### 1NC – Misdisclosure

#### Interpretation: The affirmative must, upon flipping for sides, tell the negative what specific affirmative position they will be reading, within ten minutes of flipping for sides.

#### Violation: They lied about the aff version—all screenshots on the chain.

#### Misdisclosure is a voting issue—it sends us prepping a wrong aff for most of prep time which completely skews negative strategy when we have to debate an almost entirely different framework with different justifications which decks well prepared clash which is the only external impact to debate when we can become better arguers through the process of debate. Indepedently, lying is a voting issue because it teaches terrible norms where debaters can lie about anything from status of the cp to disclosure which breaks debate.

#### Indepedently a link to the K.

### 1NC – K

#### **Academic philosophy is foundationally and irredeemably antiblack. The 1AC’s abstraction from the manifestations of racialized violence absolves white philosophers of their contributions to America’s apathy towards black death which prevents effective mobilization against white supremacy. Vote negative to reject the Western metaphysical tradition and the perennial failure of white philosophy. Curry and Curry 18**

[Tommy, PhD, Prof. of Philosophy @ TAMU, Gwenetta, PhD, Ass. Prof. of Gender and Race Studies @ Alabama], “On the Perils of Race Neutrality and Anti-Blackness: Philosophy as an Irreconcilable Obstacle to (Black) Thought,” American Journal of Economics and Sociology, Vol. 77, Nos. 3-4 (May-September 2018). DOI: 10.1111/ajes.12244] JJ

We begin with the first author’s reflections on philosophy and its recurring problem of denying the realities of race and racism, reflections that have arisen as a Black (male) philosopher whose life has been threatened for doing Black philosophy. The experience of confronting death, being fearful of being killed doing my job as a critical race theorist, and being threatened with violence for thinking about racism in America has a profound effect on concretizing what is at stake in our theories about anti-Black racism. Whereas my work on race and racism in philosophy earlier in my career was dedicated to the problems created by the mass ignorance of the discipline to the political debates and ethnological history of Black philosophers in the 19th and 20th centuries, I now find myself thinking more seriously about the way that philosophy, really theory itself—our present categories of knowledge, such as race, class, and gender, found through disciplines—actually hastens the deaths of subjugated peoples in the United States. Academic philosophy routinely abstracts away from—directs thought to not attend to the realities of death, dying, and despair created by—antiBlack racism. Black, Brown, and Indigenous populations are routinely rationalized as disposable flesh. The deaths of these groups launch philosophical discussions of social injustice and spark awareness by whites, while the deaths of white people direct policy and demand outrage. Because racialized bodies are confined to inhumane living conditions that nurture violence and despair that become attributed to the savage nature of nonwhites and evidence of their inhumanity, the deaths of these dehumanized peoples are often measured against the dangers they are thought to pose to others. The interpretation of the inferior position that racialized groups occupy in the United States is grounded in how whites often think of themselves in relation to problem populations. This relationship is often rationalized by avoidance and by the denials of whites about being causally related to the harsh conditions imposed on nonwhites in the world. Philosophy, and its glorification of the rational individual, ignores the complexity of anti-Black racism by blaming the complacency, if not outright hostility, towards Blacks on the mass ignorance of white America. To remedy this problem, Black philosophers are asked to respond by gearing their writings, lectures, and professional presence to further educate and dialogue with white philosophers in order to enable them to better understand anti-Black racism and white supremacy (Curry 2008, 2015). This therapy is often rewarded as scholarship. Philosophical positions that analyze racism as a problem of miscommunication, misunderstanding, and ignorance (philosophies predicated on the capacity of whites to change) are rewarded and praised as the cutting edge and most impactful theories about race and racism. Reducing racism to a problem of recognition and understanding allows white philosophers to remain absolved of their contribution to the apathy that white America has to the death and subjugation Black Americans endure at the hands of the white race. To some readers, speaking about races as different groups with opposite, if not antagonistic, social lives seems to run contrary to the idea that there are no real races, just people, only the human race. This is the core of race-neutral theory in academic philosophy. Race neutrality asserts that while race, class, and gender may in fact differentiate bodies, the capacity for reason—the human essence beneath it all—is what is ultimately at stake in the recognition of difference. While this mantra has been offered to whites since the integrationist strategies of the U.S. Supreme Court in the 1950s under Chief Justice Earl Warren, it has had little effect in restructuring the psychology of white individuals or remedying the institutional practices of racism that continue to exclude or punish Black Americans. How are Black scholars to speak about racism, specifically the violence and death that seem to gravitate towards Black bodies if the rules of philosophy and the fragility of white Americans insist that racism is not the cause of the disproportionate death Black Americans suffer and race is not a significant factor in Black people’s lives? This article is an attempt to debunk the seemingly neutral starting point of academic philosophy. For decades, Black philosophers have attempted to educate white philosophers and reorient the philosophical anthropologies of the discipline. Black, Brown, and Indigenous philosophers have dedicated their lives and careers to educating white philosophers and students, with little to no effect on the composition and disposition of the discipline. While it is not uncommon for philosophy departments to say they support diversity, the reality is that many, if not most, Black philosophers continue to write about the problem of racism, their experiences of marginalization, and the violence they suffer from white colleagues, disciplinary organizations, and universities. This article should be read as an attempt not to amend the Western metaphysical tradition but to reveal the obstacles that indicate its perennial failure. It is the position of the authors that many of the demands for disciplinary change are often expressed as politics, when in reality there are issues of metaphysics (the concerns of being) and philosophical anthropology (the concerns about the (non)being capable of thinking) that are unaddressed in much of the current literature. Section I of this article describes what Black philosophy has taken to be the problem of racism in academic philosophy more broadly. Since the 1970s Black philosophers have criticized, attacked, and attempted to reform the discipline with little effect. This section interrogates why that is the case. Section II argues that the failure of philosophy to change is a problem of metaphysics or the illusion that Blackness is compatible with the idea of the white human. Section III presents the social scientific evidence demonstrating the seeming permanence of anti-Black racism and the dangerous nature of colorblind ideology, which does not recognize that societal organization and racism determine the life chances of Blacks. This article ends with a suggestion of what Black philosophy would look like if its primary mandate were not to persuade whites to remedy their own racist practices, but to diagnose and build strategies against the present problems of racism in philosophy before us.

#### The 1AC’s spikes and technical obfuscation are the hoops that black scholarship has to jump through to even get on the playing field --- white psychosis responds to critique with an abstraction to the level of fair play --- this fair play is embedded with a safe fantasy zone in which whiteness has the collective power to set rules and norms

Wilderson 08 Frank B Wilderson III, Associate Professor of African American Studies and Drama at the UC, Irvine, Former Member of militarized wing of the ANC. “Incognegro: A Memoir of Exile and Apartheid” Originally published by South End Press, 2008. IB

Whereas Selma Thornton attempts an institutional analysis of the Student Senate by way of a critique of Tim Harold and his practices, Harold responds with a ready made institutional defense and, later in the article, a defense of his integrity (a personalized response to an institutional analysis). He brings the scale of abstraction back down to the level most comfortable for White people: the individual and the uncontextualized realm of fair play. It's the White person's safety zone. I'm a good person, I'm a fair person, I treat everyone equally, the rules apply to everyone. Thornton and Rodriguez's comments don't indict Harold for being a "good" person, they indict him for being White: a way of being in the world which legitimates institutional practices (practices which Thornton and Rodriguez object to) accepts, and promotes, them as timeless—without origin, consequence, interest, or allegiance—natural and inevitable. "The sign-up sheet was posted for a week, the same way we treat any workshop." The whole idea that we treat everyone equally is only slightly more odious than the discussion or how we can treat everyone equally; because the problem is neither the practice nor the debates surrounding it, but the fact that White people can come together and wield enough institutional power to constitute a "We." "We" in the Student Senate, "We" in Aptos, "We" in Santa Cruz, "We" in the English department, "We" in the boardrooms. "We" are fair and balanced is as odious as "We" are in control—they are derivations of the same expression: "We" are the police. The claim of "balance and fair play" forecloses upon, not only the modest argument that the practices of the Cabrillo Student Senate are racist and illegitimate, but it also forecloses upon the more extended, comprehensive, and antagonistic argument that Cabrillo itself is racist and illegitimate. And what do we mean by Cabrillo? The White people who constitute its fantasies of pleasure and its discourse of legitimacy. The generous "We." So, let's bust "We" wide open and start at the end: White people are guilty until proven innocent. Fuck the compositional moves of substantiation and supporting evidence: I was at a conference in West Oakland last week where a thousand Black folks substantiated it a thousand different ways. You're free to go to West Oakland, find them, talk to them, get all the proof you need. You can drive three hours to the mountains, so you sure as hell can cut the time in half and drive to the inner city. Knock on any door. Anyone who knows 20 to 30 Black folks, intimately—and if you don't know 12 then you're not living in America, you're living in White America—knows the statement to be true. White people are guilty until proven innocent. Whites are guilty of being friends with each other, of standing up for their rights, of pledging allegiance to the flag, of reproducing concepts like fairness, meritocracy, balance, standards, norms, harmony between the races. Most of all. Whites are guilty of wanting stability and reform. White people, like Mr. Harold and those in the English Division, are guilty of asking themselves the question. How can we maintain the maximum amount of order (liberals at Cabrillo use euphemisms like peace, harmony, stability), with the minimum amount of change, while presenting ourselves—if but only to ourselves—as having the best of all possible intentions. Good people. Good intentions. White people are the only species, human or otherwise, capable of transforming the dross of good intentions into the gold of grand intentions, and naming it "change." ...These passive revolutions, fire and brimstone conflicts over which institutional reform is better than the other one, provide a smoke screen—a diversionary play of interlocutions—that keep real and necessary antagonisms at bay. White people are thus able to go home each night, perhaps a little wounded, but feeling better for having made Cabrillo a better place...for everyone... Before such hubris at high places makes us all a little too giddy, let me offer a cautionary note: it's scientifically impossible to manufacture shinola out of shit. But White liberals keep on trying and end up spending a lifetime not knowing shit from shinola. Because White people love their jobs, they love their institutions, they love their country, most of all they love each other. And every Black or Brown body that doesn't love the things you love is a threat to your love for each other. A threat to your fantasy space, your terrain of shared pleasures. Passive revolutions have a way of incorporating Black and Brown bodies to either term of the debate. What choice does one have? The third (possible, but always unspoken) term of the debate, White people are guilty of structuring debates which reproduce the institution and the institution reproduces America and America is always and everywhere a bad thing this term is never on the table, because the level of abstraction is too high for White liberals. They've got too much at stake: their friends, their family, their way of life. Let's keep it all at eye level, where whites can keep an eye on everything. So the Black body is incorporated. Because to be unincorporated is to say that what White liberals find valuable I have no use for. This, of course, is anti-institutional and shows a lack of breeding, not to mention a lack of gratitude for all the noblesse oblige which has been extended to the person of color to begin with. "We will incorporate colored folks into our fold, whenever possible and at our own pace, provided they're team players, speak highly of us, pretend to care what we're thinking, are highly qualified, blah, blah, blah...but, and this is key, we won't entertain the rancor which shits on our fantasy space. We've killed too many Indians, worked too many Chinese and Chicano fingers to the bone, set in motion the incarcerated genocide of too many Black folks, and we've spent too much time at the beach, or in our gardens, or hiking in the woods, or patting each other on the literary back, or teaching Shakespeare and the Greeks, or drinking together to honor our dead at retirement parties ("Hell, Jerry White let's throw a party for Joe White and Jane White who gave Cabrillo the best White years of their silly White lives, that we might all continue to do the same White thing." "Sounds good to me, Jack White. Say, you're a genius! Did you think of this party idea all on your own?" "No, Jerry White, we've been doing it for years, makes us feel important. Without these parties we might actually be confronted by our political impotence, our collective spinelessness, our insatiable appetite for gossip and administrative minutia, our fear of a Black Nation, our lack of will." "Whew! Jack White, we sound pathetic. We'd better throw that party pronto!" "White you are, Jerry." "Jack White, you old fart, you, you're still a genius, heh, heh, heh.") too much time White-bonding in an effort to forget how hard we killed and to forget how many bones we walk across each day just to get from our bedrooms to Cabrillo...too, too much for one of you coloreds to come in here and be so ungrateful as to tell us the very terms of our precious debates are specious."

#### Ethics must first be framed through antiblackness—the color ignorance of the 1ac is part of a racial paradigm of academic philosophy. Paradigms such as truth-testing that assume neutrality are constructed to allow white comfort to skirt away conversations from blackness.

Curry and Curry 18 Tommy J Curry [Professor of Philosophy at Texas A&M University. Research interests: 19th- century ethnology, Critical Race Theory, and Black Male Studies] Gwenetta Curry [Assistant Professor in Gender and Race Studies at the University of Alabama. Current areas of study include Africana Womanism, Black Family Studies, Black Male Studies, Medical Sociology, and Food Insecurity. Previous research investigated the relationship between educational attainment and body mass index among Black women] “On the Perils of Race Neutrality and Anti-Blackness: Philosophy as an Irreconcilable Obstacle to (Black) Thought” American Journal of Economics and Sociology, Vol. 77, Nos. 3-4 (May-September 2018). DOI: 10.1111/ajes.12244 © 2018 American Journal of Economics and Sociology, Inc. IB \*\*Brackets for ableist language\*\*

Eduardo Bonilla-Silva (2010: 15) explains that color[ignorant] blind racism emerged as a new racial ideology in the late 1960s concomitantly with the crystallization of the “new racism” as America’s new racial structure. Whites could no longer get away with the overt racist practices that were used before the civil rights movements but instead depended on more subtle ways to maintain their racial dominance without using race. In today’s society, there are very few whites who outwardly consider themselves to be racist, but they will still support systems that create inequalities among minority populations.

Bonilla-Silva’s (1996) account of racism leads him to develop the idea of racialized social systems, a term that refers to societies where economic, political, social, and ideological levels are partially structured by the placement of actors in racial categories. Bonilla-Silva theorizes that the racialized system incentivizes how racialized persons develop their identities within racist structures. Race is not simply imposed on bodies but is psychologically invested in by individuals in terms of how dominant racial groups identify themselves in relationship to the groups and individuals they construct as inferiors. For some groups assimilation is possible. This is the case for ethnic groups like the Irish and the Jews because their skin color is closer to that of whites, but it would be impossible for Black groups to similarly disappear. Colorblindness could exist in theory, but in reality, people see skin color, and in America, white skin stands for superiority.

Racial segregation has been a mainstay of the American race problem since the beginning of slavery. Assigning the places that Blacks belonged, whether it be in the fields or as the “house Negro,” has been one of the primary ways that racism has been enforced against Blacks. Even after the end of slavery, Jim Crow was established to terrorize Blacks into staying confined by their segregated spaces. We would argue that even today, the established racial dynamic in America maintains racial segregation. In The Hidden Cost of Being African American, Thomas Shapiro (2004: 152) has shown how whites have been able to move into the neighborhoods with the better schools and resources with the help of their inheritances. Many of the people he interviewed about their housing location stated that they did not look at race when deciding to move to certain neighborhoods but rather they focused on the lifestyle and “standards” of the people. Most stated that “it just happened” that there were no African Americans at the school their child attends. These understandings of “standards” and lifestyle are nested in the notion that white culture defines the norms and standards. Eduardo Bonilla-Silva’s concept of “white habitus” explains the tendency whites have for racial segregation, namely, their preference for moving to all-white neighborhoods and the effects this practice has on African Americans.

Shapiro’s work parallels the findings of Bonilla-Silva’s theory of white habitus. Bonilla-Silva et al. (2006: 233) describe “white habitus” as a racialized, uninterrupted socialization process that conditions and creates whites’ racial taste, perceptions, feelings, and emotions and their views on racial matters. The most pronounced effect of white habitus is that “it promotes a sense of group belonging (a white culture of solidarity) and negative views about nonwhites.” In these all-white spaces, whites become the standard or norm while anything or anyone different becomes unnatural or problematic. White habitus promotes minorities being viewed based on stereotypes and generalizations perpetuated by the media or through other second-hand sources. The greatest irony of Bonilla-Silva et al.’s interviews was their finding that “whites do not interpret their racial isolation and segregation from Blacks as something racial.” This qualitative project shows that even when whites are communally segregated from Blacks, they do not interpret this as a racialized or racist environment. The absence of Blacks is thought to be compatible with how white Americans think about color[ignorance] blindness. The idea of white superiority, or whiteonly neighborhoods, is not understood by many white Americans as racist. In one of Shapiro’s (2004: 152) interviews, the participant states that she has “Black friends.” However, Bonilla-Silva et al. (2006: 248) point out that when whites claim to have Black friends, they usually are referring to formal activities such as sports or classroom work groups. Once the activity is over the relationship ends; the so-called Black “friends” are not actual neighbors or friends who live within their social environment. Academic philosophy operates similarly.

#### The role of debate and the alternative is to surrender to blackness—Jarvis lacks the jurisdiction to tell black people what to do.

Brady and Murillo 14[Nicholas and John, “Black Imperative: A Forum on Solidarity in the Age of Coalition,” January 26, 2014, http://outofnowhereblog.wordpress.com/2014/01/26/black-imperative-a-forum-on-solidarity-in-the-age-of-coalition/, John Murillo III is a PhD student in the English department at Brown University, and a graduate of the University of California, Irvine, with bachelor’s degrees in Cognitive Science and English. His research interests are broad, and include extensive engagements with and within: Black Studies–particularly Afro-Pessimism–Narrative Theory; Theoretical Physics; Astrophysics; Cosmology; and Neuroscience. Nicholas Brady is an activist-scholar from Baltimore, Maryland. He was also a recent graduate of Johns Hopkins with a bachelor’s degree in Philosophy and currently a doctoral student at the University of California-Irvine Culture and Theory program.]

“Surrender to blackness.” A grammatical imperative. Grammatical because syntactically it marks a command to or demand of a generalized addressee: “(Everyone) surrender to blackness.” Grammatical because the black flesh scarred and tattooed by these illegible hieroglyphics enunciates at the level of symbolic and ontological world orders: “Surrender to blackness” is a command at the level of the foundations of thought and being themselves; grammatical. Imperative because if there is any hope for a revolutionary praxis along any lines—race, class, gender, sexuality, (dis)ability—it must centralize, which is to say look in the face of, which is to say begin to the work of real love for, the blackness [preposition] which “an authentic upheaval might be born.” #BlackPowerYellowPeril failed to recognize this imperative as legible, let alone heed and meet its command/demand. Created by Suey Park (@suey\_park), the hashtag sought to draw from and build upon the accomplishments of Black womyn activists on twitter and tumblr who have long mobilized to generate productive and revolutionary interjections into the world’s violently antiblack discourses (see, for example, #solidarityisforwhitewomen, and #blackmaleprivilege) through extended, communal commentary, usually in direct opposition to the censoring strictures of any kind of respectability politics. Discussions about and within the hashtag can be found here, here, here, here(though this is very hasty, a bit shortsighted, and still not doing much more than glancing at, as opposed to engaging blackness), and here. But broadly, the intentions of the hashtag are founded upon a belief in the possibility of solidarity/coalition politics between Blacks and Asians, seeking to challenge persistent “tensions” between the communities for the sake of a common struggle against ‘white supremacy.’ For those nonblack participants, the drive toward solidarity represents a purely innocent and unquestioned, unquestionable, desire. All critiques of Asian antiblackness are rendered as derailing the move toward solidarity, for they are to bring up the obvious – clearly we are all human, we make mistakes, but to continuously bring up the “mistakes” and never “move on” is to foreclose the possibility of solidarity. And what a wonderful thing the blacks of the conversation were foreclosing – this solidarity thing. What a wonderful thing others were offering to us and we simply would not take. And yet, the unthought question remains: have you truly earned the right to act in solidarity, to form solidarity, to even believe in solidarity? And what is this solidarity thing we all hold near and dear to our hearts? Have we ever experienced it or do we simply have images we have transformed into memories of a solidarity that never existed? I know Black people and Asian people have worked together in the past, but have we ever formed a solid whole? And who is to blame for the fact that we have never had solidarity? The hashtag implies that both “sides” play an equal part in the failure to form solidarity. In the face of this, confessing our sins to each other forms the moment where we can form emotional bonds: “see, you were as racist as I, and how unfortunate it is that we let old whitey come between us. Never again will whitey make us part.” This is the logic behind much of the Asian confessing – white supremacy duped us into being antiblack racists – and also fed into the backlash aimed at blacks – “stop playing oppression olympics, that’s what whitey wants.” It must be foregrounded here that antiblackness cannot be simplified as “anti-black racism” and it is a singularity with no equivalent force – “anti-Asian” racism is not the flipside of antiblackness nor is orientalism or islamophobia. Antiblackness predates white supremacy by at least 300 years (and much more than that depending on how we trace our history) and we can understand antiblackness as the general tethering of the very concept of life to the ontological and unspeakable, unthinkable force of black death. That statement is a place to begin to define antiblackness, it is not the end for this force weaves itself in infinite variety throughout all corners of the globe, forming globe into world. This is not simply about the little racist microaggressions that people listed in their tweets, this is about a global force that the world – not simply whites – bond over and form their lives inside of and through. What #BlackPowerYellowPeril revealed, however, is that the underside of coalition politics remains a violent and virulent antiblackness. As blacks— John Murillo III (@writedarkmatter), New Black School (@newblackschool), Nicholas Brady (@nubluez\_nick), and others—raised questions and comments in the spirit of that singular imperative—“Surrender to blackness”—antiblackness emerged in the violence of the response levied against it; one need only visit the hashtag to bear witness. From outright refusals to engage the antiblackness central to the histories and politics of nonblack communities of color, to denials of the foundational, global, and singular nature of antiblackness, and to the repeated calls to police and remove this disruptive blackness and its imperative from the conversation, antiblackness exploded onto the scene. All of this in the name of “coalition.” This is because “coalition” politics and possibilities are fetishized, not loved. The fetish denies the necessary recognition of antiblackness at coalition’s heart, and that antiblackness left unattended renders the imperative illegible. It is a fetishization, then, of antiblackness. The fetish object at the heart of the coalition has always been black flesh – a fetishization where pleasure and terror meet to create the bonds of solidarity people so desire. Here, we open a forum on how the hashtag embodies this fetish, the distinction between fetish and love that must be made in excess of the hashtag and ones like it, and the absolute imperativeness of the imperative. Instead of fetishizing the object, you must surrender to blackness.

### 1NC – Contention

#### 1. Property rights are generated from individual intents and necessary for freedom—material vs immaterial is irrelevant

Uszkai 18 (Radu Uszkai, [University of Bucharest Research Center In Applied Ethics; Bucharest University of Economic Studies Assistant Professor], 2018, “Intellectual Property Has No Personality“, Annals Of The University Of Bucharest - Philosophy Series, accessed: 8-29-2021, https://www.semanticscholar.org/paper/Intellectual-Property-Has-No-Personality-Uszkai/fa1334ec56c8d599e26a7d7d1f0847b4a6567668) ajs

The starting point of a Kantian argument in favor of property rights rests on the following observation: individuals not only desire, but need resources from the external world. An additional premise is also important for understanding his perspective on ownership: property rights are not about individuals interacting in a world of limited resources. In other words, Kant rejects the Humean social and moral diagnosis that property rights are an institutional mechanism which we stumble upon in our strife to avoid conflict due to the scarcity of resources. No, property rights mean something because some of the external objects have a certain type of importance for us, as persons. We should abandon the Humean jargon dominated by ‘scarcity’ and ‘conflict’ and embrace the Kantian one, focused on ‘individual will’ and ‘autonomy’. What matters for Kant is the fact that we impose our wills on external objects and that this process has an essential role in our life projects. Property rights are, in this sense, an extension of the seminal role that freedom has. In order to be free, though, “people must be able to set all sorts of goals or ends for themselves. And to pursue the ends that they set for themselves, people need stable, durable claims over objects. Out of people’s desire to carry out individual projects on particular objects, according to Kant, the idea of legal possession is born” (Merges 2011, 70).

The first step in reconstructing a Kantian perspective on IP has to be his notes on ownership and property rights from the Metaphysics of Morals. Talking about ownership in relation to external objects, Kant distinguishes between two definitions. On the one hand, we have a nominal one, which stipulates that the object “outside me is externally mine which it would be wrong (an infringement upon my freedom that can coexist with the freedom of everyone in accordance with universal law) to prevent me from using as I please” (1991 [1797], 71). On the other hand, we have a real definition of property: “[s]omething external is mine if I would be wronged by being disturbed in my use of it even though I am not in possession of it (not holding the object). I must be in some sort of possession of an external object if it is to be called mine, for otherwise someone who affected this object against my will would not also affect me and so would not wrong me” (1991 [1797], 71).

#### Individual possession can constitute intangibles which requires the application of Kantian property rights to IPR – this evidence answers his writings on copyright law

Merges 11 MERGES, ROBERT P. Justifying Intellectual Property. Harvard University Press, 2011. JSTOR, www.jstor.org/stable/j.ctt24hgdd. Accessed 11 Aug. 2021. mvp

Our earlier example of Michelangelo showed how stable possession is required for a creator to fully work his will on a found object

— in that case, a block of marble. The same basic logic applies in all sorts of cases. Individual farmers and landowners generate and then bring to life a vision for the lands they work on;28 inventors transform off- the- shelf materials into prototypes, rough designs, and fi nished products; and artists work in media such as paint and canvas, paper and pen, textiles and wood, keyboard and iPad, and so on, to give life to a concept or mental image. Wherever personal skill and judgment are brought to bear on things that people inherit or fi nd, we see evidence of the Kantian pro cess of will imprinting itself on objects.   
It even happens when the objects at hand are themselves intangible. A composer working out a new instance of a traditional form— a fugue or symphony, blues song or tone poem— is working on found objects just as surely as the farmer or inventor. Even in our earlier example, some of the objects that Michelangelo works on in the course of carving his sculpture are intangible: received conventions about how to depict an emotion; traditional groupings of fi gures in a religious set piece, such as the Pieta; or accepted norms about how to depict athletic grace or youthful energy. He Kant p 77 may take these pieces of the cultural tableau and refi ne them, or he may subtly resist or transform them. However he handles them, these conventions are just as much objects in his hands as the marble itself.29

As with found physical objects, extended possession of these objects- intransformation is required to fully apply the creator’s skill and judgment. And because of this, Kantian property rights come into play with intangible objects as well.

Let me say a word about this complex, and perhaps controversial, possession of intangible objects. It has often been argued that this feature of IP, the control of copies of an intangible work, constitutes a form of “artifi cial scarcity,”30 that it runs counter to an ethically superior regime where information is shared freely— and is maybe even counter to the nature of information, which, some say, “wants to be free.”31

According to Kant, all property rights have this element of artifi ce, because they defi ne a conceptual type of possession. Property is not just a matter of physical contact between person and object; it describes a relationship that is deeper and goes well beyond the basic acts of grasping and holding.

I can hear one objection to this right away. Yes, Kant speaks of legal own ership as a special relation between a person and an object. But, the objection might run, in his writings he refers only to physical objects, for example, an apple (à la Locke). So maybe the own ership relation is limited to that sort of thing?

No. I give no weight to the fact that Kant uses only examples of tangible, physical property in most of the sections of the Doctrine of Right (DOR).32 Kant describes an additional type of possession that makes it crystal clear that the idea is not in any way limited to physical things—the expectation of future performance under a contract. He posits that one could not properly be said to “possess” a right to per for mance under an executory contract (one that has been signed or agreed to, but not yet performed) unless “I can maintain that I would have possession . . . even if the time of the per for mance is yet to come.”33 With that legal relation established, however, “[t]he promise of the [promisor] accordingly belongs among my worldly goods . . . , and I can include it under what is mine.”34 The synonymous use of “possession,” “object,” “belonging,” and “mine” in the case of a tangible, physical thing such as an apple and an intangible thing such as a promise of future contractual per for mance is too clear to require much comment. “Object” is very abstract for Kant, and can of course therefore include IPRs.35

Kant’s ideas about own ership and intangibles are sometimes called into question by virtue of an essay he wrote about the rights of authors and Foundations p 78 book publishers.36 In this essay, he defends the right of an author to prevent counterfeiting of his books by unauthorized publishers. Near the beginning he states: “For the author’s property in his thought (even if one grants that there is such a thing in terms of external rights) is left to him regardless of the unauthorized publication . . .”37 The main body of the essay is taken up with a sort of agency argument, whereby Kant contends that a counterfeiter who buys a copy of a book cannot copy it and sell copies, because to do so implicitly (and falsely) represents that the author has authorized the new copies. Kant in this essay closely identifi es the author’s interests with those of his publisher, and characterizes the author’s core right as the right to authorize a single, chosen publisher of a work.38

Though much has been made of the structure of this argument, with some scholars fi nding in it evidence of Kant’s rejection of a property claim to authorial works, the introductory passage cited earlier seems clear enough to me. Eliminating the parenthetical, it says, plainly enough, “For the author’s property in his thought or sentiments . . . is left to him regardless of the unauthorized publication.” Some see in this essay a normative statement that property rights ought not be granted over authorial works.39 But for my part, the only hint of a qualifi cation is the parenthetical in the passage cited above, which says “even if one grants that there is such a thing in terms of external rights.” This is not much of a problem for my interpretation, however. Kant appears to be saying “even though” external (positive) law does not provide for copyright, the author’s property remains, that is, it survives the act of counterfeiting. Not every country had true copyright protection when Kant was writing, and a lively debate was raging throughout Eu rope on the desirability of adopting strong copyright protection for books. Kant was saying, in effect, “even if copyright is not in force in a given jurisdiction, counterfeiting is still wrong.” And it is wrong, he says, by virtue of the “author’s property in his thought.”