The American Dream: A Historic Perspective

Judith Fox†

I. INTRODUCTION

The “American Dream” is an ideal that has become central to American identity. Although the phrase was first coined in the twentieth century, the concept has been present in the nation’s collective consciousness since the seventeenth century. The American Dream’s promise is deeply rooted in our immigrant past, but its vision changes with the political and economic mood of the times. The Dream lies somewhere between myth and promise. It is a promise of success for those viewed by society as worthy of that promise, but a myth for millions of others of the wrong gender, race, or class.¹

Throughout our nation’s history, government action and inaction has reserved the Dream for a select few, and while many Americans still aspire to achieve the Dream, many no longer believe in its reality. This Article will introduce the origins of the American Dream and explore how well the Dream reflects reality. Part II introduces the philosophical underpinnings of the ideal of the American Dream. It focuses on the evolution and conflicting visions of the American Dream. Part III explores some of the governmental actions and inactions that have shaped the Dream’s reality. Throughout American history, governmental policies have been enacted that privilege some Americans over others. As a result, those trying to attain the American Dream are doing so from profoundly different starting points and are subject to unequal rules of the game. Finally, in Part IV, the reality of the American Dream is exposed. The unequal playing field that has been shaped by history has left us with a promise of prosperity that cannot be realized by most Americans. Wealth inequality, and the belief held by many that elites have denied them a fair chance to achieve the American Dream, have caused a lack of social cohesion not seen in decades. Specifically, the

† Clinical Professor of Law, Notre Dame Law School. A special thanks to my research assistant, Jeanna James for all her hard work and assistance with this Article.

inability of many to attain the ideal focus of the Dream—a home—is central to the problem we now face. A look back at history should give us all pause. We are moving in a dangerous direction, one that we must correct if we are to survive as a nation.

II. THE PHILOSOPHICAL ORIGINS OF THE AMERICAN DREAM

James Truslow Adams is credited with coining the phrase “American Dream” in his 1931 book, *The Epic of America.* He explained the *American Dream* as “that dream ‘of a land in which life should be better and richer and fuller for every man, with opportunity for each according to his ability or achievement.” To Adams, the *American Dream* was not about wealth or the attainment of property. Instead, he viewed it as “a social order in which each man and each woman shall be able to attain to the fullest stature of which they are innately capable, and be recognized by others for what they are, regardless of the fortuitous circumstances of birth or position.” Our understanding of the specific meaning of the *American Dream* has changed throughout our history, even if the core concept has remained consistent.

A. The Seventeenth Century

The ideal of the *American Dream*, emerged much earlier than 1931. It appears first in the seventeenth century with the arrival of the first Puritan settlers to America, those seeking “a city upon a hill.” The perception of that Dream has changed over time and with economic circumstances. It reflects the tension between individualism and laissez-faire economics on the one hand, and the ideals of community and equality on the other. What began as a Puritan Dream of community and faith morphed over time into a distinctly American vision that placed great importance on individuality and entrepreneurship, concepts rather foreign to any Puritan origin.

Nonetheless, it began with the Puritans who came to Massachusetts and with the Quakers who came to Pennsylvania. Both groups came for the

---

2. Walter Lippmann first used the term in 1914, but it is Adams who is recognized for bringing the term into the mainstream. *The American Dream in the 21st Century* 2–3 (John Kenneth White & Sandra Hanson eds., Temple University Press, 2011).
4. Id.
6. JILLSON, supra note 5, at 2–3.
7. Id. at 17–18.
same reason—to create a new society centered on God and community. 8 Unlike the settlers in, for example, Virginia, the Puritans and Quakers did not want to recreate European life or retain European social or cultural ties. 9 They specifically wanted a new vision: an American theocracy where religion formed the basis of society and the needs of the community predominated. This early version of the American Dream saw a society without the class distinctions and church hierarchies of Europe. But it was not an egalitarian Dream. It was a vision specifically designated for the Protestant, white male. 10 

And it was not the vision of America shared by all colonists. In contrast, the Virginia settlers came to America to make their fortune. In his influential book, Democracy in America, Tocqueville describes early Virginians as men without resources or character, seeking gold. 11 As one historian noted, “[e]stablishing economic privatism” was the “colony’s central value.” 12 Virginians clung to European values and did not share the Dream of William Penn’s “poor man’s country.” 13 Their American Dream, though not articulated as such, would be recognized by a modern audience. It was the promise of the opportunity to achieve prosperity despite social class.

B. The Eighteenth Century

It was during the eighteenth century that the notion of an American Dream as a distinctly American ideal began to take shape. According to the rhetoric, America was a land where anyone could own one’s own land, support one’s family, and pass on one’s assets to his or her children, regardless of one’s social status. 14 Yet, in reality, it was a Dream reserved for free, white men. Women would not gain the legal right to fully control their own property until the nineteenth century, making it nearly impossible for them to achieve this vision of the Dream. 15 Furthermore, the use of

8. Id. at 18–22.
9. Id. at 19–21.
11. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA loc. 2301 (Harvey C. Mansfield & Delba Wintrop trans., Univ. of Chicago 2000) (ebook).
12. JILLSON, supra note 5, at 21.
13. Id. at 4.
14. Id. at 38.
15. Richard H. Chused, Married Women’s Property Law: 1800–1850, 71 GEO. L. J. 1359, 1361 (1983). Meanwhile, there is evidence that women in America had more property rights than their English counterparts even before the Married Women’s Property Acts that were enacted beginning in the mid-1800s. Id. at 1389–90.
indentured servants was declining and slavery increasing. Most Black Americans were slaves, making it far less likely they could achieve the American Dream; but even for free Black Americans, it was not imagined that they could achieve the American Dream. Native Americans and other minorities did not fare much better.

During this century, two distinct and foundational views of the American Dream emerged: the Jeffersonian and the Hamiltonian view. Each view has subsequently influenced how we perceive and attempt to achieve the Dream even today. The first, Thomas Jefferson’s view, focused on individualism and the promise of prosperity through land, specifically farming. Jefferson believed that America would be successful so long as there was equality and enough vacant land for every citizen. J. Hector St. John de Crevecoeur, in his Letters from an American Farmer, articulated the American Dream as the Dream of every immigrant “to work, save, and invest in his own land.” The idea that the acquisition of real property was essential to the American Dream began to emerge.

Alexander Hamilton’s vision of the American Dream is similar to Jefferson’s, but Hamilton also embraced laissez-faire capitalism. He favored enabling entrepreneurial commercial activity led by “an elite endowed with talent, wisdom, and wealth.” He too saw America as a land of opportunity but accepted that there should be winners and losers in the pursuit of the American Dream. Additionally, Hamilton’s view was less focused on the acquisition of land as it was on the acquisition of capital.

The differences between the Jeffersonian and Hamiltonian views of the American Dream were center stage during the election of 1796, the first election in which political parties played a significant role. The Federalists, Hamilton’s party, presented a vision favoring class distinctions. They

---

16. ALAN TAYLOR, AMERICAN REVOLUTIONS: A CONTINENTAL HISTORY, 1750–1804 22 (2016). By this time, virtually all slaves were Black. For more details of the rise in slavery in America, see infra Part III.B.
17. How to refer to people of color is always controversial. I chose to use the term “Black” because, historically, not all the slaves were from Africa. There were other people of color, specifically Asians and Native Americans, who have been disenfranchised by the government, so that was not an accurate word as well. I sincerely hope that the reference is not offensive to anyone, as no offense is intended.
18. See TAYLOR, supra note 16, at 50–51; ADAMS, supra note 3, at 112 (though Adams argues that only Jefferson’s view is really the American Dream, history has come to view it differently); see generally CLEMENT FATOVIC, AMERICA’S FOUNDING: AND THE STRUGGLE OVER ECONOMIC EQUALITY (2015).
19. JILLSON, supra note 5, at 56.
20. Id. at 56.
21. Id.
22. Id. at 50.
23. Id.
24. Id. at 51.
favored an elite class and “were more open to treating Indians and black people as inferior.” Jefferson’s Republican party, on the other hand, presented a vision more consistent with the ideals set out in the Declaration of Independence, of a nation in which “all men are created equal.” Yet, even Jefferson’s Republican party still insisted on the superiority of white men. Furthermore, Jefferson’s vision of the American Dream with farmland for all was already on shaky ground. Land was priced well out of reach for most colonists. Much of the available land was owned by speculators and already wealthy landowners.

C. The Nineteenth Century

After becoming president, Andrew Jackson tried to reassert a more Jeffersonian view of the American Dream. Jackson and his supporters saw a world where “the rise of [a] privileged class” had made it difficult, or even impossible, for other Americans to achieve the American Dream. Jackson, however, did not share Jefferson’s vision of an agrarian society. He believed in industrialization and felt that the producing class (tradesmen, farmers, merchants) was being held down by the nonproducing class (bankers, land speculators, corporations) who controlled the corporations, colleges, and churches, bending the law in its favor. His presidential victory was seen as a victory for the common man over the elites.

Abraham Lincoln is the next important person in the evolution of the American Dream and is often viewed as a key figure in its formation. Scholars disagree on the exact nature of Lincoln’s contribution to the formulation of the American Dream, but agree that his contribution was significant. His view was Jeffersonian and firmly rooted in the Declar-

26. Id. at 411.
27. Declaration of Independence (U.S. 1776).
29. Id. at 66.
30. Id. at 67; see also JILLSON, supra note 5, at 72.
31. JILLSON, supra note 5, at 85.
32. ADAMS, supra note 3, at 172.
33. JILLSON, supra note 5, at 86.
34. ADAMS, supra note 3, at 171. According to Adams, “[t]he Jacksonian movement of revolt... was one of aspiration, not of intellect.” Id. at 173. This has eerie parallels to recent experience in America. For instance, Donald Trump was also elected on an anti-elitist platform with promises. The inauguration of Andrew Jackson was marked by a “disorderly mob” rushing into the White House, smashing furniture, china, and glasses and “nearly suffocating” Jackson himself. Id. at 171. Likewise, Donald Trump’s failure to win the 2021 election caused his followers to storm the Capitol in an attempt to prevent the transition of power to President-Elect Joe Biden.
35. Michael J. Illuzzi, Lincoln’s “Race of Life” Is Not the American Dream of Equal Opportunity, 3 J. AM. POL. THOUGHT 228, 229 (2014); JILLSON, supra note 5, at 101.
36. See Illuzzi, supra note 35.
ution of Independence and the idea that all men are created equal.\footnote{37} In an 1861 speech, he called for the "weights" to be "lifted from the shoulders of all men" to allow them an equal chance at success.\footnote{38} He firmly rejected the nativist movement of the time, which espoused "racial superiority and a policy of exclusiveness in favor of old-stock Americans."\footnote{39} This is not to say that he believed that equality of rights meant equality by nature.\footnote{40} He still believed that some racial groups were naturally inferior to others. Even so, Lincoln returns to the ideals of the Declaration of Independence time and time again, even in his most famous speech, the \textit{Gettysburg Address}: "Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal."\footnote{41}

Lincoln also rejected the idea of class divisions and the notion that only the educated, elite class can attain the \textit{American Dream}.\footnote{42} To Lincoln, the \textit{American Dream} consisted of the opportunity for all to succeed, and he believed that government should assist in providing that opportunity.\footnote{43} He also rejected another important aspect of the Hamiltonian vision—the preference of capital over labor. Indeed, Lincoln once said of his political party, we “are for both the man and the dollar, but in cases of conflict, the man before the dollar.”\footnote{44}

Outside of the political world, another nineteenth century event had a profound impact on the shaping of the \textit{American Dream}. In 1851, Charles Darwin published the \textit{Origin of the Species}. His theories were at first rejected, but as his evolutionary hypothesis gradually gained acceptance it was perverted to justify racial superiority.\footnote{45} Herbert Spencer embraced Darwin’s work in his 1864 book, \textit{Principles of Biology}, where he coined the phrase “survival of the fittest” and then used his new phrase as proof of the

\begin{footnotesize}
\begin{enumerate}
\item Id. at 231; James G. Randall, \textit{Lincoln the Liberal Statesman}, in LINCOLN’S AMERICAN DREAM: CLASHING POLITICAL PERSPECTIVES loc. 1049 (Kenneth L. Deutsch & Joseph R. Fornieri eds., 2005) (ebook); M.E. Bradford, \textit{The Lincoln Legacy: A Long View}, in LINCOLN’S AMERICAN DREAM, supra at loc. 3966.
\item Randall, \textit{supra} note 37, at loc. 1049.
\item Randall, \textit{supra} note 37, at loc. 1229. Writing to Joshua Speed, Lincoln said: “As a nation, we began by declaring that ‘all men are created equal.’ We now practically read it ‘all men are created equal, except negroes.’ When the Know-Nothings get control, it will read ‘all men are created equal, except negroes, and foreigners, and [C]atholics.”’ Illuzzi, \textit{supra} note 35, at 241.
\item Randall, \textit{supra} note 37, at loc. 515–42; see also discussion of Lincoln and racism, \textit{infra} Part III.B.
\item Randall, \textit{supra} note 37, at loc. 237–38.
\item JILLSON, \textit{supra} note 5, at 100. In 1854 he once said, “the legitimate object of the government is ‘to do for the people what needs to be done, but which they can not [sic], by individual effort, do at all, or do so well, for themselves.’” Randall, \textit{supra} note 37, at loc. 237–38.
\item JILLSON, \textit{supra} note 5, at 101. Some would debate whether that adage still holds true.
\item IBRAM X. KENDI, STAMPED FROM THE BEGINNING 210–11 (2016).
\end{enumerate}
\end{footnotesize}
racial superiority of whites. Sir Francis Galton followed with his book, *Hereditary Genius*, in 1869. There, he argued that “[t]he average intellectual standard of the negro race is some two grades below our own . . . .” Social Darwinism was born. As an intellectual movement, Social Darwinism applied the theories of natural selection to social and economic issues, and was used in America and elsewhere to justify racism.

Henry Carnegie illustrated this philosophy to Americans when he stated that the “law of competition” was best for whites because “it insures the survival of the fittest in every department.” He went on to explain that competition allowed for the “concentration of business, industrial and commercial, in the hands of a few, and the law of competition between these, as being not only beneficial, but essential for the future progress of the race.” Nonwhite races, so the argument went, were not successful because they were inferior. Social Darwinists argued that economic policy should operate like nature, allowing only the fittest to survive. This combination of Social Darwinism and laissez-faire economics was coined “the Gospel of Wealth.” The *American Dream* was no longer a promise for all; it was a prize to be won by those special few who could attain it.

Norton Garfinkle argues in his book, *The American Dream vs. The Gospel of Wealth*, that this “Gospel of Wealth” ideology is distinct from and in conflict with the *American Dream*. I disagree. The “Gospel of Wealth” mimics the Hamiltonian view of the *American Dream*, though it may be a somewhat distorted view. It is a belief in “laissez-faire economics, strict opposition to government intervention in the economy, an acceptance of extreme economic inequality, a bias against labor in favor of the business owner, a vision of the industrialist and investor as the true engine of economic progress.” In many ways, it mirrors Hamilton’s view of an economy favoring the elites. Like Hamilton, the “Gospel of Wealth” embraces the idea that the *American Dream* is a prize only for the winners.

Finally, during this same period, Horatio Alger began writing his now famous novels. His books presented an optimistic view of the *American Dream*, albeit an unrealistic view. Alger wrote over one hundred novels,

---

46. *Id.* at 210.
47. *Id.*
48. Social Darwinism fell out of favor for most, especially after it was used by the Nazis to justify the Holocaust. Unfortunately, its ideas still perculate in our American political realm. The ideas were reborn with the publication of *The Bell Curve* in 1994, which critics argue supports the notion that some races are inherently more intelligent than others.
49. *Jillson, supra* note 5, at 121.
50. *Id.*
51. *Id.* at 137.
53. *Id.*
54. *Id.* at 67.
all stories about young men achieving success through their good moral character and even a bit of luck. His novels were very popular when they were written at the end of the nineteenth century, but most today would recognize the familiar myth they inspired. The Horatio Alger myth is the “rags to riches” story of the American Dream, which would have us believe that anyone without means can achieve wealth through entrepreneurship and good character.

D. The Twentieth Century

Theodore “Teddy” Roosevelt took office early in the twentieth century and returned to a more liberal view of the American Dream, which he called the New Nationalism. His is a return to Jeffersonian view of the Dream. Roosevelt believed in governmental intervention to help people achieve the American Dream, and explained his position thus:

I stand for a square deal. But when I say that I am for a square deal, I mean not merely that I stand for fair play under the present rules of the game, but that I stand for having those rules changed so as to work for a more substantial equality of opportunity and of regard for equally good service.

Roosevelt’s economic vision appears rooted in the notion of equal opportunity. For example, he explained his New Nationalism as a policy “to secure . . . a reasonable approximation to equality of opportunity for all men, so that . . . each man shall have the chance to start fair in the race of life and show the stuff that is in him . . . .” Yet, at other times, he also seemed to advocate for equality of results, not just equality of opportunity. It is clear that Roosevelt believed in the need for governmental intervention in the economy to help citizens achieve the American Dream.

Herbert Croly’s 1909 book, The Promise of American Life, had a huge influence on Roosevelt and his New Nationalism policies. Croly was influenced by a Jeffersonian view of the American Dream but sought to alter this view to fit a new, more urban and industrial world. Croly identified a goal essential to the promise of the American Dream: “What the wage-

---

55. JILLSON, supra note 5, at 123.
56. Douglas Holtz-Eakin, Harvey S. Rosen & Robert Weathers, Horatio Alger Meets the Mobility Tables, 14 SMALL BUS. ECON. 243, 265 (2000) (finding that you are as likely to end up making less money as you are to make more by becoming an entrepreneur).
57. JILLSON, supra note 5, at 163.
58. Id. at 164.
59. Id. at 162.
60. Id.
61. Id. at 162.
62. Id.
earner needs, and what it is to the interest of a democratic state he should obtain, is a constantly higher standard of living.”63 Croly advocated for the Jeffersonian ideals of equal opportunity and Hamilton’s belief in a strong federal government to achieve those goals.64 Croly was willing to accept the Hamiltonian principle of competition, which allowed for winners and losers in the economic race, but not the notion that equality of opportunity alone would allow for a fair competition. Using a race analogy, he explained it thus: “It is as if a competitor in a Marathon cross country run were denied proper nourishment or proper training, and was obliged to toe the mark against rivals who had every benefit of food and discipline.”65 Croly saw the growing income inequality of the time as an obstacle to a fair race. He saw the growth in corporate power as a danger to overall prosperity.66 Unfortunately, the presidents who followed Theodore Roosevelt did not agree and the wealth gap grew.

The years between the presidencies of Theodore and Franklin Roosevelt are a period of freewheeling capitalism. Calvin Coolidge, Warren Harding, and Herbert Hoover were especially wedded to the “Gospel of Wealth” philosophy.67 This was an era in which, as Adams explained, for Americans, “[t]he old desire to control the great corporations in the interests of the American Dream became changed into a desire to see their stocks go up.”68 Coolidge believed in the power of business to cure all economic woes and set out to reduce taxes and eliminate regulations. And, for a time, it seemed to be working.69

In 1922, Herbert Hoover wrote American Individualism: The Challenge to Liberty.70 He articulated his vision of the American Dream, one of individualism and opportunity, but not necessarily equality.71 Hoover wrote that “while we build our society upon the attainment of the individual, we shall safeguard to every individual an equality of opportunity to take that position in the community to which his intelligence, character, ability, and ambition entitle him.”72 What emerges is a Hamiltonian view of the American Dream mixed with a commitment to laissez-faire capitalism that not only allows for inequality, but embraces it. The message is clear: You can attain the American Dream only if you are entitled to it.

63. Id.
64. Id. at 162.
65. Id.
66. Id. at 161.
67. GARFINKLE, supra note 52, at 16.
68. ADAMS, supra note 3, at 397.
69. JILLSON, supra note 5, at 166.
70. HERBERT HOOVER, AMERICAN INDIVIDUALISM: THE CHALLENGE TO LIBERTY (1922).
71. Id. at 9.
72. Id.
Hoover also believed completely in markets and their ability to right themselves, so much so that, as the economy was collapsing around him in the period leading up to the Great Depression, he refused to allow federal government intervention.73

The election of Franklin D. Roosevelt (“FDR”) during the Great Depression returned the nation to a more Jeffersonian view of the American Dream. FDR talked of how, in the past, land had been given away for free and farmers could make their own way on their homestead.74 In the new industrialized world, things were different. There was “no more free land and our industrial combinations had become uncontrolled and irresponsible units of power.”75 The American Dream needed to be modernized, and FDR sought to use his New Deal to do just that.76 Roosevelt did not shy away from the individualism that was so central to American identity; in fact he embraced it.77 He sought to redefine the American Dream for an industrial world: “Liberty requires opportunity to make a living—a living decent according to the standard of the time, a living that gives man not only enough to live by, but something to live for.”78 The Great Depression and a World War, however, left many no longer believing, or even concerned with, the American Dream. Survival was the only focus.

But as both World War II and the Great Depression ended, America and its citizens prospered. The American Dream seemed alive again. For many white men and their families, it was. Unfortunately, for people of color and women, it was not. As a result, the 1960s brought a period of upheaval as those left behind by economic and social policies began to assert their right to the American Dream.

John F. Kennedy (“JFK”) promised to restore the ideal of the American Dream, harkening back to the original ideal. “We must always consider that we shall be as a city upon a hill” he declared after winning the presidency in 1961.79 Tragically, JFK was assassinated in 1963. The reins of power passed to Lyndon Baines Johnson.

Johnson set out to fulfill Kennedy’s promise that every American should “enjoy the privileges of being an American without regard to his race or his color.”80 He called on Americans to remember the American Dream, but to realize that it has not been the reality for everyone:81

73. GARFINKLE, supra note 52, at 105.
74. JILLSON, supra note 5, at 174.
75. Id. at 175.
76. Id. at 174.
77. Id.
78. Id. at 176.
79. Id. at 203.
80. Id. at 205.
81. Id. at 213.
You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please. You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, “you are free to compete with all the others,” and still justly believe that you have been completely fair. Johnson wanted Blacks to have an equal opportunity to achieve the American Dream, but unlike many of his predecessors, he also wanted an equality of results. Unfortunately, Johnson was soon to face an unpleasant reality. While white America was willing to embrace the ideal of equality, the reality was another matter. The “economic, political, and social advantages dispensed to whites under systematic white supremacy . . . reinforced through patterns of oppression of Blacks and Native Americans” had become “institutionalized privileges” that white America was loath to give up.

Martin Luther King perhaps explained it best in his famous I Have a Dream speech. Referring to the Emancipation Proclamation, he explained:

But one hundred years later, the Negro still is not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languished in the corners of American society and finds himself an exile in his own land.

Yet, even he held out hope for Jefferson’s vision of the American Dream that “one day this nation will rise up and live out the true meaning of its creed: ‘We hold these truths to be self-evident, that all men are created equal.’”

As the twentieth century was coming to an end, the American Dream was still a distant hope for many, and as the economy began to change from a manufacturing economy to an information economy, it was becoming more distant. Many Americans who had previously enjoyed the American

85. Id.
86. As predicted by Daniel Bell in two books written in the 1970s, “the nation’s economy was evolving from an industrial configuration in which manual labor produced goods to a postindustrial configuration in which mental labor produced services like information and entertainment.” JILSON, supra note 5, at 226.
Dream were now finding themselves left behind. Some began to blame the gains made by women and minorities for their losses. As they perceived it, “whiteness” was losing value and many (white males especially) did not like it one bit. In reality, it was not. For example, until well into the middle of the twentieth century, it was still considered defamation per se to call a white man “Black” (but not to call a Black man “white”). Being white gave one privileges, and the law protected one’s “whiteness.”

Ronald Reagan is the next significant figure in the American Dream, known not so much for moving it forward but for moving it backwards. With the Reagan administration, the nation saw a return of Social Darwinism and the “Gospel of Wealth” that harkened back to the Hoover administration. Reagan returned America to an old view of the American Dream—a view that “good character led to success, bad character led to failure.” The inability to achieve the American Dream was due to some fault in one’s character. This was not to say that Reagan did not believe in the promise of the American Dream. He did. He just believed that the way to achieve it was to get government out of the way.

Bill Clinton believed the opposite. He called on America to create “a new covenant to rebuild America.” Clinton’s vision of the American Dream was complicated. He embraced many of the free market principles and elitist views of Hamilton, but was not as comfortable with allowing people to fail. At the same time, he supported the egalitarian views of Jefferson and the belief that government should intervene in markets at times to allow people to succeed. In many ways, Clinton embraced a more modern view of the American Dream.

The administrations to follow continued a pattern that had existed throughout the century. Some presidential administrations leaned toward a Hamiltonian view, while others have chosen a more Jeffersonian perspective. In many ways, the Hamiltonian view has succeeded, but perhaps not in a way that even Hamilton had envisioned. The losers outnumber the winners and, as a result, the very ideal is in danger. How did we get to this point?

---

87. “Median family income grew by 63 percent from 1950 to 1970, then slowed to just 16 percent growth from 1970 to 1990, and 4.5 percent growth between 1990 and 2013. In fact, between 2000 and 2013, median family income in the United States fell by 7.1 percent.” Id.
89. Id. at 227–28; GARFINKLE, supra note 52, at 158–59.
90. JILLSON, supra note 5, at 227.
91. Id. at 228.
92. Id. at 236.
93. GARFINKLE, supra note 52, at 158.
94. See, e.g., JILLSON, supra note 5, at 225–58.
III. ROLE OF GOVERNMENT IN SUBVERTING THE AMERICAN DREAM

Throughout U.S. history, the philosophy behind the American Dream has influenced governmental actions and inactions. Governmental policies have accorded privileges to some and denied them to others. Some well-intentioned policies have had unintended consequences, which profoundly affected certain groups’ ability to succeed. This Section will look at how certain governmental acts have prevented minority groups, especially Blacks and Native Americans, from fully enjoying the American Dream.95 The full scope of the relevant governmental policies over the last four hundred years are, of course, impossible to review in the scope of this Article. Therefore, this Article only presents a small sample of the long history of racially discriminatory actions that have created the uneven economic results we now experience.

A. Native Americans

The story of African slaves transported to America is well-known. A lesser-known story is that of Native Americans who were taken as slaves, transported, and sold.96 The Native American slave trade began earlier than the African slave trade. In the early sixteenth century, Spanish slavers could obtain a license to capture individuals as slaves in certain circumstances.97 When Ponce de León sailed to Florida, he did so with a royal warrant allowing him to “wage war and seize disobedient Indians and carry them away as slaves.”98 This practice continued in colonial America in the next century. Unlike African slaves, Indian slavery was initially not about providing needed labor for the colonies. Instead, it was about ridding the colonies of unwanted residents.

For example, in Charleston, South Carolina, “between 1670 and 1720” more Indians were exported out of the country as slaves than Africans imported into the colony.99 Additionally, other native tribes soon learned how to take advantage of this new trade and captured rival tribe members, offering them to the explorers in exchange for goods and favors.100 By the early nineteenth century, Native American slavery was rare on the east coast

95. It is clear that women have also been disenfranchised. I do not mean to diminish that by not addressing it. However, it is beyond the scope of this Article to explore every act of discrimination and disenfranchisement. Instead, I must focus on the most glaring, that of racial discrimination.
97. Id. at 41–42.
98. Id. at 42.
99. Id. at 172.
100. Id. at 173.
of America. It had, however, moved west. Slavery for Native Americans had a different impact on its people than did slavery on Africans. In many ways, Native American slavery was about the elimination or assimilation of a people.

As mentioned earlier, settlers in the New World often received land grants from either the King or colonial governments. As Creek Chief Tahatatastonake told British officials, Native Americans were “surprised how People can give away Land that does not belong to them.” The land grab continued in the New World and the Native people did not simply accept the loss of their lands without protest. The result was a near continual war with Native tribes. The British government sought to end the conflicts by discouraging the settlers from moving onto the Native American lands. In 1763, a Royal Proclamation was issued ordering settlers to stay east of the Appalachians and barred colonial governors from granting western lands to speculators. The proclamation had little effect. The colonists who wanted land west of the Appalachians were unconcerned with the largely unenforceable proclamation, and east of the Appalachians the damage was done. The disputes continued. The resulting colonial policies toward Native tribes were grim. Many states set up bounties for Indian scalps. Pennsylvania, in 1764, authorized a bounty of $134 for a male scalp, $130 for a female, and $50 for a child. Genocide became the official position of colonial governments toward Native Americans.

After the Revolutionary War, the new American government did take some efforts to stem the tide of the land grab, but to little result. In 1790, it enacted the Indian Trade and Intercourse Act, which prohibited anyone from taking Indian land without congressional approval. Again, it was largely ignored, and no real effort was made on the part of the government to enforce it.

While Andrew Jackson hailed himself as the champion of the common man, he quickly made it clear that he would not be a champion of Native Americans. The official policy of his administration was that all Native Americans...
Americans should be removed from the east and pushed west so their land could be redistributed to white families.\textsuperscript{108} It began with the Indian Removal Act of 1830, ordering all tribes to be moved west of the Mississippi.\textsuperscript{109} Although the Act did not allow Native Americans to be forced off their land, that is what occurred. The State of Georgia moved to push Indians out of its territory, and the Cherokees refused to go. Instead, they sued.\textsuperscript{110} The case reached the Supreme Court and the Court ruled in favor of the tribe.\textsuperscript{111} An injunction was issued preventing the State of Georgia from removing the tribe. Unfortunately, President Jackson disagreed and ordered their removal. The result was the Trail of Tears. Thousands of Native Americans were marched 1,200 miles west, over 4,000 people died, and the Native tribes lost all their territories in the American south.\textsuperscript{112}

The land grab did not end, however, once the Native Americans were moved west.\textsuperscript{113} There were valuable resources in the western lands as well. And white business interests wanted that land. The General Allotment, or Dawes Act, followed in 1887.\textsuperscript{114} The purpose of the Act was to force Native Americans to assimilate into the white culture. The government saw this as a method of “civilizing” them by making them farmers.\textsuperscript{115} Native American reservations were divided up and given to individual male tribe members—although some tribes were able to argue that because women in their culture were viewed as equal, women should get allotments as well.\textsuperscript{116} The plots were supposed to be farmed and farm owners were supplied with simple farming tools.\textsuperscript{117} If an allotment was not farmed, it could be put back in trust for other families. Excess land was sold to white settlers and businesses.\textsuperscript{118} The land was of poor quality and many failed to meet the necessary production requirements to keep the land.\textsuperscript{119} In 1890, the promise was broken again, and the land in trust was also sold off. In the end, millions of acres of Indian lands were lost to white ownership.\textsuperscript{120} Evidence suggests that, as a result of these policies, Native Americans have some of the lowest home ownership rates to this day.\textsuperscript{121}

\begin{thebibliography}{9}
\bibitem{108}LUI ET AL., \textit{supra} note 103, at 41–42.
\bibitem{109}Id. at 42.
\bibitem{110}Id.
\bibitem{111}Cherokee Nation v. State of Ga., 30 U.S. 1, 79 (1831) (finding that “[t]he laws of the state of Georgia” would allow “the total destruction of the complainants’ rights . . . .”).
\bibitem{112}LUI ET AL., \textit{supra} note 103, at 43.
\bibitem{113}See id. at 43–44.
\bibitem{114}Id. at 46.
\bibitem{115}Id.
\bibitem{116}Id. at 46–47.
\bibitem{117}Id. at 46.
\bibitem{118}Id.
\bibitem{119}Id. at 47.
\bibitem{120}Id. at 242.
\bibitem{121}Id. at 34; \textit{see infra} Part IV.
\end{thebibliography}
It is difficult to discuss the American Dream when speaking of Native Americans. Throughout our history, governmental policies have worked to deprive this group of Americans of the hallmark of the American Dream: land. At the same time, the very notion of moving Native Americans onto the farms, as envisioned by Jefferson’s American Dream, was really nothing more than an effort to eliminate Native American culture and, thereby, to eliminate Native Americans themselves. Thus, for Native Americans the so-called American Dream required the annihilation of their very identity. Nonetheless, many Native Americans today do strive to attain this Dream and, unfortunately, many fail.

B. Black Americans

Events early in colonial history had a profound effect on who could and who could not hope to achieve the American Dream. Ironically, one of the first was accidental. In 1619, a slave ship heading for Mexico was highjacked by pirates, becoming the first slave ship to anchor in Virginia and sell slaves.122 Slavery was illegal in England at this time, and while the colonies generally followed English law, on this they diverged.123 Slavery existed in reality, even if not encoded in law.

Slavery was not established by law, but early legal references to it make no doubt it existed. For instance, a 1639 Maryland statute gave all Christians (except slaves)124 “the rights of Englishmen.”125 Interestingly, race was not mentioned even though the term “slave” was. It is not clear whether the failure to mention race was because it was assumed that all slaves were Black, or if race was simply not an issue the state considered. This may partially be explained by the fact that, at the time, there were thousands of Native American slaves in the New World.126

122. KENDI, supra note 45, at 38. There is historical evidence that some slaves were brought to America by explorers before 1619, not for the purpose of selling them, but for service of those who brought them. Olivia Waxman, The First Africans in Virginia Landed in 1619. It Was a Turning Point for Slavery in American History—But Not the Beginning, TIME (Aug. 20, 2019, 12:53 PM), https://time.com/5653369/august-1619-jamestown-history/ [https://perma.cc/R5KE-2VLS].

123. Jonathan L. Alpert, The Origin of Slavery in the United States—The Maryland Precedent, 14 AM. J. LEGAL HIST. 189, 189 (1970). New England’s 1636 Constitution legalized slavery for “captives taken in just wars” and “such strangers as willingly selle [sic] themselves or are sold to us.” This lends some evidence to the theory that, early on, slavery was really a form of indentured servitude for a term of life. KENDI, supra note 45, at 18.

124. Alpert, supra note 123, at 190. Historians debate whether slaves and slavery did not really have any legal meaning in the seventeenth century. In seventeenth-century Maryland it appears to be someone who must “serve his master for life.” It was not, at least at the time, something that one was born into. Id. at 191–93.

125. Id. at 190. It is important to note that, at the time, there were many Native American slaves. Id at 191.

126. RESÉNDEZ, supra note 96, at app. 1.
A later act, “An Act Concerning Negros & other Slaves,” made it clear in its very title that one did not have to be Black to be enslaved. As time passed, however, laws did begin to make racial distinctions. A Maryland law, for instance, made it clear that, unlike whites, Blacks could not gain rights simply by converting to Christianity. Maryland was the first colony to formally legalize slavery. This Act applied to “all Negroes or other slaves” who were either in Maryland or who were brought to Maryland subsequently. By its terms, it applied to white, as well as Black slaves. The Act is most significant in that it made slavery an inherited condition: “[A]ll Children born of any Negro or other slave shall be Slaves as their fathers [sic] were for the terme [sic] of their lives . . . .” If a white woman was foolish enough to forget her “free Condition and to the disgrace of our Nation” marry a Black slave, she became a slave for the life of her husband. Any children born of the marriage became slaves until they were “[f]orty years of age and noe [sic] longer.” Until this time, slavery had many of the attributes of indentured servitude and there is even some debate as to whether the term “slave” was actually used to refer to long-term indentured servants. This law changed that profoundly.

Early on, class and religious differences were perhaps more important than racial differences. Being of the same class, a non-Christian white servant faced many of the same legal disabilities as a Black servant. In 1661, Virginia enacted a similar law. The Act changed the prevailing legal standard by declaring that all children born in America inherited the condition of their mother, as opposed to their father. Therefore, if your mother was free, so were you; but if she was a slave, then you were born into slavery. This also had the effect of incentivizing some truly horrific behavior. Slave owners could increase their property simply by impregnating female slaves.

In the late seventeenth century, legal and social norms were changing. Bacon’s Rebellion of 1676 is often credited with changing the legal status of poor white servants and, maybe as important, their perceived status as compared to Black servants and slaves. As in Maryland, Black slaves

127. Alpert, supra note 123, at 195.
128. Harris, supra note 83, at 1717 n.20; Alpert, supra note 123, at 196.
129. Alpert, supra note 123, at 195.
130. Id. at 195.
131. Id.
132. Id.
133. Id. at 191.
135. Alpert, supra note 123, at 194.
136. Kendi, supra note 45, at 41.
and white indentured servants in Virginia were treated much the same. Nathanial Bacon organized volunteers, both Black and white, to attack local Native American tribes, something Governor George Berkeley had wanted to avoid. Instead of being pleased, the Governor charged Bacon with treason. Bacon united the Black slaves and white indentured servants in a rebellion, burning down Jamestown and “proclaiming liberty to all Servants and Negroes.” Wealthy white landowners were horrified. The idea that poor whites could join with enslaved Blacks was nothing short of “the apocalypse.”

To prevent such alliances in the future, in 1680 the state enacted legislation that pardoned the white servants involved in the rebellion and made it a crime, punishable by thirty lashes, for any slave to raise a hand “against any Christian.” As Cheryl Harris so brilliantly explained, the concept of “whiteness” as a privilege was evolving into “whiteness” as a property interest, as racial privileges became encoded into law. An important step in this process was to distinguish between white residents and residents of color by legally turning people of color into property.

What followed was a series of laws across the colonies that determined who was white and who was not and the privileges being white bestowed. Black slaves could not be educated, nor could they own property. They could not leave the plantation without a certificate and could leave only for a “necessary” purpose. Slaves could not defend themselves; but if a master were “correcting” a slave and the slave “shall happen to be killed” the master was free of “all punishment and accusation for the same.” Even free Blacks faced restrictions on owning property, among other things. Finally, a 1705 Virginia act proclaimed that “[a]ll Negro,

---

138. Some of the Black “slaves” were actually indentured servants. This would change as time went on. There is also some evidence that there were racial differences in how one was treated as part of that servitude. Two examples come to mind. In 1640, three servants ran away, two white and one Black. The white servants had their bond extended for four years, the Black servant “was sentenced to servitude for life[,]” essentially making him a slave. LUI ET AL., supra note 103, at 233. It is also of note that research into one Virginia county found that, in 1666, “32 percent of European bond laborers became landowners at the end of their terms, compared with 16 percent of African American bond laborers.” Id.

139. KENDI, supra note 45, at 53.

140. Id.

141. Id. at 54. It is important to note that, at this time, all the slaves in the colony were Black and the Christians were white. The law essentially made it illegal for any Black man to raise his hand to a white man, regardless of the circumstances.

142. Harris, supra note 83, at 1724–25.

143. Id. at 1718; HIGGINBOTHAM, supra note 134, at 156.

144. HIGGINBOTHAM, supra note 134, at 39.

145. Id. at 55.

146. LUI ET AL., supra note 103, at 82.
mulatto, and Indian slaves within this dominion shall be held to be real estate... and be held in 'fee simple.'

These prohibitions alone would have consequences for centuries, the ripples of which are still felt today. As Cheryl Harris would later explain, "[i]t was their racial otherness that came to justify the subordinate status of Blacks." The belief in white supremacy, especially white, Protestant male supremacy, prevailed at the time. "Whiteness" was a valuable privilege, a property interest as Harris would argue, and the law protected property interests.

As mentioned previously, the British government had forbidden settlements beyond the Appalachian Mountains, but many ignored these prohibitions. With limited land in the original colonies, settlers moved further west, taking slavery with them. Slavery continued in America for the next two hundred years. During that time, white families were gaining property and passing it on to their children, often with the assistance of the U.S. government. Black families, most of whom were enslaved, could not own property and therefore could not pass anything to their children. In fact, slaves did not have any rights to their children, who could be sold away whenever a master chose to do so.

Colonies needed labor and labor required colonists. Following the Jeffersonian view of the American Dream, colonists were often drawn to the New World by the promise of cheap, or even free, land. Kings made the first land grants, usually to adventurers on their way to claim the land for their respective countries. These grants were almost always made to white European settlers or explorers, some of whom would have had no hope of becoming landowners in their own countries. William Penn’s famous land grant allowed for the creation of one of the most successful early colonies, Pennsylvania. In South Carolina, the government thought to encourage the slave trade by giving land grants to anyone importing slaves. Georgia, on the other hand, hoped to keep slavery out of the

147. HIGGINBOTHAM, supra note 134, at 52.
148. Harris, supra note 83, at 1717.
149. Id. at 1713.
150. Id. at 1718–21. Evidence of the value of “whiteness” can be seen in the number of lawsuits by numerous immigrant groups all wanting to be declared “white.” LUI ET AL., supra note 103, at 251.
151. LUI ET AL., supra note 103, at 239.
152. ADAMS, supra note 3, at 114–15.
154. Id.
155. HIGGINBOTHAM, supra note 134, at 165. At the height of the South Carolina government’s program, each “free person above sixteen years of age received 150 acres for each manservant or male slave imported and 100 acres for every woman servant or manservant under sixteen years of age
colony and created a program to finance what came to be known as “charity colonists.” 156 The government financed their trip to America and gave them each fifty acres of land. Others were given loans to bring over servants and, as a reward, given as much as 500 acres. Indentured servants who successfully completed their indentured terms were also given free land in some colonies. All of these efforts were for the purpose of putting formerly Native American lands into the hands of white European settlers. 157

In 1776, Thomas Jefferson wrote the Declaration of Independence, penning those famous words “all men are created equal.” 158 Despite the promise of this founding document, the new American government worked to ensure the privileged position of white males. A little over a decade later, Congress passed the Naturalization Act of 1790, which restricted American citizenship to free white males. 159 Other acts followed to restrict the rights of even free Blacks. Blacks could not vote, intermarry with whites, or testify against whites in a court of law. 160 This pattern continued for the next hundred years. Eventually, in the South and elsewhere, Blacks and whites would be segregated into separate neighborhoods, schools, and even restrooms.

While Lincoln certainly espoused the notion that “all men are created equal,” he saw this as a promise that all men should be able to reach their natural potential, but it was not at all clear that he viewed all men as having the potential to be equal. 161 Like much involving race, the truth is more complicated. An often-cited quotation to support the position that Lincoln was racist, at least in our modern sense of the word, comes from the famous Lincoln-Douglas debate of 1858:

I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and black races,—that I am not nor ever have been in favor of making voters or jurors of Negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain

156. Id. at 237. The program, as history surely shows, was unsuccessful as the white immigrants were simply too few to meet the labor needs of the plantations. Slavery not only came to Georgia—it thrived.

157. Of course, this was all land stolen from the people who already occupied America. See infra Part III.A.

158. Declaration of Independence (U.S. 1776).


160. Higginsbotham, supra note 134, at 139.

161. See Don E. Fehrenbacher, Only His Stepchildren; Lincoln and the Negro, in LINCOLN’S AMERICAN DREAM, supra note 37, at loc. 4641.
together there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race.\footnote{Id. at loc. 4779–80.}

Lincoln’s preferred solution to the end of slavery had been to return the slaves to Africa or Latin America, a “solution” that ignored the fact that, for most, Africa was now more foreign than America.\footnote{Id. at loc. 4952; KENDI, supra note 45, at 218–19.} He is further quoted as having told a group of free Blacks: “On this broad continent, not a single man of your race is made the equal of a single man of ours. Go where you are treated the best . . . .”\footnote{Fehrenbacher, supra note 161, at loc. 4938; see also Jason H. Silverman, In Isles Beyond the Main: Abraham Lincoln’s Philosophy on Black Colonization, in LINCOLN’S AMERICAN DREAM, supra note 37, at loc. 4994–5161.} Yet, he also worked to enfranchise some freed slaves and seemed by the end of his term to be moving firmly in this direction.\footnote{Id. at loc. 4994–5161.} In 1865, he signed the Freedom Bureau Act, a law intended to provide wage labor and land for freed Black slaves, with the land to be taken from white southerners.\footnote{G ABOR S. B ORITT, LINCOLN AND THE ECONOMICS OF THE AMERICAN DREAM 264–46 (1994); see also Freedmen’s Bureau Acts of 1865 and 1866, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/generic/FreedmensBureau.htm#:~:text=On%20March%203%2C%201865%2C%20Congress,including%20newly%20freed%20African%20Americans [https://perma.cc/E63R-94EX] (last visited Mar. 5, 2022).} Unfortunately, his assassination never really allowed his dream of Black ownership to come to fruition.\footnote{See Freedmen’s Bureau Acts of 1865 and 1866, supra note 166.} At the same time, it and other land acts during this period did allow some gains for Black ownership.\footnote{M ELVIN L. O LIVER & T HOMAS SHAPIRO, BLACK WEALTH/WHITE WEALTH 14–15 (10th anniversary ed. 2006).}

What followed Lincoln’s assassination was the enactment of Jim Crow laws throughout the South, many of which survived until the Civil Rights Act a hundred years later. The disenfranchisment of Blacks began with the first congressional Reconstruction Acts. The laws required formerly Confederate states to grant the rights of Blacks to vote, while formerly Union states could connite to deny these same rights.\footnote{KENDI, supra note 45, at 244.} In 1869, the Thirteenth and Fourteenth Amendments to the Constitution purported to guarantee the right to vote regardless of color. That victory was also illusory. Across the South, laws were put in place to prevent Blacks from voting, and groups like the Ku Klux Klan terrorized those who tried.\footnote{Id. at 245.} These laws generally
prevented voting, but also impacted many aspects of economic life. For instance, some states had so-called black codes that made it a crime for a Black worker to quit his job or be absent from work. Others created special fees and licenses for Black artisans, mechanics, or shopkeepers.171

The economic advantage of being white can be understood through the famous case of Homer Plessy. Mr. Plessy was denied entry into the white section of a train in Tennessee. Albion Tourgee represented Homer Plessy in his lawsuit complaining of his treatment.172 Plessy’s lawyer did not argue that Blacks should be permitted to sit with white patrons on the trains in Louisiana. He argued instead that by not allowing Mr. Plessy, who was “seven-eighths Caucasian and one-eighth African blood[,]”173 to take a seat in the white section of the train, Louisiana was depriving him of his property interest in being “white.”174 The lawyer explained:

> How much would it be worth to a young man entering upon the practice of law, to be regarded as a white man rather than a colored one? . . . Nineteen-twentieths of the property of the country is owned by white people. Ninety-nine hundredths of the business opportunities are in the control of white people . . . . Under these conditions, is it possible to conclude that the reputation of being white is not property?175

The economic and social privilege of being white continued throughout the nineteenth century and into the twentieth century. In fact, it continues to this day.

Woodrow Wilson was born in the South when slavery was still the norm. When he became president, he moved to segregate the federal government to match the practices of his home state, Virginia. In 1913, Wilson segregated federal government offices. Curtain dividers were installed between Black and white workers, separate cafeterias were created, and Black-only toilets were put in the basement. His administration even went so far as to demote Black supervisors so that no white worker was supervised by a Black worker.176

World War I and the Russian Revolution of 1917 brought new fears to American lawmakers. Political leaders saw an American Dream grounded in capitalism now being threatened by the possibility of communism spreading to America. Woodrow Wilson’s administration set out to encourage all

---

171. LIU ET AL., supra note 103, at 84.
172. Harris, supra note 88, at 1746–48. Homer Plessy, who appeared white, was arrested for trying to seat himself in the white section of a train in Louisiana. Id. at 1746; see also Plessy v. Ferguson, 163 U.S. 537 (1896).
173. Plessy, 163 U.S. at 541.
174. Harris, supra note 83, at 1747.
175. Id. at 1748.
white Americans to buy their own home.\textsuperscript{177} The “Own Your Own Home” program was created by the Department of Labor, the goal of which was to promote the “patriotic duty” of white Americans to stop renting and to build homes instead.\textsuperscript{178} The program was specifically directed at white families who were encouraged to move away from Black families and warned how to “consider the ‘general type of people living in the neighborhood’” before building their home.\textsuperscript{179} To further ensure the racial purity of neighborhoods, developers were encouraged by governmental publications to use exclusive zoning,\textsuperscript{180} supplemented by restrictive racial deed covenants to “prevent ‘incompatible ownership occupancy.”\textsuperscript{181}

Restrictive deed covenants contain restrictions placed in a deed that prohibit both innocuous things, such as whether a homeowner can put a fence around her yard, and very significant matters, such as the race of people a homeowner is permitted to sell the home to if she decides to move. Restrictive racial covenants became powerful tools for excluding unwanted people from housing developments.\textsuperscript{182} A 1936 Federal Housing Administration (“FHA”) manual advised the use of deed restrictions to avoid the “‘infiltration’ of inharmonious racial groups . . . .”\textsuperscript{183} This forced Black families into less favorable neighborhoods or excluded them from homeownership altogether.\textsuperscript{184} The following covenant is an example of common language in deed covenants. This comes from a deed in a South Bend, Indiana development:

No person other than a member of the Caucasian Race may acquire, hold, lease or occupy any dwelling house on any lot in said addition. Provided, however, that this shall not exclude the housing of domestic help and chauffer in the owner’s dwelling house while the same is being occupied.\textsuperscript{185}

\begin{footnotes}
\item[177] Id. at 60.
\item[178] Id.
\item[179] Id. at 61.
\item[180] Exclusive zoning was the practice of enacting zoning ordinances to prevent Black residents from living in certain areas. For a discussion of how exclusive zoning was used to create and maintain racial segregation, see id. at 39–57.
\item[181] Id. at 62; see also Memorandum from Richard C. Stearns for the Jenkins Files (Sept. 13, 1983), http://archives.ubalt.edu/aclu/pdfs/R0002_ACLU_S03A_B02_F020.pdf [https://perma.cc/35PZ-WTPB] [hereinafter Stearns Memo].
\item[183] Stearns Memo, supra note 181, at 5. An earlier version of the manual explained that “[t]he more important among the adverse influential factors are the ingress of undesirable racial or nationality groups . . . .” Id. at 3.
\item[184] For more information about racial covenants, see Mapping Prejudice, U. MINN., https://mappingprejudice.umn.edu/ [https://perma.cc/P2J3-V8UQ] (last visited Mar. 9, 2022).
\item[185] St. Joseph Cnty, Ind., Deed Book 223: 137 (Sept. 25, 1929).
\end{footnotes}
Courts across the country enforced the covenants as private agreements not subject to constitutional challenge.\textsuperscript{186} As an extra measure of protection, developers created homeowners’ associations. Buyers were obligated to join and abide by their rules if they chose to buy a home in the development. The rules of the associations precluded Black members.\textsuperscript{187}

In 1948, the U.S. Supreme Court took up the issue of racial covenants.\textsuperscript{188} The Court concluded “that the restrictive agreements standing alone cannot be regarded as violative of any rights guaranteed to the petitioners by the Fourteenth Amendment.”\textsuperscript{189} However, if a party sought “judicial enforcement of the restrictive agreements” the Fourteenth Amendment was violated.\textsuperscript{190} The ruling did nothing to remove such covenants from deeds, nor did it make it illegal to add them to a new deed. It was only a violation of law to seek enforcement of a racial covenant in court. Deeds continued to be written containing these racial covenants until the passage of the Fair Housing Act made them illegal. Restrictive covenants run with the land, meaning they pass from owner to owner unchanged. While they could not be enforced in a court of law, they were certainly enforced in practice.\textsuperscript{191} As a result, restrictive covenants written before 1968 are still present on deeds today, although they are now unenforceable. They are hard, if not impossible, to remove.\textsuperscript{192}

Herbert Hoover dispels any doubt as to how early twentieth-century leaders viewed the economic plight of nonwhites. He explained the income inequalities of the 1920s with little concern:

\begin{quote}
[I]f we would use European scales of “classes” we would find that above their scale of “lower classes” we have in equivalent comfort, morality, understanding, and intelligence fully eighty per cent, of our native-born whites.\textsuperscript{193}
\end{quote}

Though perhaps not an accurate assessment of reality, his view is clear. The country’s “native-born whites” were doing fine. Why should we care about the rest?

\begin{footnotes}
\item[186] ROTHSTEIN, supra note 176, at 81.
\item[187] Id. at 78–79.
\item[189] Id at 13.
\item[190] Id at 20.
\item[191] States have only recently begun taking action to deal with these covenants. See, e.g., 2021 Ind. Acts 20 (allowing a homeowner to put a notice on the deed disavowing the covenant).
\item[193] HOOVER, supra note 70, at 62 (emphasis added).
\end{footnotes}
The Great Depression changed governmental attitudes about assisting those who were unable to realize the American Dream on their own. As in colonial times, one of the main ways the government sought to assist was through land. Unlike the previous two centuries, however, the government was not going to give land away. Instead, it sought to save the homes already owned by curbing the flood of foreclosures occurring across the country. Roosevelt created the Home Owners’ Loan Corporation (“HOLC”) in 1933 to buy back and refinance defaulting loans.\textsuperscript{194} HOLC created color-coded maps of every city in America to designate which neighborhoods were safe investments and which were risky.\textsuperscript{195} Neighborhoods with Black residents were coded red, regardless of the economic characteristics of the residents.\textsuperscript{196} Lenders were discouraged from making mortgage loans in areas outlined in red. Thus, Redlining was born.

In 1934, the Federal Housing Administration (“FHA”) was created, followed in 1938 by the Federal National Mortgage Association (“Fannie Mae”).\textsuperscript{197} FHA insured loans given by banks, allowing banks to give fully amortized loans to middle-class borrowers.\textsuperscript{198} FHA adopted the maps created by HOLC. FHA appraised the properties based on these standards and later created manuals for private appraisers to do the same.\textsuperscript{199} The manuals instructed appraisers that “[t]o retain stability it is necessary that properties shall continue to be occupied by the same social and racial classes.”\textsuperscript{200} Appraisers were then instructed to “give higher ratings” where they saw “[p]rotection against adverse influences” such as “infiltration of inharmonious racial or nationality groups.”\textsuperscript{201} The redline maps and discriminatory appraisals all but ensured that home loans were not made to Black families. Even if an entire development was intended for Black families, the buyers could not access FHA loans. FHA’s policy was that “no loans will be given to colored developments.”\textsuperscript{202}

\textsuperscript{195} ROTHSTEIN, supra note 176, at 64; FISHER & FOX, supra note 194, at 7–8.
\textsuperscript{196} ROTHSTEIN, supra note 176, at 64.
\textsuperscript{197} FISHER & FOX, supra note 194, at 8.
\textsuperscript{198} ROTHSTEIN, supra note 176, at 64.
\textsuperscript{199} Id. at 65.
\textsuperscript{200} Id.
\textsuperscript{201} Id. Unlike some other discriminatory practices, racially discriminatory appraisals are still with us today. In September 2021, Freddie Mac conducted a study and determined that “[a]ppraisers’ opinions of value are more likely to fall below the contract price in Black and Latino census tracts, and the extent of the gap increases as the percentage of Black or Latino people in the tract increases.” FREDDIE MAC, RACIAL AND ETHNIC VALUATION GAPS IN HOME PURCHASE APPRAISALS, ECONOMIC & HOUSING RESEARCH NOTE 2 (Sept. 2021), http://www.freddiemac.com/fmac-resources/research/pdf/202109-Note-Appraisal-Gap.pdf [https://perma.cc/L5Y7-L6RG].
\textsuperscript{202} ROTHSTEIN, supra note 176, at 66. Some groups, however, were able to circumvent the racist system. See GABRIELLE ROBINSON, BETTER HOMES OF SOUTH BEND: AN AMERICAN STORY OF
The Servicemen’s Readjustment Act of 1944 provided that returning veterans would be guaranteed a college education and a home to live in. The Veterans’ Administration created the VA loan to provide subsidized loans with low down payments to returning soldiers.\(^{203}\) By 1950, half of all mortgage loans were insured by the FHA and VA.\(^{204}\) Yet, between 1930 and 1960 “less than 1 percent of all mortgages went to African Americans.”\(^{205}\) Many returning veterans of color soon learned that the promises made to veterans were only intended for white veterans.

The story of Dr. Roland Chamblee is just one such story.\(^{206}\) Doctor Chamblee landed on Omaha Beach four days after D-Day as part of a bomb detachment. He was wounded in France, returned to England, then went back to France, and eventually landed in Germany.\(^{207}\) Upon returning to America, he tried to purchase a home in Indiana, but was turned away a number of times once the seller or realtor discovered he was Black.\(^{208}\) Unfortunately, Dr. Chamblee’s experience was not an outlier; this kind of systematic racism was not only widespread, it was the norm.

Another often forgotten part of Roosevelt’s New Deal was the creation of public housing projects to address the severe housing shortage of the time.\(^{209}\) The housing was segregated, with most housing going to white families only.\(^{210}\) The Tennesse Valley Authority located in Norris, Tennessee, is such an example. It built “a model village with 500 comfortable homes, leased to employees and construction workers.”\(^{211}\) Black workers were housed “in shoddy barracks some distance away.”\(^{212}\) The town was to be whites only because, as one official explained, “[n]egroes d[id] not fit into the program.”\(^{213}\) Many, but not all, of these projects were part of Roosevelt’s Public Works Administration. Those using federal money had to guarantee to keep the housing consistent with
the “neighborhood composition.”214 What followed was a pattern of pushing Black families into the worst neighborhoods and worst housing. The result was to force many Black Americans into urban ghettos. In 1968, the National Commission on Civil Disorders concluded that: “What white Americans have never fully understood—but what the Negro can never forget—is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.”215

Blacks shut out of the mortgage market were forced to find other ways to purchase property.216 For too many, that meant a land contract, or contract for deed, as they are sometimes known. Contracts for deeds are an especially predatory way in which to purchase a home.217 The buyer makes all the payments and assumes all the responsibility for upkeep but does not own the home until all payments have been made. The sales prices are unusually inflated, as are the interest rates. Even when all payments are made, it is often difficult to obtain a deed from the seller.

In 1966, Monsignor John Egan was moved from the archdiocese’s Office of Urban Affairs to a small parish in the Lawndale neighborhood of Chicago in an effort to silence the activist priest.218 The neighborhood did not have the racial covenants of some other Chicago neighborhoods, and as a result, it was largely Jewish and Black, these two ethnic groups having been barred from other neighborhoods.219 The plan to silence Egan backfired spectacularly. Instead, with the help of a Holy Cross Brother, Jack Macnamara, and student volunteers, he helped organize the Contract Buyers League to fight the inequitable housing conditions in the Chicago neighborhood.220 The Contract Buyers League members were Black land contract buyers who had been forced to buy homes in poor condition at inflated prices because they were shut out of the traditional mortgage markets. Egan

214. See id. at 24.
218. Satter, supra note 216, at 233.
219. Id. at 17–18.
220. Id. at 232–71.
and Macnamara organized rental strikes and drew national attention to the plight of these contract buyers. As a result, many were able to get relief from these predatory loans.221 Equally important, these rental strikes drew attention to the issue of mortgage discrimination at the time LBJ was attempting to pass the Fair Housing Act.

In 1968, the Fair Housing Act was enacted.222 It outlawed discrimination in the sale and renting of housing based on race.223 That should have ended racial discrimination in the housing context, but it did not.224 The wave of deregulation that began with the Ford Administration brought with it a new wave of discrimination in the form of subprime loans.225 Subprime loans are loans with high interest rates allegedly given to borrowers whose credit or income does not qualify them for a prime loan.226 It became clear early in the subprime mortgage boom that lenders were targeting minority populations for these bad loans.227 Black borrowers were given subprime loans when similar white borrowers were given prime loans.228 More insidiously, many of these loans were designed to fail. They targeted current homeowners in an effort to strip their equity with successive refinances.229

The subprime bubble eventually burst, causing a massive foreclosure crisis. 240,020 Black families lost their homes to foreclosure between 2005 and 2008,230 and this was before the official start of the foreclosure crisis.231 In 2009, nearly eight percent of all Black homeowners who had purchased or refinanced their loans during the subprime boom years of 2005 to 2008


222. 42 U.S.C §§ 3601–3631.

223. Id. § 3604.


226. FISHER & FOX, supra note 194, at 22.

227. ENGEL & MCCOY, supra note 225, at 21–25.

228. Turner & Skidmore, supra note 224; Unequal Burden, supra note 224.

229. ENGEL & MCCOY, supra note 225, at 23; FISHER & FOX, supra note 194, at 32.


231. FISHER & FOX, supra note 194, at 36. The official start of the crisis was 2008 when the foreclosures began to effect even prime borrowers. Id.
had already lost their homes to foreclosure, as compared to only four-and-a-half percent of white homeowners. Black borrowers were 1.76 times more likely to have their home foreclosed on than white borrowers. While Black borrowers accounted for 7.8 percent of the loan originations between 2005 and 2008, they accounted for 11.6 percent of the foreclosures. By the time the Obama administration launched the Making Home Affordable program, many Black families had already lost their homes. Other communities rebounded after the crisis, but Black neighborhoods largely did not.

IV. THE AMERICAN DREAM TODAY

The above exploration of the history of discriminatory policies toward Native Americans and Blacks matters, especially when one considers that wealth matters and wealth helps determine whether one can attain the elusive American Dream. Wealth is a combination of earnings and assets. Across all metrics, minorities are not faring as well as whites. According to the Federal Reserve, “the typical White family has eight times the wealth of the typical Black family” in America. Native American families, though doing better than Black families, still fall behind white families in wealth. Blacks earn sixty-one cents for every dollar white Americans earn.

Most American families own their own homes, but when broken down by race, the numbers tell another story. Seventy-four percent of all white Americans owned their own home at the end of the third quarter of 2021,
compared to only forty-four percent of Black Americans.\textsuperscript{240} This gap in homeownership between white and Black families is larger than it was when the Fair Housing Act was signed in 1968.\textsuperscript{241} Just as important, Black families who do own their own home “are nearly five times more likely to own a home in a formerly relined neighborhood than in a greenlined, or ‘desirable’ neighborhood . . . .”\textsuperscript{242} These formerly relined neighborhoods still have high poverty rates and worse health conditions than other neighborhoods.\textsuperscript{243}

In his book, \textit{The Hidden Cost of Being African American}, Thomas Shapiro points out the importance of generational wealth for families’ struggles to achieve the \textit{American Dream}.\textsuperscript{244} White families have the benefit of generational wealth\textsuperscript{245} as a result of hundreds of years of governmental policies that have allowed them to accumulate wealth, while at the same time denying that same privilege to Black families. This is especially important when it comes to purchasing a home, the essential element of the \textit{American Dream}. A 1996 study showed that only twelve percent of Black families had family assistance with the down payment when buying their first home compared with forty-six percent of white families.\textsuperscript{246}

The \textit{American Dream} is in danger for many in America, but when conditions are bad for white Americans, they are always worse for minorities. There is a housing shortage in America.\textsuperscript{247} Housing prices have soared.\textsuperscript{248} Add to this the continued evidence of mortgage discrimination, and the situation for hopeful Black homebuyers is grim.\textsuperscript{249}

The situation for Native Americans is equally grim. Statistics regarding Native Americans are more difficult to obtain. However, according to the National Congress of American Indians, Native Americans owned fewer

\begin{footnotes}
\item[240] Id.
\item[243] Id.
\item[244] O LIVER & S HAPIRO, supra note 168, at 70–71.
\item[245] Id. at 71.
\item[246] Id. at 113.
\item[248] Id.
\item[249] See Munnell et al., supra note 224; Turner & Skidmore, supra note 224; Unequal Burden, supra note 224.
\end{footnotes}
than one percent of the owner-occupied homes in America in 2007. More than a quarter of all Native Americans live in poverty. Forty-nine percent of the Native Americans living in South Dakota live in poverty. In South Dakota’s Pine River Reservation, the number is ninety-seven percent. The extreme poverty of Native Americans, especially those who live on reservations, is the direct result of governmental policies. Ironically, the federal government deprived them of the land that, according to that same government, is essential in the quest for the American Dream.

V. CONCLUSION

Our founders envisioned a land where everyone could own their own land, support their family, and pass on their assets to their children, regardless of their social status. At times, that American Dream was possible for at least most Americans. It was never achievable, however, for others. Centuries of discriminatory governmental actions have resulted in winners and losers, not determined by effort or worth, but by race. Many hope to erase the structural racism that shaped America by claiming it was history and not the fault of anyone alive today. Perhaps, but white Americans today clearly benefit from that history and, unfortunately, there is significant evidence that America has not completely moved on from its discriminatory ways. If we still believe in the American Dream, the time has long passed for us to take action to see that it can be realistically realized by all Americans, and not just the select few.

251. Id.
254. Id.
255. JILLSON, supra note 5, at 38.