

# Half/Full

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*Research suggests that multiracial identity is uniquely malleable, and I will focus here on the significance of that malleability for mixed-Asian individuals, primarily those of Asian/White descent. At various times, mixed-Asian individuals may present themselves as “half” Asian; other times, they may present themselves as “full” Asian, “full” White, or, in some instances, fully ambiguous. Mixed-Asian racial identity negotiation, I will argue, often presents considerable challenges for mixed-Asian individuals. And mixed-Asian individuals are often targets of what I have elsewhere called “racial capitalism” by White individuals and predominantly White institutions. Still, I conclude that the malleability of mixed-Asian racial identity provides unique opportunities for destabilizing existing views about racial identity, reinvigorating stale conversations about race, and ultimately facilitating progress toward a racially egalitarian society.*

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## INTRODUCTION

About one out of six new marriages in America takes place between two people of different races—an all-time high. And Asian Americans are ahead of the curve: about one in three Asian Americans marries someone of a different race. Such relationships precipitate what commentators have described as an “interracial baby boom.”

Research suggests that multiracial identity is uniquely malleable, and I will focus here on the significance of that malleability for mixed-Asian individuals.<sup>1</sup> At various times, mixed-Asian individuals may present themselves as “half” Asian; other times, they may present themselves as “full” Asian, “full” White, or, in some instances, fully ambiguous.<sup>2</sup> Mixed-Asian racial identity negotiation, I will argue, often presents considerable challenges for mixed-Asian individuals. And mixed-Asian individuals are often targets of what I have elsewhere called “racial capitalism” by White individuals and predominantly White institutions—that is, these individuals and institutions derive value from mixed-Asian racial identity.<sup>3</sup> Still, I conclude that the malleability of mixed-Asian racial identity provides unique opportunities for destabilizing existing views about racial identity, reinvigorating stale conversations about race, and ultimately facilitating progress toward a racially egalitarian society.

In Part I, the Essay examines the social scientific literature regarding mixed-Asian racial identity. As the result of a wide range of factors, including phenotypic characteristics, life experiences, and family dynamics, mixed-Asian individuals often view their racial identity differently from members of any of the traditional socially ascribed racial categories. In particular, mixed-Asian identity is often more fluid and dynamic, shifting from one context to the next. Such fluidity and dynamism is facilitated by a social view of mixed-Asian individuals as occupying a unique racial space. Part I also briefly notes the relative dearth of legal discourse relating to mixed-Asians.

Part II explores the way mixed-Asian racial fluidity is used, manipulated, exploited, and leveraged. Mixed-Asian individuals often engage in what scholars have described as “identity performance” or “identity work,” so as to present

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1. Throughout the Essay, I will refer to individuals who either identify themselves or are identified by others as part Asian as “mixed-Asian.” I will refer to individuals who more generally identify themselves or are identified by others as belonging to more than one race as “multiracial.” I choose to discuss racial identity primarily in terms of the five categories described by David Hollinger as the “ethno-racial pentagon”—Black, Asian, White, Latino/a, and Native American—but I readily acknowledge that these categories are socially constructed. I capitalize all five categories in order to place them on equivalent linguistic standing. See DAVID A. HOLLINGER, *POSTETHNIC AMERICA: BEYOND MULTICULTURALISM* 8 (1995).

2. Of course, Asian/White individuals are not the only subcategory of mixed-Asian individuals. They are, however, my focus in this Essay because they arguably occupy both ingroup and outgroup identities simultaneously. I will explore this theme further in Part I.

3. Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151 (2013).

themselves in the manner most favorable in a particular social or employment context. For example, mixed-Asian individuals may be able to present themselves in a way that is more palatable to employers by displaying greater assimilation into dominant White norms of behavior and self-presentation. But mixed-Asian racial identity is also exploited by White individuals and predominantly White individuals. For example, an employer might count a mixed-Asian person for purposes of its diversity numbers even if that person does not personally consider herself a minority, or might incorporate photos of a mixed-Asian person on its website or in its promotional literature in order to advertise its nominal commitment to diversity without engaging harder questions of structural disadvantage and remediation.

Part III examines some of the negative implications of such uses of mixed-Asian identity, which harm both mixed-Asian individuals and society at large. For example, mixed-Asian individuals suffer identity demands that harm the integrity of their racial identity and submerge their own complex processes of identity negotiation. More broadly, exploitation of mixed-Asian racial identity by White individuals and predominantly White institutions often essentializes<sup>4</sup> mixed-Asian individuals, impoverishes our discourse around race, fosters racial resentment by inhibiting the reparative work essential to improved racial relations, and detracts from more meaningful antidiscrimination goals.

Despite the many negative implications of manipulating mixed-Asian identity in the ways I have described, the Essay concludes in Part IV by suggesting that the fluidity and malleability of mixed-Asian identity also has the potential to serve as a powerful tool for racial reform. Mixed-Asian racial malleability has the potential to destabilize entrenched beliefs about race, to lay bare hidden demands of racial identity performance, and to engender a dramatic improvement in our conversations and policies regarding race.

### I. MIXED-ASIAN IDENTITY

This Part situates mixed-Asian individuals in society, focusing in particular on two features of mixed-Asian identity—its multiplicity and fluidity. It examines how the broader social backdrop manifests itself specifically within the legal realm by describing cases that examine mixed-Asian individuals and briefly surveying the law review literature regarding mixed-Asian individuals.

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4. Essentialism is “the notion that a unitary, ‘essential’ [mixed-race] experience can be isolated and described independently” of other identity categories such as gender, class, or sexual orientation. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (developing the notion of essentialism in the context of gender).

### A. *Sociology*

Unsurprisingly, in light of the so-called “interracial baby boom,”<sup>5</sup> much sociological research has examined biracial and multiracial identity. Research has examined both the way that multiracial people identify themselves (“self-identification”) and the way that others identify multiracial people (“other-identification”).

With respect to self-identification, two features of multiracial identity have received considerable attention: first, its multiplicity—that is, the many different ways in which multiracial people identify themselves; and second, its fluidity—that is, the frequency with which such identification can change. For example, David Brunnsma and Kerry Ann Rockquemore’s study of Black/White college students in Detroit found that they adopted a range of identities, with only 13.6% classifying themselves as “Black” and 3.6% classifying themselves as “White.”<sup>6</sup> Five percent of participants classified themselves as having a “protean” identity, meaning that their race was fluid and changed depending on the situation, while 12.2% adopted a “transcendent” identity, by declining to identify with any category and rejecting race as “a socially constructed category that is utterly meaningless to their individual sense of self.”<sup>7</sup> These varying identities gesture at the fluidity of mixed-race identity. A considerable volume of research has found that multiracial individuals identify themselves differently at different times.<sup>8</sup> Moreover, such fluidity is manipulable to a degree. The way that individuals report racial and ethnic origin is sensitive to how the question is asked, and responses change based on the format of the question.<sup>9</sup> In short, mixed-Asian individuals often move from an identity that is “half” Asian and “half” White to one that is “full” Asian or “full” White.<sup>10</sup>

Like individuals of other races, mixed-Asian individuals exhibit multiplicity and fluidity of identity. Research has identified a variety of factors that determine

5. Susan Kalish, *Demographics: Interracial Baby Boom*, FUTURIST, May 1993, at 54; see also Julie C. Lythcott Haines, *Where Do Mixed Babies Belong? Racial Classification in America and Its Implications for Transracial Adoption*, 29 HARV. C.R.-C.L.L. REV. 531, 531–32, 531 n.4 (1994).

6. David L. Brunnsma & Kerry Ann Rockquemore, *What Does “Black” Mean? Exploring the Epistemological Stranglehold of Racial Categorization*, 28 CRITICAL SOC. 101, 110 (2002).

7. *Id.* at 111.

8. See, e.g., David R. Harris & Jeremiah Joseph Sim, *Who is Multiracial? Assessing the Complexity of Lived Race*, 67 AM. SOC. REV. 614, 618–20 (2002) (finding that 10.3% of all youth provide inconsistent responses to questions regarding racial identity asked at school and at home, and that the percentage who identified as multiracial varied from 3.6% to 6.8%); Steven Hitlin et al., *Racial Self-Categorization in Adolescence: Multiracial Development and Social Pathways*, 77 CHILD DEV. 1298, 1298 (2006) (finding that multiracial adolescents were four times more likely to change their racial identification between two scheduled interviews than they were to report consistently).

9. Charles Hirschman et al., *The Meaning and Measurement of Race in the U.S. Census: Glimpses into the Future*, 37 DEMOGRAPHY 381, 384–85 (2000).

10. This fluidity inspires the title of my Essay.

how mixed-Asians identify themselves, including physical appearance,<sup>11</sup> parental identity,<sup>12</sup> life experience,<sup>13</sup> socioeconomic status,<sup>14</sup> and upbringing.<sup>15</sup> One of the largest studies conducted to date, involving 110 Asian/White individuals, found that “a respondent’s phenotype and the level of cultural exposure to her or his Asian heritage [were] the most important factors influencing racial identity.”<sup>16</sup> This variance reveals the multiplicity of self-identification—different individuals identify themselves differently. In Brian Chol Soo Standen’s work involving detailed interviews with eight individuals with Korean mothers and White fathers, the question, “What term would you use to identify yourself, in terms of racial, ethnic, cultural background, and/or nationality?” produced at least six different responses: Jewish Korean American, Asian American, Asian American more specifically Korean American, half Korean and half White, half Korean and half Caucasian, and hapa.<sup>17</sup>

Moreover, mixed-Asian identity seems particularly vulnerable to manipulation and constraint—or, alternatively, empowered for expression and choice—by the available options in a particular context. For example, one study of Asian/White individuals found that when asked, “With what race do you most identify?,” participants divided evenly, with 50.9% choosing White and 49.1% choosing Asian.<sup>18</sup> Yet when the same set of individuals were asked, “If filling out the 1990 U.S. Census, in which you had to choose one racial category, which would you choose?,” approximately 34% of respondents who stated that they identified as White in the first question would have chosen to label themselves as

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11. E.g., Julie M. AhnAllen et al., *Relationship Between Physical Appearance, Sense of Belonging and Exclusion, and Racial/Ethnic Self-Identification Among Multiracial Japanese European Americans*, 12 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 673, 675–76 (2006); Jamie Mihoko Doyle & Grace Kao, *Are Racial Identities of Multiracials Stable? Changing Identification Among Single and Multiple Race Individuals*, 70 SOC. PSYCHOL. Q. 405, 411 (2007).

12. Research has found that—unlike Black/White individuals, who are more likely to identify with their fathers’ race—Asian/White individuals tend to identify with their mother’s race. Jenifer Bratter & Holly E. Heard, *Mother’s, Father’s, or Both? Parental Gender and Parent-Child Interactions in the Racial Classification of Adolescents*, 24 SOC. F. 658, 670–71 (2009). Parental identification is not, however, dispositive for either group. *Id.*

13. Doyle & Kao, *supra* note 11, at 415; Ronald E. Hall, *Biracial Sensitive Practice: Expanding Social Services to an Invisible Population*, 5 J. HUM. BEHAV. SOC. ENV. 29, 31 (2002).

14. Doyle & Kao, *supra* note 11, at 411; Sarah S.M. Townsend et al., *Being Mixed: Who Claims a Biracial Identity?*, 18 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 91, 95 (2012).

15. Doyle & Kao, *supra* note 11, at 411; Rogelio Saenz et al., *Persistence and Change in Asian Identity Among Children of Intermarried Couples*, 38 SOC. PERSP. 175, 178 (1995).

16. Nikki Khanna, *The Role of Reflected Appraisals in Racial Identity: The Case of Multiracial Asians*, 67 SOC. PSYCHOL. Q. 115, 122 (2004).

17. Brian Chol Soo Standen, *Without a Template: The Biracial Korean/White Experience*, in THE MULTIRACIAL EXPERIENCE: RACIAL BORDERS AS THE NEW FRONTIER 245, 253 (Maria P.P. Root ed., 1996). For those who may be unfamiliar with the term, “hapa” is derived from Hawaiian and “is used to identify biracial or multiracial individuals who are half-Asian.” *About Hapastories.com*, HAPA STORIES.COM, at <http://www.hapastories.com/about.php> (last visited Mar. 15, 2013).

18. Khanna, *supra* note 16, at 119–20.

Asian on the census.<sup>19</sup> A series of structured interviews with eight Korean/White individuals found similar fluidity. One participant noted that to “most everyone” he identified himself as Asian American, but “to other Asian Americans, probably hapa.”<sup>20</sup> Other participants also acknowledged that they identified themselves differently in different situations; for example, they were more likely to identify as Korean when they were with their Korean family members.<sup>21</sup> And Jamie Mihoko Doyle and Grace Kao have examined the determinants of racial identity for multiracial individuals, and found that multiracials identify differently not only depending on context, but also during different times in their lives.<sup>22</sup>

Research therefore reveals that mixed-Asian individuals identify themselves in a wide variety of ways depending on a range of contextual variables, and that, moreover, such identification may shift over short or long periods of time.

Perhaps less surprisingly, others identify multiracial individuals in a variety of ways and see them differently depending on context. For example, researchers have found that, when subjects are required to encounter a constructed Facebook profile, White individuals identified a profile of a racially ambiguous person differently depending on a range of factors—including whether the person’s interests were stereotypically Black or stereotypically White.<sup>23</sup> Other research reflects this unsurprising finding.<sup>24</sup>

Thus, both mixed-Asians’ self-identification and other-identification shifts depending on a host of contextual variables. This malleability sets the stage for the unique role that mixed-Asian identity plays in society.

### B. Legal Discourse

Scholars have recognized the unique harms suffered by multiracial individuals. For example, I have elsewhere argued that multiracial people suffer discrimination *as multiracial*—that is, someone who expresses animus against an Asian/White person is not merely expressing animus against Asian-ness or Whiteness.<sup>25</sup> Rather, the Asian/White person is seen as a distinct entity—

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19. *Id.*

20. Standen, *supra* note 17, at 253.

21. *Id.*

22. Doyle & Kao, *supra* note 11, at 405.

23. Virginia A. Newton et al., *The Effect of Stereotypical Cues on the Social Categorization and Judgment of Ambiguous-Race Targets*, 4 J. INTERPERSONAL REL., INTERGROUP REL. & IDENTITY 31, 39 (2011).

24. See, e.g., Kristin Pauker & Nalini Ambady, *Multiracial Faces: How Categorization Affects Memory at the Boundaries of Race*, 65 J. SOC. ISSUES 69 (2009) (examining categorization of multiracial individuals by members of other races).

25. Nancy Leong, *Judicial Erasure of Mixed-Race Discrimination*, 59 AM. U. L. REV. 469, 483–504 (2010).

threatening, challenging, and therefore subject to animus.<sup>26</sup> Scot Rives agrees, offering an account of the unique discrimination that multiracial people suffer.<sup>27</sup>

Despite the evidence of animus against multiracial people, including mixed-Asian people, both courts and prevailing legal doctrine do a poor job of recognizing and remedying this animus. My previous research revealed that, in adjudicating Equal Protection and Title VII claims, judges almost universally treated multiracial people as members of a monoracial category.<sup>28</sup> Rives offers some explanations for this phenomenon, arguing that the categorization of mixed-race individuals has not kept pace with the presence of such individuals in society.<sup>29</sup>

Scholarship has examined the intersection of multiracial identification with the legal system in a range of other ways. A great deal of attention has focused on the implications of recognizing a multiracial category—primarily on the census, but also on other legal mechanisms. For instance, scholars have examined the implications of categorization for other aspects of the legal system, such as the Voting Rights Act,<sup>30</sup> transracial adoption,<sup>31</sup> and affirmative action.<sup>32</sup> And considerable research has also focused on the closely related topic of interracial marriage.<sup>33</sup>

Relatively little legal scholarship has focused on mixed-Asian individuals. One reason may be that suits by individuals expressly identified as mixed-Asian are relatively rare in the courts—extensive research found only six cases in the past twenty-five years in which a mixed-Asian individual was even *mentioned*,<sup>34</sup> with mixed-Asian plaintiffs in discrimination suits even more rare.<sup>35</sup> That is, there is less of a legal hook to examine mixed-Asian people because they are little-recognized by courts. A related reason is that our society remains focused on the

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26. *Id.*

27. Scot Rives, *Multiracial Work: Handing over the Discretionary Tool of Multiracialism*, 58 UCLA L. REV. 1303, 1325–30 (2011).

28. Leong, *supra* note 25, at 510.

29. Rives, *supra* note 27, at 1333.

30. Alaina R. Walker, *Choosing to Be Multiracial in America*, 21 BERKELEY LA RAZA L.J. 61, 63 (2011).

31. *See generally* Haimes, *supra* note 5.

32. *See generally* Nancy Leong, *Multiracial Identity and Affirmative Action*, 12 UCLA ASIAN PAC. AM. L.J. 1 (2007).

33. While such scholarship abounds, one useful recent collection is the 2007 symposium at the University of Wisconsin examining the fortieth anniversary of *Loving v. Virginia*, 388 U.S. 1 (1967).

34. Extensive searching by myself and my research assistant revealed only six cases in which a mixed-Asian person was *mentioned*. *Hunter v. Regents of the Univ. of Cal.*, 190 F.3d 1061, 1068 (9th Cir. 1999); *Peters v. INS*, No. 93-4389, 1993 WL 391372 (5th Cir. Sept. 20, 1993); *In re Mickel O.*, 197 Cal. App. 4th 586, 596 (Cal. App. 2011); *Blasi v. Pen Argyl Area Sch. Dist.*, No. 10-6814, 2011 WL 4528313, at \*1 (E.D. Pa. Sept. 30, 2011); *State v. Powers*, No. W2009-01068-CCA-R3-PD, 2012 WL 601173, at \*12 (Tenn. Crim. App. Feb. 22, 2012).

35. We found two such cases. *Hunter*, 190 F.3d at 1061; *Blasi*, 2011 WL 4528313, at \*1.

Black-White binary. Although scholars have urged movement beyond this paradigm,<sup>36</sup> change has come slowly.

This Essay, then, strives to think specifically about mixed-Asian identity—how it functions both within and beyond the legal system. While we cannot treat mixed-Asian people as emblematic of multiracial people in general, the situation of mixed-Asian people sheds light on the condition of mixed-race America, and, more generally, on the role of race in American society.

## II. USING MIXED-ASIAN IDENTITY

This Part explores some of the ways that mixed-Asian racial identity is used. As the result of preexisting distributions of power along racial lines, predominantly White individuals and institutions can and do derive value from mixed-Asian racial identity. Within this power structure, mixed-Asian individuals can themselves also derive value from their own racial identity. While I do not claim these are the only ways that mixed-Asian identity may be used or valued, they present a useful starting point for subsequent analysis.

### *A. Commodification*

I have elsewhere explored the phenomenon of “racial capitalism”—the process whereby White people and predominantly White institutions derive value from non-White racial identity.<sup>37</sup> The concept combines Marxian notions of capital, in conjunction with research on social capital and status markets. I define “racial capital” as the economic and social value derived from an individual’s racial identity, either by that individual, by other individuals, or by institutions. The value is not always economic in the immediate sense, although it may be transformed into economic terms. For instance, acquiring racial capital might allow someone to deflect charges of racism.<sup>38</sup> It might provide credibility in making decisions that affect public policy.<sup>39</sup> Or it might allow an institution to avoid legal liability for race-based discrimination.<sup>40</sup>

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36. See, e.g., Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1266–68 (1993); Juan Perea, *The Black/White Binary Paradigm of Race: The “Normal” Science of American Racial Thought*, 85 CALIF. L. REV. 1213, 1215 (1997); Juan F. Perea, *Ethnicity and the Constitution: Beyond the Black and White Binary Constitution*, 36 WM. & MARY L. REV. 571, 573 (1995).

37. See generally Leong, *supra* note 3, at 2153–54.

38. This form of racial capital can take the form of referring to one’s non-White friends—the inference is that, if one has non-White friends, one cannot be racist. Devin Friedman, *Will You Be My Black Friend?*, GQ (Nov. 2008), <http://www.gq.com/news-politics/mens-lives/200810/devin-friedman-craiglist-oprah-black-white-friends-obama>.

39. For instance, following Hurricane Katrina, George W. Bush addressed the NAACP’s annual meeting after having declined the invitation several years in a row. See, e.g., Sheryl Gay Stolberg, *Bush, in First Speech to N.A.A.C.P., Offers Message of Reconciliation*, N.Y. TIMES, July 21, 2006, at A16 (mentioning George Bush’s references to his “black friends”).

40. Compare WAL-MART CLASS WEBSITE, [http://www.walmartclass.com/public\\_home.html](http://www.walmartclass.com/public_home.html)

The Marxian account of capital also makes transparent the power dynamics that determine the valuation of racial identity. Although all individuals produce the commodity of racial identity, it is members of the dominant group—generally White people and predominantly White institutions—who most often engage in racial capitalism by capturing the surplus value associated with non-Whiteness. They gain access to non-Whiteness through affiliations with friends, colleagues, and employees, and continue to derive both economic and social value from those affiliations. The ironic result, then, is that White people and predominantly White institutions are the primary determinants of what non-Whiteness is worth.<sup>41</sup>

Racial capitalism melds concepts from other theories of capital. But defining racial capital as a distinct concept is useful because it highlights the unique ways in which individuals and institutions derive value from race. Although I do not advocate racial exceptionalism,<sup>42</sup> the framework I develop acknowledges that our unique history regarding race and the social meaning of race warrant a specific analysis of the way that race continues to be assigned value in society today.

Two examples illustrate the troubling ways that racial capitalism currently occurs within institutions. First, consider the way that race functions in higher education. A diverse student body has become a point of pride among colleges and universities, as well as a prerequisite to remaining competitive in the enrollment competition.<sup>43</sup> With a few exceptions, elite schools are predominantly White; thus, achieving diversity usually means increasing the enrollment of non-White students.<sup>44</sup>

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(last visited Mar. 15, 2013), with *Wal-Mart Details Progress Toward Becoming a Leader in Employment Practices*, PR NEWSWIRE, <http://www.prnewswire.com/news-releases/wal-mart-details-progress-toward-becoming-a-leader-in-employment-practices-74373262.html> (last visited Mar. 15, 2013).

41. My account of racial capitalism does not exclude the possibility that non-White people and predominantly non-White institutions could engage in racial capitalism. But given the existing system of racial value instantiated by the diversity rationale, the long history of subordination of and discrimination against non-White people, and the fact that White people still control the vast majority of powerful institutions, I focus on that form of racial capitalism here.

42. That is, I am not claiming that we should view race as more important than other identity categories. Nor am I claiming that race supplies capital while other identity categories do not. My aim is to acknowledge that different identity categories occupy different historical and social spaces and to reflect that understanding in my account of how race is valued. Of course, the intersection of race with other identity categories such as gender, sexual orientation, and class affects the way racial identity is valued. See generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

43. For example, the influential *U.S. News and World Report* rankings maintain a companion ranking system that rates schools on the level of diversity they maintain. *Law School Diversity Index*, U.S. NEWS & WORLD REP., <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-school-diversity-rankings> (last visited Mar. 15, 2013).

44. See SEAN F. REARDON ET AL., RACE, INCOME, AND ENROLLMENT PATTERNS IN HIGHLY SELECTIVE COLLEGES, 1982–2004 (2012), available at <http://cepa.stanford.edu/sites/default/files/race%20income%20%26%20selective%20college%20enrollment%20august%202012.pdf>; *Labor Force Status of 2011 High School Graduates and 2010–11 High School Dropouts 16 to 24 Years Old by School Enrollment, Educational Attainment, Sex, Race, and Hispanic or Latino Ethnicity, October 2011*, BUREAU LAB. STAT., U.S. DEPT' LAB. (Apr. 19, 2012), <http://www.bls.gov/news.release/hsgec.t01>

In short, claiming non-Whiteness in their student bodies allows schools—often predominantly White schools—to gain status and respect. These qualities translate into economic gain as those schools attract more applicants and more donors.<sup>45</sup> Non-Whiteness thus yields both social and economic value for colleges and universities through the process of racial capitalism.

Another example of racial capitalism emerges in the workplace. Racial capitalism leads directly to economic gain in labor markets. Businesses—large law firms are a prime example—emphasize the presence of non-Whiteness within their work force. Many such businesses purport to embrace diversity—and hence non-Whiteness—because it makes good business sense, touting a range of substantive benefits that flow from a work environment that includes individuals of many backgrounds.<sup>46</sup> A variant of this reasoning is the notion that—even if diversity does not improve a company’s substantive output—clients desire diversity, and so diversifying the ranks helps the bottom line. Advocates of these variants of the “good for business” rationale support creating a diverse workforce because it generates economic benefits.<sup>47</sup>

As a result of the value placed upon non-White racial identity in—but not limited to—institutions of higher education and workplaces, such identity has become a commodity. As I will explain in more detail in subsequent sections, mixed-Asian identity is a uniquely valuable commodity in such settings for a number of reasons. I next turn to the way that mixed-Asian identity is used by White people and predominantly White institutions and examine the ways in which such identity may be leveraged by mixed-Asian people themselves.

### B. *Exploitation*

The commodification of mixed-Asian racial identity manifests itself in exploitation by White individuals and predominantly White individuals. In a range of circumstances, mixed-Asian racial identity represents an opportunity for White

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.htm (revealing that 1,577,000 white students were enrolled in two- and four-year colleges and universities, as compared to 326,000 black students, 124,000 Asian students, and 415,000 students of Hispanic or Latino ethnicity).

45. While it is difficult to quantify the connection between diversity, enrollment, and economic stability, the fact that schools take pains to publicize their diversity statistics strongly suggests their belief in its importance to their public image. Scott Jaschik, *Viewbook Diversity vs. Real Diversity*, INSIDE HIGHER EDUC. (July 2, 2008), <http://www.insidehighered.com/news/2008/07/02/viewbooks>; accord Matthew Hartley & Christopher C. Morphey, *What’s Being Sold and to What End? A Content Analysis of College Viewbooks*, 79 J. OF HIGHER EDUC. 671, 686–87 (2008) (finding that a survey of 371 colleges’ and universities’ promotional materials revealed that Black and Asian students were overrepresented by more than fifty percent relative to their actual presence in the student body, and also found that seventy-five percent of schools appeared to over-represent diversity).

46. See David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good for Business”*: *The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1556 (2004) (describing the history of the “good for business” rationale).

47. *Id.* at 1571–91.

individuals and predominantly White individuals to derive racial value. As I have described elsewhere, some of the opportunities that mixed-Asian individuals present are common to all people of color.<sup>48</sup> Others—and these will be my focus here—are exclusive to or more predominant with mixed-Asian individuals.

One way is through the social value derived from displaying evidence of nonracism and inclusive attitudes. While racism has not disappeared from society, there is stigma associated with being overtly racist.<sup>49</sup> For White people, then, displaying their friendships with non-White people represents a way of demonstrating their nonracism,<sup>50</sup> and friendships with mixed-Asian people of Asian/White descent are a particularly desirable opportunity for several reasons. First, mixed-Asian people are often seen as more phenotypically similar to White people and also sometimes have more stereotypically anglophone last names. These attributes often make mixed-Asian people more familiar, and therefore less threatening, to White individuals. For the same reason, mixed-Asian people may be more welcome in predominantly White institutions. Their presence ratifies the institution as racially inclusive, yet requires relatively minimal effort from the institution in terms of challenging existing beliefs or dealing with unfamiliar physical appearances. Moreover, whether or not this view is justified, mixed-Asian people are less likely to trigger White guilt. In part due to the “model minority”<sup>51</sup> stereotype and in part due to the foundational role of slavery in the United States, Asian people—and even more so mixed-Asian people—are not perceived as victims of historical discrimination and oppression to the same extent as, for example, Black people.<sup>52</sup> Thus, mixed-Asian people allow White people to claim diversity without presenting the same challenges to the culture with which they are familiar or triggering the same feelings of guilt and anxiety as members of other races might. Perhaps even more importantly, the recognition that a White/Asian person is part White may comfort White people by causing them to think that the White/Asian person is complicit in any guilt they might experience—that is, the

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48. See generally Leong, *supra* note 3.

49. See, e.g., Elic Mystal, *Racist Is the New N-Word*, TRUE/SLANT (Feb. 11, 2010, 8:42 AM), <http://trueslant.com/eliemystal/2010/02/11/racist-is-the-new-n-word>.

50. See, e.g., EDUARDO BONILLA SILVA, *RACISM WITHOUT RACISTS* 53–72 (3d ed. 2010); Bradford Plumer, *Rick Santorum: A Brief History of the “Some of My Best Friends” Defense*, NEW REPUBLIC (June 16, 2011), <http://www.tnr.com/article/politics/90059/gop-rick-santorum-best-friend-defense>; Kristen Warner, *Having Black Friends*, STUFF WHITE PEOPLE LIKE (Jan. 21, 2008, 12:00 AM), <http://stuffwhitepeoplelike.com/2008/01/21/14-having-black-friends>.

51. Nancy Chung Allred, *Asian Americans and Affirmative Action: From Yellow Peril to Model Minority and Back Again*, 14 *ASIAN AM. L.J.* 57, 69 & nn.93–140 (2007) (describing the model minority myth and “mascotting” of Asian Americans by Whites).

52. I am not claiming here that Asian people are less likely to be victims of racism than Black people, or that historical atrocities perpetrated against Asians—for example, World War II’s internment camps—were more or less grievous than slavery. In my view, suffering contests do little to advance the conversation. My claim is simply that White people may see Asians, and particularly mixed-Asians, as less victimized, and therefore their presence may be less likely to trigger White guilt and anxiety about White privilege.

White/Asian person's Whiteness is read by the White person to mean: "I don't have to feel guilty around this person."

In some instances, mixed-Asian people also present an opportunity for White people and predominantly White institutions to further their reputation as racially diverse without actually embracing greater cultural difference within the workplace. As noted, Asian American individuals are stereotyped as members of a model minority and are likewise stereotyped as better assimilated to dominant White cultural norms than members of other racial groups.<sup>53</sup> While these stereotypes are, of course, not always true, Asian/White individuals are more likely to grow up in environments that express White cultural norms than are mixed-Asian individuals who are not Asian/White. Moreover, as with friendships, Asian/White individuals are more likely to allow this display of nonracism without overtly triggering White guilt.<sup>54</sup>

Mixed-Asian racial identity also represents an opportunity for identity control by White people and predominantly White institutions. Because mixed-Asian identity is often fluid, outsiders may manipulate it. Particularly with respect to White/Asian identity, an institution may encourage perception of such people as Asian when doing so is advantageous to the institution, and as White in other circumstances. For example, an employer might count a White/Asian person for purposes of its diversity numbers, even if that person does not personally consider herself a minority.<sup>55</sup> In a similar fashion, it might incorporate photos of a White/Asian person on its website or in its promotional literature in order to advertise its nominal commitment to diversity without engaging harder questions of structural disadvantage and remediation. Or the institution may assign the mixed-Asian employee to projects involving an Asian client, or encourage the mixed-Asian student to attend a lunch with a prospective Asian donor, as a way of facilitating better relationships between the institution and the outsider.<sup>56</sup>

Yet when the mixed-Asian person is involved in other activities where homogeneity is more valued, the institution may prefer to present her as White. The institution may do this in a variety of ways. It may emphasize an individual's stereotypically non-Asian traits while downplaying his stereotypically Asian traits. For example, a law firm may create a biographical page for an individual that notes that he played college football while omitting that he is a classically trained pianist. Or a partner may introduce a client to a mixed-Asian individual by noting

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53. Chung Allred, *supra* note 51.

54. *See supra* text accompanying notes 41–43.

55. Research has found that as many as half of White/Asian individuals identify as White, at least in some circumstances. Khanna, *supra* note 16, at 119–20.

56. While I know of no literature that systematically addresses the prevalence of such incidents, I have personally experienced everything described in this paragraph, and know other White/Asian people who have as well.

that he is particularly skilled at facilitating social connection, while downplaying his technical skills.

Mixed-Asian people also are often subject to racial capitalism in the form of exoticism. The New York Times, among others, reports that “ethnically ambiguous” models are particularly in vogue.<sup>57</sup> As one executive explained: “Today what’s ethnically neutral, diverse or ambiguous has tremendous appeal . . . Both in the mainstream and at the high end of the marketplace, what is perceived as good, desirable, successful is often a face whose heritage is hard to pin down.”<sup>58</sup> In fashion and other style-oriented industries, then, companies literally make money by selling the exotic look of their models, rendering mixed-Asian individuals a commodity to be viewed and desired.

And, finally, mixed-Asian people present an opportunity for investment in the narrative of postracialism.<sup>59</sup> Pointing to evidence of racial mixing adds fuel to the conservative narrative that race simply no longer matters—indeed, the difficulty of classifying multiracial people has been invoked by conservatives in arguing against affirmative action policies.<sup>60</sup>

### C. Entrepreneurship

Within the system of racial capitalism, mixed-Asian actors are not passive pawns. Rather, mixed-Asian racial identity also presents opportunities for those who are identified as mixed.<sup>61</sup> To date, the scholarly literature has largely not addressed the possibilities specifically provided by mixed-Asian identity, and so the discussion in this section will be largely hypothetical and admittedly informed by personal experience and observation. My hope is that readers will find the analysis intuitively appealing and certainly worthy of further study.

Mixed-Asian individuals may leverage their identity in a variety of ways. For example, mixed-Asian individuals may be able to present themselves in a way that is more palatable to employers by displaying greater assimilation into dominant White norms of behavior and self-presentation. Alternatively, mixed-Asian individuals may find it advantageous in other circumstances to play up their Asian-

57. Ruth La Ferla, *Generation E.A.: Ethnically Ambiguous*, N.Y. TIMES, Dec. 28, 2003, §9, at 1, 9.

58. *Id.*

59. See generally andré douglas pond cummings, *The Associated Dangers of “Brilliant Disguises,” Color-Blind Constitutionalism, and Postracial Rhetoric*, 85 IND. L.J. 1277 (2010) (describing postracial rhetoric).

60. For example, at oral argument in *Gratz v. Bollinger*, counsel for the plaintiffs pointed to mixed race individuals as an example of why the University of Michigan’s affirmative action program is problematic, noting that the extent to which affirmative action is available depends on how the applicant identifies himself or herself during the application process. See Transcript of Oral Argument at 10–11, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (No. 02-516). However, the Court did not ultimately discuss the issue of multiracial identity in its opinion.

61. See Kerry Ann Rockquemore, *Deconstructing Tiger Woods: The Promise and the Pitfalls of Multiracial Identity*, in THE POLITICS OF MULTIRACIALISM: CHALLENGING RACIAL THINKING 125, 129–30 (Heather M. Dalmage ed., 2004).

ness—for example, when filling out college applications they may choose to write about their Asian heritage, or when seeking a choice assignment with an Asian company they may emphasize even tenuous connections to Asian culture.

I have described this leveraging of individual identity as “identity entrepreneurship.”<sup>62</sup> I argue that identity entrepreneurship is neither inherently good nor inherently bad. Depending on the context in which it occurs, it might be either. Ultimately, identity entrepreneurship should be evaluated in terms of whether it ultimately advances the decommodification of racial identity.<sup>63</sup> I mention it here primarily to emphasize that mixed-Asian individuals do exercise agency within the existing system of racial capitalism, in a society in which race is commodified.

Many of the ways in which mixed-Asian individuals may choose to engage in identity entrepreneurship mirror the ways in which White people engage in racial capitalism. That is, if White people value a particular conception of racial identity, mixed-Asian individuals might choose to engage in identity entrepreneurship to manifest that conception. For example, in an environment in which the dominant White culture values assimilation, an Asian/White individual with a non-Anglophone first name might adopt a nickname or might shorten a long and unfamiliar last name. Conversely, in an environment in which the dominant White culture values Asian-ness, an Asian/White individual might choose to do just the opposite to maximize the extent to which she is identified as Asian.

These hypothetical examples suggest that mixed-Asian people, and particularly Asian/White individuals, have uniquely broad opportunities when it comes to identity entrepreneurship. If Asian/White individuals affirmatively decide to manifest either an Asian or a White identity, the multiplicity and fluidity of their racial identification means that their presentation is likely to affect the way that others see them and will likely affect the value of their racial identity. Mixed-Asian identification, then, is a uniquely valuable commodity.<sup>64</sup>

### III. HARMS

This Part examines some of the negative implications of the uses of commodified mixed-Asian identity, which harm both mixed-Asian individuals and society at large. I argue that identity commodification itself constitutes a harm. Moreover, mixed-Asian individuals suffer identity demands that harm the integrity of their racial identity and submerge their own complex processes of identity negotiation. And at a broader social level, exploitation of mixed-Asian racial

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62. Nancy Leong, *Identity Entrepreneurs 2* (Mar. 24, 2013) (unpublished manuscript) (on file with author).

63. See *infra* Section III.

64. To be clear, I do not wish to argue that mixed-Asian identification is *more* valuable than other racial identities within a system of racial capitalism—only that the *manner* in which it is valued is distinctive.

identity by White individuals and predominantly White institutions often essentializes mixed-Asian individuals, impoverishes our discourse around race, fosters racial resentment by inhibiting the reparative work essential to improved racial relations, and detracts from more meaningful antidiscrimination goals.

#### *A. Intrinsic Harms of Commodification*

Commodification places things within the market and therefore within the realm of the mundane.<sup>65</sup> Scholars debate whether and in what circumstances commodification is socially desirable. Some, such as Richard Posner, have advocated for universal commodification;<sup>66</sup> others, such as Karl Marx, have argued for something approaching universal noncommodification.<sup>67</sup> While I incorporate elements of Marxian analysis in my discussion of racial capitalism, I do not adopt wholesale his views on commodification. Rather, I align myself with a pluralistic position, shared by many commentators,<sup>68</sup> in which commodification is appropriate in some instances but not in others. Moreover, as I have explained elsewhere, I do not develop a universal theory of commodification.<sup>69</sup> Rather, my analysis is limited to the notion that race should not be commodified.<sup>70</sup>

We should not commodify racial identity because commodification of race is inherently inconsistent with equality.<sup>71</sup> Commodification of race harms individual identity, degrades the quality of our discourse around race, and entrenches racial hierarchy. Moreover, there is no way to structure a transaction involving race in a way that avoids this degradation: racial identity is too closely linked with selfhood,

65. See, e.g., MICHAEL J. SANDEL, *WHAT MONEY CAN'T BUY: THE MORAL LIMITS OF MARKETS* 8–11 (2012) (discussing the effect of being placed in a market context).

66. See, e.g., Elisabeth M. Landes & Richard A. Posner, *The Economics of the Baby Shortage*, 7 J. LEGAL STUD. 323, 347–48 (1978) (outlining initial steps toward a free market system for baby adoption).

67. See generally KARL MARX, *CAPITAL: A CRITICAL ANALYSIS OF CAPITALIST PRODUCTION* 579–91, 621–35, 660 (Frederick Engels ed., Samuel Moore & Edward Aveling trans., 3d ed. 1903) (1867) (describing the economic distortions and social injustices created when wages are paid for labor).

68. See, e.g., Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849, 1903–17 (1987).

69. Leong, *supra* note 3, at 2199–2204.

70. *Id.* I will not fully recapitulate that analysis here, but I have found useful Michael Sandel's argument that commodification corrupts—that is, there is a “degrading effect of market valuation and exchange on certain goods and practices.” Michael J. Sandel, *What Money Can't Buy: The Moral Limits of Markets*, in *RETHINKING COMMODIFICATION* 122, 122 (Martha M. Ertman & Joan C. Williams eds., 2005); see also I. Glenn Cohen, *The Price of Everything, the Value of Nothing: Reframing the Commodification Debate*, 117 HARV. L. REV. 689, 703–10 (2003) (explaining that the transactions have an “expressive nature” that should be examined to determine whether the transaction either denigrates or preserves the value of the good exchanged). I also note that the argument for non-commodification of race might extend equally well to other identity categories, although I save discussion of those categories for another day.

71. I discuss this idea briefly here and in more detail elsewhere. See Leong, *supra* note 3.

and such a transaction cannot avoid evoking historical and ongoing racialized slavery in America.<sup>72</sup> Moreover, as a result of the disparity in status associated with membership in particular racial groups, racial capitalism disparately impacts White and non-White individuals. Indeed, it widens existing disparities. Because racial identity cannot be commodified and exchanged consistent with notions of equality, race should ideally remain uncommodified.<sup>73</sup>

### B. Harms to Individual Mixed-Asians

Commodification of racial identity inflicts distinct harms on mixed-Asian individuals: in particular, it fractures identity and creates pressure for them to engage in manifestations of racial identity that please White people. These harms reinforce the inequality of mixed-Asian people and White people.

Racial identity is a deeply personal characteristic that individuals negotiate throughout their lives.<sup>74</sup> This is particularly true with respect to non-White individuals, who—unlike White individuals, whose race is largely “invisible”—are required to think about their race continuously and to engage in intricate identity performances,<sup>75</sup> and even more true for mixed-Asian individuals, for whom identity negotiation is often a fraught process that lasts a lifetime.<sup>76</sup> Considerable social science research emphasizes the importance of racial identity formation to individual self-esteem and comfort with one’s surroundings.<sup>77</sup> Camille Gear Rich

72. The latter concern gestures at the distinction Cohen draws between “Conventionalist” and “Essentialist” accounts of corruption. The former examines the way goods and transactions are figured in a particular society; the latter looks to their inherent nature. Cohen, *supra* note 70, at 707.

73. My objection to the commodification of race is distinct from—and does not necessarily forbid—the commodification of culture, or even cultural artifacts that are associated with particular racial identities. Scholars disagree as to whether commodification of culture is objectionable. Some condemn it as appropriation. See, e.g., Greg Tate, *Nigs R Us, or How Blackfolk Became Fetish Objects*, in EVERYTHING BUT THE BURDEN: WHAT WHITE PEOPLE ARE TAKING FROM BLACK CULTURE 1, 4–5 (Greg Tate ed., 2003). Others view cultural commodification as rebellious, liberatory, and potentially transformative. See, e.g., Regina Austin, *Kwanzaa and the Commodification of Black Culture*, in RETHINKING COMMODIFICATION, *supra* note 70, at 178, 188.

74. See Michelle Adams, *Radical Integration*, 94 CALIF. L. REV. 261, 296–99 (2006) (examining the importance of racial identity formation for people of color in integrated America); Scott Cummings, *Affirmative Action and the Rhetoric of Individual Rights: Reclaiming Liberalism as a “Color-Conscious” Theory*, 13 HARV. BLACKLETTER L.J. 183, 233–35 (1997) (examining the individual struggle with racial identity); Camille Gear Rich, *Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII*, 79 N.Y.U. L. REV. 1134, 1172–86 (2004) (discussing racial identity formation and maintenance and collecting literature on the topic).

75. See Barbara J. Flagg, “Was Blind but Now I See”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 957 (1993) (“The most striking characteristic of whites’ consciousness of whiteness is that most of the time we don’t have any.”).

76. Doyle & Kao, *supra* note 11, at 417.

77. Rich, *supra* note 74, at 1172–86; see also Michelle Adams, *Radical Integration*, 94 CALIF. L. REV. 261, 296–99 (2006) (examining the importance of racial identity formation for people of color); Adriana J. Umaña-Taylor, *An Examination of Ethnic Identity and Self-Esteem with Diverse Populations: Exploring Variation by Ethnicity and Geography*, 13 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 178, 178 (2007) (describing empirical research which shows a “positive and significant

explains that, “[f]or individuals who have chosen to enact a particular racial or ethnic identity, race/ethnicity associated practices provide certain assurances about their group position and importance in the world, even though they know that certain material or personal realities will not remain the same.”<sup>78</sup> Racial identity thus allows individuals—particularly mixed-race individuals, whose identity may be subject to greater external pressure—to claim and establish ownership in a continuous version of personhood.

Commodification of race harms individuals by disassociating racial identity from the individual; it separates identity from the person who lives that identity.<sup>79</sup> The result of commodification is that race no longer forms one component of an integrated self. Such dissociation of racial identity undermines the effort that each individual puts forth into creating a cohesive, continuous racial identity. This is particularly true for mixed-Asian individuals, who, as sociological research reveals, undergo a particularly lengthy and fluid process of identity negotiation.<sup>80</sup> The treatment of race as a commodity thus fractures mixed-Asian identity, impairing mixed-Asian individuals’ relationship to a core personal trait.

Likewise, defining racial identity as a commodity places identity demands on mixed-Asian individuals. It pressures them both to perform their racial identity *and* to perform it in a way palatable to the White majority. These accepted identity categories and scripts then become self-perpetuating as social norms infuse case law and case law reinscribes social norms.<sup>81</sup>

The commodification of mixed-Asian identity pressures mixed-Asian people to make the Asian aspects of their identities salient at some times because their access to various social goods is determined, in part, by their performance of that identity. Mixed-Asian college applicants, for example, are frequently instructed to emphasize their non-Whiteness in their admissions essays in order to prove themselves qualified for admission under the diversity rationale.<sup>82</sup> Moreover, these identity demands do not disappear once a mixed-Asian person has matriculated at

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relationship between a composite ethnic identity score and indices of psychological well-being such as self-esteem”).

78. Rich, *supra* note 74, at 1180.

79. Scholars have noted the fragmentation of identity that results from commodification with respect to other identity categories as well. See, e.g., David M. Skover & Kelly Y. Testy, *LesBiGay Identity as Commodity*, 90 CALIF. L. REV. 223, 226 (2002) (discussing fragmentation of the “LesBiGay” identity).

80. See *supra* Part I.A.

81. See Kenneth L. Karst, *Myths of Identity: Individual and Group Portraits of Race and Sexual Orientation*, 43 UCLA L. REV. 263, 295 (1995) (“Law maintains a vocabulary of identities and sometimes even channels claims (and thus claimants) into recognized identity categories with conventional scripts for behavior.”); see also Devon W. Carbado, *Yellow by Law*, 97 CALIF. L. REV. 633, 634 (2009); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1381 (1988).

82. See Leong, *supra* note 32, at 22 n.98. Of course, this may vary from one school to the next, depending on whether Asian individuals are overrepresented in the application pool.

an educational institution or begun work at a company. Rather, when race is commodified and a person's added value is intertwined with her racial identity, the demand for production of that identity continues. Mixed-Asian individuals are therefore subject to ongoing pressure to justify their presence through performance of non-Whiteness.<sup>83</sup>

Yet in this complex performance of racial identity, making mixed-Asian identity salient is only the opening act. When racial identity is commodified, the value assigned to mixed-Asian identity varies depending on tastes reflected in the market. Some manifestations of mixed-Asian identity are viewed far more favorably by the dominant White culture, and mixed-Asian individuals are therefore rewarded for conforming their identity performances to those tastes.<sup>84</sup> That is, the dominant White culture favors an attractive, mildly exotic, and fully assimilated version of mixed-Asian identity that resembles Tiger Woods, Olivia Munn, and Dean Cain—not a less assimilated version in which the mixed-Asian individual's Asian-ness is more salient.<sup>85</sup>

This ongoing task of identity management is burdensome for mixed-Asian individuals. In their discussion of identity work, Devon Carbado and Mitu Gulati explain that, while “everyone works identity” to some degree, the greatest amount of identity work falls on outsiders to the dominant culture because they are subject to more negative stereotypes that they must work to overcome.<sup>86</sup> Identity work has downsides: it is exhausting and consuming; “the outsider not only has to perform, but she has to perform well.”<sup>87</sup> Moreover, “[i]dentity performances can become a denial of self,”<sup>88</sup> or can backfire if the performance is identified as strategic.<sup>89</sup> The costs of identity performance, then, are greater for non-White individuals.<sup>90</sup> And they may be greater still for mixed-Asian individuals, who have the additional burden of negotiating the boundary between two categories as well as negotiating social expectations.

Common practice reveals the double-edged sword of racial identity commodification: mixed-Asian identity is valued, but only if performed according to a script approved by majority identity groups in the workplace. Many employers

83. RICHARD THOMPSON FORD, *RACIAL CULTURE: A CRITIQUE* 59–64 (2005).

84. Cf. Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701, 714–19 (2001) (discussing difficulty in proving discrimination based on identity performance).

85. Indeed, Cain changed his name from Dean George Tanaka. *Biography for Dean Cain*, INTERNET MOVIE DATABASE, <http://www.imdb.com/name/nm0001002/bio> (last visited Mar. 15, 2013).

86. Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1269–70 (2000).

87. *Id.* at 1291.

88. *Id.* at 1288.

89. *Id.* at 1291.

90. For a discussion of the harms of ascribed identity scripts to democracy, see Holning Lau, *Identity Scripts & Democratic Deliberation*, 94 MINN. L. REV. 897, 915–930 (2010).

who have affirmative action plans nonetheless adopt policies hostile to some instances of racially correlated identity performance.<sup>91</sup> Particularly relevant to mixed-Asian individuals, employers may develop regulations banning non-English languages or ethnically associated dress such as saris.<sup>92</sup> For mixed-Asian individuals who wish to perform an identity associated with Asian-ness, such policies overtly suppress their favored performances of identity.

Even where a grooming policy does not explicitly ban an instance of racially correlated identity performance, employers may still prefer to hire minorities who perform versions of identity more congenial to the dominant group.<sup>93</sup> And—aware of these preferences—non-White people may feel obligated to perform their identity in a manner consistent with this unwritten code. For example, a Thai man whose name is difficult to pronounce for many native speakers of American English may feel obligated to adopt a nickname, or an Indian woman may feel obligated to replace her saris with khakis and button down shirts. Such identity performances often demand time, money, and psychological resources. Thus, in addition to the disparate burden of identity management, non-White people are also subject to the disparate pressure of conformity to a workplace culture more distant from their own.

Racial capitalism thus pressures non-White individuals to do identity work. Because part of their value in a particular setting is tied to their non-Whiteness, they are subtly—or not-so-subtly—encouraged both to perform their non-Whiteness and to do so in a way that meets with the approval of the dominant culture.

### C. Harms to Society

Broader social harms also result from commodifying mixed-Asian identity. Such commodification impoverishes our discourse around race, fosters racial resentment, and ultimately displaces more meaningful antiracist measures. These harms prevent progress towards eliminating racism and inequality.

We struggle to have good conversations about race. Commentators have examined this difficulty, both within and outside the academy.<sup>94</sup> Not long ago

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91. See *Equal Emp't Opportunity Comm'n v. United Va. Bank*, 615 F.2d 147, 155 (4th Cir. 1980) (examining the hiring practices of a bank that maintained an extensive affirmative action program yet repeatedly expressed disapproval in interview notes of “Afro, bush, or mod” hairstyles as well as the red hair of one black candidate); Rich, *supra* note 74, at 1136 n.1.

92. Rich, *supra* note 74, at 1158–66.

93. Tristin K. Green, *Work Culture and Discrimination*, 93 CALIF. L. REV. 623, 646, 658–59 (2005).

94. See BEVERLY DANIEL TATUM, *CAN WE TALK ABOUT RACE? AND OTHER CONVERSATIONS IN AN ERA OF SCHOOL RESEGREGATION*, at xiii, 83 (2007) (discussing conversations about race in cross-racial friendships); Richard Delgado, *Rodrigo's Book of Manners: How to Conduct a Conversation on Race—Standing, Imperial Scholarship, and Beyond*, 86 GEO. L.J. 1051 (1998) (proposing rules for conducting scholarly conversations about race); Matt Bai, *Race: Still Too Hot to*

President Barack Obama called on Americans to have a conversation about race—and some groups responded<sup>95</sup>—but it is hard to say whether this symbolic pronouncement and the response to it produced any improvement in our national discourse surrounding race.

Commodification of racial identity impoverishes our thought and discourse surrounding race. It infects the way we think about and talk to one other. As Margaret Jane Radin explains: “Theories are formed in words. Fact- and value-commitments are present in the language we use to reason and describe, and they shape our reasoning and description, and . . . reality itself.”<sup>96</sup> Commodifying race engenders thinking of race as just another *thing* that we can take, use, consume, exploit, enjoy, and discard as we wish. This way of thinking is fundamentally at odds with an attitude of respect for racial identity. Rather than inculcating this better way of thinking about race, commodification precludes it.

Commodification of mixed-Asian identity, and the corresponding desire for mixed-Asian identity as a racial commodity, continues to influence our thinking and our discourse.<sup>97</sup> This desire does not reflect what we might deem worthy feelings about race, such as a desire for respect or inclusion. Rather, it reveals a desire to improve institutional status by increasing the number of non-White people present. This desire dehumanizes mixed-Asian people by stripping away their individual identities—identities often acquired through considerable turmoil and soul-searching—and replacing their personhood with a single detached attribute: their race.

As things now stand, market rhetoric impoverishes our discursive practices surrounding race. Couching conversations about race in market rhetoric limits racial discourse to discussions of deriving monetary value. If a law firm merely wants to hire more people of color so that it can display their pictures on its website and brag about its numerical diversity to its customers, then the firm’s conversation about race halts at hiring. Such a conversation does not allow for examination of the broader historical, experiential, and cultural dimensions of racial identity. The result is a discourse in which only a thin and visible version of racial identity is welcomed; other aspects of individuals’ racial identity are squeezed out and dismissed from view because they lack economic significance.

Racial capitalism also fosters resentment from mixed-Asian people. Such individuals are well aware of attempts by White individuals and institutions to

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*Touch*, N.Y. TIMES, July 24, 2010, at WK1 (discussing difficulty of racial discourse); Lynette Holloway, *Why Is Talking About Race So Hard?*, ROOT (Sept. 24, 2010, 3:02 PM), <http://www.theroot.com/buzz/why-talking-about-race-so-hard> (discussing the difficulty of racial discourse).

95. Larry Rother & Michael Luo, *Groups Respond to Obama’s Call for National Discussion About Race*, N.Y. TIMES, Mar. 20, 2008, at A21.

96. Radin, *supra* note 68, at 1882.

97. Leong, *supra* note 3, at 2199–2204 (discussing how the commodification of racial identity, generally, affects our thinking and discourse; by extension, the same conclusion may be drawn regarding mixed-Asian identity).

capitalize on their identification.<sup>98</sup> Such resentment harms human relationships. Commodification of racial identity changes the meaning of interactions between individuals. In particular, commodification cheapens cross-racial interaction and attempts at cross-racial understanding. When race is viewed as a commodity, White people are encouraged to think of mixed-Asian people in terms of their instrumental value, not their intrinsic worth.

For mixed-Asian people, the harm to relationships is particularly salient when White people are (or are suspected of) fulfilling a racial fetish. Racial fetishes more generally are grounds for suspicion: would-be friends might be disingenuous; would-be lovers might be thrill seeking.<sup>99</sup> But given the exoticism to which mixed-Asian people are subject, these concerns are particularly trenchant. Mixed-Asian women often discuss, with a sigh, men who cannot stop talking about how “exotic” they are, and every racially ambiguous person has long ago grown weary of the line—in a bar, at the grocery store, at the DMV—“What’s your ethnic background?” or even, simply, “What are you?”<sup>100</sup> The market for race as a commodity gives rise to these suspicions, which ultimately pose an obstacle to the formation of cross-racial relationships that could dismantle racial barriers.

Importantly, such resentment and cynicism may result even if mixed-Asian individuals nominally acquiesce in the process of racial capitalism. Suppose that a young mixed-Asian lawyer receives an offer of employment from a prestigious law firm. The hiring partner explicitly tells her that the firm hired her in part because they wish to improve their “diversity numbers,” and from the moment she begins work at the firm it imposes identity demands on her ranging from photographing her for promotional materials to assigning her to work on a proposal for an Asian prospective client. The young lawyer may participate in these demands without objection; she may view them as the price of employment at the firm, a job she deeply wants, and may perceive that she will suffer negative repercussions if she objects to the firm’s demands. Nonetheless, the firm’s capitalization of her mixed-Asian identity may result in feelings of objectification, disenchantment, and alienation. Although the lawyer “consents” to the capitalization of her non-Whiteness in the sense that she continues to work at the firm, the resentment she

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98. This conclusion follows from the idea that non-White people are aware of—and resent—White individuals’ attempts to derive value from non-White racial identity. See generally DAMALI AYO, *HOW TO RENT A NEGRO* 2–3 (2005) (introducing the book as an ostensible guide to paying and being paid for that value).

99. See, e.g., Elizabeth F. Emens, *Intimate Discrimination: The State’s Role in the Accidents of Sex and Love*, 122 HARV. L. REV. 1307, 1343–45 (2009); Randall Kennedy, *Interracial Intimacies: Sex, Marriage, Identity, Adoption*, 17 HARV. BLACKLETTER L.J. 57, 66–70 (2001); Russell K. Robinson, *Structural Dimensions of Romantic Preferences*, 76 FORDHAM L. REV. 2787, 2805–08 (2008).

100. Carrie Lynn H. Okizaki, “*What Are You?*”: *Hapa-Girl and Multiracial Identity*, 71 U. COLO. L. REV. 463, 463 (2000).

feels as a result exemplifies the harm to racial relations the law firm's behavior has caused.

Capitalization of mixed-Asian identity, then, infuses already-tenuous race relations with inauthenticity, cynicism, and resentment. Whites view mixed-Asian individuals as sources of racial capital, or, perhaps, fear that mixed-Asian people will suspect them of capitalizing. Mixed-Asian people suspect their racial identification is being capitalized, even when, perhaps, there is no such intent. Within this maze of suspicion, the opportunity for genuine improvement in racial relations is often lost.

And finally, racial capitalism impedes progress toward racial equality. Given our nation's history of slavery, the exchange of racial commodities evokes the era in which Blacks and Native Americans were enslaved on the basis of race. And racialized slavery is far from a thing of the past, particularly for Asians and mixed-Asians, who form a large percentage of the slaves in America today.<sup>101</sup> Commodification of race cannot occur without evoking this social meaning. The commodification of race makes profound historical inequality a continuing reality by reminding us of the past and ongoing commodification of racialized bodies.

From a forward-looking perspective, treating mixed-Asian identification as a commodity leads to a preoccupation with bare numerical diversity at the expense of more meaningful markers of antidiscrimination progress. Accruing the economically beneficial features of race becomes an end in itself rather than a means to racial equality as the ultimate end.

Notably, preoccupation with numerical diversity often replaces efforts to make meaningful changes in institutional culture. Writing about the workplace, Tristin Green argues that "[t]he problem with work culture from an antidiscrimination perspective is that the process of social interaction is likely to be infected with discriminatory bias, leading to work cultures that are defined and imposed along racial and gender lines."<sup>102</sup> Failure to make changes in work culture, therefore, may mean that mixed-Asian employees will fail to thrive in a particular workplace regardless of whether the workplace has achieved the numerical diversity racial capitalism prioritizes.

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101. *Asian Massage Parlors*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us/massage-parlors> (last visited Mar. 15, 2013) (stating that there are over 5,000 brothels, disguised as massage parlors, in the United States, in which Asian sex slaves are forced to have sex with customers); Janice G. Raymond & Donna M. Hughes, *Sex Trafficking of Women in the United States: International and Domestic Trends*, COALITION AGAINST TRAFFICKING IN WOMEN 18–20, 41 (Mar. 2001), [http://www.heart-intl.net/HEART/081004/sex\\_traff\\_us.pdf](http://www.heart-intl.net/HEART/081004/sex_traff_us.pdf) (discussing research, based on the writings of men who solicited prostitutes, that showed women were marketed according to racist stereotypes, and johns often chose a woman/girl because of her race and had sexual expectations which aligned with racial stereotypes).

102. Green, *supra* note 93, at 643–53; see also Katharine T. Bartlett, *Making Good on Good Intentions: The Critical Role of Motivation in Reducing Implicit Workplace Discrimination*, 95 VA. L. REV. 1893, 1904–08, 1931, 1936 (explaining that implicit racial biases may be exacerbated when people feel forced to comply with nondiscrimination norms).

Preoccupation with numerical diversity in educational institutions leads to an analogous failing. Colleges and universities across the country are intent on acquiring adequate diversity statistics to report to their boards of trustees, post on their websites, and cite to prospective students. Yet at the same time, they may fail to take measures to ensure that mixed-Asian students integrate into campus life and that these students are emotionally well.<sup>103</sup> The effort—or lack thereof—to reform institutional culture marks the dramatic difference between numerical racial diversity and racial inclusiveness. Yet this focus on numerical diversity follows directly from racial capitalism.

Moreover, preoccupation with numerical diversity often preempts a more nuanced understanding of institutional demographics. Within educational institutions, for instance, some admissions offices focus single-mindedly on how many students they can report as falling within the crude categories of “Asian,” “Black,” or “Latino,” while remaining ignorant of more granular disparities within those categories.<sup>104</sup> Mixed-Asian individuals form a prime example of a demographic that is obliterated by such thinking.<sup>105</sup> Admissions offices tend to classify mixed-Asian students as members of the most under-represented race with which they might be identified.<sup>106</sup> Such thinking is troubling for a number of reasons. It uncomfortably recalls the “one drop” rule, in which even a “drop of . . . blood” of certain races was sufficient to categorize an individual as a member of that race.<sup>107</sup> It also encourages admissions committees to think instrumentally about how they can classify mixed-Asian individuals, rather than attempting to understand how such individuals classify themselves and are classified by others. And perhaps most problematically, it directs attention away from an understanding of race that is both broader and more nuanced—one that reflects current social realities and incorporates that understanding into institutional practices.

Surely numerical diversity is a prerequisite for accomplishing antidiscrimination goals of equality and just distribution of social goods. But much more than numerical diversity is also necessary: institutions must also make efforts to

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103. See, e.g., Note, *Educational Benefits Realized: Universities' Post-Admissions Policies and the Diversity Rationale*, 124 HARV. L. REV. 572, 584 (2010) (“Research suggests not only that institutional intervention is necessary to reap the benefits of structural diversity, but also that increasing *only* the structural diversity of an institution, without further intervention, may actually produce *negative* effects for students.”).

104. See, e.g., Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 STAN. L. REV. 855, 855–56 (1995) (discussing how the heterogeneity of Asians and Pacific Islanders is not addressed in Stanford Law’s affirmative action program).

105. Monoracial Asian subgroups are similarly obscured. Among Asians enrolled in colleges and universities, for example, individuals who identify as Chinese, Japanese, and Korean are well represented, but Thai, Lao, and Burmese remain underrepresented. *Id.* at 892–93.

106. Leong, *supra* note 32, at 7–9.

107. Christine B. Hickman, *The Devil and the One Drop Rule: Racial Categories, African Americans, and the U.S. Census*, 95 MICH. L. REV. 1161, 1188 (1997).

integrate their constituencies and foster good racial relations. Racial capitalism interferes with this ideal version of inclusive thinking because capitalization is complete at the time a mixed-Asian student matriculates or a mixed-Asian employee is hired. The practice of racial capitalism therefore does nothing to foster robust inclusive measures. Indeed, it diverts attention away from them.

One might argue that even if White individuals and institutions engage in racial capitalism for reasons we find repellent, there may be collateral consequences we desire. Suppose, for instance, that the management of a company seeks out mixed-Asian employees for precisely the worst reasons: they wish only to shield the company from litigation and to capture the image of the mixed-Asian employees in promotional materials featured on the company's website and printed literature. Nonetheless, the company's motivation leads it to take actions that result in a more diverse workforce, and perhaps even to place mixed-Asian individuals in prominent and powerful positions within the company.<sup>108</sup> We might hypothesize that, in the aggregate, the greater presence and influence of mixed-Asian individuals in the company's work force will lead to changes in the workplace culture, ultimately making it more inclusive and more congenial to individuals of all races.<sup>109</sup>

On the basis of presence alone, however, reform seems unlikely. Changing workplace culture is a complicated endeavor, difficult to undertake successfully even with strong institutional support.<sup>110</sup> An institution interested in non-Whiteness only as capital is unlikely to provide that support. And so I am skeptical that the bare presence of non-White individuals in incrementally greater numbers will change the culture of a company.<sup>111</sup>

#### IV. HALF FULL

Despite the vulnerability of mixed-Asian individuals to the harms of racial capitalism, the particular case of mixed-Asian identity still offers cause for optimism. Some mixed-Asian people move between two identity categories, while

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108. Cf. Patrick S. Shin & Mitu Gulati, *Showcasing Diversity*, 89 N.C. L. REV. 1017 (2011) (discussing how diversity in a workplace is perceived and its general value to employers).

109. See, e.g., Katherine T. Bartlett, *Showcasing: The Positive Spin*, 89 N.C. L. REV. 1055, 1068 (2011).

110. Green, *supra* note 93, at 664–82.

111. Perhaps implicit in my argument is the assumption that the change in numerical diversity will not be that great if the company wants only to protect itself from litigation and to have people of color around for display purposes. Of course, if a company's non-White representation were to increase from five percent to eighty percent, it seems far more likely that the culture of the company would change to a more inclusive one. But if the company's reasons for seeking out non-White individuals are limited to the purely self-interested ones I have associated with capitalizing non-Whiteness, it seems unrealistic to believe that the company would engage in behavior that would result in such a dramatic change in its workforce. Such goals can be accomplished with a much smaller change in the demographics of those that the company employs. See Leong, *supra* note 3, at 2223.

others occupy two or more categories simultaneously. This fluidity challenges the viability of racial categories altogether. Likewise, mixed-Asian people can alternately leverage or downplay qualities that identify them as Asian, revealing a unique racial agency and providing them with unique opportunities in the worlds of education, work, and society at large.

Perhaps most importantly, mixed-Asian individuals challenge expectations, causing others to rethink their orientation to race. As Doyle and Kao explain: “In a society where racial boundaries are meaningful, multiracials directly challenge common understandings of race.”<sup>112</sup> Simply by raising racial awareness, mixed-Asian individuals may promote dialogue and facilitate cross-racial understanding. More specifically, they may cause people who think of race as static and fixed to reexamine and modify those views. Not all of these effects, of course, are costless for mixed-Asian people. But this burden comes with an opportunity. Mixed-Asian people have the opportunity not only to engage in identity entrepreneurship that benefits them as individuals, but also to engage in constructive activity that advances our national conversation on race.

I conclude, then, with the suggestion that the glass is not half empty, but half full. The rapidly growing mixed-Asian population faces unique challenges. Yet that population also creates unique opportunities. We can hope that, with time, the multiplicity, fluidity, and ambiguity of mixed-Asian identification will inspire better racial understanding, that, in turn, will move us toward a society in which racial capitalism is a thing of the past.

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112. Doyle & Kao, *supra* note 11, at 405.