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WHAT, TO THE MARGINALIZED PERSON, IS THE AMERICAN DREAM

*Deidré Keller*¹

*“[W]henever I despair over our history, I am brought back to hope, the hope that things will get better, for my children.”*²

I am so grateful to the 2022-2023 Law Review members who worked hard to put on a Symposium around the important and hopeful theme, “The American Dream Belongs to All of Us.”

Chimamanda Ngozi Adichie warns us of “the danger of a single story.”³ In Gloria Naylor’s 1988 novel *Mama Day*, the titular character pronounces that every story has at least four sides – “his side, her side, an inside, and an outside.”⁴ The students planning this year’s Symposium asked, “What is your American Dream?” This question belies the same insight Adichie and Naylor articulate. While many speak of “The American Dream,” the students planning the Symposium rightly recognized the importance of exploring not a singular American Dream but a multiplicity of American Dreams.

Doctor Martin Luther King dreamt of a beloved community which was a global vision in which all people can share in the wealth of the earth. In the beloved community, poverty, hunger, and homelessness will not be tolerated because international standards of human decency will not allow it. An all-inclusive spirit of sisterhood and brotherhood will replace racism and all forms of discrimination, bigotry, and prejudice. Love and trust will triumph over fear and hatred. Peace

1. Dean and Professor of Law at Florida Agricultural & Mechanical University College of Law. I am thankful to Ankevia Taylor, Editor-in-Chief of the Law Review, for the vision and tenacity she displayed in bringing scholars from around the country together to discuss such an important topic. I can’t wait to see how the leadership skills she and her team displayed will make the FAMU College of Law proud and the world a better place. This Note is dedicated to them and to all of the College’s students; past, present, and future. You were all made for a time such as this.

2. Oprah Winfrey, *Oprah Talks to The Underground Railroad Author Colson Whitehead*, OPRAH (Aug. 2, 2016), <https://www.oprah.com/oprahsbookclub/oprahs-interview-with-colson-whitehead>.

3. Chimamanda Adichie, *The Danger of a Single Story*, TED (Jul. 2009), https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story/c.

4. GLORIA NAYLOR, *MAMA DAY* 246 (1988) (“[E]verybody want to be right in a world where there ain’t no right or wrong to be found. My side. He don’t listen to my side. She don’t listen to my side. Just like that chicken coop, everything got four side: his side, her side, an outside, and an inside. All of it is the truth.”).

with justice will prevail over war and military conflict.”⁵ At the FAMU College of Law, our mission is centered on “being a beacon for hope and a catalyst for change.”⁶ I understand this mission embodying Dr. King’s dream of a beloved community. On this note, I hope to challenge us to continue envisioning more impactful ways to live out that mission.

Generally, what do we mean when we say, “the American Dream”? There are book-length treatments of that question.⁷ Freeman Hrabowski, President of the University of Maryland Baltimore County for 30 years, articulates it simply:

Deep down in our collective psyche, we hold to a fundamental belief that in America, anyone who works hard can win. This is the core of the American dream: by working hard and playing by the rules, you can and will create a better life for yourself and your family.

Over the course of this note, I hope to expand and complicate this simple definition.

On July 5, 1852, Frederick Douglass delivered a speech entitled “What to the Slave is the Fourth of July?”⁸ As I thought about the Symposium’s theme, “The American Dream Belongs to All of Us,” I kept returning to the same question, “What to the Marginalized Person is the American Dream?” So, I went back and reread Douglass’ 1852 address, delivered at a meeting organized by the Rochester Ladies’ Anti-Slavery Society just 14 years after Douglass himself had escaped enslavement.⁹

I will organize this Note around three themes Douglass articulated in his speech. These themes, which remain timely and relevant over 170 years later, are (1) the importance of attending to those *most* impacted by injustices; (2) the responsibility of each of us to address the injustices we see in the world around us; and (3) the practice of remaining hopeful in the face of what, at times, may feel like daunting circumstances. I will structure this Note around these three themes as I consider what the American Dream means for marginalized persons. Throughout, I will weave in examples of the FAMU College of Law’s impact and suggest how the College might continue to grow that impact. My intention here is to demonstrate how the progress that we have made since Douglass’ speech might provide a light by which we

5. *The King Philosophy –Nonviolence*, KING CTR. (2023), <https://thekingcenter.org/about-tkc/the-king-philosophy/>.

6. *About Us*, FLORIDA AGRIC. & MECH. UNIV. COLL. OF L. (2023), <https://law.famu.edu/about-us/index.php>.

7. *See generally* DORON TAUSSIG, WHAT WE MEAN BY THE AMERICAN DREAM: STORIES WE TELL ABOUT MERITOCRACY (2021); JIM CULLEN, THE AMERICAN DREAM: A SHORT HISTORY OF AN IDEA THAT SHAPED A NATION (9th ed. 2004).

8. Frederick Douglass, Address to the Rochester Ladies’ Anti-Slavery Society in Rochester, New York (Jul. 5, 1852) (<https://loveman.sdsu.edu/docs/1852FrederickDouglass.pdf>).

9. *Id.*

can begin to piece together a hopeful vision for how each of us can play a part in moving towards an American Dream grounded in principles of justice and equality for all.

I. MIND THE FACES AT THE BOTTOM OF THE WELL

The first of Douglass' themes that I will engage is the importance, indeed, the imperative, of attending to the needs of those among us who have the least power. In his 1852 speech, after acknowledging the occasion of the United States of America declaring its independence from the British crown, Douglass characterized the founding fathers of the nation as follows:

They were peace men; but they preferred revolution to peaceful submission to bondage. They were quiet men; but they did not shrink from agitating against oppression. They showed forbearance; but they knew its limits. They believed in order; but not in the order of tyranny. With them, nothing was settled that was not right. With them, justice, liberty, and humanity were final – not slavery and oppression.¹⁰

Douglass then goes on to say that the celebrations of the Fourth of July are overshadowed for him by the suffering of those who remain enslaved. He says:

Fellow citizens, above your national, tumultuous joy, I hear the mournful wail of millions whose chains, heavy and grievous yesterday, are, today, rendered more intolerable by the jubilee shouts that reach them.¹¹

Let's contemplate, for just a moment, what Douglass is doing here. This is right at the beginning of the speech. Later in the speech, he will engage questions of law and morality, but before he does any of that, he asks his audience to engage, with him, in a radical act of empathy. The request he is making sits on several assumptions; the most important of which is that his audience is capable of empathizing with those who remain enslaved.

One hundred and forty years after Douglass' speech, Derrick Bell would publish a book called *Faces at the Bottom of the Well* in which he argued that racism in the United States is permanent.¹² This thesis would come to be known as racial pessimism, to which I will return. For the time being, I note only that Douglass' attention to the wailing of the enslaved resonates with the approach Bell employs in the book.¹³ In short, if our aim is a more just nation, then we must engage with those who bear the brunt of the injustices of our day.

10. *Id.*

11. *Id.*

12. DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1993).

13. *Id.*

When I speak of the “marginalized person,” this is who I am speaking of. I have chosen this language carefully to include those marginalized not only by race but also by class, immigration status, gender, gender expression, sexuality, disability, and relation to the carceral system. I have also chosen this language to attempt to grapple with the intersections of these various modes of marginalization. To be clear, this inclusivity is not for inclusivity’s sake. I chose this inclusive framing because I believe wholeheartedly in what Fannie Lou Hamer expressed – “Nobody’s free until everybody’s free.”¹⁴ And, to take that notion one step further, I also believe that getting from where we are to my American Dream – a dream of justice for all of us – will require coalition. In short, there is no way forward but together.

So, who are those who lack power in our current moment. There are, of course, many answers to that question, but I want to start right here, in Parramore. The FAMU College of Law stands in what the segregated African American community of Parramore was.¹⁵ There is a wealth of history here, including the Wells Built Museum which was, in the early 20th century, one of the only places in or around Orlando where black visitors to the City could stay.¹⁶

My students who come here every day know that there is a serious homelessness problem here in Parramore.¹⁷ When I started here at the College, during the height of Covid, when students were all learning remotely, and there were very few employees in the building day-to-day, there were many days when I would arrive in the morning and find homeless individuals sleeping under the building overhang. Now, to be clear, I grew up in New York City, so homelessness is not new to me. But, when I think about those among us who have the least power, many of whom exist at various intersections of racial, class, disability, gender, and other modes of marginalization, every day that I come to work in this community, I am faced with the question of how it must feel for the homeless people right here in our back yard to have this phenomenal building right here. How must it feel to see the diverse students, faculty, and staff coming and going. And, every day, I ask myself, what can we do to help to solve this problem.

II. LESS TALK, MORE ACTION

That brings us to Douglass’ second theme - the idea that each of us has some responsibility to address the injustices of our day. He says:

14. Fannie Lou Hamer, Address at the Founding of the National Women’s Political Caucus, Washington, D.C (Jul. 10, 1971).

15. Tana Mosier Porter, *Segregation and Desegregation in Parramore: Orlando’s African American Community*, 82 FLORIDA HIST. SOC’Y (2004), <http://www.jstor.org/stable/30149526>.

16. *Id.*

17. *Id.*

I scout the idea that the question of the constitutionality or unconstitutionality of slavery is not a question for the people. I hold that every American citizen has a right to form an opinion of the constitution, and to propagate that opinion, and to use all honorable means to make his opinion the prevailing one.¹⁸

I read this assertion as requiring all of us to have a vision not only for our lives and our families' lives but for the communities we inhabit and, indeed, for the country. Douglass is clear in his speech that that vision, to be valid, must be grounded in justice and morality.¹⁹ What I will focus on in this second section is the responsibility each of us has to not just empathize with those around us who have the least power but to do something about the injustices we see. In his speech, Douglass says of those who claim to be religious adherents but do not act in accordance with their stated faith: A worship that can be conducted by persons who refuse to give shelter to the houseless, to give bread to the hungry, clothing to the naked is a curse, not a blessing to mankind.²⁰

Here he is imploring his listeners to see the wrongness of the Fugitive Slave Act. But, I would suggest that these words reach down through the ages and demand of each of us that we don't just recognize the plight of the powerless among us but that we act to redress the harms.

Now, some might say that the problems faced by homeless individuals are largely problems for health professionals. The CDC notes that "[p]eople who are homeless have higher rates of illness and die on average 12 years sooner than the general U.S. population."²¹ Similarly, you might think that homelessness is a problem to be solved by social workers. The data shows that the homeless population experiences far higher rates of mental illness than the population at large.²² We could opine that homelessness is a problem that is properly addressed by the construction industry. After all, when all other factors are controlled for, the single factor that correlates most closely to rates of homelessness in any given geographic area is the availability of affordable housing.²³

But I am going to suggest that we, as lawyers, have a significant role to play in solving this problem. Lawyers, are, in the words of Charles Hamilton Houston, "either social engineers or parasites on so-

18. Douglass, *supra* note 8.

19. *Id.*

20. *Id.*

21. *Homelessness & Health: What's the Connection?*, NAT'L HEALTH CARE HOMELESS COUNCIL (Feb. 2019), <https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf>.

22. *Id.*

23. *Id.*

ciety.”²⁴ The multi-faceted nature of the problem of homelessness suggests to me that some social engineering is in order. There are at least three ways we, as members of this Parramore community, could approach this problem. First, as citizens, we could engage our elected officials. But I want to suggest that in our roles as lawyers and lawyers-to-be there is even more we can do. We can offer direct legal services to homeless folks, and we can utilize our research and problem-solving skills to take a more systemic approach to ameliorating this issue. We might, for example, seek to study the underlying causes of homelessness in this area and then endeavor to do the necessary advocacy to find solutions that address those underlying causes. Strategies might include the type of litigation undertaken by Latham & Watkins LLP, Idaho Legal Aid Services, and the National Law Center on Homelessness & Poverty, who won a 9th Circuit case, *Martin v. Boise*,²⁵ in 2019, which ultimately held that the City of Boise’s ordinances criminalizing sleeping outdoors were unconstitutional on 8th Amendment grounds. But, recognizing once again that the problem of homelessness is multi-faceted, I would like to suggest that litigation is far from the only tool we have in our tool belt. Indeed, in many instances, it ought to be the last tool we reach for. The point here is to recognize not only the problems but then, to paraphrase Toni Morrison, to use the power you have to empower somebody else.²⁶

This example of considering how we might turn our considerable skills to addressing the problem of homelessness in our own backyard is just one example of how attending to the needs of those among us who have the least power has the potential to position us to do some really impactful work.

III. HOPE IN THE FACE OF RACIAL PESSIMISM

I am going to turn from this specific example to take in a host of issues as we consider the final theme in Douglass’ address that I wanted to engage, and that is remaining hopeful in the face of incredible odds. Recall Douglass is speaking in 1852, fourteen years before the end of the Civil War. Douglass says of the moment in which he is speaking:

I am not included with the pale of this glorious anniversary! Your high independence only reveals the immeasurable distance between

24. Angela J. Scott, *African American Social Engineer*, AMERICAN BAR ASS’N (Jan. 6, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future-part-ii/human-rights-hero--the-african-american-social-engineer/#:~:text=Known%20as%20%E2%80%9Cthe%20man%20who,practice%20of%20law%20could%20and.

25. *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019)

26. Monica Torres, *8 Indispensable Pieces Of Work And Career Advice From Toni Morrison*, HUFFPOST (Aug. 6, 2019), https://www.huffpost.com/entry/toni-morrison-career-advice_l_5d49b973e4b01ae816c9890c.

us. The blessings in which you this day rejoice are not enjoyed in common. The rich inheritance of justice, liberty, prosperity, and independence bequeathed by your fathers is shared by you, not by me.”²⁷

Douglass goes on to rail, in particular, against the Fugitive Slave Act of 1850, passed just two years before. Imagine, for a moment, speaking after you yourself have escaped from enslavement, under the threat of being captured and drug before a court where Douglass reminds us, you could not so much as put forth your own witnesses and where the stakes are incredibly high;²⁸ nothing less than your life and liberty are on the line. To say that Douglass’ circumstances, and indeed the circumstances of all black people, especially those who remained in bondage, were daunting is to understate things significantly. Yet near the end of the speech, Douglass says, “the doom of slavery is certain. I, therefore, leave off where I began, with hope.”²⁹ How could Douglass be hopeful in this moment? Where did that certainty come from?

In a law review article entitled “The Word and the River,” published in 1992, Charles Lawrence offers this:

“To say that an oppressed people has a special capacity for hope may seem paradoxical, but the slave knows intuitively that the system of slavery is vulnerable and that its destruction is inevitable. If this were not so, why would the master be so fearful of its demise? And why would he expend so many resources defending it?”³⁰

At the beginning of this Note, I mentioned racial pessimism – the idea that racism in America is permanent and promised that I would return to it. All of this talk of hope demands that I return to it now. When we look around at what is happening in the world today – the overturning of *Roe v. Wade* (and that decision’s intimation that much of what was protected by the conception of constitutionally protected privacy, including the rights of gay people to marry),³¹ laws aimed at limiting what students can study here and elsewhere, the recent treatment of those seeking to immigrate to the United States, particularly from Central and South America, to name but a few recent developments aimed squarely at marginalized persons, it is easy to feel hopeless, to be pessimistic. Indeed, Bell’s thesis could be applied to any of these various marginalizations. The fact that *Dobbs* decided less than a year ago, upended 50 years of precedent representing one of the key victories of the feminist movement while calling into question *Obergefell*,³² one of the most important victories for the LGBTQ+ com-

27. Douglass, *supra* note 8.

28. *Id.*

29. *Id.*

30. Charles R. III Lawrence, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 S. CAL. L. REV. 2231 (1992).

31. *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705 (1973).

32. *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

munity makes very clear that the progress / retrenchment cadence Bell noted in the racial justice space is just as pertinent in these other areas. It's difficult not to be pessimistic. But I am going to share with you what keeps me hopeful.

I hope this comes as no surprise, but the thing that helps me to see with clarity the depths of these issues and nonetheless remain convinced that we can and shall overcome is my students. I came to FAMU Law because of its mission to be a beacon for hope and catalyst for change, and I am willing to bet that many students came for that same reason. No doubt, there is plenty of work to be done to realize my American Dream and yours –to move toward Dr. King's beloved community. My part of that work is to educate lawyers committed to seeing injustices from the perspective of those most impacted by them and then putting in the hard work it will take to change. What is your part of the work? What are you willing to do to realize your American Dream? My hope comes from knowing we are all in this work together and, to quote one of my favorite artists of all time, Bob Marley, "We know we shall win as we are confident in the victory of good over evil."³³

33. BOB MARLEY, *WAR* (Island 1976).