### 1

#### The 1AC rhetoric of US courts as the basis for legality is always an instance of comparative law where the West is viewed as the “correct system”. That comes first – only we explain the ways the orient functions politically and militarily which solves the aff.

**Ruskola 1** Teemu Ruskola, *Legal Orientalism*, 101 Mich. L. Rev. 179 (2002).  
Available at: <https://repository.law.umich.edu/mlr/vol101/iss1/4> //Nato

If comparison is such an inherently risky enterprise, is there any way to talk about Chinese law without implicating oneself in the perilous act of comparison? Comparativists in fact often insist on a distinction between the study of "foreign law" and the discipline of "comparative Jaw": the latter consists of the express comparison of two legal systems, rather than mere description of foreign legal systems.53 Yet it seems inescapable that the description of foreign law - including Chinese law - is always an instance of comparative law: even in "mere description," the implicit point of reference is always our own system, against which we compare the object culture.s4 Indeed, the description of Chinese law does not occur in a vacuum. Edward Said, the literary scholar and leading postcolonial theorist, uses the term "Orientalism" to refer to the discourses that structure Westerners' understanding of the Orient.ss He emphasizes the extent to which the identity of the colonial and postcolonial West is a rhetorical achievement. In a series of imperial gestures, we have reduced "the Orient" to a passive object, to be known by a cognitively privileged subject - ourselves, "the West." Exhorts Said, Without examining Orientalism as a discourse one cannot possibly understand the enormously systematic discipline by which European culture was able to manage - even produce - the Orient politically, sociologically, militarily, ideologically, scientifically, and imaginatively during the post-Enlightenment period.56 What remains largely absent in comparative law is the study of specifically legal forms of Orientalism: the ways in which "the Orient" - as well as "the West"57 - have been produced through the rhetoric of law. Below, this Article turns to Euro-American representations of Chinese law and analyzes their rhetorical processes as a kind of "legal Orientalism."

#### The Impact is Oriental Despotism – Asian subjectivity becomes no longer individualized by concentrated by the state and becomes an anti-model through negative semantics. That leads to legal erasure and anti asian violence.

**Ruskola 2** Teemu Ruskola, Legal Orientalism, 101 Mich. L. Rev. 179 (2002).  
Available at: <https://repository.law.umich.edu/mlr/vol101/iss1/4> //Nato

I begin the account of Chinese legal subjectivity, or its absence, by outlining Hegel's vision of China in his Philosophy of History. I do so without any implication that Hegel "invented" Orientalism or is somehow singularly responsible for it. Uninterested in either accusing or excusing its author,139 I use the Philosophy of History simply as a textual case study, for it happens to provide a truly classic statement of many Orientalist ideas that continue to structure the perception of Chinese law even today. According to Hegel, "The history of the world travels from East to West, for Europe is absolutely the end of History, Asia the beginning."140 In Hegel's dual ontology, Oriental states "belong to mere space," or "un-Historical History," while the West exists in the "Form of time."141 According to Hegel, With the Empire of China History has to begin, for it is the oldest, as far as history gives us any information, and its principle has such substantiality, that for the empire in question it is at once the oldest and the newest. Early do we see China advancing to the condition in which it is found at this day, for as the contrast between objective existence and subjective freedom of movement within it, is still wanting, every change is excluded, and the fixedness of character which recurs perpetually takes the place of what we should call the truly historical.142 Hegel's statement of China's extraordinary stability is no doubt extreme, yet it has many historical variations.143 In Marx's scathing metaphor, China "vegetates in the teeth of time,"144 while Weber saw in Confucianism a religion that worshipped the status quo and thus radically impeded China's passage into modernity.145 In Hegel's particular teleological view, History's end goal is the accomplishment of freedom, which coincidentally culminates in the political system of Prussia. In contrast, China, standing at the threshold of History, is the paradigmatic example of "Oriental Despotism." Despotism is in fact the natural form of government for the Chinese, for the simple reason that they do not exist as individual subjects. In Hegel's words, in China "all that we call subjectivity is concentrated in the supreme Head of the State,"146 while "individuals remain mere accidents."147 This despotism results in part from a confusion between family and state: "The Chinese regard themselves as belonging to the family, and at the same as children of the state."148 By implication, the Chinese also lack a proper distinction between law and morality: moral dicta are expressed in the form of laws, but lacking subjectivity, the Chinese obey these laws merely as external forces, like children who fear parental punishment.149 Analyzed as an Orientalist discourse, Hegel's account accomplishes several things. First, the purported fact that China is timeless and static implies that the West is not.150 Second, imputing to the Chinese a lack of subjectivity and moral character suggests that Westerners do not lack those progressive qualities. Third, observing that the Chinese are confused about the real nature of "law" establishes the European legal ordering as proper. The Orientalist implications are not difficult to grasp: China is an anti-model and stands for everything that we would not wish to be - or admit to being. This is an entirely negative definition: China is basically just a "glimpse of what it itself is not," viz., we, the Occident.151 Hegel, Marx, and Weber are classical European Orientalists whose work ultimately affirms the superiority of Western civilization and law.152 However, they do not exhaust the universe of legal Orientalisms, which vary by historical and cultural context. The anti immigrant Orientalism of nineteenth-century United States provides an example of a peculiarly American form of Orientalism.153 As one historian of Chinese immigration observes, nineteenth-century Americans viewed almost every aspect of Chinese life as an illustration of their backwardness: "wearing white for mourning, purchasing a coffin while still alive, dressing women in pants and men in skirts, shaking hands with oneself in greeting a friend, writing up and down the page, eating sweets first and soup last, etc."154 The usefulness of this particular Orientalist discourse lay in its role in justifying the legal exclusion of Chinese immigrants at that historical moment. Indeed, the text of a 1878 report by the California State Senate Committee on Chinese Immigration sounds as though it had been excerpted directly from Hegel's Philosophy of History: The Chinese are ... able to underbid the whites in every kind of labor. They can be hired in masses; they can be managed and controlled like unthinking slaves. But our laborer has an individual life, cannot be controlled as a slave by brutal masters, and this individuality has been required by the genius of our institutions, and upon these elements of character the State depends for defense and growth.155 Such sentiments may have very much a nineteenth-century flavor, but consider also the following analysis of the Chinese immigration exclusion, made by a federal judge in the 1920s: The yellow or brown racial color is the hall-mark of Oriental despotisms, or was at the time the original naturalization law was enacted. It was deemed that the subjects of these despotisms, with their fixed and ingrained pride in the type of their civilization, which works for its welfare by subordinating the individual to the personal authority of the sovereign, as the embodiment of the state, were not fitted and suited to make for the success of a republican form of Government. Hence they were denied citizenship.156 To the judge, it was thus self-evident that the Congress's exclusion of the Chinese from immigration was not based on "color" but cultural disqualification for citizenship.157 That is, the Chinese were so radically "un-legal" that they were simply not capable of the kind of selfgovernance that was required by America's "republican form of Government."

### 2

#### Asian Americans subject formation is never complete – there is an ontological gap between the real and symbolic which is characterized by incomplete assimilation. Asian bodies are not our own but rather tools of society. Anything that doesn’t start with Asian assimilation means we are always excluded and is an independent link.

Kim 09 (Chang-Hee Kim, The Fantasy of Asian America: Identity, Ideology, and Desire) 2009 klmd recut/tagged Nato

Fantasy of Asian American Identity The question of how Asian Americans are perceived as ‘permanent aliens’ in the U.S. is a common topic in Asian American studies. Frank H. Wu states that “where are you from” is a question anyone with an Asian face is continuously asked in the U.S. In his essay “Where Are You Really From,” he mentions that Asian Americans’ being mistaken for a foreigner has become their routine experience to the extent that they cannot be a real American. In everyday life in the United States, such awkward situations happen casually and regularly, and affect Asians and Asian Americans deeply, placing them in the status of permanent, yet never complete assimilation. Due to the popular circulation of knowledge informed by postcolonial studies in academia, the misrecognition of the Other has become a constant point of reference to support oppositional positions of “minoritized” in opposition to so-called epistemic violence9; our identities are constituted, exchanged, and recognized by the hegemonic social order justifying the legitimacy of existing arbitrary social structures. Given how the cognitive knowledge of ‘who we are’ is predetermined, we are subject to the pre-existing system 8 Who Killed Vincent Chin? is a 1987 documentary film directed by Christine Choy and produced by Renee Tajima-Pena about the death of Vincent Chin. It was nominated for an Academy Award for Best Documentary Feature. 9 Gayatri C. Spivak theorizes the notion of “epistemic violence” in her renowned article “Can the Subaltern Speak?” 31 of signs that creates a kind of epistemological gap between our knowledge of ourselves and how we are referred to. The recognition of ones’ identity as Asian, for instance, takes place when the public eye sees something in them that does not fully belong to them. It ascribes to their being a kind of fantasy that makes them “typical” Asians in terms of racial identification. Parts of their bodily appearances become determinants of their racial identity, functioning as an abstract sign that automatically refers to some concept of “Asian,” and their ontological being has its meaning only in relation to the conceptualized. Their subjectivity thus becomes regulated by, and subject to, the pre established system of racial identification insofar as it certifies “who they are.” It refers to the way in which any Asian American happens to be recognized as Charlie Chan. “Who they are,” in this sense, indicates, as Louis Althusser might put it, an ideological subject that the contingent and arbitrary rule of social agreements, however biased, constitutes. It is no wonder that Michael Omi and Howard Winant define racial formation as a “sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed” (RFUS 55). It is interesting to see the way in which particular parts of “what they are made of”—hair color, the shape of eyes, facial features—become the universal referent of “who they are.” They not only represent but also substitute for the imagined totality of their ontological being. In other words, their identitarian self has its ontological meaning reduced to the conceptual formality of what it means to be Asian American. The process of racial identification, as a result, occurs beyond their control and will in figuring out their self-identity. It keeps escaping and defying their basic desire to 32 differentiate their individual self from that of others. Essential to an understanding of how racial identification takes place is obviously such an uncontrollability of representations. Asian American identity exists as an abstract sign that makes sense in the context of the conceptual Asian like Charlie Chan—for example, the imagined as well as hegemonic system of Asian stereotypes. Within the discursive formality of the identity are imaginary elements that seem both extraneous and intrinsic to Asian American ontology. This epistemological difference in their self-identity stands for the gap. Fundamentally, the gap emerges when the hegemonic authority of public gaze defines “who they are” as typical of Asian Americans. That is, it comes out of the ontological inconsistency and contradiction of the representational system of Asian American identity vis-à-vis the totalitarian authority to recognize them “as such” in accordance with the pre-ontological formality of the conceptual Asian American. Nonetheless, Asian Americans’ bodies superfluously signify something excessive, more than “who they are,” an elusive meaning that is not always clear and definable vis-à-vis their racial identity. The discrepancy between the formalistic meaning of Asian American identity and the self-reflective or self-referential meaning of their subjective self consists in an indefinable dimension, or an ontological gap, within the identity. Metaphorically, it works as Charlie Chan’s apparitional power encompassing Asian Americans’ distinctive individualities within themselves. This apparition keeps haunting them, evoking others’ temptation to recognize the former as symbolic of the conceptual Asian. Given this, that Asian Americans’ distinctive subjectivity negates any given identity in terms of, say, race, can be seen as an antagonistic gesture of political resistance to U.S. culture, i.e., the public eye that 33 produces the stereotype of Asians as a fixed form of truth. Constituted as a cognitive system of knowledge that falls within the realm of common sense, stereotype rather turns Asian Americans into an appendix to the symbolic apparition or uncanny double that reifies their identity in the typical formality of “Asian”—that is, racial fantasy. Asian Americans become a puppet-like agent of Charlie Chan’s apparitional power evoking something in themselves more than themselves, which is projected upon their identity. It creates a division within the system of “commonsensical” representation—the conceptual (fantasy) vs. the original (imagination). The apparitional power of fantasy—invisible but effective to the public eye—is what combines the two for the sake of the communicative exchange of their identity as a cognitive sign. At the same time, the apparitional fantasy remains elusive and unidentifiable, making the gap between “who they are” and “who they are seen as.” Simply put, the former is the real of them whose subjectivity remains neither fully symbolized nor properly interpellated, an unfathomable dimension of Asian American identity that resists their being completely identified as a typical Asian as a whole. On the contrary, the latter refers to the symbolic figure of the Asian American that the public eye recognizes as one of Charlie Chan Asians. Although it is our fate to be social subjects dictated by the representational system that constitutes our identitarian position, the gap of the subject between real and symbolic never comes to a closure. The identitarian system of representation can maintain itself through social agreements for the communication between self and other. At stake in the system is the uncontrollability of representations intrinsic to the nature of the agreements making for the idealistic achievement of universal communication in 34 totality, yet it always remains incomplete. W. J. T. Mitchell observes, “Representation is that by which we make our will known and, simultaneously, that which alienates our will from ourselves in both the aesthetic and political spheres” (21). The system of representation, such as languages and bodily appearances, is a social construct making possible the communicative process of identification and, simultaneously, creating an epistemological void that prevents the communication from being fully accomplished. This gap is where fantasy with a spectral power operates in the process of identification and fills up the gap, and thus secures the discursive certainty of a community in which the ideological transparency of a hegemonic discourse comes true.

#### Discussions of labor unions must be centered around the historical exclusion of Asian migrant workers from white labor unions.

McMillin 12 [Calvin McMillin, Doctor of Philosophy June 2012, " THE HARDBOILED AND THE HAUNTED: RACE, MASCULINITY, AND THE ASIAN AMERICAN DETECTIVE," University of California Santa Cruz, <https://escholarship.org/content/qt2jr6h026/qt2jr6h026.pdf>] lydia

Whatever merits of such a “solution,” one can presume that this first wave of Asian immigrant laborers left China with dreams of a better life in 金山 (“Gold Mountain”); however, the reality proved far more difficult than they likely imagined. Between the years 1865 and 1869, thousands of Chinese laborers worked on the Central Pacific Railroad, “laying tracks, clearing trees and rocks, handling explosives, and boring tunnels in the Sierra Nevada” (Maria Hong 201). But a growing resentment against “cheap Chinese labor” by white labor unions caused these immigrants to struggle in the years that followed. Unable to find work in mining camps, industrial jobs, and agricultural labor, these Chinese men were forced into working in laundries, running restaurants, and doing domestic work. In Chinese American Masculinities: From Fu Manchu to Bruce Lee (2001), Jachinson Chan expands on the consequences of such discrimination: The combination of exclusion laws and discriminatory socio-economic practices that refused jobs to Chinese men effectively emasculated the Chinese men. They were treated as inferior men who could not demonstrate their heterosexual identities and they could only find jobs that were deemed by mainstream American society as feminine work. (5) Beyond confinement to so-called “women’s work,” Chinese men suffered further indignities due to a litany of anti-Chinese immigration laws, including the Page Law of 1875 and the Scott Act of 1889. In the former, single Chinese women were often classified as prostitutes and summarily barred from entering the country, while the former ruling prohibited Chinese wives of immigrant laborers from entering the country. Coupled with anti-miscegenation laws and the resultant initiation of bachelor societies in the segregated ghetto of Chinatown, this ostensible “emasculation” of an entire population of immigrant men would have a huge impact on Asian American masculinity, one that would resonate all the way into the twentieth century. Incipient notions of what constituted the American Dream may have been possible or at the very least conceivable for European immigrants of white descent, but for the Chinese, the same dream was not so readily attainable. Whereas Europeanborn arrivals to the New World could more readily “become American” by changing their names, adopting American styles of dress, and leaving their customs behind in the Old World, Chinese immigrants, even those attempting to erase their cultural differences with whites, had a much more difficult time assimilating, as they were racially marked as “Other” by their distinctive physical features. In his landmark work of Asian American history, Strangers from a Distant Shore (1989), the late Ronald Takaki (1939-2009) mobilizes F. Scott Fitzgerald’s most famous character to help illustrate the unique challenges of achieving a sense of true national belonging for Asian immigrants: Immigrants of European ancestry had certain advantages in America. The promise of this new world for them, as F. Scott Fitzgerald portrayed it, was mythic: here an individual could remake himself – Gatz could become Gatsby […] Physically indistinguishable from old-stock whites in America, they were able to blend into the society of their adopted country. Asian immigrants could not transform themselves as felicitously, for they had come “from a different shore.” (12) Takaki’s invocation of Jay Gatsby as the consummate self-made American serves as an apt cultural metaphor, for how else do we imagine what constitutes an American but through collective fictions? While Benedict Anderson explains this mental leap of community-forming and nation-building in Imagined Communities (1983) through the rise of print culture, I would argue that it is within a particular popular mode – the novel (and now television, film, and the internet) – in which ideas about what makes a “real American” get formulated and concretized. As Lisa Lowe, noted scholar in Asian American studies, points out in Immigrant Acts (1996), “With the emergence of print culture as an institution of modernity in the ‘West,’ the Anglo-American novel has held a position of primary importance in the interpellation of readers as subjects for the nation, in the gendering of these subjects, and in the racializing of spheres of activity and work” (98). How better, then, to explore and translate into ethnic terms deep-seated questions of masculinity, race, and national belonging than to use a popular American icon – whether it be Jay Gatsby or the hardboiled detective? While Frank Chin advocates a return to Asian cultural roots through the historiomythological figures of Chinese literature as a means to remasculinize the Asian American male, the texts I wish to discuss embrace a homegrown myth of a more recent vintage to achieve similar cross-cultural aims.

#### Chinese Restaurant Strikes proves weaponization.

Chow 17 [Kat Chow, 6-16-2017, "How The White Establishment Waged A 'War' On Chinese Restaurants In The U.S. ," NPR.org, <https://www.npr.org/sections/codeswitch/2017/06/16/532697303/how-american-unions-tried-to-wage-a-war-against-chinese-restaurants-in-the-u-s> [accessed 10-24-21] lydia

In most American cities these days, it seems like there's a Chinese restaurant on every other street corner. But in the late 1800s, that ubiquity was exactly what certain white establishment figures feared,according to a [new study](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2948030) co-written by Gabriel "Jack" Chin, a law professor at the University of California, Davis. Chin examined how white union workers and lawmakers waged a nationwide "war" on Chinese restaurants in America from 1890 to 1920. "It shows this tradition of an expectation on the part of some white Americans that public policy should be organized for the benefit of their employment," says Chin, who adds that he sees parallels with anti-immigrant policies being put forth today. In 1882, Congress passed the [Chinese Exclusion Act](http://www.npr.org/sections/codeswitch/2017/05/05/527091890/the-135-year-bridge-between-the-chinese-exclusion-act-and-a-proposed-travel-ban), which barred Chinese immigrants from entering the U.S. for decades. Some white Americans worried that Chinese laborers would steal their jobs and hijack their opportunity. And this xenophobic fear carried over to the restaurant industry. Chinese restaurants — known by some at the time as "chop suey houses" — were understood to be a good value, offering inexpensive meals in an exotic setting. "The economic menace [of Chinese restaurants] was twofold," says Chin. "First, if Chinese people had the opportunity to earn a living, then they might stay. And their communities would continue to exist, and the Chinese presence, which many objected to, would continue." The second thing, says Chin, is that "if Chinese restaurants made Chinese food available at a relatively low price and then American restaurants wouldn't be able to compete, either the wage scales for American restaurants would have to go down or they would close." And then, there was the pervasive idea that Chinese men were lecherous threats to white women. Chinese restaurants were considered "dens of vice," Chin says, where white women were at risk of moral corruption by way of sex, opium and alcohol. I talked with Chin about his research and how anti-immigrant sentiment can manifest itself in even the most "creative" of methods. He told me about six different ways that Chinese restaurants were targeted: **1. Race riots** There were Chinese communities expelled from Western and Mountain States through race riots, Chin says, where Chinese restaurateurs or miners were beaten or quite literally burned from their homes. **2. Boycotts** Unions representing cooks, waiters and bartenders organized largely unsuccessful boycotts against Chinese restaurants in many places, including Massachusetts, Arizona, California, Montana, Minnesota and Ohio. The unions imposed fines on union members who ate at Chinese restaurants, Chin says, but couldn't keep their members from eating there: "Individual members of the public had incentives to cheat because the food was understood to be a good value at the time." And, Chin points out, for the most part, these unions weren't trying to enlist Chinese restaurant workers to join their ranks. Instead, they were vying for Chinese employees to be replaced by white workers. **3. A peculiar law** When boycotts were largely unsuccessful, the unions turned to the legal system. At the American Federation of Labor's 1913 convention, organizers proposed that all states should pass laws that barred white women from working or patronizing Chinese or Japanese restaurants for both moral and economic reasons, Chin says. (A similar law had been enacted in Saskatchewan, Canada, and upheld by Canada's Supreme Court.) States including Montana, Pennsylvania, Massachusetts, Washington and Oregon saw versions of the bill, which were ultimately unsuccessful. In Massachusetts, for example, the state Supreme Judicial Court struck down the law on the grounds that it was discriminatory. **4. Government agencies and licenses** Chin points to old newspaper reports that show that government agencies refused to issue business or restaurant licenses to Chinese restaurateurs, citing various reasons: Some officials claimed they had already issued enough licenses. Others said they would not issue licenses to people who were not citizens. And since Chinese people couldn't naturalize, this targeted them. **5. Policing** While the proposed white women's labor law was never officially enacted, some police officers began patrolling the restaurants of their own volition, Chin says. "We see newspaper reports," he explains, "where the police in the first decades of the 20th century believed they had the authority, and exercised it, simply to issue orders in the public interest." For example, he adds, "when there were concerns about white women patronizing Chinese restaurants and when the police thought this was prejudicial to the safety of white women, they would simply order white women out." In 1909, the murder of a [prominent white union leader's daughter by a Chinese restaurant worker](https://tenement.org/blog/where-miss-sigel-met-her-slayer/) inflamed tensions. In June of that year, Leon Ling reportedly strangled Elsie Sigel in a jealous rage and stuffed her body into a trunk in his bedroom. Sigel had met Ling when she worked in Manhattan's Chinatown as a missionary, and her death and the subsequent manhunt for her killer sparked a wave of racial profiling across the country. Newspapers hyped the story, with headlines like "Was Strangled By Her Chinese Lover: Granddaughter of General Sigel Slain in the Slums of New York." The case seemed to justify the fears that union workers had of all the misfortunes that would spring from Chinese restaurants. "To be a Chinaman these days," one Connecticut newspaper wrote, "is to be at least a suspect in the murder of Elsie Sigel."

#### The advocacy refuse Asian subject formation. Signifiers will always fail to bridge the gap between the real and symbolic, but self-negation makes the subject unfathomable in ideological edifice.

Kim 2 [Asian] (Chang-Hee Kim, The Fantasy of Asian America: Identity, Ideology, and Desire) 2009 //Nato

In Hegel’s Phenomenology of Spirit, Georg Hegel concentrates on the concept of struggle in the dialectical formation of subjectivity. His well-known dialectical division, the master vs. slave, is clearly indicative of their uneven relation. In Hegel, the freedom to gain the true sense of self is not the subject’s recognizing the objectified other in self-reflectivity; rather, that is its eliminating the other from itself to consolidate its hegemonic—whether master or slave—position and thus to become independent of the other permanently. Nonetheless, the Hegelian subject is aware that its dialectical positionality as either master or slave relies on the other, without which it cannot survive, realizing its ontological limitation as such. This is a critical moment when the ontological gap of the subject erupts, separating its becoming from its being. That is, the 44 subject as either master or slave can never be the other, for their relationship always remains ontologically distanced in the perpetual process of becoming. Yet the relationship between master and slave is different from that of the Adornian model in which both subject and other are objectively distinct in self-reflectivity. In Hegel, their distanced relationship is rather what evokes the desire and struggle for mutual identification not only to remove one from the other but also to become a free independent subject. Moreover, Hegel insists that the relationship take on one’s desire to dominate the other for the sake of its self-reliance, which nevertheless ends up impossible and incomplete in that it is suicidal. In the Hegelian dialectic, the master’s position is indebted to that of the slave insofar as the latter, i.e., the enemy, is what makes the former ontologically consistent in itself. In other words, the true sense of freedom for the subject in Hegel is to either become the enemy or eliminate it, either of which means the death of the subject. The Hegelian subject essentially attempts to carry out the “absolute negation” of the selves in a fashion to negate their own otherness in themselves and to “raise their self-certainty (about existing for-self) to truth in the ‘other’ as well as in themselves” (Hegel 55). Rather than pretend to remain objective and distanced in treating the other, the Hegelian subject strives to secure its identitarian position in light of the life-death struggle between master and slave. The eventual way to obtain freedom from its own ontological limitation that the subject cannot be in-andfor itself as a whole is paradoxically negating its positive being dependent on that of the other. This illustrates the subject’s death instinct towards “nothingness,” which makes our knowledge on the subject inexorably entangled in inconsistencies and contradictions. 45 In Hegel, the subject’s death instinct, an ontological abyss that remains unfathomable in its ideological edifice, is the only way to realize its “pure existence-for-self” (Hegel 55) Identity is apparitional in nature, for as discussed earlier, we all can become a/the “real Asian American” but never will be, and the resulting gap between our being and becoming is where the subject endlessly strives to secure its identitarian position in light of the life-death struggle against the other in-and-for itself. The realization of identity is its purist objectification in that, in neoliberal capitalism, identity is equivalent to a commodity imbued with a cultural capital of dual meanings: an owned property of the subject feeling happy (with no more work) and an alienated property of the subject feeling miserable (with endless work) as Karl Marx teaches us.16 In Race and Resistance, Viet T. Nguyen describes Asian American identity as the cultural capital of both accommodation and resistance in U.S. society, and it well explains the point I am making here (143-44): on the one hand, Asian Americans make a good relationship with the society that praises them as a model minority, as a civil subject fully assimilable to the mainstream; on the other hand, they make a bad relationship with the society that stereotypes their identity as a yellow peril, viciously alienating them from the mainstream. Asian American identity has its multiple meanings with an apparitional effect that changes the ontological meaning of its referent and at the same time, reduces them back to their archetype: Charlie Chan or the gook. While the identity acts as a conduit that connects Asian Americans with the society for their mutual understanding, this communicative sign always signifies itself as inconsistent, contradictory, and, as Nguyen puts it, “hypocritical” in representing Asian Americans as a whole. It is no wonder Nguyen observes that Asian Americans are facing the “crisis of representation over ideological diversity” in identity politics (9). Identity works as a vanishing mediator that connects the hegemonic system of ideological reality with the identitarian subject as the constituent of the former. Such a vanishing mediator as identity, through its apparitional as well as self-effacing effect, plays a role in maintaining the systematic order of the reality by transforming the preontological chaotic multitude, namely, individuals with identities, into, as Slavoj Žižek puts it, “the semblance of a positive objective order of reality” (Ticklish 158). The Hegelian dialectic shows that the subject comes to have its identity rendered apparitional and thus precarious. Simultaneously, the identity never completely sits itself apart from its proprietor because of its dialectical relationship with it, the subject, in terms of the life/death struggle, which makes the mutual gap never closed. This gap can be translated as a minimal void that prevents the subject from being, that is, fully getting identified with, its identitarian self, which potentially gives rise to the totalitarian racist subject: being fully identified as white, “the kind of men” who can kill Vincent Chin, or anyone with a darker skin, with impunity.

#### The ROB is to reject every instance of anti-asianness in the classroom – anything else normalizes violence

Eng & Han 19 [Asian], DAVID L. ENG & SHINHEE HAN [David L. Eng is Richard L. Fisher Professor of English as well as Graduate Chair of the English Department at UPenn. He is also Professor in the Program in Asian American Studies, the Program in Comparative Litera Racial Castration: Managing Masculinity in Asian America (Duke University Press) as well as the Coeditor (with Alice Y. Hom) of Q&A: Queer in Asian America (Temple University Press, 1998). His current project is a co-edited collection (with David Kazanjian) entitled Loss: Mourning and Melancholia in the Twentieth Century. Shinhee Han, C.S.W., is a psychotherapist at the Counseling & Psychological Services of Columbia University. She is a doctoral candidate in the Shirley M. Ehrenkranz School of Social Work at New York University and maintains a private practice in New York City.], RACIAL MELANCHOLIA, RACIAL DISSOCIATION: On the Social and Psychic Lives of Asian Americans, DUKE UNIVERSITY PRESS, Durham and London, 2019, ghs//BZ Recut/Tagged Nato

NATIONAL MELANCHOLIA For Asian Americans and other people of color, suspended assimilation into mainstream culture may involve not only debilitating personal consequences; ultimately, it also constitutes the foundation for a type of national melancholia, a collective national haunting, with destructive effects. In Caucasia, the ambivalence characterizing the narrator’s passing into whiteness leaves her with the constant and eerie feeling of “contamination.”13 Writing about the nature of collective identifications, Freud notes in “Group Psychology and the Analysis of the Ego” (1921), “In a group every sentiment and act is contagious, and contagious to such a degree that an individual readily sacrifices his personal interest to the collective interest. This is an aptitude very contrary to his nature, and of which a man is scarcely capable, except when he makes part of a group.”14 Our analysis insists on a consideration of what happens when the demand to sacrifice the personal to collective interest is accompanied not by inclusion in—but rather exclusion from—the larger group. It reorients psychic problems of racial melancholia toward social problems concerning legal histories of whiteness as property and, in particular, exclusion laws and bars to naturalization and citizenship for Asian Americans as a type of property right. As we know, the formation of the US nation-state entailed—and continues to entail—a history of institutionalized exclusions, legal and otherwise. Part of our introduction focused on the transatlantic slave trade and indigenous dispossession. Here, it is vital to consider the long history of legalized exclusion of Asian American immigrants and citizens alike—from Japanese internment and indefinite detention during World War II to earlier exclusion acts legislated by Congress, brokered by the executive, and upheld by the judiciary against every Asian immigrant group.15 For example, from 1882 to 1943, Chinese immigrants experienced the longest legalized history of exclusion and bars to naturalization and citizenship—the first raced-based exclusions in US history. To cite but one specific instance, in 1888 the US Congress retroactively terminated the legal right of some twenty thousand Chinese residents to reenter the United States after visiting China. Those excluded from reentry were also barred from recovering their personal property remaining in the country, underscoring the ways in which race, citizenship, and property were simultaneously managed by the state to control and restrict flows of both Asian labor and capital. This law was followed by a series of further exclusion laws, as well as accompanied by legislative acts against miscegenation and the ownership of private property, culminating in the National Origins Act (1924) and the Tydings-McDuffie Act (1934), which effectively halted all immigration from Asia for an indefinite period. As Teemu Ruskola notes, at the very historical moment when “the United States was pleased to refer to its China policy as Open Door … it hardly escaped the Chinese that the door swung one way only.”16 Yet, in our multicultural and colorblind age, few people remember this history of racially motivated discrimination against Asian Americans that laid the legal foundation for the emergence of the figure of the “illegal immigrant” and of “alien citizenship” preoccupying so much of political debate concerning immigration today. This history of exclusion is barely taught in US universities or high schools—indeed, colorblindness and the model minority myth demand a forgetting of these events of group discrimination in the name of abstract equality and individual meritocracy. A return to this history thus expands our prior analyses of race as relation and whiteness as property to consider how the legal mechanisms of citizenship have broadly functioned as a kind of restricted property right. For Asian immigrants, these mechanisms have mediated a long history of social exclusion and inclusion in US law and society. Racial melancholia can be seen as one profound psychic effect marking these histories of legal exclusion from the nation-state and prohibitions from national belonging. Today, discourses of American exceptionalism and democratic myths of abstract equality and individualism demand a forgetting of these formative losses and exclusions, an enforced psychic amnesia that can return only as a type of repetitive national haunting—a type of negative or absent presence.17 The contemporary model minority stereotype that defines Asian Americans is both a product of—and productive of—this negative or absent presence.18 Asian American model minority discourse emerged in the postwar period after the lifting of legalized exclusion—in the wake of Cold War conflict, the US civil rights movements, and the reformation of the Immigration and Nationality Act (Hart-Celler Act) of 1965. The Hart-Celler Act abolished the earlier immigration quotas based on national origins at the heart of US immigration policy for nearly half a century, replacing it with a system of preferences focused on the technical skills of immigrants and on family reunification. It dramatically shifted immigration patterns to the United States and spurred a “brain drain” of settlers from Asia (and Latin America). At the same time, Hart-Celler also created a vast and largely unacknowledged force of low-income and undocumented migrants from South Asia, new areas of China, particularly Fujian province, and Southeast Asia. This “yellowing” of the US nation-state reversed a long history of anti-Asian exclusion precisely under the banner of model minority citizenship and the collective forgetting of this history of exclusion and its unauthorized subjects. The model minority myth identifies the academic success of second-generation Asian American immigrant children as dispositive of the United States as a land of equal opportunity free of racial discrimination or distress. Thereby, it functions as a national tool that manages and erases a long history of institutionalized exclusion by characterizing Asian American success precisely as the result—rather than something that occurred despite the lack—of equal opportunity in the United States. In turn, the deployment of the model minority myth configures the unequal status of African Americans in US culture and society as a self-inflicted injury. Resisting the invidious political juxtaposition of Asian American “success” with African American “failure,” comparative race scholars have sought to reformulate this regulatory dialectic. Over a hundred years ago, W. E. B. Du Bois asked African Americans in The Souls of Black Folk (1903), “How does it feel to be a problem?”19 Today, comparative race scholars have revised Du Bois’s earlier inquiry, asking Asian Americans, “How does it feel to be a solution?”20 (We return to this dynamic in detail is chapter 3 on parachute children and psychic nowhere.) Put in terms of comparative race relations, Ellen Wu observes that during the prewar era of exclusion and yellow peril, Asians were defined as definitely not white. However, following the postwar era of inclusion, citizenship, and the emergence of model minority stereotype, Asians were defined as definitely not black.21 Understanding this triangulation is key to apprehending the ways in which racial binaries of black and white mask complex social relations of race while preventing political coalitions and alliances. Effacing unequal histories of racial discrimination, this divide and conquer strategy emerges most forcefully today in contemporary debates about affirmative action that seek to pit the interests of African Americans and Asian Americans against one another. The model minority stereotype is a myth because it homogenizes widely disparate Asian American and Asian immigrant groups by generalizing them all as academically and economically successful, with no social problems to speak of. In this manner, the stereotype works to deny, in Lisa Lowe’s words, the “heterogeneity, hybridity, and multiplicity” of various Asian American individuals and groups who do not fit its ideals of model citizenry.22 The pervasiveness of the model minority stereotype in our contemporary national imagination thus works as one important melancholic mechanism facilitating the erasure and loss of repressed Asian American identities as well as histories of discrimination and exclusion. These identities and histories can return only as a type of ghostly presence. In this sense, the Asian American model minority subject also endures in the US historical imaginary as a melancholic national object—as a haunting specter to democratic ideals of inclusion that cannot quite get over these legislated histories of loss. The psychic consequences that this model of national melancholia has exacted on the Asian American psyche are extensively explored and interrogated in Asian American cultural productions. One compelling example comes from Maxine Hong Kingston’s China Men (1980). In Kingston’s historical novel, an imaginary chronicle of several successive generations of male ancestors in the United States, the narrator speculates about the disappearance of the “Grandfather of the Sierra Nevada Mountains.” After he helps to complete the transcontinental railroad, the greatest technological feat of ﻿the nineteenth century, Ah Goong vanishes. Kingston writes, “Maybe he hadn’t died in San Francisco, it was just his papers that burned; it was just that his existence was outlawed by Chinese Exclusion Acts. The family called him Fleaman. They did not understand his accomplishments as an American ancestor, a holding, homing ancestor of this place.”23 Kingston understands that the law’s refusal to recognize Chinese immigrants as citizens “outlaws” their existence, subjecting them to legal erasure as well as institutional violence: “It was dangerous to stay,” she observes in the context of the “Golden Spike” ceremony commemorating the railroad’s completion. “The Driving Out had begun. Ah Goong does not appear in railroad photographs.”24 At the same time, Kingston also underscores how this historical repudiation of the Asian laborer gains its psychic efficacy through a simultaneous internalization of its interdictions on the part of those excluded themselves. That is, the grandfather’s own family members refuse to recognize him as “an American ancestor, a holding, homing ancestor of this place.” They cannot perceive the “Fleaman’s” accomplishments building the transcontinental railroad as legitimizing his membership in the American nation. How, in turn, can it be possible to see themselves as legitimate members of this society? In this regard, racial melancholia can be described as splitting the Asian American psyche. This cleaving of the psyche can be productively thought about in terms of an altered, racialized model of classic Freudian fetishism.25 That is, assimilation into the national fabric demands a psychic splitting on the part of the Asian American subject who knows and does not know, at once, that she or he is part of the larger social body. In the same breath, fetishism also describes mainstream society’s disavowal and projection of otherness onto a disparaged group that is then homogenized and reduced to a stereotype. In this manner, racial fetishism delineates a psychic process by which difference is assumed and projected and then negated and denied, returning us to social dynamics of Myrdal’s “American dilemma.”

## Case

### ADV

#### Strikes inhibit democratization and aren’t enough to induce transition – your evidence is overly optimistic.

Ahlquist 17 [John; School of Global Policy and Strategy, University of California San Diego; “Labor Unions, Political Representation, and Economic Inequality,” 3/9/17; AnnualReviews; https://www.annualreviews.org/doi/pdf/10.1146/annurev-polisci-051215-023225] Justin

But strikes and union alliances are almost never sufficient to induce a regime transition on their own. Unions, even if successful at mobilizing workers under authoritarian systems or as voters, are not always prodemocratic elements (Valenzuela 1989, Levitsky & Mainwaring 2006). Unions deeply incorporated into populist or Marxist parties can end up inhibiting democratization, even when independent labor organizations are pushing in the opposite direction (Levitsky 2001). Union leaders, when insulated from rank-and-file pressure, can become co-opted by parties or even criminal elements. Whether unions are part of pro- or antidemocratic coalitions can vary across cases and across unions within a country, depending on the instrumental benefits offered to union leaders and members as well as the expected outcomes under different regime types.

#### Illegal strikes solve better and aff strikes become water downed and negotiated out by the state- TURNS CASE

Reddy 21 Reddy, Diana (Doctoral Researcher in the Jurisprudence and Social Policy Program at UC Berkeley) “" There Is No Such Thing as an Illegal Strike": Reconceptualizing the Strike in Law and Political Economy." Yale LJF 130 (2021): 421. <https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy>

In recent years, consistent with this vision, there has been a shift in the kinds of strikes workers and their organizations engage in—increasingly public-facing, engaged with the community, and capacious in their concerns.[178](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref178) They have transcended the ostensible apoliticism of their forebearers in two ways, less voluntaristic and less economistic. They are less voluntaristic in that they seek to engage and mobilize the broader community in support of labor’s goals, and those goals often include community, if not state, action. They are less economistic in that they draw through lines between workplace-based economic issues and other forms of exploitation and subjugation that have been constructed as “political.” These strikes do not necessarily look like what strikes looked like fifty years ago, and they often skirt—or at times, flatly defy—legal rules. Yet, they have often been successful. Since 2012, tens of thousands of workers in the Fight for $15 movement have engaged in discourse-changing, public law-building strikes. They do not shut down production, and their primary targets are not direct employers. For these reasons, they push the boundaries of exiting labor law.[179](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref179) Still, the risks appear to have been worth it. A 2018 report by the National Employment Law Center found that these strikes had helped twenty-two million low-wage workers win $68 billion in raises, a redistribution of wealth fourteen times greater than the value of the last federal minimum wage increase in 2007.[180](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref180) They have demonstrated the power of strikes to do more than challenge employer behavior. As Kate Andrias has argued: [T]he Fight for $15 . . . reject[s] the notion that unions’ primary role is to negotiate traditional private collective bargaining agreements, with the state playing a neutral mediating and enforcing role. Instead, the movements are seeking to bargain in the public arena: they are engaging in social bargaining with the state on behalf of all workers.”[181](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref181) In the so-called “red state” teacher strikes of 2018, more than a hundred thousand educators in West Virginia, Oklahoma, Arizona, and other states struck to challenge post-Great Recession austerity measures, which they argued hurt teachers and students, alike.[182](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref182) These strikes were illegal; yet, no penalties were imposed.[183](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref183) Rather, the strikes grew workers’ unions, won meaningful concessions from state governments, and built public support. As noted above, public-sector work stoppages are easier to conceive of as political, even under existing jurisprudential categories.[184](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref184) But these strikes were political in the broader sense as well. Educators worked with parents and students to cultivate support, and they explained how their struggles were connected to the needs of those communities.[185](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref185) Their power was not only in depriving schools of their labor power, but in making normative claims about the value of that labor to the community. Most recently, 2020 saw a flurry of work stoppages in support of the Black Lives Matter movement.[186](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref186) These ranged from Minneapolis bus drivers’ refusal to transport protesters to jail, to Service Employees International Union’s Strike for Black Lives, to the NBA players’ wildcat strike.[187](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref187) Some of these protests violated legal restrictions. The NBA players’ strike for instance, was inconsistent with a “no-strike” clause in their collective-bargaining agreement with the NBA.[188](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref188) And it remains an open question in each case whether workers sought goals that were sufficiently job-related as to constitute protected activity.[189](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref189) Whatever the conclusion under current law, however, striking workers demonstrated in fact the relationship between their workplaces and broader political concerns. The NBA players’ strike was resolved in part through an agreement that NBA arenas would be used as polling places and sites of civic engagement.[190](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref190) Workers withheld their labor in order to insist that private capital be used for public, democratic purposes. And in refusing to transport arrested protestors to jail, Minneapolis bus drivers made claims about their vision for public transport. Collectively, all of these strikes have prompted debates within the labor movement about what a strike is, and what its role should be. These strikes are so outside the bounds of institutionalized categories that public data sources do not always reflect them.[191](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref191) And there is, reportedly, a concern by some union leaders that these strikes do not look like the strikes of the mid-twentieth century. There has been a tendency to dismiss them.[192](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref192) In response, Bill Fletcher Jr., the AFL-CIO’s first Black Education Director, has argued, “People, who wouldn’t call them strikes, aren’t looking at history.”[193](https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref193) Fletcher, Jr. analogizes these strikes to the tactics of the civil-rights movement.

#### Increased strikes sabotage the economy – they cause major disruptions and lower income for workers.

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Labor strikes can cause major disruptions to industry, commerce and the lives of many people who aren't even connected to the strike itself. The Professional Air Traffic Controllers Association strike in 1981 resulted in the firing of thousands of air traffic controllers, and the New York City transit strike in late 2005 affected millions of people. The history of strikes and labor unions is a key chapter in the story of the Industrial Revolution.

While the reasons behind strikes can be complex, they all boil down to two key elements: money and power. In this article, we'll find out how labor strikes have affected the balance of power between corporations and workers, what laws regulate strikes and learn about some important strikes in history.

It's difficult to say when the first real labor strike occurred. The word "strike" was first used in the 1700s, and probably comes from to notion of dealing a blow to the employer [ref]. In 1786, a group of printers in Philadelphia requested a raise and the company rejected it. They stopped working in protest and eventually received their raise. Other professionals followed suit in the next few decades. Everyone in a city who practiced the same profession agreed to set prices and wages at the same rate. Members would shun anyone who diverged from the agreement, refusing to work in the same shop and forcing employers to fire them. By the 1800s, formal trade societies and guilds began to emerge.

To have a strike today, you must have a union (though not necessarily an official union) -- an organization of workers that bargain collectively with an employer. Workers form unions because an individual worker is powerless compared to an employer, who can set low wages and long working hours as long as it adheres to labor laws. When workers combine to form a union, they collectively have enough power to negotiate with the employer. The main weapon the union has against the employer is the threat of a strike action.

At its most basic level, a strike occurs when all the workers in the union stop coming to work. With no workers, the business shuts down. The employer stops making money, though it is still spending money on taxes, rent, electricity and maintenance. The longer the strike lasts, the more money the employer loses. Of course, the workers aren't getting paid either, so they're losing money as well. Some unions build up "war chests" -- funds to pay striking workers. But it isn't usually very much, and it's often not enough for a prolonged strike.

Strikes help explain why unions are more powerful than individuals. Imagine if an employer refuses to give a raise to an individual worker. She then decides to stop coming to work in protest. The employer simply fires her for not coming to work. That one worker has no power to influence the employer. However, it can be very costly for an employer to fire every single worker when a union goes on strike (though it has happened).

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