

INTERNATIONAL TRADE AND AFRICAN HERITAGE: THE COTTON STORY

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How does race shape the laws and institutions that in turn shape the global political economy? Answering this question requires, first, situating the study of race relations in a global context.¹ Second, it requires an examination of the economic aspects of race relations and racial justice.² Finally, it requires the converse: an examination of the racialized aspects of the international economy.

This essay tells a story of cotton: its role in the international marketplace, its abiding connection to communities of African heritage, and its continuing exposure of the hierarchies that create socioeconomic inequality.³ The story focuses on economic subsidies for United States (U.S.) farmers, long a contentious point in international trade negotiations and a source of economic harm to African exporting nations.⁴ This essay goes beyond the setting of multilateral trade talks to observe that U.S. farm subsidies had a racially exclusionary cast at home: African-American farmers were often denied subsidies, or were provided them at a lesser level compared to White farmers.⁵ In other words, at the same time that African farmers were being pushed out of international markets by U.S. cotton subsidies, those very same subsidies were also imposing exclusionary harms on African-

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1. Hank Richardson's work has led the way in examining how questions of international legal justice impact persons of African descent, and vice versa. *See generally* HENRY J. RICHARDSON, III, *THE ORIGINS OF AFRICAN AMERICAN INTERESTS IN INTERNATIONAL LAW* (2008); Henry J. Richardson, III, *The Gulf Crisis and African-American Interests under International Law*, 87 AM. J. OF INT'L L. 42 (1993); Henry J. Richardson, III, *Constitutive Questions in the Negotiations for Namibian Independence*, 78 AM. J. OF INT'L L. 74 (1984); Henry J. Richardson, III, *Self-Determination, International Law and the South African Bantustan Policy*, 17 COLUM. J. TRANSNAT'L L. 185 (1978).

2. While there is of course a robust literature on race relations, critical race theory and race relations scholarship in the legal academy has focused relatively infrequently on either international law or economic law, let alone international economic law. There are some important exceptions: *see generally* DARIA ROITHMAYR, *REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGE* (2014); EMMA COLEMAN JORDAN & ANGELA HARRIS, *ECONOMIC JUSTICE: RACE, GENDER, IDENTITY, AND ECONOMICS* (2005); EMMA COLEMAN JORDAN & ANGELA HARRIS, *WHEN MARKETS FAIL: RACE AND ECONOMICS* (2005); JEANNE M. WOODS & HOPE LEWIS, *HUMAN RIGHTS & THE GLOBAL MARKETPLACE: ECONOMIC, SOCIAL, AND CULTURAL DIMENSIONS* (2005).

3. *See generally* SVEN BECKERT, *EMPIRE OF COTTON: A GLOBAL HISTORY* (2015).

4. *See Farm Subsidies and the World Trade Organization*, PEARSON EDUCATION CANADA 1, 2 (2005), http://wps.aw.com/wps/media/objects/1308/1340187/ragan_econ_11ce_Ch34a_topic.pdf (noting that the U.S. has generous support for agriculture, whereas the lack of economic opportunity poses a serious threat to developing countries).

5. Joy Milligan, *Protecting Disfavored Minorities: Toward Institutional Realism*, 63 UCLA L. REV. 894, 899 (2016).

American farmers.⁶

The efforts by African cotton farmers and African-American farmers to remedy that exclusionary harm were largely contemporaneous: the late 1990s and early 2000s saw both a class-action lawsuit by African-American farmers against the U.S. Department of Agriculture,⁷ and a diplomatic effort by African governments in international trade talks.⁸ Both of these efforts focused on the harmful effects of U.S. farm subsidies.⁹ The former case focused on the exclusion of African-American farmers as subsidy recipients,¹⁰ and the latter case focused on the exclusion of African farmers as competitors with subsidized American farmers.¹¹

These efforts were seemingly not in dialogue with each other. What would or should have happened, had they been in such dialogue? This essay concludes by contemplating the implications of this connection for, as Hank Richardson would put it, “African-American interests under international law.”¹²

I. THE HISTORY OF A GLOBAL COMMODITY

Historically, cotton’s role in U.S. race relations can hardly be questioned—it served as one of the main plantation crops and stood at the heart of the slave economy.¹³ The international economic significance of U.S. slave plantations, however, might be less well understood. For example, the antebellum South favored “free trade” policy—a term that was paradoxical, to say the least, given that its exports depended on forced labor—because the Southerners were exporters to the British and feared British retaliation against U.S. protectionism.¹⁴ By

6. *Id.* See also *Farm Subsidies and the World Trade Organization*, *supra* note 4, at 2 (discussing the negative effects of dominance of U.S. agriculture on developing countries).

7. *Pigford v. Glickman*, 185 F.R.D. 82, 86 (D.D.C. 1999).

8. See Dot Keet, *The Challenges Facing African Countries Regarding the WTO Trade Regime Since the Third Ministerial Meeting in Seattle*, INST. FOR GLOBAL DIALOGUE 1, 9–10 (2000), <https://www.tni.org/en/archives/act/1828> (discussing proactive and reiterated demands from African nations for better market access).

9. See *id.* (“The proactive African [nations] demand[] . . . the removal of . . . export subsidies . . . that create unfair competition against developing countries’ exports and unfair import competition within their own domestic markets.”); *Pigford*, 185 F.R.D. at 87 (“Throughout the country, African[-]American farmers complain that country commissioners have discriminated against them for decades, denying their [subsidy] applications, delaying the processing of their [subsidy] applications or approving them for insufficient amounts or with restrictive conditions.”).

10. *Pigford*, 185 F.R.D. at 87.

11. *Keet*, *supra* note 8, at 9–10.

12. RICHARDSON, *supra* note 1, at 235.

13. See Lu-in Wang, *The Complexities of “Hate”*, 60 OHIO ST. L.J. 799, 845, 845 n.267 (1999) (noting both the power of cotton in agricultural capital in southern states but also the importance of slavery to the maintenance of that power).

14. See Kathryn Susan Boodry, *The Common Thread: Slavery Cotton and Atlantic Finance from the Louisiana Purchase to Reconstruction* 45–48 (December 2013) (unpublished doctoral dissertation) (on file with Harvard University’s Digital Access to Scholarship at Harvard) (noting that cotton gained importance as an export crop to Great Britain, while protective tariffs would be a big issue for the South in the antebellum period).

contrast, the industrialists of the North favored an economic policy stance of protectionism to support their infant industries.¹⁵ The Southern states opposed high tariffs on imports into the U.S., because they feared retaliation on their own exports and a consequent loss in trade.¹⁶

Sven Beckert's *Empire of Cotton* argues that cotton formed the essential raw stuff of the industrialization era.¹⁷ England's Industrial Revolution arose first and foremost from its textile mills, whose primary ingredient was none other than cotton.¹⁸ Although cotton had long been a staple of subsistence and small market farming in numerous territories around the world, only the brutalities of plantation agriculture could extract the levels of productivity needed to fuel large-scale manufacturing.¹⁹

Moreover, many of the cotton-exporting economies in the global South today were cultivated by merchants in the nineteenth century, desperately seeking out alternative sources of the raw material so necessary to fuel the burgeoning industrial economies of the global North.²⁰ Facing the prospect of declining cotton supplies from the U.S. South due to the abolition of slavery and the war between the states, nineteenth century capitalists searched elsewhere for alternative supplies, and in many cases actively induced cotton cultivation.²¹ Africa provided one such alternative. The Scramble for Africa included the drive to grow and export cotton.²² Cotton cultivation was pursued by the Germans in Togo, by the Belgians in Congo, by the British in Egypt and Uganda, and by the French in

15. *See id.* at 68–69 (discussing the increased need for protectionist measures to safeguard developing manufacturing interests in the North).

16. *See id.* (noting Southern commitment to free trade policies after a failed embargo on Britain ruined cotton markets).

17. BECKERT, *supra* note 3, at xiv. Beckert provides a somewhat totalizing narrative. However, despite that, the basic facts of his account relating to the construction of the cotton economy remain striking. There is no need to agree with Beckert that cotton was the single most important commodity, or that cotton cultivation practices everywhere were largely comparable. *See generally id.*

18. *Id.* at 37–54.

19. *Id.* at 84, 91–92, 116, 119. “As the *American Cotton Planter* put it in 1853, ‘The slave-labor of the United States, has hitherto conferred and is still conferring inappreciable blessings on mankind. If these blessings continue, slave-labor must also continue, for it is idle to talk of producing Cotton for the world’s supply with free labor. It has never yet been successfully grown by voluntary labor.’” *Id.* at 119; *see id.* at 116 n.34 (“There is no real question nowadays . . . that [the plantation] was a site of early development of industrial discipline.”).

20. *See id.* at xiv (discussing the effect of cotton on the global South versus the global North).

21. *See id.* at 258 (discussing the self-interests of colonialism concerning the cotton market).

22. *See* Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT’L L. 1113, 1127 (“There is no disagreement over the motives for the colonization of Africa; commentators agree on its economic basis.”); *Id.* at 1127 n.38 (“. . . Africa, in the rhetorical metaphor of imperial jingoism, was a ripe melon awaiting carving in the late nineteenth century. Those who scrambled fastest won the largest slices and the right to consume at their leisure the sweet, succulent flesh.”).

Benin and Mali.²³ In particular, the French declared Africa to be the new “country of cotton.”²⁴ Hence, the cotton export economies of West Africa can be seen as one locus of the empire of cotton.²⁵ Beckert states that “between 1860 and 1920, 55 million acres of land in Africa, Asia and the Americas . . . were newly planted with cotton for world markets. . . . Approximately 80 percent of all that new cotton-growing land was situated in territories that had not grown cotton in 1860.”²⁶

Meanwhile, in the U.S., the end of the Civil War saw a brief period in which former African slaves sought a more equitable relationship to cotton production.²⁷ The “forty acres and a mule” that had been promised by the Reconstruction government, but that was never delivered, featured as one aspect of new citizenship that came only briefly before disappearing behind massive retrenchment.²⁸

Beckert produces historical documents that recount with chilling clarity the financial incentives that helped to precipitate the demise of African-American hopes for equality and the reinstatement of compulsory labor to ensure the raw materials necessary to supply industrial production.²⁹ A British treatise, *The Cotton Supply of the United States of America*, opined that “[c]otton can only be cultivated extensively in the Southern States by negro labour and negro labour can only be controlled under . . . slavery.”³⁰ In other words, “only reenslavement would bring forth cotton.”³¹ A lawyer and Union general advised cotton cultivators that “[m]aking money [in the South] is a simple question of being able to make the darkies work.”³²

The institutional phenomenon known as Jim Crow became an important part of the response to the “question of being able to make the darkies work”³³—a confluence of laws and practices that disenfranchised African-Americans not only politically but economically.³⁴ The most-well known of Jim Crow strategies pertained to the electoral process—grandfather clauses, poll taxes, and the like that ensured that political representation of African-Americans soon disappeared after

23. *Id.* at 342, 358.

24. See BECKERT, *supra* note 3, at 258. (“L’Afrique est le vrai pays du coton.”)

25. *Id.*

26. *Id.* at 358.

27. See Roy L. Brooks, *Getting Reparations for Slavery Right—Response to Posner and Vermeule*, NOTRE DAME L. REV. 251, 262 (discussing how during the postbellum period former slaves without money or defenses pressed for redress).

28. *Id.* at 263.

29. BECKERT, *supra* note 3, at 281–92.

30. *Id.* at 281 (citing GEORGE MCHENRY, *THE COTTON SUPPLY OF THE UNITED STATES OF AMERICA* (1865)).

31. *Id.*

32. *Id.*

33. *Id.*

34. See RICHARD M. VALELLY, *THE TWO RECONSTRUCTIONS: THE STRUGGLE FOR BLACK ENFRANCHISEMENT* 148 (2004) (noting that disenfranchisement of African-Americans entrenched White supremacy in the U.S. including the de jure phenomenon of Jim Crow).

its brief emergence in the South.³⁵ The loss of voting power opened the way for post-Reconstruction legislatures in the South that “altered lien laws to give landlords a primary claim” on cotton crops; “modified criminal law to make plantation workers susceptible to arrest, conviction and prison sentence for indebtedness”, and enacted new vagrancy laws “aimed at driving ‘negro loafers to the field.’”³⁶ These vagrancy laws formed a centerpiece of the new strategy to compel labor: “[s]o-called black codes passed as early as November 1865 in Mississippi required freedpeople to sign labor contracts that defined mobility as ‘vagrancy.’”³⁷ Landowners now “violently repressed black collective action” aimed at improving conditions, and their campaigns were enforced by racial terror: “[l]ynchings in the Mississippi Delta alone numbered a hundred between 1888 and 1930.”³⁸ Laws and institutions were marshaled to tie newly freed people to the land.³⁹ Beckert shows that those implicated in marshaling such laws included industrialists and government officials of the U.S. North.⁴⁰ Northern businessmen asserted that “freedpeople’s mobility ‘cannot be deemed anything more than a temporary state of affairs, to be corrected by the joint influence of the vagrancy laws and the necessity of the vagrants.’”⁴¹ The Union army in many cases assisted in the process of compelling “freed slaves to work for wages on plantations.”⁴² Though cotton entrepreneurs were resigned to the fact that “remuneration for labor will hereafter be necessary,” the loss of mobility and the broader economic dependency cultivated by Jim Crow minimized the potential expense of nominally free African-American labor.⁴³

At the same time, the White “yeoman farmer” rose in the South to become much more significant in U.S. cotton production.⁴⁴ The rise of the White farmer was made possible through “broader access” to inputs such as fertilizers, and, most importantly, to credit.⁴⁵ Credit lines often proved perilous for White farmers as well as Black: one-third of the former lost their land and became tenant farmers.⁴⁶ By the turn of the nineteenth to the twentieth century, sufficient political support existed for the creation of the first federal farm subsidy programs, which were created to respond to the need for credit.⁴⁷ In 1916, Congress established the first banks and associations of the Farm Credit System still in existence to this day, and

35. *Id.* at 50, 141–143.

36. BECKERT, *supra* note 3, at 287.

37. *Id.* at 284.

38. *Id.* at 287.

39. *Id.* at 284.

40. *Id.*

41. *Id.*

42. BECKERT, *supra* note 3, at 282.

43. *Id.* (quoting MACON DAILY TELEGRAPH, May 31, 1865, at 1).

44. *Id.* at 289.

45. *Id.* at 290.

46. *Id.*

47. *Id.*

also passed the Federal Farm Loan Act.⁴⁸ With the Great Depression and the advent of New Deal era legislation, the first component of the modern legislative architecture for farm subsidies in the U.S. was created: the Agricultural Adjustment Act of 1938.⁴⁹ Following World War II, two more bedrock statutes were passed: the Agricultural Act of 1949⁵⁰ and the Commodity Credit Corporation (CCC) Charter Act of 1948.⁵¹

These three statutes continue to provide the framework for farm support and the standing authority for the U.S. Department of Agriculture (USDA) and its CCC.⁵² In addition, Congress frequently passes multi-year, omnibus farm bills that adjust the particulars of farm support.⁵³ Federal law requires the CCC to supplement farmer incomes and to manage market prices for a number of specific commodities, including cotton.⁵⁴ To meet these goals, the CCC has employed a wide variety of techniques.⁵⁵ These include direct payments to farmers (both fixed payments and “deficiency” payments, which make up the difference between the commodity’s average market price and its “target price”) as well as loans.⁵⁶

Contemporary historians, such as Edward E. Baptist, have attested that slave production both formed a crucial aspect of the modern capitalist economy of the U.S. and depended on methods of torture and profound brutality to achieve its profits.⁵⁷ Before slavery was abolished, competitive cotton could be elicited only through forcible labor.⁵⁸ Afterwards, concomitant with the emerging predominance of the White yeoman farmer, the question of how to make cotton competitive was answered not through forced labor, but through financial assistance—governmental subsidies in which cotton prices could fall to a point that, in a rich economy, was not possible through free labor.⁵⁹ Yet, two very different tribunals—the U.S. District Court for the District of Columbia and the World Trade Organization Dispute Settlement Body—would eventually confirm that these subsidies also harmed those excluded by them.⁶⁰

48. THE U.S. S. COMM. ON AGRIC., NUTRITION, AND FORESTRY 1825–1998: MEMBERS, JURISDICTION, AND HIST., S. DOC. NO. 105–24, at ch. 3 (1998) [hereinafter U.S. Senate Committee on Agriculture].

49. Pub. L. No. 75-430, Stat. 31.

50. Pub. L. No. 81-439, 63 Stat. 1051.

51. Pub. L. No. 80-806, 62 Stat. 1070.

52. GEOFFREY S. BECKER, CONG. RES. SERV., RS20848, FARM COMMODITY PROGRAMS: A SHORT PRIMER 1 (2005).

53. *Id.*

54. *Id.* at 2.

55. *Id.*

56. *Id.* at 2–4.

57. EDWARD BAPTIST, THE HALF HAS NEVER BEEN TOLD: SLAVERY AND THE MAKING OF AMERICAN CAPITALISM xxi (2014).

58. *Id.*

59. U.S. Senate Committee on Agriculture, *supra* note 48, at ch. 3 (1998).

60. *See* Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) (alleging racial discrimination by the U.S. Department of Agriculture against African-American farmers in its allocation of farm loans and assistance); Appellate Body Report, *United States – Subsidies on Upland Cotton*, WTO Doc. WT/DS267/AB/R (Mar. 3, 2005) (concluding that U.S. subsidies did seriously prejudice

Part II of this article describes these two cases of exclusion from cotton subsidies—African farmers and African-American farmers. Part III then considers the normative question—what to make of this? How should we understand race and global political economy?

II. THE MODERN CONSTRUCTION OF THE GLOBAL COTTON TRADE

In the early 2000s, four cotton-exporting African countries (the “Cotton 4”)⁶¹ sought to gain the market access to which the logic of free trade should have entitled them, calling upon the international trading system to adjust the rules so as to permit those countries to benefit from their comparative advantage.⁶² While African cotton exports faced numerous challenges in the global marketplace, such as competition from synthetic fibers, a primary obstacle lay in the subsidies that developed country governments, in particular the U.S., provided to their domestic farms.⁶³ Those subsidies accounted for an estimated annual loss of over 9 billion dollars to cotton farmers in developing countries, including countries in Africa.⁶⁴

Over the next decade and a half, the African countries mobilized to obtain commitments from the U.S. and other developed countries in the trade negotiations of the WTO to remove those subsidies.⁶⁵ What followed was a protracted and ultimately only partially successful effort, which finally won some concessions in 2015, and which also starkly reveals the gap between the myth of globalization and its reality.⁶⁶

A. Exclusion of African Farmers from Global Markets by U.S. Farm Subsidies

The economic logic the Cotton 4 put forth in 2003 was seemingly clear: U.S. cotton was much less competitively priced than African cotton—\$0.68 per pound compared to \$0.31 per pound—but the U.S. remained the largest global exporter, accounting for more than 40% of cotton sales on the international market.⁶⁷ Continued U.S. dominance was possible largely as a consequence of governmental farm support, which in the early 2000s amounted to more than two billion dollars

other WTO members).

61. See *Groups in the agriculture negotiations*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/agric_e/negoti_groups_e.htm (last updated July 29, 2016) (identifying Benin, Burkina Faso, Chad, and Mali as a group called the Cotton 4).

62. Joint proposal by Benin, Burkina Faso, Chad, and Mali, *Poverty Reduction: Sectoral Initiative in Favour of Cotton*, WTO Doc. TN/AG/GEN/4 (May 16, 2003). This initial proposal was revised. Communication from Benin, *Poverty Reduction: Sectoral Initiative on Cotton: Wording of Paragraph 27 of the Revised Draft Cancun Ministerial Text*, WTO Doc. WT/GC/W/516 (Oct. 7, 2003).

63. CHARLES E. HANRAHAN, CONG. RESEARCH SERV., RS21712, THE AFRICAN COTTON INITIATIVE AND WTO AGRICULTURAL NEGOTIATIONS 4 (2004).

64. *Id.* at 3.

65. *Id.* at 1–2.

66. World Trade Organization, Ministerial Decision of 19 December 2015, WTO Doc. WT/MIN(15)/45–WT/L/980 (2015).

67. HANRAHAN, *supra* note 63, at 3.

annually,⁶⁸ a subsidy that covered 56% of production costs.⁶⁹ At the same time, cotton production accounted for only 0.034% of the vast and diverse U.S. economy.⁷⁰ Comparatively, cotton production accounted for 5% to 10% of the Cotton 4 countries' economies, and an even greater percentage of export earnings—an average of 30% of total export earnings and 60% of agricultural export earnings.⁷¹ Cotton employed two million farmers in the four African countries.⁷² The number of employed people in the U.S. on cotton farms was 173,000, less than 10% of the total U.S. population and a vastly smaller percentage of the total workforce.⁷³

The General Agreement on Tariffs and Trade (GATT), which was the central multilateral trade agreement from 1948 until the 1994 establishment of the World Trade Organization (WTO) as its successor, imposed almost no discipline on agricultural trade policy.⁷⁴ Subsidies as a whole were little-regulated in the early GATT, which instead required only that signatories notify other signatory states of subsidies they imposed, and admonished that export subsidies on primary products were to be avoided.⁷⁵ Even relatively strict disciplines, such as the general prohibition of quantitative restrictions (i.e., controls that limited the numerical level of imports as opposed to levying a financial charge such as a tariff), exempted various measures related to import and export restrictions on agriculture.⁷⁶ Moreover, GATT signatories took liberties beyond what the rules formally permitted in protecting their domestic and international agricultural interests.⁷⁷ Domestically, there was little effort to ensure that agricultural policy in the U.S. or the European Union (E.U.) complied with GATT restrictions.⁷⁸ Internationally, numerous agreements on both agricultural and non-agricultural commodities departed wholesale from GATT norms, including agreements on sugar, cocoa, coffee, tin, and of course petroleum.⁷⁹ Some of these agreements

68. *Id.*

69. Kym Anderson & Ernesto Valenzuela, *The World Trade Organization's Doha Cotton Initiative: A Tale of Two Issues* 3 (World Bank Development Policy Research, Working Paper No. 3918, 2006 Group).

70. HANRAHAN, *supra* note 63, at 2.

71. *Id.*

72. *Id.*

73. *Id.*

74. *See generally* General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

75. *Id.* at art. XVI. CVDs were also allowed. *Id.*

76. *Id.* at art. XI(2)(c).

77. *See* Stephanie Mercier, *The WTO and US Agricultural Policy: Intersections and Consequences*, CHOICES (2004), <http://www.choicesmagazine.org/2004-4/policy/2004-4-08.htm> (stating that the U.S. relied upon Article XVI and Article XI to exempt agriculture from GATT jurisdiction).

78. *Id.* *See also* DANIEL A. SUMNER, AMERICAN ENTERPRISE INSTITUTE, U.S. FARM POLICY AND WTO COMPLIANCE 1–2 (2007) (noting the U.S.'s ambivalence towards agricultural trade policy and that agriculture was not subject to the same multilateral liberalizing thrust as with other trade).

79. *See Textiles Monitoring Body (TMB): The Agreement on Textiles and Clothing*, WORLD

arose out of an effort by newly decolonized states to stabilize the markets for their principal exports, as part of a larger project towards the “New International Economic Order” (NIEO).⁸⁰ Others, however, far predated the postcolonial era.⁸¹

It is worth stopping here to note how the study of international trade law is constructed and how that is reflected in the mythologies adopted by the trading system itself. According to that mythology, since World War II, the global trading regime has been characterized by a commitment towards liberalized trade, as made evident in incremental and ultimately significant reductions in tariffs and non-tariff barriers to trade in goods.⁸² Though this account is accurate in describing industrial goods overall, it bears very little resemblance to what has occurred in the global marketplace for commodities.⁸³ Commodity economies have been largely excluded from efforts to liberalize for most of the history of the trading system.⁸⁴

The mainstream account of the trading system might be seen as a progression towards trade liberalization, with pockets of exceptions that have gradually been narrowed.⁸⁵ Reorienting an analysis of international trade focusing on commodities retells that story as one of international trade riven by deviations from the norm in ways that remain economically vital for the majority of the global population.⁸⁶ From this perspective, the NIEO efforts were to rewrite international trade rules that already departed from norms of free trade in such a way that would ensure redistribution towards the global poor.⁸⁷

Only with the establishment of the WTO in 1995, as the successor organization to the GATT, was there any real effort to contain agricultural

TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/texti_e/texintro_e.htm (last visited Mar. 15, 2016) (describing the Multifibre Arrangement which provided for quantitative restrictions, a major departure from basic GATT rules).

80. In 1970s, developing countries tried to reconstruct the global commodity economy through the U.N.-centered Declaration and Programme of Action for a New International Economic Order. G.A. Res. S-6/3/201 (May 1, 1974).

81. See WORLD TRADE ORGANIZATION, WORLD TRADE REPORT 2011 46–91 (2011) (providing historical background of preferential trade agreements which have been around for centuries).

82. See INT’L MONETARY FUND, GLOBAL TRADE LIBERALIZATION AND THE DEVELOPING COUNTRIES (Nov. 2001), <https://www.imf.org/external/np/exr/ib/2001/110801.htm> (arguing for the continued liberalization of trade).

83. See MAMERTO PEREZ ET AL., THE PROMISE AND PERILS OF AGRICULTURAL TRADE LIBERALIZATION 3 (2008) (stating that rich countries dominate world agricultural markets, including the entire value chain).

84. See *id.* at 4 (describing how agricultural reforms have limited impact and how direct or indirect tariff and subsidies impair agricultural product prices for developing countries).

85. See INT’L MONETARY FUND, *supra* note 82 (noting that liberalization of trade has assisted developing countries, but additional progress is needed).

86. See generally TIMOTHY A. WISE, THE LIMITED PROMISE OF AGRICULTURE TRADE LIBERALIZATION (2008).

87. See Adeoye Akinsanya & Arthur Davies, *The Third World Quest for a New International Economic Order: An Overview*, 33 INT’L & COMP. L.Q. 208, 208 (1984) (noting that developing countries’ dissatisfaction with the current economic paradigm led to the demand for a NIEO).

protectionism.⁸⁸ The underlying political rationale for the effort to regulate agricultural trade was that it indicated a quid-pro-quo in which developed countries seeking protections for intellectual property and market access for services were finally willing to offer up market access to areas in which developing countries often enjoyed a comparative advantage, such as agriculture and textiles.⁸⁹ This would prove to be a complicated issue for many reasons, not just because of the stubborn political attachment to subsidies in the global North, but also because of the desire on the part of some developing countries to protect their own domestic industries, albeit through measures less resource-intensive than subsidies, such as quantitative restrictions.⁹⁰

The political sensitivities attached to negotiations on agriculture meant that only limited commitments were made in the initial 1994 WTO Agreement on Agriculture.⁹¹ These included a commitment to across-the-board cuts on both domestic subsidies and export subsidies.⁹² The maximum reduction was 36% (for developed-country export subsidies) and many of the reduction commitments were significantly lower.⁹³ Moreover, the reduction commitments left in place export subsidies that were “grandfathered” in the annex to the Agreement, and it included only those domestic subsidies considered to be the “most trade-distorting,” leaving in place a number of very significant tools of farm support.⁹⁴

In 2001, WTO Members embarked on an effort to make its balance of rules and obligations more amenable to developing country interests.⁹⁵ The Doha round of negotiations adopted a Ministerial Declaration henceforth known as the “Doha Development Agenda.”⁹⁶ Part of this agenda called for a return to agriculture negotiations and the establishment of additional liberalization commitments by the next biannual round in 2003.⁹⁷

88. See Clive Potter & Jonathan Burney, *Agricultural multifunctionality in the WTO—legitimate non-trade concern or disguised protectionism?*, 18 J. RURAL STUD. 35, 35 (2002) (highlighting how the implementation of domestic agricultural subsidies distorted trade and led to contentions in the WTO).

89. See TONY HERON, *THE GLOBAL POLITICAL ECONOMY OF TRADE PROTECTIONISM AND LIBERALIZATION* 105 (2014) (describing how the EU has sought to advance its agenda within the WTO through quid pro quo for the liberalization of agricultural trade).

90. See JUAN HE, *THE WTO AND INFANT INDUSTRY PROMOTION IN DEVELOPING COUNTRIES: PERSPECTIVES ON THE CHINESE LARGE CIVIL AIRCRAFT INDUSTRY* 79–81 (2016) (providing information on the implementation and ban of quantitative restrictions, as well as the exceptions for its usage).

91. See Jennifer Clapp, *WTO Agriculture Negotiations: Implications for the Global South*, 27 THIRD WORLD Q. 563, 564 (2006) (describing the 1994 Uruguay Round as a disappointment because it altered little in regard to agricultural subsidies).

92. *Id.*

93. Carmen G. Gonzales, *Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries*, 27 COLUM. J. ENVTL. L. 433, 453 (2002).

94. *Id.* at 457, 466.

95. *Id.* at 435.

96. World Trade Organization, Ministerial Declaration of 14 November 2001, WTO Doc. WT/MIN(01)/DEC/1, 41 ILM 746 (2002) [hereinafter Doha Declaration].

97. *Id.* ¶¶ 13, 14.

The African countries had not historically been powerful players in the inner circle of trade negotiations, the so-called “green room.”⁹⁸ However, they were able to mobilize at various points in WTO negotiations to shed light on their issues.⁹⁹ For example African countries led the walkout from the 1999 Seattle negotiations that helped to cause their breakdown and to bring about the focus on development in the next round at Doha in 2001.¹⁰⁰ At times, civil society groups supported their cause.¹⁰¹ For example, supporting the Doha Development Agenda, Oxfam came out in 2002 with a scathing indictment of the international trading system called *Rigged Rules and Double Standards: Trade, Globalization and the Fight Against Poverty*,¹⁰² which sought to call attention to the high trade barriers developing countries faced in seeking market access for their principal exports.¹⁰³ Trade policies fomented by agricultural protectionism, Oxfam asserted, amounted to “robbery against the world’s poor”, costing twice as much as what poor countries received annually in aid and “inflicting enormous suffering.”¹⁰⁴

The Cotton 4 built on the momentum coming out of the 1999 Seattle and 2001 Doha rounds and the focus of international civil society.¹⁰⁵ They fashioned a focused call for accelerated progress on cotton subsidies in particular.¹⁰⁶ Their strategy was to break cotton out from the larger and protracted agricultural negotiations on the grounds that cotton subsidies presented such a clear case of trade injustice.¹⁰⁷

98. See JEFFREY J. SCHOTT, *THE WTO AFTER SEATTLE* 33 (2000) (describing the “green room” process as a situation where decisions are made by a small group of countries).

99. See *id.* at 72–73 (highlighting the preparedness of developing and least developed countries for the WTO ministerial meeting in Seattle by their submission of proposals, including the African Group coalition led by Kenya).

100. FATOUMATA JAWARA & AILEEN KWA, *BEHIND THE SCENES AT THE WTO: THE REAL WORLD OF INTERNATIONAL TRADE NEGOTIATIONS* 23 (2004); see Michael Friis Jensen & Peter Gibbon, *Africa and the WTO Doha Round: An Overview*, 25 *DEV. POL’Y REV.* 5, 6 (2007) (describing how the Doha Round was supposed to be focused on developmental problems after the lackluster attention during the Uruguay Round, yet actually resulted in little relevance to African development).

101. See Lewis Machipisa, *TRADE-AFRICA: Civil Society Rejects Attempts to Expand WTO Powers*, *INTER PRESS SERVICE* (Sep. 9, 1999), <http://www.ipsnews.net/1999/09/trade-africa-civil-society-rejects-attempts-to-expand-wto-powers/> (describing how the African Trade Network, a grouping of trade unions, social movements, citizen groups, and NGOs across Africa, rejected further liberalization negotiations).

102. OXFAM, *RIGGED RULES AND DOUBLE STANDARDS: TRADE, GLOBALIZATION AND THE FIGHT AGAINST POVERTY* (2002).

103. See *id.* at 10 (“Northern governments reserve their most restrictive trade barriers for the world’s poorest people.”).

104. *Id.* at 5.

105. See generally Elinor Lynn Heinisch, *West Africa versus the United States on Cotton Subsidies: How, Why and What Next?*, 44 *J. MOD. AFRICAN STUD.* 251 (2006).

106. See *id.* at 262–65 (indicating how the West African countries operated as a group by filing jointly against U.S. cotton subsidies thereby giving them more clout).

107. See *id.* at 262–63 (highlighting how the failure to reach a cotton agreement was a key impasse during agriculture negotiations, that the WTO established a sub-committee to focus

The potential impact of removing cotton subsidies for the African countries would have been enormous.¹⁰⁸ The World Bank found that if cotton producers in the global North, primarily the U.S. and E.U., actually removed their subsidies, as envisioned in the Doha Development Agenda, Africa's cotton production would increase by a third and its cotton exports would increase by half.¹⁰⁹ U.S. policies were implicated in half of this gain.¹¹⁰

The response to the Cotton Sectoral Initiative, and the Doha Development Agenda more generally, proved minimal despite years of dedicated effort by African trade negotiators.¹¹¹ In 2003, the African countries called for the removal of all production subsidies on cotton.¹¹² By 2005, the WTO Members agreed to eliminate export cotton subsidies by 2006, to give “priority” to the reduction of domestic subsidies, and accord duty-free and quota-free access for cotton imports from least-developed countries (including the Cotton 4).¹¹³ The WTO also agreed to establish a “Consultative Framework” for cotton-specific development assistance.¹¹⁴

Though seemingly considerable, these commitments, in reality, fell far short of the mark. The elimination of export subsidies by itself would not make a significant difference: the World Bank study found that “export subsidy removal would contribute almost none of the global benefits from reform.”¹¹⁵ Duty-free and quota-free access would contribute only “one-ninth of the global gain” from prospective liberalization.¹¹⁶ The other eight-ninths of projected global gain would come from “cutting domestic support programs”—the area in which no specific commitments were made in the 2005 decision.¹¹⁷ From that perspective, the commitments made clearly failed to address the most important issue, and the focus on increasing development assistance looks like a minor concession intended to smooth over that fact—recall that aid at most makes up for half of what is lost in developing-country revenue due to trade subsidies.¹¹⁸

specifically on cotton, and how West African countries indicated that the U.S. and European subsidies and tariffs support injustice).

108. *See id.* at 267 (noting that the West African countries lose 30% to 40% more from U.S. cotton subsidies than they receive from U.S. development assistance).

109. Anderson, *supra* note 69, at 7.

110. *Id.* at 8.

111. *See* Daniel A. Sumner, *Congress Needs to Cut Ties With the Cotton Lobby*, U.S. NEWS (Jan. 28, 2016), <https://www.usnews.com/opinion/economic-intelligence/articles/2016-01-28/congress-should-stop-promoting-cotton-subsidies-to-benefit-the-cotton-lobby> (indicating that while ordinary cotton subsidies were removed after Brazil's WTO victory of the U.S., recent U.S. legislation continues to suppress global cotton prices by at least 6%).

112. Joint proposal by Benin, Burkina Faso, Chad, and Mali, *Poverty Reduction: Sectoral Initiative in Favour of Cotton*, WTO Doc. TN/AG/GEN/4 (May 16, 2003).

113. World Trade Organization, Ministerial Decision of 22 December 2005, WTO Doc. WT/MIN(05)/DEC/¶ 11 (2005) [hereinafter Hong Kong Ministerial Declaration]

114. *Id.* ¶ 12.

115. Anderson, *supra* note 69, at 8.

116. *Id.*

117. *Id.*

118. OXFAM, *supra* note 102, at 3.

While the African countries were marshaling forces in trade negotiations, the country of Brazil was preparing a more direct challenge to the U.S., building on a momentum of success in WTO dispute settlement.¹¹⁹ In 2002, Brazil initiated the WTO dispute settlement process against U.S. cotton subsidies,¹²⁰ alleging that they ran afoul of the newly established disciplines of the WTO Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Agriculture.¹²¹ Brazil ultimately prevailed against the U.S. at both the initial and appellate levels.¹²² The WTO Dispute Settlement Body found that the various programs employed by the U.S. cotton program did constitute subsidies within the meaning of WTO rules, that several of them had caused “serious prejudice” to other WTO members through significant price suppression of international markets, and that a particular form of payment (“user marketing Step 2”) had created an export subsidy by making payment contingent on exportation.¹²³

The WTO called for the U.S. to remove these subsidies so as to “bring its measures . . . into conformity with its WTO obligations.”¹²⁴ Although the complainant was Brazil, and not the Cotton 4 countries, if the U.S. actually had complied with this ruling, the Cotton 4 countries would have benefited. However, the U.S. ultimately avoided complying with the WTO ruling.¹²⁵ In the equivalent of an out-of-court settlement, the U.S. negotiated an arrangement with Brazil whereby it would make payments to Brazil, and in exchange Brazil would drop its complaint regarding U.S. non-compliance.¹²⁶ These payments amounted to \$300 million to the Brazilian Cotton Institute.¹²⁷ Because of its ability to pay off Brazil, the U.S. was able to retain its cotton program.¹²⁸ The support measures have moved from direct payments to forms of guarantees and crop insurance. Whether or not these now violate WTO rules on export subsidies or domestic measures, they continue to push African farmers out of the international marketplace.

Thus, the “judicial” arm of the WTO did not benefit the African cotton

119. See Gregory Shaffer, Michelle Ratton Sanchez & Barbara Rosenberg, *The Trials of Winning at the WTO: What Lies Behind Brazil’s Success*, 41 CORNELL INT’L L.J. 383, 413–422 (2008) (discussing Brazil’s use of WTO Dispute Settlement).

120. Request for Consolidations by Brazil, *United States–Subsidies on Upland Cotton*, WTO Doc. WT/DS267/1 (Sept. 27, 2002).

121. Shaffer, *supra* note 119, at 417–18.

122. Report of the Panel, *United States–Subsidies on Upland Cotton*, ¶ 8.1, WTO Doc. WT/DS267/R (Sept. 8, 2004); Appellate Body Report, *United States–Subsidies on Upland Cotton*, ¶ 448, WTO Doc. WT/DS267/R (Mar. 3, 2005).

123. Appellate Body Report, *United States–Subsidies on Upland Cotton*, *supra* note 122, ¶ 448.

124. *Id.* ¶ 449.

125. Shaffer, *supra* note 119, at 471–78.

126. Steven Suppan, *Unconditional Surrender: The U.S.-Brazil Deal to End WTO-Authorized Retaliation*, INST. FOR AGRIC. AND TRADE POL’Y (Oct. 9, 2014), <http://www.iatp.org/blog/201410/unconditional-surrender-the-us-brazil-dealto-end-wto-authorized-retaliation>.

127. *Id.*

128. *Id.*

exporting countries, because the U.S. was able to avoid changing its practices by negotiating settlement payments with Brazil.¹²⁹ The “legislative” arm—the negotiations for new trade rules under the Doha Development Agenda—ultimately let the Cotton 4 down as well. Despite their early, if limited, success in procuring concessions on export subsidies and market access, as well as a promise to pursue negotiations on domestic subsidies, delays soon cropped up with regard to both the implementation of existing commitments and the expansion of those commitments through continuing negotiations.¹³⁰

Ultimately, the Cotton Sectoral Initiative could not escape being bogged down by fractures in the trade talks more generally.¹³¹ The Doha Development Agenda talks stalled not only over the precise formula to be used to calculate barrier reductions, but also over broad policy questions such as whether developing countries—including very large exporters such as China and India—should benefit from more lenient trade rules in recognition of their developing-country status.¹³² Political resistance in the global North to agricultural concessions, always pronounced, became even fiercer with the global financial crisis of 2008 and the ensuing fallout.¹³³ Negotiations struggled through several rounds without major advances, leading to multiple pronouncements of the “death of Doha.”¹³⁴

By the most recent round, in Nairobi, the WTO Secretariat was intent on salvaging what remained of the Doha round.¹³⁵ The result was what WTO officials billed as an historic agreement—a commitment by developed country WTO Members to eliminate export subsidies on agricultural products immediately.¹³⁶ The WTO Members adopted a separate decision on cotton; yet, the Nairobi decision on cotton merely repeated the same elements adopted ten years before in the initial WTO decision on the Cotton 4 proposal—a commitment to the elimination of export subsidies (now expanded to all agricultural products and not just cotton); duty-free and quota-free access for least developed countries; and an affirmation of the importance of development assistance in cotton.¹³⁷ As for domestic subsidies—

129. *Id.*

130. *Id.*

131. See World Trade Organization, Ministerial Declaration of 19 December 2015, WTO Doc. WT/MIN(15)(46) [hereinafter Decision on Cotton] (noting that the Cotton Sectoral Initiative was created by Benin, Burkina Faso, Chad, and Mali to combat the damage that cotton subsidies in richer countries caused to the overall cotton market).

132. ERS Report WRS-09-02, *The 2008/2009 World Economic Crisis: What It Means for U.S. Agriculture* (U.S.D.A. 2009).

133. See RANDY SCHNEPF, CONG. RESEARCH SERV., RS22927, *WTO DOHA ROUND: IMPLICATIONS FOR U.S. AGRICULTURE 11–12* (2014) (describing how progress made in the Doha Round negotiations reached an impasse in 2009).

134. See, e.g., Susan C. Schwab, *After Doha: Why Negotiations Are Doomed and What We Should Do About It*, FOREIGN AFF. (May/June 2011).

135. Wasi Ahmed, *How to Salvage Remaining Doha Issues*, FIN. EXPRESS (Dec. 28, 2015, 10:29 PM), <http://www.thefinancialexpress-bd.com/2015/12/28/8044/How-to-salvage-remaining-Doha-issues>.

136. World Trade Organization, Ministerial Declaration of 19 December 2015, WTO Doc. WT/MIN(15)/45, ¶ 6 [hereinafter Decision on Export Competition].

137. Decision on Cotton, *supra* note 131, ¶¶ 2, 9, 10.

the element that economists have found to be by far the most harmful to developing-country exports—WTO Members noted only that “more efforts remain to be made.”¹³⁸ Despite the apparent breadth and relative success of the Nairobi commitments, their actual economic impact will be limited compared to the initially envisioned scope of the Doha Development Agenda.

The Cotton 4 remained marginalized and let down by the promise of trade liberalization. Their relatively low political and economic clout meant that they could not procure meaningful concessions in negotiations, despite some significant effort and strategizing.¹³⁹ It also translated to a lack of participation in the dispute settlement process: to date, no African WTO member has ever brought a complaint in the system.¹⁴⁰ This may be due to a lack of capacity or to political and economic calculus: dependent on the global North for both aid and trade, the African countries may be reluctant to be so confrontational.¹⁴¹ The dispute settlement system has equalized developed-developing country relations somewhat, but seemingly only for those large developing countries with enough economic clout and institutional wherewithal to take on the Northern states.

B. Exclusion of African-American Farmers from U.S. Farm Subsidies

Just as the African countries were beginning to make their move in WTO negotiations in the late 1990s, African-American farmers were also mobilizing against injustices caused by U.S. farm subsidies. In 1998—the same year that African governments walked out of the Seattle WTO Ministerial Conference—401 African-American farmers filed suit in U.S. federal court, alleging racial discrimination by the U.S. Department of Agriculture (USDA) in its conferral of farm assistance.¹⁴² The farmers hailed from Alabama, Arkansas, California, Florida, Georgia, Illinois, Kansas, Missouri, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.¹⁴³ They farmed cotton as well as the other commodities covered by U.S. farm loan programs.¹⁴⁴ The farmers alleged that when they applied for various farm programs, the USDA not only discriminated against them in granting benefits from those programs, but also failed to respond when they filed complaints within the agency.¹⁴⁵ Judge Paul Friedman certified the class.¹⁴⁶ A year later, he approved a consent decree enforcing a settlement agreement between the farmers and the USDA.¹⁴⁷

The plaintiffs had recounted a deep and wide pattern of exclusion and

138. *Id.* ¶ 8.

139. Suppan, *supra* note 126.

140. *Id.*

141. *Id.*

142. *Pigford v. Glickman*, 182 F.R.D. 341, 342–43 (D.D.C. 1998).

143. *Id.*

144. *Id.*

145. *Id.* at 343.

146. *Id.* at 342.

147. *Pigford v. Glickman*, 185 F.R.D. 82, 86 (D.D.C. 1999).

mistreatment at the hands of farm support program officials.¹⁴⁸ One farmer, Mr. Alvin E. Steppes, an African-American farmer from Lee County, Arkansas, had applied for an operating loan, fully complying with application requirements, only to see his application denied.¹⁴⁹ As a result, Mr. Steppes had insufficient resources to plant crops, he could not buy fertilizer and crop treatment for the crops he did plant, and he ended up losing his farm.¹⁵⁰

Another farmer who applied for an operating loan, Mr. Calvin Brown from Brunswick County, Virginia, was first told that his application was being processed, and then told that there was no record of his application ever having been filed and that he would have to reapply.¹⁵¹ “By the time Mr. Brown finally received his loan in May or June 1984, the planting season was over, and the loan was virtually useless to him.”¹⁵² In a third instance, “the entire county of Greene County, Alabama where Mr. George Hall farmed was declared eligible for disaster payments” and “[e]very single application for disaster payments was approved . . . except Mr. Hall’s application. . . .”¹⁵³

As a whole, the court found that the USDA’s denial of credit and benefits has had a devastating impact on African[-]American farmers. According to the Census of Agriculture, the number of African[-]American farmers has declined from 925,000 in 1920 to approximately 18,000 in 1992. The farms of many African[-]American farmers were foreclosed upon, and they were forced out of farming. Those who managed to stay in farming often were subject to humiliation and degradation at the hands of the county commissioners and were forced to stand by powerless, as [W]hite farmers received preferential treatment.¹⁵⁴

Judge Friedman aptly placed the plaintiffs’ claims in a larger historical context of dispossession and disenfranchisement. From the very beginning of African-Americans’ formal claims to equality at the end of the Civil War, the federal government had broken its promises to farmers.¹⁵⁵ Judge Friedman began his opinion by intoning the first of these: “Forty acres and a mule.”¹⁵⁶ The U.S. government had created the Freedmen’s Bureau at the close of the war and, as part of its operations therein, had “promised to sell or lease to farmers parcels of unoccupied land and land that had been confiscated by the Union during the war, and it promised the loan of a federal government mule to plow that land.”¹⁵⁷ Yet, with President Johnson’s administration, what land had been granted to African-

148. *Id.* at 87.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. Pigford, 185 F.R.D. at 87–88 (citations omitted).

155. *Id.* at 85.

156. *Id.*

157. *Id.*

Americans was taken away and given to Confederate loyalists.¹⁵⁸ “For most African[-]Americans, the promise of forty acres and a mule was never kept.”¹⁵⁹ Nevertheless, through their own perseverance, African-Americans had managed to acquire and operate farmland, amounting to 925,000 black-owned farms by 1920.¹⁶⁰

The establishment of the USDA, and the expansion of its farm support programs, did not help to redress this historical inequity, nor did it elect simply to treat Black and White farmers equally going forward.¹⁶¹ Rather, the court found, the USDA earned its reputation as “the last plantation,” and played “a key role in . . . forc[ing] minority and disadvantaged farmers off their land through discriminatory loan practices.”¹⁶² For decades, the court found, “the Department of Agriculture and the county commissioners discriminated against African[-]American farmers when they denied, delayed or otherwise frustrated the applications of those farmers for farm loans and other credit and benefit programs.”¹⁶³

To remedy this discrimination, the plaintiffs reached a settlement with the USDA wherein all members of the plaintiff class were entitled to, at minimum, the opportunity to claim a \$50,000 cash payment and forgiveness of all debts owed through USDA loan programs.¹⁶⁴ In 1999, Judge Friedman concluded:

Forty acres and a mule. The government broke that promise to African[-] American farmers. Over one hundred years later, the USDA broke its promise to Mr. James Beverly. It promised him a loan. . . . Because he was African[-]American, he never received that loan. He lost his farm because of the loan that never was. Nothing can completely undo the discrimination of the past or restore lost land or lost opportunities to Mr. Beverly or to all of the other African[-]American farmers whose representatives came before this Court. Historical discrimination cannot be undone.

But the Consent Decree represents a significant first step. A first step that has been a long time coming, but a first step of immeasurable value. As Mr. Chestnut put it, “Who really knows the true value, if there is one, for returning a small army of poor [B]lack farmers to the business of farming by the year 2000 who otherwise would never make it back? I am not wise enough to put a dollar value on that and I don’t think anybody on this planet is wise enough to reduce that to dollars and cents.”¹⁶⁵

By 2009, unfortunately, the first step represented by that victory had failed to

158. *Id.*

159. *Id.*

160. Pigford, 185 F.R.D. at 85.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* at 95.

165. *Id.* at 112–113 (citations omitted).

lead as far as it might have.¹⁶⁶ The plaintiffs complained of difficulties in obtaining the anticipated remedies.¹⁶⁷ Even at the time of the initial settlement approval, some plaintiffs had objected to the absence of appeals rights to processing of claims, with one Mr. Willie Head asking, “[w]ould you send your sons and daughters off to war with one bullet?”¹⁶⁸ Over the next few years, the plaintiffs repeatedly objected that adjudicators were unfairly denying their claims.¹⁶⁹ At this point, however, Judge Friedman could do no more for the plaintiffs, stating that such objections were “not properly before the Court” since the claims procedures had been extensively vetted and approved in the initial consent decree.¹⁷⁰

Moreover, delays in processing meant that not all farmers who potentially could have filed claims were able to, and efforts to postpone the deadline for filing were rejected after an early extension of ten months.¹⁷¹ Finally, the court declined to interpret the terms of the consent decree expansively, instead permitting debt relief for farm loans only where specific findings of discrimination had been made.¹⁷² Ultimately, one-third of the claims filed under the consent decree were reportedly rejected.¹⁷³

III. AFRICAN-AMERICAN INTERESTS IN INTERNATIONAL LAW

In 2006, interviewers from the Federation of Southern Cooperatives, Land Assistance Fund, an organization devoted to supporting development and self-reliance for poor farmers in the South, approached Black cotton farmers with questions about farm subsidies.¹⁷⁴ Ninety-two percent of the farmers surveyed expressed the importance of the subsidies:

The payments helped some of the farmers pay for their seeds to then allow for an early crop; make payments on their FSA loans; pay for leasing the land; the payments add to the overall income because ‘prices are low and production is so high’; and help to cover the cost of production generally.¹⁷⁵

The farmers were aware of the racially discriminatory aspects of the farm

166. Susan A. Schneider, *Discrimination at USDA: Response to New York Times*, AGRICULTURAL LAW (May 1, 2013), <http://aglaw.blogspot.com/2013/05/discrimination-at-usda-response-to-new.html>.

167. *Id.*

168. Pigford, 185 F.R.D. at 108.

169. Pigford v. Glickman, 127 F. Supp. 2d 35, 38 (D.D.C. 2001).

170. *Id.*

171. Pigford v. Veneman, 141 F. Supp. 2d 60, 61–62 (D.D.C. 2001); Pigford v. Veneman, 265 F. Supp. 2d 41, 43 (D.D.C. 2003).

172. Pigford v. Schafer, 536 F. Supp. 2d 1, 5 (D.D.C. 2008).

173. Schneider, *supra* note 166.

174. Jerry Pennick & Heather Gray, *U.S. Cotton Program & Black Cotton Farmers in the United States: Part Two: Findings and Analysis of Interviews with Black Cotton Farmers*, FEDERATION OF SOUTHERN COOPERATIVES, <http://www.federationsoutherncoop.com/cottonstudy/cotton2.htm> (last visited Mar. 15, 2017).

175. *Id.*

subsidies.¹⁷⁶ Many of them expressed knowledge of and frustration with specific instances in which minority farmers had received lower payments or worse treatment than others.¹⁷⁷ Nevertheless, they saw the subsidies as important to their own economic security.¹⁷⁸ From this vantage point, the objective was the same as it has always been for African-Americans in the U.S.—to achieve parity of treatment and full citizenship standing. Black farmers were still looking for their proverbial forty acres and mule—in this case, that share of resources was in the form of equal access to farm subsidies.¹⁷⁹

The survey did not ask Black farmers whether they were aware, and what they thought, of the fact that U.S. cotton subsidies worked to disadvantage African farmers whose products were more competitively priced.¹⁸⁰ If it had, what would the farmers have responded? What should they have said?

It is with this category of questions that Professor Richardson's work has wrestled. Distilling the history of "Afro-America" and its relationship to international law, Professor Richardson has offered two "interpretations" of African-American interests.¹⁸¹ The first (Interpretation I) understands African-Americans in national context only.¹⁸² It insists on the domestic lens and a single-minded focus on perfection of the U.S.'s flawed and broken promises to its African-American population.¹⁸³ Professor Richardson identifies Booker T. Washington, a Black American educator and leader at the turn of the nineteenth to the twentieth century, as expressive of this viewpoint.¹⁸⁴ Washington believed that "the sole concern of [B]lacks should be to better their lot in an imperfect and hostile society," and consequently never supported the "back-to-Africa" movements led by some of his contemporaries such as Marcus Garvey.¹⁸⁵

The intellectual and pan-Africanist W. E. B. Du Bois, among others, criticized the historical and geographical narrowness of Washington's perspective.¹⁸⁶ Professor Richardson identifies Du Bois as emblematic of the second interpretation of African-American interests (Interpretation II).¹⁸⁷ Du Bois declaimed that "the problem of the color line, is international and no matter how desperately and firmly we may be interested in the settlement of the race problem . . . in the United States, it cannot ultimately be settled without consultation and cooperation with the whole

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. Pennick & Gray, *supra* note 174.

181. Henry J. Richardson, III, *Gulf Crisis and African-American Interests Under International Law*, 87 AM. J. INT'L L. 42, 60 (1993).

182. *Id.*

183. *Id.*

184. *Id.* at 61.

185. *Id.*

186. *Id.*

187. Richardson, *supra* note 181, at 61–62.

civilized world.”¹⁸⁸ This perspective saw multiple connections between African-American interests and the international community, particularly the colonized world: in the origins and causes of injustices suffered, and in the path towards liberation, a global frame was required.¹⁸⁹

Applying Professor Richardson’s framework to the question of cotton exposes the starkness of the distributive justice at hand. Interpretation I might hold that Black farmers should not only support the continuation of U.S. subsidies, but also their expansion to redress the historical exclusion and underservice of the Black community. Interpretation II might counter that the interests of Black cotton farmers could not be addressed at the expense of their counterparts in West Africa.

How to reconcile the interests of the economically dispossessed and excluded in the U.S. with those in the developing world? The question is not merely rhetorical: it is a crucial question not only with respect to African-American interests, but also in the cause of global justice more generally. The global economy operates in such a way that, too often, the interests of poor working people in the global North and global South are pitted against each other.¹⁹⁰ At this writing, the U.S. is in the midst of extraordinary turmoil over its economic future, and one of the primary focal points is the fate of U.S. populations that have been economically dispossessed by policies of globalization.¹⁹¹ This unease is reflected across countries of the global North: in the United Kingdom, in France, Germany, Austria, and elsewhere.¹⁹² Hostility towards working people of poor countries, whether they are immigrants into developed economies or whether they populate off-shored and out-sourced economies in the global South, arises from a zero-sum frame. How can we reimagine our politics?

African-American farmers in the U.S. South and African farmers in the Global South occupy two nodes in global political economy.¹⁹³ The 1999 consent decree granting relief to African-American farmers quoted one of them, a Mr. Chestnut, as asking, “Who really knows the true value, if there is one, for returning a small army of poor [B]lack farmers to the business of farming.”¹⁹⁴

The value of redressing historical subordination of African-American citizens and farmers by the U.S. government may have been, and may continue to be,

188. *Id.* at 62 (quoting W. E. B. Du Bois, *Opinion of W. E. B. Du Bois*, THE CRISIS, Nov. 1923, at 7, 9).

189. *Id.* at 62–64.

190. *See infra* Part I (discussing the Global North’s cotton cultivation and colonization of the Global South).

191. *See* Richardson, *supra* note 181, at 63 (discussing the effects on African-Americans in the U.S. as a result of U.S. foreign and domestic policies).

192. *See* Josh Lowe, Owen Matthews, & Matt McAllester, *Why Europe’s Populist Revolt Is Spreading*, NEWSWEEK (Nov. 23, 2016, 9:02 AM), <http://www.newsweek.com/2016/12/02/euro-pe-right-wing-nationalism-populist-revolt-trump-putin-524119.html> (discussing political movements opposed to globalization policies across in Europe).

193. *See infra* Part I (discussing the Global North’s cotton cultivation and colonization of the Global South); *Pigford v. Glickman*, 185 F.R.D. 82, 112–13 (D.D.C. 1999) (discussing the role of Black farmers in the U.S.).

194. *Pigford*, 185 F.R.D. at 112–13.

unknowable. That one of the costs of such redress, if and when it takes the form of expanding farm subsidies, is to displace African farmers, is paradoxical only on the surface. These communities of African heritage, deliberately drawn into an economy of exploitation a century or more before, continue to struggle against a global marketplace whose laws and institutions are too often closed, or insufficiently open, to their appeals for economic equity. To return to the inquiries set forth at the beginning of this essay, the story of cotton in the global marketplace is one in which race and economy have most certainly interacted to produce the hierarchies which persist to this day.

Does the international economic order provide sufficient space for a reimagined vision of trade policy? The WTO narrowed many arenas of policy space that had previously existed and arguably departed from the mid-twentieth century framework of “embedded liberalism,” towards a more strictly neoclassical vision. Yet the framework does provide some flexibility. On the issue of subsidies, for example, the WTO establishes a “green box” for non trade-distorting subsidies that would support small farmers.¹⁹⁵ These subsidies could not take the same form as those used by the U.S. in the cotton case, which are connected to commodity prices; rather, they must be “decoupled” from prices and can act through, for example, direct payments to producers, decoupled income support, and income safety-net programs.¹⁹⁶ In this way, the WTO would not preclude the U.S., for example, from dismantling its larger subsidy programs while maintaining programs for smaller farmers including African-American farmers.¹⁹⁷ This would however require a dramatic shift in both national and global political will, towards a new solidarity, and a more wholehearted embrace of norm of special and differential treatment than has characterized the trade regime to date.¹⁹⁸

In criticizing U.S. cotton subsidies, the analysis here does not endorse a free-trade or free-market ideal. It is on this policy point that some critiques of rich-country subsidies have foundered, because they imply that a completely deregulated market would produce more just results. An alternative critique informed by the history of development in the global political economy targets rich-country subsidies because they occur against a backdrop not only in which similar measures cannot be mobilized on behalf of poor-country farmers, but also in which rich-country governments proclaim the virtues of the free-market ideal. The intention here is to excavate and expose the actual underpinnings and mechanisms of the global economy, shaped as it has been not only by its progress but also by multiple vectors of historical and contemporary injustice.

195. *Domestic Support in Agriculture: The boxes*, WORLD TRADE ORGANIZATION (Oct. 1, 2002), https://www.wto.org/english/tratop_e/agric_e/agboxes_e.htm.

196. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, Annex 1A [WTO Agreement on Agriculture, Annex 2].

197. My thanks to Ambassador Faizel Ismail for a very helpful discussion on this point.

198. FAIZEL ISMAIL, REFORMING THE WORLD TRADE ORGANIZATION DEVELOPING COUNTRIES IN THE DOHA ROUND 1-7 (2009).

IV. CONCLUSION

This essay has illuminated historical specificities of the global economy as constructed with respect to the cotton trade. The global cotton economy, and the processes of Western industrialization it helped to fuel, depended on the slave plantations of the New World. Core features of the contemporary cotton trade then arose directly in response to the abolition of U.S. slavery. Colonial powers cultivated alternative sites of cotton production in West Africa after U.S. plantation production fell; these territories subsequently became the Cotton 4 exporting countries of Benin, Burkina Faso, Chad and Mali. At the same time, the U.S. government developed subsidies to support U.S. production, which following slavery's abolition had proved no longer price-competitive; but, in keeping with the legacy of slavery and white supremacy, excluded African-American farmers from those subsidies.

The operation of U.S. agricultural subsidies today unites Africans and African-Americans, connected as they are in history to the emergence of these subsidies and each experiencing a form of exclusionary harm from these subsidies. But these subsidies also potentially divide these two groups by putting them on opposite sides of the subsidies issue, at least as currently configured, with African-American farmers calling for the extension of subsidies as a form of redressing historical subordination, and African farmers calling for the elimination of subsidies as an ongoing affront to their comparative economic advantage.

The law and politics of global economic justice must bridge these rifts and find a common, or at least compatible, basis for advancement of the poor and vulnerable wherever they are located. The path forward can only be made by both understanding, and transcending, this legacy.