

THE DUTY TO MISCEGENATE

by

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A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
(Philosophy)
in The University of Michigan
2013

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DEDICATION

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27th March 1921 – 13th April 2013

ACKNOWLEDGEMENTS

I thank Elizabeth Secor Anderson.

I thank Stella Botchway & Mark Morris Bernard Green,

Linda Shultes, Molly Mahony, Sarah Buss, Anna Kirkland, & Peter Railton,

Lorrel Rose Coleman, Michael Silvera Hinds, Vanessa Coleman, Linda Amanda
Victoria Campbell, Ryan Eleseo Augustus Campbell, & Lydia Eleanor Campbell.

'If people of color are to "do" philosophy, philosophers must be willing to "do" people of color. When we give minorities' issues their due we dignify them as moral agents with morally and intellectually significant lives' (Allen-Castellitto 2000: 198).

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CHAPTER 1

Social stigmatisation: 'a social tyranny'

1.1.0. The chief mischief of the legal penalties

In his essay *On liberty*, in its second chapter, *On the liberty of thought and discussion*, John Stuart Mill tells us that

'[f]or a long time past, the chief mischief of the legal penalties is that they strengthen the social stigma. It is that stigma which is really effective, and so effective is it, that the profession of opinions which are under the ban of society is much less common in England, than is, in many other countries, the avowal of those which incur risk of judicial punishment'.

This string of words is the stimulus for the first section of this doctoral dissertation.

In this first section, I aim to answer the following question: What was 'the chief mischief of the legal penalties' against miscegenation? First, I shall define each element of this question, namely 'the chief mischief', 'miscegenation', and 'the legal penalties'. Second, I shall show how—both in the official *reasons for repeal* of those penalties and in the presumed *legacy of Loving v. Virginia* (i.e. in the presumed legacy of the case, in 1967, in which the Supreme Court of the United States (SCOTUS) launched that repeal)—the answer to the question has been taken to be

'discrimination'. Third, I shall argue that what Mill says, in the words I quoted in the previous paragraph, about 'legal penalties' enacted and enforced, by those who have legal power, against 'those who disown the beliefs they deem important', is *also* true of 'legal penalties' against miscegenation: their 'chief mischief' is, in fact, that they strengthened social stigmatisation.

1.1.1. Definitions

1.1.1.1. The chief mischief

For Mill, 'mischief' is a matter of 'do[ing] harm to', 'bring[ing] evil upon', and 'becom[ing] a burthen on' persons other than oneself (1859: 4.8). Mill thinks any action that amounts to 'mischief' is morally wrong, because it 'detract[s . . .] from the general sum of good' (1859: 4.8). According to Mill's utilitarian moral theory, 'pleasure is good', 'happiness is [. . .] pleasure', and 'actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness' (1861b: 2.2).

However, since a single action may be a 'mischief' in many different ways, 'the chief mischief' of any action will be that mischief, which 'would detract more from the general sum of good', than would any other mischief that results from the action. Mill offers at least two examples of what, in his opinion, is correctly described as 'the chief mischief'. First, in the opening paragraph of his essay *On the subjection of women*, Mill tells us that 'the principle which regulates the existing social relations between the two sexes—the legal subordination of one sex to the other—is wrong itself, and now one of the chief hindrances to human improvement' (1869: 1.1). Second, in the closing paragraph of his essay on *The negro question*, Mill denounces Thomas Carlyle's (1849) *Occasional discourse on the negro question* as a 'speech against the "rights of Negroes"' (1850: 1). Mill says that 'the owners of human flesh[. . .] will welcome such an auxiliary' as Carlyle, who 'by thus acting, [. . .]

has made himself an instrument of [. . .] "a true work of the devil". Mill says he 'hardly know[s] of an act by which one person could have done so much mischief as this may possibly do' (1850: 15).

Thus, Mill thinks that '[t]he subjection of women' (1869) and 'the matter of negro slavery' (1850: 15) each constitute a mischief that is correctly described as 'the chief mischief'. For this reason, Mill's concept of 'the chief mischief' recommends itself as a philosophical tool to launch an analysis of the injustice that besets persons who experience life at the intersection (Crenshaw 1989) of these two chief mischiefs: persons who are racialised-and-gendered-as-black-women.

1.1.1.2. Miscegenation

1.1.1.2.1. Neologism

According to Peggy Pascoe (2009: 13), in her *What comes naturally: Miscegenation law and the making of race in America*, '[b]etween 1864 and 1967, lawmakers and their supporters routinely called laws that banned interracial sex and marriage "anti-miscegenation" laws'. In addition to the decision of the SCOTUS, in *Loving*, in 1967, Pascoe refers to 1864— five years after Mill's publication of *On liberty*—when, in a satirical pamphlet, entitled *Miscegenation: The theory of the blending of the races, Applied to the American white man and the negro*, David Goodman Croly coined the new word that these 'lawmakers and their supporters' adopted. Croly (1864: ii) coined the noun 'miscegenation', by drawing upon 'the

Latin *Miscere*, to mix, and *Genus*, race, [. . .] to denote, the abstract idea of mixture of two or more races'. Similarly, Croly defined the verb 'to miscegenate' as 'to mingle persons of different race'.

In fact, Croly coined *two* neologisms. For, 'as the particular subject under discussion limits, in a certain view, the races that are to be intermingled', Croly coined a more specific neologism, 'to express the idea of the union of the white and black races'. The more specific neologism, 'Melaleukation' or 'Melamigleukation', is 'derived from two Greek words, viz.: *Melas* (μέλας), black; and *Leukos* (λευκός), white. The word *Mignumi* (μίγνυμι), to mix, is understood'. Croly's ultimate objective was to introduce, into public discourse, the more specific neologism. On 29th September 1864, the 'Author of "Miscegenation"' wrote anonymously to President Abraham Lincoln, enclosing a copy of the book, 'in the hope that, after you have perused it, you will graciously permit me to dedicate to you another work on a kindred subject, viz. "Melaleukation". In the first work I discuss the mingling of all races which go to form the human family; but my object in the new publication is to set forth the advantages of the blending of the white and black races on this continent'.

However, Croly's first work does exactly what he promised would be done in his second. Nor did Croly's second work ever appear. Yet, the more specific neologism was not adopted by 'lawmakers and their supporters'. We might be tempted to attribute this to the fact that, as Croly concedes, the more specific neologism is 'ill adapted for popular use', not least because of 'its difficulty of pronunciation'. Yet,

according to Vern L. Bullough and Bonnie Bullough, '[t]he survival of 'miscegenation' [as opposed to the alternative, more specific, neologism] undoubtedly owed much to [. . .] the confusion of the Latin prefixes [*sic*] *miscere* and *mis* (bad)' (1994: 395).

1.1.1.2.2. Typology

What type of 'mixture', 'mingl[ing]', or 'union' of 'the white and black races on this continent' did Croly, these 'lawmakers[,] and their supporters', most deem to be 'bad'? To answer this question, we must first establish what types of miscegenation there are. Distinguish *biological* from *relational* miscegenation; each comprises two varieties. Since only some, not all, heterosexual intercourse results in children, biological miscegenation might be either simply sexual or both sexual and procreative. By contrast, relational miscegenation might be vertical (and, likely, hierarchical) or horizontal (and, possibly, egalitarian). Vertical miscegenation includes cross-racial adoption, which is marked by parental authority and filial subordination; horizontal miscegenation includes cross-racial companionship, which is marked by the equal status of each companion.

miscegenation	biological	purely sexual
		procreatively sexual
	relational	vertical
		horizontal

Table 1. Miscegenation

There are two distinct strands of argument in *Miscegenation*, namely, an argument from 'equality' and an argument from 'superiority': 'The equality of the race is acknowledged far and wide. Its superiority in many of those characteristics which enter into the beau ideal of true manhood, is unquestionable' (1864: 48). This tension in Croly's text is evident from the very first paragraph, in which Croly gives two distinct refinements of 'the abstract idea of mixture of two or more races'.

On the one hand, his argument from 'superiority' begins from the premise that 'miscegenation' is 'the blending of the various races of men' (1864: 1). From this premise, Croly argues for the procreatively sexual 'blending of blood' (1864: 18). He argues '[t]hat the mingling of diverse races results in a positive benefit to the progeny. That in the millennial future, the most perfect and highest type of manhood will not be white or black, but brown, or colored, and that whoever helps to unite the various races of men, helps to make the human family the sooner realize its great destiny' (1864: 51–52).

On the other hand, his argument from 'equality' begins from the premise that 'miscegenation' is 'the practical recognition of the brotherhood of all the children of the common father' (1864: 1). On this horizontally relational view, miscegenation is 'the realization of the common brotherhood' (1864: 54); to miscegenate is to 'fraternize with the people of all nations' (1864: 1).

1.1.1.2.3. Fraternity

According to Véronique Munoz-Dardé, in her article *Fraternity and justice*, 'political philosophy is very much concerned with liberty and equality, but considerably less so with fraternity. Always somewhat eclipsed by the other two values, fraternity has undergone neither the formal treatment initially generated by Berlin's distinction between "positive" and "negative" liberty, nor the analytical effort to define the term similar to Williams', Nagel's, or Dworkin's approach to equality' (1999: 81). For this reason, it is startling that, as far as Croly is concerned, '[t]o free [the negroes] is to recognize their equality with the white man' (1864: 50); it is startling that Croly invites us to 'pray that [. . .] we stand with [this persecuted race]' on the broad and solid ground of justice, equality, and fraternity' (1864: 48). It is startling that, for Croly, freedom is fraternity.

However, the approach to fraternity taken by Croly differs from that taken by Munoz-Dardé. Like John Rawls, who dismissed 'ties of sentiment and feeling [. . .] between members of the wider society' as 'unrealistic', and who declared that 'fraternity [. . .] imposes a definite requirement on the basic structure of society' (1971: 106), Munoz-Dardé insists that her 'interpretation of fraternity is recommended as a moral perspective for political institutions, not as a principle citizens have to apply in every moment and moral decision of their life' (1999: 94). By contrast, Croly argues that 'we should recognize the great doctrine of human brotherhood, and that human brotherhood comprehend[s . . .] the provision for [the]

entrance [of 'the negro'] into those family relations which form the dearest and strongest ties that bind humanity together' (1864: 58).

In this debate, Mill sides with Croly. In his review of George Grote's *Plato and the other companions of Sokrates*, Mill says he thinks it is a 'fact that the idea and sentiment of virtue have their foundation not exclusively in the self-regarding, but also, and even more directly, in the social feelings'. Mill observes that this 'fact' is 'a truth first fully accepted by the Stoics, who have the glory of being the earliest thinkers who grounded the obligation of morals on the brotherhood, the *συγγένεια*, of the whole human race' (1866a: 55). Furthermore, in a letter—dated 7th December 1868—Mill assures John Candlish that he will 'not lose the feeling which [his] three years in Parl[iamen]t have given [him], of brotherhood in arms with those who are still there fighting the battles of advanced liberalism'. In another letter—dated 24th June 1862—Mill employed the same phrase, to thank John Elliott Cairnes for writing *The slave power*: 'when I read anything you write, [. . .] I feel growing up in me, what I seldom have, the agreeable feeling of a brotherhood in arms. This feeling being one of the pleasantest which life has to give'. Not only is this feeling 'one of the pleasantest', it is also, politically speaking, one of the most powerful. That Mill thinks so is clear from an entry—dated 24th January 1854—in his *Diary*: 'If we suppose cultivated to the highest point the sentiments of fraternity with all our fellow beings, past, present, and to come, [. . .] this system of cultivation [. . .] would suffice both to alleviate and to guide human life'. Inadequate cultivation of 'the sentiments of fraternity' is what, Mill seems to think, constituted injustice 'in the Slave States of America' and 'among the feudal nobility'. In his essay on *Whewell's moral*

philosophy, Mill denounces the fact that 'the slavemasters and the nobles [. . .] felt themselves "bound" by a "tie of brotherhood" to the white men and to the nobility, and felt no such tie to the negroes and serfs' (1852: 51). This lack of a cross-racial 'feeling of a brotherhood in arms' is bad, thinks Mill, because, as he asserts, in his *Vindication of the French Revolution of February 1848, in reply to Lord Brougham and others*, it is one of the 'moral axioms' that 'every one of the living brotherhood of humankind has a moral claim to a place at the table provided by the collective exertions of the race' (1849: 73).

Croly puts Mill's belief that each person enjoys 'a moral claim to a place at the table' in terms of each person's fitness for fraternity. Croly observes that 'the influence of slavery must have been, in many instances, to degrade the negro far below his own standard in all the better attributes of man, and thus to render him unfit for marriage with the better classes' (1864: 52). Yet, despite this observation, Croly asserts that 'the negro[. . .] ha[s] all the qualifications which would fit him to be the companion of his white brother' (1864: 63). Whether 'the negro[']s' fitness for fraternity should be understood as 'his' fitness for 'marriage' or 'his' fitness for 'companion[ship]' is moot.

1.1.1.3. The legal penalties

Penalties are 'the dealings of society with the individual in the way of compulsion and control' (1869: 1.9). Penalties cause harm: Mill speaks in the same breath 'of pains and penalties' (1859: 1.10). Thus, an individual 'suffers these penalties' and 'may suffer very severe penalties at the hands of others' (1859: 4.5).

Mill distinguishes legal and social penalties. According to Mill's distinction, when society applies 'social penalties' to an individual (1859: 2.17), it is 'punishing him, [. . .] by general disapprobation' (1859: 1.11), and it uses 'the moral coercion of public opinion' (1859: 1.9). By contrast, when society applies 'legal penalties' to an individual, it is 'punishing him, by law' (1859: 1.11), and it uses 'the means [of] physical force' (1859: 1.9).

However, Mill's examples diverge from his distinction: they suggest a broader conception of what it is to be a legal penalty. Mill offers three examples of legal penalties: (a) that of being 'sentenced to twenty-one months' imprisonment', (b) that of being 'rejected as jurymen', and (c) that of being 'denied justice against a thief', of 'refusal of redress' (1859: 2.18). Only the first of these uses 'the means [of] physical force' (to restrain the human body). The latter two use the means of bureaucracy (to impede the physically free human body in its pursuit of its goals).

Similarly, in his decision in *Loving*, Justice Warren (1967: 4) identifies three examples of legal penalties that Virginia attached to cross-racial marriage: (a) imprisonment, (b) lack of legal recognition of one's status as 'wife' or 'husband', and (c) lack of recourse to legal remedies. Warren gives the name of 'penalty' only to the first: 'Section 20-59[... of the Virginia Code] defines the penalty for miscegenation: [. . .] confinement in the penitentiary for not less than one nor more than five years'. Indeed, 'Mildred Jeter, a Negro woman, and Richard Loving, a white man' had been 'sentenced to one year in jail'—a sentence which 'the trial judge [had] suspended [. .

.] for a period of 25 years on the condition that the Lovings leave the State and not return to Virginia together for 25 years' (1967: 2). This, indeed, used 'the means [of] physical force'. Yet, the latter two examples—rendering 'marriages [. . .] absolutely void without any decree of divorce'—each use the means of bureaucracy. The virtue of Mill's broader conception of what it is to be a legal penalty means that Mill would also consider these to be 'the legal penalties' against miscegenation.

Warren tells us that legal '[p]enalties for miscegenation arose as an incident to slavery and have been common in Virginia since the colonial period' (1967: 6). European enslavement of persons racialised-as-negro began with the kidnapping, by the Portuguese explorers Antão Gonçalves and Nuno Tristão, of ten Africans, near Cabo Branco, in 1441. European competitive colonisation of the planet began with Christopher Columbus's arrival in the Americas, in 1492. In the 500-year-long period of negro slavery and planetary colonisation, almost all the competing European slaving nations—not just the British in Virginia—imposed legal penalties on cross-racial marriage between persons racialised-as-negro and persons racialised-as-white.

However, very few of these imperial jurisdictions conjoined those legal penalties with legal *prohibitions* against cross-racial marriage. Yet, according to Mill's definition of 'the legal penalties', a legal penalty need not be accompanied by a legal prohibition, but can, instead, be accompanied by a legal permission. This is an advantage of Mill's definition, because it correctly identifies as 'the legal penalties' against miscegenation many of the laws that nevertheless permitted cross-racial marriage between persons racialised-as-negro and persons racialised-as-white.

Indeed, most imperial jurisdictions conjoined legal penalties against cross-racial marriage with legal *permissions* to marry cross-racially. Sometimes, cross-racial marriage was legally penalised by requiring that the parties to the marriage obtain official permission, before embarking upon it. At other times, cross-racial marriage, although legally permitted, was legally penalised, by conspicuously failing to extend to it a legal benefit that was enjoyed by marriages that were not cross-racial. For examples of such penalties conjoined with permissions in the British Empire (both in Australia and, before 1985, in South Africa), see Ellinghaus (2001: 209n2) and Badenhorst, Hendrickse, and Nowbath (1985: 6); for those in the Spanish Empire, see Stolcke (1989: 11); for those in the Portuguese Empire, see Boxer (1963: 98 & 121); and for those in the German Empire, see Aitken (2007: 167–168).

1.1.2. Discriminations

1.1.2.1. Reasons for repeal: Discrimination by the state

In his review, *Law of libel and liberty of the press*, Mill criticises '[Francis Ludlow] Holt's celebrated treatise on the Law of Libel' (1825a: 72). According to Mill, Holt (1812) had made the 'declaration, that nothing must be done tending to lessen the reverence for the laws: that to whatever degree a law may be bad, its badness shall not be suffered to be exposed, nor any representation to be made which shall convince the people of the necessity for its repeal'. Mill disagreed. Instead, Mill argued that, '[t]o obtain reform, you must point out defects' (1825a: 108). Indeed, Elizabeth S. Anderson, in her book *The imperative of integration*, argues that this principle constitutes a methodology: 'Nonideal theory begins with a diagnosis of the problems and complaints of our society and investigates how to overcome these problems' (2010: 6). We are interested in what is worthy of complaint, because the social phenomena it is worth our complaining about are the raw material of any philosophy that aims to respond adequately to our less than ideal social and political world. What 'badness', what 'defects', or what 'complaints' about the legal penalty against cross-racial marriage were officially 'point[ed] out' and, ultimately, 'convince[d] the people of the necessity for its repeal'?

Legal repeals are associated more with legal prohibitions, than with legal permissions. I have found no evidence to confirm that those imperial jurisdictions that conjoined legal penalties with legal permissions ever repealed those permissions.

For this reason, I focus on the repeals of legal penalties conjoined with legal prohibitions. I have found legal penalties conjoined with legal prohibitions only in French imperial jurisdictions (i.e. (1) in French Louisiana, (2) in Metropolitan France, and (3) in the Napoleonic Empire) and in British imperial jurisdictions (i.e. in South Africa and in what is now the USA).

French imperial jurisdictions, although they declared such legal penalties on at least three occasions—i.e. (1) in Article 6 of the *Code Noir* (1724), (2) in the *Arrêt du Conseil d'état du Roi concernant les mariages des noirs, mulâtres, ou autres gens de couleur, du 5 avril 1778*, and (3) in the *Dictionnaire général de police civile et judiciaire de l'empire français* (Léopold 1813)—executed the repeal of these legal penalties discreetly, without recording any official argument. For instance, the most explicit reference to the act of repeal that Jennifer Heuer (2009: 545), who conducted a thorough search of France's Archives Parlementaires, was able to uncover, was the following report, from 1819: 'Your committee, said M. Broglie, has ensured that the King's government has destroyed the effects of the ministerial circular which the petitioner is complaining about, and has sworn in the future to conform to existing laws that do not forbid such marriages, and, as a consequence, your committee invites you to return to the business of this meeting's agenda' (Archives Parlementaires 1873: 51, translation mine). Doubtless the motivation here was to ensure that no official responsibility was taken for the injustice of the legal penalties that were repealed. Yet, this practice renders it all the more morally confusing why these legal penalties were so bad or defective as to need repeal.

British imperial jurisdictions were more forthcoming. For instance, South Africa repealed its legal penalties with an official argument concluding that those legal penalties were not unjust! When F. W. de Klerk, then the Minister for Internal Affairs, introduced the Immorality and Prohibition of Mixed Marriages Amendment Act, 1985, to repeal the Prohibition of Mixed Marriages Act, 1949, he was acting on the recommendation of the *Report of the Joint Committee on the Prohibition of Mixed Marriages Act and Section 16 of the Immorality Act*. In that report, the Chairman of Joint Committee, Piet J. Badenhorst, offers three distinct 'grounds' for why his 'Committee [. . .] recommends that the Prohibition of Mixed Marriages Act, 1949, [. . .] be repealed': first, the Act 'cannot be justified on scriptural or other grounds'; second, 'since [the Act was] placed on the Statute Book, provision has been made for group ordering by way of the classification of the population into groups, the determination of own residential areas, the attendance of own educational institutions and the right to vote on a group basis, and these measures sufficiently ensure the continued social, educational and constitutional ordering of own communities'; and, third, the Act is 'of a discriminatory nature in that [it] do[es] not provide for equal treatment of the various population groups, but single[s] out one identifiable population group only' (Badenhorst, Hendrickse, & Nowbath 1985: 6).

The first ground is an assertion, rather than an argument. One wants to know what the 'scriptural or other' premises were that were found to be false. More importantly, the first ground is negative, rather than positive. One wants to know not why specific justifications of the Act failed, but what ground justified the Act's repeal. Badenhorst seems to offer this to us, in his third ground: South Africa's legal penalties

for cross-racial marriage are ripe for repeal because they are 'of a discriminatory nature'. This third argument echoes the official argument that was recorded some two decades earlier, by the SCOTUS, in the USA. We may reconstruct the argument of Warren's opinion, thus:

1. 'The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States' (1967: 10).
2. 'Virginia is [as of 1967] one of 16 States which prohibit and punish marriages on the basis of racial classifications' (1966: 6).
3. 'The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy' (1966: 11).
4. Legal 'measures designed to maintain White Supremacy' are 'official state sources of invidious racial discrimination'.

Therefore, from 2, 3, and 4,

5. It is 'invidious racial discrimination which justifies this classification' (1966: 11).

Therefore, from 1 and 5,

6. '[T]hese statutes cannot stand consistently with the Fourteenth Amendment' (1966: 2).

Virginia's legal penalties for cross-racial marriage were ripe for repeal because they constituted 'official state sources of invidious racial discrimination'.

However, this is where any similarity between South Africa and the SCOTUS ends. For, they interpret 'discrimination' in contrasting ways. Whereas Badenhorst found that South Africa's legal penalties 'do not provide for equal treatment of the various population *groups*', the SCOTUS found that Virginia's legal penalties 'deny to [. . .] *person[s]* within [their] jurisdiction the equal protection of the laws' (italicisation mine). Furthermore, whereas Badenhorst drew his conclusion about lack of 'equal treatment' on the basis that South Africa's legal penalties 'single out one identifiable population group only', the SCOTUS explicitly rejected this argument:

'Appellants point out that the State's concern in these statutes, as expressed in the words of the 1924 Act's title, "An Act to Preserve Racial Integrity," extends only to the integrity of the white race. While Virginia prohibits whites from marrying any nonwhite (subject to the exception for the descendants of Pocahontas), Negroes, Orientals, and any other racial class may intermarry without statutory interference. Appellants contend that this distinction renders Virginia's miscegenation statutes arbitrary and unreasonable *even assuming the constitutional validity of an official purpose to preserve "racial integrity."* We need not reach this contention because we find the racial classifications in these statutes repugnant to the Fourteenth Amendment, even assuming an even-handed state purpose to protect the "integrity" of all races' (Warren 1967: 11–12n11, italics mine).

The SCOTUS rejected this argument, because it rejected what this argument conceded: 'the constitutional validity of an official purpose to preserve "racial integrity"'. To have conceded this, would have been to have validated the way 'White Supremacy' sustains its supremacy: by '[p]reserv[ing . . .] the integrity of the white race'. Notably, Badenhorst embraced this argument, because he embraced what this

argument conceded: 'the continued social, educational and constitutional ordering of own communities'—which is euphemism for the continued 'White Supremacy' of South African Apartheid. Thus, Badenhorst undercut the argument of his third ground with the argument of his second ground and his official report equivocated between two reasons for repealing South Africa's legal penalties: the injustice of those penalties, and their redundancy, given the effectiveness of other unjust legal penalties. The fact that South Africa interpreted 'discrimination' so very differently from the SCOTUS, whose eighteen-year-old reason for repeal was—internationally—the only precedent it had to work from, should give us pause for thought. If these two jurisdictions could not agree on what 'the chief mischief' was, yet could agree that it was called 'discrimination', should we not be suspect of whatever goes, in their arguments, by the name of 'discrimination'? Even if we are not suspicious, there is good reason for thinking that discrimination by the state was not 'the chief mischief of the legal penalties' against miscegenation.

1.1.2.2. Legacy of *Loving*: Discrimination by persons racialised-and-gendered-as-black-women

Ralph Richard Banks argues that repeal was not enough. Banks finds the legacy of Warren's repeal to be worthy both of note and of complaint. Nevertheless, like Warren, what Banks finds worthy of complaint is 'discrimination'—this time not by the state, but by persons racialised-and-gendered-as-black-women.

1.1.2.2.1. The most noteworthy feature of the post-*Loving* period

In an article, *The aftermath of Loving v. Virginia: Sex asymmetry in African American intermarriage*, Banks argues that '[t]he most noteworthy feature of the post-*Loving* period is [. . .] the sustained low intermarriage rate of black women, especially in light of the demise of antimiscegenation laws and the increased opportunity for interracial contact' (2007: 533–534). Banks's argument for the superlative noteworthiness of this 'feature of the post-*Loving* period' is that, 'to the extent that the symbolism of *Loving* itself could have influenced marriage behavior, the opinion *might have been expected to spur* interracial marriage by black women. After all, Richard Loving was white and his bride, Mildred Jeter, was black. The Lovings embodied the possibility of love and marriage between a black woman and a white man' (2007: 536, italicisation mine).

In his more recent monograph, *Is marriage for white people?: How the African American marriage decline affects everyone*, Banks makes a normatively stronger assertion, calling this 'a puzzling phenomenon', because 'the intermarriage rate for black women *should have increased dramatically* during the 1960s and '70s' (2011: 118–119, italicisation mine). Banks's argument for this stronger assertion is—partially, but primarily—the fact that '[t]he Supreme Court's 1967 decision in *Loving v. Virginia*—a case involving the marriage of a black woman to a white man—invalidated the prohibitions of interracial marriage that remained on the books in more than a dozen states. After *Loving*, interracial marriage became legal throughout the United States' (2011: 117–118). (Banks's use of the connective 'also' shows that the second

reason he gives has secondary importance: 'The intermarriage rate for black women should also have been spurred by the fact that black women were much more likely than black men to interact with members of other races at school or work' (2011: 118).)

Presumably, for Banks, that which had become legal should have occurred and should have occurred with high frequency. Yet, it has occurred only infrequently. As evidence of this 'feature of the post-*Loving* period', Banks cites data that the Pew Research Center captured in a report, *Marrying out: One-in-seven new U.S. marriages is interracial or interethnic*, which 'analyzes trends in intermarriage through the lens of each of the nation's four biggest racial/ethnic groups—whites, blacks, Hispanics and Asians' (2010: 9). Within this data, Banks seems to distinguish three distinct facets of this 'feature of the post-*Loving* period':

1.1.2.2.1.1. Persons racialised-and-gendered-as-black-women cross-racially marry less often, than persons racialised-and-gendered-as-black-men.

'In 2008', Banks tells us, 'fewer than one in ten black female newlyweds married across racial lines, which makes them less than half as likely as black men to marry someone of a different race' (2011: 116). Banks cites the Pew Research Center, which found that '[s]ome 22% of black male newlyweds in 2008 married someone of a different race or ethnicity, compared with 8.9% of black female newlyweds that same year' (Passel, Wang, & Taylor 2010: 11).

Commenting on this statistic, Banks notes that 'Black men now intermarry more than twice as frequently as black women, but that gender gap is not long-standing. [. . .] In fact, according to United States Census data, in 1960 there were slightly more interracial married black women than interracial married black men' (2011: 117). To be precise, in 1960, 'there were twenty-six thousand black women married to white men, and twenty-five thousand black men married to white women' (2011: 273n239, citing U.S. Census Bureau 1998). 'Then', Banks tells us, 'over the next few decades, as rates of interracial marriage increased throughout society, an interracial marriage gap developed between black men and women. That gap has widened with each decennial census. Now, there are more than half a million interracial married black men, and only two hundred thousand interracial married black women' (2011: 117).

Note that the vast majority of these cross-racial marriages are to persons racialised-as-white: '[a]mong Blacks Who Out-Married in 2008[. . . n]early six-in-ten of each gender married a white spouse. Close to a quarter of black women (24%) and 22% of black men married a Hispanic person. A small minority married an Asian spouse (7% for men and 6% for women), and the rest married someone in the "other" category. [. . .] "Other" includes American Indian, two or more races and "some other" races' (Passel, Wang, & Taylor 2010: 13).

1.1.2.2.1.2. Persons racialised-and-gendered-as-black-women cross-rationally marry less often, than persons racialised-as-neither-black-nor-white.

In a context where, in general, only persons gendered-as-women are legally permitted to marry persons gendered-as-men, it is illuminating to look at the sum of marriages that involve persons gendered-as-men and, among those marriages, to compare the proportion involving persons racialised-and-gendered-as-black-women with the proportion involving persons gendered-as-women-and-racialised-as-other-than-black. The Pew Research Center's report provides us with the relevant data. First, look at cross-racial marriages that involve persons racialised-and-gendered-as-white-men. 'Among whites who out-married in 2008, [. . . m]ore than a quarter of white men (27%) married an Asian woman, and *about 7% married a black woman*'; 46% of 'white men married a Hispanic person' (Passel, Wang, & Taylor 2010: 10, italicisation mine). Second, if we look at cross-racial marriages that involve persons racialised-and-gendered-as-Hispanic-men, the phenomenon is similar. 'More than eight-in-ten (83%) Hispanic men who out-married in 2008 married a white spouse', 5.3% 'married an Asian', and '*just 5% of Hispanic male newlyweds*' 'married a black spouse' (Passel, Wang, & Taylor 2010: 15, italicisation mine). Again, if we look at cross-racial marriages that involve persons racialised-and-gendered-as-Asian-men, the phenomenon is similar. 'Among Asian newlyweds who intermarried in 2008', 71% of 'Asian men' 'married a white person', 'the proportion marrying a Hispanic spouse' was 18%, and *only 5%* 'marr[ied] someone who is black' (Passel, Wang, & Taylor 2010: 19). From this data, we can conclude that persons racialised-and-gendered-as-black-women cross-racially marry less often, than persons gendered-as-women-and-racialised-as-other-than-black.

Importantly, this is a gendered conclusion and the converse is not generally true. That is to say, it is not generally true that persons racialised-and-gendered-as-black-men cross-racially marry less often, than persons gendered-as-men-and-racialised-as-other-than-black. The Pew Research Center's report provides us with the data that shows this, from the perspective of persons gendered-as-women. The report shows that among 'Asian newlyweds' the converse is true, but not among 'white newlyweds' or 'Hispanic newlyweds'. Thus, '[a]mong Asian newlyweds who intermarried in 2008', 77% of 'Asian women' 'married a white person', 'the proportion marrying a Hispanic spouse' was 10%, and 5% 'marr[ied] someone who is black'. By contrast, '[a]mong whites who out-married in 2008', 51% 'of white women [. . .] married a Hispanic person', '20% of white women married a black man, while just 9% married an Asian man' (Passel, Wang, & Taylor 2010: 10). Moreover, '[a]mong Hispanic newlyweds who intermarried in 2008', '78% of Hispanic women' 'married a white spouse', 'some 13% married a black spouse', and 4% 'married an Asian' (Passel, Wang, & Taylor 2010: 15).

A comparison of the two previous paragraphs seems to suggest that persons racialised-and-gendered-as-Asian-men stand in relation to persons gendered-as-women-and-racialised-as-other-than-Asian as persons racialised-and-gendered-as-black-women stand in relation to persons gendered-as-men-and-racialised-as-other-than-black. Banks argues that this apparent similarity is deceptive: 'Commentators sometimes compare the low intermarriage rate of black women to that of Asian men; these groups are thought to be disadvantaged in the relationship market by stereotypical images depicting Asian men as soft and effeminate and black women as

strong and masculine. But even Asian men intermarry at considerably higher rates than black women. Asian American men born in the United States are three or more times as likely to marry interracially as are black women' (2011: 116). Banks cites the Pew Research Center, which reported that, in 2008, '8.9% of black female newlyweds married someone who was not black' (Passel, Wang, & Taylor 2010: 12). By contrast, '[a]mong the estimated 186,000 Asian newlyweds in 2008, [. . .] 19.5% of Asian men' 'married someone of a different race/ethnicity' (Passel, Wang, & Taylor 2010: 17) and, in that same year, 41% of 'Native' 'Asian men' had 'married someone of a different race/ethnicity in the past 12 months' (Passel, Wang, & Taylor 2010: 35). Thus, persons racialised-and-gendered-as-black-women fare worse than even the worst-faring category of persons gendered-as-men-and-racialised-as-other-than-black.

1.1.2.2.1.3. Persons racialised-and-gendered-as-black-women cross-racially marry less often, than persons racialised-as-white.

However, '[p]erhaps the starkest evidence of the intimate segregation of black women', Banks tells us, 'emerges not in contrast to other minority groups as much as in comparison to whites. Usually, the smaller a group, the more frequently its members intermarry. This is a straightforward matter of numbers. For members of smaller groups there are more potential spouses outside of the group than in. The situation is reversed for members of the largest groups. Thus, in the United States, whites have long had lower intermarriage rates than members of any minority group'. Yet, '[b]y some measures the intermarriage rate of black women is now no higher than that of whites' (2011: 116–117). Banks does not cite a source for this data, but

he is likely referring to two findings of the Pew Research Center: first, that, of those currently married in 2008, '4.7% [of 'all whites'] were married to someone of a different race or ethnicity' (Passel, Wang, & Taylor 2010: 9), and '5.5% of married black women' had 'a non-black spouse' (Passel, Wang, & Taylor 2010: 11); and, second, that, of those newly married in 2008, 'nearly one-in-ten (8.9%) ['white newlyweds'] married a nonwhite spouse' (Passel, Wang, & Taylor 2010: 9) and '8.9% of black female newlyweds' 'married someone of a different race or ethnicity' (Passel, Wang, & Taylor 2010: 11). According to Banks (2011: 117), '[t]his is an extraordinary development, and one that bolsters the conclusion that black women are more segregated in the intimate marketplace than any group in American society'.

1.1.2.2.2. The most *complaint*-worthy feature of the post-*Loving* period?

However, Banks does not merely think that this 'feature of the post-*Loving* period' is worthy of note. More importantly, Banks thinks that it is worthy of *complaint*. In the absence of 'official state sources of invidious racial discrimination', Banks complains about the discriminatory choices of persons racialised-and-gendered-as-black-women. Banks asserts that these discriminatory choices constitute a complaint-worthy harm to persons racialised-and-gendered-as-black-women—the very persons who are making these choices! Banks offers two arguments for this assertion. First, 'some black women marry down rather than marry out'. This fact, Banks thinks, 'leave[s] black women with men who share their race but not much else'. It renders 'black couples [. . .] mismatched'. Second, 'other black women remain unmarried rather than partner with a man of another race'. This fact, Banks

thinks, burdens them with the 'hazards of the single life—unsatisfying and nonmonogamous relationships, the increased risk of sexually transmitted diseases, abortion, single parenthood' (2011: 120).

Yet, these discriminatory choices might not, on balance, be worthy of complaint. First, 'marry[ing] down' might not be a serious harm, and so might not be worthy of complaint. Certainly, being 'mismatched' is a harm, but the thought that it is a serious harm might simply be a prejudice of the rich. Indeed, in her article *Is marriage for rich people*, Nancy Leong asks: 'Why do we view marrying someone who is less educated, less wealthy, or both, as marrying down?'. Leong is 'concerned that Banks overstates the undesirability of such pairings in a manner not entirely different from those who assume problems inherent in interracial marriages. [. . .] Banks does with class what he accuses others of doing with race' (2011: 1320).

Second, 'remain[ing] unmarried' might not be a serious harm, and so might not be worthy of complaint. Certainly, the lack of a partner and an unplanned pregnancy can be harmful, but they might be less harmful than marriage. Anita LaFrance Allen-Castellitto, in her article, *Women and their privacy: What is at stake?*, observes that 'women's often-unreciprocated, often-subservient caretaking functions with respect to their husbands have denied them both the *opportunity* for solitude and the *ability* to enjoy and exploit the modicum of privacy their lives as wives and mothers afforded'. This observation suggests that non-marital exclusive sexual partnerships and even 'single parenthood' could better furnish a person gendered-as-woman with the sort of '[s]olitude [that] contributes to the process of self-definition and personality development' (1984: 243).

Furthermore, these discriminatory choices might, in fact, be worthy of celebration. To see this, it is crucial to think about the good reasons a person might have for making these discriminatory choices. Broadly, there are three types of good reason. It might be

- (1) a matter of priorities: she has prioritised a felt duty
 - (a) to persons racialised-and-gendered-as-black-men,
 - (b) to families that have been racialised-as-black, or
 - (c) to cultures that have been racialised-as-black.

Banks (2011: 132–142) gives voice to persons who raise these reasons in his chapter, *Desire*. Alternatively, it might be

- (2) a matter of pessimism, either about
 - (a) whether each family and, more generally, society is sympathetic to such cross-racial relationships,
 - (b) whether each family and, more generally, society is sympathetic to cross-racial motherhood and cross-racial children, or
 - (c) whether persons racialised-and-gendered-as-white-men possess
 - (i) the cultural capital to understand cultures racialised-as-black,
 - (ii) the perceptual tools to discern the racial injustice that besets such cross-racial relationships, or

(iii) the coping mechanisms to deal with the racial injustice that besets such cross-racial relationships.

Banks (2011: 143–169) gives voice to persons who raise these reasons in his chapter, *Fear*. Finally, it might be

- (3) a matter of politics. This *political* reluctance might be either
 - (a) in protest against how persons racialised-and-gendered-as-white-men have sexually exploited persons racialised-and-gendered-as-black-women, in the past, or
 - (b) to protect herself from experiencing similar sexual exploitation, in the present.

This last reason is, I suspect, the most important, as Allen-Castellitto suggests: 'When a Jewish friend told me she would not consider marrying a non-Jew, I knew exactly what she meant: she does not trust Gentile men, just as some of my black women friends do not trust white men' (2000: 198). Indeed, Imani Perry goes so far as to argue that Banks 'pays too little attention to the history of nonconsensual and exploitative sexual relationships between white men and black women that may be the root of many black women's reluctance' (2011: 11). Yet, Perry's accusation is, I think, incorrect. *Pace* Perry, Banks is aware of 'a long-standing practice of white men taking sexual liberties with black women' (2011: 144); he notes that '[m]any black women associate white men's attraction to them with the twisted sexual relationships that often developed between master and slave' (2011: 152); and he reminds us that

'the black feminist scholar Patricia Hill Collins has memorably written, "Freedom for Black women has meant freedom from White men, not the freedom to choose White men as lovers"' (2011: 138, citing Collins 2000: 162).

However, Banks's defence against Perry's accusation reveals an even deeper flaw in his argument. Banks's real error is in how he expects persons racialised-and-gendered-as-black-women to respond to this phenomenon: 'If fears of interracial intimacy keep people separate now, it is because those fears embody the echo of the past. Many of us continue to act out the roles we first began to inhabit long ago. We scarcely stop to consider that we might change the script' (2011: 169). Banks assumes that it is within the power of persons racialised-and-gendered-as-black-women unilaterally to 'change the script'. In her article *Don't lecture black women about marriage*, Latoya Peterson (2011) argues that it is not within their power unilaterally to do this. 'Falling black marriage rates aren't the result of black women "being picky"', Peterson argues, 'but of the complex politics of attraction'. Indeed, 'to imply that black women being closed-minded is the reason for the current state of affairs is grossly simplifying the complex politics of attraction, *particularly in societies that value some types of beauty more highly than others*' (italicisation mine).

1.2.0. They strengthen the social stigma

1.2.1. Its stigma might remain

In her book, *Terrorist assemblages: Homonationalism in queer times*, Jasbir Puar draws a racial link between two sexual cases decided by the SCOTUS. Commenting on *Lawrence v. Texas*, which, in 2003, legalised homosexual sodomy in the USA, Puar observes that *Loving* 'is rarely mentioned in relation to Lawrence-Garner, which [. . .] could as easily be apprehended for its interracial as for its sexual implications' (2007: 130). Puar refers to the fact that, contrary to popular belief, 'the case involves an interracial pairing: a white man [Lawrence] and an African American man [Garner]'. Like Puar, I think that *Loving* is rarely mentioned—and should more often be mentioned—in relation to *Lawrence*. However, unlike Puar, I think the failure to draw this connection between these two cases impoverishes our apprehension not only of *Lawrence*, but also of *Loving*. Thus, I urge us not to apprehend *Lawrence* 'for its interracial [. . .] implications', but rather to apprehend *Loving* for its *stigmatising* implications. To this end, let us reflect philosophically on the following words from Justice Kennedy's opinion in *Lawrence*: 'If protected conduct is made criminal and the law which does so remains

unexamined for its substantive validity, its stigma might remain even if it were not enforceable as drawn for equal protection reasons'.

Although philosophers sometimes speak of 'stigma', they short-change us on a definition of 'stigma'. For example, in his article, *Shame, stigma, and disgust in the decent society*, Richard J. Arneson defines 'stigma' with a particularly disappointing lack of rigour. Arneson places the word 'stigma' in apposition both with 'detectable marks of shame' (2007: 37) and with 'a visible mark of reproach' (2007: 48). However, these two definitions are at odds with each other. First, not every 'mark' that is 'detectable' is also 'visible'—any detective could have told Arneson that. Second, traumatic experiences are not the same as malicious intentions. The phrase 'of shame' suggests that the origin of the 'detectable marks' lies in the emotional state of the stigmatised person. By contrast, the phrase 'of reproach' suggests that the origin of the 'visible mark' lies in the intentional action of the person doing the stigmatising. Third, and most importantly, an action is correctly said to generate a stigma not (a) because the victims of the action feel bad, or (b) because the perpetrators of the action intended harm, but rather (c) because the action is reasonably interpreted, by an onlooker, as expressing disrepute.

Indeed, by focussing upon the interpretations that it is reasonable for any onlooker to reach, I shall argue that, according to Mill, in social stigmatisation, a story to explain separation is built out of badges and remains as the mainstream way of communicating about human bodies. Although I agree with Banks that repeal was not enough, in contrast to both Banks and Warren, I shall argue that those legal

penalties were ripe for repeal because they strengthened social stigmatisation. That, *pace* Warren, was why those legal penalties were worthy of complaint. Furthermore, since those legal penalties were not the source of this social stigmatisation, but rather a strengthening of it, repeal of those legal penalties was not enough to dismantle the social stigmatisation. On the contrary, *social stigmatisation subsists*: as a story with increased standing in public discourse. As Peterson correctly pointed out, we can observe social stigmatisation at work, today, 'in societies that value some types of beauty more highly than others'. A salient example of this is a society in which the SlutWalk is generally understood as a protest against the oppression of persons gendered-as-woman, but in which persons racialised-and-gendered-as-black-women cannot afford to participate, because the public presentation of their human bodies is reasonably interpreted as expressing disrepute. I argue that this phenomenon is a 'social tyranny', which enslaves these persons, with respect to their public reputation. That, *pace* Banks, is why the legacy of Warren's repeal is worthy of complaint. Repeal is not enough, because repeal is not destigmatisation.

1.2.1.1. A story to explain separation . . .

'In what does beauty consist? In richness and brightness of color, and in gracefulness of curve and outline. What does the Anglo-Saxon, who assumes that his race monopolizes the beauty of the earth, look for in a lovely woman? Her cheeks must be rounded, and have a tint of the sun, her lips must be pouting, her teeth white and regular, her eyes large and bright; her hair must curl about her head, or descend in crinkling waves; she must be merry, gay, full of poetry and sentiment, fond of song, childlike and artless. But *all these characteristics belong, in a somewhat exaggerated degree, to the negro girl*. What color is beautiful in the human face? Is it the blank white? In paintings, the artist has never portrayed so perfect a woman to the fancy, as when choosing his subject from some other than the

Caucasian race, he has been able to introduce the marvelous charm of the combination of colors in her face. Not alone to the white face, even when tinted with mantling blood, is the fascination of female loveliness imputed. The author may state—and the same experience can be witnessed to by thousands—that *the most beautiful girl in form, feature, and every attribute of feminine loveliness he ever saw, was a mulatto*. By crossing and improvement of different varieties, the strawberry, or other garden fruit, is brought nearest to perfection, in sweetness, size, and fruitfulness. This was a ripe and complete woman, possessing the best elements of two sources of parentage. Her complexion was warm and dark, and golden with the heat of tropical suns, lips full and luscious, cheeks perfectly moulded, and tinged with deep crimson, hair curling, and "Whose glossy black / To shame might bring / The plumage of raven's wing." (italicisation mine)

Croly (1863: 36) tells this story under the title 'THE MISCEGENETIC IDEAL OF BEAUTY IN WOMAN'. This story suffices to support Peterson's suggestion that laws penalising miscegenation arose 'in societies that value some types of beauty more highly than others'. In short, the story 'in [such] societies' is that '[t]he "happy mean" between the physical characteristics of the white and black, forms the nearest approach to the perfect type of beauty in womanhood' (Croly 1863: 37). However, this is not the whole of the story. On the contrary, it is only half of it.

According to the story thus far, 'the negro girl' is 'so perfect a woman to the fancy'; to her is 'imputed', by 'the Anglo-Saxon', 'the *fascination* of female loveliness'; it is when 'the Anglo-Saxon [. . .] saw' what he took to be 'a mulatto', that he concluded he had seen 'the most beautiful girl in *form*[and] *feature*' (italicisation mine). Croly's words emphasise the sexual desire of 'the Anglo-Saxon' for what he perceives to be the bodily appearance of persons to whom he has 'imputed' the titles of 'the negro girl' or of 'a mulatto'. This emphasis contrasts strongly with what, only six pages later, Croly has to say about 'THE WHITE

DAUGHTERS OF THE SOUTH' (1863: 42). In this contrasting chapter, Croly's emphasis is placed on his contention that '[a] platonic love, a union of sympathies, emotions, and thoughts, may be the sweetness and grace of a woman's life, and without any formal human tie, may make her thoroughly happy' (1863: 43). Croly encourages us to draw the following conclusion: On the one hand, persons racialised-and-gendered-as-black-women are fit for sex. On the other hand, persons racialised-and-gendered-as-white-women are fit for legal marriage or social companionship. By implication, persons racialised-and-gendered-as-black-women are not fit for legal marriage or social companionship. This implication is an instance of social stigmatisation.

The activity of social stigmatisation is the activity of explanatory story-telling. According to Anderson (2010: 7–10), the story told seeks to explain the fact that some persons group themselves separately from other persons. They group themselves separately, because they have attained dominant control over some good that is critical to securing social advantage. The goods at play could be such things as gold, potable water, or élite higher education; but, in the case at hand, the goods are sex, marriage, and companionship. However, by explaining this fact about dominant control, the story also seeks to justify it. Thus, stigmatisation seeks ultimately to stabilise the separation that some persons have succeeded in obtaining for themselves in their society.

It is a common misconception that a stigmatising social story stabilises such separation only by sowing the seeds of aversion between the separated persons. For

instance, Croly tells us that '[a] separate race is always hated' (1863: 53) and Anderson tells us that a stigmatising social story seeks to 'rationalize antipathy toward the group' (2010: 46). In fact, the truth is that 'a separate race' is sometimes 'hated' and sometimes desired. Persons who group themselves separately from other persons maintain that separation *both* by spinning stories about the fitness of those other persons for aversion, *and*—which may surprise—by spinning stories about the fitness of those other persons for attraction. Indeed, Anderson's own theory of stigmatisation shows why this is so, even if Anderson herself does not notice it.

Persons who group themselves separately from other persons group themselves either in space or by status. Separation in space excludes persons who do not dominate the good from access to the good; it does this by keeping them at a distance from the good. For example, persons who do not dominate the critical good might require to reside at a distance from the critical good—they might require to live in inner-city ghettos. By contrast, separation by status includes persons who do not dominate the good in access to the good. However, this inclusion is not premised on the 'moral axiom' that 'every one of the living brotherhood of humankind has a moral claim to a place at the table provided by the collective exertions of the race' (Mill 1849: 73). On the contrary, this inclusion is granted on the proviso that, as they partake of the good together, 'at the table', persons who dominate the critical good will enjoy a superior social role, whereas persons who do not dominate the critical good must assume an inferior social role. For instance, persons racialised-and-gendered-as-black-women might be permitted to partake in sex with persons racialised-and-gendered-as-white-men, on the proviso that there are 'no strings

attached' to this sex—on the proviso, that is, that 'those family relations which form the dearest and strongest ties that bind humanity together' (Croly 1864: 58) are absent from the sex.

Thus, the fact that 'the colored girl may appear very beautiful in the eye of the white man' (Croly 1863: 37) is an instance of what William Wilberforce, the British campaigner against negro slavery, called 'the degradation of the Negro race, in the eyes of the whites' (1823: 12). Like Croly, who observed that 'the influence of slavery must have been, in many instances, to degrade the negro far below his own standard in all the better attributes of man, and thus to render him unfit for marriage with the better classes' (1864: 52), Wilberforce similarly observed that 'the slaves are considered too degraded to be proper subjects for the marriage institution'. Indeed, 'the universal want of the marriage institution among the slaves [. . .] appears to [Wilberforce] to be one of the most influential in its immoral and degrading effects' (1823: 19–20).

1.2.1.2. . . . is built out of badges . . .

The law that abolished slavery in the USA—the Thirteenth Amendment to the Constitution of the United States (1865)—was interpreted in the *Civil Rights Cases* of 1883. The SCOTUS found that 'Congress has a right to enact all necessary and proper laws for the obliteration and prevention of slavery with all its badges and incidents' (1883: 21). In her article *Defining the badges and incidents of slavery*, Jennifer Mason McAward argues that '[a]n incident of slavery, as that term was used,

was any legal right or restriction that necessarily accompanied the institution of slavery' (2012: 575) and that 'after the ratification of the Thirteenth Amendment, the term "badge" of slavery was regarded in judicial circles as a post-emancipation synonym for "incident"' (2012: 615). Although the SCOTUS in the *Civil Rights Cases* was unconvinced that 'the denial to any person of admission to the accommodations and privileges of an inn, a public conveyance, or a theatre [. . .] tend[s] to fasten upon him any badge of slavery' (1883: 21), the SCOTUS in *Loving*, by contrast, held that '[p]enalties for miscegenation arose as an incident to slavery' (1967: 6). Thus, the SCOTUS implied that those penalties now remained only as a 'badge of slavery'. Mill anticipated this phrase, when he called female 'sex a disqualification for privileges and a badge of subjection' (1869: 4.19). Strikingly, in his review of Cairnes's *The slave power*, Mill used a very similar notion to that of the disqualifying badge to describe the subjection of persons racialised-as-black. Mill spoke of 'the external brand of his past degradation' (1862b: 23). The relevant similarity between a disqualifying 'badge' and a degrading 'brand' is that each is affixed to the body from the outside, usually by someone other than the person whose body it is. This activity of affixing, from the outside, a disqualifying badge or brand to a body, is what Mill thinks social stigmatisation is. We can see that this is so, in a letter, dated 20th August 1830, that Mill wrote from Paris to his father. Mill relates a story about 'the charcoal-carriers (*charbonniers*)' who protested the rumour that they 'had used some expressions of encouragement' to 'Charles the Tenth a few days before the *coup d'etat*'. The charcoal-carriers protested that 'none of their number had used any such expressions as those described [ascribed?] to them'; Mill refers to their protest as

'their complaint against the sort of stigma which had been thrown upon them' (1830: 2).

The relevant difference between a 'badge' and a 'brand', it is that a 'badge' is not part of the body to which it is affixed, whereas a 'brand' is part of the body that is branded. In this respect, stigma works more like a 'brand', than like a 'badge'. This is what Anderson means, when she says that stories to explain separation consist in 'the attribution of negative stereotypes to dishonorable *internal* traits' (2010: 46, italicisation mine). Anderson is referring to our cognitive bias of 'attribut[ing] stereotype-confirming behavior to people's internal dispositions, such as their genes, culture, or voluntary choices' (2010: 45). Yet, Mill's metaphor of the badge remains helpful, since it reminds us that the 'negative stereotypes' of which Anderson speaks should be understood in an unconventional way. We tend to think of 'negative stereotypes' as matters of bad motivation or of bad cognition, but there is a third, less well-discussed alternative: 'negative stereotypes' are matters of bad communication. In their article, *A semiotic approach to understanding the role of communication in stereotyping*, Klaus Fiedler and his colleagues tell us that:

- 'motivational accounts attribute stereotypical biases to a desire to confirm one's expectancies, which may be stronger than the motive to assess the world accurately',
- 'cognitive approaches posit that stereotypes (like other biases) result from resource limitations that prevent people from systematic or exhaustive information processing'.

By contrast,

- '[a] semiotic approach [. . .] points to origins of stereotyping that are located outside the individual, in sign systems used for information transmission[. . .] The aim of a semiotic approach is to illuminate the crucial role of information transmitters used for communication *between* individuals, as distinct from feeling and thinking *within* individuals'.

Fiedler and his colleagues are keen to insist that '[a] semiotic approach is in no way in conflict, or incompatible, with cognitive and motivational approaches, but it adds a radically distinct component' (Fiedler, Bluemke, Freytag, Unkelbach, & Koch 2008: 96). This component is the sign. A sign is the association of some sensory datum—something one can see, feel, hear, taste, or smell—with some concept—something one can think about. When the sign is a 'brand', the relevant concept is simply the fact that the branded item is owned by some particular person. However, when the sign is a 'badge', that sign can communicate much more than just the feature of being owned.

The act of fastening a disqualifying 'badge' to a body is the 'attribution' of the concept of 'disqualification' to some apparent part of that body. The disqualifying 'badge' fastened to persons racialised-and-gendered-as-black-women attributes the concept of unfitness for cross-racial marriage, or of unfitness for cross-racial companionship, to some apparent part of their racialised-and-gendered bodies. We can observe the contemporary communicative currency of this disqualifying 'badge' in the way that persons racialised-and-gendered-as-black-women are perceived, by

persons racialised-and-gendered-as-white-men, in online communities designed to allow daters to look for a marriageable or companionable 'match'. There are two aspects to this treatment: what they state in their personal advertisements and whose personal advertisements and unsolicited emails provoke a positive response from them.

First, in a randomised sample of 173 'White [. . .] men and women between the ages of 21 and 30 years' in 'metropolitan Atlanta, Georgia', 'June through August 2004 and February through May 2005', Kathryn L. Sweeney and Anne A. Borden (2009: 746–747, 751–752) found that '[f]ewer than 3% of Whites chose Black as a potential dating match but 18% would date someone who is Asian and nearly half of the White daters [. . .] checked off the box indicating Latino/a as an option'. Moreover, in a randomised sample of 1558 'profiles from people who self-identified as [. . .] white, ['18-50', and] living within 50 miles of four major U.S. cities: New York, Los Angeles, Chicago and Atlanta', on 'Yahoo Personals, the most popular national online dating website (Madden and Lenhart, 2006[: 11]), between September 2004 and May 2005', Cynthia Feliciano, Belinda Robnett, and Golmaz Komaie (2009: 43, 46, 48) found that '[w]hite men with stated racial preferences [. . .] only prefer not to date one group at levels above 90%: black women' and, 'among those who state racial preferences, white males are over two and a half times as likely to exclude blacks as white women'.

Second, in a randomised sample of '597,167 observations of user actions (browsed profiles)' of '3,702 men', '85.33%' of whom described themselves as

'white', all 'located in Boston and San Diego, [. . .] over a three-and-a-half-month period in 2003', Günter J. Hitsch, Ali Hortaçsu, and Dan Ariely (2010: 397, 424, 420) found that, although '80.3% of men [. . .] state that the ethnic background of their partner "doesn't matter"', 'the chance of a white man [responding to a profile by] contacting a black woman is 10% lower than the chance of him contacting a white woman'. Moreover, the unique website *OkCupid* allows advertisers to 'build their own match algorithms, [. . . by] answer[ing] as many questions as they please (the average is about 230) [. . . and] also pick[ing] how her ideal match would answer and how important the question is to her' (Rudder 2009a). *OkCupid* found that 'in general, the better you match someone, the more likely you are to reply to a first message from them' and that 'the races all match each other roughly evenly'. However, although the match algorithms, authored by the 'white male' advertisers themselves, suggest that they should be replying to 'black female' profiles at a rate of 42%, 'white male' advertisers reply to unsolicited emails from 'black female' profiles only at a rate of 32% (Rudder 2009b).

Mill would likely have taken a very dim view of this cutting off of the nose to spite the face. In his essay *On liberty*, Mill argues that 'the legal doctrine, that no person can be allowed to give evidence in a court of justice, who does not profess belief in a God [. . .] is suicidal, and cuts away its own foundation'. Mill's argument is that, '[u]nder pretence that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obloquy of publicly confessing a detested creed rather than affirm a falsehood'. Mill concludes that '[a] rule thus self-convicted of absurdity so far as regards its professed purpose,

can be kept in force only as a badge of hatred, a relic of persecution' (1859: 2.18). Similarly, under the 'pretence' that persons racialised-and-gendered-as-black-women are unfit for marriage or companionship, the online 'rule' that persons racialised-and-gendered-as-black-women are excluded from cross-racial dating is 'suicidal, and cuts away its own foundation'. It is suicidal, because 'white male' advertisers lose out on marriage or companionship with a person who, according to their very own algorithms, is their marital or companionate match. This online rule 'can be kept in force only as a badge of hatred'—or else, as I have argued, as a badge of stigmatising desirability.

1.2.1.3. . . . and remains as the mainstream.

A semiotic approach to social stigmatisation is compatible with Anderson's theory. For Anderson (2010: 65) argues that, 'racially stigmatizing representations do not merely inhabit people's private thoughts; they have public standing as commonly known, publicly noticeable default presumptions for interracial interactions'.

Anderson (2010: 53–54) explains these 'three dimensions of public standing' as follows:

- 'A representation R is a matter of *common knowledge* between A and B just in case A and B entertain representation R, each knows that the other is entertaining r, each knows that each knows this, and so on';
- 'R is a matter of *public notice* just in case it is both common knowledge and acceptable to invoke in public discourse';

- 'R has *default status* if it is common knowledge that R is taken for granted as a common premise of public discussion and interpersonal interaction, such that people must send countervailing signals to one another to establish a different common premise'.

However, observe that, although Anderson claims here to have 'distinguish[ed] three dimensions of public standing', she has actually distinguished only two: both 'public noticeability' and 'default status' incorporate 'common knowledge' (be that 'common knowledge' of the 'representation R' or be it of the fact that 'R is taken for granted as a common premise of public discussion and interpersonal interaction'). Moreover, observe that even Anderson thinks that at least some social stigmatisation lacks 'public noticeability': 'The stereotype of the Jewish shyster [. . .] is unmentionable in mainstream discourse. No one blinks at a news report stating that a twenty-three-year-old black man was arrested for murder. But a broadcast that began "A fifty-five-year old Jew, David Goldstein, was arrested for stock fraud today" would be condemned as gratuitously stirring up anti-Semitism'. We can concede to Anderson that the the 'public standing' of the social stigmatisation of racial blackness, unlike the 'public standing' of the social stigmatisation of racial Jewishness, is beset by 'public noticeability', without conceding to her that 'public noticeability' is essential to the 'public standing' of social stigmatisation. Thus, we are left with one essential 'dimension[...]' to this 'public standing': it's 'default status'. Mill's theory of the social tyranny of the mainstream can illuminate this 'default status'. Moreover, it can explain Anderson's charge that '[t]his public status inflicts an expressive injury on blacks, by *assaulting their public reputation*' (2010: 65, italicisation mine).

Mill describes 'men' as 'those who are in a position to tyrannize' (1869: 4.9) and he describes 'the ex-slave-owners' as 'those who have had tyrannical power taken away from them' (1850: 3); Mill refers to '[t]he subjection of women' as the 'tyranny with which the man is legally invested' (1869: 2.2), and, in his *Autobiography*, he refers to 'negro slavery' as 'the worst and most anti-social form of the tyranny of men over men' (1873b: 7.31). Indeed, in his review of Cairnes's *The slave power*, Mill denies that 'negro slavery' is 'the name of one social evil among many others'. On the contrary, 'in truth it is[...] the summing-up and concentration of them all; the stronghold in which the principle of tyrannical power, elsewhere only militant, reigns triumphant' (1862: 41). What, then, for Mill, is 'social tyranny'?

Among 'pain in general', Mill distinguishes 'the infliction of pain by the mere will of a human being'. Mill refers to this subset of 'all pain' as 'despotism' and as 'tyranny' (1850: 14). Thus, for Mill, 'social tyranny' is the antithesis of 'Social Liberty'. 'Social Liberty' consists in 'the [. . .] limits of the power which can be legitimately exercised by society over the individual' (1859: 1.1); it includes both 'limits to the power which the ruler should be suffered to exercise over the community' (1859: 1.2) and 'a limit to the legitimate interference of collective opinion with individual independence' (1859: 1.5). Thus, 'social tyranny' exists, when appropriate limits are not placed on either (a) 'the power [of] the ruler [. . .] operating through the acts of the public authorities' or (b) 'the [. . .] interference of collective opinion', which 'execute[s] its own mandates' (1859: 1.5).

However, as Timothy Hinton points out, in his article *Liberalism, feminism, and social tyranny*, '[i]t is a striking fact that contemporary philosophical liberalism has almost entirely ignored the topic of social tyranny as Mill describes it'. According to Hinton, John Rawls (1971) and Ronald Dworkin (2000)—the theorists who dominate 'contemporary philosophical liberalism'—assume that 'the proper focus of liberal political philosophy is on the system of legal rights people possess'. As a consequence, 'one of the cardinal assumptions of the kind of liberalism espoused by Rawls and Dworkin [is] that what Mill refers to as "social mandates" fall entirely outside the proper province of political philosophy' (2007: 238). Hinton argues that '[e]ither contemporary liberals must return to the more radical doctrine affirmed by Mill or else they must deny that [. . .] inequalities are rooted in social, as opposed to legal structures'. Let us eschew the legalistic chauvinism of Rawls and Dworkin, and let us return to the social philosophy of John Stuart Mill. Corresponding to the two threats to 'Social Liberty' that he identifies, Mill distinguishes two types of 'social tyranny', two ways in which 'the people [. . .] may [. . .] oppress a part of their number' (1859: 1.4).

social tyranny	tyranny of the magistrate	tyranny of the monarch
		tyranny of the majority
		tyranny of the mighty
	tyranny of the mainstream	

Table 2. Social tyranny

On the one hand, there is 'the tyranny of the magistrate' (1859: 1.5), which is 'the tyranny of the political rulers'. Since the 'political rulers [. . .] consisted of a governing One, or a governing tribe or caste' (1859: 1.2), tyranny exercised by 'a governing One' may be called the tyranny of the monarch and tyranny exercised by 'a governing tribe or caste' is what Mill calls 'the tyranny of the majority' (1859: 1.4). However, Mill himself reminds us that tyranny exercised by 'a governing tribe or caste' can consist in tyranny by either 'the most numerous or the most active part of the people'. Thus, to take account of 'those who succeed in making themselves accepted as the majority', Mill would have done better to distinguish 'the tyranny of the majority' from the tyranny of the mighty. A tribe or caste is socially mighty, if it succeeds in exercising 'the tyranny of the magistrate', despite its numerical minority.

On the other hand, there is what Mill would have called—I think—the tyranny of the mainstream. For, in his essay *On liberty*, Mill refers to 'the tyranny of the prevailing opinion and feeling' (1859: 1.5) and, in his parliamentary speech decrying Chichester Fortescue's Land Bill, Mill (1866b) argues that 'Ireland is in the main stream of human existence and human feeling and opinion; it is England that is in one of the lateral channels'. Thus, just as, literally, the mainstream is not 'the lateral', but the leading current in a river, metaphorically, Mill conceives of the mainstream as the leading current in society. We see this metaphorical use of 'the main stream', elsewhere in Mill's oeuvre. For instance, in his review of Auguste Comte's *Cours de philosophie positive*, Mill says that 'M. Comte confines himself to the main stream of human progress, looking only at the races and nations that *led* the van' (1865a: 69,

italicisation mine). Similarly, in a review of Albany Fonblanque's *England under seven administrations*, Mill discusses 'a person who has a multitude of ideas' and picks out 'his *leading* idea', which Mill describes as the 'more obvious reason', as 'the main stream of the thought' (1837: 3, italicisation mine).

A theory of the tyranny of the mainstream is not forthcoming from either Rawls and Dworkin, who focus exclusively on 'the tyranny of the magistrate'. By contrast, Mill theorises the tyranny of the mainstream as

'the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own' (1859: 1.5).

Hitherto, this description has been understood to pick out social 'rules of conduct' for the 'fashion[ing]' of 'characters'. For instance, Anderson (1991: 24–25) takes what I have called the mainstream to be the leading way of making character-forming decisions about the 'conduct' of one's life, like decisions about 'adopting [a] new conception of the good'. Anderson argues that, '[t]o discover a superior conception of the good, we must be free to explore different ways of life under conditions of toleration': precisely what a *tyranny of the mainstream* has been thought to stop us from doing.

However, this is not the only way in which 'society [can] impose, by other means than civil penalties, its own ideas and practices as rules'. For just as 'collective

opinion' may 'interfere[...]' with individual 'character', it may also 'interfere[...]' with interpersonal communication. This 'interference' occurs when society [. . .] impose[s . . .] its own ideas and practices' not 'as rules of conduct', but as rules of *communication*. On this alternative view, the mainstream is the leading way of communicating about the natural and social world in which one is situated. This is what it means for it to be 'common knowledge that [a representation of some item in that world] is taken for granted as a common premise of public discussion and interpersonal interaction'. Moreover, it is the fact that this way of communicating is the mainstream that makes any onlooker's interpretation of an act or an event *reasonable*. From the point of view of an onlooker to some action or event that occurs in a community, that action or event is correctly said to have generated a stigma, if (a) there exists, in that community, a tyrannous mainstream way of communicating about human bodies, and (b) the action or event, to paraphrase Elizabeth S. Anderson and Richard H. Pildes (2000: 1525), 'make[s] sense in light of the community's [mainstream] practices' of communicating about human bodies.

1.2.2. Enslaving the soul itself

1.2.2.1. He dares not call his soul his own

Mill argues that the tyranny of the mainstream is

'a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer

means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself' (1859: 1.5).

According to Ferdinand David Schoeman, in his book *Privacy and social freedom*, to say that a tyranny 'enslaves the soul' is to say that it 'distorts the process of development that makes a self rationally competent' (1992: 25). 'A self that is socially engineered', Schoeman tells us, 'cannot engage in rational assessment'. Similarly, according to Hinton, 'dominating people's very souls' consists in 'shaping their identities in ways that are unacceptable' (2007: 237) and in 'distort[ing] our deepest sense of who we are' (2007: 248).

However, neither Schoeman nor Hinton capture what Mill meant by the phrase 'enslaving the soul itself'. Indeed, for Mill, 'enslaving the soul itself' is less about engineering who one is, so much as about monopolising how one is represented. That this is so, is clear from the notes he made, on 8th May 1834, in the *Monthly Repository*. Mill decries

'the provincial attornies, [. . .] who derive all their consequence from the management, which they now hold in their hands, of the pecuniary affairs of the whole landed aristocracy'.

For, according to Mill,

'[t]he attorney, who under good laws and a good system of judicature would be nobody, is now the most influential personage in every small place: and the landowner, [. . .] whose affairs [. . .] he alone is competent to manage, is held by him in a state of the most slavish dependence'.

This 'most slavish dependence' consists in the fact that

'the soul [. . .] of an English landowner, intellect, conscience, and all, is folded up in his title deeds, and kept in a box at his attorney's office. He dares not call his soul his own, for he dares not call his estate his own, without the leave of his attorney'.

The role of the attorney is to represent a client in public discourse on legal matters. If the 'laws' and the 'system of judicature' are bad, this role, Mill thinks, grants the attorney an undeserved monopolistic power over how the client will be represented in public discourse. This leaves the client slavishly dependent upon the attorney, at whose whim the client might be favourably or disreputably represented. This situation brings about a distinct sort of pain for the client. Thus, to charge the tyranny of the mainstream with 'enslaving the soul itself' is to charge it not merely with 'assaulting', but with enslaving a person's 'public reputation'.

1.2.2.2. Few of us can afford to show our bodies

'Berlin.

I found it dazzling. The city had a jewel-like sparkle, especially at night, that didn't exist in Paris. The vast cafés reminded me of ocean liners powered by the rhythms of their orchestras. There was music everywhere. Word of our success at the Champs-Élysées had preceded us and we were greeted with great excitement. There were rumors that the show was indecent, an impression I may have strengthened when a reporter asked me to describe my ideal world. One where we can all go naked, as in paradise, I replied. I was quick to add that few of us can *afford* to show our bodies'.

Those were the words of Josephine Baker (1977: 58), in the autobiography she wrote with her husband, Jo Bouillon. Baker was a North American person racialised-

and-gendered-as-a-black-woman. Bouillon was a French person racialised-and-gendered-as-a-white-man. Baker's use of the words 'us' and 'our' are ambiguous, but they certainly allow for the possibility that Baker is speaking on behalf of persons racialised-and-gendered-as-black-women. Let us take Baker to be doing just that. Let us interpret Baker's words to mean that, in our non-ideal social and political world, persons racialised-and-gendered-as-black-women cannot afford to show their bodies. I shall defend Baker's assertion, by arguing that persons racialised-and-gendered-as-black-women cannot afford to show their bodies, in just the same way that 'an English landowner[... . . .] dares not call his soul his own'.

The word 'afford' here is key. If I can afford to do something, I can do that thing without running the risk of adverse consequences. Baker's use of the word 'afford' recalls to mind the more recent use to which that word was put, in *An open letter from black women to the SlutWalk*, posted at Black Women's Blueprint, on 23rd September 2011. The SlutWalk was a local and, thereafter, global, reaction to the following words, uttered on 24th January 2011, by a representative of the Toronto Police Service: 'women should avoid dressing like sluts in order not to be victimized'. On its website, the organisation SlutWalk Toronto (2011) says that the word

"Slut" is being re-appropriated. [. . .] We are asking you to join us for SlutWalk, to make a unified statement about sexual assault and victims' rights and to demand respect for all. Whether a fellow slut or simply an ally, you don't have to wear your sexual proclivities on your sleeve, we just ask that you come'.

This invitation is, in the open letter, declined. The many, and often distinguished, signatories of the open letter, who name themselves as 'the undersigned women of African descent and anti-violence advocates, activists, scholars, organizational and spiritual leaders', say that '[w]e know the SlutWalk is a call to action and we have heard you'. However, they give the following reason for declining this invitation: 'Even if only in name, we cannot afford to label ourselves, to claim identity, to chant dehumanizing rhetoric against ourselves in any movement' (Tanis *et al.* 2011).

Notice three things about this assertion that distinguish it from Baker's assertion. First, it is more explicit. Second, it is much stronger. Third, it is not merely an assertion; it is the conclusion of an argument. First, whereas Baker refers to an some ill-defined subset of an unspecified group of persons—'few of us', the signatories refer to themselves and to every person who is a member of their solidarity—'we'. Second, whereas, according to Baker, 'few of us can afford to show our bodies', if our bodies are 'naked', the signatories, by contrast, 'cannot afford' to show their bodies, '[e]ven if only in name'. Indeed, the signatories say that 'we don't have the privilege to walk through the streets of New York City, Detroit, D.C., Atlanta, Chicago, Miami, L.A. etc., either half-naked or fully clothed self-identifying as "sluts" and think that this will make women safer in our communities an hour later, a month later, or a year later'. In other words, the signatories cannot afford to *show off* their bodies, i.e. to represent their bodies, publicly and ostentatiously, in a sexually eye-catching way. Third, the word 'dehumanizing' is key to understanding the argument of the signatories, for they say that 'we can[not] self-identify as "sluts" when we're still working to annihilate the word "ho", which deriving from the word "hooker" or

"whore", as in "Jezebel whore" was meant to dehumanize'. Thus, it is the threat of dehumanisation—the threat, that is, of having one's status as a human being stripped away—that leads the signatories to conclude that they cannot afford to participate in the way they have been invited to participate. Dehumanisation is the adverse consequence that persons racialised-and-gendered-as-black-women risk, if they show off their bodies. As Sydney Fonteyn Lewis puts it, in her doctoral dissertation, *Looking forward to the past: Black women's sexual agency in 'neo' cultural productions*,

'[w]hereas the word "slut" has historically been used to shame white women into normative categories of sexual behaviors, black women have historically never had access to these normative categories [. . .] Although black women have doubtlessly been called sluts, the word has functioned differently, not as an aberrant to the chaste norm, but as a generalized description of black womanhood' (2012: 15–16).

We can demonstrate that 'slut' has 'functioned' as a 'generalized description of black womanhood', by adding a third dimension to our analysis of the way in which persons racialised-and-gendered-as-black-women are perceived, by persons racialised-and-gendered-as-white-men, in communities designed to allow daters to look for a marriageable or companionable 'match'. So far, we have analysed

1. what they state in their personal advertisements, and
2. whose personal advertisements and unsolicited correspondence provoke a positive response from them,

Yet, we can also analyse

3. what expectations they express, in their positive responses.

It might be thought that the private conversations about sex, marriage, and companionship that occur between individual persons are unobservable. Not so. In an unexampled experiment, the social psychologist Yann Le Bihan placed three bogus personal advertisements in two French magazines. Varying only in respect of one word, each advertisement read as follows: 'Very beautiful young [*black, mixed-race, blond*] woman, 26 years old, would like to meet a man to share fun times and more if we're a match. Only detailed letters will receive a reply'. Six advertisements, placed between 1997 and 1999, in the *Mariage* section of *Le Chasseur Français*, yielded 637 responses. Three similar advertisements (omitting the words 'and more if we're a match'), placed in 1997, in the more ambiguously entitled *Particuliers Femmes* section of *Le Nouvel Observateur*, yielded 235 responses. In total, Le Bihan received 872 mailed letters from persons racialised-and-gendered-as-white-men.

Le Bihan used software to calculate how frequently certain words, grouped into themes, recurred among the letters. Le Bihan found the following: (a) 'the blond woman' received the greatest number of replies; (b) 'the woman of mixed race' received few overtly sexual letters and a significant number of letters from wealthy, middle-aged professionals, who saw in her a potential trophy wife (2007: 200); and (c) 'the black woman' was seen as 'the woman of third choice' (2007: 171). Not only did she receive the fewest replies (237, or 27.2% of the total), she received replies of inferior quality, from persons who tended to present socio-economic impairments that might inhibit them from participating in sex, marriage, or companionship with

either 'the blond woman' or 'the woman of mixed race'. These persons tended to be older, on-the-rebound, unemployed, income-poor, and uncultivated. Indeed, they tended to be rural and to request that 'the black woman' participate in agricultural work. Most significantly, their replies to 'the black woman' tended to be sexual, as opposed to marital. Only she received naked photographs. Words suggesting a demand for sex were more frequently found in replies to her. Only she received sexually explicit replies to an advertisement under the rubric of *Mariage* (2007: 191, 171–192, 235–236). This, then, is why persons racialised-and-gendered-as-black-women cannot afford to show their bodies: the mainstream way of communicating about their human bodies disqualifies them as sexual sluts who are unfit for marriage or companionship.

This shows us why 'discrimination' fails to capture, and why 'stigmatisation' better captures, 'the chief mischief of the legal penalties' against miscegenation. First, a discriminatory action is an action that denies someone a benefit. For example, it denies someone the rights of legal marriage or it denies someone one's hand in marriage. Yet, if the mainstream way of communicating about the human bodies of persons racialised-and-gendered-as-black-women associates them with fitness for purely pleasurable sex, it seems that these persons are getting a benefit, not being denied one. Discrimination cannot explain why it is harmful that these persons get sex, that others do not. By contrast, stigmatisation can account for the harm of this benefit, because stigmatisation attends to the story that is spun to stabilise that benefaction. Second, although an assault on one's public reputation, and the threat of living up to one's damaged public reputation, are both harms, neither needs to be

mediated by any discriminatory action. On the one hand, although discriminatory actions that 'make sense in light of' the mainstream way of communicating about human bodies are reasonably interpreted, by any onlooker, as expressing disrepute, that mainstream way of communicating can exist without any actions that deny a benefit to some. On the other hand, no one need deny a person any benefit, for her to experience the threat of 'slut', when she walks in the street. Thus, 'the chief mischief of the legal penalties' against miscegenation was not 'discrimination', but rather that 'they strengthen[ed] the social stigma'.

CHAPTER 2

Encounters that count: 'a foundation for solid friendship'

'[W]e can', Mill tells us, 'if we are sufficiently determined upon it, abolish all tyranny'. Mill thinks that 'the abolition [. . .] of despotism' or 'tyranny' is equivalent to 'freedom' and that 'one of the greatest victories yet gained over [tyranny] is slave-emancipation' (1850: 14). However, I have argued that, even though the law of enslavement no longer penalises cross-racial marriage involving them, persons racialised-and-gendered-as-black-women remain enslaved with respect to their public reputation. Repeal was not enough, because repeal was not destigmatisation. How, then, can we abolish the tyranny of the mainstream way of communicating about—how can we, that is, destigmatise—the human bodies of persons racialised-and-gendered-as-black-women?

I shall argue that this tyranny is, in the words of the Indian constitutionalist, Dr Bhimrao Ramji Ambedkar, 'essentially a problem of Caste'. Ambedkar shares Mill's optimism that we can abolish Caste. In an address, which he wrote for, but was not ultimately permitted to deliver to, Lahore's Jat-Pat-Todak Mandal, or Society for the Destruction of Caste—an address, which he later published as *The annihilation of Caste*, and an address that Mohandas Karamchand Gandhi said '[n]o reformer can

ignore' (1936)—Ambedkar argues that '[t]he real remedy for breaking Caste is inter-marriage'. However, I shall reject Ambedkar's assertion as it stands and argue that his own premises lead us to a revised version of this assertion: 'the real remedy for breaking Caste' is com-panion-ship. Com-panion-ship is companionship that is built, over time, through the activity of regular and frequent meal-sharing. Indeed, even Ambedkar himself argues that '[a]nother plan of action for the abolition of Caste is to begin with inter-caste dinners'. I shall defend this latter assertion. I shall argue that com-panion-ship can destigmatise the bodies of persons racialised-and-gendered-as-black-women, by, as Ambedkar puts it 'killing [our] consciousness of Caste'.

2.1.0. The real remedy for breaking Caste is inter-marriage

2.1.1. Essentially a problem of Caste

Harriet Taylor Mill, in her essay *The enfranchisement of women*, which she published in the same year that she married John Stuart Mill, remarks that 'we are firmly convinced that the division of mankind into two castes, one born to rule over the other, is in this case, as in all cases, an unqualified mischief' (1851: 17). This 'unqualified mischief' was similarly condemned by Mill, himself, who, in a letter, dated 15th May 1865, to Parke Godwin, identifies 'one thing [he] hope[s] will be considered absolutely necessary: to break altogether the power of the slaveholding caste'. Given that his father authored the first and, for some time after, standard *History of British India* (Mill 1818), and given that both he and his father were employed, for the majority of their working lives, by the East India Company (Mazlish 1988), it is highly probable that the Mills are likening the '[s]ubjection of women' and 'the matter of negro slavery' to caste in India. Under the title *Castes in India: Their mechanism, genesis and development*, Ambedkar presented, in a seminar on anthropology, at Columbia University, his 'critical evaluation of the various characteristics of Caste'. Although he was not a contemporary of Mill, it is not unreasonable that we take him seriously *as a philosopher of caste*, given that he was

probably the first person categorised-as-untouchable to pursue philosophy at a doctoral level and given that, in his *The annihilation of Caste*, he acknowledges the philosopher 'Prof. John Dewey, who was my teacher and to whom I owe so much' (1936b: 25.4).

Ambedkar's 'critical evaluation [. . .] leave[s] no doubt that prohibition, or rather the absence of intermarriage—endogamy, to be concise—is the only one that can be called the essence of Caste when rightly understood' (1917: 11). On Ambedkar's analysis, the endogamous essence of

'the Caste system has two aspects. In one of its aspects, it divides men into separate communities. In its second aspect, it places these communities in a graded order one above the other in social status' (1936b: 21).

Yet, as Traude Pillai-Vetschera argues, in her chapter, *Ambedkar's daughters: A Study of Mahar women in Ahmednagar district of Maharashtra*, endogamy does not separate and grade 'men', so much as 'women'. According to Pillai-Vetschera,

'[c]aste ranking within the system depended to a large extent on the sexual purity of the women. Each community tried to control female sexuality through rules and regulations, very strict ones among the high castes, less severe ones—permitting more freedom to women—among the lower orders' (2007: 242).

However, the word 'freedom', here, is a euphemism, because endogamy grants sexual freedom only at a cost that persons categorised-and-gendered-as-untouchable-women can ill afford. It is not something they have cause to celebrate. As Meena Kandasamy (2011) put it, in her article *Celebrating the loud slutty sensibility*,

'in our country, when a man chooses to abuse a woman by calling her a whore or slut in any of the regional languages, he attaches a caste-epithet to the slur. Needless to say, such an epithet almost always carries a reference to one untouchable caste or another'.

Thus, to paraphrase Lewis, 'slut' has 'functioned' as a 'generalized description of black' and *untouchable* 'womanhood'. In each injustice, endogamous separation is sustained by mainstreaming a rule of communication, according to which persons racialised-and-gendered-as-black-women, or persons categorised-and-gendered-as-untouchable-women, are unfit for cross-racial or cross-caste marriage or companionship.

However, Ambedkar also deploys his philosophical concept of 'Caste' (with a capital 'C') beyond Brahminical and White Domination. He argues that 'there was a social problem between Ulster and Southern Ireland: the problem between Catholics and Protestants, which is essentially a problem of Caste' (1936b: 2.19). Similarly, Mill argued that 'the opponents of Catholic emancipation [. . .] are willing to degrade five or six millions of their countrymen to the condition of an inferior caste' (1825b: 12). This assertion should not be written off as the exaggeration to which a nineteen-year-old ingénue might be prone. For, in his *Autobiography*, Mill remarked that '[t]hese writings [. . .] were original thinking, as far as that name can be applied to old ideas in new forms and connexions' (1873b: 4.18). Yet, we should not be distracted by the fact that both Ambedkar and Mill frame the 'social problem between Ulster and Southern Ireland' in religious terms. Christian religious difference became a social problem in Ireland only in the early sixteenth century, when the Church of

England, in 1534, rejected the authority of the Roman Catholic Pope. Nearly two hundred years prior to this religious schism, the English Lord Lieutenant of Ireland had enacted the Statutes of Kilkenny (1367), which 'ordained and established that no alliance by marriage, gossipred, fostering of children, concubinage or amour or in any other manner be henceforth made between the English and Irish on the one side or on the other. [. . .] And if any do to the contrary and thereof be attaint, that he shall have judgment of life and limb as a traitor to our lord the King' (Curtis & McDowell 1943: 53). The aim of this 'legal penalty' was to maintain, as a separate population, the Anglo-Irish descendants of the Cambro-Normans, who had invaded Ireland, in the second half of the twelfth century (Mitchell 2007).

Mill proposes a remedy for this social problem. In his *Considerations on representative government*, Mill argues that, in Ireland, 'the memory of the past, and the difference in the predominant religion[. . .] keep apart two races, perhaps the most fitted of any two in the world to be the completing counterpart of one another' (1861a: 16.9). Indeed, in the *Morning Chronicle*, in his series of forty-three leading articles, evaluating the many different 'opinions on the nature of the remedy which the condition of Ireland requires' (5th October 1846: 4), Mill argues that it is 'desirable' that 'the Irish branch of the human family [. . .] should enter into the admixture'. Mill specified that this 'ent[rance]' was 'desirable [. . .] perhaps largely, especially when the other element is composed of the Saxon race, which needs to be tempered by amalgamation with the more excitable and imaginative constitution and the more generous impulses of its Celtic kinsfolk' (26th October 1846: 6). Doubtless Mill would have agreed with Croly that '[i]n England the Irish are a separate class,

degraded as the negro is in the Northern States' (1864: 59). Thus, Mill spins a similar stigmatising story about persons racialised-as-Irish to that which Croly spins about persons racialised-as-negro. Moreover, although he only advocates it as a remedy when 'laying the foundation of new nations beyond the sea', Mill nonetheless advocates, for persons racialised-as-Irish and persons racialised-as-English, a similar remedy to that which Croly advocates for persons racialised-as-negro and persons racialised-as-white.

Yet, there is one dissimilarity. Mill uses a different word: 'amalgamation'. Under the title of 'Reasons for coining these words', Croly argues that '[a]malgamation is a poor word, since it properly refers to the union of metals with quicksilver, and was, in fact, only borrowed for an emergency, and should now be returned to its proper signification' (1864: ii). In clearing the way for his neologism, Croly resists the continued use of the word 'amalgamation', but not the continued use of the metaphor. Indeed, towards the end of his essay, Croly continues to use the metaphor, this time to describe the changing character of the North American political landscape:

'Four years ago the Democrats, so-called, defended slavery, and the Republicans only dared to assert an opposition to the extension of slavery. The Republican party to-day boldly demands that every black man in the land shall be free; [. . .] the great Republican party has merged into the little abolition party. The drop has colored the bucket-full' (1863: 48–50).

Thus, the metaphor of amalgamation begins with the idea of a freshly-purchased and recently-opened 'bucket[...]full' of white paint. Then, the idea is that paint in this

'bucket' is 'colored', by adding a 'drop' of paint that is not white in colour. It is best, according to this theory, that the white paint be kept pure; failing that, in any admixture, the white paint is to be predominant. However, so powerful is the paint that is not white in colour, that just one 'drop' can contaminate a whole 'bucket-full'. The theory that this metaphor generates explains the proviso Mill gives to his miscegenistic remedy: 'a people who, in so great a degree, yet remain to be civilized' should not 'be the predominant ingredient' (1846: 6).

However, this theory is incompatible with the theory of social stigmatisation that is, elsewhere, generated, by Mill's metaphor of the 'badge'. One way to grasp the incompatibility, is to see each theory as a competing etymology of the word 'caste'. This English word is derived from the Portuguese noun phrase *casta raça*, which is ambiguous: it may have meant 'pure breed' (cf. Latin *castus* = English 'chaste') or it may have meant 'separated lineage' (cf. Latin *castus*, from *carere* = English 'separated', from 'to cut off'). The former meaning correlates with procreativity sexual biological miscegenation, whereas the latter meaning correlates with horizontally relational miscegenation. In his first aspect of Caste, Ambedkar conceives of this separation as consisting in an imagined boundary between those persons who are cut off from each other. Although Ambedkar tells us that 'Caste is not [. . .] a physical barrier', 'not a physical object like a wall of bricks or a line of barbed wire', he nevertheless remains committed to the assertion that Caste is a 'object', 'barrier', 'wall', or 'line'—just a 'notional' one. Importantly, what this means is that flout the authority of this 'line' is to cross the social boundary established by Caste. This theory of crossing 'Caste' competes with the alternative theory of contaminating purity,

which assumes that Brahminity, whiteness, or Protestant Englishness exists, prior to the erection of the 'notional' boundary. Furthermore, in his second aspect of Caste, Ambedkar conceives of the 'graded order' of the separated persons as 'the slight and stigma cast upon them by the Hindu religion' (1936b: 4.5). In this use of the phrase 'cast upon', Ambedkar puns. For, etymologically, the English verb *to cast* is derived from an Old Norse verb *kasta*, meaning 'to throw'. This etymology shows us that Ambedkar theorises Caste in the same way that Mill theorised stigma—as something 'thrown upon' a person, to explain social separation. Indeed, as Gary Michael Tartakov (2009: 104) has demonstrated, 'the sociological concept of stigmatized classes explains the situations of Dalits and African Americans better than the unique traditional accounts of their situations, as matters of *caste pollution* or *racial inferiority*'. Thus, we ought not to be distracted by the metaphor of amalgamation: for both Mill and Ambedkar, to stigmatise is to cast aspersions.

2.1.2. The feeling of being kith and kin

Mill argues that 'the tie which connects a man with his wife' 'in many men exclude[s], and in most, greatly temper[s], the impulses and propensities which lead to tyranny' (1869: 2.2). Similarly, Ambedkar's initial statement of his prescription is that '[t]he real remedy for breaking Caste is inter-marriage. Nothing else will serve as the solvent of Caste' (1936b: 20). Indeed, the Supreme Court of India has recently endorsed Ambedkar's 'real remedy': In the matter of *Lata Singh vs. State of Uttar Pradesh & Another* (2006), Justice Markandey Katju asserted that 'inter-caste

marriages are in fact in the national interest as they will result in destroying the caste system'.

We may reconstruct Ambedkar's argument for this assertion as follows:

1. 'Fusion of blood can alone create the feeling of being kith and kin' (1936b: 20).
2. '[U]nless this feeling of kinship, of being kindred, becomes paramount the separatist feeling—the feeling of being aliens—created by Caste will not vanish' (1936b: 20).
3. 'You must make your efforts to uproot Caste' (1936b: 26.2) and 'the separatist feeling—the feeling of being aliens—created by [it]'.

Therefore,

4. You must fuse your blood.

I accept Ambedkar's third and second premises, but I reject his first premise. Let me address these in reverse order. Ambedkar's third premise is supported by the conjunction of Mill's utilitarianism and Mill's argument that social stigmatisation is a social tyranny; I shall not advance an additional argument for it, here. Ambedkar's second premise contrasts two distinct 'feeling[s]'. On the one hand, there is 'the separatist feeling [. . .] created by Caste'. This is not just the feeling of being separate. Since 'the Caste system has two aspects', it is also the feeling of being 'in a graded order one above the other in social status' (1936b: 21). Thus, 'the feeling of being aliens' better captures this feeling of being both separated and graded at the

same time. On the other hand, there is 'this feeling of kinship, of being kindred'. Distinguish the 'feeling of kinship, of being kindred', which I shall call commonality, from the fact 'of kinship, of being kindred', a fact to which Ambedkar refers, in his first premise, as '[f]usion of blood'. Ambedkar's second premise is compelling, because it is a matter of kindred feeling and not a matter of kindred fact. Conversely, Ambedkar's first premise is not compelling, because it is a matter of kindred fact and not a matter of kindred feeling. Thus, in section 2.1.2.1., I shall show that Ambedkar's second premise is true, because over fifty years' worth of independent lines of social psychological enquiry has confirmed the hypothesis that cross-caste commonality is necessary to break what Gordon Allport called 'prejudice'. In section 2.1.2.2., I shall show that Ambedkar's first premise is false, because it expresses the proposition that only cross-caste kinship can give rise to cross-caste commonality. I argue that cross-caste kinship is an unreliable source of cross-caste commonality, and (in 2.2.1.) that cross-caste commonality can also be created by what I call cross-caste companionship.

2.1.2.1. Cross-caste commonality

Allport, who, in his book on *The nature of prejudice*, established the relevant social psychological theory, stipulated both a premise about cross-caste commonality and a premise about cross-caste 'contact'. Unfortunately, Allport's theory is now standardly and unshakeably referred to as 'the contact hypothesis'. This is a terrible misrepresentation of the hypothesis and of the social scientific evidence that has conformed to and confirmed it. For, Allport's contention is not at all that, for

instance, persons should be in 'contact' with each other, i.e. that they should 'touch' each other or 'touch base' with each other (cf. Latin *con* + *tactus* = 'a touching'). Indeed, Allport's hypothesis was not correctly summarised by Diana Ross (1970): 'Reach out and touch somebody's hand; make this world a better place, if you can'. On the contrary, Allport's contention is that persons should encounter or confront each other; they should interact, or engage in some activity with, each other. Thus, the social psychological theory were more accurately called *the hypothesis of interactive encounter*.

However, not all encounters *count*—this was why Allport (1954: 281) placed no fewer than four conditions on the success of any such encounter. In defining success, Allport focused on the reduction of what he called 'prejudice'. Allport defined 'prejudice' as 'an antipathy based on faulty and inflexible generalization'. Notice how Allport's limited understanding of the nature of stigma leads him (a) to overlook the fact that stigma occasions attraction, as well as 'antipathy', and (b) the fact that stigma is not only a motivational matter of 'antipathy' and a cognitive matter of 'faulty and inflexible generalization', but also something semiotic. Thus, Allport's 'prejudice' is not the whole of Mill's 'stigma'. However, it is a significant aspect of it, and so what Allport has to say about 'prejudice' is relevant to what Ambedkar argues about Caste. 'Prejudice', Allport told us, 'may be reduced by':

1. 'equal status contact between majority and minority groups'
2. 'in the pursuit of common goals'.

Allport added that 'The effect is greatly enhanced if this contact is'

3. 'sanctioned by institutional supports (i.e., law, custom or local atmosphere)',

'and provided it is'

4. 'of a sort that leads to the perception of common interests and common humanity between members of the two groups'.

The notion of cross-caste 'common[ality]' seems to appear in both Allport's second and fourth conditions. In the second condition, there is commonality of the 'goals' pursued, whereas, in the fourth condition, there is commonality of the 'interests' and 'humanity' of the pursuers of those goals. A goal is something not yet realised and something that could only be realised in the future. By contrast, an interest or one's humanity is real and present. What Ambedkar called 'this feeling of kinship, of being kindred' is better captured by a commonality of something real and present, than by a commonality of something yet to be realised. Thus, Allport's fourth condition is what is key to the defence of Ambedkar's second premise.

However, whereas Allport merely hypothesises that cross-caste 'common[ality]' 'greatly enhance[s]' the 'reduc[tion]' of 'prejudice', Ambedkar asserts that cross-caste commonality must be 'paramount' in order to 'break[...] Caste'. We can understand the dispute between Allport and Ambedkar as a dispute

over what sort of encounters constitute sufficient 'integration'. According to Anderson, '[i]ntegration consists in the participation as equals of all groups in all social domains' and 'the typical temporal order in which a society moves from segregation to full integration' is 'in four stages:

- (1) formal desegregation,
- (2) spatial integration,
- (3) formal social integration, and
- (4) informal social integration'.

The first stage 'consists in the abolition of laws and policies enforcing racial separation'; the second stage 'consists in the common use on terms of equality of facilities and public spaces by substantial numbers of all races'. The third stage 'occurs when members of different races cooperate in accordance with institutionally defined social roles, and all races occupy all roles in enough numbers that roles are not racially identified'. The fourth and final stage 'happens when members of different races form friendships, date, marry, bear children or adopt different race children. At school and work, it happens when members of different races share conversations at the lunch table, hobnob over the coffee break, and play together at recess' (2010: 116). Allport is saying that a society's achievement of Anderson's fourth and final stage would be a 'great[...] enhancement', but that its achievement of her third stage would be sufficient to reduce 'prejudice'—understood motivationally and cognitively. By contrast, Ambedkar is saying that a society's achievement of Anderson's third stage would be

insufficient to dismantle 'stigma'—understood semiotically. For that, the fourth and final stage is necessary.

Sixty years of social psychological experiments have progressively shown that Ambedkar was very probably right. Not only have Allport's successors found that the fourth condition should have been expressed much more strongly; they have found that it is the fourth condition that makes any cross-caste encounter count. For instance, in his article, *The systematic analysis of socially significant events: A strategy for social research*, Stuart W. Cook (1962: 75), found that he had to 'take account of one of the most frequently reported findings with regard to intergroup contact—namely, the more intimate or neighborly the association, the more favorable the attitude'. To this end, Cook interpreted Allport's fourth condition as expressing the necessity of 'acquaintance potential', by which Cook meant that cross-caste 'contact' should offer an 'opportunity [. . .] for the participants to get to know and understand one another'. Later, Thomas Pettigrew (1997: 173, 183), in an article, *Generalized intergroup contact effects on prejudice*, rendered the condition even more demanding. In a study of the 'self-reports of 3,806 survey respondents in seven 1988 national probability samples of France, Great Britain, the Netherlands, and West Germany', Pettigrew found that 'a situation's potential for friendship is an essential, not just facilitating, condition of optimal intergroup contact'. More recently, in an article, *Racial reconciliation in South Africa: Interracial contact and changes over time*, James L. Gibson and Christopher Claassen gave the condition even more stringency. 'In 2004', Gibson and Claassen report, '4,108 interviews were completed, including 1,549 Blacks, 1,362 Whites, 738 Coloured

respondents, and 459 South Africans of Indian origin'. From these interviews, Gibson and Claassen (2010: 271) found that 'contact with Whites is only beneficial to the attitudes of Black South Africans *if it is intimate*, [whereas] that contact increases racial reconciliation amongst Whites, Coloureds, and South Africans of Indian origin, regardless of its intimacy'.

Yet, social psychologists have not only performed experiments that consistently conform to, confirm, and strengthen Allport's fourth condition, they have also performed meta-analyses of those experiments, to identify why Allport's strengthened fourth condition is so crucial. Most significantly, in their article *How does intergroup contact reduce prejudice?: Meta-analytic tests of three mediators*, their meta-analysis of more than 515 studies led Thomas Pettigrew and Linda Tropp (2008: 922) to conclude that, in cross-caste 'contact', 'the mediational value' of 'enhancing knowledge about the outgroup' 'appears less strong than' the mediational value of both (a) 'reducing anxiety about intergroup contact' and (b) 'increasing empathy and perspective taking'. These two factors explain what is meant by reference to 'intimacy', in Gibson and Claassen's strengthened version of Allport's fourth condition. Indeed, these two factors show how cross-caste encounters that fall short of Allport's strengthened fourth condition fall short of breaking 'stigma'.

First, 'reducing anxiety about intergroup contact' is necessary for breaking 'stigma'. In an article, *Relationships between intergroup contact and prejudice among minority and majority status groups*, Linda Tropp and Thomas Pettigrew (2005: 951), drawing upon their meta-analysis of same 515 studies, found that 'the relationships

between contact and prejudice tend to be weaker among members of minority status groups than among members of majority status groups'. They attributed this finding to the fact that, 'for members of minority status groups, an ongoing recognition of their group's devaluation inhibits the potential for positive contact outcomes, whereas such an effect is unlikely to occur among members of majority status groups'. Tropp and Pettigrew's explanation accounts for the racialised asymmetry in the results that Gibson and Claassen observed in South Africa. Presumably, among 'Black South Africans', there is an 'ongoing recognition of their group's devaluation', that we do not find 'amongst Whites, Coloureds, and South Africans of Indian origin'. Presumably, from the perspective of 'Black South Africans', these encounters were not unambiguously non-hierarchical. On the contrary, these encounters made sense in light of the mainstream way of communicating about 'Black South African[...] bodies.

Second, 'increasing empathy and perspective taking' is necessary for breaking 'stigma'. Persons racialised-as-black and persons racialised-as-white suffer from emotional and perceptual segregation about, for instance, what behaviour counts as racially stigmatising. On the one hand, in her article *Emotional segregation: A content analysis of institutional racism in US films, 1980-2001*, Angie K. Beeman tells us that 'emotional segregation refers to the lack of empathy that exists between African Americans and "whites"'. According to Beeman, this lack of 'empathy' is a lack of 'understanding and internalizing the emotions another person feels' (2007: 690). A difference in emotional response to a stimulus is likely attributable to a difference in perception of that stimulus. According to Russell K. Robinson (2008a:

2803), in an article entitled *Structural dimensions of romantic preferences*, 'perceptual segregation' is the phenomenon whereby 'black people and white people who observe the same interracial incident are likely to disagree as to whether the white person committed discrimination'. This is because, Robinson (2008b: 1093) explains, in an article entitled *Perceptual segregation*, '[w]hile many whites expect evidence of discrimination to be explicit, and assume that people are colorblind when such evidence is lacking, many blacks perceive bias to be prevalent and primarily implicit'. For instance, Robinson reports,

'according to a CNN poll, 60% of black respondents agreed that, "the federal government was slow in rescuing those stranded in New Orleans after Katrina because many of the people in the Louisiana city were black." Just 12.5% of whites concurred' (2008b: 1100).

Furthermore, Robinson reports,

'in 1994, a *CBS News/New York Times* poll found that roughly 40% of blacks, compared to 15% of whites, believed that the criminal justice system was biased against [O. J.] Simpson. [. . .] The Simpson poll [. . .] found an even greater difference between blacks and whites when it asked about racial bias in the criminal justice system in general: Roughly 74% of blacks stated that the criminal justice system generally is biased against blacks, while only 22% of whites perceived such bias'.

Invariably, the white reaction to the discordant black perspective is that blacks are either sincere and paranoid, or dishonestly playing the race card (Robinson 2008b: 1139).

We can understand both black anxiety and perceptual segregation on matters of racial stigmatisation in terms of what Curtis D. Hardin and Terri D. Conley (2001: 8), in their article *A relational approach to cognition: Shared experience and relationship affirmation in social cognition*, call 'the perceived achievement of mutual understanding'. According to Hardin and Conley, we develop this perception of a 'shared reality', because 'shared experience links specific interpersonal relationships to specific cognitions, thereby simultaneously binding social relationships and maintaining the individual's grasp of a dynamic world'. Although such a cognitive bias can clearly be socially beneficial, as Anderson points out, it can also act as a 'stigma-reinforcing cognitive bias[...]':

'The shared reality bias leads individuals to align their perceptions and judgments with those of ingroup members, especially if the group is based on personal affiliation [. . .] The shared interpretations of the social world that ['whites'] build with their ['white'] peers will tend to exclude blacks' experiences. To the extent that blacks are more aware than whites are of discrimination and other obstacles to their advancement, insular whites will build a shared reality among themselves that underestimates the extent of these obstacles. This reinforces dispositional explanations of black disadvantage (2010: 46–47).

Thus, for any cross-caste encounter to suffice to break 'stigma', it would need (a) to get us past our anxiety about a supposed difference in our reality, and (b) to get us to develop the perception that a shared reality is common to us both. The sense of a shared reality that common to all persons racialised-as-white must be replaced with a sense of a shared reality that is common to all persons, across the social boundaries erected by caste. Thus, from the potential of perceived common humanity and interest, to the potential for acquaintance, to the potential for friendship, to intimacy

itself (not merely the potential for intimacy), understood as the sense of a shared reality, Allport's fourth condition has been revealed to be nothing other than Ambedkar's second premise. If a cross-caste encounter does not consist in the sense of a shared reality, it does not count—it will not 'uproot Caste' and 'the feeling of being aliens[. . .]created by [it]'.

2.1.2.2. Cross-caste kinship

However, Ambedkar's first premise is false. It is false that 'Fusion of blood can alone create the feeling of being kith and kin'. This premise is false for two reasons. First, in 2.1.2.2., I distinguish two interpretations of '[f]usion of blood', two types of cross-caste kinship—namely, the procreation of cross-caste children and the practice of cross-caste marriage—and I argue that neither can be relied upon to generate cross-caste commonality. Second, in 2.2.1., I argue that cross-caste kinship is not the only way in which cross-caste commonality may be created, because cross-caste commonality can also be created by what I call cross-caste companionship.

Like Ambedkar, Croly, too, spoke of 'the necessity of the fusion of the white and black' (1864: 18), of 'the ultimate fusion of the negro and white races' (1864: 60). By this, Croly meant the procreatively sexual 'blending of blood'. So we might think that, by the phrase '[f]usion of blood', Ambedkar means the procreation of cross-caste children. Yet, cross-caste parents have not achieved a perception of a shared reality common to both, simply because they have together produced children of so-called 'mixed race'. On the contrary, as Adrienne D. Davis (2003) observes,

enslaved persons racialised-and-gendered-as-black-women often gave birth to such children, following their sexual harassment at the hands of their masters—free persons racialised-and-gendered-as-white-men. Crucially, these masters did not participate in the shared activity of raising these cross-caste children. On the contrary, these children were, instead, legally assumed to have the enslaved status of their mothers. Indeed, '[t]he South was one of the smallest importers of slaves, but had the largest slave population in the West', because '"[t]he perpetuation of the institution of slavery, as the nineteenth-century Southerners knew it, rested on the slave-woman's reproductive capacity"' (2003: 459, citing White 1985: 79-80). As Adrian Piper wryly notes, the result of this procreative phenomenon is that 'the longer a person's family has lived in this country, the higher the probable percentage of African ancestry that person's family is likely to have' (1992: 17). Yet, despite this extensive '[f]usion of blood', a perception of a shared reality does not yet exist across the boundaries of caste in the USA. On the contrary, it has generated *new*, invidious forms of micro-distinction between racial attributes, among persons of so-called 'mixed race', and between those persons and persons racialised-as-black (Piper 1992). Thus, the production of cross-caste children has proved unreliable in giving rise to cross-caste commonality.

However, recall that Ambedkar's assertion of his 'real remedy', the assertion that immediately preceded his argument, was about cross-caste marriage, or cross-caste *connubium*. It was not about cross-caste procreation, or 'fusion of blood', as he so vividly puts it. Thus, Ambedkar's argument, if he was expecting it to yield this conclusion about marriage, is invalid. Suppose we give Ambedkar the benefit of the

doubt. Suppose that he had not waxed lyrical about 'fusion of blood', but had, instead, given us, as his first premise, the proposition that '[Cross-caste connubium] can alone create the feeling of being kith and kin'. Would this premise have been true?

Mill would have rejected the premise. Marriage, in Mill's day, was regulated by the law of *couverture*. According to William Blackstone (1769), who gave what became the standard explanation of this law,

'[b]y marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband'.

It was against the background of this law that Mill (1851a) made a pre-nuptial statement to Harriet Taylor. Mill argued that

'the whole character of the marriage relation as constituted by law [is] such as both she and I entirely and conscientiously disapprove, for this among other reasons, that it confers upon one of the parties to the contract, legal power and control over the person, property, and freedom of action of the other party, independent of her own wishes and will'.

In effect, Mill denounced marriage as a social tyranny. Thus, when Mill advocates miscegenation as a remedy for social stigmatisation, he cannot mean that remedy to consist in marriage. One social tyranny cannot remedy another.

However, it might be objected that, since Mill's day, marriage has been rehabilitated. Proof of its rehabilitation, the objection might go, is that law of

couverture has been repealed. This is unconvincing. First, it would not have convinced Mill, who, as we have already observed, believes both that 'the chief mischief of the legal penalties is that they strengthen the social stigma' and that that stigma or 'that odious association lasts'. For Mill, even though the law of *couverture* has been repealed, badges of *couverture* might still remain. Second, as Claudia Card (1997: 322–323) argues, in her article *Against marriage*, contemporary marriage retains even the legal aspects of the social tyranny that Mill espied in it:

'the legal rights of access that married partners have to each other's persons, property, and lives make it all but impossible for a spouse to defend herself (or himself), or to be protected against torture, rape, battery, stalking, mayhem, or murder by the other spouse'.

Even more worryingly, in a society in which 'people who do not have independent access to an income often find themselves economically pressured into marrying' and in which 'the consequences of divorce can be so difficult that many who should divorce do not', contemporary marriage threatens to leave persons racialised-gendered-and-classed-as-poor-black-women in a vulnerable and precarious position.

2.2.0. Another plan of action for the abolition of caste is to begin with inter-caste dinners

Despite Mill's opposition to it, there is something special about marriage. Furthermore, Ambedkar thinks there is something special about meal sharing. Indeed, Ambedkar asserted that 'Caste will cease to be an operative force only when inter-dining and inter-marriage have become matters of common course' (1936b: 20.5–6). I shall try to understand what truth there might be to what Ambedkar asserted. By exploring Mill's notion of 'the ideal of marriage', and its relation to meal-sharing, I shall argue that, when these have 'become matters of common course', we will succeed in 'killing the [. . .] consciousness of caste'.

2.2.1. The ideal of marriage

Mill's 'ideal of marriage' is intimately related to the social value he places on meal-sharing.

First, consider 'inter-marriage'. Between 2003 and 2004, George Yancey (2007: 201) conducted, 'in a Texas metropolitan area[,] twenty-one interviews of white partners in [. . .] interracial marriages'; '[i]n almost half of the marriages

(n=10) one partner was black'. Strikingly, Yancey found that 'Whites married to non-blacks generally adjusted their racial attitudes *because of their interracial marriages*'; Yancey also 'observe[d] these tendencies among whites married to blacks' (2007: 203–204, *italicisation mine*). In 2.2.1.1., I shall argue that cross-caste commonality was achieved in these marriages not because they were marriages, but because they put the marital partners on an equal deliberative footing. I call a relationship that instantiates this feature a 'companionship'. Yancey's data shows that cross-caste companionship can create cross-caste commonality.

Second, consider 'inter-dining'. In 2004, in South Africa, Gibson and Claassen (2010: 269) found that: 'when intergroup contact achieves a level of intimacy compatible with meal sharing or true friendships, that contact has substantial consequences for the fostering of racial reconciliation'. In 2.2.1.2., I shall argue that there is, for Mill, an important link between cross-caste commensality and cross-caste companionship: cross-caste commensality can create cross-caste companionship.

2.2.1.1. Cross-caste companionship

Mill distinguishes legal marriage, which he and Harriet Taylor eschew, from what he calls 'the ideal of marriage', which he and Harriet Taylor advocate. '[T]he ideal of marriage', Mill says, 'would be a common, if not the commonest, case in marriage, did not the totally different bringing-up of the two sexes make it next to an impossibility to form a really well-assorted union'. By contrast, 'the ideal of marriage [. . .] often happens between two friends of the same sex, who are much associated

in their daily life' (1869: 4.16). Harriet Taylor agrees that 'the ideal of marriage' can occur outside of legal marriage: 'The highest order of durable and happy attachments would be a hundred times more frequent than they are', she says, 'if the affection which the two sexes sought from one another were that genuine friendship, which only exists between equals in privileges as in faculties' (1851: 39). In fact, Mill, in an early draft of his *Autobiography*, asserted that, before they were legally married, in 1851, he and Harriet Taylor Mill enjoyed 'the ideal of marriage', which he called 'companionship':

'Certain it is that our life, during those years, would have borne the strictest scrutiny, and though for the sake of others we not only made this sacrifice but the much greater one of not living together, we did not feel under an obligation of sacrificing that intimate friendship and frequent companionship which was the chief good of life and the principal object in it, to me, and, conscious as I am how little worthy I was of such regard, I may say also to her' (1873a).

Suppose companionship of the sort that existed between John Stuart and Harriet Taylor Mill were forged across the boundary erected by caste. How might such cross-caste companionship succeed in creating cross-caste commonality?

On the one hand, cross-caste companionship might create cross-caste commonality, because it generates a certain output from shared activity. Mill seems to encourage this thought, when he says that, in 'the ideal of marriage', 'each of two persons, instead of being a nothing, is a something', when he speaks of 'that union of thoughts and inclinations which is the ideal of married life' (1869: 4.15), and when he asserts that 'whatever differences there might still be in individual tastes, there

would at least be, as a general rule, complete unity and unanimity as to the great objects of life.' (1869: 4.16). Margaret Gilbert seems to support this thought. Although, like Mill and Taylor Mill, Gilbert asserts that there is 'no obvious reason to think that fusion of the kind common in marriage cannot exist without benefit of legal marriage', Gilbert nevertheless finds that '[m]arriage is liable to produce an intensive, long-term fusion'. Yet, unlike Ambedkar, who spoke of a '[f]usion of blood', Gilbert is speaking of a 'fusion of egos'. For Gilbert, if one 'makes explicit references to [one]self in terms of "I" and "mine"', then one '*has an ego, or, equivalently, is an ego*' (1996: 217). For Gilbert, 'two egos may be said to have fused just in case the people in question form a plural subject of some kind' (1996: 220). For Gilbert, one is a member of a plural subject when one uses the pronoun 'we', where 'we' refers to 'a set of people each of whom shares, with oneself, in some action, belief, attitude, or other such attribute' (1989: 168). This joint 'action, belief, attitude' is the output of one's shared activity. Gilbert tells us that 'fusion is a matter of degree', in two respects. First, 'two (or more) people can be fused together to a greater or lesser extent'; second, '[f]usion can [. . .] be of long or short duration' (1996: 221). Mill, who takes 'the ideal of marriage' to be a relationship 'of an enduring character, [. . .] through the whole of life' (1869: 4.16), would understand companionship not as moderate and temporary fusion, but as intensive and long-term fusion. Conversation is an example of moderate and temporary fusion. According to Gilbert, '[w]hen people talk together in conversation, at least when they make assertions as opposed to questioning, they 'put up' propositions for joint acceptance or rejection. Depending on how others react, a given proposition is jointly accepted or rejected' (1989: 295). In this way, a conversation 'generates various views that are

jointly accepted at least for the duration of the encounter. These conversationalists will, then, be fused temporarily, to a degree, in relation to a certain goal and a certain set of views' (1996: 221). Thus, a conversation may be described as 'the negotiation of jointly accepted views' (1996: 221n19). By contrast, intensive and long-term fusion, Gilbert tells us, is a relationship in which 'the parties have one or more major long-term joint projects', and in which, 'over time[,] negotiations take place and agreements are reached on a multitude of issues, major and minor' (1996: 222). For example, if two unequally racialised and gendered egos, from either side of the boundary erected by caste, fuse, intensively and long-term, they are a plural subject and might well, for that reason, jointly believe some particular event or action to have been racially stigmatising. Thus, since the output of this fusion is cross-caste concord on what behaviour counts as racially stigmatising, one might, therefore think that a '[f]usion of [egos] can [also] create the feeling of being kith and kin'.

On the other hand, cross-caste companionship might create cross-caste commonality, because it generates a certain input into shared activity. This alternative thought might be prompted as a response to a problem that arises, if one focuses on the output from shared activity. The problem is that cross-caste concord about what behaviour counts as racially stigmatising could be achieved in a variety of ways. For example, the parties to the conversation could accept this conversational output as the result of a randomising mechanism. This would be a type of egalitarian input. However, the parties to the conversation could also accept this conversational output as the result of a majoritarian vote, as the result of an unjust bargain, or even a threat. Cross-racial concord that results from such inegalitarian inputs as these cannot be

relied upon to create cross-caste commonality. Thus, surprisingly, it cannot be the output of conversation that is the active ingredient in 'genuine' or 'true friendships'. Focus, then, not on the state of holding a jointly accepted view, but rather on the process of getting to one. Central to what Andrea Westlund calls '[t]he "input" side of joint intention' (2009: 2) is what Bennett Helm calls the 'problem of import' (2010: 262; 266n29): What is so important to true friends that it acts as a normative constraint on the way in which they come jointly to adopt some 'action, belief, attitude'? Of import to 'genuine' or 'true' friends is the 'conception of [their] relationship as one of mutual concern between individuals whose practical perspectives are normatively on a par' (Westlund 2009: 16). This is because each individual in the 'true friendship' treats some idiosyncratic set of considerations as providing reasons for her to act (Westlund 2009: 3n6), and any view that the 'true friend[s]' are jointly to accept must be rationally and reasonably acceptable, from each individual's distinct, idiosyncratic, practical perspective. Thus, to reject any conversational output generated in a way that fails to promote this conception of their relationship is to guard against both deference and domination within the relationship. It is to keep each party to the relationship on an equal deliberative footing. This focus on the input of shared activity makes sense of Mill's argument that we adopt a 'principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other' (1869: 1.1). Indeed, it makes sense of Croly's argument that we 'place the races upon a footing of perfect equality' (1864: 58).

We are now in a position to explain how a '[footing of equality] can [also] create the feeling of being kith and kin'. A person is biased towards embracing

complaints made by herself as having *prima facie* plausibility. The default is that, if the person *thinks* that she has grounds for complaint, then, at least to her mind, she probably *does* have grounds for complaint. This motivates a person to seek from others a just response to her complaint. In a cross-racial relationship marked by equal deliberative standing, the 'map of racial self-interest' has been redrawn (Kennedy 1997: 819). Each person is biased towards embracing complaints made by *either* member of the plural subject as having *prima facie* plausibility. The new default is that, if either member of the plural subject *thinks* that she has grounds for complaint, then, at least to the minds of either party to that plural subject, that member of the plural subject probably *does* have grounds for complaint. This motivates both members of the plural subject to seek from others a just response to the complaint. In this way, a cross-caste relationship marked by equal deliberative standing can create cross-caste commonality. Indeed, this theory was Yancey's own explanation of the data he collected in Texas, in 2004: 'Because of the necessity of establishing healthy relationships, it is important that marital partners take seriously the experiences of their spouses. This provides whites married to people of color incentive to understand the power of racism from the testimonies of their spouses' (2007: 203–204).

2.2.1.2. Cross-caste commensality

According to Ambedkar, '[a]nother plan of action for the abolition of Caste is to begin with inter-caste dinners' However, Ambedkar thinks that

'[t]his also, in [his] opinion, is an inadequate remedy. There are many castes which allow inter-dining. But it is a common experience that inter-dining has not succeeded in killing the spirit of Caste and the consciousness of Caste. [. . .] Caste will cease to be an operative force only when inter-dining and inter-marriage have become matters of common course' (1936b: 20.5–6).

In 2.2.1.2, I shall argue that, when 'inter-dining', or cross-caste commensality, 'become[s a] matter[...] of common course', it can reliably lead to cross-caste companionship. Since, etymologically, from Latin *con-*, meaning 'with', and *panis*, meaning 'bread', one's *companion* is one's 'bread-fellow', I shall call cross-caste commensality that paves the way to cross-caste companionship 'cross-caste companionship'. In 2.2.2., I shall argue that cross-caste companionship breaks caste by 'killing [. . .] the consciousness of caste', by transforming, that is, the mainstream way of communicating about persons racialised-and-gendered-as-black-women from bread-fellow to bread-fellow.

Recall Mill's assertion that one of the 'moral axioms' is that 'every one of the living brotherhood of humankind has a moral claim to a place at the table provided by the collective exertions of the race'. Mill is speaking, in this string of words, both metaphorically and literally. Certainly, Mill equates this 'axiom' to the assertion that 'every person alive ought to have a subsistence' (1849: 73), so that 'the table' is a metaphor for the cornucopia of nature. Yet, Mill also, elsewhere, asserts that granting 'a place at the table' is, literally, a way in which one expresses human fraternity and fellowship with another person. In his essay *On Ireland*, Mill remarked that '[a]fter what fashion men bepraise their friends, the proceedings at any public dinner will testify. At such entertainments (next to eating and drinking), the principal purpose for

which the guests are assembled, seems in general to be that of receiving assurances from one another that they are patterns of every human virtue' (1825: 63). Doubtless, Mill thinks that too much mutual praise goes on at such events, but, nevertheless, the 'principal purpose' of such events is clearly recognitive: 'guests are assembled' in order publicly to acknowledge the common humanity of the guests.

Furthermore, 'guests are assembled' at meals in order to signal intimacy in one's relationship with one's guests. Thus much was demonstrated by Lisa Miller, Paul Rozin, and Alan Page Fiske (1998: 423, 427–433). 'In 1992, 69 University of Pennsylvania undergraduates (34 men and 35 women) were asked [. . .] to answer 'yes' or 'no' to three separate questions concerning whether they 'share food', 'share eaten food', or 'feed or are fed by' people with whom they have various relationships' and '150 University of Pennsylvania undergraduates (73 male and 77 female) [. . .] saw a projected videotape of a man and a woman conversing while they ate lunch [and] were asked to describe what they had seen and to guess the relationship between the two people in the tape'. Miller, Rozin and Fiske found that 'sharing food is interpreted as a sign of social intimacy', that 'feeding is a stronger sign of intimacy than sharing, and will incline observers to the assumption of romantic involvement, in an appropriate context', and that 'consubstantiation [i.e. eating food that has been 'previously bitten/tasted/touched by another'] enhance[s] the intimacy judgments in the context of food sharing'.

Miller et *alii*'s insight into the intimate value of meal-sharing and Mill's insight into the recognitive value of meal-sharing—or, at least, the intimate and recognitive

value that meal-sharing have *in a society, such as ours, beset by heteronormative white male domination*—have explanatory power. First, Miller et al. can explain why Gibson and Claassen found that 'when intergroup contact achieves a level of intimacy compatible with meal sharing or true friendships, that contact has substantial consequences for the fostering of racial reconciliation'. Miller's explanation is that, at least in a society such as ours, 'true friendships' just are friendships that instantiate 'meal sharing'. Second, Mill can explain why Gibson and Claassen found that 'contact with Whites is only beneficial to the attitudes of Black South Africans if it is intimate'. To see how, notice that, for their

"intimacy of contact" index, [Gibson and Claassen] weighted the[ir] friendship responses by the frequency of sharing a meal, adding either no "bonus" points for those never sharing a meal with their friends of the opposite race, .5 additional points for those who dine with their friends, but not very often, and a full point for those who quite often eat with friends of another race'.

In other words, 'contact with Whites is only beneficial to the attitudes of Black South Africans', if it is the sort of 'contact' that includes meal-sharing. Mill's explanation is that 'contact with Whites is only beneficial to the attitudes of Black South Africans', if it instantiates the sort of 'assurances' that, according to Mill, meal-sharing is wont to instantiate. These are the sort of 'assurances' that might dispel what Tropp and Pettigrew called the 'ongoing recognition of their group's devaluation'.

However, not only can the insights of Mill and Miller explain the findings of Gibson and Claassen, they also have the distinction of being able to explain both our arcane rules of etiquette and our acts of exclusive commensality.

Take rules of etiquette. Norbert Elias, in his *The history of manners*, found

'ample evidence to show that[, in the seventeenth century,] customs, behavior, and fashions from the court are continuously penetrating the upper middle classes, where they are imitated and more or less altered in accordance with the different social situation. They thereby lose, to some extent, their character as means of distinguishing the upper class [from the upper middle class]. They are somewhat devalued. [Crucially, t]his compels those above to further refinement and development of behavior' (1969: 100–101, italicisation mine).

We can explain the invention and re-invention of dining etiquette, by the upper class of the royal court, as a refusal to signal intimacy with, or to recognise the common humanity of, those in the upper middle class, immediately below.

Now take exclusive commensality. Persons racialised-as-white have been consistently found, at different ages and in different countries, to exclude persons racialised-as-black from the dining table. We can similarly explain this phenomenon as a refusal, by persons racialised-as-white, to signal intimacy with, and to recognise the common humanity of, persons racialised-as-black. The literature consists in data for adults, for undergraduates, and for school-pupils.

First, take adults. In South Africa, Gibson and Claassen (2010: 266) and, six years earlier, James L. Gibson (2004: 139), both found that '[f]ully four of five blacks report that they have never shared a meal with a white person'. According to Gibson and Claassen (2010: 266), cross-caste 'meal sharing' was 'especially rare among Black South Africans'. Indeed, 30.8% of 'Blacks' who reported that they had 'quite a

number' of 'White' friends also reported that they 'never share a meal with a White person'. By contrast, 'among Whites reporting having quite a number of Black friends, only 9.4% has never shared a meal with them'. Gibson and Claassen conclude from this data that, 'even when Blacks come in relatively close contact with Whites, these relationships are characterized by lower levels of intimacy'.

Second, take students. In 2010, Leigh. E. Schrieff, Colin. G. Tredoux, John A. Dixon, and Gillian Finchilescu repeated an experiment they had first performed in 2005 (2005: 441). '[F]rom a balcony over-looking the dining hall', 'in two catered residences, at the University of Cape Town', they observed—throughout the 'entire the dinner period, i.e. 17h40 to 19h30, in 13 sessions, scattered over three different months'—'[a] total of 475 students [. . .], of which 159 (33.47 %) were black African, 80 (16.84%) Indian, 29 (6.11%) coloured, and 206 (43.37%) white students' (2010: 7–8, 13-14). Schrieff *et al.* 'found marked segregation in seating patterns'—which they called 'hyper-segregation'—'in spite of the opportunity for socially sanctioned intergroup contact', and their two experiments, five years apart, 'demonstrate[d] the consistency of segregated seating patterns over time'. Furthermore, 'in a cafeteria affiliated to a metropolitan university located in a city in the north-west of England' and where '17% [of students] classified themselves as having another ethnic origin', Beverley Clack, John A. Dixon, and Colin Tredoux (2005: 13) observed seating patterns 'on nine time intervals for 6 days over a period of 2 weeks, yielding a total of 45 intervals'. They found that 'interethnic exposure at the level of social units—the spaces where customers chatted as friends or acquaintances whilst eating a meal—was consistently lower than one would expect

under conditions of random mixing[. . .]The majority of individuals sat in units comprised exclusively of members of their own ethnic group'.

Third, take school-children. In a 'magnet' school, 'in a large urban area in the northeastern United States', James E. Rosenbaum and Stefan Presser (1978: 175) made a striking observation: 'the black and white students [sitting at the same dining table, but] at the boundaries between racial groups tended to turn their chairs so they would have their backs, not their sides, directed at the other group. Even at a single table, they managed to shift their seats to create the impression of separate tables'. Rosenbaum and Presser's observation occurred in a school they described as 'predominantly nonwhite', but this predominance was unlikely to have been the cause of the segregation. For, from a '[c]oding of cafeteria seating patterns', between 'mid-February' and 'late June', in 'a desegregated school', in a 'Northeastern industrial city' in the USA, Janet W. Schofield and H. Andrew Sagar (1977: 132–134) found that 'race is an extremely important grouping criterion even for children who have chosen to attend a desegregated school'. Similarly, in the cafeteria of a school serving a 'mostly middle-class community, primed by liberal professionals and activists', Paul Zisman and Vernan Wilson (1992: 206 & 204) observed, 'once a week for a three-week period in each month of November, February, and May', the 'table-hopping' of groups of 'three or more individuals who repeatedly engage in meaningful conversation [. . .]over a period of time'. They found that, at tables in the cafeteria, 'tight-knit groups [. . .] tend to discourage cross-"race" interaction' and that even 'the cores of integrated groups tend to be segregated'. Again, Clark McCauley, Mary Plummer, Sophia Moskalenko, and J. Toby Mordkoff. (2001: 321), in a study of

'lunch-table clusters in the cafeteria of a private girls' school', in Pennsylvania, found 'less Black–White contact among upper-school students (grades 6–12) than among lower-school students (grades K–5)'. In her monograph, *Why are all the black kids sitting together, in the cafeteria?: And other conversations about race*, Beverly Daniel Tatum explains this relative difference in segregation. Tatum argues that '[i]n adolescence [. . .] race becomes personally salient for Black youth' in a way that it never was, during pre-pubescent childhood. For this reason, Tatum argues, '[b]lack students turn to each other for the much needed support they are not likely to find anywhere else' (1997: 60). Tatum concludes that, for persons racialised-as-black, 'in racially mixed settings, racial grouping is a developmental process in response to an environmental stressor, racism. Joining with one's peers for support in the face of stress is a positive coping strategy' (1997: 62).

The fact that racialised exclusion from cross-caste commensality is rife and the fact that commensality signals intimacy and recognition of common humanity, suggest that cross-caste commensality could reliably lead to cross-caste companionship. Specifically, this reliability lies in two aspects of commensality: in what it occasions and in what it promises.

Meal-sharing *occasions* corporeal co-presence and, in our society, conversation constrained by a norm of relevance or adequacy. First, through corporeal co-presence, a person who inhabits a body racialised-as-white can become habituated to bodies racialised-as-black, bodies inhabited by other people. This is crucial to destigmatisation. Since stigma is a badge affixed to a human body, person

who are to become companionate with each other need to learn to become accustomed to each other's human body. Consider how one grows accustomed to the lay of a new house, into which one has moved. Over time, one stops bumping into walls, doors, and skirting-boards, because one has been practicing the activity of conducting one's life in close proximity to this unfamiliar physical object, i.e. the new house. Our practice of physical proximity leads to our becoming physical attuned to, and physically at ease in, the new house. Corporeal co-presence achieves habituation in much the same way. The only difference is that, in the cross-racial context, the unfamiliar physical object around which one practices physical proximity, to which one becomes physical attuned, and in whose embrace one grows physically at ease, is a unequally-racialised body. Second, at least in our society, persons who engage in conversation that is, in the short run, constrained by a norm of relevance or adequacy, are in possession of the basis for a conversation that could become, in the long run, constrained by a norm that requires each party to the conversation to treat the other as her deliberative equal. This is a norm according to which the distinctive perspective of the person racialised-as-black and the distinctive perspective of the person racialised-as-white are of equal concern, when it comes to what can count as an acceptable output of that conversation. Indeed, cross-caste conversation constrained by this norm of equal deliberative standing is what *cross-caste companionship* is.

Meal-sharing *promises* that this corporeal co-presence and norm-constrained conversation will be continued into the future, both regularly and frequently. An event occurs regularly, if the time when a subsequent recurrence of that event will

take place is easily predicted, by the people who will participate in that subsequent event. An event occurs frequently, if it occurs on relatively many, rather than relatively fewer, occasions. Call an activity that occurs with regularity and frequency continual. For Mill, it is crucial that companionship be built on an activity that is continual. For Mill, 'the ideal of marriage' obtains only among persons 'who are much associated in their daily life', who engage in 'the constant partaking in the same things'—things that count as 'a foundation for solid friendship'. Commensality is something in which counts, in Mill's terms, as 'a foundation for solid friendship'. In our society, we are constantly and continually eating, on a daily basis. Since we each regularly eat—that is to say, the time when we are likely to want to eat is, in general, easily predictable by others—and since we each frequently eat—that is to say, we eat on very many occasions—it is no addition to the daily schedule of a person that she engage in the action of eating a meal. Since the activity of eating is no unexpected burden, the activity of sharing that meal is *ceteris paribus* no imposition either. For this reason, continual cross-caste commensality is not only reliably companionate, it is also readily available, and morally permissible, in a way that many other cross-caste activities are not.

It might be objected that dining invitations issuing from individual persons racialised-as-white to individual persons racialised-as-black might appear awkward at best and patronising at worst. Yet, this is not a problem for cross-caste companionship, since we can bring about cross-caste companionship not only via individual invitations, but also within dedicated institutional contexts. The basic idea would be to treat formal racial integration not, as it is currently treated, as the

terminus of the integrative process, but as the cradle for informal social integration. Just as the racial desegregation of schools and workplaces was once thought liable to lead to cross-racial sex and marriage, we might think that institutionalising cross-racial meal sharing in schools and work-places might lead to cross-caste companionship. An example of how this might be done is *Mix It Up at Lunch Day*, popularised by Teaching Tolerance, a Project of the Southern Poverty Law Centre. This annual event facilitates, among school-children, the non-awkward and non-patronising extension of invitations to share meals. Yet, a similar institutional framework is also imaginable for adults outside of the workplace. In the decade before the laws of Apartheid were repealed in South Africa, persons racialised-as-black and persons racialised-as-white, in Pretoria and Johannesburg, created *Koinonia South Africa*. This was a Christian and voluntary organisation that put into contact with each other unequally-racialised households who each had expressed a willingness to engage in cross-caste commensality. It is no coincidence that *Koinonia* is Greek for 'Fellowship': the aim of the South African organisation was to facilitate and communicate the public recognition of the fellowship of all South African persons.

2.2.3. Killing the consciousness of caste

Given the foregoing argument, it may come as a surprise to learn that Ambedkar, in a letter, dated 27th April 1936, to Har Bhagwan of Lahore's Society for the Annihilation of Caste, confessed that 'the real method of breaking up the Caste System was not to bring about inter-caste dinners and inter-caste marriages but to

destroy the religious notions on which Caste was founded' (Ambedkar 1936a). However, this is less surprising if we grasp the distinction that Ambedkar drew between the source of a social disease and the script to remedy it. In his *The annihilation of Caste*, Ambedkar challenges the Society for the Destruction of Caste: 'You have located the source of the disease. But is your prescription the right prescription for the disease?' (1936b: 20.6-7). What Ambedkar meant, by 'the source' and 'the prescription' is clarified in what he says immediately prior to and immediately after this string of words.

Immediately prior to this string of words, Ambedkar says to his audience that '[y]ou are right in holding that Caste will cease to be an operative force only when inter-dining and inter-marriage have become matters of common course'. Clearly, Ambedkar agrees with his audience that lack of regular and frequent 'inter-dining and inter-marriage' is the sustaining 'source' of the 'disease' that is 'Caste'. Yet, 'the source' does not directly determine the script. Ambedkar realises this; Anderson does not. Anderson asserts that '[i]f racial segregation is the problem, it stands to reason that racial integration is the remedy' (2010: 112). One might assume that Ambedkar's argument has the same structure: if the problem of 'Caste' is the 'absence of intermarriage', it stands to reason that '[t]he real remedy for breaking Caste is inter-marriage'. However, this is not at all how Ambedkar argues.

Recall Anderson's four stages of social integration. Clearly, Ambedkar is focused on the Anderson's fourth stage of 'integration'. However, what Ambedkar seems to notice, but Anderson does not, is that the fourth stage does not, unlike

each of the first three stages, involve the 'destruction of a physical barrier'. On the one hand, 'admitting blacks to public accommodations' and 'in the work-place, especially government offices, and higher education' both involve the 'enforce[ment]' of '[a]ntidiscrimination laws' and the enforcement of '[t]he authoritarian structure of the workplace', against physical 'resistance' to change. On the other hand, the fourth stage involves something quite different, as Ambedkar explains to his audience, immediately after the string of words I quoted above:

'Ask yourselves this question: why is it that a large majority of Hindus do not inter-dine and do not inter-marry? Why is it that your cause is not popular? There can be only one answer to this question, and it is that inter-dining and inter-marriage are repugnant to the beliefs and dogmas which the Hindus regard as sacred. Caste is not a physical object like a wall of bricks or a line of barbed wire which prevents the Hindus from commingling and which has, therefore, to be pulled down. Caste is a notion, it is a state of the mind. The destruction of Caste does not therefore mean the destruction of a physical barrier. It means a *notional* change' (1936b: 20.7–8)

Thus, ultimately, Ambedkar is less committed to marital change—what Anderson would call 'informal social integration'—than he is to 'notional change', which does not even appear as a stage in Anderson's 'typical temporal order'. Although he does indeed argue that '[t]he real remedy for breaking Caste is inter-marriage', a closer attention to the nuance of Ambedkar's text reveals that 'the right prescription' for the 'disease' that is Caste is the destruction of the 'notional' barrier that stands in the way of 'inter-marriage'. Neither '[a]ntidiscrimination laws' nor '[t]he authoritarian structure of the workplace' can destroy this 'notional' barrier—even though they might create the conditions in which tools for its destruction might grow.

Although the 'notions' whose destruction Ambedkar identifies as the proper 'prescription' are 'religious' and 'Hindu', they need not be. We already know that Ambedkar thinks that Caste ranges more broadly than Hinduism. The way to think about the 'notions' that underpin Caste is as the mainstream way of communicating about human bodies. This is clear from the fact that, for Ambedkar, the destruction of these 'notions' is, in fact, not so much a destruction as a 'change'—a change in the things that are deemed to be 'matters of common course'.

For his part, Mill shares this mutative, rather than destructive, approach to tackling stigma. In his review of Albany Fonblanque's *England under seven administrations*, Mill describes 'the main stream of the thought' as 'one simple, broad, direct, common-place view of it' (1837: 3). The common-place obviousness of what Mill calls the mainstream is what Alexis Shotwell, in her *Knowing otherwise: Race, gender, and implicit understanding*, refers to as 'common sense'. To the extent that it prevails in public discourse, an opinion or feeling gains the status of common sense. However, this is not to say that, because it constitutes common sense, it also constitutes good sense. Admittedly, Mill acknowledged that common sense is sometimes congruous with good sense: '[t]he generality of a practice is in some cases a strong presumption that it is, or at all events once was, conducive to laudable ends' (1869: 1.5). However, Mill thought that, most of the time, common sense is not congruent with good sense: 'the general or prevailing opinion on any subject is rarely or never the whole truth' (1859: 2.42). Shotwell (2011: 29), quoting Mimi Nguyen's (2000) analysis of North American 'talk shows', points to at least one reason why there is often lack of congruity between common sense and good sense: 'what

appears as 'common sense'—like, 'It's Adam and Eve, not Adam and Steve!'—is really deeply invested in racial and sexual hegemony'. Shotwell (2011: 33–34) explains this investment as follows: 'Common sense conforms to most people's basic understandings of their world—that's what it is to be commonsensical. [. . .] When we have commonsense knowledge, we do seem to know something, frequently even in a strong sense of the term "know"—but this knowledge is frequently a product of and productive of inequitable social worlds' (2011: 37). Yet, we would not wish to get rid of 'common sense' altogether. For, 'part of common sense is the kernels of good sense' (2011: 38). For this reason, Shotwell urges on us the project of '[t]ransforming common sense' (2011: 38). Similarly, in his *Principles of political economy*, Mill argues that,

'[w]ithout entering into disputable points, it may be asserted without scruple, that the aim of all intellectual training for the mass of the people, should be to cultivate common sense; to qualify them for forming a sound practical judgment of the circumstances by which they are surrounded' (1848: 2.3.2).

The cultivation of common sense is a matter of changing the mainstream way of communicating about human bodies. That mainstream will be changed, 'when inter-dining and inter-marriage have become matters of common course'.

Certainly, Banks had something similar in mind, when he challenged persons racialised-and-gendered-as-black-women to 'change the script'. Yet, what Banks failed to realise was that 'the script' can only be changed by a *joint* effort: of persons racialised-and-gendered-as-black-women *and persons racialised-and-gendered-in-other-ways*, who put each other, publicly, on an intimate and equal footing.

CHAPTER 3

White right: 'a right to avoid'

It might be objected that Mill could not offer a duty to miscegenate as a remedy for the injustice that besets persons racialised-and-gendered-as-black-women, because his commitment to individual 'Social Liberty' precludes such a duty. In 3.1.0., I shall develop this objection, by reconstructing, as charitably as possible, Mill's argument for his assertion that 'we have a right to avoid ['his society']'. In 3.2.0., I shall explore the extent to which that reconstructed argument may be harnessed in the objection at hand, i.e. by the recalcitrant who argues that he has 'a right to avoid blacks'. I shall argue that, although Mill has not provided us with an explicitly sound argument for his assertion that 'we have a right to avoid ['his society']', even if Mill had provided us with such an argument, it would not support the more particular, racialised assertion that we have 'a right to avoid blacks'. On the contrary, I shall argue, Mill's essay *On liberty* rather startlingly supports the assertion that '[w]e are [. . .] bound to seek [the] society' of persons racialised-and-gendered-as-black-women.

3.1.0. We have a right to avoid it

In order to reconstruct Mill's argument for the assertion that 'we have a right to avoid' the 'society' of anyone, we need to look closely at the language of the passage in which Mill makes that assertion:

'We have a right, also, in various ways, to act upon our unfavourable opinion of any one, not to the oppression of his individuality, but in the exercise of ours. We are not bound, for example, to seek his society; we have a right to avoid it (though not to parade the avoidance), for we have a right to choose the society most acceptable to us. We have a right, and it may be our duty, to caution others against him, if we think his example or conversation likely to have a pernicious effect on those with whom he associates. We may give others a preference over him in optional good offices, except those which tend to his improvement. In these various modes [. . .]' (1859: 4.5).

There are at least two arguments that we can reconstruct, from this passage. The first argument, which I shall discuss in 3.1.1., is grounded in the premise that 'we have a right to choose the society most acceptable to us'. The second argument, which I shall discuss in 3.1.2., is grounded in the premise that '[w]e have a right, [. . .] in various ways, to act upon our unfavourable opinion of any one'. Of these two arguments, it is the second that reflects the more charitable interpretation of Mill's text. This is because, as I shall argue in 3.1.3., the second argument can be supported by a premise that Mill defends elsewhere in his text, namely, the premise that 'men should be free to act upon their opinions'.

3.1.1. We have a right to choose the society most acceptable to us

An argument differs from a string of assertions, because only an argument offers (at least) one assertion as the reason for believing that another assertion is true. Thus, in reconstructing Mill's argument for his conclusion that 'we have a right to avoid' the 'society' of anyone, we are looking for at least one assertion, which Mill is offering as the reason for believing that his conclusion is true. Mill seems to be offering the assertion that 'we have a right to choose the society most acceptable to us' as the reason for believing his conclusion. This is suggested by the fact that Mill introduces this assertion with the word 'for'; this word is a subordinating conjunction that introduces a cause. Mill is arguing that this assertion causes his conclusion to be true. Thus, the structure of Mill's argument would seem to be as follows:

1. '[W]e have a right to choose the society most acceptable to us'

Therefore,

2. '[W]e have a right to avoid' the 'society' of anyone.

However, this argument is unconvincing, because, not only is it not valid, it is not sound. The argument is not valid, because, it attempts to infer a conclusion about avoiding society from a premise about choosing society. We could try to rectify this, by inserting a premise about avoiding society. The simplest way of doing this would be to insert the following additional premise:

1a. If we have a right to choose the society most acceptable to us, then we have a right to avoid the society of anyone.

Yet, Mill does not give us an argument for this conditional premise and the antecedent of this conditional premise seems false. Both considerations suggest that, even if, by the insertion of this additional premise, the argument can be made valid, it is unlikely to be rendered sound.

The antecedent of this conditional premise is the premise that 'we have a right to choose the society most acceptable to us'. This premise seems false, because, on the face of it, it tells us that we have the right to associate with anyone we deem acceptable to us, whether or not they, in turn, deem us acceptable to them. This seems counter-intuitive, because we do not generally think of ourselves as having the right to associate with persons who deem us unacceptable to them. In general, we think that other persons should have the final say about who gets to associate with them, or not. (I say 'in general', because I intend to raise a problem for this intuition, in 3.2.0.) We could try to rectify this, by interpreting the premise elliptically: We have the right to choose the society most acceptable to us, [so long as those we choose deem us acceptable to them]. This would render premise 1 less implausible.

However, it would do nothing to defend premise 1a, which is not at all an obvious truth. For, even if I concede that 'we have a right to choose the society most acceptable to us', so long as those we choose deem us acceptable to them, my role—to use the examples offered by Phillip Cole (2011)—as a parent, as a 'registrar', in an

'adoption agency', as a 'doctor', or as a 'university lecturer' means that, whilst I continue to occupy that role, I 'do not have the right to refuse to associate with [just] anybody'. This is because, Cole tells us 'I have obligations to associate with family members, such as my children', and, more generally, my refusal to associate 'may constitute a violation of the rights of others'. The principle here is that 'one's right ['to refuse to associate'] varies depending on one's position and role' (2011: 238–239).

Thus, given the implausibility of premises 1 and 1a, it seems likely that the most obvious way of reconstructing an argument for Mill's conclusion generates an argument that is likely to be unsound.

3.1.2. We have a right to act upon our unfavourable opinion of any one

Instead of reconstructing Mill's argument from the sentences that succeed Mill's conclusion, we might, alternatively, reconstruct Mill's argument from the sentences that precede it. However, this is not as straightforward as the previous attempt at reconstruction.

Consider the clause 'We are not bound, for example, to seek his society'. Mill's use of the phrase 'for example' suggests that the clause in which that phrase occurs is at least one of the 'various ways' in which '[w]e have a right[. . .] to act upon our unfavourable opinion of any one'. Yet, the presence of a right (cf. 'We have a right') is not the same as the absence of a requirement (cf. 'We are not bound'). We can draw upon the 'fundamental legal conceptions' of Wesley Newcomb Hohfeld

(1913) to explain this distinction. If a person *A* lacks a requirement to do act *q*, then *A* has a privilege with regard to *q*: it is up to *A* whether or not she performs *q*. Privileges are distinct from claims. If *A* has a claim against interference with her performance of act *q*, then *A* has that claim against some other person *B*. Correlatively, there is a requirement upon *B* not to interfere with *A*'s performance of *q*. Thus, since the sentence 'We have a right[. . .] to act upon our unfavourable opinion of any one' expresses a claim, it seems a mistake for Mill to offer the clause 'We are not bound, for example, to seek his society'—a clause that expresses a privilege—as an 'example' of that claim. There are two ways in which we could try to absolve Mill of this mistake.

One argument we could make might be that Mill is using the word 'right', loosely, to encompass both claims and privileges. If this is indeed what Mill is doing, then the privilege is correctly said to be an 'example' of the 'various' claims *and privileges* that we are said to have. Yet, to make this argument would be to misinterpret Mill, who, elsewhere, explicitly defines a 'right' as a claim:

'When we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion. [. . .] To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of' (1861b: 5.23–24).

An alternative argument we could make might be that the phrase 'for example' governs not just the clause in which it is embedded (i.e. 'We are not bound[. . .] to seek his society'), but both main clauses in the complex sentence of which that

clause is a part (i.e. 'We are not bound[. . .] to seek his society; we have a right to avoid it'. This argument is attractive because, whereas the clause 'We are not bound, for example, to seek his society' expresses a privilege, the clause 'we have a right to avoid it' expresses a claim. If both this privilege and this claim are offered as an 'example' of the 'various' claims we are said to have, then Mill's mistake appears to be less devastating. For, on this interpretation, there is at least now a claim that is being offered as an 'example' of a claim. However, this argument is also unattractive, because it requires that our interpretation of the phrase 'for example' violate the force of the semi-colon separating the two main clauses. If we can stomach this violation of syntax—and I think that our being charitable to Mill will require us to do so—we can reconstruct the following argument:

3. 'We have a right[. . .] to act upon our unfavourable opinion of any one'.

4. One of the 'various ways' of acting upon our unfavourable opinion of someone is avoiding their society.

Therefore, *a fortiori*,

5. '[W]e have a right to avoid' the 'society' of anyone.

3.1.3. Men should be free to act upon their opinions

If we choose the second of these two reconstructions, we can more easily integrate the reconstructed argument into Mill's theory of 'Social Liberty'. For, whereas Mill does not, elsewhere in his essay *On liberty*, engage in substantial discussion about 'a right to choose the society most acceptable to us', Mill does, by

contrast, engage in substantial discussion about 'a right to act upon our [. . .] opinion of any one'.

Mill comes closest to discussing 'a right to choose the society most acceptable to us', when he discusses the 'liberty [. . .] of combination among individuals' and the 'freedom to unite' (1859: 1.12). This is the third of three liberties that, according to Mill, sit within the 'appropriate region of human liberty' (1859: 1.12). The first is the 'liberty of thought and feeling' together with the 'liberty of expressing and publishing'. The second is the 'liberty of each individual', which Mill defines as the

'liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong'.

Taken together, they comprise a set of liberties with regard to which an individual's 'independence is, of right, absolute' and with regard to which 'the individual is sovereign' (1859: 1.9); they extend to 'the rightful limit to the sovereignty of the individual over himself' (1859: 4.1).

Yet this tripartite division of the 'appropriate region of human liberty' is singularly unhelpful when it comes to interpreting the 'liberty [. . .] of combination among individuals' and the 'freedom to unite'. For, although Mill dedicates a full chapter to the discussion of each of the first and second of these three liberties (respectively, chapter two, *Of liberty of thought and discussion*, and chapter three, *Of*

individuality, as one of the elements of well-being), he devotes only a paragraph in chapter five, *Applications*, to the third of the three. Moreover, in that paragraph, Mill is not concerned with the conditions that must be met for 'combination among individuals' to be permissible or free—a concern that might put that paragraph on a par with chapters two and three. On the contrary, what little we get from Mill on the conditions that must be met for free or permissible 'combination among individuals' in fact occurs in chapter one, where he asserts that 'the persons combining [must] be of full age, and not forced or deceived' (1859: 1.12). By contrast, in chapter five, Mill is concerned with individuals who have *already* combined and to vindicate his thesis that, where people 'enter into engagements with one another [. . .] it is fit, as a general rule, that those engagements should be kept' (1859: 5.11). The upshot of this inadequate theoretical attention to the third of the three liberties is that, in chapter one and in chapter five, Mill tells us only half of the story: his discussion of our 'freedom to unite' (1859: 1.12), is left unrelated to what he asserts, in chapter four, *Of the limits to the authority of society over the individual*, as our 'right to avoid' (1859: 4.5). Is avoidance only permissible among adults who each consent to one of the consenting adults avoiding another of those consenting adults? One suspects not.

Mill offers a much more helpful division of the 'appropriate region of human liberty' in his introduction to chapter three, where he distinguishes the concerns of this chapter from those of the preceding chapter. Mill distinguishes, on the one hand, the assertion that 'human beings should be free *to form opinions, and to express their opinions* without reserve' from, on the other, the assertion that 'men should be free *to act upon their opinions*—to carry these out in their lives, without hindrance, either

physical or moral, from their fellow-men, so long as it is at their own risk and peril' (1859: 3.1, *italicisation mine*). Thus the 'appropriate region of human liberty' is bipartite, not tripartite. Within the first of the two parts, the 'liberty of thought and feeling' is the freedom 'to form opinions', and the 'liberty of expressing and publishing' is the freedom 'to express [one's] opinions'. Mill clearly thinks that the seemingly two freedoms are in fact one and the same; he is scathing of the supposed 'right to [the] freedom [. . .] of holding opinions in secret, without ever disclosing them' (1859: 4.19). Indeed, Daniel Jacobson tells us that 'the form of speech relevant to speech rights [. . .] is not action, for Mill[;] discussion is a mode of thinking, and [. . .] expression is more like thought than like action' (2000: 282, 284). Now consider the second of the two parts. Mill argues that there is a 'diversity of taste' among human beings (1859: 3.14) and that 'a person's taste is as much his own peculiar concern as his opinion or his purse' (1859: 4.12). Since the sum of one's actions upon one's opinions amounts to the trial of an individual way of life, and since, as Mill puts it, 'it is only the cultivation of individuality which produces, or can produce, well-developed human beings' (1859: 3.10), the assertion that 'men should be free to act upon their opinions' is equivalent to the assertion that 'there should be different experiments of living' (1859: 3.1), that there should be different individualities. Both a 'liberty of each individual' and a 'liberty [. . .] of combination among individuals' are instruments for ensuring that 'different experiments of living' obtain. Thus, the so-called 'liberty [. . .] of combination among individuals' is merely one of many species of the freedom 'to act upon [one's] opinions'. Yet, it is also a species of the most important of the two parts of the 'appropriate region'. For, as Mill puts it, '[t]he only freedom which deserves the name, is that of pursuing our

own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it' (1859: 1.13).

The foregoing argument vindicates our preferred reconstruction of the premise of Mill's argument. Let us, then, integrate the premise that 'men should be free to act upon their opinions' into that argument. As it stands, an argument from the proposition 'men should be free to act upon their opinions' to the proposition 'We have a right[. . .] to act upon our unfavourable opinion of any one' is invalid. To render the argument valid, we must make three adjustments. First, we must change the predicate 'should be free to' into the predicate 'have a right to'. Second, we must change the subject 'men' into the subject 'We'. Third, we must introduce an additional premise, namely that our opinions include our 'unfavourable opinion'. If we are charitable in this way to Mill's text, we can reconstruct the full argument as follows:

1. We have a right to act upon our opinions.

2. Our opinions include 'our unfavourable opinion'.

Therefore, *a fortiori*,

3. 'We have a right[. . .] to act upon our unfavourable opinion of any one'.

4. One of the 'various ways' of acting upon our unfavourable opinion of someone is avoiding their society.

Therefore, *a fortiori*,

5. '[W]e have a right to avoid' the 'society' of anyone.

3.2.0. A right to avoid blacks?

You have the right, don't you, to avoid any other person? Mill tells you as much. Moreover, because this is your right, it is irrelevant, is it not, what your reasons are for exercising this right or what the results will be from your exercising this right? Indeed, the fact that this is your right means that you may avoid any other person for any reason and with any result. Mill suggested at least two ways in which you might understand this right of yours.

'Nobody desires,' Mill said, 'that laws should interfere with the whole detail of private life' (1861b: 5.13). Contemporary liberal theorists seem to be in agreement with Mill, that we have a right against laws that would, if they were enacted and enforced, interfere with the 'the whole detail of private life'—especially when that 'detail' is racialised. For instance, Derek Matravers asserts that 'Fred has no obligation to have black friends [. . .] nobody is obliged to have a black partner. It is plainly ridiculous to maintain that people ought to practice equal opportunities in all areas of life' (2008: 1, 5). In the same vein, Christopher Heath Wellman confesses that '[he] would expect a black person to be insulted by a racist white who would never consider marrying someone who is black, but [he] would not say that this black person has a right not to be insulted in this way' (2008: 139). Indeed, he confesses

that, 'as much as [he] abhor[s] racism, [he] believe[s] that racist individuals cannot permissibly be forced to marry someone [. . .] outside of their race'. Wellman seems to equate this assertion about the impermissibility of legal coercion with the existence of a general moral entitlement: 'the importance of freedom of association entitles racist individuals to marry exclusively within their race' (2008: 138). David Miller betrays the same concern with 'the idea that we have a deep interest in not being forced into association with others against our wishes. It applies most clearly in the case of intimate relationships: it would clearly be intolerable if I were obliged to share my house or my bed with another person or persons without my consent' (2007: 210–211).

However, Mill also suggested another way in which you might understand your right. By asserting your right to avoid, you might merely be trying to show that your act of avoidance is not 'wrong'. Mill tells us that, when we call something 'wrong', we are referring to 'the idea of penal sanction [. . . W]e mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience' (1861b: 5.14). Mill's observation suggests that your right to avoid anyone, is not just a right you enjoy against any law that might force you to associate with a person you prefer to avoid. On the contrary, it is also a right you enjoy against social criticism—either from other people, who raise an eyebrow at your behaviour, or from that niggling qualm you have in the back of your own mind. In short, no-one may make you feel bad for exercising your right to avoid anyone.

We might express your right as the following generalised principle:

G. For any person *P*, and for any person *Q*, *P* has the right to avoid *Q*.

The principle seems reasonable enough, doesn't it? However, from this generalised principle, some people infer a racialised result. For instance, some people think it follows that,

R: If *P* is racialised-as-white, if *Q* is racialised-as-black, and if *P*'s reason for avoiding *Q* is that *P* has an unfavourable opinion of 'blacks', then *P* has a right to avoid *Q*.

The philosopher Michael Levin gives an example of some people who think we can infer the more specific racialised principle from the generalised principle. Levin tells us that 'Libertarians will wonder why a right to avoid blacks needs any defense at all, since it falls under voluntary association [. . .]' (1996: 313). Levin's string of words motivates this the third and final section of this dissertation.

3.2.1. It falls under voluntary association

I presume that what Levin's 'Libertarians' mean is that 'a right to avoid blacks' is justified by some theory of voluntary *dissociation*. Yet, what exactly is the theory of voluntary dissociation under which 'a right to avoid blacks' is supposed to fall? I shall argue that 'a right to avoid blacks' does not fall under any of the three leading

contemporary theories of 'voluntary [dis]sociation', offered by Chandran Kukathas, Christopher Heath Wellman, and Stuart White. Furthermore, I shall argue that 'a right to avoid blacks' does not fall under Mill's classical theory of 'voluntary [dis]sociation'.

3.2.1.1. Kukathas's right to exit

According to Kukathas, we should 'see[. . .] the right of association as fundamental' (1992: 117; 2003: 97). By this, Kukathas means that 'the right to be free to leave [is] the individual's [. . .] only fundamental right' (1992: 116–117).

However, a right to exit is not a right to avoid. If I avoid association with you, my act of avoidance is performed *before* I might have become associated with you. My act is prospective. By contrast, if I exit some association in which I am currently associated with you, my act of exit is performed *after* I have already become associated with you. My act is retrospective. Thus, if Kukathas's theory of voluntary dissociation is nothing more than an argument for a right to exit, a 'right to avoid blacks' will not fall under it.

	associative	dissociative
prospective	entry	avoidance
retrospective	re-entry	exit

Table 3. Kukathas's right to exit

3.2.1.2. Wellman's right to exclude

According to Wellman, 'we should always begin with a weighty presumption in favor of freedom of association' (2011: 34) and when Wellman speaks of a 'right to freedom of association', he means 'a presumptive right to exclude others' (2008: 114). However, a right to exclude is not a right to avoid. Sonu Bedi suggests why that might be. 'Individuals may discriminate', says Bedi, 'but exclusion implies that someone is being kept out of something. This, in turn, connotes the existence of some group or association. [. . .] There is a collective component to such exclusion[,] one that seeks to privilege a group or association not a discrete individual' (2010: 434). The distinctively 'collective component' of exclusion is the 'group or association' that 'someone is being kept out of'. We can represent this distinctively 'collective component' as a place in the predicate of exclusion. '*P* avoids *Q*', is a binary predicate that contains two places available for a name to be slotted in. By contrast, '*P* excludes *Q* from *R*', is a ternary predicate that contains three places available for a name to be slotted in. The 'group or association' that 'someone is being kept out of' is represented by the third variable, *R*. Yet, the predicate of avoidance does not contain that third variable *R*. Thus, if Wellman's theory of voluntary dissociation is nothing more than an argument for a right to exclude, a 'right to avoid blacks' will not fall under it.

		<i>P</i>	<i>Q</i>	<i>R</i>
binary	(avoid)	I	you	
ternary	(exclude)	I	you	from (y)our group

Table 4. Wellman's right to exclude

3.2.1.3. White's white expectation

According to Stuart White, '[f]reedom of association is widely seen as one of those basic freedoms which is fundamental to a genuinely free society' (1997: 373). Stuart White says that there is 'a sphere of intimate association in which it is permissible for people to practice *whatever pattern of exclusion they like*' (1997: 386). For example, Stuart White tells us, this 'right of intimate exclusion properly applies at the individual level, with racist whites refusing to accept proposed dates with blacks' (1997: 390). However, a right to refuse an invitation is not a right to exclude. Exclusion is a ternary relation, whereas Stuart White's example is a description of a binary relation:

I (one of Stuart White's 'racist whites') refuse a proposal to associate with you (a potential dater, racialised-as-black).

Just like a right to avoid, a right to refuse an invitation is a right both to engage in a prospective act and to engage in a binary relation. For this reason, it is worth our investigating whether 'a right to avoid blacks' will fall under Stuart White's argument for a right to 'refus[e . . .] proposed dates with blacks'.

Strikingly, Stuart White contrasts his binary relation with 'a dating agency [that] exclude[s], say, blacks, from its books'. This is a ternary relation:

I (a representative of the 'dating agency') exclude you (a potential dater, racialised-as-black) from association with us (our group, comprising the 'dating agency' and its 'thousands of members').

Notably, Stuart White does not evaluate the ternary relation in the same way he evaluates the binary relation. Stuart White argues that, 'for dignity-related reasons, we might [. . .] think it impermissible for the agency to exclude, say, blacks, from its books' (1997: 390). Stuart White explains that 'the mere fact of exclusion from an association on categorical grounds can be an injury to [. . .] the wider public perception of [the individual's] intrinsic worth' (1997: 384). Yet, one wonders why the individual's interest in a reputation for having intrinsic worth is dispositive in the case of the ternary act of dissociation from 'blacks', but not dispositive in the case of the binary act of dissociation from 'blacks'. Why this double standard? Stuart White justifies this double standard by appealing to an intuition he expects that we share: '[t]he basic intuition is clear and forceful', he says, 'we should all be free to decide and control who our friends and lovers [. . .] will not be' (1997: 386).

		<i>P</i>	<i>Q</i>	<i>R</i>
binary	(refuse a proposal to associate with)	I (one of Stuart White's 'racist whites')	you (a potential dater, racialised-as-black)	
ternary	(exclude)	I (a representative of the 'dating agency')	you (a potential dater, racialised-as-black)	from our group (comprising the 'dating agency' and its 'thousands of members')

Table 5. White's white expectation

However, Stuart White's intuition is not found to be 'basic[, . . .] clear and forceful' by Laurence Mordekhai Thomas. Thomas has a different intuition. Thomas's intuition is that 'the private sphere [. . .] is the most important aspect of a person's life, considerably more important than the public sphere'. If Thomas's intuition is correct, then there is a problem with Stuart White's double standard: 'our commitment to ethnic equality,' Thomas says, 'proves to be somewhat disingenuous. We judge that a person does no wrong at all in not being concerned with ethnic equality in the most important area of her or his life[,] because we hold that equality matters only in the public sphere, which is less dear to our hearts' (1999: 196).

Furthermore, whereas Stuart White's intuition is one that exonerates 'racist whites', Thomas's intuition is one that accuses them of wrongdoing. Thus, there is a sense in which Stuart White's intuition is one that it is advantageous for a person racialised-as-white to have. The fact that Stuart White is philosopher racialised-as-white, whereas Thomas is a philosopher racialised-as-black, serves only to strengthen the suspicion that this difference in 'basic intuition[s]' is racialised. If Stuart White's argument for a right to 'refus[e . . .] proposed dates with blacks' is nothing more than the white expectation that we will all share an intuition that is advantageous to persons racialised-as-white, Stuart White's argument will not convincingly support a 'right to avoid blacks'.

3.2.1.4. Mill's right to avoid

Since contemporary liberal philosophers have been so complacent in developing a theory of voluntary dissociation that can accommodate a right to avoid, Levin's 'Libertarians' might argue that 'a right to avoid blacks' is a right that 'falls under' Mill's classical theory of voluntary dissociation. To Levin's 'Libertarians', Mill's conclusion that 'we have a right to avoid' the 'society' of someone (i.e. Mill's proposition 5) might look like a generalised right to avoid the society of someone—a generalised right from which a racialised right might be inferred. However, Mill's theory will not permit this inference. Mill does not argue that we have a right to avoid someone regardless of our social role, for any reason at all, and with any result. On the contrary, Mill attaches a proviso both to his premise that we have a right to act upon our opinions (i.e. Mill's proposition 1) and to his premise that '[w]e have a right[. . .] to act upon our unfavourable opinion of any one' (i.e. Mill's proposition 3). When initially stated, the proviso is 'so long as it is at their own risk and peril'. When re-stated, the proviso is 'not to the oppression of his individuality, but in the exercise of ours'. If Mill's argument is to be valid, this twofold proviso must be attached to Mill's conclusion (i.e. to Mill's proposition 5). Thus, according to Mill, if *P*'s act of avoiding *Q* is an act that poses a risk to, imperils, or oppresses *Q*'s individuality, then *P* does not have a right to avoid *Q*. Furthermore, according to Mill, *P* has a right to avoid *Q* only to the extent that *P*'s avoiding *Q* is necessary for the cultivation and exercise of *P*'s individuality. Yet, 'a right to avoid blacks' fails to meet the conditions of each part of the proviso.

On the one hand, avoiding the society of blacks oppresses the individuality of persons who are racialised-as-black. To see how, recall Mill's proposition 2: Our opinions include 'our unfavourable opinion'. The word 'our', here, is ambiguous. Presumably, the word 'our' has singular force, such that the proposition really expresses something like 'My opinions include my unfavourable opinion'. However, on the face of it, the word 'our' is plural and that fact invites me to consider the possibility that people other than myself might share my unfavourable opinion.

Suppose a critical mass of persons other than myself share my unfavourable opinion. Suppose further that they share my unfavourable opinion not as a secret thought in each individual's head, but as a common starting premise in public discourse. In this case, we may say that my opinion is what Mill called the 'prevailing opinion and feeling'. Recall that, if it prevails, then an opinion or feeling has the most weight in public discourse. It is the leading current in public discourse. It is the mainstream. Importantly, because it prevails, this opinion and feeling informs how onlookers understand what is being communicated by the acts and events that onlookers witness occurring around them. It informs an onlooker's interpretation of those phenomena. An onlooker's 'proposed interpretation' is reasonable, if it make[s] sense in light of the community's [mainstream] practices, its history, and shared meanings' (Anderson & Pildes 2000: 1525). A stigmatising interpretation from an onlooker is all that is needed, to assault and enslave the public reputation of persons beset by this mainstream way of communicating about their bodies.

Mill thinks that, at least in the nineteenth century, the unfavourable opinion that prevailed about 'blacks' is an instance of social tyranny oppressing the individuality of every person racialised-as-black. In Mill's review of Cairnes's *The slave power*, Mill says that,

'[i]n America, [. . .] the freed slave transmits the external brand of his past degradation to all his descendants. However worthy of freedom, they bear an outward mark which prevents them from becoming imperceptibly blended with the mass of the free; and while that odious association lasts, it forms a great additional hindrance to the enfranchisement by their masters, of those whom, even when enfranchised, the masters cannot endure to look upon as their fellow-citizens' (1862: 23).

Thus, according to Mill, the 'prevailing opinion and feeling' about 'blacks', is that they are not 'worthy of freedom' and that they are not 'fellow-citizens'. Wilberforce, forty years earlier, and the SCOTUS, only five years earlier, both specified this unworthiness of freedom or fellowship in marital terms. Recall Wilberforce's observation that 'the slaves are considered too degraded to be proper subjects for the marriage institution' (1823: 19–20). The SCOTUS, in *Dred Scott v. Sandford*, the notorious case of 1857, specified this marital degradation in cross-racial terms. Chief Justice Roger B. Taney argued that laws against cross-racial marriage

'show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power, and which they then looked upon as so far below them in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes, not only in the parties, but in the person who joined them in marriage. And no distinction in this respect was made between the free negro or mulatto and the slave, but this stigma of the deepest degradation was fixed upon the whole race'.

As Le Bihan demonstrated, 'that odious association', that 'stigma of the deepest degradation', still 'lasts'. The mainstream way of interpreting the bodies of persons racialised-and-gendered-as-black-women continues to consist in a code associating their bodies with purely pleasurable cross-racial sex and with unfitness for cross-racial companionship. Any act, therefore, which, to an informed onlooker, 'make[s] sense in light of' 'that odious association' will oppress the individuality of persons racialised-and-gendered-as-black-women. The act of avoiding encounters-that-count with 'blacks' 'make[s] sense in light of' 'that odious association' with unfitness for cross-racial companionship. Thus, the act of avoiding encounters-that-count with 'blacks' oppresses the individuality of persons who are racialised-as-black, including persons racialised-and-gendered-as-black-women.

On the other hand, avoiding the society of blacks is an exercise not of individuality, but of 'group formation'. We can see that this is so, by comparing Mill's theory of voluntary dissociation with that of Hannah Arendt. In her *Reflections on Little Rock*, in defending 'the right to free association, and therefore to discrimination' (1959: 52), Arendt argues as follows:

In 'the social sphere[. . .] once we have entered it, we become subject to the old adage of "like attracts like" which controls the whole realm of society in the innumerable variety of its groups and associations. What matters here is not personal distinction but the differences by which people belong to certain groups whose very identifiability demands that they discriminate against other groups in the same domain. [. . . W]ithout discrimination of some sort, society would simply cease to exist and very important possibilities of free association and group formation would disappear' (1959: 51).

Thus, Mill argued that *P* enjoys a right to avoid *Q*, because, for some particular conception of individuality *I*, dissociation from *Q* is necessary for the cultivation and exercise of *I*. By contrast, Arendt argued that *P* enjoys a right to dissociate from *Q*, because, for some multi-party human relationship *R*, dissociation from *Q* is necessary for engagement in *R*. '[A] right to avoid blacks' falls under Arendt's theory of voluntary dissociation, because the act of avoiding 'blacks' is the process of white 'group formation'.

Mill develops the resources to make this point, but it was Franz Fanon, the Martiniquan-Algerian psychiatrist, who in fact put these resources together. Recall that Mill referred to the protest of the charcoal-carriers as 'their complaint against the sort of stigma which had been thrown upon them' (1830: 2). This notion of stigma as 'thrown upon' another yields Mill's notion of a 'scapegoat'. According to Mill, in an unpublished letter defending religious sceptics, a 'scapegoat' is someone 'to whom to pass on the slanders thrown upon [oneself], and be able to say to the bigots, It is not I, it is my brother' (1851b). Fanon, agrees with Mill that stigma is something thrown upon one's body from the outside. Take, for instance, Fanon's description of the moment when he hears the words "'Look, a Negro!'": 'It was an external stimulus that flicked over me as I passed by', says Fanon. It was 'a hemorrhage that spattered my whole body with black blood' (2008/1952: 84–85). Similarly, Fanon agrees with Mill that a scapegoat is someone whom one stigmatises in order to construct for oneself an identity of innocence. Fanon tells us that

'each individual has to charge the blame for his baser drives, his impulses, to the account of an evil genius, which is that of the culture to which he belongs [. . .]. This collective guilt is borne by what is conventionally called the scapegoat'.

However, Fanon completes the work that Mill began, by articulating the stigmatisation of racial blackness in terms of the notion of the scapegoat. Fanon tells us that

'the scapegoat for white society—which is based on myths of progress, civilization, liberalism, education, enlightenment, refinement—will be precisely the force that opposes the expansion and the triumph of these myths. This brutal opposing force is supplied by the Negro' (2008/1952: 150).

It is presumably for this reason that Fanon tells us that '[t]here is a quest for the Negro, the Negro is in demand, one cannot get along without him, he is needed [. . .]' (2008/1952: 135). As Arendt might have put it, the 'very identifiability' of any group racialised-as-white 'demands' that some persons be racialised, stigmatised, and scapegoated as black.

The fact that Arendt's theory captures the sort of voluntary dissociation at work in 'a right to avoid blacks' is not a welcome finding for Levin's 'Libertarians'. For, it suggests two reasons why there is no 'right to avoid blacks'.

First, even Arendt does not think that all 'group formation' is sufficiently valuable as to justify 'the right to free association, and therefore to discrimination'. On the contrary, Arendt is concerned to prevent the disappearance of 'very important

possibilities of free association and group formation'. What, if anything, makes white 'group formation' a very important possibility? Given that white 'group formation' is parasitic upon the social stigmatisation of racial blackness, it is difficult to see any significant value in it at all. I will not argue for this point; I merely seek to put the ball in the court of Levin's 'Libertarians', to show them the sort of unhappy premise for which they will need to argue, if they wish to justify 'a right to avoid blacks'.

Second, and more importantly, there simply could not be 'a right to *avoid* blacks'. For, a right to *avoid* is a right to engage in a binary dissociative relation. By contrast, because it refers to an exercise in white 'group formation', via the scapegoating of persons racialised-as-black, 'a right to avoid blacks' is a right to engage in a ternary dissociative relation; it has what Bedi called a 'collective component'.

		<i>P</i>	<i>Q</i>	<i>R</i>
binary	*(avoid 'blacks')	I (one of Levin's 'Libertarians')	you (one of the 'blacks')	
ternary	(exclude 'blacks')	I (a person whose aim is to racialise myself as white)	you (a person whom I scapegoat-as-black)	from our group (of persons who are using others to racialise themselves as white)

Table 6. Levin's 'Libertarians[s]\' right to exclude blacks

Instead, of

I (one of Levin's 'Libertarians') avoid you (one of the 'blacks'),

the structure is more like

I (a person whose aim is to racialise myself as white) exclude you (a person whom I scapegoat as black) from our group (of persons who are using others to racialise themselves as white).

Thus, 'a right to avoid blacks' is nothing more than a right to exclude persons whom one racialises as black from the emerging white racialised group. Libertarians will not wonder why a right to *exclude* 'blacks' needs at least some defence.

3.2.2. We are not bound to seek his society

Levin's 'Libertarians' might concede that Mill's theory of voluntary dissociation does not support the assertion that we have 'a right to avoid blacks'. However, Levin's 'Libertarians' might retort that, even so, Mill's theory of 'Social Liberty' will not support the assertion that we have a duty to miscegenate. Levin's 'Libertarians' might rely on the fact that Mill says, in reference to someone of whom we have an 'unfavourable opinion', that '[w]e are not bound [. . .] to seek his society' (1859: 4.5). Levin's 'Libertarians' might defend Mill's assertion, by adverting to Mill's explanation of 'the characteristic difference which marks off[. . .] morality in general, from the remaining provinces of Expediency and Worthiness':

'It is a part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfil it. Duty is a thing which may be exacted from a person, as one exacts a debt. Unless we think that it might be exacted from him, we do not call it his duty. Reasons of prudence, or the interest of other people, may militate against actually exacting it; but the person himself, it is clearly understood, would not be entitled to complain. There are other things, on the contrary, which we wish that people should do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not bound to do; it is not a case of moral obligation; we do not blame them, that is, we do not think that they are proper objects of punishment. [. . . W]e call any conduct wrong, or employ, instead, some other term of dislike or disparagement, according as we think that the person ought, or ought not, to be punished for it; and we say that it would be right to do so and so, or merely that it would be desirable or laudable, according as we would wish to see the person whom it concerns, compelled, or only persuaded and exhorted, to act in that manner' (1861b: 5.14).

When Mill spoke of the 'amalgamation' of 'the Irish branch of the human family' and 'the Saxon race', he merely said it was 'desirable', not that it was 'right'. For this reason, Levin's 'Libertarians' might argue, Mill 'would wish to see the person[s] whom it concerns' 'only persuaded and exhorted[...] to act in that manner'; Mill would not wish to see them 'compelled[. . .] to act in that manner'. Yet, '[u]nless we think that' amalgamation 'might be exacted from' them, that they might 'rightfully be compelled to fulfil' a duty to amalgamate, 'we do not call it his duty'. Instead, Mill would merely 'like or admire' those who amalgamated and 'perhaps dislike or despise' those who did not.

Yet, were Levin's 'Libertarians' to mount this retort, their interpretation of Mill's text would be incomplete. A more complete interpretation will reveal that, for Mill, miscegenation could be a matter of moral duty (as apposed to 'Expediency and Worthiness'), that, for Mill, miscegenation could be a matter of imperfect moral duty,

and that, for Mill, miscegenation could be a matter of perfect moral duty and of moral right (as opposed to 'generosity or beneficence').

First, Levin's 'Libertarians' argue that amalgamation may not 'be exacted' from 'the Irish' and 'the Saxon race', that they may not 'rightfully be compelled to fulfil' a duty to amalgamate. The suggestion lurking behind this argument is that only laws exact or compel action, and laws exacting or compelling amalgamation are morally inappropriate. However, although such laws would indeed be morally inappropriate, the suggestion that only laws exact or compel action is false. This misguided legalistic interpretation of Mill's text—which Hinton told us had been encouraged by Rawls and Dworkin—obscures the fact that, at least according to Mill, social criticism is not 'persua[sion or] exhort[ation]', it is 'comp[ulsion]'. Indeed, in the paragraph prior to that from which the passage above is drawn, Mill explicitly rejects this legalistic interpretation of what it is to be bound by a moral requirement:

'When we think that a person is bound in justice to do a thing, it is an ordinary form of language to say, that he ought to be compelled to do it. We should be gratified to see the obligation enforced by anybody who had the power. If we see that its enforcement by law would be inexpedient, we lament the impossibility, we consider the impunity given to injustice as an evil, and strive to make amends for it by bringing a strong expression of our own and the public disapprobation to bear upon the offender' (1861b: 5.13).

From this string of words, it is clear that Mill thinks that 'a strong expression of our own and the public disapprobation' counts not as 'persua[sion or] exhort[ation]', but as 'comp[ulsion]'.

Second, we have an imperfect duty to onlookers. According to Mill,

'[h]uman beings owe to each other help to distinguish the better from the worse, and encouragement to choose the former and avoid the latter. They should be for ever stimulating each other to increased exercise of their higher faculties, and increased direction of their feelings and aims towards wise instead of foolish, elevating instead of degrading, objects and contemplations' (1859: 4.4).

Thus, we owe to 'each other help to distinguish the better from the worse' ways of communicating about the bodies of persons racialised-and-gendered-as-black-women. It is our duty to offer such help to each other, because

'[t]o discover to the world something which deeply concerns it, and of which it was previously ignorant; to prove to it that it had been mistaken on some vital point of temporal or spiritual interest, is as important a service as a human being can render to his fellow-creatures' (1859: 2.16).

For this reason, we must be careful about what our actions might reasonably seem to express to any onlooker who is aware of the mainstream way of communicating in our society (cf. Buss 2001). We must be careful not to perform actions that make sense in light of a tyrannous mainstream, and we must be careful to perform actions that contribute to cultivating that mainstream. I have argued that we can 'cultivate common sense' regarding how to communicate about the bodies of persons in this category, if we 'kill[...] the consciousness of Caste'. I have argued that we can 'kill[...] the consciousness of Caste', if we engage in cross-caste com-panion-ship. Thus, in the absence of any alternative morally permissible, readily available, and reliably companionate way of 'discover[ing] to the world' this 'cultivat[ed] common sense'

that 'deeply concerns it', we owe onlookers the help that only—as far as we can tell—our engagement in cross-caste com-panion-ship can bring.

Third, we have a perfect duty to persons racialised-and-gendered-as-black-women. According to Mill,

'duties of perfect obligation are those duties in virtue of which a correlative right resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right'.

When Mill speaks of 'a correlative right', he is referring to 'the idea of a personal right—a claim on the part of one or more individuals, like that which the law gives when it confers a proprietary or other legal right'. (Notice that, for Mill, 'personal right[s]' do not consist solely in 'legal right[s]'—there are non-legal 'personal right[s]', too—and that, for Mill, a 'personal right' may be enjoyed by 'more' than 'one [. . .] individual[...]'.) Persons racialised-and-gendered-as-black-women have a right that we seek the society of persons racialised-and-gendered-as-black-women. Indeed, it is because this 'personal right' exists, that we can describe what besets these persons as not a lack of 'generosity', nor a lack of 'beneficence', but an 'injustice': the injustice of tyranny. According to Mill, the 'distinction [. . .] which exists between justice and the other obligations of morality' is that

'injustice consists in [. . .] a wrong done, and some assignable person who is wronged[. . . A] right in some person, correlative to the moral obligation[. . .] constitutes the specific difference between justice, and generosity or beneficence. Justice implies something which it is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right. No one has a moral right to our generosity

or beneficence, because we are not morally bound to practise those virtues towards any given individual' (1861: 5.15).

Persons racialised-and-gendered-as-black-women have this right, because they have a right not to suffer serious and preventable harm and because we have a duty to prevent serious and preventable harm to other persons. In the first chapter of this dissertation, I showed that the harm caused by the tyranny of the mainstream that besets persons racialised-and-gendered-as-black-women is serious. Indeed, I showed that, by acting in ways that 'make sense in light of' this mainstream, we 'strengthen the social stigma' and, thereby, wrong persons racialised-and-gendered-as-black-women. In the second part of this dissertation, I showed that the harm caused by the tyranny of the mainstream that besets persons racialised-and-gendered-as-black-women is preventable. At least one of the ways in which we can prevent this tyranny is by engaging in encounters-that-count with persons racialised-and-gendered-as-black-women. Thus, we have a duty to prevent this serious harm and our duty is correlated with a right that persons racialised-and-gendered-as-black-women have.

Anderson would likely disagree with foregoing argument. Anderson argues that

'individuals acting out of warm feelings for ingroup members in the context of personal relations of friendship and intimacy do not demean outgroups or otherwise act unjustly. Outgroup members are not morally entitled to demand that these individuals befriend them. This does not mean that such conduct is beyond moral criticism. It contains the seeds of injustice, since it may spread its effects beyond the sphere of intimate relations and may lead to categorical inequality, prejudice, and stigma' (2010: 20-21).

I have already shown that 'individuals acting out of warm feelings for ingroup members in the context of personal relations of friendship and intimacy' could reasonably be interpreted, by an onlooker, as doing something that makes sense in light of the tyrannous mainstream way of communicating about the bodies of persons racialised-and-gendered-as-black-women. On this point, Anderson is mistaken. (Curiously, Anderson's mistake is revealed by her own theory of expressive action.) However, I can grant Anderson that '[o]utgroup members are not morally entitled to demand that these individuals befriend them'. For, all I have argued is that 'outgroup members' are entitled to have their society sought by ingroup members. Continual cross-caste commensality is not friendship, even if it can be relied upon to tend in that direction. Yet, where Anderson and I seem to agree, is that 'such conduct is [not] beyond moral criticism'. Indeed, in agreeing with Anderson on this point, I need not disagree with Mill that 'the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself'. For I have already established that actions that make sense, to an onlooker, in light of a tyrannous mainstream concern the interests of the persons beset by that tyranny.

However, given the dominant legalistic interpretation of liberal theory, we might wonder what a 'moral criticism' of those who fail to fulfil their duty to miscegenate might look like. At least one way in which to engage in moral criticism is to generate 'moral distress' (Waldron 1987), by publicly demanding that a person justify an act or omission in her private life (Allen-Castellitto 2003). Such a moral criticism could be framed as a criticism of relational egalitarianism—and I shall conclude by sketching just such a moral criticism. Persons racialised-as-white who

espouse relational egalitarianism for their social institutions ought also, on pain of inconsistency, to espouse relational egalitarianism for their individual decisions. In his article, *Split-level equality: Mixing love and equality*, Laurence Mordekhai Thomas (1999) does for Anderson's (1999) theory of relational egalitarian justice what Gerald Allen Cohen (2001), in his *If you're an egalitarian, how come you're so rich?*, did for John Rawls's *A theory of justice*. Just as Cohen noted that Rawls's distributive egalitarian justice was undermined—non-existent, even—in the absence of a distributive egalitarian ethos, informing individual decision-making, so Anderson's relational egalitarian justice is undermined, and will fail to obtain, in the absence of a relational egalitarian ethos. Cohen thinks that Rawls's Difference Principle, properly understood, regulates not merely the basic institutional structure of society, but also the decisions of rich individuals. Similarly, Anderson's (2007) principle requiring the racial integration of democratically necessary elites, properly understood, regulates not merely the composition of elites atop of institutions that form the basic structure of society. No, it also regulates the composition of elites atop of social groupings that are not part of the basic structure. What does this mean in practice? Thomas poses the rhetorical question:

'How seriously can we be about equality in the public sphere if we believe that it is morally permissible to privilege our own ethnicity as a matter of principle in the private sphere and therefore in forms of social interaction regarded to be far more important—namely, ties of romance and friendship?' (1999: 195).

Thomas's reworking of Cohen might be put in the following way:

If you're an egalitarian, how come your companion is so white?

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