- require users to identify their race and permit users to search by race;
- require users to identify their race but do not permit race-based searches;
- ask for any or all of the above racial information but allow users to opt out of identifying their race and racial preferences;
- post statements encouraging users not to discriminate based on race;

23. See generally Robinson, supra note 2.
24. See id.
• encourage users to “flag” statements of racial preference and remove flagged statements; 25
• remove all racial references in profiles (with respect to self and/or dating preferences).

How might such structural choices impact personal preferences? Under one of the abovementioned options, a site might ask a user’s height, weight and neighborhood, but not her race. How many people, I wonder, would write race into their profiles, if the website administrators did not prompt them to think about race? In the empirical study described more fully below, we examined profiles from one gay-oriented website that does not prompt users to indicate racial preferences in establishing their profiles but does require a user to identify his own race. Under these conditions, less than fifteen percent of profiles indicated a racial preference. 26 This finding is consistent with a study of Yahoo! personals, which found that just nine percent of white users mentioned a racial preference. 27 Thus, a website that did not prompt users to state racial preferences might elicit facially race-neutral profiles from the majority of people who use the site.

If a law adopted some of the strongest policies against racial discrimination in dating, it might face considerable opposition from the public and raise First Amendment concerns. For example, a law compelling administrators to monitor text submitted by users to purge it of all racial references would directly and significantly restrict individual speech. Judicial precedent upholding laws banning the expression of racial preferences in housing and employment contexts would be inapposite because of two key distinctions. First, the courts are unlikely to categorize the underlying activity (dating) as “commercial,” as they do employment and housing discrimination. 28 Second, the law would not penalize the underlying romantic decisions, thus making unavailable the First Amendment exception for advertisements promoting unlawful activity. 29

25. See Craigslist—Fair Housing is Everyone’s Right!, http://www.craigslist.org/about/FHA.html (last visited Apr. 21, 2008) (“If you encounter a housing posting on craigslist that you believe violates the Fair Housing laws, please flag the posting as ‘prohibited.’”). The website further explains, “If a post receives enough negative flags it will automatically be removed (only one flag per person per post is counted). Posters whose postings are repeatedly flagged are subject to staff review and additional remedial measures.” See Craigslist—Flags and Community Moderation, http://www.craigslist.org/about/help/flags_and_community_moderation (last visited Apr. 21, 2008). A dating website might adopt a similar policy, which would allow people offended by expressions of racial preference to engage in self-help.

26. See infra note 100.

27. Phua & Kaufman, supra note 13, at 988.


At the other end of the spectrum, policies similar to the one at issue in the Roommates.com case require self-identification even when a user would prefer not to specify her identity or sort her dates by that particular trait. A court should approach a free speech challenge to a law regulating such requirements with greater skepticism. Importantly, the issue here is not whether government can silence individuals' speech about race but whether government can prevent the web site from requiring the user to speak about race and subject herself to discrimination. Arguably, such a law would actually promote speech while curbing race discrimination. It would require the web site to leave it to the individual to write race into her profile or leave it out. Moreover, it appears that no court has held that web design is "speech" for purposes of the First Amendment. This space does not allow me to explore the legal implications of each design regulation with respect to the First Amendment and the CDA. My main point is that a range of options exist and, at a minimum, web site designers might voluntarily pursue some of these options for reducing the salience of race. A web site designer that is committed to racial equality might reasonably decide not to require people to express racial identity and preferences.

None of the policies mentioned above, however, would actually eliminate race from dating because most sites permit users to post photographs of themselves. This failure might actually be a virtue because it preserves some space for the legitimate consideration of race and might make such a law seem more valid. Although photographs provide racial information, discerning race is not as easy as many think. Photographs that are not tethered to a racial classification and the various performative aspects that

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31. In Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002), the U.S. Supreme Court treated as speech and ultimately invalidated a federal pornography statute that criminalized certain "visual depictions" of underage sexuality. Id. at 241; cf. Langdon v. Google, Inc., 474 F. Supp. 2d 622, 629–30 (D. Del. 2007) (stating that the court would violate the First Amendment if it ordered Google to display plaintiff's advertisement). A statute narrowly targeting web site architecture, while permitting users to post whatever visual and textual matter they desire, is arguably different.


33. Cf. Robinson, supra note 2, at 51 (noting that "[courts can . . . accommodate both speech and equality in the casting context by creating minor procedural hurdles that create space for decision makers to consider the race and/or sex designation carefully and reflect on alternative casting options prior to making their ultimate decision").
constitute race (talk, walk, clothing, etc.) might not provide conclusive evidence of race. Many people think that race is obvious and biological, but there is tremendous racial variation in the physical features among the people grouped under the umbrella of a particular “race.” Moreover, the first and sometimes only view of a potential date on many web sites, including Match.com, is a small “thumbnail” photograph, and such photographs may not disclose all the features necessary in order for a user to discern race. On some sex-oriented web sites, including Adam4Adam.com, a popular gay web site, many users (who may have sex with men but do not necessarily identify as “gay”) do not publicly post facial photographs. Because sex is often, but not always, the focus, many users publicly post photographs such as a naked torso, a penis, and/or buttocks. Under these circumstances, the racial classification may provide necessary evidence for a user to distinguish whites from light-skinned Latinos and Latinos from blacks, for instance. Hence, without the assistance of racial classifications, users might initially be drawn to photographs of some people who do not “look black” or “look Latino” and yet are. At the same time, some users might avoid whites with olive skin and curly hair because they perceive such people to be nonwhite. In this way, the intervention would scramble racial perception and racial preferences to a limited extent. Users might arrange to meet someone without knowing for certain that person’s racial background. Indeed, they might enter romantic relationships based on a misapprehension of the other person’s race. In this way, web sites would facilitate interracial interactions that might not otherwise occur.

Match.com automatically generates “matches,” people whose profiles it says are compatible. When I signed up for Match.com years ago, I frequently opened the weekly e-mail from this site to find that several of the people the site selected as my matches (many white, but some black or otherwise of color) were perfect for me in every way, except they did not check the box saying they would date blacks. In writing this essay, I signed up for Match.com again simply to see whether the same pattern would appear, and once again the site proffered “matches” who did not want to date blacks. Beyond the bizarre design of the software, which both established an infrastructure for expressing racial preferences and then ignored those preferences in notifying me about my ostensible matches, I found it depressing to get weekly reminders of the romantic aversion that


many people of all races continue to feel toward black people. However, on the flip side of these e-mails, I wonder if Match.com sent my profile to the men who said they did not want to date blacks. If so, it would be expanding the pool of potential dates, contrary to the user's preference, and subtly encouraging them at least to consider black people.

Over time, the geography of Los Angeles and the structure of certain Internet sites subtly shifted my racial preferences. When living in D.C. and later New York City, by and large I did not look at white men as potential romantic partners because of the ample and visible supply of black MSM in these urban centers and an upbringing that encouraged me to seek a black partner. Upon returning to Los Angeles, and dealing with the end of my long-term relationship with a black New Yorker, I initially sought out black men as I would have in New York. I quickly learned, however, that the number of black men on the web sites that I frequented seemed smaller than the number of whites, Latinos, and others. Thus, I began to widen my search and open myself to the possibility of dating nonblacks. This new openness resulted in a handful of dates with white men, but no real connections. Moreover, I noticed a racial trend in my correspondence on the Internet. It seemed that my introductory e-mails to black men were more likely to be returned than those sent to white men. Although I never empirically tested the response rate, I would estimate that for every ten e-mails I sent to white men, I received three replies, while I received replies from seven out of ten black men. It also seemed that the black men were more likely to want to meet me immediately while the white men's responses tended to be ambivalent and mainly exploratory. In response to these market dynamics, I eventually returned to a focus on black men because attempting to connect with white men seemed less likely to result in an enduring connection. I suspect that people of all races take such expectations into account in many contexts when considering whether or not to approach someone. For instance, whether one is at a bar or the grocery store, attempting to strike up a conversation with an attractive stranger is risky and intimidating to many because we fear rejection and humiliation. If one thinks that white men are more likely to reject him than black men, it would make sense to target black men and perhaps set a higher threshold for approaching white men such as requiring them to be very attractive or waiting for them to signal an interest before approaching.

Although few might think it problematic that dating web sites facilitate racial preferences, I believe we should think more critically about such

36. See, e.g., Phua & Kaufman, supra note 13, at 985–87 (studying Yahoo! personal ads and finding that users were least likely to express a preference for blacks).

37. Cf. id. at 984 (suggesting that men of color may expect white men not to be interested unless their profile says "all races are welcomed" or "race doesn't matter"). Because some black people openly profess a preference for a black partner, see infra text accompanying note 39, some white people might believe that blacks are not interested in them and thus focus on other races.
facilitation and not quickly conclude that law is powerless to impact these structures. As I have outlined above, whether structural interventions are legally compelled or voluntary, they may erode racial stereotypes and thus reshape preferences. Nonetheless, there would be costs to regulating dating web sites and banning or discouraging the expression of racial preferences. Although antidiscrimination laws often focus on deterring discrimination by whites, most laws, including Title VII, also ban discrimination by people of color. If the law applied to all races in the context of dating web sites, it would constrain the racial preferences of blacks and other minorities, which might be less likely to rest on stereotypes. A study that compared references to race in 2400 Yahoo! personal profiles from men found that men of color were more likely than whites to mention race. Indeed, blacks were six times more likely than whites to mention race. Of the black men seeking men, fourteen percent mentioned race simply to state that they had no racial preference, and thirteen percent expressed a preference for whites only. Just nineteen percent expressed a preference for blacks only. The authors of the study concluded that “minority men are more sensitive to race than are White men, probably due to their experiences as minorities.” Whereas whites have the privilege not to think about race, I have argued elsewhere that blacks tend to see race consciousness as necessary to their survival in white-controlled domains. This phenomenon may extend to intimate realms as well. Since blacks spend their days at work trying to rebut racial stereotypes and navigating the pressure to uphold colorblind norms by rendering “racial comfort,” they may find the prospect of doing this work in the most intimate realms of their lives to be distasteful. They may crave a space where, at the end of a long day, they can lay down the burden of being black, and just be. Sadly, because of the persistent racial disparities between blacks and whites, it may be very difficult for a black person to experience this type of racial transcendence with a white person. I argue below that blacks may be particularly likely to have nonstereotypical reasons for avoiding relationships with whites, including the racial conflict that often stems from black-white differences in perceiving discrimination. At the same time,
racial minorities are likely to have a special need for screening in order to effectuate their preferences. Because whites are in the majority, they would likely have an ample number of white potential partners even if web sites did not permit racial classifications and race-based searching of their databases. It is true that they would have to consider some people of color, but often the majority of the “matches” generated by the site or obtained by the user would continue to be white. By contrast, people of color on mostly white web sites would have a harder time connecting with the few potential mates who are people of color. They may have to wade through a large pool of white prospects in order to access the elusive person of the same race. Such regulation would be problematic in that it would exert greater pressure on minorities to cross racial lines than it would on white people. It may exacerbate the structural impediments, such as residential segregation and wealth disparities, which already isolate minorities who live and work in white-dominated spaces. Because not all reasons for racial preferences are problematic, we must consider the identities and the contexts that shape any particular preference.47

C. Constraining Queer Sexuality and Reifying Heterosexuality

This part briefly considers the impact of social and Internet structures on sexual preferences for men or women, in addition to the issue of sex segregation in queer communities. The designation of certain spaces as queer, as in the Castro in San Francisco or Chelsea in New York City, has a dual function. These mostly urban spaces draw people who are interested in exploring their sexuality and might have limited opportunities in rural and suburban areas.48 In this way, they cultivate and enable queer preferences. However, by designating certain spaces as officially queer, do we also implicitly identify the rest of the world as officially straight? This demarcation of spaces allows self-identified straight people to avoid queer spaces and remain within the straight zones—where they are protected from queer advances, which might challenge their sexual identity. Roommates.com’s effort to help straight people avoid queer roommates might be understood as a structure that similarly protects heterosexuality. Brad Sears has written that his entree into the gay community and dating black men came through attending a gay club with his then-girlfriend.49 Unlike the highly specialized and largely monochromatic gay male clubs that predominate in large cities today, this club was a general home for outsiders: “lesbian and gay, black and white, young and old, the trannies

47. See Kennedy, supra note 21, at 29 (rejecting the simple-minded notion that “all racial distinctions are the same” and arguing for the “need to discriminate among discriminations”).
48. See, e.g., Sears, supra note 7.
49. See id.
and the wheelchaired.” 50 Sears writes that an interaction with a black man who challenged his failure to be out “sparked a revolution in my worldview and self-image.” 51 In major cities today, most queer clubs and bars are dominated by either men or women, and a “heterosexual” couple like Sears and his then-girlfriend would stand out like a sore thumb.

The Internet similarly reflects a strict separation of romantic markets. For example, Match.com requires the user to search for either a man or a woman; users cannot simultaneously search for potential male and female dates. 52 Thus, it erases the possibility of bisexuality. 53 One might think that my proposals with respect to race should be extended to sex so that profiles cannot specify sex, and users cannot search based on sex. But sex is different. 54 Such an intervention would approach compulsory bisexuality. Requiring men who want to have sex with men to wade through a large pool of women (and vice versa) seems too invasive given a narrower fix; instead of a man having to state that he is looking for a man or a woman, he should be able to state that he is looking for either. 55

Although inclusive social spaces seem to be fading in the United States, they may be more prevalent in particular communities abroad, where sexual identity seems not to be as rigid and reductive. During the summer of 2007, friends in Argentina took me to a cavernous club with a crowd that was very mixed in terms of sexual orientation. This diversity extended even to a “dark room.” In this space, my friends told me, queer and straight couples made out alongside each other, and importantly, the spatial integration allowed a significant number of men who are not easily defined as queer or straight to blur sexual boundaries. According to my Argentine friends, the club attracts men who identify as straight but might occasionally have sex with another man they meet at the club. This integrated back room is thus a structure that complicates crude lines of identification and facilitates sexual exploration, expanding romantic preferences as much as we confine them in U.S. gay ghettos.

50. Id.
51. Id.
52. See Match.com, http://www.match.com/ (last visited Apr. 3, 2008) (prompting the user to state whether he is a “man” or a “woman” and whether he is searching for a “man” or a “woman”).
54. See Emens, supra note 20 (manuscript at 5) (“Sex is so foundational to the way we talk about desire that we rarely include it in the description of someone’s type; it’s assumed.”).
55. Even the requirement that a person identify as a “man” or a “woman” is too narrow in that transgendered people may feel excluded. Perhaps a bisexual person may set up two profiles, assuming that the site permits users to create multiple profiles. In any event, a site’s failure to include the option of bisexuality in its “man looking for woman” framework likely influences behavior. Cf. Russell Korobkin, Psychological Impediments to Mediation Success: Theory and Practice, 21 Ohio St. J. on Disp. Resol. 281, 308–14 (2006) (reviewing studies on the impact of framing on behavior).
Romantic spaces tend not only to be segregated into “straight” and “queer” zones but in queer communities, they are often rigidly designated for men or women. We might benefit from thinking critically about the influence of such sex-segregated structures. How might the norms governing a social space be transformed by including queer women with queer men? It is possible that certain male-identified traits, such as a fixation on sexual conquest and gratification, would be diluted if women were present. I pause to emphasize that I am not arguing that men are naturally hypersexual and women are naturally less sexual beings, but that the social norms that say men are supposed to simply want to hook up and lesbians are supposed to want to “U-Haul” might be disrupted and complicated if men and women socialized together more. Perhaps more queer women would feel free to hook up, and more queer men would feel free to pursue a relationship.

Further, we should ask whether the misogyny that continues to be expressed by many gay men is bolstered by the de facto men-only policies in most spaces where queer men socialize. Corey Johnson and Diane Samdahl’s ethnographic study of a country-western gay bar in a southern city documents the animosity that gay men expressed when lesbians flocked to the bar on Thursdays, the bar’s sole “lesbian night.” Although a number of respondents claimed that the bar welcomed everybody, gay male respondents simultaneously made negative remarks about women: describing women as “fish,” a derogatory term for female genitalia; calling a woman who caused a man to spill his beer a “[d]umb [c]unt”; complaining about “fucking dykes!”; and revealing a general aversion to the bar on lesbian night. Many of the men expressed seemingly baseless stereotypes that the lesbians at the bar were poor tippers, bad dancers, and generally rude. These troubling intergroup dynamics call for greater

56. See Stephen Ellingson & Kirby Schroeder, Race and the Construction of Same-Sex Sex Markets in Four Chicago Neighborhoods, in The Sexual Organization of the City 93, 97 (Edward O. Laumann et al. eds., 2004) (arguing that gay male culture encourages separating sex from intimacy, while lesbian culture promotes longer-term relationships).

57. This is a reference to a long-standing joke in the lesbian community:
   Q: What does a lesbian bring on a second date?


59. Id. at 332, 341. In the words of one gay man who refused to take his friends to the bar on Thursdays, “Gay men are like flipped out if there are like more than two [lesbian] women in a place, you know two women in a bar. They are like, ‘Oh god [sic] there is [sic] all these lesbians everywhere.’” Id. at 342 (first alteration in original).

60. Id. at 344-45. The authors suggested that sexual interest explained some of these perceptions. The all-male bartenders were more likely to flirt with gay male customers than lesbians, and thus the men were more likely to tip. Id. Similarly, a man who is bumped by another man on a crowded dance floor might use it as an opportunity to meet and flirt, but that same man might have little interest in engaging a female who bumps him.
study as to how to overcome such stereotyping and proprietary attitudes over queer spaces.61

II. RACE IN THE BEDROOM

My second main point is that race structures our relationships, even when we think we have transcended it. Race may determine how power is allocated and exercised in interracial relationships. Racial privilege does not vanish simply because two people have committed to a relationship or marriage. It may continue to be a third member of the partnership, present in the bedroom and the relationship more generally, even if it is cloaked by norms of colorblindness.

I illustrate this dynamic by drawing on a phenomenon that I call perceptual segregation.62 I argue that black people and white people who observe the same interracial incident are likely to disagree as to whether the white person committed discrimination. This is so because black people and white people, on average, subscribe to different definitions of discrimination and use disparate evidentiary standards for identifying discrimination. Because blacks, for various reasons, are likely to define discrimination more broadly than whites and less likely to require evidence of bad intent, the black partner in an interracial relationship may perceive discrimination where her white partner does not. She then must decide whether to articulate this perception or to "cover" it. In general, people of color and women who complain about discrimination are characterized as whiners, hypersensitive, and enthralled by a victim mentality.63 The popular refrain "He's just playing the race card" often functions to deflect black perceptions and conclude that the real problem is the black person's deluded mindset. There is no reason to think that the general social aversion to and skepticism of black complaints about discrimination evaporate when two people fall in love or have sex.

Because the black partner and white partner in an interracial relationship have inherited different racialized conceptions of discrimination from their respective communities, they are likely to experience perceptual conflict in the context of their relationship. This conflict could emerge in myriad ways.

61. I am not categorically opposed to men-only or female-only social spaces, whether queer, straight, or mixed in terms of sexual orientation. But I find it disappointing that the social and political possibilities for coalitions between queer men and queer women are often subordinated to a narrow focus on constructing a ready supply of potential sexual hook ups.

62. For an in-depth analysis of this phenomenon and an application to the legal system's adjudication of Title VII claims, see Robinson, supra note 3 (manuscript at 136-201).

and might manifest itself in many mundane daily encounters. An experience as routine as dining out might provoke a racial dispute if the couple experiences adverse treatment from the staff. For example, the hostess might appear to seat an all-white party before the interracial couple, or the waiter might seem aloof or hostile toward the couple. In most scenarios, there could be multiple and potentially intersecting explanations for this adverse treatment—the hostess is incompetent, the restaurant is very busy, and/or the waiter is having a bad day. Perceptual segregation suggests that the black partner is likely to be more race-conscious than the white partner and more vigilant in monitoring potential discrimination. The white partner, meanwhile, might think the best way to overcome race is to ignore it. In light of this belief in colorblindness, the white partner may gravitate toward the nonracial explanations for the adverse treatment.

Warren, a man included in social psychologist Kellina Craig-Henderson’s study of black men in interracial relationships, reported that, during his eight-year relationship with a white woman, he often noticed that people around them in public places were uncomfortable. Although Warren was attentive to these adverse reactions, his white partner was “‘usually totally oblivious to their reactions and could have cared less.’” When pressed as to why he noticed other people’s reactions, he explained, “Well because, ummm . . . my being Black and I have to deal with this. I have to be aware . . . .” His white girlfriend did not have to, and apparently that perceptual difference created a rift between them. Because of these clashing mindsets, the couple may be predisposed to disagree when confronted with issues of potential discrimination. Note that these disagreements could encompass many social-political issues as well.

For example, surveys have shown a substantial black-white divide regarding perceptions of the role of race in the government’s inadequate response to Hurricane Katrina, the extent of racial bias in the criminal justice system, the likelihood that the government created AIDS to harm black communities, and the extent to which the government subjects black government officials to greater surveillance. Thus, not only daily interactions but also news reports bear the potential to spark racialized disagreements.

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64. See, e.g., Julie Schmit & Larry Copeland, *Cracker Barrel Customer Says Bias Was 'Flagrant,'* USA Today, May 7, 2004, at 1B (describing lawsuits by black and interracial parties who alleged that the Cracker Barrel restaurant chain discriminated against them).

65. Craig-Henderson, *supra* note 1, at 123 (reporting the experience of Gary, who stated that “it was mostly a matter of perception . . . for example, if we get a bad table in a restaurant or very slow service . . . you’re never really certain”).

66. See *id.* at 101–02. Although I emphasize a number of the problematic responses from Kellina Craig-Henderson’s interviews, a number of the men explained their involvement in interracial relationships in ways that were not stereotypical or otherwise troubling. See, e.g., *id.* at 107–08 (discussing Damon, who was not looking for a white woman but ended up happily married to one, much to his surprise).

67. *Id.* at 102.

68. *Id.*

People in interracial relationships are likely to respond to this conflict in two ways. First, they may argue frequently about such issues. In addition to the arguments that a couple might have for all sorts of nonracial reasons, the interracial couple must also manage potential conflict over race, one of the most intensely felt and polarizing topics. The racial differences in perception thus impose an extra burden on black-white relationships. Of course, some all-black couples and all-white couples might also disagree about race at times, but they are more likely to agree than interracial couples because they are more likely to have had similar racial experiences. One might expect that white people who form relationships with blacks tend to be more race-conscious and sympathetic to black perceptions of race than the average white person. This seems true for some people in interracial relationships, but the extent of this dynamic is unclear. Further, studies suggest that other people engage in interracial relationships for reasons that would not seem to reflect a progressive, race-conscious mindset. For instance, Craig-Henderson argues that some people in interracial relationships are motivated by a desire to flout social norms or are animated by racial stereotypes, including aesthetic preferences shaped by white supremacy (for example, the belief that black men are more sexually aggressive and well-endowed, or the notion that white women have more beautiful physical features, such as long straight hair). For instance, one of the subjects in her study of black men in interracial relationships said that “there was no such thing as an ‘unattractive White woman.’” Some people might view their interracial partner as a racial trophy. Others may justify their preference for nonblacks by stereotyping their own race. L.G., a man in Craig-Henderson’s study, explained that his aversion to black women resulted from his belief that they do not have “‘their act together . . . financially, emotionally . . . and spiritually, or any of those types of things,’” and he does not want to put up with “‘a lot of games and a lot of nonsense.’” We can also see the flip side of this phenomenon by looking at online profiles of people who, rather than refusing to date black people, actively seek them out. For instance, one white man who responded to an Internet profile of a black top described himself as a “Total GWM [gay white male] bottom into size and aggressive masculine total top

70. Consider this white man’s explanation for why he prefers Asian women: “[H]e stated he liked them because their food ‘is awesome,’ they are ‘just so attractive to me,’ and he ‘just love[s] the Asian race, it’s mystical to me in a way.’” Bonilla-Silva, supra note 6, at 118 (second alteration in original).
71. Craig-Henderson, supra note 1, at 97.
72. Id. at 96–97 (discussing interviewee Derrick, who Craig-Henderson described as “obsessi[ve]”).
73. Id. at 105. L.G.’s explanation is ironic because this is precisely the sort of charge that black women sometimes level at black men. See Joy Jones, Marriage Is for White People, Wash. Post, Mar. 26, 2006, at B1.
men who know what they want. Blk tops ++...”74 This man’s preference for black men thus appears to rest on a stereotype that black men are essentially “aggressive” and “masculine,” expected to have big penises (the reference to “size”), and to be “total tops.”75 I discuss additional profiles that express a racial preference in Part III.

A second reaction to racial conflict may occur even when the white partner is more race-conscious than the average white person and does not subscribe to racial stereotypes, but still does not quite see eye-to-eye with her black partner. Couples can avoid arguments over race if one (or both) of the partners suppresses conflicting perceptions. For instance, if a white woman disagrees with her black husband’s assertion that the hostess in a restaurant is racist, she may withhold her contrary opinion to preserve peace. Or the black husband may silence his instinct that he was subjected to discrimination at work and decide not to confront the perpetrator because he does not want to upset his wife. Consider Derrick, the man in Craig-Henderson’s study who stated that “there was no such thing as an ‘unattractive White woman.’”76 He acknowledged that he had to “tough it out” while spending time with his Cuban wife’s family because they “frequently made racial slurs, and emphasized the fact of his Blackness.”77 Derrick learned to laugh at such slurs because that reaction ingratiated him with his in-laws, yet he privately harbored animosity toward them.78 He also disclosed that he had to limit his interactions with other black people because his wife “did not feel comfortable around other Black people, including his friends and family.”79 When he tried to confront his wife about her aversion to other blacks, she denied the racial element, stating it was not “a racial thing,” but she was just not a social person.80 Some people of color may deal with the potential for racial conflict by adopting a colorblind mentality, which is pervasive among whites.81 One way of

74. This person responded to a profile that we posted as part of the empirical study detailed below. This profile and all data compiled in the empirical study are on file with the author.

75. Another respondent, who described himself as a thirty-eight-year-old man of mixed racial heritage, similarly stated in his profile, “looking for hung, verbal, assertive tops that knows [sic] how to work a willing, submissive bttm [sic]. happiest making you feel good! like men around my age or older ... ethnic men to the front of the line.”

76. See Craig-Henderson, supra note 1, at 97.

77. Id. at 98. Although this example involves a Cuban woman, who may have been able to pass for white, I do not mean to imply that Latinos in general are aligned with the “white” perspective in perceiving (or failing to perceive) instances of discrimination.

78. See id.

79. Id.; see also id. at 119–20 (discussing Chester, who “generally avoided seeing certain ‘Black’ movies with his wife” because they might make her “‘uncomfortable’”).

80. Id. at 98.

81. See id. at 103 (discussing M.B., who stated that he and his white girlfriend “‘view people as people. For us, color just doesn’t matter’”); see also Robinson, supra note 3 (manuscript at 124 n.251) (discussing psychological evidence suggesting that many people of color and women minimize discrimination as a coping mechanism). See generally Gary Blasi & John T. Jost, System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice, 94 Cal. L. Rev. 1119 (2006) (applying system
transcending race, then, may be the choice (conscious or unconscious) not to acknowledge race or the burdens it imposes on one's life. The racial divide on issues of discrimination and the substantial work that must be done to soften or bridge that divide, through various mechanisms (e.g., rendering racial comfort, "toughing it out," or adopting a colorblind perspective) shed new light on the preferences that some people of color might have for wanting to date or marry a person of the same race.82

Craig-Henderson’s book includes only men who identify as heterosexual. We can see how these dynamics play out in a queer context by turning to Dwight McBride’s book Why I Hate Abercrombie & Fitch.83 In this book, McBride recounts his interracial dating experiences while in graduate school at UCLA. In one case, he was approached by a white man at a club. After a few minutes of conversation in which the two seemed to be connecting, the white man said he and his friends were “out looking for black guys tonight.” The white man smiled as if McBride would be impressed, and perhaps grateful. But he was not. There was a racialized perceptual divide—what the white man intended as a compliment or enticement actually upset McBride. McBride writes,

> At that moment, I wanted to be far away from him . . . [and] from the gay world that had brought me a perceived sense of liberation only a few months before . . . . That same gay world was now beginning to teach me some important lessons . . . about my value in that world and the ways in which race and racism would have congress in even my most intimate of negotiations within it.84

The white man’s interest appeared to start and stop with McBride’s skin color and the attributes he assumed to correlate with it. After all, the white friends were looking for blacks just for “tonight.” Tomorrow, having satisfied their momentary fetish, they would presumably move on to something else. Maybe it would be “Latin night.”

On another occasion, McBride met a white man and eventually slept with him. The sex was good, McBride writes, until his white partner yelled out,
“‘Give me that big black dick!’” at which point McBride says he nearly went limp.85 Later, the white man told him, “‘You are the first black guy I’ve ever been with.’”86 Again, McBride’s white partner either intended these comments as compliments or was indifferent as to how McBride would receive them.

The biggest mystery in light of the numerous interracial indignities and disconnections McBride catalogues in his book is why he continued to engage white men. Part of the answer likely lies in structure. Spending most of his time at UCLA, like me, he likely had limited opportunities to meet black men of a similar educational and social class. As a result of these structural constraints, McBride apparently made a compromise: he would date white men, but only under certain circumstances.87 I can only imagine that one of these rules must have been “No talking during sex.”88

When race is not frankly engaged in relationships, the white partner and the black partner might have completely distinct experiences. Because the black person is likely to be more race-conscious and more sensitive to potential racial slights, she may be engaged in a constant racial negotiation. The white partner, by contrast, may be oblivious to these dynamics and attest that they enjoy a colorblind relationship. Meanwhile, the black partner may be asking: How much racial education should I have to do in this relationship? How many offensive remarks must I let slide? How many experiences with discrimination should I stifle for fear of aggravating my partner? At what point does it all become too much? And to the extent that some people of color have a high tolerance for racial humiliation and continue to prefer white people, what does that tell us about the enduring appeal of whiteness, even in communities of color?

III. ASSESSING RACIAL PREFERENCES AMONG MEN WHO DATE MEN

This part presents a study that generates empirical data on the impact of race in internet dating interactions among MSM. Very little research has explored this topic. Much of the previous scholarship focuses only on heterosexuals.89 The most relevant study on Internet dating among gay men found that men of color were more likely to mention race in their ads than white men, and that black men were least likely to be preferred.90

85. Id.
86. Id. at 121.
87. See id. at 124–25 (describing the responses of black men to the “gay marketplace of desire . . . that centers on ‘whiteness’”).
89. See, e.g., Kennedy, supra note 21, at 39 (acknowledging that “[a]ll too little is said here about gay and lesbian relationships”); Shauna B. Wilson et al., Dating Across Race: An Examination of African American Internet Personal Advertisements, 37 J. Black Studies 964, 970–71 (2007) (studying 200 profiles of African Americans on Match.com presumably looking for partners of the other sex without giving specific attention to profiles seeking partners of the same sex).
90. See Phua & Kaufman, supra note 13, at 988–89.
However, that study did not consider how race intersects with sex role. Recognizing this limitation, the authors called for future research to "delve deeper" into the "sexual stereotypical objectification of ethnicity." This research seeks to fill that void.

We assessed racial preferences among MSM that connect with men on a popular web site, Adam4Adam.com (A4A). The research consisted of two stages. First, we conducted a preliminary survey of profiles in order to determine how frequently web site users explicitly mentioned a racial preference. We also evaluated these profiles to get a sense of the justifications and stereotypes animating racial preferences. Because only 14.3% of the profiles we surveyed expressed a racial preference, we developed a second phase to ascertain preferences that people might be reluctant to state overtly.

In the second part of the study, we created personal profiles in order to compare the relative demand for men of color who perform particular sex roles. Race appears to shape romantic opportunities through prevalent stereotypes that assign men of color to certain sex roles based on their race or ethnicity. For instance, I have argued elsewhere that black men are often expected to be hypermasculine, sexually aggressive, and well-endowed. By contrast, Asian men may be stereotyped as passive, submissive, and more likely to adopt a feminine role in a gay couple. This study enabled me to put such arguments to the test. But why do such stereotypes matter? In my view, they limit individual freedom by putting pressure on men of a particular race to conform to the stereotype in order to maximize the number of dates he may obtain. Because of the norm of colorblindness, we cannot expect all people to be frank about their racial preferences when it comes to dating and partnering. Although preliminary analysis showed that a relatively small number of users expressed racial preferences in their profiles, we wanted to learn whether a larger group of men had racial preferences, even if they would not articulate them expressly and might not have even been conscious of them. Thus, this study attempted to discern aggregate trends reflecting demand for men of particular races who play particular sex roles in the marketplace of desire. For instance, we asked

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91. Id. at 992. Voon Chin Phua and Gayle Kaufman examined thousands of Yahoo! personal ads, but they did not post ads in order to compare responses to ads posted by men of different races. Id. at 985–87.
92. This research also attempts to answer the call by Devon Carbado and Mitu Gulati for greater scholarly and judicial attention to intraracial distinctions in order to understand racial discrimination fully. See, e.g., Carbado & Gulati, Fifth Black Woman, supra note 34, at 720–21.
93. I conducted this study with my research assistant, Greg Furtado, who provided invaluable assistance. In addition, my colleague Saul Sarabia advised and assisted with the study. UCLA’s Office for Protection of Research Subjects Institutional Review Board approved this research.
94. See Robinson, supra note 4, at 1822–23.
95. See id.
96. See, e.g., Robinson, supra note 3 (manuscript at 74–75).
whether there is more demand for a black top (the sex role widely perceived as masculine) than for a black bottom (widely perceived as more feminine).

We ascertained these trends by posting nearly identical profiles on A4A. The statistics and descriptions of the profiles we posted were very similar, but each time we posted the profile, we changed the race and sex role. Importantly, each profile featured one photo of the same model, an attractive and fit personal trainer. Because we did not use different models, one cannot attribute the differences in market interest to the attractiveness of particular models or features. Our goal was to control for physical attractiveness as we determined aggregate racial preferences by comparing the number of e-mails that each profile attracted. The ultimate goal of this project is to demonstrate the impact of race in determining the opportunities that men have for finding romantic partners and the pressures that racial stereotypes exert on certain men of color.

A. Methodology

For the first stage of this project, we analyzed expressions of racial preferences stated in personal profiles on A4A. We studied roughly 500 profiles, which were selected based upon their sequential order in random searches of personal profiles in the Los Angeles area. We created an account with no identifiable information in order to navigate the site and search through the profiles. We conducted a search with only the following geographical parameters: North America, California, southern California/Los Angeles, and all areas. No other categorical restrictions (e.g., race, age, sex role) were used.

On October 24, 2007, the first 300 personal profiles were viewed and saved as PDF documents in sequential order. This was done by opening each ad in its own window and then converting that window into a PDF document. On October 29, 2007, another 215 personal profiles were viewed and saved as PDF documents in the same fashion.

We saved personal profiles and gave each a numerical identifier based only on the order in which they were viewed and saved. We then put profiles into a database linking the numerical identifier with a username, geographical location, sexual position, race, and racial preference.

97. The statistics of each profile (height, weight, penis size, etc.) were identical for each profile. The primary difference was that we changed the profile's text slightly so that users of the web site would not become suspicious. For example, the first racial profile (i.e., white top) included text stating, "No-nonsense man looking for same. Cut to the chase about what you want." The second racial profile (i.e., white bottom) contained the same basic message but in different language: "Let's get to the point. No games or BS." Because we thought the black profiles might provoke the most skepticism because of our model's racial features, we wrote the black profiles so that the profile referred to the subject as a "light-skinned black man."

98. We recorded 515 profiles to account for potential duplicates in our searches. Ultimately there were five duplicates, which we discarded. Thus, the final number of profiles was 510.
Usernames were used to identify any duplicate personal profiles acquired during the second session on October 29, 2007.

Numerical designations were assigned to major geographical locations within Los Angeles, race, and sexual position, as defined by the web site. Racial preferences were assessed for the six racial categories identified by the web site (Asian, black, Latino, Middle Eastern, white, and mixed). If a racial preference was stated or implied, a numeric identifier (1) was entered for the particular race so identified. The direction of that preference, whether positive or negative, was then captured by changing the sign of the numeric identifier previously entered. Thus, a statement in a profile looking for Asian men would be identified with a +1 in the Asian column. A statement in a profile that the user was not looking for Asian men would be identified with a -1 in the Asian column. Personal profiles stating that they were looking only for a certain race were identified with a +1 in the column of the stated race and a -1 for all other racial categories. Just 14.3% of the profiles in our sample expressed a racial preference.

For the second stage of this project, personal profiles were created on the web site with only the following information: username, picture, location, profile headline, profile text, age, height, weight, waist size, body type, hair, body hair, looking for (users can state that they are looking for sex and/or relationships, etc.), race, sex role, smoke (whether the person smokes or not), and penis size. Each profile included a photograph of the same model, whose shirtless torso was exposed. The photographs did not disclose his face, which is common on the web site. The model is an attractive, athletic Latino gay man, and we selected him because his skin color was not

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99. The eleven geographical locations were assigned numbers alphabetically. Thus, downtown was “1,” east Los Angeles was “2,” Echo Park and Westlake was “3,” and so forth. Similarly, the six racial categories were assigned numerical identifiers with Asian being assigned “1,” black “2,” and so on, though mixed was assigned “6,” outside the otherwise alphabetical order. The five sexual position preferences were assigned numbers based on the sequential order as given by A4A. Top was “1,” bottom was “2,” versatile/top was “3,” versatile/bottom was “4,” and versatile was “5.”

100. Of the profiles that expressed a racial preference, the hierarchy of preference for a particular race was as follows: whites (49.3%), Latinos (43.8%), blacks (39.7%), and Asians (9.6%). The hierarchy of preference against a particular race was as follows (starting with the group least preferred): Asians (8.2%), blacks (5.5%), whites (4.1%); and Latinos (2.7%). These numbers might be read to suggest that a unique disadvantage attaches to Asians. However, I hesitate to draw conclusions from this sample since a small number of profiles overtly stated racial preferences and unlike the second stage of the study, this sample reflects only men in Los Angeles. Moreover, there does not appear to be any reason to think that the subset of people who express racial preferences are representative of the remaining, vast majority of people who decline to state a racial preference, but might nonetheless have implicit racial leanings. See Steven D. Levitt & Stephen J. Dubner, Freakonomics: A Rogue Economist Explores the Hidden Side of Everything 83 (2005) (discussing a study of online personal ads showing dissociation between white users’ stated lack of racial preferences and their tendency to send e-mails overwhelmingly to white profiles). The second part of the study attempts to measure more directly such implicit racial preferences.

101. The profiles were also created with a locked “private pie” that was never unlocked during the course of the study.
near either end of the color spectrum (neither extremely pale nor extremely brown).

The racial designation (Asian, black, Latino, and white) and sex role (top or bottom) were then varied for each profile that we created. Username, picture, profile headline, and profile text were also varied depending on the race and sex role of the personal ad. Pictures were of the same model and varied only in pose and lighting.

Usernames were generated based upon the race of the personal profile being posted and the sex role of the profile. Some profiles were also created with a neighborhood location or a numeral to add variety, though the numeral assigned was neutral enough so as not to imply penis size. We selected locations within Los Angeles and New York to avoid neighborhoods with strong racial identities (such as Harlem in New York). We chose downtown for Los Angeles and midtown for New York. In selecting these specific neighborhoods, we intended to discern the racial dynamics of white-dominated marketplaces of desire, not the various ethnic pockets throughout the city, which might exhibit very different norms and trends in terms of racial preferences.

We made profile headlines as brief as possible and mainly reiterated the basic race and sex role information contained in the profile. Thus, one profile headline read “White Top Seeing What’s Out There” and another read “No-nonsense White Bottom.” Profile text was kept short, similar to the profile headline, in order to minimize extraneous information and to keep uniformity among the profiles. Each profile headline conveyed the basic message to keep communications brief in order to facilitate hooking up more quickly. For example, one profile read, “No-nonsense man looking for same. Cut to the chase about what you want.” Another profile read, “Let’s get to the point. No games or BS.”

Age, height, weight, waist size, body type, hair, body hair, looking for, smoke, and penis size were the same for every personal ad. Each personal ad was for a twenty-five-year-old man, five feet nine, 167 pounds, thirty-one-inch waist, athletic body type, black hair, smooth body, nonsmoking, eight-inch penis, looking for “1-on-1 Sex,” “3some/Group Sex,” or “Relationship.” We selected these statistics in order to maximize the attractiveness of the profile and yet minimize (to the extent possible) tension with prevailing racial stereotypes. For example, we worried that if we made the height six feet two, some users might doubt that an Asian man would be that tall. No profile included any expression of racial preference or any other sign that might have deterred people of other races from expressing interest.

A4A requires approval of all pictures uploaded to a personal ad. Since obtaining approval requires as much as forty-eight hours, profiles were created two days before the designated Saturday evening when we signed

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102. Some users of the site incorporate references to their penis size (for example, “Teninchtop”) in their usernames in order to attract interest.
onto A4A with the profile. Although users can search all active profiles,
the users who are currently online are displayed most prominently and often
receive the most messages. We created each profile and posted it once by
signing on during a Saturday night in the following order in Los Angeles:
white top, white bottom, black top, black bottom, Asian top, Asian bottom,
Latino top, and Latino bottom. The order in New York was the following
(reverse racial): Latino top, Latino bottom, Asian top, Asian bottom, black
top, black bottom, white top, and white bottom. The postings occurred
from February 2, 2008, through March 22, 2008. Each Saturday during this
period we posted one profile in Los Angeles and one in New York.

We signed on each profile for one hour on a Saturday evening starting at
10:00 p.m. (PST) in Los Angeles and 1:00 a.m. (EST) in New York. We
selected these times because we expected them to be prime time for men
looking to connect with another man, and we anticipated that the New York
scene extended later than the Los Angeles scene. We counted all e-mails
that the profile received from initial posting (which typically happened on
Friday) until Saturday evening at 11:00 p.m. (PST) in Los Angeles or
Sunday morning at 2:00 a.m. (EST) in New York. During the hour in
which we signed on with the profile, we recorded racial demographics for
the first 100 users randomly displayed using the “Members Online”
function of the web site for each area (in Los Angeles and New York).
After the hour had elapsed, we signed off and made a PDF screen capture of
the e-mail inbox of the profile to show the total number of e-mails received
during that hour and then saved the screen capture as a PDF file. We also
took a PDF screen capture of each individual e-mail received and the
sender’s profile. We then deleted the profile that we had posted. We did
not respond to any e-mails or initiate conversations with any users. We
simply posted each profile and let the users of the site respond.

B. Results & Discussion

The results of this study produced three main findings. First, as depicted
in Figure 1 (next page), the results suggest a racial hierarchy among MSM.
The white and Latino profiles received a similar number of e-mails, while
the Asian and black profiles received a significantly smaller number. This
finding suggests that scholars must be careful when discussing
discrimination against people of color in romantic marketplaces. Not all
racial minority groups are similarly positioned. The closeness of the results
for whites and Latinos is surprising. Although white profiles received four
more e-mails than Latino profiles, the difference is not statistically
significant. However, as I discuss below, there are important intraracial
distinctions among Latinos that warrant further study.

The second main finding is that the black bottom profiles were uniquely
disadvantaged. This finding thus partially confirms this essay’s hypothesis
regarding the interaction of racial stereotypes and sex role. In general, the
top profiles drew more e-mails than the bottom profiles, but the starkest
disparity between top and bottom was among the black profiles. As
predicted by the stereotype of black male endowment and virility, the black top profiles drew substantially more e-mails (twenty-six) than the black bottom profiles (four), which received the fewest e-mails in the entire study.

Figure 1: Number of E-mails Received by Race

Figure 2: Number of Responses to Each Profile, by Race, Location, and Sex Role Conditions
The disinterest in the black bottom fully extended to black respondents to the profiles. Indeed, not a single black respondent (or Asian or Latino respondent) sent an e-mail to a black bottom profile. It thus appears that some black men in white-dominated marketplaces of desire may have internalized the stereotype of black male virility and may have little interest in black men who are perceived as violating this norm. The image of a black man being penetrated may simply be too far afield from the iconic image of rapper 50 Cent, who is viewed as masculine, aggressive, and, in some quarters, essentially black. By contrast, a black man who identifies as a bottom may be viewed as the inverse of the so-called “hypermasculine” black man represented by 50 Cent. Since users have limited information about the person behind the profile, they might use sex role as a proxy for effeminacy, flamboyancy, and being openly gay, which may be disfavored traits. They may think it is shameful and “un-black” to identify as a bottom.103 Black men looking for bottoms may express more interest in men of other races because a white man or Asian man bottoming, for instance, does not violate any racial norm to which the black men subscribe. I emphasize that this norm does not operate only among blacks. Although a few white men sent e-mails to the black bottom profiles, the strikingly low number of e-mails suggests that men of all races have little interest in black men who identify as bottoms. The stereotype of black men as “hypermasculine” might have whipsawed the black tops since perceptions of black male aggression are linked to the stereotype of black male criminality. Because many men use A4A for relatively anonymous hook ups and tend to meet at one of the sexual partners’ residence, concerns about safety are crucial. As appealing as the black top might be, fear of being victimized (in bed or after sex) might have dampened interest in connecting with black men.104

A related pattern emerged from the responses to the Latino profiles. There was substantially more interest in Latino top profiles (fifty-two e-mails) than Latino bottom profiles (twenty-seven), although the market for Latino bottoms clearly surpasses that for black and Asian bottoms. We expected the black top profiles to enjoy a special advantage because of the

103. There may be a distinction between identifying as a bottom and performing the bottom role at times. For instance, some men on A4A identify as tops yet seek only other tops. The implication is that at least one of the tops will bottom but neither holds himself out as a bottom publicly. We found some support for this phenomenon. Approximately 8% of the respondents to top profiles also identified as tops; another 9% of the respondents to top profiles identified as a “versatile/top,” which is supposed to signify that one usually, but not exclusively, performs the top role in intercourse. But we did not find a comparable pattern of bottoms responding to bottom profiles. In fact, not a single bottom replied to a bottom profile, and only 2.4% of respondents to bottom profiles identified as a versatile/bottom. Therefore, it may be more acceptable among some blacks (and nonblacks) to identify as a top or versatile/top than to identify as a bottom.

104. See Kimberlé Williams Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 Harv. L. Rev. 1331, 1373 (1988) (setting forth a binary paradigm of black-white stereotypes, including the belief that black people are “criminal” and “immoral”). I thank Jerry Lopez for this insight.
stereotype of black male endowment/virility and the context of a sex-oriented web site\textsuperscript{105} that for many users may be quite distinct from the search for a life partner.\textsuperscript{106} However, the black top profiles got half the e-mails of the Latino top profiles (twenty-six versus fifty-two) and about the same as the Latino bottom profiles (twenty-six versus twenty-seven). Thus, although the stereotypes about black male sexuality create a market for black top profiles, they remain subordinate to the white top and Latino top, and they surpass only the Asian top in market power among tops (twenty-six versus seventeen).

In contrast to blacks and Latinos, sex role did not make a difference for Asians. Although Asians ranked below whites and Latinos, there was no disparity between the Asian top and Asian bottom profiles. Indeed, each drew exactly seventeen e-mails in the entire study.\textsuperscript{107} We expected the Asian top profiles to be disadvantaged as much as the black bottom profiles because they are counterstereotypical. Yet, the black top profiles received only a few more e-mails than the Asian top profiles. This finding might suggest that the stereotype of Asian men as feminine is no longer very salient among MSM. At the same time, our Asian top profiles may have been viewed as exceptions to the stereotype. Because the profiles reported the model's statistics to be five feet nine, 165 pounds, with an eight-inch endowment (statistics that we expected to attract many users), the Asian top profiles may have surmounted the stereotype. A future study could test this by using less attractive statistics, say, five feet five, 120 pounds, and a six-inch endowment to determine whether the Asian top profiles incur greater disadvantage than appeared in our study. Relatedly, the Asian bottom profiles may not have benefited much from the stereotype of Asian male

\textsuperscript{105} Although the site gives users the option of indicating a preference for friendship and/or a relationship, the user is bombarded with sexually explicit advertisements for pornographic movies and online services and none that promotes friendships or relationships. These ads, which support the free service, may channel men toward sex.

\textsuperscript{106} Several profiles conflated blackness with masculinity and an expectation that a black man perform the top role. For example, one thirty-nine-year-old white man who identified primarily as a top indicated that he would "flip" and play the bottom role for a black man: "Hairy aggressive verbal masculine top looking for kinky bottom and am open to being versatile to black masculine tops." A thirty-four-year-old Puerto Rican bottom echoed the stereotype of black male virility: "NSA [no strings attached] PUERTO RICAN MASCULINE MUSCULAR BOTTOM LOOKING TO SPREAD EAGLE FOR MASCULINE HUNG RAW [unprotected sex] BLACK TOPS. . . . BEST THING IN LIFE IS FEELING ANOTHER MASCULINE MAN HAVE HIS ORGASM INSIDE MY ASS." A few men of color associated whiteness with effeminacy. A twenty-three-year-old mixed man who describes himself as a "Rican Dominican Arab Italian Grey Eye Dr Feel Good" and who appears black or Latino, emphasized that he is "into ETHNIC mixed [sic] guys" and "I am not into caucasian the WeHo/Chelsea Ambercrombie [sic] FISH." "Fish" is a derisive term for female genitalia. This profile goes on to rule out "anyone who uses the term BLATINO and . . . Homothugs." Interestingly, as problematic as some of this man's assumptions are, he is seeking to define a space between the dominant and white West Hollywood scene and the "Homothugs" that emulate 50 Cent.

\textsuperscript{107} The demand for Asian top profiles was roughly the same in New York and Los Angeles. For the Asian bottom profiles, there was much more demand in Los Angeles (thirteen e-mails) than New York (four e-mails).
effeminacy. However, it may be telling that Asians were the only racial group for which the demand for bottoms matched that for tops. In general, the preferred bottom was white, followed by Latino. The white bottom profiles received more than twice as many e-mails as the Asian bottom profiles (thirty-eight versus seventeen).

A third finding is that whites appear to have a special advantage in that they may take on a top or bottom role without incurring significant penalties in the marketplace. A Latino top who becomes a bottom gives up a significant privilege, since the Latino top profiles generated the most interest in the entire study and the Latino bottoms garnered about half as many e-mails (fifty-two versus twenty-seven). Black men similarly face considerable pressure to perform a top role. Although the black top remains disadvantaged relative to the Latino and white tops, at least that profile received a significant number of e-mails. In Los Angeles, the black bottom received three e-mails; the black bottom profile in New York received just one e-mail.

C. Limitations

There are some limitations to this study that require discussion. First, the profiles that we posted were all men who identified as either a top or bottom. Many men identify as something in between these endpoints on the sex role spectrum: versatile, a versatile/top, or a versatile/bottom. Others list no sex role, and still others express an interest only in oral sex. This study’s conclusions may not apply to men in these categories. One explanation for the disparity in the responses to the top and bottom profiles may be that the pictures and statistics for the top profiles were regarded as more attractive. The top photos showed the model’s torso, which included a well-defined chest and six-pack abdominal muscles. For some of the bottom photos, the model was photographed from the side or from the back. In these photos he may not have appeared as muscular and athletic as in the top photographs. Although we anticipated that muscle and athleticism would be more important to users seeking a top, it is possible that bottom profiles using the top photographs would have drawn greater interest. However, some profiles indicated a preference for a slimmer build in a bottom. Thus, it is hard to know the ultimate impact on this issue. Further, the endowment listed in all profiles may have provided the top profiles with an advantage. It appears that a profile with an eight-inch endowment is above average on the web site, which might have made our top profiles especially appealing. By contrast, because the bottom plays the receptive role in anal intercourse, some users may have viewed his endowment as irrelevant. At the same time, some respondents commented favorably on the bottom’s endowment and expressed an interest in performing oral sex on him.

108. The findings suggest that Asians also enjoy this freedom. However, regardless of the role they assume, Asians drew less interest than whites.
Additionally, because of prevalent stereotypes of black men, the black profiles may have been disadvantaged because they did not conform to the stereotype of a black man. Instead of featuring the brown skin tone of Denzel Washington or Wesley Snipes, the photos accompanying the black profiles appeared to be closer to the skin tone of Barack Obama. Moreover, it is possible that inflated expectations of black male endowment made our black profiles appear to be merely average for black men or even below average. However, we were committed to using the same model and same statistics for each profile even though we realized that each profile would be read in light of prevailing racial stereotypes. In pretesting the photos, I showed them to several people who understood the design of the study. One person responded that the model “could not” be black because “black men have bigger builds.” (Our model’s build was closer to Obama’s build than 50 Cent’s build.) Of course, black men come in all shapes and sizes, but the black profiles may have suffered if they were perceived as diverging from the iconic image of an aggressive, strapping, and extremely well-endowed black man.

Another limitation is that residential segregation made it extremely difficult to find a romantic marketplace that had a large representation of all races. The selection of neighborhoods with relatively small black populations may have disadvantaged black profiles in particular. On a recent Wednesday night at 10:00 p.m. (EST) in New York City, a search revealed just nine black tops online in midtown (the neighborhood where all profiles resided). Yet there were forty-four black tops in central Harlem. Thus, posting the profiles in Harlem or parts of Brooklyn may have produced greater interest from black users. By posting the black profiles in midtown New York and downtown Los Angeles, we forced them to compete with all other races in a white-dominated marketplace, and, for the most part, they came out on the losing end. Although the black profiles likely would have benefited from being posted in Harlem, blacks enjoyed greater overall representation in the online community (sixteen percent) than Asians (six percent), and yet the black bottom fared much worse than the Asian bottom. These findings speak to the demand for men of color who perform particular sex roles in white-dominated markets, but they reveal little about the preferences of men in racial/ethnic enclaves where one race or ethnicity dominates.

CONCLUSION

Some readers might perceive this essay to point in different directions. One part explores the possibility of regulating website design in order to

109. Overall racial demographics in the online community, which are based on our count of 100 randomly displayed profiles each time we posted a profile, are as follows: 46% white, 18% Latino, 16% black, 13% mixed, 6% Asian, and 1% Middle Eastern.

110. Posting all profiles in Harlem would have raised concerns about the nonblack profiles, especially the white and Asian profiles.
encourage people to consider people who do not match their racial preferences. Another part demonstrates how perceptual differences and racial microaggressions can manifest a gulf between two people in an intimate relationship. To some extent, this tension reflects the difficulty of the topic itself. "The subject of interracial intimacy bristles with complexity and paradox, mystery and drama...."111 And, of course, intimacy is a delicate thing. Thus, while we should think critically about race, gender, and intimacy, we should approach any potential intervention with caution. Having said that, online dating may provide a productive example of a context in which the law might remove barriers to equality through structural changes without regulating intimacy preferences as comprehensively as it attempts to regulate discrimination in employment and housing.

The risk of disproportionately burdening minorities who do not live or work in predominantly white spaces might be reduced by the existence of race and ethnicity-themed web sites such as BGCLive.com ("BGC" stands for "Black Gay Chat") and, in the related context of religion, JDate.com. These sites are intended for people who identify based on a minority status and wish to meet others who share that status. Many such sites, however, do not restrict access to people who share the status. Thus, non-Jews are present on JDate.com, and it appears that white men are present on BGCLive.com. The two web site domains—"mainstream" sites like Match.com, and race/ethnicity-themed sites like BGCLive.com—thus provide greater options for minorities who may or may not want to date majority members. Similarly, the A4A study suggests that there are multiple romantic marketplaces in a single city. Recognizing the value ascribed to men of his race and sex role in the white-dominated "mainstream," a man of color might reasonably attempt to opt out of this hierarchy and pursue romantic fulfillment in other spaces.

111. Kennedy, supra note 21, at 37.
Racially-Mixed Personal Identity Equality

By Tanya Katerí Hernández

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Abstract:

A growing number of commentators view discrimination against multiracial (racially-mixed) people as a distinctive challenge to racial equality. This perspective is based on the belief that multiracial-identified persons experience racial discrimination in a manner that makes it necessary to reconsider civil rights law. This essay disputes that premise and deconstructs its Personal Identity Equality approach to anti-discrimination law and demonstrates its ill effects reflected in Supreme Court affirmative action litigation.

Keywords:

Multiracial, biracial, racially-mixed, mixed-race, racial mixture, discrimination, equality, identity, affirmative action

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The growth of a mixed-race population in the United States that identifies itself as “multiracial” has commanded public attention. The U.S. Census Bureau began permitting respondents to simultaneously select multiple racial categories to designate their multiracial backgrounds with the 2000 Census. With the release of data for both the 2000 and 2010 census years much media attention has followed the fact that first 2.4% then 2.9% of the population selected two or more races.¹ The Census Bureau projects that the self-identified multiracial population will triple by 2060.² Scholars have documented how the mainstream press has universally celebrated the growth of a multiracial identified population “as the end of race as we know it.”³ At the same time advertisers have seized upon the interest in “racially ambiguous” and presumably mixed-race appearances for marketing numerous products.⁴

The public fascination with multiracial identity has promoted the belief that racial mixture will, in and of itself, destroy racism. For instance, leaders for the recognition of a

“multiracial” census category frequently posit that multiracials are a “unifying force,” on the theory that multiracial individuals “as a group may be the embodiment of America’s best chance to clean up race relations.” Indeed, the equating of racial mixture with racial harmony is often quite explicit. Harvard sociologist Orlando Patterson agrees: “[i]f your object is the eventual integration of the races, a mixed-race or middle group is something you’d want to see developing.... The middle group grows larger and larger, and the races eventually blend.” The multiracial discourse narrative thus posits that “mixing away” racism will absolve the nation from having to address entrenched racial disparities in socioeconomic opportunity.

The fascination with multiracial identity has also entered the legal context. Specifically, the presence of fluid mixed-race racial identities within allegations of discrimination leads some legal scholars to conclude that civil rights laws are in urgent need of reform because they were built upon a strictly binary foundation of blackness and whiteness. Building upon the social movement for recognition of multiracial identity on the census and generally, scholars conclude that courts misunderstand the nature of discrimination against mixed-race persons when they do not specifically acknowledge the distinctiveness of their multiracial identity. Even United States Supreme Court litigation has

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begun to associate the growth of multiracial identity with the obsolescence of civil rights policies. Particularly worrisome has been the judicial suggestion that the growth of multiracial identity undercuts the legitimacy of affirmative action policies that have long sought to pursue racial equality.

The supposition that the multiracial experience of discrimination is exceptional, and not well understood or handled by present anti-discrimination law, is evident in the publications of several multiracial-identity scholars. I coin the term “multiracial-identity scholars” to refer to authors whose scholarship promotes the recognition of the distinct challenges that multiracial identity now presumably presents for civil rights law.9 For instance, the central claim in Nancy Leong’s much cited article, “Judicial Erasure of Mixed-Race Discrimination,” is that mixed-race discrimination claims are not properly administered by the legal system because the mixed-race specificity of the claims is ignored. Building upon Leong’s analysis, Scot Rives and Tina Fernandes each in turn assert that the legal system is unable to address the “unique harms” of multiracial complaints without a

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specific “multiracial category” in anti-discrimination jurisprudence.\textsuperscript{11} In turn, Leora Eisenstadt includes multiracial identity within her call for reforms for the evolution of “fluid identity discrimination”\textsuperscript{12} that parallels Camille Gear Rich’s premise that multiracial claims present “special challenges for antidiscrimination law” that necessitate an “elective race” approach.\textsuperscript{13}

The crux of the multiracial identity scholar critique of the emerging cases is that courts often reframe multiracial plaintiffs’ self-identities by describing mixed race plaintiffs as “mono-racial” minority individuals.\textsuperscript{14} Specifically, in many cases, judges refer to mixed-race complainants as solely African American or black.\textsuperscript{15} These scholars take issue with this characterization, arguing it hinders the recognition of the racial discrimination that multiracial individuals experience. This essay disputes that premise because the cases themselves illuminate the disjuncture between the theoretical critique they make and the actual adequacy of the judicial administration of the claims.

Specifically, a close examination of such claims indicates that in an overwhelming number of the cases scholars rely on, the facts present a complainant whose description of the


\textsuperscript{14} Leong, “Judicial Erasure,” pp. 472, 511. It should be noted that Tina Fernandes and Scot Rives endorse the entirety of Leong’s critique and only depart in how they think the legal system should respond.

\textsuperscript{15} See, e.g., Callicutt v. Pepsi Bottling Group, Inc., No. CIV. 00-95DWFAJB, 2002 WL 992757, at *1 (D. Minn. May 13, 2002).
alleged discrimination includes pointed, derogatory comments about non-whiteness and blackness in particular.\textsuperscript{16} The overarching commonality in the cases is the exceptionalism of blackness and non-whiteness, rather than multiraciality, as subject to victimization. Although the plaintiffs may personally identify as multiracial persons, they present allegations of public discrimination rooted in a specific non-whiteness and often black bias that is not novel or particular to mixed-race persons, nor especially difficult for judges to understand. For instance, the employment discrimination case of Jill Mitchell presents a paradigmatic illustration of the adequacy of current law to address the racial discrimination that multiracial-identified persons encounter.

Jill Mitchell is a light-skinned biracial woman with a black father and white mother. Based on her appearance many people presume she is of mixed Hispanic and European descent. Mitchell started working for Champs Sports in Beaumont Texas in 1996 as a full-time management trainee. She worked for a year without incident and received praise about her work performance. But she felt her entire work experience changed once her store manager discovered that her racial background included African ancestry despite the fact that Mitchell did not disclose her race on her job application and declined to identify her racial background when asked during the job interview. The manager deduced Mitchell’s racial background from the repeated visits to the store from her darker-skinned relatives and friends.

Mitchell says the manager’s “attitude towards her changed dramatically” as he fixated on her African ancestry. He often made negative remarks about blacks to Mitchell and, on one occasion, remarked to Mitchell that, “she only dated black men” as if that were problematic. At one point Mitchell overheard the manager state “we need to get her out of here.” The store manager’s racialized treatment of Mitchell continued until she was eventually demoted, and her former position was filled with a white employee who came not from the ranks of the established management trainee program like herself but instead from the part-time hires. As a result she attributed her demotion to race discrimination and filed an employment discrimination claim pursuant to Title VII of the Civil Rights Act of 1964.

Jill Mitchells’ chances for winning her lawsuit were quite low. Not because of the relative merits of her claim but because it has been empirically documented that few complaints of racial discrimination ever yield success for claimants. The vast majority of racial discrimination claims are dismissed by courts without the opportunity for a trial. Commentators attribute the low success rate to the growing hostility with which courts approach allegations of discrimination. Courts seemingly believe that the passage of civil

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rights laws alone has wrought a post-racial society in which instances of discrimination are rare.\textsuperscript{23}

Despite the overarching challenge of persuading courts that an instance of discrimination has actually occurred, Jill Mitchell’s motion for court appointed counsel was granted with the court noting that “the merits of Mitchell’s allegations weigh in favor of granting the motion.”\textsuperscript{24} While the published opinion does not entail a substantive resolution of the discrimination charge it is still quite a victory in the context of contemporary judicial animosity to any discrimination claim. Here the court simultaneously endorses the merits of the claim of discrimination and authorizes the funds for a court appointed lawyer. This is rare in any civil case let alone an employment discrimination case. Indeed, it seems likely from the record that after Mitchell obtained a court appointed lawyer, a confidential settlement agreement was reached in the case because Mitchell requested that the lawsuit be dismissed with prejudice rather than proceed with a judicial inquiry.

What then do multiracial-identity scholars find problematic about the judicial administration of this biracial identified claimant? Throughout the opinion, the court refers to Mitchell as “black.”\textsuperscript{25} For the multiracial-identity scholars, the court’s singular focus on blackness means that despite the favorable outcome the court failed to recognize the possibility that Mitchell’s mistreatment was the product of anti-multiracial bias.\textsuperscript{26} From their


\textsuperscript{24} Mitchell, at 650.

\textsuperscript{25} 42 F. Supp. 2d 642, 645-47 & 650.

perspective, the court’s oversimplified reference to Mitchell as black is analytically problematic despite the fact that the court also emphatically states that Mitchell has a discrimination claim that should proceed and warrants the dedication of public resources in a court appointed attorney.

However, the court’s oversimplification of the claimant’s racial identity in court documents parallels the singular salience of blackness that Mitchell’s own narrative raises. Nor can the black-focus of her own factual allegations be dismissed as the strategic coaching of an attorney seeking to situate the case into the traditional paradigm of white versus black racism, because Mitchell represented herself, and the black-focused narrative appeared in her own testimony before the Magistrate Judge in her hearing to request court-appointed counsel. In fact, 39% of the multiracial workplace discriminations cases I assessed were filed by complainants representing themselves and using their own words to describe how they felt targeted and harmed. Thus, the recurrent theme of the primacy of bias against non-whiteness and anti-blackness specifically is not a lawyer’s strategic construct. The Mitchell case then is inappropriately labeled by multiracial-identity scholars as illustrating a judicial confusion about the nature of multiracial discrimination or the inadequacy of the existing antidiscrimination legal framework. Instead, the Mitchell case demonstrates the coherence of judicially focusing on blackness when the claimant articulates a factual pattern enmeshed in anti-black bias. Like Jill Mitchell’s case the vast majority of multiracial stories of discrimination entail allegations of non-white or specifically anti-black bias rather than prejudice rooted in hostility towards racial mixture itself.  

27 Hernández, “Multiracials in the Workplace.”

In short, the increase in the number of individuals identifying as mixed-race or multiracial does not present unique challenges to the pursuit of political equality inasmuch as the cases are mired in a long existing morass of bias against non-whiteness and its intimate connection to white supremacy. Rather than point to a need for a shift away from the existing civil rights laws, the cases instead indicate the need for further support of the current structures. The multiracial discrimination cases highlight the continued need for attention to white supremacy and for fortifying the focus of civil rights law on racial privilege and the lingering legacy of bias against non-whites.

What then fundamentally concerns multiracial-identity scholars about the discrimination cases despite the fact that the empirical record does not by and large show anti-mixture animus? For multiracial-identity scholars, the primary locus of multiracial discrimination is in any societal resistance to the assertion of a multiracial personal identity. I call this approach to civil rights, “Personal Identity Equality.” It is epitomized by the notion that “misrecognition of one's identity is social subordination.” One group of psychologists similarly states that even asking mixed-raced people about their racial ancestry is an instance of “overt racism” specifically “targeting multiracial people.” These psychologists further aver that “not having a [multiracial] racial designation on institutional forms is one of the most invidious experiences of racism that occurs to multiracial people.”

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The crux of the multiracial-identity scholar critique of the anti-discrimination cases then is that the courts often reframe multiracial plaintiffs’ self-identities by describing mixed-race plaintiffs as “mono-racial” minority individuals. Specifically, in many cases, courts refer to mixed-race complainants as solely African American or black. These scholars take issue with this judicial characterization, arguing it conceals racial animus against multiracial individuals.

The privileging of personal racial identity is evident in Nancy Leong’s concern with courts that “erase” multiracial identity and refer to multiracial complainants as simply black, in Leora Eisenstadt’s apprehension that the law currently forces “employees into an unnatural and uncomfortable identity” and in Camille Gear Rich’s proposal for an “elective race” ideological framework that provides a legal right to racial self-definition. It also constitutes Tina Fernandes’s and Scot Rives’s insistence that a specific “multiracial” category be officially added to the list of protected racial groups that anti-discrimination law implicitly recognizes.

32 Leong, “Judicial Erasure,” pp. 472, 511. It should be noted that Tina Fernandes and Scot Rives endorse the entirety of Leong’s critique and only depart in how they think the legal system should respond.


34 Leong, “Judicial Erasure.”


That multiracial-identity scholars focus on personal identity as the central issue of equality is part of the larger multiracial social movement preoccupation with identity. In fact, the academic treatment of multiracial identity is often very intertwined with the activism promoting recognition for a distinct multiracial identity on data collection forms.\textsuperscript{38} It is perhaps the interest in multiracial activism that has led academics to focus on the concern with expressions of personal racial identity.

For multiracial identity activists, the right to personal racial identity is their definition of equality as reflected in the “Bill of Rights for Racially Mixed People.”\textsuperscript{39} A Bill of Rights is traditionally understood to be a listing of legal rights provided the highest constitutional protection because they are understood to be fundamental rights of citizenship. It is thus quite notable that the central unifying item in the Bill of Rights for Racially Mixed People is the statement “I HAVE THE RIGHT To identify myself differently than strangers expect me to identify.”\textsuperscript{40} The multiracial Bill of Rights is extensively reproduced and cited to within multiracial identity circles and has become “something of a charter statement” and is often read at multiracial support group meetings.\textsuperscript{41} However the Bill of Rights and the racial

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equality platform it advocates is focused “solely on naming and claiming a multiracial identity.” That is the totality of its civil rights concerns.

Multiracial identity movement survey responses about the nature of multiracial discrimination are equally narrow. Multiracial forms of discrimination that respondents articulate revolve around being questioned about their personal identity. Thus the “What are you” question is often offered as emblematic of multiracial-specific discrimination.

Curiously, in Kimberly McClain DaCosta’s interviews with multiracial activists (or what she interestingly calls “multiracial entrepreneurs”) each activist invoked civil rights as being at the root of their actions. Yet, the multiracial activist agenda “has been limited to vague declarations that multiracial recognition could somehow help reduce racial strife.”

When Kim Williams also interviewed every major leader of a multiracial-identity organization, she found that only 30 percent of the leaders reported that combating racism in their local communities was a priority for their group.

42 Joseph, Transcending Blackness, xvi.


multiracial examination of power in the consideration of what is racism.48 Jared Sexton describes this multiracial activist dynamic as reducing the political to the personal.49 The focus on personal identity is also evident in multiracial-identity internet sites that discuss multiracial experiences but “do not challenge racism.50” A significant deficit of the personal identity view of civil rights is its abstraction away from “articulating institutional forms of racism and the pervasiveness of white supremacy.51”

Some might suggest that the multiracial promoted Personal Identity Equality exaltation of personal identity as a civil rights issue is not necessarily incompatible with the traditional civil rights group-based material inequality approach to civil rights. Yet the concept of Personal Identity Equality is not innocuous when it interferes with the ability to identify and address the material inequality that individuals are exposed to apart from their personal identity. Indeed, there is a harmful disconnect between the multiracial-identity scholar critique of anti-discrimination law, and the actual demonstrated adequacy of the laws to address multiracial discrimination.

The disconnect evidences itself in a number of ways. Firstly, in how the vast majority of multiracial discrimination claims follow the pattern of the paradigmatic Mitchell v. Champs case discussed earlier with its binary white versus non-white allegation of discrimination rather than in allegations about actual anti-mixture bias. Secondly, in how the

48 Joseph, Transcending Blackness, xv.
51 Dalmage, Tripping on the Color Line, p. 171.
cases show courts appropriately enforcing anti-discrimination law. In short, the close examination of these cases undermines the multiracial-identity scholar critique of the cases as exhibiting judicial confusion about anti-mixture bias and the inadequacy of anti-discrimination law.

This multiracial-identity scholar disconnect from the reality of the cases likely stems from the primacy that they place upon the recognition of personal identity above all else which in turn clouds their ability to appreciate the adequacy of the judicial enforcement of the cases that instead focuses on the harms from group-based racial hierarchies. The primacy on the recognition of personal identity is a prominent feature of the public activism for cultural recognition of a multiracial identity that is a misplaced import into the legal context. When the individual identity focus of the multiracial social movement is transplanted into the legal context it obstructs the ability to understand the needs of multiracial victims of discrimination from white versus non-white group-based hierarchies. This disserves the needs of multiracial persons experiencing discrimination. Moreover, the rhetoric of Personal Identity Equality has come to be used to undermine the enforcement of anti-discrimination law in harmful ways.

Supreme Court Chief Justice Roberts directly posed questions regarding the implication of mixed-race candidates for affirmative action programs, when the University of Texas’ consideration of race in its affirmative action plan was challenged in 2013. In Fisher v. Texas (Fisher I) the Court affirmed the process of considering race as a factor amongst others in a public university’s admission efforts to achieve a more diverse student body. But the Court also narrowed the ability to use affirmative action by stating that in the judicial assessment of whether a particular admission policy satisfies the strict scrutiny standard of

being narrowly tailored in pursuit of the goal of diversity, the university is not entitled to
deferece or a presumption of good faith in its operation of their programs.

In the oral arguments for Fisher I, Justice Roberts questioned how compelling the
university pursuit of a diverse student body could be if a candidate who was “one-quarter
Hispanic” or “one-eighth Hispanic” is allowed to identify on the admissions application as
Hispanic without the university verifying the veracity of the racial identification. For
Justice Roberts, mixed-race applicants are a cause for generating skepticism about the
integrity and ability of affirmative action to truly achieve racial diversity.

Nor is this skepticism limited to Justice Roberts. When the Supreme Court re-
examined the University of Texas affirmative action policy in Fisher II, two other Supreme
Court justices joined Roberts in raising concerns about the viability of affirmative action in
light of multiracial-identified applicants. These concerns were included in the text of their
joint opinion dissenting from the majority decision that the race-conscious admissions
program in use at UT is lawful under the Equal Protection Clause of the constitution. In
Fisher II, Justices Alito, Roberts and Thomas joined in a dissenting opinion that opined that
the affirmative action program was faulty because “as racial and ethnic prejudice recedes,
more and more students will have parents (or grandparents) who fall into more than one of
UT’s five [enumerated racial] groups.” This presumption that the increase in multiracial-
identified applicants undermines both the implementation and justification for affirmative
action, did not originate with the Justices. As with the Grutter and Gratz litigation in

53 Transcript of Oral Argument at 32-34, Fisher v. University of Texas at Austin, 133 S. Ct.
2411 (2013) (No. 11-345).

Michigan a decade earlier, the challenge to UT’s affirmative action program was replete with opposition papers referencing the presumed significance of a mixed-race applicant pool.55

What each of the foregoing examples demonstrate is the influence that multiracial identity discourse has had on justifying challenges to policies of racial inclusion even in cases where the Supreme Court has endorsed the constitutionality of affirmative action while at the same time imposing constraints on its use. Especially alarming then is the Supreme Court’s reference once again to mixed-race persons in its decision authorizing outright state bans on affirmative action.

In, Schuette v. Coalition to Defend Affirmative Action, the Court held that a public ballot initiated amendment to the Michigan State constitution that bans the use of affirmative action at public universities is not a state action that inflicts injury on racial minorities in violation of the Equal Protection Clause of the United States constitution.56 In doing so, the Supreme Court gave license to any other state to ban race-based affirmative action as well. Eight states currently ban race-based affirmative action at all public universities. California, Washington, Michigan, Nebraska, Arizona, and Oklahoma all passed bans through voter referenda. In Florida, Governor Jeb Bush issued an executive order creating the ban.


In assessing whether the ballot initiative in *Schuette* was intended to harm racial minorities Justice Kennedy asserted in the court opinion that "in a society in which those [racial] lines are becoming more blurred, the attempt to define race based categories also raises serious questions of its own." In other words, the growth of multiracial-identified persons calls into question the utility of presuming that individuals have a pre-determined perspective about the ballot initiative (of being harmed or not) based upon their racial identity.

Justice Scalia elaborates further on this theme in his concurring opinion in the case. For Justice Scalia, making any assumptions about how racialized group members perceive race-based policies like affirmative action bans that might impede their access to traditionally racially exclusive institutions, is itself an “exercise that promotes the noxious fiction that, knowing only a person’s color or ethnicity, we can be sure that he has a predetermined set of policy ‘interests’ thus reinforcing the perception that members of the same racial group—regardless of their age, education, economic status share the same political interests.” To underscore his point Scalia then poses the question “does a half-Latino, half-American Indian have Latino interests, American-Indian interests, both, half or both?” At first blush it may appear like a simple matter of logic for Justice Kennedy and Justice Scalia to equate assertions of what political actions do and do not harm a racial group, with impermissible stereotyping.


But what the Justices’ leveraging of multiracial identity to question race-conscious analysis overlooks is the extent to which racial harms can be imposed on group members regardless of the diversity of their perspectives. Racialized group members can certainly have a diverse array of political perspectives about any given topic including affirmative action but still be similarly situated with respect to how affirmative action bans potentially impede their access to traditionally racially exclusive institutions in a manner that is ultimately harmful. Numerous studies show that with the advent of affirmative action policies there was a dramatic change in the U.S. labor market with a demonstrated increase in the numbers of racial minorities in almost every job niche. There is near unanimous consensus among economists that such programs of inclusion contributed to the improved income levels of racial minorities. Moreover, affirmative action policies have increased the racial and ethnic diversity of many educational settings. Ballot initiatives that ban affirmative action therefore hinder the inclusion of racial minorities in ways that can directly harm them regardless of how they racially identify themselves. As is the case with the multiracial discrimination cases, racial mixture does not diminish the extent of harm that a ballot initiative can cause. The empirical data indicates that after various state affirmative action

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bans were instituted that the numbers of racial minority admissions were substantially reduced.⁶²

In short, over two decades of multiracial discourse situating mixed-race persons as racially unique and emblematic of racial progress, has bolstered the opposition to policies of racial inclusion and provided such opponents additional fodder for their argumentation. Rhetoric has consequences. Indeed, the Supreme Court affirmative action litigation references to mixed-race persons has paralleled the public discourse notion that the growth of multiracial identified persons signals the decline of racism. Only a direct challenge to the Personal Identity Equality perspective relied upon by multiracial identity scholars has the potential to more effectively pursue racial equality, because “impurity and hybridity, in and of themselves, are no guaranteed challenge to the racial orders of white supremacy and antiblackness.” ⁶³

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14. Leong, “Judicial Erasure,” pp. 472, 511. It should be noted that Tina Fernandes and Scot Rives endorse the entirety of Leong’s critique and only depart in how they think the legal system should respond.


27. Hernández, “Multiracials in the Workplace.”


32. Leong, “Judicial Erasure,” pp. 472, 511. It should be noted that Tina Fernandes and Scot Rives endorse the entirety of Leong’s critique and only depart in how they think the legal system should respond.


34. Leong, “Judicial Erasure.”


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WHITE OUT

THE CONTINUING SIGNIFICANCE OF RACISM
Rejecting Blackness and Claiming Whiteness: Antiblack Whiteness in the Biracial Project
MIN KA HMAIA LA

Over the past fifteen years in the United States, there has emerged a concerted push to reclassify people with one Black and one white parent as biracial. Advocates of this biracial project seek to have people of mixed parentage (PMP) recognized as a distinct racial group. They maintain that a biracial identity is more mentally healthy than a Black one and challenges popular notions of race in the United States. Therefore, taking it to the battle for "ultimately disabuse Americans of their false beliefs in the biological reality of race" (Zack 2001:34).

If this will lead society away from racial classifications, hasten racial reconciliation, and bring about a color-blind society (Gilens & Shak 1993; Spiro 2001), still the progressive qualities of a biracial identity are more than real. The presence of a biracial race would certainly disrupt popular notions of race and roots historically in biological theories of race. People of African descent into the United States of America (1935; Cha-1999; Malik 1997) have been positioned between blacks and whites in the racial pecking order. Several historians have addressed the historical role of whiteness in different racial formations (Rosado 1997; Allen 1994), but the role of whiteness in order to resist the racialization of society has been largely ignored (Curtin 1977; Caso 1997). Still, the progressive qualities of a biracial identity are more than real.
REJECTING BLACKNESS AND CLAIMING WHITENESS. The chapter analyzes the racial project's development, focusing on the concept of whiteness as a tool to distance PMP from their racial reality. With this in mind, the chapter examines the assertion of a racial reality based solely on being white, arguing that it is not a simple binary distinction between white and nonwhite. Instead, it explores the ways in which whiteness is deployed as a tool to maintain social and political boundaries, emphasizing the role of individual identity in shaping racial categorization.

The chapter also critiques the use of biological determinism in the construction of whiteness, arguing that it is not a natural or inevitable state but one that is socially constructed. It discusses the ways in which whiteness is continually redefined and reimagined, with white individuals often forced to negate their racial reality. It concludes that whiteness is not a fixed category but one that is continually negotiated and transformed, reflecting the complexities of racial identity and the ways in which it is constructed and perceived.

The chapter concludes with an analysis of the implications of this approach for understanding the complexity of racial identity and the ways in which it is constructed and perceived. It argues that by recognizing the fluidity and flexibility of whiteness, we can better understand the ways in which it is continually negotiated and transformed, reflecting the complexities of racial identity and the ways in which it is constructed and perceived.
racial identity, the to whiteness is a dynamic structure that can adjust to new historical circumstances. The biracial project's use of whiteness is evident most clearly on biracial-identity sites, which emerged around the same time the Internet became a popular form of mass communication (the early 1990s). These sites have been actively used in propa­gating the arguments of lobbyists and lay advocates of whiteness, which emerged around the same time the Internet became a popular form of mass communication (the early 1990s). These sites have been actively used to promote the arguments of lobbyists and lay advocates of whiteness.

The biracial project's use of whiteness is evident most clearly on biracial-identity sites, which emerged around the same time the Internet became a popular form of mass communication (the early 1990s). These sites have been actively used in propagating the arguments of lobbyists and lay advocates of whiteness. Whether argued from an ideological or biological, deterministic perspective, it tools whiteness squarely in biology. Projects such as Project RACE (1997) notes, while it is true that everyone is a racial claim and a flawed hope that we can define who is Black. The Multiracial Alliance (TMA) have helped forge a popular conception of biraciality. The Multiracial Alliance (TMA) have helped forge a popular con­ception of biraciality. The Multiracial Alliance (TMA) have helped forge a popular conception of biraciality. The Multiracial Alliance (TMA) have helped forge a popular conception of biraciality. The Multiracial Alliance (TMA) have helped forge a popular conception of biraciality. The Multiracial Alliance (TMA) have helped forge a popular conception of biraciality. The Multiracial Alliance (TMA) have helped forge a popular conception of biraciality.
that those [non-African Americans] so ill. no way do I think calling yourself "black" defines who is biracial in such a way as to include already all African Americans mixed ancestry." (Interracial Voiced, September 26, 2000)

Here, Whittaker's concept of black racial identity acknowledges the history of white identity Web site, where being biracial is tied to "white-blood," looking like "generation in African American racial identity. Rather than seriously, white, and having few (if my) stereotypic Black features (e.g., dark complexion, full lips, etc.).

This is especially so when discussing light-skinned blacks. A reader on the question, Tiffani Whittaker, who identifies as Madison, wrote: "Yeah, now I get it. You want Black to include all kinds of things because "multiracial" on that Web site, particularly when those people clearly identify as "white." In raising the question, Tiffani Whittaker, who identifies as Madison, wrote: "White isn't White, Latino, European, Indian, Black is Black. Stop taking away from the essence of Black and trying with this discussion, in the time... Some people in my family chew a biological view of... Yell more people, but you will be quick to pigeon hole a Mulatto as looking white, but they are not... That is what black America looks like. (Interracial Voiced, September 26, 2000)

Becky's suggestion that Whittaker perceives "Black" as limited, ugly, and implausible, Whittaker's point about phenotypic differences among African Americans... Implausible, Whittaker's point about phenotypic differences among African Americans distinguishes "multiracial" from Black. He most participants in... He even identifies... "Black" to one a Mulatto...physical appearance becomes only be Mulatto. Do you know what is what black America looks like. (Interracial Voiced, September 26, 2000)

Richard Minci, TMP's... "Whitewashing the blacks that... multiracial and a regular... Does Blacks are mixed... Do you resemble the Black slaves that... "Black," if people are constantly... "You're not right... This has important, he views this... The centrality of "white blood" to a biracial race... (possibly)... More pure. This conversion of race in strict biological terms... is more than a malicious attempt... And moves beyond a... (Multiplicity People... (Mulatto People... The literature regarding... (interracial混合... The measure of... "Blades," if people are constantly... "What you are or taking..." Blade," if you are Black. (Interracial Voiced, September 27, 2000)

"None of this is related to the fact that you..." Blade," if people are constantly..."Blade," if you are Black. (Interracial Voiced, September 27, 2000)
As the biracial project was established to address the needs of both the Black and white communities, it also raised questions about the identity of biracial individuals. Some argued that biracial people should adopt their ethnic identity, while others believed that they should be considered as a separate race. This debate continues to this day, with biracial individuals often facing discrimination and racism from both Black and white society.

In conclusion, the biracial project has had a significant impact on society, both positively and negatively. While it has brought attention to the needs of biracial individuals, it has also created tension and division within communities. As society continues to evolve, it is important to continue to address and resolve these issues in order to build a more inclusive and equitable future.
In 1997, during the congressional hearings to determine whether to add a "multiracial" category to the census, several organizations and community groups expressed opposition to such a category. The National Asian Pacific American Consortium (NAP-AAC) and the National Council of American Indians who have multiple ancestries, but are "singled out" by the census indicates. Census figures are used to monitor and enforce critical analysis of the returns re-reflecting the "biracial community".

The most recent support of this view is the 734,764 people who checked for Affirmative Action and the Asian American for an "Accurate Count" for Light-skinned individuals... have been told for years that "mixed people... are: "satisfy individual multiracial goals... may leave many of them to check "Blacks" alone on the census (Hubbard 2001). However, all the gains in recognition they need. Still, these non-black communities and critical understanding of the returns... of light-skinned individuals (Lee 1993; Nobles 2000). While it is undeniable that the census also overlooks the age of these respondents. The population of those marking "Black" and "White" on the 2000 census is significantly younger than others single racial identity and it does not necessarily entail rejecting a Black identity or ambiguous people... are: those who do identify as biracial, and that those who do identify as biracial community's sue... of Proyecto RACB, labeled the NAACP as "radical" for attempting to "define our community". Black, while making only passing reference to the numerous other... the number of people marking "Black" and "White" (U.S. Census Bureau 2000). This considerable difference is misleading precisely because of the age of this cohort.

Many view race as an idea... children"... Black, while making only passing reference to the numerous other... the "biracial community". It contributes to racialization, and the black community does not exist... the appropriate racial label"... Black"... White"... mark "Blacks" alone on future schedules, and assume either a Black identity... minors make up nearly 72 percent of the population that marked "Blacks" alone with "Whites", which means that the census was used as a way to identify as biracial will likely change on the 2000 census. Some will cease identifying as biracial and assume either a Black identity... the minors while under the age of... The consequence of this decision is... respondents, it is necessary... of the age of the respondents, the consequence of this decision is... respondents, it is necessary... of the age of the respondents, the consequence of this decision is... respondents, it is necessary...
Heretofore, studies of whiteness quantitatively focused on its use by groups with political, and economic consequences of race and racism, how they understand now categorization • • • • white. Neverthe­ less, in looking at only how the Irish, South-East Europeans, Jews, and others used their racial group, being categorized as Block and the sociopolitical reality of racism may lead them to view a Black racial identity as more present. Color can also use whiteness to negotiate the cultural hierarchy. Specifi­ cally, I have focused on the claim that people of mixed parentage possess whiteness as an immutable biological attribute. The main concern is how they seek to use that property to distinguish themselves above Blacks in the racial hierarchy and receive some of the privileges by single-white mothers. This coastline of whiteness. Having no historical basis for asserting such “racial reality,” as does not mean that those social institutions are mirroring in assuming this issue. France Wmmedance-Twin (1991!), in examining white others of Black children in Britain, found that politically progressive white mothers tended to encour­ age a Black identity in their children and to teach them proactive methods of coping with Black studies scholars must give this racial project more attention. At present, discussions on this issue have led to a dis­ cussion of biraciality that acts as if Blacks are the growing racial issues that we see in the current year. Those children never show their presence 10 percent of white women that are Black children in that year (U.S. Department of Health and Human Services 1997). We must give more attention to how these children live in predominantly white neighborhoods. Given the reality of segregation (Massey and Denton 1993) and the patriarchal practices of mothers being primarily caregivers, a significant number of these children are being raised in predominantly white households. This does not constitute a biracial community but rather a growing phenomenon. This does not constitute a biracial community but rather a growing phenomenon.
It may seem coincidental, history demonstrates that when white people are a numerical minority, they maintain social control of the racial order by positioning the progeny of Black-white unions as an intermediary between themselves and blacks (Horowitz 1973). Given this racial project's concern for expanding the boundaries of whiteness so that having "white blood" makes one non-black and socially positions a biracial race above blacks, we cannot ignore its potential to further social control over people of color. Indeed, the attempt to restructure the racialized social system so that whiteness becomes available to more non-whites could frustrate social movement intent on destroying whiteness and racial oppression.

Who Are These White People?: "Rednecks," "Hillbillies," and "White Trash" As Marked Racial Subjects

JOHN HARTIGAN, JR.

There are few better critical openings onto the operations of whiteness than through its meaty, soft underbelly, as represented by "rednecks," "hillbillies," and "white trash." These terms are applied to numbers of white people, in each instance emphatically inscribing a charged form of difference marked off from the privileges and power of whiteness; each term demarcates an inside and an outside to mainstream white society. Though it is easy to assume that these racial epithets are ill-defined, the differences from which they are historically derived and that they continue to inscribe depict fundamental social dimensions of whites' lives and interests that are both obscured by the concept of whiteness and critical to the task of remaking this racial identity in specific terms rather than abstractions or generalizations. The manifold uses of these derogatory labels in U.S. popular culture offer an erudite means to grasp both the enduring intraracial dynamic that have long maintained the marked status of whiteness and the intriguing, complex current forms of making that white engage in as they attempt to navigate increasingly fraught social terrains in the United States.

The active uses of these terms in popular cultural discourses today are one aspect of the current "crisis of white identity," a concept that references the changing political and social landscapes of the United States (Wuwn 1994). Whiteness' majority status in this country is crumbling, beginning in the nation's largest cities during the 1970s and 1980s and continuing now with its largest suburbs (California and Texas) and projected to be even more dramatic elsewhere. However, while the percentage of the population that is white may decrease, the power and privileges that are gained and maintained through the use of these and other derogatory terms by whites in the U.S. is as potent as ever. There are few other critical openings into the operations of whiteness in the United States.
Race in a Bottle

Drugmakers are eager to develop medicines targeted at ethnic groups, but so far they have made poor choices based on unsound science

By Jonathan Kahn

Two years ago, on June 23, 2005, the U.S. Food and Drug Administration approved the first “ethnic” drug. Called BiDil (pronounced “bye-dill”), it was intended to treat congestive heart failure—the progressive weakening of the heart muscle to the point where it can no longer pump blood efficiently—in African-Americans only. The approval was widely declared to be a significant step toward a new era of personalized medicine, an era in which pharmaceuticals would be specifically designed to work with an individual’s particular genetic makeup. Known as pharmacogenomics, this approach to drug development promises to reduce the cost and increase the safety and efficacy of new therapies. BiDil was also hailed as a means to improve the health of African-Americans, a community woefully underserved by the U.S. medical establishment. Organizations such as the Association of Black Cardiologists and the Congressional Black Caucus strongly supported the drug’s approval.

A close inspection of BiDil’s history, however, shows that the drug is ethnic in name only. First, BiDil is not a new medicine—it is merely a combination into a single pill of two generic drugs, hydralazine and isosorbide dinitrate, both of which have been used for more than a decade to treat heart failure in people of all races. Second, BiDil is not a pharmacogenomic drug. Although studies have shown that the hydralazine/isosorbide (H/I) combination can delay hospitalization and death for patients suffering from heart failure, the underlying mechanism for the drug’s efficacy is not fully understood and has not been directly connected to any specific genes. Third, and most important, no firm evidence exists that BiDil actually works better or differently in African-Americans than in anyone else. The FDA’s approval of BiDil was based primarily on a clinical trial that enrolled only self-identified African-Americans and did not compare their health outcomes with those of other ethnic or racial groups.

So how did BiDil become tagged as an ethnic drug and the harbinger of a new age of medicine? The story of the drug’s development is a tangled tale of inconclusive studies, regulatory hurdles and commercial motives. BiDil has had a relatively small impact on the marketplace—over the past two years, only a few million dollars’ worth of prescriptions have been sold—but the drug has demonstrated the perils of using racial categories to win approval for new phar-
maceuticals. Although African-Americans are dying from heart disease and other illnesses at younger ages than whites, most researchers believe the premature deaths result from a complex array of social and economic forces [see “Sick of Poverty,” by Robert Sapolsky; SCIENTIFIC AMERICAN, December 2005]. Some medical professionals and policy experts, however, have pointed to BiDil as proof that genetic differences can explain the health disparity. Worse, some pharmaceutical companies are now using this unfounded argument to pursue other treatments targeted at various ethnic groups, a trend that may segregate medicine and fatten the profits of drugmakers without addressing the underlying causes that are killing so many African-Americans before their time.

Birth of BiDil
The BiDil saga began more than 20 years ago with a pair of studies designed to gauge the effects of vasodilating drugs—which widen blood vessels—on heart failure, a debilitating and ultimately fatal disease that afflicts millions of Americans. Until then, doctors treated heart failure with diuretics (to reduce the accumulation of fluid that results from inadequate pumping) and digoxin (to increase the contraction of the heart muscle) but had little else at their disposal. In the early 1980s Jay Cohn, a cardiologist at the University of Minnesota, hypothesized that administering two vasodilators, hydralazine and isosorbide dinitrate, might ease the strain on weakened hearts by relaxing both the arteries and veins. Together with the U.S. Veterans Administration, Cohn designed and conducted two trials to assess this theory.

The first Vasodilator Heart Failure Trial (V-HeFT I) tested the H/I combination against a placebo and a drug called prazosin, which is used to treat high blood pressure. The results seemed to show great promise for the combination. The second trial, V-HeFT II, tested H/I against enalapril, a first-generation angiotensin-converting enzyme (ACE) inhibitor. (ACE inhibitors lower blood pressure by curbing the production of vessel-constricting peptides.) As it turned out, enalapril proved more effective than H/I for treating heart failure. From that point forward, ACE inhibitors became the new first-line therapy for heart failure patients. Doctors began recommending hydralazine and isosorbide dinitrate—both available as inexpensive generic pills—for those who did not respond well to ACE inhibitors.

▲ APPROVAL of BiDil as a treatment for heart failure in African-Americans has encouraged other drugmakers to consider developing medicines targeted at racial groups. But most scientists agree that these categories are not useful for predicting drug responses, because the genetic variation among individuals in the same race is much greater than the variation between races.
Cohn, however, remained committed to developing a treatment that combined hydralazine and isosorbide dinitrate because he believed in its effectiveness. In 1987 he applied for a patent on the method of using the drugs together to treat heart failure in all people, regardless of race. (He could not get a patent on the drug combination itself because both medicines were already available in generic form.) He then licensed the patent rights to Medco, a small pharmaceutical firm in North Carolina, which took steps in the early 1990s to put the H/I combination into a single pill—and BiDil was born.

Medco and Cohn brought BiDil to the FDA for approval in 1996. In early 1997 the agency refused to approve the drug. Ironically, most of the doctors on the FDA’s review panel thought BiDil did in fact work and said they would consider prescribing it. The problem was not with the drug but with the statistical data from the V-HeFT trials, which were designed to test the hypothesis that vasodilators could treat heart failure and not to meet the regulatory standards for FDA approval. After the rejection, Medco’s stock plummeted by more than 20 percent, and the company let the patent rights revert to Cohn. By 1997 half of the 20-year life of the original BiDil patent had already passed, which may explain Medco’s reluctance to sink more money into the drug.

Cohn argued that H/I worked particularly well in the African-Americans enrolled in the V-HeFT studies. The clearest support for this claim came from V-HeFT I, which placed only 49 African-Americans on H/I—a tiny number considering that new drug trials typically enroll thousands of subjects. In 1999 Cohn published a paper in the Journal of Cardiac Failure on this hypothesized racial difference and filed a new patent application. This second patent was almost identical to the first except for specifying the use of H/I to treat heart failure in black patients. Issued in 2000, the new patent lasts until 2020, 13 years after the original patent was set to expire. Thus was BiDil reinvented as an ethnic drug.

Race-specific patent in hand, Cohn relicensed the intellectual-property rights to NitroMed, a small Massachusetts firm. The FDA then gave NitroMed the go-ahead to conduct the African-American Heart Failure Trial (A-HeFT), a relatively small study involving 1,050 self-identified African-Americans. In A-HeFT, half the heart failure patients took BiDil while the other half received placebos; at the same time, the patients in both groups continued taking their already prescribed treatments for heart failure (for example, about 70 percent of the subjects in both groups were on ACE inhibitors). The results were strikingly positive: the mortality rate in the BiDil subjects was 43 percent lower than that in the placebo group. In fact, BiDil appeared so effective that A-HeFT’s Data Safety Monitoring Board suspended the trial early, in July 2004, so that the drug could be offered to the subjects in the placebo group as well. NitroMed’s stock surged on the news, more than tripling in value in the following days. The next June the FDA formally approved BiDil with a race-specific label, indicating it was for use in black patients.

But researchers have good reason to believe
that BiDil would also be effective in nonblack patients. Indeed, Cohn himself has said he believes the drug should work in people of all races. So why did the developers of the drug test it in only one ethnic group? The answer seems to be driven more by commerce than by science. If the FDA had approved BiDil for the general population, the patent protection for the drug’s manufacturer would have expired in 2007. Restricting the clinical trial to African-Americans maximized the chances that the FDA would approve the race-specific use of BiDil, giving NitroMed an additional 13 years to sell the H/I combination without competition.

Segregated Medicine

Science and commerce have always proceeded together in advancing medicine, but in the case of BiDil the balance seems to have gotten out of whack. There can be no doubt that Cohn and the other medical professionals behind the drug’s development sincerely want to improve the lives of the many people suffering from heart failure. In this respect, the approval of BiDil is certainly a good thing. But Cohn and NitroMed have also used race to obtain commercial advantage. The patented drug costs about six times as much as the readily available generic equivalents. The high cost has already made many insurers reluctant to cover BiDil and may place it beyond the reach of the millions of Americans without health insurance. Moreover, the unprecedented media attention to the race-specific character of the drug may lead many doctors and patients alike to think that non-African-Americans should not get the drug, when, in fact, it might help prolong their lives.

Perhaps most problematically, the patent award and FDA approval of BiDil have given the imprimatur of the federal government to using race as a genetic category. Since the inception of the Human Genome Project, scientists have worked hard to ensure that the biological knowledge emerging from advances in genetic research is not used inappropriately to make socially constructed racial categories appear biologically given or natural. As a 2001 editorial in the journal Nature Genetics put it, “scientists have long been saying that at the genetic level there is more variation between two individuals in the same population than between populations and that there is no biological basis for ‘race.’” More recently, an editorial in Nature Biotechnology asserted that “race is simply a poor proxy for the environmental and genetic

LOOKING FOR A TREND

After the FDA’s rejection of BiDil in 1997, the drug’s developers examined the trial results by race. They spotted a small positive effect among black patients, but because only 49 blacks were taking the drug in the trial, the results may not be meaningful.

BIDIL (H/I) DID NOT AID SURVIVAL IN WHITE PATIENTS ...

Percentage of patients surviving over time

... BUT SEEMINGLY BENEFITED THE FEW BLACK PATIENTS

Number of Years

0 1 2 3 4 5
causes of disease or drug response…. Pooling people in race silos is akin to zoologists grouping raccoons, tigers and okapis on the basis that they are all stripy.”

The FDA’s approval of BiDil was based on accepting NitroMed’s argument that the drug should be indicated only for African-Americans because the trial population was African-American. This labeling sends the scientifically unproved message that the subject population’s race was somehow a relevant biological variable in assessing the safety and efficacy of BiDil. Most drugs on the market today were tested in overwhelmingly white populations, but we do not call these medicines “white,” nor should we. The FDA’s unstated assumption is that a drug that proves effective for white people is good enough for everyone; the same assumption should apply when the trial population happens to be black. Otherwise, the FDA is implying that African-Americans are somehow less fully representative of humanity than whites are.

In November 2004 Nature Genetics published an article by Sarah K. Tate and David B. Goldstein of University College London entitled “Will Tomorrow’s Medicines Work for Everyone?” The paper noted that “29 medicines (or combinations of medicines) have been claimed, in peer-reviewed scientific or medical journals, to have differences in either safety or, more commonly, efficacy among racial or ethnic groups.” Journalists immediately quoted the study as providing further evidence of biological differences among races; for example, an article in the Los Angeles Times, after discussing BiDil, referred to “a report in the journal Nature Genetics last month [that] listed 29 drugs that are known to have different efficacies in the two races.” (The italics are mine.) Similarly, a story in the Times of London asserted that “only last week, Nature Genetics revealed research from University College London showing that 29 medicines have safety or efficacy profiles that vary between ethnic or racial
groups.” (Again, the italics are mine.) And a New York Times editorial entitled “Toward the First Racial Medicine” began with a discussion of BiDil and went on to note that “by one count, some 29 medicines show evidence of being safer or more effective in one racial group or another, suggesting that more targeted medicines may be coming.”

One small problem: these newspaper stories totally misrepresented the Nature Genetics piece. Tate and Goldstein asserted that the racial differences in drug safety or efficacy have only been claimed, not proved, and in the next sentence they go on to say, “But these claims are universally controversial, and there is no consensus on how important race or ethnicity is in determining drug response.” (My italics again.) In only four of the 29 medicines identified, Tate and Goldstein found evidence that genetic variations between races could possibly be related to the different responses to the drugs. (All four are beta blockers used for treating high blood pressure and other cardiovascular ills; some research indicates that these drugs work better in individuals carrying a gene variant that is more common in people of European ancestry than in African-Americans.) For nine of the medicines, the authors found “a reasonable underlying physiological basis” to explain why blacks and whites may respond differently to the drugs; for example, some scientists have speculated that ACE inhibitors may be more effective in people of European descent than in African-Americans because of variations in enzyme activity. (Other researchers have hotly contested this hypothesis.) For five of the medicines, Tate and Goldstein found no physiological reasons to explain the varying drug responses, and for the remaining 11 they concluded that the reports of differing responses may not be valid.

Nevertheless, the appeal of race-specific drugs is growing. In 2003 VaxGen, a California biopharmaceutical company, made an abortive attempt to use a retrospective analysis of racial subgroups to salvage a proposed AIDS vaccine called AIDSVAX. Although the clinical trial for AIDSVAX showed no decrease in HIV infection rates in the study population as a whole, VaxGen claimed a significant reduction in infection among the black and Asian participants. But only a few hundred blacks and Asians were involved in the study, meaning that a handful of infections could skew the results. The claim of race-specific response was undercut later that year when another trial in Thailand showed that AIDSVAX was ineffective there as well. In a similar case, AstraZeneca, the British pharmaceutical firm, argued that its lung cancer drug, Iressa, worked better in Asians when a clinical trial in 2004 showed that the medicine did not improve survival rates overall. (Unconvinced, the FDA changed the labeling for Iressa, disallowing its use in any new patients.) More recently, AstraZeneca has conducted trials of Crestor, the company’s multibillion-dollar cholesterol-lowering drug, in African-Americans, South Asians and Hispanics. Consumer groups have claimed that Crestor is less safe than other cholesterol-lowering drugs, but AstraZeneca says the race-specific studies demonstrate the safety and efficacy of the medicine.

Researchers using race to develop drugs may be motivated by good intentions, but such efforts are also driven by the dictates of an increasingly competitive medical marketplace. The example of BiDil indicates that researchers and regulators alike have not fully appreciated that race is a powerful and volatile category. When used to bolster the commercial value of a drug, it can lead to haphazard regulation, substandard medical treatment and other unfortunate unintended consequences. The FDA should not grant race-specific approvals without clear and convincing evidence of a genetic or biological basis for any observed racial differences in safety or efficacy. Approving more drugs such as BiDil will not alleviate the very serious health disparities between races in the U.S. We need social and political will, not mislabeled medicines, to redress that injustice.

### HEALTH IN BLACK AND WHITE

<table>
<thead>
<tr>
<th>Number of deaths per 100,000 people</th>
<th>White</th>
<th>Black</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heart failure</td>
<td>213.3</td>
<td>280.6</td>
</tr>
<tr>
<td>Cancer</td>
<td>184.4</td>
<td>227.2</td>
</tr>
<tr>
<td>Stroke</td>
<td>48</td>
<td>69.9</td>
</tr>
</tbody>
</table>

SOURCE: Age Adjusted death rates for 2004, National Center for Health Statistics

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Fifty years ago, the U.S. Supreme Court struck down state laws banning interracial marriage, but the issues involved in the case extended beyond its current popular understanding as a tribute to romance.

Interracial marriage is at a historic high. According to a recent Pew Research Center report, couples with different racial backgrounds made up one in six new marriages in 2015—a stark change from previous eras when even looking at someone across the color line with a hint of romance could be a matter of life or death. This radical shift is largely attributed to the Supreme Court’s decision in
Loving v. Virginia, which marks its 50th anniversary on June 12. In Loving, the Court struck down state laws banning interracial marriage, holding that such restrictions are unconstitutional.

Loving is widely praised as a case about law ceding to the power of love in the face of astonishing harassment and bigotry endured by interracial couples. The redemptive trope coming out of the Loving decision that love conquers all has also influenced other social movements, such as those leading to Obergefell v. Hodges—the 2015 Supreme Court decision recognizing same-sex marriage.

The 1967 Loving decision therefore is often celebrated as an affirmation of love that made America a better and more progressive society. There’s just one problem.

Love is not what the case was really about.

At issue in the Loving decision was Virginia’s Racial Integrity Act of 1924, which prohibited interracial marriage and paved the way for a series of state laws designed to prevent racial mixing. Anti-miscegenation laws had been common in Virginia for centuries. But what often becomes lost in discussions about Loving is that this particular act was signed into law on the very same day the Virginia legislature passed another act that allowed the state to forcibly sterilize people with disabilities, including people labeled with derogatory medical terms such as “feebleminded.” Questions concerning the lawfulness of Virginia’s forced sterilization law led to another landmark Supreme Court decision in 1927, Buck v. Bell, in which the Court upheld its legality with Justice Oliver Wendell Holmes infamously declaring “three generations of imbeciles are enough.”

Virginia’s dual passage of racial integrity and sterilization acts in 1924 highlighted another concern held by lawmakers beyond that of interracial love: the perception that the white race was in danger of being weakened by inferior traits and that laws were needed to promote good racial hygiene and public health.

As legal historian Paul Lombardo notes, these acts showed how marriage restrictions and forced sterilization were deeply connected strategies for promoting a broader agenda of eugenics—a popular social and political standpoint in the late...
19th and early 20th centuries that used science, law, and medicine to weed out groups with what were taken to be hereditary defects (disability, poverty, criminality, etc.). Eugenics had been practiced in many nations across the globe and took various forms, including immigration restrictions, incarceration, and the genocides seen during the Holocaust. Supporters worked to encourage the demographic growth of so-called superior people of a predictable class, race, and ethnicity.

Eugenics was a failed political attempt at giving intellectual and scientific cover to what was nothing more than the gross racism and stigmatization of disadvantaged groups. The Supreme Court, in Loving, euphemistically referred to the time when these laws were passed as a “period of extreme nativism which followed the end of the First World War.” Tied closely to this nativism was the eugenic rearticulation of old entrenched biases that were not only skeptical of foreigners, but deeply invested in controlling reproduction as a means of preserving power for a particular slice of White America.

Within this context, it becomes clear that the issues involved in Loving extended beyond its current popular understanding as a tribute to romance. Indeed, for a case heralded for being about the boundless nature of love, there is surprisingly little discussion about this in the Loving decision apart from the appellants’ surname and rather dry assertions that marriage is a civil right. By contrast, consider this passage from the Court’s opinion in Obergefell, which reflects Justice Anthony Kennedy’s tone throughout a decision that waxes poetically on love’s virtues:

Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other.
The *Loving* decision instead responded to the eugenic aspect of Virginia’s Racial Integrity Act and how it was designed to prevent the perceived dilution of white racial purity. Rather than celebrating love, the Court’s opinion states that laws against interracial marriage are unconstitutional because they are “measures designed to maintain White Supremacy.”

Understanding *Loving v. Virginia* from this perspective highlights exactly why it is important, 50 years later, to recognize the Court’s decision in ways that go beyond affirming that love knows no racial boundaries. *Loving v. Virginia* continues to be relevant to modern discussions on racial intimacy, and speaks to contemporary social and political initiatives whose true purpose is often masked by distracting and disingenuous rhetoric. This can be seen in current government proposals aimed at banning travel from certain Muslim-majority countries, building a physical barrier on the southern border, revoking health care from millions of people, and decimating civil rights programs and social services that provide support for the most vulnerable. A robust understanding of *Loving* instructs us to peel back the superficial economic and political justifications for these contemporary proposals. This allows us to appreciate how they are often motivated by an eerily reminiscent Holmesian logic regarding who is weak and who is strong, who belongs and who doesn’t, and who deserves to live and who should perish.

At its half-century mark, *Loving v. Virginia* should be celebrated for fostering multi-racial relationships that have brought joy to many families and made communities stronger. Yet, it’s also important to understand and appreciate its relevance to not only intimate relationships, but also relationships between government and those who are governed. *Loving* is a decision that implores us to reject the eugenic and supremacist remnants of a distant past and to pursue a more diverse, equitable, and inclusive society. That, in a nutshell, is what love is truly about.

**ABOUT THE AUTHOR**

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