Latino/as In The Mix: Applying Gotanda’s Models of Racial Classification and Racial Stratification

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The author acknowledges the pioneering effect Professor Neil Gotanda’s work has had on the discussion of racial discourse to include the racial oppression of Asian/Pacific Islander Americans. According to the author, Professor Gotanda’s analytical model to examine the social practice of race contains three elements. Moreover, Professor Gotanda’s model is applicable to all minority groups who may not fit the traditional black-white paradigm, such as Latino/as. However, the author argues that Professor Gotanda’s model may overemphasize the application of those three characteristics. The author argues that the construction of racial categories for African Americans and national origin-based groups of color, particularly Asian/Pacific Islander Americans, are based on the presumption of foreignness and the incapacity to assimilate. The author concludes that any analysis of racial classifications include an assessment of the intersection between race and foreignness.

INTRODUCTION

Neil Gotanda’s earliest work focusing on immigration law and other cases concerning the status of Asian/Pacific Islander Americans has been instrumental in the development of critical race theory. He has forced open the doors of racial discourse to include the unique effect of racial oppression on Asian/Pacific Islander Americans, broadening the analysis of racial oppression to focus on the group whom he identifies as Other Non-Whites and to whom I refer as racially identified national origin groups or national origin-based groups of color. More recently, he has used the in-
sights developed from his research on the distinct attributes of the racial category assigned to Asian/Pacific Islander Americans to discuss racial hierarchy and the intersection of different groups of color and the white majority.\(^3\)

Professor Gotanda’s analysis of the critical forces that shape racial discourse has focused on the construction of an Asian/Pacific Islander American racial category which contains some different attributes than the Black and White racial categories.\(^4\) His paradigm is applicable to other Non-Whites who do not fit neatly within the formalistic Black-White, bipolar framework that dominates discussions of race in the United States. The emerging critical Latino/a and Asian/Pacific Islander American scholarship jettisons this bi-polar framework in favor of a more textured analysis of the racial classification of national origin-based groups of color and includes elements of Professor Gotanda’s analysis.\(^5\) Indeed, Professor Gotanda’s work provides the formative construct for these new approaches to critical race theory.

Professor Gotanda has asked critical race scholars and others to question the vitality of the two category Black-White framework used for almost all analyses of the U.S. racial scheme.\(^6\) As he has noted, “almost all general discussions of race in legal literature, even those couched in terms of ‘minorities’ or ‘ethnicity,’ have focused upon African American and White bi-polar racial relations.”\(^7\) Professor Gotanda’s work assesses the intersection of racial classification and a “foreignness” tied to a particular national origin, as well as the emergence of a tiered race classification construct that situates all Non-Whites oppositionally. These relatively undiscussed elements of the U.S. caste system of white supremacy\(^8\) are instructive in analyzing all groups of color in the United States, including


7. Id.

8. I use the term U.S. racial caste system or caste system to refer to a society dominated by a bi-polar conception of race that establishes a hierarchical spectrum anchored at one end by the African race and at the other end by the Caucasian race.
both national origin-based groups of color and African Americans, and are critical to an understanding of race relations today.

Professor Gotanda's work regarding national origin-based groups of color points out two particular phenomena: (1) the link of race with foreignness for distinct national origin groups which represents a relatively unexplored dimension of racial oppression; and (2) the development of a system of racial stratification in which different communities of color are compared without reference to systemic discrimination and the importance of race in current social problems is diminished.\(^9\)

Professor Gotanda's analysis of racial stratification which results in comparisons of communities of color in isolation from any examination of the role of white supremacy is a critical element of today's racial politics. The relationship among communities of color is reported to be more strained because of economic competition and increasingly scarce resources. This ideology conveniently directs the focus away from the role of white supremacy in continuing racial oppression.

Professor Gotanda's work is so important because he analyzes current and legal events from this perspective. Moreover, he calls on communities of color to acknowledge the impact, both internally and externally, of racial hierarchy in the United States. In his analysis of tiered racial categories within the United States, Professor Gotanda also highlights the unique racial construct that applies to national origin-based groups of color, particularly Asian/Pacific Islander Americans. His research chronicling the development of a racial category for Asian/Pacific Islander Americans, which he establishes as inextricably linked to "foreignness" based on a presumed relationship with another nation, is instructive for other communities of color that are identified as distinct national origin groups such as Latino/as, as well as communities of color viewed as more domestic, i.e. African Americans.

These facets of the U.S. racial oppression racial hierarchy or stratification as Professor Gotanda refers to this, and the intersection of foreignness and racial categories are integral to any comprehensive understanding of race in the United States today. Both of these themes are discussed below as these relate to racially identified national origin groups, in particular Latino/as and as these relate to their more domestic counterparts, African Americans.

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9. Professor Gotanda further points to the salience of racial stratification as a racial ideology which compares the relative economic and social "successes" of Blacks, Latinos and Asians and permits the conclusion that race is no longer a pivotal issue in social problems such as the continuing economic disparity between Whites and Blacks. This ideological use of racial stratification is particularly deceptive because, as Professor Gotanda points out, the underlying assumption of anti-discrimination legislation is that many social problems do have a racial component. Gotanda, Rights, supra note 3, at 1091.
I.
FOREIGNNESS AND RACIAL CATEGORIES

A. The Social Practice of Race

Professor Gotanda's model for the analysis of racial categories examines "the ideology of the social practice of race" in order to compare African-Americans to Asian/Pacific Islander Americans in the United States. He reviews three factors that define the racial categorization of people of color, and he concludes that the racialization of Asian/Pacific Islander Americans in the United States is substantially parallel to the racialization of African-Americans. However, for racially identified national origin groups, there is an additional element of "non-Americanness" foreignness that does not exist within the African American racial category. Professor Gotanda's recent work assesses racial categories as these support relations of subordination.

In examining the social practice of race in the United States, Professor Gotanda notes that there are three ideological characteristics underlying the African American racial category: (1) a purely domestic view of race without consideration of international influences; (2) the erasure of prior social identity in terms of tribe, nation and language groups; and (3) the presumption of and identification of biological race traits.

The comparison of the means for the racial classification of different communities of color is essential to a complete understanding of racial hierarchy in the United States. Professor Gotanda's work provides a useful model for situating all groups of color within this racial hierarchy and identifying forms of economic and social subordination.

Professor Gotanda's model contains one flaw. His model may overemphasize the difference in the application of the three characteristics discussed below. Professor Gotanda finds that the classification of African Americans has not been based on the twin factors of foreignness and the incapability of assimilating into U.S. society. The construction of racial categories for all communities of color in the United States, including African Americans and national origin-based groups of color, are based on the presumption of foreignness and the incapacity to assimilate. African Americans and national origin-based groups of color are identified as outsiders in this country because of their presumed foreignness and incapacity to assimilate.

11. Id. at 319-21.
12. Id.
1. Purely Domestic Constructs and Distinct National Origins

Professor Gotanda emphasizes the international character of the racial category assigned to Asian/Pacific Islander Americans. As he notes, for Asian/Pacific Islander Americans, the racial category is not purely a domestic construct, as it includes the explicit element of a distinct national identity tied to a foreign country.\(^\text{13}\)

Professor Gotanda asserts that foreign considerations are not a significant part of the Black racial category in the United States because the social categorization of African Americans took place within U.S. borders. As a result, the social identity of African Americans was not tied to a particular ethnic or national origin group, but rather was constructed relationally to a domestic White identity. In comparison, the racial category of Asian-Pacific Islander Americans, according to Professor Gotanda, was specifically related to a particular “foreign” nation. Latino/as similarly may be viewed as possessing a distinct national origin despite the fact that many Latino/as never migrated to the United States but rather became “American” through conquest or colonization.\(^\text{14}\)

Professor Gotanda may overemphasize the domestic nature of the African American racial construct. The “fathers” of this nation considered the “foreign” ties of African Americans when discussing the desire to populate this country with Europeans. Thomas Jefferson favored immigration of Europeans believing that the United States would offer sanctuary for individual liberty.\(^\text{15}\) Benjamin Franklin noted in 1751 that he wished there were more English in America representing the “principle Body of white People” and that America should avail the opportunity to exclude black and “tawney” people, whom he described as those of African and Asian descent.\(^\text{16}\) Benjamin Franklin’s opposition to immigration of non-English settlers was based on his concern that they would “never adopt our language or customs anymore than they can acquire our complexion.”\(^\text{17}\) Benjamin Franklin equated race with an inability to assimilate for any Non-White group.

There is some difference in the application of this characteristic of racial categorization to African Americans and more recent immigrants of

\(^{13}\) Id. at 319 (In the case of Asian/Pacific Islander Americans, Professor Gotanda refers to this as an orientalist construction and he notes that the “conflict between the domesticateing impulse of racialization and the foreign otherness of orientalism goes to the heart of conflicting constructions of Asian Americans and also conflicts of identities among Asian Americans”).

\(^{14}\) See Olivas, supra note 2.

\(^{15}\) Nathan Glazer, The Emergence of an American Ethnic Pattern in Race and Ethnic Conflict, in CONTENDING VIEWS ON PREJUDICE, DISCRIMINATION, AND ETHNOVIOLENCE 331, 334 (Fred L. Pincus and Howard J. Ehrlich eds., 1995).


\(^{17}\) Glazer, supra note 15, at 334.
color to the United States. The link between the presumed inability to assimilate and race for African Americans may seem less obvious to more recent immigrants of color, including Asian/Pacific Islander Americans and Latino/as. This may explain why some Latino/as view African Americans as culturally more like Whites than Latino/as.\textsuperscript{18}

2. \textit{Erasure of Prior Social Identity}

Professor Gotanda points out that historically, the racial category for African Americans has superseded claims of culture, ethnicity and nationality.\textsuperscript{19} From the perspective of the dominant culture, this erasure of prior social identity has occurred for African Americans, although Africans brought to this country saw themselves as members of various African tribes.\textsuperscript{20}

The erasure of prior social identities such as tribe, nation, language groups or other ethnic identification from the perspective of Whites similarly has occurred in the ascription of a racial category to Asian/Pacific Islander Americans. As a result, the dominant culture sees one cohesive group that supersedes separate claims of culture, ethnicity and nationality and collapsing into the category of Asian.\textsuperscript{21}

This characteristic is not easily applied to Latino/as. According to some, Latino/as have not been identified by Whites as a single racial category, and continue to self-identify based on national origin group rather than as a single racial group.\textsuperscript{22} Others assert the existence of a constructed identity for Latino/as that crosses national origin boundaries and can be based on a shared history of oppression in the United States.\textsuperscript{23} The coming majority of Latino/a voters in the United States who are predicted to become the largest racial minority group in the United States in the early part of the twenty-first century\textsuperscript{24} may also hasten a pan-Latino/a identity with a corresponding erasure of prior social identity similar to Asian-Pacific Is-

\textsuperscript{18} PHILIP PERLMUTTER, THE DYNAMICS OF AMERICAN ETHNIC, RELIGIOUS AND RACIAL GROUP LIVES, AN INTERDISCIPLINARY OVERVIEW 42 (1996).
\textsuperscript{19} Gotanda, \textit{Repeal, supra} note 10, at 320.
\textsuperscript{20} PERLMUTTER, \textit{supra} note 18, at 62.
\textsuperscript{21} See Chang, \textit{supra} note 5, at 1258-65 (discussing how the \textit{model minority myth} of Asian/Pacific Islander Americans in the United States has de-emphasized cultural differences among different national origin groups from Asia).
\textsuperscript{22} PERLMUTTER, \textit{supra} note 18, at 42; see also Paul Brest and Miranda Oshige, \textit{Affirmative Action for Whom?}, 47 STAN. L. REV. 855, 888 (1995) (noting that many Latino/as identify themselves as White and with their particular national origin group).
\textsuperscript{24} Rachel F. Moran, Foreword—Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond, 8 LA RAZA L.J. 1 (1995).
lander Americans and African Americans.

3. The Presumption of Biological Race Traits

The third factor assessed by Professor Gotanda in this model is that the racial category is "naturalized" as biological or a self-evident scientific category.\(^{25}\) As he notes, the presumed biological differences among races was the basis of modern anthropology which was used as a science to legitimize white supremacy.\(^{26}\) This presumption that certain traits are genetic and tied to race remains part of the social lexicon despite contrary scientific evidence.\(^{27}\)

This presumption of biological race traits exists for Asian/Pacific Islander Americans as well as Latino/as. Professor Gotanda points out that the traits assigned to the Asian category are foreignness and unassimilability.\(^{28}\) These traits may be applied more broadly than Professor Gotanda asserts to all groups of color in the United States, including national origin-based groups of color and African Americans. Racially identified national origin groups, in particular Asian/Pacific Islander Americans, have been judicially determined to be "unassimilable" in the past.\(^{29}\)

Biological race traits have been assigned to Latino/as who often are perceived by the White majority as a racial group.\(^{30}\) Professor Luis Angel Toro has described the many ways in which Mexican-Americans have been racialized as "alien to the mainstream white society whose members viewed themselves as the bearers of a superior European civilization in America."\(^{31}\) This history of the external racial identification is evident from such practices as the lynching of Mexicans from the 1880s through

\(^{25}\) Gotanda, Repeal, supra note 10, at 320.

\(^{26}\) Id. at 320-21.

\(^{27}\) For a discussion of the scientific illegitimacy of nineteenth century notions about the biology of race see Ian Haney Lopez, The Social Construction of Race: Some Observations on Illusion, Fabrication and Choice, 29 HARV. C.R.-C.L. L. REV. 1, 27-37 (1994) (discussing the concept of the social construction of race noting that all races are constructed relationally which would support the formation of hierarchy of race).

\(^{28}\) Gotanda, Repeal, supra note 10, at 321.

\(^{29}\) Gotanda, Rights, supra note 3, at 1096. See also United States v. Korematsu, 323 U.S. 214 (1944) (upholding U.S. government policy using concentration camps for Japanese-Americans during World War II); United States v. Wong Kim Ark, 169 U.S. 649 (1898) (deciding that children born within U.S. territory were U.S. citizens even if their parents were aliens ineligible for citizenship), J. Harlan and Fuller dissenting ("Chinese laborers, of a distinct race and religion,... apparently incapable of assimilating with our people, might endanger good order, and be injurious to the public interests... 169 U.S. at 731 (quoting Fong Yue Ting v. United States, 149 U.S. 698, 717 (1893))).

\(^{30}\) See Clara E. Rodriguez, Puerto Ricans: The Rainbow People in Rethinking Today's Minorities, in RETHINKING TODAY'S MINORITIES 87, 107 (Vincent N. Parrillo ed., 1991) (noting that the definition of a person as Latino connotes for some a subtle but often undefined and ambiguous racial difference).

the 1930s, the use of the term "greaser" as a racial epithet, and U.S. government publications warning of the inferiority of Latin Americans, ninety percent of whom were of Indian blood. More recently, "illegal aliens" have been demonized, as demonstrated by the past two presidential campaigns. This racialized debate about illegal immigration clearly has spilled into the debate about legal immigration.

Latino/as in the United States also have been viewed as foreign and unassimilable. The racial category for Latino/as includes a distinct, foreign element tied to a perceived national origin although Latino/as from Puerto Rico and the former Mexican territories have lived in the United States for generations. The erasure of tribal, national or language identity, however, has not occurred within the Latino/a community, although Latino/as may be increasingly viewed by the majority as one single group.

African Americans have understood their own "foreignness" in this country, despite the more distant individual connection to other nations. This recognition, which is shared by national origin-based groups of color, is not sufficiently emphasized by Professor Gotanda. The foreignness of African Americans has been chronicled by Ralph Ellison's recognition of the invisibility of African American migrants from the south to the north and W.E.B. Du Bois' reference to the "twoness" that African Americans feel as an American and as a person of African descent. This foreignness is tied to a distinct national origin—the nations of Africa.

The attribute of being unassimilable also has been applied to African Americans who were never incorporated into the various theories of assimilation including both the "melting pot" and the cultural pluralist metaphor of the "salad bowl." The earliest proponent of the assimilation of European immigrants through intermarriage and ultimately a melding of what were perceived as the "races" of Europe made no reference to the assimilation of Non-Whites. Similarly, proponents of cultural pluralism,
which does not require the extinction of ethnic and racial cultures in a
democratic society, did not include any groups of color. As noted by
Justice Marshall in Regents of the University of California v. Bakke, "[t]he
dream of America as the great melting pot has not been realized for the
Negro; because of his skin color, he never even made it into the pot." 40

The perception that a particular group of color is unable to assimilate
into this country is an essential aspect of the racial hierarchy in which the
racial classification of different communities of color occurs. All groups
of color, including both national origin-based groups and African Ameri-
cans, are assumed unable to assimilate into U.S. society to a greater or
lesser degree. 41

Thus, Professor Gotanda's model applies to all groups of color in a
more parallel manner than is recognized in his work. However, there are
distinctions in the application of the characteristics of racial classification
to various groups of color. As a result, the presumed inability to assimilate
based on the foreignness of Asian/Pacific Islander Americans and La-
tino/as may seem more apparent than it does for African Americans. The
perceived inability to assimilate applies to all groups of color within the
U.S. racial hierarchy and this characteristic must be part of any analysis of
racial classification in the United States.

B. Foreignness and Immigration Law

The judicial determination that a particular national origin-based ra-
cial group is unassimilable and foreign because of presumed biological
race traits is the defining feature of the legal treatment and identification of
Asian/Pacific Islander Americans and other racially identified national
origin groups in the United States. 42 Immigration law has been instrumen-
tal in establishing the markers of foreignness for distinct national origin
groups of color through the plenary power doctrine and other racially tar-
geted immigration laws and policies made constitutionally permissible un-
der this doctrine and the naturalization laws. The naturalization laws ini-
tially established the foreignness of African Americans, Native Americans
and all Non-White persons until after the Civil War and an amendment of
the laws to specifically include African Americans. The equation of ra-

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39. Id. at 8.
   concurring).
41. See Nathan Glazer, Is Assimilation Dead?, 530 ANNALS AM. ACAD. POL. & SOC. SCI. 122,
   135 (Nov. 1993) (concluding that assimilation has not occurred for African Americans, but that it has
   been available to Latino/as and Asian/Pacific Islanders based on their choice, depending upon the de-
   gree to which these latter two groups are marked by race).
42. See, infra pp. 49-53 discussing naturalization cases and criterium of free white person status.
cially identified national origin groups with an inability to assimilate into U.S. society was ultimately explicitly recognized by the Supreme Court in a naturalization case.43

1. The Plenary Power Doctrine

The plenary power doctrine accords both Congress and the Executive Branch virtual absolute authority regarding the admission and removal of noncitizens from the United States. The application of this doctrine has resulted in egregious abuses of human and civil rights under the doctrine of territorial sovereignty.44 Noncitizens are at the mercy of Congress in terms of their continued eligibility for immigrant status and the conditions for maintaining that status.45

Numerous immigration laws were formulated based on race and national origin during the nineteenth century, many of which were directed at Asian/Pacific Islander Americans and constitutionally permissible under the plenary power doctrine.46 The rationale for these immigration limitations was based on the perceived unwillingness of Chinese immigrants to assimilate. One prominent example is the Chinese Exclusion Act, enacted in 1882, which excluded all Chinese laborers for ten years, severely limiting Chinese immigration, although it permitted entry of teachers, students and merchants through a small quota.47

Latino/as have been subjected to similar treatment under the immigration laws. Programs were developed to deport Mexicans, including U.S. citizens of Mexican descent, as part of an immigration policy protecting U.S. labor. Mexicans, including Mexican-American citizens, because of the proximity of their home country, were summarily deported in the 1930s and 1950s. In the 1930s, following the stock market crash of 1929, xenophobic urges were exacerbated by the popular belief that undocumented Mexican workers were responsible for severe unemployment in high paying jobs.48 This popular sentiment resulted in the forced depara-

44. See Michael Scaperlanda, Polishing the Tarnished Golden Door, 1993 Wis. L. REV. 965 (discussing why the plenary power doctrine is based on an out-moded concept of territorial sovereignty and is a remnant from nineteenth century views of state sovereignty).
45. See, e.g., Harisiades v. Shaughnessy, 342 U.S. 580 (1952) (Congress had the power to authorize the deportation of a legally resident alien because of his membership in the Communist party).
46. U.S. immigration policy was often directed at the exclusion of Chinese immigrants during the nineteenth century. Gotanda, Repeal, supra note 10, at 314; see also BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY 1850 - 1990 (1993).
47. The Chinese Exclusion Act also effectively denied laborers the right to have any spouses join them in the United States because spouses were also defined as laborers, despite a decision by the Supreme Court in Chew Heong v. United States, 112 U.S. 536, 589 (1884), that a prior U.S.-China treaty required readmission of laborers in the U.S. prior to 1880. See also United States v. Jung Ah Lung, 124 U.S. 621, 633-34 (1888); Chae Chan Ping v. United States, 130 U.S. 581, 595 (1889) (The Chinese Exclusion Case).
48. Gerald P. Lopez, Undocumented Mexican Migration: In Search of a Just Immigration Law
tion and repatriation of thousands of Mexican aliens; moreover, a substantial proportion of the Mexican-born population in the United States left because of deliberate efforts to exclude them rather than because of the depression job market.49

2. The Naturalization Laws

The naturalization laws similarly established that Non-White national origin-based groups of color and other groups of color (African Americans and Native Americans) were incapable of assimilating. The 1790 Naturalization Act limited naturalization to "free white persons," excluding persons of African and Native American descent.50 It cemented the distinction between Whites and Non-Whites and provided a backdrop for judicial decisions establishing a racial hierarchy among groups of color. For example, amendments to the Nationality Act in 1870 extended the right to naturalize to persons of African ancestry, but deliberately denied other non-Whites, specifically the Chinese, this right.51

The continued racial restrictions in the naturalization laws placed on all racially identified national origin groups other than persons of African descent provided the means for the initial construction of the racial categories for all racially identified national origin-based groups and other groups of color.

The Supreme Court and lower federal courts developed criteria for determining which noncitizens were "free white persons" to apply the naturalization laws that equated a Non-White racial classification with an inability to assimilate.52 The inconsistency of these opinions reveals some of the complexity of racial categorization in the United States, and offers insight about the intersection of race and assimilation.

The Supreme Court and the lower federal courts interpreted the "free white person" criterium to include only those persons who were "white" and therefore were viewed as capable of assimilating into U.S. society based on their perceived commitment to Christianity and an ability to adhere to the U.S. republican form of government.53 Initial interpretations of

49. Id. at 632-33.
50. In 1790 the first naturalization act provided that "any alien being a free white person... shall be considered as a citizen of the United States..." 1 Stat. 103, c. 3. See, e.g., Elk v. Wilkins, 112 U.S. 94 (1884) (holding that a Native American was not a citizen of the United States).
51. See, e.g., In re Ah Yup, 1 Fed. Cas. 223 (D.Cal. 1878) (excluding a native of China from citizenship because he was of the "Mongolian race"). This was the first Congressional step toward excluding Chinese and the first national origin limitation aside from slavery.
52. Note also that the Court's decision in United States v. Wong Kim Ark, 169 U.S. 649, 702-3 (1898), interpreted the 14th Amendment citizenship clause to include all persons born in the United States, specifically persons born in the United States whose parents were lawful permanent residents ineligible for citizenship because of race.
53. IAN HANEY LOPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 23 (1996) (describing the naturalization cases as constructing a white racial identity).
the "free white person" requirement used a narrow statutory construction of the plain language. They were based on the "scientific" racial category of Caucasian which excluded mixed race persons and Asian/Pacific Islander Americans, including Asian Indians. Subsequently, when the interpretation relying upon the scientific classification of Caucasian proved to be "too" inclusive, the federal courts turned to the intent of the legislature and common knowledge as tools for analysis.

The federal government proposed a very narrow interpretation of the "free white person" requirement in some cases. The federal government wanted to confine the free white persons eligible to naturalize, which represented the category of people able to assimilate, to include the original European settlers in the United States when the naturalization law was drafted in 1790. The federal courts, however, refused to adopt this narrow construction of the term "free white person."

The Supreme Court also rejected an interpretation of the race-specific naturalization requirement that focused on the intention of the framers of the 1790 Nationality Act in Ozawa v. United States. In this case, the naturalization applicant who was Japanese argued that the intent of the legislature was to exclude African Americans from naturalization. The Supreme Court did not adopt this interpretation, and it decided that color alone could not be determinative, because some Caucasians might be darker than lighter skinned persons of other races.

54. See In re Ah Yup, 1 Fed. Case at 224 (1878) (the first case to consider whether a Chinese person was eligible to naturalize relied upon the ordinary meaning of the word "white" to include the "well settled meaning in common popular speech" as ordinarily used everywhere in the United States: meaning a person of the Caucasian race in popular language, literature and even in scientific parlance at the time); In re Camille, 6 F. 256 (Circuit Court, D. Oregon, 1880) (applicant's mother was a Native American woman from British Columbia); In re Saito, 62 F. 126 (Circuit Court, D. Mass., 1894) (Japanese applicant for naturalization); In re Kanaka Nian, 21 Pac. 993 (Hawaiian applicant for naturalization).

55. In re Balsara, 180 F. 694, 695-96 (2d Cir. 1910) (Court noted that the "scientific" category for the Caucasian race would include Afghans, Hindus, Arabs and Berbers as part of the Aryan race, although these "races" were not represented in the U.S. upon the passage of the first naturalization law. The court adopted a plain meaning interpretation of the language, noting that Congress could have been more specific in its naturalization criteria if it wanted to create such a limit, and therefore approved the citizenship application for a member of the Parsees race.)

56. In In re Ellis, 179 F. 1002, 1003 (D. Oregon 1910), a Syrian who was a Turkish subject applied for citizenship. The federal government argued that the term "free white person" was intended to include only those people of the white race who, at the time of the formation of the government, lived in Europe and were inured to European governmental institutions. Only these individuals from tradition, teaching, and environment, would be predisposed toward our form of government, and thus readily could assimilate with the people of the United States.

57. Id. at 1004.


59. Id.

60. Id. at 197 ("The test afforded by the mere color of the skin of each individual is impracticable as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would re-
concluded that the reasoning in an “unbroken line” of cases was that the term “white” referred to the scientific term of Caucasian and delineated a “zone of whiteness” a concept that required a case-by-case determination. 61

The Supreme Court found that Mr. Ozawa, the naturalization applicant, clearly was not Caucasian and therefore “belong[ed] entirely outside the zone [of whiteness] on the negative side.”62 The Supreme Court attempted to deflect the obvious conclusion that its decision was a race-based determination and noted that the culture and enlightenment of the Japanese people was not at issue, and that neither its decision nor the naturalization laws implied any suggestion of individual unworthiness or racial inferiority.63

The next year, in United States v. Bhagat Singh Thind,64 the Supreme Court confronted that borderline between “white persons” and others ineligible to naturalize, and refused to rely on the scientific classification of Caucasian which would have expanded the group of persons eligible to naturalize.65 The Court noted that “Caucasian is a conventional word of much flexibility,” and it is not identical to “white person.”66

In Thind, the Supreme Court directly equated eligibility to naturalize as a white person with the ability to assimilate into United States society. The Court found that Hindus, while scientifically classified as Caucasian, were morphologically distinguishable from other groups in the United States recognized as “white.” In comparison, the Court noted that other groups commonly recognized as white, such as “the children of English, French, German, Italian, Scandinavian, and other European parentage, quickly merge into the mass of our population and lose the distinctive

result in a confused overlapping of races and a gradual merging of one into the other without any practical line of separation. Beginning with the decision of Circuit Judge Sawyer in In re Ah Yup, 5 Savy. 155 (1878), the federal and state courts, in an almost unbroken line have held that the words ‘white person’ were meant to indicate only a persons of what is popularly known as the Caucasian race. (citations omitted). With the conclusion reached in these several decisions we see no reason to differ.”).

61. Id. at 198; see also Yamashita v. Hinckle, 260 U.S. 199, 200 (1922).
62. 260 U.S. at 198.
63. Id.
65. The lower courts were split on the question of whether a Hindu person, who ethnologists at the time classified as a Caucasian, was eligible to naturalize. In re Sadar Bhagwab Singh, 246 F. 496 (E.D. Pa. 1917) (the court noted that Congress intended to use the term white as “the nearest approach to definiteness of expression” but which did not imply either: a color test; a geographic test; or a scientific/ethnological test”) Id. at 498. One federal court found that the Caucasian designation could not be synonymous with white since a Martian might be eligible for citizenship but not Caucasian. In re Akhay Kumar Mozumdar, 207 F. 115 (E.D. Wa. 1913); In re Mohan Singh, 257 F. 209 (S.D. Ca. 1919) (finding a Hindu Asian Indian eligible to naturalize relying on use of the term “white” by modern ethnologists as interchangeable with the word Caucasian, and that a preponderance of views included Hindus as Caucasian because the court found that the applicant was of a group from India that was the least mixed race of all others).
hallmarks of their European origin.\(^6\)

The application of the racial restriction in the naturalization law to Latino/as, in particular a Mexican, illustrates the fluid racial classification of Latino/as.\(^5\) In re Rodríguez, decided in 1897, held that Mr. Rodríguez was a "free white person" within the meaning of the naturalization law, in contrast to other mixed race cases where applicants for naturalization were found to be ineligible to naturalize.\(^6\) Counsel for Rodríguez argued that Aztec Indians were capable of assimilating into U.S. society, and that they were more similar to Africans in the United States who had been deemed eligible for citizenship.\(^7\) Rodríguez's counsel argued that the spirit of the naturalization laws must be followed, rather than the "hair splitting, technical and meaningless consideration of who are meant to be white people."\(^8\) The government argued that Mr. Rodríguez was not white based on the ordinary sense of this word, and that Native American Indians had never been considered to be white persons. Mr. Rodríguez had identified himself as pure blood Mexican.\(^9\)

The judicial determination that a Mexican could assimilate into U.S. society despite his "pure" Amerindian blood and the specific design of the

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\(^6\) 261 U.S. at 215. See also U.S. v. Cartozian, 6 F.2d 919 (D. Oregon 1925) (court traced the lineage of Armenian people and found that Armenians are of European origin, even though the Armenian province is within the confines of the Turkish province which had been classified as Asiatic at the time. The court was persuaded of the European origin of Armenians because of the assimilation and intermarriage of Armenians with Europeans; evidence of Christian religion espoused since the fourth century, and intermarriage with the Caucasians of Russia for many generations lead the court to "confidently" affirm that the Armenians are white persons and moreover that they readily amalgamate with the European and white races.)


\(^8\) In re Rodríguez, 81 F. 337 (W.D. Tex. 1897).

\(^9\) Id. The arguments presented included: (1) the Aztecs possessed an ability to advance modern Christian civilization along the lines of its best traditions, since liberty and free government in Mexico were forwarded by Hidalgo and Inanez, both of pure Indian or Aztec stock; (2) Mexico’s current ruler was the most enlightened, progressive and able ruler in whose veins runs more Aztec/Indian blood than Spanish or Caucasian; (3) equally true that North American Indians like Aztec or native races of Mexico have the ability and aptitude to assimilate the ideas in government, morals, progress, political economy, social and domestic regulations and above all our religious codes. And, that since Elk v. Wilkins, 112 U.S. 94 (1884) recognized that a Native American can become a citizen either through a treaty or abandonment of his tribal relations, thereby becoming subject to the jurisdiction of the United States, then there is no justification to distinguish between Native Americans in the U.S. and someone born in Mexico, South America or Canada.

\(^7\) 81 F. at 342.

\(^9\) Amici briefs argued that Mr. Rodríguez was not a white person since only Spaniard, Caucasian Mexicans were within this classification. The district court noted that Mr. Rodríguez did appear to be Indian, but an amici brief pointed out that the 1876 American Encyclopedia classified the population of Mexico: about 6 million Indians with unmixed blood in 35 tribes (nearly one-half in nomadic, savage tribes in the northern mountain region); 5 million whites or creoles chiefly descended from the early Spanish colonists; 25,000 Africans or hybrids, possessing some negro blood, whether mixed with European or Indian; and the Mestizos, or half breeds, derived from union of whites and Indian. Id. at 346-47.
naturalization laws to exclude African Americans and Native Americans may not appear to further the theory that racially identified national origin groups who are not Black or White generally are viewed as foreign and unassimilable. However, the decision in In re Rodriguez does not indicate that Latinos are viewed as White but rather may be viewed as an example of how racial categories are constructed through the political process in the interests of the white majority.73 The Rodriguez court was faced with the earlier U.S. commitment to the Mexican government in a treaty negotiating the territorial expansion of the United States. The United States had committed by treaty to providing the option of U.S. citizenship or the maintenance of Mexican citizenship to those Mexican nationals living in the newly acquired territories.74 It was in the interest of the United States and its foreign relations with Mexico to apply to individuals the principles contained in both the Texas Constitution and U.S.-Mexico treaty, which had conferred rights and privileges of United States citizenship upon Mexicans by treaty and various collective acts of naturalization.75 The district court, therefore, chose to adopt an interpretation compatible with the "spirit and intent of the law" regardless of Mr. Rodriguez' ethnological status, and permitted him to naturalize.

Immigration law and policy may be viewed as directly establishing the foreign or "outsider" status of African Americans, Native Americans and Asian/Pacific Islander Americans. This status as outsider is based on a racial classification and corresponding biological trait of an incapacity to assimilate and hence foreignness. Again, the fluid racial classification of Latino/as situates this group differently from other groups of color and creates ambiguity regarding the racial classification of Latino/as.

C. Foreignness and Citizenship in the United States

As Professor Gotanda has illuminated in his works, the role of "foreignness" exceeds the citizen-noncitizen dichotomy and has significant legal implications. Professor Gotanda has written about the existing dualism for national origin-based groups of color. Under this structure, if an individual is identified as a racial minority, there is one standard of review, but if the individual is identified as a "foreigner," then there is a much

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73. George A. Martinez, Mexican-Americans and Whiteness, ___ HARV. LAT. L. REV. (forthcoming 1996) (discussing how categorization as "white" has not resulted in the corresponding privilege associated with whiteness to Mexicans).
74. The Treaty of Guadalupe-Hidalgo of 1848 by which Mexico ceded the territory of Texas to the United States also provided for the incorporation of thousands of Mexicans as U.S. citizens, regardless of color. See Rodriguez, 81 F. at 350-51.
75. The Texas Constitution stated that all persons including Africans, descendants of Africans and Indians residing in Texas on March 2, 1836 (day of declaration of independence) were citizens of Texas, making Mexicans who resided in Texas citizens of that state. Congressional resolutions passed on March 1, 1845 and December 29, 1845 made all such citizens incorporated into the citizenship of the United States. 81 F. at 350.
lower level of constitutional protection, if any at all, under the plenary power doctrine. This presumption of foreignness that exists for national origin-based groups of color obscures the citizenship status of individuals and renders the traditional protection of citizenship incomplete. This fractured citizenship protection also has been experienced by both Asian/Pacific Islander Americans and Latino/as.

1. The Presumption of Foreignness Against National Origin-Based Groups of Color.

In the United States, an individual is presumptively a citizen if he or she is racially identified as either African American or White. The citizenship presumption is not present for Asian Americans, Latinos, and other racially identified national origin groups. Professor Gotanda illustrates the non-citizenship presumption which renders individuals "foreign." As he points out, the non-citizenship presumption arises in "conversational 'racial first encounters' between Other non-Whites and White or Black Americans in the 'Where are you from' question (this is not an inquiry about residence in the U.S.). Another is the comment, 'You speak without an accent' intended as a compliment."76

One of the benefits of this citizenship presumption that exists for both African Americans and Whites in the United States may be a limited assimilation available to Black immigrants from the Caribbean, Latin America and Africa in certain situations.78 For example, I am reminded of a personal incident in which my partner and I met a Nigerian Minister who was visiting our church for a few months. When the minister met us, he asked my partner where he was from, to which my partner responded New York. The minister then asked the question again, and my partner was slow to respond as he pondered the question. I immediately knew what the minister was asking since I have answered this question all of my life. I told the minister that my partner was from Guyana; answering the question that he had really been asking.79

The distinctiveness of national origin may be diminishing as the United States becomes a multiracial society. The question most frequently

77. Gotanda, Rights, supra note 3, at 1096.
78. This limited assimilation may allow Black immigrants to fluidly maneuver within African American society in many circumstances. See Constance R. Sutton, Transnational Identities and Cultures: Caribbean Immigrants to the United States, in Immigration and Ethnicity - American Society - "Melting Pot" or "Salad Bowl"? (Michael D'Innocenzo and Josef P. Sirefman eds., 1992).
79. We later had a long conversation about the impulses he experienced to assimilate into the African-American community which included "losing" his West Indian accent and not discussing his country of birth. External forces also have prompted my partner's self-identification. To most people he is seen as simply a Black man which has made him feel less tied to his national origin than his race.
asked of Non-Black, Non-White persons of color may be shifting to “What are you” rather than “Where are you from” which requires some form of racial identification. There appears to be a growing resistance to racial identification among multiracial youth in the United States in order to avoid answering the question “What are you?” In a study of members of urban youth organizations in three U.S. cities, the young people complained that they were constantly faced with the question of “What are you?” at school, in job applications and interviews and during public encounters, which called for their self identification into a category such as African American, Latino/a or Asian/Pacific Islander American which they thought of as irrelevant. These youth identified themselves in relation to their geographic communities and friendship alliances. They viewed themselves as “of color” or “‘ kinda’ all ethnic” rather than as members of a particular racial group.

The “Where are you from” question which searches for a national origin identifier may be a way of asking “What are you” as a means of racial identification for those who are viewed as Non-Black and Non-White. This has been my personal experience as an individual who is perceived as multiracial or biracial because national origin for Latino/as is often an indicator of race. I most often identify myself as Puerto Rican, although I am half Puerto Rican, one-quarter Panamanian and one-quarter Peruvian. Racially, I identify myself as Black when forced to choose between Black and White, but I also refer to myself as multiracial (Black, Amerindian and White).

For some, whose racial classification may not be immediately apparent, their racial first encounters may also include a racial identification inquiry which does not include a presumption of foreignness. This shift in the inquiry from national origin to racial identification, if it occurs broadly, ultimately may diminish the presumption of foreignness that attaches to Non-Black people of color in the United States.

2. The Diminished Protection of Citizenship

Immigration law and policy have been instrumental in constructing a racial identity that is tied to foreignness for Asian Americans and other national origin-based groups of color, as discussed above. This duality of

80. Shirley Brice Heath, *Race, Ethnicity, and the Defiance of Categories in TOWARD A COMMON DESTINY, IMPROVING RACE AND ETHNIC RELATIONS IN AMERICA* 39, 45 (Willis D. Hawley and Anthony W. Jackson eds., 1995) (discussing the results of a survey of urban youth organizations in three major U.S. cities designed to document the language and culture of the organizations that young people in the community judged were effective for them and noting that the participants felt that the categories of Black, White or specific immigrant groups did not apply to them).

81. *Id.*

identity that racially identified national origin groups experience renders citizenship suspect and less protective than for White immigrants, whose citizenship and "Americanness" is presumed. This is not solely a development within immigration law where Congress possesses extraordinary authority under the plenary power doctrine.\(^8\)

The Supreme Court case \textit{United States v. Korematsu} exemplifies the tenuous nature of citizenship for national origin-based groups. In \textit{Korematsu},\(^8\) the Supreme Court upheld the federal government internment and relocation policy, during World War II, of persons of Japanese descent, including U.S. citizens and lawful permanent residents.\(^5\) Professor Gotanda asserts that the concentration camps used for Japanese Americans like Korematsu are clear examples of legally sanctioned and socially constructed markers of foreignness which have occurred in the United States.\(^6\) As he has pointed out, the Supreme Court's decision in \textit{U.S. v. Korematsu} reified a century of racial construction for Asian/Pacific Islander Americans based on their foreignness and unassimilability.\(^7\) It is significant that the only invidious racial classifications that has been upheld by the Supreme Court involved not only a particular racial group, but also a group possessing a distinct national origin.

Clearly the results in \textit{Korematsu} indicate that the element of foreignness as part of a racial identity is maintained regardless of citizenship status, when a group is viewed as unassimilable.\(^8\) The justification for the relocation contained in the Final Report, prepared by the Commanding General, included an apparent lack of assimilation;\(^9\) the geographic loca-

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83. See supra section IB1.
84. 323 U.S. 214 (1944); see also Hirabayashi v. United States, 320 U.S. 81 (1943) (upholding military curfew on persons of Japanese descent in West Coast during early months of World War II).
85. This incident has been described as the "one justly infamous episode in which the Court upheld . . . an overtly racial classification," an example of the nefarious impact of war and racism on cultural health, and a case involving serious moral error. Laurence H. Tribe, \textit{American Constitutional Law} 1452, 1466, §§ 16-6, 16-14 (2d Ed. 1988); Richard Delgado and Jean Stefancic, \textit{Norms and Narratives: Can Judges Avoid Serious Moral Error}, 69 \textit{Tex L. Rev.} 1929 (1991) (noting that these cases include those that are shocking to virtually everyone and which are later condemned). The intersection of race and assimilation is made more vivid when this case is juxtaposed with \textit{Meyer v. Nebraska}, 262 U.S. 390 (1923) in which a state law prohibiting teaching the German language in public or private schools (evidencing a "lack" of assimilation of persons of German national origin) was struck down and the Supreme Court recognized that due process liberty protection must include the liberty to make decisions about raising one's children. In comparison, in \textit{Korematsu} the lack of assimilation justifies stripping citizens of their fundamental rights.
86. Gotanda, Review, supra note 76, at 1190.
87. Id.
88. Id. at 1188, 1190-91.
89. The Final Report states that persons of Japanese descent were "a large unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race, culture, custom and religion" who participate in "emperor worshipping ceremonies" and possess "dual citizenship." Korematsu, 323 U.S. at 237. Justice Murphy's dissenting opinion notes that any lack of assimilation is due largely to American social customs and laws, and that studies demonstrated that persons of Japanese descent
tion of members of this group near strategic points; a possible connection
to minor isolated shellings and bombings of the Pacific Coast area as well
as unidentified radio transmissions and night signaling; and the need for
protective custody for Japanese persons.90

Latino/as have also experienced diminished citizenship protection. 
Latino/as have been identified as foreign rather than as citizens in a variety 
of situations. For example, Mexicans, who had been deemed eligible for
"full participation" in the political community under the naturalization
laws in In re Rodriguez also were subject to second class citizenship status
because as a group they are racially identified.91 The summary deportation
of Mexican Americans in the 1930s and 1950s is an example of the second
class citizen status of this racially identified national origin group.92

Professor Gotanda has used the example of Asian/Pacific Islander
Americans to demonstrate the impact of the foreign-citizen duality. When
Asian/Pacific Islander Americans are characterized as "foreign" in the
dualistic identity imposed on national origin-based groups of color there is
a range of possible inferences: disloyalty, language and accent, dress and
demeanor all of which may be viewed as extensions of foreignness. This
presumption of foreignness is also experienced by Latino/as.93 These in-
ferences derived from foreignness can give rise to government actions
which will be insulated from judicial review under the plenary power doc-
trime and the exception to constitutional protection that exists for nonciti-
zens under this doctrine.94 Also, when Asian/Pacific Islander Americans
are identified as citizens, then racial stratification ideology prevails which,
as Professor Gotanda has pointed out, pits Asian/Pacific Islander Ameri-
cans against other Non-Whites, specifically Blacks.

D. The Role of Foreignness in the Analysis of Race Today in the United
States.

Foreignness continues to be an element of racial discourse in the
United States. This is particularly evident in current immigration policy

were readily susceptible to integration into American society if given the opportunity, that there was
no evidence of a sinister correlation between emperor worshiping activities and disloyalty, and that
dual citizenship is the right of a country under international law, and a doctrine which had not been
followed with regard to American citizens of Japanese descent born in the U.S. after 1925. Id. at nn. 4,
5 and 6.

90. All of which incidents were later found to be falsely reported. See Louis Fisher and Neal
91. See Martinez, supra note 73.
92. See infra n. 49 and accompanying text.
93. See OMB Report on 1986 Immigration Reform and Control Act finding that Latino/as had
been discriminated against as a result of employer sanctions provisions; see also Gotanda, Review,
supra note 76, at 1192 n. 22 (noting Latino/a opposition to the proposed immigration reform that
would impose penalties on employers who hire undocumented workers because of the fear that em-
ployers would assume Non-White job applicants were foreigners and not hire Latino/as).
94. Gotanda, Rights, supra note 3 at 1099.
debates among proponents of severe immigration restrictions. Asian/Pacific Islander Americans and Latino/as have been identified, despite their citizenship status, as the cause of balkanization in this country and the perceived degradation of American culture.

Cultural assimilationists today propose immigration restrictions to restore a White, Christian America. One prominent assimilationist Peter Brimelow has written about the "problem" of the "browning of America" in his book *Alien Nation: Common Sense About America's Immigration Disaster*. He blames the influx of Asian and Latino/a immigrants since immigration reform in 1965 for perceived problems in race relations. In fact, this book has been read as a distinct attack on Latino/a immigration. The perceived biological traits of foreignness and the incapacity to assimilate identified by Gotanda in his model of racial classification are part of the cultural assimilationist position. The cultural assimilationist position adopts the presumption that national origin-based groups of color are incapable of assimilating and that these groups positively threaten the "American" national identity which they view as based on a White, Christian culture.

Professor Gotanda uses the foreignness attributed to national origin-based groups to inject novel perspectives into the dominant racial discourse. His analysis includes the impact of that foreignness on the bi-polar, Black-White paradigm for the analysis of race in the United States. He analyzes the ways in which the myths and stereotypes of Asian/Pacific Islander Americans affect race politics both in terms of the relationship between Asian/Pacific Islander Americans and the majority White population and the relationship between Asian/Pacific Islander Americans and other racial groups.

As Professor Gotanda illustrates, it is only through the in-depth understanding of the complex way in which national origin-based groups of


96. Hing, *Beyond the Rhetoric*, supra note 95, at 874.

97. See Motomura, *supra* note 95, at 1927, 1931 (criticizing Brimelow for his essentialist perspective on race, ethnicity and immigration which is expressed through Brimelow's and others' "fear 'they' will overwhelm 'us,' [which] naively and invidiously ignore[s] those of 'us' who welcome 'them' but also see 'them' as vital to our national self-interest").


100. See Hing, *Beyond the Rhetoric*, supra note 95, at 874.


color are racialized that we can begin to unravel the ideology of race in its current form using the model of racial stratification he proposes. This rigorous, in-depth review performed by Professor Gotanda regarding the "position" of Asian/Pacific Islander Americans within the U.S. racial hierarchy invites scholars looking at the role of racially identified national origin groups such as Latino/as to examine the pattern of racialization and the intersection of communities of color within the U.S. racial caste system.

II.

RACIAL STRATIFICATION AND LIMITS OF MULTICULTURALISM

Another important theme in Neil Gotanda’s work regarding the role of national origin-based groups of color in the U.S. racial caste system concerns the racial hierarchy that has emerged. Professor Gotanda’s continuing commentary about race relations in the U.S. emphasizes the replacement of a bi-polar model with a more complex, tiered, stratified racial relations. Professor Gotanda’s recent work highlights a number of examples of this racial stratification and points out how this racial stratification structures relationships among communities of color and operates to reinforce racial hierarchy through seemingly neutral "multicultural" representations.

Professor Gotanda examines the limits of multicultural discourse and how it may be used to reinforce racial hierarchy and white supremacy. The example he offers identifies the judicial use of cultural stereotypes which reflect “traditional racial usages.” Professor Gotanda’s analysis of Judge Karlin’s sentencing in People v. Soon Ja Du reveals that the judge used the various cultural specific characteristics that reinforce the white majority view of racial categories, but carefully did not use race labels to ensure adherence to “colorblindness.” In the People v. Soon Ja Du, Du Soon Ja, a fifty-one year old Korean immigrant, mother and store owner shot from behind and killed Latasha Harlins, a fifteen year old African American girl in a dispute over a bottle of orange juice which was recorded on a security video camera.

Professor Gotanda characterized the sentencing as the use of multiculturalism as an alternative to race, which resulted in the creation of a tiered,

103. *Id.* at 245-46 (defining racial stratification as more than a simple step-ladder, but rather representing a highly textured across a range of social, economic and cultural privilegions, and noting that stratification for Asian/Pacific Islander Americans has taken place through the elaboration of an older stereotype into a new cultural construction which is the “Model Minority” which has become a biological race trait for Asian/Pacific Islander Americans).
104. *Id.*
105. *Id.* at 239.
108. 5 Cal.App.4th 822.
hierarchical structure between communities of color. Judge Karlin used cultural stereotypes to place the actions of both Latasha Harlins and Du Soon Ja in a context that, according to Professor Gotanda, humanized Du by reproducing the Korean-shopkeeper innocent victim stereotype, and demonized Harlins by portraying her as a criminal and referring to gangs and gang terror.

This use of a multicultural discourse replaces the traditional race model. However, it may still result in the subordination of all people of color. Judge Karlin’s use of multiculturalism resulted in the evaluation of each group, African Americans and Korean Americans, in comparison to each other. This use of multiculturalism further served to create divisions among the groups of color. Professor Gotanda describes this phenomenon as a reconstruction of white privilege whereby the African American minority is monitored by the Korean model minority image, and both are subordinate to the invisible, unmentioned White majority.

Professor Gotanda’s work is so provocative because he invites us to uncover the hidden racial discourse in the multicultural analysis used by Judge Karlin. He further exhorts us to dissect the cultural stereotypes and “recognize the half truths” that are part of these stereotypes. As a result, Professor Gotanda demands that we look closely at the ways in which each community of color has been racially identified and how this identification controls the racially stratified relations in which communities of color are measured and monitored by these stereotypes in relation to one another.

The Du Soon Ja example shows the strength of the stereotypes that may be controlling in a multicultural perspective in law, as well as the unwillingness to depart from a traditional bi-polar analysis. It illustrates the need to identify the manifestations of racial stratification. Professor Gotanda provides a strong model for analyzing the role of other racially identified national origin groups that will lead to a critical assessment of various aspects of the U.S. racial hierarchy.

Professor Gotanda’s analysis is particularly insightful if applied to the role of Latino/as in a stratified society. A preliminary analysis of the role of Latino/as indicates that Latino/as occupy a fluid “position” that shifts between a monitoring function similar to Asian/Pacific Islander Americans

109. Gotanda, Multiculturalism, supra note 102, at 240.
110. Karlin described Du as a victim of circumstances including gang terror who was in the shop on the day of the murder to protect her son from repeated robberies. Harlins referred to as an example of shoplifters who attack shopkeepers after being caught in the act which Karlin associates with gang theft and terror despite the fact that Harlins was not a member of any gang and there was information in the probation report, unmentioned by the Judge, regarding Harlins as a past honor student in junior high school, an active church member, an assistant cheerleader, a member of a drill team and a junior camp counselor at a youth center. Judge Karlin, Gotanda also points out, wrote her sentence from a position of whiteness which is an unidentified, seemingly neutral position. See id. at 241-42.
111. Id. at 240.
112. Id. at 245.
as described by Professor Gotanda, and as an aggregating factor such that Latino/as often are merged with the African American population to represent a frightening mass of Black and Brown faces. This shifting position may limit Latino/a input into the discussion of race issues in the United States because Latino/as are viewed as both Non-White and White in various circumstances. This fluid position further may create distance between Latino/as and other communities of color who similarly are uncertain about the racial classification and/or identification of Latino/as. This shifting racial identification also highlights existing fissures within the Latino/a community among national origin groups and those who identify themselves as "Black" Hispanics and "White" Hispanics. Moreover, this shifting racial identification by the White majority permits the conclusion that there is a significant "difference" in the Latino/a discrimination experience.

CONCLUSION

Professor Gotanda's models for analyzing racial classification and racial stratification offer critical insights into the construction of the racial hierarchy that operates in the United States. It is imperative that the analysis of racial classification include an assessment of the intersection between race and foreignness. The inference that "foreign" groups of color are incapable of assimilating into U.S. society is a pervasive element of racial classification for all Non-Whites including African Americans, Native Americans, Asian/Pacific Islander Americans, Latino/as and other national origin-based groups of color.

The racial stratification model discussed by Professor Gotanda further offers insight into the emergence of new formulations of racial hierarchy in the United States. No longer can any discussion of race and inter-group dynamics be premised exclusively on a bi-polar, Black-White paradigm. The "position" of other groups of color within the racial hierarchy must be examined and understood in order to engage in an emancipatory discourse that confronts the vestiges of white supremacy free of the traditional boundaries of the Black-White paradigm. Professor Gotanda has offered a theoretical framework for this emancipatory discourse, and he has illus-

113. There may be a lack of a clear racial identity for many Latino/as based on Latin American-based structures of racial identity. Latino/as possess a more fluid racial identity that is circumscribed by external factors such as the U.S. Census which forces identification between "Black" Hispanics and "White" Hispanics. See Trucios-Haynes, supra note 68 (noting that the process of identification for many Latino/as in the United States indicates that: "their world was inverted: their racial appearance became more important than their culture," and many Latino/as adopt what is described as an internal cultural identity, for example as a Latino/a or Puerto Rican, and an external racial identity as Black or White (citing Clara E. Rodriguez, Challenging Racial Hegemony: Puerto Ricans in the United States, in RACE 131, 141 (Steven Gregory & Roger Sanjek eds., 1994))).

114. Martinez, supra note 73, at 29 (noting that Latino/as often are constructed as "White" but have not received the benefits traditionally associated with Whiteness).
trated the application of this framework to Asian/Pacific Islander Americans. This paper has attempted to initiate a discussion of how this theoretical framework may apply to Latino/as.