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Higher Education as "Place": Location, Race, and College Attendance Policies

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Higher education is many things to many people. First, of course, it is opportunity—even a dictionary metaphor for opportunity. It is commerce and corporate connections at one end of the log, and Mark Hopkins or other wonderful teachers at the other end. But few persons consider the "place-ness" of college, certainly not in the way people think of elementary and secondary schools as defining place. The "neighborhood school" is a fixture of U.S. home buying and educational policymaking, deeply etched into folkways and realtors' steering practices. In a sense, the iconic *Brown v. Board* decision was about whether or not Linda Brown and her Black classmates could attend their neighborhood schools or whether such schoolchildren would be consigned to Negro schoolhouses, segregated and marginalized into an inferior and stigmatizing caste.

Although *Brown* was a case of K-12 public education, the road to *Brown* ran through several higher education cases, where qualified Black students were denied admission into predominantly White colleges and universities.

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In this sense, place was crucially at issue: White public spaces into which Blacks were not allowed. States erected Black colleges (*Sweatt v. Painter*, 1950), started Black law schools, paid for scholarships for Blacks to attend colleges or professional schools in other states (*Gaines v. Canada*, 1938), or required Blacks to sit in cloakrooms, roped-off areas or anterooms of White college classrooms (*McLaurin v. Oklahoma State Regents,* 1950). The October 14, 1948, *New York Times* carried a stunning photograph, marked, "Negro Attends First Class at University of Oklahoma," showing G. W. McLaurin sitting in the "anteroom" of an OU education psychology class, separated from his White classmates. The article also notes that he had been assigned "a special desk in the library and a special room in the student union building where he can eat his meals" (in Olivas, 1997a, p. 982) Clearly, space counts in college.

The issue of place has also been contested in other sitings, such as whether colleges can locate in certain "service" areas, whether college policies can be localized or tied to locales, whether regions and regional populations have legal claims to proportional college resources, or whether the setting of higher education can trigger racial claims. Indeed, each of these scenarios has been tested in court, each with its own incontestable racial calculus. And placing colleges near populations is a central feature of universal access, the theme of this special issue.

In the long and winding cases that flowed from the original *Adams* litigation, several Southern states acted to implement the holding, particularly addressing the need of White institutions (to admit Black students in a set of circumstances where the rise of standardized testing meant that few Black students could present satisfactory test scores) and of Black colleges (White students did not want to attend HBCU and historical resource allocations had not provided professional programs attractive to wide range of students) (Olivas, 1997b).

In Mississippi, where the U.S. Supreme Court held that the state had to eliminate the vestige of its dual system of public high education, the issues of remedies played out in terms of place. Ordered to use the following legal standard, the district court fashioned a remedy: If the state perpetuates policies and practices traceable to its prior system that continue to have segregative effects—whether by influencing student enrollment decisions or by fostering segregation in other facets of the university system—and if such policies are without sound educational justification and can be practicably eliminated, then the state has not satisfied its burden of proving that it has dismantled its prior system. Such policies run afoul of the Equal Protection Clause, even though the state has abolished the legal requirements that Whites and Blacks be educated separately and has established racially neutral policies not animated by a discriminatory purpose (*U.S. v. Fordice,* 1992, pp. 731–732).

Studies and the district court attempted to apply this standard in several respects: admissions standards, program allocations, and institutional mergers. Of course, any attempt to fashion remedies in a segregated system is like redrawing a map or resetting a clock. Admitting Black students into White colleges is not necessarily the same issue as admitting White students into Black colleges; these are not always symmetrical problems. Whites have always been welcome to attend these institutions, even if the reverse has not been true.

The literature on admissions is extensive, as is the litigation on this facet of higher education. The U.S. Supreme Court case, *U.S. v. Fordice,* began as *Ayers v. Allain* in 1975. *Fordice* is the logical extension of the 1954 and 1955 *Brown v. Board of Education* decisions, James Meredith's efforts to be admitted into the University of Mississippi (UM) in 1962, and Mississippi's 1963 imposition of an ACT requirement. Not having employed standardized tests before Meredith's widely publicized application, the University of Mississippi clearly undertook to provide groundcover for its failure to recruit Blacks or admit them into undergraduate programs before or since *Brown,* decided nearly a decade before. After the *Meredith* court ordered the University of Mississippi to admit Meredith, several state institutions, including UM, began to require ACT test scores of 15, a number between the state's median Black ACT score of 7 and the median White score of 18. The *Meredith* decision also struck down UM's requirement of recommendation letters from UM alumni, which had virtually guaranteed that no Black could present a complete admissions portfolio.

In *Fordice,* the Supreme Court was particularly skeptical of the ACT test requirement because of the racial history of its use in Mississippi, because the ACT was used as a sole criterion in defiance of the ACT test maker's recommendations and because even institutions with similar academic missions and state-designated equivalence weighted ACT scores differently. For instance, Mississippi University for Women used an automatic cutoff ACT admissions score of 18, but the historically Black Alcorn State and Mississippi Valley State Universities—which had the same state designations as "regional institutions"—required a minimum ACT score of 13. Writing for the Court, Justice Byron White noted: "The courts below made little, if any, effort to justify in educational terms those particular disparities in entrance requirements or to inquire whether it was practicable to eliminate them." Regarding the use of ACT as a sole criterion, Justice White wrote:

> In our view, such justification [that is, the state's concern with grade inflation and the lack of comparability in grading practices and courses among Mississippi's diverse high schools] is inadequate because the ACT requirement was originally adopted for discriminatory purposes, the current requirement is traceable to that decision and seemingly continues to have seg-

> regative effects, and the State has so far failed to show that the "ACT-only" admissions standard is not susceptible to elimination without eroding sound educational policy. (*Fordice,* 1993, pp. 737–738)

The *Fordice* Court remanded for reconsideration. It should be noted that, after the district court reviewed Mississippi's plan for remediation, historically White institutions left their standards intact, keeping the requirement of a 15 on the ACT; the historically Black institutions, however, lowered the bar from a score of 13 to an 11 on the ACT, with provisions to admit students in exceptional cases with scores as low as 9. On remand, using "channeling effect" language from *Fordice,* which struck down actions that would *discourage* Blacks from attending White institutions and vice versa, Judge Biggers determined that these differential score admission standards would resegregate students by their race. He ordered that UM adopt the state's plan, which required higher scores overall and a summer preparatory program for special admissions. The first program was held in the summer of 1996. Finding that ACT cutoff scores had no discriminatory purpose, Judge Biggers also allowed their use in the awarding of scholarships and alumni preferences (*Ayers,* 1987, pp. 1433–1435). The Black plaintiffs appealed this decision; in 1997, the Fifth Circuit handed down its decision in *Ayers v. Fordice.* The court held that the use of test scores for scholarships was traceable to prior *de jure* governance and remanded for further fact-finding on this and other issues. It is clear from this continued litigation, post-*Hopwood,* that *Hopwood* was not controlling for racial admissions in Mississippi. Nowhere did the Fifth Circuit here say that *Hopwood* had any effect upon Mississippi.

The *Fordice* case is important both for its status as a belated, post-*Brown* implementation ruling that White and Black institutions have obligations not to remain racially identifiable and also for its value in admissions cases. Before remanding the case, the Supreme Court looked carefully at schools' reliance upon test scores, scholarships, financial aid policy concerning test scores, and the racial consequences of differential test score cutoffs. *Fordice,* therefore, is a direct successor to *Bakke* and, before *Gratz* and *Grutter,* was the only college admissions case in the twenty years since *Bakke.* In *Fordice,* the Supreme Court had determined that the reliance upon standardized scores constituted a "vestige of *de jure* segregation that continued to have segregative effects: Because African-American applicants as a class scored lower on the ACT than White applicants, the standards effectively channeled Black students to the historically Black universities" (*Fordice,* 1992, pp. 737–738). The state addressed this finding in two respects: broadening admissions criteria to include high school grades and rank in class and also enacting extensive summer precollegiate programs to provide alternative conditional admissions and remedial instruction. These practices ameliorated to the Court's satisfaction the existing admissions disparities.

On the second front, the Court reviewed programs to determine the extent to which program duplication and program approval policies had segregative effects. At the operational level, the issue was the extent to which historically Black institutions would be permitted to develop high–demand and desirable specializations, such as postbaccalaureate professional schools (engineering, MBA, law, pharmacy) and doctoral programs. Thus, Jackson State University was awarded attractive programs in allied health professions, engineering, social work, urban planning, and business administration; and Alcorn State University was allowed to establish an MBA graduate program at one of its campuses. These new programs would be prestigious curricular additions and might attract non-Black students as well, whereas Whites would not otherwise likely attend Black colleges if they had alternative majority opportunities. Although there had been a study to determine whether or not a law school or pharmacy school should be established at (the urban, Black) Jackson State University, state officials determined that existing public college programs in these two prestigious fields were sufficient for Mississippi's needs and purposes.

In all, the state appropriated more than $245 million over 17 years for new programs at the three historically Black institutions. The courts were impressed by this aggregate amount, characterizing it as "generous," yet the annual amount is less than $15 million, split across several schools and unadjusted for inflation. Moreover, an endowment for "other-race" programming was established in the amount of $70 million, to be paid over the course of 14 years, with promised "best efforts" to raise another $35 million from private sources. Yet in the best of worlds, a fully funded $105 million endowment would generate only $4–$5 million annually to be split among the three colleges.

Finally, the Court had ordered that the state consider merging Delta State University and Mississippi Valley State; the state determined that such a merger was not efficacious and instead decided to add several new academic programs at Mississippi Valley State University. The total amount of money, including capital projects, is $503 million for the life of the agreement, over 17 years. By spring 2004, virtually all the technical features of the thirty-year case had been settled, except attorneys' fees (*Ayens v. Thompson*, 2004). The plaintiffs were still deciding whether to appeal their loss, as they had requested far more than the decree accorded them.

Legal scholar Alex M. Johnson Jr. has critiqued the *Fordice* decision for its asymmetric result:

> The *Fordice* approach . . . is flawed because it relies on two false assumptions. First, *Fordice* assumes the education African-Americans will receive at Mississippi's predominantly white institutions will be comparable to the educational experience they would have received at the state's predominantly or historically black colleges. It is not. Second, *Fordice* assumes African-Ameri-

> can students attending a predominantly white college will receive an educational experience comparable to that of a white student attending the same white college. They do not.
>
> The *Fordice* Court embraced the integrationist view that society need only provide Whites and African Americans with one publicly-financed school system based on the assimilationist model. Thus, although Mississippi's dual school system was already ostensibly integrationist, at least in the sense that members of each race could attend educational institutions predominated by the other race, the Court concluded that such a dual system simply did not fit within its assimilationist model. The Court thus implicitly rejected the view that true equality can be attained by maintaining predominantly or historically black schools, perhaps out of fear that allowing predominantly or historically black colleges to exist undisturbed would legitimate the existence of all-white schools. However, such a fear is fallacious. First, the choice to attend either a predominantly white or predominantly black college is (or at least was prior to *Fordice*) a free one. Second, the fear that a contrary result in *Fordice* would lead to the maintenance of separate white institutions is illusory because those predominantly white institutions already exist and will likely remain predominantly if not overwhelmingly white (Johnson, 1993, p. 1468).

A dozen years after Johnson wrote this, he would likely view the end result as a mixed bag: Both sectors will likely remain racially identifiable, allowing Black colleges to continue, but with only modestly increased resources. Jackson State clearly benefits and will do so at a higher level, with the additional programs and program authority. However, the infusion of overall resources will likely not substantially alter the trajectories of any of these schools.

Racial College Sagas

Entire states or cities have racial college histories, with their own ethnic sagas, racial siting decisions, and evolving demographics. For example, consider the college locale decisions of a large Southern town that grew into a major city in the 20th century. The first real college was situated in a remote site and was chartered in 1891 as a college for "the instruction of the White inhabitants of the City." It was "to be free and open to all," which was interpreted by its trustees to require that no tuition be charged to those White students.

Seventy-five years later, the institution went to court to reconstitute its charter so that it could admit students of color and charge tuition; in 1966, the court agreed that the university could do so, reformulating its charter by use of the *cy pres* doctrine, which allows a trust document to be reformulated when its essential attributes are no longer feasible or efficacious (*Coffee v. Rice University,* 1966). In 1931, the city's school district chartered a

junior college, one that grew into a small private institution open only to Whites until the state reconstituted it into a public institution in 1963. Then it began to admit Blacks. During the 1950s, it had begin to admit some few Mexican Americans, without drawing attention to this practice. Its law school, established in 1949, graduated its first Mexican American in 1960, its first Asian student in 1969, and its first Black students in 1970 (Gross, 1997). It was ineligible to join the prestigious Association of American Law Schools until 1966, due to its racially restrictive practices.

In 1947, the state established its first public college in the city as the Texas State University for Negroes, and its law school was the subject of a 1950 U.S. Supreme Court decision that struck down the admissions policy of the state's first public law school. Rather than admit Blacks to its law school, the state had established an evening law school for Negroes in the state capitol. The program was an alternative, basement program, so lacking in quality and resources that the Supreme Court saw through the ruse in 1950 and ordered the White institution to admit Blacks (*Sweatt v. Painter,* 1950). That year, it enrolled in the architecture program its first Black student who would graduate from the university. The law school moved 120 miles from the state capitol to the larger city, where it became a historically Black law school, one that exists to this day, with approximately one-quarter of its enrollment being Mexican American. For a number of years, even as the city grew, this historically Black institution was the only public college in the city, where it shared a city street as a border with the private institution established originally by the city school district (Shabazz, 2004). (The city school district maintained a K-14 junior college as well, until the 1980s, when it was separated by the school district and became its own local community college with its own publicly elected trustees and independent tax base.)

By the 1970s, the public university of the city had eclipsed the HBCU in size and prestige and began to add branch campuses in the heart of downtown (One Main Street), in the White suburbs where NASA was built, and in a rural area some distance from the city. These four campuses led to differentiated missions for each: the entire system grew to over 50,000 students, a "main," or "central campus" with all the doctoral programs, intercollegiate athletic programs, and professional programs (the law school, architecture, optometry, pharmacy, etc); an upper-division campus near NASA, with many local two-year colleges feeding it junior or seniors; an open-door downtown college that offered baccalaureate programs and whose student body became predominantly minority; and the rural campus that shared a location with a rural community college. In the 1990s, the system added suburban learning centers in growing parts of the exurban city more than 25 miles from the downtown and main campus hubs. These "higher education-lite" remote facilities did not have their own faculties

but were planned to develop into their own campuses as the state became willing to expand and accommodate the exurban growth areas.

The city grew toward the direction of the state's agricultural college, which was 100 miles away. Between this A&M campus (45,000 students) and the city was a rural HBCU that had been established as the Agricultural and Mechanical College of Texas for Colored Youth in 1876 and that was part of the state's separate-but-equal segregated land-grant college system (Shabazz, 2004). By 2000, this Black agricultural college was part of the suburban ring of the city, approximately 40 miles from the downtown area, on the same road that led to the state capitol (Prairie, 2004). In addition, the city had dozens of smaller private colleges and larger public two-year institutions.

This rich and complex college history is dynamic and changing, as the city itself ebbs and flows. The area's population has increased in size to over 4.3 million people, becoming the nation's fourth largest city. Immigration and in-migration have rendered the population larger, diverse, and international. The 2002 census revealed that African Americans constitute 25% of the area's population, Mexican Americans and other Latinos 40%, Asians 6%, and Anglos 29%. As a result, the city's largest public institution has become a campus with no single racial group in the majority; it will soon be eligible to become an HSI (Hispanic Serving Institution), when 25% of the student body it serves becomes Hispanic. It still shares a street border with the HBCU, which has grown to 10,000 students, predominantly Black and Chicano. The city's major school district enrolls 211,000 students, of whom fewer than 10% are Anglo. In addition, there are over a dozen neighboring school districts, each becoming more diverse and larger (Houston Census, 2004; Houston Independent, 2004; deLeon, 1989; Kellar, 1999; San Miguel, 2001; Valenzuela, 1999).

The HBCU has an open admissions policy and now competes for other open admissions students with the 9,000 student Downtown College (formerly the South Texas Junior College) of the larger public institution; the two campuses are less than two miles apart—one in a prime downtown location in the thriving theater district, the other (the HBCU) in a deteriorating mixed residential and light industrial area. It is sandwiched between two of the larger system's campuses—the one that eclipsed it in 1963 when the state transformed the White-by-practice private college, and the one that duplicated its mission and overlapped its target population in the 1970s, when it was created by the state in the choice downtown service area. The HBCU was affected by fire and by ice, after its birth as an institution designed to keep Blacks out of the state capital's White public campus. Historical records show an earlier integration of the city's public dental and medical schools, but one that occurred slowly and grudgingly (Shabazz, 2004, pp. 78–79).

And thus was Houston's racial college character forged from elements of White private colleges and segregated public institutions. Imagine an alternative, parallel world, where Rice University was open to all inhabitants of Houston, without tuition charges. Imagine a world where the state had built the University of Texas and Texas A&M University as integrated institutions in Austin and College Station, and where Blacks were not consigned to Texas Southern University or Prairie View A&M University (2004). Imagine the University of Houston as a private institution, open to all, or the public institution in Texas's largest city as an integrated public college, rather than a Texas State University born of racial necessity and a University of Houston made public to eclipse the neighboring Black institution, and a UH-Downtown not created by the state to further marginalize Texas State University and compete with its mission. Locale and racial identity gave birth to these campuses, and the state was both parents, creating separate and unequal institutions, building parallel campuses with adjoining borders and service areas, and spending extraordinary legal and political resources to maintain these insular enterprises.

Nashville, Tennessee, has a similar racial birthright. For many years, only Tennessee State University, a historically Black college, provided public higher education in this southern city, while Vanderbilt thrived as an exclusively White private college. In Knoxville, the public flagship University of Tennessee grew up White and privileged until the late 1960s. At that point, University of Tennessee officials cast their eyes on the larger city over 100 miles away where many of their alumni had moved and where, like Houston officials, they desired a metropolitan downtown presence. In 1968, the University of Tennessee established a campus in downtown Nashville, UT-N, to offer business and other programs to desirable Nashville residents, until Tennessee State University cried foul and pressured the state's higher education agency to act. Although by this time, all the public colleges were legally open to all races, no historically White public college in the state enrolled more than 7% Black students, while TSU was virtually all Black. The UT-N and other "off-campus centers" established by the University of Tennessee were better integrated, approximately 80% White, but UT-N's location in prime downtown clearly thwarted any possibility that TSU, located in a less-desirable part of town, could diversify its student body or serve upwardly mobile downtown Nashville professionals. As had happened in downtown Houston, the White public institution had further marginalized the HBCU, while extending its own reach and influence in the larger polity (*Geier v. Blanton,* 1977; *Geier v. Alexander,* 1986; *Geier v. Sundquist*, 2004).

Further, the state of Tennessee had engaged in the same politics of location earlier in Memphis, where the University of Tennessee had established a downtown regional center in the 1950s, despite Memphis State University's prior claim to metropolitan Memphis (*Sanders v. Ellington,* 1968). A federal

court took notice of this phenomenon: "For reasons unknown to many but understandable by a few, many University of Tennessee downtown students drove past the Memphis State University campus to take classes" (*Geier,* 1977, p. 653). A dozen years later, Memphis State University established its own downtown regional center; and when there was official concern about propinquity and program duplication, a Joint University Center was created, directed by MSU, the most logical locus.

At the end of the day in Nashville, however, this was not to be. The state finessed the issue for a number of years, undertaking studies, trying to enact cooperative programs, and delaying the resolution of this complex political problem. In 1977, it came to a head when the federal court ordered a merger of TSU and UT-N, which by then had grown into a separate and full branch of UT-Knoxville. It also required that TSU absorb the downtown UT-N facility as its own downtown campus. To those UT partisans who argued that this merger remedy was unfair to the University of Tennessee, the Court responded: "Certainly, it cannot be argued that TSU would be overwhelmingly Black today if it had not been established as an institution for Negroes. Merger is a drastic remedy, but the State's actions have been egregious examples of constitutional violations" (*Geier,* 1977, p. 660).

The judge might have written the same of the federal government's actions, as the United States was back in federal court less than a decade later, attempting to turn back the clock. The Reagan administration's Justice Department had decided to object to the merger, arguing that it was an impermissible racial remedy and an abuse of the court's discretionary authority. In 1986, the appeals court rejected this late effort, with thinly veiled disdain:

> All of the parties directly involved in this case agreed to settle it after sixteen years of litigation. In the early years it was the United States that exhorted the court to broaden its remedial orders while the state sought to restrict them. At the very time the state became convinced that its earlier efforts had failed to eliminate the vestiges of its past discriminatory practices, the Department of Justice was urging the court to pull back—a truly ironic situation. The district court did not abuse its discretion when, after considering the intervener's detailed written objections and conducted three hearings, it approved a settlement agreed to by all the original parties to the action.
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> The district court rejected the argument that it could not properly conclude from the record that the low minority enrollment in Tennessee's public professional schools resulted from past discriminatory practices. The district court was fully justified in making this determination. Applicants do not arrive at the admissions office of a professional school in a vacuum. To be admitted they ordinarily must have been students for sixteen years. Students applying for post-graduate schooling in the 1983–84 school year would have

> begun school at age six in 1967 and would have entered college in 1979. The district court had made consistent findings between 1968 and 1984 that the public colleges and universities of Tennessee had not eliminated the vestiges of their years of operation under state-imposed segregation. The district court could also take judicial notice of findings by the district courts and this court that those vestiges had not been eliminated from many of the public school systems of Tennessee, all of which were operated under the same state-imposed system of separate schools for the two races. (*Geier v. Blanton,* 1986, p. 809)

Although the merger plan had called for the newly configured TSU to be approximately half White and half Black by 1992–1993, its overall racial composition settled at one-quarter White, three-quarters Black. In the flagship campus of the University of Tennessee in Knoxville, the Black enrollment in 1992–1993 was 5.39%, short of its 11.2% goal. (The state of Tennessee is 16% Black.) By 2004, UT-Knoxville was 11% Black, while TSU was 64% Black.

As the backdrop to this litigation in Tennessee, the U.S. Department of Health, Education, and Welfare had been sued by the NAACP Legal Defense Fund in 1970 to require HEW to enforce *Brown* at the higher education level (*Adams,* 1973). This was a risky strategy, not because it was unwarranted, but because a primarily White southern judiciary could have reacted to the failure to desegregate in several ways: by closing White institutions that had benefited from historic political privilege, by merging or reconstituting the activities into a hybrid directed by White institutions (as happened in Memphis), by merging or reconstituting the activities into a hybrid directed by Black colleges (as happened in Nashville), or by closing Black institutions and forcing White colleges to accommodate the displaced students.

In fact, these alternatives have variegated combinations as well: An area's growth could be so pronounced that several racially district institutions could coexist (as appears to have happened in Houston with Texas Southern University, the University of Houston, and UH-Downtown), or the demography could change so substantially that a college of one race could morph into a college with a different racial character (as Bluefield State College in West Virginia turned from an HBCU into a predominantly White institution or as the University of Houston changed from a private White college into a public White college and then became transformed into a public college without a single racial majority). An area's racial calculus could so thoroughly change over time that its local colleges simply changed over time in accord with their communities: That several California colleges enroll substantial Asian student bodies is surely due to changes in immigration policy, Asian achievement, and other historical developments in the years following World War II internment practices (Kidder, 2000;

Takagi, 1993). Texas Rio Grande Valley institutions such as Laredo State University, Pan American University, and Texas Southmost College are predominantly Mexican American (or Mexican), although the original institutions were not historically Hispanic or ethnic in character; in addition, each of these institutions was absorbed into larger institutional systems, emerging as TAMU-Laredo International University, UT-Pan American/Edinburg, and UT-Brownsville. The same would be true for many other community colleges and four-year institutions that have become predominantly minority campuses, especially as the urbanization of minority populations affected higher education in the 20th century. Just as the siting of urban highways and other public works can have racial consequences, so can the location of public college campuses (Hall, 1980). And then, population shifts, exurban sprawl, housing patterns, environmental policies, and public pressure all have racial roots or disparate racial consequences.

MEXICAN AMERICANS AND THE POLITICS OF REGION AND COLLEGE CHOICE

For Mexican Americans, contesting the politics of college place has taken a different route than that occasioned by the separate but equal route of *Brown* and its extensive branches. Education was so poor and inadequate for Mexican Americans in the 20th century that neither the state, nor private philanthropies, nor church groups established colleges for this population (Delgado & Palacios, 1975; Romo, 1990; Ruiz, 2003; San Miguel, 1987). While *de jure* segregation affected Mexican Americans in different ways than the racism aimed at Blacks in Texas, as one example, very few children of Mexican origin graduated from high school or attended college (Perea, 2004; Salinas, 1971). Only a trickle attended professional schools such as law or medicine, even in large cities such as Houston, Dallas, or San Antonio (Barrera, 1998; Kidder, 2003; Martinez, 1994). Even Catholic institutions did poorly in serving Mexican Americans, despite the fact that the overwhelming majority of Mexican Americans are Catholic.

Since its founding in 1968, the Mexican American Legal Defense and Education Fund (MALDEF) has litigated many cases involving education, voting rights, immigration, language rights, employment discrimination, and other civil rights affecting Mexican Americans. In choosing higher education cases, MALDEF has brought two suits involving college location and siting issues, *Richards v. LULAC* and *Garcia v. California Polytechnic State University, San Luis Obispo* (CSU-SLO). In the first case, decided in 1993, MALDEF brought suit against the state of Texas for its regional inequities in choosing sites for colleges and in allocating sites for colleges and allocating higher education resources. In the latter, it brought suit in California to strike down admissions practices that favor White applicants within CSU

"service areas." Brought in 2004, this second case is pending. Both cases are complex, nuanced assaults upon state practices that limit the accessibility of higher education for Mexican American populations and which turn on issues of where one resides, or the politics of place.

Many benefits flow from where one lives. Indeed, a surprisingly large number of life's advantages and opportunities are parceled out by residence, duration, domicile, and location. The concepts of "neighborhood schools," voting districts, tax obligations, in-state tuition, eligibility for certain licensure, and many legal statuses derive from place. Even the same crimes committed in different jurisdictions can have vastly different consequences and manifestations. Living in Alaska can render its residents eligible for participation in shared mineral revenues (*Zobel v. Williams,* 1982), while homesteads in other states can escape the reach of creditors in bankruptcy proceedings. The eligibility for certain officeholders can turn on the length of residency in certain jurisdictions. There is an extensive legal and sociological literature on these topics, and literally hundreds of relevant court decisions (Olivas, 1988). In addition to the comity struck between states for reciprocal arrangements and full faith and credit between political entities, a related issue is federal jurisdiction that preempts various state laws, such as a uniform immigration or national security regime that trumps state residency rights (Olivas, 2004).

In higher education, this complex algebra apportions the statewide coordination of governance of higher education to institutional boards of trustees and statewide higher education agencies, who execute the legislative and corporate requirements to establish and locate colleges. (I am not even referring here to various zoning or local taxation issues concerning colleges, which is another interlocking and extensive concern.) (*City of Morgantown v. West Virginia Board of Regents,* 1987.) Rather, where a college is located can apportion access in a way that benefits certain citizens and may not advantage—or can even harm—others not so well situated.

Before examining these two location-specific cases, I digress for two preliminary thoughts about the politics of college place. First, in my usual manner of trying to situate research issues in my own experience or literary/cinematic references, I think of *Breaking Away,* the wonderful 1980s film concerning the "cutters" in Bloomington, Indiana, the locals or children of residents in this quintessential Midwestern college town, home of the University of Indiana (IU) and the students at IU, who feel and act superior to the locals. The locals are disparagingly referred to by the more advantaged outsiders who attend IU as "cutters," or stone-cutters, as the local quarries provide the building blocks and foundations for construction facilities all over the world. In the movie, which also is a first-rate tale of bicycling and the town-gown divide, the local resident cutters rarely attend college and resent the outsider college students.

Second, this is not an issue I personally resonate to or fully identify with, unlike, say, being poor while in college. I attended a local hometown college (the College of Santa Fe, in my native state of New Mexico), but not because it was there. Rather, I was a 17-year-old seminarian, studying to become a Catholic priest; and I spent eight years as a theology student—four in high school and four in college. I attended CSF because that is where my Archbishop assigned me, because I was admitted, and because I received a scholarship. After my first year, he assigned me to a more national seminary, the Pontifical College Josephinum, in Worthington, Ohio, where I graduated in 1972. I then undertook graduate work at Ohio State University, a campus that enrolled more students than the entire population of Santa Fe at the time, and attended Georgetown University Law Center. I chose this school because it was Catholic and because a CSF classmate and other New Mexico friends had attended—also because it had a night J.D. program, so I could work while attending law school. But place *per se* never drove my choice(s) of higher education institutions: other personal choices and considerations led me to the venues I entered, and I was fortunate to have had a wide range of options, all of them affirmative and within my unsure grasp.

But I certainly can appreciate how geography affects opportunity. I probably chose the seminary route because of priests in my neighborhood parochial school(s). After my parents had seven children, my father, a liquor store clerk, was able to attend the local college (the University of New Mexico, in Albuquerque), transforming our family's life as he became a successful accountant and as we had three more children. He couldn't have done all this in Tierra Amarilla, the northern New Mexico town where his own father grew up. "Place" would have made it impossible for my family to transform itself.

Immigrant families in New York City had the opposite opportunity structure, as the city university campuses extended extraordinary tuition-free opportunities to many poor children. Rice University in Houston offered the same, at least to the "White" inhabitants of the city. So I understand that place counts, location counts—even if it did not do so for me.

For Mexican Americans in Texas, place counts, especially in determining who goes to local colleges. If one pictures the map of Texas, envision the 41 counties that form the border between Texas and Mexico, from El Paso in the west to Brownsville in the east where the Gulf Coast begins. This swath is hundreds of miles long, stretching from Ciudad Juarez to Matamoros, along the Rio Grande River (the Rio Bravo, in Mexico). It is widely referred to as "the Valley" or more broadly, as "the Border," or "la Frontera" (Gutierrez-Jones, 1995; Perea, 2003).

The plaintiffs in *LULAC* (1993) charged that the border area was denied equitable higher education, so that Mexican Americans, the predominant

population, were denied equal access to college, compared to the rest of the state, which was predominantly Anglo or non-Mexican in origin. Based upon the allocation of resources as measured by the state's reasons, the trial judge found that this claim was correct and that this misdistribution violated several Texas State Constitutional requirements:

- Article I, 3, the equal rights clause of the Texas Constitution, provides: "All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive public emoluments, or privileges, but in consideration of public services."
- Article I, 3a provides: "Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative."
- TEX. CIV. PRAC. & REM. CODE 106.001 provides in pertinent part: "An officer or employee of the state or a political subdivision of the state who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin: . . . (5) refuse to grant a benefit to the person; [or] (6) impose an unreasonable burden on the person."

After a extensive jury trial in state court, where the plaintiffs entered into the record "certain statistical matters," the court entered the following into the trial record:

> (1) about 20% of all Texans live in the border area, yet only about 10% of the state funds spent for public universities are spent on public universities in that region; (2) about 54% of the public university students in the border area are Hispanic, as compared to 7% in the rest of Texas; (3) the average public college or university student in the rest of Texas must travel 45 miles from his or her home county to the nearest public university offering a broad range of masters and doctoral programs, but the average border area student must travel 225 miles; (4) only three of the approximately 590 doctoral programs in Texas are at border area universities; (5) about 15% of the Hispanic students from the border area who attend a Texas public university are at a school with a broad range of masters and doctoral programs, as compared to 61% of public university students in the rest of Texas; (6) the physical plant value per capita and number of library volumes per capita for public universities in the border area are approximately one-half of the comparable figures for non-border universities; and (7) these disparities exist against a history of discriminatory treatment of Mexican Americans in the border area (with regard to education and otherwise), and against a present climate of economic disadvantage for border area residents. (*Richards v. LULAC,* 1993, p. 309)

The trial court also held:

> (1) that the Texas Higher Education System does not provide to the class that Plaintiffs represent equal rights under the law because of Plaintiffs' Mexican

> American national origin and discriminates against Plaintiffs and the class they represent because of their Mexican American national origin, in violation of Art. I, 3 of the Texas Constitution, and denies Plaintiffs equal educational opportunity; (2) that the Texas Higher Education System has resulted in the expending of less state resources on higher education in geographic areas of significant Mexican American population than in other geographic areas of the state, and thereby denied to Mexican Americans equal rights and equality under the law, in violation of Texas Constitution Arts. I, 3 and I, 3a; and (3) that the Texas Higher Education System expends less state resources on higher education in the border area of Texas . . . than its population would warrant thereby denying Plaintiffs and the class they represent equal rights and equality under the law guaranteed by the Texas Constitution in violation of Texas Constitution Art. I, 3 and Texas Constitution Act. I, 3a. (*Richards v. LULAC*, 1993, p. 314)

The Texas Supreme Court unanimously reversed the trial court decision, holding that an equal rights violation based upon a "geographical classification . . . cannot be sustained," nor could its corollary race or national origin claim. The state Supreme Court strongly denied the trial court's reasoning: "We hold as a matter of law that plaintiffs here have failed to establish that the Texas university system policies and practices are in substance a device to impose unequal burdens on Mexican Americans living in the border region." The court determined that the theory of the case was both under-inclusive and over-inclusive:

> Whatever . . . the effects of the Texas university system policies and practices, they fall upon the entire region and everyone in it, not just upon Mexican-Americans within the region. Conversely, they do not fall upon Mexican-Americans outside the region. The same decisions that plaintiffs allege show discrimination against Mexican Americans in the border area serve, at the same time, to afford greater benefits to the larger number of Mexican Americans who live in metropolitan areas outside the border region. (*Richards v. LULAC,* 1993, p. 314)

Although the plaintiffs lost the case, the war was won in the legislature, where border-area legislators directed substantial resources to border colleges: doctoral and other graduate programs, a pharmacy school, and substantially upgraded facilities and programs. Unlike the one-time infusion of dollars and modest increases involved in the *Fordice* settlement, this initiative brought significant program resources, program authorization, and political prestige to the border-area institutions. For example, the colleges that had been small institutions with their own boards of trustees were admitted into the larger and more powerful flagship University of Texas (UT) and Texas A&M University (TAMU) systems. A dozen years later, it is clear to observers that the region has benefited from the political settlement, despite the overturned ruling.

In a second case hinging on geographical issues, MALDEF has filed a suit challenging the admissions practices of California State Polytechnic University, San Luis Obispo (CSU), which combine standardized test scores and regional criteria, based upon residence in certain geographical "service areas." Because the case is in the early stages, not all the relevant data or documents are available, but the plaintiffs have charged CSU with using a "rigid mathematical formula" that heavily weights the SAT and awards points for living in chosen neighborhoods. The complaint alleges:

> After eliminating students who do not meet the initial minimum threshold score, Cal Poly SLO awards additional points to students in the remaining applicant pool based on six categories including awarding 250 points to students living within a specific geographic area around the Cal Poly SLO campus, its so-called "service area." This area stretches from Kings County to Lompoc.
>
> Cal Poly SLO's geographical preference for applicants living within its "service area" also results in an adverse disparate impact against Latino, African American, and Asian American students. For high school aged individuals residing within Cal Poly SLO's designated "service area," Whites are overrepresented, while Latinos, Asian Americans, and African Americans are underrepresented in comparison to their populations statewide. Therefore, Latinos, Asian Americans, and African Americans are eligible for the "service area" bonus at lower rates than Whites. These differential rates result in a discriminatory effect on Latinos, African Americans, and Asian Americans. (MALDEF.org, 2004)

The data reveal that the chosen "service area" is disproportionately White: in terms of the percentage of high school aged students, California data reveal that the statewide figures are 37.5% White (55% in the CSU-SLO service area), 40.1% Latino (35.3% in the service area), 10.8% Asian (3.4%), and 7% African American (2.4%). In the designated service area, 1.9% of all statewide White students reside, 1.2% of all statewide Latino students, .5% African Americans, .4% Asians; in the 2000 U.S. Census, these figures led to 14,294 White students in the service areas, and 9,173 Latinos. Due to the case being recently filed, it is difficult to access how the trial judge will consider these discrepancies.

As in the "geographical classification" strategy attempted in Texas, political factors undoubtedly underpin the admissions cartography. Those schools in the San Luis Obispo service area may or may not have been chosen for their racial characteristics, but it is hard to imagine that race was not a factor, if not *the* factor, in their designation. And while it is not essential that high-achieving schools be predominantly White (or Asian), the complex calculus of high school attendance line-drawing is rarely race free; neither is the checkerboard of housing patterns a deracinated process. But in virtually every state, a relatively small number of feeder high schools rou-

tinely send their graduates to certain colleges, and this channeling process has a powerful racial and ethnic influence as well (Rendón, Novack, & Dowell, 2004). Texas acknowledged this "channeling" effect by its enactment of the Top Ten Percent Plan (after the devastating effect of *Hopwood*), which has broadened the number of high schools who send graduates to the state's flagship public colleges (Olivas, 1999; Tienda et al., 2004; Torres, 2003). Moreover, the colleges have broadened their recruitment efforts beyond the traditional schools to reach a broader array of such schools with promising applicants. This result has drawn substantial fire from some parents and others, but it is in colleges' interest to recruit from a broader pool and assure a wider stream of applicants.

Conclusion

All of these technical issues aside, college admissions has been a front-burner issue in recent years, with race chief among the topics. *Grutter* has reaffirmed the *Bakke* practices, but the battle will remain joined for the foreseeable future, especially as states remain strapped for funds or choose not to support colleges at reasonable levels (*Grutter v. Bollinger,* 2003). Competition and cutbacks in California, our largest and most extensive higher education system, will affect equity and college-going in ways not yet fathomed or discernable. And race, as always, is a fugue that runs through these politics. Alex Johnson cuts directly to the chase when he argues, concerning *Fordice:*

> What is lacking in the Court's approach is some recognition that secondary and post-secondary education are related. Tremendous dissonance is created by the fact that African Americans are forced to take part in a segregated, predominantly African American educational and social system at the elementary and secondary level, and then channeled into a different segregated, post-secondary educational system that employs the cultural norms of the White community from which the African American student is otherwise disassociated.
>
> This dissonance is exacerbated by the Court's failure to recognize the costs incurred in the transition from one system to the other, a failure which stems from its flawed view of the White system of post-secondary education as the ideal integrationist system. Of course, that system is not truly integrationist. The brand of integration mandated by *Fordice* and practiced in America merely requires assimilation of African Americans into White culture and does not integrate the cultures and *nomos* of the African American and White communities into each other. (Johnson, 1993, p. 1469)

As we acknowledge the profound role played by *Brown,* we do well to remember its moral force and eloquence, but also to recall the massive re-

sistance to its true implementation. There is a natural human tendency, one to which we are all subject, to view things as being better and more understandable than they are. In truth, college admissions is a simple concept but an enormously complex transaction. The role of residence, location, and locale is an understated factor in this phenomenon, one that is an important determiner in the skein of luck and merit that ultimately results in our children making their ways to college classrooms. In the sense that I have tried to sketch here, *Brown* was in one important sense about place, and place matters.

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