PREFACE

Despite the significance of the Japanese American internment and its aftermath to our understanding of legal doctrine, critical legal theory, civil rights and civil liberties, among other areas of law, there is a relative paucity of scholarship on the topic. In response, this symposium, entitled, *The Long Shadow of Korematsu*[1] represents the first coordinated inquiry into the law of the internment, redress and reparations. The symposium draws upon and advances recent developments in the critical understandings of race in the jurisprudence of multiracial constitutional democracies.

Two important structural developments have enabled this future-oriented exploration of the topic—the forging of a successful coalition that led to passage of the Civil Liberties Act of 1988 and demographic changes in legal academe. The project would not have been possible but for the decades of activism among the Japanese American community and its allies in the movement for redress and reparations. This extraordinary movement culminated in the 1988 Civil Liberties Act,[2] which provided for the establishment of the Civil Liberties Public Education Fund ("CLPEF") to promote educational projects exploring the legacy and meaning of internment.[3] Our joint endeavor, known as the Original Legal Research Collaborative, is one of only two law-related projects funded by CLPEF. Our sister project—a law casebook on teaching the internment, redress and reparations, is scheduled for publication next year.[4] This symposium is dedicated to the nisei and sansei activists who formed the backbone for the impressive coalition to demand justice for wartime wrongdoings, and to those who continue to struggle in that spirit toward a more just and equal society. The relatively recent diversification of legal academe has produced a critical mass of scholars interested in Asian Pacific American ("APA") legal

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[1] The Collaborative thanks Professor Dean Hashimoto of Boston College Law School for providing the title of the Symposium.

[2] Pub. L. No. 100–383, 102 Stat. 903 (1988) (codified at 50 app. U.S.C. § 1989).

[3] We thank the CLPEF Board of Directors: Chair Dale Minami, Vice Chair Susan Hayase, Father Robert Drinan, Leo K. Goto, Elsa H. Kudo, Yeichi Kuwayama, Peggy N. Nagae and Dr. Don Nakanishi. The grants were administered expertly by the CLPEF Staff: Executive Director Dr. Dale Shimasaki, Deputy Director Martha Watanabe, Administrative Officer Margretta Kennedy, Grant Consultant Julie Hatta and Graduate Intern Dina Shek.

[4] This curriculum project on internment is entitled RACE, LAW & LIBERTY: THE JAPANESE AMERICAN INTERNMENT AND REDRESS—A CRITICAL INQUIRY (Eric Yamamoto, with Margaret Chon, Carol Izumi, Jerry Kang and Frank Wu, forthcoming 2000).

issues and histories. As a result, new questions, conceptual linkages and theoretical frameworks are being posed by a new generation of scholars with shared interests in APA jurisprudence. We thank Boston College Law School for housing this historic effort through an unprecedented collaboration between the *Boston College Third World Law Journal* and the *Boston College Law Review*.[5] This sponsorship is particularly appropriate in light of the early and ongoing support of the Boston College Law School for both the First and Fifth Annual Conferences of Asian Pacific American Law Faculty.[6]

The symposium begins with an Introduction by Professor Fred Yen contextualizing the symposium in light of the recent publication by Chief Justice William Rehnquist of his book on national security law and internment.[7] The Introduction is followed by a Foreword by Mari Matsuda. As the first member of our collaborative team, Professor Matsuda, frames the symposium Articles on internment through the lens of power as reflected through our Constitutional order. In *McCarthyism, The Internment, and the Contradictions of Power*,[8] Professor Matsuda connects the massive repression of internment with that of McCarthyism—analyzing both episodes as a "repudiation of Constitutional values in the name of preserving the republic."[9] The remaining Articles and Comments are organized into three Sections.

Section One, "Properties of Racial Formation," includes two Articles addressing the construction of race and property rights. In *No Right to Own?: The Early-Twentieth Century "Alien Land Laws" As a Prelude to Internment*,[10] Keith Aoki examines the material significance of West Coast anti-Chinese movements and legislation, Asian citizenship exclusion, and Alien Land Laws that provided the legal and political antecedent conditions for internment of Japanese Americans. Through ideologically and racially defining "foreign-ness" through immigration and citizenship exclusion and alien land laws, Professor Aoki argues that the state was able to define disloyalty in internment cases based upon foreign-ness. He further argues that the panethnic

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[5] We are indebted to the student editorial boards of both publications, as well as to their professional staff members, Rosalind Kaplan and John Gordon.

[6] In particular, we thank Dean Aviam Soifer and Dean James Rogers for their support and sponsorship of the First and Fifth conferences respectively, and to Professor Fred Yen as the lead organizer for both gatherings.

[7] Alfred C. Yen, *Introduction: Praising With Faint Damnation—The Troubling Rehabilitation of* Korematsu, 40 B.C. L. REV. 1, 19 B.C. THIRD WORLD L.J. 1 (1998).

[8] 40 B.C. L. REV. 9, 19 B.C. THIRD WORLD L.J. 9 (1998).

[9] *Id.* at 9.

[10] 40 B.C. L. REV. 37, 19 B.C. THIRD WORLD L.J. 37 (1998).

racial lumping of Japanese with earlier Chinese immigrants through law, demonstrates the formation of the negative, externally-shaped Asian Pacific American category. In *Redeeming Whiteness in the Shadow of Internment: Earl Warren,* Brown, *and a Theory of Racial Redemption,*[11] I reconsider the momentous *Brown* decision, and the Warren Court generally, through the lens of "racial redemption." I explore Earl Warren's personal need to redeem his encumbered racial past during which he played a key leadership role in Japanese American internment. I argue that Warren's individual redemption parallels and symbolizes the need for the legal system's redemption from its pre-World War II complicity with Jim Crow segregation through the postwar *Brown* decision and subsequent pro-civil rights decisions of the Warren Court era. Drawing upon his expertise in American Indian legal history, Professor Joseph Singer provides his insights and comments on this Section.[12]

Section Two, entitled "Race (in)Security: Internment and Law's 'External' Realm," traces connections between internment jurisprudence and postwar legal discursive constructions of foreign affairs, national security and international human rights law. In *A Tale of New Precedents: Japanese American Internment as Foreign Affairs Law,*[13] Gil Gott locates in the internment jurisprudence the origins of postwar foreign affairs law. Analyzing the ontological underpinnings of the discipline and the record of internment, Professor Gott argues that foreign affairs law is the product of a highly objectionable "realist" paradigm of international relations, and often a vehicle for regressive politics of an imperial, xenophobic or racist nature. Natsu Taylor Saito uncovers the racial contingency of borders in her Article, *Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians—A Case Study.*[14] Professor Saito starts with an analysis of *Mochizuki v. United States,* a recent class action for redress under the Civil Liberties Act brought on behalf of the more than 2000 Japanese Latin Americans who were kidnapped and incarcerated by the United States during World War II. She details how the United States violated international law by holding them as hostages to be exchanged for American citizens in Japanese-occupied territories. Professor Saito examines the extent to which State and Justice Department

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[11] 40 B.C. L. REV. 73, 19 B.C. THIRD WORLD L.J. 73 (1998).

[12] Joseph William Singer, *Comment: The Stranger Who Resides with You: Ironies of Asian-American and American Indian Legal History,* 40 B.C. L. REV. 171, 19 B.C. THIRD WORLD L.J.171 (1998).

[13] 40 B.C. L. REV. 179, 19 B.C. THIRD WORLD L.J. 179 (1998).

[14] 40 B.C. L. REV. 275, 19 B.C. THIRD WORLD L.J. 275 (1998).

officials considered international law in their actions, and analyzes the ongoing costs to the United States of its disregard for international law in this context. As commentator, Professor Lisa Iglesias deftly synthesizes the two Articles while emphasizing linkages to the LatCrit movement in legal scholarship.[15]

"Theorizing Racial Remedies and Coalitions," the final Section, includes three Articles that explore contemporary understandings of multiracial coalition building as well as the multiple meanings of racial apologies, redress and reparations. In *Reparations and the "Model Minority" Ideology of Acquiescence: The Necessity to Refuse the Return to Original Humiliation*,[16] Chris K. Iijima critically questions why the national redress and reparations movement of Japanese Americans succeeded where other reparations movements did not, for instance that of African Americans. Drawing on the critique of the "model minority," Professor Iijima analyzes the discourse generated in legislative debates over the Civil Liberties Act of 1988 and concludes that the construction of quiescent and superpatriotic Japanese American victims who sought to "prove their loyalty," combined with the erasure of principled resistors to internment, led to the predominant view of Japanese Americans as minorities deserving of an executive apology and federally legislated monetary relief. In so doing, Professor Iijima underscores the potential dangers of redress and reparations which may serve as material reward for acquiescence by racial minority groups in existing racial hierarchies. The Article by Robert Westley, entitled *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?*,[17] asks the provocative question of whether reparations may provide a better remedy than the much-contested policy of affirmative action. Professor Westley seeks to intervene in the debate over racial remedies at the levels of pragmatic policy and counterhegemonic norm creation. By carefully developing the historical and socioeconomic arguments for reparations, he establishes the empirical basis for reparations and lays the foundation for the development of reparations advocacy as "critical legalism"—a "legal norm reflecting and reinforcing the interests and perspectives of the subordinated."[18] In *Racial Reparations: Japanese American Redress and African American Claims*,[19] Eric K. Yamamoto identifies three particular

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[15] Elizabeth M. Iglesias, *Comment: Out of the Shadow: Marking Intersections in and between Asian Pacific American Critical Legal Scholarship and Latina/o Critical Race Theory*, 40 B.C. L. REV. 349, 19 B.C. THIRD WORLD L.J. 349 (1998).

[16] 40 B.C. L. REV. 385, 19 B.C. THIRD WORLD L.J. 385 (1998).

[17] 40 B.C. L. REV. 429, 19 B.C. THIRD WORLD L.J. 429 (1998).

[18] *Id.* at 432.

[19] 40 B.C. L. REV. 477, 19 B.C. THIRD WORLD L.J. 477 (1998).

risks that attend reparations movements: 1) legal distortion of claimants; 2) procedural dilemmas; and 3) reparations ideology. Using a comparative approach examining the experiences of Japanese Americans, Native Hawaiians and African Americans, Professor Yamamoto seeks not to deter reparations claims, but to ensure that such potential underside risks are accounted for, assessed and minimized as much as possible through strategic analysis, careful planning and coalition-building with other group reparations efforts. Professor Aviam Soifer offers his thoughtful commentary on the Articles in Section Three.[20]

It has been our privilege to collaborate in concert with the redress and reparations movement that inspires and makes possible this project. We hope our efforts here honor the spirit of resistance of those who legally challenged the injustice of internment—Gordon Hirabayashi,[21] Minoru Yasui,[22] Fred Korematsu,[23] Mitsuye Endo,[24] William Hohri[25] and the many sansei attorneys and allies who in the 1980s reopened and vacated the internment convictions.[26]

—Sumi Cho, Project Director
Original Legal Research Collaborative
of the Civil Liberties Public Education Fund

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[20] Aviam Soifer, *Comment: Redress, Progress and the Benchmark Problem*, 40 B.C. L. REV. 525, 19 B.C. THIRD WORLD L.J. 525 (1998).

[21] Hirabayashi v. United States, 320 U.S. 81 (1943).

[22] Yasui v. United States, 320 U.S. 115 (1943).

[23] Korematsu v. United States, 323 U.S. 214 (1944).

[24] *Ex Parte* Endo, 323 U.S. 283 (1944).

[25] Hohri v. United States, 586 F. Supp. 769 (D.D.C. 1984), *rev'd in part*, 782 F.2d 227 (D.C. Cir. 1986), *vacated and remanded*, 482 U.S. 64 (1987), *dist. ct. ruling aff'd*, 847 F.2d 779 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 925 (1988).

[26] On the vacation of convictions, see Korematsu v. United States, 584 F. Supp. 1406 (N.D. Cal. 1984); Hirabayashi v. United States, 627 F. Supp. 1445 (W.D. Wash. 1986). In 1984, Judge Robert C. Belloni granted the government's motion to vacate Minoru Yasui's conviction but dismissed his petition to hold hearings on the case, thereby refusing to make any findings of governmental misconduct. Yasui appealed the dismissal to the Ninth Circuit Court of Appeals, but died in November of 1986 while waiting for a ruling. For a summary of the *coram nobis* cases, see LESLIE T. HATAMIYA, RIGHTING A WRONG: JAPANESE AMERICANS AND THE PASSAGE OF THE CIVIL LIBERTIES ACT OF 1988, at 165–80 (1993).