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STEVEN W. BENDER\*

## En Paz Descanse: Remembering Keith Aoki's Contributions Toward Latina/o Equality

In memorializing and celebrating Keith's treasure trove of scholarly contributions, we organized<sup>1</sup> the Oregon Symposium around the three subjects of intellectual property, Asian American jurisprudence, and critical geography/local government. Still, it was impossible to capture the breadth and depth of Keith's scholarly work in three panels, in a day, or even in this printed Symposium. Even within the confines of intellectual property, where most lawyers and scholars specialize in their reach, Maggie Chon observes that Keith's work stretched across copyright, trademark, patent, and trade secret.<sup>2</sup> Had there been time, we might have featured additional topics and speakers on Keith's influence in the areas of property law, critical race, voting rights, Latina/o critical legal theory, international law, and more.<sup>3</sup>

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\* Professor of Law, Seattle University School of Law. En paz descansa is Spanish for rest in peace. As a longtime member of the University of Oregon faculty until 2011, I had the honor of serving as Keith Aoki's colleague for the entirety of his time at the Oregon law school. I am grateful to Keith's friends Ibrahim Gassama, Kevin Johnson, and John Shuford for their comments on this piece.

<sup>1</sup> I helped Margaret Hallock, director of the Wayne Morse Center for Law and Politics, in planning the University of Oregon's memorial celebration of Keith Aoki's life. We consciously aimed to center his considerable scholarly contributions.

<sup>2</sup> Margaret Chon, *Law Professor as Artist: Themes and Variations in Keith Aoki's Intellectual Property Scholarship*, 90 OR. L. REV. 1251 (2012).

<sup>3</sup> Of course, Keith's scholarship wasn't easily cabined within discrete subject areas. For instance, one of his pieces on local government might engage Asian American and Latina/o politics, critical race, and critical geography. At the Symposium this scholarly blending and versatility was evident. For example, the last panel on local government featured Keith's work on immigration, critical geography, local politics, critical race, and more.

Here I briefly address and situate Keith's engagement of Latina/o policy issues within his scholarly identity and legacy. Keith is probably remembered best for his contributions in the three topical areas of emphasis in the Oregon Symposium, and rightly so. It is impossible to trump the significance of his advocacy on copyright policy in which one of his works alone has been downloaded more than 500,000 times by readers worldwide.<sup>4</sup> Yet an examination of Keith's near fascination with daunting issues of Latina/o policy reveals and confirms much about his scholarly legacy and allows me to explore his imperative of the significance of political representation as a strategy for social change, a vital piece of his scholarly identity. Moreover, Keith's steadfast adherence to ideals of equality for Latinas/os<sup>5</sup> led to his most significant career move in leaving Oregon for Davis with his family in 2006.<sup>6</sup> Thus, the discussion below resonates with the collective remembrances of Keith as a scholar, colleague, father, and ultimately as a moral beacon for following one's core ideals and sense of right.

Keith's engagement of Latina/o critical theory connects to several themes identified in his remembrances. For example, in the UC Davis Law School memorial symposium, Bob Chang lauds Keith as being at the cutting edge of scholarly theory.<sup>7</sup> At the Oregon Symposium, Neil Gotanda remarked in the same vein that he needed to reread one of Keith's articles, knowing that in light of Keith's prescience that Keith was "up to something."<sup>8</sup> Keith's alliance with Latina/o causes came early in his scholarly career, well before Latinas/os captured national scholarly attention upon eclipsing African Americans as the most populous U.S. minority group,<sup>9</sup> and

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<sup>4</sup> *In Remembrance of Keith Aoki*, HASTAC (May 11, 2011, 5:07 PM), <http://hastac.org/blogs/admin/remembrance-keith-aoki> (last visited Jan. 28, 2012).

<sup>5</sup> See generally Keith Aoki & Kevin R. Johnson, *An Assessment of LatCrit Theory Ten Years After*, 83 IND. L.J. 1151, 1158 (2008) ("We both are committed to Latina/o civil rights, the fight against subordination, and a vision for a more just world.").

<sup>6</sup> As anyone who knew Keith closely understood, he left Oregon solely because of the 2005–2006 dean search at the University of Oregon School of Law in which Keith believed the main University administration mistreated a stellar Latino candidate.

<sup>7</sup> Robert S. Chang, *Keith Aoki's Theory of Racial Microclimes*, 45 U.C. DAVIS L. REV. (forthcoming 2012) ("It is not surprising to find Keith at the cutting edge of ideas," noting that some fourteen years after Keith raised the concept, racial microclimes were being explored as a theory by historians and sociologists).

<sup>8</sup> Neil Gotanda, Remarks at Keith Aoki Memorial Symposium and Celebration of Life (Oct. 1, 2011).

<sup>9</sup> Lynette Clemetson, *Hispanics Now Largest Minority, Census Shows*, N.Y. TIMES, Jan. 22, 2003, at A1.

before the full onslaught of blame and hate had been heaped on undocumented Latina/o immigrants, as illustrated today by vitriolic local policies such as those in Arizona<sup>10</sup> and Alabama,<sup>11</sup> and by ill-intentioned national figures such as Sheriff Joe Arpaio and Governor Jan Brewer.<sup>12</sup> Early on, Keith recognized the pivotal role of Latinas/os and Latina/o immigrants in forging dignity in law for vulnerable populations generally. His innovative proposal of immigration regionalism, by which localities (and other subnational entities) could develop forward-looking, integration-focused immigration policy in concert with the federal government, is a practical blueprint for more compassionate immigration policies for Latina/o immigrants and represents Keith's propensity to reach beyond stagnate debate for new and influential ideas.<sup>13</sup>

Keith's unique and celebrated ability to connect his global vision to local landscapes and economies<sup>14</sup> animates his Latina/o scholarship. For example, in his symposium piece with John Shuford<sup>15</sup> and two Davis law students, titled "(In)visible Cities: Three Local Government Models and Immigration Regulation,"<sup>16</sup> Keith addressed how, despite being subordinate to federal immigration law, local governments increasingly assert themselves as transnationally

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<sup>10</sup> See generally Keith Aoki & John Shuford, *Welcome to Amerizona—Immigrants Out!: Assessing "Dystopian Dreams" and "Usable Futures" of Immigration Reform, and Considering Whether "Immigration Regionalism" Is an Idea Whose Time Has Come*, 38 *FORDHAM URB. L.J.* 1 (2010).

<sup>11</sup> See *United States v. Alabama*, 443 F. App'x 411, 2011 WL 4863957 (11th Cir. 2011) (unpublished opinion) (enjoining some of the provisions of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Alabama Laws Act 2011-535, H.B. 56, 2011 Reg. Sess. (Ala. 2011)).

<sup>12</sup> See generally Keith Aoki & Kevin R. Johnson, *Latinos and the Law: Cases and Materials: The Need for Focus in Critical Analysis*, 12 *HARV. LAT. L. REV.* 73, 96-99 (2009) (connecting scapegoating of immigrants by local officials such as Sheriff Joe Arpaio to an increase in hate crimes against Latinas/os).

<sup>13</sup> See discussion *infra* notes 42-43.

<sup>14</sup> Chon, *supra* note 3; see also Rick Su, *Locating Keith Aoki: Space, Geography, and Local Government Law*, 45 *U.C. DAVIS L. REV.* (forthcoming 2012) ("Given Keith's deep interest in the global and the international, it is interesting to think that his foray into legal academics began with such an intense focus on the local.").

<sup>15</sup> Professor Shuford also contributed an Article to this memorial Symposium. See 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).

<sup>16</sup> Keith Aoki et al., *(In)visible Cities: Three Local Government Models and Immigration Regulation*, 10 *OR. REV. INT'L L.* 453 (2008).

significant global legal actors in the development of immigration policy.<sup>17</sup>

Despite tackling sobering realities of anti-immigrant hate and global subordinations, Keith's trademark optimism shines through in his Latina/o scholarship. Whether expressing his affection for the intellectual and activist movement of LatCrit,<sup>18</sup> his faith in local electoral reform to empower minority voices,<sup>19</sup> or his appreciation of the potential for localities to embrace and internalize progressive

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<sup>17</sup> See also Steven W. Bender & Keith Aoki, *Seekin' the Cause: Social Justice Movements and LatCrit Community*, 81 OR. L. REV. 595, 624 (2002) (observing that “[a]t the same time that globalization, the war on terrorism, and other events and circumstances pull LatCrit’s gaze internationally, politics provide a counter influence that reminds LatCrit scholars of the equally salient notion that movements often start small, and in one’s own backyard”). For a discussion of the LatCrit movement, see *infra* note 18.

<sup>18</sup> E.g., Keith Aoki, *One Hundred Light Years of Solitude: The Alternate Futures of LatCrit Theory*, 54 RUTGERS L. REV. 1031, 1047 (2002) (“Arriba LatCrit!”). LatCrit stands for Latina and Latino Critical Legal Theory, Inc., a coalition-building intellectual and social community that aims “to center Latinas/os’ multiple internal diversities and to situate Latinas/os in larger intergroup frameworks, both domestically and globally, to promote social justice awareness and activism.” *Welcome, LATCRIT*, <http://www.latcrit.org> (last visited May 22, 2012). See Frank H. Wu, *Becoming Asian American: An Interview with Keith Aoki*, 45 U.C. DAVIS L. REV. (forthcoming 2012) (including Keith’s reflection that “[i]n retrospect looking back at being fifty-one years old, in some ways my attempt(s) to write in, to participate with, be part of CAPALF [Conference of the Asian Pacific American Law Faculty], Lat Crit, or critical race theory represent an attempt to reconnect with things that the internment denied me and my family.”). Keith Aoki and I organized the LatCrit VII conference, held May 2–5, 2002, in Portland, Oregon, under the theme of Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community. The resulting written symposium record was published in 81 *Oregon Law Review* 587 (2002) and 13 *Berkeley La Raza Law Journal* 113 (2002). Keith cowrote the introduction to that symposium issue. Bender & Aoki, *supra* note 17. In addition to the “cluster” introduction in the *Rutgers Law Review* cited above, Keith wrote a cluster introduction for the LatCrit VIII symposium. Keith Aoki, *Cities in (White) Flight: Space, Difference and Complexity in LatCrit Theory*, 52 CLEV. ST. L. REV. 211 (2005). Additionally, Keith wrote an article for inclusion in the first LatCrit conference symposium and cowrote an article for the first freestanding LatCrit symposium publication. See Keith Aoki, *(Re)presenting Representation*, 2 HARV. LATINO L. REV. 247 (1997); Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CALIF. L. REV. 1395 (1997). He also cowrote a piece on the importance of political representation as part of the LatCrit VII symposium. Kathay Feng, Keith Aoki & Bryan Ikegami, *Voting Matters: APIAs, Latinas/os and Post-2000 Redistricting in California*, 81 OR. L. REV. 849 (2002).

<sup>19</sup> E.g., Keith Aoki, *A Tale of Three Cities: Thoughts on Asian American Electoral and Political Power After 2000*, 8 UCLA ASIAN PAC. AM. L.J. 1, 50–52 (2002) (advocating cumulative and preference transfer voting structures to ensure proportional representation of minority groups); Aoki et al., *supra* note 16, at 504–13 (discussing municipalities offering noncitizens the right to vote on local issues, particularly those involving education of their children).

aspects of international law<sup>20</sup> and to thereby resist draconian federal immigration enforcement policies,<sup>21</sup> Keith was able to deliver hope for Latina/o activism while addressing the increasingly harsh realities of inequality.

Although Keith's Latina/o scholarship traversed a wide range of issues including language subordination<sup>22</sup> and gentrification,<sup>23</sup> eventually his 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. Keith and Dean Kevin Johnson's review of the casebook *Latinos and the Law: Cases and Materials*,<sup>24</sup> details the importance of these two themes as a crucial lens by which to measure the progress of Latinas/os toward equality.

As Keith wrote in a coauthored piece as part of the LatCrit VII symposium, "meaningful political participation beginning (but not ending) with fair representation is an absolutely necessary and crucial precondition to achieving and implementing the substantive social justice and anti-subordination agenda of LatCrit."<sup>25</sup> He spoke pointedly about the history of political animus and racial discrimination faced by Latinas/os and other groups, particularly Asian Americans and African Americans.<sup>26</sup> As well he recognized the obstacles to progressive and meaningful political participation that exist at both ends of the immigrant voter pipeline—the restrictions in

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<sup>20</sup> Aoki et al., *supra* note 16, at 472–73 (discussing, among other examples, efforts of mayors to align with international efforts to address climate change and human rights violations).

<sup>21</sup> *Id.* at 492–96.

<sup>22</sup> Keith Aoki, *Introduction: Language Is a Virus*, 53 U. MIAMI L. REV. 961 (1999).

<sup>23</sup> Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699, 814–18 (1993) (charting the gentrification of neighborhoods in discussion that while not explicitly centering Latinas/os is relevant to the Latina/o urban experience); *see also* Keith Aoki, *Space Invaders: Critical Geography, the "Third World" in International Law and Critical Race Theory*, 45 VILL. L. REV. 913, 944–50 (2000) (discussing Latina/o and African American neighborhoods and their vulnerabilities to globalization).

<sup>24</sup> Aoki & Johnson, *supra* note 12 (reviewing RICHARD DELGADO ET AL., *LATINOS AND THE LAW: CASES AND MATERIALS* (2008)).

<sup>25</sup> Feng et al., *supra* note 18, at 855.

<sup>26</sup> *Id.* at 850; Aoki, *supra* note 19, at 8.

most jurisdictions on noncitizen voting,<sup>27</sup> and the reality of increasing conservatism as later generation Latina/o and Asian American immigrants move up the socio-economic ladder.<sup>28</sup> Keith identified additional impediments that confront both Asian Americans and Latinas/os, particularly the challenges of forging coalitions across the pan-ethnic lines of these diverse groups.<sup>29</sup>

Keith's scholarly focus on immigrant rights extends beyond Latinas/os to Asians and other groups.<sup>30</sup> Moreover, his proposals engage the full spectrum of the immigrant experience—from his revulsion over the horrific treatment of undocumented Latina/o immigrants in the U.S.-Mexico borderlands<sup>31</sup> and as they encounter internal borders of draconian local law<sup>32</sup> to his urging of extending voting privileges to noncitizen (both documented and undocumented) immigrants,<sup>33</sup> and to his recent passionate defense of birthright citizenship for the U.S. citizen children of undocumented immigrants.<sup>34</sup>

Keith's scholarship on immigrant and voting rights makes several fundamental contributions to the discourse and the grassroots of immigration policy reform and political representation. Foremost, Keith demanded that critical race, LatCrit,<sup>35</sup> and Asian American jurisprudence scholars recognize the importance of political representation in their reform agendas. He emphasized the role of

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<sup>27</sup> Steven Bender, Sylvia R. Lazos Vargas & Keith Aoki, *Race and the California Recall: A Top Ten List of Ironies*, 16 BERKELEY LA RAZA L.J. 11, 19 (2005).

<sup>28</sup> *Id.* at 19–20.

<sup>29</sup> Aoki, *supra* note 19, at 15 (addressing the challenge for Asian American voters and politicians to navigate cross-cultural, linguistic, and nationality lines).

<sup>30</sup> See Chang & Aoki, *supra* note 18; Ibrahim J. Gassama, Robert S. Chang & Keith Aoki, *Foreword: Citizenship and Its Discontents: Centering the Immigrant in the Inter/National Imagination (Part II)*, 76 OR. L. REV. 207 (1997).

<sup>31</sup> See Steven W. Bender, *Gringo Alley*, 45 U.C. DAVIS L. REV. (forthcoming 2012) (sketching an unfinished collaboration with Keith Aoki that intended to depict through comic art and text our failed and oppressive U.S. border policies against the entry of undocumented immigrants); see also Keith Aoki, John Shuford, Esmeralda Soria & Emilio Camacho, *Pastures of Peonage: Tracing the Feedback Loop of Food Through IP, GMOs, Trade, Immigration, and U.S. Agro-Maquilas*, NORTHEASTERN U. L.J. (forthcoming 2012).

<sup>32</sup> See Aoki et al., *supra* note 16, at 496–503 (discussing “illegal immigration” ordinances).

<sup>33</sup> *Id.* at 504–13.

<sup>34</sup> Keith Aoki, Opinion, *Arizona—Pick on Someone Your Own Size*, SFGATE (June 17, 2010), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/06/16/EDSB1E05A1.DTL>; see also Garrett Epps, *The Arc of a Chameleon Bends Toward Justice: Remembering Keith Aoki*, 90 OR. L. REV. 1227 (2012).

<sup>35</sup> *E.g.*, Feng et al., *supra* note 18, at 850–53.

redistricting as an opportunity for gaining political influence.<sup>36</sup> Keith recognized that rather than acting defensively to stave off oppressive immigration law and other policies affecting Latinas/os, Asians, and other vulnerable groups, political representation offered these groups the potential for proactive strategies to advance their causes.

Ever championing coalitional politics,<sup>37</sup> Keith realized that Asian Americans, with their relative low numbers nationally and geographic distribution weighing against leverage in national elections,<sup>38</sup> stood little chance of transformative advancement acting alone. Rather, he urged coalition with groups such as Latinas/os,<sup>39</sup> mindful of the potential alliances among Latinas/os and Asian Americans on issues such as immigration policy, language laws, and electoral reforms.<sup>40</sup>

Blending theory and pragmatism, Keith proposed an innovative policymaking structure that John Shuford and he labeled immigration regionalism. As they envisioned it, the federal government would create policymaking regions and establish a governance structure comprising state and local government officials, along with private sector and civil society groups, that would undertake to formulate forward-looking, integration-based immigration policy recommendations.<sup>41</sup> This approach balanced Keith's optimism for policy innovation at the local level (as exemplified by sanctuary

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<sup>36</sup> *Id.* at 875–77.

<sup>37</sup> See, e.g., Bender & Aoki, *supra* note 17, at 612 (lauding the diverse membership of LatCrit toward coalitional-based social change).

<sup>38</sup> Keith Aoki & Robert S. Chang, *Half-Full, Half-Empty?: Asian American Electoral "Presence" in 2008*, 86 DENV. U. L. REV. 565, 567 (2009); Aoki, *supra* note 19, at 46 (recognizing that even if Asian Americans achieve their maximum potential electoral representation they are still too few in number to carry elections on their own).

<sup>39</sup> E.g., Aoki, *supra* note 19, at 32 (suggesting the need for Asian American candidates to create viable coalitions to be successful); Keith Aoki, *Direct Democracy, Racial Group Agency, Local Government Law, and Residential Racial Segregation: Some Reflections on Radical and Plural Democracy*, 33 CAL. W. L. REV. 185 (1997) (suggesting sources of alliance and friction among potential coalitions among Latinas/os, African Americans, and Asian Americans as well as the potential for Asian Americans and Latinas/os to situate themselves favorably within prevailing power and economic structures as non-Black); Feng et al., *supra* note 18, at 883, 903.

<sup>40</sup> See Bender et al., *supra* note 27, at 15 (lamenting the absence of any discernible voting coalition between Latinas/os and Asian Americans in the 2003 California governor recall campaign despite their opportunities for convergence on issues of immigration and language policy); Aoki & Johnson, *supra* note 12, at 74 (recognizing the common immigration enforcement grievances of Latinas/os and Asian Americans).

<sup>41</sup> Aoki & Shuford, *supra* note 10, at 5; see also John Shuford, *In the Key of Aoki: Immigration Regionalism*, 45 U.C. DAVIS L. REV. (forthcoming 2012) (continuing to flesh out the theory and practical dimensions of the concept of immigration regionalism).



cities, innovative voting structures, and extending the voting franchise to noncitizen populations) with the reality of draconian localized anti-immigrant regulation that called for some federal intervention and influence.<sup>42</sup>

### CONCLUSION

Overall, Keith's embrace of Latina/o issues and Latina/o culture reflected his strident scholarly and activist voice for equality and dignity for vulnerable populations. Whether championing children of undocumented immigrants, undocumented border crossers, hungry populations worldwide, or artists channeling their creativity through music and other mediums, Keith used his position of privilege in the academy to write forcefully for silenced and marginalized voices. I credit Keith for helping me find my own scholarly voice toward dignity for populations both global and local.<sup>43</sup> With his passing, it is our collective duty to work to inspire others to carry on the antisubordination fight that survived Keith and likely us all.

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<sup>42</sup> Of course, neither the federal government acting alone, with its ramped-up immigration raids tearing apart families and prompting the creation of sanctuary cities, nor the states and local governments in their policymaking capacities, enacting oppressive anti-immigrant laws that drew federal intervention (for example, the Obama administration's lawsuit to block enforcement of Arizona's S.B. 1070), offer clear blueprints toward compassionate immigration reform. *See generally* Steven W. Bender, *Compassionate Immigration Reform*, 38 *FORDHAM URB. L.J.* 107 (2010).

<sup>43</sup> Among other interventions, Keith insisted I attend the Western Law Teachers of Color Conference held during March 1995 in La Jolla, California, where he introduced me to now Dean Rachel Moran (UCLA School of Law) and other Latina/o scholars. Later that year I attended a Colloquium on Critical Race Theory and Practice held during October 1995 in Dorado, Puerto Rico, in which the critical intervention to be known as LatCrit was formed. Through work in progress presentations at both these conferences, I gained the courage to begin writing extensively, as I have done since without interruption, about pressing Latina/o social issues. Throughout my scholarly and activist engagement with Latina/o civil rights, Keith was there to encourage, facilitate, influence, augment, interrogate, and praise my contributions. *Que en paz descansa, my dear friend.*