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Rock Climbing with the Gotandas

*Robert S. Chang**

I began writing this introduction twelve years ago. I had organized in the *Asian Law Journal*—now the *Asian American Law Journal*—a symposium engaging Professor Neil Gotanda’s work.¹ I was to write the guest editor’s introduction. I ended up never finishing the piece because I got into a fight with the student editors of the journal over their decision to reject a piece that I had solicited from a historian. He had written this beautiful essay about Neil’s use of history and on Neil’s impact in Asian American studies. The editors kept saying that it was not legal enough. My disagreement with them led me to disengage from the project.

I was so pleased when two editors from *The Journal of Gender, Race & Justice*, after learning about the unpublished essay by the historian, expressed an interest in publishing it.² We thought, though, that the historian’s essay needed some context. As it turns out, Professor Gotanda has a body of work that has never been published;³ other pieces were published in truncated form with substantial and important parts left on the “cutting room floor.” An example of the latter includes the piece for which he is best known, *A Critique of “Our Constitution is Color-Blind,”*⁴ which in its original form included lengthy discussions of Asian Americans and other non-Black groups. It has always been my view that Professor Gotanda was ahead of his time. He was the first legal scholar to argue forcefully for

* Professor of Law and Director, Fred T. Korematsu Center for Law and Equality, Seattle University School of Law. I would like to thank the editors of *The Journal of Gender, Race & Justice* for supporting this project. A version of this was presented on April 2, 2009, when I introduced Neil Gotanda, who received a Founders Award at Critical Race Theory 20 (CRT 20) at the University of Iowa College of Law in Iowa City, Iowa.

1. See *Symposium in Honor of Neil Gotanda*, 4 ASIAN L.J. 1 (1997) (contributions by Alfred C. Yen, Gary Minda, Keith Aoki, Enid Trucious-Haynes, David Benjamin Oppenheimer, Natsu Taylor Saito, and Anthony S. Chen).

2. Courtney Vorwald and Nicholas Benson, editors with *The Journal of Gender, Race & Justice*, approached me at CRT 20 to discuss this possibility, which happily became a reality. See K. Scott Wong, *The Opening of the Law in the Pursuit of Asian American History*, 13 J. GENDER RACE & JUST. 325 (2010).

3. One of his “lost episodes” was published ten years after it was supposed to be published. See Neil Gotanda, *Race, Citizenship, and the Search for Political Community Among “We the People”*: A Review Essay on Citizenship Without Consent, 76 OR. L. REV. 233 (1997). Perhaps one day, his unpublished Harvard LL.M. thesis will see the light of day.

4. Neil Gotanda, *A Critique of “Our Constitution is Color-Blind,”* 44 STAN. L. REV. 1 (1991) [hereinafter Gotanda, *A Critique*].

the importance of talking about race beyond the Black–White paradigm.⁵ But the legal academy, and law review editors, did not always appreciate this perspective.

The *Journal* editors, Gotanda, and I decided that the complete version of Gotanda's "Other Non-Whites" piece⁶ would provide a nice complement to the historian's essay. His review of Peter Irons's *Justice at War* was previously published in the *Columbia Law Review*. The editors of the *Columbia Law Review* had reduced a sixty-six page manuscript to seven journal pages. It is so nice to see, twenty-five years later, the complete version. And I would get the opportunity to complete what I began twelve years ago.

* * *

One weekend twelve years ago, Neil Gotanda called and asked if I wanted to go rock climbing with him and his son, Tetsuji. This call was like several other calls from Neil that I had received over the past couple years. On the earlier occasions, I always managed to find some excuse not to go—I was tired, I needed to write—when the truth of the matter is that I'm a little afraid of heights, along with a more generalized fear of falling (failing?).

This time when Neil asked, no excuse came out. I said, "Sure." He said, "We'll be over at your house around 10 a.m.; I've got extra shoes and a harness that will fit you." Thus began my adventure.

In many ways, my rock climbing adventure was simply a continuation of the adventures that Neil has led me on throughout my career. I first encountered Neil through his writings. He's most well-known for his piece, *A Critique of "Our Constitution is Color-Blind."*⁷ But as I stated earlier, his earlier drafts of this piece included a deeper examination of the complexity of race in the United States with a lengthy discussion of Asian Americans, which the *Stanford Law Review* editors made him take out. His brilliant, short piece, ostensibly a review of Peter Irons's *Justice at War*,⁸ laid the intellectual outline or contours for the later, more sustained critique of the Black–White racial paradigm. His suggestion that we pay attention to the category "Other non-Whites" provided a way to talk about race beyond the Black–White paradigm. His articulation of foreignness attributed to Asian Americans as the primary mode by which U.S. society subordinated them eventually became the mainstay of much of the Asian American jurisprudence that developed in the next decade. His book chapter in the early 1980s on *Asian American Rights and the "Miss Saigon Syndrome,"*⁹

5. Neil Gotanda, "Other Non-Whites" in *American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186 (1985) (reviewing PETER IRONS, *JUSTICE AT WAR* (1983)) [hereinafter Gotanda, "Other Non-Whites"].

6. *Id.*

7. Gotanda, *A Critique*, *supra* note 4.

8. Gotanda, "Other Non-Whites," *supra* note 5.

9. Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome,"* in *ASIAN*

an early look at the culture wars that erupted in the next decade, was a methodological tour de force that combined cultural analysis with law to do interdisciplinary legal scholarship before there was interdisciplinary legal scholarship. He continued to develop this methodology of combining cultural studies with legal analysis to unpack the *Soon Ja Du* case,¹⁰ which involved a Korean American shopkeeper who shot a Black teenage girl in the back in a dispute over a bottle of orange juice.¹¹ The shooting of Latasha Harlins and the shockingly light sentence Du received provided part of the tinder and the powder that ignited in the conflagration known as the L.A. Riots, Unrest, or Rebellion following the acquittal of those four white policemen in the first trial in the beating of Rodney King. Neil's cultural studies reading allowed him to unpack the density of race in a multi-race setting.

He was ahead of his time.

When I think about my career, I realize how much I owe to Neil. I owe a debt of gratitude to so many of the trailblazers in critical race theory. But my debt to Neil is much more personal, much more specific. When I taught at California Western School of Law in the mid 1990s, I used to joke that I held the Neil Gotanda Chair in Asian American Jurisprudence. I felt odd in some ways being at Cal Western because Neil had taught there some years back. I found myself being rewarded for doing the same kind of work that he had been doing—work that got him, essentially, fired.

It's not always good to be ahead of your time.

But Neil was not someone who was going to be stopped. The body of his work shows a constant engagement with new modes of analysis, though always relentlessly interrogating the complexity of race in the United States. So many of us owe him a tremendous personal and intellectual debt.

Back to the summer of 1997. I'm working my way up the face of a large boulder. When I get stuck, Neil suggests places for my hands and feet—he suggests a pathway that might work. As I work my way up, I don't worry about falling because he has me on belay, spotting me. I know that if I fall, he will catch me. I make it eventually to the top, able to get there because of him.

* * *

It was my privilege to introduce my friend and mentor, Neil Gotanda, at CRT 20 to receive a Critical Race Theory Founders Award. It is my privilege to introduce his Article here.

AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY 1087 (Hyung-chan Kim ed., 1992).

10. *People v. Soon Ja Du*, 5 Cal. App. 4th 822 (Cal. Ct. App. 1992).

11. Neil Gotanda, *Multiculturalism and Racial Stratification*, in *MAPPING MULTICULTURALISM* 238 (Avery F. Gordon & Christopher Newfield eds., 1996).

