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ROMANTIC DISCRIMINATION AND CHILDREN

SOLANGEL MALDONADO*

In recent years, social scientists have used online dating sites to study the role of race in the dating and marriage market. Their research has revealed a racialized and gendered hierarchy that disproportionately excludes African-American men and women and Asian-American men. For decades, other researchers have studied the risks and outcomes for children who grow up in single-parent homes as compared to children raised by married parents. This Essay explores how racial preferences in the dating market potentially affect the children of *middle-class* African-American mothers who lack or reject opportunities to marry.¹ What is the relationship between racial preferences in the dating and marriage market and children's access to resources and opportunities? Do racial preferences in the dating and marriage market increase the likelihood that children of *middle-class* African-American mothers will be raised in homes with fewer resources and limited access to opportunities available to other children with similarly educated parents? If so, what, if anything, should the law do to minimize racial preferences' effects on children?

I. RACIAL PREFERENCES IN THE DATING AND MARRIAGE MARKET

Americans' acceptance of interracial intimacy has increased dramatically in just one generation. In 1987, less than 50% of Americans approved of African-Americans and Whites dating. By 2013, 87% of all Americans, and 96% of 18-29 year olds, approved of marriages (not just dating) between African-Americans and Whites.² Yet, despite our approval of inter-

* Joseph M. Lynch Professor of Law, Seton Hall University School of Law.

1. Legal scholars have examined how racial preferences in the foster care and adoption system harm children. See e.g., Solangel Maldonado, *Discouraging Racial Preferences in Adoptions*, 39 U.C. DAVIS L. REV. 1415 (2006); Richard Banks, *The Color of Desire: Fulfilling Adoptive Parents' Racial Preferences Through Discriminatory State Action*, 107 YALE L.J. 875 (1998); ELIZABETH BARTHOLET, *FAMILY BONDS: ADOPTION, INFERTILITY, AND THE NEW WORLD OF CHILD PRODUCTION* (Beacon Press, 1999).

2. Jeffrey Passel et al., *Marrying Out: One-in-Seven New Marriages is Interracial or Interethnic*, PEW RES. CTR. (June 4, 2010), <http://www.pewsocialtrends.org/files/2010/10/755-marrying-out.pdf>; Frank Newport, *In U.S., 87% Approve of Black-White Marriage, vs. 4% in 1958*, GALLUP (July 25, 2013).

racial relationships, most Americans marry individuals of their same race.³ One reason might be opportunity. We tend to date people we meet at school, work, or in our neighborhood, but residential and educational segregation and the lower positions racial and ethnic minorities occupy in most workplaces limit opportunities for members of different groups to interact socially as equals.

Racial preferences are another reason why the majority of cohabitating and married couples are of the same race. Just because a person approves of interracial relationships does not mean that she herself is willing to marry across the color line.⁴ A wealth of data from surveys, online dating, and speed dating studies show that when seeking an intimate partner, many individuals prefer someone of their same race. Racial preferences might also explain why some groups have higher intermarriage rates than others. Individuals who are open to dating interracially often have preferences for members of certain races to the exclusion of others. These preferences reveal a racial hierarchy in which Whites, including multiracial individuals who are part White (but not part Black), are deemed most desirable, African-Americans significantly less so, and other racial or ethnic minorities (specifically Asian-Americans, Latinos, and Native Americans) somewhere in the middle. This racial hierarchy is gendered with Asian-American men and African-American women least preferred in the interracial dating and marriage market.

About half of all Americans report that they have dated a person of a different race or ethnicity.⁵ Younger generations and racial and ethnic minorities are even more likely to have dated interracially.⁶ Yet, even among the younger generation we find racial differences in dating patterns. White college students are more likely to date Asian-Americans and Latinos than

3. Debra Blackwell & Daniel Lichter, *Homogamy Among Dating, Cohabiting and Married Couples*, 45 SOC. Q. 719, 732 (2004); Passel et al., *supra* note 2.

4. Melissa R. Herman & Mary E. Campbell, *I Wouldn't But You Can: Attitudes Toward Interracial Relationships*, 41 SOC. SCI. RES. 343, 356 (2012).

5. Jeffrey Jones, *Most Americans Approve of Interracial Dating*, GALLUP, Oct. 7, 2005, <http://www.gallup.com/poll/19033/most-americans-approve-interracial-dating.aspx>.

6. *See generally* Kara Joyner & Grace Kao, *Interracial Relationships and the Transition to Adulthood*, 70 AM. SOC. REV. 563 (2005). Sixty percent of eighteen to twenty-nine year-olds who participated in a Gallup poll reported that they had dated interracially, as did 53% of individuals aged thirty to forty-nine, 46% of individuals aged fifty to sixty-four, and 28% of individuals sixty-five and older. 69% of Latinos, 52% of African-Americans, and 45% of Whites reported the same. Jones, *supra* note 5.

to date African-Americans. African-American college students are also less likely than other racial or ethnic minorities to date interracial.⁷

While the majority of individuals who date or cohabitate interracial ultimately do not marry a person of a different race,⁸ the rate of intermarriage has increased significantly since the Supreme Court declared in 1967 that laws prohibiting interracial marriage were unconstitutional.⁹ In 1960, just 2% of marriages in the United States were interracial. Fifty years later, in 2010, 15% of marriages celebrated that year were between spouses of different races or between Latinos and non-Latinos.¹⁰ Yet, race continues to influence our romantic choices. In a society where race did not play a role in intimate relationships, 44%, not just 15%, of recent marriages would be interracial.¹¹

Intermarriage patterns vary widely by race, color, and gender. The majority of American Indians (58%) marry out, primarily with Whites,¹² as do

7. Elizabeth McClintock, *When Does Race Matter? Race, Sex, and Dating at an Elite University*, 72 J. MARRIAGE & FAM. 45, 48 (2010); Shana Levin et al., *Interethnic and Interracial Dating in College: A Longitudinal Study*, 24 J. SOC. & PERS. RELATIONSHIPS 323, 340 (2007).

8. Herman & Campbell, *supra* note 4, at 346; George Yancey, *Who Interracially Dates: An Examination of the Characteristics of Those Who Have Interracially Dated*, 33 J. COMP. FAM. STUD. 179, 180 (2002); Blackwell & Lichter, *supra* note 3, at 720–21. Americans are twice as likely to cohabit with a partner of a different race as to marry across race. *See also* Zhenchao Qian & Daniel Lichter, *Changing Patterns of Interracial Marriage in a Multiracial Society*, 72 J. MARRIAGE & FAM. 1065, 1077–79 (2011). For example, in 2010, 18.3% of cohabitating different-sex couples were interracial or had a Latino and a non-Latino partner as compared to 9.5% of different-sex married couples. Daphne Lofquist et al., *Households and Families: 2010*, U.S. CENSUS BUREAU, Apr. 2012, at 18–19. Interracial cohabiting couples are more likely than same-race couples to break-up and thus are only 60% as likely as same-race cohabiting couples to marry. Joyner & Kao, *supra* note 6, at 574.

9. *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

10. Wendy Wang, *The Rise of Intermarriage*, PEW RES. CTR. 1–3 (Feb. 16, 2012), <http://www.pewsocialtrends.org/2012/02/16/the-rise-of-intermarriage/>. Latinos are an ethnic group and can be of any race. *Id.* (noting that the term “Latino” or Hispanic refers to persons of Latino/Hispanic origin regardless of race). However, researchers treat them as a racial group when comparing differences in wealth, education, income, fertility patterns, and life expectancy of racial groups. *See* Jose A. Cobas et al., *Racializing Latinos: Historical Backgrounds and Current Forms*, in *HOW THE UNITED STATES RACIALIZES LATINOS: WHITE HEGEMONY AND ITS CONSEQUENCES 1* (Jose A. Cobas et al. eds. 2009). Many Latinos believe that “Latino” is a race and reject U.S. definitions of race. *See* Ana Gonzalez Barrera & Mark Hugo Lopez, *Is Being Hispanic a Matter of Race, Ethnicity, or Both?*, PEW RES. CTR. (June 15, 2015), <http://www.pewresearch.org/fact-tank/2015/06/15/is-being-hispanic-a-matter-of-race-ethnicity-or-both/> (reporting that two-thirds of Hispanic say that Hispanic is part of their race). Consequently, this Essay follows the approach of the majority of researchers who treat marriages between Latinos and non-Latinos as intermarriage and different from marriages between other ethnic groups such as Irish-Americans and Italian-Americans.

11. Raymond Fisman et al., *Racial Preferences in Dating*, 75 REV. ECON. STUD. 117, 117 (2008).

12. Wendy Wang, *Interracial Marriage: Who Is Marrying Out?*, PEW RES. CTR., June 12, 2015, <http://www.pewresearch.org/fact-tank/2015/06/12/interracial-marriage-who-is-marrying-out/>. Approximately 70% of all interracial marriages involve a White partner. *Id.* Marriages between minorities of different races are significantly rarer. *Id.*

more than one-third of U.S.-born¹³ Asian-Americans and Latinos, and 17% of African-Americans.¹⁴ Multiracial individuals who are part White are significantly more likely than their mono-racial co-ethnics to have a White partner but here too marriage patterns vary by race.¹⁵ The majority of Asian/White and about half of Latino/White multiracial individuals have a White spouse or cohabitating partner.¹⁶ In contrast, the majority of African-American/White multiracial individuals partner with African-Americans.

Intermarriage patterns also vary by skin color. Lighter-skinned minorities are more likely than their darker-skinned counterparts to intermarry with Whites. For example, U.S.-born Latinos who identify as racially white on the U.S. Census are significantly more likely than their darker counterparts to be married to non-Latino Whites.¹⁷ Skin tone plays a similar role in the intermarriage patterns of U.S.-born Asian-Americans.¹⁸ Dark-skinned minorities who intermarry with Whites are more likely than their lighter-skinned counterparts to be married to Whites who have attained less formal education than themselves—in other words, to marry “down” in terms of education.¹⁹

The marriage patterns of some groups are not only influenced by race, but also by gender. U.S.-born Asian-American women are almost *five times* more likely to intermarry than African-American women.²⁰ African-American men are more than twice as likely as African-American women

13. Immigrants are significantly less likely than their U.S.-born co-ethnics to intermarry. See Passel et al., *supra* note 2 (reporting that 39% of U.S.-born Latinos and 46% of U.S.-born Asian-Americans who married in 2008 married out as compared to 12% of Latino immigrants and 26% of Asian immigrants). See Qian & Lichter, *supra* note 8, at 1076 (noting that there is no significant difference between the intermarriage rate of U.S.-born and foreign-born Blacks).

14. Wang, *supra* note 12 (discussing that 9% of Whites who married in 2010 married out.); Wang, *supra* note 10, at 1.9.

15. Qian & Lichter, *supra* note 8, at 1070.

16. *Id.* at 1071; KIM PARKER ET AL., PEW RES. CTR., MULTIRACIAL IN AMERICA: PROUD, DIVERSE AND GROWING IN NUMBERS, 80–81 (2015), http://www.pewsocialtrends.org/files/2015/06/2015-06-11_multiracial-in-america_final-updated.pdf.

17. Zhenchao Qian, *Race and Social Distance: Intermarriage with Non-Latino Whites*, 5 RACE & SOC'Y 33, 33 (2002). Darker-skinned Latinos tend to identify as racially “other” on the U.S. Census. *Id.* at 40. Latinos who identify as racially White are twice as likely as Latinos who identify as racially Black to be married to non-Latino Whites. See HaeYoun Park, *Who Is Marrying Whom*, N.Y. TIMES, Jan. 29, 2011, <http://www.nytimes.com/interactive/2011/01/29/us/20111013mixedrace.html>. Latinos with American Indian ancestry are also more likely than Latinos with Black ancestors to be married to non-Latino Whites. *Id.*

18. Intermarriage rates with Whites are lowest for African-Americans, slightly higher for dark-skinned Latinos, higher for lighter-skinned Asian-Americans, and highest for the lightest-skinned Latinos. See Qian, *supra* note 17, at 45.

19. Zhenchao Qian, *Breaking the Last Taboo: Interracial Marriage in America*, 4 CONTEXTS, Fall 2005, at 35.

20. Wang, *supra* note 10, at 9–10 (reporting that 9% of African-American women married out in 2010 as compared to 43% of U.S. born Asian-American women).

to marry out. The opposite is true for Asian-American men who are half as likely as their female counterparts to intermarry.²¹

Gays and lesbians are more likely than their heterosexual counterparts to have an intimate partner of a different race.²² Yet, the same racial patterns observed in different-sex relationships are apparent in same-sex relationships. Asian-Americans and Latinos in same- or different-sex relationships are significantly more likely than African-Americans to have a partner of a different race or ethnicity.²³

A. What Drives Interracial Marriage Patterns?

Most married couples do not randomly end up together but rather are the result of assortative mating—the tendency of people to date and marry individuals like themselves.²⁴ We generally partner with people who are similar to us in terms of race, education, and socioeconomic status in part because we spend a lot of time with people with similar levels of education at school or at work.²⁵ Our family members, friends, and neighbors also tend to be of the same race and similar socioeconomic status. Online dating studies suggest, however, that even when the pool of potential mates is not limited by whom we meet at school, work, the gym, or local bar, we still prefer to date people like ourselves. As one aptly-titled article noted, “*In the End, People May Really Just Want to Date Themselves.*”²⁶

21. *Id.* (reporting that the gender disparity is even greater between foreign-born Asian men and women. Foreign-born Asian-American women are three times as likely as their male counterparts to marry out (34% v. 11%).)

22. ANGELIKI KASTANIS & BIANCA D.M. WILSON, THE WILLIAMS INSTITUTE, RACE/ETHNICITY, GENDER, AND SOCIOECONOMIC WELLBEING OF INDIVIDUALS IN SAME-SEX COUPLES 1 (2014). The 2010 U.S. Census shows that 20% of same-sex households (unmarried) are interracial or interethnic as compared to 9.5% of different-sex married couples. Lofquist et al., *supra* note 8, at 20; GARY J. GATES, THE WILLIAMS INSTITUTE, SAME-SEX COUPLES IN CENSUS 2010: RACE & ETHNICITY 4 (2012). Because few states recognized marriages between persons of the same-sex in 2010, the U.S. Census made no distinction between same-sex households in which couples were married and those in which they were not. *Id.* at 1.

23. For example, 67% of Asian-Americans and Pacific Islanders and 55% of Latinos as compared to 33% of African-Americans in same-sex relationships had a White partner. KASTANIS & WILSON, *supra* note 22, at 2.

24. Gary S. Becker, *A Theory of Marriage: Part I*, 81 J. POL. ECON. 813, 813 (1973); MARTIN BROWNING ET AL., ECONOMICS OF THE FAMILY 36–37 (2014); Matthis Kalmijn, *Intermarriage and Homogamy: Causes, Patterns, Trends*, 24 ANN. REV. SOC. 395 (1998); JUNE CARBONE & NAOMI CAHN, MARRIAGE MARKETS: HOW INEQUALITY IS REMAKING THE AMERICAN FAMILY 62 (2014).

25. Kalmijn, *supra* note 24, at 398. We also tend to marry partners with similar physical traits such as attractiveness, height, and weight. *Id.* at 416–17.

26. Emma Pierson, *In the End, People May Really Just Want to Date Themselves*, FIVETHIRTYEIGHT, Apr. 28, 2014, <http://fivethirtyeight.com/features/in-the-end-people-may-really-just-want-to-date-themselves/>. I am grateful to Professor Naomi Schoenbaum at George Washington University School of Law for this source.

Dating and marriage *outcomes* are the result of both preferences and opportunities and thus cannot explain whether opportunity, preferences (and if so, whose preferences), or both, drive the different rates of interracial coupling. Researchers have addressed the limitations of dating and marriage outcomes by directly examining the preferences of individuals seeking a romantic partner. Studies that focus on *stated* preferences—what people say they want in a partner—generally ask date-seekers to identify the traits they seek in a romantic partner or examine the traits date-seekers have identified in a personal ad or online dating profile.²⁷ Not surprisingly, individuals may not be completely truthful when describing the traits they seek in a partner because they fear they will be judged as superficial, elitist, or even racist. Moreover, even when we are completely honest, our *stated* preferences may not reflect our true preferences. As evolutionary psychologists have discovered, we often do not know what we really want in a mate.²⁸

To address the limitations of *stated* preferences, researchers have examined the *revealed* preferences of online date-seekers by observing how they respond when contacted by daters with certain traits.²⁹ For example, Günter Hitsch and his colleagues examined the search behaviors of almost 22,000 heterosexual online daters.³⁰ The date-seekers, who did not know that their behaviors would be observed by researchers, provided detailed profiles noting their age, gender, race, education, income, height, weight, marital status,³¹ political and religious affiliations, interest in dating some-

27. See Gerald Mendelsohn et al., *Black/White Online Dating: Interracial Courtship in the 21st Century*, 3 PSYCHOL. POPULAR MEDIA CULTURE 2, 5 (2014); Belinda Robnett & Cynthia Feliciano, *Patterns of Racial-Ethnic Exclusion by Internet Daters*, 89 SOC. FORCES 807, 810–11 (2011); Günter J. Hitsch et al., *What Makes You Click—Mate Preferences in Online Dating*, 8 QUANT. MARKETING & ECON. 393, 397 (2010) [hereinafter Hitsch et al., *What Makes You Click*].

28. See Paul W. Eastwick & Eli J. Finkel, *Sex Differences in Mate Preferences Revisited: Do People Know What They Initially Desire in a Romantic Partner?*, 94 J. PERSONALITY & SOC. PSYCHOL. 245, 245 (2008).

29. See, e.g., Ken-Hou Lin & Jennifer Lundquist, *Mate Selection in Cyberspace: The Intersection of Race, Gender, and Education*, 119 AM. J. SOC. 183, 183 (2013); CHRISTIAN RUDDER, *DATA CLYSM: LOVE, SEX, RACE, AND IDENTITY—WHAT OUR ONLINE LIVES TELL US ABOUT OUR OFFLINE SELVES* 109–16 (2014) (discussing that almost 75% of Internet users who are seeking romantic partners have used the Internet to meet potential dates); Lin & Lundquist, *supra* at 203; see also DAN SLATER, *LOVE IN THE TIME OF ALGORITHMS: WHAT TECHNOLOGY DOES TO MEETING AND MATING* 103 (2013); Michael J. Rosenfeld & Reuben J. Thomas, *Searching for a Mate: The Rise of the Internet as a Social Intermediary*, 77 AM. SOC. REV. 523 (2012).

30. Hitsch et al., *What Makes You Click*, *supra* note 27, at 398.

31. Some married individuals who are separated or in the process of divorcing search for their next relationship online while still legally married. A small percentage of married individuals who have no intention of divorcing their spouse also use these sites even though there are sites devoted exclusively to individuals seeking a partner for an affair such as Ashley Madison, which markets itself as the world's leading married dating service for *discreet* encounters. See ASHLEY MADISON, <https://www.ashleymadison.com> (last visited Sept. 28, 2016).

one of a different ethnic background, and whether they were seeking a casual or long-term relationship. Many users also provided a photo which the researchers rated for physical attractiveness based on the opinions of objective observers.³² Date-seekers browsed other users' profiles and sent emails to individuals they might want to date.

Not surprisingly, online daters' search behaviors revealed a universal preference for physically attractive individuals with high incomes. However, women valued a man's income more highly than his physical appearance, and men ranked a woman's physical attractiveness above her income.³³ Online daters' search behaviors also revealed strong racial preferences even when they did not state those preferences. For example, 55% of the women expressed no racial preferences in their profiles, but their *revealed* preferences—who they contacted and who they responded to when contacted—showed equally strong preferences as the women who had expressed a racial preference.³⁴ In other words, 95% of female online daters in Hitsch's study had racial preferences even though only 41% stated those preferences in their profiles.

Other online dating studies have revealed racial preferences.³⁵ They also reveal a *racial hierarchy* of preferences. For example, the majority of straight White men in an online dating study conducted by Cynthia Feliciano and her colleagues stated a racial preference. The majority also ex-

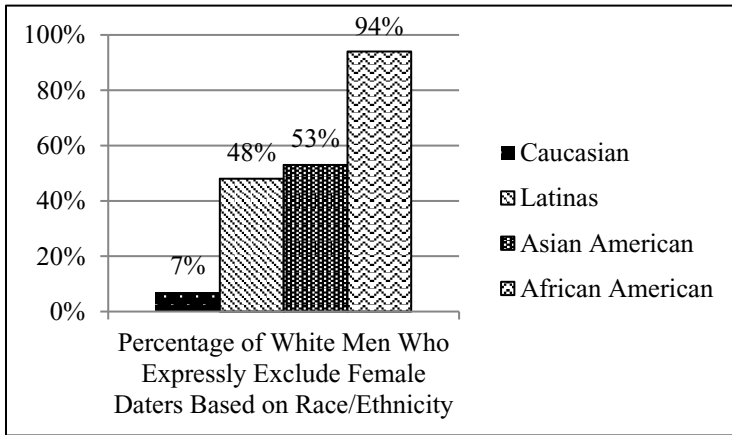
32. The researchers hired college students who rated photos of 400 male faces and 400 female faces on a scale of one to ten. The researchers used each picture approximately twelve times. "Consistent with findings in a large literature in cognitive psychology, attractiveness ratings by independent observers appear to be positively correlated." Hitsch et al., *What Makes You Click*, *supra* note 27, at 401.

33. *Id.* Other studies have similarly found that date-seekers prefer attractive partners. See Eastwick & Finkel, *supra* note 28, at 245; Raymond Fisman et al., *Gender Differences in Mate Selection: Evidence from a Speed Dating Experiment*, 2 Q.J. ECON. 673, 673 (2006); Regan et al., *Partner Preferences: What Characteristics do Men and Women Desire in Their Short Term Sexual and Long Run Romantic Partners*, 12 J. PSYCH. & HUM. SEXUALITY 1 (2008). Other studies have similarly found that men care more about looks and women care more about income and status. For example, one speed dating study of graduate and professional students found that women preferred men who had been raised in affluent neighborhoods while men had no such preferences. See Fisman et al., *Gender Differences*, *supra* note 11; see also Günter J. Hitsch et al., *Matching and Sorting in Online Dating*, 100 AM. ECON. REV. 130, 147–148 (2010) [hereinafter Hitsch et al., *Matching and Sorting*]. Older studies have similarly found that men value a woman's physical appearance over her intelligence and ambition but women (at least when seeking a partner for a long-term relationship) care more about a man's earning potential, intelligence, and social status. See David Buss, *The Strategies of Human Mating*, 82 AM. SCIENTIST 238, 240 (1994); Pamela Regan, *Minimum Mate Selection Standards as a Function of Perceived Mate Value, Relationship Context, and Gender*, 10 J. PSYCH. & HUM. SEXUALITY 53, 68 (1998). However, some studies have found that both genders value physical attractiveness above other traits. See, e.g., Eastwick & Finkel, *supra* note 28, at 245; Robert Kurzban & Jason Weeden, *Do Advertised Preferences Predict the Behavior of Speed Daters?*, 14 PERS. RELATIONSHIPS 623, 631–32 (2007).

34. Hitsch et al., *What Makes You Click*, *supra* note 27, at 424. Another study found similar results. See Fisman et al., *Racial Preferences*, *supra* note 11, at 118–19.

35. See *infra* notes 41, 44–52 and accompanying text.

pressed interest or willingness to date interracial.³⁶ However, they were quite specific about which groups they were willing to date. About 50% of White men who stated a racial preference expressly excluded Asian-American women and similar numbers excluded Latina women. Yet, more than 90% refused to consider African-American women. The chart below illustrates this hierarchy.



Source: Cynthia Feliciano et al., *Gendered Racial Exclusion among White Internet Daters*, 38 *Social Science Research* 39 (2009)

It is no longer socially acceptable to express racial preferences in most contexts³⁷ and it is illegal to act upon such preferences in settings such as education, employment, and housing. In fact, 84% of online daters in one study stated that they would not date someone “who has vocalized a strong negative bias toward a certain race of people.”³⁸ Despite this strong anti-discrimination norm, studies have found a racial hierarchy in which White men rank African-American women significantly below Asian-American, Latina, or White women.³⁹ This hierarchy is also reflected in straight White men’s response rates when contacted by female online date-seekers. White men are most likely to respond to messages from White women and from multiracial Asian-American and Latina women who

36. Cynthia Feliciano et al., *Gendered Racial Exclusion Among White Internet Daters*, 38 *SOC. SCI. RES.* 39, 45, 49 (2009). About one-third of White men who expressed a racial preference preferred to date White women only. *Id.*

37. Bonilla-Silva & Baiocchi, *Any But Racism: How Sociologists Limit the Significance of Racism*, 4 *RACE & SOC’Y* 117, 119 (2001); Charles Gallagher, *The End of Racism as the New Doxa: New Strategies for Researching Race*, in *WHITE LOGIC, WHITE METHODS: RACISM AND METHODOLOGY* 163 (Tukufu Zuberi & Eduardo Bonilla-Silva eds., 2008).

38. Rudder, *supra* note 29, at 112–13.

39. George Yancey, *Crossracial Differences in the Racial Preferences of Potential Dating Partners: A Test of the Alienation of African-Americans and Social Dominance Orientation*, 50 *THE SOC. Q.* 121, 130 (2009); Glenn Tsunokai et al., *Racial Preferences in Internet Dating: A Comparison of Four Birth Cohorts*, 33 *WESTERN J. BLACK STUD.* 1, 12 (2009); RUDDER, *supra* note 29, at 115.

are part White.⁴⁰ They are less likely to respond to multiracial African-American/White women, and almost never respond to messages from African-American women.⁴¹

White women's preferences also reveal a racial hierarchy. Almost 75% of straight White women in Feliciano's study expressed racial preferences and a majority of those (64%) preferred to date White men only.⁴² Although most White women excluded all non-White men, they were more than twice as likely to exclude African-American and Asian-American men as compared to Latino men.⁴³

Data from millions of online daters on Match (the most popular dating site in the U.S for the last 20 years), OkCupid, and Date Hookup confirm the racial hierarchy in the online dating market.⁴⁴ Straight White women on these sites rated Asian-American and African-American men as significantly less attractive than the average man.⁴⁵ This hierarchy is also reflected in White women's response rates when contacted by online date-seekers. Several studies conducted by Curington, Lin, and Lundquist revealed that White women respond mainly to White men and ignore messages from men of other races with one exception—multiracial men who are part White.⁴⁶ While more than 90% of White women rejected Asian men as potential dates, they responded to messages from multiracial Asian/White men at similar rates as they did to messages from mono-racial White men.⁴⁷ They also responded to Latino/White men and African-American/White men at higher rates than their mono-racial counterparts.⁴⁸

Online date-seekers have many preferences, including age, body type, education, income, and religion. But race ranks particularly high on their preferences. For example, while 59% of straight White men in Feliciano's study stated a racial preference, only 23% expressed a religious preference.⁴⁹ For these men, a woman's race was more important than her education, religion, employment, marital status, or whether she smoked. Straight White date-seekers on the online dating site OkCupid revealed similarly strong preferences for Whites even when the system's algorithm determined that their best "match," based on their responses to approximately 300 questions about their beliefs, needs, wants, and activities they enjoy, was a person of a different race.⁵⁰

College-educated minorities and Latinos/as are more likely to intermarry

40. Celeste Vaughn Curington et al., *Positioning Multiraciality in Cyberspace: Treatment of Multiracial Daters in an Online Dating Website*, 80 AM. SOC. REV. 1, 10 (2015); RUDDER, *supra* note 29, at 116–17.

41. Curington, *supra* note 40, at 10; RUDDER, *supra* note 29.

42. Feliciano et al., *supra* note 36, at 47.

43. 77% of White women with a stated racial preference excluded Latino men but 91% excluded African-American men and 93% excluded Asian men. Only 4% excluded White men. *Id.*

44. RUDDER, *supra* note 29, at 114–15.

45. *Id.*

46. Curington et al., *supra* note 40; Lin & Lundquist, *supra* note 29, at 203–04.

47. Curington et al., *supra* note 40, at 18.

48. *Id.* at 10.

49. Feliciano et al., *supra* note 36, at 45.

50. Christian Rudder, *Race and Attraction, 2009-2014*, OKTRENDS (Sept. 10, 2014), <http://blog.okcupid.com/index.php/race-attraction-2009-2014/>; RUDDER, *supra* note 29, at 109–10.

than their less-educated counterparts,⁵¹ so one might assume that college-educated Americans as a group have weaker racial preferences. However, online dating studies suggest otherwise. Hitsch's study of heterosexual online daters discussed above found that the vast majority of White women, regardless of their level of education or income, have strong preferences for White men.⁵² Feliciano and her colleagues found that college-educated Whites are *more* likely than Whites with only a high school education to exclude African-Americans as romantic partners.⁵³ And Lin and Lundquist found that racial preferences trumped educational preferences.⁵⁴ College-educated Whites are more likely to contact and respond to messages from Whites *without* a college degree than to messages from African-Americans *with* a college degree.⁵⁵ White men *without* a college degree received more messages than college-educated African-American and Asian-American men.⁵⁶ College-educated African-American women received significantly fewer messages than women of other races with lower levels of educational attainment.⁵⁷

Racial minorities and Latinos are generally more willing than Whites to date interracially,⁵⁸ yet their preferences reflect a similar racial hierarchy. For example, 70% of straight Asian-American and Latina women in an online dating study conducted by Belinda Robnett and Cynthia Feliciano expressed a racial preference and

51. Wang, *supra* note 10, at 20–21 (reporting that college-educated second generation (U.S.-born children of immigrants) Latinos/as are almost three times as likely to marry out as their counterparts with only a high school degree (43% v. 16%)); See PAUL TAYLOR ET AL., PEW RES. CTR., SECOND GENERATION AMERICANS: A PORTRAIT OF THE ADULT CHILDREN OF IMMIGRANTS 58 (2013); See Wang, *The Rise of Intermarriage*, *supra* note 10, at 20, 24 (reporting that 60% of Asian-Americans who intermarried with Whites in 2010 had a college degree as compared to 49% of all Asian-American adults in the U.S.); PAUL TAYLOR ET AL., PEW RES. CTR., THE RISE OF ASIAN AMERICANS 25 (2013), <http://www.pewsocialtrends.org/files/2013/04/Asian-Americans-new-full-report-04-2013.pdf>; Qian & Lichter, *supra* note 8, at 1077 (finding that “educational attainment among Blacks in 2008 was significantly associated with marriages to Whites. When both partners had at least a college education the odds of marrying out were more than twice as high than when both partners had only a high school diploma or less.”). The majority of recently married couples (interracial or same-race) share similar levels of formal education. But when African-Americans and Latinos marry a White partner whose level of education differs from theirs, the White spouse tends to be the less-educated partner. See Qian, *supra* note 19. Some research suggests that less-educated Whites trade their higher racial status for minority partners with higher educational and economic status while high-achieving minorities trade their class status for White spouses with higher racial status. See Aaron Gullickson & Vincent Kang Fu, Comment, *An Endorsement of Exchange Theory in Mate Selection*, 115 AM. J. SOC. 1243, 1243 (2010); Vincent Kang Fu, *Racial Intermarriage Pairings*, 38 DEMOGRAPHY 147, 147 (2001).

52. Hitsch et al., *What Makes You Click*, *supra* note 27, at 425.

53. Feliciano et al., *supra* note 36, at 49; see also Tsunokai et al., *supra* note 39, at 10.

54. Lin & Lundquist, *supra* note 29, at 183.

55. *Id.*

56. *Id.* at 209.

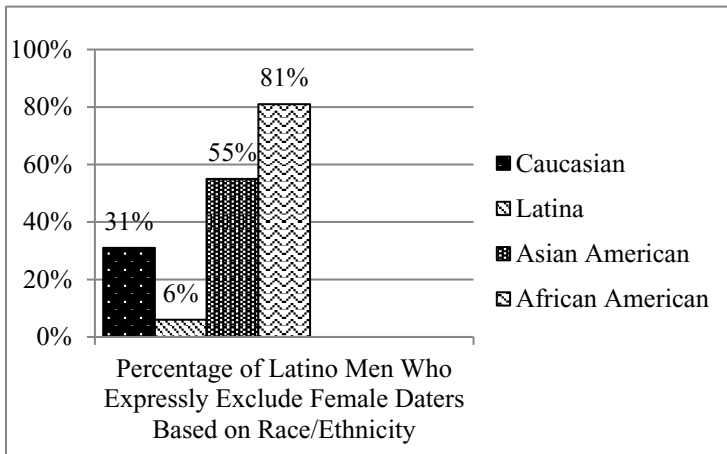
57. *Id.*

58. For example, one study found that while a majority of straight White women stated that they preferred to date only White men, only 6% of Asian-American women and 16% of Latina women preferred to date only men of their same race. See Feliciano, *supra* note 36, at 46–48. Minorities are also more willing to date Whites than Whites are to dating them. *Id.* at 51; Mendelsohn et al., *supra* note 27, at 11.

overwhelmingly excluded minority men other than their co-ethnics.⁵⁹ The vast majority, however, were willing to date White men.⁶⁰

This racial hierarchy is also reflected in Asian-American and Latina women's response rates when contacted by online daters.⁶¹ They are most likely to respond to emails from White men and their multiracial co-ethnics who are part White (Asian-American/White men and Latino/White men) than to messages from their mono-racial co-ethnics.⁶² Surveys of college students' dating preferences have also found that many Latinos and Asian-Americans prefer Whites to other groups, including their own co-ethnics.⁶³

The preferences of straight Asian-American and Latino men also reflect a racial hierarchy. For example, Robnett and Feliciano found that over 60% of Asian-American and Latino men who expressed a racial preference were willing to date White women, but less than 20% were willing to date African-American women.⁶⁴ Approximately 50% of Asian-American men were willing to date Latina women and similar numbers of Latino men were willing to date Asian-American women.⁶⁵ The graphs below illustrate the preferences of straight Asian-American and Latino men.



59. Feliciano et al., *supra* note 36, at 46–48.

60. *Id.*; see generally Glenn T. Tsunokai, Allison R. McGrath, & Jillian K. Kavanagh, *Online Dating Preferences of Asian Americans*, 31 J. SOC. & PERS. RELATIONSHIPS 796 (2014).

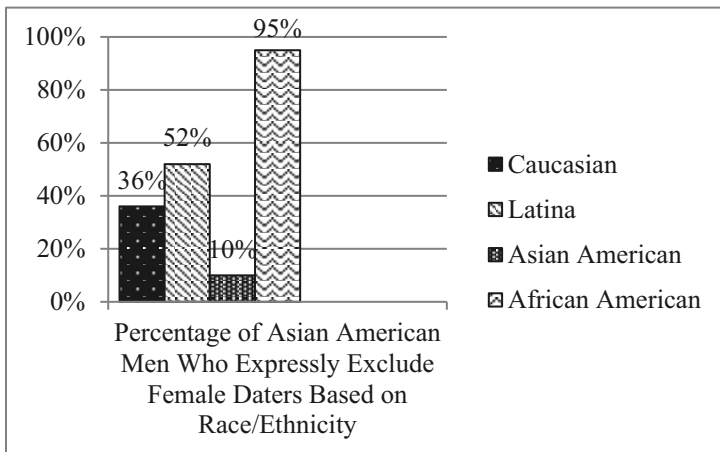
61. Curington et al., *supra* note 40, at 12.

62. Lin & Lundquist, *supra* note 29, at 207; Rudder, *supra* note 50.

63. Liu et al., *Ethnocentrism in Dating Preferences for an American Sample: The Ingroup Bias in Social Context*, 25 EURO. J. OF SOC. PSYCH. 95, 95 (1995).

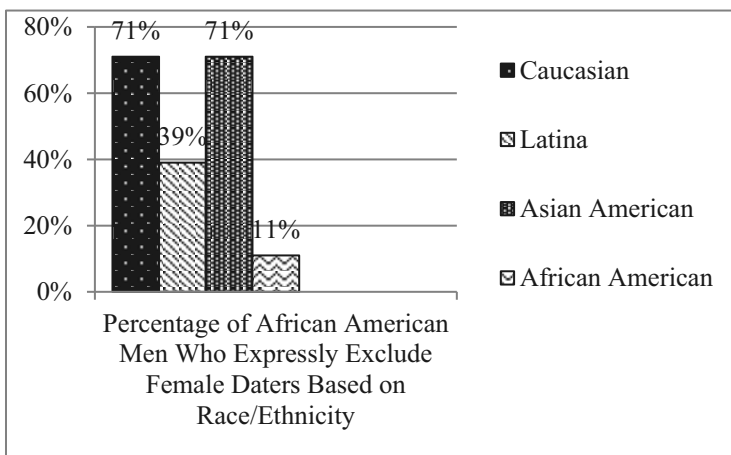
64. Belinda Robnett & Cynthia Feliciano, *Patterns of Racial-Ethnic Exclusion by Internet Daters*, 89 SOC. FORCES 807, 816 (2011).

65. *Id.*



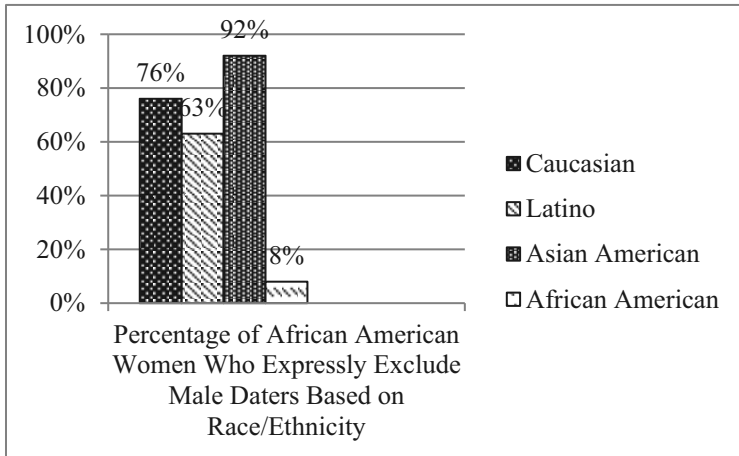
Source: Belinda Robnett & Cynthia Feliciano, *Patterns of Racial-Ethnic Exclusion by Internet Daters*, 89 Soc. Forces 807 (2011).

While the preferences of Asian-Americans, Latinos/as, and Whites reflect a similar racial hierarchy, the stated preferences of African-American men and women do not follow this pattern. For example, African-Americans express stronger same-race preferences than Asian-Americans and Latinos and are three times as likely to expressly refuse to date individuals of other races.⁶⁶ The majority also expressly exclude Whites as potential dates.⁶⁷ The graph below illustrates the stated preferences of African-American online date-seekers.



66. Yancey, *supra* note 39, at 135; Robnett & Feliciano, *supra* note 64, at 815–16. *Patterns of Racial-Ethnic Exclusion by Internet Daters*, 89 SOC. FORCES 807, 815 (2011); Feliciano et al., *supra* note 36, at 46–48.

67. Yancey, *supra* note 39, at 135; Robnett & Feliciano, *supra* note 64, at 815; Feliciano et al., *supra* note 36, at 46–48.



Source: Belinda Robnett & Cynthia Feliciano, *Patterns of Racial-Ethnic Exclusion by Internet Daters*, 89 Soc. Forces 807 (2011).

Yet, in contrast to their *stated* preferences, the *revealed* preferences of straight African-American men and women suggest that they may be more willing to date Whites than indicated by their *stated* preferences. One online dating study conducted by Mendelsohn and his colleagues found that African-Americans were *ten times* more likely to contact Whites than Whites were to contact them.⁶⁸ That study and others have also found that African-Americans are *more* likely to respond to messages from Whites and from multiracial African-American/White individuals than messages from African-Americans.⁶⁹

These studies demonstrate an undeniable racial hierarchy in the dating market.⁷⁰ Daters' preferences for multiracial persons who are part White over mono-racial minorities further reveal a hierarchy that values light skin and European appearance. These studies also suggest that while partial Whiteness can elevate Asian-Americans and Latina women to White status, it does not have the same power for African-American women. For example, Asian-American, Latino, and White men rated online profiles and photographs of multiracial African-

68. Mendelsohn et al., *supra* note 27, at 8.

69. *Id.* at 12; Curington et al., *supra* note 40, at 12; Lin & Lundquist, *supra* note 29, at 203–04.

70. Although the preferences of online date-seekers might not be representative of the entire population, over 75% of Americans between the ages of eighteen and sixty-four, including racial minorities and individuals with less than a high school diploma, are online and 38% of Americans who are “single and looking” have used online dating sites or apps. See *Internet User Demographics: Internet Users in 2014*, PEW RES. CTR., <http://www.pewinternet.org/data-trend/internet-use/latest-stats/> (last visited Oct. 6, 2016); AARON SMITH & MAEVE DUGGAN, PEW RES. CTR., *ONLINE DATING & RELATIONSHIPS* (2013), <http://www.pewinternet.org/2013/10/21/online-dating-relationships/> (“66% of online daters have gone on a date with someone they met through a dating site or app, and 23% of online daters say they have met a spouse or long term relationship through these site.”).

American/White women as significantly more attractive than mono-racial African-American women but as less attractive than women of other races.⁷¹

The preferences revealed by these studies are consistent across daters of different ages, incomes, education, geographic location (including urban v. rural dwellers), and self-identification as liberal or conservative.⁷² Speed dating studies and surveys of college students' preferences have found a similar racial hierarchy.⁷³ For example, 381 college students at a public university in California completed an anonymous questionnaire that asked them to describe the traits they desire in a romantic partner, whether they were willing to date someone of a different race, and if so, to rank their preferred racial or ethnic groups and explain their reasons for their rankings.⁷⁴ All of the non-Black male students who expressed racial preferences ranked African-American women last⁷⁵ but White students were significantly less likely than Asian-American or Latino students to report any racial preferences or to expressly exclude African-Americans.⁷⁶ However, students' explanations for their preferences reveal a racialized and gendered hierarchy fueled by Western notions of beauty, stereotypes, and family and societal disapproval. Students' most commonly stated reasons for excluding African-Americans or ranking them last included lack of physical attraction, cultural differences, perceived aggressive personality or behavior, and social disapproval.⁷⁷ Rates of exclusion varied by gender. Heterosexual White male students were more than twice as likely as their female counterparts (67% v. 30%) to exclude African-Americans as potential dates.⁷⁸ Asian-American males were also more likely than females to exclude African-Americans as potential dates.⁷⁹ Men were more than twice as likely as women to cite lack of physical attraction (such as skin tone, hair texture, and body type) as reasons for excluding African-Americans as potential dates.⁸⁰

As noted earlier, all daters prefer physically attractive partners.⁸¹ Beauty may be in the eye of the beholder but throughout most of the Western world, a light complexion and phenotypically European features, such as straight hair and a

71. RUDDER, *supra* note 29, at 117.

72. *Id.*

73. See Fisman et al., *supra* note 11, at 126; Fisman et al., *supra* note 33, at 674; James A. Bany et al., *Gendered Black Exclusion: The Persistence of Racial Stereotypes Among Daters*, 6 RACE & SOC. PROB. 201, 202 (2014).

74. Bany et al., *supra* note 73, at 201.

75. *Id.* at 209.

76. Approximately 80% of Asian-American, African-American, and Latino students as compared to 49% of White students reported a racial preference. While 80% of Asian American and 66% of Latino students excluded African-Americans as potential dates, approximately half of White students (49%) did the same. *Id.* at 206.

77. *Id.* at 209.

78. *Id.* at 206.

79. *Id.*

80. Bany et al., *supra* note 73 at 208. For example, some non-Black men wrote: "Too dark," "I generally don't like curly hair or dark skin." "Because African-American women are usually bigger broader physically type people." "I just don't like to date anyone who has really dark skin . . . anyone but Black." *Id.*

81. See Hitsch, *supra* note 33, and accompanying text.

narrow nose, are perceived as most attractive, especially for women.⁸² These physical features are deemed desirable not only by Whites but also by African-Americans and other minority groups.⁸³ As scholars have asserted, light “skin tone is also a form of social capital that grants access to . . . marriage to higher status men.”⁸⁴ One need only name a few African-American female celebrities considered universally beautiful (such as Beyoncé Knowles, Halle Berry, and Alicia Keys) to conclude that women with lighter skin and more Eurocentric features are perceived as most attractive.⁸⁵

Gendered and racialized stereotypes affect how individuals are perceived in the dating market. For example, one study found that White men who expressed a body type preference were more likely to exclude African-American women as dates, presumably because they associated African-American women with a particular body type.⁸⁶ Another study found that the more highly a man valued femininity, the higher the likelihood that he would express interest in dating Asian-American women but not African-American woman.⁸⁷ Several studies have found

82. KIMBERLY JADE NORWOOD, *COLOR MATTERS: SKIN TONE BIAS AND THE MYTH OF A POST-RACIAL AMERICA* 123 (2013); PATRICIA HILL COLLINS, *BLACK SEXUAL POLITICS: AFRICAN-AMERICANS, GENDER, AND THE NEW RACISM* 123 (2005); Verna Keith, *A Colorstruck World: Skin Tone, Achievement, and Self-Esteem Among African-American Women*, in *SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS* 25 (Evelyn Nakano Glenn, ed. 2009).

83. Keith, *supra* note 82 at 25; JOANNE L. RONDILLA & PAUL SPICKARD, *IS LIGHTER BETTER?: SKIN-TONE DISCRIMINATION AMONG ASIAN AMERICANS* 1–2 (2007); *see generally* Andrés Villarreal, *Stratification by Skin Color in Contemporary Mexico*, 75 *AM. SOCIOLOGICAL REV.* 652 (2010). For example, African-Americans (male and female) rate lighter-complexioned African-American women, but not men, as more attractive than those with darker complexions. Mark Hill, *Skin Color and the Perception of Attractiveness Among African-American: Does Gender Make a Difference?*, 65 *SOC. PSYCH. Q.* 77 (2002). As scholars have noted, some African-Americans have internalized the majority’s preference for light skin. *See* Bond & Cash, *Black Beauty: Skin Color and Body Images Among African-American College Women*, 22 *J. APPLIED SOC. PSYCH.* 874 (1992); Ronald E. Hall, *Bias Among African-Americans Regarding Skin Color: Implications for Social Work Practice*, 2 *RES. SOC. WORK PRAC.* 479, (1992); Ronald E. Hall, *Skin Color Bias: A New Perspective on an Old Problem*, 132 *J. PSYCH.* 238 (1998); *See* EVELYN NAKANO GLENN, *Consuming Lightness: Segmented Markets and Global Capital in the Skin-Whitening Trade*, in *SHADES OF DIFFERENCE* 168 (Evelyn Nakano Glenn, ed. 2009) (Asian-American and Latina women (in the U.S. and abroad) have similarly internalized the preference for lighter skin as shown by their expenditure of billions of dollars on skin lightening products each year); Charles Blow, *A Bias More Than Skin Deep*, *N.Y. Times* (July 13, 2015), http://www.nytimes.com/2015/07/13/opinion/charles-blow-a-bias-more-than-skin-deep.html?_r=0; Monisha Rajesh, *India’s Unfair Obsession With Lighter Skin*, *THE GUARDIAN*, Aug. 14, 2013, 12:32 PM, <https://www.theguardian.com/world/shortcuts/2013/aug/14/indias-dark-obsession-fair-skin>; G.P. Abuja, *Beauty in Nigeria: Lighter Shades of Skin*, *THE ECONOMIST*, Sept. 28, 2012, <http://www.economist.com/blogs/baobab/2012/09/beauty-nigeria>.

84. Keith, *supra* note 82, at 26.

85. As the African-American Emmy award winning actress Viola Davis retorted when a New York Times journalist referred to her as “darker-skinned and less classically beautiful” than lighter-skinned Black actresses, this is simply “a fancy term of saying ugly.” Yesha Callahan, *Viola Davis Responds to Being Called “Less Classically Beautiful,”* *THE ROOT*, Sept. 26, 2014, http://www.theroot.com/blog/the-grapevine/viola_davis_responds_to_being_called_less_classically_beautiful_you_define/.

86. Feliciano et al., *supra* note 36, at 49.

87. Adam D. Galinsky et al., *Gendered Races: Implications for Interracial Marriage, Leadership Selection, and Athletic Participation*, 24 *PSYCH. SCI.* 498, 502 (2013). Straight women tend to prefer men with masculine traits and straight men tend to prefer women with feminine traits. *Id.* at 501; *see also* DAVID BUSS, *THE DANGEROUS PASSION* 87 (2000).

that Americans perceive Asian-Americans to be more feminine than other groups, and African-Americans to be more masculine.⁸⁸ They also associate dark skin with masculinity.⁸⁹ Given the importance that men place on a partner's physical appearance, and the value all races place on light skin on women, it is not surprising that lighter-skinned women are higher in the racial hierarchy of the dating market.

Societal notions of masculinity and femininity are reflected in stereotypes and media portrayals of minority groups. Asian-American women are depicted as hyper-feminine, Asian-American men are portrayed as effeminate and asexual, and African-American men are depicted as hyper-masculine.⁹⁰ Although the media is beginning to portray African-American women as desirable partners,⁹¹ historically, cultural depictions of Black women have generally been limited to images of matronly caregivers, sexually immoral, or emasculating, angry women.⁹²

Gender differences in the racial hierarchy are also apparent when one examines stereotypes about different groups' personalities and behaviors. Although straight women (and gay men) reject African-American men at high rates, African-American women are excluded at even higher rates. Studies show that while both men and women rely on stereotypes about African-Americans' "aggressive personality" as a reason for excluding them as dates, straight men are significantly more likely than straight women to do so.⁹³ Their stated reasons reflect cultural assumptions about African-American women as emasculating, domineering, and angry and African-American men as dangerous.⁹⁴ While the stereotype of African-American men as hyper-masculine and sexually aggressive fuels the perception

88. Johnson et al., *Race is Gendered: How Covarying Phenotypes and Stereotypes Bias Sex Categorization*, 102 J. PERSONALITY & SOC. PSYCH. 116 (2012); Galinsky et al., *supra* note 87, at 502.

89. Hill, *supra* note 83, at 77–78. For example, on study found that when White college students looked at facial photos of African-American women, they sometimes mistook them for male faces. See Phillip Atiba Goff et al., *Ain't I a Woman: Towards and Intersectional Approach to Person Perceptions and Group-Based Harms*, 59 SEX ROLES 392 (2008); Elizabeth F. Emens, *Intimate Discrimination: The State's Role in the Accidents of Sex and Love*, 122 HARV. L. REV. 1307, 1321 n. 52 (2009); Johnson et al., *supra* note 88, at 127.

90. See generally COLLINS, *supra* note 82; KASTANIS & WILSON, *supra* note 22, at 1.

91. For example, Kerry Washington, the lead character in the television drama, *Scandal*. It is worth noting that Shonda Rhimes, the creator of *Scandal*, is an African-American woman.

92. See generally COLLINS, *supra* note 82. These images continue to predominate. For example, as recently as 2014, the New York Times referred to the producer of programs with African-American characters as "an angry Black woman." Alessandra Stanley, *Wrought in Rhimes' Image*, N.Y. TIMES, Sept. 18, 2014, <http://www.nytimes.com/2014/09/21/arts/television/viola-davis-plays-shonda-rhimes-latest-tough-heroine.html>.

93. For example, 50% of Latino college students in the California study as compared to 10% of Latina students and 29% of White males as compared to 9% of White females cited aggressive personality and behavior when describing their reasons for excluding African-Americans. Male students wrote that African-American women are "abrasive" and have "attitude problems" and "large chips on their shoulders." Bany et al., *supra* note 73, at 208. Some female students similarly reported that they would not date African-American men because they have aggressive personalities. One woman cited African-American men's "gangster style" and another wrote that some African-American men "tend to be violent." See also Rose Weitz & Leonard Gordon, *Images of Black Women Among Anglo College Students*, 28 SEX ROLES 19, 19 (1993) (studying White college students' perceptions of African-American women).

94. COLLINS, *supra* note 82; Wilson et al., *supra* note 22 (stereotype of African-American men as "thugs").

that they are threatening and dangerous, these are also traits that some straight women (and gay men) find appealing.⁹⁵

Many college students in the California public university study expressed concern that family members and society in general would not approve if they dated African-Americans.⁹⁶ Another study of White college students' racial attitudes similarly found that they feared family and societal disapproval if they married interracially.⁹⁷ Interestingly, Asian-Americans and Latinos/as were significantly more likely than Whites to cite social disapproval as a reason to exclude African-Americans as romantic partners.⁹⁸ The frequency of these concerns varied by gender. Asian-American and Latina students were significantly more likely than their male counterparts to express concern that parents, friends, and strangers would disapprove and they feared they would be discriminated against if they dated African-American men.⁹⁹ These concerns are not unfounded. Interracial couples face greater opposition and disapproval from family members and society than same-race couples.¹⁰⁰

Parents' objections to their children's interracial relationships confirm the racial hierarchy apparent in the dating market. Asian-American, Latino, and White parents all express greater objections to their children intermarrying with African-Americans as compared to other groups.¹⁰¹ They express fear that society will discriminate against their adult children and mixed-race grandchildren, and also express concern about the racial identity and psychological well-being of mixed-race grandchildren.¹⁰² Although not always expressly stated or acknowledged, parents also fear their own potential loss of status. One study found that Latino parents express disapproval of intimacy with African-Americans even before their

95. Bany et al., *supra* note 73, at 209 (reporting female student's comment on African-American men's "attractive skin color and body type."). Small percentages of White women, specifically women who prefer very tall and masculine men, have strong preferences for African-American men. See Feliciano et al., *supra* note 36, at 49. Pornography sites are filled with images of interracial sexual activity between dark-skinned Black men and White women, reflecting and reinforcing the stereotype of Black men as well-endowed and sexually gifted. See Gail Dines, *The White Man's Burden: Gonzo Pornography and the Construction of Black Masculinity*, 18 YALE J. L. & FEMINISM 283, 285 (2006). See generally RANDALL KENNEDY, *INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION* (2004).

96. Bany et al., *supra* note 73, at 207

97. Eduardo Bonilla-Silva & Tyrone A. Forman, "I Am Not a Racist But . . .": Mapping White College Students' Racial Ideology in the USA, *Discourse & SOC'Y*, 50, 60–62 (2000).

98. Fifty-five percent of Asian-Americans, 39% of Latinos, but only 10% of White students with expressed racial preferences listed social disapproval as a reason for excluding African-Americans. Bany et al., *supra* note 73.

99. Bany et al., *supra* note 73, at 207.

100. Family members express concern that the interracial couple will face societal disapproval and that neighbors, teachers, and strangers will treat them and their offspring differently. See Erica Morales, *Parental Messages Concerning Latino/Black Interracial Dating: An Exploratory Study Among Latina/o Young Adults*, in 10:3 *LATINO STUDIES* 316 (Lourdes Torres, ed., (2012)); Jennifer Lee & Frank D. Bean, *America's Changing Color Lines: Immigration, Race/Ethnicity, and Multiracial Identification*, 30 ANN. REV. SOC. 221, 225 (2004).

101. GEORGE YANCEY, *WHO IS WHITE?: LATINOS, ASIANS, AND THE NEW BLACK/NON-BLACK DIVIDE* 70 (2003); Wang, *The Rise of Intermarriage*, *supra* note 10, at 39; Morales, *supra* note 100, at 320; EILEEN O'BRIEN, *THE RACIAL MIDDLE: LATINOS AND ASIAN AMERICANS LIVING BEYOND THE RACIAL DIVIDE* 96 (2008); Feliciano et al., *supra* note 36, at 46–48.

102. See Morales, *supra* note 100, at 316.

children start dating because they fear jeopardizing the family's status in the racial hierarchy.¹⁰³ Other studies have found that White parents are similarly concerned about the loss of status for the family, especially when the child marries an African-American partner.¹⁰⁴

Parents' objections to children's interracial relationships reflect not only a racialized hierarchy, but also a gendered one. Their reactions to the relationship depend not only on the race of the child's partner but also the gender. Families are much more likely to express strong disapproval when daughters (as compared to sons) date or marry out.¹⁰⁵ For example, White women in interracial relationships experience greater disapproval than White men dating minority women or minority men dating White women.¹⁰⁶ Latino parents are similarly more likely to express opposition when daughters (as compared to sons) date African-Americans.¹⁰⁷

Societal disapproval of interracial relationships also depends on the race and gender of the minority spouse. Numerous commentators have noted greater objections from both African-Americans and Whites to relationships between African-American men and White women as compared to relationships between African-American women and White men.¹⁰⁸ In fact, a 2005 Gallup poll found that while 72% of Whites approve of a White man dating an African-American woman, only 65% approve of an African-American man dating a White woman.¹⁰⁹ White women married to Asian-American men also experience greater objections from

103. *Id.* at 327–28. Latinos, including immigrants with African ancestry, are aware of African-Americans' stigmatized status in the U.S., see R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 78 N.Y.U. L. REV. 803, 803 (2004); SUZANNE OBOLER, *ETHNIC LABELS, LATINO LIVES: IDENTITY AND THE POLITICS OF (RE)PRESENTATION IN THE UNITED STATES* (1995); TATCHO MINDIOLA ET AL., *BLACK-BROWN RELATIONS AND STEREOTYPES* 71–2 (2002); Arnold K. Ho et al., *Evidence for Hypodescent and Racial Hierarchy in the Categorization and Perception of Biracial Individuals*, 100 J. PERSONALITY & SOC. PSYCH. 492, 492 (2011) (noting that Whites and minorities agree that "Whites have the highest social status, followed by Asians, Latinos, and Blacks."); See generally Kimberly Kahn et al., *The Space between Us and Them: Perceptions of Status Differences*, 12 GROUP PROCESSES & INTERGROUP REL. 591 (2009), and fear that a child's relationship with an African-American partner will jeopardize the higher racial status Latinos enjoy (or believe they enjoy). Morales, *supra* note 100, at 325. They also assume they must distance themselves from African-Americans to achieve social mobility. *Id.* at 328; see O'BRIEN, *supra* note 101, at 54 (some Latino adults refuse to date African-Americans for the same reasons).

104. MARIA ROOT, *LOVE'S REVOLUTION: INTERRACIAL MARRIAGE* 60 (2001).

105. M. Belinda Tucker & Claudia Mitchell-Kernan, *Social Structural and Psychological Correlates of Interethnic Dating*, 12 J. SOC. & PERS. RELATIONSHIPS 341–346, 353 (1995); Morales, *supra* note 100, at 328; Erica Chito Childs, *Families on the Color-Line: Patrolling Borders and Crossing Boundaries*, 5 RACE & SOC'Y 139, 156 (2002); HEATHER DALMAGE, *TRIPPING ON THE COLOR LINE: BLACK-WHITE MULTIRACIAL FAMILIES IN A RACIALLY DIVIDED WORLD* 58 (2000); ERICA CHITO CHILDS, *NAVIGATING INTERRACIAL BORDERS: BLACK/WHITE COUPLES AND THEIR SOCIAL WORLDS* 69 (2005).

106. ROOT, *supra* note 104, at 60 (Root concluded that women's status is influenced by her male partner's status so family members are concerned when they partner with men of lower racial status. In contrast, men's status is not tied to their female partner's status); see also Suzanne C. Miller et al., *Perceived Reactions to Interracial Romantic Relationships: When Race Is Used as a Cue to Status*, 7 GROUP PROCESSES AND INTERGROUP REL 354, 355 (2004).

107. Morales, *supra* note 100, at 328.

108. ROOT, *supra* note 104, at 60; ANGELA ONWUACHI-WILLIG, *ACCORDING TO OUR HEARTS: RHINELANDER V. RHINELANDER AND THE LAW OF THE MULTIRACIAL FAMILY* 141–43 (2013).

109. Jones, *supra* note 5.

both the White and Asian-American communities than Asian-American women married to White men.¹¹⁰

Racial preferences are problematic for many reasons. They undermine our commitment to anti-discrimination and perpetuate social distance between groups. They also affect marriage outcomes. The two groups least preferred by online daters—African-American women and Asian-American men—are also the groups with the lowest rates of intermarriage. For African-American women, racial preferences affect not only their rate of intermarriage, but their likelihood of marrying at all and raising a child without a co-parent.

Marriage rates and non-marital birth rates vary significantly by education. College-educated women are more likely to marry than women with lower levels of formal education.¹¹¹ They are also significantly less likely to have children outside of marriage.¹¹² However, African-American women are much less likely to marry than women of other races¹¹³ and are also more likely than women of other races to have non-marital children and to raise them in single-parent households.¹¹⁴ While two-parent households are not superior to single-parent households, in the United States children raised by single parents are less advantaged in myriad ways, even when the single-parent has financial resources. The next section will briefly describe these relative disadvantages.

II. ROMANTIC PREFERENCES' EFFECTS ON CHILDREN

For most of U.S. history, non-marital children suffered significant legal and societal discrimination. Most, although not all, of the legal disabilities have been eliminated as a result of U.S. Supreme Court decisions striking down laws denying non-marital children the same rights enjoyed by marital children.¹¹⁵ Societal disapproval of non-marital families has also decreased as children are increasingly raised by cohabitating or single parents. Despite these changes, non-marital chil-

110. KUMIKO NEMOTO, RACING ROMANCE: LOVE, POWER, AND DESIRE AMONG ASIAN AMERICAN/WHITE COUPLES 6 (2009) (One ethnographic study found that White men married to Asian women could not recall any instances of public discrimination against them because of their relationship. In contrast, White women married to Asian-American men reported negative comments from friends and neighbors about their choice of mate.).

111. PEW RES. CTR., THE DECLINE OF MARRIAGE AND RISE OF NEW FAMILIES 4 (2010), <http://www.pewsocialtrends.org/2010/11/18/the-decline-of-marriage-and-rise-of-new-families/>.

112. See Rachel M. Shattuck & Rose M. Kreider, *Social and Economic Characteristics of Currently Unmarried Women with a Recent Birth: 2011*, U.S. CENSUS BUREAU 4 (May 2013), <http://www.census.gov/prod/2013pubs/acs-21.pdf> (finding that non-marital birth rate for college-educated women was less than 9% as compared to 57% for women with less than a high school diploma).

113. 14% of White women ages thirty-five to forty-nine have never been married as compared to 43.6% of African-American women of the same age. *Id.*

114. Although the non-marital birth rate has been declining since 2008, approximately 70% of children born to African-American mothers are non-marital. See Brady Hamilton et al., *Births: Preliminary Data for 2015*, in 65.3 NAT'L VITAL STAT. REP. 10 (2016), http://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_03.pdf. 29% of children born to White mothers and 53% of children born to Latina mothers in 2015 were non-marital. *Id.* Asian-Americans have the lowest rate (16%) of non-marital births. *Id.* See also Shattuck & Krieder, *supra* note 112, at 4.

115. See Solangel Maldonado, *Illegitimate Harm: Law, Stigma, and Discrimination Against Nonmarital Children*, 63 FLA. L. REV. 345, 347 (2011) (discussing cases).

dren are disadvantaged relative to their marital counterparts in many ways. First, as I have described in prior work, the law continues to place heavier burdens on non-marital children in a number of areas, including parental support for college, intestate succession, and paternal transmission of U.S. citizenship.¹¹⁶ Second, non-marital children continue to experience societal disapproval. The majority of Americans, including African-Americans and Latinos, believe that non-marital childbearing is a significant social problem and that unmarried women should not have children¹¹⁷ Although the majority of non-marital children do not receive government benefits, society presumes that they will rely on public assistance for their support which contributes to their stigmatization.¹¹⁸ Non-marital African-American children face greater disapproval than White children, especially when they are poor.¹¹⁹

Non-marital children are disadvantaged in virtually every measure, with consequences that extend into adulthood.¹²⁰ Numerous studies have shown that children who grow up in a single-parent home or with cohabitating parents¹²¹ are more likely than children raised by married parents to be poor,¹²² underachieve

116. *Id.* at 349.

117. PEW RES. CENTER, GENERATION GAP IN VALUES, BEHAVIORS: AS MARRIAGE AND PARENTHOOD DRIFT APART, PUBLIC IS CONCERNED ABOUT SOCIAL IMPACT 3 (2007), <http://www.pewsocialtrends.org/2007/07/01/as-marriage-and-parenthood-drift-apart-public-is-concerned-about-social-impact/> (71% of participants stated that the increase in non-marital births is a “big problem” for society); *Id.* at 5 (59% believe that unmarried women having children is wrong and 66% believe that “[s]ingle women having children” is bad for society). Although Latinos and African-Americans have high non-marital birth rates than whites, they are almost as likely as whites to believe that non-marital childbearing is wrong. *Id.* at 8–9. More men (73%) than women (60%) believe that single women having children is bad for society. *Id.* at 50. Interestingly, most participants (67%) thought that children are better off when unhappy parents divorce rather staying together. *Id.* at 6. They were more accepting of divorce than non-marital childbearing. See also PEW RES. CTR., *supra* note 111, at 2 (finding that 69% of study participants “say the trend toward more single women having children is bad for society, and 61% say that a child needs both a mother and father to grow up happily.”).

118. Maldonado, *supra* note 115, at 367–71.

119. Jane D. Bock, *Doing the Right Thing? Single Mothers by Choice and the Struggle for Legitimacy*, 14 GENDER & SOC’Y 62, 65 (2000) (noting that “[t]he levels of stigma . . . vary according to the class, race, and age of the mother.”); see also Kimberly Seals Allers, *There is a Single Mother Hierarchy, and It Needs to Stop*, WASH. POST (June 10, 2016), <https://www.washingtonpost.com/news/parenting/wp/2016/06/10/the-single-mother-hierarchy/>.

120. See Jane Waldfogel et al., *Fragile Families and Child Well-Being*, 20 FUTURE OF CHILDREN 87, 91 (2010); Sara McLanahan, *Fragile Families and the Reproduction of Poverty*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 111, 111 (2009).

121. Although half of non-marital children are born to cohabiting parents, the majority of non-marital parents are not romantically involved by the time the child is five years old. Sara McLanahan & Audrey N. Beck, *Parental Relationships in Fragile Families*, 20 FUTURE OF CHILDREN 17 (2010) (cohabiting parents are more likely than married parents to be poor, have less formal education, and to experience family instability (breakups and multi-partner fertility) which is strongly associated with poorer outcomes for children). See Wendy Manning, *Cohabitation and Child Well-Being*, 25 FUTURE OF CHILDREN 51, 51 (2015). However, studies show that “stable cohabiting families with two biological parents seem to offer many of the same health, cognitive, and behavioral benefits that stable married biological parent families provide.” *Id.* African-American mothers are less likely than women of other races to be living with the child’s father at birth and are less likely than other groups to ever marry the father.

122. CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., RL34756, NONMARITAL CHILDBEARING: TRENDS, REASONS, AND PUBLIC POLICY INTERVENTIONS 15–16 (2008) (reporting that

academically, become teen parents, abuse drugs, engage in delinquent behavior, experience behavioral problems, and earn lower wages as adults.¹²³ They are also less likely to attend college or receive financial support as children¹²⁴ or as adults.¹²⁵ Researchers cannot completely explain the reasons for these poorer outcomes, but many argue that fewer resources—rather than growing up in a home with two married parents—are the source of these disadvantages.¹²⁶ Indeed, the law's preference for marital childbearing and the legal benefits it grants to married couples may explain the differences in outcomes.¹²⁷ With the possible exception of academic achievement,¹²⁸ these outcomes disproportionately affect African-American and Latino children who are more likely to be raised in single-parent families.¹²⁹ While a close relationship with both parents may reduce these risks, divorced and non-marital fathers disengage from their children at alarmingly high rates.¹³⁰

in 2007, 41% of women with non-marital children had incomes below the poverty level but only 19% had incomes above \$50,000).

123. Wendy Sigle-Rushton & Sara McLanahan, *Father Absence and Child Well-Being: A Critical Review*, in *THE FUTURE OF THE FAMILY* 116, 120–21 (Daniel Patrick Moynihan et al., eds., 2004); Maldonado, *supra* note 115, at 372, n.167. Of course, the majority of children raised in single-parent homes do not experience these negative outcomes but, as a group, they are more likely than children raised by married parents to experience poor outcomes. *Id.* at 373–74.

124. See Timothy S. Grall, *Custodial Mothers and Fathers and Their Child Support: 2007*, U.S. CENSUS BUREAU 6–8 (Nov. 2009), <http://www.census.gov/prod/2009pubs/p60-237.pdf> (reporting that 62.8% of divorced parents had a child support order as compared to only 43.5% of never married parents and 51.2% of divorced parents with a child support order received the full amount owed as compared to less than 40% of never married parents); See also *Minority Families and Child Support: Data Analysis*, OFF. OF CHILD SUPPORT ENF'T. 35, 63 (2007), <http://www.acf.hhs.gov/programs/cse/pol/DCL/2007/dcl-07-43a.pdf> (finding the “child support process is most responsive to divorced parents and least responsive to never-married parents”).

125. For example, they are less likely to receive help with the down payment for a house, or to receive an inheritance from the father or paternal grandparents.

126. Maldonado, *supra* note 115, at 372–73 (discussing studies).

127. Vivian Hamilton, *Family Structure, Children and the Law*, 24 WASH. U. J. L. POL'Y 9, 10 (2007); See Alice Ristorph & Melissa Murray, *Disestablishing the Family*, 119 YALE L.J. 1236, 1252 (2010) (noting that the “law channel[s] individuals . . . into marriage, and from marriage into coupled parenthood.”); see also Goodridge v. Dep't of Public Health, 798 N.E.2d 941, 956–57 (Mass. 2003) (describing the numerous federal and state benefits available to married couples).

128. One study found that while whites and Latinos raised in single-parent families tend to have lower levels of educational attainment than children raised by married parents, African-American children in single parent homes may acquire more education than African-American children living with both parents. See JEFF GROGGER & NICK RONAN, U.S. DEP'T LABOR, *THE INTERGENERATIONAL EFFECTS OF FATHERLESSNESS ON EDUCATIONAL ATTAINMENT AND ENTRY-LEVEL WAGES* ii-iii (1995), <http://www.bls.gov/osmr/pdf/n1950080.pdf>; see also SARA McLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* 87–88 (1994) (“[W]ith respect to educational achievement, father absence has the most harmful effects among Hispanics and the least harmful effects among Blacks.”).

129. Child Support Enforcement, *supra* note 124, at 3–4 (finding that in 2002, 66% of white mothers but only 48% of African-American mothers had child support orders); *id.* at 8 (concluding that the difference in child support rates is “largely due to racial and ethnic family formation differences.”).

130. Sara McLanahan & Audrey N. Beck, *Parental Relationships in Fragile Families*, 20 *FUTURE OF CHILDREN* 17 (2010) (By the time the child is five years old, only 51% of unmarried fathers visit at least once a month and one-third have no contact with their children at all). The vast majority of children in single-parent families live with their mother. *Families and Living Arrangements: America's Families and Living Arrangements: 2013: Children (C table series)*, U.S. CENSUS BUREAU tab.C3 (last

Marriage is not the solution to the potential disadvantages experienced by non-marital and disproportionately African-American and Latino children. These disadvantages are the result of social inequality, lack of resources, residential segregation, and an educational system that fails children in poor and minority neighborhoods. Yet, the advantages and opportunities available to *marital* children are increasingly significant and have created a divide of haves versus have nots along marital lines. Low-income and working class individuals (who are disproportionately African-American or Latino/a) increasingly postpone or forego marriage but not childbearing.¹³¹ As a result, single and cohabitating parents are disproportionately poor and have few resources to invest in their children. In contrast, college-educated individuals postpone marriage and childbearing until they are financially stable. This latter group invests more resources in their children than prior generations ever have.¹³² Assortative mating has magnified the inequality between marital and non-marital children as highly educated and successful individuals marry and have children with highly educated and successful partners, leaving low-income individuals to create “fragile families.”¹³³

While the class inequality exacerbated by assortative mating is troubling, this Essay focuses on the racial inequality created by preferences in the dating and marriage market. Consequently, it focuses on the dating market for college-educated African-American women since their children are most affected by racial preferences in the marriage market. While racial preferences may also disadvantage the children of low-income African-American mothers, their children are much more disadvantaged by poverty, family instability,¹³⁴ and lack of access to adequate schools and safe neighborhoods—problems that will not be remedied by eliminating racial preferences in the romantic marketplace.

The number of children affected by racial preferences in the dating and marriage market is small as compared to the number of African-American children in “fragile families.” These children are amongst the most privileged, as their mothers are college-educated and likely to be financially stable. These children are also likely to attend quality schools and to reside in desirable neighborhoods. Given their relative privilege, one might ask whether it is worthwhile to explore how racial preferences limit their access to resources and opportunities when so many children have significantly fewer advantages. I contend that it is. When we examine opportunities for children, we should not focus only on the most disadvantaged

updated Nov. 6, 2014), <http://www.census.gov/hhes/families/data/cps2013C.html> (85% of children living with only one parent lived with their mother only).

131. KATHRYN EDIN & MARIA KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE 109 (2005).

132. CARBONE & CAHN, *supra* note 24, at 84–89; A. LAREAU, UNEQUAL CHILDHOODS 300 (2011); as sociologist Andrew Cherlin has stated “[i]t is the privileged who are marrying and marrying helps them stay privileged.” Jason DeParle, *Two Classes, Divided by “I Do”*, N.Y. TIMES (July 14, 2012) (quoting Andrew Cherlin), http://www.nytimes.com/2012/07/15/us/two-classes-in-america-divided-by-i-do.html?_r=0.

133. The “Fragile Families and Child Well-Being” study tracked 5000, primarily non-marital, children born from 1998 to 2000 in large U.S. cities. See PRINCETON UNIVERSITY, FRAGILE FAMILIES & CHILD WELLBEING STUDY, <http://www.fragilefamilies.princeton.edu> (last visited Sept. 28, 2016).

134. See Paul R. Amato, *The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-Being of the Next Generation*, 15 FUTURE OF CHILD 75, 82 (2005).

children but should also address barriers that prevent *all* children from taking advantage of opportunities available to a select few. For example, it is not enough for all children to attend adequate schools if some children have opportunities to attend superior schools because of their race. Similarly, it is troubling if children of college-educated Asian-Americans mothers have greater access to resources and opportunities than the children of college-educated African-American women, if those advantages are the result of racial preferences.

In the United States, marriage has historically been a mechanism for women's economic security.¹³⁵ Even today, some women rely on marriage as a tool for economic security and upward mobility.¹³⁶ Historically, marriage has not provided these economic benefits to African-American women who married African-American men, as the earnings of African-American men have always been much lower than those of White men.¹³⁷ This remains true today, as African-American women are twice as likely as their male counterparts to graduate from college and almost three times as likely to obtain a post-graduate degree.¹³⁸ However, minority women who intermarry with White men enjoy significantly higher family incomes and wealth than those who marry in. For example, in 2010, the median family income of White/Latino/a marriages was \$57,900 as compared to \$35,578 for Latino/Latina marriages.¹³⁹ Asian-Americans who intermarried with Whites earned higher combined incomes than all other couples—same-race or interracial.¹⁴⁰ Minority women who intermarry with Whites live in wealthier neighborhoods and are more likely to have access to intergenerational transfers of wealth than minority women in same-race marriages.

The children of White/non-White marriages tend to enjoy greater access to safe neighborhoods, high quality schools, economic resources, and intergenerational transfers of wealth than the children of minority couples. They also enjoy the intangible benefits of access to networks that rarely include minorities. For example, a child who resides in a wealthier neighborhood with high quality schools—

135. STEPHANIE COONTZ, *MARRIAGE, A HISTORY: FROM OBEDIENCE TO INTIMACY OR HOW LOVE CONQUERED MARRIAGE* 243 (2005).

136. This Essay focuses on women's marital rates because the vast majority of children in single-parent households reside with their mothers.

137. Linda M. Burton & M. Belinda Tucker, *Romantic Unions in an Era of Uncertainty: A Post-Moynihan Perspective on African-American Women and Marriage*, in 621 *ANNALS OF AM. ACAD.* 132, 143 (2009).

138. Wendy Wang & Kim Parker, *PEW RES. CTR. WOMEN SEE VALUE AND BENEFITS OF COLLEGE; MEN LAG ON BOTH FRONTS, SURVEY FINDS* 13 (2011); Nat'l Center for Education Statistics <https://nces.ed.gov/fastfacts/display.asp?id=72> (reporting that 71% of African Americans who earned a Master's degree in 2009-2010 were women as were 66% of those who earned a Bachelor's degree)

139. Wang, *supra* note 10, at 6; One study of the three largest Latino groups—Mexican-Americans, Cuban-Americans, and Puerto Ricans found that for all three groups, members who intermarried with Whites enjoyed higher financial resources than counterparts who married in. Xuanning Fu, *Marital Assimilation and Family Financial Resources of U.S. Born Hispanics*, 2 *OPEN SOC. J.* 10, 16 (2009); see also Sharon M. Lee & Barry Edmonston, *New Marriages, New Families: U.S. Racial and Hispanic Intermarriage*, 60 *POP. BULL.* 1, 23 ("Children living in white/Asian interracial families had the highest mean family income.").

140. Wang, *supra* note 10, at 6. White/Asian newlyweds of 2008 through 2010 had median combined annual earnings of \$70,952 as compared to \$60,000 for White/White couples and \$62,000 for Asian/Asian couples. African-Americans married to Whites had a median family income of \$53,187 as compared to \$47,700 for African-Americans who married in.

neighborhoods that are disproportionately White—may have greater access to coveted internships and academic opportunities not available in less privileged neighborhoods and schools. Some of these opportunities are formal—the school in the wealthier neighborhood may have more guidance counselors who search for opportunities and help students secure them. Other opportunities are informal and can only be described as networks or as one single mother described “access to power.”¹⁴¹ These networks help individuals obtain jobs, internships, and clients, opportunities that are not available to individuals outside the network.¹⁴²

Racial preferences limit the pool of potential partners available to African-American women and reduce the likelihood that their children will be raised in financially secure, two-parent homes and have access to the resources and opportunities available to the children of interracial marriages. When highly educated and financially successful men—who are disproportionately White or Asian-American—exclude African-American women as potential romantic and ultimately marriage partners, African-American women may end up marrying men with lower levels of educational attainment and income. Those marriages will not only have fewer resources, but are also at higher risk of divorce.¹⁴³ Consequently, the children of those marriages may be more likely to grow up with fewer resources and to spend part of their childhood in a single parent home.

One might not be sympathetic to an African-American college-educated woman who rejects a same-race partner with an average income because she would prefer a higher income partner. But African-American women are not rejecting same-race partners with average incomes. They are rejecting partners with low incomes or no income at all. The pool of employed African-American men is so thin that African-American women may find it difficult to find a same-race partner who is employed period.¹⁴⁴ For example, one recent study reported that there are

141. Interview with YG (Aug. 12, 2016) (on file with author).

142. See Elizabeth Emens, *Intimate Discrimination: The State's Role in Accidents of Sex and Love*, 122 HARV. L. REV. 1307, 1377 (2009) and accompanying text (noting that “families are at the heart of communities and thus of social and employment networks. Who one knows has significant effects on one’s opportunities.”).

143. Linda M. Burton & M. Belinda Tucker, *Romantic Unions in an Era of Uncertainty: A Post-Moyinhan Perspective on African-American Women and Marriage*, 621 ANNALS OF AM. ACAD. 132 (Jan. 2009); RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE: HOW THE AFRICAN-AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE 112 (2011) (proposing that African-American women marry “out” instead of marrying “down”); *Id.* (women who marry less successful men (educationally or occupationally) have higher divorce rate); College educated African-Americans are significantly more likely as college educated Whites to divorce. *Id.* See Richard Fry, *The Reversal of the College Marriage Gap*, PEW RES. CTR. (Oct. 7, 2010), <http://www.pewsocialtrends.org/2010/10/07/the-reversal-of-the-college-marriage-gap/>.

144. The mass incarceration of African-American men and the existence of a criminal record severely limits employment opportunities. See Christopher J. Lyons & Becky Pettit, *Compounded Disadvantage: Race, Incarceration, and Wage Growth*, 58 SOC. PROBS. 257, 259 (2011). In some cities like Milwaukee, almost one in eight African-American men has spent time in prison. See John Pawasarat & Lois M. Quinn, *Wisconsin's Mass Incarceration of African-American Males: Workforce Challenges for 2013*, <https://www4.uwm.edu/eti/2013/BlackImprisonment.pdf> (last visited Sept. 28, 2016). According to the Sentencing Project, ten percent of African-American men in their thirties are in prison on any given day. *Trends in U.S. Corrections*, THE SENTENCING PROJECT, <http://www.sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf> (last visited Sept. 28, 2016); see also U.S. DEPT. OF JUSTICE, *Jail Inmates at Midyear 2014* (June 2015),

“51 employed young black men for every 100 young black women,” ages 25–34.¹⁴⁵ In contrast, “[a]mong never-married white, Hispanic and Asian American young adults, the ratio of employed men to women is roughly equal—100 men for every 100 women.”¹⁴⁶ The pool is even more limited for African-American women seeking a college-educated same-race partner as African-American women graduate from college at twice the rate of their male counterparts.¹⁴⁷ Successful African-American men are more likely than African-American women to intermarry, thereby decreasing the pool of marriageable African-American men available to African-American women.¹⁴⁸

Given the limited pool of marriageable African-American men, some middle class African-American women will not find a same-race partner. Their own racial preferences for African-American men and those of non-Black men for non-Black women, further limit African-American women’s opportunities to marry. Indeed, African-American women are more than three times as likely as white women to never marry.¹⁴⁹ Given their limited prospects for marriage, the African-American community’s greater acceptance of non-marital childbearing, and society’s increased acceptance of single-parent families, it is not surprising that some

<http://www.bjs.gov/content/pub/pdf/jim14.pdf> (reporting that 35% of jail population is African-American); E. ANN CARSON, U.S. DEPT. OF JUSTICE, PRISONERS IN 2014 15 (2015), <http://www.bjs.gov/content/pub/pdf/p14.pdf> (reporting that 37% of male prison population is African-American). African-Americans comprised 13% of the U.S. population in 2015. See *Quick Facts*, U.S. BUREAU, <https://www.census.gov/quickfacts/table/PST045215/00> (last visited Sept. 28, 2016).

145. Wendy Wang & Kim Parker, PEW RES. CTR., RECORD SHARE OF AMERICANS HAVE NEVER MARRIED 14 (2014). “In most racial and ethnic groups, men are more likely than women to have never been married. The major exception is among blacks. In 2012, roughly equal shares of black men (36%) and black women (35%) ages 25 and older had never been married.” *Id.* at 11. Interestingly, African-American women express a preference for men “having primary economic responsibility . . . despite the remoteness of such a prospect.” Burton & Tucker, *supra* note 143, at 142 (noting that many middle class African-Americans view “a traditional alignment of household responsibilities . . . as an achievement in the larger society’s terms.”); PEW RES. CTR., *supra* note 111, at 28 (finding that “[f]ully 88% of black respondents (compared with 62% of whites and 77% of Hispanics) say that in order to be ready for marriage, a man must be able to support a family financially” and concluding that “blacks are the racial group most inclined to consider financial security a prerequisite to marriage.”).

146. Wang & Parker, *supra* note 145, at 14.

147. Wendy Wang & Kim Parker, PEW RES. CTR. WOMEN SEE VALUE AND BENEFITS OF COLLEGE; MEN LAG ON BOTH FRONTS, SURVEY FINDS 13 (2011) (“In 2010, only 37% of black college graduates were men and 63% were women. Among white, Hispanic and Asian college graduates, the share of men is close to the average of 45%.”).

148. College-educated African-American men seeking to marry do not face the same challenges as African-American women. Although African-American men are rejected at high rates by online daters of other races, they are two to three times as likely as African-American women to intermarry. While the challenges faced by professional African-American women seeking a mate are well-documented, see, e.g., BANKS, *supra* note 143, at 33; KARYN LANGHORNE FOLAN, DON’T BRING HOME A WHITE BOY: AND OTHER NOTIONS THAT KEEP BLACK WOMEN FROM DATING OUT 43 (2010), given the large pool of educated African-American women seeking a same-race partner, it is doubtful that racial preferences affect African-American men’s ability to marry (someone). Similarly, Asian-American men have high rates of marriage (despite relatively low rates of intermarriage compared to Asian American women) so racial preferences do not seem to restrict their ability to find a mate either.

149. See Imani Perry, *Blacks, Whites, and the Wedding Gap*, N.Y. TIMES, Sept. 16, 2011, <http://www.nytimes.com/2011/09/18/books/review/is-marriage-for-white-people-by-ralph-richard-banks-book-review.html>.

college-educated African-American women choose to raise a child without a spouse.¹⁵⁰

The children of college-educated African-American “single mothers by choice”¹⁵¹ are unlikely to experience the increased risk of poor outcomes faced by children of low-income single mothers.¹⁵² However, they are unlikely to enjoy all of the advantages of children raised by two college-educated parents. First, most families need two-incomes to maintain a home in a desirable neighborhood with high quality schools, and access to extracurricular and cultural activities that are increasingly necessary for children to compete when applying to college or summer internships.¹⁵³ Second, most families need two incomes to save for a child’s college education. Single parents, even those who are financially stable, are less likely than married parents to be able to afford to pay for a child’s college education. Third, single parents “have no one with whom to share the financial, logistical, or emotional burdens of being a parent.”¹⁵⁴ As a result, single mothers, albeit privileged single mothers, will likely have fewer resources—financial, emotional, and time—to expend on their children and cultivate opportunities for their success. Finally, single parents, and by extension their children, may be excluded from networks that married parents inhabit. Given the single-mother hierarchy, African-American single mothers are more likely than White single mothers to be excluded from these networks.¹⁵⁵ As one divorced woman observed “as an African-American woman - even with an Ivy League education and a middle-class income - [she] was still subject to the stereotypical perception of ‘the black single mother’.”¹⁵⁶

150. Women of other races also intentionally chose to become single parents. See generally SINGLE MOTHERS BY CHOICE, <http://www.singlemothersbychoice.org> (last visited Sept. 28, 2016).

151. See Tomiko Fraser Hines, *Being a Single Mother by Choice, Part 2* (Mar. 1, 2016), <http://madamenoire.com/616917/being-a-single-mother-by-choice-part-2/> (noting that single motherhood by choice is not an uncommon for professional African-American); *Many Women Choosing to be Single Mothers*, ATLANTA BLACK STAR, Mar. 29, 2013, <http://atlantablackstar.com/2013/03/29/being-a-single-mother-is-a-choice/>.

152. Claire Cain Miller, *Single Motherhood, in Decline Over All, Rises for Women 35 and Older*, N.Y. TIMES, May 8, 2015, <http://www.nytimes.com/2015/05/09/upshot/out-of-wedlock-births-are-falling-except-among-older-women.html> (discussing increase in rate of nonmarital births to women over the age of 35).

153. See Chris Taylor, *Single Moms by Choice: Making the Finances Work*, REUTERS, Sept. 9, 2014, <http://www.reuters.com/article/us-money-singlemoms-idUSKBN0H41D220140909>. As one African-American single mother by choice stated, “I make a very comfortable living . . . That said, it’s still one income. And living in southern California, there are certain things that are difficult to attain on a single income. Like a larger home, or private school tuition . . .”; Tomiko Fraser Hines, *Being a Single Mother by Choice, Part 1* (Feb. 29, 2016), <http://madamenoire.com/616911/being-a-single-mother-by-choice-part-1/>.

154. Isabel Sawhill, *Celebrating Single Mothers by Choice* (May 8, 2015), <https://www.brookings.edu/2015/05/08/celebrating-single-mothers-by-choice/>.

155. See Allers, *supra* note 119 (stating that “society secretly categorizes single mothers in gradients of respectability depending on income, race, and most important, how you became a single mother.”).

156. Allers, *supra* note 119 (noting that some college-educated African-American single mothers use hyphenated names when interacting with administrators at their child’s predominantly white schools).

For many college-educated single mothers, an increased pool of marriageable men would not have altered their decision to raise a child without a partner despite the challenges discussed above.¹⁵⁷ However, at least some women who are raising children alone might have preferred to do so with a partner had they found the “right” partner. There are many reasons individuals do not find a marriage partner, but African-American women face greater challenges due to a limited pool of marriageable African-American men and racial preferences that decrease their likelihood of partnering with men of other races as college-educated Asian-American and Latina women often do. As a result, the children of college-educated African-American women are unlikely to have access to the benefits available to the children of similarly educated Asian-American and Latina women. What, if anything, should the law do to help children who are not disadvantaged relative to the most vulnerable African-American families, but are less advantaged than the children of two parent families? Before we attempt to answer this question, we should first explore the law’s role in shaping racial preferences.

III. LAW’S ROLE IN SHAPING RACIAL PREFERENCES

“The heart [may] want[] what it wants”¹⁵⁸ but racial preferences are not shaped in a vacuum. They are influenced by historical and current social and legal norms. The law’s explicit role in shaping romantic preferences is extensive. States prohibited marriages between African-Americans and Whites as early as the seventeenth century through the enactment of laws banishing or enslaving Whites who married Black slaves.¹⁵⁹ Although most states did not prohibit interracial sex, these laws signaled that African-Americans were not appropriate romantic partners.

After the Civil War, many more states enacted anti-miscegenation laws. Forty-one states prohibited marriages between Whites and African-Americans at some point.¹⁶⁰ Southern states segregated Whites and non-Whites in public spaces and the federal government maintained segregated offices and military units.¹⁶¹ The courts enforced laws, private covenants, and practices that denied African-Americans housing and employment opportunities available to Whites.¹⁶² These

157. See Katy Chatel, *I’m a Single Mother by Choice, One Parent Can Be Better Than Two*, WASH. POST, Mar. 16, 2015, https://www.washingtonpost.com/posteverything/wp/2015/03/16/im-a-single-mother-by-choice-one-parent-can-be-better-than-two/?utm_term=.cee9f5971f47.

158. RICHARD B. SEWALL, *THE LIFE OF EMILY DICKINSON* 493 (2000).

159. Christine B. Hickman, *The Devil and the One Drop Rule: Racial Categories, African Americans, and the U.S. Census*, 95 MICH. L. REV. 1161, 1171–74 (1997); PEGGY PASCOE, *WHAT COMES NATURALLY: MISCEGENATION LAW AND THE MAKING OF RACE IN AMERICA* 20 (2009).

160. See DAVID FOWLER, *NORTHERN ATTITUDES TOWARDS INTERRACIAL MARRIAGE: LEGISLATION AND PUBLIC OPINION IN THE MIDDLE ATLANTIC AND THE STATES OF THE OLD NORTHWEST 1780–1930*, at 7 (1987).

161. DESMOND S. KING, *SEPARATE AND UNEQUAL: BLACK AMERICANS AND THE U.S. FEDERAL GOVERNMENT 1–3* (1995); Dick Lehr, *The Racist Legacy of Woodrow Wilson*, THE ATLANTIC, Nov. 27, 2015, <http://www.theatlantic.com/notes/2015/11/the-racist-legacy-of-woodrow-wilson-contd/417990>. See generally ERIC YELLIN, *RACISM IN THE NATION’S SERVICE: GOVERNMENT WORKERS AND THE COLOR LINE IN WOODROW WILSON’S AMERICA* (2016).

162. RICHARD BROOKS & CAROL ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS 47–48* (2013); see generally IRA KATZNELSON, *WHEN*

practices limited opportunities for interracial contact and reinforced social distance between African-Americans and Whites.

The law's explicit regulation of interracial intimacy ended in 1967 with the U.S. Supreme Court's decision in *Loving v. Virginia*.¹⁶³ The federal government also passed legislation prohibiting racial discrimination in employment and housing and attempted to enforce the Supreme Court's decision in *Brown v. Board of Education*¹⁶⁴ mandating desegregation of schools.¹⁶⁵ Despite these reforms, the legal policies that facilitated race discrimination until the 1960s continue to shape our racial preferences today. Racially restrictive covenants, redlining, and racial steering created the racially segregated neighborhoods and schools that anti-discrimination laws have failed to integrate. These practices, which continue today despite laws prohibiting them,¹⁶⁶ also created the disparity in wealth between African-Americans and Whites that make it impossible for most African-Americans to acquire property in these neighborhoods today.¹⁶⁷ These structural inequalities limit opportunities for African-Americans and Whites to interact as equals and consider members of the other group as potential romantic partners.

The law has also contributed to the dearth of marriageable African-American men. Failing schools and a racialized criminal justice system have led to the mass incarceration of African-American men and rendered them virtually employable and unmarriageable after their release,¹⁶⁸ leaving African-American women to raise children alone (or pursue relationships with men of other races).

The law's active role in facilitating discrimination and its failure to remedy the continuing effects of its discriminatory policies would support state intervention to ensure that African-American children's access to resources and opportunities are not limited by racial preferences that the law helped shape or reinforce. However, even if the law had not played an active role in shaping our romantic preferences, the state's interest in eradicating disadvantages deriving from racial discrimination would warrant intervention to provide children affected by racial preferences with similar opportunities as other children.

Determining how the state should support these children is no easy task given limited resources especially when these children already have greater access to resources and opportunities than significantly disadvantaged children such as those in "fragile families." At minimum, however, the recognition that despite their relative advantages, racial preferences may disadvantage the children of college educated African-American mothers suggests that the state should support all fami-

AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH CENTURY AMERICA (2005).

163. 388 U.S. 1 (1967).

164. 347 U.S. 483 (1954).

165. See Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964); Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 72 (1968).

166. For example, banks continue to engage in redlining, realtors continue to steer African-Americans towards minority neighborhoods and away from predominantly White neighborhoods, and homeowners and landlords continue to reject African-American homebuyers and renters. Further, federal law exempts owner-occupied dwellings of four or fewer units from its anti-discrimination mandate. See Fair Housing Act, 42 U.S.C. § 3604. This is known as the "Mrs. Murphy" exemption.

167. See generally KATZNELSON, *supra* note 162.

168. See generally MICHELLE ALEXANDRE, *THE NEW JIM CROW* (2012).

lies regardless of family form. This might be as simple as celebrating all families—married, divorced, blended, cohabitating, and single-parent—and eliminating the message that marital families are superior. Instead of the federal Healthy Marriage Initiative¹⁶⁹ which funds projects that seek to encourage marriage before childbearing,¹⁷⁰ and signals that marital families are superior to other family forms,¹⁷¹ the federal government should fund a Healthy *Families* Initiative. A Healthy *Families* Initiative should, like the current Healthy Marriage Initiative, be part of the federal government’s “strategy to enhance child well-being.”¹⁷² However, instead of funding “public advertising campaigns on the value of healthy marriages” as the federal government does now, a Healthy *Families* Initiative would fund campaigns on the value of healthy families and parent-child relationships. These reforms would redirect funds away from programs seeking to promote marriage (and which have been unsuccessful) and towards programs that support parents regardless of their family structure. The name change alone would signal that all families are valued.

IV. CONCLUSION

This Essay’s focus on the relative disadvantages experienced by the children of privileged—college educated African-American single mothers—might seem trivial given the significant poverty, family instability, and risk of poor outcomes faced by the much larger number of African-American children in fragile families. However, racial inequality affecting one child is still one too many. Further, the stigmatization of single-parent families, especially if African-American, negatively impacts all children in non-marital families regardless of their parents’ income and education. A Healthy *Families* Initiative would benefit the children of college-educated single mothers by signaling that their families are no less normative than marital families. It would also direct resources to the families that need them most to secure their children’s well-being rather than making support dependent on marriage.

169. *Healthy Marriage*, OFFICE OF FAMILY ASSISTANCE, <http://www.acf.hhs.gov/ofa/programs/healthy-marriage/healthy-marriage>, (last visited Sep. 8, 2016).

170. Maldonado, *supra* note 115, at 384 (discussing project funded by the Healthy Marriage Initiative that expressly sought “to increase the number of marriages before conception . . .”).

171. OFFICE OF FAMILY ASSISTANCE, *supra* note 169 (“Children living in two-parent, married household do better in school, have fewer behavioral problems, and are more likely to have successful marriages of their own.”).

172. *Id.*

