LGBT EQUALITY AND SEXUAL RACISM

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INTRODUCTION

We want to use the fiftieth anniversary of *Loving v. Virginia*[1] to juxtapose the public legal posture of LGBT litigants with the private practices of racial discrimination in intimate relationships, or "sexual racism."[2] In arguing for marriage equality, LGBT litigants and groups successfully relied on the U.S. Supreme Court's *Loving* decision for its recognition of the right to marry as fundamental and the Court's refusal to defer to a history of discrimination.[3] Indeed, *Obergefell v. Hodges*[4] cited *Loving* eight times to justify extending the right to marry.[5]

Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission,[6] which is pending before the Court as this Article goes to press, represents another moment in which the LGBT rights movement is turning to race in order to

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

2. Scholars have used various terms to refer to discrimination in sexual and romantic relationships. Legal scholars have used terms such as "romantic segregation" and "intimate discrimination." *See, e.g.*, Elizabeth F. Emens, *Intimate Discrimination: The State's Role in the Accidents of Sex and Love*, 122 HARV. L. REV. 1307, 1307–08 (2009); Russell K. Robinson, *Structural Dimensions of Romantic Preferences*, 76 FORDHAM L. REV. 2787, 2802–03 (2008). In recent years, the term "sexual racism" has gained traction globally. *See, e.g.*, Denton Callander et al., *Is Sexual Racism* Really *Racism?: Distinguishing Attitudes Toward Sexual Racism and Generic Racism Among Gay and Bisexual Men*, 44 ARCHIVES SEXUAL BEHAV. 1991, 1991 (2015).

3. *See, e.g.*, Brief for Petitioners at 34, Obergefell v. Hodges, 135 S. Ct. 2584 (2015) (No. 14-556).

4. 135 S. Ct. 2584 (2015).

5. *Id.* at 2598–604.

6. No. 16-111 (U.S. argued Dec. 5, 2017).

advance its goals.[7] In a line of key precedents from the 1960s to the 1980s, the Court rejected litigants' requests for First Amendment-based exemptions from antidiscrimination laws that protected people of color and women.[8] The Court dismissed such defenses in a brusque and occasionally derisive manner.[9] Yet the Court has seriously engaged First Amendment claims when LGBT rights are at stake, and in two of the three key cases, it vindicated the First Amendment claim.[10] This contrast sets up another instance in which LGBT rights may very well depend on whether LGBT advocates can lay claim to prior victories by people of color and women.

The Colorado Civil Rights Division brought suit against Masterpiece Cakeshop after its owner refused to make a cake for Charlie Craig and David Mullins's wedding reception.[11] Jack Phillips, the owner, argued that his religious beliefs, his artistic freedom as a baker, and Colorado's failure to recognize same-sex marriage entitled him to an exemption from the Colorado antidiscrimination statute.[12] Colorado courts rejected Phillips's defenses, and he appealed to the Supreme Court.[13] Craig and Mullins, who are both white men, responded with a brief that links their case to *Loving* and other

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7. *See generally* Damien W. Riggs, *Introduction: Towards a Typology of Racisms in Gay Men's Communities*, *in* THE PSYCHIC LIFE OF RACISM IN GAY MEN'S COMMUNITIES, at ix, x (Damien W. Riggs ed., 2017) (arguing that a "narrative of 'homo-innocence' . . . allows white middle-class gay men to ignore" their complicity in racism and "make recourse to analogies between race and sexuality in order to make rights claims about the latter").

8. *See, e.g.*, Roberts v. U.S. Jaycees, 468 U.S. 609, 628–29 (1984); Bob Jones Univ. v. United States, 461 U.S. 574, 602–04 (1983); Runyon v. McCrary, 427 U.S. 160, 175–76 (1976).

9. *See, e.g.*, Hishon v. King & Spalding, 467 U.S. 69, 77–78 (1984); Newman v. Piggie Park Enters., Inc., 390 U.S. 400, 402 n.5 (1968) (per curiam) (characterizing a free exercise objection to the Civil Rights Act of 1964 as "patently frivolous").

10. *Compare* Boy Scouts of Am. v. Dale, 530 U.S. 640, 644 (2000) (finding that New Jersey's public accommodations law, which required the Boy Scouts to maintain the membership of "an avowed homosexual and gay rights activist," violated the group's "First Amendment right of expressive association"), *and* Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., Inc., 515 U.S. 557, 559 (1995) (holding that "Massachusetts may [not] require private citizens who organize a parade to include among the marchers a group imparting a message the organizers do not wish to convey"), *with* Christian Legal Soc'y v. Martinez, 561 U.S. 661, 668–69 (2010) (finding that a public law school's policy of "condition[ing] its official recognition of a student group . . . on the organization's agreement to open eligibility for membership and leadership to all students" was a "reasonable, viewpoint-neutral condition on access" that did not violate the First Amendment). Additionally, in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47 (2006), the Court concluded that the Solomon Amendment, which withheld funds from colleges that restricted military recruiters' access, did not violate the First Amendment, even where the exclusion was to protest the military's "Don't Ask, Don't Tell" policy, *id.* at 70. For a thoughtful discussion of how the First Amendment has advanced LGBT rights in other contexts, see generally Scott Skinner-Thompson, *The First Queer Right*, 116 MICH. L. REV. (forthcoming 2018).

11. Craig v. Masterpiece Cakeshop, Inc., 370 P.3d 272, 276 (Colo. App. 2015), *cert. granted sub nom.* Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n, 137 S. Ct. 2290 (2017).

12. *Id.*

13. *See* Petition for Writ of a Certiorari, Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n, No. 16-111 (U.S. argued Dec. 5, 2017).

protections for racial and religious minorities.[14]   For example, the brief asserts:

> If the First Amendment bars a state from applying an anti-discrimination law to the sale of wedding cakes because they involve artistry, then bakeries could refuse to provide cakes for an interracial or interfaith couple's wedding, a Jewish boy's bar mitzvah, an African-American child's birthday, or a woman's business school graduation party.[15]

At oral argument, the Justices quizzed the lawyers as to whether race discrimination precedents necessarily extend to sexual orientation and other forms of bias.[16]

Bigots such as the trial judge in *Loving* have long invoked religion to justify discrimination.[17]   We agree with Mullins and Craig that neither religion nor artistic freedom justifies letting businesses discriminate. However, we also want to make manifest the tension between the public posture of LGBT-rights litigants and the practices of some LGBT people who discriminate based on race in selecting partners. We argue that some white people's aversion to dating and forming relationships with people of color is a form of racism, and this sexual racism is inconsistent with the spirit of *Loving*. Part I provides a review of empirical literature on the prevalence of racial preferences in intimate relationships and shows that racial preferences are particularly pronounced among gay men.   Part II supplements this overview with a qualitative exploration of how race informed the intimate experiences of people who sat for interviews as part of our ongoing study, LGBT Relationships and Well-Being.[18] We also offer a theory that may partially explain sexual racism in the LGBT community.   Specifically, exposure to mainstream gay culture may teach sexual minority men that race and desire are closely intertwined. In Part III, we propose ideas for further research, including a study that would test our theory.

I. EMPIRICAL EVIDENCE OF RACIAL PREFERENCES

Understanding racial preferences within the LGBT community is a tricky issue to navigate because interracial relationships are more common among

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    14. *See* Brief for Respondents Charlie Craig & David Mullins at 2–3, 14–15, 21–22, 31, 38–40, 43, 47–50, *Masterpiece Cakeshop*, No. 16-111.

    15. *Id.* at 2–3.

    16. Transcript of Oral Argument at 20–23, 31–32, *Masterpiece Cakeshop*, No. 16-111.

    17. The judge justified his decision as follows:
    Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.
Loving v. Virginia, 388 U.S. 1, 3 (1967) (quoting Loving v. Commonwealth (Va. Cir. Ct. Caroline Cty. Jan. 22, 1965)).

    18. This is the first of what we anticipate will be several publications that draw on the data from the LGBT Relationships and Well-Being study. This study entails interviewing 100 LGBT people about their dating and relationship experiences over their lifetimes.   We recruited subjects by distributing flyers at a broad range of venues in the San Francisco Bay Area, New York City, and Chicago and referrals from subjects who sat for interviews.

sexual minorities than heterosexuals.[19]   An analysis of U.S. census data demonstrates that 20.6 percent of same-sex couples are interracial, compared to 18.3 percent of unmarried heterosexuals and 9.5 percent of married heterosexuals.[20]   Potential explanations for these differences include the possibility that sexual minorities are more progressive than heterosexuals. Prominent white LGBT people have described their experiences as sexual minorities as fostering greater empathy for other stigmatized groups.[21] Some empirical work has sought to test the "minority solidarity assumption"—the assumption that one's status as a sexual minority should make him or her more tolerant of other minorities.[22]   Other explanations, however, suggest that same-sex couples are more likely to be interracial because of a restricted pool of potential partners relative to heterosexuals, who are in the overwhelming numeric majority.[23] LGBT-identified people make up about 3.5 percent of the U.S. population, "a figure roughly equivalent to the population of New Jersey."[24] These demographic constraints may be a more powerful explanation for the greater integration of LGBT couples than a heightened openness to partners of other races.

A small but growing body of research has demonstrated the existence of sexual racism, especially within gay and bisexual men's experiences of dating and online partner seeking.[25] "Sexual racism" has been defined as "a specific form of racial prejudice enacted in the context of sex and dating."[26]

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19. GARY J. GATES, WILLIAMS INST., SAME-SEX COUPLES IN CENSUS 2010: RACE AND ETHNICITY (2012), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Couples RaceEthnicity-April-2012.pdf [https://perma.cc/4UDW-ZKAQ]; Lisa K. Jepsen & Christopher A. Jepsen, *An Empirical Analysis of the Matching Patterns of Same-Sex and Opposite-Sex Couples*, 39 DEMOGRAPHY 435, 435–36 (2002); Michael J. Rosenfeld & Byung-Soo Kim, *The Independence of Young Adults and the Rise of Interracial and Same-Sex Unions*, 70 AM. SOC. REV. 541, 542 (2005).

20. GATES, *supra* note 19.

21. Consider Apple CEO Tim Cook. Cook invoked Dr. Martin Luther King, Jr. as an inspiration to come out and stated: "Being gay has given me a deeper understanding of what it means to be in the minority and provided a window into the challenges that people in other minority groups deal with every day. It's made me more empathetic, which has led to a richer life." Tim Cook, *Tim Cook Speaks Up*, BLOOMBERG (Oct. 30, 2014, 4:16 PM), https://www.bloomberg.com/news/articles/2014-10-30/tim-cook-speaks-up
[https://perma.cc/467C-RGM8]; *see also* PATRICK J. EGAN ET AL., FINDINGS FROM THE HUNTER COLLEGE POLL OF LESBIANS, GAYS AND BISEXUALS: NEW DISCOVERIES ABOUT IDENTITY, POLITICAL ATTITUDES, AND CIVIC ENGAGEMENT 21–22 (2008).

22. *See* Russell K. Robinson, *Marriage Equality and Postracialism*, 61 UCLA L. REV. 1010, 1035, 1041–44 (2014) (summarizing literature).

23. *See* Jennifer H. Lundquist & Ken-Hou Lin, *Is Love (Color) Blind?: The Economy of Race Among Gay and Straight Daters*, 93 SOC. FORCES 1423, 1424 (2015).

24. GARY J. GATES, WILLIAMS INST., HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER? 1 (2011), https://williamsinstitute.law.ucla.edu/wp-content/uploads/ Gates-How-Many-People-LGBT-Apr-2011.pdf [https://perma.cc/RH86-7YG9].

25. *See, e.g.*, Denton Callander et al., *'Not Everyone's Gonna Like Me': Accounting for Race and Racism in Sex and Dating Web Services for Gay and Bisexual Men*, 16 ETHNICITIES 3, 4 (2016); Matthew Rafalow et al., *Racialized Femininity and Masculinity in the Preferences of Online Same-Sex Daters*, 4 SOC. CURRENTS 306, 306 (2017); Robinson, *supra* note 2, at 2799–800, 2808–19.

26. Callander et al., *supra* note 25, at 3. We use "racial preferences" to describe all predispositions for a particular race, and "sexual racism" to focus on a subset of preferences that are driven by prejudice. We treat racial preferences as presumptively suspect, but we do

As an example of sexual racism, consider the theme on the male hookup app Grindr of comparing men of color to food. Asian men are "rice," blacks are "chocolate," and Latinos are "spice."[27] According to this objectifying logic, a preference for or against a particular race is no more significant or harmful than favoring vanilla ice cream over chocolate.

Studies of gay men have indicated that men in online dating and sexual partner seeking contexts express desire for white and Latino partners more frequently than black and Asian-identified men.[28] One challenge to studying sexual racism is that, although men who seek partners online appear to be more vocal about their racial preferences than people interacting offline, studies suggest that most white men, irrespective of sexuality, do not state racial preferences.[29] A further complication is that some studies suggest that men of color may be more likely than whites to mention race in their profiles.[30] However, this does not mean that most white men lack racial preferences relative to men of color. Because the majority of potential partners are white, white men may have the luxury of not thinking about race when they write their profiles.[31] Men of color, by contrast, may be more cognizant of how race may impinge their romantic opportunities and thus directly address race. In a study by Voon Chin Phua and Gayle Kaufman, black men were the most likely to mention race inclusively and in nondiscriminatory ways (e.g., "all races welcome").[32] Overall, Phua and Kaufman conclude that their data indicate that minorities' racial preferences correspond to the "racial hierarchy."[33] "Most advertisers prefer either their own race or Whites, and [non-blacks] least prefer Blacks, regardless of sexual orientation."[34]

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not extend that presumption to sex-based preferences, such as a man who prefers men. Our concern with racial preferences is that they may perpetuate racial subordination by, among other things, limiting relationship possibilities for people of color. In our view, gay men, who make up about 1 percent of the population, *see* GATES, *supra* note 24, at 1, do not contribute to patriarchy simply by refusing to date women. We plan to engage sex- and gender-based preferences within the LGBT community more fully in future work arising from the LGBT Relationships and Well-Being study.

27. *See generally Douchebags of Grindr*, TUMBLR, https://www.tumblr.com/tagged/douchebags-of-grindr [https://perma.cc/BX92-U6V2] (last visited Apr. 13, 2018).

28. *See, e.g.*, Rafalow et al., *supra* note 25, at 313; Glenn T. Tsunokai et al., *Online Dating Preferences of Asian Americans*, 31 J. SOC. & PERS. RELATIONSHIPS 796, 808 (2014); Jaclyn M. White et al., *Race-Based Sexual Preferences in a Sample of Online Profiles of Urban Men Seeking Sex with Men*, 91 J. URB. HEALTH 768, 771 (2014).

29. Voon Chin Phua & Gayle Kaufman, *The Crossroads of Race and Sexuality: Date Selection Among Men in Internet "Personal" Ads*, 24 J. FAM. ISSUES 981, 988–89, 991 (2003); Robinson, *supra* note 2, at 2811–12. Some apps and websites allow users to filter profiles to show only people of a particular race. *See* Emens, *supra* note 2, at 1322. Thus, even someone who does not mention race in his profile might use race to screen profiles.

30. Denton Callander et al., *Just a Preference: Racialised Language in the Sex-Seeking Profiles of Gay and Bisexual Men*, 14 CULTURE HEALTH & SEXUALITY 1049, 1057 (2012).

31. *Cf.* Barbara J. Flagg, *"Was Blind, but Now I See": White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 969–73 (1993) (stating that "the white person has an everyday option not to think of herself in racial terms at all").

32. *See* Phua & Kaufman, *supra* note 29, at 984.

33. *Id.* at 991.

34. *Id.*

Some studies have directly examined online interactions between people of different races to avoid the limitations of relying on profile text as evidence of racial preferences.[35] Further, some of these studies broaden the frame to compare racial preferences among people of various sexual orientations.[36] Jennifer Lundquist and Ken-Hou Lin's comparative study of white same-sex and different-sex daters examined user data from one of the most widely used dating websites. They analyzed dyadic interactions in daters sending and responding to messages from other users of the same or different race or ethnicity.[37] They found that male same-sex daters were less likely to send and respond to messages from users of other races or ethnicities than female same-sex daters and male different-sex daters (but not female different-sex daters).[38] This study confirms previous findings from research demonstrating that although gay men and lesbians are more likely to report willingness to date someone of a different race or ethnicity than heterosexuals, this difference may be mainly driven by a higher willingness to date someone of a different race or ethnicity among lesbians than gay men.[39] In the Phua and Kaufman study, white gay men were nearly five times as likely as straight men to state that they would date only white men.[40] Further, 3 percent of straight Asian men said they would date "Whites only" compared to 31 percent of gay Asian men.[41] Five percent of straight black men said "Whites only," compared to 19 percent of gay black men.[42] These findings suggest that something distinctive may be happening in gay male communities—that is, something that does not merely mimic the racial patterns in the broader society. Although as sexual minorities they face constrained options for sexual and romantic partnering, white gay men appear more likely to prefer whiteness than both white heterosexual men and white lesbians. And gay men of color may contribute to this pattern by prioritizing whiteness more than lesbians of color and heterosexual men of color.

When examining within-group variation partnership patterns among same-sex couples, studies have demonstrated high degrees of racial homophily (i.e., relationships where partners share the same race or ethnicity) among whites in same-sex relationships. Using the 2010 U.S. census data, Angeliki Kastanis and Bianca Wilson demonstrated that 79 percent of white individuals in same-sex relationships were partnered with another white person (followed by 54 percent of African American individuals in same-race

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35. *See, e.g.*, Callander et al., *supra* note 30, at 1051.

36. *See, e.g.*, Lundquist & Lin, *supra* note 23, at 1428–30; Tsunokai et al., *supra* note 28, at 801–03.

37. Lundquist & Lin, *supra* note 23, at 1430–32.

38. *Id.* at 1438.

39. *Id.* at 1441 (citing Phua & Kaufman, *supra* note 29).

40. Three percent of white straight men said "Whites only" compared with 14 percent of white gay men. *See* Phua & Kaufman, *supra* note 29, at 988.

41. *Id.*; Tsunokai et al., *supra* note 28, at 808 ("Consistent with [Phua and Kaufman], our analyses indicate that Asian females and gay males are more willing to date Whites than their heterosexual male counterparts.").

42. Phua & Kaufman, *supra* note 29, at 988.

partnerships, 37 percent Latino/a, 20 percent Asian and Pacific Islander, and 12 percent among American Indian and Alaskan Natives).[43] Similar findings have been shown in convenience samples of gay and bisexual men. For example, one study indicated high levels of racial homophily in male same-sex relationships, with white men evidencing the highest rates of racial homophily.[44] Thus, sexual racism may manifest not only in preferences for same-race sexual and dating partners expressed on websites and apps known for hookups and casual dating but also in the formation of committed long-term partnerships, and it may be especially pronounced among white men.

Relatedly, it is important to understand that sexual racism does not exist simply as a categorical exclusion, such as "no blacks or Asians," but may permeate long-term relationships. For instance, a man of color may be deemed desirable only insofar as he adheres to sexualized racial stereotypes. Studies suggest that gay men of various races use race as a proxy to label a man as a "top" or a "bottom."[45] Black men are expected to embody the insertive or "top" role (which is associated with masculinity) while Asian men are expected to assume the receptive or "bottom" role (which is regarded as relatively feminine).[46] White men, by contrast, are permitted to assume the role of their choice—top, bottom, or versatile—without being constrained by racial stereotypes.[47] The literature suggests that race and ethnicity function to shrink or expand the scope of one's sexual liberty. A study of men in New York City found that race did not correlate with sexual position preferences; that is, black men were no more likely to identify as tops than men of other races, and Asian men were no more likely to identify as bottoms.[48]

Despite this disconnect between racial stereotypes and actual sex-role preferences, many people resist thinking of romantic preferences as a social

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43. ANGELIKI KASTANIS & BIANCA D.M. WILSON, WILLIAMS INST., RACE/ETHNICITY, GENDER AND SOCIOECONOMIC WELLBEING OF INDIVIDUALS IN SAME-SEX COUPLES 2 (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census-Compare-Feb-2014.pdf [https://perma.cc/5U5P-RSZC].

44. *See, e.g.*, Christian Grov et al., *Challenging Race-Based Stereotypes About Gay and Bisexual Men's Sexual Behavior and Perceived Penis Size and Size Satisfaction*, 12 SEXUALITY RES. & SOC. POL'Y 224, 231–32 (2015).

45. *See* David J. Lick & Kerri L. Johnson, *Intersecting Race and Gender Cues Are Associated with Perceptions of Gay Men's Preferred Sexual Roles*, 44 ARCHIVES SEXUAL BEHAV. 1471, 1479 (2015); Trevon D. Logan, *Personal Characteristics, Sexual Behaviors, and Male Sex Work: A Quantitative Approach*, 75 AM. SOC. REV. 679, 696 (2010) (surveying sex-worker ads and prices and finding that black men who identify as tops enjoy the "highest premium" and black bottoms incur the "largest penalty" in the entire study—nearly 30 percent); Patrick A. Wilson et al., *Race-Based Sexual Stereotyping and Sexual Partnering Among Men Who Use the Internet to Identify Other Men for Bareback Sex*, 46 J. SEX RES. 399, 406–07 (2009); *see also* Phillip Atiba Goff et al., *"Ain't I a Woman?": Towards an Intersectional Approach to Person Perception and Group-Based Harms*, 59 SEX ROLES 392, 396, 400–01 (2008) (finding that white viewers rated black faces as more masculine than similar white faces).

46. Lick & Johnson, *supra* note 45, at 1479.

47. *Id.*

48. Grov et al., *supra* note 44, at 231–32. This study also found that men of color were not more likely than white men to have a high number of sexual partners or practice unprotected sex. *Id.* at 229.

justice issue.[49] They tend to think of romance and sexuality as a "personal" issue that is disconnected from broader questions of racial and LGBT justice. Some have tried to minimize sexual racism by comparing a racial preference to a preference for a particular height, body type, or hair color.[50] However, some research has demonstrated associations between sexual racism and general measures of multiculturalism and racial discrimination, thus undermining a benign explanation.[51] Indeed, men of color often report experiencing sexual racism online and in social spaces such as nightclubs and describe this as a source of considerable minority stress.[52] Some report altering the content of their self-portrayals in the shadow of racialized expectations in order to take advantage of, or rebut, sexualized racial stereotypes as they search for suitable potential partners.[53] We explore the individual impact of sexual racism on men of color in the following Part.

II. RACIALIZED "LESSONS IN BEING GAY"

How do gay and bisexual men come to see race as shaping their sexual desire? We begin to elaborate a theory of "lessons in being gay" to unpack the socialization process that perpetuates sexual racism.[54] In *Why I Hate Abercrombie & Fitch: Essays on Race and Sexuality*, Dwight McBride, a black gay man, recounts how white men repeatedly framed him in racial terms, giving the example of a man at a nightclub who told McBride that he and his friends were "out looking for black guys tonight."[55] McBride lamented how the initial sense of sexual liberation that he experienced in West Hollywood evanesced: "That same gay world was now beginning to teach me some important lessons . . . about my value in that world and the ways in which race and racism would have congress in even my most intimate of negotiations within it."[56] During the course of the LGBT Relationships

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49. *See* Jesus Gregorio Smith, *"It Can't Possibly Be Racism!": The White Racial Frame and Resistance to Sexual Racism*, *in* THE PSYCHIC LIFE OF RACISM IN GAY MEN'S COMMUNITIES, *supra* note 7, at 105, 105.

50. *See, e.g.*, *id.*

51. Callander et al., *supra* note 2, at 1995 .

52. Jesus Smith, *Getting Off Online: Race, Gender, and Sexuality in Cyberspace*, *in* ILLUMINATING HOW IDENTITIES, STEREOTYPES AND INEQUALITIES MATTER THROUGH GENDER STUDIES 109, 119 (2014).

53. *Id.* at 116, 118.

54. *See, e.g.*, Regina Kunzel, *Lessons in Being Gay: Queer Encounters in Gay and Lesbian Prison Activism*, 100 RADICAL HIST. REV. 11 (2008); Russell K. Robinson, *Masculinity as Prison: Sexual Identity, Race, and Incarceration*, 99 CALIF. L. REV. 1309, 1314 (2011); Russell K. Robinson & David M. Frost, *The Afterlife of Homophobia*, 80 ARIZ. L. REV. (forthcoming 2018). We offer this theory as one of what are likely several factors that contribute to racial preferences in the LGBT community. Another question, which requires further study, is whether gay men, and particularly white gay men, are more inclined to seek high social status and assimilation than lesbians. If this is true, the preference for a white partner may represent an effort to retain or obtain as much white male privilege as possible.

55. DWIGHT MCBRIDE, WHY I HATE ABERCROMBIE & FITCH: ESSAYS ON RACE AND SEXUALITY 119 (2005).

56. *Id.* at 120. *See generally* Chong-suk Han et al., *West Hollywood Is Not That Big on Anything but White People: Constructing "Gay Men of Color,"* 58 SOC. Q. 721 (2017).

and Well-Being study,[57] several gay and bisexual men described how sexual racism impinged upon their understanding of their sexual liberty. For example, Kevin is an Asian-American man in his twenties, lives in San Francisco, and self-identifies as a bottom and as more on the feminine end of the gender spectrum.[58] Kevin recounted learning his value in the gay community by perusing ads for casual sex on Craiglist when he was a teenager:

> There were like multiple barriers and, like, disparaging/really racist disclaimers that were obstacles for my meeting people initially. Even the title of the ad would say 'interested in this, not Asians' [or] . . . 'not interested in femmes or Asians.' In order to obviate those barriers, I looked for search terms that were just Asian, and so I would get a lot of people who were only interested in Asians for deplorable reasons . . . assumptions about how I would treat them, how I would service them, how I was just more of a receptacle and my pleasure wasn't taken into account; I was being used for their [pleasure].[59]

Kevin recalled that the "vast majority" of Craiglist ads either expressed disinterest or a fetishized interest in Asian men. Given these limitations, Kevin hooked up mainly with men who had a fetish for Asians.[60] These experiences troubled him because the men's homes were often decorated with "Asian paraphernalia," such as movie posters with Asian themes.[61] They were "props on the set, [and] I kinda felt that I was in alignment with these themes."[62] Kevin said that these men tended to treat him as a "sperm receptacle."[63] Their attitude toward him was as follows:

> You're going to turn over and I'm going to f--- you. . . . This is what I'm going to do to you, and you're going to take it. You're kinda bottom of the barrel; what I'm going to do to you, you're going to like it, because you don't have any other choices.[64]

Recently, Kevin has become more critical of his preference for whiteness and is trying to date men of color as well as white men.[65] In reflecting on his sexual choices, he noted that his family seemed to value his association with white partners.[66] At one point, his mother even warned him not to break up with a wealthy white partner by stating: "Well, at least he's not black!"[67] Kevin's story offers a glimpse into how broader social forces from heterosexual people, including one's family of origin, may intersect with

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57. *LGBT Relationships*, BERKELEY L., https://www.law.berkeley.edu/lgbtrelationships/ [https://perma.cc/RL6K-EDQS] (last visited Apr. 13, 2018).
58. Interview with "Kevin" (Dec. 3, 2016).
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*

racial norms in the gay community to pressure one into certain roles and relationships.[68]

Wendell, a black New Yorker in his thirties, described more subtle pressure to conform to black stereotypes.[69] Wendell, who identifies as a top, said that several white and Latino partners encouraged him to perform an aggressive role that is in tension with how he sees himself.[70] Speaking of one white partner, Wendell stated:

> He always wants me to be really rough [sexually] . . . and it causes me to scratch my head sometimes. Whenever I'm having sex, I'm constantly checking in [to see if he's in pain]. And he's like "just f--- the hell out of me. Don't ask me; just f--- me." Which we can do, but I just don't feel comfortable using him . . . [or] that I should be that hypersexual, really aggressive male.[71]

Wendell also spoke about how, growing up in the black community, he was regarded as soft and uppity.[72] Yet when Wendell began dating nonblack men, they regarded him as aggressive.[73] Speaking of these nonblack sexual partners, Wendell said: "That's completely them putting it on me."[74] Unlike Kevin, Wendell experienced conflict between how he was perceived in a mostly straight community of color and the mostly white, gay community.[75]

These interviews contribute nuance about intersectional identities that is rarely visible in the literature and which tends to focus on outright exclusion of men of certain races or, less frequently, using race to channel them into performing as a top or bottom. Wendell firmly identifies as a top, and Kevin clearly identifies as a bottom. But Kevin resented white men assuming that he would acquiesce to a particular sexual role—the submissive, abject bottom—because of his race.[76] Similarly, Wendell was flummoxed by nonblack men's demand that he embody an aggressive, angry black top, which is not how he would prefer to perform the top role. These stories show how Kevin's and Wendell's pursuit of sexual liberty was interrupted by their partners' conceptions of racial stereotypes as integral to their sexual pleasure.

III. UNDERSTANDING RACIAL MISEDUCATION: A RESEARCH AGENDA

The juxtaposition of the growing body of research on sexual racism, particularly in gay and bisexual male communities, with the narratives we are hearing in the LGBT Relationships and Well-Being project, points to some

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68. *Id.*
69. Interview with "Wendell" (Jan. 29, 2017).
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.*
76. Trevor Hoppe, *Circuits of Power, Circuits of Pleasure: Sexual Scripting in Gay Men's Bottom Narratives*, 14 SEXUALITIES 193, 199, 211 (2011) (finding differences among gay men who identify as bottoms in terms of how much power the bottom wields).

pressing directions for future research on this topic.[77]   Why do gay and
bisexual men appear to have stronger preferences for whiteness than lesbian
and bisexual women? Why do gay and bisexual men—both those who are
white and those of color—appear to desire white partners more than their
heterosexual counterparts? We suggest that mainstream gay male culture
may drive these disparities. A cultural explanation may explain why
cisgender lesbian/bisexual women and transgender people seem less likely to
practice sexual racism, at least in the overt forms that we see in hookup apps.
Online dating and hookup apps play a more marginal role in female and
transgender communities and, historically, most gay bars have been reserved
for cisgender men.[78]   In short, the gender segregation common in LGBT
communities[79] may help explain the differences in expressions of sexual
racism.[80]   Through exposure to mainstream gay culture, such as apps, media,
nightlife venues, and pornography, gay and bisexual men may learn that the
gay community installs young, athletic white men as the central figure of
desire.[81]   Moreover, they may learn that men of color are desired only to the
extent that they fulfill a white man's racialized desire.[82]   Men who defy these

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77. We envision this research spanning multiple disciplines, including psychology, public
health, sociology, and law.

78*. See* Chelsea Edgar, *This Instagram Account Is Helping Queer Women Fall in Love*,
BUZZFEED (Apr. 5, 2018, 10:31 AM), https://www.buzzfeed.com/chelseaedgar/herstory-
personals-instagram-lesbian-queer-women-online [https://perma.cc/G4K2-GBWC].

79*. See, e.g.*, Robinson, *supra* note 2, at 2802.

80. This is not to romanticize female relationships as race-neutral or antiracist. Recent
research suggests that white women seeking partners online are more likely to prefer women
without children, which may have a disparate impact on black and Latina women in the dating
pool. Matthew H. Rafalow & Jessica M. Kizer, *Mommy Markets: Racial Differences in
Lesbians' Dating Preferences for Women with Children*, J. LESBIAN STUD., Nov. 2017, at 1,
1–2. For a critique of LGBT preferences for a "biological model of parenthood," see generally
Michael Boucai, *Is Assisted Procreation an LGBT Right?*, 2016 WIS. L. REV. 1065. We need
more research to detect additional subtle ways in which race may influence female and
transgender relationships. Our ongoing study includes a substantial number of women,
transgender, and gender nonbinary subjects and is exploring how race functions in these
relationships. Our initial results are consistent with the general literature in suggesting that
racial preferences and stigma are more prevalent among gay men.

81. *See, e.g.*, Wilson et al., *supra* note 45, at 408.

82. *Id.* at 409 ("[I]t is through race-based sexual stereotyping that men of particular racial
groups become desirable sexual partners."). One prevalent manifestation of sexual racism is
the assumption that all black men are extremely well endowed, which is associated with
hypersexuality and sexual dangerousness. *See, e.g.*, *id.* (finding that white men expect even
black men who clearly identify as a bottom in their profile to be a "big-dick Black top"); *see
also* Niels Teunis, *Sexual Objectification and the Construction of Whiteness in the Gay Male
Community*, 9 CULTURE HEALTH & SEXUALITY 263, 267–68 (2007). Gay pornography often
trades on this stereotype by referring to the "big black cock." No matter how large a white
man's penis is, he is hardly ever described as having a "big white cock." A scene in the ABC
show *How to Get Away with Murder* featured the lead white gay character engaging in a
threesome with a black man and a Latino man. When the black man drops his underwear, the
camera zooms in on the white man's reaction. *How to Get Away with Murder: Don't Tell
Annalise* (ABC television broadcast Oct. 13, 2016). The mainstream black comedy *Girls Trip*
was similarly marketed with an image of the four black female leads' slack-jawed response to
a dark-skinned black man standing in front of them wearing form-fitting underwear. *See Girls
Trip*, IMP AWARDS, http://www.impawards.com/2017/girls_trip.html [https://perma.cc/
PSG4-PV8C] (last visited Apr. 13, 2018). These latter examples are reminders that men may
absorb racial stereotypes not only from gay communities but also from the broader culture.

stereotypes (e.g., the black bottom and Asian top) simply have no role to play in the community.[83] Scholars could test this theory by examining the degree to which immersion in white-centric aspects of gay culture is associated with endorsement of, and adherence to, these racial and sexual stereotypes. Men who are newly out, or not out at all, and men who have a critical perspective on mainstream gay norms might be more likely to recognize these "lessons in being gay" as stereotypes and see men of color as more appealing partners.

In addition, we need to know more about how gay and bisexual men of color perceive, negotiate, resist, and overcome sexual racism. Thus far, research has focused mainly on the perpetration of sexual racism, with few studies examining the experience of sexual racism from the "target's perspective."[84] Kevin and Wendell give us some formative insight into the need to better understand these processes. As many scholars have demonstrated, LGBT community spaces are too often constructed around the needs and desires of white cisgender men.[85] We call for more research on how men of color experience and navigate these spaces, as well as how men of color find and form communities that support and facilitate sexual and relational connections that are not limited by sexual racism. How does someone like Kevin progress from playing a racialized role assigned by white men to questioning these power dynamics and becoming open to dating men of various races?[86] We might organize this research agenda from the "proximal" to "distal."

At the proximal or immediate level, more needs to be done to understand the potential impact that sexual racism can have on the well-being and relationship potentials of gay and bisexual men of color. For example, we do not yet know how socialization within the kinds of limiting sexual spaces described by Kevin and Wendell is internalized by gay and bisexual men of color. As we noted earlier, although race does not appear to correlate with sexual identity, black and Asian men in particular may face pressure to embody top and bottom roles, respectively. We need more research on role discrepancies—that is, disparities between such men's personal sexual desires and the desires that potential partners and a larger white-centric gay community expect them to express and perform. Based on scholarship on internalized stigma in other forms, if the prevailing forms of sexual racism are directed inward and applied to the self, sexual racism may contribute to

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83. *See* Teunis, *supra* note 82, at 270 ("All but one of the African American men spoken with report that they invariably are put in a top position when they have sex with white men. They often indicate that they are more versatile by preference or even bottoms, but such a role is seemingly not available to them.").

84. Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093, 1103–05 (2008); Janet K. Swim & Charles Stangor, *Introduction*, *in* PREJUDICE: THE TARGET'S PERSPECTIVE 1, 5 (Janet K. Swim & Charles Stangor eds., 1998). *But see* Han et al., *supra* note 56, at 712–23.

85. *See* Chong-suk Han, *They Don't Want to Cruise Your Type: Gay Men of Color and the Racial Politics of Exclusion*, 13 SOC. IDENTITIES 51, 52–56 (2007); David J. Malebranche et al., *Masculine Socialization and Sexual Risk Behaviors Among Black Men Who Have Sex with Men: A Qualitative Exploration*, 12 MEN & MASCULINITIES 90, 98–102 (2007); Teunis, *supra* note 82, at 268–70.

86. *See supra* notes 58–68 and accompanying text.

diminished self-worth and have further negative consequences for the psychological well-being of gay and bisexual men of color.[87] The research that we envision on exposure to mainstream gay culture would include men of color and determine whether one's distance from mainstream gay culture helps to explain the extent to which he prefers white partners and adheres to racialized roles.

Moreover, sexual racism may limit the relationship possibilities of gay and bisexual men of color. In light of the trend in which opportunities to find sexual and dating partners are migrating from physical to virtual venues in which sexual racism appears particularly prevalent,[88] gay and bisexual men of color may be less able to find relationship partners and pursue their central motives for intimacy and romantic relationship formation. Given that the ability to meaningfully pursue and achieve these kinds of "intimacy projects" is core to individual happiness, regardless of sexual orientation, gender, and race, the limiting potential of sexual racism likely extends beyond the relational domain to impact general mental health and psychological well-being.[89]

At the distal level, we need research that explores how gay and bisexual men of color contest and navigate sexual racism with their sexual partners or potential partners. For example, how do they manage the expectation of exposure to sexual racism in online spaces? Do they rely on social spaces, nightlife venues, and apps that cater to men of color?[90] To the extent that these racial minority venues contain fewer potential partners, what sorts of tradeoffs do they require some men to make in terms of outness, age, socioeconomic status, and other factors? Do some men of color acquiesce to racially demeaning relationships because they perceive no other options?

To the extent that men of color date and form relationships with white partners, how do gay communities (both white communities and communities of color) receive them? Given that racial homogamy (dating within one's race) remains the norm, especially among white men, do interracial couples experience less social support and connectedness than

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87. *See generally* Gregory M. Herek et al., *Internalized Stigma Among Sexual Minority Adults: Insights from a Social Psychological Perspective*, 56 J. COUNSELING PSYCHOL. 32 (2009).

88. In light of persistent residential segregation, one would expect online dating to create new possibilities for interaction. *See, e.g.*, Robinson, *supra* note 2, at 2791–93. However, sexual racism appears to cabin this potential, at least in the gay male community. The shift from dating and hookup websites that are not strictly tied to geography to location-based apps may reinstate the segregated physical boundaries of many cities.

89. David M. Frost & Allen J. LeBlanc, *Nonevent Stress Contributes to Mental Health Disparities Based on Sexual Orientation: Evidence from a Personal Projects Analysis*, 84 AM. J. ORTHOPSYCHIATRY 557, 558–59 (2014); David M. Frost, *Similarities and Differences in the Pursuit of Intimacy Among Sexual Minority and Heterosexual Individuals: A Personal Projects Analysis*, 67 J. SOC. ISSUES 282, 286–88, 294 (2011).

90. Of course, focusing on men of color does not eliminate concerns about racial hierarchy because men in these venues may prefer Latinos to black and Asian men. *See supra* note 28 and accompanying text. Some research on "gay men of color" does not sufficiently attend to hierarchy among men of color. *See generally* Han et al., *supra* note 56.

same-race couples?[91] Do people in gay communities often assume that interracial relationships are driven by fetish or objectification and thus inferior to same-race partnering? How do men who do not conceive of their relationships in such stereotypical terms protect themselves from such stereotypes or seek to rebut them? How might sexual racism shape gay and bisexual men's sense of sexual and racial identity? In particular, what role does sexual racism play in alienating men of color from gay identity and the gay community?[92] Finally, as suggested by Kevin's narrative,[93] what role does one's family of origin play in shaping a gay or bisexual man's racial preferences? For example, do some men (whether white or of color) experience pressure to choose a same-race partner to please their families?[94] Or does coming out as gay or bisexual free some men to cross race lines and mean that they face less judgment from their families?

For the reasons mentioned above, we contend that sexual racism is a form of racism and prejudice rather than just a "personal preference." It harms gay and bisexual men of color, and white men who choose to partner with them, and it may exacerbate their experiences of minority stress.[95] In other words, the heightened social stress that all sexual minorities experience relative to their heterosexual peers, due to the continued stigmatization of nonheterosexual sexual behavior and desire, may be further compounded by the racialized stigmatization stemming from sexual racism within the LGBT community perpetrated primarily against gay and bisexual men of color. These intersecting forms of minority stress, coming from both outside of and within the LGBT community, may perpetuate what some have called a "syndemic" of negative social influences that contribute to the oft-observed elevated rates of sexual and mental health problems facing gay and bisexual black and Latino men.[96]

In conducting this research, scholars should take into account structural constraints on gay and bisexual men's romantic and sexual opportunities.[97] As we have written elsewhere, mainstream culture tends to erase sex between

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91. *Cf.* David M. Frost et al., *Social Support Networks Among Diverse Sexual Minority Populations*, 86 AM. J. ORTHOPSYCHIATRY 91, 95–98 (2016) (finding that sexual minorities tend to rely on people of the same race and sexual orientation for everyday support and that LGB people of color reported having smaller social-support networks).

92. *See* Han et al., *supra* note 56, at 728–29.

93. *See supra* notes 58–68 and accompanying text.

94. Studies suggest that family scrutiny and expectations are at least a partial explanation for heterosexual white women expressing stronger preferences than heterosexual white men for a same-race partner. *See, e.g.*, Melissa R. Herman & Mary E. Campbell, *I Wouldn't, but You Can: Attitudes Toward Interracial Relationships*, 41 SOC. SCI. RES. 343, 346–47 (2012).

95. *See* Ilan H. Meyer et al., *Social Patterning of Stress and Coping: Does Disadvantaged Social Status Confer More Stress and Fewer Coping Resources?*, 67 SOC. SCI. & MED. 368, 368–71 (2008).

96. Perry N. Halkitis et al., *Measurement Model Exploring a Syndemic in Emerging Adult Gay and Bisexual Men*, 17 AIDS BEHAV. 662, 663–64 (2013); Patrick A. Wilson et al., *Using Syndemic Theory to Understand Vulnerability to HIV Infection Among Black and Latino Men in New York City*, 91 J. URB. HEALTH 983, 985–89 (2014).

97. *See* Emens, *supra* note 2, at 1385–400. *See generally* Robinson, *supra* note 2 (calling for greater study of structural influences on romantic preferences).

men.[98] Even when gay people are visible in mainstream media, they tend to be desexualized. Many sexual minority men struggle in determining whether men that they meet in public life are in fact interested in men, in part because of the violence and discrimination that can follow from making a potentially unwelcome advance.[99] The resulting isolation in the general community may pressure sexual minority men to turn to gay apps, bars, and pornography to connect with their sexuality and find experiences that tend to be elusive in their daily lives. In rural spaces, apps such as Grindr may be the only infrastructure for men to connect with men. Yet, as we have documented, gay cultural and networking spaces may entail exposure to sexual racism and thus be harmful to men of color's health and well-being.[100] Hence, such men face a double bind.

We end this Part with a cautionary note. Like most research in this field, we have focused on the perpetuation of discrimination, and we have also called for additional research on the effects of sexual racism on targets. In these situations, white partners are either excluding people of color or objectifying them. Focusing on sexual racism as such may obscure the many healthy, loving interracial relationships that resist and defy racist norms. We know of no research comparing the prevalence of sexual racism to that of healthy interracial relationships. But we call for researchers to explore expanding their research paradigms to account for positive and redemptive interracial experiences.[101] For example, researchers might ask people of color not only "What types of discrimination have you faced in dating?" but also "Have you had positive interracial experiences? What were they like?" This expansion of the paradigm would produce a more holistic depiction of the full spectrum of interracial relationships, including the infuriating and the inspiring.

CONCLUSION

We began by juxtaposing the LGBT movement's reliance on *Loving* to advance LGBT rights and within-group practices that perpetuate sexual racism. We expect that some readers (perhaps especially gay white men who strongly identify with mainstream gay culture) will find this connection threatening and worry that it will undermine LGBT rights.[102] We think that

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98. *See* Robinson & Frost, *supra* note 54.

99. *See, e.g.*, Kavita B. Ramakrishnan, *Inconsistent Legal Treatment of Unwanted Sexual Advances: A Study of the Homosexual Advance Defense, Street Harassment, and Sexual Harassment in the Workplace*, 26 BERKELEY J. GENDER L. & JUST. 291 (2011). As documented by several case studies in Ramakrishnan's article, even men who desire men may experience internalized conflict and respond with violence, and some courts treat such a response to a "homosexual advance" as justifiable. *See id.* at 305–11.

100. *See supra* notes 54–57 and accompanying text.

101. The recent engagement of Prince Harry and Meghan Markle, who is biracial, elicited an outpouring of online love from many, including interracial couples and black women, who saw their love as sending a powerful message of inclusion. *See, e.g.*, Javier Moreno, *Inspired by This Professor's Message, Interracial Couples from All Over Are Sharing Their Stories of Love*, BUZZFEED (Dec. 30 2017, 3:11 PM), https://www.buzzfeed.com/javiermoreno/a-professor-had-a-compelling-message-about-love-and [https://perma.cc/QP5E-SN4D].

102. *See* Teunis, *supra* note 82, at 267–73 (recounting others' objections).

such concerns are overstated as a legal matter and, more importantly, they would wall off vital lines of scholarly inquiry. The LGBT movement's success in securing marriage equality and eradicating sodomy laws does not mean that we should regard how individuals exercise these rights as an entirely private matter, insulated from scrutiny.[103] To the contrary, a genuine commitment to *Loving*—one of the rare Supreme Court opinions that explicitly condemns "White Supremacy"[104]—would require a critical examination of sexual racism. As Kevin's and Wendell's stories illustrate, what a white man perceives as his sexual liberty might be felt by his partner of color as a manifestation of sexual racism. To privilege the white man's freedom to discriminate would be to enshrine white gay men and their desires as the essence of LGBT identity and to tell men of color that they need to check their race-consciousness at the door when they enter gay communities. Regarding *Masterpiece Cakeshop*, we do not think the law should validate a baker's liberty to discriminate. By contrast, we think the sexual racism context requires a search for frameworks that preserve individual liberty while treating men of color as equal members of the community whose lives and relationship possibilities matter.

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103. By comparison, African American scholars continue to engage in a robust debate about the impact of race, gender, and class in determining access to marriage among African Americans, and this discourse rarely turns on legal constraints. *See, e.g.*, RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE? (2011); RANDALL KENNEDY, INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION (2003); R.A. Lenhardt, *Race, Dignity, and the Right to Marry*, 84 FORDHAM L. REV. 53 (2015); Melissa Murray, *Black People, White People, Red Herrings*, 111 MICH. L. REV. 977 (2013).

104. Loving v. Virginia, 388 U.S. 1, 11 (1967).