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Foreword

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Unbound by Law: Keith Aoki as Our Avatar

Holodeck . . . Give me a comic artist studio!!¹

What makes the story of Keith Aoki so poignant is that it is surprising someone like him existed in legal academe.²

INTRODUCTION

What if Keith Aoki did not exist? Seriously. What if there had been no such a being as Keith Aoki? Would we as a

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¹ Keith Aoki, *Pictures Within Pictures*, 36 OHIO N.U. L. REV. 805, 808 (2010).

² Sumi Cho, *Becoming Asian American and the Magic of Historical Accident*, 90 OR. L. REV. 1203 (2012).

community want to create a Keith Aoki? Why? Why would a group of otherwise stable, hardworking academics want to come up with this person and endow him with qualities of near mythic proportions? Could it be that we need him that much?

Let's go back to the beginning in academia for many of us who contributed to this memorial Symposium. It was the early nineties, Reaganism had morphed into Clintonism, and a new generation was entering the legal academy. Many came with a mixture of resentment toward the legal establishment and a commitment to fundamental change within it and in the broader system it signified and maintained. The resentment was fueled by a conviction that the law had not done enough to promote a more just society. The commitment rested on the view that the legal establishment had not been sufficiently critical, partly because it lacked diversity and thus revolutionary perspective, but also because it had thus failed to fully engage the myriad and complex ways in which forces of subordination were connected. Many of the new entrants to law teaching had some level of association with the critical studies movement; some were already branching out as critical race, critical feminist, LatCrit,³ NAIL,⁴ or TWAIL⁵ adherents. It was an exciting time, filled with possibilities of foundational change not only in how law was taught, but also how it was practiced and how it could help transform society.

However, there was also the immediate reality of gaining and keeping jobs that offered substantial material benefits to people who may not have cared about making a lot of money but still appreciated a comfortable middle-class existence. It was important and necessary to be convincing enough in the ways the legal academic establishment had come to expect in order to gain access to seven-figure annuities. It was also important and necessary to continue to maintain the forbearance of the establishment at least through tenure while engaging and nurturing fellow travelers in the important tasks of knowledge production and distribution.

There were many points of tension and conflicts along the way. Three clearly stood out: First, there was the tension between pursuing philosophical or ideological goals and obtaining the security that

³ LatCrit stands for the organization and community of scholars and activists known as Latina and Latino Critical Legal Theory, Inc.

⁴ NAIL stands for New Approaches to International Law.

⁵ TWAIL stands for Third World Approaches to International Law.

came with tenure. Second, there was the tension between finding a safe ideological group home and the scholarly imperative of constantly questioning everyone, even your friends, and everything, including your own beliefs and goals. Third, there was the tension between holding on to one's humanity and sense of decency on one hand, and on the other, adopting professional perspectives and practices—so well rewarded by our profession and institutions—that heap pain and despair on others, colleagues as well as students.

Seen in this context, everyday life could easily become unbearable. The creation of a being, an avatar, that demonstrates how to navigate and resolve these many tensions, would seem a worthwhile exercise. Consider this possibility as you examine the various portraits of this extraordinary figure we called Keith, sketched by colleagues in this Symposium. Who among us is not filled with wonderment that this Keith figure, nicknamed Super Aoki,⁶ actually pulled off an existence that resolves and reconciles these tensions? The Keith described in the following pages never wavered in his ideological commitment to the outsiders, the dispossessed, the least of these. Yet he published with such alacrity, taught insane numbers of classes and students, accepted institutional drudgework beyond all expectations, and breezed through the tenure process. This Keith also fraternized with and was beloved by all the Crits and kindred communities, yet he belonged to no one in particular and never sacrificed rigor in his scholarship for anything or anyone. And absolutely no material temptation seemed to have interfered with his sense of decency. No professional reward or desire creased his perpetual smile or mitigated his sense of outrage at injustice. He screamed “Moo Ha Ha,” a unique phrase that came to represent all that was vile and ridiculous about human greed and our quest for power, but he did so with an infectious joy.

Perhaps we testify to the existence of this man with just a touch of envy? Truth be told, can anyone objectively conceive of possessing the strength of character, equanimity, courage, and plain energy it took to be this Keith Aoki? Maybe our stories represent a yearning. Whether it is for a Paradise Lost or one still to be found might be the question. Let's turn to the evidence.

⁶ Keith's own drawings gave him the creative license to portray himself in superhero terms—for example, as flying from a lecture hall using a jet pack. See Aoki, *supra* note 1, at 818.

I

DREAMING THE ENTIRE MAN⁷

Decent respect for the effort and perspectives of these contributing authors as well as the work of our editors demands that we put aside for just a brief moment all intimations of incredulity as we consider the evidence. In that vein, we have invited the memorial articles to reflect Keith Aoki's contributions to roughly three interconnected areas: Asian American jurisprudence/immigration law and politics, intellectual property, and property/critical geography/local government. This reflects our best efforts to create some sort of subject matter organization rather than to just concede the obvious fact that Keith saw no boundaries cleanly separating his numerous scholarly contributions and would be aghast at all these affirmations of a modernistic vision of authorship. It might be more helpful to see in each contribution how Keith represented the reconciliation of the tensions identified above. Or perhaps how each witness would reconcile them?

First let us recreate the foundation of this Keith Aoki figure before turning to the outline of his scholarly and other professional contributions some of his colleagues have submitted for this Symposium. As the story goes, long before he entered law teaching, Keith had a life that was quintessentially American as well as suggestive of the possibilities of transcendence. Looking back at the origin of this figure, one could see the initiations for a life rooted in unbounded curiosity, empathy for outsiders, rejection of rigid beliefs and fixed identities, and a desire to mitigate conflicts. In another symposium put together in his honor by the editors of the *University of California-Davis Law Review*, a close friend, Dean Frank Wu, suggests that “[b]efore Keith was a law professor, he was an artist; he belonged to the *avant-garde* in both professions. And before Keith was Asian American, he was white.”⁸ This provocative assessment of some of the dualities in Keith's origins and professional career captures the foundation of a life-long struggle to escape conventional boundaries or categorizing. One could easily add to that assessment: before Keith was LatCrit, he was Asian American, etc. Yet this

⁷ See JORGE LUIS BORGES, *THE CIRCULAR RUINS*, reprinted at <http://www.acsu.buffalo.edu/~jatill/175/CircularRuins.htm> (“He dreamed an entire man . . .”).

⁸ See Frank H. Wu, *Becoming Asian American: An Interview with Keith Aoki*, 45 U.C. DAVIS L. REV. (forthcoming 2012).

observation, affirmed by Keith himself on many occasions, not only energized his involvement in Asian American jurisprudence, it also supported the extension of that involvement into work on broader immigration/citizenship law and politics as well as even wider considerations of power relations reflected by old and new property formations.

The Keith celebrated here grew up in the Detroit area at a time and age critical to absorb the essence of the conflicts and revolutionary fervor of the sixties but too young to be defined by it. His Japanese American parents survived World War II, internment, and all that came with it. His father was a second-generation Nisei, born in California, and his mother, born in Honolulu, spent the war years in Japan. Can you picture a Stan Lee superhero character here? Keith understood his parents' choice to give him and his brother the traditional middle-class American life. It was not that they denied their Japanese ancestry, but their recent experience led them toward an embrace of social integration, at least in their public lives.

Keith's initial questioning of this path foreshadowed his deeper restless intellectual commitments that came after law school. As Professor Sumi Cho asserts in this Symposium, "that Keith would ultimately rebel and push against the silence, confinement, and self-distortion imposed by a totalizing set of rules that prefigured his birth is unsurprising."⁹ First came the anti-war attitude. Then, Wayne State as an art major. It was in college and through art that Keith first began to express in a committed fashion his discomfort with life in the heartland.¹⁰ He was drawn to a more "physicalist" or "brutal" representational style in his own artwork. Industrial-age sculpture mixed easily with punk rock for Keith, as the intoxicating realm of a punk/art rock band musician provided yet another artistic outlet for Keith. He achieved considerable success in his artistry. But soon the inherent limitations of Detroit—demographics and economic dislocations—pushed him toward the more cosmopolitan New York City where Keith undertook graduate work at Hunter College in the eighties.

In a sense, law school was ready for him when he entered Harvard in the late 1980s. Intellectual property discourse was benefiting from

⁹ Cho, *supra* note 2, at 1212.

¹⁰ See Lydia Pallas Loren, *The Bridge and Playful Thunder of Keith Aoki*, 90 OR. L. REV. 1217 (2012).

growing acceptance of the latest wave of economic globalization. Throw into the milieu the ferment of critical theory, and an irrepressibly curious mind finds an intellectual base. Keith started his first teaching job at the University of Oregon in 1993 after a brief and relatively unhappy exposure to corporate law practice in Boston. What an entrance that was. Garrett Epps captured the essential Keith Aoki as he described his first “true introduction to Keith’s protean identities.”¹¹ “Have you ever heard of the Church of Jack Lord?” must stand as one of the most exquisite introductions since “Dr. Livingstone, I presume?” Professor Epps described Keith as “the most stimulating colleague I have ever had and expect to have.” But in addition to his outlining for us, Marvel Comics-style, the Keith Aoki character, Professor Epps, a celebrated novelist and distinguished reporter long before he became a constitutional law scholar, summarizes for us the character’s core mission. He states that Keith “was always moved by and moving toward an identity that combined the history of his country with that of his family and made of them a powerful lens to pierce hypocrisy and pretention.”¹²

Professor Sumi Cho picks up this narrative in her reflections on “the scholarly, political, and community-building contributions of Professor Keith Aoki.”¹³ Professor Cho encountered Keith in Oregon around the same time as Professor Epps. Her piece provides important content and context for Keith’s journey from being a “compatriot/student/fellow traveler of the largely white, predominantly male, strongly groucho-marxist-anarcho-yippie tendency within Critical Legal Studies” to becoming Asian American.¹⁴ Professor Cho’s observation that “the Keith we all know and love” could not have fully come into being “until he reconciled his racial identity” could have been said about many a mythic hero.¹⁵ This reconciliation provided Keith with the freedom as well as empathy to engage all of us, regardless of background, in our own

¹¹ See Garrett Epps, *The Arc of a Chameleon Bends Toward Justice: Remembering Keith Aoki*, 90 OR. L. REV. 1227, 1228 (2012).

¹² *Id.* at 1227.

¹³ Cho, *supra* note 2, at 1203.

¹⁴ *Id.* at 1207 (quoting Keith Aoki); see also Keith Aoki, *Critical Legal Studies, Asian Americans in U.S. Law & Culture, Neil Gotanda, and Me*, 4 ASIAN AM. L.J. 19, 20–24 (1997).

¹⁵ Cho, *supra* note 2, at 1213.

respective journeys. It also helped him to surf, Ninja-like,¹⁶ the tensions confronting his generation of legal academics and empower all of us in the process.

Professor Cho also affirms Professor Epps's statement of Keith's core mission as the "Secret Agent/Asian Man" who allied himself "with the subaltern and those outside the circles of power."¹⁷ Clearly, Keith's embrace of his Asian American identity, like his entry into the legal academy, was not an end in itself. It was a rebellious act of individual self-determination, a necessary phase in a life-long struggle against oppressive group-based stereotypes, an identification with those at the bottom of the well,¹⁸ and a concrete act to help destabilize an old suffocating transnational order policed by violence and ignorance. One could easily picture him working within Asian American identity to reject internal communal forms of rigidity and subordination.

Robert Chang's submission ties both this internal self-awareness-based engagement to a broader consideration of Keith's early interventions in immigration law and politics within the context of economic globalization.¹⁹ Keith's work on issues of immigration law and politics as they impact other communities besides Asian Americans may be seen as the result of a readiness, post-identity reconciliation, to tackle issues of subordination in all their complexity, interconnectedness, and reach.²⁰ Chang wrote in the context of long-term scholarly collaboration and conversation between the two colleagues that began with a 1997 article, "Centering the Immigrant in the Inter/National Imagination."²¹ Here, Professor Chang writes about "the role that political theory might play in helping to think through" the incoherence of immigration law and politics.²² His work in this piece is a worthy reminder of Keith's ability to seed and nurture ideas that may continue to bear fruit way

¹⁶ See Hari M. Osofsky, *The Geography of "Moo Ha Ha": A Tribute to Keith Aoki's Role in Developing Critical Legal Geography*, 90 OR. L. REV. 1233 (2012).

¹⁷ Cho, *supra* note 2, at 1214.

¹⁸ See DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

¹⁹ Robert S. Chang, *Centering the Immigrant in the Inter/National Imagination (Part III): Aoki, Rawls, and Immigration*, 90 OR. L. REV. 1319 (2012).

²⁰ *Id.* at 1320–21.

²¹ Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CALIF. L. REV. 1395 (1997), 10 LA RAZA L.J. 309 (1998).

²² Chang, *supra* note 19, at 1322.

past his time on this earth. Professor John Shuford's article on racial identity, xenophobia, place, and the pull of idealized notions of the past among once privileged classes is another example of this legacy.²³

Professor Chang's piece is also a beautiful paean to Keith's extraordinary contributions as a colleague and mentor and his stoicism in the face of horrendous adversity. He gives personal testimony to Keith's support for the professional development of colleagues, Keith's "fierce" loyalty to friends, and his energy rooted in "his faith in us, the words that we would speak and write, the students we would teach, the better world, that with him, we would strive to make."²⁴

Keith broadened his work on immigration and citizenship law and politics in keeping with the changing focus, terms, and images of oppression. Shortly after he began teaching law, Keith embraced, for example, the revolutionary implications of LatCrit theory. In his contribution to this Symposium, Steven Bender points out that, "early on Keith recognized the pivotal role of Latina/os and Latina/o immigrants in forging dignity in law for vulnerable populations generally."²⁵ Professor Bender argues that "eventually [Keith's] writings ripened to reveal two core themes that defined his overall scholarly agenda: his insistence on the preeminence of voting rights and representation in any social reform agenda, and his imperative of fair treatment for Latina/o and other immigrants as a barometer of how the United States treats vulnerable groups."²⁶ Bender's piece captures Keith's energy and scholarly rigor, his "steadfast adherence to ideals of equality," as well as his consummate optimism even in the face of "sobering realities of anti-immigrant hate and global subordinations."²⁷ The kid from Detroit, who was white before becoming Asian American, had morphed easily into a fighter for immigrant Latina/o dignity. No boundaries remained stable for long in the face of the evolutionary potential inherent in Keith's origin.

²³ John Shuford, "The Tale of the Tribe and the Company Town": *What We Can Learn About the Workings of Whiteness in the Pacific Northwest*, 90 OR. L. REV. 1273 (2012).

²⁴ Chang, *supra* note 19, at 1335.

²⁵ See Steven W. Bender, *En Paz Descanse: Remembering Keith Aoki's Contributions Toward Latina/o Equality*, 90 OR. L. REV. 1265 (2012).

²⁶ *Id.* at 1269.

²⁷ *Id.* at 1268.

Keith's artistic career sparked his scholarly interest in intellectual property, where he left yet another and perhaps his deepest impression. Professors Lydia Loren and Margaret Chon wrote about Keith's impact and influence in the field of intellectual property broadly defined. Both highlighted three specific aspects of Keith's contributions to the field: the influence of his artistic training on his scholarship, the breadth and depth of his scholarly contributions, and his unique demonstration of collegiality, a personal style that allowed him to mentor, collaborate, and otherwise influence so many others.

Professor Loren adopted the metaphor of Keith as a bridge.²⁸ Keith was a bridge into the legal academy for her, but it was a bridge that spanned generations because Keith, in his pre-law artistic life, had worked with her father when she was still in elementary school. Professor Chon's piece also captured the bridge imagery, reflecting on the special way Keith bridged whatever gap existed between his artistic expression and his scholarly work in intellectual property. As Chon puts it, "No doubt, his art and music influenced his perspectives in this area."²⁹ She added, "Surely he was the only one of us who illustrated fair use through graphic art."³⁰ Turning to his voluminous scholarly output, Chon noted Keith's "capacity, drive, and tenacity to write in several fairly disparate areas of law,"³¹ and the fact that he engaged "multiple types of intellectual property, both international and domestic," transplanting "other disciplines and theoretical insights into this area of law, which is still dominated by liberal utilitarian assumptions and analyses."³²

In discussing Keith's legacy, both colleagues noted the ease with which Keith crossed subdisciplines and tied various strands of thought together to offer a coherent process of analysis. His critique of "the pervasive trope of the romantic author"³³ and his warnings about the creation of a "world of unequal access to, ownership of, and distribution of informational resources,"³⁴ and the "colonization of

²⁸ Loren, *supra* note 10. Professor Loren borrowed the metaphor from Professor Shubha Ghosh, another academic collaborator.

²⁹ Margaret Chon, *Law Professor as Artist: Themes and Variations in Keith Aoki's Intellectual Property Scholarship*, 90 OR. L. REV. 1251, 1252 (2012).

³⁰ *Id.*

³¹ *Id.* at 1255.

³² *Id.*

³³ Loren, *supra* note 10, at 1221.

³⁴ *Id.* at 1222.

global industrial agriculture through intellectual property controlled by large multinational agrochemical entities,”³⁵ were anchored and unified by a healthy skepticism of human or corporate capacity to fully apprehend let alone solve all problems. Keith asked questions, investigated, looked for connections, and kept on writing. As Professor Chon put it in discussing Keith’s art, “After many variations, Keith remained preoccupied with his signature themes of dignity, fairness, and freedom in all of his scholarship, including his enormous body of intellectual property scholarship.”³⁶

Both colleagues recognized that as powerful as Keith’s intellectual insights were in the field, it was his abundant energy, unassuming nature, and an infectious playfulness suggested by his trademark grin and unlimited supply of obscure cultural references that opened the door for his exceptional influences. In the words of Professor Epps, “his images are out there somewhere, all the time; his words live on in scholarship databases; his kind deeds to younger colleagues take shape in the careers that he helped create and shape.”³⁷

Finally, Professor Hari Osofsky, former colleague at Oregon and Professor John Shuford, a former student and long-term collaborator with Keith, provide tantalizing insight into Keith’s influence in the field(s) of property/critical geography/local government. Shuford’s Article showcases enduring Keith influences on his intellectual development and research focus. Professor Shuford outlines an absorbing story of the struggle for resources, power, place, and security in the present-day inland Northwest of the United States.³⁸ He describes the construction of racialized identities and segregated communities as established groups and power structures struggle to deal with challenges posed by both the historically dispossessed as well as new immigrants, both legal and undocumented. In typical Aoki fashion, Shuford asks troubling questions such as, “How can

³⁵ *Id.* at 1223.

³⁶ Chon, *supra* note 29, at 1263.

³⁷ Epps, *supra* note 11, at 1230.

³⁸ Keith was fascinated by these dynamics of resources and place in the Northwest, where he spent most of his scholarly career. Among these localized issues Keith addressed were the seemingly intractable land use struggles in Oregon. See Keith Aoki et al., *Trading Spaces: Measure 37, MacPherson v. Department of Administrative Services, and Transferable Development Rights as a Path out of Deadlock*, 20 J. ENVTL. L. & LITIG. 273 (2005); Keith Aoki, *All the King’s Horses and All the King’s Men: Hurdles to Putting the Fragmented Metropolis back Together Again? Statewide Land Use Planning, Portland Metro and Oregon’s Measure 37*, 21 J.L. & POL. 397 (2005).

one plausibly explain the phenomena of near absolute white racial homogeneity in some counties and micropolitan areas without references to laws and legal measures that permit(ted) or criminalize(d) presence according to one's background?"³⁹

Professor Osofsky deals with similar themes while highlighting Keith's seminal role in the development of the subfield of Critical Legal Geography⁴⁰ and his deployment of the celebrated term, "Moo Ha Ha." Professor Osofsky observed that the phrase captured, in a way only a graphic artist could, Keith's focus on greed and inequality. The phrase helped Keith illustrate "ways in which people who have property assert power, exclude others, and work to maintain power."⁴¹ Osofsky added that critical geography played an important role in Keith's dissection of "Moo Ha Ha" because it "focuses on understanding flows of power and capital and their interconnection with place and space."⁴²

What also emerges from Osofsky's analysis is that Keith's choice to bring geography into his scholarly work was an act of solidarity with a disfavored discipline as well as a demonstration of his commitment to going wherever his passion and reason took him. Osofsky also provides further evidence of Keith's capacity to leverage his influence through collaborative work and concludes that Keith's scholarly contributions and mentorship will continue to pay dividends as new scholars find voice from what he valued and how he conducted himself.⁴³

Collectively, the contributions to this memorial Symposium cover a variegated swath of legal academic work. They do not claim to capture the full breadth and depth of Keith's scholarly and collegial contributions to the profession and its constituents. What they do supply is a complex flavor of one person's impact on the profession through disciplined work on diverse areas of law—intellectual property, local government, critical geography, Asian American jurisprudence, immigration and critical Latina/o jurisprudence—and through an unyielding commitment to critical analysis. A voracious appetite for human and intellectual connections and an abiding sense

³⁹ Shuford, *supra* note 23, at 1317.

⁴⁰ Osofsky, *supra* note 16, at 1235.

⁴¹ *Id.* at 1237.

⁴² *Id.* at 1238.

⁴³ *Id.* at 1250.

of decency tie all the portraits of this figure. But yet what emerges from this brief exercise is a still un-contoured image of a figure of immense generosity and complexity, working ceaselessly to rip apart established faiths, revealing relationships but hesitant to assert definitive new conclusions. Professor Chon calls Keith a “chastened idealist.”⁴⁴ When it came to giving due credit to others, divining meanings and directions in the work of colleagues, connecting disparate ideas, and suggesting new directions, Keith was dependable and irreplaceable. A vexing but profound sense of humility would not allow him to claim ownership of even his most acute observations or acknowledge his imprint on the many others, colleagues, students, or acquaintances.

CONCLUSION

Come, my friends, 'Tis not too late to seek a newer world. . . .
Though much is taken, much abides⁴⁵

This is the point where one unfamiliar with Keith might be forgiven for intoning, “Yeah, sure, and I have a bridge in Brooklyn for sale” or some other expression of disbelief verging on contempt. After all we are talking about the legal academy that hardly fosters humility or tolerates nontraditional expressions of genius. Is it possible that all these exceptional qualities described in this memorial could exist in any one person? What if this is all a dream? The fiction of an exhausted cadre yearning to recapture exhausted or lost ideals? Many came to do good but over time settled for doing well. Perhaps our conscience pricks us to create reminders of the values and goals we once had for ourselves back when we were young and hungry. Ancient peoples created mythic figures partly to serve the same purpose. Poets sang their praises for posterity. We could do much worse.

In any case, does it matter? Did it matter that the *wizard* discovered that he himself was the creation of another?⁴⁶ Consider the delicious irony. The Keith Aoki described here would surely appreciate interrogating the lines between fiction and reality, author and subject, and so on. What matters truly is that in these pages we

⁴⁴ Chon, *supra* note 29, at 1264.

⁴⁵ ALFRED, LORD TENNYSON, *ULYSSES* (1842).

⁴⁶ See BORGES, *supra* note 7.

have testified collectively as to what we value, what we desire, what we love. We have done so unreservedly. At a minimum, by this effort we have confirmed our standards that aspire to a newer and better academy, and the world that should accompany it.

Bob Dylan sang,

Every day your memory grows dimmer
It doesn't haunt me like it did before⁴⁷

Clearly, he wasn't singing about our Keith.

⁴⁷ BOB DYLAN, TRYING TO GET TO HEAVEN (Sony Music Entertainment, Inc. 1997).

