Critical Legal Studies, Asian Americans in U.S. Law & Culture, Neil Gotanda, and Me

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The author offers a personal reflection on how Neil Gotanda's contributions to Asian American legal scholarship helped him "become Asian American" when the author used Gotanda's writings and teaching materials for a class.

INTRODUCTION

I was born in 1955, but did not become an "Asian American" until

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1. LISA LOYE, IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS at 70-71 (1996) ("The articulation of an 'Asian American Identity' as an organizing tool has provided a concept of political unity that enables diverse Asian groups to understand unequal circumstances and histories as being related. The building of 'Asian American' culture is crucial to this effort, for it articulates and empowers the diverse Asian-origin community vis-a-vis the institutions and apparatuses that exclude and marginalize it. Yet to the extent that Asian American fixes Asian American identity and suppresses differences—of national origin, generation, gender, sexuality, class—it risks particular dangers: not only does it underestimate the differences and hybridities among Asians, but it may also inadvertently support the racist discourse that constructs Asians as a homogenous group, that implies Asians are 'all alike' and conform to 'types'."). See also ROBERT S. CHANG, TOWARD AN ASIAN AMERICAN LEGAL SCHOLARSHIP: CRITICAL RACE THEORY, POST-STRUCTURALISM, AND NARRATIVE SPACE, 1 ASIAN J. 1, 5-6, n.7 (1994), 81 CAL. L. REV. 1243, 1245-1246, n.7 (1993) [hereinafter Chang, Asian American Legal Scholarship] (I use the term "Asian American" in the manner of Bob Chang, who writes that he uses "Asian American" rather than "Asian Pacific American" or "Asian/Pacific Islander" not in an exclusionary manner, but because [he finds] the other terms cumbersome." Chang "hesitate[d] to define 'Asian American' further than being a relatively fuzzy category that includes "persons of Asian descent who live in the United States regardless of citizenship status" because "this term is malleable and is often used by the dominant group to confer and deny benefits." He also notes that while "the term 'Asian American,'[l]ike its predecessor, 'Oriental,' . . . was created in the West from the need to make racial categorizations in a racially divided . . . society", the term "Asian American" might be able to "serve as a unifying identity based on the common experiences of Asian Americans because of the inability of most non-Asian Americans to distinguish between different Asian groups."); PAT K. CHEW, ASIAN AMERICANS: THE "RETICENT" MINORITY AND THEIR PARADOXES, 36 WM. & MARY L. REV. 1, 25-26 (1994) [hereinafter Chew, Paradoxes] ("The Census Bureau definition of Asian American includes individuals from over sixteen countries of origin or ethnic groups and over
sometime during the summer of 1994. Please allow me to explain and describe how my relationship with Neil Gotanda and his work helped mediate this process.2

First, I will provide some biographical and family information. Second, I will very briefly describe the Critical Legal Studies context with which I became acquainted in the late 1980s (which by then was referred to as the Crit Networks) through which I first met Neil in 1990, and then again in 1992. Third, I will describe how I had the opportunity to teach a class called Asian Americans in U.S. Law & Culture at the University of Oregon during Fall 1994. Neil’s work, as well as his intellectual generosity, was pivotal to my gaining a sense of this new area of legal scholarship. Finally, I will make a few brief observations about the class, and focus on highlights of a session Neil had with the class in October, 1994.

A. BIOGRAPHICAL AND FAMILY BACKGROUND

I am definitely a child of the geopolitical jumble of the mid-twentieth century.3 My mother was born in Hawaii in the 1920s to a relatively prosperous middle-class Japanese family (my maternal grandfather was a builder who arrived in the U.S. in the early twentieth century).4 Because Hawaii was then a U.S. Territory, my mother was a U.S. citizen under the famous birthright citizenship case of United States v. Wong Kim Ark.5

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My father was also born a citizen of the U.S. in an agricultural community in Yolo County, California during the 1920s. His parents, Japanese sharecroppers working the tomato fields, were "aliens ineligible to become citizens" who had come to California in the late 1890s.

In November 1941, my mother's father decided to move his family from Hawaii back to Japan. As a result, my mother and her brothers and sisters spent World War II in an outlying suburb of Kyoto. My father was among those Japanese Americans interned by the U.S. Government at the behest of Lt. General John De Witt beginning in 1942.

My father's family was relocated to the Gila River Relocation Center # 1 in Arizona in April 1942. Having reached college age before World War II ended, my father was told that if he wanted to pursue a higher education, he would have to choose an inland school. In June 1944, he opted for a college in the midwest (and eventually became a research chemist), which partially explains how he and I ended up in a suburb of Detroit, Michigan. An uncle from my father's side fought in the 442nd Regimental Combat Team in Italy.


8. See Spickard, Japanese Americans, supra note 6, at 60 ("[I]n 1913,... the California Assembly passed the Alien Land Law. The law, quickly copied in Washington and several other states, did not mention Japanese Americans specifically. Instead, it forbade 'aliens ineligible to citizenship'—Asians—to buy land or lease it for more than three years. Those who already owned land could keep it, but they could not bequeath it to other noncitizens.").


10. Spickard, Japanese Americans, supra note 6, at 120 (1996) ("Through the intervention of a number of West Coast university presidents... [Nisei college] students began to venture eastward,... The West Coast was still closed to them, but they were allowed to go out of the camps to colleges and universities in the plains states, the midwest and the east.").

11. Chew, Paradoxes, supra note 1, at 47 (1994) (Asian Americans are indeed amply represented in certain fields, particularly those in, or related to, the sciences and mathematics.... However, Asian Americans are under-represented in many other occupations.).

12. See generally Takaki, Strangers From a Different Shore, supra note 4, at 391.
My mother, who was with her family in Japan for the duration of the war, had to renounce her U.S. citizenship and swear loyalty to the Emperor. One of her brothers was drafted and fought in the Japanese Army in Siberia, was a Russian POW, and eventually committed suicide after returning to Japan at the war’s end. Since my mother was a minor when she swore loyalty to the Emperor, she was able to regain her citizenship and return to the United States. She went to live with an older sister who had also been repatriated and had married and moved to Michigan. My grandfather and some of my mother’s older brothers remained in occupied Japan.

I was born in Detroit and raised in Trenton, a middle-class white suburb south of Detroit, in 1955. In the 1960s, if I were asked the question of what racial category I belonged to, I imagine I would have described myself as an Oriental; or if asked what nationality I was, I would have said, Japanese-American. My memories of growing up in the Midwestern suburban milieu are probably similar to many persons of my generation. However, there are a few discordant shards that come back to me whose (generational) universality I doubt. One example is playing war.

While the foregoing narrative is relatively chronological and straightforward, these facts about my parents’ families and their whereabouts and doings unfolded to me as a discontinuous and fractured account that I have been gradually piecing together over the past four decades. See Courtney Whitney, MacArthur: His Rendezvous With History (1956); Mark Gayn, Japan Diary (1948).

Spickard, Japanese Americans, supra note 6, at 140 (“In most of the eastern two-thirds of the United States, Japanese Americans lived separated from one another amid a sea of white faces. That isolation and the Americanist stance of many of the Nisei [or second generation] who went east, were reflected in a high degree of assimilation.”). See also Kimberle W. Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 HARV. L. REV. 1331, 1332, n.2 (1988) (One of the conventions of dominant [legal] scholarship is the use of ‘they’ or ‘them’ to denote Blacks as a subject group. Implicit in such references is a silent ‘we’ which carries the appearance of objectivity but actually presumes a dominant group perspective.). In part, this essay reflects how I moved from talking about Asian Americans as them to talking about we or us.

See, e.g., Gotanda, Miss Saigon Syndrome, supra note 2 (discussing ways that U.S. legal culture tends to collapse and conflate notions of race and nationality, particularly with respect to Asian Americans. See also Keith Aoki, Foreign-ness and Asian American Identities: Yellowface, WW II Propaganda and Bifurcated Racial Stereotypes, 4 UCLA AS. PAC. AM. L. J. (forthcoming 1997).

The T.V. shows Combat and Gallant Men were big hits in the early pre-Vietnam era, as Hollywood and television shows sought to re-remember World War II for the popular imagination. See Tom Engelhardt, Ambush at Kamikaze Pass, in AMERICAN MEDIA AND MASS CULTURE: LEFT PERSPECTIVES 481, 486-489 (Donald Lazere ed., 1987). Engelhardt describes the content of postwar American entertainment involving Third World characters and plotlines:

Theoretically, it should have been somewhat more difficult following the Chinese and Vietnamese revolutions and other uprisings of the oppressed and non-white around the world to ignore the people for the scenery. Yet we can’t fault Hollywood for its valiant attempt. Generally, American films have... reproduced[ed] the white world whole in the Orient, for example, with Asians skittering at the edges of sets as servants or as scenic figures of menace... . A second convention in these films concerns the pecking order of white and non-white societies when they come into conflict. It is always a unified front among whites. . . . The audience is expected to carry two racial lessons away from this sort of thing. The first is that the presence of the incomprehensible and nonhuman brings out what is human in every
and pretending to kill "japs" with toy guns, at least until my mother in-
formed me that I was a "jap" and shouldn't be saying such things.\textsuperscript{17}

I also recall being excluded from a Thanksgiving Pageant in the sec-
ond grade by a teacher who told me that there weren't any Chinese people
at Plymouth Rock (she was of Polish ancestry, and needless to say, my
second grade rhetorical skills weren't up to pointing out that there proba-
bly weren't many Polish people eating turkey on that chilly 17th century
Massachusetts day either).

In another instance, my family would occasionally travel across the
border into Canada to dine at the more-than-passable French restaurants in
Windsor. My father always checked and double-checked that we all had
our papers, like our birth certificates, so that we would be able to prove we
were Americans upon re-entering the United States.\textsuperscript{18}

I remember a neighbor once told me that my family was okay because
we were like whites (this in the incredibly racially charged summer of
1967 when a social, political and physical conflagration consumed Detroit
and other major U.S. cities). Or, against the backdrop of the Vietnam War,
I recall being referred to in class repeatedly by a high school math teacher
(and veteran) as Rice Paddy Daddy, which he seemed to think epitomized
the apex of cleverness. His implication was that there was no difference
between the Viet Cong and Japanese Americans. Not wanting to make a
scene (or flunk), I failed to challenge his ridiculous conflation of race, na-
nationality and who knows what else.\textsuperscript{19}

There are even some memories which I have forgotten and know
about only through my mother, such as being conversant in Japanese and
English until I entered kindergarten, after which I lost my Japanese lan-
guage ability.

Why do I float out these disordered fragments? Are they merely an

\begin{quotation}
\textsuperscript{17} The second is the implicit statement that, in a pinch, any white is a step up from
the rest of the world \ldots \textsuperscript{17} The set hierarchy of roles is structured something like this: \ldots
Among the whites, the men stand triumphantly at the top, their women cringe, sigh, and
faint below; and the Asians are left to scramble for what's left, like beggars at a refuse
heap \ldots \textsuperscript{17} There is only one category in which a nonwhite is likely to come out top dog—
\textsuperscript{17} villain \ldots \textsuperscript{17} Moving upward toward a peak of Third World success and white condescen-
sion, we discover the role of sidekick. Indispensable to the sidekick is his uncanny ability to
sacrifice his life for his white companion at just the right moment. In this, he must leave the
audience feeling that he has repaid the white man something intangible that was owed him.
And in this too, we find the last major characteristic of Third World roles—expendability.

\textsuperscript{18} The next season, war shows were out and spies were in; the season after, superheroes dis-
placed spies only to be seasonally displaced by a constantly vacillating Hollywood. \textsuperscript{18} See DARYL Y.
HAMAMOTO, MONITORED PERIL: ASIAN AMERICANS AND THE POLITICS OF TV REPRESENTATION
(1994).

\textsuperscript{19} This occurred at a border where citizenship documents such as passports and birth certifi-
cates were generally not requested by border officials from white Americans or Canadians.

\textsuperscript{19} To add another level of ironic contradiction to the conflation of a third generation Japanese
American such as myself with the Viet Cong, during this period I had many extremely heated argu-
ments with my father over U.S. involvement in Viet Nam, to which I was strongly opposed and which
he strongly supported.
\end{quotation}
extended exercise in Proustian navel gazing? I believe they have a point. They remain as childhood indicators that, even in an apparently assimilated context, such as middle-class white suburban Midwestern America, there was something different about me in a way I was unable to identify until much later. This difference, being Japanese American, became obscured to varying degrees by vigorous (too vigorous to my father) involvement in antiwar protests, sex, drugs and the rock n’roll culture of the late 1960s and early 1970s.

In a complex way for me, deracination/assimilation in the late 1960s and early 1970s meant identifying with New Left countercultural movements and politics. By identifying with the largely middle-class, largely white student counterculture, I was making a claim of “non-Asian-ness” in the following way: If “Asian (or Japanese American)” meant “assimilationist” or “traditional” or some combination thereof in an authority-respecting iteration), then my identifying with the left 1960s counterculture was a statement that I was not “Asian (or Japanese) American” in those senses. Similarly, my attraction to Critical Legal Studies in the late 1980s had an element of claiming to be “non-conservative” and hence, “non-Asian.”

B. CRITICAL LEGAL STUDIES, NEIL GOTANDA AND MISSED/UNSEEN OPPORTUNITIES

Flash forward to Harvard Law School, 1987-1990: As a law student (and later as a law professor), I was interested in and greatly influenced by the work of scholars working in the vein of Critical Legal Studies (CLS) such as Morton Horwitz, Gerald Frug, Roberto Unger, Duncan Ken-

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20. In terms of describing myself as Japanese American or Asian American, it is my impression that I was not really politicized in the pan-ethnic sense of the late 1960s Asian Power movement that sprung from the 1969 Third World Student strikes at San Francisco State University and U.C. Berkeley. This is partly because I wasn’t living in an area with a demographic ‘critical mass’ of Asian Americans. For a contemporaneous view and collection of materials related to the late 1960s Asian American Movement, see ROOTS: AN ASIAN AMERICAN READER (Amy Tachiki et al. eds., 1971). In particular, see Amy Uyematsu, The Emergence of Yellow Power in America, in ROOTS, supra, at 9.

21. Thanks to Sumi Cho for this insight.


nedy, Joe Singer, Gary Peller and James Boyle (to name a few). I went to great pains to pore through and grasp some of their (at times) exceedingly dense but at other times, inexplicably whimsical and anarchic) works. It is this strand, the strong Critical Legal Studies strand, that I apprehend in much of Neil Gotanda's writings. Most importantly, Neil's work acts as a bridge between CLS work and the later work of Critical Race Theory (CRT) scholars, as well as Asian American Legal Scholarship, Feminist Crit and LASTCIT work.

During my time at Harvard Law School, I could not help but be aware of the schism that found its way into the pages of the 1987 issue of the Harvard Civil-Rights/Civil-Liberties Law Review. CRT, while not to-


31. See, e.g., Mark Kelman, Trashing, 36 STAN. L. REV. 293 (1984); Duncan Kennedy and Peter Gabel, Roll Over Beethoven, 36 STAN. L. REV. 1 (1984); Pierre Schlag, Normative and Nowhere to Go, 43 STAN. L. REV. 167 (1990). See also THE LIZARD, an anonymous alter-ego zap-comix-style newsletter distributed at the January 5, 1984, American Association of Law Schools convention in San Francisco (Lizard is an emanation of a small faction within the critical legal studies movement, sometimes referred to as the True Left).

32. On a deep level, Neil's works show he is very cognizant of the way liberal legal thought posits in complex and often contradictory ways, clashing visions of public and private spheres, as well as how the public/private distinction pervades U.S. liberal legal thought. See Gotanda, A Critique of Our Constitution is Colorblind, supra note 2, at 12-16. See also Neil Gotanda, CLS, CRT and Asian American Studies, supra note 2, at 128-130.

tally opposed to the loose agenda of CLS, was clearly critical of the elitist and imperialistic aspects of rich, white lefty male law professors drawing up blueprints for revolution and ironic rabble-rousing.\(^{34}\) In particular, CRT raised objections to the critique of rights and legal formalism, as well as to the top-down (as opposed to bottom-up) style of some CLS scholars. Even the anarchic, self-parodistic humor and ironic characteristic of one strand of CLS could be seen as evidence of the privilege of those who have the social and/or intellectual space to engage in self-parody.\(^{35}\)

At that point in time, I did not categorize myself politically as an Asian American. That is, I did not claim a political content to the racialized category with which I described myself and to which others classified me. I did not see myself as occupying the subject position\(^{36}\) of a person of color within legal academia. While I was intellectually appreciative of

\(^{34}\) Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals From Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 405-405 (1987) (I think... the so-called 'governing narrative'... about the significance of rights is quite different for whites and blacks. For most whites, including the mostly-white elite of CLS, social relationships are colored by viewing achievement as the function of committed self-control, of self-possession. For blacks, including black lawyers, academics and clients, on the other hand, relationships are frequently dominated by historical patterns of physical and psychic dispossession. In a semantic, as well as a substantive sense, then, ... CLS has ignored the degree to which rights-assertion and the benefits of rights have helped blacks, other minorities, and the poor;); *The Ethereal Scholar*, supra note 33, at 305-06 ("One explanation for the CLS position on rights may be that the average Crit, a white male teaching at a major law school, has little use for rights. Those with whom he comes in contact in his daily life—landlords, employers, public authorities—generally treat him with respect and deference. Rarely is he the victim of coercion, revilement or contempt. In the mind of the average Crit, rights offer relatively little security, while they promote a shrunken, atrophied and unsatisfying social existence.").

\(^{35}\) Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 350 (1987) ([CLS] analysis uses a sharp knife to cut through existing assumptions about law. The sharp knife, as parents teach their children, is a useful but dangerous tool. The challenge for the CLS movement is to maintain a credible and effective praxis along with its deeply critical stance. The alternative tools of 'jokes and snippets' are revealed as inadequate standing alone: they seem the stuff of child's play—something merely to amuse while the dangerous knife remains safely in the drawer;); *Critical Legal Studies*, supra note 33, at 412 (Recently, a CL-affiliated newsletter... published an article... that contained what Hispanic adherents of CLS considered an outrageous anti-Mexican slur. Three Chicano professors wrote an open letter decrying the slur. Instead of dismissing the complaint ("Those hot-headed Chicanos are at it again"), as some did, or reacting defensively ("Can't they take a joke?"), [the editors of the newsletter] met with the authors, struggled with them, and ultimately admitted error. Community was restored, perhaps on a higher plane than before.).

\(^{36}\) Chantal Mouffe describes the idea of subject position thusly:

Within every society, each social actor is inscribed in a multiplicity of social relations—not only social relations of production but also the social relations, among others, of sex, race, nationality and vicinity. All these social relations determine positionality or subject positions and every social agent is therefore the locus of many subject positions and cannot be reduced to only one... Furthermore, each social position, each subject position, is itself the locus of multiple possible constructions, according to the different discourses that can construct that position.


some CRT work, I remained emotionally noncommittal, and thus was peculiarly deracinated in a way similar to my midwestern upbringing—I was white, but I wasn’t white. 38

Looking back, I think I saw myself as a compatriot/student/fellow traveler of the largely white, predominantly male, strongly groucho-marxist-anarcho-yippie tendency within Critical Legal Studies. Ironically, this aporetic (and ultimately unsatisfactory, for me at least) self-identification on my part created a situation wherein I as a person of color inserted/asserted myself in legal discourse from a paradoxical colorless (read white and male) left legal subject position.

For example, when I first met Neil Gotanda, I was unable to connect in a significant way my own odd subject position with Neil’s (and Critical Race Theory’s) increasingly important work. It was the summer of 1990, and I had been invited to a CLS Summer Camp at SUNY-Buffalo Law School. A few days before, CRT had held a workshop and some of the participants in the RaceCrit workshop had opted to stay longer and attend the CLS Summer Camp. Among these RaceCrit holdovers was Neil Gotanda. While I do not really remember the exact content of our conversations, I do recall being struck by the political-ness of Neil’s demeanor on me. It was unusual in my experience to that date to see a politically left Japanese American in the way that Neil was politically left. More interesting to me was Neil’s simultaneous assertion of left politics and Asian American identity—which was probably more in keeping with the origins of the 1960s Asian American movement, but which was in marked contrast to my unreflective “non-Asian” political sense. Clearly, Neil was an interesting figure.

Two years later, in the late winter of 1992, my path crossed Neil’s again at the 1992 Crit Networks Conference, sponsored jointly by Harvard Law School and Northeastern Law School. Neil was assembling an Asian American panel, in which he asked me to participate. I regrettably declined his invitation. Not paying close attention at the time, I was unaware of a shift in the project Neil was working on: the construction of a politically charged Asian American subject position within, and in some ways set apart from, Critical Race Theory. Other more astute minds than mine did pick up on a lot of the important groundwork and contributions Neil (and many others) had been making, both within Asian American Studies

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38. Perhaps some of this lack of emotional engagement might have come from the strength with which the Black-White paradigm was articulated. If Asian American equals a nonwhite, racialized subject position, Critical Race Theory becomes more relevant as a tool for understanding the structures one is working within. If, on the other hand, assimilationist ethnicity prevails (or worse yet, like my family’s neighbor told me in 1967, Asian Americans were like us (whites) and not like ‘them’ (Blacks)), then Asian American could mean non-black, and all sorts of divisive politics become possible. Alternately, Asian American (or Latinalo) and possibly all these racialized categories are similar to understanding light in quantum physics: is light a wave or a particle? The answer is both—or rather, it depends.
(as a sub-set of Ethnic Studies) and Critical Race Theory. But that really is another story.

C. HOW I BECAME AN ASIAN AMERICAN: TEACHING ASIAN AMERICANS IN U.S. LAW & CULTURE

I began teaching law in Fall 1993 at the University of Oregon School of Law. As do most, if not all, new law professors, I spent an extraordinary amount of office time preparing for each of my classes that first year. By the time May 1994 rolled around and I finished grading exams, I was ready for a break. However, a break was exactly what I was not going to receive.

Two people I greatly admire were crucial to my intellectual life during Summer 1994: Sumi Cho and Neil Gotanda. Sumi had taught a number of political science courses at the University of Oregon focusing on different aspects of Asian American Studies. Sumi came into my office in May 1994 and asked me how I would feel about teaching an Asian Americans and the Law class that coming fall. I made some noncommittal noises about how it might be a good class for me to teach in a couple of years. Gradually, however, I was persuaded by the depth of Sumi’s contention that teaching this class would be both good for me and good for the Asian American students at the University of Oregon.

The next day Sumi showed up in my office with at least ten shopping bags full of books, journals and photocopied articles. She said, All you have to do is read this stuff and you’ll be able to do the class—no problem! With the help of an absolutely first-rate research assistant, Mustafa Kasubhai, we plunged into Sumi’s materials and began planning the organization of this course I had never taught before, but was now bound to instruct in September. As I thought about teaching the class, I became more and more hooked on Sumi’s challenge and found myself pondering ways to parse the Asian American experience through a critical lens.

My next encounter with Neil was via phone and electronic mail as I contacted him in a panic, as the sheer mass and richness of the materials Sumi had given me began to swamp me conceptually. I had heard he was teaching an Asian Americans and the Law class at UCLA Law School, so I called him and asked if he would be kind enough to supply me with a syllabus and outline for the course. Neil’s syllabus, along with his A Critique of ‘Our Constitution is Colorblind,’ became the structural skeleton for all of the Asian American materials that Sumi had generously given me. More specifically, Neil’s discussion of four usages of the concept of race

39. These usages consist of status-race, formal-race, historical-race and culture-race. See Gotanda, A Critique of ‘Our Constitution Is Colorblind,’ supra note 2, at 36-62, 38, 40, 56 (‘Under the status-race approach, which assumes the subordinated status of Blacks, racial segregation by custom or statute reflects a ‘common sense’ understanding of the ‘natural’ racial hierarchy. In contrast, the formal-race, color-blind approach, assumes ‘equal protection of the law’ based on common
from *A Critique of 'Our Constitution is Colorblind,'* coupled with his discussion of racial nonrecognition \(^40\) and the etiology of U.S. racial categories \(^41\) and the rule of hypodescent, \(^42\) comprised the magnifying glass through which the Asian American materials were examined. Neil’s use and understanding of the public/private distinction in understanding U.S. attitudes towards race, racial subordination and color-blind legalism became a strong link between my earlier immersion in CLS work and the construction of the Asian Americans in U.S. Law & Culture class.

Somewhere during the summer of 1994, as I processed the materials for this class, I became an Asian American. \(^43\)

I am not sure whether it was the effect of immersion in thousands of pages of different Asian American materials, legal and otherwise, amplified by the pressure of having to impose a structure, or if it was some kind

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\(^40\) Gotanda, *A Critique of 'Our Constitution is Colorblind,'* supra note 2, at 16-23, 16-18 ("Nonrecognition has three elements. First, there must be something which is cognizable as a racial characteristic or classification. Second, the characteristic must be recognized. Third, the characteristic must not be considered in a decision. For nonrecognition to make sense, it must be possible to recognize something while not including it in making a decision . . . . To use colorblind nonrecognition effectively in the private sphere, we would have to fail to recognize race in our everyday lives.").

\(^41\) *Id.,* at 23-35, 28-29 ("[T]he racial 'science' of the eighteenth and nineteenth centuries justified slavery by asserting the inferiority of African-Americans. The work of Blumenbach, a German comparative anatomist of the late nineteenth century, who classified humans into five principal races—Caucasian, Mongolian, Malay, American and Ethiopian—was particularly influential . . . . Even after a century of efforts to discredit scientific theories asserting the 'natural' superiority of the white race, race continues to be accepted as a scientific concept.").

\(^42\) *Id.,* at 23-26, at 24 ("Americans no longer have the need of a system of judicial screening to decide a person's race; the rules are simply absorbed without explicit articulation . . . . American racial classifications follow two formal rules: 1) RULE OF RECOGNITION: Any person whose Black-African ancestry is visible is Black. 2) RULE OF DESCENT: (a) Any person with a known trace of African ancestry is Black, notwithstanding that person's visual appearance; or, stated differently, (b) the offspring of a Black and a white is Black").

\(^43\) It was on a late May afternoon in 1969, three months after he had left the Philippines for New York City, that Peter Bersamin says he began to realize he was Asian. Driving up to Cape Cod, he stopped at a sign promising vacancies. But when Mr. Bersamin asked about a room, the keeper looked at him, told him no and closed the door. Before I got back to the car I knew it, he said. That was my first experience with racial discrimination and the beginning of my awareness as being somebody other than white. Until then, Mr. Bersamin had identified himself only as Filipino. But after meeting other Asian immigrants in Queens over the years, the 50-year old psychologist has come to feel less part of a national or ethnic group and more part of a racial one. He now felt kinship for the Chinese, whom he had regarded suspiciously in the Philippines, and for the Japanese, whom his father, a colonel during World War II, hated so much he refused to stop in Tokyo on a trans-Pacific flight . . . . Many Asians still feel a strong sense of their separate ethnic identities, and ethnic clubs still flourish in some cities and colleges. Yet the emerging racial consciousness is giving birth to many pan-Asian clubs, particularly in Queens, lower Manhattan, Los Angeles and San Francisco, where only in the last two decades have Asians of different origins begun to live together.

of self-recognition on my part—seeing the circumstances of my life, both past and present, in the Asian American materials. As I had never taken an Ethnic Studies/Asian American Studies class, I was unfamiliar with much of the historical materials. At the very least, the emphasis and tone of the materials were new to me, even though I was the son of a Nisei internee. For example, reading about the sheer virulence of the late-nineteenth century Californian response to Chinese laborers,44 as manifested by laws like the federal Chinese Exclusion Act of 1882,45 was chilling. Not only did such attitudes foreshadow the internment of Japanese Americans in the 1940s, but they are disturbingly parallel to the contemporary discussion of U.S. immigration policy (as well as measures like Proposition 18746 and Proposition 209,47 the enactment of two immigration laws punishing immigrants, and the rollback of welfare benefits to legal immigrants in the 1996 Welfare Reform Act48).

Another thing I found striking was how much Asian immigrants have contributed to shaping U.S. law. Cases like Yick Wo v. Hopkins49 and Korematsu50 possessed a textual richness and density that had eluded me when I encountered them in law school, seeking only to correctly memorize an appropriate, one-dimensional parenthetical (i.e., ‘Yick Wo stands for the proposition that facially neutral statutes passed with invidious intent are

unconstitutional'; *Korematsu* means that laws employing classifications based on race will be subject to strict scrutiny').

There was no one particular epiphanic moment where a lightbulb clicked on over my head, or a beatific sunbeam shone down on me as the dark clouds parted, when I "became" an Asian American. Simply put, over the course of the summer of 1994, I became connected with a rich and complex past about which I wanted to learn more. I do not necessarily refer to my own individual past, but the history of Asian Americans in general. I desired to understand more about and participate in constructing and re-constructing Asian Americans. Fortunately, many of the scholarly moves I had learned from CLS and CRT helped, rather than hindered, my ability to grasp some of the nuances of racial formation relevant to the Asian American experience. 51

However, this does not mean that Asian American identity is something I or others are capable of firmly and concisely defining. In fact, it seems in many ways that the obverse is true: Asian American identity cannot (or should not) be defined concisely, and perhaps it is in the Wittgensteinian fuzziness 52 of the term Asian American that it attains its useful-

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51. Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 UCLA AS. PAC. AM. L.J. 33, 61 (1995) (The concept of 'differential racialization' responds in part to the problem of essentialism and in part to the questions of group power. It acknowledges that historical and contemporary influences racialize different racial groups and subgroups differently.... 'Differential isolation' may exist even within subgroups, as between the first and second waves of Vietnamese American immigrants.... The concept of 'differential racialization,' extended to encompass racialized differences between groups as well as within groups... furthers the inquiry into the extent and form of comparative racial group agency and ways in which group power is exercised... [creating] differing racial meanings for these groups... [that] bear not only on 'individual identity and collective consciousness' but also upon 'political organization'.... More 'established' immigrant groups, with greater access to political power... may organize around mobility issues ('glass ceilings'), while recent immigrant groups may focus on 'survival issues' (funding for language classes and job-training programs.).)


66. Consider for example the proceedings that we call games. I mean board-games, card-games, ball-games, Olympic games, and so on. What is common to them all?—Don’t say: There must be something in common, or they would not be called 'games' —but look and see whether there is anything in common to all. For if you look at them you will not see something that is common to all, but similarities, relationships, and a whole series of them at that.... [We see a complicated network of similarities overlapping and criss-crossing: sometimes overall similarities, sometimes similarities of detail.

67... [Which may be characterized as] family resemblances; for the various resemblances between members of a family: build, features, colour of eyes, gait, temperament, etc., overlap and criss-cross in the same way. And I shall say: 'games' form a family....

69. How shall we explain to someone what a game is? I imagine that we should describe games to him, and we might add: This and similar things are called 'games'.... We do not know boundaries because none have been drawn. To repeat, we can draw a boundary—for a special purpose. Does it take that to make the concept useable? Not at all!...
ness.

During fall semester 1994, I taught a class on "Asian Americans in U.S. Law and Culture" for the first, and so far only, time. In many conversations with students, I was struck by a prevalent ambivalence about the apparent slippage that occurs in claiming the title "Asian American" and the deeply felt need to invoke such a category for a variety of ends, but each with a different valence.53

Up until that point I was intellectually aware of, but had not experienced first-hand, the incredible heterogeneity and diversity (generational, nation of origin, linguistic, etc.) of Asian America in the 1990s. This class convinced me of the intuitive appeal of the category Asian American, as well as impressing upon me the breadth, scope and fuzziness of the concept. With the "Asian American" students, the type of wary poststructural anti-essentialist skepticism towards categories voiced by my colleagues in the legal academy was very much a minor undertone. The students embraced the label "Asian American" in spite of, or perhaps because of, the unifying (and simplifying) empowerment such a self-naming may sometimes confer,55 harking back to the origination of the term "Asian American" in the 1960s.56

53. YEN LE ESPIRITU, ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES at 6 (1992) (describing panethnicity as the "generalization of solidarity among ethnic subgroups"). See also Chang, Asian American Legal Scholarship, supra note 2, at 1245-1246, n.7 ("There is tremendous diversity within the category 'Asian American' in which I include persons of Asian descent who live in the United States regardless of citizenship status. I hesitate to define 'Asian American' further because the term is malleable and is often used by the dominant group to confer and deny benefits .... Asian American can serve as a unifying identity based on the common experiences of Asian Americans because of the inability of most non-Asians to distinguish between different Asian groups. Unfortunately, this inability to distinguish between Asians has not translated into an inability to discriminate against Asians, as evidenced by the tragic death of Vincent Chin.").

54. Here, I use "Asian American" in the broadest sense, i.e., the students ranged from fifth-generation Chinese-Americans and fourth-generation Japanese American to second-generation Korean-Americans and Filipinos to naturalized students whose families had recently emigrated from Laos, Vietnam, and Cambodia, as well as Pacific Islanders from the Marshall Islands, and those from increasingly mixed racial backgrounds. Following are some of the written responses to a question ("Tell me a little about yourself") I asked at the end of the first class: "I'm a Japanese-Okinawan-Croatian-American lesbian .... I want to hear about Asians and Asian Americans ...." (emphasis in original); "I wanted to enhance my understanding of the Asian American experience ... as an adoptee in an all-Caucasian family, getting to understand the Asian side of me has become a real interest ...."; "I was born and raised in Hawaii .... I am Chinese, Irish, Scottish, Welsh, German, French and Spanish ...." (quotations from responses used with permission).

55. Onishi, New Sense of Race, supra note 42 ( Talk of Asian-Americans as a distinct racial group grew out of the civil rights movement. At the University of California at Berkeley and at Los Angeles, students sought to unify Japanese- and Chinese-Americans, who had remained divided since immigrating a century ago. But starting in 1965, with the repeal of laws that had sharply restricted immigration from Asia since the 1920s, the number of Americans of Asian descent rose to a critical mass, from one million in 1960 to nine million today.).

56. See WEI, THE ASIAN AMERICAN MOVEMENT, supra note 19, at 1 ("Not until the civil rights movement of the 1960s exposed the pervasive problem of racism in U.S. society and raised questions about exactly how democratic the nation's political system was did members of the various Asian immigrant groups begin to think of themselves and to act politically together as Asian Ameri-
In contrast, in October 1994, I attended the first conference of Asian Pacific American Law Professors at Boston College Law School. Many presenters voiced a marked skepticism and equivocality about the internal and external stability of a potentially essentializing categorical grouping like “Asian Pacific American.” However, some of the same presenters (including myself) expressed a simultaneous sense of the intuitive “appropriateness” and possible strategical advantages of such a grouping.

Overall, my impression of the group’s attitude regarding the usefulness of a category like “Asian Pacific American Law Professors” was one of cautious and pragmatic optimism, tinged with the distinct undertone of wary anti-essentialist skepticism which is invoked as an almost necessary qualification to any statement.

The concept Asian American implies that there can be a communal consciousness and a unique culture that is neither Asian nor American, but Asian American. In defining their own identity and culture, Asian Americans bring together previously isolated and ineffective struggles against the oppression of Asian communities into a coherent pan-Asian movement for social change....).

See also Amy Uyematsu, The Emergence of Yellow Power in America, in ROOTS at 9 (Amy Tachiki et al eds., 1971). But compare, Elaine H. Kim, Asian American Literature: An Introduction To The Writings And Their Social Context at xii (1982) (noting that the label ‘Asian American’ “[like its predecessor, ‘Oriental,’... was created in the West from the need to make racial categorizations in a racially divided, or at least, a racially diverse society.”). Also compare Chang, Asian American Legal Scholarship, supra note 2 at 1321 (“Though there is power in affirming the category Asian American, the category is also limiting, especially because it remains defined in terms of the dominant group.... That the term “Asian American” can be an oppressive categorization is the starting point of the third branch of Asian American Legal Scholarship—poststructuralism—which deconstructs the category ‘Asian American,’ emancipating us from its limits.”).


58. In a different context (the Subaltern Studies Reading Group) than Asian American Legal Scholarship, Gayatri Spivak has written about the importance of approaching “strategic essentialism” with care. See Gayatri Spivak, Subaltern Studies: Deconstructing Historiography, in OTHER WORLDS 197, at 205 (1988). But see Gayatri Spivak, In a Word, 1 DIFFERENCES 12 (1989) (“The emphasis falls on being able to speak from one’s own ground... on noting how we ourselves and others are what you call essentialist, without claiming a counter-essence disguised under the alibi of strategy.”).

59. Lisa Lowe articulates a sense of the equivocal nature and multiplicity of formulations of Asian American identities.

I stress heterogeneity, hybridity and multiplicity in the characterization of Asian American culture as part of a twofold argument about cultural politics, the ultimate aim of that argument being to disrupt the current hegemonic relationship between “dominant” and “minority” positions. On the one hand, my observation that Asian Americans are heterogeneous is part of a strategy to destabilize the dominant discursive construction... of Asian Americans as a homogeneous group.... On the other hand, I underscore Asian American heterogeneities (particularly class, gender, and national differences among Asians) to con-
Herein lies a paradox which I began understanding during the summer and fall of 1994. How do groups mediate internally-generated solidarity as a “race-ed” group in a pervasively “race-ed” society without also importing structures of “essentialized” race into both intragroup and intergroup discourse? For “Asian Americans, this paradox creates acute tensions. These tensions come about in large part from a convergence of peculiarly structured American notions of “ethnicity,” “nationality,” and “race” as mediated by a persistent global “Orientalism” which inscribes a racialized “foreign-ness” on persons from Asia and of Asian descent living in the United States.

This sense of the negotiated nature of race within U.S. culture gives rise to multiple and sometimes contradictory understandings of both inter- and intra-group as well as individual identity. It is this paradox which Neil has been exploring for some time.

D. NEIL’S TALK ON ASIAN AMERICANS AND PARADOX: DO YOU TAKE THE JOB?

Fortunately, Neil was able to fly up to Eugene in late October and speak with my class about the complexities of Asian American identity. Neil began by stating the paradox: Asian American identity both does not exist and does exist. First, as to the idea that no natural Asian American category exists, Neil pointed to the 1965 Immigration Act and the heterogeneity in the generational and national origin of Asian immigration to the U.S. from the nineteenth century on. He then asserted that if asked to describe themselves, most students would probably use country of origin/ancestry as the relevant marker. Even in Asian American literature, tribute to a dialogue within Asian American discourse, to negotiate with these modes of argumentation that continue to uphold a politics based on ethnic “identity” . . . . I argue for the Asian American necessity—politically, intellectually, and personally—to organize, resist, and theorize as Asian Americans, but at the same time I inscribe this necessity within a discussion of the risks of a cultural politics that relies upon the construction of sameness and the exclusion of differences.


60. Id., at 39-40 (1991) (“[I]n the 1990s, we can afford to rethink the notion of ethnic identity in terms of cultural, class, and gender differences, rather than presuming similarities and making the erasure of particularity the basis of unity . . . [enabling] crucial alliances with other groups—ethnicity-based, class-based, gender-based, and sexuality-based—in the ongoing work of transforming hegemony”).

Neil noted, novelists such as Amy Tan and Maxine Hong Kingston were culture-specific. For example, Tan's *The Joy Luck Club* was not about some generalized Asian American experience, but was about the Chinese experience. Neil concluded by contending that most, if not all, cultural/social institutions, such as churches, social clubs, and athletic leagues, were generally organized around ethnicity/nationality. Thus exists the paradox: if there is no such thing as an Asian American, if the category doesn't actually exist, then why do we keep talking about it? Why is an Asian Americans in U.S. Law & Culture class being taught at the University of Oregon Law School?

After adumbrating the first part of the paradox, Neil then shifted to talking about the undeniable existence of the category Asian American. He identified two fairly obvious reasons for the category's existence: the U.S. census reports and Equal Employment Opportunity (EEO) 1 reports. Prior to the 1960s, the U.S. census counted persons as being either White, Black, Indian or Other. After the 1970s, census categories were expanded to five categories: American Indian/Alaskan Native, Asian/Pacific Islander, Black, White and Hispanic. The EEO 1 reports furthered the creation of an Asian American classification by requiring employers to describe the racial composition of an employer's workforce to the Equal Employment Opportunity Commission (EEOC). In discussing governmentally-created racial categories, Neil hastened to add that they are problematically under- and over-inclusive. He asked the students in which categories a Filipino (with a Spanish surname), a South Asian, a Southwest Asian from Iran, a Central Asian or an African might be placed. Alternatively, Neil questioned, where might persons of mixed parentage fit in this schema?

Neil contrasted these governmental categories of race with court cases that until recently did not deal with Asians *qua* Asians, but as Chinese, Japanese, Koreans, Filipinos, etc. At least on the surface, a case like *Korematsu* was about the internment of Japanese-Americans, not *Asian Americans*. Neil asked whether cases such as *People v. George Hall* (upholding a 19th century California law that barred admission of nonwhite testimony against a white defendant), *Yick Wo v. Hopkins* (striking down a facially neutral city zoning ordinance that had discriminatory effect against the Chinese in San Francisco), *Chae Chan Ping v. U.S.* (upholding the 1882 Chinese Exclusion Act), and *Korematsu v. U.S.*

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63. *People v. George Hall*, 4 Cal. 399 (1854).


(upholding the constitutional validity of the World War II internment of Japanese-American citizens) have some common thread that belies the specificity of national origin and obfuscates their racial content?

Having complicated the idea of a homogenous Asian American category, Neil went on to suggest that the category Asian American did not solely emanate from governmentally imposed "public" classifications, but was generated "privately" in civil society from friends, family, media and culture as well. Arising from numerous sites, the category of Asian American is dynamic and fluid. Using the term "Korean" as an example, Neil illustrated how it existed as a marker for multiple identities, acting as a citizenship signifier in both the international arena (passports, visas, etc.) and the domestic U.S. arena (legal or undocumented immigrant status). Neil stressed that when utilizing the term Asian American, it is important to understand exactly what we are identifying and to make explicit which of the complex social processes we are plugging into (i.e., culture, race, nationality, or a mixture).

Neil then made an example of his status as a third-generation Japanese American to discuss four possible senses of culture and cultural identification in the Asian American context. First, Neil mentioned food as culture, asking what social processes are engaged in when we discuss food as Japanese, Chinese or Asian. What are we to make of Jack-in-the-Box restaurants serving a Japanese-originated dish like Oyako Donburi? Second, Neil focused on religion as culture—what does it mean when an increasing number of White Americans are converting to South or East Asian religions? Third, what are we to make of Japanese, Korean, Chinese or Asian American clubs and social groups? Finally, issues surrounding culture arise over the issue of who can deny a claim of identity. Neil posited that if he were to say he was Korean, his mother could reply, No, you’re Japanese American. Expanding on this example, Neil remarked on the power of institutions to deny membership. If he were to apply for a special Korean scholarship, the administrators of the scholarship could say to him, You may think you’re Korean, but we say you’re not.

With regard to claiming a racial identity for oneself, Neil said that the chosen category (whether Korean, Japanese, etc.) may act as a statement about one’s location in a hierarchical economic pecking order. Likewise, the claim that one is Asian American might serve in some circumstances as a claim of non-Blackness or a claim of non-Whiteness. Such self-identification could be seen as an implicit contention that one is a member of a model minority. Neil pointed out that on the contested terrain of racial and cultural negotiations over identity, it is important to be aware of how we: (a) may be race-ed by others; (b) may race ourselves; and (c) may race others. Even when we try and make assertions about our identity, there may be serious pitfalls. Neil told the students that when thinking about the negotiated quality of race, they should try to be...
self-conscious of the multiple and dynamic dimensions of such claims.

When a student inquired whether Neil thought that the ongoing redefinition of race in the federal courts would have an effect on redefining ideas about race and Asian Americans, Neil responded that perhaps the question should be posed the other way around. The real issue is whether the renegotiation of race that is going on in every arena of American life, from movies to music and television, will affect the concept of race in the federal courts. Pausing for a moment, Neil asked the class about the significance of the 1994-95 television sitcom *All American Girl* (featuring comedian Margaret Cho)—was it good or bad? Who had a claim on it? Korean Americans? Asian Americans? All Americans?

One student said a problem with *All American Girl* was that the people creating the dialogue, stories, and plots were not Korean American. Therefore, it was not a show created by Korean Americans, but was on one level, created for Korean Americans. Another student followed up with the comment that the involvement of Korean American writers in the production of the show would not make a difference in the show’s content. The Korean Americans would be doing what the white writers used to do. Yet another student jumped in and criticized *All American Girl* for perpetuating the negative stereotype that all Asian American women were exotic bimbos—either they were Margaret Cho or Connie Chung. Neil stopped the class for a moment to focus on the slippage from speaking about Korean Americans to speaking about Asian Americans. The student concerned with negative sexual/racial stereotypes then replied that while Korean Americans were portrayed on *All American Girl*, she thought the show was bad for Asian Americans in general.

At his law professor best, Neil then posed a hypothetical situation to the class: imagine that a majority of the writers and production staff on *All American Girl* are white (or at least non-Asian/Korean) and a position opens up for a new writer. You are a female Chinese American scriptwriter and all the other applicants are white males. Do you take the job writing jokes for a Korean American? The student thought about it for a moment and said she would not take the job if she was not respected. Neil suggested that she was giving up the opportunity to make a racial micro-negotiation. He restated the question: do you take the job writing jokes for a Korean American when (a) you’re not Korean American and (b) a majority of the writers are white? The student attempted to say she would be powerless because institutional pressures would foreclose her from having any real power to change the negative charge of the racial stereotypes to which she objected. Characterizing her response as abstract, Neil pushed for a real answer. The student had a choice—the job was offered, would she take it or not? Another student suggested that a Chinese American might at least give it a try.

At that point, Neil said that “giving it a try” was also a decision to opt
for the position that the category Asian American had a coherence in this context. This position reflected the underlying assumption that a Chinese American scriptwriter might have greater access to the experiences of a Korean American than a white scriptwriter. On the downside, there was the risk that this hypothetical writer would be co-opted and become complicit in perpetuation of stereotypes she found onerous; yet if she didn’t take the risk, it might happen anyway. On the upside, if she took the job, there was the possibility of creating some room to maneuver, to talk with Korean American friends, perhaps to lobby for hiring a Korean American writer, and so on.

Through this discussion, Neil had simultaneously managed to problematize and invoke the paradox of Asian American-ness in the class. By spotlighting the question of agency, Neil created a discussion I was able to refer to again and again later in the semester as we parsed cases on exclusion, immigration, internment and reparations. I would ask, what could the people in these cases have done otherwise? What didn’t they do? What was the significance in a case like *Yick Wo v. Hopkins*\(^6\) of a stigmatized and marginalized Chinese community being able to raise enough money to have the leading San Francisco law firm of the day carry their argument successfully to the U.S. Supreme Court? What did it mean that Fred Korematsu had plastic surgery on his eyelids and nose and posed as a Chicano so he could stay with his then girlfriend, whose family turned him in to the authorities? Neil also helped bring home the point to my students that, in many significant ways, their (racial, ethnic, cultural, gender and other) identities were made (in oftentimes hotly contested racial micro- and macro-negotiations), not found.

D. CONCLUSION

Neil Gotanda’s work has played an important part in my becoming an Asian American, directly through his scholarship and by allowing me to use his teaching materials. In another less direct way, Neil’s work also provided a link between some of the ideas and methodologies I was familiar with from my immersion in several strands of CLS work and the new work which has been going on in the burgeoning area of Asian American legal scholarship. By drawing attention to the need to speak carefully and self-consciously (in a non-perjorative way) when using concepts like race, ethnicity, culture, so as to make the multiple levels these dynamic concepts operate on apparent is a task which Neil has done a great deal to advance, and which benefits Asian American legal scholarship.

\(^6\) 118 U.S. 356 (1886).