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The American Dream Belongs to All of Us: Latinos and Jamaican Americans Experience Cultural Genocide by American Assimilation

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THE AMERICAN DREAM BELONGS TO ALL OF US: LATINOS AND JAMAICAN AMERICANS EXPERIENCE CULTURAL GENOCIDE BY AMERICAN ASSIMILATION

*Ankevia Taylor*¹

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1. Ankevia K. Taylor, J.D. Candidate, Florida A&M University College of Law, 2023; B.A. Florida State University, 2019. When I started writing this paper, I thought that I simply wanted to discuss how the Latino Civil Rights Movement was influenced by the African American Civil Rights Movement –and that both communities simply wanted to be free. Professor Reyes challenged me to dig deep within, and make the article on a topic I could find healing through. She suggested analyzing both the Latino and Jamaican experience here in the United States—as I am a Jamaican American woman. As usual, Professor Reyes was right! Researching and writing this article has allowed me to connect with who I truly am, and fully embrace my identity as a Jamaican American woman. Thank you, Professor Reyes, for always encouraging me to dig deep, work hard, and to never lose sight of who I am. I am truly grateful for your guidance and appreciate all the time and energy you commit to making sure all of your students have the tools to succeed.

OPENING THOUGHTS

America has a history of oppression that starts right at its inception—the infamous voyage of Christopher Columbus. Since the beginning of the United States of America as we know it, there has been a history of discrimination, genocide, and, in 1619, the enslavement of African people. Four centuries later, it is difficult for many citizens of the United States to merely acknowledge—let alone combat—the insidious racial disparities which minoritized populations face in the country today. In this assumed “color-blind” era, many citizens of the United States and their sympathizers propose that we live in a post-racial society. Unsurprisingly, most people in racial categories other than White would seriously beg to differ.

The American Experiment was supposed to yield a country with freedom and democracy for all its citizens. The promises of the constitution reinforce these ideals—yet racialized populations struggle every day for equal opportunity and protection of the law. As the country continues to diversify, racialized populations such as the Latino and Jamaican American communities have been forced to assimilate into what has been the racial status quo of America – “White,” “Black,” or “Other.” This forced assimilation aims to further racist ideologies and promote “model minorities.” However, the effect of this forced assimilation is the stripping of history and self-identity from racialized populations to further White supremacy.

The struggles that Latino and Jamaican Americans face in the United States resemble the experiences of the African Americans in their fight for civil rights and equality fight that continues today. It is time for the legislative, judicial, and executive branches of the United States to initiate a collective effort to empower this country’s diverse cultures. This mission of attaining access and opportunity to racialized populations cannot be done simply through Supreme Court rulings or even the passing of a state or federal act –it will take a collective commitment of all three branches of the government to uphold the promises of the United States Constitution.

“The histories of African Americans’ collaborations with other people of color have indicated that dreams born out of the Black freedom struggle impacted African Americans and White Americans and other people of color.”²

2. SONIA SONG-HA LEE, BUILDING A LATINO CIVIL RIGHTS MOVEMENT 3 (2014) (citing JOSHUA B. FREEMAN, WORKING-CLASS NEW YORK 273 (2001); IRA KATZNELSON, CITY TRENCHES 96 (1983); DUAL CITY: RESTRUCTURING NEW YORK 14 (John H. Mollenkopf & Ma-

INTRODUCTION

Latinos³ and Jamaican Americans⁴ are stripped of their history and self-identity to achieve even minimal success in the United States of America.⁵ The forced assimilation that occurs when immigrants come to the United States results from a race-centered society that forces individuals to fall into the status quo of White⁶, Black⁷, or “Other.”⁸ Latino and Jamaican Americans, and other immigrant communities, are significantly confined by this “othering” in the United States—and must be protected to prevent cultural genocide of the diverse people who truly make America great.⁹

American legislators must protect those most vulnerable in society to ensure that the constitutional rights and protections guaranteed to every American are provided without obstacle—and that the cost of attaining such rights is not cultural genocide.¹⁰ Law, cul-

nuel Castells eds., 1992) (“A number of civil rights studies focused outside of the South have analyzed the multiple Latino and Asian American social movements that overlapped with black freedom struggles in the in the 1940s through 1960s.”).

3. In recognizing the differing opinions on whether to use Latino, Latina, or Latinx I have chosen to use Latino as a gender and culturally inclusive term. As used in this article, “Latino” will refer to individuals who identify as Hispanic or Latino/a/x here in the United States.

4. The term Jamaican American will be used to describe those who have immigrated from Jamaica for eventual citizenship in the United States of America, as well as the children they have had and the generations thereof.

5. David Stowman, *Getting to Know Ourselves*, 62 BENCH & B. MINN. 5 (2005) (“We are tolerant toward those with whom we identify, but less inclined to extend the benefit of the doubt to those who are dissimilar. It’s a general bias. However, since Americans of European descent predominate within the judicial system, their life experience and outlook shape the system, at times to the detriment of minorities.”)

6. The term White will be used to describe those who identify as White or European in the United States of America.

7. The term Black will be used to describe those who identify as Black or African American in the United States of America.

8. John O. Calmore, *Race-Conscious Voting Rights and the New Demography in A Multiracing America*, 79 N.C. L. REV. 1253, 1260 (2001) (“Over the last thirty-five years, however, as the difficulties of mainstream integration have continued to be problematical, blacks have come to reinforce race consciousness, even though it tends to polarize blacks from whites and to insulate them from mainstream dictates.”); see also Charles Lawrence, III, *The Id, the Ego, and Equal Protection*, 39 STAN. L. REV. 317, 322 (“Americans share a common historical and cultural heritage in which racism has played and still plays a dominant role. Because of this shared experience, we also inevitably share many ideas, attitudes, and beliefs that attach significance to an individual’s race and induce negative feelings and opinions about nonwhites.”).

9. Calmore, *supra* note 8, at 1260.

10. Maritza I. Reyes, *Opening Borders: African Americans and Latinos Through the Lens of Immigration*, 17 HARV. LATINO L. REV. 1, 16 (2014) (“A discussion about race in the United States cannot obviate the obvious—race permeates individual and group interac-

ture, and society significantly shape the experience of Latinos and Jamaicans in the United States and other racialized communities and the country must reconcile the destruction White Supremacy has inflicted upon them.¹¹ The fight against White Supremacy has been a struggle in America since its conception –originally targeting Native Americans, then moving to include stolen enslaved Africans, and now expanding to oppress all racialized population.¹² Affirmative action, education, and consideration can address and combat the forces of White supremacy in the United States of America.¹³

The American Experiment was supposed to produce a country of free citizens able to fully participate in the governing of society through democracy; however, that privilege has only been extended without obstacles to White Americans, and those who are perceived or accepted as such.

Racism in the United States has had a detrimental effect on the Latino and Jamaican experience in this country; affirmative action can be used to promote acculturation rather than assimilation.¹⁴ Part I of this article will explore the origins of the American Experiment as the creation of a country with freedom and democracy and how the benefit of those rights has never been given to racialized minorities without a struggle and fight. Part II explores Supreme Court cases that deal with discrimination issues in America and highlights how the solution to the forced assimilation of diverse cultures cannot be found solely in the judicial system. Part III will explain how American assimilation pro-

tions, and the failure to address race and racism in an open and educated manner delays the accomplishment of Dr. Martin Luther King Jr.'s dream of a united race of Americans.”).

11. Anthony V. Alfieri, *Objecting to Race*, 27 GEO. J. LEG. ETHICS 1129, 1132 (2014) (“Race talk is contingent on law, culture, and society. Historically constructed, it is shaped by, and gives shape to, legal doctrine and lawyering strategy, cultural identity, and social caste in local, regional, national, and even international contexts.”); *see also* LEE, *supra* note 2, at 3.

12. Kevin R. Johnson, *The Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions Among and Within Minority Groups*, 63 LA. L. REV. 759, 768 (2003). (“Racism against minority groups is related in direct and indirect ways.”) (explaining how minority groups experience racism in America).

13. Jasmine B. Gonzales Rose, *Race Inequity Fifty Years Later: Language Rights Under the Civil Rights Act of 1964*, 6 ALA. C.R. & C.L. L. REV. 167, 167 (2014) (Expressions of racism have become more subtle and sophisticated. Rather than explicitly barring someone from employment, education, public accommodations, and civic participation on the basis of his or her race, racially discriminatory exclusion is often couched in seemingly race-neutral terms.”).

14. John Cocchi Day, *Retelling the Story of Affirmative Action: Reflections on a Decade of Federal Jurisprudence in the Public Workplace*, 89 CAL. L. REV. 59, 63 (2001). (While the Court tacitly recognizes that group-targeted remedies are necessary to dismantle America’s apartheid, so too is their deep apprehension on the Court about the possibility of ‘slid[ing] into a regime of racial and ethnic rights and entitlements.”).

notes cultural genocide and discuss how “Additive Acculturation”¹⁵ should be the goal to uphold the right of equal protection explicitly provided in the United States Constitution.¹⁶

I. THE AMERICAN DREAM BELONGS TO ALL OF US

The American Dream should not be a privilege given only to those who fall in line with societal constructions of race and look in conformity with the “majority,” but freely available to every person who inhabits the United States of America.¹⁷

A. *The American Experiment*

Charles Sumner was a member of the Radical Republicans, a political party that played a significant role in the development of America as we know it post-civil war.¹⁸ The Radical Republicans were known for being abolitionists of slavery and advocating for Black Americans’ emancipation and civil rights.¹⁹ The infamous Civil Rights Act of 1866 was an effort backed by Radical Republicans to reinforce the Thirteenth Amendment passed to abolish slavery.²⁰ Seventeen years later, the United States Supreme Court ruled that the Civile

15. Jim Paterson, *A Case for Acculturation*, LEARNING FOR JUST. (2017), <https://www.learningforjustice.org/magazine/summer-2017/a-case-for-acculturation> (“Elena Makarova, a scholar who studies cultural identity development, recommends that educators support what some experts call additive or bicultural acculturation, a process that allows new immigrants to adjust to their new culture while still maintaining pride in and substantive connections to their heritage and their country of origin.”).

16. U.S. CONST. amend. XIV, § 1

17. Sarah Churchwell, *A Brief History of the American Dream*, GEORGE W. BUSH INST. (2021), <https://www.bushcenter.org/catalyst/state-of-the-american-dream/churchwell-history-of-the-american-dream.html> (“Over time, the phrase “American dream” has come to be associated with upward mobility and enough economic success to lead a comfortable life. Historically, however, the phrase represented the idealism of the great American experiment.”).

18. *The Radical Republicans*, AM. BATTLEFIELD TR., <https://www.battlefields.org/learn/articles/radical-republicans#:~:text=the%20Radical%20Republicans%20were%20a,Charles%20Sumner%20in%20the%20Senate> (last visited Apr. 5, 2022), (“The Radical Republicans were a group of politicians who formed a faction within the Republican party that lasted from the Civil War into the era of Reconstruction. They were led by Thaddeus Stevens in the House of Representatives and Charles Sumner in the Senate. The Radicals were known for their opposition to slavery, their efforts to ensure emancipation and civil rights for Blacks, and their strong opinions on post-war Reconstruction.”).

19. *Id.* (“Throughout this post-war period, they fought for the eradication of slavery and civil rights for Blacks.”).

20. U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”).

Rights Act was unconstitutional, effectively dismantling the progress the Radical Republicans had fought so hard to achieve.²¹ This blow to civil rights would take decades to undo, as it was not until 1964 that Congress would pass a renewed Civil Rights Act.²² The Civil Rights Act of 1964, although necessary for the progress of attaining equal protection for all citizens, moved the goal from racial equality to address discrimination against Black Americans to a general goal of liberal equality.²³ In furtherance of this refocus on liberal equality, the public debate shifted from racism and inequality to crime and liberal equality.²⁴

Here is the issue with liberal equality –it leaves out the historical context of racism and discrimination in America. Instead, it refocuses on a sameness in the treatment of all to move forward.²⁵ This mootness of “race talk” suggests a color-blind era of society that is statistically shown only to be a figment of the White imagination.²⁶ There is a consensus among the White community that racism died in the 1960s and that discrimination is an issue of the past.²⁷

21. *Dred Scott v. Sandford*, 60 U.S. 393 (1857), superseded (1868); see also *U.S. Supreme Court: Civil Rights Cases, 1883*, IOWA CULTURE.GOV, [https://iowaculture.gov/history/education/educator-resources/primary-source-sets/reconstruction-and-its-impact/us-supreme-1#:~:text=by%20an%20%2D1%20decision,discrimination%20in%20the%20private%20sector.\(last%20visited%20Mar%2010%202023\)](https://iowaculture.gov/history/education/educator-resources/primary-source-sets/reconstruction-and-its-impact/us-supreme-1#:~:text=by%20an%20%2D1%20decision,discrimination%20in%20the%20private%20sector.(last%20visited%20Mar%2010%202023);); see also Areto A. Imoukhuede, *Education Rights and the New Due Process*, 47 IND. L. REV. 467, 499 (2014). (Yet, the Court chose to ignore the context of the Fourteenth Amendment in order to weaken the scope of what ought to have been broad protective powers to further a uniquely American conception of equality.”).

22. *Legal Highlight: The Civil Rights Act of 1964*, U.S. DEPARTMENT OF LABOR, OFF. OF THE ASSISTANT SEC’Y FOR ADMIN. & MGMT., <https://www.dol.gov/agencies/oasam/civil-rights-center/statutes/civil-rights-act-of-1964> (last visited Apr. 5, 2022). (The Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, or national origin. Provisions of this civil rights act forbade discrimination on the basis of sex, as well as race in hiring, promoting, and firing. The Act prohibited discrimination in public accommodations and federally funded programs.)

23. Imoukhuede, *supra* note 21, at 499. (The sameness standard of liberal equality does not appreciate or adjust to concepts of social hierarchy or historical context. Under such an ahistorical approach, a law that mandates separate facilities based solely on race is not necessarily furthering inequality unless it can be shown that the quality of those facilities are themselves unequal.”).

24. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 43 (2012) (showing how the country shifted the focus to crime to using racial ideology to criminalize and massively incarcerate racialized populations).

25. *Id.*

26. EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA* 37 (5th ed. 2018) (“The White commonsense view on racial matters is that racists are few and far between, that discrimination has all but disappeared since the 1960s, and that mist whites are color-blind.”).

27. *Id.*

However, as explained by Bonilla-Silva, “A close examination of research in the areas of housing, education, and everyday social interaction reveals startlingly little progress since the 1960s.”²⁸ Liberal equality makes the great suggestion that the United States has somehow overcome racial discrimination and is now maintaining general equality for all. The reality is that the federal and state governments still have a long way to go before the promises of their respective constitutions can be realized.²⁹

B. America Thrives off Diversity but Mistreats Diverse Populations

Racialized populations in the United States are often forced to weigh the costs and benefits of showing up in the world as they are and being considered different –or assimilating into American culture for social acceptance as a “model minority.”³⁰ Even those who are accepted in the U.S. as “model minorities” still fall victim to racist ideologies and beliefs of patriotism that undermine and minimize their diverse cultures.³¹ Just as individuals may believe negative stereotypes of racialized communities, they may also simultaneously believe positive stereotypes about racialized communities.³² In fact, some argue that people who believe in such positive stereotypes may be simply masking their true hostility to that same racialized community.³³

The constant pressures, whether positive or negative, racialized communities face to be accepted into American society have caused a separation even within racialized communities as no one community wants to be at the bottom of the social ladder –considered a Black American. As explained by Sonia Song-Ha Lee, the delineation between “Blackness” and “Latinidad” was cultivated by Mexican American leaders who wished to distinguish themselves as a language minority group to form a political base separate African Americans.³⁴

28. *Id.* at 44.

29. *Id.* at 26; *see also* Miranda Oshige McGowan & James Lindgren, *Testing the “Model Minority Myth”*, 100 Nw. U. L. REV. 331 (2006) (“As critiqued in the scholarly literature, however, this positive image of Asian Americans as a model minority conceals a more sinister core of beliefs about Asian Americans and other racial minorities in America.”)

30. LEE, *supra* note 2, at 6. (showing how communities that immigrated to the United States were forced to pick a side of being “colored” or standing with White supremacy).

31. McGowan, *supra* note 29, at 331.

32. *Id.* at 332.

33. *Id.* at 333.

34. *Id.*

This political base was the foundation for the political deployment of race, ethnicity, and minority status in the United States.³⁵

While there is a discussion amongst the Latino community of what term best describes their reality's social construct, the Jamaican American community faces an automatic grouping of being close enough to an African American by virtue of their skin color.³⁶ Lee argues that the positive connotations of the term "ethnicity" carry over better in society than "race" —"whereas being 'ethnic' indicates the possibility of becoming American, being "racial" signals an identity that is unassimilable.³⁷ Alternatively, some Latinos argue that racial categorization is exactly what the community needs to further its civil rights movement in the United States.³⁸

i. The Latino Immigration Experience

Like Jamaican Americans and other groups that have immigrated to the United States, Latino Americans experience a "Death by English."³⁹ Juan Perea explores how people in the United States are often offended and frightened by the mere sound of the Spanish language.⁴⁰ This fear and offense come from the sense of a loss of control over what they regard as 'their' country.⁴¹ While it would be much simpler to say that racist White people caused this death by English—study into the issue has revealed that a diverse range of people force American Assimilation.⁴² Like the anti-Black racism prevalent in

35. *Id.* at 333.

36. McGowan, *supra* note 29, at 337 ("This position is viewed as advantageous because it allows Latinos to resist the imposition of North American racism by claiming an identity as neither "black" nor "white" but "other.").

37. *Id.* ("[F]or example, Jewish ethnics assimilated into a 'white' American culture, whereas African Americans are perpetually imagined as 'unrepresentative' Americans.").

38. Gene Demby, *On The Census, Who Checks 'Hispanic,' Who Checks 'White,' And Why*, NPR (June 16, 2014, 9:18 AM), <https://www.npr.org/sections/codeswitch/2014/06/16/321819185/on-the-census-who-checks-hispanic-who-checks-white-and-why> ("This isn't the '50s anymore. We don't live in—and we never have lived, frankly—in a black/white/other world. There are lots of groups here and we deserve recognition, and to be included.

39. Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965 (1995) ("'Death by English' is a death of the spirit, the slow death that occurs when one's own identity is replaced, reconfigured, overwhelmed, or rejected by a more powerful, dominant identity not one's own.").

40. *Id.* at 967.

41. *Id.*

42. See Art Alcausin Hall, *There Is A Lot to Be Repaired Before We Get to Reparations: A Critique of the Underlying Issues of Race That Impact the Fate of African American Reparations*, 2 SCHOLAR 1 (2000); see also Tanya Katerí Hernández, *Latino Inter-Ethnic Employment Discrimination and the "Diversity" Defense*, 42 HAR. CIV. RIGHTS-CIV. LIBS. L. REV. 259 (2007).

Latin America and the Caribbean, many Black people in the United States of America perpetuate Anti-Latino and Anti-Caribbean racism.⁴³ Professor Maritza Reyes explains, “Oppression often goes around in circles, and people of color are not immune from internalizing biases and acting upon them to oppress more vulnerable people of color. In the legal academy, for example, ‘some of the harshest critics of minority faculty candidates and professors . . . are minority faculty members.’”⁴⁴ This internalized bias can only be changed if an individual is open to identifying first that it exists – and then taking the proper steps to educate oneself and seek help from others in their community.

When in America, Latino Americans face what can be called a “Symbolic Deportation” where they are ousted by both historical races in the United States (White and Black) and rendered invisible through the absence of public recognition.⁴⁵ Professor Perea describes this Latino invisibility as the principal cause of death by English, and he continues by providing examples of how Latinos are rendered invisible. He explains that lack of public recognition, positive public identity, prohibitions on the use of Spanish, lack of Spanish translators, etc., all contribute to the silencing and invisibility of the Latino community in the United States of America.

ii. The Jamaican Immigration Experience

There is seldom legal discussion of the Jamaican American immigration experience, which raises an important question about the social construction of race in self-identity for immigrants.⁴⁶

My sense of myself includes
 an organ for darkness
 and the sharp, short breaths
 of a woman opening
 to breathe. Opening my mouth,

43. Hernández, *supra* note 42, at 268. (“Racism, in particular anti-Black racism, is a pervasive and historically entrenched fact of life in Latin America and the Caribbean. Over 90% of the approximately ten million enslaved Africans brought to the Americas were taken to Latin America and the Caribbean, whereas only 4.6% were brought to the United States.”)

44. Maritza I. Reyes, *Professional Women Silenced by Men-Made Norms*, 47 AKRON L. REV. 897, 950-51 (2015).

45. Perea, *supra* note 39 (“Sometimes we are rendered invisible through the absence of public recognition and portrayal. Sometimes we are silenced through prohibitions on the use of Spanish. Sometimes we are rendered politically invisible, or nearly invisible, through the attribution of foreignness, what I shall call ‘symbolic deportation.’”)

46. Thomas Glave, *This Jamaican Family: The Word, and Dreams*, 42 AFRICAN AMERICAN REV. 235 (2008) <http://www.jstor.org/stable/40301208>.

closing my mouth, as darkness,
 like a low
 exhausted wave, moves
 through me
 until this world is me.⁴⁷

Black immigrants to the United States must choose whether they will hold on to their national origins or be forced by society to identify as Black Americans.⁴⁸ Despite the general conclusion that Jamaican Americans are Black Americans, there are times when their Caribbean culture is apparent—even if the observer is not sure which country they are from.⁴⁹ Sometimes these observations will come as backhanded compliments such as: “you have good hair,” “you look so exotic,” and other objectifying comments.⁵⁰ Alternatively, these observations will come as insults that demeanor assumes the individual’s personality based on their assumed national origin.⁵¹

The first-generation of Black immigrants tend to distance themselves from Black Americans, but they inevitably face an overwhelming pressure to assimilate into a Black identity.⁵² By the second generation, the children of Black immigrants are automatically assumed to be Black Americans and must actively prove and assert their ethnic identities to be perceived in the fullness of who they are.⁵³ “Some achieve socioeconomic success while retaining strong ethnic attachments and identities, while others assimilate to American

47. Mervyn Morris, *The American Light: Two Jamaican Poets in the U.S.A.*, 24 MISSISSIPPI REV. 36, 41 (1996) <http://www.jstor.org/stable/20134645><http://www.jstor.org/stable/20134645> (“In the Jamaica of Claudia Rankine’s collection, *Nothing in Nature Is Private*, there are hints of hardship and social inequality, but the stress falls mainly on individuals, relationships, moments that have helped to shape the persona. There is sharper focus on what the U.S.A. might offer than on reasons for leaving Jamaica.”).

48. Mary C. Waters, *Ethnic and Racial Identities of Second-Generation Black Immigrants in New York City*, 28 INT’L MIGRATION REV. 4, 795 (1994) <https://doi.org/10.2307/2547158>.

49. *Id.* at 803 (“A crucial factor for these youngsters is that their accents and styles of clothing and behavior clearly signaled to others that they were foreign born. In a sense, their identity as an immigrant people precluded having to make a ‘choice’ about what kind of American they were.”).

50. See also Marita Golden, *My black hair: a tangled story of race and politics in America*, QUARTZ (June 24, 2015, 9:00 AM), <https://qz.com/432098/my-black-hair-a-tangled-story-of-race-and-politics-in-america/>.

51. Waters, *supra* note 48.

52. *Id.* at 796.

53. *Id.* (“Immigration from the English-speaking islands of the Caribbean has been substantial throughout the twentieth century, but numbers of immigrants coming from the West Indies and Haiti really grew following the change in the immigration law in 1965.”).

subcultures with limited socioeconomic mobility.”⁵⁴ Jamaican Americans, in any generation, are confronted with the daily choice of blending in or standing out—a decision that ultimately determines their access to opportunity in the United States.

II. AMERICA PROVIDES INCONSISTENT EFFORTS OF PROTECTION TO RACIALIZED GROUPS

The Civil Rights Movement and Second Reconstruction gave hope to Americans that one-day equal protection of the law may be realized in the country they call home.⁵⁵ The Fourteenth Amendment of the United States Constitution promised equal protection to all citizens⁵⁶—a goal that has not yet been realized. The Equal Protection Clause of the Fourteenth Amendment, ratified in 1868 and revised in 1992, explicitly provides the following:⁵⁷

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.⁵⁸

The revision of the Fourteenth Amendment in 1992 signaled a further effort by Congress to achieve better the goals of equal protection of the law for all citizens.⁵⁹ Congress must continue to pass laws that further the goals of this revised Fourteenth Amendment and provide the Su-

54. *Id.* at 800 (“The other possibility is that the youngsters who do not “become Ameri? Can” and adopt the negative attitudes toward school, opportunity, hard work and the “American dream” that their American peers have adopted, but rather stay tied to their parents’ ethnic community and values, will end up doing better.”).

55. Rhonda V. Magee Andrews, *The Third Reconstruction: An Alternative to Race Consciousness and Colorblindness in Post-Slavery America*, 54 ALA. L. REV. 483 (2003)

56. U.S. CONST. amend. XIV, § 1.

57. *The Civil Rights Movement And The Second Reconstruction, 1945—1968*, HISTORY, ART, & ARCHIVES UNITED STATES HOUSE OF REP., <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Keeping-the-Faith/Civil-Rights-Movement/> (last visited Mar. 10, 2023) (“During the period from the end of World War II until the late 1960s, often referred to as America’s ‘Second Reconstruction,’ the nation began to correct civil and human rights abuses that had lingered in American society for a century.”).

58. U.S. Const. amend. XIV, § 1.

59. The Civil Rights Movement And The Second Reconstruction, 1945-1968, *supra* note 57.

preme Court, the final arbiter of the law, clear power to promote the equal protection of all citizens.⁶⁰

The Supreme Court can interpret laws; however, if laws provide no clear and direct protection for racialized populations, the Supreme Court cannot strike down laws and other harms that directly affect racialized populations.⁶¹ This makes it increasingly complex for the Supreme Court to further the promises of the Constitution as they are typically bounded by precedent and established law.⁶² Alternatively, when rulings are made that support the equal protection of racialized populations, they are generally applicable to the narrow facts of the case or based on a flawed racial belief and not generally applicable to the protection of all communities experiencing similar discrimination.⁶³

A. *Brown v. Board of Education (1954)*

Brown v. Board of Education sparked a revolution in civil rights by ruling that “separate is inherently unequal.”⁶⁴ However, in this de-

60. *Marbury v. Madison*, 5 U.S. 137 (1803); see also *Two Centuries Later: The Enduring Legacy of Marbury v. Madison* (1803) US COURTS.GOV <https://www.uscourts.gov/sites/default/files/judicial-review.pdf#:~:text=IN%20Marbury%20v.,chief%20interpreter%20of%20the%20Constitution> (“In *Marbury v. Madison*, decided in 1803, the Supreme Court, for the first time, struck down an act of Congress as unconstitutional. This decision created the doctrine of judicial review and set up the Supreme Court of the United States as chief interpreter of the Constitution.”).

61. See generally H.R. 2116, 117th Cong. (2021); see also Janelle Griffith, *House passes Crown Act banning discrimination against Black hairstyles*, NBC news (2022), <https://www.nbcnews.com/politics/politics-news/house-passes-crown-act-banning-discrimination-black-hairstyles-rcna20617> (explaining how the CROWN act passed along party lines. This begs the question of how could something as simple as preventing employment discrimination be a party issue? More importantly, this makes one consider what would it take for equal protection to not be a political issue as it is expressly provided to all citizens in the 14th Amendment).

62. *Stare decisis*, LEGAL INFO. INST. (2021), https://www.law.cornell.edu/wex/stare_decisis (“Although courts seldom overrule precedent, the U.S. Supreme Court in *Seminole Tribe of Florida v. Florida* explained that *stare decisis* is not an ‘inexorable command.’ When prior decisions are ‘unworkable or are badly reasoned,’ then the Supreme Court may not follow precedent, and this is ‘particularly true in constitutional cases.’); see also *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44 (1996).

63. *Brown v. Bd. of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483, 495 (1954) supplemented sub nom. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955) (holding that segregation of children in public schools solely on the basis of race violates the equal protection clause of the Fourteenth Amendment).

64. *Id.* (“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”); see also *The Civil Rights Movement And The Second Reconstruction, 1945—1968*, HISTORY, ART, & ARCHIVES UNITED STATES HOUSE OF REP. (last visited Apr. 1, 2022), <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Keeping-the-Faith/Civil->

cision, the Court primarily focused on the effects of segregation on Black children—specifically in education.⁶⁵ This made the decision difficult to apply to other realms of society where the effects of segregation harmed adult Black people.⁶⁶ Furthermore, the Court’s decision was based primarily on an inherently racist study conducted by one of the most controversial Black psychologists, Kenneth Bancroft Clark.⁶⁷ The study concluded that segregation of public schools caused Black children to become mentally retarded and develop a sense of inferiority to their White counterparts.⁶⁸ This study made this conclusion based on the doll selection of children and completely disregarded the social experiences of Black Americans in the United States—which should have been at the center of the *Brown v. Board of Education* decision.⁶⁹

B. *Washington v. Davis* (1976)

Washington v. Davis was another opportunity for the Supreme Court to uphold the promises of the Fourteenth Amendment; however, its strict adherence to precedent prevented them from ruling in favor of

Rights-Movement/#:~:text=During%20the%20period%20from%20the,American%20society%20for%20a%20century.

65. *Brown v. Bd. of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483, 495 (1954) supplemented sub nom. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955) (quoting K. B. Clark, *Effect of Prejudice and Discrimination on Personality Development* (Midcentury White House Conference on Children and Youth, 1950). (A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to (retard) the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial(ly) integrated school system.”).

66. See also, Jonathan D. Glater, *What We Wish for: In the Wake of Brown v. Board*, 11 ALA. C.R. & C.L. L. REV. 113 (2019).

67. *Appendix to Appellants’ Briefs: Statements by Social Scientists*, 2 SOCIAL PROBLEMS 4, 227-35 (1955), <https://doi.org/10.2307/799106>; see also DAMON FREEMAN, *RECONSIDERING KENNETH B. CLARK AND THE IDEA OF BLACK PSYCHOLOGICAL DAMAGE, 1931–1945*, CAMBRIDGE UNIVERSITY PRESS (2011) (“One of the most controversial figures in Black intellectual history is psychologist Kenneth B. Clark. Prominently identified as the main proponent of the idea that racial segregation led to psychological damage in Black children, Clark’s work heavily influenced the U.S. Supreme Court in its 1954 *Brown v. Board of Education* school desegregation decision. Almost immediately afterwards, his research methods and conclusions were challenged as incomplete and biased.”) (explaining how landmark case *Brown v. Board of Education* was decided on inherently racist ideologies using a problematic psychologist who happened to be Black).

68. *Brown v. Bd. of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. at 495, (“Segregation of white and colored children in public schools has a detrimental effect upon the colored children.”) (quoting K. B. Clark, *Effect of Prejudice and Discrimination on Personality Development* (Midcentury White House Conference on Children and Youth, 1950).

69. *Brown v. Bd. of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483 at 495.

the plaintiff.⁷⁰ This decision is criticized by both civil rights activists and constitutional scholars as damaging to the cause of equal opportunity and equal protection.⁷¹ Professor Christopher Lawrence III explains two primary arguments advanced against this Supreme Court decision and its impact on the fight for equal opportunity and protection in the United States.⁷²

The first objection to this ruling is that it is often impossible for discriminated communities to meet the burden of a motive-centered doctrine of racial discrimination.⁷³ Lawrence explains that improper motives are easy to hide with viewpoint-neutral or content-neutral laws leaving government officials plenty of room to argue that their actions were racially neutral.⁷⁴ The second objection to this ruling is that racial inequality will exist irrespective of the motives of decision-makers.⁷⁵ Lawrence points out that even assuming decision-makers' best intentions, the larger systems of oppression and racist ideologies must be combatted before such a high burden on harmed communities.⁷⁶

C. *Plyer v. Doe* (1982)

Plyer v. Doe shows, yet again, how the judicial system cannot be the sole instrument relied on for the enforcement of equal protection in all areas of the social realm for racialized populations.⁷⁷ Although this case was ruled in favor of the children not legally admitted into America, it does not explicitly address how states may treat adults not legally admitted.⁷⁸ Despite this lack of specific protections, it did make the connection that "an [immigrant] within the jurisdiction of the

70. *Washington v. Davis*, 426 U.S. 229 (1976) (holding that the Equal Protection Clause was created to prevent official conduct that discriminates on the basis of race).

71. See Lawrence, *supra* note 8, at 319 ("Minorities and civil rights advocates have been virtually unanimous in condemning Davis and its progeny. They have been joined by a significant number of constitutional scholars who have been equally disapproving, if more restrained, in assessing its damage to the cause of equal opportunity.") (explaining how *Washington v. Davis* was condemned by civil rights activists and constitutional scholars).

72. Lawrence, *supra* note 8, at 319

73. *Id.*

74. *Id.*

75. *Id.*

76. See Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978); see also Kenneth L. Karst, *Foreword: Equal Citizenship Under the Fourteenth Amendment*, 91 HARV. L. REV. 1 (1977).

77. *Plyer v. Doe*, 457 U.S. 202 (1982).

78. *Id.*

United States, even those [without citizenship] is a person entitled to protection under the Equal Protection Clause.”⁷⁹ This case is also noted as progressive in almost declaring education a fundamental right and purposely avoiding making such a contention.⁸⁰ Due to the limitations placed on the powers of the judicial branch, all branches must work together to make the United States accessible to all of the citizens who inhabit the country.

III. THE “MELTING POT” BURNS!

The diverse populations who call America their home should be celebrated, not merely tolerated.⁸¹ The election and continued support of President Donald Trump evoked a strain in racialized populations. While some found President Trump liberating and empowering, others saw him as a symbol of the freedom to be overtly racist.⁸² During his announcement speech to run for the presidency in the 2016 election, President Trump stated:

When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.⁸³

While this may be an outrageous and racist statement to some, this is the man who ultimately was elected President of the United States of

79. Patricia G. Gittelson, *Immigration Jurisprudence from the Dark Ages Toward the Light*, 2 J. LEG. ADVOC. & PRAC. 51, 58 (2000).

80. Anjaleck Flowers, *The Implied Promise of A Guaranteed Education in the United States and How the Failure to Deliver It Equitably Perpetuates Generational Poverty*, 45 MITCHELL HAMLINE L. REV. 1 (2019).

81. Alissa Stern, *Celebrate, Don't Tolerate*, HUFFPOST (2016), https://www.huffpost.com/entry/celebrate-dont-tolerate_b_57854327e4b0cbf01e9eb335 (“In the U.S., we talk about increasing tolerance as a way to reduce religious tensions. Maybe we would do better if instead of just tolerating each other, we celebrated each other. If nothing else, it would give us an excuse to eat more sweets and might just make us all a little sweeter in the process.”); see also Kevin R. Johnson, “Melting Pot” or “Ring of Fire”?: *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259, 1261 (1997) (“The current movement to restrict immigration to the United States is premised on the notion that today’s immigrants refuse to assimilate, unlike previous groups of immigrants. By so doing, these immigrants run afoul of the ‘Melting Pot’ mythology of assimilation.”).

82. BONILLA-SILVA, *supra* note 26 (“Donald Trump stoked the racialized feelings of poor whites with his rhetoric thus legitimizing the problematic emotions of his followers.”).

83. Amber Philips, *‘They’re rapists.’ President Trump’s campaign launch speech two years later, annotated*, WASH. POST (2017), <https://www.washingtonpost.com/news/the-fix/wp/2017/06/16/theyre-rapists-presidents-trump-campaign-launch-speech-two-years-later-annotated/>.

America by electoral college vote.⁸⁴ President Trump's election was a clear example of how color-blindness is simply a myth—a defense against White guilt. To further assuage White guilt, racialized communities in the United States were inflicted with “uplift suasion,”⁸⁵ which ultimately blamed them for the inequality experienced rather than the systems of oppression. Uplift suasion is an educational persuasion technique predicated on the belief that “ignorance and hate lead to racist ideas” however, through self-interests and racist policies, racist ideas are conceived.⁸⁶ Instead of looking within to see why the only socially praised and accepted demographics were White and White adjacent, racialized communities were told they were the problem—that it was something wrong with them.⁸⁷

I fell into a burning ring of fire,
I went down, down, down
the flames climbed higher,
and it burned, burned, burned,
the ring of fire.⁸⁸

These lyrics symbolize the experience immigrants undergo upon entry into the United States of America—a constant burning of self for a taste of freedom.⁸⁹

For decades, there has been a movement to restrict immigration in the United States solely based on the belief that immigrants refuse to assimilate—unlike the generations before them.⁹⁰ Professor Johnson explains that Latino assimilation, similar to pressures experienced by

84. See Harrison Smith, *Donald Trump is elected president of the United States*, WASH. POST (2016), https://www.washingtonpost.com/lifestyle/kidspost/donald-trump-is-elected-president-of-the-united-states/2016/11/09/58046db4-a684-11e6-ba59-a7d93165c6d4_story.html (“At 70 years old, he is the oldest president ever elected to the White House, and the first to take the office without any experience in politics or in the military.”).

85. IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA*, 506 (2016).

86. *Id.*

87. *Id.* at 440-68 (“Cosby envisioned the ultimate uplift suasion show about a stereotype defying family uplifted by their own striving beyond the confines of discriminated Blackness. He believed he was showing African Americans what was possible if they worked hard enough and stopped their antiracist activism.”).

88. Johnson, *supra* note 81, at 1262 (“The complexities of the assimilation process are lost in public discourse on the topic. Even if a Mexican-American seeks to assimilate into the mainstream, the costs—which may be quite high—often outweigh the benefits. He or she must carefully navigate through a ‘ring of fire’ in adjusting to life in the United States.”) (quoting JUNE CARTER & MERLE KILGORE, *Ring of Fire*, on JOHNNY CASH, *THE BEST OF JOHNNY CASH* (Colum. Records 1963)).

89. *Id.* at 1262.

90. *Id.* at 1261.

other cultures, implicates race, ethnicity, and nationhood issues.⁹¹ Due to this connection to race, a social construction, some people decide to be Latino, as accepted or assumed by society or opt to “pass” as White.⁹² Alternatively, some Latinos believe that they have always been perceived as Latino no matter their phenotype, surname, or clarity in English. This disconnection in what someone is perceived to be and who they identify as has emerged as a growing issue in a country that constantly forces citizens to pick a box.⁹³ Professor Johnson explains that due to the extreme diversity in the Latino, and other immigrant communities, the ability to assimilate widely differs.⁹⁴



Source: www.blog.voicetube.com/archives/56485.⁹⁵ Designed by Gordon Johnson.⁹⁶

91. *Id.* at 1265.

92. *Id.* at 1265.

93. Eric Jensen, *Measuring Racial and Ethnic Diversity for the 2020 Census*, U.S. CENSUS BUREAU: WITHIN CENSUS BLOGS (Aug. 4, 2021), <https://www.census.gov/newsroom/blogs/random-samplings/2021/08/measuring-racial-ethnic-diversity-2020-census.html>.

94. Johnson, *supra* note 81, at 1266.

95. The Origins of the Melting Pot (illustration), in *Is America a Melting Pot or a Salad Bowl?*, BLOG.VOICETUBE.COM (last visited Jun. 28, 2023), <https://www.blog.voicetube.com/archives/56485>.

96. Gordon Johnson, *United Unity Togetherness*, PIXABAY, <https://pixabay.com/vectors/united-unity-togetherness-2723203/> (last visited Apr. 2, 2022).

A. *Racism is at the Root of the Problem*

Racism has been a part of American history since the first boat of kidnapped Africans were enslaved on American land in 1619.⁹⁷ With this deeply ingrained history of involuntary racial subordination and overall oppression, it is important to explore the role racism plays in the self-identity and beliefs inflicted on immigrants.⁹⁸

Once in the United States, immigrants from Latin American countries and their descendants may reinforce or learn racist ways. Today, some Latinos are still trying to comprehend race as understood in the United States and where they fit within the U.S. racial structure. Racism, including intra-Latino racism, is generally tied to national origin and often related to the particular group's or individual's claim to whiteness—European ancestry. Within the Latin American hierarchy of race, countries that can lay claim to more pure European roots “are viewed as more advanced than those more significantly populated with people of indigenous descent or those of African descent.”⁹⁹

Despite the rift racism has caused between the Black, Latino, and Caribbean communities, society's continued education and evolution have opened doors where bridges of allyship can be formed. Racialized populations continue to build coalitions to fight back against the systems of oppression and White Supremacy that force them to assimilate into the United States society.¹⁰⁰ Jesse Jackson famously established his rainbow coalition to reinforce the need for race and ethnic groups to unify.¹⁰¹ Tanya Hernandez discusses the sociological concept of “social distance,” which is articulated as a measure of the social unease one

97. *Slavery in America*, A&E TELEVISION NETWORKS, <https://www.history.com/topics/black-history/slavery> (May 19, 2022) (“[M]any consider a significant starting point to slavery in America to be 1619, when the privateer The White Lion brought 20 enslaved African ashore in the British colony of Jamestown, Virginia.”).

98. Eric K. Yamamoto, Susan K. Serrano, Minal Shah Fenton & James Gifford, *Dismantling Civil Rights: Multiracial Resistance and Reconstruction*, 31 CUMB. L. REV. 523, 523 (2001) (“I am from Hawai'i, America's fiftieth state. In response to oppressive work and living conditions, my grandfather helped a fledging union fight the White plantation owners who controlled all the political and economic life in the territory. He was branded a troublemaker and a traitor. He was forced to flee and change his family name.”).

99. Maritza I. Reyes, *supra* note 10, at 1 (“Latin American racial constructs would rank Argentina as a highly valued White country.”) (quoting Hernández, *supra* note 42 at 298).

100. See generally Kevin R. Johnson, *The Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions Among and Within Minority Groups*, 63 LA. L. REV. 759, 759 (2003).

101. Hall, *supra* note 42, at 45 (“Divisiveness is often a strategy used to weaken. It has been used in war and in other situations requiring the strategy, and it was one of the tools used by slave traders and slave owners who broke up Black families or groups too tightly knit.”).

ethnic or racial group has when interacting with another.¹⁰² Through addressing this social unease, strong foundations of coalitions can be made—and true unity can be achieved.

A St. Mary's Law Review article explains that the reluctance in the United States to accept the harms of racism on society stems from a general unwillingness to associate past racial ills and injustice with present-day ills.¹⁰³ The article contends that those who identify as White refuse to acknowledge the role “whiteness” has played in benefiting some and “blackness” hampering others.¹⁰⁴ “Neo-conservatism” is introduced as a philosophy in which White America attempts to distance itself from the “sins of slavery” and those who practiced it.¹⁰⁵ However, as evident in the increase of social unrest, the citizens of the United States do not feel equally protected, they feel targeted, oppressed, and discriminated against by the very state actors that are hired to protect them.¹⁰⁶ These realities will not go away simply by hopes and wishes, it will take a conscious and collaborative effort to begin to remedy the harms racism has had on society in the United States.

B. “Additive Acculturation” Should Be the Goal

Additive acculturation promotes positive self-identity in racialized populations and keeps citizens meaningfully connected to their heritage.¹⁰⁷ No one should be forced to forget where they come from, and especially not to attain the very rights and privileges freely accessible to others. The United States must move beyond assimilation to additive acculturation which allows people who have immigrated to the U.S. to maintain pride and connection to their heritage and country of origin.¹⁰⁸ Through true celebration and value of the diverse cultures that inhabit the United States, liberty and justice for all may actually be realized. Educators and legislators must embrace the ideology of additive acculturation as it allows immigrant communities to

102. Hernández, *supra* note 42, at 271.

103. Hall, *supra* note 42, at 28.

104. *Id.* at 29.

105. *Id.* at 30.

106. *Id.* at 41; *see also* *Police Brutality, Misconduct and Shootings*, N.Y. TIMES, <https://www.nytimes.com/topic/subject/police-brutality-misconduct-and-shootings> (last visited Apr. 28, 2022).

107. Paterson, *supra* note 15.

108. Hall, *supra* note 42, at 41.

benefit from cross-ethnic connections and develop a positive self-image that includes their home country.¹⁰⁹

Promoting additive acculturation can be done through analyzing current policies and societal norms around communities that have immigrated to the United States and taking active steps to create spaces where those communities will be celebrated and appreciated. Inclusive educational and legal practices must consider the impact of the construction of race on these communities and the negative bias that may be present in professionals themselves or systems as a whole. America cannot wait for the judicial branch to provide equal opportunity and cultural appreciation; it is the responsibility of state and federal legislators to pass laws that will protect the country's cultural diversity.¹¹⁰ In addition to state and federal laws passed to further the equal protection of all citizens, there must be a committed effort by the judicial and executive branches to uphold the promises of the United States Constitution. Professor Lawrence argues that a new test is used to trigger recognition of racially motivated behavior, which urges a complete understanding of race and human motivation.¹¹¹ With a complete understanding of twentieth-century psychology, judges and legislators can identify when race unconsciously influences government action.¹¹²

CONCLUSION

The American Dream belongs to all of us.¹¹³ The Fourteenth Amendment clearly and explicitly promises equal protection to all citizens, and it is time for all branches of the American government to join in furthering this goal. It is time for federal and state laws to provide explicit protection and celebration of the diverse populations that call the United States their home. Latinos and Jamaican Americans, like all minoritized populations in the United States, wish for more than to be simply tolerated—or pushed towards assimilation. It is through a

109. *Id.*

110. Johnson, *supra* note 100, at 763 (“Given that the courts in these times are not likely allies in the quest for racial justice, reinvigorated forms of political action should be investigated.”)

111. Lawrence, *supra* note 8, at 324 (“While it is grounded in the Court’s present focus on individual responsibility, it seeks to understand individual responsibility in light of modern insights into human personality and collective behavior.”).

112. *Id.*

113. Suzanne Malveaux, *Harris: The American dream belongs to all of us*, CNN: PRESS ROOM (Sep. 6, 2012), <https://cnnpressroom.blogs.cnn.com/2012/09/06/harris-the-american-dream-belongs-to-all-of-us/>.

genuine and consistent celebration of this multicultural country that
America can truly be great!