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Book Review

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## **Identity Capitalists: The Powerful Insiders Who Exploit Diversity to Maintain Inequality by Nancy Leong**

### **Abstract**

In her first book *Identity Capitalists: The Powerful Insiders Who Exploit Diversity to Maintain Inequality* (“Identity Capitalists”), Nancy Leong gifts readers the reflective space—and a new vocabulary—to process the interplay between power, identity, and inequality that animates interpersonal relationships and institutional practices embedded in American life.

## Book Review

## *Identity Capitalists: The Powerful Insiders Who Exploit Diversity to Maintain Inequality* by Nancy Leong<sup>1</sup>

ZARA NARAIN<sup>2</sup>

IN HER FIRST BOOK *Identity Capitalists: The Powerful Insiders Who Exploit Diversity to Maintain Inequality* (“*Identity Capitalists*”), Nancy Leong gifts readers the reflective space—and a new vocabulary—to process the interplay between power, identity, and inequality that animates interpersonal relationships and institutional practices embedded in American life. The first Asian woman to hold the rank of full professor at the University of Denver Sturm College of Law, Leong has written extensively on race discrimination.<sup>3</sup> In 2013, Leong coined the term “racial capitalism” to “describe the way that white people and predominantly white institutions derive value from nonwhiteness.”<sup>4</sup> The focus of *Identity Capitalists* is broader in scope. Leong defines the process of identity capitalism as one “in which an ingroup benefits from outgroup identity,”<sup>5</sup> wherein the ingroup controls power and resources and is typically comprised of those privileged by race, gender, sexual orientation, and class.<sup>6</sup>

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1. (Stanford University Press, 2021) [Leong, *Identity Capitalism*].
  2. JD Candidate (2022), Osgoode Hall Law School.
  3. Leong, *Identity Capitalism*, *supra* note 1 at 186. See also Sturm College of Law, “Nancy Leong” (last accessed November 2021), online: <[www.law.du.edu/about/people/nancy-leong](http://www.law.du.edu/about/people/nancy-leong)>.
  4. Nancy Leong, “Racial Capitalism” (2013) 126 Harv L Rev 2151 at 2154.
  5. Leong, *Identity Capitalism*, *supra* note 1 at 15-16.
  6. *Ibid* at 2-3.

Leong's objective is straightforward, yet ambitious, especially in terms of the honesty and authenticity she demands of the reader.<sup>7</sup> She aims to convince the reader that “we are all participants in identity capitalism, willing or not, witting or not—[herself] included.”<sup>8</sup> This is alarming because, at its core, identity capitalism is about “self-interest” and “power”—not “tolerance, diversity, inclusion, or equality” despite projecting the façade of these four ideals.<sup>9</sup>

Selecting litigants, literary personalities, pop icons, and politicians as her cast, Leong skillfully narrates who identity capitalists—and their counterparts, identity entrepreneurs<sup>10</sup>—are, what motivates them, and what the consequences of their behaviour are on an individual, institutional, and societal basis.<sup>11</sup> Clear, accessible language and a variety of gripping visuals (*e.g.*, photographs, advertisements, and illustrations) also contribute to the book's narrative appeal and its potential to reach a broad audience beyond academia.

If Leong's cast of characters is any indication, her coverage in this book is broad. For the purposes of this review, Leong's insight into the identity capitalism that takes place within institutions of higher education and workplaces is particularly salient, as is her discussion of the pervasiveness of identity capitalism in judicial reasoning.

In the first chapter, “Fake Diversity,” Leong exposes the lengths that some institutions of higher education go to make themselves *appear* more diverse, rather than actually invest in substantive reform to *become* more diverse.<sup>12</sup> Using the story of Diallo Shabazz, Leong explains the practice of “racial photoshopping,” whereby racialized students are photoshopped into institutional promotional material to signal diversity.<sup>13</sup> Shabazz, for example, intended to sue the University of Wisconsin after discovering that his image was photoshopped without his consent onto the cover of its 2001 admissions brochure. Although Shabazz ultimately settled with the school for a “budgetary apology” in the form of \$10 million earmarked for recruitment of minority students and diversity

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7. See *ibid* at 159. Honesty and authenticity are notably two of the four principles Leong suggests are foundational to “replacing superficial identity capitalism with deeper, more substantive progress toward equality” (*ibid*). The other two principles are education and apology.

8. *Ibid* at 11.

9. *Ibid* at 7.

10. *Ibid*. Chapter four is dedicated to describing identity entrepreneurs. Namely, “individuals who leverage their outgroup identity to benefit themselves.” See *ibid* at 84.

11. *Ibid* at 3–4.

12. See *ibid* at 39.

13. See *ibid* at 13–14.

initiatives within the University of Wisconsin system,”<sup>14</sup> this example illustrates the ways in which identity capitalism leaves outgroup members feeling alienated and objectified as a result of institutions assigning them instrumental value.<sup>15</sup> Leong demonstrates that racialized students are valuable insofar as they are able to further recruitment efforts and appease financial stakeholders “who care about diversity.”<sup>16</sup>

In her conclusion, Leong illustrates another way in which racialized students are instrumentally valuable to institutions of higher education: White peers can learn from them. Leong specifically considers the task of putting together first year sections at her historically white law school. The school’s practice has been to evenly divide racialized students among the sections, despite the fact that this causes racialized students to feel isolated from one another and reluctant to speak up in class when topics like race discrimination arise.<sup>17</sup> Leong describes one meeting in which she participated where white administrators defended the school’s practice. She summarizes one administrator’s comments as follows:

[T]he whole reason we even bothered to admit a racially diverse student body was so that *all* the students would benefit from a racially diverse class, and concentrating the nonwhite students in a few sections would deprive the white students in the other sections of that benefit. In other words, we *had* to spread the students of color around, because otherwise how would the *white* students benefit from their presence.<sup>18</sup>

Leong attempted to practice what she preached, she explains, by putting the principles of honesty, apology, education, and authenticity into practice when she spoke up during this meeting to address these troubling comments.<sup>19</sup> Her preface to the tale of implementing these principles is puzzling, however, as it signifies little hope in the efficacy of these strategies to result in change. Leong remarks that she knew speaking up in a room full of white people “would probably be an exercise in futility.”<sup>20</sup> But it is in precisely such spaces that one needs to speak up and trust that the strategies relied on will have an impact.

Chapters one through six demonstrate Leong’s ability to name and illustrate a problem. However, Leong’s own reaction when confronted with an identity capitalist problem inspires little confidence in the promise of the four

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14. *Ibid* at 14.

15. See *ibid* at 39.

16. *Ibid* at 26.

17. See *ibid* at 184.

18. *Ibid* [emphasis in original].

19. *Ibid* at 185.

20. *Ibid*.

foundational principles—*i.e.*, honesty, apology, education, and authenticity—to “replac[e] superficial identity capitalism with deeper, more substantive progress toward equality.”<sup>21</sup> Leong’s foundational principles are framed as a means to reform the law and society more generally, but they are rather conservative. Her solutions focus heavily on what complicit ingroup members and institutions can do to reactively recognize and rectify identity capitalist practices. But these solutions ignore the potential for proactive outgroup solidarity and resistance to identity capitalism. Leong furnishes readers with the terms “identity capitalist” and “identity entrepreneur” but leaves readers without the language for resistance within this framework. How can the *objects* of identity capitalism transform themselves into *subjects* capable of dismantling the conditions that create identity capitalism and reinforce inequality? With this goal in mind, what do demands for honesty, apology, education, and authenticity look like from the perspectives of marginalized groups?

Solutions aside, the real strength of Leong’s book is the mix of historical and contemporary examples she provides of identity capitalist practice and logic. Chapter two, “All-American Exploitation,” is organized around the themes of “slavery, suffrage, and segregation.”<sup>22</sup> Leong analyzes the pro-slavery discourse of Reverend Leander Ker, George Fitzhugh, and John Caldwell Calhoun to demonstrate how “identity capitalism was used to obscure the horrors of slavery and to translate the practice into something palatable, or even preferred” by suppressing enslaved peoples’ voices and purporting to speak for them.<sup>23</sup> In the context of suffrage, Leong demonstrates how “anti-suffrage men,” like William Crosswell Doane, sought to elevate the “words, arguments, and identities of women who opposed suffrage” to continue to deny women the right to vote.<sup>24</sup> Returning to race and America’s transition from slavery to segregation, Leong illustrates how, in addition to strategic suppression and elevation of voice, identity capitalists also resorted to the distortion and fictional creation of outgroup voice to advance an anti-integration agenda.<sup>25</sup> Ultimately, each example builds to the conclusion that “identity capitalism is an ingroup’s response to a perceived loss of power.”<sup>26</sup>

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21. *Ibid* at 159.

22. *Ibid* at 43.

23. *Ibid* at 44.

24. *Ibid* at 47.

25. See *ibid* at 50-52.

26. *Ibid* at 52.

Chapter three, “Anxiety and Absolution,” is the most theory-driven of the book. Leong canvasses the concepts of “status anxiety,”<sup>27</sup> “status leaks,”<sup>28</sup> and “identity performance”<sup>29</sup> to illustrate that the fear of being perceived as a bigot drives ingroup identity capitalist behaviour, and to a lesser extent that outgroup members do exercise agency in choosing to pass, cover, or flaunt their identity.<sup>30</sup> Chapter four, “Identity Entrepreneurs,” traces the consequences of outgroup members exercising their agency to leverage their identity and benefit themselves—sometimes harmlessly and other times at the expense of their communities.<sup>31</sup> Leong contrasts identity entrepreneurship with “selling out,” observing that they can both lead to the same disadvantages.<sup>32</sup>

Chapters five, “Unequal Protection,” and six, “The Law of Identity Capitalism,” contain the most interesting legal analyses in the book. The former chapter focuses on antidiscrimination law, specifically the pitfalls and promises of workplace antidiscrimination law. Leong proposes four concrete reforms to American antidiscrimination law.<sup>33</sup> In broad strokes, decision-makers are encouraged to deepen their analyses of discrimination to include identity performance, taking into account the social significance of certain “identity-correlated” behaviours such as hairstyle, accent, mannerism, et cetera, and to disregard largely irrelevant evidence like an employer’s past record on an issue or whether an outgroup member participated in the alleged discriminatory decision-making. Decision-makers must also avoid victim-blaming identity entrepreneurs in the context of sexual harassment suits.<sup>34</sup> The latter chapter looks beyond antidiscrimination law, towards the way that identity capitalism operates in the domain of copyright, constitutional, and criminal law.<sup>35</sup> The most resonant examples that Leong illustrates include how identity capitalism in the law allows offensive speech to become protected speech;<sup>36</sup> how it weaponizes the words of a minority of women to scale back on reproductive rights for all;<sup>37</sup> how it manipulates the words of civil rights leaders like Martin Luther King

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27. See *ibid* at 65ff.

28. See *ibid* at 69ff.

29. See *ibid* at 78ff.

30. See *ibid* at 64, 78.

31. See *ibid* at 88.

32. See *ibid*.

33. *Ibid* at 130.

34. See *ibid* at 131-32.

35. *Ibid* at 137.

36. See *ibid* at 145-46.

37. See *ibid* at 148-51.

Jr. to reach decisions that disadvantage Black people;<sup>38</sup> and how convenient, race-neutral explanations are deployed to prevent outgroups from being tried by a jury of their peers.<sup>39</sup>

Leong writes for an American audience, but identity capitalism is not a uniquely American problem. *Identity Capitalists* has important lessons to teach Canadian law students, law school administrators, and members of the legal and non-legal community more generally. Leong casts a wide net in terms of the readers she hopes to attract, using a range of examples likely to appeal to academics and pop culture fanatics alike. Although she does not hold back in her critiques of prominent political and judicial figures, Leong's solutions to the problem of identity capitalism are mild. While critical theorists will appreciate the new terminology provided by Leong, they will not find reconstruction to be a prominent theme of this book.

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38. See *ibid* at 155-56.

39. See *ibid* at 144.