

# Sexual Racism: Intimacy as a Matter of Justice

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Taking seriously the idea that the “the personal is the political,” I argue that intimacy, the opportunity to be a part of a reciprocal romantic relationship, is a matter of justice. We ought to care about the distribution of this opportunity. Justice demands as much. What has gone largely undertheorized is racial discrimination that takes place in the intimate sphere. Prioritizing individuals as romantic partners in a way that reinforces ideas of racial hierarchy or stereotypes, what I call “sexual racism,” is unjust. Sexual racism is based on nothing more than a kind of blatant, even ugly (pun intended) kind of racial favoritism or disgust. These are not benign sexual preferences but problematic conditions that structure the very formation of romantic relationships. Renegotiating the boundaries of the intimate sphere, I argue that online dating websites ought to be sites of public concern.

In her book *Inequalities of Love*, sociologist Averil Y. Clarke uses the personal narratives of college-educated black women to show that in the realm of love, romance, and family, they are “disadvantage[d] relative to other women at [their] age and station in life” (Clarke 2011, 15). In fact, she concludes that “degraded black women’s experience of deprivation in romantic partnership and marriage develops and intensifies over time” (Clarke 2011, 117). Christian Rudder, the creator of OkCupid, a popular free online dating site founded in 2004, recently published statistical results that inform this disparity. Rudder stated that “when you’re looking at how two American strangers behave in a romantic context, race is the ultimate confounding factor” (Rudder 2014, 99). His results show that white users are more likely to be messaged or responded to than their nonwhite counterparts. They show, in particular, that black women and Asian men are the least likely to be messaged or responded to (Rudder 2014, 102–13).

This essay argues that this kind of racial disparity is unjust. It seeks to begin a conversation about the relationship between justice and intimacy. One’s choice of a romantic, sexually intimate partner is one of the most personal of decisions. After all, in order to create a family or relationship, individuals must first select whom they’d like to be with. If there is anything that seems outside the purview of justice, it must be these decisions. I challenge this view by considering the case of sexual racism. I define “sexual racism” as prioritizing an individual as a possible romantic, intimate

partner on account of their race in a way that reinforces extant racial hierarchy or stereotypes. Although scholarly work in sociology discusses the phenomenon of sexual racism (see generally Clarke 2011; Stember 1976; see citations *infra*), and some legal scholars discuss the role of the state in matters of interracial intimacy (see, e.g., Emens 2009; Fox 2009; Kennedy 2004; Robinson 2007), there is no sustained treatment of it from a perspective of normative political theory. What has gone largely undertheorized is racial discrimination that takes place in the sexual or intimate sphere.

Taking seriously the idea that the “the personal is the political” (MacKinnon 1987, 100), I argue that intimacy is a matter of justice. I define “intimacy” as the opportunity to be a part of a reciprocal romantic relationship. We ought to care about the distribution of this opportunity. Justice demands as much. In short, I argue that prioritizing individuals as romantic partners in a way that reinforces ideas of racial hierarchy or stereotypes is not just a private or moral wrong but an issue of social justice. Two interrelated claims motivate this thesis: one, sexual racism limits an opportunity that is a social primary good and a capability central to human dignity, and two, unlike sexual discrimination based on other characteristics like height or weight, racial discrimination invokes a category with social and historical importance. In particular, sexual racism is based on nothing more than a kind of blatant, even ugly (pun intended) kind of racial favoritism or disgust. When race structures the very formation of romantic relationships in

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a way that supports racial hierarchy, this is not about some individual or idiosyncratic sexual preference but about larger, structural issues of privilege and disadvantage.

My argument proceeds in five parts. First, I argue that intimacy is a matter of justice. Drawing on John Rawls and Martha Nussbaum, I argue that the opportunity to be a part of a reciprocal romantic relationship is a primary social good and is important to a capability central to human dignity. Second, we ought to be concerned when race structures or limits this opportunity. I argue that prioritizing romantic, sexually intimate partners in a way that reinforces racial hierarchy or stereotypes is unjust. Third, I respond to objections that prioritizing intimate partners on racial grounds is one, akin to prioritizing on other characteristics such as height and two, akin to prioritizing on the basis of sex. Fourth, I suggest why we cannot address unjust discrimination in the intimacy market in the same way as we address its employment counterpart. Finally, I suggest a possible way to respond to sexual racism that renegotiates the boundaries of the intimate sphere by viewing online dating websites as sites of public concern.

### **INTIMACY AS MATTER OF JUSTICE**

Central to the argument of this essay is that intimacy is a matter of justice. By “intimacy,” I mean the opportunity to be a part of a reciprocal romantic relationship. Just as we ought to care about the distribution of basic liberties, wealth, and employment, we ought also to care about the distribution of intimacy. I draw on John Rawls’s account of social primary goods and Martha Nussbaum’s capabilities approach to flesh out this claim. I realize that these are two different liberal accounts of justice (see generally Brighouse and Robeyns 2010). My concern here is not to defend either theory but to consider them in light of the issue of intimacy. I argue that both point to the idea that opportunity to be a part of a reciprocal romantic relationship is a primary social good and is important to a capability central to human dignity. Such goods and capabilities are, for Rawls and Nussbaum, respectively, within the scope or purview of justice.

#### **Primary social good**

According to John Rawls, justice is about the distribution of social primary goods. He defines these goods as those things that “it is supposed a rational man wants whatever else he wants” ([1971] 1999, 79, 92). Rawls contends that all of us are characterized by two capacities: “capacity for a sense of right and justice” and our “capacity to decide upon, revise, and rationally pursue a conception of the good” (1997, 277). Primary social goods are central to exercising these capacities. Rawls’s list of primary goods includes: “rights,

liberties and opportunities, income and wealth.” Rawls also includes on this list the “social bases of self-respect” ([1971] 1999, 79, 54). For instance, the right to religious freedom is a primary social good, and hence a concern for justice, because it is crucial in pursuing certain life plans and projects. Since I do not know what my life plans and projects will be in the original position, I will ensure that there is equality of religious freedom.

Similarly, the opportunity for employment is also a primary social good. If free and rational individuals seek more rather than fewer primary goods in order to, in part, “pursue a personal conception of the good,” employment is the crucial mechanism by which they can procure resources, money, and even self-respect. This is why Rawls contends that, at a minimum, there ought to be formal equality of opportunity where offices and positions are open to all ([1971] 1999, 47, 64). This means that in addition to governmental jobs, justice demands we regulate the behavior of individuals, here private employers.

Just as the opportunity to seek a job or position is a concern of justice, so too is the opportunity to be in a reciprocal romantic relationship. Intimacy is a distinct primary social good, not reducible to other such goods. First, intimacy is something that most (if not all) individuals pursue in some fashion. Most individuals seek some kind of sexual closeness coupled with love or romantic affection. Even if individuals decide not to pursue a long-term, monogamous relationship, the desire to be sexually and romantically intimate with another and to have that affection or love returned is ubiquitous.

Elizabeth Brake argues that the opportunity to form care-taking relationships is also a social primary good. She argues that such “relationships are ‘all-purpose means normally needed’ in the pursuit of widely different conceptions of the good” (Brake 2010, 329). This argument holds even more force in the case of intimacy. For Brake, caring relationships “are normally an ongoing site of development,” pointing to their status as long-term associations (Brake 2010, 329). Intimacy, as I have defined it here, may include such long-term relationships but also those short-lived romances where reciprocal affection and love may exist for a brief time. This points to intimacy’s obvious “all purpose” character. Intimacy is an opportunity that an individual will tailor to his or her own idiosyncratic conception of the good.

Second, intimacy often contributes to self-respect, which Rawls cryptically refers to as perhaps “the most important primary good” ([1971] 1999, 386). Being desired by someone else informs our own self-worth and sense of confidence. Brake goes on to say that the “clear connections between close interpersonal relationships and mental (as

well as physical) health suggest that caring relationships are comparable to self-respect in psychologically supporting individuals in their plans of life” (Brake 2010, 329). This support is even more compelling in the case of intimacy. Caring relationships may not have an element of reciprocal romantic interest. They may provide individuals with the psychological (and material) support, a sibling caring for his father or his sister, but not the kind of romantic relationship that comes with intimacy.

Third, and this follows from this reciprocal quality, mere resources are not sufficient for intimacy. The adage that money can’t buy love points to the idea that intimacy is a distinct primary social good. Although money may have the potential to secure affection and desire from someone, this is not always the case. The reciprocal quality of intimacy often rests on precisely that kind of deeply emotional and physical connection that mere money or resources cannot easily create. Those individuals in the original position would rationally seek to secure more of this opportunity rather less, independently of securing anything else.

Although extant scholarly work suggests that Rawls does not go far enough in applying his principles of justice to the intimate sphere (see, e.g., Nussbaum 2003b; Okin 1989a, 1989b; see also Cohen 1997), recent work may suggest otherwise (see, e.g., Bedi 2014; Schouten 2013). Rawls himself says that the family is part of the “basic structure.”<sup>1</sup> Intimacy, in fact, may in many cases be conceptually prior to familial relationships. Contending that the opportunity to be a part of a reciprocal romantic relationship is a primary social good is to affirm the idea that these decisions are not beyond the scope of justice, an argument I revisit again in the final section of the essay.

### Capability

Martha Nussbaum’s capability approach offers another liberal framework from which to consider intimacy a matter of justice. Nussbaum’s account of justice proffers the idea of a “basic social minimum” that “focuses on human capabilities, that is, what people are actually able to do and to be—in a way informed by an intuitive idea of a life that is worthy of the dignity of the human being” (2001, 5; see also Nussbaum 2003a). Although Nussbaum initially justified her theory of justice on comprehensive grounds, drawing in part on Aristotelian arguments (see Nussbaum 1988), recent work

1. “The family as part of the basic structure cannot violate these freedoms. Since wives are equally citizens with their husbands, they have all the same basic rights, liberties, and opportunities as their husbands; and this, together with the correct application of the other principles of justice, suffices to secure their equality and independence” (Rawls 1997a, 789–90).

treats it as a political conception, in line with Rawls (see Nussbaum 2001, 69; see generally Nelson 2008). Like Rawls, this focus on capabilities must leave individuals with a “a wide space for important types of choice and meaningful affiliation” (Nussbaum 2001, 69).

Central to her understanding of justice is a commitment to human dignity, a commitment, according to Nussbaum, that has “broad cross-cultural resonance and intuitive power” (2001, 72). This kind of dignity means that human beings “have worth as an end, a kind of awe-inspiring something that makes it horrible to see this person beaten down by the currents of chance—and wonderful, at the same time, to witness the way in which chance has not completely eclipsed the humanity of the person” (Nussbaum 2001, 97). She contends that individuals from various cultural and religious backgrounds can affirm such dignity, and in turn, a core set of capabilities. She identifies 10 such capabilities including: “life, bodily health, bodily integrity, sense, imagination, and thought, emotions, practical reason, affiliation, other species, play and control over one’s environment” (Nussbaum 2001, 79–80).

In elucidating the capability of emotions, Nussbaum explicitly affirms the importance of intimacy: “Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by fear and anxiety or by traumatic events of abuse or neglect (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development)” (Nussbaum 2001, 79). The capability of emotions validates the significance not just of intimacy but also of other opportunities such as the chance to grieve and experience gratitude. These are all types of human associations that involve attachment to others. Nussbaum talks about human dignity where Rawls speaks in the language of self-respect. Both concepts point to the importance of intimate attachments. A life without it, a life without the reciprocal nature of loving and being loved in return, is one that would lack dignity. It’s obvious that mutual romantic affection is the kind of affiliation that is a nearly universal capability, one that can be endorsed by all cultures. Nussbaum even argues that love can be central to maintaining a society’s sense of justice. By loving another, we engage in “a vigorous imaginative engagement with another persons’ particularity” (2013, 165). This, in turn, informs a sense of compassion and empathy that has the potential to counter and reduce inequality.

By appealing to the language of capabilities versus rights, Nussbaum challenges the idea that the intimate sphere is beyond the purview of justice. She suggests that “the sphere

of rights was typically imagined as the public sphere, and the family was typically imagined as a private sphere to which the discourse of rights had no applicability.” But, as she goes on to say, the “concept of capabilities has no such baggage to jettison, and the idea of being able to do or be something is obviously applicable inside the family, as well as outside of it” (Nussbaum 2005, 176). Fully appreciating intimacy as important to a capability central to human dignity suggests that justice is “applicable” even to those decisions that stand to create the very bounds or parameters of the intimate or familial sphere.

### **PRIORITIZING INTIMATE PARTNERS SOLELY ON THE BASIS OF RACE: REINFORCING RACIAL HIERARCHY OR STEREOTYPES**

We ought to be concerned from a perspective of justice when race structures or limits the distribution of this social primary good or human capability. Both Rawls and Nussbaum contend that justice requires some principle of nondiscrimination on the basis of race. Nussbaum is explicit about this. In the capability of affiliation, Nussbaum ties principles of “self-respect” and “nonhumiliation” to the idea that there ought to be “protections against discrimination on the basis of race, sex, sexual orientation, religion, cast, ethnicity or national origin” (2001, 79). For Rawls, primary social goods must be distributed equally unless an unequal distribution of income or other material resources is to the benefit of the least advantaged. With regards to employment, for instance, Nussbaum includes among her list of capabilities “the right to seek employment on an equal basis with others” (part of the larger category of control over one’s environment; Nussbaum 2001, 79–80). Rawls also makes clear that offices and jobs should, at a minimum, be “open to all” ([1971] 1999, 47, 64), and, importantly, this applies to both public offices and jobs in the private, employment market (see generally Bedi 2014). In specifying the original position, Rawls says delegates do not know “their own social position, their place in the distribution of natural attributes, or their conception of the good” ([1971] 1999, 172). Along with ignorance of these characteristics comes ignorance of factors that are “arbitrary from a moral perspective” (Rawls [1971] 1999, 64), including “race” and “ethnic group” status and “sex” (Rawls 2001, 15).

There is a larger debate about what this principle of nondiscrimination means. For instance, does it prohibit all discrimination on the basis of race? Or does it deem unjust only discrimination against racial minorities? Often, this is a debate about whether racial justice is about formal equality or antisubordination. I leave this debate to one side while acknowledging its importance. At a minimum, a principle of

nondiscrimination on the basis of race requires that social primary goods or capabilities not to be limited in a way that reinforces racial hierarchy or stereotypes.

Of course, one may adopt a stricter account of nondiscrimination, one that contends that justice requires formal equality or race blindness. This stricter interpretation would deem unjust any kind of racial discrimination whether or not it reinforces existing racial inequality. I focus on the more modest principle in this essay only because this essay seeks to begin rather than end a conversation about sexual racism. If we are engaging in the debate between formal equality and antisubordination in light of discrimination in the intimacy market, we are already operating on the assumption that this ought to be an issue of justice. It is this very assumption I initially seek to establish.

I argue that it is unjust when individuals prioritize intimate partners in ways that reinforce racial hierarchy or stereotypes. There is a descriptive and normative component to this argument. One, individuals do in fact engage in racial discrimination when selecting intimate partners and, as I argue, they problematically do so in a way that often reinforces existing racial hierarchy or stereotypes. Second, there is no justification or reason for prioritizing individuals in this way other than a blatant visceral kind of racial favoritism or disgust. This kind of discrimination, in turn, implicates larger, structural issues of disadvantage and privilege.

Consider research data from OkCupid, which as of April 2014 had ten million users (Rudder 2014). In 2009, Christian Rudder published results titled “How Race Affects the Messages You Get.”<sup>2</sup> OkCupid has a distinctive percentage matching system. The user answers a list of questions (the more questions answered, the more “accurate” the match percentage) and then can search for compatible matches. The OkCupid match/compatibility algorithm does not take into account appearance, including the user’s racial identification. It is self-described as taking into account the users’ “inner selves” (Rudder 2014, 101). Consequently, the match scores of individuals across different racial groups were roughly even, in the same way that the match scores of individuals across different zodiac signs were roughly even (Rudder 2014, 101). But although the data found that reply rates did not vary among those with different zodiac signs (unsurprisingly), such rates vary significantly among those from different racial groups. For instance, OkCupid concluded that among those who identify as straight, white

2. Unless cited otherwise, quotations and research presented in this paragraph can be found at <http://blog.okcupid.com/index.php/your-race-affects-whether-people-write-you-back/>.

men get a greater percentage of responses than any other racial group. “White women prefer white men to the exclusion of everyone else—and Asian and Hispanic women prefer them even more exclusively.” So women of all racial groups prefer men who are white, findings that persisted in a more recent analysis of the data from OkCupid (Rudder 2014, 102–9). In fact, this disparity in racial matching was similar for gay users as well (Rudder 2014, 243). This proves that the extent to which one has the opportunity to be a part of a reciprocal romantic relationship depends on one’s race. And those who are often the most successful in the intimacy market—whites—are also most privileged outside of it.

We need not look just to OkCupid. Recent empirical work informs these results, making clear that individuals do, in fact, prioritize romantic partners solely on the basis of race and in ways that reinforce racial hierarchy or stereotypes. This work primarily uses online dating profiles and response rates as well as more conventional survey data to reveal the relationship between race and dating preferences.

With regard to heterosexuals, these studies conclude that: females prefer whites over nonwhites (Tsunokai, McGrath, and Kavanagh 2013); white men and women are more likely to seek out potential dates with whites rather than with blacks (Herman and Campbell 2012; Lin and Lundquist 2013); white women are less willing to date nonwhites than white men (Hwang 2013); college students are more likely to exclude blacks as potential dates (Bany, Robnett, and Feliciano 2014; McClintock 2010); whites are least likely to date outside of their race, and Asians and Latinos are least likely to date blacks (Robnett and Fedliciao 2011); blacks were 10 times more likely to contact whites than whites were to contact blacks (Mendelsohn et al. 2014); and, controlling for appearance, Arabs suffered an ethnic penalty in one of Sweden’s largest online dating sites (Jakobsson and Lindholm 2014).

With regards to gay men, these studies (of which there are generally fewer) conclude: Asian men are the least desired in a sample of online profiles of urban males seeking sex with men (White et al. 2014); interviews reveal sexual marginalization of Asian men in the gay community (Han 2008a); an ethnic hierarchy exists with whites and Latinos as the most desirable racial groups in the online gay male community (Brown 2003; Robinson 2007); gay men of all races prefer to date whites over nonwhites (Tsunokai et al. 2013); and gay Asian men are often forced to take on the “submissive” intimate role in competing for white men (Han 2008).

Just as private employers (see, e.g., Bertrand and Mullainathan 2004), landlords (see, e.g., Ewens and Wang 2014; Hanson and Hawley 2011), and banks (see, e.g., Kau, Kee-

nan, and Munneke 2012; Ladd 1998) discriminate against nonwhites, so too do prospective daters and romantic partners. Racial privilege extends beyond these conventional spheres to the intimacy market as well. The opportunity to be a part of a reciprocal romantic relationship—like the opportunity to seek employment or apply for housing or a mortgage—is often limited by race. It is worth pointing out that whites are not the only racial group that practices sexual racism. Nonwhites have also internalized this racial hierarchy, as they too, as the studies above suggest, often prefer whites.

Certainly, there are those who may prefer nonwhites in the intimacy market and may do so in ways that do not reinforce existing racial stereotypes. But the existence of such cases does not obviate the injustice of sexual racism when individuals prefer nonwhites in ways that reinforce racial caricatures. For instance, Robnett and Fedliciao (2011) find that Asian males are more highly excluded from the heterosexual intimacy market than their Asian female counterparts. This informs existing stereotypes that view Asian males as effeminate and asexual (what David Eng [2001] calls a kind of “racial castration”) and their Asian female counterparts as submissive and sexual (what Sheridan Prasso [2005] calls the “Asian Mystique”). Or consider the gay intimacy market where those who prioritize blacks over whites often do so by considering them as aggressive, sexually dominant, and physically well-endowed (see, e.g., Coleman 2011; Smith 2014). Here nonwhites are fetishized, making them sexually attractive (and hence prioritized) but in ways that reinforce racial stereotypes. This kind of fetishism stands to confound the reciprocal quality of intimacy. Someone is being loved and found attractive based not simply on their individuality but on their ability to fulfill a racial stereotype. Reducing someone to this kind of caricature stands to diminish the validation and self-respect that intimacy has the potential to confirm.

Although she does not discuss intimacy, Iris Marion Young suggests that “white males . . . in so far as they escape group marking, can be individuals” (Young 1990, 59). They are not subject to “cultural imperialism” or its attendant racial stereotypes but rather beneficiaries of it. This holds particularly true for intimacy where whites are in a privileged position, precisely because they are neither penalized nor fetishized on account of their race.

Insofar as sexual racism intersects with extant concerns about racial stereotype and privilege, this is not just an issue of private morality or ethics. The sexual racist does not act upon her own idiosyncratic taste or preference, making this simply a private wrong (see Waldron 1981). She operates on aesthetic norms that are, as the empirical data above make

clear, based on and track existing racial prejudice. The fact, for instance, that whites are often privileged in the intimacy market and racial minorities are disadvantaged is just another instance of racial inequality, inequality that occurs in such areas as employment and housing. Racist norms are part of our sexual preferences just as they are part of our preferences for whom to rent to or employ.

This does not make these preferences any less an issue of justice. In all these cases, the relevant social primary good or human capability is limited in ways that reinforce existing privilege and stereotype. Once we realize that the opportunity to be in a reciprocal romantic relationship is also limited on precisely those racial terms that have limited individuals historically and socially, this kind of sexual discrimination is not just a matter of private morality but within the purview of justice. Sexual racism is part of and interconnected to the social and normative structure that treats racial minorities as less than their white counterparts. If we care about racial equality, this begs for an expansive, not narrow, view of justice. Failing to treat sexual racism as an issue of justice diminishes its significance by deemphasizing its connection to larger arguments about privilege and stereotype.

Once we realize that sexual racism is indeed an issue of justice, we can then ask whether this kind of discrimination is unjust. Extant normative debates over racial discrimination often hinge at least in part on whether there are justifiable reasons for the relevant racial discrimination. For instance, those who defend race-based affirmative action, and the scholarly work here is quite nuanced and extensive, argue that such policies seek to remedy past wrongs, reduce inequality, or provide for diversity (see, e.g., Anderson 2010; Boxill 1978; Thomson 1973). Even those who defend racial profiling assume that such profiling at the very least “contribute[s] to the provision of a public good as basic as security” (Risse and Zeckhauser 2004, 132). I do not seek to engage these debates here; rather, I am pointing out that scholars often disagree over the justness of these kinds of racial discrimination.

But sexual racism is inapposite, precisely because there is no presumptive justification or reason for the discrimination. This makes it a particularly invidious kind of unjust discrimination. Prioritizing intimate partners on the basis of race is often nothing more than a kind of visceral, even ugly, instance of racial discrimination and stereotyping. Here there is no issue of public security or redress that would invite a possible defense. In the intimacy market, race is not being used as a proxy for some other characteristic. Again, OkCupid’s data on race preferences controlled for match percentage. That is, it considered the response rate for pairs of individuals that had a

similar match score—the only difference being their race. This match score takes into account a wide variety of compatibility questions relating to education, income, expectations, and likes/dislikes.

Or consider that the studies above conclude, in part, that: white women prefer to date Latinos and blacks over Asians and East Indians, even though the former have lower than average economic statuses (Feliciano, Robnett, and Komaie 2009); college students exclude blacks as potential dates based just on physical attractiveness (Bany et al. 2014); randomizing occupation on one of the largest Swedish online dating sites still generates an ethnic penalty for Arabs (Jakobsson and Lindholm 2014); and education does not mediate the observed racial preference among white internet daters (Lin and Lundquist 2013). This suggests that race is not simply a proxy for compatibility in terms of socioeconomic status, education, and the like. A prospective dater’s race qua race is often doing the discriminatory work.

This is also evident in racial preferences on gay casual dating online sites (see Brown 2003; Robinson 2007; White et al. 2014). Here the use of race cannot be based on any kind of proxy argument. By its very terms, these sites facilitate casual dating where issues of education and economic status and social or family stigma are often less important. Insofar as these sites are just about attraction, racial preferences are based on nothing more than racial favoritism or disgust.

This means that sexual racism is akin to bans on interracial marriage or policies of public segregation, policies that have long been treated as unjust. Just as bans on interracial marriage are often based on naked racial disgust, so too are racial preferences in the intimacy market. If individuals prioritize (or penalize) possible romantic partners solely on the basis of race that reinforces hierarchy or stereotypes, there is no legitimate justification for doing so that is not ultimately about racist norms. In such cases, individuals prefer or penalize those who are white or nonwhite, respectively, in the intimacy market for no other reason than those individuals are members of a particular racial group.

#### WHAT ABOUT HEIGHT OR SEX?

There are two possible objections to the conclusion that sexual racism is unjust. Both objections suggest that this conclusion goes too far. First, if sexual racism is unjust, it is also unjust to prioritize intimate partners solely on the basis of height or weight, or some other kind of physical feature. But individuals routinely discriminate on the basis of appearance in selecting intimate partners. Second, if sexual racism is unjust, then it is also unjust to prioritize intimate

partners solely on the basis of sex. But those who identify as straight prioritize individuals of the opposite sex just as those who identify as gay prioritize individuals of the same sex. I argue that both objections fail, because sexual racism is inapposite to prioritization on the basis of appearance or sex.

The first objection focuses on the fact that individuals routinely discriminate on the basis of physical characteristics such as height or weight in selecting intimate partners. It seems absurd to suggest that this is also unjust. After all, this would mean that it is unjust to consider appearance in the intimacy market. If we may *not* consider appearance in selecting intimate partners, it seems that the very idea of intimacy breaks down.

My response here is twofold. First, discrimination on the basis of race that reinforces existing racial hierarchy or stereotypes is different from discrimination on the basis of height or weight. Although those who are taller and slimmer have social advantage (see generally Kirkland 2008; Rhode 2010), these markers simply do not have the political salience of race. After all, laws and social institutions have explicitly discriminated on the basis of race, not on the basis of height or weight. Slavery, Jim Crow, and segregation in schools, restaurants, and other public places reveal this obvious fact. Height and weight do not structure or mark out extant deep social inequalities in the same way as race. For instance, Iris Marion Young's (1990) arguments about oppression, exploitation, marginalization, powerlessness, cultural imperialism, and violence demonstrate the salience of race.

Second, and relatedly, race is not a mere physical attribute like height or weight. One can objectively measure one's height or weight. These are genuinely aesthetic characteristics. They completely mark out actual physical traits. Now certainly racial categories often correlate with certain physical features (e.g., lighter skin, different facial features). I'm not suggesting that race is entirely unconnected to such features. The important point from a perspective of justice is that racial categories mean much more. Scholarly work routinely argues that race is a legal, social, and political construct (see, e.g., Braman 1999; Haney-Lopez 2006; Hochschild, Weaver, and Burch 2012; Jacobson 1999). Scholars have discredited the view that there is something biological or objectively fixed about racial categories (see, e.g., Lewontin 1997; Livingstone 1962, 279; Smedley and Smedley 2005), concluding in fact that there is more biological diversity within the alleged categories of race than among them (Lewontin, Rose, and Kamin 1984). To equate race with mere physical attributes such as height or weight is to affirm implicitly this discredited view, one that essentializes racial cat-

egories. This objection, one that aligns or treats race as just another physical attribute, misses the normative and political force that comes with racial categories.

In fact, the studies cited above suggest that individuals sometimes prioritize not exclusively based on some physical set of attributes but the racial category itself. Within each racial group there are obviously individuals of various sizes and body shapes. Someone who prioritizes white men over Asian men may do so because they view the latter as effeminate or asexual. In some of the studies above, the research found a racial penalty even using the same photo, altering only the name to suggest a different race or explicitly altering the stated racial category (see, e.g., Jakobsson and Lindholm 2014; Robinson 2007). This informs the idea that sexual racism may not be about some objective single physical attribute that happens to correlate with a racial category but the very political, legal, and social marker that constitutes these categories and the stereotypes that often accompany them.

Consider as a contrast sexual discrimination that may take place on the basis of religion. Even if we may find such discrimination problematic, it is not about attractiveness. That is, an individual who refuses to date someone of a particular religion does not do so because they find that person less physically attractive. Rather, it is (presumably) in light of issues of compatibility. If that individual turned out to be of another religion or if they converted (what sometimes happens in such romantic pairings), they may now become a viable prospect. Race is different. In the case of sexual racism, the individual is seen as less *physically* attractive based on racial stereotypes or norms, based on categories that have legal, social, and political salience. They cannot simply "convert" to another race, precisely because this kind of discrimination implicates racialized aesthetic norms. Race, then, is unlike intimate or romantic discrimination based on religion (a trait that is not about attractiveness) or height or weight (traits that do not trigger and implicate socially and historically grounded stereotypes).

In that way, sexual racism imposes an identitarian harm that may not exist with sexual discrimination on the basis of other characteristics. Because race is more than just a physical attribute, often providing a context for self-respect and identity, discrimination on the basis of it has the potential to violate human dignity. Simultaneously, unlike intimate discrimination on the basis of religion, sexual racism is about racist norms that are tied to the body. It cuts deeper than rejection based on these other characteristics. Nussbaum explicitly connects the principle of nondiscrimination on the basis of race to the "social bases of self-respect and non-humiliation" (2001, 79). Sexual racism harms individ-

uals in a way that discrimination on the basis of height or weight or even religion does not.

The second objection focuses on the fact if sexual racism is unjust, so too is sexual discrimination on the basis of sex. Those who identify as straight often prioritize those of the opposite sex as intimate partners, and those who identify as gay prioritize those of the same sex. It seems strange to argue that this kind of intimate discrimination is unjust. My response here is twofold as well.

First, this kind of intimate discrimination is like discrimination on the basis of height or weight. In this case, sex is like any other physical attribute. Generally, sex refers to the biological category: male or female. Gender, on the other hand, refers to the attributes that are often associated with the biological category, attributes that include femininity, masculinity, or aggressiveness. These attributes fall under the description of “man” or “woman.” This distinction between gender and sex is a familiar one in feminist theory. Simone de Beauvoir’s classic statement that “One is not born, but rather becomes, woman” speaks to it ([1949] 2009, 283; see also Butler 1990). Individuals who prioritize those of the same or opposite sex as intimate partners are prioritizing certain physical or biological attributes—including breasts, penises, or vaginas—over others. This is unproblematic, precisely for the same reason as prioritization on the basis of height or weight. Certainly, if individuals prioritize gendered attributes of masculinity or femininity, this may pose problems from a perspective of justice. In that case, discrimination is not just on physical attributes but distinct notions of the appropriate relationship between gender and sex (see Hartley and Watson 2010; see also Bedi 2013, 177–207), a kind of discrimination needing a more extensive analysis of intimacy. This essay does not mean to suggest that sexual racism is the only kind of injustice in the intimacy market.

Second, this kind of sex discrimination functions as a central component of gay identity. Insofar as those who identify as gay and lesbian discriminate on the basis of sex in selecting intimate partners, their discrimination may constitute, in part at least, what it means to be gay. Attraction and love for those of the same sex is a marker of being gay. Although recent scholarly work is critical of the idea that gays’ and lesbians’ desire for those of the same sex is biologically based (see, e.g., Halley 1994; Helfand 2009; Stein 2001), it still treats this desire as often central to one’s sexual identity (see Gill 2014; Richards 1999). As David Richards argues, claims by gays and lesbians “are in their nature claims to a self-respecting personal and moral identity in public and private life through which they may reasonably express and realize their ethical convictions of the moral powers of friend-

ship and love in a good, fulfilled, and responsible life” (1999, 93). This is why gay and lesbian organizations often deploy the locution of “sexual orientation” rather than “sexual preference.”<sup>3</sup> Constitutive of gay and lesbian identity is the desire for those of the same sex.

This kind of preference then is unlike the preference for those of a particular race or even those of a minimum height or particular weight. Loving and hence preferring individuals of the same sex is not some incidental desire but one that is often consequential to gay and lesbian identity. But it may be morally problematic to view racial preferences as in any way constitutive of identity. Individuals generally do not structure their sense of self in terms of their preference for those of a particular race. This would require the sexual racist to place her racist desires front and center. If anything, they may treat these preferences as anything but central to their identity and sense of self. Consider an individual who does, in fact, structure their identity around preferring or prioritizing those of a particular race. If such prioritizing reinforces racial hierarchy or stereotypes, this means that that individual’s sense of self is tied up with such racist notions (e.g., a white person lover, an Asian lover). Justice pushes against affirming such an identity, precisely because they are based on preferences that are racist. This reveals a difference between sexual racism and intimate discrimination on the basis of sex. We often acknowledge the latter in order to affirm the importance of gay and lesbian identity in a way that we do not and ought not to acknowledge the former.

I concede that there could be cases where this kind of prioritization on the basis of race is less problematic with regards to identity. For instance, a black individual who proclaims a preference for only those who are also black may seek to challenge extant racialized aesthetic norms. They may do so explicitly to undermine racial hierarchy or stereotypes rather than to validate them. Perhaps in this case it may not be unjust for this individual to proclaim this preference as part of his or her identity. After all, he or she is doing so in order, in part, to challenge racist norms. This possibility intersects with the larger question of whether we ought to adopt a norm of race blindness or antisubordination in the case of sexual discrimination, a question I flag but do not explicitly answer here. Again, answering this question means

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3. Lambda Legal, <http://www.lambdalegal.org/issues/employment-workplace>; International Gay and Lesbian Human Rights Commission, <http://www.iglhrc.org/cgi-bin/iowa/theme/2.html>; Human Rights Campaign, [http://www.hrc.org/issues/workplace/equal\\_opportunity.asp](http://www.hrc.org/issues/workplace/equal_opportunity.asp); GLAD (Gay and Lesbians Advocates and Defenders), <http://www.glad.org/rights/c/anti-lgbt-discrimination>.



that we are already operating on the assumption that sexual racism is an issue of justice, an assumption that this essay seeks to establish.

### UNCONSCIOUS RACISM AND THE PROBLEM OF STATE COERCION

If sexual racism is unjust, how should we respond to it? This question of remedy assumes that society is not fully complying with the relevant principles of justice. I realize that this assumption is at odds, in particular, with Rawls's account, an account that is often seen as one in ideal theory (see generally Simmons 2010). After all, it requires that we abstract away from certain characteristics both personal and societal in crafting principles of justice. Rawls also assumes a level of societal compliance with the principles of justice. Critics of this framework often contend that this framework is too abstract, grounding principles of justice in ideal as opposed to nonideal conditions (see, e.g., Farrelly 2007; Geuss 2008; Wiens 2012). Although I do not seek to resolve this debate here, I do assume that questions about remedy are important in thinking about justice. If society were fully compliant with principles of justice, sexual racism, along with racism in the employment or housing sphere, would probably not exist. That is not the society we currently live in. In fact, the existence of sexual racism undermines the idea that we are indeed in a postracial world. I focus on the question of remedy, in part, to reveal that it may be appropriate for laws and policies to treat one kind of injustice differently from another. That is, we ought to separate conceptually the issue of injustice from the issue of remedy.

In the employment context, the remedy is relatively straightforward. Laws and policies need only prohibit such employment decisions, holding private employers civilly or even criminally liable for their racist actions. This kind of coercion forces employers to hire racial minorities. I suggest that this possibility may be problematic in the intimacy market, because sexually racist preferences are often unconscious, affecting a delicate and often unpredictable area of human life.

Whom we find attractive is perhaps one of the most idiosyncratic choices an individual makes. A central tenet of liberalism is the idea that the state ought to remain neutral among competing conceptions of the good. This entails that the freedom to select the intimate partner of one's choice is a primary social good (a basic liberty or right) and a capability central to human dignity. In fact, Rawls argues that rights and liberties are lexically prior to the distribution of other goods ([1971] 1999, sec. 11, 54–55). Nussbaum makes clear that we ought to be able “to engage in various

forms of social interaction” (2001, 79). Whereas there may *not* be a right to employ whomever one chooses (but see Epstein 1992), a right to choose or select one's intimate partners seems harder to reject.

This is because our choice of intimate partners is so central to who we are, to our idea of self, that the state is forbidden from coercively regulating it. Important here is that if there is any area with special importance to form, develop, and cultivate our own particular conception of the good, it must be our decisions regarding intimacy. And if that is the case, the state must not coercively prohibit individuals from selecting their romantic partners (see Cordelli 2014).

Moreover, we do not simply wake up one day and proclaim we are attracted to those of a particular race (or not attracted to those of another race). We cannot switch our desires on or off. That's not how desire operates. Our romantic desires seem ineffable and often beyond our conscious control. Rachel Moran, who analyzes the historical and social impact of antimiscegenation laws in light of issues of race and intimacy, recognizes that sexual desire entails an elusive “X factor” where “intimacy [is] an affirmation of personal uniqueness.” Relationships, she goes on to say, are “unmediated, unquantifiable, and indescribable.” “Love and identity are beyond the reach of rational judgment” (Moran 2003, 14). To interfere coercively with such decisions is to upset the delicate and unpredictable nature of intimacy. Employment decisions are not beyond the reach of rational judgment, for we can define the extent and scope of what it means to be an employee in a particular workplace. This means we can coercively prohibit racial discrimination in the employment market without ruining the idea of employment. In contrast, we cannot define the extent and scope of what it means to be a romantic, intimate partner. The delicate, unpredictable, and irrational nature of intimacy militates against state coercion.

These considerations suggest that sexual racism may be a kind of “unconscious racism” (Lawrence 1987), defined by research in political science as an “implicit bias” (see generally Ksiazkiewicz and Hedrick 2013). Charles Lawrence explains that we “inevitably share many ideas, attitudes, and beliefs that attach significance to an individual's race and induce negative feelings and opinions about nonwhites. To the extent that this cultural belief system has influenced all of us, we are all racists. At the same time, most of us are unaware of our racism. We do not recognize the ways in which our cultural experience has influenced our beliefs about race or the occasions on which those beliefs affect our actions” (1987, 322). Our sexual desires are influenced by such beliefs, attitudes, and culture. Considering

that these norms are racist, they obviously influence whom we find attractive. If whiteness or being white is prioritized in the intimacy market, it stands as a reflection of the larger culture and its “negative feelings” about nonwhites. This means that we cannot simply decide to be attracted to those of a particular race. Sexual racism does not seem to be a conscious deliberate choice we make. Although we may be aware that we are not attracted to people of color, this may not be an intentional decision we make one morning while contemplating possible romantic partners.

But just because we may act on an unconscious belief regarding racial hierarchy or stereotypes in such a sensitive area of life does not extinguish the unjustness of our act. It does not extinguish our moral obligation to reflect upon the way in which our desires and tastes are not benign preferences but instances of naked racial favoritism or disgust. It only suggests that coercion is not a suitable remedy for this kind of injustice.

#### **ONLINE DATING WEBSITES: RENEGOTIATING THE INTIMATE SPHERE**

This does not mean there is nothing we can do. Certainly, the state can provide public education about the history of racism and the emergence of racialized aesthetic norms, in an effort to promote alternative standards and conceptions of beauty. But given that this is an issue of justice, we ought to do more. One possibility is to renegotiate the public/private divide so as to bring online dating websites into the boundary of justice. This line of reasoning suggests that we ought to be attuned to the way in which social spaces can reinforce racial norms (see generally Hayward 2013). Here the injustice occurs in those “spaces” in cyberspace where intimate partners are often selected. So even if we may not coercively prohibit individuals from prioritizing romantic partners on the basis of race, in the same way we prohibit employers from doing so, this does not mean we should facilitate this kind of unconscious racial favoritism or disgust.

Most major dating websites permit users both to identify their race and to screen potential dates on the basis of race. Consider in this regard OkCupid.com and Match.com, two of the most popular online sites.<sup>4</sup> These sites, for example,

permit a user to search for individuals of a particular race. These websites problematically treat racial groups just as they do other searchable characteristics, including height, weight, income, or educational level. In doing so, these websites both ignore the political and normative salience of racial categories and legitimate these categories as important attributes of an intimate partner. That means that a user can act on his ideas of racial hierarchy or stereotype and avoid having to view profiles from the racial groups he or she disfavors. The ease with which users can racially discriminate is noteworthy on these sites.

Although he does not frame the issue in light of normative political theory, Russell Robinson suggests “lawmakers might consider regulating web site design decisions that produce, exacerbate, or facilitate racial preferences.” Such regulations could include prohibiting users from searching on the basis of race (Russell 2007, 2794). Doing so may render it more difficult for the sexual racist to discriminate in a way that reinforces racial hierarchy or stereotypes. This does not infringe an individual’s right to choose a partner of his or her choice. The option to do so still exists. Someone may still decide to be intimate with only those of a particular race. In fact, on such dating websites, one can refuse to contact those of a particular race or decide not to respond to messages from members of a perceived disfavored racial group. But if the website does not permit users to search or screen on the basis of race, it will be more difficult for them to be sexually racist.

Elizabeth Anderson (2010) argues that racial integration is a requirement of justice. There is a moral imperative for us to ensure that “members of different races form friendships, date, marry, bear children or adopt different race children” (Anderson 2010, 116). Anderson argues that an “ideal of integration” challenges segregation. She defines “segregation” as embodying the “structures and norms of spatial and social separation” and dictating the terms of racial interaction based on “domination and subordination” (Anderson 2010, 112). Permitting users to search on the basis of race in online dating websites reinforces these two pillars. Such searches make it easy to ensure a norm of “separation” and permit interaction in ways that affirm racial stereotypes. For instance, if individuals prioritize Asian women on the basis of racial caricatures, allowing users to search on the basis of race permits them to focus just on that particular racial group. This undermines integration and its emphasis on equality and not stereotype. Although she does focus on intimacy or the dating market, Anderson’s argument underlies the importance of regulating sites to at least encourage an “ideal of integration.”

Admittedly, these online decisions to search and screen via race are deeply personal ones. Whom one decides to date

4. <http://www.match.com>; <http://www.okcupid.com>. Match.com lists the following racial groups (allowing users to select more than one): Asian, Black/African descent, East Indian, Latino/Hispanic, Middle Eastern, Native American, Pacific Islander, White/Caucasian, Other. OkCupid.com lists the following groups (also allowing users to select more than one): Asian, Black, Hispanic/Latin, Indian, Middle Eastern, Native American, Pacific Islander, White, Other.

or be intimate with is central to an individual's conception of the good. A commitment to a rigid notion of the boundaries of the intimate sphere may suggest that such decisions are beyond the purview of justice. Yet, it is this very commitment that feminists have railed against, arguing that the intimate sphere often makes it difficult to address violence, domination, or inequality that take place among private individuals within the family or home (see, e.g., Allan 1988, 79–80; Kelly 2003; MacKinnon 1987; McClain 1995; Okin 1989; Pateman 1989, 118–40).

Short of rejecting the intimate sphere altogether, liberals have responded to this problem by arguing that what we deem as personal or intimate and hence beyond the scope of democratic regulation must itself be open to democratic contestation, debate, or justification (see, e.g., Benhabib 1992, 2004; Brettschneider 2007; Cohen 2002; Habermas 2001, 116; Zivi 2011; see generally Bedi 2009, 24–38; Kelly 2003, 42–46). According to this approach, the boundary between the public and the private is not rigid and prepolitical but contingent and open-ended. Corey Brettschneider (2007) argues for what he calls a commitment to “strong political reconstruction.” He describes this in the following way: “Although the phrase ‘public reason’ seems to suggest an inherent divide between public and private life, on the strong public reconstruction there is no such clear or prior divide. Rather, to the degree that privacy exists at all, its boundaries must be determined by and normatively argued for through public reason. This has a major implication for traditional understandings of privacy: domestic life is not immune from political examination” (Brettschneider 2007, 24–25). The reclassification approach invites a dialogue that is framed by a theory of public reason, grounded in the idea that the boundary between the private, “domestic life” and its public counterpart is not rigid or set but itself open to political renegotiation. This dialogue permits democracies to reclassify private matters as issues of public concern.

Once we recognize the problem of sexual racism, the very decisions that stand to create the intimate sphere now become sites of justice, in this case, the way websites permit race-based searches. Whereas feminist theory challenges the way this sphere shields from public scrutiny domination that occurs within a family or relationship, the argument of this essay orients our attention to those conditions that create a particular family or romantic relationship. For those who meet online, dating websites facilitate the terms under which these relationships occur. And these terms have the potential to underpin racial segregation rather than overcome it.

The personal nature of these online searches does not mean that they are beyond public criticism. Just as family

and domestic life may be subject to considerations of justice, so too is the way online dating websites structure the intimacy market. In fact, Nussbaum makes clear that limitations on what one is “able to do or be . . . is obviously applicable inside the family, as well as outside of it” (2005, 176). Insofar as intimacy is important to a capability central to human dignity, online dating websites that structure this opportunity so as to facilitate sexual racism are not exempt from claims of justice.

The democratic reclassification approach suggests that we should include online dating websites and applications as sites of public concern. They facilitate the terms of social cooperation and, as a result, effect an ideal of racial integration. Focusing in particular on online dating, a recent Pew Research survey finds that 38% of all American singles use either the internet or cell phone apps to meet others. And 5% of those who are currently married or in long-term relationships met their partners online. Of those who have been together for 10 years or less, the percentage that met online is even higher at 11%.<sup>5</sup> As the internet becomes even more ubiquitous as a platform for social cooperation, romantic pairing is more likely to occur via the internet. Our social interactions are constantly being mediated in this relatively new, frictionless world.

Romantic pairings obviously occur outside the internet. Focusing just on internet dating websites will not extinguish the problem of sexual racism. Individuals may still be able to prioritize on the basis of race in ways that reinforce hierarchy or stereotypes. But, at a minimum, we must realize that the way in which these websites structure the parameters of a search has a significant impact on our contemporary dating and romantic lives. And this impact directly implicates issues of racial justice.

This entails that online dating websites ought to be a “public” concern. Seeing that these websites structure our desires in a way that facilitates (let alone encourages) sexual racism, we ought to take notice. Although prohibiting users from searching on the basis of race would not infringe the right to choose or select one's intimate partner—individuals are still able to respond to and select an intimate partner of their choice—it would recognize the injustice of sexual racism. It would make it harder for someone to be sexually racist. Prohibiting these searches may stand as one possible way to combat, though not extinguish, sexual racism.

In *Schuette v. Coalition to Defend Affirmative Action* (2014), a Supreme Court decision that upheld a Michigan

5. See <http://www.pewinternet.org/2013/10/21/online-dating-relationships>.

state amendment prohibiting race-based affirmative action, Justice Sonia Sotomayor in dissent reasoned that: “The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race” (*Schuetz* 572 U.S., at 46). This essay begins a philosophical conversation about sexual racism. It does so by realizing that our intimate decisions are not beyond the purview of justice. For once we turn our attention to these often hidden and deeply personal choices, we see that racism is alive and well. In positively commenting upon Sotomayor’s dissent, former Attorney General Eric Holder warns that we should not focus solely on the “high-profile expressions of outright bigotry.” For if we do, “we are likely to miss the more hidden, and more troubling, reality behind the headlines . . . because the greatest threats . . . are more subtle. They cut deeper.”<sup>6</sup> Although Holder may not have had sexual racism in mind when making that statement, this essay flags sexual racism as an instance of injustice that is indeed “more subtle” and “hidden.” To the extent that our intimate preferences represent a kind of naked racial favoritism or disgust, we must be careful not to dismiss them as benign. If online dating websites facilitate these racist preferences, justice may demand we renegotiate the boundaries of the intimate sphere by treating them as sites of public concern.

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6. See [http://www.washingtonpost.com/politics/transcript-attorney-general-eric-holders-speech-to-morgan-state-university-graduates/2014/05/17/d6b72284-ddd0-11e3-b745-87d39690c5c0\\_story.html](http://www.washingtonpost.com/politics/transcript-attorney-general-eric-holders-speech-to-morgan-state-university-graduates/2014/05/17/d6b72284-ddd0-11e3-b745-87d39690c5c0_story.html).

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