### 1

#### Interpretation – 1AC must use personal knowledge, organic intellectuals, and academic intellectuals, to garner offense.

Reid-Brinkley, Shanara (2008),” The Harsh Realities Of “Acting Black”: How African-American Policy Debaters Negotiate Representation Through Racial Performance and Style” Retrieved from <https://getd.libs.uga.edu/pdfs/reid-brinkley_shanara_r_200805_phd.pdf> Taja1h

The process of signifyin’ engaged in by the Louisville debaters is not simply designed to critique the use of traditional evidence. As Green argues, their goal is to “challenge the relationship between social power and knowledge.”57 In other words, those with social power within the debate community are able to produce and determine “legitimate” knowledge. These legitimating practices usually function to maintain the dominance of normative knowledgemaking practices, while crowding out or directly excluding alternative knowledge-making practices. The Louisville “framework looks to the people who are oppressed by current constructions of power.”58 Jones and Green offer an alternative framework for drawing claims in debate speeches, they refer to it as a three-tier process: A way in which you can validate our claims, is through the three-tier process. And we talk about personal experience, organic intellectuals, and academic intellectuals. Let me give you an analogy. If you place an elephant in the room and send in three blind folded people into the room, and each of them are touching a different part of the elephant. And they come back outside and you ask each different person they gone have a different idea about what they was talking about. But, if you let those people converse and bring those three different people together then you can achieve a greater truth.59

#### Violation – [Extempt]

#### Prefer

#### 1] Pornotroping: The 1AC narrates forms of violence for ballots commodifying experience and degrading them to high school debate rounds and detaching ourselves from the violence. This turns the aff because none of your impacts are achieved only recreating cruel optimism.

#### 2] Embodiment – Without embodiment the aff does nothing. Their method illusory so voting aff doesn’t do the benefits it discusses. It only matters if you have a connection with the advocacy, means vote neg on presumption. Also turns their method since it filters out whiteness.

**Campbell 97** [Fiona, [members.tripod.com/FionaCampbell/speech\_acts\_on\_problematising\_empowerment.htm](http://members.tripod.com/FionaCampbell/speech_acts_on_problematising_empowerment.htm), 12-04-07] Brackets in original

So who am I to speak, to be listened to? And why is it important to identify my speaking position? The word‘ in spoken or written form (sometimes referred to as Discourse), is the site that both power and knowledge meet. Which is why speech acts can be inherently dangerous**. Furthermore a personin a Privileged speaking position, such as myself, has a political/ethical responsibility to interrogate his/her relationship” to subordinated and disadvantaged peoples** and declare their „interest‟. On this point, La Trobe University, Professor Margaret Thornton states ―assumed objectivity of **knowledge itself camouflage not only the fact that it always has a standpoint, but that it also serves an ideological purpose**‖ (Thornton 1989: 125**). Refusing to declare one‟s speaking position, I argue constitutes not only a flagrant denial of the privileging effect of speech, but must be considered as an act of complicity to systematically mislead**. I speak tonight from what I would term, a privileged speaking position. As someone who has been exposed to tertiary education, had an opportunity to read and reflect on many books and ideas, with a job and more particularly, as a teacher. Indeed, for some I act as a mentor - the one who ‗knows something about knowledge‘. On the other hand, I am deeply ambivalent about my ‗expertise‘ to engage in the act of public speech talk. For am from the margins, the client, patient, the ‗riff raff‘, flotsam and jetsam of society and might say - somewhat ‗deviant‘. It is important to come clean about my speaking position, my knowledge standpoint and declare my interests: I speak for myself as a woman who has experienced youth homelessness, childhood violence and later ‗disability‘. **Before I speak I am required to undertake a process of self-examination, to scrutinise my representational politics, to immerse myself in a self-reflexive interrogation and discern “what [my] representational politics authorises and who it erases** … ―(Howe 1994: 217). Do I speak for myself or others? Am I making gross generalisations about groups in the community? Does my speech contain unacknowledged assumptions and values? More specifically, within this process of reflection, **I am required to examine the context and location from which I speak, in order to ascertain whether it is ―allied with structures of oppression … [or] … allied with resistance to oppression.**

#### 3] Accessibility – models of debate that don’t meet the three tiered process are uniquely inaccessible for oppressed bodies because they’re forced to invest in a system that is terminally juxtaposed in opposition to their very identity.

#### TVA – [Extempt]

#### That’s DTD, no RVI, and Competing interps

#### A] its key to check abuse against whiteness

#### B] we indict your orientation toward anti asian-ness

#### C] reasonability leads to judge intervention which means biases go unchecked.

#### D] RVIs is just a form of white reparations, you shouldn’t win simply because the shell was wrong which reproduces cancellation politics of harshly punishing Asian people for small mistakes.

#### NC theory first – question of whether or not the form of the 1ac is good

### 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.

Kim 1 (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.

#### **Debate is a communicative activity which forces coercive mimetism which gauges successful assimilation that excludes Asian bodies. Language marks impossible social compliance for the Asian and separates them from the rest of the students.**

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﻿MIMICRY; OR, THE MELANCHOLIC MACHINE Racial melancholia as psychic splitting and national dis-ease opens on the interconnected terrains of mimicry, ambivalence, and the stereotype. In his seminal essay “Of Mimicry and Man: The Ambivalence of Colonial Discourse,” Homi Bhabha describes the ways in which a colonial regime compels the colonized subject to mimic Western ideals of whiteness. At the same time, this mimicry is also condemned to failure. Bhabha writes, “Colonial mimicry is the desire for a reformed, recognizable Other, as a subject of a difference that is almost the same, but not quite. Which is to say, that the discourse of mimicry is constructed around an ambivalence; in order to be effective, mimicry must continually reproduce its slippage, its excess, its difference.… Almost the same but not white.”28 Bhabha locates and labels the social imperative to assimilate as the colonial structure of mimicry. He highlights not only the social performance but also its inevitable, built-in failure. This doubling of difference that is almost the same but not quite, almost the same but not white, results in ambivalence, which comes to define the failure of mimicry. Here we elaborate on Bhabha’s observations of mimicry with its intrasubjective internalization into the psychic domain through the logic of racial melancholia. It is important to remember that, as with Bhabha’s analysis of mimicry in the colony, Freud marks ambivalence as one of melancholia’s defining characteristics. In describing the genealogy of ambivalence in melancholia, Freud himself moves from the domain of the social to the realm of the psychic. He notes that the “conflict due to ambivalence, which sometimes arises from real experiences, sometimes more from constitutional factors, must not be overlooked among the preconditions of melancholia.”29 According to Freud, melancholia not only traces an internalized pathological identification with what was once an external but now lost ideal. In this moving from outside to inside, we also get a strong sense of how social injunctions of mimicry configure individual psychic structures as split and dis-eased. The ambivalence that comes to define Freud’s concept of melancholia is one that finds its origins and routes in social history—in colonial and racial structures impelling performative displays of mimicry and man. It is crucial to extend Bhabha’s theories on colonial mimicry to the domestic landscape of race relations in the United States—a postcolonial nation itself—in order to consider how we might usefully explore this concept for Asian Americans. One potential site of investigation is the racial stereotype discussed above—the model minority myth. In an earlier essay titled “The Other Question: Stereotype, Discrimination, and the Discourse of Colonialism,” Bhabha aligns ambivalence and splitting with the stereotype, suggesting that the performance of mimicry and the phenomenon of the stereotype be considered together. The stereotype, Bhabha writes, “is a form of knowledge and identification that vacillates between what is always ‘in place,’ already known, and something that must be anxiously repeated … for it is the force of ambivalence that gives the colonial stereotype its currency.”30 If we conceptualize the model minority myth as a privileged stereotype through which Asian Americans appear as subjects in the contemporary social domain, then we gain a better understanding of how mimicry specifically functions as a material practice in racial melancholia. That is, Asian Americans are forced to mimic the model minority stereotype in order to be recognized by mainstream society—in order to be, in order to be seen at all. However, to the extent that this mimicry of the model minority stereotype functions only to estrange Asian Americans from mainstream norms and ideals (as well as from their own histories), mimicry can operate only as a melancholic process. As both a social and a psychic malady, mimicry and the model minority myth distance Asian Americans from the mimetic ideals of the nation. For Asian Americans, mimicry is always a partial success as well as a partial failure to assimilate into regimes of whiteness. Let us analyze this dynamic from yet another angle. Although Asian Americans are now largely thought of as model minorities exemplifying the “American dream,” this stereotype of material success is partial because it is configured primarily as economic achievement (in spite of extreme poverty in various Asian American communities) rather than social or cultural belonging. The putative success of the model minority subject comes to mask the limits of his political representation and agency. It covers over her inability to gain “full” and “well-rounded” subjectivities—to be politicians, athletes, artists, and activists, for example—to be recognized as a “typical American,” to invoke the exact title of Gish Jen’s novel from 1991. To occupy the model minority position, Asian American subjects must therefore submit to a model of economic rather than political and cultural legitimation. To this day, widespread social and parental pressures often dictate that Asian American students must opt for “safe”professional and upwardly mobile careers— doctor, engineer, lawyer— often at the expense of individual desires and psychic well-being—“doing well versus feeling well.”31They must not contest the dominant order of things; they must not “rock the boat”or draw attention to themselves. It is often difficult for our Asian American patients and students to articulate or to acknowledge their desires, as the model minority stereotype demands not only an enclosed but also a passive self-sufficiency and compliance. Drawing from Jacques Lacan’s idea of the subject as a desiring subject, Antonio Viego has described a similar prioritizing of needs over desires in the context of Latino immigration. He describes this process as the psychic production of a “dead subject,”the creation of a subject dead to his or her desires.32 Insofar as both social and parental pressures emphasize needs over desires— necessity over extravagance in Sau-ling W ong’s elegant formulation— melancholia and the death drive cannot be far behind.33 The model minority stereotype also delineates Asian Americans as academically successful but rarely well-rounded—well-rounded in tacit comparison to a normative white student body. Here is another example of Bhabha’s concept of mimicry as nearly successful imitation. This not quite successful performance attempts to cover over that gap—the failure of well­ roundedness— as well as that unavoidable ambivalence resulting from this tacit comparison in which the Asian American student is seen as lacking and not fully assimilated. This social failure incites a psychic ambivalence that characterizes the racialized subject’s identifications with dominant ideals of whiteness as pathological. This is an ambivalence that opens upon the landscape of melancholia and depression for many Asian American students. Those Asian Americans who do not fit into the model minority stereotype are altogether erased from—are not recognized by—mainstream society. Like Kingston’s grandfather in China Men, they are often rejected by their own families as well. The difficulty of negotiating this unwieldy stereotype is that, unlike most negative stereotypes of African Americans, the model minority myth is considered to be a “positive”representation— a model of social achievement and exceptionalism. In this regard, not only mainstream society but also Asian Americans themselves become attached to, and divided by, its seemingly admirable qualities without sufficiendy recognizing its liabilities—what the political theorist Wendy Brown describes as a “wounded attachment.”34 According to Bhabha, in its doubleness the stereotype, like mimicry, creates a gap embedded in an unrecognized structure of ambivalence. In Jen’s Typical American, for instance, we encounter Ralph Chang, who chases the American dream through his attempts to build a fried-chicken empire, the “Chicken Palace.”Eventually, the franchise fails, and the first “a”falls off the “Chicken Palace”sign which becomes “Chicken P\_lace.”This falling off is the linguistic corollary to the gap in the American dream that Ralph unsuccessfully mimes. Perhaps it is in this gap—in this emptiness—that melancholia emerges and comes to inhabit. It is also where the negotiation between mourning and melancholia is staged. MOURNING/MELANCHOLIA/IMMIGRATION The structure of mimicry gestures to the partial success and partial failure to mourn our identifications with whiteness. Moreover, it also gestures to our partial success and partial failure to mourn our identifications and affiliations with Asian cultures. Thus far, we have been focusing on the loss of whiteness as an ideal structuring the assimilation and racialization processes of second- generation Asian Americans. However, the lost object can be multifaceted. Since the reformation of the Immigration and Nationality Act of 1965, demographically there are more first-generation Asian American immigrants living in the United States today than any other generations of Asian Americans (these patterns are shifting noticeably under globalization today, a topic of further discussion in part II). Examining Asian American experiences of exclusion from the mid-1990s, this chapter focuses on the second-generation offspring of these first-generation immigrants who at that time filled our classrooms and clinics. Hence, it focuses on the psychic dynamics of mourning and melancholia in relation to problems of immigration and intergenerational losses between first- and second-generation Asian Americans. Generationally, racial melancholia delineates a psychic process by which an intersubjective subject-subject relationship between mainstream and minority groups as well as between the first- and the second-generation Asian American parents and children becomes configured as an intrasubjective psychic predicament of loss and exclusion. The experience of immigration itself is based on a structure of mourning. When one leaves one’s country of origin—voluntarily or involuntarily—one must mourn a host of losses both concrete and abstract. These include homeland, family, language, identity, property, status in community—the list goes on. In Freud’s theory of mourning, one works through and finds closure to these losses by investing in new objects— in the American dream, for example. Our attention to the problematics of mimicry, performance, ambivalence, and the stereotype, as well as our earlier analysis of the legal history of exclusion and bars to naturalization and citizenship for Asian Americans, reveals a social structure that prevents the immigrant from fully assimilating into the American melting pot. From another perspective, it denies him or her the capacity to invest in new objects. The inability to invest in new objects, we must remember, is part of Freud’s definition of melancholia. Given the ways in which Asian American immigrants are foreclosed from fully assimilating into mainstream culture, are they consigned to a perpetually melancholic status? If so, how do we begin to address Freud’s notion of melancholia as pathological? Clearly not all Asian Americans are consigned to melancholy or depression. If this is the case, how do first-generation immigrants negotiate and mitigate their losses? How do their second-generation offspring inherit and inhabit these losses? If the losses suffered by first-generation immigrants are not resolved and mourned in the process of assimilation—if libido is not replenished by the investment in new objects, new communities, and new ideals—then the melancholia that ensues can be traumatically passed down to the second generation. At the same time, can the hope of assimilation and pursuit of the American dream also be transferred? If so, we might say that mourning and melancholia are reenacted and lived out by second-generation children in their own attempts to assimilate and to negotiate the American dream. Here, immigration and assimilation characterize a process involving not just mourning or melancholia but the intergenerational negotiation between mourning and melancholia. Configured as such, this notion begins to depathologize melancholia by situating it as the intersubjective unfolding and outcome of the mourning process that underwrites the various psychic investments and losses connected to the immigration experience. CASE HISTORY: ELAINE Let us turn to a clinical example. Elaine, a US-born Korean American female college student, grew up in Texas. Her father is a professor, and her mother is a homemaker. An academic dean referred Elaine to me (Dr. Han) in 1997 because she was at risk of failing her first year in college. In a tearful presentation, Elaine reported, “My parents have sacrificed everything to raise me here. If my parents had stayed in Korea, my mom would be so much happier and not depressed. She would have friends to speak Korean with, my father would be a famous professor, and we would be better off socially and economically. I wouldn’t be so pressured to succeed. They sacrificed everything for me, and now it’s up to me to please them, and to do well in school.”When asked the reasons for her academic probation, she responded, “I didn’t do well because at a certain point, I didn’t care anymore, about myself or anything else.” Elaine’s case is an illustration of an intergenerational transference between immigrant parents and a child that might be usefully described through the logic of racial melancholia. The loss experienced by the parents’failure to achieve the American dream—to achieve a standard of living and a level of social acceptance greater than what they could have putatively achieved in Korea— is a loss transferred onto and incorporated by Elaine for her to work out and to repair. In particular, Elaine reenacts these losses through her relationship with her mother. Elaine’s depression is a result of internalized guilt and residual anger that she not only feels toward but also identifies with in her mother. Through this incorporation, she also functions as the placeholder of her mother’s depression. This mother-daughter predicament has been widely debated in feminist circles.35 Here, the question is how race intersects and reconfigures what is considered a strongly gendered dynamic. This intersection of sexual and racial difference in first- and second- generation intersubjective conflict is a common narrative in Asian American literature as well. Numerous stories portray the first generation (and often the second generation) as being a lost generation—bereft, traumatized, with few material or psychic resources.36Is it, however, only at the moment in which the first generation acknowledges its disappointments and failure to achieve the American dream that this theme of first-generation sacrifice then emerges to be retroactively projected onto the second generation? In other words, are Asian American parents as completely selfless as the theme of sacrifice and ideals of Confucian filial tradition suggest, or is this idea a compensatory gesture that attaches itself to the losses, disappointments, and failures associated with immigration? Could the ambitions of Elaine’s father to become a professor in an American university have motivated the family’s immigration, or was it perhaps his inability to succeed in Korea—especially because of constraints on opportunities connected to various military conflicts during World War II and the ensuing Cold War? Sacrifice, it is important to remember, is built on the assumption of nonequivalence and the melancholic notion that what is forfeited and lost can never be recuperated. In turn, do children of immigrants “repay” this sacrifice only by repeating and perpetuating its melancholic logic—by berating and sacrificing themselves? But could sacrifice also be considered the displaced residue of hope— a hope for the repairing of melancholia, of achieving the American dream? Can hope, too, be transferred from parent to child, or from child to parent? Elaine’s case evokes Rea Tajiri’s moving documentary film History and Memory (1991).37 History and Memory is about a young Japanese American girl whose parents endure internment during World War II. Whereas the girl’s mother has repressed all memories of the internment experience, the daughter has nightmares that she cannot explain—recurring images of a young woman at a watering well. The daughter is depressed, and the parents argue over the etiology of her depression. Eventually, the daughter discovers that these nightmares are reenactments of the mother’s histories in camp. Ironically, the mother has history but no memory, while the daughter has memory but no history. For both mother and daughter, history and memory do not come together until the daughter visits the former site of the internment camp, Poston. There she realizes that it is her mother’s history that she remembers. Tajiri’s film is an eloquent disquisition on racial melancholia. It is a compelling example of the ways in which historical traumas of loss, grief, and forgetting are passed down from one generation to another unconsciously— how, as Freud remarks in his essay “The Unconscious”(1915), “the unconscious of one human being can react upon that of another, without passing through the conscious.”38The daughter’s psychic predicament illustrates Freud’s observation that the most difficult losses suffered in melancholia are unconscious ones, psychic forfeitures that cannot be properly grieved and for which Freud could offer no simple solution or remedy. Yet, at the same time, it also diverges from Freud’s conception of the disease insofar as it posits a theory of melancholia that is not individual but that is intergenerationally shared among members of a social group, Japanese American internees. It also departs from Freud’s definition of melancholia as pathology and permanence. Here, the hope for psychic health is stitched into the fabric of melancholia but only as an optative gesture that must be redeemed by subsequent generations. In contrast to Freud’s contention that melancholia is a classic intrasubjective psychic condition, Tajiri’s version of melancholia approaches this condition from a different perspective. It refines our theory of racial melancholia as a psychic state focused on bonds of displaced love and hate among a collective—an intersubjective collective— that might be addressed and resolved across generations. Indeed, in History and Memory the daughter’s return to Poston initiates an incipient healing process in her mother. In melancholia, the subject’s turning from outside (intersubjective) to inside (intrapsychic) threatens to render social history invisible. What is striking in both these examples, of Elaine and of History and Memory, is the manner in which the daughters’bodies and voices become substitutes for those of the mothers— not just the mothers’bodies and voices but also something that is unconsciously lost in them. To return to Freud, the melancholic “knows whom [s]he has lost but not what [s]he has lost in [her].”39Elaine’s narrative and the Japanese American daughter’s nightmares are not their own histories. These daughters have absorbed and been saturated by their mothers’losses. The mothers’voices haunt the daughters. These losses and voices are melancholically displaced from the external world of the social into the internal world of the psyche. The anger that these daughters feel toward the loved object is internalized as depression and anger toward the self. Freud’s essay reminds us that the reproaches against the self are, in fact, displaced reproaches against the loved object that have been shifted onto the individual’s own ego.40 In this respect, racial melancholia highlights a particular subject-object confusion, as it traces a trajectory from love to hate of the lost object, indeed orienting the production of racial hatred over love. In the course of moving from the outside world into the domain of the psyche, this hate is brought into the shelter of the ego, identified with the self, and subsequently transformed into self-hate. As such, the internal monologue that the daughters direct toward themselves should rightly be an external dialogue between daughter and mother —indeed, toward the larger social world around them. If racial melancholia traces the social exclusions of immigration, assimilation, and racialization as form of self-hate, how might we address the problem as a subject-subject relation, a subject-subject (com)plaint? In the Psychic Life of Power, Judith Butler writes, “The melancholic would have saidsomething, if he or she could, but did not, and now believes in the sustaining power of the voice. Vainly, the melancholic now says what he or she would have said, addressed only to himself, as one who is already split off from himself, but whose power of self-address depends upon this self-forfeiture. The melancholic thus burrows in a direction opposite to that in which he might find a fresher trace of the lost other, attempting to resolve the loss through psychic substitutions and compounding the loss as he goes.”41This turning from outside to inside threatens to erase the political bases of melancholia, and to obscure the history of the melancholic (racial) subject in relation to the subject of (racial) history, precisely as it configures hate as a displaced residue of love. To approach this dynamic from another angle, when Asian American students seek therapy, their mental health issues are overwhelmingly perceived as intergenerational familial conflicts. That is, they are often diagnosed as being exclusively symptomatic of cultural rather than social or political conflicts. By configuring Asian values and Confucian filial tradition as the exclusive source of all intergenerational dis-ease, a pathologized Asian culture comes to serve as an alibi for a panoply of mental health issues and symptoms.42 These predicaments may in fact trace their etiology not to questions of Asian cultural difference but rather to historical forms of institutionalized racism and economic exploitation—to the subject of (racial) history. The segregation of Asian American mental health issues into the domain of cultural difference covers over structural questions of institutional violence and inequality, as well as histories of whiteness as property, as they circulate both inside and outside the therapeutic space of the clinic. For instance, not to account for a history of Japanese internment and indefinite detention when analyzing Tajiri’s mother- daughter family conflict serves not only to repress and to deny this history but also to redouble and to intensify the source of the daughter’s melancholia and depression. Lowe writes in Immigrant Acts, “Interpreting Asian American culture exclusively in terms of the master narratives of generational conflict and filial relation essentializes Asian American culture, obscuring the particularities and incommensurabilities of class, gender, and national diversities among Asians. The reduction of the cultural politics of racialized ethnic groups, like Asian Americans, to first-generation/second-generation struggles displaces social differences into a privatized familial opposition. Such reductions contribute to the aestheticizing commodification of Asian American cultural differences, while denying the immigrant histories of material exclusion and differentiation.”43 A therapeutic process that solely attributes Asian cultural differences to intergenerational conflict may result in the failure to cure; even more, it may also serve to endanger further the mental health of the patient. CASE HISTORY: NELSON This discussion on intergenerational dilemmas of immigration and assimilation brings us to the related issue of mourning, melancholia, and language. Nelson, a first-generation Japanese American student who emigrated from Osaka to New Jersey when he was five, sought therapy with me (Dr. Han) in 1996, presenting chronic struggles with depression associated with racial conflict. Nelson is the eldest child and has two siblings, a brother and a sister, both of whom were born in the United States. Before Nelson entered school, his mother spoke only Japanese to the children. When Nelson started kindergarten, his teacher admonished his mother to replace Japanese with English at home if she wanted her children to assimilate and to become successful students. Despite the mother’s broken English, she followed the teacher’s instructions assiduously, speaking only English to her children. Nelson recounts a story that took place later in grade school. During a reading lesson, he mispronounced “crooked” as “crookd”(one syllable). His teacher shamed him publicly for his failed speech act—his failed act of mimicry —and demanded to know where he learned to mispronounce such a simple word. Nelson reluctantly replied that he learned this pronunciation from his mother. Nelson remembers, in particular, feelings of social embarrassment and shame from the ridicule of his teacher and classmates. What we learn about Nelson’s case history is that, although his original connection to the primary object (the mother) was through the Japanese language, this connection was interrupted by a foreign property, English. The mother’s poor mimicry of English severed and revised the earliest mother-child attachment, one brokered in Japanese. As such, Nelson could no longer mirror himself from his mother, in Japanese or in English. This estrangement from language, both native and foreign, is a double loss. Although acquiring a new language (English) should be perceived as a positive cognitive development, what is often not acknowledged sufficiently is the concomitant psychic trauma triggered by the loss of what had once been a safe, nurturing, and familiar language to the young child (Japanese). The loss of Japanese as a safe and nurturing object reveals another way to think about racial melancholia in relation to processes of immigration and assimilation. In Nelson’s case history, melancholia results not only from a thwarted identification with a dominant ideal of unattainable whiteness but also a vexed relationship to a compromised Japaneseness. Nelson’s situation reveals how on two fronts ideals of whiteness and ideals of Japaneseness are lost and unresolved. Here the problem of accent marks an impossible social compliance. In both instances, language is the privileged vehicle— the privileged property— by which standards of successful assimilation and failed integration are measured. In this sense, language itself might be thought of as a kind of property right and stereotype, demanding a flawless mimicry on the part of the young Nelson, whose failed performance leads him to shame and self-abasement at a crucial moment of social and psychic development. Nelson’s transition from Japanese to English is another example of the negotiation between mourning and melancholia in the immigration and assimilation process. That is, although he suffers a loss and revaluation of his mother tongue, his transition into the adopted ideal of the English language is anything but smooth. We need to emphasize that the shaming ritual to which the grade-school teacher subjected Nelson—one all too common in the Darwinian space of the classroom— is one that not merely makes his transition into English difficult but also demonizes and repudiates the mother (and the mother tongue and accent) at the same time. What was once a loved and safe object is retroactively transformed into an object of shame and insecurity. To the extent that the figure of the mother originally represents safe notions of “home,” Nelson’s estrangement from his mother, and from his mother tongue, renders her unheimlich— unhomely, unfamiliar, uncanny— a topic that critical race scholar Mari Matsuda has explored in her legal analyses of accent discrimination.44 The relationship between language, pedagogy, and assimilation into a mainstream national citizenry is examined also in a short story by Monique T. D. Truong. “Kelly”(1991) is about a young Vietnamese refugee, Thuy-Mai, who finds herself in the improbable space of a North Carolina classroom of 1975. Truong’s narrator composes a distressing epistolary monologue to her one and only (and now absent) friend from that dark period of her life, Kelly. In doing so, she reenacts the melancholic logic discussed above. That is, an intersubjective external dialogue meant for two parties is melancholically internalized and transformed into an intrasubjective monologue of one remarkable for its anger and solipsism. What is an epistolary, after all, other than an impassioned (but not necessarily answered) plea to the other? Truong’s narrator recalls their grade-school teacher: Kelly, remember how Mrs. Hammerick talked about Veteran’s Day? How about the Day of Infamy when the Japanese bombed Pearl Harbor? Mrs. Hammerick, you know, the mayor’s wife always had a sweet something surrounding her like she had spent too much time pulling taffy.... Kelly, you only knew that she liked the Beths and the Susans cause they wore pink and never bulged and buckled out of their shirt plackets. I was scared of her like no dark corners could ever scare me. You have to know that all the while she was teaching us history she was telling, with her language for the deaf, blind, and dumb; she was telling all the boys in our class that I was Pearl and my last name was Harbor. They understood her like she was speaking French and their names were all Claude and Pierre.45 Truong’s story expands our discussion of language and its performative effects on the constitution of good and bad national subjects. Here, Mrs. Hammerick’s common language for the “deaf, blind, and dumb”—a language from which Thuy-Mai is emphatically excluded—is used to create and then separate good students from bad students within the institutionalized space of the classroom. The Susans and the Beths, the Claudes and the Pierres, are all, as Louis Althusser would put it, “interpellated”by the mayor’s wife as good citizen- subjects of the classroom and nation-state.46 Truong emphasizes how education is a primary site through which narratives of national identity and belonging are established and reinforced through pedagogical compliance. At the same time, the Vietnamese refugee, Thuy-Mai, is pathologized as Asian enemy, dismissively labeled “Pearl Harbor,”erroneously conflated with the Japanese, and implicitly rendered a menace to the coherence and integrity of the US nation-state. Mrs. Hammerick is, of course, not literally speaking French (though Vietnam was of course colonized earlier by France), but Truong’s attention to language underscores the ways in which an unconscious discourse of colonialism and race, of national inclusion and exclusion, is circulated in the classroom. Furthermore, as Lowe points out, Mrs. Hammerick’s nationalizing tract is simultaneously a gendered discourse: “The narrator’s observations that the teacher’s history lesson addresses ‘all the boys’further instantiates how the American nationalist narrative recognizes, recruits, and incorporates male subjects, while ‘feminizing’and silencing the students who do not conform to that notion of patriotic subjectivity.”47 Racialized subjects, such as Nelson and Thuy-Mai, become “good”citizens when they identify with the paternal state and accept, as Lowe summarizes, “the terms of this identification by subordinating [their] racial difference and denying [their] ties with the feminized and racialized ‘motherland.’”48 In the following section, we turn to Melanie Klein’s theories of good and bad objects, of good and bad mothers and motherlands, to explore the politics of aggression and destructiveness, of guilt and reparation, as they configure the psychic limits of racial melancholia and expand on Freud’s account of loss and interminable mourning.

#### Links

#### 1] Substance – Their philosophy prevents Asian subject from understanding themselves without white gaze, which means applying their framing extends imperialism where white people tell Asian subjects what they should and should not do.

#### 2] Reps – Their representation of defending Phil as a reason for nowhere with absolute fixity and truth is Anti – Asian because it comes form a standpoint of privilege. They haven’t experiences hate crimes or violence based on the color of their skin.

#### 3] Scholarship – Phil demes Asian subjectivity to white imaginary. Their ethical theory was all formulated in their heads without an inch of real world experience. That’s why its so utopian.

#### **Thus, 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 (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

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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

#### 1] Intellectual property is an inalienable personal right of economic use

**Pozzo 6** Pozzo, Riccardo. “Immanuel Kant on Intellectual Property.” Trans/Form/Ação, vol. 29, no. 2, 2006, pp. 11–18., doi:10.1590/s0101-31732006000200002. SJ//DA recut Cookie JX

Corpus mysticum, opus mysticum, propriété incorporelle, proprietà letteraria, geistiges Eigentum. All these terms mean **intellectual property, the existence of which is intuitively clear because of the unbreakable bond that ties the work to its creator.** The book belongs to whomever has written it, the picture to whomever has painted it, the sculpture to whomever has sculpted it; and this independently from the number of exemplars of the book or of the work of art in their passages from owner to owner. The initial bond cannot change and it ensures the author authority on the work. Kant writes in section 31/II of the Metaphysics of Morals: “Why does unauthorized publishing, which strikes one even at first glance as unjust, still have an appearance of being rightful? Because on the one hand a book is a corporeal artifact (opus mechanicum) that can be reproduced (by someone in legitimate possession of a copy of it), so that there is a right to a thing with regard to it. On the other hand a book is also a mere discourse of the publisher to the public, which the publisher may not repeat publicly without having a mandate from the author to do so (praestatio operae), and this is a right against a person. The error consists in mistaking one of these rights for the other” (Kant, 1902, t.6, p.290). The corpus mysticum, **the work considered as an immaterial good, remains property of the author on behalf of the original right of its creation. The corpus mechanicum consists of the exemplars of the book or of the work of art. It becomes the property of whoever has bought the material object in which the work has been reproduced or expressed.** Seneca points out in De beneficiis (VII, 6) the difference between owning a thing and owning its use. He tells us that the bookseller Dorus had the habit of calling Cicero’s books his own, while there are people who claim books their own because they have written them and other people that do the same because they have bought them. Seneca concludes that the books can be correctly said to belong to both, for it is true they belong to both, but in a different way **The peculiarity of intellectual property consists thus first in being indeed a property, but property of an action; and second in being indeed inalienable, but also transferable in commission and license to a publisher. The bond the author has on his work confers him a moral right that is indeed a personal right. It is also a right to exploit economically his work in all possible ways, a right of economic use, which is a patrimonial right. Kant and Fichte argued that moral right and the right of economic use are strictly connected, and that the offense to one implies inevitably offense to the other.** In eighteenth-century Germany, the free use came into discussion among the presuppositions of a democratic renewal of state and society. In his Supplement to the Consideration of Publishing and Its Rights, Reimarus asked writers “instead of writing for the aristocracy, to write for the tiers état of the reader’s world.” (Reimarus, 1791b, p.595). **He saluted with enthusiasm the claim of disenfranchising from the monopoly of English publishers expressed in the American Act for the Encouragement of Learning of May 31, 1790. Kant, however, was firm in embracing intellectual property. Referring himself to Roman Law, he asked for its legislative formulation not only as patrimonial right, but also as a personal right.** In Of the Illegitimity of Pirate Publishing, he considered the moral faculties related to **intellectual property as an “inalienable right (ius personalissimum) always himself to speak through anyone else, the right, that is, that no one may deliver the same speech to the public other than in his (the author’s) name”** (Kant, 1902, t.8, p.85). Fichte went farther in the Demonstration of the Illegitimity of Pirate Publishing. **He saw intellectual property as a part of his metaphysical construction of intellectual activity, which was based on the principle that thoughts “are not transmitted hand to hand, they are not paid with shining cash, neither are they transmitted to us if we take home the book that contains them and put it into our library.** In order to make those thoughts our own an action is still missing: we must read the book, meditate – provided it is not completely trivial – on its content, consider it under different aspects and eventually accept it within our connections of ideas” (Fichte, 1964, t.I/1, p.411). At the center of the discussion was the practice of reprinting books in a pirate edition after having them reset word after words after an exemplar of the original edition. Given Germany’s division in a myriad of small states, the imperial privilege was ineffective against pirate publishing. Kant and Fichte spoke for the acceptance of the right to defend the work of an author by the usurpations of others so that he may receive a patrimonial advantage from those who utilize the work acquiring new knowledge and/or an aesthetic experience. In particular, Fichte declared the absolute primacy of the moral faculties within the corpus mysticum. He divided the latter into a formal and a material part. “This intellectual element must be divided anew into what is material, the content of the book, the thoughts it presents; and the form of these thoughts, the manner in which, the connection in which, the formulations and the words by means of which the book presents them” (Fichte, 1964, t.I/1, p.411). Fichte’s underlining the author’s exclusive right to the intellectual content of his book – “the appropriation of which through another is physically impossible” (ibid.) – brought him to the extreme of prohibiting any form of copy that is not meant for personal use. In Publishing Considered anew, Reimarus considered on the contrary copyright in its patrimonial aspects as a limitation to free trade: “What would not happen were a universal protection against pirate publishing guaranteed? Monopoly and safer sales certainly do not procure convenient price; on the contrary, they are at the origin of great abuses. The only condition for convenient price is free-trade, and one cannot help noticing that upon the appearance of a private edition, publishers are forced to substantially lower the price of a book” (Reimarus, 1791a, pp.402-3). Reimarus admitted of being unable to argue in terms of justice. Justice was of no bearing, he said, for whom, like himself, considered undemonstrated the author’s permanent property of his work (herein supported by the legislative vacuum of those years). What mattered, he said, was equity. In sum, Reimarus anticipated today’s stance on free use by referring to the principle that public interest on knowledge ought to prevail on the author’s interest and to balance the copyright. Moreover, Reimarus extended his argument beyond the realm of literary production to embrace, among others, the today vital issue of pharmaceutical production on patented receipts. “Let us suppose that at some place a detailed description for the preparation of a good medicine or of any other useful thing be published, why may not somebody who lives in places that are far away from that one copy it to use it for his own profit and but must instead ask the original publisher for the issue of each exemplar?” (Reimarus, 1791b, t.2, pp.584). To sum up, Reimarus’s stance does not seem respondent to rule of law. For in all dubious case the general rule ought to prevail, fighting intellectual property with anti-monopolistic arguments in favor of free trade brings with itself consequences that are not tranquilizing also for the ones that are expected to apply the law. **By resetting literary texts, one could obviously expurgate some errors. More frequently, however, some were added, given the exclusively commercial objectives of the reprints. The valid principle was, thus, that reprints were less precise than original editions, but they were much cheaper for the simple reason that the pirate publisher had a merely moral obligation against the author and the original publisher. In fact, he was not held to pay any honorarium to the author upon handling over the manuscript, nor to paying him royalties, nor to pay anything to the original publisher. The** only expense in charge of the pirate publisher was buying the exemplar of the original edition out of which he was to make, as we say today, a free use.

#### 2]The aff violates the categorical imperative and is non-universalizable- governments have a binding obligation to protect creations

**Van Dyke 18** Raymond Van Dyke, 7-17-2018, "The Categorical Imperative for Innovation and Patenting," IPWatchdog, <https://www.ipwatchdog.com/2018/07/17/categorical-imperative-innovation-patenting/id=99178/> SJ//DA recut SJKS

As we shall see, applying **Kantian logic entails first acknowledging some basic principles; that the people have a right to express themselves, that that expression (the fruits of their labor) has value and is theirs (unless consent is given otherwise), and that government is obligated to protect people and their property. Thus, an inventor or creator has a right in their own creation, which cannot be taken from them without their consent.** So, employing this canon, **a proposed Categorical Imperative (CI) is the following Statement: creators should be protected against the unlawful taking of their creation by others. Applying this Statement to everyone, i.e., does the Statement hold water if everyone does this, leads to a yes determination. Whether a child, a book or a prototype, creations of all sorts should be protected, and this CI stands.** This result also dovetails with the purpose of government: to protect the people and their possessions by providing laws to that effect, whether for the protection of tangible or intangible things. **However, a contrary proposal can be postulated: everyone should be able to use the creations of another without charge. Can this Statement rise to the level of a CI? This proposal, upon analysis would also lead to chaos. Hollywood, for example, unable to protect their films, television shows or any content, would either be out of business or have robust encryption and other trade secret protections, which would seriously undermine content distribution and consumer enjoyment.** Likewise, inventors, unable to license or sell their innovations or make any money to cover R&D, would not bother to invent or also resort to strong trade secret. Why even create? This approach thus undermines and greatly hinders the distribution of ideas in a free society, which is contrary to the paradigm of the U.S. patent and copyright systems, which promotes dissemination. By allowing freeriding, innovation and creativity would be thwarted (or at least not encouraged) and trade secret protection would become the mainstay for society with the heightened distrust.

#### 3]The aff encourages free riding- that treats people as ­means to an end and takes advantage of their efforts which violates the principle of humanity

**Van Dyke 2** Raymond Van Dyke, 7-17-2018, "The Categorical Imperative for Innovation and Patenting," IPWatchdog, <https://www.ipwatchdog.com/2018/07/17/categorical-imperative-innovation-patenting/id=99178/> SJ//DA recut SJKS

Also, **allowing the free taking of ideas, content and valuable data, i.e., the fruits of individual intellectual endeavor**, would disrupt capitalism in a radical way. **The resulting more secretive approach in support of the above free-riding Statement** would be akin to a Communist environment **where the State owned everything and the citizen owned nothing, i.e., the people “consented” to this. It is, accordingly, manifestly clear that no reasonable and supportable Categorical Imperative can be made for the unwarranted theft of property, whether tangible or intangible,** apart from legitimate exigencies.

#### IPs are a necessary check on companies free-riding off associations of quality.

Wong et al 20 [Liana, Ian, and Shayerah; Analyst in International Trade and Finance; Specialist in International Trade and Finance; Specialist in International Trade and Finance; “Intellectual Property Rights and International Trade,” \*Updated\* 5/12/20; CRS; <https://www.everycrsreport.com/files/20200512_RL34292_2023354cc06b0a4425a2c5e02c0b13024426d206.pdf>] Justin

Trademark protection in the United States is governed jointly by state and federal law. The main federal statute is the Lanham Act of 1946 (Title 15 of the United States Code). Trademarks permit the seller to use a distinctive word, name, symbol, or device to identify and market a product or company. Marks can also be used to denote services from a particularly company. The trademark allows quick identification of the source of a product, and for good or ill, can become an indicator of a product's quality. If for good, the trademark can be valuable by conveying an instant assurance of quality to consumers. Trademark law serves to prevent other companies with similar merchandise from free-riding on the association of quality with the trademarked item. Thus, a trademarked good may command a premium in the marketplace because of its reputation. To be eligible for a trademark, the words or symbol used by the business must be sufficiently distinctive; generic names of commodities, for example, cannot be trademarked. Trademark rights are acquired through use or through registration with the PTO.

A related concept to trademarks is geographical indications (GIs), which are also protected by the Lanham Act. The GI acts to protect the quality and reputation of a distinctive product originating in a certain region; however, the benefit does not accrue to a sole producer, but rather the producers of a product originating from a particular region. GIs are generally sought for agricultural products, or wines and spirits. Protection for GIs is acquired in the United States by registration with the PTO, through a process similar to trademark registration.

#### 4] Unauthorized publication and usage of text is wrongful and infringes on inalienable moral rights

Barron ’11. [Barron, Anne (2011) Kant, copyright and communicative freedom. Law and philosophy . pp. 1-48. <http://eprints.lse.ac.uk/37521/1/Kant_Copyright_and_Communicative_Freedom_%28lsero%29.pdf>] NChu

My claim in this article is that a significantly different, and arguably richer, conception of what a free culture entails and how the rights of authors relate to it emerges from a direct engagement with the philosophy of Immanuel Kant.15 The immediate justification for turning to Kant in this context is that he dealt very directly with the issue of authors’ rights – first in an essay published in 178516 (hereinafter ‘1785 Essay’) and again briefly in a section – entitled “What is a Book” – of his late work of political philosophy, Part I of The Metaphysics of Morals. 17 Moreover, he theorized these rights as speech rights, and not as rights of property in works considered as crystallizations of their authors’ communications.18 The most wellknown of the arguments contained in these writings can be briefly outlined. Kant’s premise is that a book considered as a material object must be distinguished from a book considered as the vehicle for an activity of authorial speech. On the one hand, an author’s manuscript, and every printed copy of it, is an ordinary object of property attracting an ordinary right of property vested in whomever is legitimately in possession of the object. This right would include the right to use the object, to sell the object and indeed to copy the object. On the other hand, a published book (considered as the vehicle of its author’s speech) is also a communication from publisher to public in the name of the author. Hence it is also an action, and as such it has its existence in a person – the person of the author. For Kant, it follows that unauthorized publication of copies of the author’s text – though not unauthorized reproduction as such – is wrongful. By selling copies of an author’s text to the public, the unauthorized publisher is not just dealing with commodities – printed books – in his own name, but is disseminating an author’s speech, thus compelling the author to speak against his will,19 to acknowledge the book as his own and be responsible for it.20 Actions “belong exclusively to the person of the author, and the author has in them an inalienable right always himself to speak through anyone else, the right, that is, that no one may deliver the same speech to the public other than in his (the author’s) name”21 or deliver a fundamentally altered speech in his name.22 However if the work is indeed so altered that it would be wrong to attribute it to the author, it can rightfully be published in the modifier’s name.23 These remarks on authors’ rights have not gone unnoticed by copyright lawyers. On the contrary, Kant’s 1785 Essay is often cited as inspiration for the theory – now institutionalized in international copyright law – that authors ought to have inalienable ‘moral’ rights in relation to their works.24 These are enforceable legal rights which are ‘moral’ in the sense that they concern authors’ non-pecuniary interests in relation to their works (such as the interest in being identified as author, and in ensuring that one’s works are published only in the form in which they were created); and they contrast with the economic rights (e.g. to control the reproduction and distribution of copies) which protect authors’ pecuniary interests in the commercial exploitation of their works. Yet moral rights in practice afford far less protection to authors than the theory would suggest, and transferable economic rights to the most commercially valuable works are more often than not held by corporate investors. And since it is economic rights which are the focus of concerns about copyright expansionism and its implications for the public domain, the formal recognition of a doctrine of moral rights has done little to allay these concerns.