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## Facing History, Facing Ourselves: Eric Yamamoto and the Quest for Justice

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# FACING HISTORY, FACING OURSELVES<sup>†</sup>: ERIC YAMAMOTO AND THE QUEST FOR JUSTICE

ERIC YAMAMOTO,<sup>‡</sup> *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA*, New York: New York University Press, 1998, 330 pp.

*Reviewed by Robert S. Chang\**

## SNAPSHOTS

*Snapshot 1.*<sup>1</sup> New Orleans. Summer 1996.

It's hot. The neighborhood grocery store is owned by a Vietnamese American family. The residents of the neighborhood are largely African American. Relations between the store owners and the residents are not good. A fight erupts between the store owner's son and a young African American man. Neighborhood residents accuse the store owners of physical and verbal assault and discriminatory hiring practices. A boycott of the store ensues. The store owners file a federal lawsuit against the organizers of the boycott, claiming to be victims of economic terrorism.

*Snapshot 2.*<sup>2</sup> Hawai'i. 1993.

In January, Reverend Paul Sherry, President of the United Church of Christ, issues an astounding apology to Native Hawaiians. He expresses his sorrow for the role his ancestors and predecessors in the church played in illegally overthrowing the Hawaiian monarchy and asks for forgiveness. His public apology prompts Asian American churches in the United Churches of Christ's Hawai'i Conference to undertake their own efforts to craft an apology accompanied by reparations. These efforts are both celebrated and criticized from within and without.

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† Copyright 1998 Robert S. Chang. The title comes from Chapter 8 which in turn takes its title from a conference on collective memory and violence, *Facing History and Ourselves*, held in Brookline, Massachusetts, in April 1997.

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1. This account is drawn from ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 1-6 (1999).

2. See *id.* at 60-61.

*Snapshot 3.*<sup>3</sup> South Africa. January 1997.

Five former policemen confess to the 1977 murder of Steve Biko and seek amnesty from the Truth and Reconciliation Commission. Biko was a Black anti-apartheid activist.<sup>4</sup> After the policemen had severely beaten him, they withheld medical treatment and drove him 750 miles to place him in the jail cell in which he died. Although the policemen confessed, the confessions seemed to be designed solely to escape legal liability: "They did not recognize the suffering they inflicted or acknowledge why their acts amounted to human rights abuses. They expressed no contrition and offered no amends."<sup>5</sup> Biko's family challenged the power of the commission to grant amnesty. They were unsuccessful.

Imagine these as photos on your mantel. They are not the most pleasant images to live with. They do not evoke nostalgic memories of loved ones, of the past, of an innocence lost but fondly recalled. They are painful to look at, easier to avoid. But these are the images that we must face. We must confront them, understand them, and seek to resolve them. Otherwise the wounds that are so painfully evident in each of the frames will only fester and perhaps explode.<sup>6</sup>

One example of what can happen when a wound is allowed to fester occurred in April 1992.<sup>7</sup> Explosions occurred in various U.S. cities,<sup>8</sup> most notably in Los Angeles, following the acquittal of the four White policemen who were caught on tape beating Rodney King, a Black man.<sup>9</sup>

3. See *id.* at 265–66.

4. His political writings can be found in STEVE BIKO, *I WRITE WHAT I LIKE* (Aelred Stubbs ed., 1978).

5. YAMAMOTO, *supra* note 1, at 266.

6. See LANGSTON HUGHES, *Harlem [2]*, in *THE COLLECTED POEMS OF LANGSTON HUGHES 426* (Arnold Rampersad & David Roessel eds., 1959).

7. See generally LOS ANGELES—STRUGGLES TOWARD MULTIETHNIC COMMUNITY: ASIAN AMERICAN, AFRICAN AMERICAN, AND LATINO PERSPECTIVES (Edward T. Chang & Russell C. Leong eds., 1994) (discussing race and ethnic relations in the context of the Los Angeles uprising and urging new approaches to addressing inequality and race issues in the national picture); *READING RODNEY KING/READING URBAN UPRISING 2* (Robert Gooding-Williams ed., 1993) (discussing the "complex network of conditions—social, economic, political, and ideological"—of urban America that gave rise to the Rodney King incidents).

8. See Abraham L. Davis, *The Rodney King Incident: Isolated Occurrence or a Continuation of a Brutal Past?* 10 HARV. BLACKLETTER J. 67, 68 (1993) ("The Los Angeles riots also triggered the eruption of violence and destruction of property on a smaller scale in the cities of San Francisco; Seattle; Miami; Las Vegas; Atlanta; and Madison.").

9. See generally Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles"*, 66 S. CAL. L. REV. 1581 (1993) (discussing how, through the influence of a White majority "master narra-

Much of the violence in protest of the acquittal was done to the chant "No justice, no peace."<sup>10</sup> Despite the later convictions of two of the police officers for violating Rodney King's civil rights,<sup>11</sup> it is unclear that justice has been done or that there has been a real resolution of the racial tensions underlying the violence.<sup>12</sup>

A calm of sorts has descended, but the question is not whether there will be another fire, but rather where and when it will next erupt. James Baldwin expressed it best:

If we . . . do not falter in our duty now, we may be able . . . to end the racial nightmare, and achieve our country, and change the history of the world. If we do not now dare everything, the fulfillment of that prophecy, re-created from the Bible in song by a slave, is upon us: *God gave Noah the rainbow sign, No more water, the fire next time!*<sup>13</sup>

Walls can be built to try to contain the explosions. They can be built to hide behind. The increase in prison construction, private security, and gated communities demonstrates that these walls are in fact being built.<sup>14</sup> But can America afford to indulge its color-blind fantasy of a world where things are made right by building walls and turning a blind eye to race? Injustice can go unanswered for only so long. Remember: "No justice, no

tive," the Los Angeles riots following the Rodney King incident have been viewed largely along an African American/Korean American racial divide).

10. See Angela Oh, *Race Relations in Los Angeles: "Divide and Conquer" Is Alive and Flourishing*, 66 S. CAL. L. REV. 1647, 1648, 1650 (1993) (criticizing the media's exploitation of the tensions between African Americans and Korean Americans in reports of the Los Angeles riots and arguing that "persistent institutional inequities were the root cause" of the riots).

11. *Koon v. United States*, 518 U.S. 81 (1996) (affirming in part and reversing in part the district court's downward departures from the sentencing guidelines).

12. I attended the first National Korean American Studies Conference in late April 1997 which commemorated the fifth anniversary of the urban unrest following the first acquittal of the policemen who beat Rodney King. The pain and anger expressed by some of the participants and audience members showed that racial healing had yet to take place. In the Korean American community, this event is commemorated as *Sa-I-Gu*, literally, 4-29, the date the unrest began. See SA-I-GU (Christina Choy & Renee Tajima, 1993); see also *Five Years After the Los Angeles Riots*, HARRISBURG PATRIOT, April 29, 1997, at A2.

13. JAMES BALDWIN, *THE FIRE NEXT TIME* 119-20 (1963).

14. See, e.g., *THE CELLING OF AMERICA: AN INSIDE LOOK AT THE U.S. PRISON INDUSTRY* (Daniel Burton-Rose et al. eds., 1998); NIGEL SOUTH, *POLICING FOR PROFIT: THE PRIVATE SECURITY SECTOR* (1988); JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* (1991).

peace.” It does not take an altruist to seek resolution of this country’s racial problems.<sup>15</sup>

But what counts as a successful resolution? Professor Eric Yamamoto, in *Interracial Justice*, provides an analytic framework that shows us some of the ingredients necessary for a successful resolution. This book is the culmination of several years of activist lawyering and academic writing.<sup>16</sup> Yamamoto, perhaps more than most law professors, has been able to blend theory and practice in his activism and in his writings.<sup>17</sup> He is the embodiment of the race praxis for which he advocates. In his book, Professor Yamamoto shares the lessons he has learned. The challenge for us and this nation is to listen.

#### THE ANALYTIC FRAME

Professor Yamamoto defines race praxis as “a critical pragmatic process of race theory generation and translation, practical engagement, material change, and reflection. It grounds justice at the juncture of progressive race theory and antistatist practice—to integrate conceptual inquiries into power and representation with frontline struggles for racial justice.”<sup>18</sup>

15. Cf. Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (observing that advances for racial minorities tend to occur when they advance the interests of those in power). I posit that it is in the self-interest of those in power to share it to resolve this country’s racial wounds.

16. See, e.g., Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997); Eric K. Yamamoto, *Race Apologies*, 1 J. GENDER, RACE & JUST. 47 (1997); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495 (1997); Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 UCLA ASIAN PAC. AM. L.J. 33 (1995).

17. For example, early in his teaching career Yamamoto participated on the legal team that pursued coram nobis petitions to overturn the convictions of Gordon Hirabayashi, Fred Korematsu, and Minoru Yasui, who were convicted of violating various measures enforcing the exclusion and internment of Japanese Americans during World War II. Their convictions were upheld by the United States Supreme Court. See *Korematsu v. United States*, 323 U.S. 214 (1944); *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Yasui v. United States*, 320 U.S. 115 (1943). Gordon Hirabayashi’s and Fred Korematsu’s convictions were eventually overturned after they each petitioned for a writ of coram nobis. See *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987); *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984). Minoru Yasui died before the appeal of the dismissal of his petition could be heard. See JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES 29 (Peter Irons ed., 1989).

Yamamoto recounts the coram nobis efforts, using that experience to make broader points about recent national security cases. See Eric K. Yamamoto, *Korematsu Revisited—Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review: Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 SANTA CLARA L. REV. 1 (1986).

18. YAMAMOTO, *supra* note 1, at 10.

In formulating a race praxis, Yamamoto suggests that we consider the four “Rs”: recognition, responsibility, reconstruction, and reparation.<sup>19</sup> The four “Rs” provide the analytic framework that he uses to understand interracial conflicts, to evaluate efforts to resolve these conflicts, and to recommend steps toward interracial reconciliation:<sup>20</sup>

[*Recognition*] asks racial group members to recognize and empathize with the anger and hope of those wounded; to acknowledge the disabling social constraints imposed by one group on another and the resulting group wounds; to identify related justice grievances often underlying current group conflict; and to critically examine stock stories of racial group attributes and interracial relations ostensibly legitimating those constraints and grievances.<sup>21</sup>

[*Responsibility*] suggests that amid struggles over identity and power, racial groups can be simultaneously subordinated in some relationships and subordinating in others . . . [such that] a group’s power is both enlivened and constrained by specific social and economic conditions and political alignments . . . [and] therefore asks racial groups to assess carefully the dynamics of group agency for imposing disabling constraints on others and, when appropriate, to accept group responsibility for healing the resulting wounds.<sup>22</sup>

[*Reconstruction*] entails active steps (performance) toward healing the social and psychological wounds resulting from disabling group constraints. Those steps might include apologies by the aggressors and, when appropriate, forgiveness by those injured and a joint reframing of stories of group identities and intergroup relations.<sup>23</sup>

[*Reparation*] seeks to repair the damage to the material conditions of racial group life in order to attenuate one group’s power over another. This means material changes in the structure of the relationship (social, economic, political) to guard against “cheap reconciliation,” in which healing efforts are “just talk.”<sup>24</sup>

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19. See *id.* at 10–11.

20. See *id.*

21. *Id.* at 10.

22. *Id.* at 10–11.

23. *Id.* at 11.

24. *Id.*

Professor Yamamoto develops and uses these analytic dimensions to examine more closely the snapshots described above. He urges this kind of analysis and the development of a race praxis to negotiate the momentous changes that are occurring in this country. We have all heard the predictions and seen the headline news that Whites will no longer be a numerical majority by the middle of the next century or earlier (depending on which demographic prediction you use and depending on future policies affecting immigration and reproduction).<sup>25</sup> Fear of a non-White majority may have helped spur efforts to (1) curb the entry of people of color at the border;<sup>26</sup> (2) limit the educational, economic and political opportunities of certain persons through English-Only in schools, the workplace, and voting booths;<sup>27</sup> (3) end affirmative action for racial minorities<sup>28</sup> and deny any public funding to any educational institution that

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25. See SAM ROBERTS, WHO WE ARE: A PORTRAIT OF AMERICA BASED ON THE LATEST U.S. CENSUS 246 (1995) ("Whites will become a minority again around the middle of the twenty-first century."). Many geographic/political areas already have majorities of color. See Angelo N. Ancheta & Kathryn K. Imahara, *Multi-Ethnic Voting Rights: Redefining Vote Dilution in Communities of Color*, 27 U.S.F. L. REV. 815, 819 (1993) (explaining that Chicago, Dallas, Houston, Los Angeles, New York City, San Antonio, San Francisco, and San Jose each have majorities of color). Some already believe that a majority of color is already in place in the United States. One poll asked White Americans what percentage of the United States was Hispanic, Black, Asian, and White. White Americans exaggerated the percentage of minorities and greatly underestimated the percentage of Whites, believing it to be 49.9% when in fact it was 74%. See Priscilla Labovitz, *Immigration—Just the Facts*, N.Y. TIMES, March 25, 1996, at A19.

26. See IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 3 (Juan F. Perea ed., 1997) (discussing nativism in modern-day America that targets both undocumented and legal aliens, resulting in discriminatory legislation, immigration restrictions, and "broad deterioration in support for racial equality"); ARGUING IMMIGRATION: ARE NEW IMMIGRANTS A WEALTH OF DIVERSITY . . . OR A CRUSHING BURDEN? (Nicolaus Mills ed., 1994) (discussing the national backlash against immigration and explaining various arguments in the current debate on immigration); Kevin R. Johnson, *The Antiterrorism Act, the Immigration Reform Act, and Ideological Regulation in the Immigration Laws: Important Lessons for Citizens and Noncitizens*, 28 ST. MARY'S L.J. 833, 836 (1997) (arguing that the U.S. government continues to employ immigration laws as a means "to protect the established political and social order" against perceived threats).

27. See generally Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293 (1989) (arguing that "English-Only" legislation would not survive constitutional attack under the equal protection clause); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 279, 280 (1992) (discussing the historical "interaction between the dominant culture and other American cultures with respect to language" and examining the use of law by American nativists "to enforce conformity through language restriction").

28. An example is California's Proposition 209, which eliminated affirmative action "in the operation of public employment, education or contracting" and survived constitutional challenge. *Coalition for Econ. Equity v. Wilson*, 946 F. Supp. 1480, 1491, 1510, 1519-20 (N.D. Cal. 1996), *rev'd*, 122 F.3d 692 (9th Cir. 1997), *cert. denied*, 118 S. Ct.

exercises affirmative action;<sup>29</sup> (4) incarcerate more men of color for longer periods of time;<sup>30</sup> and (5) fight against multicultural education.<sup>31</sup> None of this is to say that Whites are not being hurt by the economic changes spurred by globalization and capital flight. Many are.<sup>32</sup> Nevertheless, the

397 (1997). For a thoughtful critique of Proposition 209 and the role courts have played and can play in the affirmative action debate, see Girardeau A. Spann, *Proposition 209*, 47 DUKE L.J. 187 (1997).

29. Columnist Julianne Malveaux reported that Representative Frank Riggs (R.-Calif.) "plans to offer an anti-affirmative action amendment when the Higher Education Act is voted on the House floor next week." Julianne Malveaux, *There's Progress on Race But Much to Do*, USA TODAY, Oct. 2, 1998, at 15A. An earlier effort by Congressman Riggs to do the same was rejected by a vote of 249-171. See Anthony Lewis, *Is Tide Turning on Affirmative Action?*, SAN DIEGO UNION-TRIB., May 19, 1998, at B7.

30. For example, one study found that 99 percent of those given mandatory life sentences under Georgia's second drug offense statute were African American:

African Americans are estimated to make up 27% of the population [in Georgia]. Two hundred forty of 243 persons convicted under Ga. Code Ann. § 16-13-30(d) from its enactment in 1982 until May 1993 were African American. The bulk of these convictions involved guilty pleas for sales of less than \$100 worth of cocaine.

Natsu Saito Jenga, *Unconscious: The "Just Say No" Response to Racism*, 81 Iowa L. Rev. 1503, 1516 n.85 (1996) (citing Georgia Sup. Ct. Comm'n on Racial and Ethnic Bias in the Court System, *Let Justice Be Done: Equally, Fairly, and Impartially* 161 (1995)). Nationally, "23% of Black males aged 20 to 29 were either in prison or jail, or on probation or parole, as compared with 6.2% of White males and 10.4% of Hispanic males in the same age range." *Id.* at 1516 n.84. Statistics such as these are not the product of accident but are rather the product of selective enforcement, selective prosecution, and selective sentencing. See Sheri Lynn Johnson, *Race and the Decision to Detain a Suspect*, 93 Yale L.J. 214 (1983) (discussing how race is used in determining probable cause or reasonable suspicion, and whether that determination is relevant and/or constitutional); David A. Sklansky, *Cocaine, Race and Equal Protection*, 47 Stan. L. Rev. 1283 (1995) (arguing that the longer sentences for crack cocaine convictions compared with sentences for powder cocaine result in longer sentences for African Americans, who are the vast majority of those convicted for crack cocaine); Floyd D. Weatherspoon, *The Devastating Impact of the Justice System on the Status of African American Males: An Overview Perspective*, 23 Cap. U. L. Rev. 23 (1994) (discussing the disparity in incarceration rates and length of sentences between African American males and White males).

31. See Peter McLaren, *White Terror and Oppositional Agency: Towards a Critical Multiculturalism*, in *MULTICULTURALISM: A CRITICAL READER* 45 (David T. Goldberg ed., 1994) (highlighting and discussing recent attacks on multiculturalism in education); Christopher Newfield & Avery F. Gordon, *Multiculturalism's Unfinished Business*, in *MAPPING MULTICULTURALISM* 76, 86-89 (Christopher Newfield & Avery F. Gordon eds., 1996) (same).

32. See Susan Sward, *Generation Gap, Color Gap: Women Split on Affirmative Action*, S.F. CHRON., Mar. 31, 1995, at A1 (according to Patricia Ireland, president of the National Organization of Women, anti-affirmative action advocates "are playing on people's worries about their jobs by arguing that affirmative action is the reason 'a lot of white men are unemployed . . . not because of corporate downsizing, automation, computerization, all the reasons that there has been a shift in the economy'").



question is whether racial minorities will be scapegoated and blamed for the downturn in economic fortune, as they have been in the past.<sup>33</sup> Capital has historically exploited race and racial animus to disrupt potential class solidarity.<sup>34</sup> Will color-on-color conflict be exploited to prevent the formation of a working political coalition among progressive-minded people of color and similarly-minded Whites? The former racial compromises that held together this nation are unraveling under the pressures of changing demographics. These snapshots show us that the time for flesh-colored Band-Aids has passed, if ever they worked.<sup>35</sup>

#### FRAMING THE SNAPSHOTS

##### *Snapshot 1. New Orleans. Summer 1996.*<sup>36</sup>

Yes, it's hot. But how did it get that way? The first analytic dimension is recognition. The Nguyens have operated the store in the neighborhood for approximately eight years. But it's not their

33. An example of this can be found in the way Irish workers blamed Blacks for their ill fortune in the mid- to late-1800s. Ronald Takaki quotes Irish workers as saying, "In a country of the whites where [white workers] find it difficult to earn a subsistence . . . what right has the negro either to preference or to equality, or to admission?" RONALD TAKAKI, *A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA* 151 (1993). See also Jonathan Kaufman, *Mood Swing: White Men Shake Off That Losing Feeling on Affirmative Action*, WALL ST. J., Sept. 5, 1996, at A1. The article notes, "Just a few years ago, white men . . . complained bitterly to themselves and to pollsters that competition from women and minorities was imperiling their career climb and job security." *Id.* The article goes on to point out that White male opposition to affirmative action was diminishing as they were seeing that affirmative action was not having the widespread effect they thought it would have. Perhaps the last quotation from a formerly very angry White man says it best: "I'm not as bitter as I was . . . It's still mostly a white man's world where I work." *Id.*

34. See, e.g., GEORGE LIPSITZ, *RAINBOW AT MIDNIGHT: LABOR AND CULTURE IN THE 1940s* 69-95 (1994) (discussing hate strikes by White workers to prevent the hiring of Black workers); ALEXANDER SAXTON, *THE RISE AND FALL OF THE WHITE REPUBLIC: CLASS POLITICS AND MASS CULTURE IN NINETEENTH-CENTURY AMERICA* 293 (1990) (showing "that within the constraints imposed by Republican economic policies, wage earners developed a uniquely American organizational apparatus that depended on, and maximized, racial exclusion" which "could be expected to inhibit working-class challenges to industrial capitalism").

35. This is a reference to the controversy surrounding the designation of pinkish-beige as "flesh" for Band-Aids and Crayola Crayons and the vision of the "normal" that is contained within such a designation. "For years, we 'understood' what a flesh-colored band aid was—until black people pointed out that their skin is not pinkish-beige." Patricia A. Tidwell & Peter Linzer, *The Flesh-Colored Band Aid—Contracts, Feminism, Dialogue, and Norms*, 28 HOUS. L. REV. 791, 817 (1991).

36. The following account is drawn from YAMAMOTO, *supra* note 1, at 1-6, with citations provided for direct quotes.

neighborhood. Presumably, they live elsewhere and are considered outsiders by the neighborhood's residents. The Nguyens are reminded of this by "repeated taunts about 'going back to your own country.'"<sup>37</sup> In turn, the neighborhood residents accused the Nguyens of "physical and verbal assault and discriminatory hiring practices."<sup>38</sup> They wanted to "reclaim the community from a stream of foreigners who invade a neighborhood and bleed it of money," and a local church minister "proclaimed his hope that the 'campaign against outside shop owners in African American neighborhoods will spread all over the city.'"<sup>39</sup> Given these strong feelings, how are the disputing parties to recognize in each other the anger and hope that each feels, especially when the perceived solution to the problem was the sale of the store, preferably to an African American? After a failed attempt by the New Orleans Human Relations Commission and the United States Department of Justice to mediate the dispute, the Nguyens closed their store and filed a lawsuit. The judge in the case ordered the parties to formal mediation which also failed to resolve the dispute. Professor Yamamoto comments:

Constrained by narrow notions of legal relevance and by institutional practice, the legal proceedings did not delve into the historical roots of the black residents' perceptions of the Nguyens as members of a just-arriving group exploiting African Americans. Nor did the lawsuit bring the Nguyens closer to correcting racial misconceptions about African Americans as shortsighted and untrustworthy.<sup>40</sup>

So what could have been done to bridge the divide? Arguably, both groups—the Nguyens and the neighborhood residents—were victims on a larger tableau. The Nguyens presumably were displaced from their homeland by the war waged by the United States government in Southeast Asia.<sup>41</sup> If they were like other displaced persons from Southeast Asia, their weak English language skills limited their economic

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37. *Id.* at 1.

38. *Id.*

39. *Id.* at 2.

40. *Id.* at 4.

41. See BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850–1990*, at 121, 125–28 (1993).

opportunities.<sup>42</sup> However, they were able to come up with the funds to start or purchase a small business in a largely African American neighborhood. They occupied a middleman minority position that served the interests of capital in various ways, including a part in a differentially racialized buffer zone that bore the brunt of the anger and frustration of the truly disadvantaged.<sup>43</sup> On the other hand, the African American residents had their own grievances, not just against the Nguyens, but against the legal and extralegal methods employed to prevent their economic and social advancement which have included “southern slavery, Jim Crow apartheid, and present-day white racism.”<sup>44</sup> Is it possible for the Nguyens and the African American residents to find a common ground or a “chain of equivalents”<sup>45</sup> in their different struggles against oppression? Or will they be left, as one journalist observed, to fight over crumbs?<sup>46</sup>

This snapshot serves as an example of the likely result if the parties fail to recognize the anger, pain, and hope each feels.<sup>47</sup> It also serves as an ex-

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42. *Id.* at 135–36.

43. Historically, it has been in capital’s interest to permit certain groups to advance and occupy a middle role between capital and labor. These groups exploit labor, which further consolidates capital’s power over labor while also serving as a target for the hostility of labor in class struggle. See JON ELSTER, AN INTRODUCTION TO KARL MARX 134–39 (1986); DANIEL T. O’HARA, CLASS, IN CRITICAL TERMS FOR LITERARY STUDY 406 (Frank Lentricchia & Thomas McLaughlin eds., 2d ed. 1995); see also IVAN LIGHT & EDNA BONACICH, IMMIGRANT ENTREPRENEURS: KOREANS IN LOS ANGELES 1965–1982, at 17–24 (1988) (finding that the middleman minority thesis was a useful beginning point but too restrictive to describe Koreans in Los Angeles, instead favoring the more expansive concept of immigrant entrepreneurship); PYONG GAP MIN, CAUGHT IN THE MIDDLE: KOREAN MERCHANTS IN AMERICA’S MULTIETHNIC CITIES 5 (1996) (arguing that the middleman minority theory, which had generally been based on cases in preindustrial societies, still retained validity as seen in his study of Korean merchants in contemporary America).

44. YAMAMOTO, *supra* note 1, at 5.

45. Chantal Mouffe, *Hegemony and New Political Subjects: Toward a New Concept of Democracy*, in MARXISM AND THE INTERPRETATION OF CULTURE 89, 100 (Cary Nelson & Lawrence Grossberg eds., 1988) (invoking the concept of solidarity to establish a chain of equivalents between different groups and their struggles against oppression).

46. See Tara Young, *Fighting over Crumbs: Cultures Clash at Corner Store*, NEW ORLEANS TIMES-PICAYUNE, July 3, 1996, at 1 (reporting the genesis and escalation of the dispute), cited in YAMAMOTO, *supra* note 1, at 279 n.1.

47. It is of course easier for parties to empathize with those similar to themselves, and “[e]mpathy for those unlike oneself is, indeed, ‘more work,’ but certainly it is not impossible. . . .” Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574, 1584 (1987). This is not to say that the Nguyens’ pain is the same as that of the African American neighborhood residents. Cf. Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-Isms)*, 1991 DUKE L.J. 397 (remarking on the dangers of equating one-ism with another). Other scholars have expressed skepticism or caution about the work that empathy can do. See Richard Delgado, *Rodrigo’s Eleventh Chronicle: Empathy and False Empathy*, 84 CAL. L. REV. 61, 68 (1996) (exploring the ideas that “[o]ur society doesn’t

ample of the failure of the parties to take responsibility for the power each is able to exercise over the other. For the Nguyens, their position as shop owners in the neighborhood provided them with economic power which placed them in a position of privilege vis-à-vis the neighborhood residents. There is something to the claim made by one spokesperson for the neighborhood residents who rejected the Nguyens' request to learn what they had done to offend community members: "If they don't know what they have done over these past eight years, we say it's eight years too late."<sup>48</sup> At the same time, the neighborhood residents were able to exercise power through collective action directed against the Nguyens. Could anything short of sale have satisfied the residents? An apology from the Nguyens? A change in the way they interacted with customers? The hiring of an African American clerk? What would have created the space for each side to forgive each other? Why was the sale of the store, preferably to an African American, seen as the only possible solution? The boycott ended when the Nguyens sold their store to a Palestinian who was welcomed by African American residents, "they said, because Palestinian store owners in other communities treated Blacks well."<sup>49</sup>

If the different mediators had engaged in the race praxis urged by Professor Yamamoto, perhaps there would have been a deeper resolution with greater understanding between the parties. We are left, instead, with stock stories, stereotypes: Vietnamese are rude and do not contribute to the community; African Americans are shortsighted and untrustworthy; Palestinians treat Blacks well. These stock stories, which allow us to get on with our everyday lives without really seeing and engaging with each other, dominated that summer in New Orleans.<sup>50</sup>

*Snapshot 2. Hawai'i. 1993.*

Hawai'i is as multicultural and multiracial as it gets. The lessons to be drawn from *Snapshot 2* are important enough for Eric Yamamoto to

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really want empathy for outgroups and minorities" and that people prefer preferential treatment for themselves and their kind); Cynthia V. Ward, *A Kinder, Gentler Liberalism? Visions of Empathy in Feminist and Communitarian Literature*, 61 U. CHI. L. REV. 929, 931 (1994) (discussing the politicization of empathy and arguing that "empathy cannot validly be deployed either to attack liberal legalism or to construct its replacement").

48. YAMAMOTO, *supra* note 1, at 2.

49. *Id.* at 5.

50. Five community churches brought together 350 African Americans and Vietnamese Americans to "pray for and promote 'understanding of cultural and ethnic heritages.'" *Id.* at 5. This may be a start toward true reconciliation, but it is unclear that it brought more than "warm feelings and [a] momentary sense of harmony." *Id.* at 6.

devote two chapters to the apology and redress by Asian American churches to Native Hawaiian churches.<sup>51</sup>

Reverend Paul Sherry's apology in early 1993 was intended "to begin a process of repentance, redress and reconciliation for wrongs done. . . . [N]ot to condemn, but to acknowledge. . . . [T]o remember and ask [for] forgiveness."<sup>52</sup> In order to repent, it seems clear that one must acknowledge or recognize what one has done. But what if the initial wrong occurred 100 years ago? In this case, Reverend Sherry's apology came 100 years after the illegal overthrow of Queen Lili'uokalani in 1893. Perhaps institutions, or those speaking on behalf of institutional entities, can accept responsibility for long ago acts, but can others? When Asian American churches in the United Church of Christ's Hawai'i Conference proposed an apology and reparations to Native Hawaiians, who were they speaking as, who were they speaking for, and who were they speaking to? These problems were highlighted in the remarks of the highly respected Reverend Wong:

As an Asian/Chinese, we Chinese look back at our [relations] with Native Hawaiians. We feel that we have not exploited nor dehumanized them. But in fact, we have accepted them enough to marry them. . . . Please do not clump Chinese with other Asian Americans who may have taken advantage of these [Hawaiians on O'ahu].<sup>53</sup>

In a similar fashion, "[t]he largely Korean American churches tended to express indifference, hinting that any responsibility for complicity in the white-controlled oppression of Hawaiians in the first half of the century lay with Japanese and Chinese Americans."<sup>54</sup> With no real agreement or acknowledgment as to responsibility, Reverend Sherry's "repentance, redress, and reconciliation" and Yamamoto's reconstruction and reparation appear out of reach. What to do?

The stalemate was broken by Reverend Kekapa Lee, a Hawaiian-Chinese American pastor, who focused the attention on the wounds that needed to be healed:

Some of us [Hawaiian people] are hurt deeply by what took place 100 years ago. Some of us have not a consensus on the role of the [church in the overthrow of the Hawaiian nation]. That is not the point. What the call for

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51. See *id.* at 60–80, 210–35 (examining relations between Asian Americans and Native Hawaiians).

52. *Id.* at 60.

53. *Id.* at 63.

54. *Id.* at 62.

apology [does is] . . . to sever this pilikia [troubled feeling] that we might move on. We want to put this behind and we call on all of you who are not Hawaiian to kokua [cooperate]—even though some of us Hawaiians are not totally [with] this.<sup>55</sup>

With these words, Reverend Lee broke the stalemate. Conference members put aside their differences when they saw the pain felt by their fellow members. They no longer insisted on their claims to innocence, or fought over the degree of their culpability.<sup>56</sup> Members of their community were in pain. This pain was recognized, which placed this interracial conflict ahead on the road toward recovery as compared to *Snapshot 1* where the parties could not even see the other's pain.

A simple explanation for the different outcomes in *Snapshots 1* and 2 has to do with the relationship between the parties. In 1, the disputing parties do not see themselves as part of a "we," whereas in 2, although there are differences (Asian American, Chinese American, Japanese American, Samoan American, White, Native Hawaiian, various mixed-race groupings), they already feel themselves to be part of a "we" as members of the United Church of Christ's Hawaiian Conference. There is already an affiliation that makes it easier to see, feel compassion for, and/or empathize with another's pain.<sup>57</sup> There is also a stronger compulsion to repair the pain or the rent in the fabric of the "we." To fix it is more clearly within one's self interest. What then is one to do when confronted with a situation like *Snapshot 1*? It is unclear that Yamamoto, or anyone else for that matter, has come up with an answer outside of getting the disputing parties together to "talk story" to learn about each other and to break the grip of the stock stories that too often determine or at least constrain our perceptual fields and hence our reality.<sup>58</sup>

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55. *Id.* at 64.

56. *See id.* at 65.

57. There are clear differences between seeing, feeling compassion for, and empathizing with, as should be apparent from the prepositions (or lack thereof) following those verbs.

58. This highlights the importance of narrative to the enterprise of interracial justice. For more on the need for narrative, see generally Margaret Chon, *On the Need for Asian American Narratives in Law: Ethnic Specimens, Native Informants, Storytelling, and Silences*, 3 UCLA ASIAN PAC. AM. L.J. 4 (1995). *But see* Richard A. Posner, *Legal Narratology*, 64 U. CHI. L. REV. 737, 744–45 (1997) (reviewing LAW'S STORIES (Peter Brooks & Paul Gewirtz eds., 1996)).

*Snapshot 3. South Africa. January 1997.*

A question raised obliquely in *Snapshot 1* and more directly in *Snapshot 2* has to do with the role of history in the quest for interracial justice. How are we to take the remarks of Nelson Mandela who “joined hands with F.W. de Klerk and declared, ‘Let’s forget the past! What’s done is done!’”?<sup>59</sup> It seems as though the first two “Rs” (recognition and responsibility) require careful attention to, but not obsession with, the past. Eric Yamamoto addresses, in the context of United States history, the difficult balance to be drawn:

On the one hand, in light of the historical legacy of white supremacy in the United States and the current conflicts among communities of color rooted partially in perceptions of past grievance, a “never forget” view of history pays appropriate attention to power and domination in race relations. . . .

On the other hand, a never-forget approach to intergroup history can bolster the destructive side of identity politics by separating communities unnecessarily. Racial groups sometimes frame identities around historical harms, clinging to collective memories of ancestral wrongs, and thereby poison reconciliatory possibilities.<sup>60</sup>

Do Mandela and de Klerk really mean it when they say, “Let’s forget the past!”?

Shortly after Mandela became President of South Africa, he signed a bill that created the Truth and Reconciliation Commission, which was “composed of three committees with distinct but related functions: the first function [was] to investigate gross violations of human rights; the second, to consider amnesty for those who confess to political crimes; and the third, to recommend reparations for victims.”<sup>61</sup> The Commission was created “to deal with our past as part of a total constitutional and political settlement for our country,” to satisfy “a need for understanding, but not for vengeance, a need for reparation, but not for retaliation.”<sup>62</sup> The power of the Commission to grant amnesty was seen as a way to allow the nation to move forward, motivated by a vision of restorative justice captured by the African notion of *ubuntu*:

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59. YAMAMOTO, *supra* note 1, at 254.

60. *Id.* at 12.

61. *Id.* at 255.

62. *Id.* (quoting Justice Minister Omar).

Ubuntu is the idea that no one can be healthy when the community is sick. "Ubuntu says I am human only because you are human. If I undermine your humanity, I dehumanize myself." It characterizes justice as community restoration—the rebuilding of the community to include those harmed or formerly excluded.<sup>63</sup>

Restoration (Yamamoto's reconstruction) requires forgiveness from those victimized. Forgiveness, though, does not come easy. Think about the last time somebody apologized to you. How did you respond? "Don't worry about it." "Forget it." Perhaps the more formal, "I accept your apology." When is the last time you have said or have heard, "I forgive you." How often do we really forgive others their trespasses? Imagine then the difficulty of applying this on a group or national scale.

How should the Commission deal with the policemen who confessed to killing Steve Biko? A confession is not the same thing as an apology. Would granting the policemen amnesty help move the nation forward? Arguably, the confessions by the policemen satisfy the requirements of recognition and responsibility. But saying "Yes, I did it" is not enough.<sup>64</sup> The third "R," reconstruction, would require the policemen to take active steps which might include apologies. The fourth "R," reparation, would require them to somehow make amends to the victims and to society. The policemen, though, "expressed no contrition and offered no amends."<sup>65</sup> The Commission, if guided by Professor Yamamoto's four "Rs" or by *ubuntu*, would deny amnesty. Under these circumstances, it would be criminal to ask Biko's family to forgive his killers.

#### MIRRORS

How a person negotiates the conflicts described in the snapshots tells you much about that person. It is not much different for nations. The question for the United States is how it will deal with its race "problem." At the beginning of this century, W.E.B. DuBois stated that the problem of the twentieth century would be the color line.<sup>66</sup>

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63. *Id.* at 256.

64. Yamamoto devotes Chapter 2, "When Sorry Isn't Enough," to examining the recent spate of race apologies that have been taking place. He is highly critical of apologies that lack substance in that they do not take into account the need for reconstruction and reparation. *See id.* at 50–59.

65. *Id.* at 266.

66. *See* W.E.B. DuBois, *THE SOULS OF BLACK FOLK* (1903).



Toward the middle of this century, the Carnegie Corporation asked Gunnar Myrdal to conduct a “comprehensive study of the Negro in the United States,”<sup>67</sup> a specific aspect of the color line. After several years of study, Myrdal introduced his report, stating: “There is a ‘Negro problem’ in the United States and most Americans are aware of it. . . . [This problem] suggests something difficult to settle and equally difficult to leave alone. It is embarrassing.”<sup>68</sup>

Toward the close of this century, President William Clinton appointed an advisory panel to study race as part of his One America Initiative.<sup>69</sup> The panel has reported, perhaps not surprisingly, “that we’ve come a long way and still have a long way to go in eliminating racial discrimination, income inequality and stereotypes.”<sup>70</sup> Yet despite all of the evidence of government participation in discrimination,<sup>71</sup> the United States government continues to resist recognizing the harm that it has caused and continues to cause. This leads naturally to foot-dragging when the question of reconstruction or reparation comes to the table.<sup>72</sup> Either nothing happens, or those harmed are forced to pursue costly litigation against the government.

The most recent example is the case of Black farmers suing the U.S. Department of Agriculture for its discriminatory lending practices and for its failure to investigate properly their claims of discrimination.<sup>73</sup> One reason for the failure of the Department to address discrimination claims was that its civil rights enforcement office was

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67. GUNNAR MYRDAL, 1 *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* li (1944).

68. *Id.* at lxix.

69. See William J. Clinton, *Remarks by the President at University of California at San Diego Commencement*, June 14, 1997, <<http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1997/6/16/1.text.1>> (visited Nov. 21, 1999).

70. Malveaux, *supra* note 29, at 15A.

71. See George Lipsitz, *The Possessive Investment in Whiteness: Racialized Social Democracy and the “White” Problem in American Studies*, 47 *AM. Q.* 369, 372 (1995) (outlining a number of federal programs since the 1940s that discriminated against racial minorities, providing benefits to Whites with intergenerational effects, creating a sense of entitlement that is disconnected in the minds of many Whites from its racist roots); see also Cheryl I. Harris, *Whiteness as Property*, 106 *HARV. L. REV.* 1707 (1993).

72. For recent articles on the issue of reparations for Blacks, see Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 *TUL. L. REV.* 597 (1993); Rhonda V. Magee, Note, *The Master’s Tools, From the Bottom Up: Responses to African American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 *VA. L. REV.* 863 (1993).

73. See Bill Miller, *Judge Rules Black Farmers Can Pursue Bias Case Against Government*, *L.A. TIMES*, Oct. 10, 1998, at A17.

eliminated in 1983 by the Reagan administration and was not restored until 1997.<sup>74</sup> This is more than embarrassing.

One Black farmer and a leading plaintiff, Timothy C. Pigford, sums it up: "What we hope now is that the government will do the right thing and go ahead and compensate these families . . . so that they can go back to farming. Why don't they settle this suit with dignity to the farmers so we can get on with our lives?"<sup>75</sup>

We see that the Black farmers and their families were frustrated by the government's failure to recognize the harms it had perpetrated against them, to take responsibility for those harms, to take steps toward reconstruction through apologies and by rewriting history, and to provide reparations by taking active steps to improve their material conditions. The government's failure to take these steps makes it impossible for the farmers to forgive the past acts so that they can move on with their lives and makes it impossible for the nation to get on with its life. Instead, the Black farmers and this nation are forced to continue facing backwards instead of being able to turn toward the future. Meanwhile, the government seeks to engage in an active forgetting as a way of coping with the past.<sup>76</sup>

But Timothy Pigford and others will not let the United States forget. People like Pigford are troublesome because they force this nation to look at itself in the mirror. Sometimes, what is reflected is not a pretty picture,<sup>77</sup> and how the nation addresses its race "problem" will show whether it can live up to its self-image and its democratic ideals. Mirrors can be tough critics.

#### A POSTCARD FROM THE EDGE

*Snapshot 4.*<sup>78</sup> San Francisco. 1994.

Brian Ho, Patrick Wong, and Hilary Chen bring a class-action lawsuit to invalidate admissions system at Lowell High School and several

74. *See id.*

75. *Id.*

76. Milan Kundera suggests that forgetting is necessary for nations to persist over time. *See* MILAN KUNDERA, *THE BOOK OF LAUGHTER AND FORGETTING* 14 (Michael Henry Heim trans., 1980) (asserting that the names of those who participated in the August 21, 1968 uprising in Czechoslovakia were carefully forgotten by their countrymen).

77. I am reminded of the Oscar Wilde novel in which the protagonist is given a portrait of himself which, when he views it, reflects the accumulation of his sins and misdeeds over time which other viewers are unable to see. *See* OSCAR WILDE, *THE PICTURE OF DORIAN GRAY* (1890).

78. This account is drawn from YAMAMOTO, *supra* note 1, at 27, 29–33.

other San Francisco area public schools which “capped” students of Chinese descent.<sup>79</sup> The complaint alleges that the upper limit placed on the percentage of Chinese American students at San Francisco area public schools operates to admit lesser-qualified African American, Latina/o, White, and other Asian American applicants at the expense of better-qualified Chinese American applicants.<sup>80</sup> The admissions system was put into place by a 1983 consent decree designed to desegregate San Francisco’s public schools.<sup>81</sup> The consent decree came about because of a lawsuit by the San Francisco NAACP.<sup>82</sup> The NAACP and other groups, such as Chinese for Affirmative Action, opposed the lawsuit.<sup>83</sup>

Eric Yamamoto discusses this case in some detail as an example of an extremely complex and sticky interracial conflict. He indicates that some of the problems arose because important aspects were not considered by the interested parties:

Noticeably absent from the litigation strategy and legal and popular discourse is critical inquiry into what appear to be intergroup justice grievances underlying the suit and reactions to it—grievances concerning “barring the door” and squandering moral capital, on the one hand, and misappropriating civil rights strategies and gains, leapfrogging, and complicity, on the other. . . .

Also noticeably missing from the legal filings, oral arguments, and court rulings is critical inquiry into the interminority dynamics at the heart of the case. One aspect . . . is intergroup power. . . . A second missing aspect is the resort to civil rights law. . . . A third unstated element is context.<sup>84</sup>

Yamamoto suggests the questions to ask:

What kinds of justice grievances, tied to past experiences of exclusion or subjugation, lie beneath the surface of the

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79. See *Ho v. San Francisco Unified School District*, 965 F. Supp. 1316 (N.D. Cal. 1997).

80. See *id.* at 1318–19.

81. See *id.* at 1318.

82. See *id.* at 1318 (referring to Consent Decree entered on April 30, 1983, in *San Francisco NAACP v. San Francisco Unified School District*, No. C-78-1445 WHO).

83. See generally Julie D. Soo, *Racial-Cap Suit Delayed Once Again: But Lowell's New Guidelines Placate Many Parents*, *ASIAN WK.*, Sept. 16, 1998, at 17 (reporting on the progress of the litigation).

84. YAMAMOTO, *supra* note 1, at 31–32.

immediate conflict? Held by whom? Against whom? Based on what collective memories, racialized images, and current power struggles? Ostensibly legitimating what beliefs and actions? And what practical consequences flow from lack of critical attention to those grievances?<sup>85</sup>

But he does not guide us through these questions, which is unfortunate because the Lowell case is where his guidance is especially needed.

The controversy has stumped many from the time the lawsuit was filed. The Chinese American parents in San Francisco want the best for their children, San Francisco represents a site where Chinese Americans have faced a long history of virulent racism that limited their occupational, residential, and educational opportunities.<sup>86</sup> Is the Lowell admissions policy just another chapter in this saga that placed Chinese American children in "Mongolian" schools in the late part of the last century and the early part of this one? Is the Lowell admissions policy like the formal and informal policies that limited Jewish enrollment in elite institutions of higher education?<sup>87</sup>

One resolution would use Professor Jerry Kang's idea regarding "negative action," which forbids worse treatment of Asian Americans than Whites in the admissions context.<sup>88</sup> The consent decree might be reformed to create parity with regard to the treatment of Chinese Americans and Whites<sup>89</sup> (which is not the case now, where Whites receive affirmative action insofar as the test scores required for their admission is lower than that required for Chinese Americans). This would mean that, to a certain extent, Chinese Americans as a group are to bear some of the consequences for what amounts to an

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85. *Id.* at 32-33.

86. See generally CHARLES MCCLAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA* (1996).

87. For excellent discussions of the foundations of the legacy preference, see generally JOHN K. WILSON, *THE MYTH OF POLITICAL CORRECTNESS: THE CONSERVATIVE ATTACK ON HIGHER EDUCATION* (1995); John D. Lamb, *The Real Affirmative Action Babies: Legacy Preferences at Harvard and Yale*, 26 COLUM. J.L. & SOC. PROBS. 491 (1993).

88. See Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1 (1996) (explaining that negative action occurs when affirmative action admissions policies, whose intent is to promote racial justice, treat Asian Americans worse than Whites).

89. This is consistent with the approach urged by Selena Dong. See Selena Dong, Note, *"Too Many Asians": The Challenge of Fighting Discrimination Against Asian Americans and Preserving Affirmative Action*, 47 STAN. L. REV. 1027, 1051-56 (1995) (arguing that courts should subject racial classifications that advantage Whites over a minority group to strict scrutiny and refuse to accept diversity as a compelling state interest justifying affirmative action for Whites).

affirmative action policy that benefits other Asian American groups, African Americans, Latina/os, and Native Americans. Of course, certain individuals in the group will bear a greater cost than others, but this is inherent in group membership, which confers both benefits and burdens.<sup>90</sup>

This solution is premised on a certain comfort with the idea and existence of groups and group accountability. But what if someone wants to opt out? The tendency is to opt out when it comes to bearing costs that come with being a member of a group; people tend not to opt out when it comes to benefits. This creates what seems to be a contradiction, where someone is an individual when group-based costs are distributed but a group member for group-based benefits. This fundamental contradiction in identity is resolved through a denial of benefit from racial group membership. Thus, White men express anger at the costs they bear from affirmative action programs, proclaiming that they violate the tenets of liberal individualism while simultaneously not recognizing the privilege they exercise and receive as White men.<sup>91</sup> To turn it around, one might ask: If you don't want the costs associated with being a White man, will you give up the privilege that goes with being a White man? The same question could be asked of the Chinese American plaintiffs in the Lowell case: If they do not want to bear the costs associated with being Chinese American, are they willing to give up the benefits they receive as Chinese Americans? They cannot have it both ways. Nevertheless, this snapshot raises the difficulties inherent in discussing group responsibility. The question of responsibility is in some ways simpler when dealing with individual or institutional responsibility. While Yamamoto may not address or resolve the group conundrum, the analytical framework and methodologies he develops help to find and ask the right questions.

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90. My other approach would question the use of public funds in this way where the greatest funds go to the ones who arguably need it least rather than to those who are struggling the most and need the most help. What is created is a scarce public good where the scarcity is part of what makes it all the more valuable. It fosters competition for the public good as though it were a zero-sum game where one party's gain is another's loss and vice versa.

91. For a discussion of White privilege, see generally Barbara J. Flagg, "Was Blind, But Now I See": *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953 (1993) (arguing for a reconceptualization of White race consciousness that acknowledges the ways that race influences facially neutral White decisionmaking); Peggy McIntosh, *Wellesley College Center for Research on Women, White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies* (1988) (building an understanding of White privilege in everyday experiences through a woman's view of male privilege), reprinted in *POWER, PRIVILEGE, AND LAW: A CIVIL RIGHTS READER* 22 (Leslie Bender & Daan Braveman eds., 1995).

## CONCLUSION

Eric Yamamoto has written a remarkable book. He deals courageously with difficult issues. The snapshots described above are not pleasant to view. But Professor Yamamoto has lived with those snapshots on his mantel, examined them from every angle, and teaches us what he has learned. His insights are informed by his study of various disciplinary approaches to dispute resolution. He has taken disparate disciplines and synthesized the best analytic insights and methodologies into a workable approach to achieving interracial justice. He goes beyond mere calls for racial healing and provides a theoretically-informed practical guide to help us and America negotiate the difficult issues and conflicts that exist and will continue to exist for the foreseeable future. If we do not want racism to be a permanent feature of our society, we should listen to Professor Yamamoto.