
ESSAY

Remembering Keith Aoki: Mentor, Scholar, and Friend

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INTRODUCTION

The first year of law teaching is perhaps what many consider the most challenging year for a law professor. That was certainly the case for me, anyway. I found teaching the law for the first time while writing law review articles and fulfilling institutional service obligations very challenging and quite burdensome. Thankfully, several family and friends provided much needed support during that critical year. Keith Aoki was one of those individuals.

In this Essay, I aim to convey my deepest appreciation and admiration for Keith. Words cannot fully express how much his mentorship and friendship meant to me. Using snippets of email exchanges between us primarily during the first year of my law

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teaching,¹ I hope to illustrate how the support he gave to me as a junior faculty member benefitted me as a teacher and as a scholar. In so doing, I seek not only to honor Keith but to also remind myself — and hopefully others — to fill the void that he left us and be as supportive of new law teachers and scholars as he was to many of us.

I. MEETING KEITH

I first met Keith when I was a second-year law student at American University's Washington College of Law ("AU"). It was the spring semester of 1999. At that time, Keith was an associate professor at the University of Oregon School of Law and was a visiting professor at Boston College Law School that semester. I was enrolled in Professor Leti Volpp's new seminar: Asian Pacific Americans and the Law. Leti was then in the second semester of her first year of law teaching at AU while Keith was in his fifth year. Leti assigned Keith's law review article, *No Right to Own: The Early Twentieth-Century "Alien Land Laws" As a Prelude to Internment* ("No Right to Own"), to the class and also invited him to give a guest lecture.²

I found both Keith and his work exciting. Keith was unlike any law professor I had met up to that point. He was eclectic. Energetic. Passionate. And, he smiled a lot. Importantly, his work was absolutely inspiring. I particularly recall reading *No Right to Own* and being moved by Keith's ideas. The article examined state alien land laws passed in the 1920s that restricted the ability of immigrants who were not eligible to become naturalized U.S. citizens from owning land.³ The Supreme Court upheld the validity of these laws in a series of cases in 1923.⁴ Critically, Keith connected these alien land laws to the

¹ Cognizant of Keith's privacy, I only included parts of our email exchange that I believe he would not have minded that I shared with you. Mona Aoki, Keith's wife, gave me permission to publish the email exchanges that I included in this Essay. See E-mail from Mona Aoki to Rose Cuison Villazor (Nov. 23, 2011, 9:26 AM EST) (on file with the law review).

² Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 40 B.C. L. REV. 37 (1998).

³ *Id.* at 38.

⁴ See, e.g., *Frick v. Webb*, 263 U.S. 326, 331-32, 333, 334 (1923) (upholding bar on land ownership by corporations or other business organizations with majority of shares owned by "aliens ineligible to citizenship"); *Webb v. O'Brien*, 263 U.S. 313, 316 (1923) (upholding 1920 California Alien Land Law classification of "cropping contracts" as "interests in land" and, therefore, beyond reach of "aliens ineligible to citizenship"); *Porterfield v. Webb*, 263 U.S. 225, 231, 232, 233 (1923) (upholding constitutionality of California's 1920 Alien Land Law); *Terrace v. Thompson*, 263 U.S. 197, 211, 216-17 (1923) (upholding validity of Washington's 1921 Alien Land Law).

incarceration of Japanese Americans and Japanese nationals in internment camps during World War II, which the Supreme Court affirmed in *Korematsu v. United States*.⁵

No Right to Own drew important links between immigration law, citizenship law, property law and race in ways that I had not seen before in my other classes. To be sure, my first year constitutional law class discussed *Korematsu*,⁶ but we did not learn about Supreme Court cases that validated the racially restrictive alien land laws. Although we studied *Korematsu*, we did not read *Oyama v. California*, the 1947 Supreme Court case that later overturned California's alien law.⁷ These alien land law cases could have also been covered in property law, but they too were not covered in that class. *No Right to Own* thus opened my eyes to areas of law and parts of American history that were completely marginalized from the traditional first-year curriculum.

Keith's article particularly impacted me because I had a personal connection to restrictions on land ownership. I grew up in the Commonwealth of the Northern Mariana Islands ("CNMI"), a U.S. territory, which restricts land ownership to most (though not all) indigenous persons of that territory. As immigrants from the Philippines, my family and I did not — and could never — meet the legal requirements for land ownership.⁸ That is, despite residing in CNMI for several years, we had no right to own land there.

Not wanting to be deterred of their American dream of owning a home, my parents entered into a twenty-five year lease on a small lot and built a modest house on the leased land. Although we appreciated having a house, we understood that the land on which the house stood was not ours and that eventually, unless the lease is renewed, we would have to leave the property and our home behind. We viewed land ownership as a marker of belonging and our inability to own land served a constant reminder that we were outsiders. *No Right to Own* articulated the sense of exclusion from membership that many immigrant families, including mine, faced in the CNMI. Notably, *No Right to Own* encouraged me to explore the constitutionality of that law, which from my view, had a disparate impact on noncitizens residing in the CNMI.

⁵ 323 U.S. 214 (1944).

⁶ *Id.*

⁷ *Oyama v. California*, 332 U.S. 633, 679-84 (1948) (invalidating the California Alien Land Law as applied to U.S. citizens, but not Japanese nationals).

⁸ For a deeper understanding of land ownership restrictions in the CNMI, see Rose Cuison Villazor, *Blood Quantum Land Laws and the Race versus Political Identity Dilemma*, 96 CALIF. L. REV. 801 (2008) [hereinafter Villazor, *Blood Quantum*].

I did not realize it then but this brief encounter with Keith as a guest professor would have a profound impact on me as a law professor several years later.

II. KEITH'S SUPPORT FOR TEACHING

Five years later, in September 2004, I reconnected with Keith at Michigan State Law School during the Conference of Asian Pacific American Law Faculty hosted by Peter Yu. At the time, I was a fellow and an LL.M student at Columbia Law School, and I planned to enter the teaching market in 2005. Leti, with whom I stayed in contact through the years, advised me to say hi to Keith at the conference. After reintroducing myself to him, Keith said something like, "Any friend of Leti's is a friend of mine!" He next proceeded to ask me about my current research. Then Keith began asking questions to which I did not have answers. I recall being embarrassed, but Keith simply smiled and told me that he would be happy to read my work when I was ready.

As evidenced by that interaction, Keith was friendly and helpful. I was virtually a stranger to him, yet he gladly spoke to me and freely offered advice about law teaching and the teaching market in ways that, to this day, truly astound me. A year later (in 2005), I applied for law teaching positions and accepted an offer to teach at the Southern Methodist University Dedman School of Law ("SMU").

A. *Getting Ready to Teach*

In the fall of 2006, I began teaching at SMU. The courses I agreed to teach included property law and immigration law, which also happened to be my primary scholarly interests. Although I was excited to teach, I was equally anxious to get started. Knowing that Keith also taught property law, I decided to reach out to him:

From: rvillazo@smu.edu
Sent: Wednesday, July 26, 2006, 1:31 PM
To: kaoki@law.uoregon.edu
Subj: [no subject]

Hi Keith,

. . . I don't know if you recall, we talked a few times in 2004 about my getting an academic job. Well I'm happy to email you from my computer at SMU. I'll be teaching property and immigration I wanted to ask you about teaching property.

I plan to use Singer's casebook I'm really nervous about teaching property!

Rose

Within hours, Keith wrote back.

From: Keith Aoki [mailto:kaoki@law.uoregon.edu]
Sent: Wednesday, July 26, 2006, 3:43 PM
To: Rose Villazor
Subj: RE: [A Message from the Web]

Rose, I'm visiting at UC-Davis this year and just moved a couple of days ago. I'm going into my office tomorrow and will try and send you digital stuff (lecture notes, powerpoint slides, syllabi, etc.) tomorrow when I go into my office for the first time

Looking back at this email now, I find it quite remarkable that Keith even took the time to write me back. Keith was still in the process of settling into a new home after moving from Oregon to California. I think most people would have set up some kind of an automatic, outgoing email reply apologizing for delayed responses to emails. By contrast, not only did Keith respond to my email, but he also offered to help me.

The next day, I received several email messages from him. These messages contained his syllabus, teaching notes, and PowerPoint slides. I created a folder in my inbox entitled "Aoki" for these email messages. Days later, I also received a FedEx package containing printed copies of his notes and PowerPoint slides. I was extremely happy, relieved, and grateful to receive his teaching materials. I spent hours that semester — and, indeed, that entire year — preparing for classes. Armed with Keith's teaching materials, I felt confident about teaching. How could I not? Whenever I felt unsure about a particular topic, I turned to Keith's copious notes. As Keith wrote in response to my email thanking him for the materials:

From: Keith Aoki [mailto:kaoki@law.uoregon.edu]
Sent: Wednesday, July 26, 2006, 9:21 P.M.
To: Rose Villazor
Subj: RE: [A Message from the Web]

you'll do great, just stick to the script!

B. Teaching Property

From Day 1, Keith's teaching notes and other materials helped shape the way I taught property. Keyed to Joseph Singer's casebook, Keith's notes summarized cases and asked questions that illustrated the various aspects of property law I wanted to teach my students. PowerPoint slides also recapped specific information about the cases and statutes I taught, further reinforcing the arsenal of resources that I was fortunate to get from Keith.

To this day, I still rely on Keith's notes and PowerPoint slides when I teach property law. Some of his PowerPoint slides with pictures and images are particularly useful because they quickly and memorably convey certain property law concepts. Of course, I have since created my own slides and added other materials to my notes. I also rely less on PowerPoint now than I did during my initial years of teaching. Since then I have also developed a teaching style that blends the Socratic method with the humanities, striving to teach my property students the ways in which property law shows us what it means to be human.

Despite developing my own teaching style, I continue to rely on some of Keith's key PowerPoint slides. There are three slides in particular that I continue to use. I show these slides before teaching estates in land and the rule against perpetuities, both of which are fairly perplexing concepts. One slide that particularly stands out is a picture Edvard Munch's famous painting, *The Scream*, which depicts an alien-looking figure holding his cheeks and screaming. This picture is then followed by a slide that has a chart showing the system of estates in land. The third slide again shows *The Scream*. Through these three slides, Keith was able to capture how students must feel when they are tackling the differences between fee simple determinable, fee simple subject to condition subsequent, and the other types of estates. Importantly, by showing these slides, Keith sent a message to students — it is difficult to master the various rules concerning estates in land and that it is perhaps correct to be anxious about it. Keith was also saying that he — and now me, as their professor — understood what students were going through. Through these pictures, Keith showed the students — and me — a compassionate form of law teaching.

Keith checked up on me later that first semester of teaching. Sometime near Thanksgiving, I received the following email from him:

From: Keith Aoki [mailto:kaoki@law.uoregon.edu]
Sent: Thursday, Nov. 23, 2006 3:15 PM
To: Rose Villazor
Subj: thanksgiving song for you

hi rose, here's a song for you on thanksgiving, i wrote the music, a colleague mike axline wrote the words, my band, the garden weasels played the music (we're not quitting our day jobs :)),

very warmest regards, happy thanksgiving and cheers, k

After receiving that email, Keith truly became my hero. Here was this generous teacher and brilliant scholar, *and*, it turns out, he was also in a band! His band, the Garden Weasels, performed the song "Blue Planet," which was a fairly upbeat song. The email came at the right time. I recall that this particular email arrived after a rough teaching day. Indeed, my first semester of law teaching was almost finished, and I was unsure what my students thought about me and the course. Hearing Keith's music was therefore especially welcomed. Importantly, it was reassuring to know that someone was looking out for me. For a first-year, first-semester law professor, I was lucky to have Keith in my corner.

III. KEITH'S SUPPORT OF SCHOLARSHIP

Keith was not only generous with his teaching materials, but he was especially helpful to my scholarship, particularly by reviewing drafts of my first two major publications. The first was *Blood Quantum Land Laws and the Racial Versus Political Identity Dilemma* ("Blood Quantum"),⁹ and second was *Rediscovering Oyama v. California: At the Intersection of Property, Race and Citizenship* ("Rediscovering Oyama").¹⁰ I wonder whether Keith realized when he read and commented on my work how much of his own work on property and race, particularly his *No Right to Own* article, influenced these two pieces. I really hope that he did.

A. *No Right to Own Land in the Territories*

In *Blood Quantum*, I examine restrictions on land ownership in the CNMI and American Samoa, another U.S. territory, which are based on blood quantum rules.¹¹ This essay was initially sparked by my own personal experience with the CNMI's land law as well as my scholarly interest in the intersection between property and race. As I worked

⁹ Villazor, *Blood Quantum*, *supra* note 8, at 801.

¹⁰ Rose Cuison Villazor, *Rediscovering Oyama v. California: At the Intersection of Property, Race, and Citizenship*, 87 Wash. U. L. Rev. 979 (2010) [hereinafter Villazor, *Rediscovering Oyama*].

¹¹ See Villazor, *Blood Quantum*, *supra* note 8, at 825-31.

through my analysis of blood quantum rules in the CNMI and American Samoa, I struggled whether to ultimately conclude that equal protection principles prohibited these land alienation restrictions that denied many non-indigenous individuals from owning land. I was particularly sensitive to the issue because, as I previously noted, many of those precluded from land ownership are immigrants. I found Keith's point in *No Right to Own* about emphasizing the ways in which property law has been used to racially subordinate a helpful starting point in analyzing the territorial blood quantum laws. As Keith clearly stated in *No Right to Own* with respect to the alien land laws that prevented Japanese from owning land:

The salient point of these laws was their strongly racist basis — “aliens ineligible to citizenship” was a disingenuous euphemism designed to disguise the fact that the targets of such laws were first-generation Japanese immigrants, or “Issei.” The objective of these laws was to prevent racialized “others,” (who were also foreigners) — non-white Japanese barred from naturalized U.S. citizenship — from asserting the “right to own,” a fundamental stick in the proverbial “bundle of sticks” U.S. property regime, and related sticks such as the “right to rent” and the “right to devise” property by bequest.¹²

In *No Right to Own*, Keith made evident that at the core of the alien land laws was racism against Japanese immigrants and their families. I then wondered whether his analysis would be applicable in land alienation laws in the CNMI and American Samoa. Ultimately, I concluded that the U.S. territorial property laws called for a different analysis and approach. In my view, an application of the Equal Protection Clause in the territorial context would be a mistake. Indeed, I critiqued equal protection jurisprudence for its inability to uphold these blood-based land alienation restrictions. To me, these land laws, although not necessarily ideal, were enacted by the U.S. Congress and the people of these territories not for the purpose of discriminating on the basis of race, but rather for the goal of promoting indigenous people's rights to property.¹³

As a young scholar writing her first major law review article, I was reasonably nervous about making such a bold assertion. I was also quite worried about what Keith might say, given his writing on the connections between property, race, and citizenship. I, therefore,

¹² See Aoki, *supra* note 2, at 38-40.

¹³ See Villazor, *Blood Quantum*, *supra* note 10, at 833-36.

emailed Keith in June 2007 and sought comments from him. Keith wrote a very long and encouraging email that was embarrassingly effusive and generous with praise. I include a brief excerpt below:

From: Keith Aoki [mailto:kaoki@law.uoregon.edu]
Sent: Monday, June 25, 2007 2:18 PM
To: Rose Villazor
Subj: Re: Comments?

. . . First, blood is such a powerful metaphor and you use it to great effect describing the current dilemma in US Equal protection jurisprudence the tension between an individual entitlement to be free of racial discrimination and the cramped recognition of group rights based on blood quantum based on a autonomy/self-determination theory . . . you're taking us through an area that has been ignored and saying [that] whats going on in these cases contain clues to Bigger ideas.

BRAVO!!!! . . .

Very warmest regards, k

Keith's supportive remarks gave me a big boost of confidence. First, I was unsure if anyone truly understood what I was trying to convey about the limits of equal protection doctrine as applied to group-rights claims to property when the basis of the group formation was contingent on blood quantum. Second, his encouraging comments made me feel that I was contributing something valuable to legal scholarship. From my perspective as junior professor, receiving encouraging feedback from an established scholar provided much needed support that carried me through my next article.

Moreover, Keith did not just stop there. As a good mentor, he pushed me by asking hard questions that helped me in crystallizing my arguments and gave me ideas for my future writing projects:

From: Keith Aoki [mailto:kaoki@law.uoregon.edu]
Sent: Monday, June 25, 2007 2:18 PM
To: Rose Villazor
Subj: Re: Comments?

. . . I think you bring something genuinely new to the Equal Protection table by disrupting the locked dichotomy between blood=race/political autonomy. The question I have for you is, how does this piece fit into Post-Covering world?¹⁴ . . . how do

¹⁴ Here, he is referring to KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON*

we distinguish between bogus and authentic claims to culture? . . . In the [American] Samoan example, you use the history of colonialism to justify why property, land and blood intersect to produce the blood quantum system, but I wonder how this approach would work its way out in a much more plural society like the U.S. . . .

Keith's questions made me realize that portions of my *Blood Quantum* arguments required further development and, thus, needed to be taken out. As a result, I removed a section about how the CNMI and American Samoa's claims to land ownership were cultural claims. Someday, I hope to return to that excised section and answer the questions that Keith asked.

B. Fred Oyama and the Property Rights of U.S. Citizens

During our email exchange regarding *Blood Quantum*, the topic and framing of my next law review article emerged. I was in the beginning stages of researching the validity of local ordinances that prohibited undocumented immigrants from leasing land. One such ordinance was passed by Farmers Branch, a suburb of Dallas, Texas.¹⁵ I saw the parallels between the Farmers Branch and the earlier alien land laws, and I wanted to analyze them from an equal protection analytical framework. That interest led to a discussion between Keith and me about *Oyama v. California*. Discussing the case, Keith wrote:

From: Keith Aoki [mailto:kaoki@law.uoregon.edu]
Sent: Monday, June 25, 2007 4:09 PM
To: Rose Villazor
Subj: Re: Comments?

The *Oyama* case is troubling to me and is an example of why EP doesn't really work. As you recall, the case was brought by Fred Oyama, American-born citizen, who claimed he was denied EP because similarly situated American citizens were able to have their parents/guardians hold property in trust for them when they [were] minors, whereas Fred could not because of California's Alien Land Laws. In what I thought was a tortured opinion, the Court ONLY struck down the part of the Alien Land Law that contained the prohibition on

AMERICAN CIVIL RIGHTS (2006).

¹⁵ FARMERS BRANCH, TEX., ORDINANCE No. 2952, § 1(B)(5)(i) (2008), *invalidated by Villas at Parkside Partners v. City of Farmers Branch, Tex.*, No. 10-10751, 2012 WL 952252 (5th Cir. Mar. 21, 2012).

noncitizens holding property in trust for their citizen children. The Supreme Court at that point in time did NOT want to directly overrule *Terrace v. Thompson* and the 1920s Alien Land Law cases.

Keith was, of course, correct. Contemporary equal protection doctrine provides little protection when the discriminatory conduct was, as in the Farmers Branch case, not explicitly about race. Importantly, Keith's discussion of *Oyama* led me to the arguments I made in *Rediscovering Oyama*. In particular, I contended that the reason local governments like Farmers Branch passed laws restricting the leasehold rights of undocumented immigrants may be blamed on *Oyama* itself. To be sure, *Oyama* is important because it protects a citizen's right to own property. But, by choosing to not examine whether the Equal Protection Clause restricted discrimination against noncitizens' property rights, the Supreme Court in *Oyama* left open the possibility that their rights may be curtailed in the future. Notably, this was an argument that I might not have reached if Keith had not been there to help me to think through the connections between contemporary anti-immigrant ordinances and the alien land laws.

In sum, my early writings during that first year of law teaching would not have come out the way that they did if not for Keith's own scholarship and, importantly, the feedback and questions I received from him.

IV. KEITH'S ONGOING SUPPORT OF JUNIOR FACULTY

Keith and I continued to email each other over the years, although I would consider the emails we exchanged during my first year of law teaching as the most influential ones to me as a law professor. In 2009, during my last semester at SMU, I invited Keith to speak at a colloquium on law and citizenship. He agreed to come and presented a paper that examined the intersection of immigration and local government law. My colleagues and students very much enjoyed his talk. Of course, I too thought that this paper was exceptional (as always). Yet, what I remember most was the way in which he promoted the work of other professors, particularly highlighting the scholarship of junior law professors, during his talk. Even when it was Keith's turn to shine, he chose to underscore the work of others.

In the summer of 2009, I moved to New York because I had accepted a teaching position at Hofstra Law School. I became quite involved in settling in New York and, regrettably, less diligent in

maintaining communication with Keith. I also saw him less at conferences.

Sometime in December 2010, we had another round of email exchange:

From: Rose Villazor [mailto:Rose.Villazor@hofstra.edu]
Sent: Thursday, December 02, 2010 9:45 AM
To: Aoki, Keith
Subject: Hi and Law & Society Ques

Dear Keith,

Hi! I feel like it's been forever since we last saw each other! How are you? I hope that things are going well.

I've adjusted to Hofstra and being back in NYC . . .

Anyway, I'm writing because I'm trying to organize an "Author Meets Reader" session on Steve Bender's book, *Tierra y Libertad*.

Are you planning on going to LSA? If so, want to join us?

Thanks!

All best,

Rose

From: Aoki, Keith [mailto:kaoki@ucdavis.edu]
Sent: Thursday, December 02, 2010 1:18 PM
To: Rose Villazor
Subject: RE: Hi and Law & Society Ques

Hi Rose, it's great to hear from you!!!!!!!!!!!! I'm not planning on being at LSA, but the session with Steve sounds terrific BTW I'm attaching a rough draft of "Welcome to Amerizona!" for the *FULJ* (I think you did a paper as well),

very warmest regards and cheers, k

Keith's *Welcome to Amerizona*¹⁶ article critiqued Arizona's S.B. 1070, but also suggested a way out of the ongoing debate about federal

¹⁶ Keith Aoki & John Shuford, *Welcome to Amerizona — Immigrants Out!: Assessing "Dystopian Dreams" and "Useable Futures" of Immigration Reform, and Considering Whether "Immigration Realism" is an Idea Whose Time Has Come*, 38 *FORDHAM URB. L.J.* 1 (2011).

versus local regulation of immigration law. Proposing what he and his co-author called “immigration regionalism,” he argued for a type of regulation that would still privilege federal control over immigration but that also seeks the input of regional and local governments as well as the private sector. The article is thought provoking and just might help to address the still unresolved issue of state and local government roles with respect to enforcement and regulation of immigration law.

As I looked through the footnotes of his article, I noticed that Keith cited three of my articles. A senior scholar like Keith surely did not need to cite my work. Yet he did. I would later find out that he was already sick by this time. Despite his illness, Keith was steadfast in his support of me and many other junior faculty in his scholarship.

CONCLUSION

My time with Keith was, unfortunately, limited. Yet, within that brief period, I learned a lot from him. In his memory, I will strive to keep his teachings and writings alive in my own work. Importantly, I will do my best to carry out his generous efforts to support junior faculty in their teaching and writing.

I thought it would be best to end the Essay highlighting Keith’s own words. This email was also from the summer of 2007 during the flurry of email exchanges we had while I was writing *Rediscovering Oyama*. Notably, it illuminates Keith’s deep commitment to social justice.

From: Keith Aoki [mailto:kaoki@law.uoregon.edu]
Sent: Monday, June 25, 2007 4:23 PM
To: Rose Villazor
Subj: Re: Comments?

. . . my two principle[s] are (1) anti-essentialism, and (2) anti-subordination. To the extent that some person or group [wants] to shove some crude essentialist version of “culture” down my throat (English-Only, No same sex marriage) I push back argumentatively, taking the crit turn; (2) to the extent that an illegitimate hierarchy can be defined as one person their foot on another person’s neck, I would try and intervene . . . to read just the power imbalance . . .

Not fancy French philosophy, but them’s the words I live by :)