

# Florida A & M University Law Review

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## Editorial Board

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# FLORIDA A & M UNIVERSITY LAW REVIEW

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## EDITOR'S NOTE

*Ankevia Taylor, Editor-in-Chief*

The theme for Volume 17 of the Florida Agricultural and Mechanical University *Law Review* is “The American Dream Belongs to All of Us.” This theme was inspired by the moving words of Vice-President Kamala Harris during her speech at the Democratic National Convention held on September 5, 2012. This Volume includes a diverse range of traditional and contemporary legal issues in the United States of America affecting minoritized and underrepresented communities.

Thank you to all of the hardworking editors of the 2022-2023 FAMU *Law Review*. Thank you to the brilliant alums of the FAMU *Law Review* that have come before this school year. It is through your guiding light and support that this journal continues to excel. The 2022-2023 FAMU *Law Review* is proud to continue upholding the mission of this journal by providing a forum for the expression of diverse ideas and views of interest to the academic and professional legal community. In the words of the great Aristotle, “We are what we repeatedly do. Excellence, then, is not an act, but a habit.”

# FOREWORD TO THE AMERICAN DREAM<sup>1</sup>

*Areto Imoukhuede, Professor of Law*<sup>2</sup>

“The American Dream Belongs to All of Us” is a title loaded with inclusive possibility in the face of historic contradiction. While we acknowledge that the pursuit of this Dream has inspired exclusion and oppression, we nevertheless hope to broaden access to the Dream and reclaim through it the equality aspirations of the Declaration of Independence –a universal right to “life, liberty, and the pursuit of happiness.”<sup>3</sup>

As a foreword or first word for this fascinating and ambitious 17th volume of the Florida A&M University *Law Review*, let us consider what the American Dream is.

## 1. THE AMERICAN DREAM IS OF “A MORE PERFECT UNION.”

The American Dream can be framed from multiple perspectives: individual achievement and advancement, generational wealth and family progression, and community growth and possibility. Most conceptions of the Dream have at their core a vision of prosperity and limitless possibility. Prosperity in the form of personal, material wealth is a frequent framing of the American Dream. Some would suggest that there is nothing more to the Dream than this simple phrase – get rich. However, that framing leaves out what makes this Dream the dream that has defined a nation.

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1. This *Foreword to the American Dream* is dedicated to my late friend, mentor, and fellow John Mercer Langston Black Male Writing Workshop co-founder, Professor Terry Smith.

2. Areto Imoukhuede, Professor of Law, Florida Agricultural and Mechanical University (“FAMU”) College of Law, J.D., 2002, Georgetown University Law Center; B.A. (Economics), Northwestern University, 1999. Professor Imoukhuede thanks the nation’s first Black woman to chair a Biomedical Engineering Department, Professor Princess I. Imoukhuede for her thoughtful comments and for being a close, living example of the American Dream. He offers a special thanks to Richard Joseph Zygowicz for his insightful comments and suggestions. Professor Imoukhuede thanks Michelle Bilsky and Khadijah Wright for their outstanding research assistance. He further thanks all of his past research assistants and students for their contributions, known and unknown, that have enriched this foreword. Professor Imoukhuede thanks Ankevia Taylor and the entire FAMU Law Review for their dedicated work, patience, and thorough review. Finally, he thanks Bridget and Emmanuel Imoukhuede for their unfailing support.

3. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

What makes the American Dream uniquely “American” is a utopian vision of progression towards a better world. Meliorism, the belief that the world can be made better through human action, is an aspect of this vision. The Preamble to the U.S. Constitution suggests some core components to this view of the American Dream.

“We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”<sup>4</sup>

The American Dream here, is of “a more perfect Union.” This Dream is about equality, liberty, peace, and comfort in the context of prosperity.

## 2. THE AMERICAN DREAM IS ABOUT EQUALITY, NOT EQUAL OPPORTUNITY.

I have previously written about “a pervasive ethos in America that there should be an equal opportunity for all, regardless of race, class, or lineage, to attain whatever amount of wealth, professional prestige, and social status that our hard work and overall merit entitle us.”<sup>5</sup>

This ethos accepts inequality so long as it is justified through meritocracy. Meritocracy refers to a hierarchy based on individual ability demonstrated through achievement. Within this framework, not everyone has an equal right to liberty or freedom. According to an equal opportunity framing, only the *best* people are deserving of the Preamble’s vaunted “domestic Tranquility”<sup>6</sup> – surmised as peace and comfort – and only the most deserving may share equally in the nation’s prosperity. Equality is limited to the point of nearly being erased. Liberty, peace, and comfort in the context of prosperity must be earned.

The American Dream is far grander than the smallness of equal opportunity.

## 3. EQUAL OPPORTUNITY EXCUSES DREAMING A SMALLER DREAM.

Qualifying equality with *opportunity* is the first step in a shift away from the Preamble’s utopian vision for “a more perfect Union” and towards a self-centered, individualized pursuit – to get rich. The collective, national vision of limitless possibility for all to enjoy equality, liberty, peace, and comfort in the context of prosperity, is shifted

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4. U.S. CONST. pmb1.

5. Areto A. Imoukhuede, *The Fifth Freedom: The Constitutional Duty to Provide Public Education*, 22 U. FLA. J.L. & PUB. POL’Y 45, 46 (2011).

6. U.S. CONST. pmb1.

towards a pragmatic, narrow epicurean fantasy that is beneath the American Dream.

Equal opportunity framings idealize adversarial competition to individually earn a seat at the table of prosperity. Narrowing the Dream to opportunity creates an excuse for not realizing the Dream. A worthy framing of the Dream would more appropriately inspire the pursuit of the most inclusive possibility. Instead, equal opportunity framings assuage a collective conscience and blame the victims of injustice for their own oppression.<sup>7</sup>

The American Dream is a collective, utopian vision. It is far more than an individualized, epicurean fantasy. Pragmatism destroys this vision.

#### 4. THE POVERTY PARADOX, PRAGMATISM, AND THE SPECIOUSNESS OF EQUAL OPPORTUNITY

Nobody who dreams the American Dream envisions a life shackled by poverty and degradation. Layering on a justification of merit does not alter the core dream that equality, life and liberty, peace, and comfort should not be contingent upon individual competition. The American Dream is a vision for our shared advancement towards a more perfect union. “A more perfect Union” is contingent upon unity and cooperation, not competition.

Ongoing poverty is a disgusting absurdity within a nation as wealthy as the U.S. It demonstrates the speciousness of equal opportunity framings. Despite the national context of prosperity, those born to or otherwise living in poverty do not enjoy equal access to high-quality public education or other components necessary for advancing their capabilities.<sup>8</sup> Neither peace nor comfort is there’s to enjoy.

Note that we are discussing poverty and inequality in the context of prosperity; the opposite of the core Dream, which is equality, liberty, peace, and comfort in the context of prosperity. An equality framing recognizes that poverty has no place in a land of plenty and inspires us to correct it, while an equal opportunity framing accepts poverty as expected in a world of unequal merit.

The justification that poverty is essential to freedom is tantamount to suggesting that in preparing a metaphorical omelet that is America, we must break a few eggs. If you are one of the broken, the rest of us might feel some discomfort, but the combination of equal opportunity justification and pragmatism assuages guilt. The poverty of some will not be considered an injustice because equal opportunity re-

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7. Jim Wilets & Areto A. Imoukhuede, *A Critique of the Uniquely Adversarial Nature of the U.S. Legal, Economic and Political System and Its Implications for Reinforcing Existing Power Hierarchies*, 20 U. PA. J.L. & SOC. CHANGE 341 (2017).

8. Areto A. Imoukhuede, *Education Rights and the New Due Process*, 47 IND. L. REV. 467, 469–71 (2014).

quires some poverty in a world of unequal talents. In fact, eradicating poverty would upset the natural order of things and make us all poorer. Ultimately, equal opportunity is the ultimate Orwellian framing. Poverty, and any loss of freedom that results from it, becomes essential to freedom itself.

Yet, the argument that who owns and has access to the American Dream should have pragmatic limitations continues to maintain traction. Let us specifically consider liberty within a pragmatic framing.

## 5. PRAGMATISM UNDERMINES THE UTOPIAN VISION

The original founding of the United States legally mandated racial oppression and inequality. Prior to the Civil War and the passage of the Fourteenth Amendment to the U.S. Constitution, Black people, could not legally claim to be American. This bar on citizenship was, of course, linked to the legally sanctioned brutality of American slavery.

Liberty has a straightforward definition for an enslaved person. Also, consider that before the Civil War, much of the U.S. citizenry thought that immediate, universal, Black liberation was not a pragmatic or achievable goal. Among those who shared this view included the Great Emancipator himself. Abraham Lincoln was unlike his Radical Republican contemporary, Senator Charles Sumner. Before the Civil War, Lincoln's stated aim was *not* to end slavery. Instead, he ran for office and was elected to pursue a less radical and more pragmatic resolution to North-South tension and, thereby, preserve the Union.<sup>9</sup>

American slavery was deemed essential to the nation's prosperity. Pragmatic justifications for violating the basic humanity of Black people were considered a sufficient basis for narrowing core American ideals of liberty, of basic freedom. Pragmatism is but one of many justifications for past and ongoing racial injustice, oppression, and unconscionable privilege, and it is among the most insidious. Pragmatism undermines a broader vision of equality by framing actual equality as unachievable.

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9. See Abraham Lincoln, Lincoln-Douglas Debates of 1858 (Aug. 21, 1858) (transcript available in the Northern Illinois Digital Library); Abraham Lincoln, Lincoln-Douglas Debates of 1858 (Aug. 27, 1858) (transcript available in the Northern Illinois Digital Library); Abraham Lincoln, Lincoln-Douglas Debates of 1858 (Sept. 15, 1858) (transcript available in the Northern Illinois Digital Library); Abraham Lincoln, Lincoln-Douglas Debates of 1858 (Sept. 18, 1858) (transcript available in the Northern Illinois Digital Library); Abraham Lincoln, Lincoln-Douglas Debates of 1858 (Oct. 7, 1858) (transcript available in the Northern Illinois Digital Library); Abraham Lincoln, Lincoln-Douglas Debates of 1858 (Oct. 13, 1858) (transcript available in the Northern Illinois Digital Library); Abraham Lincoln, Lincoln-Douglas Debates of 1858 (Oct. 15, 1858) (transcript available in the Northern Illinois Digital Library); *see also* ABRAHAM LINCOLN, SELECTED SPEECHES AND WRITINGS 150 (Don Fehrenbacher ed., Library of America, 1992); *Compare The Radical Republicans*, AM. BATTLEFIELD TRUST, <https://www.battlefields.org/learn/articles/radical-republicans> (last visited Nov. 21, 2022).

The American Dream is a utopian vision unbound by the constraints of pragmatism. This Dream should inspire the achievement of the impossible.

## 6. THE DREAM BELONGS TO US, ALL OF US.

While the acronym for this nation is the *US*, it has rarely, if ever, truly included *us*. How, then, is it possible for all of *us* to claim America and stake a claim in an American Dream, a vision for America?

Make no mistake, the definition of who is American has not been inclusive and continues to be controversial. For decades after the passage of the Fourteenth Amendment – one of three Constitutional Amendments that reconstructed the U.S. Constitution – anyone wishing to attain U.S. Citizenship had to either claim to be White to obtain first-class citizenship or Black to obtain a form of second-class citizenship. Asians and others who were not legally deemed to be Caucasian, even if they literally came from the Caucus mountains, were therefore barred from achieving American status.<sup>10</sup>

A casual textualist reviewer might conclude that because the phrase *American Dream* contains the word *American*, this dream belongs exclusively to Americans. What is an American, who is an American, and who therefore owns this Dream can be defined in many ways, but based on the plain meaning of the words, it most definitely cannot be everyone.

Yet, like so many textualist interpretations, this framing is flawed because it leaves out the context.

The uniquely American context of this Dream begins with a bold but covertly humble acknowledgment that the Dream has not been realized. The Constitution's Preamble implies imperfection as it seeks to form "a more perfect Union."<sup>11</sup> Indeed, the Constitution's 27 Amendments since its original ratification are themselves an acknowledgment of imperfection and the possibility for progress. Specifically, the Fourteenth Amendment to the Constitution broadens equal protection under the law to "all persons," not all citizens.

As a matter of Constitutional Law, the American Dream belongs to all of us.

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10. See *Thind v. United States*, 518CV02543JGBSHK, 2019 WL 3549830 (C.D. Cal. July 18, 2019); see also IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* (2017).

11. U.S. CONST. pmb1.

7. ISSUE 17 BOLDLY CONFRONTS RACISM, MISOGYNY, XENOPHOBIA,  
AND DEHUMANIZING INEQUALITY.

Equality is essential to the American Dream. Anything short of actual equality is incongruent to the grandeur of the Dream.

Notwithstanding the foregoing, questions remain. We can begin by considering what value the American Dream can hold in the face of racialized oppression and privilege (racism); gender oppression and patriarchy (misogyny); persecution of foreigners and perceived outsiders (xenophobia); and other forms of dehumanizing inequality. The articles that follow this foreword grapple with these and other related concerns.

Eric Peterson's, *The White Washing of American History* confronts the manufactured controversy over the 1619 Project and other efforts to ban the teaching of Black history. This article analyzes various state legislative attempts to "whitewash American history" as it contends that a critical reading of American history is not only necessary but essential to the nation's progress.

Kadean Wilson's, *Bias and Sexism: The Racial and Gender Wage Gap Affecting Black Women* addresses the racial wage gap between Black and White women and how the Equal Pay Act has failed to address the intersecting issues of gender and race that Black women face. This article concludes by recommending a uniform mandatory wage disclosure law modeled on Washington's Equal Pay and Opportunities Act, which would allow Black women to sue based on their gender and race.

Alanis Alvarez's, *Stare Decisis of Death Row: How the Florida Supreme Court Disregarded Stare Decisis Since 2020* analyzes how the Florida Supreme Court has disregarded the doctrine of *stare decisis* throughout 2020, and the consequences of four significant changes to Florida's death penalty law, especially for defendants on death row and on defendants that could face the death penalty. This article explores future possibilities for the court and its death penalty doctrine.

Irina S. Ewing's, *How the American Taxation System Unduly Affects the Black Community*, demonstrates how the U.S. tax system detrimentally impacts the Black community and undermines wealth accumulation. It establishes that this form of inequality is not the way things have to be by revealing how other countries' tax systems promote income equality, and it offers solutions to correct the detrimental and disproportionately detrimental impact of the American tax system on Black people.

Derrick S. Gaiter's, *Must American Artist Starve* proposes a solution to the problem of artist and publisher compensation and discusses the realities and limitations of pursuing a Takings Clause violation under the Fifth Amendment.

Finally, Gabriella Kamran's, *Off-White: Al-Khazraji And Shaare Tefila's Potential to De-essentialize Antidiscrimination Law* argues that the Arab and Jewish identities of the plaintiffs in the Al-Khazraji and Shaare Tefila cases "exist at a jagged, unruly seam of the sociological and legal construction of race." The essay suggests applying an intersectionality framing to disrupt the problematically essentialized, single-axis framework of anti-discrimination law.

This 17th Volume of Florida A&M University *Law Review* is itself a dream realized. The authors, the law review editors, and the entire staff under the leadership of the Editor-in-Chief, Ankevia Taylor, have achieved something remarkable here. I hope that all involved in this issue's preparation and all who read this issue will be unbound by the constraints of pragmatism and be inspired to achieve the impossible.

And now, forward, to the American Dream.



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