
True Believer

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As many of his colleagues and friends point out in this Symposium and elsewhere, one of Keith Aoki's most memorable qualities was his "incongruous humility."¹ This was not only a personality trait: his work also exhibits a modesty and generosity that serve as an ongoing intellectual statement about pluralism and civil discourse. Keith demonstrated this characteristic from his first published works about the law, his comic strips for the *Harvard Law School Record*. Cartooning with political content often demonstrates an exaggerated self-righteousness. But ambivalence is a theme in Keith's comic strips, just as it is a theme of legal education and legal reasoning,² and of postmodernism and liberalism (more on this later). Keith's strips began with a focus on the kind of self-absorbed doubts familiar to any law student — doubts about the meaning of law, about legal education, and about one's choice to attend law school. Ambivalence is everywhere. Even as he mocked the so-called "Socratic" method, many of Keith's cartoons consisted of over-caffeinated Socratic dialogues between caricatured Right and Left ideologues (visually represented as match-ups like Archie vs. Jughead, Popeye vs. Wimpy, and Sluggo vs. Nancy³).

While he skewered the conservative wing of the Harvard faculty and administration, his satire of Critical Legal Studies and its adherents was equally pointed. In one of his most inventive and surprising strips, a postmodern private dick trying to determine "Who Killed Hegemony

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¹ John Shuford, *In the Key of Aoki: Immigration Regionalism* (eco), 45 UC DAVIS L. REV. 1655, 1664 (2012).

² This is most pithily expressed in the title of Richard Fischl and Jeremy Paul's book for law students. RICHARD FISCHL & JEREMY PAUL, GETTING TO MAYBE: HOW TO EXCEL ON LAW SCHOOL EXAMS (1999).

³ See KEITH AOKI, CASUAL LEGAL STUDIES: ART DURING LAW SCHOOL 37, 43, 51 (1989) [hereinafter ART DURING LAW SCHOOL].

Cricket?” runs into a pistol-packing dame who condemns the “macho, bogus, pseudo-rebellious, self-mythologizing, phony bad-boy posturing” of the detective and the CLS movement he represents. So she announces the rise of “POST-Critical Legal Studies” — as she shoots him to death.⁴

Keith’s caricatures of intellectual factionalism as violent struggle (a recurring motif in the strips,⁵ like the dialogue device) simultaneously describe their high ideological stakes and mock the self-importance of the ivory (and especially Ivy) tower. Duncan Kennedy argues in this symposium that the latter reflected not merely the stock criticism of the academy, but also Keith’s genuine concern that the controversies that obsessed Harvard Law School (and by extension, his own artistic statements about them) were trivial: that they “would turn out to be all just in-jokes of a little milieu of late 80s elite law profs and law students trying to be radical and aesthetically avant-garde at the same time.”⁶

Keith’s intellectually modest and generous qualities are also on display in his 1993 symposium contribution, *Adrift in the Intertext: Authorship and Audience “Recoding” Rights—Comment on Robert H. Rotstein, “Beyond Metaphor: Copyright Infringement and the Fiction of the Work.”*⁷ *Adrift in the Intertext* is part of the foundational discourse in intellectual property law that adapted postmodernist literary theory and employed it to question IP doctrine. IP scholars in the early 1990s seized on the postmodernist argument that the meaning of a text is constructed not only by its nominal author, but also by the audience that interacts with it. Audience members assign a text new meaning not only in their minds, but also by incorporating elements of the text into new creative works, a practice that came to be referred to as “recoding.” (More recently, IP scholars and the media have taken to using the term “remixing” to mean essentially the same thing.⁸) Thus, the argument goes, IP law is mistaken insofar as it clings to the “romantic” notion of a single author whose singular genius entitles her

⁴ KEITH AOKI, *The Public/Private Eye: The Hard-Boiled Bricoleur*, reprinted in KEITH AOKI, 1990 SUPPLEMENT TO CASUAL LEGAL STUDIES: ART DURING LAW SCHOOL 8 (1990).

⁵ See, e.g., KEITH AOKI, *Dr. Doctrine and Frontline Ideological Combat*, in ART DURING LAW SCHOOL, *supra* note 3, at 49, 53.

⁶ Duncan Kennedy, *Remembering Keith Aoki’s Casual Legal Studies: Art in Law School*, 45 UC DAVIS L. REV. 1817, 1821 (2012).

⁷ 68 CHI.-KENT L. REV. 805 (1993).

⁸ See, e.g., LAWRENCE LESSIG, REMIX: MAKING ART AND COMMERCE THRIVE IN THE HYBRID ECONOMY 69 (2008); Robert P. Merges, *Copyright, Creativity, Catalogs: Locke Remixed :-)*, 40 UC DAVIS L. REV. 1259 (2007); Madhavi Sunder, *IP³*, 59 STAN. L. REV. 257, 263 (2006).

or him to “own” a text. The law should instead relax IP protections in order to encourage both productivity and diversity of expression through collaborative and interactive recoding. This argument is of course commonplace today, but it was big news in the early 90s.

In Keith’s characteristically sly “meta” fashion, *Adrift in the Intertext* not only discusses this concept; it embodies it. The comics artist Dylan Horrocks wrote, “Why . . . do we criticize a comic for ‘describing’ key dramatic events with words rather than ‘showing’ them with pictures? Such a criticism comes from certain expectations we have of comics that in turn come from the (often unconscious) assumption that ‘comics are a visual medium.’ ”⁹ As a good comic-book artist, Keith not only tells us about the idea, but shows it to us — even in this piece, which predates his incorporation of pictures into his legal scholarship. As the article’s lengthy title indicates, the piece is a comment on another’s work. The Chicago-Kent Law Review had devised a symposium on IP in which authors from outside the IP academy would write the primary articles, and IP scholars (including Keith) would comment on them.¹⁰ Robert Rotstein, an IP practitioner,¹¹ wrote an essay arguing that copyright doctrine had shifted in focus from the author to the work, and that such a shift is consistent with a similar emphasis in postmodern literary theory.

Keith’s piece concisely sums up and directly engages the main points of Rotstein’s article — basic tasks that law-review “comments” and “responses” often fail to do. Noting that Rotstein characterizes his *Beyond Metaphor* as primarily descriptive, Keith places it in the context

⁹ Dylan Horrocks, *Inventing Comics: Scott McCloud’s Definition of Comics*, 234 COMICS JOURNAL 5 (2001), available at <http://www.hicksville.co.nz/Inventing%20Comics.htm>. In this quote, Horrocks is actually questioning the assumption he describes, which he attributes to Scott McCloud’s UNDERSTANDING COMICS (1993). UNDERSTANDING COMICS, a meta-comic about the theory of comics art, was, unsurprisingly, a favorite of Keith’s. See KEITH AOKI, BOUND BY LAW 73 (2006) (citing McCloud as an influence). It clearly influenced Keith’s visual approach to presenting abstract ideas in BOUND BY LAW and THEFT! A HISTORY OF MUSIC. See generally KEITH AOKI, BOUND BY LAW (2006) (using a comic book as a medium for presenting abstract ideas); CENTER FOR THE STUDY OF THE PUBLIC DOMAIN, THEFT! A HISTORY OF MUSIC (forthcoming 2012) (doing the same). Furthermore, Akiko, the protagonist of *Bound by Law*, shares the tousled black hair and eye-obscuring glasses of McCloud’s cartoon avatar who narrates UNDERSTANDING COMICS. McCloud’s avatar makes a cameo appearance in Keith’s final published law-review comic, *Pictures within Pictures*. See Keith Aoki, *Pictures within Pictures*, 36 OHIO N.U. L. REV. 805 (2011).

¹⁰ See Wendy J. Gordon, *Preface*, 68 CHI.-KENT L. REV. 583, 583 (1993).

¹¹ See Robert H. Rotstein, *Beyond Metaphor: Copyright Infringement and the Fiction of the Work*, 68 CHI.-KENT L. REV. 725, 725 n.aa1 (1993) (identifying Rotstein as a partner in a California law firm).

of contemporaneous work in the academy that uses similar aspects of postmodern literary theory to argue normatively for changes in contract law. He does this by explicating and tying together then-recent work by Peter Jaszi, James Boyle, Jane Gaines and Rosemary Coombe. He also discusses Richard Posner's opposition to poststructuralist theory. Even here, Keith's purpose is not so much to disagree as to promote understanding of the counterargument in order to predict the challenges faced by advocates of "recoding."¹² Keith achieves a surprisingly difficult task — writing an interesting comment on the work of multiple fellow scholars without criticizing them. In doing so, Keith demonstrates a desire not only to make his own arguments, but to truly understand and appreciate those of others — and to explain and advocate for those ideas. Plato did it for Socrates. Engels did it for Marx. Dylan did it for Guthrie.¹³ Lasseter did it for Miyazaki.¹⁴ And Keith did it for just about anyone he thought had a really good idea.

He adapts and reworks existing material in ways that advance the discussion. This includes building upon ideas and changing them — Keith's main points are that while Rotstein makes a good normative case for the death of the romantic author, as a descriptive matter, reports of that death are greatly exaggerated. But Keith's approach does not consist of merely appropriating ideas for his own purposes. He also fleshes out and strengthens ideas introduced by others. Indeed, the main point of his article, and its insightful original contribution, is to offer some friendly advice by pointing out potential challenges. These include existing copyright doctrine that continues to derive from the "romantic author" theory, political and industry opposition (including Posner's critique mentioned above), and two endogenous problems. First, the doctrinal consequences of incorporating poststructuralist theory into legal discourse are indeterminate. Even if the law comes to appreciate recoding as a legitimate kind of expression, it will still, as a practical matter, have to recognize some outer limits on cultural appropriation — and such limits will likely entrench the existing distribution of wealth and

¹² 68 CHI.-KENT L. REV. at 827-31.

¹³ Bob Dylan, one of Keith's favorite musicians, openly modeled his early music on Woody Guthrie's. When Dylan first played in New York in 1961, he supposedly said, "I been travellin' around the country, followin' in Woody Guthrie's footsteps." "Song for Woody" was one of Dylan's first recorded compositions. BOB DYLAN, *Song for Woody*, on BOB DYLAN (Columbia Records 1962).

¹⁴ John Lasseter, the "Chief Creative Officer" of Pixar Animation Studios, has promoted the Japanese-language animated films of Hayao Miyazaki to English-speaking audiences and produced translated versions.

power rather than disrupt it. Second, awarding legal recognition to recoding may erode its status as an oppositional practice and reduce it to a bland commodity — like the corporate-dominated popular culture it purports to recode.

Keith's piece is an insightful, contemporaneous document of the birth of a movement that has since come to dominate IP. In retrospect, it is impressive that Keith, very early in his scholarly career, had the vision to recognize the advent of this movement and the foresight to anticipate how important it would become. He was writing an intellectual history of IP theory practically in real time. This kind of scholarship consists partly in refining work that others started, but left unfinished. Such finishing sometimes requires understanding a concept, its weaknesses and its place in the larger discourse better than its earlier advocates did. But it also requires modesty and generosity, since it ultimately makes someone else's work look better. Keith excelled in this role. As John Shuford notes in this symposium, Keith often played an intellectual role analogous to his favored musical role: the bass player in a rock band, who fills out a composer's song, sometimes in subtle ways that a casual listener might fail to appreciate. I would add an analogy to another of Keith's artistic roles: the "inker" of a comic book, who completes, with brush-and-ink, the rough drawings of a pencil artist.¹⁵ Both artists are indispensable to the finished work, in which the individual contributions blend together.

THE DOUBTER AS BELIEVER

Presumably from his art-school days, Keith was well-versed in postmodern cultural-studies and art-criticism theories of the 1970s and 80s. With his fascination for comic books, rock-and-roll, and other aspects of pop culture, postmodern pastiche came easily to him. But Keith did not appropriate from the "lowbrow" arts as a mere formal exercise or a nihilistic statement about the emptiness of art. He was an actual practitioner, who had worked as a comic-book artist and rock musician. He had some ironic distance from these commercial pop-art forms — but it was informed by a genuine understanding and love for them that distinguished his appropriations from those of many highbrow *bricoleurs*.

Keith's work, for all its postmodern and left-radical flourishes, had at its heart a modernist and liberal agenda. Much of Keith's work plays

¹⁵ Keith told me he served briefly as an inker for Marvel Comics in the late 1970s or early 1980s. In his law-school and legal-academic comics, however, he did both the penciling and inking (or their digital equivalents).

with postmodernist ambivalence, but the truly ambivalent must eventually succumb to nihilism. If everything is equally meaningful, everything is equally meaningless, there are no foundational truths, and there can be no normative aspiration. Keith's work was far from nihilistic. It was brimming with excitement he could barely contain, and thus is shot through with fascinating tangents, asides, and, of course, footnotes. Even his grim avatar in his law-school comics, a smoking skeleton/law student originally named Mr. Death,¹⁶ was rendered as restless and kinetic (even when he wasn't actually doing anything¹⁷). Moreover, while Death was skeptical about legal education, he was clearly consumed by intellectual curiosity. To Keith, every idea was interesting and worthy of discussion, not because every idea is equally pointless, but because every idea has something we can learn from (or at least have fun with). In the interest of brevity, I won't even try to list the many topics on which he published; if you don't know already, just flip through this volume to get an idea. His omnivorousness is most obvious in his comics. For example, in *P.I.E.R.R.E. and the Agents of R.E.A.S.O.N.*, Keith's first comic-as-law-review-article, Keith borrowed from (among many other sources) an 18th-century etching by Francisco Goya and the 1960s comic-book art of Jack Kirby and Jim Steranko depicting the adventures of secret agent Nick Fury.¹⁸

Being open to every idea, however, can lead to an abdication of normativity. Keith was always concerned about this problem: indeed, in his law school comic strips, he eventually renamed his skeletal avatar "The Normative Chameleon."¹⁹ Liberal pluralism responds to normative indeterminacy by embracing it. According to the "marketplace of ideas" theory, more voices, more thoughts, and more discussion lead not to normative chaos but to spontaneous normative

¹⁶ See, ART DURING LAW SCHOOL, *supra* note 3, at 7.

¹⁷ See, ART DURING LAW SCHOOL, *supra* note 3, at 33, 59.

¹⁸ See Keith Aoki, *P.I.E.R.R.E. and the Agents of R.E.A.S.O.N.*, 57 U. MIAMI L. REV. 743, 743 n.1 (2003) (thanking Goya, Kirby, and Steranko). R.E.A.S.O.N.'s flying ship on page 748 is a version of Nick Fury's "heli-carrier," and all the science-fiction gadgetry in the story is rendered in the style of Kirby and Steranko. *Id.* at 748. The final image on page 753 is based on Goya's *The Sleep of Reason* (with a guest appearance by Pierre, a character from a Maurice Sendak children's book). *Id.* at 753. A classic Nick Fury story illustrated by Steranko, *Today Earth Died!*, is a particular influence on *P.I.E.R.R.E.* See Stan Lee, Jim Steranko, Joe Sinnott, and Sam Rosen, *Today Earth Died!*, 1 STRANGE TALES 168 (1968). I know this because I happen to own a tattered copy of it. So did Keith.

¹⁹ See, e.g., KEITH AOKI, 1990 SUPPLEMENT TO CASUAL LEGAL STUDIES: ART DURING LAW SCHOOL 3 (1990).

progress. Keith's ecumenical excitement about ideas, I think, expresses a faith in pluralism and the progressive power of the marketplace of ideas.

This faith is reflected in the way he describes recoding in his aforementioned *Adrift in the Intertext*. Popular culture has long been dominated by large media corporations. Consolidation in the telecom and entertainment industries concentrated cultural influence in even fewer corporate hands. At the time *Adrift in the Intertext* was published (1993), a few intellectual-property theorists had begun to advance the view, prevalent today, that relaxing IP protections could mitigate this consolidation and contribute to "semiotic democracy" — that is, a participatory culture. Reduced IP protections, the argument goes, will free individuals to engage in recoding so they can actively participate in the making of cultural meaning. Rosemary Coombe was one of the first to argue that intellectual property law can inhibit or facilitate the exercise of a "quintessentially human" quality: "the capacity to make meaning, challenge meaning, and transform meaning . . ."²⁰ Around the same time, Michael Madow argued that the law should encourage recoding in order to "align itself with cultural pluralism and popular cultural production."²¹

In *Adrift in the Intertext*, Keith appropriately credits Rosemary Coombe with introducing the term "recoding" into the IP-law discourse.²² But although Coombe borrowed the term from the art and architecture theorist Hal Foster, she made only a passing citation to Foster's work.²³ Coombe advanced her view that recoding can advance semiotic democracy, but she did not explain or engage with Foster's normative views on recoding. Keith, however, bolstered Coombe's argument by quoting extensively from Foster. Keith quoted a passage from Foster *Recodings: Art, Spectacle, Cultural Politics* that included the following: "resistance is performed. . . through a parodic collage of the privileged signs of gender, class and race that are contested, confirmed, 'customized.' In this *bricolage* the false nature of these

²⁰ Rosemary J. Coombe, *Objects of Property and Subjects of Politics: Intellectual Property Laws and Democratic Dialogue*, 69 TEXAS L. REV. 1853, 1879 (1991) (footnote omitted).

²¹ Michael Madow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 CALIF. L. REV. 125, 239 (1993).

²² Keith Aoki, *Adrift in the Intertext: Authorship and Audience* "Recoding Rights--Comment on the Robert H. Rotstein, "Beyond Metaphor: Copyright Infringement and the Fiction of the Work," 68 CHI.-KENT L. REV. 805, 810 (1993).

²³ See Coombe, *supra* note 20, at 1863 n.62; see also Aoki, *supra* note 23, at 805.

stereotypes is exposed as is the arbitrary character of the social/sexual lines that they define.’”²⁴

As an uninformed dilettante in both IP law and critical theory, I had worked on and off for years on a critique of recoding theory in IP law before I read Foster’s work in 2010 — at Keith’s insistence. In connection with my long-gestating project, I discussed Coombe’s theory of recoding with Keith. He insisted that I read Foster, and handed me his own copy of Foster’s *Recodings*. It is a well-worn 1989 edition, bookmarked with dozens of yellow Post-Its. (The book, a collection of essays originally published between 1982 and 1985, was first printed in 1985.)

When I read Foster, I was surprised to find that he does not subscribe to Coombe’s liberal-pluralist view of semiotic democracy. In fact, he’s a neo-Marxist, strongly influenced by the similarly leftist UK “Cultural Studies” school.²⁵ The view set out in Keith’s quote is merely the preface to a much more skeptical view of recoding and cultural pluralism generally.²⁶ Foster did state that recoding could expose the “false nature of . . . stereotypes” and the “arbitrary character of the social/sexual lines that they define.” But immediately after this passage, Foster argues that questioning received cultural meanings does *not* meaningfully challenge cultural hegemony. Why? Because capitalism is the source of the hegemony, and capitalism (and, I would add, liberal pluralism) does not depend on a set of fixed cultural meanings.²⁷ To the contrary, liberal capitalism depends on the appearance of variety and choice: “In our system of commodities, fashions, styles, art works . . . it is difference that we consume.”²⁸ Thus, reconfiguring social meanings through recoding does not threaten the dominant order; indeed, it “hardly constitutes resistance, as is commonly believed: it simply means you are a good player, a good consumer.”²⁹

I have to admit my original reaction to reading this passage was that Keith had misunderstood Foster. But that’s hardly likely; Keith was no fool. He owned a copy of *Recodings*, after all, and Foster’s point is

²⁴ Aoki, *supra* note 22, at 810 n.33 (quoting HAL FOSTER, *RECODINGS: ART, SPECTACLE, CULTURAL POLITICS* 170 (1985)).

²⁵ As originally quoted by Keith, the passage from Foster cited in the text in turn contained a quote from DICK HEBDIGE, *SUBCULTURE* 116 (1979). Hebdige was a leading Cultural Studies figure.

²⁶ Indeed, Foster’s *RECODINGS* includes an essay entitled “Against Pluralism.”

²⁷ *Id.* at 171.

²⁸ *Id.*

²⁹ *Id.* (emphasis added).

clearly set out immediately after the passage Keith quoted. Then was Keith deliberately misrepresenting Foster? Just as unlikely. Keith loved to see all sides of an issue, and he was not afraid of contrary opinions. So what explains the partial (in both sense of the term) quotation? I tried to get this straight from the horse's mouth. I showed Keith the full passage from Foster (from his own copy, no less!) and told him he, and pretty much every IP scholar to use the term "recoding," had misconstrued Foster.³⁰ Keith's only response was to say, rubbing his hands together with a maniacal grin, "It's about time for the ritual slaying of the elders."³¹

In preparing this essay, however, I noticed for the first time something telling in *Adrift in the Intertext*. In introducing the argument that the interests of semiotic democracy support a legal right to recode, Keith states that it is "*one way of thinking about the implications*" of postmodern literary theory for IP law.³² Keith was using Foster's words (recoding them, in fact) to flesh out and explicate *one* view — that of Coombe and many of her contemporaries. He did not mean to attribute the view to Foster, nor did he even mean to adopt that normative position himself (he does not explicitly do either of these things in his essay). Keith favors the pluralist argument but he

³⁰ My point is not that Foster is necessarily correct, or that his term "recoding" can't itself be recoded. Rather, my point is that liberal pluralists in IP have simply ignored Foster's trenchant critique of liberal pluralism. I explore this point in my critique of recoding theory mentioned in the text, which I finally finished thanks to Keith's input and encouragement. Thomas W. Joo, *Remix Without Romance*, 44 U. CONN. L. REV. --- (forthcoming 2012). Is it in poor taste to promote my own work in this symposium? Nah. If Keith were around he would have done it for me.

³¹ He said this just about every time we discussed my project in 2010 and early 2011. I found it a bit creepy then, and even more so now that I know how ill he was at the time. But it's also morbidly funny in retrospect, which I suspect is how it was intended. In a possibly related example, Keith depicted himself in his final law-review comic wearing a T-shirt with the slogan "You Can't Avoid the Void" as he flies off into space. Aoki, *supra* note 9. Jamie Boyle suggests this may also have been a veiled reference to Keith's (then-undisclosed) condition. See Jamie Boyle, *RIP, Keith Aoki*, THE PUBLIC DOMAIN ENCLOSING THE COMMONS OF THE MIND, (Apr. 27, 2011), <http://www.thepublicdomain.org/2011/04/27/rip-keith-aoki/>. Then again, in other frames of *Pictures within Pictures*, Keith's T-shirt has less portentous slogans like "Tastes Great, Less Filling," "AC/DC," and "Language is a Virus" (the latter being a Laurie Anderson song lyric Keith loved to quote). So maybe the final T-shirt was just a shout-out to Robert Crumb, one of Keith's favorite comic artists. See R. Crumb, *You Can't Avoid the Void*, in ZAP COMIX #8 (1975), available at <http://www.comics.org/issue/202441/>. (Crumb also makes a cameo on the first page of *Pictures within Pictures*). So who can really say what "slaying the elders" or "the void" meant? Sometimes an allusion is just an allusion...with Keith they were endless, and often head-scratchers.

³² Aoki, *supra* note 22, at 810.

recognizes that it's only one view. That is, he's pluralist even when it comes to pluralism: a meta-pluralist. Keith's "ritual slaying of the elders" comment is also consistent with this. At first, I thought he was saying, out with the old, in with the new. But more specifically, he was telling me to put the idea out there so the marketplace of ideas can correct itself (or not). It kind of proves Hal Foster right: to challenge dominant ideas constitutes participation in pluralism, so if what you are challenging is pluralism, you just can't win. For a committed pluralist like Keith, however, that's not a bad thing. In other words, maybe Keith was yanking my chain in about the most "meta" way possible.

None of this is to say that Keith was a liberal formalist or an eternal Normative Chameleon. Far from it. Despite *Adrift in the Intertext's* subtle normative caginess, Keith explicitly supported "audience recoding rights" on pluralist grounds in his later work.³³ He believed in the progressive potential of pluralism. Indeed, in one article, he argued that the recoding of stereotyped images could contribute to "transformational restructuring of the very institutional and structural nets that have too often ensnared us in their interpretive loops."³⁴ This implicitly rejects Hal Foster's cynicism about recoding's reconstructive potential.

Keith's extensive, historically conscious work on racial construction and discrimination³⁵ showed that he never fell for the "formal equality" narrative and saw the need to take normative stands. Keith expressed sympathy for Chantal Mouffe's concept of "radical democracy."³⁶ Despite its name, radical democracy's insistence that freedom and equality are distinct, and sometimes in tension with one another, is hardly a radical departure from democratic traditions. As Bob Chang has pointed out, Mouffe "identified the objective of a radical and plural democracy as "none other than the goal Tocqueville perceived as that of democratic peoples, that ultimate point where freedom and equality meet and fuse, where people 'will be perfectly

³³ See Keith Aoki, *The Stakes of Intellectual Property Law*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (David Kairys ed., 3d ed. 1998); Keith Aoki, *How the World Dreams Itself to Be American*, 17 *LOY. L.A. ENT. L.J.* 523, 543 (1997).

³⁴ Keith Aoki, "Foreign-ness" & Asian American Identities, 4 *UCLA ASIAN PAC. AM. L.J.* 1, 5 (1996).

³⁵ See, e.g., Aoki, *supra* note 34; *A Tale of Three Cities*, 8 *UCLA ASIAN PAC. AM. L.J.* 1 (2002); Keith Aoki, *No Right to Own?* 40 *B.C. L. REV.* 37 (1998).

³⁶ See 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, 185, 187, 203 (1997).

free because they are entirely equal, and where they will all be perfectly equal because they are entirely free.’”³⁷

But Keith was not so naïve as to think formal equality and freedom of expression could achieve this balance of equality and freedom. As the neoconservative view of race was on the rise, insisting that we had advanced into a “colorblind” age, Keith’s work on topics such as immigration and the “Alien Land Laws” reminded us that the historical experience of race continues to obstruct equality. As noted above, Keith pointed out in *Adrift in the Intertext* that a permissive stance on “recoding rights” could be hijacked by entrenched interests. He seemed to have concluded, albeit reluctantly, that persistent inequality could require republicanist solutions. In one of his law-school comic strips, he mocked the concept of democracy being mediated by an “elite cadre of Madisonian notables and legal analysts.”³⁸ A few years later, however, Keith wrote that he had lost his faith in decentralized democracy. In the wake of state voter initiatives limiting gay rights and capping property taxes, he wrote, “an ‘elite cadre of Madisonian notables and legal analysts’ does not seem all that unappealing.”³⁹

Beginning with the give-and-take of his law school comics, Keith’s work shows a developing wish for a pluralism governed by norms of fair play. The “radical democracy” Keith envisioned requires a thick skin, but also a shared commitment to honest curiosity, mutual respect for others’ humanity, and a sincere desire to make things better. I doubt Keith was naïve enough to believe the world runs according to those rules — but he followed them nonetheless.

³⁷ Robert Chang, *Foreword: Towards a Radical and Plural Democracy*, 33 CAL. W. L. REV. 139, 141 (1997) (quoting Chantal Mouffe, *Hegemony and New Political Subjects: Toward a New Concept of Democracy*, in MARXISM AND THE INTERPRETATION OF CULTURE 89, 101 (Cary Nelson & Lawrence Grossberg eds., 1988)).

³⁸ See Keith Aoki, *Little Orphan Analysis*, reprinted in ART DURING LAW SCHOOL, *supra* note 3, at 45; KEITH AOKI, 1990 SUPPLEMENT TO CASUAL LEGAL STUDIES: ART DURING LAW SCHOOL 2 (1990). Keith appears to have gotten the phrase “elite cadre of Madisonian notables and legal analysts” from Unger. See ROBERTO MANGABEIRA UNGER, WHAT SHOULD LEGAL ANALYSIS BECOME? 134 (1996) (referring to “Madisonian notables”); see also *id.* at 117 (“The shamefaced Bonapartism of legal elites, claiming to defend the people from their own ignorance, anger and selfishness, does not have an encouraging record.”).

³⁹ Aoki, *supra* note 36, 186.