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Locating Keith Aoki: Space, Geography, and Local Government Law

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Locating Keith Aoki: Space, Geography, and Local Government Law

*Rick Su**

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INTRODUCTION

Anyone reviewing Keith Aoki's scholarship is sure to remark on at least two things. The first is his immense scholarly productivity, which includes the publication of more than fifty articles and books in less than two decades in the legal academy. The second is the incredibly wide range of issues on which he has written, from intellectual property and genetic engineering, to immigration and racial politics. Indeed, the diversity of scholars who have come together to contribute to this special issue on Keith Aoki testifies to how far and wide his scholarly impact was felt in the legal academy. Moreover, it is striking how much this body of scholarship reflected Keith personality: his insatiable curiosity, his kinetic energy, and his boundless enthusiasm.

Yet, for every scholar, even those whose work ends up spanning a wide range of issues, there was a beginning. And for Keith, that beginning was firmly situated in the world of spatial analysis, legal geography, and local government law. His first publication in 1993 not only focused on urban development in the United States, but also was motivated by such local concerns as housing policy and gentrification. For some, such a start may come as a bit of a surprise. Given Keith's

* Copyright © 2012 Rick Su. Associate Professor of Law, SUNY-Buffalo Law School; B.A., Dartmouth College; J.D., Harvard Law School.

deep interest in the global and the international, it is interesting to think that his foray into legal academics began with such an intense focus on the local. Moreover, considering that he spent much of his career trying to come to grips with the inherently intangible, as he did in the field of intellectual property, it seems almost quaint to think that he began with such "grounded" interests. Indeed, from this perspective, the main question for some may be how Keith ventured from such "humble" beginnings to develop expertise and insights in such a broad range of different issues.

Space, geography, and local government law, however, were not simply issues that interested Keith in the beginning of his academic career. In many ways, they defined his thinking and touched nearly every one of Keith's research projects. He never failed to appreciate the centrality of space, geography, and local government law as topics of research and returned to these subjects time and time again, whether in the context of land use regulations in Oregon or local government relations in California. Space, geography, and local government law also became a steadfast and crucial lens through which he viewed a variety of other issues, from how local government structures illuminate our understanding of immigration regulations, to how insights from the study of space and geography expand our understanding of the more physical effects of intellectual property. In this respect, Keith's research not only formed the foundations for how we now understand the role of local governments and legal structures in the construction of space in American society, but also the relevance of this construction in a variety of different academic subjects. In this regard, Keith was not only a serious scholar in the world of legal geography and local government studies; he was also, in many ways, their ambassador into other fields.

I. SPATIAL BEGINNINGS

In his wide-ranging examination of the spatial organization of American society, entitled *Race, Space, and Place: The relation between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, Keith peeled back the layers of ideological struggles that constitute the foundation of the modern metropolitan form.¹ From the grand layout of our metropolitan regions, to intimate decisions about where one's family should live, Keith argued that these and other

¹ Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699 (1993) [hereinafter *Race, Space, and Place*].

choices have deep roots in changing attitudes about the role of space in the United States. Since the dawn of the urban revolution in the late nineteenth century, reformers have looked to urban development and physical planning as a means of shaping the physical and social landscape of American society.² And in so doing, these thinkers crafted worldviews that later influenced how policymakers approached urban development and the problems that they faced. Focusing on what he calls “aesthetic realignments,” Keith showed how the intellectual history of space matters as much to the physical development of our “lived environment” as macroeconomic forces and technological innovations.³ What emerges is a rich and colorful history of the people, visions, and ideas that have shaped, quite literally, the physical environment of our everyday lives. It is also a cautionary tale of utopian thinking: a catalog of how early dreams of “Garden Cities” and “Broadacre” came to be embodied in the towering housing projects of the mid-twentieth century and the segregated sprawl of the modern metropolis.⁴

Throughout his analysis, Keith laid out in careful detail the ideological strands that emerged in response to different historical contexts: the agrarian wistfulness and anti-urban impulse during the early days of urban revolution,⁵ the rise of functionalism and utilitarian efficiency during the heyday of industrialization,⁶ and the predilection for creating boundaries both physical and political when immigration and the great southern migration quickly diversified our great cities.⁷ These and other intellectual trends, he argued, contributed to profound shifts in architectural thinking and models of urban planning from the late nineteenth century to the end of the twentieth century. Set forth in a chronological manner, it is easy to assume the development of our lived environment as a linear progression, with each trend adding a distinct and individual layer. Yet, in a way that would become characteristic of Keith’s scholarship, the most striking aspect of his analysis was in how these distinct ideological strands, many of which overlapped and ran parallel to one

² See generally PETER HALL, *CITIES OF TOMORROW: AN INTELLECTUAL HISTORY OF URBAN PLANNING AND DESIGN IN THE TWENTIETH CENTURY* 14-46 (1990) (detailing historical reactions to nineteenth-century slums of London, Paris, Berlin and New York).

³ See Aoki, *Race, Space, and Place*, *supra* note 1, at 700-01.

⁴ See *id.* at 734-35, 767-72.

⁵ See *id.* at 705-07.

⁶ See *id.* at 701, 775-91.

⁷ See *id.* at 750-51.

another, intersect in different ways over the years to create the spatial organization that is so familiar today. In his view, it was a combination of many factors — “Arcadian” ideals, utilitarian visions, and racial panic — that eventually led to a metropolitan form that split the suburbs from the city, residences from businesses, and whites from blacks.⁸

In focusing on the historical construction of space, and utilizing such a wide-ranging interdisciplinary approach in its study, *Race, Space, and Place* constituted a significant contribution to the development of legal geography and local government law at a time when they were just beginning to emerge as a focus of legal scholarship. As Richard Thompson Ford observed, traditional legal analysis had long cast the role of space aside as irrelevant, or taken it for granted as a necessary but otherwise lifeless backdrop.⁹ Not only did *Race, Space, and Place* return attention to this spatial dimension in its assessment of policy issues like gentrification and legal issues like the scope of local power, it also recognized the extent to which the spatial distribution of our urban and suburban environments is itself a product of background legal rules. Just as architects and planners were pursuing different aesthetic visions of the physical environment, Keith illustrated how these visions were simultaneously shaped by legal innovations like zoning and land-use regulations.¹⁰ In the late 1970s, Gerald Frug galvanized the study of local government law by famously urging recognition of “the city as a legal concept.”¹¹ In publishing *Race, Space, and Place* a decade later, Keith not only took this admonishment to heart, but advanced the effort even further by extending the analytical scope to the history of space more generally.

Keith’s entry into the legal academy not only took place at a pivotal time in the development of local government law; it also coincided with an interesting time in the life cycle of American cities. The urban decline of the mid-twentieth century started to give way to promises of restructuring and renewal.¹² At the same time, migration, both foreign and domestic, lent an increasingly prismatic hue to many cities once

⁸ See *id.* at 825-26.

⁹ Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1857 (1994).

¹⁰ See Aoki, *Race, Space, and Place*, *supra* note 1, at 761-63.

¹¹ See generally Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059 (1980) (tracing the legal history of cities and arguing that more power should be invested in cities to ensure public freedom).

¹² See, e.g., JON C. TEAFORD, *THE METROPOLITAN REVOLUTION: THE RISE OF POST-URBAN AMERICA* 165-71 (Kenneth T. Jackson ed., 2006) (discussing the resurrection of central cities during the late 1970s and 1980s).

only understood in a strictly black-white divide.¹³ As a result, the legal issues associated with the spatial organization of metropolitan regions were also changing: traditional concerns such as urban disinvestment and neighborhood abandonment were being joined by worries about gentrification and displacement. It is no wonder that Keith's focus would be so fixated on the causes and effects of drastic historical change.¹⁴ Nor is it surprising that what he recounts is not simply the roots of this given urban phenomenon, but rather how evolving aesthetic contributed to its development.¹⁵

Race, Space, and Place was Keith's first major academic publication. Yet it also beautifully exhibits many of the hallmarks that would later come to define Keith's scholarship more broadly. Even in this early work, Keith demonstrated an immense ability to bridge a diverse range of disciplinary approaches and theoretical insights, weaving together an entirely new outlook in the process. From aesthetic theory and architecture, to public policy and urban planning, *Race, Space, and Place* is a dazzling agglomeration of a wide-ranging body of literatures, each of which come together to give a novel sense of the historic evolution of space. Moreover, in this work Keith also demonstrated his uncanny ability to reveal the hidden richness and complexity of what may otherwise appear at first glance to be an aspect of little significance. It is easy to take space for granted, as legal scholars often do. In Keith's hands, however, space came alive. It became the active and contested ground upon which generations of thinkers and activists ascribed their visions, ideas, and fears. Moreover, space was not simply the product of how reformers and policymakers conceptualized social relationships among individuals and communities; it also became the baseline from which the next generation of thinkers developed their ideas in response.

Another important aspect of *Race, Space, and Place* is how Keith maintained an emphasis on issues of social justice on the one hand, and a healthy skepticism of reform efforts on the other. Notwithstanding its sweeping historical scope, *Race, Space, and Place* begins with concrete concerns about the effects of urban gentrification and the neighborhood displacement that was taking place in many cities. Even with its emphasis on competing theoretical traditions, the article remains grounded in real-life concerns about how spatial

¹³ See generally PRISMATIC METROPOLIS: INEQUALITY IN LOS ANGELES (Lawrence D. Bobo et al. eds., 2000) (discussing the "racialization" in social and economic inequalities in a segregated urban environment).

¹⁴ See Aoki, *Race, Space, and Place*, *supra* note 1, at 699-700.

¹⁵ See *id.* at 823-25.

organizations and local institutional structures affected efforts towards more egalitarian and fair society.¹⁶ Yet his enduring interest in history also meant that he saw reform as a slow process, one to be cautiously taken. Keith would later go on to apply this critical eye to other fields, from critical race theory to environmental justice. It is worth noting here, however, that *Race, Space and Place* is on many levels an account of how well-meaning ideas sometimes materialized into short-sighted projects. Indeed, his concluding critique of "post-modernism" as an architectural trend was based in large part on the fact that while it might have "revived" many city neighborhoods by invoking a pastiche of urban life long gone, it also did so with little regard for the profound effect that this would eventually have on the urban residents that were ultimately displaced in the process.¹⁷

II. EXPORTING SPACE

Keith's interest in legal geography and local government law initiated a long and prolific career as a legal scholar. These were areas that he would return to time and time again, even as the scope of his scholarly interests expanded. Yet Keith's contribution to the study of geography and local government law involved more than the articles that were directly situated within these fields; it also included the efforts he made to incorporate a local and spatial awareness into many other areas of legal inquiry. Throughout his career, Keith showed how space and geography can enhance our understanding of such disparate issues as the legal construction of race, immigration policymaking, and the changing nature of intellectual property.

Nowhere is this cross-disciplinary approach more evident than Keith's contributions to critical race theory. Indeed, he was one of the earliest and strongest advocates of how the critical study of geography can enhance the critical study of race. To be sure, given the longstanding association of race and segregation, space has always been an integral part of the history of race relations in this country. As Keith noted in *Race, Space, and Place*, early land-use regulations were implemented to keep blacks and whites apart at the neighborhood level even after the Supreme Court prohibited direct efforts at racial zoning.¹⁸ Yet Keith also called attention to the fact that the very meaning of race in a country as vast and diverse as the United States is also dependent on classifications of space. As he pointed out in

¹⁶ See *id.* at 828-29.

¹⁷ See *id.* at 823-25.

¹⁸ See *id.* at 755-58.

(Re)presenting Representation, it is important to acknowledge that “even within a bounded, sovereign political unit like the United States, construction of racial identities differs markedly from region to region, and even within regions or cities themselves, in spite of the absence of legal recognition of this fluidity.”¹⁹ Moreover, given the importance of spatial constructs like the “ghetto,” the “barrio,” and the “border” to our understanding of race, he argued that more attention needs to be paid to the work of cultural geographers precisely because their work “impart[s] a sense of the flux or dynamism of the spaces and places that legal discourse creates, negotiates, and policies.”²⁰

If Keith’s early contribution to critical race theory was in urging more consideration of space and local institutions, his later role centered on recognizing and celebrating the works of legal scholars who bridged this divide in their scholarship. For example, in *Space Invaders: Critical Geography, the “Third World” in International Law and Critical Race Theory*, Keith highlighted the works of John O. Calmore, Chantal Thomas, Elizabeth Iglesias, and Audrey MacFarlane, among others, for “contest[ing] and politiciz[ing] our formally ‘neutral’ conception of space.”²¹ *Space Invaders* also took the additional step of broadening the scope of spatial analysis to include the construction of the “third world” and issues of international law — a connection Keith commended for bringing to light the “heretofore obscured linkage between the macro realm of transglobal capital flows and investment decisions, and the micro realm of inner-city redlining, gentrification, displacement and residential racial segregation.”²² Further, in *Cities in White Flight: Space, Difference and Complexity in LatCrit Theory*, Keith drew upon competing models of local government decentralization based on works from Robert Nozick, Frank Michelman, and Iris Young in assessing three conference essays.²³ Though not all of these essays were directly about local government institutions or even space, Keith showed how they were nevertheless part of a broader debate about the “desirability of the decentralization” as applied to legal

¹⁹ Keith Aoki, *(Re)presenting Representation*, 2 HARV. LATINO L. REV. 247, 254-55 (1997).

²⁰ *Id.* at 257.

²¹ Keith Aoki, *Space Invaders: Critical Geography, The “Third World” in International Law and Critical Race Theory*, 45 VILL. L. REV. 913, 916 (2000) [hereinafter *Space Invaders*].

²² *Id.* at 937.

²³ Keith Aoki, *Cities in (White) Flight: Space, Difference and Complexity in LatCrit Theory*, 52 CLEV. ST. L. REV. 211, 211-12 (2005).

narrative, racial identities, or the “production of knowledge” more generally.²⁴

Keith was also at the forefront of the recent localist trend in immigration scholarship. To be sure, given immigration’s reputation as a national issue and a federal responsibility, scholars in the field are just beginning to recognize the significance of the local sphere.²⁵ Much of this is due to the recent proliferation of state and local laws on immigration. Many of these works have focused on the constitutionality of these responses and the desirability of state and local involvement from an immigration perspective. Keith was one of the first, however, to approach these issues with a solid grounding in local government law.

As he and his co-authors argued in *(In)visible Cities: Three Local Government Models and Immigration Regulation*, the phenomenon of local immigration regulations has roots in the different and contested ways in which local governments are conceptualized under U.S. law: as creatures of the state, as semi-autonomous polities, or as semi-private firms.²⁶ These models have long been central to the local government literature, and their descriptive accuracy and normative desirability continue to be subjects of debate. Foregrounding this central aspect of local government law, however, Keith and his co-authors added tremendously to the immigration literature, which was just beginning to grapple with the relevance of local governments, much less the legal regime within which they operate. Not only does *(In)visible Cities* show how many local laws concerning immigration — from those that limit enforcement to those that mandate it — exemplify certain aspects of local governments’ identity in our federal system, they also demonstrate how foregrounding the different possible models provides a crucial framework to judge these efforts.²⁷ In other words, any analysis of the propriety or wisdom of local immigration regulation must, at a certain point, grapple with the question of how we envision the roots and purpose of local power more broadly. As Keith and his co-authors noted: “In the areas of immigration law and alienage law, while the answer may lie in striking

²⁴ See *id.* at 219.

²⁵ For a summary of the recent literature, see, for example, Rick Su, *A Localist Reading of Local Immigration Regulations*, 86 N.C. L. REV. 1619, 1623 & n.12-15 (2008).

²⁶ Keith Aoki, John Shuford, Kristy Young, & Thomas Hwei, *(In)visible Cities: Three Local Government Models and Immigration Regulation*, 10 OR. REV. INT’L L. 453, 457 (2008).

²⁷ See *id.* at 487-88.

a new balance toward immigration federalism, the question is, are we up to the task of reconceiving ‘new grants of, and new limits on, local power’ in order to work toward better and more just solutions.”²⁸

If *(In)visible Cities* hinted at what is possible when insights developed in the local government literature is applied to the field of immigration, Keith’s next article on this intersection illustrates the full potential of this kind of analysis. In *Welcome to Amerizona — Immigrants Out!*, Keith and his co-author John Shuford examined the recent history of local responses to immigration and proposed a system of “immigration federalism” in which regional institutions larger than the locality but smaller than the state assist the federal government in setting and enforcing our nation’s immigration laws.²⁹ Drawing upon the work of urban futurist Joel Kotkins and immigration scholar Kevin Johnson, *Welcome to Amerizona* is ultimately an appeal to pragmatism.³⁰ Rather than seeking to shut out the disparate actors currently seeking to influence the immigration debates, many of whom are institutionally situated at the state and local level, the article proposes a way to integrate them explicitly into the political conversation through regional advisory councils built around existing local government institutions.³¹

As we have seen, Keith’s approach to issues of race and immigration was infused with a keen understanding of the workings of local government institutions and a deep appreciation for the role of space and geography. But what about areas in which geography is increasingly cast aside as irrelevant, such as intellectual property in a digital age? Indeed, even here where the role of physical space seems at times a quaint anachronism, Keith made his contributions not by disavowing the role of space and geography, but rather by adapting and importing it into the study of the digital revolution’s effects on intellectual property. Indeed, as he argued, what interested him about the law of intellectual property was how it “produc[es] not only the conceptual, but also *the actual physical spaces* of the information age.”³²

²⁸ See *id.* at 452-53 (emphasis omitted).

²⁹ Keith Aoki & John Shuford, *Welcome to Amerizona — Immigrants Out!: Assessing “Dystopian Dreams” and “Usable Futures” of Immigration Reform, and Considering Whether “Immigration Regionalism” is an Idea Whose Time Has Come*, 38 *FORDHAM URB. L.J.* 1, 62-65 (2010).

³⁰ See *id.* at 31-32, 35-38.

³¹ See *id.* at 61-74.

³² Keith Aoki, *(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship*, 48 *STAN. L. REV.* 1293, 1297 (1996) (emphasis added).

Thus, when Keith called for a “cultural geography of authorship” in his seminal article on intellectual property, the reference to geography was not simply metaphorical.³³ Rather, he went to great lengths to reveal how digital electronic networks and the informational resources that they carry are both situated within, and serve to produce and maintain, a distinct spatial geography. He noted that rather than an entirely decentralized system, information like capital and culture are increasingly concentrated in “global cities” (e.g. New York, London, and Tokyo) that “are linked into and constitute a rapidly changing international communications network.”³⁴ The geographic impact of “global cities” is reflected not only in the regions that are increasingly bypassed in this network exchange,³⁵ but also in the polarization that has come to define them internally.³⁶

To be sure, it is easy to overlook these bifurcations when the focus is on the “spatial coordinates of a purely semiotic system and electronic space such as the Internet.” Yet, as he argued, both of these trends — from increasing “unequal access to, ownership of, and distribution of informational resources” to the growing “spatial bifurcations of our cities, regions, and nations” — are integral aspects of the emerging intellectual property regime.³⁷ Indeed, it is at their intersection that Keith located what he referred to as the “the cultural geography of authorship.”³⁸

III. SPACE AT THE GROUND LEVEL

As the foregoing analysis shows, Keith was a scholar with both a firm grasp on theory and an acute understanding of the cultural and ideological forces that shape the way law intersects with the physical environment. As an academic ambassador, he broadly spread the insights of spatial analysis and local government law to critical race theory, immigration law, and intellectual property law.³⁹ Yet, even as he wrestled with grand theories and large-scale forces, Keith never lost sight of the ground level dynamics — from the politics of the local to the interactions of everyday life — that give meaning to these theoretical and analytical endeavors. Indeed, few scholars were as

³³ See *id.* at 1338.

³⁴ *Id.* at 1350.

³⁵ *Id.* at 1351.

³⁶ *Id.* at 1350.

³⁷ *Id.* at 1352.

³⁸ *Id.*

³⁹ See *supra* Part II.

aware of and as adept in navigating between the macro and the micro levels as Keith.⁴⁰ In the words of Michael Foucault, the “little tactics of habitat” were just as important to him as the “great strategies of geopolitics.”⁴¹

The fact is, although it is easy to generalize about space at an abstract level, there is no substitute for close analysis of a specific community at a particular point in time. And throughout Keith’s academic career, he often sharpened his theories on precisely such an intimate scale. A good example of this is his careful parsing of the spatial and racial politics of the southern California community of Monterey Park in the 1990s.⁴² Not only did Keith bring alive the texture and feel of life in Monterey Park during this time, but he also effectively used it as a lens to explore many different legal issues, from race and immigration to democratic representation and land-use policy.

Monterey Park was an ideal case study because of the radical transformations it experienced in the 1980s and 1990s. Located just east of Los Angeles and commonly referred to as the “first suburban Chinatown,” the City of Monterey Park underwent one of the most dramatic demographic shifts of any community in California.⁴³ Once an overwhelmingly white suburb,⁴⁴ Monterey Park experienced an explosion of Asian American (predominantly Chinese) and Latino (predominantly Mexican) residents, going from 3% and 12%, respectively, in the 1960s, to nearly 58% and 30% by the 1990s.⁴⁵ Of course, the transformation of Monterey Park was part of the secondary suburbanization that followed the white flight of the 1940s and 1950s, as middle- and upper-class minorities followed their white counterparts in search of safer neighborhoods and better schools out in the suburbs.⁴⁶ Yet the transformation was also tied to the massive

⁴⁰ See Aoki, *Space Invaders*, *supra* note 21, at 937.

⁴¹ Michel Foucault, *The Eye of Power*, in *POWER/KNOWLEDGE: SELECTED INTERVIEWS & OTHER WRITINGS, 1972-77*, at 146, 149 (Colin Gordon ed., 1980).

⁴² See *infra* notes 51, 53 (discussing Keith’s analysis of the political dynamics in Monterey Park).

⁴³ See generally TIMOTHY P. FONG, *THE FIRST SUBURBAN CHINATOWN: THE REMAKING OF MONTEREY PARK, CALIFORNIA* (1994) (discussing transformation of Monterey Park during 1980s and 1990s).

⁴⁴ See *id.* at 18.

⁴⁵ See Leland T. Saito & John Horton, *The New Chinese Immigration and the Rise of Asian American Politics in Monterey Park, California*, in *THE NEW ASIAN IMMIGRATION IN LOS ANGELES AND GLOBAL RESTRUCTURING* 234 (Paul Ong et al. eds., 1994).

⁴⁶ See MIKE DAVIS, *CITY OF QUARTZ: EXCAVATING THE FUTURE IN LOS ANGELES* 206-07 (1990).

flow of immigration into California, particularly Los Angeles, following the liberalization of immigration laws in 1965. Of course, the shift in racial demographics and alienage was only one part of story; the fact that many of these immigrants brought in substantial amounts of capital set the stage for the next chapter.⁴⁷ Also, in this same year, Monterey Park shifted from a largely residential bedroom community to one of the most important commercial centers for Chinese-Americans in Southern California.

First, Monterey Park offers concrete insights into the local politics of immigration. As Keith argued along with Robert Chang in *Centering the Immigrant in the Inter/National Imagination*, developments in Monterey Park illustrate the contested role of “borders” as the international, the national, and the local collapse in the context of immigration.⁴⁸ Beneath the fierce debates about whether business signs need to include some English, or the availability of foreign-language books in the public library,⁴⁹ one saw in this small community a much bigger conversation about America’s national identity and the limits of assimilation. Moreover, because one of the central disagreements between native and immigrant residents involved the extent to which commercial development should be allowed, the Monterey Park transformation shows how complex such conversations can become when grounded in a specific policy context. Indeed, at the end of the day, the political debates in Monterey Park were primarily about land use: while immigrant “newcomers” wanted more strip malls and shopping plazas to serve the growing Chinese and Asian community in Southern California, many native “old-timers” wanted to maintain the residential flavor of the community they had long grown to love and had been initially happy to share with newcomers.⁵⁰ In this context, to whom does Monterey Park belong? From a macro-level perspective, well-defined positions and broad, if competing, principles often characterize the politics of immigration. But when understood from the ground up, as Keith and his co-author demonstrated here, the answers are often far from clear, even when the stakes are a lot more tangible.

In addition, as Keith expanded in *Direct Democracy, Racial Group Agency, Local Government Law, and Residential Racial Segregation: Some*

⁴⁷ See FONG, *supra* note 43, at 160.

⁴⁸ Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CALIF. L. REV. 1395, 1406 (1997).

⁴⁹ See *id.* at 1434.

⁵⁰ See *id.* at 1431-32.

Reflections on Radical and Plural Democracy,⁵¹ Monterey Park is also an important site for talking about the complexity of class and race in an increasingly multiracial landscape. Contrasting the explosive growth of Asians and Latinos in Monterey Park with the community's persistent shortage of black residents, Keith suggested that Asians and Latinos benefited tremendously from being treated as "non-black." He recognized that new immigrant groups often exploit their role as the racial middlemen in the black-white divide, and may be even more forceful in their exclusion of blacks even as they seek to overcome their exclusion by whites.⁵² Moreover, Asians were situated higher on the socioeconomic spectrum in Monterey Park than their Latino neighbors. This, Keith argued, not only has important implications for our understanding of race as it actually unfolds on the ground, but also raises serious questions about how immigration affects America's already complex racial politics. Indeed, as Keith later explored in *A Tale of Three Cities: Thoughts on Asian American Electoral and Political Power after 2000*, the political coalitions that formed in Monterey Park between Hispanics and Asians, along with the role that Monterey Park and its local politics played in the 1990 appeal for a state assembly district centered on Asian American representation, raised many questions about the nature of political representation.⁵³

If Monterey Park became an important site in Keith's scholarship about race, immigration, and democratic representation, then the state of Oregon, where he spent a large part of his academic career, served as the context from which he furthered his examination of local governance and the politics of land use. Oregon, of course, is unique in the world of local government law. It was one of the first states to implement an urban growth boundary in response to suburban sprawl. It was also one of the first to successfully experiment with "regional governance" in the form of a county-level land use planning council. Because of these innovations, Oregon had long been considered a vanguard in the world of local government reforms.⁵⁴

Many explanations were given for why Oregon succeeded in these endeavors when similar efforts in other regions failed. Some noted the unique coalition that formed between Oregon's urban and rural

⁵¹ Keith Aoki, *Direct Democracy, Racial Group Agency, Local Government Law, and Residential Racial Segregation: Some Reflections on Radical and Plural Democracy*, 33 CAL. W. L. REV. 185 (1997) [hereinafter *Direct Democracy*].

⁵² See *id.* at 201.

⁵³ Keith Aoki, *A Tale of Three Cities: Thoughts on Asian American Electoral and Political Power after 2000*, 8 ASIAN PAC. AM. L.J. 1, 17-22 (2002).

⁵⁴ See, e.g., ROBERT BRUEGMANN, *SPRAWL: A COMPACT HISTORY* 202-06 (2002).

constituencies, both of which had an interest in ensuring a clear delineation between urbanized and agricultural areas.⁵⁵ Others pointed to the lack of urban-suburban tensions in Oregon, which may be based in part on the relative absence of traditional racial divides in such a relatively homogenous state.⁵⁶ But even as scholars of state and local governments championed Oregon as a model of good governance, Keith noted potential cracks. As early as 1997, Keith expressed concerns about Oregon's initiative process, which in 1992 imposed a draconian property tax cap similar to Proposition 13 in California, which had devastated the state's system of local government funding. Moreover, in 1994, Oregon nearly enacted an anti-gay initiative similar to one that was eventually struck down in Colorado.⁵⁷ In a moment of frank self-awareness, Keith acknowledged a change of heart with respect to his view of direct democracy: "Rather than describing myself as a neo-Jeffersonian, nowadays I guess I would call myself a born-again but somewhat chastened Madisonian."⁵⁸

Given his early skepticism of Oregon politics, Keith was probably not surprised when the fate of Oregon's much touted land-use planning regime was called into question by the passage of Ballot Measure 37 in the fall of 2004.⁵⁹ Measure 37 created a "compensation" or "waiver" scheme for any landowner whose property value decreased because of government regulation.⁶⁰ With little ability to pay for the costs imposed on those negatively affected by land-use regulations (and no avenue to collect the gains created for others through the positive effects of these regulations), waivers of existing land-use regulations, including those set forth by the urban growth boundary, seemed to be the only option available. Thus, even while urban planners and regionalism advocates sought to export the Oregon model, property rights activists both within and outside of the state succeeded in stifling the effort at its roots.

As was the case with Monterey Park, the fate of regional planning in Oregon influenced much of Keith's thinking about local government

⁵⁵ See Margaret Weir, *Coalition Building for Regionalism*, in REFLECTIONS ON REGIONALISM 127, 131-32 (Bruce J. Katz ed., 2000).

⁵⁶ See Carl Abbott, *The Portland Region: Where City and Suburbs Talk to Each Other — and Often Agree*, 8 HOUSING POL'Y DEBATE 11, 26 (1997).

⁵⁷ See Aoki, *Direct Democracy*, *supra* note 51, at 185-86.

⁵⁸ *Id.* at 186.

⁵⁹ See Keith Aoki, *All the King's Horses and All the King's Men: Hurdles to Putting the Fragmented Metropolis Back Together Again? Statewide Land Use Planning, Portland Metro and Oregon's Measure 37*, 21 J.L. & POL. 397, 434 (2005) [hereinafter *All the King's Horses*].

⁶⁰ See *id.* at 435-36.

law and regional governance. To be sure, many questions remained unresolved after Measure 37 passed, which Keith suggested was one of the many “difficulties involved in addressing complex public policy issues through the initiative process.”⁶¹ Yet, as he argued in *All the King’s Horses and All the King’s Men: Hurdles to Putting the Fragmented Metropolis Back Together Again? Statewide Land Use Planning, Portland Metro and Oregon’s Measure 37*, the initiative battle over property value and traditional land-use controls in Oregon shows how local government, and its role in our federal system, has changed. Indeed, as Keith observed: “Measure 37 abandons the constitutive question of local government: at what level power should be appropriately lodged — local, regional, state, or federal. Instead, . . . [it] posits a deep conflict between government — all government — and private property rights.”⁶²

Yet, situated as he was in the middle of this transformation, Keith was not content as a simple observer. Indeed, in *All the King’s Horses and All the King’s Men* and expanded upon in more detail in *Trading Spaces: Measure 37, MacPherson v. Department of Administrative Services, and Transferable Development Right as a Path Out of Deadlock* (co-authored with Kim Briscoe and Ben Hovland), Keith sought a way to reconcile the ascendant valorization of property rights and traditional value of land-use planning.⁶³ The answer, he suggested, lies in Transferable Development Rights. Inattentive to how regulations affected property values and the steps that can be taken to ameliorate the effects, Keith argued that “the state’s land-use system remained in a first-generation mode, rather than taking advantage of some of the available second-generation planning tools implemented elsewhere.”⁶⁴ Rather than having governments compensate monetarily for the property values that might be lost to regulation, Keith proposed a cap-and-trade system where landowners affected by a development restriction are given a “development right” that can be used on other properties to go beyond its baseline zoning allowance.⁶⁵ Landowners are then free to exercise these development rights themselves or sell them to developers. This, he argued, provides cost mitigation to property owners while still allowing local governments to regulate

⁶¹ See *id.* at 438.

⁶² See *id.* at 436.

⁶³ See *id.* at 441-44; Keith Aoki et al., *Trading Spaces: Measure 37, MacPherson v. Department of Administrative Services, and Transferable Development Right as a Path Out of Deadlock*, 20 J. ENV’T L. & LIT. 273 (2005).

⁶⁴ See Aoki, *All the King’s Horses*, *supra* note 59, at 441.

⁶⁵ See Aoki et al., *supra* note 63, at 298-99.

land use in ways that are beneficial to the community as a whole.⁶⁶ In other words, Oregon's urban growth boundary can be saved; it simply requires thinking outside of the traditional modes.

There are, of course, serious concerns associated with Transferable Development Rights, many of which Keith addressed in his article. Yet, like his use of Monterey Park, Keith's focus on the rise and fall of Oregon's unique regional planning regime offered an insightful and gripping context from which astute theoretical observations and concrete policy proposals were made. Keith never abandoned his fascination with the role of space and the local sphere. And as these examples illustrate, his interest was rooted in important ways in the unique contexts and concrete experiences of particular communities on the ground.

CONCLUSION

I first met Keith when he visited Harvard Law School for a gathering of local government scholars in 2000. Having already acquired an interest in local government law, I was familiar with his scholarship and enthusiastic for the opportunity to talk to him about his views. What I did not anticipate, however, was his warm demeanor, electrifying personality, and unwavering enthusiasm. His early encouragement was an important reason I followed his path into legal academia. And it was his example that I copied in grounding my own research in local government law while broadening the scope of its application into other fields. My experience, of course, was not unique. Many scholarly careers were nurtured by his mentorship; many articles were influenced by his scholarship.

Just as Keith advanced the study of space, geography, and local government law by urging its acceptance more broadly in the legal academy, he also contributed to its development by tirelessly supporting those who heeded his call and chose to follow in this path. Thus far, our efforts to "locate" Keith Aoki have centered on his research. This approach offers a crucial perspective on his many contributions. But for those whose lives have been touched by Keith, this account will surely prove to be unsatisfying. The fact is, behind all the bylines and article titles, beyond the conference presentations and distinguished titles, he was an inspirational teacher, an affable colleague, and a steadfast friend. Countless other perspectives can also be added to account for the various ways in which Keith has touched our lives. Mapping the rich network of relationships and ties that

⁶⁶ See *id.* at 328.

connected us to Keith is, admittedly, beyond my humble capabilities. Yet if we are to truly “locate” Keith Aoki, there is arguably no geography more important.
