Foreword: Expanding the Debate on Race, Poverty, Social Justice, and the Law

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BY MARGARET M. RUSSELL*

It brings me great pleasure to introduce the inaugural issue of the Hastings Race and Poverty Law Journal, the culmination of over two years of steadfast organizing by a thoughtful and enterprising group of Hastings law students. The Journal's founders astutely recognized that legal scholars, students, practitioners, and activists need an academic "home" to explore on an ongoing basis complex issues of race, poverty, and social justice. They also realized that the endeavor of organizing a journal would be—in and of itself—a valuable learning process of intellectual engagement, advocacy, and sheer hard labor. Undaunted by the difficulties involved in conceiving and implementing such an ambitious project, these students remained committed to their core mission of:

Promoting and inspiring discourse in the legal community regarding issues of race, poverty, social justice, and the law. This Journal is committed to addressing disparities in the legal system. We will create an avenue for compelling dialogue on the subject of the growing marginalization of racial minorities and the economically disadvantaged. It is our hope that the legal theories addressed in this Journal will prove useful in remedying the structural inequalities facing our communities.¹

As you read this first issue, it is critically important to listen to the voices of the Journal's founders as well as to those of the authors of the individual articles. In launching this publication, its editors are coming to voice in their own way as students and as future lawyers. These students' voices emerge in their selection of articles for this issue, as they did in the inaugural symposium held in April 2003 to celebrate their work.² These are scholarly voices of social

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². On April 11, 2003, the Journal held its inaugural symposium, "Reclaiming Civil Rights: Access to Justice," featuring the following speakers: Maria Blanco, National Senior Counsel, Mexican American Legal Defense and Educational Fund (MALDEF);
justice theorists, eager to provide an intellectual forum for analysis and debate. These are passionate voices of progressive advocates, determined to facilitate the translation of theory into practice. These are voices of hope and discontent that will carve a path for significant social change in the legal profession. They honor their school, their communities, and the legal profession through their collective vision and commitment.

By providing a biannual publication for the scholarly exploration of legal theories and strategies to ameliorate poverty and racism, this Journal serves a unique function in the growing field of academic literature on social justice lawyering. In their pathbreaking casebook, Social Justice: Professionals, Communities, and Law, Martha R. Mahoney, John O. Calmore, and Stephanie M. Wildman trace the ideals of social justice lawyering to core democratic principles of liberty and equality:

Social justice lawyering seeks to give material meaning to these ideals in the daily lives of individuals and communities that are marginalized, subordinated, and underrepresented... How do people who need lawyers find them, and how do lawyers who wish to serve people in need structure practices to meet these goals? How has the law addressed basic human needs and recognized the protections necessary for democratic practice? How can lawyers work with individuals and communities who are engaging in the struggle for a better life and social change? . . . Social justice lawyering envisions the practice of law both on behalf of and alongside of subordinated peoples, with the efforts and achievements of members of the community a crucial aspect of the work.3

The Journal has the potential to contribute significantly to this academic literature by focusing particularly on the impact of poverty and race on the law.

In talking and writing about poverty and race, it is helpful to remember that we live in an era of pitched battles—not only about the ideological content of debates, but about the form and language of the discourse itself. Increasingly, the battleground of race and poverty discourse focuses on particular words, phrases, and statistics—and even on the question of whether statistics will be used at all. On the national level, defenders of George W. Bush's tax policies recently accused critics of engaging in "class warfare" simply for pointing out the policies' negative implications for
middle-class and poor communities—as if raising the issue of class in and of itself creates the class warfare. On the local level in California, proponents of Ward Connerly’s Proposition 54 seek to end government collection of statistics on race, ethnicity, color, and national origin, contending that the erasure of public data in these categories will foster a colorblind society. Progressives who articulate critiques of structural racism run the risk of being accused of “playing the race card”—again, as if identifying race as a problem is the problem.

Despite these vigorous efforts to quell critiques of poverty and racism, there are thriving scholarly and activist movements that


5. For the full text of the initiative, as well as background materials, see generally http://www.racialprivacy.org (proponents’ website); and http://www.informedcalifornia.org (opponents’ website). The initiative provides in pertinent part:

Prohibition Against Classifying by Race by State and Other Public Entities:
Section 32 is added to Article I of the California Constitution as follows:

Section 32.
(a) The state shall not classify any individual by race, ethnicity, color or national origin in the operation of public education, public contracting or public employment.
(b) The state shall not classify any individual by race, ethnicity, color or national origin in the operation of any other state operations, unless the legislature specifically determines that said classification serves a compelling state interest and approves said classification by a 2/3 majority in both houses of the legislature, and said classification is subsequently approved by the governor.
(c) For purposes of this section, “classifying” by race, ethnicity, color or national origin shall be defined as the act of separating, sorting or organizing by race, ethnicity, color or national origin including, but not limited, inquiring, profiling, or collecting such data on government forms.
(d) For purposes of subsection (a), “individual” refers to current or prospective students, contractors or employees. For purposes of subsection (b), “individual” refers to persons subject to the state operations referred to in subsection (b).


7 Proposition 54 failed passage on October 7, 2003 with only a 36% YES vote. Cal.
continue to recognize that race and class do matter. To these communities, talking and writing about race and class are antidotes to historical amnesia. Race and class disparities persist throughout American society—in access to the environment, education, employment, criminal justice, housing, voting, health, and


Moreover, structural problems of racism and poverty intersect and can be mutually reinforcing in their devastating legal effects. Recalling his work as a social justice lawyer, John O. Calmore observes:

In this line of work, we must appreciate that poverty has multiple dimensions. In terms of time, there is persistent poverty; in terms of space, there is neighborhood poverty; and in terms of behavior, there is underclass poverty. Sometimes, these dimensions coalesce and those in poverty experience both stigmatizing and oppressive constraints. This predicament is worsened by societal imposition of negative racial characteristics as an overlay. In other words, poverty and space become racialized to the detriment of these poor. This marks the intersection of race, space, and poverty.

In founding this Journal, its editors recognize the need for sustained research and commentary to help delineate the intersection. They understand that innovative theories, strategies, and policies are essential to lawyering for social change. Accordingly, they have chosen a first set of articles that superbly fulfill the Journal's mission to create an "avenue for compelling dialogue." The following five articles explore cutting-edge issues...
at the intersection of race, poverty, and law. The authors’ topics and approaches are diverse, yet all share a commitment to identifying and remediying inequities suffered disproportionately by racial minorities and poor people.

In *Reclaiming Civil Rights*, Eric K. Yamamoto combines personal narrative, legal doctrinal analysis, and political commentary to explain why it is imperative for progressives in these “uncivil times” to reclaim and reinforce the core ideals of past civil rights movements. Drawing upon his experiences as a Hawai‘i-born, Japanese American lawyer and professor who has worked in multiracial coalitions for economic and social justice, Yamamoto sounds notes of “celebration, caution, and challenge” as he urges us to oppose the conservative voices of New Federalism and the Bush-Ashcroft era. He recommends five “action paths” to social change and describes a new nonprofit organization, the Equal Justice Society, which seeks to link these paths in a national organizing movement. In many ways, Yamamoto’s call to action captures the spirit and commitment behind this Journal and is therefore a perfect choice to begin this issue.

The second article, *Beyond Reparations: Accommodating Wrongs or Honoring Resistance?*, is an excellent example of “reclaiming civil rights” by comparing the twentieth century Japanese American redress movement with the twenty-first century African American reparations movement. Natsu Taylor Saito argues that most public discussion of race-based redress and reparations lacks a nuanced understanding of the “diametrically opposed purposes” that redress and reparations can serve. She notes that:

[Reparations] purport to redress wrongs, but can quite easily end up reinforcing the structures that created those wrongs. The effect of redress hinges . . . on how we frame the wrongs. Do we frame them as aberrations from basically acceptable status quo, or do they reflect injustices intrinsic to the system? How we answer this question will determine the kinds of remedies we need to pursue.

Saito analyzes and acknowledges the successes of the Japanese American redress movement; however, she questions the “story,” uncritically accepted by many, that internment was the “aberration”

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19. Id. at 13.
20. Id. at 23.
21. Id. at 14.
23. Id.
24. Id.
from the usual rule of American fairness and that redress adequately cured the "aberration." She argues that redress and reparations movements are ultimately inadequate if they do not address the role of racism in supporting the status quo of structural inequality. In conclusion, Saito suggests that advocates for African American reparations face similar dangers of historical amnesia and distortion if they fail to reframe the existing debate to include the broader context of concrete economic dispossession suffered by African Americans today.

Economic dispossession of the most fundamental kind is the subject of Kevin Bundy's *Officer, Where's My Stuff? The Constitutional Implications of a De Facto Property Disability for Homeless People.* This important article reclaims civil rights in the context of poverty by focusing on the troubling practice of "property sweeps," the often arbitrary confiscation of homeless people's personal belongings as a means of enforcing criminal laws against loitering and vagrancy. Bundy notes that municipalities resort to such policies with increasing frequency—instead of providing social services—thereby making life for the homeless so difficult that they are forced to seek refuge elsewhere. The cumulative effect of these policies is to criminalize most aspects of homeless existence. Bundy asserts that this dispossession creates a de facto property disability in violation of the Fourth, Fifth, and Fourteenth Amendments. He concludes with an argument in favor of a right to shelter as a "precondition to both exercising property interests and participating in civic life as envisioned by the Constitution and the egalitarian underpinnings of the American political tradition."

A central purpose of the Journal is to bring unheard voices to legal and public policy discourse. Bill Ong Hing's article, *Refugee Policy and Cultural Identity: In the Voice of Hmong and Iu Mien Young Adults,* is a detailed and impressive examination of the impact of refugee policies and the "Americanization experience" on the
cultural identity of Hmong and Iu Mien young people. These individuals—some born in the United States, some born in Thai or Laos refugee camps—live at the crossroads of their parents’ traditional cultures of origin and a radically different American way of life. As Hing notes, these crossroads yield memorable stories of individualism: “Theirs is a statement of dissent and independence from mainstream culture, Asian American culture dominated by Chinese American and Japanese American life, and their own parents’ cultures.”

Hing draws from personal interviews, history, ethnography, immigration law, and immigration policy to produce a valuable document of a group “in transition” in ways that contradict mainstream assumptions about race, class, and culture.

In the final article, *Immigration, Civil Rights, and Coalitions for Social Justice*, Kevin R. Johnson returns to the theme articulated by Eric Yamamoto in the first piece in this issue: the pressing need for civil rights coalitions to sustain progressive action in “uncivil times.” Like Hing, Johnson identifies American immigration law as a source of virulent racial exclusion; he urges sustained scholarly attention to the field, as it “reveals volumes about domestic race relations in the nation.” Johnson traces patterns of this exclusion through the development of anti-Chinese laws, the national origins quota system, the war on Mexican immigrants as “illegal aliens,” and Haitian interdiction and asylum policies. Drawing upon these examples of racism and nativism against noncitizen groups, Johnson analyzes their implications for domestic minority populations:

The harsh treatment of noncitizens reveals just how this society views citizens of color. As psychological theory suggests, the virulent attacks on noncitizens in effect represent transference and displacement of animosity for racial minorities generally. Because direct attacks on minorities on account of their race is nowadays taboo, frustration with domestic minorities often is displaced to foreign minorities. A war on noncitizens of color focusing on their immigration status, not race, as conscious or unconscious cover, serves to vent social frustration and hatred. The end result is that animosity for domestic minorities is displaced to a more publicly palatable target for antipathy.

Johnson concludes with a compelling argument for civil rights

34. *Id.* at 180.
36. *Id.*
37. *Id.*
38. *Id.* at 184.
39. *Id.* at 187.
40. *Id.* at 191.
41. *Id.* at 193.
42. *Id.* at 183.
coalitions in which citizens and noncitizens unite in recognition of the interlocking nature of racism and nativism. Johnson thus joins with other authors in this issue in addressing discrimination as a complex phenomenon requiring a complex range of solutions.

In summary, these five articles comprise a significant contribution to the academic literature about race, poverty, social justice, and the law. Each author draws upon a range of disciplines to produce rich insights about the promises and limitations of the legal system in the quest to address inequality. Each article also yields the promise of further scholarly exploration. In this way, the Journal's ultimate objectives are fulfilled as well: to inspire others to expand the debate about race and poverty, and to generate solutions that are substantive and long-lasting.