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CYBER-RACE

Jerry Kang*

To date, most inquiries into race and cyberspace have focused on the "digital divide" — whether racial minorities have access to advanced computing-communication technologies. This paper asks a more fundamental question: Can cyberspace change the way that race functions in American society? Professor Jerry Kang starts his analysis with a social-cognitive account of American racial mechanics that centers the role of racial schemas. These schemas consist of racial categories, rules of racial mapping that place individuals into these categories, and racial meanings associated with each category. He argues that cyberspace can disrupt racial schemas because it alters the architecture of both identity presentation (enabling racial anonymity and pseudonymity) and social interaction (enabling increased interracial interactions). Thus, cyberspace presents society with three design options: abolition, which challenges racial mapping by promoting racial anonymity; integration, which reforms racial meanings by promoting interracial social interaction; and transmutation, which disrupts the very notion of fixed racial categories by promoting racial pseudonymity (or "cyber-passing"). After analyzing each option's merits, Professor Kang concludes that society need not adopt a single, uniform design strategy for all of cyberspace. Instead, society can embrace a policy of digital diversification, which explicitly zones different cyber spaces according to different racial environments. For example, most market places could be zoned abolition, whereas most social spaces could be zoned integration. By encouraging a diversified policy portfolio, society can exploit synergies created by flexible zoning while avoiding policy lock-in. Although cyberspace is no panacea for the racial conflicts and inequality that persist, it offers new possibilities for furthering racial justice that should not be wasted.

INTRODUCTION

When we built the interstate highway system, we celebrated the possibilities. This national transportation network would facilitate

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commerce, promote defense, and better the welfare of all Americans. But in the planning, we did not seriously explore what the concrete network would do to community life.¹ We "overlooked" how highways would promote city decay by moving people and resources out to the suburbs² and how they would cement segregation.³

When television rolled out in the 1940s and 50s, we again celebrated the possibilities. We praised television as an extraordinary educational medium, one that would not only convey information but also spark critical engagement with culture and politics.⁴ We failed to see how television would become a "vast wasteland,"⁵ serving up stock images folded into agreeable entertainment and sensational news.⁶

Both highway and television have had unforeseen impacts on human relations generally and race relations specifically. We should remember these lessons as we build-out cyberspace. Part (information super-) highway,⁷ part (Web-) TV, cyberspace has already had enormous political, economic, and social impact. It may eventually dwarf the significance of both highway and television. What unintended consequences will it have on American race, racism, and race relations?

¹ See KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 249 (1985); CLIFFORD STOLL, *SILICON SNAKE OIL: SECOND THOUGHTS ON THE INFORMATION HIGHWAY* 3, 49 (1995).

² See Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1068 (1996) (noting that the suburban boom could not have happened without the Federal-Aid Highway Act of 1956); see also GEORGE M. SMERK, *URBAN TRANSPORTATION: THE FEDERAL ROLE* 266 (1965) (describing the loss of urban political power and tax revenue that resulted from the population shift to rural areas).

³ See Frug, *supra* note 2, at 1065 ("[T]he rapid growth of the suburbs, fostered . . . by government programs, provided a secure place to which whites could flee. As a result, African Americans are segregated today in a manner that no other minority in the United States is now or has ever been segregated."); *id.* at 1069 (describing how highway construction has led to Whites resettling in the suburbs and Blacks resettling in the ghettos, with the highways themselves often acting as the physical boundary between communities); Florence Wagman Roisman, *Intentional Racial Discrimination and Segregation by the Federal Government as a Principal Cause of Concentrated Poverty: A Response to Schill and Wachter*, 143 U. PA. L. REV. 1351, 1354 n.11 (1995) (suggesting that highway construction and mass transit policies exacerbated residential segregation).

⁴ See, e.g., JAMES DAY, *THE VANISHING VISION: THE INSIDE STORY OF PUBLIC TELEVISION* 23 (1995) (describing how enthusiasts "envisioned an opportunity to propagate the best in teaching by using television to share the best teachers").

⁵ Newton Minow, Address to the National Association of Broadcasters (May 9, 1961), in NEWTON N. MINOW & CRAIG L. LAMAY, *ABANDONED IN THE WASTELAND: CHILDREN, TELEVISION, AND THE FIRST AMENDMENT* 185, 188 (1995).

⁶ See *infra* pp. 1167-68.

⁷ For another comparison between the interstate highway system and cyberspace, see Steven G. Jones, *Understanding Community in the Information Age*, in *CYBERSOCIETY: COMPUTER-MEDIATED COMMUNICATION AND COMMUNITY* 10, 10-11 (Steven G. Jones ed., 1995). For a related discussion of the automobile, see DOUGLAS SCHULER, *NEW COMMUNITY NETWORKS: WIRED FOR CHANGE* 178 (1996).

Many worry that racial minorities will be left behind in the technological backwater.⁸ Although minority access to computing-communication infrastructure is a critical issue, I explore a more foundational question: Can cyberspace change the very way that race structures our daily lives? To see why this might be possible, consider the following:

Car purchase: I have bought my last two cars through a buying agent, who charges me a flat fee of three hundred dollars over dealer's invoice. I use this service mostly because I am too busy to negotiate with car dealers. But there is another reason: I worry that I may receive worse offers than a similarly situated White male.⁹ By using the buying agent, I skirt the aggravation of wondering, "Am I being discriminated against?"

Tennessee roommate: One college summer, I was hired at Oak Ridge National Laboratories. Unfamiliar with Tennessee, I found housing over the telephone. I arranged to live with a graduate student, who was kind enough to pick me up at the airport. I told him my height, what kind of jacket I had, and that I wore glasses. He told me that he had red hair, which would make him easy to spot. I later learned that neither he nor my immediate supervisor knew that I was Asian American until we met face to face. My phone voice, grammar, and accent¹⁰ did not prompt them to flip out of the default assumption: White. As for my name, they somehow heard "Jerry King."

Fighting words: In researching this paper, I began participating in graphical virtual communities.¹¹ In these communities, one picks an avatar (a graphical representation of the self), navigates visually depicted environments, and chats with other individuals. In one world, I play a Black man, who looks young, muscular, bald. My virtual skin tone, which can be altered, is very dark. One afternoon, a character who appeared as a White female asked me whether I was an "African American" in real space. When I said "yes," I was sprayed with racist bile. Here is a partial log:

⁸ See *infra* pp. 1162-64. See generally Donna L. Hoffman & Thomas P. Novak, *Bridging the Racial Divide on the Internet*, 280 SCIENCE 390, 390-91 (1998) (investigating differences in computer ownership and Web usage among racial groups).

⁹ Ian Ayres has demonstrated statistically significant differences in the average offers received by car purchasers as a function of gender and race (White versus Black). See Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817, 817-19 (1991); Ian Ayres, *Further Evidence of Discrimination in New Car Negotiations and Estimates of Its Cause*, 94 MICH. L. REV. 109, 109-10 (1995) [hereinafter Ayres, *Further Evidence*].

¹⁰ I immigrated to the United States when I was six and grew up in the Midwest. Like everyone, immigrants and non-immigrants alike, I have an accent. See generally Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991) (discussing accent discrimination).

¹¹ For a description of graphical virtual communities and other forms of cyberspace communications, see *infra* Part II.

PERPETRATOR: hey nigger

PERPETRATOR: betta watch out we got an eye on you and others do to your reported to the aryan nation KKK mutherfucker!!

PERPETRATOR: eine mine mo catch a nigger by his toe and if he hollers let him go! HEHEHE

PERPETRATOR: KKK

ME: --- why don't you come out to play? [*The perpetrator had been sending me these messages privately, after disappearing from the room that I was in. I was trying to get her to reappear.*]

PERPETRATOR: run nigger run <grin> [*This was in response to my leaving the room, in which I was originally attacked.*]

ME: Are you afraid to show yourself even in the virtual world?

PERPETRATOR: were are you at>??

ME: I'm at the teleporter, near Temple St.

PERPETRATOR: answer monkey boy

ME: So why are you so filled with hate?

PERPETRATOR: Im not just dont like niggers thats all

PERPETRATOR: white power!!

ME: Is it all of us or just some?

ME: Why did you leave? [*The perpetrator had reappeared, but then disappeared.*]

ME: Have you ever met one of us in the real world?

ME: Do you care whether I'm an American Black or a Carribean [sic] or Nigerian immigrant?¹²

Articulating my emotional reaction is difficult. Although I have confronted many racial epithets as an Asian American, in this situation I felt attacked as a *Black man*. I do not want to overstate this point because I do not know how African American men would have generally responded. In addition, this attack never threatened my physical safety. Yet it jarred me deeply.

These three anecdotes illustrate how race still functions in American society — what I call “racial mechanics.” Each anecdote also demonstrates how the architecture that mediates an interaction can alter racial mechanics in different ways. For example, in the *car purchase* anecdote, I used an economic architecture that removed racialized negotiations from the car buying ritual. In the *Tennessee roommate* anecdote, the telephone's architecture inadvertently cloaked my race until I met my roommate face-to-face. If he were uncomfortable or particularly elated about living with an Asian, neither discomfort nor joy would have been triggered until we met at the airport.

¹² Unfortunately, I could not capture the entire log. An unedited transcript, which includes simultaneous conversations with other parties, is available from the Harvard Law School Library upon request.

Finally, in the *fighting words* anecdote, cyberspace enabled me to present myself as a Black man, something I could not do face to face.¹³

Cyberspace enables new forms of social interaction. How might these new communicative forms affect racial mechanics? These are not idle academic questions. As my *fighting words* anecdote shows, race and racism are already in cyberspace. As computing-communication technologies advance to engage more senses, those bodily characteristics that signal a person's race will increasingly appear in cyberspace. What should decisionmakers do to shape this architecture?

- If you are a programmer working on an e-mail listserv program, do you make it easy to append small photographs in the signature block?
- If you are a university dabbling in distance education and want to design a graphical chat room for virtual office hours, will the avatars look human? If yes, what color will their flesh be? If you give choices, what will the default character look like?
- If you are an Internet Service Provider, and enough subscribers have broadband connections with digital cameras, do you create rooms where people can talk to each other through videolinks?¹⁴ Does it matter whether these spaces are for flirting or for filing mortgage applications?

Such design questions are urgent because cyberspace holds both redemptive and repressive potential.¹⁵ If cyberspace's repressive possibilities materialize, racial subordination will be reinforced.¹⁶ By contrast, if its redemptive possibilities are achieved, we may move toward "a society in which race is no longer an axis of social division, inequality, and hatred, nor used to create a repressive social, economic, or political status."¹⁷ Cyberspace's consequence for race is not predeter-

¹³ A classic nonfiction example of real-space racial passing appears in JOHN HOWARD GRIFFIN, *BLACK LIKE ME* (1961), which tells the story of a White man passing as a Black through the deep South in late 1959.

¹⁴ See, e.g., Lee Gomes, *A Giant Game of "I Spy" on the Web: Netcams Bring Videoconferences Into Bedrooms*, WALL ST. J., July 19, 1999, at B1 (describing increasing sales of "netcams," which are fueling video exchanges — many of them X-rated — on the Internet).

¹⁵ As Mark Dery puts it, technology is "a Janus machine, an engine of liberation and an instrument of repression." MARK DERY, *ESCAPE VELOCITY: CYBERCULTURE AT THE END OF THE CENTURY* 14 (1996). One repressive possibility is that cyberspace may become a tool for mass surveillance by the private sector. See generally Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 STAN. L. REV. 1193 (1998) (analyzing the increased threat to information privacy caused by cyberspace).

¹⁶ For example, the difference in access to technology may increase socioeconomic differences between Whites and non-Whites; the lack of accountability in certain online social spaces may increase hate speech and racist rhetoric; the possibility of transmutation, see *infra* Part V, may reinscribe racist meanings through blackface-like minstrelsy, see *infra* p. 1184.

¹⁷ Gabriel J. Chin, Sumi Cho, Jerry Kang & Frank Wu, *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action*, 4 UCLA ASIAN PAC. AM. L.J. 129, 160 (1996).

mined. The choice — of what we would like to achieve and how — is up to us.

To help us make an informed choice, I begin in Part I by examining how race continues to have a significant impact in American life and society. Exploring a central theme of Critical Race Theory — that race is a social construction — I offer a social cognitive account of American racial mechanics. Roughly, my claim is that interpersonal interactions are altered by racial schemas, which consist of racial *categories*, rules of racial *mapping* through which we categorize individuals into specific categories, and racial *meanings* associated with each category. Over time and numbers of interactions, these microlevel alterations aggregate into macrolevel social effects of significant consequence. Obviously, this social cognitive approach is not the only way to parse racial mechanics; however, this analytical method will prove useful in examining the special difference that cyberspace makes.

In Part II, I explore what that difference is. After providing a primer on the communicative forms of cyberspace, I explain how the new computing-communication technologies have created radically new possibilities for social interaction. As the technologies improve at a blistering pace, the power, popularity, and pervasiveness of these new types of social interaction will only grow. But social interaction mediated through cyberspace differs significantly from social interaction in real space. For instance, in presenting individual identity, cyberspace can make racial anonymity easier. In addition, cyberspace can increase the realm of communication partners with whom we interact, by making real-space residential segregation a less total constraint on the people we meet. These architectural differences make possible interesting disruptions of racial schemas.

The next three Parts investigate specific strategies of schema disruption. In Part III, I discuss how cyberspace-enabled racial anonymity might prevent us from applying the rules of racial mapping. If successful, this would keep race out of cyberspace. It is a strategy of racial *abolition*, which may be attractive not only to those who believe that (White) racism is incorrigible but also to those who insist that the best way to get beyond race is to get beyond race. In Part IV, I discuss how cyberspace-enabled social interactivity can reform the troublesome racial meanings associated with each racial category. In essence, this is a high-tech version of the social contact hypothesis, which suggests that well-designed racially integrated environments decrease racial prejudice and hostility. This is a strategy of racial *integration*. In Part V, I discuss how cyberspace-enabled racial pseudonymity, or “cyber-passing,” can disrupt the very concept of racial categories. If in cyberspace, we can freely choose the social categories we inhabit or present — including race, as well as gender — what lessons might that teach us as we “pass” and the audience as it witnesses the pass? Perhaps cyber-passing could teach us that the bodies we have been given

need not dictate the identities we embrace. I call this strategy racial *transmutation*.

Each strategy suffers from numerous difficulties, and no single approach is a panacea. However, ignoring race in cyberspace is not an option. In Part VI, I explore in more practical terms what society — not only lawmakers, but all of us — might do. Interestingly, in cyberspace, we do not have to choose a uniform design strategy. Instead, we can adopt a policy of diversification that racially zones different cyberspaces differently, as the circumstances warrant. For instance, in many market places, abolition may be best. By contrast, in many social spaces, some combination of integration and transmutation may be most appropriate. By expressly encouraging a diversified policy portfolio, we can exploit synergies created by flexible zoning. At the same time, we avoid locking a particular racial paradigm into the laws, norms, and architecture of a burgeoning cyberspace that is too new and dynamic for society to be confident about governing.

Finally, some notes about method and scope are in order. My method is informed by two legal literatures that have not mixed thus far: Critical Race Theory¹⁸ and the burgeoning cybersocial theory.¹⁹ Each has much to say to the other, and this paper initiates that dialogue. My normative recommendations are not principally about law reform; instead, they involve societal intervention in the market, norms,²⁰ and especially architecture.²¹ To maintain a manageable

¹⁸ A fine introduction to Critical Race Theory can be found in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* at xiii-xxxii (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995). Within any dynamic intellectual tradition, it is hard to identify standard methods or principles. See, e.g., Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography, A Year of Transition*, 66 U. COLO. L. REV. 159, 160-61 (1995) (attempting to identify Critical Race Theory's principal themes). The reader, however, should be aware that some of the method, approach, and argument I present in this paper may be inconsistent with other works within this school of thought. For example, certain critical race theorists may object strongly to the idea of implementing a strategic delay in the disclosure of race in social spaces. See *infra* pp. 1172-73. I claim no orthodoxy.

¹⁹ See, e.g., M. ETHAN KATSH, *LAW IN A DIGITAL WORLD* 3-20, 92-113 (1995) (discussing culture and interaction in cyberspace); James Boyle, *Foucault in Cyberspace: Surveillance, Sovereignty, and Hardwired Censors*, 66 U. CIN. L. REV. 177, 177 (1997) (critiquing digital libertarianism and the current preference for technological rather than legal solutions); James Boyle, *A Politics of Intellectual Property: Environmentalism for the Net?*, 47 DUKE L.J. 87, 87 (1997); Julie E. Cohen, Lochner in Cyberspace: *The New Economic Orthodoxy of "Rights Management"*, 97 MICH. L. REV. 462, 462-563 (1998) (discussing economic models for governing cyberspace); Lawrence Lessig, *Reading the Constitution in Cyberspace*, 45 EMORY L.J. 869, 869-910 (1996) (addressing the problem of applying the Constitution in cyberspace); David G. Post, *Anarchy, State, and the Internet: An Essay on Law-Making in Cyberspace*, 1995 J. ONLINE L. art. 3 (June 1995) <<http://www.wm.edu/law/publications/jol/post.html>> (on file with the Harvard Law School Library).

²⁰ See generally ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 123-259 (1991) (presenting a theory of norms).

²¹ In the legal literature, this multifaceted approach is sometimes called the New Chicago

scope, this paper focuses on race and sets aside gender and class.²² As for audience, I address intellectuals who study race, those who study cyberspace, and those few who study both. In addition, I target the techno-policy elite (often law-trained) within private industry, regulatory agencies, and legislative staffs, who are setting cyberspace's ground rules. These elites rarely focus on race; I hope this paper makes that no longer possible.

I. RACE

Race continues to be a fundamental axis of social, economic, cultural, and political organization. Race affects both the symbolic and material realms of our lives, shaping our self-conceptions and altering our life-chances.²³ Race affects whom we befriend, date, and marry.²⁴ Race affects our purchases.²⁵ Race affects our vote.²⁶ Race affects our

School. See Lawrence Lessig, *The New Chicago School*, 27 J. LEGAL STUD. 661, 662-63 (1998) (describing the four types of constraints that regulate behavior). For an illuminating application of this approach to cyberspace, see Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 HARV. L. REV. 501 (1999) [hereinafter Lessig, *The Law of the Horse*]. Cybersocial theory has given special emphasis to architecture. See Joel R. Reidenberg, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*, 76 TEX. L. REV. 553, 569 tbl.1 (1998) (comparing and contrasting traditional legal regulation and "Lex Informatica," "law" implemented through technological architecture).

²² I briefly discuss universal service policies, which have strong class components, in Parts IV.A and VI.C.2(a). Gender analogues permeate the footnotes. Both subjects, however, obviously deserve serious separate examination in the context of cyberspace. In the future, race can and should be studied in unison with gender and class. Examples of such unified discussion can be found in fields outside of cyberspace. See, e.g., Richard H. Fallon, Jr., *Affirmative Action Based on Economic Disadvantage*, 43 UCLA L. REV. 1913, 1947-50 (1996) (discussing the use of economically based affirmative action in place of race-based affirmative action); Cheryl I. Harris, *Finding Sojourner's Truth: Race, Gender, and the Institution of Property*, 18 CARDOZO L. REV. 309, 312-24 (1996) (discussing how slavery as property structured the social and legal meanings of race and gender).

²³ See RALF DAHRENDORF, *LIFE CHANCES: APPROACHES TO SOCIAL AND POLITICAL THEORY* 28, 31, 34 (1979) (discussing the concept of life-chances); ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* 99-111 (2d ed. 1995) (comparing the earnings of Black Americans to White Americans); Paul Ong & Suzanne J. Hee, *Economic Diversity*, in *THE STATE OF ASIAN PACIFIC AMERICA: ECONOMIC DIVERSITY, ISSUES & POLICIES* 31, 31-56 (Paul Ong ed., 1994) (comparing the earnings of Asian Americans to Whites); see also Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 8-53 (1994) (suggesting that despite popular conceptions, Asian Americans still face discrimination).

²⁴ In 1980, the percentage of Blacks who married nonblacks was 2%. The percentage of intermarriage for Latinos was 13%, for Asians 25%, and for Jews 50%. See KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS: AND WHAT THAT SAYS ABOUT RACE IN AMERICA* 74-75 (1998).

²⁵ See discussion and sources cited *supra* note 9 (discussing racial discrimination in car purchases).

²⁶ For example, President Clinton won 84% of the Black vote and 72% of the Hispanic vote in the 1996 election. See Maria Puente, *Clinton Sees Gain in Hispanic Vote, Retains Black Vote*, USA TODAY, Nov. 7, 1996, at 5A. Asian Americans voted overwhelmingly against California's

relationship with law enforcement.²⁷ How does race structure our lives so powerfully?

Different theories approach this question in different ways to provide different insights.²⁸ Thankfully, my task is not to determine which theory is the most correct in some abstract sense. Instead, I am interested in that theory that can best parse the specific nexus of race and cyberspace. As I explain in the next Part, cyberspace alters the architecture of interpersonal interactions. More specifically, it changes the ways we express individual identity as well as increases opportunities for interracial interactions. Accordingly, the theoretical approach we adopt must be able to explore the significance of whether we transmit racial signals at all, how we transmit those racial signals that we do convey, and the impact of racially integrated environments (in this case integrated through cyberspace) on race and racism.

Among possible candidates, one promising method is the social cognitive approach, which is empirically well grounded and has impressive explanatory and critical power.²⁹ Applying this method, I offer the following descriptive model of racial mechanics: In any social interaction, we *map* each other into racial *categories* that trigger associated racial *meanings*. These meanings influence the terms, nature, and evolution of the interaction. As shorthand, I use the term "racial schema" to refer to all three elements: (i) *racial categories*, through which the basic concept of race is understood; (ii) rules of *racial mapping*, which are used to classify individuals into categories; (iii) *racial*

Proposition 209, which ended affirmative action in state education, contracting, and employment. Exit polls in Los Angeles County revealed that 76.2% voted against the Proposition; exit polls in the San Francisco Bay Area revealed that 84.1% voted against the Proposition. See ASIAN PACIFIC AMERICAN LEGAL CENTER OF SOUTHERN CALIFORNIA & NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM, 1996 SOUTHERN CALIFORNIA ASIAN PACIFIC AMERICAN EXIT POLL REPORT: AN ANALYSIS OF APA VOTER BEHAVIOR AND OPINIONS 13 (1999).

²⁷ See, e.g., CHARLES J. OGLETREE, JR., MARY PROSSER, ABBE SMITH & WILLIAM TALLEY, JR., BEYOND THE RODNEY KING STORY: AN INVESTIGATION OF POLICE CONDUCT IN MINORITY COMMUNITIES 13 (1995) (demonstrating disproportionate African American representation "in every aspect of the criminal system as offenders, victims, prisoners, and arrestees").

²⁸ For a literature review and critique of various traditional theories of race, see MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960s TO THE 1990s (2d ed. 1994). See *id.* at 9-47 (describing ethnicity, class, and nation-based theories of race).

²⁹ See generally ZIVA KUNDA, SOCIAL COGNITION: MAKING SENSE OF PEOPLE (1999) (surveying the social cognition field). Readers new to the race literature should not assume that Critical Race Theory generally adopts social psychological explanations of race. Two prominent pieces that do use social psychological research, however, are Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995); and Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 336-39 (1987).

meanings, which are cognitive beliefs about and affective reactions to the categories.

To elaborate each element, I employ the following fictional stories:

Late-night Walk: After a long conference, I am walking in a strange downtown, late at night, looking for a taxi. I see two people approaching me. From a distance, I ascertain their rough size. From their clothing and body shape, I guess that they are male. As they walk closer, I see that they are Black. For reasons I cannot explain, my heartbeat quickens, and I become anxious, glancing around for other people. I begin taking a few steps to cross to the other side of the street but decide against it. Instead, I grip my briefcase more tightly, closer to my body, then walk at a faster pace. As I pass the Black men, I peek over my shoulder just to make sure that they have walked on by.

Personal Ads: I am searching the personal classifieds for advertisements placed by Asian American women. Thankfully, the ads not only provide racial self-identifications but also state the specific races that the person is willing to date. A friend asks me why I am searching so narrowly. I respond, defensively, with many reasons. Some of the reasons are assumptions about Asian American women — their appearance, their personality, their likely interest in an Asian American man. I say, "I know this is a generalization, but we will probably have more in common." I also explain that an Asian male/Asian female couple does not raise eyebrows although other matches might.

Race is a familiar concept within our culture. Although most Americans cannot rattle off a crisp definition, we know "race" when we see it. Most people understand race as a biological characteristic,³⁰ inherited from our parents and manifested in physical appearance. Integral to the concept of race is the typology of *racial categories*. In fact, the way that many people define race is simply to list categories, such as White, Black, Asian, Latino/a, and American Indian.³¹ Sometimes, we are not exactly sure whether a particular category counts as a race as opposed to a nationality, ethnicity, or religion. But we should

³⁰ See Leonard Lieberman, Raymond E. Hampton, Alice Littlefield & Glen Hallead, *Race in Biology and Anthropology: A Study of College Texts and Professors*, 29 J. RES. IN SCI. TEACHING 301, 315 (1992).

³¹ See Roger Sanjek, *Intermarriage and the Future of Races in the United States*, in RACE 103, 109 (Steven Gregory & Roger Sanjek eds., 1994) (noting that "street-level discourse" commonly identifies the racial categories as White, Black, Hispanic, Asian, and American Indian). Historically, anthropologists, sociologists, and biologists have identified anywhere between a handful to hundreds of different races. See GORDON ALLPORT, *THE NATURE OF PREJUDICE* 110 (1958) (noting that anthropologists have identified between two and 200 races); STEPHEN CORNELL & DOUGLAS HARTMANN, *ETHNICITY AND RACE: MAKING IDENTITIES IN A CHANGING WORLD* 21 (1998) (noting that scientists have identified between three and 63 races).

not be chided for such imprecision because racial categories reflect fickle social conventions, not good science.³²

Upon encountering an individual, we collect data through our senses to map the individual to a racial category. In the *Late-night Walk*, such *racial mapping* is based on physical appearance. By looking at the men's skin color, hair, and facial features, I automatically map them into the "African American" racial category.³³ The architecture of a face-to-face interaction permits this classification. Contrast this to my *car purchase* anecdote, in which I invoked a transaction facilitator³⁴ to cloak my racial identity. Racial mapping can also take place discursively, as in the *Personal Ads*.³⁵ The advertisement could

³² Genetic differences do not justify racial categories. No racial category features a unique gene or substantially differs genetically from the others. See CORNELL & HARTMANN, *supra* note 31, at 22–23 ("[T]he extent of genetic variation among individuals within supposed racial groups typically exceeds the variation between the groups."). Moreover, the genetic differences among races are of degree, not kind, changing smoothly as a function of ancestral geography. See Roger Sanjek, *The Enduring Inequalities of Race*, in RACE, *supra* note 31, at 1, 7 ("Small local populations vary slightly from each other as one proceeds east to west from East Asia to western Europe, or north to south from Scandinavia to the Congo basin. Historical movements of peoples, and intermingling of populations, complicate but do not disguise the fundamentals of continuous, clinal distribution.").

To be sure, some average genetic differences — in addition to environmental factors that trigger gene expression — account for average phenotypical differences in skin color, hair texture, and facial features, such as the eyes and nose. However, it is scientifically arbitrary to categorize *Homo sapiens* on the basis of these relatively trivial physical characteristics when myriad other differences, some visible (e.g., eye color), some invisible (e.g., blood type), are ignored. Accordingly, "there no longer exists a consensus on the scientific accuracy and utility of" race. Lieberman, Hampton, Littlefield & Hallead, *supra* note 30, at 317; see also Thomas A. LaVeist, *Why We Should Continue to Study Race . . . but Do a Better Job: An Essay on Race, Racism and Health*, 6 ETHNICITY & DISEASE 21, 21 (1996) (conceding that "physical anthropologists currently do not recognize the validity of race"). However, this lack of scientific consensus does not prevent scientists from continuing to use "race," sometimes sloppily. See LaVeist, *supra*, at 21–22.

³³ See KUNDA, *supra* note 29, at 17–18. "As we encounter objects, people, or behaviors, we classify them as instances of particular concepts. Much of this is done automatically — we do not see an elongated yellow object with black stripes, we see a banana." *Id.* (describing generally one of the functions of concepts, also called schemas). Schemas (not only racial ones) are elements of a conceptual or cognitive structure necessary to process in real-time the sensory stimuli that constantly flood our minds. As Allport explains, the human tendency to generalize and create categories is natural. "Life is so short, and the demands upon us for practical adjustments so great, that we cannot let our ignorance detain us in our daily transactions." ALLPORT, *supra* note 31, at 9.

³⁴ See Kang, *supra* note 15, at 1232–37 (discussing the role of transaction facilitators in cyberspace). Facilitators "help execute [a] transaction but are not the principal drivers of the exchange." *Id.* at 1232.

³⁵ In both the *Late-night Walk* and the *Personal Ads* stories, the mapping is unambiguous, but this is not always the case. For instance, a person's looks may not neatly match a racial archetype, perhaps because she is "multiracial." See, e.g., SHIRLEE TAYLOR HAZLIP, *THE SWEETER THE JUICE* 13 (1994) (recounting a personal family history that reveals the complexities of living at the boundaries of socially constructed racial categories). Hazlip writes:

I am a black woman, but many of you would never know it. . . . My skin is as light as that of an average white person. . . . But . . . [my] psych[e], soul[], and sensibilities are black. Sociologists would say [my family members] have been "socialized" as black people. Yet, our lives have been deeply colored by our absence of deep color.

have been silent on race, like the telephone call in my *Tennessee roommate* anecdote. But in the marketplace for romance, disclosing race is the current fashion, and neither public morality nor law protests.³⁶

Racial mapping triggers racial meanings³⁷ — cognitive beliefs about and affective reactions to — people in these racial categories.³⁸ In the *Late-night Walk*, the racial meanings attached to Blackness (as well as the gender category male) are violence, lawlessness, and criminality.³⁹ Even though I may intellectually resist exaggerated claims of Black criminality,⁴⁰ I cannot avoid feeling a greater threat because

Id.; see also Lawrence Wright, *One Drop of Blood*, NEW YORKER, July 25, 1994, at 53 (describing a National Center for Health Statistics study that found that 5.8% of people who self-identified as Black were not so identified by a census interviewer; the same went for nearly one-third of those who self-identified as Asian American, and 70% of those who self-identified as American Indian).

Also, a person's ethnic group may not fit readily into current racial typologies. For example, many Americans may not know how to categorize Americans of Middle Eastern descent. Are they White? Asian (think Oriental/Persian rugs)? Black (think *African* American, from Egypt, Libya)? See, e.g., Soheir A. Morsy, *Beyond the Honorary "White" Classification of Egyptians: Societal Identity in Historical Context*, in RACE, *supra* note 31, at 175 (describing how U.S. Immigration regulations map northern Africans, as well as Middle Easterners, to "White"); see also Doug Daniels, *The White Race is Shrinking: Perceptions of Race in Canada and Some Speculations on the Political Economy of Race Classification*, 4 ETHN. & RACIAL STUD. 353, 354 (1981) (providing informal survey results based on asking students about the race of various nationalities, such as Italians, Argentinians, and Iranians).

³⁶ For legal discussions of interracial romance, see Randall Kennedy, *How Are We Doing with Loving?: Race, Law, and Intermarriage*, 77 B.U. L. REV. 815, 816–20 (1997) and Note, *Racial Steering in the Romantic Marketplace*, 107 HARV. L. REV. 877, 894 (1994). For social aspects of interracial dating, see Viet D. Dinh, *Single White Female*, 2 RECONSTRUCTION 19, 19–20 (1994).

³⁷ I do not use "meaning" in the way that philosophers of language might use it. Instead, my reference point is Critical Race Theory. See, e.g., Lawrence, *supra* note 29, at 356–60 (presenting an equal protection theory of cultural meanings); see also Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1, 21–36 (1996) (suggesting a banned meanings approach to equal protection, whereby an individual has the right not to suffer disadvantage from a governmental practice that conveys an objective social meaning of stigma).

³⁸ Cf. KUNDA, *supra* note 29, at 315 (describing "stereotypes . . . as cognitive structures that contain our knowledge, beliefs, and expectations about a social group. There is also growing recognition that group labels bring to mind feelings as well as thoughts." (internal citations omitted)).

³⁹ See Cynthia Kwei Yung Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 MINN. L. REV. 367, 402–23 (1996).

⁴⁰ On the question whether a racial generalization is "justified" because it is accurate, see JODY DAVID ARMOUR, *NEGROPHOBIA AND REASONABLE RACISTS* (1997). In thinking about "rational racism," Armour asks us to be mindful of the following points: First, we must be sure to have good data. See *id.* at 40. Second, we must be sure that we are parsing these data correctly. We often choose wrong or irrelevant baselines, focus on relative measures instead of absolute ones, see *id.* at 38–39, 41–46, and exaggerate threats posed to ourselves and discount harms to others, see *id.* at 54. Third, we must appreciate the costs we inflict when we act on inaccurate generalizations about a specific individual. Social morality, not statistics, answers the question whether the benefits we derive from acting on such generalizations justify the costs in-

these men are Black.⁴¹ To be sure, the threat assessment relies on environmental factors, such as the lateness of the hour and the unfamiliarity of the city, as well as on other classifications besides race, such as socioeconomic class, age, sex, and size.⁴² Still, the racial classification is potent.

In the *Personal Ads*, the racial (and gendered) meanings associated with "Asian American woman" seem different. Instead of negative meanings such as physical threat, I have generally positive aesthetic reactions, attitudes, and beliefs.⁴³ Instead of a one-dimensional framing of criminality, I have a multidimensional set of meanings, which include, for example, beliefs about their likely cultural exposures and practices. This is, of course, no guarantee that these meanings are not troublesome, even if I am Asian American.⁴⁴

Racial meanings are triggered, often automatically, without self-awareness,⁴⁵ and once triggered, they alter our behavior. In some

flicted on the objects of our beliefs. See *id.* at 46–58. But cf. DINESH D'SOUZA, *THE END OF RACISM: PRINCIPLES FOR A MULTICULTURAL SOCIETY* 245–87 (1995) (suggesting that most incidences of racial "discrimination" are rational). Moreover, in my view, it behooves us to ask why a particular generalization is true, whether it is true because of unjust background conditions, and whether an action rationally based on that generalization will further entrench those unjust conditions.

⁴¹ In an often quoted speech, Jesse Jackson said: "There is nothing more painful for me at this stage in my life than to walk down the street and hear footsteps and start to think about robbery and then look around and see it's somebody white and feel relieved. How humiliating." Paul Glastris & Jeannine Thornton, *A New Civil Rights Frontier*, U.S. NEWS & WORLD REP., Jan. 17, 1994, at 38 (quoting Jackson's speech on November 27, 1993). Jackson was making a passionate plea about Black-on-Black crime to a Black congregation. He did not intend his comments to be shared with a general audience, who might misinterpret the thrust and context of his message. As Armour notes, many journalists jumped on this story as vindication of their "rational" fears of Black people. See ARMOUR, *supra* note 40, at 34.

⁴² My impression is also affected by any individuating information I might have about these gentlemen. See Ziva Kunda & Paul Thagard, *Forming Impressions from Stereotypes, Traits, and Behaviors: A Parallel-Constraint-Satisfaction Theory*, 103 PSYCH. REV. 284, 300 (1996). In most stranger-to-stranger interactions, there are few individuating data.

⁴³ Perhaps this attitudinal difference can be explained by the fact that the very cognitive structures that create racial categories dispose us to favor "in-groups" and disfavor "out-groups." See Krieger, *supra* note 29, at 1186–87. In addition, we are generally clueless that these processes are in effect. See *id.* at 1217.

⁴⁴ A feminist critique is obvious. See, e.g., WILLIAM WEI, *THE ASIAN AMERICAN MOVEMENT* 75, 75–77 (1993) (discussing problems of sexism within the Asian American civil rights movement).

⁴⁵ In one telling experiment, 41 undergraduate students from New York University completed a mundane computer-delivered test. Throughout this test, two groups were subliminally shown pictures of the face of either a young African American or White man. The computers were designed to crash after the 130th question. Observers, who did not know which group they were observing, measured the hostility of the participants' reactions. Those who were flashed Black images reacted with greater hostility. See John A. Bargh, Mark Chen & Lara Burrows, *Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action*, 71 J. PERSONALITY & SOC. PSYCHOL. 230, 238–40 (1996). Numerous studies have confirmed that neutral, subliminal exposure to individuals mapped to certain racial categories evokes

cases, the change seems trivial, as in the *Late-night Walk*. But my change in body language will be noticed by the African American men. If they intended me no harm, my reaction is a palpable insult⁴⁶ — another payment of what Jody Armour calls the Black Tax.⁴⁷ In my *car purchase* anecdote, I was seeking to avoid the altered behavior of discriminatory offers — effectively an Asian Tax on the auto purchase.⁴⁸

In the *Personal Ads*, by focusing narrowly on Asian American female companions, I cut myself off from possible intimacies with women of other races. What would happen if classified advertisements were colorblind, if they operated under a racial veil? On the one hand, maybe nothing would change because people would inquire discreetly about race over the telephone or demand photographs. Or, perhaps they would opt out of the system in favor of video dating, whose architecture necessarily discloses race.

On the other hand, maybe I give the race-blind date a try. If my preference for dating Asian Americans is rigid, then that first date with, say, a Latina would be tedious. But if my preference is weaker, I might find that we both enjoy John Rawls and Jackie Chan. Based on these shared interests, we might pursue a relationship that would not have started otherwise. Here, a brief delay in triggering racial schemas would allow two people to know more of each other's complicated

associated racial meanings. See KUNDA, *supra* note 29, at 322 (collecting studies and concluding that "neutral reminders of Black people can automatically trigger in other people negative thoughts, feelings, and behaviors, without any awareness on their part that they have even been reminded of this group").

⁴⁶ See ARMOUR, *supra* note 40, at 53–54 (stating that the "relentless, cumulative, dehumanizing" occurrences of Whites avoiding Blacks on the street cause "humiliation and stigmatization [that] must be counted among the most painful costs of race-based suspicions"). Similar stories of insult abound. Roy Johnson, a senior editor at *Money* magazine, was mistaken for a parking valet rather than a customer at a fancy restaurant in a wealthy New York City suburb. "First the parking valet handed him the keys to his Jaguar instead of fetching the car. Then an elderly white couple came out and handed him the keys to their automobile, with the instruction: 'It's a black Mercedes-Benz.'" Jerelyn Eddings, Jeannye Thornton, Dorian Friedman, Scott Minerbrook, Warren Cohen, Betsy Wagner & Jill Jordan Sieder, *The Covert Color War*, U.S. NEWS & WORLD REP., Oct. 23, 1995, at 40. Mary Frances Berry, chair of the U.S. Commission on Civil Rights, says she has been kept under surveillance at shopping malls. Andrew Barrett, a commissioner of the Federal Communications Commission, says he must call for taxis because they will not stop when he hails them. See *id.* at 40–41.

⁴⁷ See ARMOUR, *supra* note 40, at 13–14 ("[L]ike a tax, racial discrimination is persistent, pervasive, must be dealt with, cannot be avoided, and is not generally resisted.").

⁴⁸ Of course, I could have responded differently, by signaling to the dealer that I am not the "average" Asian. That might have meant dressing in a particular way, bargaining more aggressively than I would otherwise, or signaling early my educational credentials and professional status — not as engineer, but as law professor. But then, all of these efforts would amount to an Asian Expenditure, potentially as expensive as the Asian Tax. See Devon Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. (forthcoming July 2000) (explaining how responding to racial stereotypes takes time and effort).

whole. This is similar to what happened in my *Tennessee roommate* anecdote, in which the telephone veiled my race.

In these ways, racial mechanics alter interpersonal interactions. These microlevel changes accumulate over time and people to produce enduring macrolevel effects on our culture, economics, and politics. What is more, racial mechanics may be self-reinforcing. For example, if the racial meanings associated with Black men include aggressiveness, I will react accordingly. Not surprisingly, Black men will perceive these behavioral cues, and, fed up with paying this Black Tax, may convey hostility in their body language or speech, thereby reinforcing my racial meanings.⁴⁹ Also, through the mechanism of "stereotype threat,"⁵⁰ the very existence of certain negative racial meanings may lead racial minorities to perform in ways that confirm these meanings.⁵¹

⁴⁹ In one classic Princeton study, researchers tested two hypotheses:

First, black, as compared to white, job applicants will receive less immediate nonverbal communications from white job interviewers; second, recipients of less immediate nonverbal communications, whether black or white, will reciprocate these communications and be judged to perform less adequately in the job interview situation than recipients of more positive nonverbal communications.

Carl O. Word, Mark P. Zanna & Joel Cooper, *The Nonverbal Mediation of Self-Fulfilling Prophecies in Interracial Interaction*, 10 J. EXPERIMENTAL SOC. PSYCHOL. 109, 111-12 (1974).

Two experiments were performed. In the first, White and Black confederates applied for the same job. They had similar paper records and were trained to respond similarly in the interview. The interviewers, however, treated the applicants differently. Interviewers addressing Black applicants kept greater physical distance, made more speech errors, and ended the interview more quickly. *See id.* at 114-15. In the second experiment, using only White applicants, confederate interviewers treated half the applicants as the Black applicants had been treated — keeping applicants at greater physical distance, speaking to them with speech errors, and terminating their interviews quickly. Observers, who reviewed all of the interviews on videotape and were unaware of the point of the experiment, believed that those applicants who were given the "Black treatment" performed significantly worse. *See id.* at 117.

⁵⁰ *See generally* Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOLOGIST 613, 614 (1997) (defining stereotype threat as "a situational threat — a threat in the air — that, in general form, can affect the members of any group about whom a negative stereotype exists (e.g., skateboarders, older adults, White men, gang members). Where bad stereotypes about these groups apply, members of these groups can fear being reduced to that stereotype. And for those who identify with the domain to which the stereotype is relevant, this predicament can be self-threatening.").

⁵¹ In one revealing study, Asian American female undergraduates with excellent math SAT scores at Harvard University were given a quantitative test of 12 math questions. Before taking the exam, each woman was asked to complete a questionnaire designed to unconsciously trigger a female identity, Asian identity, or no specific identity. The group that had its Asian identity triggered performed best in accuracy; the group that had no identity triggered came in second; and the group that had its female identity triggered ranked last. Interestingly, the questionnaires did not seem to affect conscious motivation or confidence. There were no significant differences in the number of questions attempted, the number of questions that participants reported guessing, or the number of participants who reported enjoying the test; nor was there any meaningful distinction in the participant's self-assessment of their performance, their math skills, or their difficulty with the test. *See* Margaret Shih, Todd L. Pittinsky & Nalini Ambady, *Stereotype Susceptibility: Identity Salience and Shifts in Quantitative Performance*, 10 PSYCHOL. SCI. 80, 80-81

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These brief comments do not provide a complete account of racial mechanics. Any such account would have to explore more carefully the interrelationships among the three elements of racial schemas. For instance, the intensity and valence of racial meanings may affect how we engage in racial mapping;⁵² also, the mapping rules themselves may be loaded with racial meanings.⁵³ In addition, a comprehensive account would have to (i) explain how the micro aggregates into the macro, by which I mean the structural and institutional imbalances in wealth and power among racial categories; (ii) consider alternate explanations drawing on, for example, psychoanalytic theory, Marxist economics, cultural studies, or neocolonialism; and (iii) detail how the historical legacy of racism carries forward concretely to the present.⁵⁴

Nonetheless, the description of racial mechanics I offer — because of its simplicity — gives us practical tools with which to solve problems. As I hope to show in the following Parts, these tools are well-designed to probe the difference that cyberspace makes. This social cognitive model also particularizes a fundamental theme of Critical Race Theory that “race is a social construction.” “Race,” in the sense of its racial *categories*, is a social construction, which lacks meaningful biological bases;⁵⁵ the same is true for the rules of racial *mapping*⁵⁶ and

(1999). The same experiment was performed in Canada, where the stereotype that Asians are good in math is less robust. In that iteration, the control group scored highest, followed by the Asian identity group, and then the female identity group. *See id.* at 82.

⁵² Cf. Kenneth L. Karst, *Myths of Identity: Individual and Group Portraits of Race and Sexual Orientation*, 43 UCLA L. REV. 263, 294 (1995) (stating that “[i]f particular skin colors and physiognomies seem striking, one reason is that race has been, for a very long time, so important a category in the nation’s public, official, legal vocabulary”).

⁵³ *See, e.g.*, Neil Gotanda, *A Critique of “Our Constitution is Color-Blind”*, 44 STAN. L. REV. 1, 23–27 (1991) (discussing how rules of hypodescent, which map any person with a trace of African ancestry as Black, connote Black blood as “contaminating” to the “pure White race”).

⁵⁴ *See, e.g.*, MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 50–52, 151–60 (1995) (arguing that wealth is the best measure of “sedimentation of racial inequality” and examining the intergenerational transmission of wealth).

⁵⁵ *See* CORNELL & HARTMANN, *supra* note 31, at xviii; OMI & WINANT, *supra* note 28, at 64–65 (explaining that American racial categories are produced by social construction, not natural selection); *see also* discussion and sources cited *supra* note 32.

⁵⁶ The rules of racial mapping are configured by politics, social conventions, and law. For example, as a matter of social convention, both Italians and the Irish were not originally considered “White” in the U.S. *See* BRODKIN, *supra* note 24, at 54 (examining Irish ethnic identity formation); Kenneth L. Karst, *Does Integration Have a Future?*, in *CULTURAL PLURALISM, IDENTITY POLITICS, AND THE LAW* 139, 148–49 (Austin Sarat & Thomas R. Kearns eds., 1999) (discussing Italian ethnicity). Today, both are.

Not surprisingly, there has been great fluidity in racial mapping rules applied by the federal government. *See, e.g.*, BRODKIN, *supra* note 24, at 74 (identifying Mexicans, Middle Easterners, and Indians as shuttling back and forth between White and non-White census categories); OMI & WINANT, *supra* note 28, at 3 (noting that Japanese Americans have been variously categorized by

the social *meanings* we infuse into racial categories.⁵⁷

Sociological predictions that race, a mere tribal anachronism, would disappear by century's end have proven deeply wrong.⁵⁸ So if racial schemas will not expire anytime soon, can they be strategically disrupted or reformed? More to the point, can cyberspace help effect this change, or will cyberspace simply reinscribe racism into our nation?

II. CYBERSPACE

For those who see cyberspace as the digital union of Federal Express and the Home Shopping Network, any claim about cyberspace affecting race must sound ludicrous. How can a computer connected to a telephone line change something as monumental as race and race relations? *It can do so by disrupting racial schemas.* Before exploring how, I provide a primer on the communicative forms of cyberspace.

Cyberspace⁵⁹ enables multiple forms of computer-mediated interactions.⁶⁰ A taxonomy can be generated along the following axes:

1. *Temporal engagement — Asynchronous versus Synchronous:* Asynchronous communications, such as e-mail, do not require simultaneous participation of sender and receiver. By contrast, a standard voice telephone call (without voicemail) is synchronous. The phone call is useless unless the other person picks up.

the U.S. Census as non-White, Oriental, other, and Asian and Pacific Islander). States have historically also adopted myriad mapping rules. See IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 118-19 (1996) (cataloging the history of state racial definitions). See generally F. JAMES DAVIS, *WHO IS BLACK?: ONE NATION'S DEFINITION* (1991) (discussing the changing definitions of Blackness in American history).

These rules have been challenged in court. See, e.g., HANEY LÓPEZ, *supra*, at 42-46 (discussing cases prompted by the federal laws that, until 1952, maintained racial bars on naturalization); Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109, 111-23 (1998) (discussing the law's role in defining the cultural meaning of racial identities); Karst, *supra* note 52, at 271-74. These challenges have continued to the present. See *Jane Doe v. Department of Health and Human Resources, Office of Vital Statistics*, 479 So. 2d 369, 372 (La. Ct. App. 1985) (deciding that Suzy Guillory Phipps is not White).

⁵⁷ See, e.g., Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1370-74 (1988) (describing the hegemonic role of racism, which requires identifying Blacks as the despised "other").

⁵⁸ See CORNELL & HARTMANN, *supra* note 31, at 6-9.

⁵⁹ At its broadest, the term "cyberspace" encompasses the entire web of computing-communication technologies that enmesh the globe. It includes every computing processing unit connected through every type of telecommunications, both wireline and wireless. It includes every telecommunications and mass media industry, such as land line and wireless telephony, broadcast radio and television, satellite, and cable. In this paper, however, I use the term more narrowly to apply to all computer networks that interoperate with the Internet.

⁶⁰ See Peter Kollock & Marc A. Smith, *Communities in Cyberspace*, in *COMMUNITIES IN CYBERSPACE* 3, 4-8 (Marc A. Smith & Peter Kollock eds., 1999) (describing the cyberspace landscape).

2. *Communication Initiation — Push versus Pull*: "Push" communications arrive at the receiver without any special effort on the part of the receiver to obtain that particular communication item. E-mail is a good example. Once one has established an account and publicized the address, e-mails will arrive without any special effort by the receiver. By contrast, "pull" communications require more focused effort by the receiver to retrieve particular information. Surfing the Web is a common example of pull technology.⁶¹

3. *Audience Scope — One versus Many*: One may send or make a communication available to just one person, to a few, or to millions. Importantly, on the Internet, transmitting information to multiple receivers often costs no more than sending it to a single person. A familiar "push"-like example is an e-mail distribution list; a familiar "pull"-like example is a personal home page on the World Wide Web.

4. *Media Richness — Text-only versus Multimedia*: Communications differ in media richness, ranging across plain text, formatted text, pictures, audio, and video. A single piece of communication may mix multiple forms and thus be "multimedia."

In this taxonomy, the familiar e-mail would be categorized as asynchronous, push, one-to-one, and text-only. A message sent to a group of people, such as all subscribers to an academic list, would make audience scope one-to-many. E-mails that include graphics, audio, or movie clips would change media richness to multimedia. Browsing a webpage would be asynchronous, pull, one-to-many, and typically multimedia (because webpages generally include graphics as well as text).

Less familiar than e-mail and standard webpages are threaded discussion fora (asynchronous, pull, one-to-many, and generally text-only), which are available on the Usenet⁶² or on the Web. On these fora, people post messages and replies on matters of mutual interest, such as computer operating systems, daytime soap operas, or affirmative action. These posts generate a threaded discussion through which participants share thoughts, experiences, and expertise with each other. Although many participants simply search these fora for specific in-

⁶¹ Many forms of communication have both push and pull aspects. For example, one can configure Web browsers to receive channels of information automatically. After the initial specification of channels (akin to "pull"), data are periodically delivered to the individual without a specific request for that information (akin to "push").

⁶² For good descriptions of the Usenet, see Marc A. Smith, *Invisible Crowds in Cyberspace: Mapping the Social Structure of the Usenet*, in COMMUNITIES IN CYBERSPACE, cited above in note 60, at 195, 198–200; and Paul K. Ohm, Comment, *On Regulating The Internet: Usenet, A Case Study*, 46 UCLA L. REV. 1941, 1945–52 (1999). According to Smith, as of 1999, there were 14,347 newsgroups, on which an average of 20,000 people post 300,000 messages daily, generating six gigabytes of messages. See Smith, *supra*, at 197.

formation on a need-only basis, others participate far more regularly, not only taking but also giving information.

Even less familiar than these forms of cyberspace communication are real-time chat, instant messaging, and multiuser domains (MUDs). Most chat is synchronous, push/pull, one-to-many, and text-only. An individual runs a software program called a chat client, connects to a chat room delivered by a chat server, then sees a screen of scrolling text typed by the room's inhabitants.⁶³

While "chat" is like a large, often unruly, common room for discussion, instant messaging is more like a real-time textual pager (synchronous, push/pull, one-to-few, and principally text, although increasingly voice). Instead of running a chat client, one runs an instant messaging software program, which may notify a select group of people that the user has come online and is interested in receiving messages. Instead of connecting to a specific common room for discussion, individuals simply type messages and send them to the receiver's unique identifier. The message appears on the receiver's screen immediately, at which point an immediate reply can be sent back.⁶⁴ Instant messaging has spread like wildfire.⁶⁵

Finally, MUDs (multiuser domains or multiuser dungeons) are spatially elaborated chat rooms.⁶⁶ In addition to enabling instantaneous communicative exchange, MUDs have a geographical structure in which individual participants can move from room to room, finding new persons to meet and new areas to explore. Instead of a single common room, we can have an entire castle or city. Most MUDs contain objects, such as swords, coins, or sofas, that can be manipulated. Certain MUDs are adventure games that require players to compete against each other in search of gold or experience points. Other MUDs are entirely social; that is, they are meant for people to meet each other

⁶³ For more information about Internet-based chat, see Nicolas Pioch, *A Short IRC Primer* (last modified Jan. 1, 1997) <<http://www.irchelp.org/irchelp/ircprimer.html>> (on file with the Harvard Law School Library); and *What is IRC?* (visited July 22, 1999) <<http://www.geocities.com/~mirc/irc.html>> (on file with the Harvard Law School Library).

⁶⁴ An extremely popular instant messaging program is Mirabilis ICQ, which was purchased by America Online in 1998. See *An Introduction to ICQ: What is ICQ* (visited July 22, 1999) <<http://www.mirabilis.com/products/whatisicq.html>> (on file with the Harvard Law School Library).

⁶⁵ See Leslie Helm, *Microsoft Sends AOL a Message*, L.A. TIMES, July 22, 1999, at C1 ("Instant messaging software is the fastest-growing service on the Web, with about 80 million registered users, many of whom often spend hours a day chatting with online friends."); see also Linda Matchan, *Forget the Phone. With I.M., Teens Can Talk All Night, and It's, Like, Instant*, BOSTON GLOBE, Apr. 21, 1999, at C1 ("[S]ome 432 million instant messages travel across AOL each day.")

⁶⁶ "[T]hrough typically still text-based, [MUDs] are shared, persistent, navigable virtual environments in which user-created characters and scriptable objects can interact with one another in surprisingly rich and compelling ways." Diane J. Schiano, *Convergent Methodologies in Cyber-Psychology: A Case Study*, 29 BEHAV. RES. METHODS, INSTRUMENTS & COMPUTERS 270, 270 (1997).

and converse.⁶⁷ Most MUDs are text-based, but some are graphically mediated through the use of avatars.⁶⁸

Through these various computing-communication technologies, cyberspace helps people maintain social relationships originally constructed in real space. For example, grandparents can keep in touch with their grandchildren through e-mail, or a couple can post digitized photographs of a recent vacation to share with friends on a personal, password-protected webpage. Used in this way, cyberspace is a speedy postal service that supplements the handwritten letter and telephone.

Cyberspace also facilitates relationships that originally form in cyberspace. Typically, these relationships form in virtual communities of common interests, experiences, and fates. Such communities can be large, and often their members have not met face-to-face. Examples include academic e-mail distribution lists, Usenet newsgroups, chat rooms, and instant messaging. In these examples, cyberspace functions less like Federal Express and more like sidewalk cafés with different themes or milieus.

People already participate extensively in virtual communities of one sort or another.⁶⁹ They do it to maintain relationships created in real space, to find information and companionship, to receive emotional support, and to participate in social movements.⁷⁰ Those drawn to the Internet are often drawn to its sociality, not its data.⁷¹ The "killer application" of the Internet turns out to be other human beings.⁷²

⁶⁷ See Amy S. Bruckman, *Gender Swapping on the Internet*, in *HIGH NOON ON THE ELECTRONIC FRONTIER: CONCEPTUAL ISSUES IN CYBERSPACE* 317, 318–20 (Peter Ludlow ed., 1996) (describing the history of MUD development).

⁶⁸ Some of these graphical MUDs are wildly popular and extremely profitable. Graphical MUDs using the WorldsAway technology supposedly generated over \$10 million of revenues in 12 months through virtual worlds in the United States, Japan, and Korea. See *Avaterra.com, Inc. Backgrounder* (visited Sept. 24, 1999) <<http://www.worldsaway.com/aboutus/backgrounder.html>> (on file with the Harvard Law School Library). One of these communities, called Dreamscape, has approximately 100,000 members from 16 different countries. See *id.* On average, each member spends more than 10 hours per month on Dreamscape. See *id.*

⁶⁹ According to a study by Nielsen Media Research and CommerceNet in June 1999, there are 92 million Internet users in North America, aged 16 and older. See *New CommerceNet/Nielsen Media Research Study Also Shows Internet Users Top 92 Million in the U.S. and Canada*, BUS. WIRE, June 17, 1999, available in Westlaw, AllNewsPlus, Bwire (on file with the Harvard Law School Library).

⁷⁰ See Barry Wellman & Milena Gulia, *Virtual Communities as Communities: Net Surfers Don't Ride Alone*, in *COMMUNITIES IN CYBERSPACE*, *supra* note 60, at 167, 172–73 (providing examples).

⁷¹ See Schiano, *supra* note 66, at 271 (referring to interviewees who cited sociality as a primary reason for MUDding).

⁷² See, e.g., Susan C. Herring, *Two Variants of an Electronic Message Schema*, in *COMPUTER-MEDIATED COMMUNICATION: LINGUISTIC, SOCIAL AND CROSS-CULTURAL PERSPECTIVES* 81, 103–05 (Susan C. Herring ed., 1996) (finding that both men and women used two Internet mailing lists more for social interaction than for information exchange); Kollock & Smith,

The way that cyberspace facilitates social relationships will change as computing-communications technologies develop. For example, in the next fifteen years, multimedia exchange will grow rapidly in cyberspace. Instead of plain text, grandparents will communicate with their grandchildren using voice and video. In addition to the widespread adoption of speech recognition technologies, voice traffic will be regularly carried over the Internet. Also, with the spread of inexpensive cameras and broadband connections to the home, videophone communications will become more common. Relatedly, there will be advances in user interfaces. As we move from communications that are text-only to text-plus, avatars will become more popular.⁷³

One can glimpse the future of cyberspace in the work of Bill Jepson, who has created three-dimensional virtual spaces that are easily navigable and stunningly real.⁷⁴ In one project, he has combined aerial photographs and street-level video with three-dimensional geometry to model portions of Los Angeles that are accurate down to street signs and graffiti.⁷⁵ Touring this virtual Los Angeles triggers a conversion experience. Suddenly, one sees what cyberspace might soon look like. We may be able to enter three-dimensional graphical worlds as visually compelling as the recent computer-generated animation movies *Toy Story*, *A Bug's Life*, and *Antz*. But unlike passively watching a movie, we will be in charge of exploring these worlds. Even more in-

supra note 60, at 6 (describing the popularity of chat rooms on America Online); Robert Kraut, Vicki Landmark, Sara Kiesler, Tridas Mukopadhyay & William Scherlis, *Internet Paradox: A Social Technology That Reduces Social Involvement and Psychological Well-Being?*, 53 AM. PSYCHOLOGIST 1017, 1029 (1998) (reporting that a major reason people use the Internet is "to keep up with family and friends through electronic mail and on-line chats and to make new acquaintances through MUDs, chats, Usenet newsgroups, and listservs"); Barry Wellman, Janet Salaff, Dimitrina Dimitrova, Laura Garton, Milena Gulia & Caroline Haythornthwaite, *Computer Networks as Social Networks: Collaborative Work, Telework, and Virtual Community*, 22 ANN. REV. SOC. 213, 220 (1996) ("[W]hile most of the elderly users of the 'SeniorNet' virtual community joined to gain access to information, their most popular on-line activity has been companionable chatting.").

⁷³ Such interfaces are often more compelling and functional. For example, the standard interface for chat rooms includes a window of rapidly scrolling text — the chatter of room inhabitants. But this text is hard to follow because multiple conversations are taking place among multiple people, and all comments are interlineated into one streaming transcript. By contrast, in a graphical chat room, characters having a conversation can simply move their avatars to a different corner of the room. Comments made by each character appear in a "balloon" above the avatar's head. Through visual mediation, multiple conversations in a single room can be spatially separated. See, e.g., *Avaterra.com, Inc. Backgrounder*, *supra* note 68 (describing the graphical MUD Dreamscape).

⁷⁴ Not all user interfaces will be designed this way. Even 15 years from now, it will probably be more efficient to use something like current Web browser interfaces to research text-based information. We will use different applications, with different interfaces, depending on the task.

⁷⁵ See, e.g., *Urban Simulation Team* (visited Jan. 22, 2000) <http://www.ust.ucla.edu/ustweb/about_us.html> (on file with the Harvard Law School Library).

teresting, there will be other human beings to meet, who seek not only information and economic exchange, but also conversation.⁷⁶

The necessary technology will become widespread in the next fifteen years. In addition to a large, compelling video display,⁷⁷ which is getting cheaper to produce every year, the critical requirements for replicating Jepson's environment are fast graphics processors and massive data storage in a networked environment. Dedicated three-dimensional graphics chips of extraordinary power⁷⁸ are already becoming mass-market items through the video game industry.⁷⁹ More generally, computer processing speeds have been increasing at staggering rates.⁸⁰ Data storage costs are also constantly decreasing. Furthermore, within the next fifteen years, the Internet will no doubt have evolved into a network that can guarantee designated broadband rates of data exchange.⁸¹

Think how a single, simple creation in the early 1990s — the World Wide Web — made the Internet a household term.⁸² Consider how much our lives have changed in just a decade. In fifteen more years,

⁷⁶ Science fiction writers have imagined such futures. See, e.g., ORSON SCOTT CARD, *ENDER'S GAME* 66–70 (1985); NEAL STEPHENSON, *SNOW CRASH* 23–24 (1992).

⁷⁷ The future may lead us not to larger screens but to head-mounted displays or to images painted directly onto our retinas. See, e.g., Peter Wayner, *Wraparound Sight and Sound You Can Wear on Your Head*, N.Y. TIMES, July 22, 1999, at G3 (describing a Sony head-mounted display).

⁷⁸ Sony Corporation's Playstation II reportedly includes a chip significantly faster than Intel's Pentium III microprocessor and more than twice as powerful as a Silicon Graphics workstation, the current benchmark of graphics computing. See John Markoff, *Silicon Valley's Awesome Look at New Sony Toy*, N.Y. TIMES, Mar. 19, 1999, at C1. Stunning sample videos can be downloaded at *Playstation 2 Info Center* (visited Jan. 22, 2000) <<http://www.ps2info.com>> (on file with the Harvard Law School Library).

⁷⁹ Computer games are a \$10 billion industry globally, \$5.6 billion in the United States alone. See DON TAPSCOTT, *GROWING UP DIGITAL: THE RISE OF THE NET GENERATION* 4 (1998).

⁸⁰ "Computers doubled in speed every three years at the beginning of the twentieth century, every two years in the 1950s and 1960s, and are now doubling in speed every twelve months." RAY KURZWEIL, *THE AGE OF SPIRITUAL MACHINES: WHEN COMPUTERS EXCEED HUMAN INTELLIGENCE* 3 (1999). Kurzweil predicts that "[t]his trend will continue, with computers achieving the memory capacity and computing speed of the human brain by around the year 2020." *Id.* His reasoning is as follows: The human brain has approximately 100 billion neurons. Each neuron has on average 1000 connections with its neighbors. Therefore, 100 trillion connections must be modeled. Each neuron can perform approximately 200 calculations per second. This means that the human brain has the ability to perform approximately 20 million billion calculations per second. See *id.* at 103. Given the rate at which computer calculation speed has been increasing, Kurzweil concludes: "[I]t is reasonable to estimate that a \$1,000 personal computer will match the computing speed and capacity of the human brain by around the year 2020" *Id.* at 105.

⁸¹ More than half a million U.S. households have connected to the Internet via high speed broadband connections such as cable modems, digital telephone lines, and satellite links. See Amy Harmon, *Some Enter the Fast Lane to Get Access to the Web*, N.Y. TIMES, Apr. 28, 1999, at A1. Research firms project that broadband penetration will reach 10 to 16 million households by 2002. See *id.*

⁸² See *A Little History of the World Wide Web* (last modified Oct. 3, 1995) <<http://www.w3.org/History.html>> (on file with the Harvard Law School Library).

future innovations of greater significance await us. By 2015, cyberspace will allow us to navigate graphically mediated environments of stunning complexity, detail, and realism.⁸³ These advances have the potential to change everything. Our racial schemas may not be exceptions.

* * *

To summarize: Racial schemas (categories, mapping, meanings) shape social interactions, often in troublesome ways. However, as my introductory anecdotes suggest, the architecture through which the interaction takes place can influence these racial mechanics. Cyberspace presents a new universe of communication architectures, which is growing increasingly compelling and diverse. Among other things, these technologies may enable *social interaction* among individuals who would not otherwise meet or converse in real space. Recall how chat rooms, instant messaging, discussion fora, and websites enable communications of broad audience scope regardless of geographical distance. Still, despite the impressiveness of these communication technologies, cyberspace cannot convey the full sensory richness of a face-to-face encounter. This limitation in media richness generates intriguing opportunities for presenting, or not presenting, race. If we communicate through typed messages, for instance, we may remain *racially anonymous*. Or we can present ourselves as having a different race than we do in real space and thereby be *racially pseudonymous*. What design strategies might we employ to exploit these architectural differences (increased social interaction, racial anonymity, racial pseudonymity)?

In the following three Parts, I demonstrate how we can exploit each architectural difference to disrupt one of the three elements of racial schemas. Specifically, we can adopt a strategy of abolition, which disrupts racial mapping by promoting racial anonymity; integration, which reforms racial meanings by promoting social interaction; or transmutation, which disrupts racial categories by promoting racial pseudonymity.⁸⁴ I present the merits of each design strategy as forcefully as I can; however, each path suffers from severe limitations. We

⁸³ For futuristic visions of virtual reality, see HOWARD RHEINGOLD, *VIRTUAL REALITY* 345-76 (1991).

⁸⁴ There is another design philosophy that I do not consider seriously: racial separation. This approach would leverage cyberspace in whatever way possible to promote separation between the races. White supremacists who do not want to consort with racial minorities hold this view; so do certain people of color who view integration as a euphemism for conformity to White norms and colorblindness as hopelessly unrealistic given the pervasive racism of American society. Although I understand the frustration that generates a racial separatist attitude among people of color, I reject separation politics as unnecessary and unhelpful. My thoughts align with those of my colleague, Kenneth Karst. See Karst, *supra* note 56, at 143.

should not presume that by logging into cyberspace, we enter some digital promised land that deletes centuries of racial conflict or downloads into our brains an antiracist patch that encodes us all to "get along."

III. ABOLITION

In my *car purchase* anecdote, I took advantage of an economic architecture that cloaked race. I did not try to "enlighten" any car dealer about the various forms of animus- and statistically-driven racial discrimination.⁸⁵ Instead, I took a self-help measure to disrupt racial schemas by preventing racial *mapping*. In this way, I sought to avoid even subconscious triggering of racial meanings — a phenomenon the social cognitive literature has well-documented.⁸⁶ Can cyberspace generalize this solution by abolishing race in most cyber-interactions?⁸⁷

To prevent racial mapping, we must prevent collection of the data necessary for mapping. In real space, those data include visual appearance (as illustrated in *Late-night Walk*) and verbal self-identification (as illustrated in *Personal Ads*).⁸⁸ Cyberspace makes both types of data harder to access. First, because of bandwidth limitations, most cyber-interactions have low media-richness; thus, they still generally take place through typed text. In contrast to a face-to-face encounter, text need not disclose morphology. Second, the conversation norms in most Internet chat rooms and MUDs (multiuser do-

⁸⁵ Ayres considers four possible forms of discrimination: two that are animus-based (associational, consequential) and two that are statistical (search-based, revenue-based). See Ayres, *Further Evidence*, *supra* note 9, at 111. He concludes that different forms of discrimination explain different behaviors. For instance, "sellers' discrimination against black females may in part stem from a belief that black females are more averse to bargaining than white males, and . . . consequential animus may explain part of sellers' discrimination against black males." *Id.* at 141. Abolition would address racially disparate treatment caused by either animus or statistical generalizations about which social categories include the biggest "suckers."

⁸⁶ See discussion and source cited *supra* note 43.

⁸⁷ I do not align abolition thinking with either the political left or right. On the one hand, opponents of affirmative action contend that race is no longer a salient factor in society, with the exception of affirmative action programs. On the other hand, cultural critics such as Anthony Appiah argue that the continuing use of race, even acknowledging it as a social construct, is a dangerous reliance upon an illusion. See Anthony Appiah, *The Uncompleted Argument: Du Bois and the Illusion of Race*, in "RACE," WRITING, AND DIFFERENCE 21, 35-36 (Henry Louis Gates, Jr. ed., 1986). In addition, my discussion of abolition should not be confused with the new abolitionism movement represented, for example, by Noel Ignatiev and John Garvey's magazine, *Race Traitor*. The goal of this movement is to abolish the *White* race and its related privilege, not all races. See, e.g., Editorial, *Abolish the White Race — By Any Means Necessary*, in 1 RACE TRAITOR 1, 1 (John Garvey & Noel Ignatiev eds., 1993).

⁸⁸ Even in clinical research, these are the basic methods of racial mapping. See LaVeist, *supra* note 32, at 23 (identifying "visual assessment of the study subject or respondent self-report" as the "usual" method of ascertaining race); cf. Karst, *supra* note 52, at 272 (identifying physical appearance and verbal self-admissions as methods of judicial fact-finding about race).

mains) generally discourage racial identification.⁸⁹ Although it is common to ask about gender,⁹⁰ age, and real-space location, it is often taboo to ask about ethnicity or race.⁹¹

By making it easier for us to wear a racial veil, cyberspace promotes *racial anonymity*. This prompts fantasies about realizing Martin Luther King, Jr.'s dream in cyberspace.⁹² In the digital remix version, people are judged by the content of their text-characters, not the color of their skin. Consider what a fifteen-year-old had to say: "In chat sessions, people are judged not on looks or skin color, but by their personality. The Internet provides an alternative, a place without racism or prejudice. It's not as easy to make prejudiced comments about someone online when you cannot physically see them."⁹³ Academics have said the same things, with fancier words.⁹⁴ The result is liberation and equality.⁹⁵

⁸⁹ See Lori Kendall, *Meaning and Identity in "Cyberspace": The Performance of Gender, Class, and Race Online*, 21 SYMBOLIC INTERACTION 129, 142, 145-47 (1998) (describing MUD norms of not presenting or discussing race); cf. Lisa Nakamura, *Race in/for Cyberspace: Identity Tourism and Racial Passing on the Internet*, 13 WORKS & DAYS 25/26, at 181, 183 (1995) (stating that in LambdaMOO, a multiuser domain, "[r]ace is not only not a required choice, it is not even on the menu").

⁹⁰ See Kollock & Smith, *supra* note 60, at 12; Jodi O'Brien, *Writing in the Body: Gender (Re)production in Online Interaction*, in COMMUNITIES IN CYBERSPACE, *supra* note 60, at 76, 86 ("Gender is one of the first means by which persons introduce and represent themselves to others in electronic communications."); Elizabeth Reid, *Virtual Worlds: Culture and Imagination*, in CYBERSOCIETY, *supra* note 7, at 164, 179 (explaining that among gender, race, class, and age, "gender is the only one always 'hard coded' into MUD programs").

⁹¹ See Cynthia Joyce, *Race Matters in Cyberspace, Too*, SALON MAG. (last modified June 5, 1997) <<http://www.salon.com/june97/21st/race970605.html>> (on file with the Harvard Law School Library) (discussing the negative audience reaction to a Web journalist's disclosure that she was both Black and Latina).

⁹² See Earl Babbie, "We Am a Virtual Community", AM. SOCIOLOGIST, Spring 1996, at 65, 66. Opponents of affirmative action often cite King's speech to support their position. But even if King's promised land were an America without race — a nation that instead took culture or perhaps ethnicity seriously — this does not mean that he would have insisted on formal color-blindness as the path toward the promised land. In his last book, *Where Do We Go from Here*, King specifically wrote: "A society that has done something special *against* the Negro for hundreds of years must now do something special *for* him . . ." MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* 90 (1967).

⁹³ TAPSCOTT, *supra* note 79, at 111 (quoting Deanna Perry of Florida) (internal quotation marks omitted).

⁹⁴ See Michele Willson, *Community in the Abstract: A Political and Ethical Dilemma?*, in VIRTUAL POLITICS: IDENTITY AND COMMUNITY IN CYBERSPACE 145, 149 (David Holmes ed., 1997) ("Race, gender or physical disability is indiscernible over the Internet. Any basis for enacting embodied discrimination is removed, freeing access to participation and granting each participant equal status within the network.").

⁹⁵ See Siok Kuan Tambyah, *Life on the Net: The Reconstruction of Self and Community*, 23 ADVANCED CONSUMER RES. 172, 174 (1996) ("The impersonality and immateriality of the online experience has a liberating and leveling effect; it blanks out race, age, gender, looks, timidity, and handicaps.").

I find these claims naïve. For instance, just because race is not signaled in cyberspace does not mean that race ceases to matter in cyberspace or, certainly, in real space. Race will continue to influence the "content" of one's communications even if the audience is not aware of the nature of that influence.⁹⁶

Moreover, technological and demographic changes make blanket abolition infeasible. Consider initially the technological changes. Among text, audio, and video, text discloses the least information about race. But even text permits racial mapping. For example, names, which often appear in e-mail signature blocks and bulletin board posts, enable racial mapping,⁹⁷ which triggers racial meanings, which alter behavior.⁹⁸ One's language, grammar, and diction may also suggest race.⁹⁹

In addition, a text-only stance has little future. We have already seen user interface and network bandwidth improvements that enable richer forms of communication.¹⁰⁰ Not long ago, plain text e-mail was the norm. Now, graphics and formatted text in e-mail and webpages have become standard. The most engaging chat rooms and MUDs have graphical interfaces that use avatars, which are typically racialized.¹⁰¹ Exchanging audio is also growing popular, even in stranger-to-stranger chat rooms and MUDs. But audio reveals accent, which in

⁹⁶ See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 326 (1987) (arguing that the experiences of victims of racial oppression give them "distinct normative insights"). One commentator has criticized computer games for steadfastly denying the significance of race. See Julian Bleeker, *Urban Crisis: Past, Present, and Virtual*, 24 SOCIALIST REV. 189, 210 (1995) (criticizing the popular game *SimCity 2000*, which identifies heat, crime, and unemployment — but not race — as factors that cause riots).

⁹⁷ Obvious examples include "Chang" or "López." Less information is conveyed by the name "Harris"; although it is most likely not Asian, the name could easily be that of a White or a Black. The accuracy of these assumptions turns on the number of interracial family formations as well as social conventions regarding name changes at marriage.

⁹⁸ In one study, students were given a list of names and asked to identify which were politicians and which were criminals. Students more often picked African American sounding names (for example, Jamal Johnson) as criminals, not politicians. See Connie T. Wolfe & Steven J. Spencer, *Stereotypes and Prejudice: Their Overt and Subtle Influence in the Classroom*, 40 AM. BEHAV. SCIENTIST 176, 178 (1996).

⁹⁹ See, e.g., Byron Burkhalter, *Reading Race Online: Discovering Racial Identity in Usenet Discussions*, in COMMUNITIES IN CYBERSPACE, *supra* note 60, at 60, 65 (discussing how the subject line "Sisters please explain" may suggest that the author is Black).

¹⁰⁰ Richer forms of media are more efficient and satisfying. We speak much faster than we type. Thus, if we have the technological ability to communicate faster, we will do so if it does not cost more. These richer forms of media are also more satisfying because by invoking additional senses, they better create the illusion that the person with whom we are communicating is physically present. Cf. ERVING GOFFMAN, *INTERACTION RITUAL: ESSAYS IN FACE-TO-FACE BEHAVIOR* 33 (1967) (describing the wealth of information conveyed in face-to-face meetings).

¹⁰¹ One can, however, adopt human-like avatars that are sufficiently cartoonish that race becomes ambiguous, although gender remains clear.

turn may signal national origin, geography, or race.¹⁰² When video exchange goes mainstream, a cyber-interaction will be no more racially anonymous than a face-to-face encounter.

I am not claiming that text will disappear. Often, plain old text is best, for example, for lengthy or complex expositions as well as group communications. Also, different media convey different social meanings, which explains why we do not (yet) invite wedding guests through e-mail. Still, I believe that preserving text-only communication throughout cyberspace, in the hopes of preserving racial anonymity, is a losing proposition.

The changing demographics of cyberspace buttress this conclusion. Although there are disturbing data about the "digital divide" between races, substantial numbers of racial minorities are in cyberspace.¹⁰³ Not surprisingly, entrepreneurs have created race-specific virtual communities to attract these new demographics.¹⁰⁴ If cyberspace was ever colorblind, it was when only text was exchanged and when nearly all participants were White. But that is no longer the case and is becoming less true each day.

Against these technological and demographic forces, society could mount an aggressive campaign to abolish race in cyberspace. But doing so across the board, through state action, would be unconstitutional. For instance, a law prohibiting me from self-identifying as an Asian American in a chat room would be an unconstitutional content-based restriction on speech.

Instead of clumsy law, we could imagine more subtle social norm and technological interventions. Norm-based intervention might include strongly discouraging people from bringing race into cyberspace, even in social chat rooms. Perhaps government advertisements could characterize such racial representations as uncouth or mildly racist: a racial version of "don't ask, don't tell."¹⁰⁵ Just as the state has used

¹⁰² In one experiment, individuals — some with identifiably Black voices — called a wrong number, tried to explain that their car had broken down, then asked for assistance in contacting a garage. The study organized its subjects by political affiliation, and both conservatives and liberals were less likely to help Blacks than they were to help Whites. See Samuel L. Gaertner & John F. Dovidio, *The Aversive Form of Racism*, in PREJUDICE, DISCRIMINATION, AND RACISM 61, 68–69 (John F. Dovidio & Samuel L. Gaertner eds., 1986).

¹⁰³ For further discussion of access issues, see discussion and sources cited *infra* notes 132–33, 136.

¹⁰⁴ Many virtual communities overtly target specific racial groups. For African Americans see, for example, Black Voices at <<http://www.blackvoices.com>>, Netnoir at <<http://www.netnoir.com>>, and WanOnline at <<http://www.wanonline.com>>. For Asian Americans see, for example, Asian Avenue at <<http://www2.CommunityConnect.com/AsianAvenue.html>> and Lambda Phi Epsilon at <<http://www.lambdaphiepsilon.com>>. For Latinos, see, for example, LatinoLink at <<http://www.latinolink.com>>.

¹⁰⁵ But cf. Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of "Don't Ask, Don't Tell"*, 108 YALE L.J. 485, 544–57 (1998) (arguing that the "don't

advertisements to try to make smoking socially unacceptable, perhaps the same could be done with racial self-identification in virtual communities.

As for technologies, when we transmit voice, we could create an architecture that applies speech-to-text; translation and/or grammar checking; and then text-to-speech algorithms to generate a computer-synthesized voice that strips away racialized voice cues. Similarly, avatar interfaces could have default characters that are nonhuman, for example, animals, cartoon characters, or robots.¹⁰⁶ Even with video phones, one could imagine an architecture that allowed morphing of the transmitted image into a non-racialized human face.¹⁰⁷

But such interventions seem implausible. What market forces would lead to widespread adoption of such de-racing technologies, such as the voice-to-text-to-voice filter,¹⁰⁸ when they introduce additional costs and inefficiencies? And especially with increasing numbers of racial minorities entering cyberspace, why would a social norm of abolition grow in acceptance?

Moreover, any heavy-handed attempt to pressure people into an abolition environment would inflict disparate burdens on people of color. For many racial minorities, their racial identity is an integral facet of their self-conception. To strong-arm them into repressing that self-conception,¹⁰⁹ even if only in cyberspace, is to ask some Americans to silence a part of themselves.¹¹⁰ Even worse, when "colorblind" strangers interact in cyberspace, racial minorities will understand that the default assumption is not that each is raceless: The assumption instead is that each is White.¹¹¹ This is what happened in my *Tennessee*

ask, don't tell" military policy helps to render gays invisible and politically powerless as a group).

¹⁰⁶ See, e.g., Elizabeth M. Reid, *Text-Based Virtual Realities: Identity and the Cyborg Body*, in HIGH NOON ON THE ELECTRONIC FRONTIER, *supra* note 67, at 339 (describing Furry-MUCK, a highly popular MUD in which all characters are non-human, and most are furry animals).

¹⁰⁷ These technologies would likely develop out of more primitive technologies sought by individuals who prefer "soft focus" and other enhancements to their transmitted images that are common to the Hollywood mass media industries.

¹⁰⁸ This technology would not be inconceivable because it would simply be an unusual application of real-time bidirectional language "interpretation," without the shift in languages.

¹⁰⁹ Pressure can be applied in complicated ways. For example, Lisa Nakamura relates one attempt in a MUD to enact a hate crime penalty against characters who harassed others on the basis of race. The petition failed, with detractors emphasizing that individuals could simply "hide" their race by removing it from their self-descriptions. One character wrote, "Well, who knows my race unless I tell them? If race isn't important than [sic] why mention it? If you want to get in somebody's face with your race then perhaps you deserve a bit of flak." Nakamura, *supra* note 89, at 189 (internal quotation marks omitted).

¹¹⁰ Cf. Carbado & Gulati, *supra* note 48 (describing the burdens placed on racial minorities who must abide by "colorblind" institutional norms).

¹¹¹ See Kendall, *supra* note 89, at 145-46 (stating that Whiteness is considered the default or the state of being without a race).

roommate anecdote. But this means that not only would racial minorities be gagged in their self-representation, they would also be mistaken for White.¹¹² Finally, in addition to individual psychic harms, there may be collective political harms. Often, racial minorities need to engage in collective politics based on race to resist injustice heaped upon them based on race. Heavy-handed abolition would undermine such politics just as cyberspace is maturing into a serious political medium.

One might respond that Whites would also be prevented from representing their race. But for most Whites, racial identity is less significant. As recent work in Critical White Studies has emphasized, Whiteness is unapparent, inconspicuous, and invisible.¹¹³ Such invisibility is common for those who are members of the dominant class or social category within American society.¹¹⁴ Further, although abolition identically silences Whites from presenting their racial identity, the default assumption is descriptively accurate as applied to them.

In sum, designing cyberspace to abolish race rigidly and completely will be nearly impossible. There can be useful, narrow exceptions in the construction of certain commodified market places, a matter I discuss below.¹¹⁵ As a general proposition, however, culture and market forces will not lead us to abolish race generally in cyberspace. Even if it were feasible through some aggressive top-down intervention, for example, via software or norms encouraged by the state or prominent Internet Service Providers, I would not recommend general abolition because it would inflict disparate costs on people of color. We risk not so much abolishing race as abolishing non-White races.¹¹⁶

¹¹² A religious analogy might illuminate the nature of these disparate burdens: What if we prohibited all people from identifying their religions in cyberspace because historically, religion has been a source of great conflict and strife? How would that make a Jew feel, especially if most Americans in cyberspace are Christian?

¹¹³ See generally CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (Richard Delgado & Jean Stefancic eds., 1997).

¹¹⁴ In our society, Whites do not think much about how their racial identity benefits their lives; men do not think much about their gender; heterosexuals do not think much about their sexual orientation; and able-bodied people do not think much about their physical abilities. See, e.g., RUTH FRANKENBERG, WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS 6 (1993) (discussing Whiteness); Barbara J. Flagg, "Was Blind, but Now I See": White Race Consciousness and the Requirement of Discriminatory Intent, 91 MICH. L. REV. 953, 971 (1993) (noting that Whites' social dominance allows them to "relegate [their] own racist specificity to the realm of the subconscious"); see also Devon W. Carbado, *Epilogue: Straight Out of the Closet: Men, Feminism, and Male Heterosexual Privileges*, in BLACK MEN ON RACE, GENDER & SEXUALITY: A CRITICAL READER 420, 426 (Devon W. Carbado ed., 1999) (noting how men do not think about gender and heterosexuals do not think about sexual orientation).

¹¹⁵ See *infra* Part VI.

¹¹⁶ See generally Gotanda, *supra* note 53, at 17-21, 53-60 (questioning the wisdom and practicality of colorblindness within both the public and private spheres); David A. Strauss, *The Myth of Colorblindness*, 1986 SUP. CT. REV. 99, 114-15 (arguing that colorblindness, as a public policy, actually amounts to color-consciousness).

IV. INTEGRATION

So if race cannot and should not be quarantined from cyberspace, can we adopt an integration design strategy instead? Instead of trying to disrupt racial mapping, can cyberspace help reform *racial meanings* by promoting social interactions? This approach teleports the social cognitive strand of *Brown v. Board of Education*¹¹⁷ into the 21st century. At the core of the integration approach is faith in the contact hypothesis, which claims that increased social contact between the races, under the right conditions, dissolves racial prejudice.¹¹⁸ As a threshold matter, will cyberspace increase social contact between the races?

A. Quantity

Cyberspace makes geographical proximity less relevant.¹¹⁹ Under current Internet architecture and pricing schemes, physical proximity does not make cyberspace communication any easier or cheaper.¹²⁰ Therefore, if two people are unlikely to meet in real space because they live on different sides of a city, cyberspace deletes that interaction barrier.¹²¹ This partially lifts residential segregation's choke-hold on

¹¹⁷ 347 U.S. 483 (1954). *Brown* had an equally, if not more, important material strand, which I do not emphasize here. "Separate but equal" was a sham not only symbolically but also in terms of the material resources made available to Black institutions.

¹¹⁸ See, e.g., Norman Miller & Marilyn B. Brewer, *The Social Psychology of Desegregation: An Introduction*, in *GROUPS IN CONTACT: THE PSYCHOLOGY OF DESEGREGATION* 1, 2 (Norman Miller & Marilyn B. Brewer eds., 1984). For a summary of studies lending support to the social contact hypothesis, see ALLPORT, cited above in note 31, at 252-60; THOMAS F. PETTIGREW, *RACIALLY SEPARATE OR TOGETHER?* 274-78 (1971); and Thomas F. Pettigrew, *Prejudice*, in *HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS* 820-29 (Stephan Thernstrom ed., 1980).

¹¹⁹ See, e.g., David R. Johnson & David Post, *Law and Borders — The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1370-76 (1996) (explaining how cyberspace undermines the relationship between physical location and legal governance).

¹²⁰ The quality of communication in cyberspace is principally a function of the data transfer rate (the rate of bits per second) that a user enjoys. Speed of communication, however, is not greatly affected by the geographical distance between information source and destination. Although geographical distance often correlates with the number of hops that an IP packet (the basic unit of information that travels through the Internet) must take from destination to source, there are far more important determinants of data throughput rates. Finally, the pricing model for Internet access is insensitive to the distance traveled by a data packet. Most users currently pay either a flat rate or a time-metered rate to their Internet Service Provider.

¹²¹ To talk about different sides of a city is provincial. Cyberspace allows for equally easy conversations across the globe. See, e.g., SCHULER, *supra* note 7, at 55-57 (describing a project that connected thousands of students in schools worldwide, in which students recorded daily journals, which were distributed globally through a listserv); Mary Elaine Meagher & Fernando Castaños, *Perceptions of American Culture: The Impact of an Electronically-Mediated Cultural Exchange Program on Mexican High School Students*, in *COMPUTER-MEDIATED COMMUNICATION*, *supra* note 72, at 187, 187-202 (describing an experiment in which high school students in Mexico City interacted via computer-mediated communications with high school students in San Diego); Marc A. Smith, *Invisible Crowds in Cyberspace: Mapping the Social Structure of the Usenet*, in *COMMUNITIES IN CYBERSPACE*, *supra* note 60, at 195, 197 (identifying 59% of Usenet posts as

interracial social contact.¹²²

Cyberspace also makes talking with strangers easier.¹²³ The fundamental point of many cyber-realms, such as chat rooms, is to make new acquaintances. By contrast, in most urban settings, few environments encourage us to walk up to strangers and start chatting. In many cities, doing so would amount to a physical threat. There are counterexamples in real space, such as the singles bar, but they are exceptions. As Ray Oldenberg has documented, the "great good place" where we can easily meet new friends and neighbors — if it ever existed — has all but disappeared in real space.¹²⁴

Finally, individuals are less fearful in cyberspace. Notwithstanding reports of online gambling, crime, anarchy, and pornography, cyberspace is a safe place.¹²⁵ One's physical body is never at risk. One's mental welfare is also less at risk given the option of easy exit.¹²⁶ Further, one often enjoys reputational safety.¹²⁷ This may be because one

originating outside of the United States). Of course, human language is one potent barrier; however, the popularity of English and advances in real-time translation technologies (especially between Romance languages) may make human language less of a barrier.

¹²² See generally DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 81, 109–14. (1993). Segregation is worst for Blacks, one-third of whom live in intensive racial segregation. See *id.* at 77 ("[Blacks] are unambiguously among the nation's most spatially isolated and geographically secluded people, suffering extreme segregation across multiple dimensions simultaneously."); see also Richard H. Sander, *Housing Segregation and Housing Integration: The Diverging Paths of Urban America*, 52 U. MIAMI L. REV. 977, 978–79 (1998) (describing the persistence of Black segregation). For a brief description of the federal government's role in creating this segregation, see OLIVER & SHAPIRO, cited above in note 54, at 15–18.

¹²³ See Pavel Curtis, *MUDDing: Social Phenomena in Text-based Virtual Realities*, in HIGH NOON ON THE ELECTRONIC FRONTIER, *supra* note 67, at 347, 357–58.

¹²⁴ RAY OLDENBURG, *THE GREAT GOOD PLACE: CAFÉS, COFFEE SHOPS, COMMUNITY CENTERS, BEAUTY PARLORS, GENERAL STORES, BARS, HANGOUTS AND HOW THEY GET YOU THROUGH THE DAY* 7 (1989); see also Robert D. Putnam, *The Strange Disappearance of Civic America*, 24 AM. PROSPECT 34, 34 (1996) (describing the decline of civic and political participation).

¹²⁵ See, e.g., Alecia Wolf, *Exposing the Great Equalizer: Demythologizing Internet Equity*, in CYBERGHETTO OR CYBERTOPIA? RACE, CLASS, AND GENDER ON THE INTERNET 15, 25 (Bosah Ebo ed., 1998) (reporting that some women feel safer when confronted with aggressive male behavior online than in real space). One important exception, however, is increased contact between adults and children in unsupervised settings.

¹²⁶ Nonetheless, people may experience substantial emotional distress in cyberspace. There have been reported cases of "virtual rape," in which an individual with the requisite technical expertise sexually batters other characters within a virtual community, without their consent. See, e.g., Julian Dibbell, *A Rape in Cyberspace or How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database into a Society*, 2 ANN. SURV. AM. L. 471, 477–78 (1995); Elizabeth Reid, *Hierarchy and Power: Social Control in Cyberspace*, in COMMUNITIES IN CYBERSPACE, *supra* note 60, at 107, 115 (describing an attack in Jenny-MUSH, a virtual help center for people who have been sexually assaulted or abused, in which a user named "Daddy" shouted rape narratives to everyone within the MUD).

¹²⁷ See Reid, *supra* note 126, at 113 (identifying both physical and reputational safety as sources

is interacting anonymously or pseudonymously.¹²⁸ For these three reasons, cyberspace will expose individuals to a greater audience of potential communication partners, including those of other races.

All this, of course, assumes that racial minorities have access to cyberspace. If they do not, then we have simply replaced geographical segregation with electronic segregation. The National Telecommunications & Information Administration (NTIA) provides recent comprehensive data on this point.¹²⁹ As of December 1998, 94.0 percent of all U.S. households have access to a telephone;¹³⁰ 42.1 percent own a computer;¹³¹ and most importantly, 26.2 percent have home access to the Internet.¹³² The rate of increase for household access to the Internet continues to be phenomenal.¹³³ The NTIA's study did, however, find racial differences in household access to the Internet: Asian/Pacific Islanders (36.0 percent); Whites (29.8 percent); Blacks (25.5 percent); and Hispanics (12.6 percent).¹³⁴ Racial differences persisted even when household income was held constant.¹³⁵ Moreover, the digital

of disinhibition in MUDs).

¹²⁸ For explanation of the differences between cyberspace anonymity and pseudonymity, see A. Michael Froomkin, *Flood Control on the Information Ocean: Living With Anonymity, Digital Cash, and Distributed Databases*, 15 J.L. & COM. 395, 417-24 (1996).

¹²⁹ See NAT'L TELECOMMUNICATIONS & INFO. ADMIN. (NTIA), FALLING THROUGH THE NET: DEFINING THE DIGITAL DIVIDE: A REPORT ON THE TELECOMMUNICATIONS AND INFORMATION TECHNOLOGY GAP IN AMERICA at xv-xvi (1999), available at <<http://www.ntia.doc.gov/ntiahome/fttn99/contents.html>> (on file with the Harvard Law School Library) (describing its methodology, which involved appending questions to the Census Department's current population survey).

¹³⁰ See *id.* at 2.

¹³¹ See *id.* at 5; see also Nick Turner, *High Anxiety in Low-Cost PC Market*, INVESTOR'S BUS. DAILY, Oct. 5, 1999, at A7 (reporting that computers costing less than \$600 represent nearly half of all U.S. retail sales).

¹³² See NTIA, *supra* note 129, at 5. NTIA also measured individual (not household) access to the Internet, whether from the home or elsewhere, and found that 32.1% of Americans use the Internet.

¹³³ The Internet only took seven years to hit 30% penetration into U.S. households. By contrast, the personal computer took 13 years, television took 17 years, and the telephone took 38 years. See United States Internet Council, *State of the Internet: USIC's Report on Use & Threats in 1999* (visited Jan. 16, 2000) <http://www.usic.org/currentsite/usic_state_of_net99.htm> (on file with the Harvard Law School Library).

¹³⁴ See *id.* at 6.

¹³⁵ See *id.* The percentage of households using the Internet, by income and by race/origin is as follows:

	Under \$15,000	\$15,000-34,999	\$35,000-74,999	\$75,000+
White, non-Hispanic	8.9	17.0	39.0	60.9
Black, non-Hispanic	1.9	7.9	22.2	53.7
Other, non-Hispanic	16.4	24.7	39.9	64.8
Hispanic	3.8	7.6	26.8	48.1

divide between Whites and certain minority groups is increasing, not decreasing.¹³⁶

For some skeptics, this divide is a fatal objection. For them, the gap between Whites and non-Whites is so large that there will be no meaningful social integration in cyberspace. Accordingly, they counsel against wasting time wondering whether cyberspace might promote racial equality.

This is an overreaction. First, in absolute numbers, there is substantial minority presence in cyberspace, and that presence is increasing every year. By one estimate, as of June 1998, over five million African Americans had used the World Wide Web within the past six months.¹³⁷ Also, according to the Commerce Department, Asian/Pacific Islanders have the highest percentage of household access to the Internet of any racial group, and Asian/Pacific Islanders *are* racial minorities.¹³⁸ Finally, rapidly changing Internet business models¹³⁹ may soon increase these numbers substantially.

Second, for the problem I address, relative numbers are not as important as absolute ones. Altering racial schemas is not the same political project as promoting high-tech distributive justice. The existence of a large gap between Whites and non-Whites (relevant to the

¹³⁶ "Between 1997 and 1998, the gap between White and Black households increased by 53.3% (from a 13.5 percentage point difference to a 20.7 percentage point difference), and by 56.0% (from a 12.5 percentage point difference to a 19.5 percentage point difference) between White and Hispanic households." *Id.*; see also Donna L. Hoffman & Thomas P. Novak, *The Evolution of the Digital Divide: Examining the Relationship of Race to Internet Access and Usage Over Time* (May 18, 1999) (unpublished manuscript) (on file with the Harvard Law School Library) ("In fact, the overall gap between whites and African Americans in Internet access and having ever used [the Web] have actually increased over time.").

¹³⁷ See Hoffman & Novak, *supra* note 136.

¹³⁸ Whenever interpreting socioeconomic data that characterize Asian Americans as "model minorities," it is important not to jump to conclusions. See, e.g., Chin, Cho, Kang & Wu, *supra* note 17, at 149 (explaining why the model minority myth based on household income data is misleading). For example, there is tremendous heterogeneity among the various ethnicities that constitute the Asian/Pacific Islander Census category. Because household access to the Internet is correlated with household income and because certain Asian ethnicities are disproportionately poor, it is highly probable that many Asian ethnic groups have very little access to the Internet. See, e.g., Ong & Hee, *supra* note 23, at 36-37 (noting that nearly half of all Americans of Southeast Asian descent live in poverty). In addition, surveys that are taken only in English or Spanish, such as the NTIA's, will likely produce skewed results given the substantial percentage of Asian Americans who have limited proficiency in those languages.

¹³⁹ Some firms are giving away computers to users who promise to view advertisements or sign up for ISP accounts. See, e.g., Laurie J. Flynn, *Maker of Inexpensive Computers Reports a Flood of Orders*, N.Y. TIMES ON THE WEB (Mar. 29, 1999) <<http://www.nytimes.com/library/tech/99/03/biztech/articles/29free.html>> (on file with the Harvard Law School Library) (discussing FreePC.com's business plans to give away computers to those willing to have ads continuously aimed at them on their PCs). Some firms are giving away ISP accounts in exchange for viewing advertisements and collecting transactional records about what the household does on the Internet. See Gordon Black, *This Net Service Comes with a Catch: It's Free*, SEATTLE TIMES, Jan. 6, 2000, at C1.

latter project) does not necessarily say much about the opportunities for social interaction enabled by cyberspace (relevant to the former project). For example, if nearly seventy-five percent of White households had access to the Internet, whereas only twenty-five percent of Latino households had access, then the digital divide would be huge, and from an equity perspective, disturbing. Nevertheless, a twenty-five percent Latino figure might still mean that Whites and Latinos are interacting socially in cyberspace in ways that they do not in real space.

I am not taking widespread Internet access for granted. Indeed, this paper offers, in the end, a new justification for aggressively promoting cyberspace access for minority communities.¹⁴⁰ However, it is myopic to renounce cyberspace because of current disparities in technological and cultural access.¹⁴¹ That is akin to renouncing universities, and their redesign, because of disturbing racial disparities in admissions.

One final objection to my quantity claim could be that even if racial minorities are in cyberspace, members of each racial group will associate only with other members of that group. Even though distance matters far less in cyberspace, this may simply mean that Koreans in Koreatown, Los Angeles, will mingle more freely with Koreans in New York, not African Americans two miles away in South Central. Thus, there may be no net increase in direct interracial experiences.

It is true that virtual communities specifically designed for racial and ethnic groups already exist and are increasing in popularity.¹⁴² In addition, numerous virtual communities are de facto Whites only. But we should not exaggerate the problem of self-segregation. Virtual communities are centered around common interests, experiences, and fates. There is, however, no perfect identity between one's race and one's interests, experiences, and fates.¹⁴³ Think hip-hop,¹⁴⁴ Nintendo,¹⁴⁵ partner dancing, or golf. Consider instead how powerfully

¹⁴⁰ See *infra* Part VI.C.2(a).

¹⁴¹ See Anthony G. Wilhelm, *A Resource Model of Computer-Mediated Political Life*, 25 POL'Y STUD. J. 519, 531 nn.2, 4 (1997) (emphasizing the importance of human capital and other antecedent resources necessary to engage in computer-mediated political life).

¹⁴² See *supra* note 104. Black Entertainment Television recently announced that it has raised \$35 million to upgrade its Internet presence. See Saul Hansell, *Big Companies Back a New Web Site, Aimed at Blacks*, N.Y. TIMES, Aug. 12, 1999, at C1; cf. Keith L. Alexander, *Investors Flock to iVillage Stock*, USA TODAY, Mar. 22, 1999, at 11B (noting that the share price of iVillage, which targets women, tripled on the first day after the initial public offering).

¹⁴³ See generally Karst, *supra* note 56, at 146-47 (arguing that American national culture is a potpourri, with predominant strands from Europe and Africa intermixed).

¹⁴⁴ Hip-hop is wildly popular among Asian youths, both in America and in Asia. See Kimberly Chun, *Asian Artists Put New Spin on Hip-Hop; Filipino Rappers Rewrite Ghetto Music to Own Experience*, S.F. CHRON., May 21, 1999, at 5 (describing Asian American hip-hop).

¹⁴⁵ See Arturo Escobar, *Welcome to Cyberia: Notes on the Anthropology of Cyberculture*, 35

these matters are shaped, for instance, by socioeconomic class, gender, or generation. Accordingly, people who are drawn together by commonalities will hardly be all of the same race.¹⁴⁶

Also, cyberspace, with its fundamental metaphor of a hyperlink, invites exploration. Even if people start in isolated race-specific communities, which may be comfortable ports-of-entry for racial minorities, they will undoubtedly explore other cyber-realms. That is cyberspace's seduction. As folks navigate cyberspace, going from hyperlink to link, they will likely encounter a diversity of ideas and peoples.

B. Quality

Increased social contact is necessary but not sufficient to reform racial meanings. That contact must also have certain qualities that lessen our self-interest in maintaining negative racial meanings of others. Such meanings serve deep-seated needs of belonging, superiority,¹⁴⁷ and self-esteem.¹⁴⁸ Many of us crave differential status¹⁴⁹ while simultaneously questioning our self-worth. Accordingly, we often praise the groups to which we belong (in-group) and denigrate those to which we do not (out-group).¹⁵⁰ This reaction includes racial groups. The tendency to denigrate others is exacerbated when racial groups see themselves as competing against other racial groups.¹⁵¹

Taking account of these factors, a broad consensus in the social psychological literature has developed on the environmental characteristics crucial to decreasing negative racial meanings: (i) exposure to disconfirming data, (ii) interaction among people of equal status, (iii) cooperation, (iv) non-superficial contact, and (v) equality norms.¹⁵² In the subsequent sections, I explore the extent to which cyberspace can generate environments that satisfy these five criteria.

CURRENT ANTHROPOLOGY 211, 218 (1994) (noting the globalization of Nintendo in youth culture).

¹⁴⁶ Cf. OSCAR H. GANDY, JR., COMMUNICATION AND RACE: A STRUCTURAL PERSPECTIVE 241 (1998) (citing statistics demonstrating that in 1996, 60% of the audience for Black Entertainment Television was not Black).

¹⁴⁷ See KUNDA, *supra* note 29, at 314.

¹⁴⁸ Substantial experimental evidence supports this view. Studies reveal, for example, that people who have recently received negative feedback are more likely to activate negative racial stereotypes, in order to promote their own self-esteem. See *id.* at 362-64 (summarizing studies by Steven Fein and Steven Spencer).

¹⁴⁹ See ALLPORT, *supra* note 31, at 348.

¹⁵⁰ See *id.* at 40, 348; Wolfe & Spencer, *supra* note 98, at 177.

¹⁵¹ For a fascinating discussion of how group hostility can easily be manufactured through competition, see MUZAFER SHERIF, O.J. HARVEY, B. JACK WHITE, WILLIAM R. HOOD & CAROLYN W. SHERIF, INTERGROUP CONFLICT AND COOPERATION: THE ROBBERS CAVE EXPERIMENT 8-10 (1961).

¹⁵² See Miller & Brewer, *supra* note 118, at 2.

1. *Disconfirming Data*. — First, during the social contact, “[t]he attributes of the disliked group members with whom the contact occurs must disconfirm the prevailing stereotyped beliefs about them.”¹⁵³ This requirement should not be surprising because exposure to data that confirm our racial meanings will obviously not change them.¹⁵⁴ Why might cyberspace deliver more disconfirming data than real space? In real space, we navigate racially segregated communities; therefore, our cache of racial meanings is informed mostly by vicarious experiences with other races.¹⁵⁵ By contrast, in cyberspace, we navigate less segregated communities, which means that we will engage in more direct experiences with other races. Because direct experiences are less stereotypical than vicarious ones, cyberspace will expose us to relatively more disconfirming data.

Allow me to elaborate. From youth, we infuse racial categories with meanings based on “experiences” with people mapped to these categories.¹⁵⁶ These experiences can be vicarious or direct. By *vicarious*, I mean imagined experiences — both fictional and nonfictional — that are mediated through stories told by parents, teachers, friends, and increasingly by the electronic mass media.¹⁵⁷ By contrast, *direct*

¹⁵³ *Id.*

¹⁵⁴ Indeed, even when we are exposed to data that disconfirms our racial meanings, we may process them in such a way as to avoid revising our assumptions. To begin with, we are generally poor at analyzing statistical information. See, e.g., Daniel Kahneman & Amos Tversky, *Subjective Probability: A Judgment of Representativeness*, 3 COGNITIVE PSYCHOL. 430, 450–52 (1972) (explaining how, through the heuristic of representativeness, we systematically miscalculate objective probabilities). In addition, we are all adept at selective perception, selective interpretation, and selective recall. See generally Ziva Kunda & Paul Thagard, *Forming Impressions from Stereotypes, Traits, and Behaviors: A Parallel-Constraint-Satisfaction Theory*, 103 PSYCHOL. REV. 284 (1996) (proposing a theory of how stereotypes affect impressions of individuals); Lee, *supra* note 39, at 404–06 (summarizing studies that demonstrate that ambiguous behavior is interpreted more often as “violent” if committed by a Black rather than a White person). When we are confronted with evidence that runs contrary to our racial schemas that simply cannot be ignored, interpreted away, or forgotten, we often assimilate that evidence as an exception that proves the rule. See KUNDA, *supra* note 29, at 384–91 (discussing the process of “subtyping counterstereotypic individuals”). Even as to the individual with the anti-stereotypical trait, we may still rely on stereotypes to predict her behavior. See *id.* at 355–57.

¹⁵⁵ See Adeno Addis, “*Hell Man, They Did Invent Us*”: *The Mass Media, Law, and African Americans*, 41 BUFF. L. REV. 523, 530 (1993) (explaining that Whites and Blacks know about each other largely through the media, not through direct individual contact); Robert M. Entman, *Representation and Reality in the Portrayal of Blacks on Network Television News*, 71 JOURNALISM Q. 509, 517 (1994) (suggesting that Whites with limited personal contact with Blacks assume that TV news portrayals of Blacks are representative).

¹⁵⁶ See Pettigrew, *supra* note 118, at 827 (“By early adolescence, American children of various ethnic backgrounds yield a social distance rank-ordering of groups that is essentially the same as that found among adults.”).

¹⁵⁷ My subsequent comments are not meant to suggest that racism came into being because of the electronic mass media. However, the electronic mass media have become the most potent distributors of culture generally, and racial meanings specifically.

experiences are actual experiences with people of other races, not mediated by a third party such as the mass media.

Vicarious experiences are often stereotypical. I focus on vicarious experiences delivered through the mass media because they so powerfully shape the racial meanings we hold.¹⁵⁸ Images delivered by the mass media are designed to generate profit from a mass audience. Thus, they feature exaggerated generalizations¹⁵⁹ because it makes market sense for them to do so. Free, over-the-air broadcasters, for example, sell consumer attention to advertisers. To capture the greatest number of eyes and ears, commercial broadcasters peddle products that will attract the largest number of viewers. This means pitching to the mainstream.¹⁶⁰ In telling a story in thirty minutes¹⁶¹ or thirty seconds,¹⁶² simpler characters that tap into preexisting assumptions work best because exaggerated generalizations of racial "others" are more easily processed than complicated images.¹⁶³ Even in nonfictional

¹⁵⁸ In addition to forming racial meanings, the mass media shape our entire view of reality. See DORIS A. GRABER, *MASS MEDIA AND AMERICAN POLITICS* 206 (1997) (reporting the findings of the Cultural Indicators project from the University of Pennsylvania's Annenberg School of Communications: "[H]eavy viewers of television drama (more than four hours daily) see the world as television paints it and react to that world rather than to reality more than do light viewers of the same demographic background and similar circumstances."); JOHN TWITCHIN, *THE BLACK AND WHITE MEDIA BOOK* 125 (1988). Regrettably, the mass media present a distorted view of reality. See GANDY, *supra* note 146, at 23 (arguing that our understanding of risk is much closer to what the media present than to reality); SCHULER, *supra* note 7, at 217 (observing that crime and violence are 55 times more likely to occur on television than in real life).

¹⁵⁹ See ALLPORT, *supra* note 31, at 195 ("[Stereotypes] are socially supported, continually revived and hammered in, by our media of mass communication — by novels, short stories, newspaper items, movies, stage, radio, and television.").

¹⁶⁰ See generally C. Edwin Baker, *Giving the Audience What It Wants*, 58 OHIO ST. L.J. 311, 320 (1997) (describing the distortions caused by the advertiser-driven model of broadcast); Oscar H. Gandy, Jr., *Engaging the Rational Racist* (1998) (unpublished manuscript) (on file with the Harvard Law School Library) (arguing that advertisers have a strong influence on content).

¹⁶¹ Popular television shows such as *The Cosby Show* may have led some to believe that African Americans no longer encounter racism. "By consistently sweeping such major societal problems under the rug, television to a certain extent denies the actuality of racism in America. Real world racism, which is pervasive, subtle and blatant, is commonplace in America but virtually invisible on entertainment television." SALLY STEENLAND, *UNEQUAL PICTURE: BLACK, HISPANIC, ASIAN, AND NATIVE AMERICAN CHARACTERS ON TELEVISION* 21 (1989); see also GRABER, *supra* note 158, at 205-06 ("The improved television image of African Americans has tended to foster new misconceptions, namely that they are an economically privileged group that neither needs nor deserves special assistance.").

¹⁶² Racial caricatures are also common in advertisements. As Gandy explains, "advertisers seeking to introduce upscale Anglo audiences to their new brand of salsa are unconcerned about the impact their ads have on the reproduction of stereotypical impressions of the Latinos who traditionally included such condiments in their cuisine." GANDY, *supra* note 146, at 100; see also *id.* at 186 (discussing the Frito Bandito). It therefore stands to racial reason that Aunt Jemima is Black and mammy-like.

¹⁶³ Films also contribute to racial stereotyping. See *id.* at 178-79 (explaining how stereotypes are easy to capture on film and are also easily processed by the audience); see also JESSE ALGERON RHINES, *BLACK FILM/WHITE MONEY* 70 (1996) (arguing that Black films must

news, we see similar biases. For example, photo editors disproportionately use photographs of African Americans to illustrate stories about poverty because the racial category Black is already connected to poverty, thus making the story and images simpler to consume.¹⁶⁴

By contrast, direct experiences are not deformed by the same economic forces. For instance, in my direct interactions, I have little interest in performing some "Oriental" character for anyone's enjoyment.¹⁶⁵ This is partly due to self-respect. It is also because my livelihood thankfully does not depend on my doing so.¹⁶⁶ In my direct social interactions, I also have no special incentive to highlight or exaggerate "bad news" about negative outcomes, failures, misbehaviors, or tragedies associated with me or minority communities.¹⁶⁷ By contrast, news reporting institutions do have such incentives in order to attract audience share.¹⁶⁸ In sum, my interpersonal life is not dictated by mass America's ratings.

include stereotypes in order to generate enough crossover appeal to garner funding). See generally KATHY RUSSELL, MIDGE WILSON & RONALD HALL, *THE COLOR COMPLEX: THE POLITICS OF SKIN COLOR AMONG AFRICAN AMERICANS* 244 (1992) (describing the "dominant gaze" as "the tendency of mainstream culture to replicate, through narrative and imagery, racial inequalities and biases which exist throughout society"). For a persuasive critique of racial stereotyping in *Star Wars Episode I: The Phantom Menace*, see Bruce Gottlieb, *The Merchant of Menace: Racial Stereotypes in a Galaxy Far, Far Away?*, SLATE (May 26, 1999) <<http://www.slate.com/HeyWait/99-05-26/HeyWait.asp>> (on file with the Harvard Law School Library).

¹⁶⁴ See GANDY, *supra* note 146, at 114-15; see also Howard Kurtz, *Time's 'Sinister' Simpson: Cover Photo Was Computer-Enhanced*, WASH. POST, June 22, 1994, at D1 (describing Time Magazine's decision to darken O.J. Simpson's skin color); cf. Gandy, *supra* note 160 (explaining why journalists choose extreme exemplars consistent with stereotypes to provide a more powerful story).

Many people have also complained about sports newscasters, who tend to attribute Black athletic success to natural talents and White athletic success to effort or smarts. See CHRISTOPHER P. CAMPBELL, *RACE, MYTH AND THE NEWS* 60 (1995) (characterizing such responses as examples of "aversive racism").

¹⁶⁵ Contrast this with today's most recognizable Asian American character on a television show. The character "Ling" on *Ally McBeal* is an exotic, meretricious, sexually potent, but coquettish dragon lady. Although racial minorities may intentionally play to stereotypes as one way to navigate an institutional environment successfully, few actually go to such lengths. See Carbado & Gulati, *supra* note 48. For a general discussion of Hollywood's portrayal of Asians, see GINA MARCHETTI, *ROMANCE AND THE "YELLOW PERIL": RACE, SEX, AND DISCURSIVE STRATEGIES IN HOLLYWOOD FICTION* (1993).

¹⁶⁶ Contrast this with gangsta rap music videos, which are vicarious experiences that enable young Whites to cross the cultural distance and become virtual, visual tourists of the inner city. See GANDY, *supra* note 146, at 104; see also ROBIN D.G. KELLEY, *RACE REBELS: CULTURE, POLITICS, AND THE BLACK WORKING CLASS* 191 (1994) (arguing that rap serves the same role as the blaxploitation films of the 1970s and presents the ghetto as a place of adventure, violence, and erotic fantasy).

¹⁶⁷ One exception for me is sharing facts that challenge the "model minority" stereotype of Asian Americans. See Note, *Racial Violence Against Asian Americans*, 106 HARV. L. REV. 1926, 1930-33 (1993) (written by Jerry Kang).

¹⁶⁸ See, e.g., GANDY, *supra* note 146, at 159 (discussing an institutional bias that favors the production of "bad news"); PAUL HARTMANN & CHARLES HUSBAND, *RACISM AND THE*

Cyberspace will not magically reform vicarious experiences. This is evident from the huge zones of cyberspace that look no different from more traditional mass media, such as newspapers, magazines, and television. The vicarious experiences provided here are no less stereotypical because the economic forces driving the production of such content have not changed.¹⁶⁹ However, cyberspace will increase the proportion of direct experiences we consume, principally because our social interactions will be less constrained by residential segregation. Because direct experiences tend to be less stereotypical than vicarious ones, individuals will be exposed, on balance, to more disconfirming data.¹⁷⁰

2. *Equal Status.* — This increased contact will do little good if it is configured by drastic hierarchies. Consider, for example, the intimate socioeconomic and personal contact between African Americans and Whites throughout slavery and the Jim Crow era. Because that contact was structured by a master-servant relationship, it did little to break down racial stereotypes. This is why "[c]ontact must occur in circumstances that define the status of the participants from the two social groups as equal."¹⁷¹

Some commentators contend that cyberspace naturally generates these ideal, antihierarchical environments. For example, Mark Poster writes: "[T]he salient characteristic of Internet community is the diminution of prevailing hierarchies of race, class, age, status and especially gender. What appears in the embodied world as irreducible hierarchy plays a lesser role in the cyberspace of MOOs [MUDs that are object oriented]."¹⁷²

MASS MEDIA: A STUDY OF THE ROLE OF THE MASS MEDIA IN THE FORMATION OF WHITE BELIEFS AND ATTITUDES IN BRITAIN 154 (1974) ("[T]he more negative the event the more likely it is to become 'news'.").

¹⁶⁹ Vicarious experiences in cyberspace may be less stereotypical, however, because of greater racial diversity in cyberspace content providers. In real space, racial minorities frequently identify high barriers to entry as one reason why they have not been able to gain ownership of broadcast stations. By contrast, cyberspace "broadcast" platforms are much cheaper. If a more racially diverse ownership will produce less racially stereotypical images, then even vicarious experiences may improve in quality. My skepticism about such claims arises from the reality that even in cyberspace, production of the sort of content that captures substantial browsing market share will require huge financial resources.

¹⁷⁰ Cf. Ringo Ma, *Computer-Mediated Conversations as a New Dimension of Intercultural Communication Between East Asian and North American College Students*, in *COMPUTER-MEDIATED COMMUNICATION*, *supra* note 72, at 173, 177 (concluding that computer-mediated communication between students in Asia and America "tends to demystify some distorted mass media reports," for example, regarding the U.S. educational system).

¹⁷¹ Miller & Brewer, *supra* note 118, at 2; *see also* KUNDA, *supra* note 29, at 381-82 (describing the *contact hypothesis*).

¹⁷² Mark Poster, *Cyberdemocracy: The Internet and the Public Sphere*, in *VIRTUAL POLITICS*, *supra* note 94, at 212, 224.

I am more skeptical. For instance, if cyberspace is used simply as a communications device, akin to a fancy telephone, then cyberspace will still reflect the preexisting hierarchy between sender and receiver. In other words, if an employer sends an instruction to a temporary worker through e-mail, the hierarchy between employer and temp is not erased simply because the communication traversed a computer network.

Fortunately, a substantial amount of cybersocial contact takes place in contexts not configured by any master-servant relationship. These conversational realms are instead informal communions, organized around issues of mutual interest or concern. On bulletin boards, chat rooms, and MUDs, the vast majority of participants relate on equal terms, as if they were all patrons of a virtual café. Each participant generally has no special power over the others, no special capacity to communicate in ways that others cannot.¹⁷³ If participants are treated differently, it is usually on the basis of their reputations within that virtual community.

One might complain that differences in socioeconomic status present in real space will surely manifest themselves in cyberspace. No doubt they will. However, this may actually be a blessing in disguise. Because socioeconomic class powerfully determines our interests, experiences, and fates, communities based on commonalities will often attract patrons from similar socioeconomic classes. For example, in a chat room about British poetry, participants will likely share some similarities in educational background, if not economic status. Although this may be troublesome from a class perspective, it may be a plus from an integration perspective. In real space, because residential segregation cuts across income levels, rich White folks do not live next to rich Black folks.¹⁷⁴ In cyberspace, however, both groups will congregate in virtual communities centered around fancy wines, stock tips, vacation spots, and the like. Regardless of the classist aspect of this interaction, it is an example of cyberspace promoting direct interracial experiences among people of similar socioeconomic status.¹⁷⁵

¹⁷³ There are exceptions, such as the "Wizards" who moderate various MUDs. The owner of the MUD can delegate specific powers to knock people offline, terminate their accounts, muzzle speakers, etc. See Reid, *supra* note 126, at 119-20 (discussing challenges to the legitimacy of a MUD hierarchy and reporting complaints about the legitimacy of how certain people became Wizards); see also Curtis, *supra* note 123, at 358-60 (describing Wizards' powers). I am also troubled by differential bandwidth access, which enables certain individuals to communicate more quickly and more often than others.

¹⁷⁴ See Sander, *supra* note 122, at 984 ("[T]he most affluent blacks experience roughly the same degree of segregation as the least affluent blacks.").

¹⁷⁵ To avoid being misread, I should emphasize that I favor increasing social contact between different socioeconomic classes. However, the problems that would be ameliorated by such contact are not the problems I target in this paper. Further, I do not believe that cyberspace will necessarily increase classist segregation, which already takes place in real space.

3. *Cooperation.* — Third, “[t]he contact situation must encourage . . . a mutually interdependent relationship, that is, cooperation in the achievement of a joint goal.”¹⁷⁶ Even if racial or ethnic groups have direct social contact, on terms of equal status, there may still be conflict.¹⁷⁷ Participation in *cooperative projects* is important because it defuses competition and highlights group membership defined by common project, not common race. Such multiracial ingroups make blanket denigrations of racial “others” less effective in generating self-esteem.¹⁷⁸ Further, multiracial cooperation decreases the uncertainty, competition, and frustration that sometimes appear along racial lines. Is there reason to think that cyberspace might promote cooperative relationships?

Perhaps the commonalities underlying cyber-communities could act as a foundation for cooperation. To facilitate communities based on common interests, experiences, and fates, powerful search engines enable individuals to locate others with similar profiles¹⁷⁹ or similar conversational interests.¹⁸⁰ In these communities based on commonalities, people share stories, ask questions, provide answers, and give advice. Plenty of anecdotal evidence speaks to impressive acts of cooperation: pregnant women share experiences;¹⁸¹ the elderly console each other after losing loved ones;¹⁸² patients fighting cancer provide information and support;¹⁸³ disabled children find friends who do not judge them

¹⁷⁶ Miller & Brewer, *supra* note 118, at 2.

¹⁷⁷ See PETTIGREW, *supra* note 118, at 275.

¹⁷⁸ Cf. Richard H. McAdams, *Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination*, 108 HARV. L. REV. 1003, 1080 (1995) (“Laws forbidding race discrimination may increase the occurrence of cross-membership and thereby undermine the effectiveness of racial subordination as a status strategy.”).

¹⁷⁹ For example, on AsianAvenue, one can search all registered profiles to seek out similar members. Information fields that can be searched include: gender, marital status, lifestyle, college, ethnic background, location, job industry, job function, news, sports, arts, music, and hobbies. See *Welcome to AsianAvenue.com* (visited Nov. 24, 1999) <<http://www.communityconnect.com/Preview/Pages>> (on file with the Harvard Law School Library) (previewing the services available through AsianAvenue.com).

¹⁸⁰ As of April 1998, there were over 80,000 different newsgroups. See Wellman & Gulia, *supra* note 70, at 172.

¹⁸¹ See *Yahoo! Chat* (visited Sept. 5, 1999) <<http://chat.yahoo.com/?room=Parenting::1600326512>> (on file with the Harvard Law School Library) (observing 35 people chatting about possible names for children in Yahoo!’s “Parenting” chat room at 8:42 AM PST on Sunday, September 5, 1999).

¹⁸² See Mary S. Furlong, *An Electronic Community for Older Adults: The SeniorNet Network*, 39 J. COMM. 145, 149 (1989) (describing “SeniorNet’s online grief counselor, [who] provides support for persons who have lost a spouse or loved one”).

¹⁸³ See *Yahoo! Chat* (visited Sept. 5, 1999) <<http://chat.yahoo.com/?room=Cancer%20Chat::1600326509>> (on file with the Harvard Law School Library) (observing patients with cancer providing each other with information and support in Yahoo!’s “Cancer Chat” chat room at 8:32 AM PST on Sunday, September 5, 1999).

immediately on their disability;¹⁸⁴ users share stories about drug addiction;¹⁸⁵ and gays and lesbians on the brink of coming out give each other emotional shelter.¹⁸⁶

An entirely separate mechanism with which we can encourage cooperation is to design short-term delays in racial disclosure.¹⁸⁷ Recall my *Tennessee roommate* anecdote. The telephone delayed the triggering of racial meanings associated with the category "Asian American." Assume that, contrary to fact, my roommate would have resisted rooming with an "Oriental": imagine a gallon jar of *kimchi*¹⁸⁸ stinking up your refrigerator, or better yet, consider rooming with another Wen Ho Lee.¹⁸⁹ The telephone's architecture would have prevented those racial meanings from affecting his housing decision. Over that summer, by cooperating with me as a colleague and roommate, his views of "Orientals" would likely have grown more complex, less exaggerated.

Thus, even if cyberspace cannot (and should not) be kept color-blind, a short-term delay might make sense.¹⁹⁰ By embedding some

¹⁸⁴ See TAPSCOTT, *supra* note 79, at 90–91 (describing Ability Online, a virtual community of over 7500 youths with disabilities or chronic illnesses). One child with a visible disability wrote: "The first time I went into KidsCoin everyone was so nice. . . . They're much nicer than in class. People don't judge you based on what you look like." *Id.* (internal quotation marks omitted); see also HOWARD RHEINGOLD, *THE VIRTUAL COMMUNITY: HOMESTEADING ON THE ELECTRONIC FRONTIER* 26 (1994) ("People whose physical handicaps make it difficult to form new friendships find that virtual communities treat them as they always wanted to be treated — as thinkers and transmitters of ideas and feeling beings, not carnal vessels with certain appearance and a way of walking and talking (or not walking and not talking).").

¹⁸⁵ See Wellman & Gulia, *supra* note 70, at 172.

¹⁸⁶ For example, in one study of the Usenet, those who participated in groups concerned with "marginalized but concealable" identities, such as gays and lesbians, characterized their participation as personally meaningful and valuable. Many gay participants chose to come out to their family and friends in the real world because of their online interactions. See Bruce Bower, *Marginal Groups Thrive on the Internet*, 154 SCI. NEWS 245, 245 (1998); cf. O'Brien, *supra* note 90, at 82 (describing an *Advocate* advertisement claiming that "[t]here are no closets in Cyberspace").

¹⁸⁷ One might call this playing the "e-race" ("erase") card.

¹⁸⁸ *Kimchi*, a standard part of the Korean meal, is a spicy, pickled vegetable (typically celery cabbage). I recall strict admonitions from my mother not to have any in my college dorm refrigerator, for fear that I would offend my roommates.

¹⁸⁹ Wen Ho Lee, a Chinese-American, was fired from Los Alamos National Laboratories (where I spent my summer after Tennessee) and arrested for allegedly violating national security laws. Much evidence suggests that he was the victim of a witch-hunt for spies who released missile secrets to China. For example, Robert Vrooman, the former chief of security at Los Alamos, has stated publicly that Lee was singled out because of his ethnicity. See *Joint Press Statement by Asian Pacific American Organizations Regarding Wen Ho Lee* (last modified Dec. 16, 1999) <<http://www.ocanatl.org/jpr.htm>> (on file with the Harvard Law School Library).

¹⁹⁰ Age is another characteristic cloaked by text-based cyber-interactions. See, e.g., TAPSCOTT, *supra* note 79, at 71 (describing a 14-year-old child who prefers communicating with adults by computer rather than by telephone because his age is kept hidden and he is given more respect); see also RHEINGOLD, *supra* note 184, at 228 (describing an 85-year-old woman who communicates regularly with youth online but not in real space).

such delay into the architecture, we could prevent racial meanings, which are often biased, exaggerated, and unduly negative, from setting (often subconsciously) the initial terms of the social interaction. After race is disclosed — and this must eventually occur for integration to succeed — one or both parties may be surprised, as my Tennessee roommate was surprised at the airport. However, the relationship will have already been framed by the interaction that took place before disclosure.¹⁹¹

But what about my *fighting words* experience? The same technology that enables us to talk to strangers without fear also enables us to type slurs without the threat of physical retribution. The same technology that enables us to join together based on commonalities also enables us to avoid and abuse those marked as different. Racism is the common interest for neo-Nazis who feed each other's paranoia on the Internet. As evidence, browse the myriad websites filled with hateful, racial-supremacist rhetoric.¹⁹² Or listen in on "interracial" chat rooms, where racists often "troll"¹⁹³ for reactions.

Cyberspace is no panacea. Much of this hostile, noncooperative behavior is unavoidable except in environmental spaces specifically designed to promote accountability. And for many virtual communities, accountability will be one aspect of smart design.¹⁹⁴ I should, however, highlight a few silver linings in these dark clouds.

First, witnessing racist "flames"¹⁹⁵ may be educational for the rest of us. Intellectually, most of us recognize that overt, hostile racism still exists; however, it is sufficiently well hidden that most of us do not directly confront it, especially if we are White. But we may see it in cyberspace. This experience would provide us with an anchor that helps us understand emotionally what we know intellectually about the persistence of virulent racism.

Second, the same factors that make extremists comfortable launching hate speech will also embolden the more moderate to talk frankly about race. In real space, people avoid serious discussions

¹⁹¹ This strategy of temporary delay reinforces the other environmental characteristics as well. Consider, for instance, how existing racial categories reflect a social hierarchy that might cut against the "equal status" requirement.

¹⁹² See, e.g., Simon Wiesenthal Center, *Cyberwatch: The Taskforce Against Hate* (visited Jan. 17, 2000) <<http://www.wiesenthal.com/watch/index.html>> (on file with the Harvard Law School Library) (keeping tabs on "the use of the Internet by hate groups to organize and disseminate their virulent message both in the U.S. and across international borders").

¹⁹³ "Trolling" is participating in a cyberspace discussion forum with the intent to provoke angry responses from the audience. See Judith S. Donath, *Identity and Deception in the Virtual Community*, in *COMMUNITIES IN CYBERSPACE*, *supra* note 60, at 29, 45.

¹⁹⁴ See *infra* pp. 1207–08.

¹⁹⁵ See Peter Kollock & Marc Smith, *Managing the Virtual Commons: Cooperation and Conflict in Computer Communities*, in *COMPUTER-MEDIATED COMMUNICATION*, *supra* note 72, at 109, 116 (defining "flaming" as the posting of a hostile, provocative comment).

about race, which is seen as a controversial subject. Cyberspace might promote more honest and uninhibited race talk,¹⁹⁶ and such frank discussions could more accurately reveal the misunderstandings, divisions, and resentments that exist among us.

Clearly, both "silver linings" are speculative and hard to measure. Balkanization should concern us in cyberspace, as in real space; on balance, however, cyberspace does not pose any greater threat. If we want environments of cooperation in cyberspace, then we must intentionally design and build them — as in real space. Cyberspace does not intrinsically encourage cooperation: That would be an error of technological determinism.¹⁹⁷ However, the fact that cyberspace enables people to join together based on common interests, experiences, and fates provides a substantial foundation upon which we can build environments of cooperation.

4. *Social Depth.* — Fourth, "[t]he contact situation must . . . promote association of a sort that reveals enough detail about the member of the disliked group to encourage seeing him or her as an individual rather than as a person with stereotyped group characteristics."¹⁹⁸ Even if racial minorities are online, one might be sharply skeptical about the true value of virtual "communities." Can they generate the sorts of sustained, emotionally powerful relationships that are necessary to change racial meanings? Worse, what are their opportunity costs: Do they take us away from more valuable projects and relationships in real space?¹⁹⁹

In a recent large-scale study of Internet usage, Robert Kraut and his colleagues found a correlation between increased use of the Internet and small declines in social environment, as well as increases in

¹⁹⁶ The Whitney Museum of American Art sponsored a four-month long computer-mediated conference on race. According to an observer and participant, the conversation was "honest" and addressed sensitive topics "that rarely come up in polite conversation." The discussion was "astonishingly naked, real, and instructive, allowing everyone present to better understand the ignorance and fear that fuel our collective racial paranoia and turn us on each other." Maurice Berger, *Race in Cyberspace?*, WIRED (Dec. 1995) <http://www.wired.com/wired/archive/3.12/berger.if_pr.htm> (on file with the Harvard Law School Library).

¹⁹⁷ For commentary that comes close to negative technological determinism, see KIRKPATRICK SALE, *REBELS AGAINST THE FUTURE: THE LUDDITES AND THEIR WAR ON THE INDUSTRIAL REVOLUTION: LESSONS FOR THE COMPUTER AGE* (1995), which notes that technology "comes with an inevitable logic, bearing the purposes and the values of the economic system that spawns it, and obeying an imperative that works that logic to its end, quite heedlessly." *Id.* at 262.

¹⁹⁸ Miller & Brewer, *supra* note 118, at 2. For convincing evidence that intergroup friendship is highly correlated with decreased prejudice, see Thomas F. Pettigrew, *Generalized Intergroup Contact Effects on Prejudice*, PERS. & SOC. PSYCH. BULL. 173, 180-81 (1997).

¹⁹⁹ See STOLL, *supra* note 1, at 3, 58 (arguing that computer networks isolate us instead of bringing us together); Clay Calvert, *Regulating Cyberspace: Metaphor, Rhetoric, Reality, and the Framing of Legal Options*, 20 HASTINGS COMM. & ENT. L.J. 541, 562 (1998) (discussing the abandonment of face-to-face communities).

loneliness and depression.²⁰⁰ The Kraut team's working theory is that time spent in cyberspace, although spent socially, displaces strong ties in real space with weaker ones in cyberspace. Thus, cyberspace could be seen as lacking transformative potential because the "direct" experiences it generates are superficial.

These are serious challenges for any proponent of integration. But Kraut's conclusions²⁰¹ must be contrasted against other studies²⁰² and myriad anecdotes²⁰³ that point in the other direction — toward the positive power of social relationships mediated through cyberspace. For instance, individuals have claimed that MUD participation kept them from suicidal thoughts and alcohol.²⁰⁴ Couples have fallen in love in cyberspace, have translated that relationship into real space, and, at times, have consummated the relationship in real-life marriage.²⁰⁵ In times of need, people have sent real-space assistance to

²⁰⁰ The study "examined the social and psychological impact of the Internet on 169 people in 73 [Pittsburgh] households during their first 1 to 2 years on-line." Kraut, Landmark, Kiesler, Mukhopadhyay & Scherlis, *supra* note 72, at 1017. Participants agreed to have their Internet usage automatically tracked and answered periodic questionnaires measuring social involvement and psychological well-being. *See id.* at 1020–21.

²⁰¹ Kraut's methodology has been subject to criticism. *See, e.g.,* Autumn De Leon, Robert Kraut & Donna Hoffman, *Mass Melancholy: A Carnegie Mellon Study Takes a Look at the Effects of Being Online and Comes Up with This Diagnosis*, TIME, Nov. 2, 1998, available in 1998 WL 21377749 (on file with the Harvard Law School Library) ("There are so many flaws in [the Kraut study] that it's very difficult to draw any conclusions about the effects of the Internet on individuals.") (quoting Donna Hoffman, Professor of Management at Vanderbilt University); *see also* Robert Kraut, Sara Kiesler, Tridas Mukhopadhyay, William Scherlis & Michael Patterson, *Social Impact of the Internet: What does it Mean?*, COMM. ACM, Dec. 1998, at 21 (offering commentary that qualifies and defends the study's research).

²⁰² For example, a survey by James Katz and Philip Aspden found that, "[f]ar from creating a nation of strangers, the Internet is creating a nation richer in friendships and social relationships." James E. Katz & Philip Aspden, *A Nation of Strangers?*, COMM. ACM, Dec. 1997, at 81, 85. Interestingly, of the 601 Internet users interviewed, 14% had met at least one person through the Internet whom they considered a "friend." *See id.* at 85. Moreover, 60% of these people reported meeting at least one Internet friend in real space. *See id.* at 86.

²⁰³ *See* Reid, *supra* note 90, at 164, 175 (quoting one poster, who wrote "I don't care how much people say they are, muds are not just games, they are *real*!!! My mud friends are my best friends, they are the people who like me most in the entire world. Maybe the only people who do They are my family, they are not just some dumb game.").

There are numerous supporting testimonials. For example, Sherry Turkle describes "Peter," who in real life had few friends. The MUD he participated in became a part of his everyday life. In that virtual world, he successfully courted a female player, something he could not readily do in real space. *See* Sherry Turkle, *Constructions and Reconstructions of Self in Virtual Reality: Playing in the MUDs*, 1 MIND, CULTURE & ACTIVITY 158, 161–62 (1994) [hereinafter Turkle, *Constructions*].

Another MUD enthusiast, who is a man (in real space) playing a woman who is pretending to be a man (in cyberspace), proclaimed that "this [online life] is more real than my real life." Sherry Turkle, *Multiple Subjectivity and Virtual Community at the End of the Freudian Century*, 67 SOC. INQUIRY 72, 73 (1997) [hereinafter Turkle, *Multiple Subjectivity*].

²⁰⁴ *See* Turkle, *Constructions*, *supra* note 203, at 163.

²⁰⁵ Relationships initially forged through Internet Relay Chat, for example, have led to real-space marriage. *See* Christopher C. Werry, *Linguistic and Interactional Features of Internet Re-*

their virtual community friends.²⁰⁶ And seniors who are isolated and immobile have testified to the significance of cyber-mediated companionship.²⁰⁷

More testimonials can be found in the virtual community literature;²⁰⁸ however, they would not advance the argument much. For those inclined to believe that cyberspace is beneficial, the anecdotes would provide further confirmation. For skeptics, they would be mere narratives, cultivated by commentators whose currency depends on the utopian embrace of cyberspace.

One thing is clear: More research is needed. In the meantime, we can avoid interim confusion. For instance, the question whether cyberspace impairs psychological health is largely irrelevant to the wisdom of adopting an integration environmental design. Even if cyberspace increases depression across the board, racial meanings may nevertheless be reformed. There is nothing logically or psychologically inconsistent with becoming both less racist and more depressed. My focus is the American dilemma of race, not the general state of the nation's mental health.

We do, however, have reason to worry if weak interracial social interactions in cyberspace are replacing stronger ones in real space. But I doubt that this substitution is occurring. We must make sure that our baseline of comparison is accurate by not romanticizing what real-space community looks like today.²⁰⁹ The standard pastoralist view sees community as a close-knit group in which "all can count upon all to provide companionship, emotional aid, information, services (such as child care or health care), money, or goods (be it food for the starv-

lay Chat, in *COMPUTER-MEDIATED COMMUNICATION*, *supra* note 72, at 50; see also Reid, *supra* note 90, at 175-76; cf. Keith F. Durkin & Clifton D. Bryant, "Log On To Sex": Some Notes on the Carnal Computer and Erotic Cyberspace as an Emerging Research Frontier, 16 *DEVIANT BEHAV.* 179, 186 (1995) (relating an example of one person who used sexual talk in cyberspace to get more excited about sex in real life).

²⁰⁶ See Wellman & Gulia, *supra* note 70, at 174 (describing the creation of a trust fund in memory of a computer scientist who was murdered, and the sending of books to a virtual community member who suffered a fire).

²⁰⁷ See generally Furlong, *supra* note 182, at 146-47 (describing a senior electronic community initiated at the University of San Francisco in March 1986). One participant wrote: "SeniorNet has given me the first time in memory to talk with people my own age. It's BEAUTIFUL!" *Id.* at 152.

²⁰⁸ Sherry Turkle relates an interview with a woman who was about to meet an online love interest face-to-face for the first time. The woman said:

I feel very different online. I am a lot more outgoing, less inhibited. I would say I feel more like myself. But that's a contradiction. I feel more like I wish I was. I'm just hoping that face-to-face I can find a way to spend some time being the online me.

SHERRY TURKLE, *LIFE ON THE SCREEN: IDENTITY IN THE AGE OF THE INTERNET* 179 (1995). A 26-year-old clerical worker admitted feeling more like "himself" because he was able to present multiple aspects of his identity. See *id.* at 185.

²⁰⁹ See Kollock & Smith, *supra* note 60, at 16; Wellman & Gulia, *supra* note 70, at 187.

ing or a drill for the renovating)."²¹⁰ But this is far from an accurate snapshot of today's communities in America's cities and suburbs.²¹¹ Put bluntly, what would the average MUDder be doing without the Internet on a Thursday night? Likely she would be watching television,²¹² a far more passive activity;²¹³ she would not be helping at some modern equivalent to a barn raising. Even if she were, given residential segregation, that barn raising would not be a multiracial event.

While awaiting better research, we should not lose focus on the specific question presented. Our closest personal relationships will be with those who we know face-to-face. Except for an extreme minority of Internet users, cyberspace will not generate and sustain equally powerful relationships within our lifetimes. But this is beside the point. The relevant issue is whether these cyber-relationships are so superficial that, even when presented in environments of equal status and cooperative projects, they still cannot make a dent in racial meanings.

5. *Equality Norms.* — Fifth, "[t]he social norms of the contact situation must favor group equality and egalitarian intergroup association."²¹⁴ On this last factor, cyberspace has no necessary advantage over real space. The decision for any particular community to emphasize racial equality does not depend on whether that community exists in cyberspace or real space. That said, in certain cyberspace realms, social norms can be more clearly delineated and more efficiently enforced than in real space. Upon joining a virtual community, a subscriber can receive explicit notice of the established social norms of that particular community. For instance, the registration process could

²¹⁰ Wellman & Gulia, *supra* note 70, at 171.

²¹¹ See *id.* (reporting that except for family and small friend clusters, most members of a person's community network do not "really know each other"); see also *id.* at 188 (noting that even the French go to cafés less often).

²¹² Ninety-five percent of the United States population watches some television daily. The television is on nearly eight hours per day in the home. The average American adult watches five hours of television per day. See JERRY MANDER, *IN THE ABSENCE OF THE SACRED: THE FAILURE OF TECHNOLOGY AND THE SURVIVAL OF THE INDIAN NATIONS* 75-77 (1992) (citing a Nielsen study). But cf. TAPSCOTT, *supra* note 79, at 30 (reporting that the average America Online household watches 15% less TV).

²¹³ See TAPSCOTT, *supra* note 79, at 25-26 (arguing that children spend time on the Internet much more actively than while watching television).

²¹⁴ Miller & Brewer, *supra* note 118, at 2; see also Yehuda Amir, *Contact Hypothesis in Ethnic Relations*, *PSYCHOL. BULL.* 319, 334 (1969) ("The effectiveness of interracial contact is greatly increased if the contact is sanctioned by institutional support. The support may come from the law, a custom, a spokesman for the community or any authority which is accepted by the interacting group. In many cases, institutional support comes simply from a social atmosphere or a general public agreement.").

require acceptance of "social contracts" that prohibit foul language and racial slurs.²¹⁵

Moreover, in virtual communities that require some form of registration, enforcement of such social norms may prove easier than in real space. First, the fact that all cyberspace interactions are computer-mediated makes resolving factual disputes easy. There will be no "he said/she said" controversy: In most cases, a complete log of who said what, when, and in what context will be available. Second, virtual community hosts can empower system operators, guides, or wizards to boot offline those who egregiously violate social norms of equality. If technically feasible, behavior akin to the *fighting words* incident should lead to permanent exile.²¹⁶ Third, the very software supporting the virtual community can be designed to promote these social norms.²¹⁷ For instance, if particular epithets violate the community's equality norms, then the underlying software can prevent transmission of these epithets to a single individual. This code can be fine-tuned such that epithets could still be spoken in some public realm, or even to a specific individual, as long as that individual chose to decline the "racist filtering" option.²¹⁸

Some readers will be concerned about the power of private censorship and how it might be used to promote only "politically correct" speech. In the abstract, one cannot decide what is the greater threat: the private power of individuals making racist comments that flaunt social norms of equality, or the private power of virtual community hosts trying to enforce such norms. However, these concerns should be assuaged by the amazing diversity of the Internet, which guarantees that those kicked out of one community will land in another where it is politically correct to be politically incorrect or where hosts exercise no editorial control.²¹⁹

²¹⁵ In addition, a well-drafted registration agreement that spells out clearly the rights and responsibilities of community members and contains enforceable arbitration and forum selection clauses will help virtual community hosts to manage private suit liability.

²¹⁶ Incidentally, this is not what is generally done, even in private, for-profit virtual communities that already have the registration necessary to terminate accounts. For example, after my *fighting words* attack, I was told simply to put the perpetrator on "mute." Only if the perpetrator started to make public racist comments, rather than private comments directed solely at me, would the corporation intervene.

²¹⁷ See Reidenberg, *supra* note 21, at 581 (discussing how code can produce ex ante obedience, which is more effective than ex post enforcement).

²¹⁸ But see Lessig, *The Law of the Horse*, *supra* note 21, at 518-19 (describing the potential dangers of using code to enforce norms).

²¹⁹ I mentioned earlier that one silver lining to the dark cloud of racism is that it may reveal the persistence of racism. See *supra* p. 1174. However, systems operators should not keep online users who spew racist bile simply to teach this lesson. The costs clearly outweigh the benefits.

* * *

The integration design philosophy hopes to reform racial meanings by increasing social interaction among people of different races. Because cyberspace decreases the significance of residential segregation and because it is easier to meet people in cyberspace, cyberspace will increase the quantity of direct interracial experiences as compared to real space. Also, creating environments designed to decrease racial stereotypes may be marginally easier in cyberspace than in real space.

At bottom, my claims amount to a cybersocial contact hypothesis, which requires empirical testing. I do not subscribe to any strong version of technological determinism, which assumes that cyberspace naturally or inherently encourages integration spaces that decrease racial prejudice. Many readers may feel far more pessimistic about cyberspace's integrative potential. Yet ignoring cyberspace is not an option. We must do whatever we can to avoid social environments that exacerbate racial tensions and instead encourage relationships that reform negative racial meanings.

V. TRANSMUTATION

Recall my *fighting words* anecdote. There, I was broadcasting a different racial signal in cyberspace than in real space — what I call “cyber-passing.”²²⁰ By this I mean *only* that in cyberspace (i) graphically, I used an avatar that most Americans would map into the category Black, and (ii) textually, I self-identified as Black. By contrast, in real space (i) visually, my appearance leads most Americans to map me into the category Asian American, and (ii) verbally, I self-identify as Asian American. I exclude from my definition of “racial signal” any judgment about whether I was “acting Black” in my linguistic patterns, mannerisms, aesthetic sensibilities, consumer preferences, and political commitments.²²¹

In real space, this sort of passing is restricted to those persons whose physical appearances straddle racial categories.²²² By contrast, in cyberspace, passing is available to all: It is easy to wear racial masks. In the many cyber-realms that are text-only, we can wear ra-

²²⁰ Cf. Elaine K. Ginsberg, *Introduction: The Politics of Passing*, in *PASSING AND THE FICTIONS OF IDENTITY 1* (Elaine K. Ginsberg ed., 1996) (introducing literature on passing).

²²¹ To keep my analysis manageable, I am trying to avoid larger debates about identity as performance. The standard citations are to JUDITH BUTLER, *BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF “SEX”* (1993) and JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990) [hereinafter BUTLER, *GENDER TROUBLE*].

²²² Another option, but one with high costs, is surgery. See, e.g., DERY, *supra* note 15, at 230 (discussing surgery as a form of morphing and providing the example of Cindy Jackson, who has undergone more than 20 surgeries in order to look like Barbie).

cial masks simply by taking on some textual self-identification of race. We can do so explicitly or implicitly, for example, by taking on a surname that implies a different ethnicity or race. Under current laws and technologies, this pseudonymity is also easy in graphically mediated worlds. These realms offer a bewildering menu of avatar options. The one you pick need not look like you in real space. This is how I came to "be" a Black man in my *fighting words* anecdote.

The transmutation approach argues that we should all engage in cyber-passing as a transgressive challenge to American racial mechanics. This approach draws from the real-space passing literature. As Elaine Ginsberg explains:

In its interrogation of the essentialism that is the foundation of identity politics, passing has the potential to create a space for creative self-determination and agency: the opportunity to construct new identities, to experiment with multiple subject positions, and to cross social and economic boundaries that exclude or oppress.²²³

Although Ginsberg is discussing real-space passing, her comments apply at least as well to cyber-passing.²²⁴

To evaluate the transmutationist claim, we need to examine more carefully what lessons cyber-passing teaches. Suppose that I decide to cyber-pass as an African American out of honest curiosity.²²⁵ In pursuing my curiosity, imagine that I develop this African American character seriously, as if I were engaged in method acting.²²⁶ In other

²²³ Ginsberg, *supra* note 220, at 16.

²²⁴ See Nakamura, *supra* note 89, at 191 ("A diversification of the roles which get played, which are permitted to be played, can enable a thought provoking detachment of race from the body, and an accompanying questioning of the essentialness of race as a category.").

²²⁵ Identity switching is not a radical idea. Each of us, in real space, performs numerous roles in different situations. At times, we are citizens to the state; neighbors to the community; parents to our children; teachers to our students; confidants to our friends; lovers to our partners. We play these different roles by wearing different uniforms (a suit and tie at work; jeans and a t-shirt at home), using different vocabularies (affectionate nicknames at home; fancy discourse in front of professional colleagues) and languages (Korean with parents; English with most everyone else), adopting different gestures and mannerisms (respectful body language during a martial arts class; slouching and slacking with college buddies). We are comfortable with the idea of playing multiple roles, as the circumstances require. In a transmutation environment, cyberspace extends our role-playing technique by making it substantially easier to transmit a different racial signal, and to adopt multiple, simultaneously extant characters. Cf. Turkle, *Multiple Subjectivity*, *supra* note 203, at 78 (suggesting that once people accept the idea of a flexible identity, the jump to a multiple identity is easy — "a matter of semantics"). Even in real space there are famous examples of identity switching in the form of racial and gender passing. See Ginsberg, *supra* note 220, at 1-14 (discussing the cases of Howard Griffin and Grace Calsell, White journalists passing as Black, as well as those of Billy Tipton (jazz musician), Salvador Sanchez (bullfighter), and Deborah Sampson (American Revolutionary War soldier), women passing as men).

²²⁶ I focus on more serious acts of transmutation because trivial ones will have little impact. For example, many popular video games entail a form of cyber-passing. However, playing Lara Croft in *Tomb Raider* teaches nothing about being a White woman; playing one of the Mario Brothers teaches nothing about being Italian.

words, I conjure up a detailed history and personality²²⁷ — a back story — for him and act accordingly. I might learn various lessons over time.

The threshold act of choosing race may itself have some pedagogical value.²²⁸ In real space, the racial *category* I have been assigned seems to be a natural, biological characteristic, based on immutable morphology and ancestry. I cannot cease to appear Asian to my audience. But in cyberspace, the racial signal I broadcast becomes the product of voluntary choice and intentional experimentation. This might prompt me to look at race differently, as less fixed.

Over many months, this African American character could develop a reputation²²⁹ by becoming active on a software application bulletin board and regularly posting helpful advice. He could chat “as a regular” in a graphically mediated MUD. He could even exchange e-mails and instant messages with a small circle of “friends.”²³⁰ Through these experiences, I might learn a great deal about myself.²³¹ More important, assuming that the audience accepts my cyber-pass, I might learn something about being a Black man in American society.²³² This is what I felt I learned through my *fighting words* encounter.²³³

²²⁷ See Turkle, *Constructions*, *supra* note 203, at 162–63 (giving examples of people adopting different personalities online, such as men “daring to be passive”).

²²⁸ Mark Poster makes a similar point about choosing gender. See Mark Poster, *Cyberdemocracy: The Internet and the Public Sphere*, in VIRTUAL POLITICS, *supra* note 94, at 222–24.

²²⁹ Pseudonyms can build up reputations. Hackers who engage in illegal activities have strong incentives to change their identities repeatedly in order to avoid getting caught by the authorities. This would, however, involve constant destruction of their hacking reputations. Not surprisingly, hackers maintain their pseudonyms. See Wellman & Gulia, *supra* note 70, at 177. See generally David G. Post, *Pooling Intellectual Capital: Thoughts on Anonymity, Pseudonymity, and Limited Liability in Cyberspace*, 1996 U. CHI. LEGAL F. 139, 152–67 (exploring the connection between pseudonymity, legal fictions, and limited liability).

²³⁰ Services, such as Zero-Knowledge Systems' Freedom 1.0, now enable an individual to operate under multiple pseudonyms. A user can surf the Net, chat, and send and receive e-mail without ever disclosing his or her real-space identity. See *Freedom* (visited Jan. 17, 2000) <<http://www.freedom.net>> (on file with the Harvard Law School Library); see also Patrick Norton, *First Looks: Freedom 1.0* (last modified Dec. 23, 1999) <<http://www.zdnet.com/pcmag/stories/first-looks/0,6763,2413285,00.html>> (on file with the Harvard Law School Library).

²³¹ Cf. Elizabeth M. Reid, *Communication and Community on Internet Relay Chat: Constructing Communities*, in HIGH NOON ON THE ELECTRONIC FRONTIER, *supra* note 67, at 336 (describing how a man, by playing a woman, felt liberated from having to act macho); Turkle, *Multiple Subjectivity*, *supra* note 203, at 79–80 (describing how a timid man learned to become more assertive in real life by playing an aggressive female in cyberspace).

²³² Many commentators have claimed that cyberspace teaches empathy across genders. For example, men who cyber-pass as women realize that women in cyberspace are presented with unwanted sexual attention and unsolicited assistance. See, e.g., Curtis, *supra* note 123, at 355; cf. TURKLE, *supra* note 208, at 211 (reporting that when she played a male character in a MUD: “I finally experienced that permission to move freely I had always imagined to be the birthright of men. Not only was I approached less frequently, but I found it easier to respond to an unwanted overture with aplomb . . .”).

²³³ Here is another mechanism for learning interesting lessons. Imagine that I cyber-pass as a

Furthermore, there is no reason to stop at one character. Instead, I could maintain a portfolio of characters that I nurture and develop over time.²³⁴ This experience of parallel, multiply racialized (and differently gendered) identities might help corrode the presumed connection between identity and biology.²³⁵ In particular, I might no longer see the ancestry and morphology of my single physical body as constricting my identity.²³⁶ I may eventually come to internalize the idea that multiple identities can map to a single physical body.²³⁷

This upbeat story about transmutation relies on numerous controversial assumptions. For instance, one might question how many people will engage in serious transmutation. Although some may do this briefly for fun or curiosity,²³⁸ many of us lack the time for or interest

White person. In so doing, I may become privy to comments, jokes, and conversations that would not normally take place in front of me. This too would have pedagogical value. See, e.g., Adrian Piper, *Passing for White, Passing for Black*, in *PASSING AND THE FICTIONS OF IDENTITY*, *supra* note 220, at 234, 264 (describing insulting descriptions of Blacks made in front of the author, a woman who self-identifies as Black but who is generally mapped — by Whites and Blacks — as White).

²³⁴ This is not make-believe. One 30-year-old teacher explained that she has three identities on Internet Relay Chat: one engages seriously about Yugoslavia, another chats enthusiastically about *Melrose Place*, and a third is “very active on sexual channels, always looking for a good time.” TURKLE, *supra* note 208, at 179. This is also not an invitation to multiple personality disorder. Individuals can come to grow comfortable with maintaining simultaneous, parallel identities. For instance, Sherry Turkle has interviewed college students who play multiple characters in multiple MUDs. She found that they could fragment their identities in non-pathological ways and play out different characters meaningfully in the various MUDs. See *id.* at 13; Turkle, *Multiple Subjectivity*, *supra* note 203, at 74. For some of them, real life was simply another window on a metaphorical computer screen. See TURKLE, *supra* note 208, at 13.

²³⁵ See Donath, *supra* note 193, at 29 (explaining that in real space, the norm is “one body, one identity,” but that in cyberspace, the norm is different).

²³⁶ See RHEINGOLD, *supra* note 83, at 191. Rheingold quotes Eric Gullichsen and Randy Walser, former employees of Autodesk, a virtual reality company:

[A]s you conduct more of your life and affairs in cyberspace your conditioned notion of a unique and immutable body will give way to a far more liberating notion of “body” as something quite disposable and, generally, limiting. You will find that some bodies work best in some situations while others work best in others. The ability to radically and compellingly change one’s body-image is bound to have a deep psychological effect, calling into question just what you consider yourself to be.

Imagine a costume party at which you adopt not merely a new set of clothes, but a new body, a new voice, and — in a very fundamental and literal sense — a new identity. Now imagine that you do this not only at a party, but every day, as an integral part of your life. Who, then, are you?

Id.

²³⁷ Cf. Reid, *supra* note 231, at 338 (discussing the split between gender and the physical body in cyberspace).

²³⁸ In contrast to real space, in cyberspace such identity play — under current laws and architectures — has far fewer negative repercussions. See Turkle, *Multiple Subjectivity*, *supra* note 203, at 77 (suggesting that individuals who buy Internet access “may find themselves in virtual communities taking on multiple roles; they may find themselves playing characters of different ages, attitudes, personalities, and genders”).

in even trivial forms of transmutation.²³⁹ Even those relatively few individuals who today participate in MUDs may not transmute as much as one might guess.²⁴⁰ This reluctance should not be that surprising. Maintaining an identity is work; maintaining multiple identities is more work.²⁴¹ If transmutation is not popular, then its impact may be insignificant.²⁴²

Worse, transmutation has significant downsides, which can be seen most clearly from the audience's perspective. On the one hand, suppose that the audience never discovers the cyber-pass. Then racial *meanings* may be reworked in dangerous ways. Racial meanings are generated partly by direct experiences with persons of other races. With cyber-passing, my audience will engage in what it honestly believes to be a direct experience with an African American, when in fact that character is controlled by an Asian American in real space. That will do something to the racial meanings the audience associates with

²³⁹ Of course, it is hard to know whether transmutation will become sufficiently compelling in tomorrow's technology to be broadly popular. In addition, children may have more time and interest in transmutation environments. Cf. TAPSCOTT, *supra* note 79, at 86 ("Children regularly take on the personas of others or [different] avatars.").

²⁴⁰ In one study, Schiano found that most MUD participants employed only one primary character, which was "often [a] slightly idealized or fanciful version[] of one's view of oneself, with morphs serving more as special-purpose tools or 'costumes' than true alternative identities." Schiano, *supra* note 66, at 272. Fewer than 25% of users ever played another identity, and of these, fewer than half ever changed gender. Those who did "morph" used on average three characters, although they each spent most of their time as a single main character. *See id.*

²⁴¹ *See* Curtis, *supra* note 123, at 356. Curtis observes the following about the identity practices within the well known MUD LambdaMOO:

Given the detail and content of so many player descriptions, one might expect to find a significant amount of role-playing, players who adopt a coherent character with features distinct from their real-life personalities. Such is rarely the case, however. Most players appear to tire of such an effort quickly and simply interact with the others more-or-less straightforwardly, at least to the degree one does in normal discourse.

Id.

²⁴² A related objection is that our identity play may be constricted. For instance, in choosing body types or appearances, we seem to fall back to extremely conventional definitions of physical beauty. *See, e.g.,* O'Brien, *supra* note 90, at 87 (explaining that when people cross genders, they adopt extremes). If so many of us are willing to go under the knife to present the "perfect" body in real space, should it be surprising that we choose such bodies in cyberspace, when the costs are zero? It is important, however, to distinguish between "beauty" and "race." Our aesthetics are clearly racialized. *See, e.g.,* RUSSELL, WILSON & HALL, *supra* note 163, at 51 (stating that in 1990, Americans spent \$44 million on chemicals to lighten their skin). Nevertheless, I do not believe that in a regime of transmutation, every individual will choose to play a White character. Put another way, even if there is great homogeneity in physical appearance, preferring the tall to the short, the thin to the fat, this does not mean that there will be homogeneity in the presentation of race, preferring the White to the non-White. I say this even if people prefer presenting light skin over dark skin.

It is also important to recognize that these choices depend on the purpose of the space. In virtual pickup bars, it should not be surprising that people present "beautiful" avatars. It is not so clear that this would be the norm in a graphically mediated community focusing, for example, on computer operating systems.

the racial category Black. Whether that change is good or bad depends on my behavior and its interpretation by my audience. Above, I posited that my purpose for the cyber-pass was to satisfy honest curiosity. But, what if it were to perpetuate a racist caricature? Then, in Amos & Andy-like blackface,²⁴³ I could have broadcast a Black racial signal in cyberspace and acted as an ignorant buffoon speaking "jive."

Reinscription of stereotypical racial meanings may occur even without intentional parody. Suppose that I am cyber-passing to satisfy honest curiosity and to explore the identity possibilities of this new medium. As I embark on my method acting, how do I know what it means to "act Black"?²⁴⁴ Given residential and social segregation, my knowledge will be predominantly based on the messages and themes promulgated in the mass media. Because the mass media resonates with stereotypes, my understanding and presentation of Blackness risks stereotype. So how does the audience react to this unintentionally stereotypical performance? It will experience my performance as authentic because it will hold the same stereotypes that I hold — the same because we all consume similar mass media products. Thus, my stereotypical performance will reinforce the stereotypes that the audience already holds. Moreover, the audience's credulous reception will reinforce my own stereotypes about what Blackness means. Because of cyber-passing, we may unwittingly consume black/red/yellow-face, while believing it to be an "authentic" direct experience.²⁴⁵

On the other hand, consider what happens if the audience discovers the cyber-pass.²⁴⁶ Social sanctions may be the result,²⁴⁷ however, in

²⁴³ See generally ERIC LOTT, *LOVE AND THEFT: BLACKFACE MINSTRELSY AND THE AMERICAN WORKING CLASS* (1993). Lott quotes Frederick Douglass for what Lott sees as the conventional wisdom about blackface minstrelsy: It was perpetrated by "the filthy scum of white society, who have stolen from us a complexion denied to them by nature, in which to make money, and pander to the corrupt taste of their white fellow citizens." *Id.* at 15. Lott challenges and complicates this view throughout his book.

²⁴⁴ Butler would press the provocative question: "How do I know what it means to act Asian?" Cf. BUTLER, *GENDER TROUBLE*, *supra* note 221, at 126 ("Note as well that the category of sex and the naturalized institution of heterosexuality are *constructs*, socially instituted and socially regulated fantasies or 'fetishes'."). For Butler, gender identity in real space is no less a performance than is the cyber-passing I describe.

²⁴⁵ Cf. Kendall, *supra* note 89, at 133 (expressing comparable skepticism about gender switching and wondering whether "crossing gender boundaries can strengthen those boundaries, rather than dissolve them"). Kendall relates an interesting conversation with a man, who had portrayed himself as a woman. He had claimed that he got much more attention as a "full-out . . . woman." *Id.* at 138. When Kendall, a woman in real space, explained that she did not get such attention, the man responded that she did not act like a traditional female. See *id.*

²⁴⁶ This may have been the intent of the cyber-passer in the first place. In the blackface example, the entertainer's desire is not really to deceive the audience at all. Indeed, part of "blackface" requires the audience to know that they are watching a minstrel show. Cf. Ginsberg, *supra* note 220, at 14 (explaining how, in certain forms of male transvestitism — a form of passing — the pass is meant to be revealed eventually to the audience).

²⁴⁷ Cf. Reid, *supra* note 231, at 334–36 (describing very negative reactions to gender-passing,

cyberspace communities built on pseudonymity, social sanctions may not effectively regulate behavior. Once the audience discovers that cyber-passing is common, it will start questioning the value of the racial signal transmitted in cyberspace. Perhaps individuals will expend greater effort to identify cases of cyber-passing. Or they may simply stop crediting all racial signals in cyberspace. Racial *mapping* based on such signals would be deemed useless.²⁴⁸

Perhaps this is a good thing. People would no longer be judged by the color of their (virtual) skin. But we have seen this argument before. Transmutation has collapsed into a form of abolition: The racial mask now functions as a racial veil. In this environment of transmutation collapsed into abolition, I will learn no lesson in empathy. Even the racists will not trust the racial signal.

This environment will also negate any benefits of integration by introducing uncertainty about one's real-space racial signal. Consider, for example, how attempts to speak from personal experience in real space might be challenged. Assume that I am not cyber-passing. In a forum about inter-minority conflict, I explain that I am a Korean-American immigrant who has particular insight on Korean merchant-Black customer relations. The audience may simply ignore my self-description, especially if my comments differ from those that our racial schemas would lead us to expect. Worse, they may directly challenge my claim to a particular real-space racial identity.²⁴⁹ In this way, a sincere, genuine interaction between individuals of different races may be severely disrupted. In regimes where everyone wonders whether everyone else is cyber-passing, integration cannot flourish.

In sum, the transmutation approach hopes that cyber-passing will, among other things, disrupt the very notion of racial categories. According to this view, the heart of racism is an autonomy-constricting biological essentialism. The way to fight racism (as well as other forms of body-mapped provincialism) is to decouple biology from identity — through cyber-passing. Perhaps such experience will help undermine the presumed connection between identity and biology. Un-

including examples in which the gender-passing character in an adventure-style MUD was hunted down and killed).

²⁴⁸ I admit that it is hard to know how much cyber-passing must take place, and how much the audience must know before the racial signal is entirely discredited. It is now common knowledge that passing, across race as well as gender, is not uncommon. See *id.* at 337. Nevertheless, audiences still continue to credit the signals and to be "surprised" when the "pass" is revealed. Perhaps we willingly suspend disbelief when we log-on to MUDs and similar social spaces. See, e.g., Allucquère Rosanne Stone, *In the Language of Vampire Speak: Overhearing Our Own Voices*, in *THE EIGHT TECHNOLOGIES OF OTHERNESS* 58, 65 (Sue Golding ed., 1997) (suggesting that "sophisticated" users are more able to accept that everything is up for grabs).

²⁴⁹ For transcripts of Usenet arguments over the real-space racial identity of various posters, see Burkhalter, cited above in note 99, at 71. Similarly, women in some zones of cyberspace are often required to "prove" that they are women in real space. See Curtis, *supra* note 123, at 355.

fortunately, transmutation has substantial risks. My greatest fear is that we may intentionally and unintentionally reinscribe stereotypical racial meanings into our racial schemas.

VI. DIVERSIFICATION

I have outlined three design strategies for cyber-race: abolition, integration, and transmutation. These strategies are in tension with each other. As just explained, transmutation conflicts with integration; integration conflicts with abolition;²⁵⁰ and abolition conflicts with transmutation.²⁵¹ Which design philosophy, then, shall we adopt for cyberspace? Luckily, we do not have to choose a *single* architecture for *all* of cyberspace. Instead, we can “racially zone” cyberspace by adopting different racial environments for different cyber spaces.

A. Racial Zoning

Zoning cyberspace — a space without physical geography — might seem odd. However, recent cybersocial theory has argued that the concepts of location, borders, and distance translate into a cyber-geography.²⁵² Location in cyberspace can map to a unique Internet Protocol (IP) address and any associated domain names, which exist for each computer on the Internet. A more specific location for any object stored on such a computer can be referenced by a universal resource locator (URL). This location information can be represented visually or aurally through the user interface, thereby providing “notice” of one’s cyber-location.²⁵³ A cyber space can also have clear borders that explicitly notify visitors about the nature of the place they are about to enter. Borders can also be secured, not by installing barbed wire, but by requiring registration and passwords to gain entry.²⁵⁴ Instead of physical fences, we have password screens and sys-

²⁵⁰ The entire point of abolition is to be blind to race, whereas integration requires people to see each other’s race and to interact with members of different races. For a concrete example of this conflict, consider that abolition would discourage the inclusion of photographs on personal home pages, but integration might approve of such a practice.

²⁵¹ Abolition permits individuals to express every facet of their identity save one: race. Thus, the space of identity experimentation is significantly restricted. The transmutation approach finds this counterproductive. Not only does abolition flatten the number of dimensions of identity to explore generally, it removes the one specific dimension — race — that needs to be experimented with the most.

²⁵² See, e.g., Lawrence Lessig, *The Zones of Cyberspace*, 48 STAN. L. REV. 1403, 1409 (1996) (describing the Communications Decency Act of 1996 and the NII White Paper as attempts to “induc[e] a technology for zoning”).

²⁵³ A familiar example is the URL field in Web browsers, which identifies the name of the object currently browsed.

²⁵⁴ See Johnson & Post, *supra* note 119, at 1379 (describing how cyberspace boundaries may be defined by reference to screens and passwords).

tem firewalls. Finally, even distance translates to cyberspace although it must be understood in transaction cost, not physical, terms. The distance between any two cyber-locales is measured by the ease with which one can navigate from source to destination. Thus, a location that is bookmarked within a Web browser is closer than another location whose URL has to be looked up or typed manually. A location that has a prominent hyperlink is closer than another location not linked at all or linked deeper within the website. Accordingly, cyber-spatial distance is subjective. For the individual with good searching skills, all locations are closer than for the neophyte.²⁵⁵

With these translations, the possibility of zoning different cyber spaces begins to make sense.²⁵⁶ Simply identify a location, such as a website, and within its borders, institute one of the three racial environments through some pragmatic combination of laws, technologies, and social norms.²⁵⁷ Although the state plays the central role in real-space zoning, in cyberspace zoning, a wider range of public and private actors jointly wield the zoning power. They include legislatures, standard-setting bodies, Internet service providers (ISPs), virtual community hosts, technology companies (both hardware and software), and individual users. Depending on the context, different actors can use different techniques to achieve specific zoning objectives. In the following sections, I provide more thoughts regarding *who* might do *what* to *which* spaces.

Having explained how racial zoning *can* be done, let me now address why it *should* be done. In cyberspace, a pragmatic, case-by-case racial zoning approach will be superior to a one-size-fits-all strategy. The racial zoning approach gives us the flexibility to tailor specific cyber environments to specific racial environments. We may thus be able to capture important synergies by combining all three strategies.

²⁵⁵ One commentator rejects spatial analogies for cyberspace and instead speaks of invocation. By invoking or naming something, one calls it up on the computer interface. Thus, computer networks are better likened to speech than to travel. See Chris Chesher, *The Ontology of Digital Domains*, in VIRTUAL POLITICS, *supra* note 94, at 79, 83–84.

²⁵⁶ Cf. Lessig, *supra* note 19, at 889 (observing that zoning is increasing in cyberspace “with an efficiency unmatched in real space”).

²⁵⁷ In fact, zoning in cyberspace is easier than zoning in real space because in cyberspace geography, there are fewer problems with negative externalities. In real space, there is a zoning problem when an adult bookstore seeks to set up shop next to an elementary school. In cyberspace, however, one can simply increase the “distance” between bookstore and school by refusing to hyperlink the two areas. Accordingly, visitors to the adult bookstore, whose cyber-borders are regulated through a password scheme, need not traverse the school playground; conversely, students need not walk through a cyberspace red light district to get to class. Of course, creating this “distance” becomes more complicated if the adult bookstore wants to be “closer” to the school. For instance, the adult site, *White House* (visited Nov. 23, 1999) <<http://www.white-house.com>> (on file with the Harvard Law School Library), purposefully tries to capture traffic intended for the presidential site, *Welcome to the White House* (visited Nov. 23, 1999) <<http://www.white-house.gov>> (on file with the Harvard Law School Library), by using a similar URL.

Moreover, a "racial zoning" approach provides policy portfolio diversification, which is wise whenever we design cyberspace. Cyberspace is too novel and dynamic a medium for anyone to be confident that she has gotten policy just right. We must therefore be careful to avoid irrevocable decisions.²⁵⁸

For instance, if we dogmatically adopt a single path, such as abolition, and implement our technology and social norms accordingly, then the code of cyberspace may be written in a way that makes going back difficult. This decision will become fixed in material equipment, economic investment, and social habit.²⁵⁹ By contrast, if we advocate a multifaceted strategy that racially zones different spaces differently, then we encourage multiple architectures to establish and evolve. In the various zones of cyberspace, we can construct laboratories of experimentation. If we later need to adjust our approach, we will be better equipped to do so.

To make my racial zoning idea more concrete, let me explain how certain types of cyber spaces might be zoned. What follows, however, is not an architectural blueprint, detailed enough for a business plan, software program, or draft legislation.²⁶⁰ It is only a broad overview of how we might begin to approach the problems of cyber-race.

B. Market Places

Recall again my *car purchase* anecdote.²⁶¹ Even if abolition is not appropriate generally for cyber spaces, it makes plenty of sense for those realms that are market places.²⁶² For most discrete marketplace transactions, society has rightly decided that being race-conscious produces no net positive benefit. For example, when buying a car, no one argues for race-based affirmative action.²⁶³ Consider then the impact of abolition on large economic transactions, such as automobile pur-

²⁵⁸ Cf. Lawrence Lessig, *The Path of Cyberlaw*, 104 YALE L.J. 1743, 1745 (1995) (advocating the "common law" approach to solving problems in cyberspace "with its partial answers, to repeated if slightly varied questions, in a range of contexts . . . in a temporally spaced dialogue of cases and jurisdictions").

²⁵⁹ See SCHULER, *supra* note 7, at 23 (noting the stronger and longer-lasting influence of early decisions when designing technological systems).

²⁶⁰ I attempted to do this in an earlier article on information privacy. See Kang, *supra* note 15, at app. (providing a complete draft of a cyberspace privacy statute).

²⁶¹ See *supra* p. 1133.

²⁶² Readers will rightly ask how I define "market" places. For example, is an investment club a market place or something else? I use this term only as shorthand, not as an analytic concept that helps us zone. "Market places" is a conclusory label I attach to those cyber spaces that involve an exchange of property, goods, or services that society has decided should be colorblind. This term, in and of itself, does not help us make that decision.

²⁶³ One could think of exceptions. For instance, a program to promote residential integration could offer cheaper mortgage rates to individuals of one race who purchase homes in communities that are predominantly of another race.

chases, insurance, personal loans, and mortgages. These transactions are today negotiated face-to-face, thereby triggering racial schemas. If they were instead executed through communication systems that filtered out race and its proxies, then racial discrimination (of the disparate treatment variety, conscious or unconscious, animus- or statistically-based) would decrease. Ending today's disparate treatment would do nothing to rectify the material legacy of a racist past. Still, this would not be a trivial contribution to racial equality.²⁶⁴ But what of the criticisms I had made of the abolition approach?

First, I suggested that abolition was untenable because of rapidly changing technologies and demographics. Although this would be true if the goal were to make *all* of cyberspace colorblind, it is less true if we are talking about zoning the narrow subspace of market transactions. In the name of anti-discrimination, we can feasibly design e-commerce systems that strip race out of the decisionmaking process.

Second, I suggested that any heavy-handed attempt to abolish race would inflict disparate costs on racial minorities by gagging their expression of identity. That is not the case here. Racial identity, although sometimes relevant to deciding whether to engage in a particular market transaction, is irrelevant to the transaction mechanics once the decision has been made. In other words, although my racial self-conception may be implicated when deciding whether to buy a Ninja or a Harley, once I have made the decision, nothing much turns on my buying the motorcycle in a colorblind way. Also, the default assumption that each transactor is White presents little insult to non-Whites in economic space. For racial minorities concerned about economic discrimination, it actually serves our interest for others to assume that we are White. This assumption grants "most favored race" status, in which minorities are treated as well as members of the most favored racial group, Whites.²⁶⁵

By avoiding racial discrimination, racial minorities will incur real economic payoffs, redeemed in real space. Let me underscore this point and emphasize its independence from other design approaches. Even if cyberspace will promote neither integration nor transmutation, abolishing race in consumer economic transactions can still promote racial equality — not in cyberspace, but in real space, the place that matters most.

²⁶⁴ One could imagine a future technology that would enable workers to provide informational work product in exchange for electronic payment, all mediated without any face-to-face contact. Potentially, this narrow branch of employment could also see the abolition of race.

²⁶⁵ Cf. 42 U.S.C. § 1981(a) (1994) ("All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is *enjoyed by white citizens* . . .") (emphasis added).

Our challenge is to generate a techno-legal infrastructure that encourages racially anonymous e-commerce transactions. In designing such systems, it is useful to divide the transaction into three phases: preliminary research, risk assessment, and final execution. To illustrate each phase, I use a home purchase example.²⁶⁶

When searching for homes, *preliminary research* involves gathering data about neighborhoods, home inventory, and specific attributes of specific homes. In real space, this information is often filtered through a real estate agent, who might steer me to a particular neighborhood because of my race. But now, such real estate information is available on the Internet.²⁶⁷ Therefore, I can browse through available housing inventory without relying on the judgment of a third party.²⁶⁸ Fortunately, Web browsing does not generally disclose information about identity that can be mapped back to race. We should preserve this ability to research anonymously.

This ability, however, faces threats from two corners. First, improved surveillance technologies make it easier to collect and link the personal data generated in the course of navigating cyberspace.²⁶⁹ Second, the rise of database marketing has created strong economic incentives to collect such information.²⁷⁰ In light of these two converging forces, cyberspace privacy is increasingly at risk.²⁷¹ As I have argued elsewhere, Congress should enact a "Cyberspace Privacy Act" that bars functionally unnecessary processing of personal data generated by cyberspace transactions, unless the parties agree otherwise.²⁷² Not wanting to rehash that issue, I note here only that we now have

²⁶⁶ Racial discrimination persists in the housing market. Massey and Denton report a comprehensive 1977 HUD study, which found that Whites "were favored on 48% of transactions in the sales market and on 39% of those in the rental market." MASSEY & DENTON, *supra* note 122, at 100. They also report a 1987 study by George Galster, who re-analyzed 71 audit studies carried out during the 1980s. He concluded that "racial discrimination continues to be a dominant feature of metropolitan housing markets in the 1980s." *Id.* at 99.

²⁶⁷ See, e.g., *REALTOR.COM* (visited Nov. 23, 1999) <<http://www.realtor.com>> (on file with the Harvard Law School Library).

²⁶⁸ Of course, in theory, I could have tried to access such data even without the Internet. However, the high transaction costs of locating such information on paper and keeping it constantly updated would have been prohibitive.

²⁶⁹ For a detailed discussion of what sorts of personal information might be disclosed when surfing the Web, see Kang, cited above in note 15, at 1223-30.

²⁷⁰ See *id.* at 1238-41.

²⁷¹ Excellent introductions to the legal landscape of information privacy can be found in MARC ROTENBERG, *THE PRIVACY LAW SOURCEBOOK* 1999: UNITED STATES LAW, INTERNATIONAL LAW, AND RECENT DEVELOPMENTS (1999); PAUL M. SCHWARTZ & JOEL R. REIDENBERG, *DATA PRIVACY LAW: A STUDY OF UNITED STATES DATA PROTECTION* (1996); and PETER P. SWIRE & ROBERT E. LITAN, *NONE OF YOUR BUSINESS: WORLD DATA FLOWS, ELECTRONIC COMMERCE, AND THE EUROPEAN PRIVACY DIRECTIVE* (1998).

²⁷² See Kang, *supra* note 15, at 1246-94.

another reason to protect information privacy — it helps us erase race in market places.²⁷³

Large, complicated economic transactions often involve a second phase, in which some party must make a *risk assessment* of the buyer, for example, regarding creditworthiness. In order to purchase a home, I need a mortgage from a lending institution. That institution requires substantial data from me to make its decision on the merits. Unfortunately, in the course of my providing that data, the institution also receives irrelevant information, such as race. My racial identity might be communicated via a face-to-face interaction with the lending officer or from my name on an application. Can the relevant data be provided without lifting the racial veil?²⁷⁴

Public key cryptography provides a solution.²⁷⁵ Strong public key cryptography enables us not only to send messages confidentially, but also to create digital signatures that in practice cannot be forged. A digital credential is a description of an individual digitally signed by a trusted institution.²⁷⁶ For example, Harvard University could issue the statement "Jerry Kang is a graduate of Harvard Law School" and digitally sign that statement. Because Harvard's signature cannot be forged, a prospective employer could trust this digital credential far more than a paper diploma, which can be easily forged at the local copy shop. In the home purchase example, *if* there were some agency that could be trusted to make fair creditworthiness judgments and not to discriminate on the basis of race, then I could go to that agency, provide all relevant financial data, and then receive a digital credential of creditworthiness up to some dollar amount, with specified interest rates and a given term of years. This credential would automatically expire after some time. With my credential in hand, I could approach lending institutions in cyberspace,²⁷⁷ identify the house I would like to

²⁷³ Cf. Julie E. Cohen, *A Right to Read Anonymously: A Closer Look at "Copyright Management" in Cyberspace*, 28 CONN. L. REV. 981, 1003-19 (1996) (arguing for a constitutional right to read anonymously in the context of copyrighted materials available in cyberspace).

²⁷⁴ Access to mortgages continues to depend on race. For a careful examination of the data, including consideration of nonracial explanations such as financial profiling of homebuyers and neighborhood characteristics, see OLIVER & SHAPIRO, cited above in note 54, at 136-47.

²⁷⁵ A readable introduction to cryptography in general and public key cryptography in particular can be found in SIMSON GARFINKEL, PGP: PRETTY GOOD PRIVACY 33-58 (1995). The bible on the subject is BRUCE SCHNEIER, APPLIED CRYPTOGRAPHY: PROTOCOLS, ALGORITHMS, AND SOURCE CODE IN C (2d ed. 1996). For an introduction to these concepts as applied to electronic commerce, see Froomkin, cited above in note 128, at 449-79.

²⁷⁶ See David Chaum, *Achieving Electronic Privacy*, SCI. AM., Aug. 1992, at 96 (discussing digital signatures). A more technical, but still readable, discussion of how "digital pseudonyms" can both protect privacy and maintain security in automated transactions can be found in David Chaum, *Security Without Identification: Transaction Systems to Make Big Brother Obsolete*, 28 COMM. ACM 1030 (1985).

²⁷⁷ See, e.g., *LendingTree.com* (visited Nov. 23, 1999) <<http://www.lendingtree.com>> (on file with the Harvard Law School Library) (processing loan applications online).

purchase,²⁷⁸ and request mortgage offers — with all responses to be sent to a pseudonymous e-mail account.

Such digital credentialing systems will be adopted, if at all, at the behest of private sector actors. However, the state could encourage their widespread implementation. First, the state could decrease business uncertainty surrounding the legal significance of digital credentials. For instance, a statute could expressly grant digital signatures the same legal effect as handwritten signatures. Second, the state could subsidize investment in this e-commerce infrastructure not only through applied research grants, but also indirectly through statutory safe harbors that immunize credentialing agencies and other trusted third parties.²⁷⁹ Third, if for some reason the market does not generate enough enthusiasm, the state could create an agency that itself issues creditworthiness credentials. In addition, the state could require lending institutions to accept these government-issued credentials if they are in the business of making comparable loans or benefit from federal insurance programs.²⁸⁰

With mortgage offers in hand, I enter the last phase, *final execution*. I must ensure that race, which has been filtered out of the first two phases,²⁸¹ does not sneak back in. Therefore, I cannot meet the seller face-to-face; otherwise, racial schemas will again be triggered.²⁸²

²⁷⁸ If the lending institution knows the address of the home, then it can practice geographical redlining without knowing the race of the home buyer. We could try to engineer economic systems that take even this bit of information away from lending institutions. However, lenders would actively resist losing so much of their financial discretion, which typically depends on information about the home buyer (removed by the third party credentialing system), the property to be purchased, and the property's neighborhood.

²⁷⁹ Trusted third parties are necessary to any e-commerce system established on public key cryptography. An excellent overview of trusted third parties is A. Michael Froomkin, *The Essential Role of Trusted Third Parties in Electronic Commerce*, 75 OR. L. REV. 49 (1996). A practical overview appears in Thomas J. Smedinghoff, *Electronic Contracts & Digital Signatures: An Overview of Law and Legislation*, 1999 THIRD ANN. INTERNET L. INST. 125. For descriptions of what might go wrong with a certificate authority, which is one type of trusted third party, see Lonnie Eldridge, Comment, *Internet Commerce and the Meltdown of Certification Authorities: Is the Washington State Solution a Good Model?*, 45 UCLA L. REV. 1805, 1820-28 (1998).

²⁸⁰ This proposal would go beyond the Community Reinvestment Act of 1977, which uses federal financial regulatory institutions to monitor lending practices, such as the geographical distribution of loans. Supervisory government agencies are required to consider this information, which is available to the public, in approving any application for a bank charter, deposit insurance, merger or acquisition, or office relocation. See Deanna Caldwell, *An Overview of Fair Lending Legislation*, 28 J. MARSHALL L. REV. 333, 340-42 (1995).

²⁸¹ To be more precise, race has not been totally filtered out. Specifically, the trusted credentialing agency knows my identity. Also, after the final execution, the lending institution will learn my identity as well. A truly anonymous system would be extraordinarily difficult to implement even if strong cryptography were widely used. See Peter P. Swire, *The Uses and Limits of Financial Cryptography: A Law Professor's Perspective* (visited Sept. 21, 1999) <<http://www.osu.edu/units/law/swire1/pscrypto.htm>> (on file with the Harvard Law School Library) (discussing, inter alia, problems of adverse selection, end game defection, and key management).

²⁸² The seller may not be as comfortable selling her home to an Asian American man. Faced

How can I make an offer on the house without disclosing my race? I could employ a human agent, like the human agent in my *car purchase* anecdote. Fifteen years from now, our society may use electronic agents,²⁸³ which are software programs with limited artificial intelligence, capable of negotiating transactions on our behalf.²⁸⁴ In the short term, we could adopt an "auction" system that would accept anonymous bids on homes backed by some earnest money and a digitally signed mortgage certification.

But a skeptic may argue that the racial signal will still get through. The buyers who take advantage of the race-blind option, the argument goes, will mostly be racial minorities because only they have anything to gain from such a system. By contrast, Whites will buy homes the old-fashioned way. Therefore, a seller who receives an anonymous bid might rationally suspect that it came from a racial minority. In this case, a racial signal will still be transmitted, and abolition will have failed.²⁸⁵

The actual story is more complicated. In the short term, those who try to buy a home through cyberspace will be the self-selecting few who are early adopters of technology. There is little reason to think that racial minorities will be disproportionately represented in this group. Moreover, it is possible that the racially anonymous system will provide such substantial efficiency advantages that no one, including Whites, will buy homes the old-fashioned way.²⁸⁶

with multiple offers at the same price, the seller may prefer to sell her home to a "nice" couple, who happen to be White. Maybe she will wonder, "That Chinese fellow might paint his house pink. I know those Chinese like pink. I couldn't do that to my neighbors."

²⁸³ An interesting issue worth exploring is the possibility that even electronic agents will be racialized. For example, one program that converts text into computer synthesized speech features four different voices. One voice is supposed to sound African American. Another voice is supposed to imitate Marilyn Monroe. See *ReadPlease 2000* (visited Jan. 17, 2000) <<http://www.readplease.com/rpindex.htm>> (on file with the Harvard Law School Library).

²⁸⁴ This comparison between human and electronic agents nicely demonstrates what is and is not unique about cyberspace. One could imagine developing a race-blind economic infrastructure without the use of any computers or telecommunications. Indeed, even public key cryptography could be implemented by an army of human beings scribbling on paper with pencils. However, the transaction costs would be prohibitively expensive. By substantially lowering transaction costs, cyberspace makes race-blind transaction systems economically plausible.

²⁸⁵ Cf. DOUGLAS G. BAIRD, ROBERT H. GERTNER & RANDAL C. PICKER, *GAME THEORY AND THE LAW* 89-109 (1994) (discussing how parties with "preferable" characteristics will try to distinguish themselves from less advantaged parties); Mitu Gulati, *When Corporate Managers Fear a Good Thing Is Coming to an End: The Case of Interim Nondisclosure*, 46 *UCLA L. REV.* 675, 702-03 (1999) (discussing why market forces would theoretically produce "unraveling").

²⁸⁶ One might compare this with Internet auto sites, which have grown broadly popular. See, e.g., Barbara Buell, *Virtual Highway Easing the Way for Buying, Selling Cars*, *STANFORD ONLINE REPORT* (last modified Jan. 6, 2000) <<http://www.stanford.edu/dept/news/report/news/january6/carbuy16.html>> (on file with the Harvard Law School Library) (reporting studies that predict that by 2000, 50% of new car buyers will use the Internet for preliminary research and up to 20% will make the actual purchase online).

Still, the racial signal may somehow bleed through, for example, through a requested face-to-face meeting between buyer and seller of the property. If this becomes a large problem, the law could intervene. Sellers could be required not to discriminate against anonymous offers. For example, whenever there are multiple offers on a home and at least one offer comes in through the anonymous infrastructure, the seller could be required to inform all bidders of the top price and allow them an opportunity to beat that price. Furthermore, the law could require the home to be sold to the highest bidder, except in special situations such as family transactions. The state might also create positive incentives, such as tax benefits, that would encourage sellers to opt for the race-blind transaction system.

Each intervention mentioned raises more questions than it answers, and the legal and policy problems that ripple from each intervention cannot be charted here.²⁸⁷ But the point of this discussion is not to articulate a fully detailed, comprehensive plan for restructuring America's home mortgage system through sophisticated cryptography technologies. Rather, the point is to put a little more flesh on the bones of the racial zoning process to better satisfy those readers who find concrete applications to be the test for theoretical inquiry.

Total abolition of the buyer's race and all its proxies will not eliminate residential segregation.²⁸⁸ Moreover, these reforms will not help those racial minorities who are worst off — those who lack the money

²⁸⁷ One objection is that it is wrong to strong-arm sellers or lenders into "trusting" buyers without face-to-face interaction. One might imagine either on philosophical or psychological grounds that trust should be granted on the basis of personal intimacy. Think, for instance, of the small-town banker who gives out loans based not only on the "paper record," but also on "personal" and nonquantifiable judgments. Imposing a racially anonymous structure increases the commodification of these marketplace relations.

This is a fair point. But I consider this to be a marginal increase in commodification in already heavily commodified marketplaces. We romanticize the market when we think that we have close, personal relations with the local banker, car dealer, and insurance broker. Also, in my calculus, the benefits of decreasing racial discrimination (which increases fairness to racial minorities) outweigh the costs of increased commodification (which marginally increases general marketplace alienation).

²⁸⁸ For example, even if sellers and lenders do not know the buyer's race, buyers will know the racial makeup of the neighborhood. If Whites prefer to live in a mostly White neighborhood — as opposed to an all-White neighborhood or a predominately Black neighborhood — then White buyers will pay a premium for such neighborhoods. This premium might indirectly price Blacks, who simply do not place as much value on a predominately White neighborhood, out of such communities. See David M. Cutler, Edward L. Glaser & Jacob L. Vigdor, *The Rise and Decline of the American Ghetto*, 107 J. POL. ECON. 455, 495–96 (1999) ("[W]hites still prefer to live with other Whites more than blacks prefer to live in white areas."); Sander, *supra* note 122, at 986–88. Moreover, after move-in, the neighbors will obviously discover the race of the new residents. A family may fear harassment, hostility, and even violence and thus may decline to move into a neighborhood that is predominately of another race. See *id.* at 985; see also *id.* at 1009–10 (citing additional reasons why reducing discrimination in housing sales may not significantly affect residential segregation).

to buy cars or homes and lack the technological access, intellectual wherewithal, and emotional desire to log-on to cyberspace. Nonetheless, we have before us an opportunity to abolish race in significant economic transactions that affect the lives of racial minorities. To the extent that disparate treatment still prevents minorities from enjoying equal economic opportunities, abolition delivers a concrete payoff we should pursue.

C. Social Spaces

In more social spaces, abolition would be not only difficult but also inappropriate. Two design options remain: integration and transmutation. A particular cyber space, such as a specific chat room or a specific MUD, cannot be simultaneously zoned for both integration and transmutation because of their conflict on authentication. Integration requires authentication — confidence that the racial signal broadcast in cyberspace is the same racial signal broadcast in real space.²⁸⁹ By contrast, transmutation shuns authentication because it prevents adopting multiple racial identities.

As between the two strategies, I am more sanguine about integration. My concerns about transmutation are captured by the following self-description of a cyberspace persona called "Geisha_Guest," controlled by a White American male living in Japan:

[A] petite Japanese girl in her twenties. She has devoted her entire life to the perfecting the tea ceremony [sic] and mastering the art of lovemaking. She is multi-orgasmic. She's wearing a pastel kimono, 3 under-kimonos in pink and white. She is not wearing panties, and that would not be appropriate for a geisha. She has spent her entire life in the pursuit of erotic experiences.²⁹⁰

Just imagine what this persona might do in a virtual 3D environment that would confirm both racist and sexist stereotypes about Asian women.

This is not to say that I would try to forbid transmutation environments. If people are interested in broadcasting different racial signals as part of a larger exploration of identity, then no doubt the market will create some such environments. In fact, the general desire for anonymity and pseudonymity on the Internet makes it highly likely that transmutation environments will thrive without express social intervention.²⁹¹ I would, however, encourage general education of cy-

²⁸⁹ To repeat, "authentication" does not involve examining whether my behaviors and comments are "authentic" according to some essentialized definition of a racial category. Cf. SCHNEIER, *supra* note 275, at 2 (describing authentication in the cryptography context as preventing an intruder from masquerading as someone else).

²⁹⁰ Nakamura, *supra* note 89, at 187.

²⁹¹ I can imagine some interesting scenarios in which the state could purposefully generate

berspace users to alert them to the possibility of cyber-passing. This would be a new element in the standard set of advice about not trusting everything one sees on the Internet. Similarly, I would not forbid abolition environments. If people are interested in not broadcasting racial signals in cyberspace, so be it.²⁹² Such tolerance arises from my digital diversification model of racial zoning. That said, I see the greatest potential in generating integration spaces.

1. *Authentication.* — As a threshold matter, any integration environment requires some degree of racial authentication. In other words, people must feel relatively secure that the racial signal broadcast in cyberspace is the same signal broadcast in real space. Racial authentication could be demanded clumsily. For example, the state could try to require self-identification through the use of an individual's full name or some unique identifier, such as a Social Security number. This information could then be linked to a national database containing biographical data on every citizen and permanent resident in the United States. Each data record would include a race field. This approach would raise enormous information privacy concerns,²⁹³ in addi-

transmutation environments. Consider the extensive matrix of websites maintained by the federal government. In some future world, all of these sites may be tightly linked together into a sprawling FedWorld. See *FedWorld* (visited Jan. 22, 2000) <<http://www.fedworld.gov>> (on file with the Harvard Law School Library). Indeed, one could imagine a future in which FedWorld becomes an important way that citizens interact with the federal government, in a three-dimensional graphically articulated space. What should the avatars look like, and who would decide?

What if each visitor to FedWorld were assigned a randomly racialized, gendered avatar? Then, a White male partner from a Washington, D.C., regulatory law firm might have to navigate FedWorld as a Black woman. What if we allowed individuals to change their avatars, but not without cost? Would the partner do so? What if FedWorld required registration and whatever avatar you were given would have to be kept for 10 years, like a passport?

More interestingly, what if we allowed individuals generally to pick the race that they presented, but for some small percentage of individuals, we randomly altered how they appeared to others? It would have to be a small percentage; otherwise, the racial signal transmitted in FedWorld would be discredited as meaningless. Even though one saw oneself as, say, White, everyone else in FedWorld would see that same avatar as Black. What would happen if the White attorney were dissatisfied with the service of a government bureaucrat? Would he start thinking that maybe he was presenting a Black identity to everyone else in FedWorld?

I realize that such a transmutation regime could raise some of the same problems that I mentioned when discussing abolition. For instance, there is the possibility of "psychic harm" if racial minorities are forced to play White characters. On the other hand, I think many racial minorities would play that game if Whites also had to suffer the psychic dislocation of playing a racial minority. I further realize that the federal government would undoubtedly shy away from such experiments as controversial.

²⁹² I do not want to take the status quo for granted. If, for example, every cyberspace interaction disclosed an identifying number — whether an IP address or a microprocessor serial number — both abolition and transmutation environments would be jeopardized.

²⁹³ See, e.g., Paul Schwartz, *Data Processing and Government Administration: The Failure of the American Legal Response to the Computer*, 43 HASTINGS L.J. 1321, 1344-48 (1992).

tion to the taxonomical difficulties that plague the Census.²⁹⁴ Fortunately, it would also likely be struck down under the First Amendment, which protects anonymous speech and strictly scrutinizes content-based compelled speech.²⁹⁵

There are better ways to authenticate, however, through architecture and social norms. First, any virtual community could make clear that its ground rules preclude cyber-passing. In other words, every member of the community is expected to present his or her real-space name and identity within the cyberspace community. This norm is common. Consider, for example, the typical academic e-mail list.²⁹⁶ Subscribers are on implicit notice that pseudonyms are not allowed. All parties expect that the identity presented in cyberspace is the same identity presented in real space. In other words, we expect authentication: This is a "No (cyber-)Passing Zone." Reputational sanctions attach to violations of this norm.

There are other examples. For instance, I participate on user bulletin boards for various software applications. Whenever I post a comment, I use my real-space name. In many of these realms, others do so as well. In most Usenet newsgroups, for example, participants disclose their real-space names.²⁹⁷ This practice is entirely consistent with general Usenet culture, which is mostly nonfiction.²⁹⁸ Participants who dislike such norms are free to exit.

Second, this clear ground rule could be enforced by members of the community through various verification strategies.²⁹⁹ For example, if I claimed to be Professor Charles Smith at the UCLA School of Law on

²⁹⁴ See Wright, *supra* note 35, at 46 (discussing the multiracial category for the 2000 census).

²⁹⁵ Cf. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341-43 (1995) (invalidating a bar on anonymous campaign literature). For further discussion on the constitutionality of banning anonymous speech, see A. Michael Froomkin, *Anonymity and Its Enmities*, 1995 J. ONLINE L. art. 4 <<http://www.wm.edu/law/publications/jol/froomkin.html>> (on file with the Harvard Law School Library).

²⁹⁶ Examples can be found in MUDs as well. See, e.g., Bruckman, *supra* note 67, at 319-20 (describing the professional MUDs of astrophysicists and media researchers).

²⁹⁷ See, e.g., Nancy K. Baym, *The Emergence of Community in Computer-Mediated Communication*, in CYBERSOCIETY, *supra* note 7, at 138, 155 (describing the use of real names in the popular soap opera newsgroup r.a.t.s.). Baym explains that soap operas are constantly assessed for socioemotional realism, which requires critics to disclose something about their own areas of experience and expertise. See *id.* "The use of real names helps to create an intimate environment in which this kind of disclosure can be voiced." *Id.* Accordingly, participants in this particular newsgroup actively discourage anonymity and pseudonymity. See *id.*

²⁹⁸ See Donath, *supra* note 193, at 30 ("The basic premise is that the users are who they claim to be.").

²⁹⁹ See, e.g., Kira Hall, *Cyberfeminism*, in COMPUTER-MEDIATED COMMUNICATION, *supra* note 72, at 147, 161-62 (describing a women's community whose members occasionally undertook real-space verification of a new member's gender). Some system operators will make unannounced telephone calls to registrants to listen to their voices to determine whether they are male or female. See, e.g., O'Brien, *supra* note 90, at 86.

some Usenet newsgroup, my real-space non-existence could be quickly discovered by checking the UCLA School of Law website. Or, one could verify my identity in real space, if one happens to be in the neighborhood. If one is concerned about identity impersonation ("spoofing"), one could also check a person's digital signature to see if it is the real Charles Smith talking.

Verification can also take place through some regime of registration. In many virtual communities, participation requires registration. Often, this registration requires, at the least, a functioning e-mail address.³⁰⁰ The virtual community operator might, consistent with clearly posted privacy practices, make this e-mail list available to its members. If someone claims to be a professor at a law school but provides only an America Online address, she may raise a few eyebrows.³⁰¹ Registration might include even more information, such as a physical mailing address. If someone claims to be from Southern California but has a mailing address in New Jersey, again, questions might be asked. Through such techniques, the virtual community operator can exercise nontrivial enforcement power against cyber-passing.³⁰²

Finally, verification can take place through interrogation.³⁰³ When someone claims to be a graduate of a prestigious university in a chat room, one might ask which dormitory she was affiliated with. One might also ask about faculty members with whom she studied. Although the techniques do not always translate to race, verification practices dealing with gender have grown sophisticated. Men gender-passing as women often are unmasked when they cannot answer elementary questions about menstruation. Soon, people may simply ask for a virtual business card, which includes a photograph,³⁰⁴ or a professional or personal webpage.³⁰⁵

³⁰⁰ It is difficult to provide a bogus e-mail address because a password is often sent to the e-mail address provided during registration. Without the password, an individual cannot participate fully in the virtual community. To get the password, however, there must be a functioning e-mail account. Although it is not currently difficult to create an e-mail account while cloaking one's real-space identity, it does take some effort and knowledge.

³⁰¹ Commercial e-mail addresses (for example, ____@yahoo.com) are easier to create with pseudonyms than institutional e-mail addresses (for example, ____@ibm.com). Cf. Donath, *supra* note 193, at 37.

³⁰² See Johnson & Post, *supra* note 119, at 1388.

³⁰³ Cf. Katie Hafner, *Guessing Who Is Online*, N.Y. TIMES, July 22, 1999, at G4 (describing a game in which the goal is to ask questions to identify the gender-impostor). Interestingly, Amy Bruckman, a co-designer of the game, stated: "We haven't had the guts to try a race game yet." *Id.* (internal quotation marks omitted).

³⁰⁴ Judith Donath reports that, in a newsgroup that deals with weightlifting, one person challenged another's strength claims by posting a photograph and requesting that the other do the same. See Donath, *supra* note 193, at 50. She also adds that a social norm of disclosing personal webpages increases the cost of changing identities given the nontrivial costs of setting up websites. See *id.* at 56.

³⁰⁵ It would not be very difficult for someone who is determined to maintain another identity to

Authentication will not be perfect. One reason is that the above-mentioned techniques do not necessarily authenticate race. For instance, just because the virtual community knows a member's e-mail address does not mean that it knows the member's race. But such specific authentication may not be critical. Within any virtual community, authentication generates accountability. As long as there is sufficient accountability, the relationships that form within that virtual community will tend not to be fictional. Accordingly, individuals will generally decline to cyber-pass. Moreover, a small amount of passing will not destroy an integration environment. As long as passing is not so frequent that people start ignoring racial signals transmitted in cyberspace (which would create a transmutation-collapsed-into-an-abolition environment), we can still gain integration's benefits.³⁰⁶ In addition, those who do pass successfully may gain empathic insights — all subject to the appropriate caveats about cyber-passing. This is what I think I learned in the *fighting words* anecdote. I want to emphasize that not all cyber spaces should entail authentication. In fact, as I argued before, much information should be made available for anonymous browsing. This eclectic approach reflects my digital diversification model of racial zoning.

2. *Smart Design*. — As explained in Part III, smart design of integration spaces requires attention to both quantity and quality of interracial social contact.

(a) *Quantity*. — An obvious smart design practice includes promoting racial minority access to cyberspace. Perhaps the market will spread cyberspace access evenly across ethnic and racial groups as it has done with broadcast television or video game consoles, for which there is no digital divide. However, the current data show substantial disparities between certain races in household Internet access. Although this disparity is not cause to give up on cyberspace, it is a source of concern. In this paper, I cannot undertake a careful, comprehensive analysis of how the state might respond, for example, through its universal service policies, subsidization of Internet access at community access points or in the home,³⁰⁷ and anti-electronic redlining initiatives in the build-out of high-speed data networks.³⁰⁸

create a fake personal webpage. But every incremental increase in the costs of cyber-passing decreases the likelihood that one will cyber-pass.

³⁰⁶ See Donath, *supra* note 193, at 32 ("If a signal becomes very unreliable due to excessive cheating it ceases to convey information — it stops being a signal. Yet there are stable systems of deception, where the percentage of deceivers does not overwhelm the population, and a signal remains information-bearing, however imperfectly.").

³⁰⁷ See Hoffman & Novak, *supra* note 8, at 390; see also NTIA, *supra* note 129, at 78. These access points may be especially important because Internet use requires not only software and hardware, but also cognitive skills and training. See Wilhelm, *supra* note 141, at 531.

³⁰⁸ In the future, such high-speed access from the home may be practically necessary to partici-

However, my analysis of cyber-race encourages government policy-makers to consider another factor in their decisionmaking process: Broad societal access to cyberspace for all racial minorities will increase the number of viable integration spaces.

In addition, ISPs, virtual community operators, and technology companies (both software and hardware) should develop user interfaces that promote chance encounters with other people. Consider the following two possible interfaces for a graphical world: In World 1, one can move instantly between locations by clicking on a menu of available rooms; by contrast, in World 2, the only way to move from room to room is by walking your avatar through intervening rooms. Thus, to go from the "major league soccer" room to the "Microsoft antitrust case" room, one must walk past other avatars, through hallways, common rooms, and other spaces. World 2 is a superior integration space because walking increases the number of common spaces regularly traversed. Along the way, we might encounter interesting people and unexpected places to explore — something less likely to happen if we simply "teleport" from location to location. For similar reasons, many people in real space prefer walkable cities to those that require driving.

This architecture cannot be too cumbersome; otherwise, people will opt out and find a more "efficient" world. Instead, we should design some happy medium.³⁰⁹ Skeptics might contend that there is no such medium, that any inefficiency in navigation will trigger mass exodus. But this argument misunderstands the *social* purpose of these spaces. The point is not to be "efficient"; rather, the point is to enjoy oneself. By comparison, when we go to sidewalk cafés, we do not (usually) grouse that they do not serve caffeine pills that will more efficiently administer the stimulant into our bloodstream so we can be more productive. Instead, we go for the atmosphere, the taste, and sometimes the conversation.

(b) *Quality*. — Recall that the five environmental factors that help decrease racial prejudice are (i) exposure to disconfirming data, (ii) interaction on terms of equal status, (iii) cooperation, (iv) social depth, and (v) equality norms. I have already argued that cyberspace will

pate fully in social spaces, especially on terms of equal status. However, private corporations in pursuit of self-interest may choose not to build-out in predominantly minority areas, which would shut out even affluent members of racial minorities who live in segregated minority communities. This discussion is speculative because the business models for household high-speed data access are in flux. In addition, this discussion depends on which technologies we are considering. For instance, the economics of providing high-speed data access through direct broadcast satellite differ fundamentally from those of rebuilding cable or telephony networks, line by line.

³⁰⁹ For example, in WorldsAway (now called Avaterra), one must generally walk through adjacent spaces to get from point A to point B. However, there are special teleporters that will transport people to distant locations. See *Avaterra.com, Inc. Backgrounder*, *supra* note 68.

likely expose us to more disconfirming data because it will increase the ratio of direct-to-vicarious interracial experiences. In addition, I have explained how the self-selecting and social (as opposed to master-servant) nature of these interactions may generate interracial contact on terms of equal status. What about the other factors? Are there ways to implement "smart design" principles to promote them?

(i) *Cooperation*. — One source of entertainment in these social spaces could be team games, in which teams are selected randomly and groups compete against each other for prizes, virtual or real.³¹⁰ These games could range from the intellectual (akin to *Trivial Pursuit* and *Scrabble*) to the visceral (e.g., team *Doom*).³¹¹ What is essential here is that the virtual community forms teams somewhat randomly, so that individuals do not stick only to those players they already know. The hope is that by repeatedly playing these games in teams, with individuals of other races, we might alter — even if slightly — racial meanings for the better.³¹²

Also, the virtual community host could actively promulgate cooperation norms. For example, consider a software program bulletin board maintained by the software company.³¹³ Certain users of the program, who are members of this community, provide substantial assistance to fellow users. The software company could "recognize" those helpful members with some honorific or material reward, such as free, advanced access to program updates.³¹⁴ It is in the software company's self-interest to design a vibrant electronic community that takes load off of customer support resources. Fortuitously, it also encourages the sort of cooperative behavior that may help reform racial schemas.

Finally, virtual community hosts and users should experiment with strategically delaying racial disclosure. To repeat, there is troubling evidence that, notwithstanding good intentions, stereotypes are triggered simply by exposure to the object of the stereotype.³¹⁵ So, even

³¹⁰ See Curtis, *supra* note 123, at 365 (describing the "enormous popularity" of a "food fight" game in the LambdaMOO MUD).

³¹¹ Cf. Reid, *supra* note 126, at 121 (describing adventure-style MUDs, in which individual players must cooperate to destroy monsters that cannot be killed individually).

³¹² See Pettigrew, *supra* note 118, at 279 ("[T]he preponderance of social-psychological evidence attests to the greater efficacy of the opposite approach. Behaving differently more often precedes thinking differently [than vice versa].").

³¹³ See, e.g., Dragon Systems, Inc.: Support & Services: Discussion Forum (visited Sept. 24, 1999) <<http://www.dragonsys.com/support/discforum.html>> (on file with the Harvard Law School Library).

³¹⁴ See, e.g., Peter Kollock, *The Economics of Online Cooperation: Gifts and Public Goods in Cyberspace*, in COMMUNITIES IN CYBERSPACE, *supra* note 60, at 220, 235 (suggesting that one way to encourage cooperation in virtual communities is to give credit where credit is due).

³¹⁵ See Bargh, Chen & Burrows, *supra* note 45, at 230 ("Stereotypes become active automatically on the mere presence of physical features associated with the stereotyped group, and catego-

though integration requires that participants eventually reveal their race, race need not be the first thing that people see. Consider again the software company's text-based bulletin board. Next to each posting can be the following: (i) screen name, (ii) first name, (iii) first and last name, or (iv) first and last name with photograph. My recommendation is to display authorship information in just this order.

With just a screen name or first name, we will not be able to map the author racially in most cases. Therefore, we will evaluate the comment or advice without stereotypical racial meanings being triggered. But later we might become curious about the author. The architecture should allow the user to look up the "profile" of each person, subject to strict adherence to good privacy practices. That profile could include the author's full name, photograph, and whatever other information the individual volunteers. In this way, we can have access to "race" although in most cases we will not bother inquiring, and in no case will it be the first thing we see. Technology companies that are designing the software for such bulletin boards should make these options available.

Consider another example: Academic listservs operate through electronic mail. In the next generation of e-mail programs, virtual business cards are supposed to become even easier to use.³¹⁶ These business cards can carry our photographs. Depending on the program design, when we open an e-mail from one of these academic listservs, the business card could open automatically in a window beside the e-mail contents. If so, readers would first see the author's face, then the message. However, we could delay the disclosure of race just momentarily, by displaying the business card after the e-mail, which would make it more likely that the reader would see the photograph after, not before, reading its contents. In fact, we can raise the transaction costs of accessing race (its "distance") even higher by requiring the user to double-click the photo icon before the author's image is revealed.

I concede that this delay strategy may have limited usefulness. Even without virtual business cards, substantial racial mapping takes place on the basis of names alone, and, within academic environments, reputation matters so much that we do not use "screen names" or pseudonyms. Furthermore, as our communication technologies move toward greater media richness, such as video phones, it will become

rizing behavior in terms of personality traits and then making dispositional attributions about the actor's personality have both been shown to occur automatically to some extent.") (citations omitted).

³¹⁶ See *Microsoft Outlook 2000 Products Enhancement Guide* (last modified Oct. 1998) <<http://microsoft.com/office/enterprise/prodinfo/outlkpeg.htm>> (on file with the Harvard Law School Library) (discussing the implementation of v-card technology).

increasingly difficult to delay the disclosure of race.³¹⁷ Still, it seems worthwhile to experiment with this technique while we can. To be clear, I am not arguing in favor of abolition. I think it is, on balance, a good idea to include a photograph on our business cards. However, especially in spaces where race seems marginally relevant to the conversation, I would consider inserting some "distance" between the content of our messages and our photographs.³¹⁸

(ii) *Social Depth*. — In addition, we should foster the social interactions in virtual communities that have depth and meaning. This is basic to good community design, regardless of integration concerns.³¹⁹ At the very least, the virtual community host should encourage individuals to return often and to become "regulars." This makes it more likely that multiple interactions between individuals over time will generate deeper social bonds. Economic incentives could promote such behavior. For example, for every minute that you are in the virtual community, you might be credited with a monetary token to use within that virtual community. Or, just as we accrue frequent-flier points with airlines, we could have frequent "presence" points in a virtual community, redeemable for tangible goods and services in real space.

Another technique is to export cyberspace social interaction to real space. In other words, the individual members of the cyber-community could arrange real-space gatherings, such as picnics or annual reunions. We could make real-space contact more probable by creating cyber-communities based on real-space geography. We could encourage users to provide geographical information within their profiles, which could be easily indexed and searched. As always, all such personal information exchanges must be consistent with good information privacy practices.

³¹⁷ Increased use of avatars may have the same effect. Of course, it is possible to use avatars that are not human, and therefore not racialized. However, using nonhuman avatars may be inconsistent with the norms of certain virtual communities, such as academic lists. Further research should be done on whether our racial schemas are triggered differently as a function of avatar size and photo realism.

³¹⁸ This delay technique can be seen as a pragmatic combination of the abolition and integration paradigms. This is an attempt to answer the challenge of modern racism, which has been identified as "[h]ow to promote in the white public a racial understanding that avoids the psychological liabilities of ingroup and outgroup categorization while acknowledging the full sociological implications of the past and continuing color line." Marylee C. Taylor & Thomas F. Pettigrew, *Prejudice*, in 3 *ENCYCLOPEDIA OF SOCIOLOGY* 1536, 1539–40 (1992).

³¹⁹ See, e.g., Peter Kollock, *Design Principles for Online Communities* (visited Feb. 7, 2000) <<http://www.sscnet.ucla.edu/soc/faculty/kollock/papers/design.htm>> (on file with the Harvard Law School Library) (identifying general design principles for successful online communities, which include internal economy, a coherent sense of place, rituals, history of community, identity persistence, moderate risk, and likelihood of unplanned interaction).

Obviously, by making real-space geography relevant, we risk importing the significance of residential segregation into cyberspace. Accordingly, we must balance the ways in which real-space meetings can enrich the social depth of cyberspace interactions without replicating real-space residential segregation. Here is an example: Imagine two grammar schools in Los Angeles, one predominantly Korean American and the other predominantly Latino/a. These two schools could be linked together into a supervised virtual community, to foster various "pen pal" relationships. Even though these two communities may only be five miles away from each other, the students from one school probably never would have spoken to the students of the other — but for cyberspace. It also would not be difficult to arrange a school visit or a field trip, in which teachers from both schools would bring the students together for some joint activity in real space. This would help deepen the social relationships that developed online. As part of a structured curriculum — for example, one in which students from each school compare and contrast their neighborhoods and life experiences or build together a common webpage — we might be able to create vibrant integration spaces that help reform racial meanings at an early age.

I am not arguing that personal relationships mediated entirely through cyberspace will have the social depth of face-to-face interactions. I am suggesting, however, that cybersocial interactions can have sufficient social depth to affect our racial meanings. Moreover, in the next fifteen years, "social depth" will become easier to achieve as computing-communication technologies improve. As media richness increases, cyberspace-mediated social interaction will incrementally start to feel more "real" and less different from a real-space encounter.³²⁰

(iii) *Equality Norms*. — Finally, the virtual community should espouse basic norms of equal dignity and respect for all members. I have already discussed how virtual community hosts have the power to promulgate such equality norms clearly and with some bite, for instance, by writing the behavioral norms into the underlying software. One additional topic worth addressing is the role of the state in the promulgation of these norms.

Because most virtual community hosts are private actors, a community expulsion on the basis of hate speech or racist behavior should not generate any First Amendment claims. The state, through its judicial system, should not reach out aggressively under the public forum doctrine to make virtual community hosts state actors when they are not. Indeed, in establishing the proper environmental characteristics for social spaces, the state will generally play a minimal role be-

³²⁰ See, e.g., Charles Piller, *E-Bonding Via Voice on the Web*, L.A. TIMES, Sept. 29, 1999, at A1.

cause it does not maintain these social spaces. Accordingly, the civic responsibility for intelligently designing integration spaces rests with private actors, especially prominent virtual community hosts and ISPs, such as America Online.

That said, the state can actually make it easier for virtual community hosts to promulgate and enforce equality norms. An excellent example is Section 230 of the Telecommunications Act of 1996,³²¹ part of the original Communications Decency Act that was not declared unconstitutional. This section establishes that "interactive computer service" providers are not to be considered the publisher or speaker of comments made by "another information content provider," which includes members of the virtual community.³²² Moreover, these providers are not civilly liable for good faith attempts to restrict access to objectionable material. This statutory immunity gives virtual community hosts great flexibility in punishing members who flaunt the community's equality norms, without subjecting themselves to civil liability.

* * *

Reforming racial meanings is an enormous challenge, and cyberspace is no panacea. Moreover, no empirical data yet demonstrate that cyberspace is especially well-suited to decreasing racial prejudice. At the same time, we do know that racial meanings can change, and for the better. History teaches us that hostility against racial minorities has decreased substantially in this century.³²³ Social psychology teaches us that certain interracial interactions tend to decrease racial prejudice. Our personal experiences teach us the same lesson, as we recall the various prejudices that we have fought and conquered over our lifetimes. We have no choice but to act on this limited knowledge, with eyes wide open.

CONCLUSION

America's racial problems, centuries old, persist into the present. At a microlevel, the racial schemas in our heads — racial categories, racial mappings, and racial meanings — continue to alter the path of social interactions, often in troublesome ways. These alterations, when aggregated, produce large, societal effects at the macrolevel. If we add

³²¹ 47 U.S.C. § 230(c)(1) (Supp. III 1998).

³²² *Id.*; *Blumenthal v. Drudge*, 992 F. Supp. 44, 50–53 (D.D.C. 1998); *Zeran v. America Online, Inc.*, 958 F. Supp. 1124, 1132–33 (E.D. Va. 1997).

³²³ See Taylor & Pettigrew, *supra* note 318, at 1537. For a historical essay on changing American racial attitudes, see HOWARD SCHUMAN, CHARLOTTE STEEH, LAWRENCE BOBO & MARIA KRYSAN, *RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS* 8–53 (1997).

these macrolevel effects to the sediments of America's racist past, we have good reason to think that America's racial problems will persist for centuries more.

But here and now, we are afforded an intriguing opportunity, made possible by the coming of the "Information Society,"³²⁴ brought by the convergence of computing and communication technologies. Cyberspace creates novel communication platforms that open up new possibilities in both individual identity and social interaction. By designing cyberspace appropriately, we may be able to alter American racial mechanics.

We can choose among three design strategies. Abolition seeks to keep race out of cyberspace. It invokes *racial anonymity* in cyberspace to prevent racial *mapping*. Depending on the context, this approach makes sense to those who believe that (White) racism is incorrigible, as well as to those who insist that the best way to get beyond race is to blind ourselves to race.

By contrast, integration seeks to increase interracial *social interaction* through cyberspace, thereby altering the cache of racial *meanings* in our heads. Integration sees in cyberspace the possibility that all Americans might be exposed to a lower ratio of stereotypical data. It also sees how cyberspace could promote social interactions, based on cooperative projects among people of equal status. Integration envisions cyberspace communities as antiracist pedagogical tools similar to our idealized integrated neighborhood or university.³²⁵

The last path, transmutation, is the most fantastic. It *seeks racial pseudonymity*, or cyber-passing, in order to disrupt the very notion of racial *categories*. By adopting multiple racialized identities in cyberspace, individuals may slowly dissolve the one-to-one relationship between identity and the physical body. Traditional social categories, such as race (as well as gender), may begin to lose their oppressive rigidity.

We need not choose a single path for all of cyberspace. Instead, we can racially zone cyber spaces more selectively, at a space-by-space level. For many market places, abolition is most appropriate. For many social spaces, integration is most appropriate. The terms "market" or "social" space are mere labels: For each space, there must be a contextual analysis about the merits of representing race. The labels do not short-circuit that analysis.

³²⁴ This and related terms, such as "Information Age," are now common. For an insightful, sophisticated analysis of the various definitions and theories of the information society, see FRANK WEBSTER, *THEORIES OF THE INFORMATION SOCIETY* (1995).

³²⁵ On affirmative action's role in creating a racially integrated university, see WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* (1998).

By adopting all three paths in cyberspace, we adopt a policy of digital diversification. We cannot know which path will have which consequence. By implementing all three design strategies, in different zones and in different proportions, we make certain that the legal-social-architectural combination necessary to support any one of these paths remains a policy option.³²⁶

In this paper, I have presented my vision of what cyber-race may come to be. Many readers will write this vision off as science fiction. If this dismissiveness prevails, in fifty years we will look back upon cyberspace in the same way that we look back upon the interstate highway system and television — with regret, as opportunities not seized, therefore lost. There are novel opportunities here, configured not only by new technologies but also by new politics. For example, consider how Americans along a broad political spectrum could agree on zoning most market places “abolition.” In addition, consider how cyberspace offers a way to increase direct interracial social interaction without the actual and perceived zero-sum conflicts inherent to busing or race-conscious admissions.

The thoughts I present here are not science fiction, but they are tentative. I share them in the hope of provoking users, software engineers, hardware designers, virtual community hosts, ISP providers, policy analysts, regulators, and lawmakers to think through cyber-race.³²⁷ I do so with urgency because decisions made — or not made — now, with little thought of racial consequences, may haunt us later. If we view cyberspace as a mere tool, like a glorified fax machine, we underestimate its transformative potential.

³²⁶ Perhaps this pragmatic approach toward racial zoning can be imported back into real space. For example, many opponents of race-based affirmative action in higher education argue that the state sends mixed messages when it tells employers, on the one hand, to ignore race, but admissions officers, on the other hand, to consider race. This contradiction can be seen as an example of real-space racial zoning. Certain employment spaces can be zoned “abolition,” at the same time that certain education spaces are zoned “integration.”

³²⁷ This attempt is an exploration of what I call *critical race technologies*, rooted in what Eric Yamamoto calls “critical pragmatism.” ERIC K. YAMAMOTO, *INTER-RACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 133 (1999). A critical race technology takes into account the power of architecture, digital as well as spatial, in the construction of racial mechanics. For examples of the latter, see Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699 (1993); and Richard Thompson Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*, 49 *STAN. L. REV.* 1365 (1997).

Critical Race Theorists should also recall C.P. Snow’s warning:

It is dangerous to have two cultures which can’t or don’t communicate. In a time when science is determining much of our destiny, that is, whether we live or die, it is dangerous in the most practical terms. Scientists can give bad advice and decisionmakers can’t know whether it is good or bad. On the other hand, scientists in a divided culture provide a knowledge of some potentialities which is theirs alone.

C.P. SNOW, *THE TWO CULTURES: AND A SECOND LOOK: AN EXPANDED VERSION OF THE TWO CULTURES AND THE SCIENTIFIC REVOLUTION* 98 (1964) (internal citation omitted).

We should see cyberspace instead as a new universe, which we build potentially without the constraints that bind real space.³²⁸ Even if that potential is lost to us, it may not be lost to the next generation.³²⁹ Some readers will complain that I have been too optimistic about cyber-race. Let me be clear: I genuinely fear that cyberspace will reinscribe a repressive racial mechanics even deeper into our nation. This paper is a plea to build toward redemption instead.

³²⁸ [T]he Internet is more like a social space than a thing so that its effects are more like those of Germany than those of hammers. The effects of Germany on the people within it is [sic] to make them Germans (at least for the most part); the effects of hammers is [sic] not to make people hammers As long as we understand the Internet as a hammer we will fail to discern the way it is like Germany.

Mark Poster, *Cyberdemocracy: The Internet and the Public Sphere*, in VIRTUAL POLITICS, *supra* note 94, at 212, 216.

³²⁹ According to Forrester Research, youths aged 16 to 22 spend nine hours weekly surfing the web, 38% more time than adults. Also, a stunning 47% of youths are Internet users. See David Plotnikoff, *Young Internet Explorers Will Never Know a World Without the Net* (last modified Oct. 9, 1999) <<http://www.mercurycenter.com/svtech/columns/modemdriver/docs/dp101099.htm>> (on file with the Harvard Law School Library).

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