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## CAPITALIZE ON RACE AND INVEST IN JUSTICE

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Professor Nancy Leong laments a phenomenon she dubs racial capitalism, “a process of deriving social or economic value from the racial identity of another person” (p. 2153) which results in the “commodification of identity” (p. 2152). As examples, Leong points to university affirmative action programs that turn “diversity” into a mark of elite status and employers who use minority employees as ambassadors to untapped markets or trot them out as evidence of their equal opportunity bona fides. She argues that racial capitalism “degrad[es] . . . [racial] identity by reducing it to another thing to be bought and sold” (p. 2152).

Leong makes many valid points about the sad state of contemporary race relations and highlights the limitations of our current, fragile race relations détente, which offsets extreme and often worsening racial isolation with modestly effective civil rights laws and an ethos of “diversity.” But by and large, the occasional inversion of our nation’s long-lived racial value system that results in minority race being seen as an asset instead of a liability is, on the whole, something to celebrate and (ahem) *capitalize* on, not something to complain about. Many of the problems Leong ably points out are the inevitable toxic by-product of our nation’s long, ugly history of racism and of our more recent halting but on the whole commendable attempts to correct it. I am not so sure that “racial capitalism” is distinct from the much more familiar problems of racial hierarchy and unforgiving market capitalism. And I doubt that there is any viable — even any conceivable — alternative to the kinds of self-interested calculations, strategic self presentations, subtle and overt pressures for conformity, and resulting psychological tensions that Leong describes as instances of identity commodification and racial capitalism. Just as the symptoms of a cold are caused by the body’s immune response, so the inconveniences and annoyances Leong catalogues are probably part of the necessary process of social change. On the whole, better to suffer through them than to stay infected.

Leong argues that the diversity rationale for affirmative action, which is now also part of the ethos of Fortune 500 businesses, encourages “white individuals and predominantly white institutions [to] use nonwhite people to acquire social and economic value” (p. 2152). But

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maybe this is an uncharitable way of describing it. Leong points out that employers and universities often seek out minority race employees, students, and faculty, not (only?) from a sincere desire to engage with them, but instead (also?) for reasons of public relations. But is this such a bad thing? Surely the creation of such incentives is much of the point not only of the diversity ethos, but also of civil rights activism generally. Whenever civil rights groups boycott a discriminatory business or pressure a lily-white institution to diversify, the hope is that the financial injuries and threat of bad publicity will induce the institution to open itself up to more minorities. The main goal is not to transform the sincerely held values of bigoted managers: it's enough that the institution caves in to the pressure. Civil rights activism has always been quite beady-eyed in this respect: one hopes that the threat of a costly and embarrassing demonstration will make recalcitrance and stasis less attractive than change. This is especially obvious in the case of a boycott, where the clear goal is to punish the recalcitrant business financially. Successful civil rights protests hence encourage a form of "racial capitalism," making the presence of minorities a valuable sort of insurance policy against future disruptions and bad press. So the process Leong attacks as racial capitalism is in large part a reaction to a potential accusation of racism and hence a symptom of the success of civil rights activism.

Or consider the effects of conventional antidiscrimination laws. If we think (as I do and the doctrine requires that we do) that at times one can infer discrimination from an underrepresentation of minorities, then it has to follow that a sufficient presence of minorities would defeat the inference. It follows that any institution governed by laws prohibiting discrimination (or any institution concerned with its public image) has an incentive to point to the presence of minorities in order to preemptively defeat an uncharitable inference. In a sense the institution has "used" the minorities for its own benefit, but it's hard to object to this if one accepts the logic of inferring discrimination from numerical underrepresentation in the first place. Of course, there is an unsavory aspect in all of this, and sometimes the resulting changes are only superficial. But just as often the changes are far reaching and permanent. Minorities who get positions because of civil rights pressure can win over their cynical bosses by doing a good job and disproving racial stereotypes. Minority students valued as tokens of equal opportunity can still change the hearts and minds of their classmates and professors by their example.

The complaint of commodification has some bite when applied to university admissions policies, where perhaps we are entitled to expect loftier motives to predominate. But it's misplaced as an objection to the employment relationship: after all, "commodification," as Karl Marx would remind us, is the very essence of the employment relationship. It seems odd to object when employers hire minority employees

to help with outreach to minority customers or point to them as evidence of their commitment to equal opportunity. Leong complains that diversity is often understood as an “asset” in corporate circles (pp. 2194–95). But being seen as an asset is hardly a bad thing for an employee in a profit-driven business. Anyone who accepts a job for wages agrees to sell one’s talents and attributes during working hours and only an extreme and unworkable ethos of nondiscrimination would exclude informal social connections and image from the set of potential job related attributes. If this is objectionable, then the objection is not to *racial* capitalism but to capitalism more generally.

Moreover, the institutionally and psychologically complex phenomena that produced affirmative action, the ethos of corporate diversity, and even white people seeking black friends on Craigslist (three of Leong’s examples) are more than instances of “racial capitalism.” We live in a country — indeed a planet — dominated by markets, and as a result many aspects of human interaction have taken on some of the characteristics of market transactions (or, as likely, we apprehend human interactions in these terms because we spend a lot of time thinking about market transactions, just as medieval theologians who spent their days contemplating the divine saw the hand of God in many phenomena we moderns ascribe to self-interest, evolution, and chance). For example, some sociologists have taken to describing romantic encounters in terms of capitalism and bargained-for exchange. You think people couple up, date, and get married because of sincere affection or love? Pollyanna! In fact, romantic love is really nothing more than a transaction between self-interested parties seeking advantage through the trading of commodified personal assets: status, money, talent, beauty. Young lovers size up potential partners, looking for a deal that maximizes utility. That’s why good-looking and successful people tend to hook up with other good-looking and successful people (Branjelina). And if not, it’s because there is some offsetting asset that balances the ledger: a young and beautiful woman who marries an old, homely man is surely getting compensated for the lopsided exchange in youth and beauty by his superior social status (Marilyn Monroe and Arthur Miller) or wealth (Donald Trump and any of his several wives). It follows that the women in these relationships have “commodified” their beauty — even their bodies, *perhaps their very selves* — in a relationship governed by “romantic capitalism.” (Apologies for the gendered examples; I am only summarizing the extant literature, some inspired by feminism, some by conventional accounts of male-female relationships.)

It’s fair enough to insist that capitalist exchange offers a useful metaphor for describing some of what goes on in some relationships. But as a general description it’s an impoverished account of human relationships and motivations. Do many people make subtle, perhaps subconscious calculations about the traits and assets they find valuable in

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a romantic partner and about what they have to offer when looking for love? Sure. This seems inevitable and any account of human relationships that would condemn it relies on ideals that can't seriously be applied to human beings. Does that mean that romantic relationships are nothing more than beady-eyed arms-length bargains between rational self-interested utility maximizers? Of course not. Human motivations are much more complex than that. Self-interest, calculation, and exchange coexist with altruism, a yearning for justice, and those ineffable forms of affection we call love. The less noble instincts that separate human beings from the angels don't negate the nobler ones we share with them. So it is with racial capitalism: calculation and cynical self-interest blend with more egalitarian and pluralist feelings about race, just as selfishness and altruism blend in many human affairs.

The meme of capitalism — with its Marxian implications — can be misleading, distracting us from more precise diagnoses. Take Leong's discussion of affirmative action and the diversity rationale. She is certainly right to point out that "diversity" has come with unadvertised costs for members of racial minority groups and for the institutions that claim to value it. One of those costs is, as Leong argues, that minority applicants and students valued for adding diversity are expected to live up to it by performing diversity. Leong, employing the analytics of capitalism, describes this as the commodification of identity, from which we can infer, following Marx, that the main injuries are exploitation and alienation (see pp. 2204–12).

But the problems Leong details are less instances of alienation or exploitation caused by the logic of markets and commodification than they are more mundane problems of stereotyping and compelled performance of conventional roles familiar from employment discrimination controversies such as *Price Waterhouse v. Hopkins*. If one wants philosophical analysis of the problem, Louis Althusser, who used the term "interpellation" to describe the process of being named and defined by an authoritative source of power, or Michel Foucault, who developed the theory of power/knowledge in which a host of professionals, experts, pundits, doctors, scientists, and scholars define various "types" of personalities and informally enforce standards of normal or aberrant behavior,<sup>1</sup> would be more apt citations than Karl Marx.

Some of Leong's concerns are hard to distinguish from social and psychological pressures endemic in modern society and suffered by people of all races. For instance, she, following Professors Devon Car-

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<sup>1</sup> See generally MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* (Alan Sheridan trans., Vintage Books 2d ed. 1995); MICHEL FOUCAULT, *1 THE HISTORY OF SEXUALITY* (Robert Hurley trans., Pantheon Books 1978).

bado and Mitu Gulati<sup>2</sup> argues that racial capitalism will force minorities to fracture and distort their racial identities in order to conform to workplace or institutional demands for a specific type of identity performance: the good black or unthreatening Latino. She cites employers who seek out African-American applicants, but discourage certain “racially correlated identity performance[s]” such as “Afro, bush or mod” hairstyles or punish certain affectations or modes of dress and complains that “white culture prefers a version of blackness that is closer to Martin Luther King, Jr., than to Al Sharpton; closer to Wynnton Marsalis than to Lil Wayne” (p. 2208). But don’t all employees, regardless of race, feel pressure to conform to the expectations of their employers? Couldn’t we as easily complain of the employer who prefers the affectations of Bill Clinton to Luke and Bo Duke from Hazard County, or Jackie Kennedy to Snooki from the Jersey Shore? Has everyone who has put on a suit and tie or pair of nylons they would rather leave in the closet because of a workplace dress code or unstated norm of professionalism been forced to suppress or fracture their true identity? Maybe. But, if so, isn’t that an inevitable consequence of social interaction in a large, cosmopolitan milieu where people of very different tastes and values must find common norms of interaction? In other words, isn’t that just *life in the big city*.

The attack on racial capitalism implies that we could approach Leong’s ideal and make race relations sincere and racial identity wholesome by ridding both of the influence of markets and of commodification. But what precisely is the whole, undistorted, unalienated racial identity that Leong would free from racial capitalism? When Karl Marx attacked the alienation inherent in the sale of labor and commodities for cash, he aspired to facilitate unalienated relationships in which the human satisfaction of improving the natural world for the benefit of fellow human beings would replace the cold, abstract logic of capitalist exchange.<sup>3</sup> This aspiration, famously, strikes many as hopelessly utopian, but it is a coherent and imaginable goal. Can we even imagine an analogous utopian ideal of unalienated racial identity? Leong is far from alone in holding out such a dream of a pure racial identity, freely chosen by the individual, unified internally and resilient to (or protected from) corruption from outside. Much of the subgenre of critical race theory and multicultural studies that is concerned with forced assimilation, cultural rights, the politics of recognition relies, in one way or another, on some ideal of a racial identity that one chooses freely, “without the restrictions of externally imposed

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<sup>2</sup> See generally DEVON W. CARBADO AND MITU GULATI, *ACTING WHITE?* (2013).

<sup>3</sup> See generally ERICH FROMM, *MARX’S CONCEPT OF MAN* (2003).

definition” as Caribbean feminist Audre Lorde once put it.<sup>4</sup> I’ve written against this vein of scholarship at some length<sup>5</sup> and my disagreements with Leong flow from the same spring. There can be no pure, whole, and freely chosen racial identity. Racial identity is a product of the very alienating and corrupt, motivations, coercion, and power relations Leong would try to purify it of. As for the injury of fragmentation, recall that what the great philosopher of American race relations W. E. B. Du Bois called “double-consciousness”<sup>6</sup> was not a corruption of racial identity but an inevitable consequence of it, perhaps part of its very essence. There is no hope of success for a project that seeks to make racial identities free or uncoerced, but there is the potential to create new and unnoticed forms of coercion and regulation, as well as to waste a lot of time, while pursuing such a project.

I suspect this dream of a pure and true racial identity is an instance of the more universally longed-for true self, timeless and coherent; a self that is present to itself and an objective presence in the world. Much ink has been spilt by deeper thinkers than I about the quest for this unified self; this fusion of the security and wholeness of the womb and the certainty and finality of the grave. There may be for each of us a true and enduring self, hidden in the realm of Platonic ideals or waiting to reveal itself in the heaven of immortal souls. If we must pursue this grail here on earth, let it be the crusade of psychology, religion, perhaps philosophy — but not of law. Law, like its close cousin, politics, must be the art of the possible. And if there is a true self, it does not have a race: racial identity, borne of greed, hypocrisy and domination and kept alive by the absence of goodwill and the frailty of justice, is not something that we can keep safe from corruption or work pure; it is something that we must simply make the best of, by limiting the damage it causes and, yes, by capitalizing on the few opportunities for reform and improvement it might provide.

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<sup>4</sup> Audre Lorde, *Age, Race, Class, and Sex: Women Redefining Difference*, in *OUT THERE: MARGINALIZATION AND CONTEMPORARY CULTURES* 285 (Russell Ferguson et al. eds., 1990).

<sup>5</sup> See generally RICHARD T. FORD, *RACIAL CULTURE* (2005).

<sup>6</sup> W. E. B. DU BOIS, *THE SOULS OF BLACK FOLK* 5 (Penguin Books 1996) (1903).