

4-1-2012

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Recommended Citation

Richardson, Henry J. III (2012) "The Black International Tradition and African American Business in Africa," *North Carolina Central Law Review*: Vol. 34 : No. 2 , Article 4.

Available at: <https://archives.law.nccu.edu/ncclr/vol34/iss2/4>

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LECTURES

THE BLACK INTERNATIONAL TRADITION AND AFRICAN AMERICAN BUSINESS IN AFRICA

HENRY J. RICHARDSON III*

INTRODUCTION

Dean Pierce, Dean Scott, members of the Law School Faculty, distinguished guests, students, and other friends gathered, I am honored to be invited to give one of your Reynolds Lectures for 2011. I am honored that you would have me stand in this distinguished line of scholars. This afternoon, I want to explore the origins of African-American interests in International Law. The fact that this historic subordinated American minority would have such interests might be surprising to many people, but those interests and their origins antedate the founding of the United States as a nation.

These African-American interests carry lessons for the wider inter-linked American and global communities, contrary to all who have perceived African-Americans as being only consumers of legal theories and jurisprudential approaches, and not producers and implementers of new and different notions of authority. Civil rights and its historic foundations of race, rights, and Black freedom in the United States, as linked to those in Africa, have shaped international issues in varying contexts for the past four centuries.

I will begin by discussing the origins of African-American interests in international law, including the companion notion of African-American claims to outside law. These interests are one of the foundations of the Black International Tradition. I will then turn to a prominent narrative in this tradition, that of African-Americans doing

* Professor of Law, Beasley School of Law at Temple University. Parts of this lecture are adapted from two articles I have written, *The Origins of African-American Interests in International Law*, Carolina Academic Press, Durham, NC (2008), and from *The 2010-2011 Mitchell Lecture – The Origins of African American Interests in Int'l Law*, 17 Buff. Hum. Rts. L. Rev., 1, 12 (2011). I am grateful for the hospitality and support of both the Dean and faculty North Carolina Central University School of Law in presenting this Lecture. Further, I am grateful for the excellent research of Ms. Chimdi Nwosu (J.D. expected Temple University Beasley School of Law 2012) and Mr. Samora Noguera (J.D. expected Temple University Beasley School of Law 2012); the support of John Necci, Director of the Temple University Beasley School of Law Library, and the Temple University Beasley School of Law's Clifford Scott Green Research Fund. To all of the above is due much credit. Errors remain mine.

business in Africa. This narrative can best be understood as a dialogue between the African and Pan-African aims, and the investor perspectives of these African-Americans. This dialogue must be considered historically, and in a contemporary frame. I will conclude by projecting some of the implications of this narrative and dialogue from a contemporary business venture.

THE ORIGINS OF AFRICAN AMERICAN INTERESTS
IN INTERNATIONAL LAW

In order to understand the origins of what I call the Black International Tradition, including the origins of African-American interests in international law, I worked through discourses of international legal history, African-American history, and international law. I did so through a framework of inquiry that was contextual and comprehensive in its selection of authoritative voices, namely that of the New Haven School of International Law, rather than using a framework that was restrictive and rule-oriented.

A legal history had to be written of the perspectives about authority among a people who, in the conventional historical sense, did not prevail, at least relative to community power. African-American history had to be approached so as to amplify the voices of African-Americans, even where there was no written documentation to serve as a megaphone. International Law had to be approached so as to clarify what these strong and vulnerable African heritage people demanded of that law's prescriptions and their enforcement for their own freedom. It had to be approached to clarify those demands of Black people, which they made for their own good governance in freedom. However, slave owners and government officials refused to connect those demands to the operation of the "law" of their territorial jurisdictions. They insisted on trying to minimize such Black demands as representing only the irrelevant complaining of their servants.

In uncovering the origins of these African-American interests, I had to ask about the international jurisprudence of Black folks when Whites had not, theoretically, morally, or politically, given them permission to have one. This project sought to inquire about a collection of people who from the 16th through the 19th centuries were subjected to an evolving system of exploitative policies, sophisticated captivity, and deadly terror. They were oppressed by those enslaving them to, unsuccessfully, prevent them as they were brought from Africa, from seeing their common interest in demanding freedom. Subsequently, from the late 20th century to the present day, those same people have been subjected to a stream of demands and methodology which deny that they ever evolved a culture, and that they must have

no collective identity beyond American citizenship of civil war vintage. Nevertheless, their forged collective identity has been the key to African-American survival and progress.

HISTORICAL NARRATIVE I

Let me continue this historical narrative with four clarifications:

(1) This narrative opens by developing the context of the slave trade and slave resistance from Africa into the Atlantic Basin beginning from the late 15th century. However, this narrative, which I call the International Slave System, fairly quickly, as from 1609, pulls in to focus on the Black claims to outside law on the North American continent. The American slave system was a corner of the International Slave System, and Black claims to what I call "better outside law" for rights against it, are explored in that vein.

(2) This history of slavery and the slave trade is inseparably intertwined with the history of slave resistance, resistance that was done in a variety of ways. Thus, slavery of African heritage people and slave resistance must be seen and discussed as synonymous. The same is subsequently true for racism and resistance to racism.

(3) Black claims to better outside law were expressed over the generations by Black speech, voices, agency, and action. They were defined by their normative opposition to slavery and racial oppression. These claims rested on slave resistance of Black men and Black women, over almost four centuries in North America. They are the foundation for the birth of African-American interests in international law, where international law is a key potential, but not a constant source of better outside law.

(4) Every coherent people have some collective sense of how they wish to be governed in the present and the foreseeable future. African heritage people in the Atlantic Basin, and here in North America knew that they had a right to be free of slavery. Hence, they, in resisting slavery, demanded to be governed under some system of law that confirmed their right to freedom from slavery and racial oppression. The local or domestic "law" immediately governing these people in North America and the international slave system was the law of slavery. Hence, Black claims were made in a continuing process to some better outside law that would confirm and enforce their right to freedom. The validity of their claims is not touched by their White governors historically failing to enact them into the "law" of America.

THE HISTORICAL NARRATIVE II

Let me now pick up the main thread of the historical narrative. I begin with the opening of the African Atlantic slave trade, in part to show the historical result of the European debate about who, Whites, indigenous peoples, or Africans, was going to do the necessary hard and dangerous labor in the New World colonies for survival and export trade profits. Africans lost! This early history also demonstrates that race and the rights of African heritage people, who became African-Americans, have always been international questions.

Throughout this narrative, Blacks participated in, and affected international politics as part of their struggles to survive, to carve out niches of accommodation, and to free themselves from slavery and racism as much as possible.

The early chapters discussed the landing of the Twenty Africans ("Jamestown Twenty") at Jamestown in 1619, and their status under British, Virginia, and international law, even as they were preceded by earlier Spanish slave settlements and slave revolts in North America as early as 1512. We can identify here the implicit Black claims to "outside" law by the Jamestown Twenty, that these Black people were seemingly in a position to make, revolving around their status as indentured servants or slaves, had they possessed the resources and opportunities to concretely frame them.

From the beginning, Blacks had a consciousness of affairs beyond the Eastern American shores; beginning with their collective memory of Africa and Europeans' relations with African peoples that brought them through the horrendous Middle Passage to America. African notions of liberty and patterns of resistance, beginning with the African origins of the European slave trade, are part of the underpinning of their claims to outside law. This was the case for Blacks in, for example, pre-Revolutionary Dutch and British New York, where Blacks made implicit and explicit claims to outside law in resisting that slavery. Those notably included the coordination by Blacks of their resistance with potential outside European military invasion into that territory, and the New York slave revolt of 1741, which were both brutally suppressed.

This exploration of Black claims to outside law encompasses slave revolts and maroon communities, communities of escaped slaves, throughout the Americas. International legal issues were raised by the Republic of Palmares in Brazil, which existed for most of the 17th century as no less than an independent African state until it was conquered by European troops. Maroon communities in the Caribbean, and Central and South America, influenced slaves in the thirteen North American colonies through news and stories which served as

sources of inspiration or models for resistance. It is now clear that there was a coherent international slave system linking Europe and the Americas during this period.

In this same historical era, International Law was coalescing into a coherent legal system, around the major work of Hugo Grotius (“Grotius”) in 1625. As a result, Black claims to outside law intersected with notions in Europe and the Atlantic colonies about how international law should be formulated and interpreted: what that legal system should render legal and what it should render illegal. Grotius’ work was based on natural law, and was surrounded by much jurisprudential debate. The Jamestown Twenty and other Blacks had freedom interests in how those debates should have been resolved, and how they should have related to the debated jurisprudence among White-American colonists.

I explore African heritage claims to outside law, including those raised by maroon communities during the 18th century, relative to slavery under contemporaneous international law. These include “treaties” between local colonial governments and maroon communities in the Americas, and the question of there being a partial international legal basis for slave revolts in the work of Grotius.

As Black communities evolved in British North America towards the American Revolution, through all of their captivity, slaves’ claims to outside law on the plantations of the Southern colonies still remained possible. What is more is that Free Blacks, though small in number, had somewhat more latitude to express those claims. They did so for the interests of their slave mothers, fathers, brothers, sisters, cousins, and sons and daughters. Prior to the American Revolution, Free Blacks had surprising access to international flows of information from London and the Caribbean. This produced a historical synergy between Black North American claims to outside law, and those from Inter-American and Caribbean slaves, at least for enlightenment and inspiration.

With the approach of the American Revolution, the contradiction between White European colonists’ talking of “slavery” to describe their relationship with Britain, and the actual circumstances in which they were keeping “their own” African slaves under their noses and in their own houses, stimulated new kinds of Black claims to natural law. The latter included claims to international law to the extent that it was then still based on natural law and Free Blacks in northern colonies led the way here. Black petitions for freedom based on claims to a better outside law began to appear, as well as Black freedom suits. The latter can be understood as Black claims to *domestic* law. The petition by Lancaster Hill, a slave, to the Massachusetts House of

Representatives in 1777, and its claims to outside law, illustrates Black perspectives in the Revolutionary war era demanding better law. It also indicates levels of information among Blacks about Inter-American slavery resistance, including the travels of Black sailors as a trans-mission belt for such information.

The Revolutionary War put Blacks squarely in the middle of two contending candidates for sovereignty over the same territory of North America's eastern seaboard. Consequently, Blacks were naked, as a group, on the international stage. They had to choose their loyalties as well as their most likely survival options, but in the end, as a group, they chose their most likely freedom options. In numbers, during the Revolution, most, but not all, Blacks saw the British as potential liberators, including through the declarations of Lord Dunmore, and chose to try to help their fight, or at least seek security by moving towards their military lines and encampments. Caught up in the approaching military battles, Blacks' personal decisions often had to be made quickly about, literally, which way to run.

From their position on the international stage, these Black decisions and actions involved both implicit claims to outside law and to international law made especially to British forces. Such claims can be seen even more clearly under the glare of the strong historical argument that the American Revolution, particularly in the Southern colonies, was fought as least as much to preserve the North American system of African slavery as it was to free the Thirteen Colonies from Britain.

When the Revolution successfully defeated the British, the British honored an evolving principle of customary international law about slave military service as conditionally earning their freedom by taking at least 30,000 ex-slaves with them to Nova Scotia and later to Britain. Thereafter, some of those slaves were taken by the British for their early imperial settlement of the African territory of Sierra Leone. Analogously, victorious American colonists honored their obligation by manumitting up to 12,000 slaves who had fought for them, while bitterly opposing the British removing any of "their" slaves at all.

Post-Revolution questions and conflicts defined the need for new constitutive arrangements for the new nation, and the relationship of Black claims to outside law to the evolution of such arrangements. Black claims to both outside and domestic law were made in Shays' Rebellion in Massachusetts, shortly before the Constitutional Convention. In Philadelphia, Blacks were not thought to be any part of the Convention. The premise had already been voiced in the 1750s that the United States was destined to be a European heritage controlled nation. However, Blacks were in the room in Independence Hall in

the minds and fears of the Framers, and close at hand as the servants of those august men.

African-Americans were entering, in 1787, a new stage of social and political organization, especially in Pennsylvania under the leadership of Richard Allen and James Forten, and in other northern states. They had already evolved a history of over a century of claims to outside law, including international law, from their lives in America. Subsequently, they necessarily had interests in the outcomes of the Constitutional debates about the international law-related provisions of the Constitution.

Thus, I asked, through using a fictional narrative, what interests did Blacks have in the drafting of these constitutional provisions? Here a window of influence of contemporary Critical Race Theory is opened into the scholarship of American legal history.¹ Without the pioneering work of the great legal scholar Derrick Bell in using fictional narrative to clarify deeper truths behind contemporary constitutional issues, including through his civil rights lawyer heroine Geneva Crenshaw, my inquiry here would have been greatly limited. The debates around each international law-related constitutional provision are explored, as if African Americans had sent, and the Framers had accepted, informed and committed Black representatives able and present in Independence Hall to help shape the U.S. Constitution. Black claims and interests are explored, in light of the Convention debates and perspectives of the Framers about how the United States, as a new sovereign nation consolidating itself *vis-à-vis* other sovereign states, ought to incorporate and confirm its rights and duties under international law.

My fictional Black representatives advocated for African-American interests in the Convention as long as they could, but finally they had to walk out when the Fugitive Slave Clause became the last straw! However, it might have been a very tense exit. Because, when Geneva Crenshaw had appeared before the Framers to inform them of the subsequent racial discrimination in the American future that their decisions would cause, regarding the 3/5 Clause, the Fugitive Slave Clause, the 1808 Clause and other provisions allowing the Constitution to permit slavery, the Framers ordered a loaded cannon to be brought up, and were prepared to fire as she was speaking on the Independence Hall podium, just as Ms. Crenshaw escaped in her time capsule!

I subsequently discuss the post-constitutional claims to outside law and international law by Blacks to confirm their right to freedom up

1. See HENRY J. RICHARDSON, III, *THE ORIGINS OF AFRICAN-AMERICAN INTERESTS IN INTERNATIONAL LAW* (2008).

until approximately 1808. This includes issues about the resumption of the African slave trade into the United States, the resumption of constitutional authority for its regulation, and slave revolts including Prosser's Rebellion. The hugely significant body of Black claims arising from the Haitian Revolution beginning in 1791 confirmed that it is difficult to overestimate the impact of that Revolution on the United States, including regarding the content of Black claims to that Revolution as outside law. This part of the narrative further discusses a line of federal cases showing Black agency on their international facts, regarding their claims to outside law.

It goes on to explore Black claims to outside law made by their fleeing over the international boundary to Spanish-ruled Florida to escape Southern slavery. Furthermore, it explores the forced westward migration of slaves by slave holders to extend the American plantation system to the Mississippi River in the late 18th and early 19th centuries. This migration brought Blacks in close proximity to European sovereign regimes, and their cultural remnants on American soil. These groups of foreign cultures represented concentrations of easily accessible outside norms, to which Free Blacks and slaves could claim to confirm their rights, such as that to participate in armed militias, and therefore to normatively resist new waves of American slavery and racism into Mississippi Territory.

African-Americans made important claims to outside and international law and also to domestic law, regarding the approach, conduct, and conclusion of the War of 1812 ("War"). I examine them in the context of Blacks in New Orleans, and of Andrew Jackson's actual and implied promises of manumission of slaves in return for military service, in winning his major victory against the British there to end the War. Those promises were now expressive of an evolved principle of contemporary customary international law, giving slaves a conditional right to freedom in return for military service to the territorial authority. Black claims of rights were made regarding Blacks offering and giving military service to both American and British forces, and again, regarding thousands of Blacks sailing away with the British at the War's end. More implicit, but identifiable Black claims to international law were made regarding the conclusion of, and Black interests in, the drafting and interpretation of the Treaty of Ghent, which ended the War in 1815.

Thus, Black interests in international law had evolved more clearly by the end of the War. They had evolved from their origins through innumerable Black claims to outside law relative to slavery and the slave trade, up through the American Revolution, the westward forced migration, and the War. These interests now comprised, by the

second decade of the 19th century, an African-American stake in the prescription and implementation of international law.

CONTEMPORARY LESSONS FROM AFRICAN-AMERICANS HAVING INTERNATIONAL LAW INTERESTS

If we look to draw lessons from History, important, even inherent issues must be recognized. Whoever steals a people's history steals their freedom, because they steal their capacity to fix the truth of their relations with both their own values and with other peoples and cultures. Thus, drawing lessons from the history of a particular group leads us to ask whether those are lessons the foundation for which was stolen from that group.

Part of the large importance of the approaches of critical jurisprudence in international law which have arisen in the last three decades, including Critical Race Theory, Third World Approaches to International Law, Critical Latino(a) Theory, and Feminist Jurisprudence, has been that each seeks to examine foundational questions. A primary question is whether, and how, the history of subordinated groups has been stolen by others through oppression and massive distortion. They are also framing issues of authority to correct the present jurisprudential and legal consequences of that distortion. All of these critical approaches demand the current policy relevance and present authority of the history of oppression of particular groups and peoples by other groups, interests, and their heirs. They further demand that such authority is to be incorporated into present legal thinking about the current consequences of this discrimination and oppression.²

This is necessary because, as Anthony Anghie, Makau Mutua, Ruth Gordon, and others have demonstrated, the 19th century model of the Euro-sovereign state, with its norms of dominating lesser peoples, has never quite gone away. For all of these groups, including African-Americans, and their emerged interests in international law, such critical examination and guardianship, on both the theoretical and the local planes, frame Noam Chomsky's principled assertion: "But there is no reason to subjugate ourselves to the doctrine of the powerful."³

It almost goes without saying that peoples can be subordinated not only by the oppression which directly coerces them, but also by the historiography of that oppression by subsequent influential historians. Those historians will, for the moment, hold that people's history in the palms of their hands. Notwithstanding, as the African-American history of its international law interests shows, along with concurrent

2. Henry J. Richardson, III, *The 2010-2011 Mitchell Lecture – The Origins of African American Interests in Int'l Law*, 17 BUFF. HUM. RTS. L. REV. 1, 12 (2011).

3. *Id.*

struggle in the academy, subordinated peoples can evolve a jurisprudence on which they act, without a dominating people or group's permission.⁴

LESSONS FOR THE AFRICAN AMERICAN COMMUNITY

Since the late 19th century, with roots back to slavery, there has been a divergence of perspectives among African-Americans about the wisdom of identifying and acting on their international law interests. The questions encompass those about the best political route of this people to liberation, those about African-Americans' limited resources for their own lives and communities which are insufficient to be divided towards international efforts, and finally those of caution to so refrain in order to escape majority retaliation for daring to "meddle in" international issues.⁵ In my historical work, I reflected this divergence by focusing primarily on those Black folk who did make claims to outside law, but also those who made claims to domestic law, to construct relief from slavery and racism.⁶ I believe over the intervening years that this divergence has waxed and waned. Today it has weakened, but strong divergent residues remain in local communities, for generally the same underlying reasons.⁷

However, now, African American interests in international law have been confirmed as lasting, and are increasingly being defined through various public African American related issues, such as the emerging joinder of American slave reparations questions with slave trade reparations questions under international law, the framing of domestic police brutality issues under American obligations under the Torture Convention, and the interests of African-Americans in both doing business in Africa, and helping to protect African interests in the American market.

THE NARRATIVE OF AFRICAN-AMERICANS DOING BUSINESS ON THE AFRICAN CONTINENT

I previously noted that this narrative forms an important part of the Black International Tradition. In this spirit, let me first turn to the historical underpinnings of the narrative which stretch back to the 1700's. Next, I will turn to questions in the contemporary narrative, including the dialogue between African-American Pan-African interests and commitment in doing business in Africa, and their interests in the same context as financial investors.

4. *Id.* at 13.

5. *Id.*

6. RICHARDSON, *supra* note 1.

7. Richardson, *supra* note 2, at 13.

HISTORICAL UNDERPINNINGS

In 1780, Paul Cuffe ("Cuffe"), a Free Black shipwright and merchant in Boston, began to build ships of his own and engage in an import-export business. From the profits he built ever larger ships and acquired considerable other property.⁸ He became a mainstay in the early back-to-Africa emigration movement among Blacks. This was visibly a minority trend among Blacks about their future in America, arising through international questions, beginning in the 1780s.

In 1811, Cuffe sailed first to England and then to Sierra Leone, a recent British West African colony, in his own ship to explore the possibilities of taking free Blacks back to Africa. He aimed to foster a general improvement in their lot. In 1815, he took thirty-eight Blacks to Africa at a great expense to himself. Afterwards, he concluded the expenses of such a project were prohibitive.

Cuffe represented the view that Blacks must return to Africa in order to enjoy their rights to freedom because they would never win them in America due to perpetual racism and slavery. Thus, with American government support, Blacks must return to West Africa and establish a colony there. This view conjoined with that of many contemporary Whites, including Thomas Jefferson and the American Colonization Society, who were seeking to export Free Blacks in order to better preserve the slave system.⁹ It also corresponded with White Christian missionary impulses of the period. Some three decades later, this general process would lead to the birth of Liberia.

Cuffe's pioneering story represents, throughout the 19th century, African-Americans seeking to do business in Africa in connection with the back-to-Africa emigration movement among some Blacks in America, and in connection with colonization aims on the African continent, to improve the welfare of both African-Americans and Africans. His story is also emblematic of African-Americans, by doing business in Africa, creating one route for this African heritage people in America to enter the stream of international politics.

AFRICAN-AMERICANS AND THE 19TH CENTURY
EMIGRATION QUESTION

The Treaty of Berlin of 1885 ("Treaty"), which divided up Africa among European colonial powers, acted to a degree to frame the African-American emigration question in the late 19th century, and to frame the objectives of African-Americans proposing to do business

8. See LAMONT D. THOMAS, *PAUL CUFFE: BLACK ENTREPRENEUR AND PAN-AFRICANIST* 16 (1988).

9. *Id.* at 117-18.

in Africa during that period. Those leaders favoring African-American emigration back to Africa tended to see the Treaty's European imperial partition of Africa as promising benefits for African peoples in building African progress.¹⁰ "Along with earlier leaders, they tended to see African-Americans as both providing and sharing in those benefits in Liberia, Sierra Leone, the Congo, and elsewhere, even including the future dream of a powerful unified African continent."¹¹

Timothy Fortune, editor and co-founder of the *New York Globe* (later the *New York Freeman*), and John Bruce were among this latter group, and thus tended to support both African emigration and conditional approval of European imperial aims.¹² They were joined by Booker T. Washington, who stated that "it was to the advantage of the African people to use European imperialism as a means of 'uplifting' themselves and developing their resources."¹³ He further encouraged American investment in Africa to develop business opportunities for African-Americans.¹⁴

These perspectives were generally consistent with those of earlier 19th century proponents of African American emigration. These early proponents wove these goals into European colonialism in various ways, not excluding African-American colonization of Africa in the context of Black nationalism. Leaders of this perspective included Martin Delaney, Bishop Henry Turner, Henry Highland Garnet, John Mercer Langston, Alexander Crummell, and Edward Blyden. Henry Highland Garnet, for example, supported limited emigration to West Africa for the purposes of establishing a Black industrial nation that could compete with the Western world and establish markets for sugar, cotton, and the like.¹⁵ In 1858, following on this view, he helped create the African Civilization Society in order to encourage Black professionals to establish a cotton industry within the Niger region that could possibly compete with the southern U.S. cotton industry. He envisioned a small group of African-Americans setting up permanent residence within the Niger region, supervising the cotton trade

10. See generally Henry J. Richardson, III, *Two Treaties and Global Influences of the American Civil Rights Movement Through the Black Int'l Tradition*, 18 VA. J. SOC. POL'Y & L. 59, 68-69 (2010); JOHN HOPE FRANKLIN & EVELYN BROOKS HIGGINBOTHAM, *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* 182-83 (9th ed. 2011).

11. Richardson, *supra* note 10, at 69.

12. *Id.*

13. *Id.* at 70; SYLVIA M. JACOBS, *THE AFRICAN NEXUS: BLACK AMERICAN PERSPECTIVES ON THE EUROPEAN PARTITIONING OF AFRICA, 1880-1920* 49 (1981).

14. Richardson, *supra* note 10, at 70.

15. *Id.*; Ella Forbes, *African-American Resistance to Colonization*, 21 J. BLACK STUD. 210, 222 (1990).

and establishing an African-American state while also spreading the Christian gospel.¹⁶

Other leaders had related visions. Alexander Crummell, a prominent African-American Episcopalian clergyman and an ardent supporter of African-American colonization in Africa, spent twenty years in Liberia exploring the possibility of creating an Afro-American colony there. He believed that African-Americans, having been redeemed and civilized by the Western world, should return to their ancestral land and use their knowledge and belief in Christianity to promote the regeneration and modernization of the Continent.¹⁷ Some leaders adopted a more Pan-African view, asserting Black people were all interconnected through racial identity. Black people should thus return to their homeland, establish a Black nation, and fulfill their duty of civilizing and proselytizing their African brethren, or as Martin Delaney held, to create a new Black nationality in Africa.¹⁸

But the pro-emigration position was long and strongly opposed by leaders such as Frederick Douglass ("Douglass").¹⁹ As early as 1859, Douglass firmly held that those Blacks who emigrated were "traitors to the cause", that the United States and the American Colonization Society (which he vehemently opposed) should give no support to African-American emigration, and that African-Americans should remain in the United States to work and ensure equality.²⁰ The position was cogently summed up by Samuel Cornish, editor of the Black newspaper *The Rights of All*, who stated, "[n]othing appears to me more trifling than to talk of repaying to Africa the debt we owe her, by returning her sons to its coasts. I consider that the shortest way to accomplish this grand object is, to do her sons justice wherever we find them."²¹

This prominent opposition seems to leave open the question of approval for African-Americans doing business in Africa for more profit-driven and African-American enriching strategies back in the United States. It may also leave open the question of approval of Afri-

16. Richardson, *supra* note 10, at 70; See generally Richard Blackett, *The African Civilization Society in ORGANIZING BLACK AMERICA: AN ENCYCLOPEDIA OF AFRICAN AMERICAN ASSN's* (Nina Mjagkij ed., 2001) (history of the establishment of the African Civilization Society).

17. Richardson, *supra* note 10, at 70; George Shepperson, *Aspects of American Interests in the Berlin Conference*, in *BISMARCK EUROPE & AFRICA: THE BERLIN CONFERENCE 1884-85 AND THE ONSET OF PARTITION* 281, 289 (Stig Forster et al. eds., 1988).

18. Richardson, *supra* note 10, at 70.

19. *Id.* at 70-71.

20. *Id.* at 72.

21. *Id.*; Johnson A. Adefila, *The Black Press and Africa in the 19th Century Black American Struggle for Equality*, in *CRITICAL PERSPECTIVES ON HISTORICAL AND CONTEMPORARY ISSUES ABOUT AFRICA AND BLACK AMERICA* 29, 36 (Tunde Adeleke ed., 2004).

can-Americans for any reason doing business in Africa in ways that benefitted from European colonial rule of African peoples. This latter question was implicitly but decidedly opposed beginning in the late 19th century by leaders such as George Washington Williams (“Williams”), the first African-American international lawyer, who chronicled and exposed the evils of Belgian colonialism in the Congo,²² and the young W.E.B. DuBois as he moved towards organizing the first of his Pan-African conferences.²³

THE IMPACT OF REVEREND LEON SULLIVAN ON AFRICAN AMERICANS DOING BUSINESS IN AFRICA

In the last half of the 20th century, with the influence of his ideas and leadership continuing to the present day, Reverend Leon Sullivan’s (“Sullivan”) impact on the conduct and narrative of African-Americans doing business in Africa has been profound.²⁴ From 1984 to 1987 Sullivan promulgated his Sullivan Principles (“Principles”).²⁵ These Principles obligated U.S. corporations to give equal treatment to their Black South African workers.²⁶ Sullivan nestled them within the American Free South Africa Movement (“Movement”), however, not without some friction with leaders and other Movement participants.²⁷ However, Sullivan had to do so in order to have available the powerful moral and legal anti-apartheid narrative from the wider Movement. He needed to do so, which he recognized, to provide his Principles, and his continuing public interpretations and invocation of them during those years, with sufficient leverage to force the 200 American corporations then doing business in apartheid South Africa to see that it was in their best overall interests to accede to the Principles’ authority.²⁸

Concurrently, Sullivan needed the national street action and radical norms of the Movement as the underpinning to convince the American public that his Principles, in the end, comprised an acceptable business and commercial narrative expression of the Movement’s central anti-apartheid commitment and objectives. Through this prism, the Principles, riding the wings of the Movement as it swept into Washing-

22. Richardson, *supra* note 10, at 72-73.

23. *Id.* at 73; See generally SCHOMBURG CTR. FOR RESEARCH IN BLACK CULTURE, N.Y. PUB. LIBRARY, AFRICAN AMERICAN DESK REFERENCE: 9 (1999).

24. See Henry J. Richardson, III, *Reverend Leon Sullivan’s Principles, Race, and International Law: A Comment*, 15 TEMP. INT’L & COMP. L. J. 55 (2001).

25. *Id.* at 60.

26. *Id.* at 57-58.

27. *Id.* at 59-60.

28. *Id.*

ton in 1986, provided the central principles for the federal South African Anti-Apartheid Sanctions Act of 1986.²⁹

Before we look at Sullivan's post-Movement impact on African American business in Africa, we must briefly understand how Sullivan and his Principles, and therefore how African-Americans through this disciple of Martin Luther King ("King") and his extension of non-violent principles into the international community, inaugurated new global norms and law binding on multinational corporations as they do business through rights-vulnerable workers in foreign countries, and helped shape corporate legal duties to protect those workers' rights. Here, African-Americans had an historic impact on the global commercial and investment process, and on defining the rights-related duties of its major players.

Sullivan and his Principles obligated corporate investors in foreign countries, and those investing in those corporations, to go beyond questions of profitability, risks to investment capital and technology, and beyond the balance between corporate advantage and local economic development with justice.³⁰ Sullivan's norms obliged corporate investors, as well as traders, to commit to running their entire investment process, and their negotiations with host governments, so as to foster racial non-discrimination and promotion of the human rights of the workers it employs, and of other people in that country affected by its operations. Corporations are obligated to do so, even if such justice actions are contrary to constitutive policies of their host state government.³¹

Further, by getting these corporations to contract to these obligations by signing on to his Principles, Sullivan significantly helped lay the basis for international law norms to directly obligate corporations to uphold these rights of people within their zones of influence, in all host states. Protection of human rights thus becomes an integral condition and part of the legal definition of financial profitability and of an investment beneficial to both parties. This narrative had a major influence on international perspectives about the relationship between corporate profits and the human rights protection of vulnerable people.³²

The same narrative also sets up interactions between the history of African-Americans doing business in Africa, regarding their aims of economic development and Pan-African connections, and the historic

29. *Id.* at 69.

30. *See generally Id.* (asserting that Sullivan's Principles compelled corporations to implement a more expansive view of justice).

31. *Id.* at 58.

32. *Id.* at 59.

fact of African-American instigation, inspired by King's commitment through Sullivan in a Pan-Africanist frame of global corporate standards. The latter were further codified through the Global Sullivan Principles subsequently adopted by the United Nations, which privilege the protection of human rights within investment host states through ethical multinational corporate behavior.³³

Let us now look back at Sullivan's earlier work, as a foundation for his Principles, and then look forward from the success of his Principles to his Sullivan Summits for African-American business in Africa.

Sullivan came from working class origins in New Jersey. Before coming to pastor the Zion Baptist Church in Philadelphia in the mid-1950s, he briefly served as an Assistant Pastor at Abyssinian Baptist Church in Harlem. Beginning in 1958, Sullivan was a leader among 400 Black ministers in Philadelphia who organized an effective boycott of businesses, designed to eliminate employment barriers against Black workers in the city. Its success over the next three years led to Sullivan's leadership to found a major training program to prepare people for those newly available jobs. As a result, Opportunities Industrialization Centers ("OIC") was founded in 1964, and within a few years OIC spread to almost 100 U.S. cities.³⁴

In 1969, OIC International began at the request of an African physician with assistance from local citizen groups in Nigeria, Ghana, and Ethiopia.³⁵ Its basic principle was that Africans should strive to become self-reliant so as to build healthy communities, around the axioms of self help, capacity building, community grounding and market responsibility, and wide partnership. It grew to operate in eighteen African countries, Canada, and England. In Togo, it developed what was reported to be one of the most successful demonstration farms on the African continent.³⁶ The project trained hundreds of young men and women in new agricultural methods and skills. They then returned to their villages to pass those skills on to others. Other self-help farms and skills centers for mechanics, typists, carpenters, bricklayers, electricians, and entrepreneurs evolved from OIC International programs. After the mid-1970s, OIC International's focus shifted to rural, vulnerable populations with a focus on creating women farmers by teaching sustainability of farming production by

33. *Id.* at 55.

34. *Id.* at 56.

35. *Id.*; See David O'Reilly, *New Leader Vows to Refresh a Helping Agency: Rev. Leon Sullivan Calls on a Younger Generation in the Crusade for Economic Justice*, PHILA. INQ., Jul. 18, 2000, http://articles.philly.com/2000-07-18/news/25610423_1_pastor-opportunities-industrialization-centers-ministries.

36. OIC- International, *Helping Poor Women Farmers and Communities: Opportunities Industrialization Centers: Togo*, <http://www.oici.org/where-we-work/togo/programs/> (last visited Mar. 6, 2012).

targeted instructional assistance, including organizing women-farming groups.

Sullivan's early work, prior to his *Principles*, created a global vision of African-Americans tangibly assisting, in institutional ways, African economic development, including the competitiveness of those African states to attract other foreign economic investment. In 1971, Sullivan joined the Board of Directors of General Motors Corporation, where in 1984, he launched his *Principles*.³⁷

Following the Free South Africa Movement, Sullivan in 1991, launched the Africa/African-American Summits, which since have been held every two years and have grown in size and importance. Their general goal is to strengthen the historical relations of friendship and solidarity between Africans and African-Americans and find ways to help accelerate African development. A more specific continuing objective is to develop economic ties between Africans and African-Americans.³⁸

For example, the Fourth Summit in 1997, in Harare, was attended by over 1,000 business, civic, and political leaders, including five African heads of state, delegations from several other African countries, and American civil rights leaders. As a result of the first three Summits, more than \$60 billion in African countries' bilateral debts were forgiven, new investments of over \$500 million flowed into Africa, and a 1,000 teacher program was founded under which 450 instructors helped to upgrade the educational systems of ten African countries. Further, a Best-and-Brightest African Bankers Training Program had trained 250 mid-level bankers throughout the Continent.³⁹

The Summits have also influenced U.S. investment and development assistance programs for Africa. For example, loan guarantees have expanded along with the provision of funds for infrastructure and equity investment, including through the Overseas Private Investment Corporation.⁴⁰ This influence was confirmed by President George W. Bush's ("President Bush") remarks at the 3rd Biennial Leon Sullivan Summit Dinner in Washington, in 2002, where he said, *inter alia*, "[Sullivan's] vision must be our mission [towards Africa's future]."⁴¹

37. Richardson, *supra* note 24, at 57.

38. Charles Whitaker, *Ghana's Summit Success*, EBONY MAG., Aug. 1999, at 109.

39. Lewis Machipisa, *AFRICA-AMERICAS Adding a Few Blocks to the Trans-Atlantic Bridge*, INTER PRESS SERV., <http://ipsnews.net/print.asp?idnews=94642> (last visited Mar. 22, 2012).

40. Norm Bond, *Building Bridges: The Fourth African-American Summit*, NEXT STEP MAGAZINE, Jan. 31, 1997, at 58.

41. President George W. Bush, Remarks by the President to the 3rd Biennial Leon H. Sullivan Dinner (Jun. 20, 2002) (transcript available at <http://georgewbush-whitehouse.archives.gov/news/releases/2002/06/20020620-20.html>).

It may be, however, that President Bush might not have wished to entirely turn U.S. African development policy over to Sullivan's vision, if perhaps he had understood Sullivan's vision better, and seriously considered its roots to which I have alluded.

In an interview in 2000, Sullivan declared businesses must be given incentives to trade with Africa because Africa is a risk. Africa is a continent of new nations that lack structure, but Africa is not hopeless. Here, Sullivan invoked the importance of investor perspectives regarding African-American businesspersons and others seeking to do business in Africa. Sullivan stated that he sought to "teach a man to fish" not for his own benefit, but for the benefit of Black people everywhere.⁴² This proposition, in conjunction with his perceived necessity of incorporating investor perspectives regarding laying the groundwork to do business in Africa, seems also to reflect the concurrent Pan-Africanist commitment that infused Sullivan's determination to create a series of Summits. Sullivan saw the Summits not only as a focus of assistance to Africa in and of themselves, but also as a vital to guide for African-Americans to do business in Africa for the right objectives, which could not be defined solely in terms of investor perspectives.⁴³

Sullivan also stated that the West is uninterested in African development because they are preoccupied with the seeming hopelessness of African development. Thus, we observe that President Bush, rather than adopting Sullivan's mission, focused his policies on the AIDS epidemic in Africa and U.S. efforts to provide monetary aid to African nations.⁴⁴ This focus on risk and disease may hearken back to the early generations of European explorers of Africa as "the dark Continent". Sullivan's visions seem to recall in part, his strong optimism and hope for Africa's potential as a new economic stronghold. Some of those early African-American leaders of the 19th century, discussed above, who linked their doing business on the Continent with the vision of a unified, strong and prosperous Africa, fully competitive in the international community, supported this vision. But, as W.E.B. DuBois warned: African-American businesses cannot go into Africa expecting to assume all or partial control over its people and states, even for the welfare of native Africans.

42. Jack Kemp, *The Principles of Leon Sullivan*, TOWNHALL.COM, Aug. 1, 2001, http://townhall.com/columnists/jackkemp/2001/08/01/the_principles_of_leon_sullivan[http://townhall.com/columnists/jackkemp/2001/08/01/the_principles_of_leon_sullivanhttp://townhall.com/columnists/jackkemp/2001/08/01/the_principles_of_leon_sullivan](http://townhall.com/columnists/jackkemp/2001/08/01/the_principles_of_leon_sullivanhttp://townhall.com/columnists/jackkemp/2001/08/01/the_principles_of_leon_sullivanhttp://townhall.com/columnists/jackkemp/2001/08/01/the_principles_of_leon_sullivan).

43. See Machipisa, *supra* note 39.

44. See generally Raymond W. COPSON, CONG. RESEARCH SERV., IB 95052, AFRICA: U.S. FOREIGN ASSISTANCE ISSUES (2003).

THE EXTENSION OF PAN-AFRICANIST COMMERCIAL OUTREACH:
AFRICAN AMERICAN BUSINESS PERSPECTIVES ON
ENACTING THE AFRICAN GROWTH AND
OPPORTUNITIES ACT ("AGOA")
INTO U.S. LAW

In 1999, African-American perspectives toward doing business in Africa were evidenced by a sample of perspectives on the passage of AGOA. AGOA lowered tariffs and provided other measures regarding potential additional benefits to African trade into the American market. These perspectives mirror the need for investor benefits, but also mirror the continued hope and commitment to assist, in the American arena, African economic development through favorable trade arrangements. In this regard, I will focus on the testimony of two African-American business leaders, Percy Sutton ("Sutton") of New York, and Andrew Young ("Young") of Atlanta.

Before turning to Sutton's and Young's testimony supporting this U.S. legislation, an issue of context regarding African-American business investments in Africa and this Act should be discussed. In the hearings for AGOA, Representative Jesse Jackson, Jr. ("Jackson") of Illinois proposed the HOPE FOR AFRICA Act ("HOPE Act") as an alternative in approach to AGOA, supported by a spectrum of African-American interests.⁴⁵ Although the HOPE Act did not go forward, it represented a somewhat competing approach to defining the best U.S. policy to foster African economic empowerment from African-American perspectives.

The HOPE Act proposed to empower Africa directly through debt relief, open standards of well-being of the majority of African peoples, restoration of previous levels of direct U.S. aid to Sub-Saharan Africa, and the strengthening of the diversity of African economic production capacity.⁴⁶

AGOA, however, aimed to accomplish most of these goals through the doctrine and practice of free trade.⁴⁷ This included opening the American market to African export producers and establishing a better investment climate in Africa for American investors, including African-American investors. This approach represents the free trade route of U.S. policy, and Young's testimony, along with African-American business people doing business in Africa tended to support

45. Jesse Jackson Jr., *Hope for Africa*, THE NATION, Mar. 15, 1999, at 6.

46. See *Id.*

47. See generally African Growth and Opportunity Act, <http://www.agoa.gov> (last visited Mar. 7, 2012).

this policy approach.⁴⁸ However, other more activist African-American perspectives insisted that direct U.S. governmental aid and policies to African governments and groups must be a first priority for the U.S. approach to African development and empowerment.

PERCY SUTTON

Sutton was born into a family of Black business people who taught him to support the freedom of Africa as their homeland. Sutton's family went to jail during the Civil Rights Movement. After law school, Sutton became a Member of the New York legislature, and later became President of the New York borough of Manhattan.⁴⁹ Sutton was also a businessman, owner of radio stations around America, chairman of the Inner City Broadcasting Corporation, and a large investor in African Continental Telecommunications ("ACT"), a telecommunications company.⁵⁰

ACT had a contract with a major company for \$450 million to launch ACT's satellite up over the African Continent in 2003.⁵¹ The satellite would make possible mobile telephone communications throughout Africa and globally. The satellite would also enable easy and low cost African access to the Internet. Sutton had previously been involved in spot oil trading out of Nigeria and trading in heavy machinery in other parts of Africa, which made him aware of the lack and need for modern telecommunications throughout Africa.⁵² ACT sought to attract other U.S. investors to this venture through its investment bank. However, ACT ran into investor attitudes which suggested Africa was a place into which you pour money and don't get anything out. Sutton testified that this was not true.⁵³

Sutton's testimony in favor of AGOA rested on a self-described Pan-Africanist foundation, but it was seasoned with investor perspectives. Sutton testified regarding the need for Africa to be empowered to get equal free trade prerogatives, as a necessary step in attaining global equity. He saw AGOA as helpful in attracting investments from African-American business ventures into Africa. He argued, from his

48. *U.S. Trade Relations with Sub-Saharan Africa: Hearing Before the Subcomm. on Trade of the Comm. On Ways and Means*, 106th Cong. 35-36 (1999) [hereinafter *Hearings*] (statement of Hon. Andrew Young, Chairman, Good Works Int'l LLC).

49. Douglas Martin, *Percy Sutton, Political Trailblazer, Dies at 89*, N.Y. TIMES, Dec. 28, 2009, at A1.

50. Frank McCoy, *Going Down to the Wire: Percy Sutton Invests \$835 million in Wireless Communication Network in Africa*, Black Enter., Apr. 1, 1999, at 15.

51. *U.S. Trade Relations with Sub-Saharan Africa: Hearing Before the Subcomm. on Trade of the Comm. On Ways and Means*, 106th Cong. 66-70 (1999) (statement of Hon. Percy Sutton, Chairman, African Cont'l Telecomm. Ltd.).

52. *Id.* at 66.

53. *Id.* at 69.

Pan-Africanist perspective, that doing business in Africa can give good investment returns. He also noted that returns from Africa in communications were the fastest growing investment sector on the Continent.⁵⁴

Sutton's testimony explicitly supported sub-Saharan African free trade policies, including those with the U.S. through AGOA, as being "an essential element" in Africa's "economic development and maturity."⁵⁵ He further argued that AGOA helps Africa towards economic development, especially regarding its manufacturing sector.⁵⁶ Sutton noted that the enactment of AGOA would be a step further in a global trend already underway, of foreign investors looking more favorably on African possibilities compared to those in other third-world countries.⁵⁷

Sutton stated that African-American investment in Africa was linked to the mutual economic benefit of the U.S. and Africa, rather than generating economic benefits only for Africa.⁵⁸ He recalled the recent history of his New York radio stations being a resource, in the 1970s and 1980s, for African liberation leaders coming to the United States to raise American support for the African liberation struggle.⁵⁹

In noting that AGOA would improve the African investment climate to benefit African-American business people, Sutton argued, from an investor perspective, that Africa's need for telecommunications goods and services provided by African-American businesses, created African-American investment opportunities by the very intensity of that need.⁶⁰ In this connection, Sutton further argued that his company, ACT, in the framework of AGOA, would provide job opportunities, investment, and business opportunities for African workers and people, as well as transferring skills and technology to Africa. AGOA was, however, necessary to this process.⁶¹

In sum, Sutton's testimony represented African-American business people as positive interpreters to U.S. capital markets of Africa's investment climate, and positive interpreters of Africa's derived benefits regarding economic development and job creation from American investment.⁶² In taking this stance, Sutton showed his awareness of some of the continuing historical legacy of African-Americans doing

54. *Id.* at 68.

55. *Id.* at 66.

56. *Id.* at 67.

57. *Id.*

58. *Id.*

59. *Id.* at 68.

60. *Id.*

61. *Id.* at 69.

62. *Id.*

business in Africa: the connection between business ventures by *these* African heritage people and fostering African economic development; the “uplifting” of its people on a spectrum ranging from notions of missionary salvation to those of economic development; the potential African-American assistance by such business ventures to a greater vision of African continental unity and globally-recognized power; and the economic benefits from returns on such investments as raising the status of African-Americans back in the U.S.

ANDREW YOUNG

Young testified before the Sub Committee, supporting AGOA, as Chair of the consulting company Good Works International, former U.S. Ambassador to the United Nations during the Carter Administration, former Member of Congress, Mayor of Atlanta, and Martin Luther King’s lieutenant throughout King’s leadership of the Movement.⁶³

Young also testified as a representative of African-American business, from the basic perspective that Africa’s necessary route to development rests on foreign private investment, which the U.S. government through its policies, including AGOA, must facilitate.⁶⁴ Thus, Young linked the Pan African legacy of African-Americans doing business on the Continent to private investment and privatization of African governmental services. He posited that this linkage was vital for African development, especially its access to the Internet.⁶⁵ Young saw technology and capital as key to democratization in Africa, and along with Sutton, saw AGOA as facilitating that process.⁶⁶

Young reviewed recent African history under European colonial domination and the African determination to overcome the horrors and destruction of that period.⁶⁷ That determination features both successes and failures, with Africa’s future being in the balance.⁶⁸ But AGOA, including its activation of private investment as a statement of U.S. policy, could make an important difference to the African future, including in growing its exports.⁶⁹ Investors need, including African-American investors, U.S. approval of African governmental policies for the success of their own ventures in African countries.⁷⁰ However,

63. *Hearings*, *supra* note 48, at 34 (statement of Hon. Andrew Young, Chairman, Good Works Int’l LLC).

64. *Id.*

65. *Id.*

66. *Id.* at 35.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

Young noted that African governments must do their part to improve their own investment climate.⁷¹ But given the richness of Africa's resources, the U.S. needs Africa and U.S. investments, including African-American investment, to serve as linkages to vital U.S. interests in Africa.⁷²

Here, we must recall a strong strand of African-American business history in Africa in the late 19th century. We have seen that several Black leaders were looking to coordinate their business ventures with European African colonial domination. These Black leaders were doing so believing in either the "uplifting" benefits of colonialism to the African peoples, which African-American business might supplement, or profitable opportunities for African-American business people that colonial domination created.

Young thoroughly rejected that approach. He implicitly insisted that African-Americans doing business in Africa must align their ventures *with* the African struggle to recover from the horrors and distortions of colonialism. They must do so by, with the help of AGOA and U.S. government policy, structuring their investment ventures to foster African economic development, which fosters African democratization. In doing so, American investment, including African-American investment, will serve as a barrier to the danger of European neo-colonialism by actively competing with French and other foreign businesses that could re-dominate African economies. I do not believe that Sutton disagreed.

AGOA REFLECTIONS

From the Congressional testimony of these two prominent representatives of African-American businesspeople in Africa, we see that the normative vision of African-American business fostering African economic development remains central. The vision encompasses the continuing historical spectrum of African-American business aims and strategies, ranging from Pan-Africanist solidarity to risk-calculating investment profit motives. The necessity of favorable U.S. government policy, within free trade parameters, is more revealed. The implicit argument is made that the danger of the U.S. fostering free trade American investment as a barrier to European neo-colonialism, is worth the risk that this "Washington consensus" of liberalized trade and investment policy as projected towards Africa may produce similar patterns of domination on the Continent.

71. *Id.* at 36.

72. *Id.*

ROBERT JOHNSON'S INVESTMENT IN LIBERIA

I want to close this Lecture by looking at a prominent African-American businessman's current investment in Liberia. The critical narrative in which it is embedded, including the venture's relation to historic questions regarding African-American business in Africa, must be discussed.

Robert Johnson ("Johnson") is the founder of Black Entertainment Television ("BET"), Chairman of the conglomerate RLJ Companies ("RLJ"), and America's first black billionaire.⁷³ In March 2009, RLJ Companies opened its first project in Africa, a four-star luxury hotel ("RLJ project") in Kendeja, Liberia, outside of the capital Monrovia.⁷⁴ The hotel, with 78 luxury rooms and villas, occupies 13 acres of beachfront, under a fifty year lease by the government to RLJ.⁷⁵ The \$12 million hotel is largely self-contained because of the lack of supporting infrastructure. The Liberian government with Chinese assistance has provided some improvements to Kendeja and more are planned.⁷⁶ Johnson is also spearheading the creation of a \$20 million Liberian Enterprise Development Fund, to provide credit to Liberian entrepreneurs to support small and medium-sized businesses to create jobs.⁷⁷ The improvements to Kendeja to make way for the RLJ project included closing and appropriating the land of the Kendeja National Cultural Center, which has itself become a prominent focus of opposition to the hotel project.

The hotel already has its first bookings of an international women's conference.⁷⁸ The hotel aims to attract United Nations ("U.N.") personnel from the current U.N. peacekeeping force in Liberia (the duration of whose remaining stay is uncertain), non-governmental

73. Janell Ross, *Robert Johnson, First Black American Billionaire, Proposes Plan to Reduce Black Unemployment*, HUFFINGTON POST BUSINESS, (Oct. 11, 2011, 7:07 PM), http://www.huffingtonpost.com/2011/10/11/robert-johnson-bet-black-unemployment_n_1005260.html.

74. Emily Schmall, *BET Founder Robert Johnson's Liberian Resort: An Oasis of Calm*, DAILY FINANCE (Feb. 19, 2011, 9:00 AM), <http://www.dailyfinance.com/2011/02/19/bet-founder-runs-oasis-of-calm-in-Liberia>.

75. *Bob Johnson Open Four-Star Hotel—Liberia Leader Lauds Efforts*, GOV'T OF THE REPUBLIC OF LIBERIA: EXECUTIVE MANSION (Jun. 11, 2009), http://www.emansion.gov.lr/press.php?news_id=1209.

76. *Id.*

77. See CHF International, *A New Economic Opportunity in Liberia - The Liberian Enterprise Development Finance Company*, (June 12, 2009), <http://www.chfinternational.org/ledfc.www.ledfc.comwww.ledfc.com>

78. *International Colloquium on Women's Empowerment, Leadership, Development, International Peace and Security*, RLJ Resorts & Villas Events, <http://www.rljkennderjaresort.com/Events /tabid/628/language/en-US/Default.aspx> (last visited March 7, 2012).

organization workers, visiting government officials, wealthy Liberians, and European and American vacationers in the future.⁷⁹

Johnson decided to invest after hearing President Ellen Sirleaf's ("President Sirleaf") appeal, at President Clinton's Global Initiative in New York in 2007. President Sirleaf appealed to the American private sector to support her efforts at national reconstruction.⁸⁰ Johnson praised the Liberian business climate as more friendly than that of the United States. Johnson also expressed confidence that Liberia would evolve a vibrant economy with a successful middle class. Johnson explained a prime motive for opening this resort was to help establish a connection between the Black community in the United States and Liberia. "I believe passionately that African[-]Americans have a responsibility to support Liberia, much like Jewish[-]Americans support Israel This includes the special responsibility to do whatever we can to make sure President Sirleaf succeeds, in this window of opportunity."⁸¹

As one commentator noted, luxury resorts are a rarity in West Africa, and virtually non-existent in states that have experienced war. Resorts elsewhere in the region have found it difficult to attract European and American tourists. As a high-end resort built on the heels of a long civil war in a nation still considered unfit for investment by many, Johnson's project in Kendeja is a first for the region, not only for its timing but also for its opulence.⁸²

In light of the issues and trends discussed herein, the RLJ project raises important questions. These issues are framed not only by the facts, but by on-line comments in response to the hotel's opening ceremony. Some of those comments were vigorously supportive. President Sirleaf's government has strongly supported the project, claiming it would benefit Liberian development by contributing to national economic revitalization. President Sirleaf declared that, "Liberia would love to see U.S. private sector development. Bob Johnson has already started a hotel chain. We hope more [investment] from the US private sector will follow [including additional new jobs]."⁸³ Further, as noted herein, the government is also supportive of the policy judgments made to close the Kendeja National Cultural Center in providing the land for the RLJ project.

79. *Women's Conference Leaves Liberians Out in the Cold*, HUFFINGTON POST WORLD, (Apr. 7, 2009 6:12 AM), http://www.huffingtonpost.com/2009/03/07/womens-conference-leaves_in_172804.html.

80. Schmall, *supra* note 75.

81. *Id.*

82. *Id.*

83. Interview by Mark Whitaker with Ellen Johnson Sirleaf, President, Republic of Liber. (May 25, 2012), available at <http://www.cfr.org/liberia/liberias-sirleaf-reform-africa-video/p22211>.

However, one comment stated, in part:

I wish Liberia would consider keeping Robert Johnson out of the country. Look at the investment – a luxury resort. What will such an investment attract? Tycoons and leeches; those who will drive a deeper wedge between the rich and the poor. A luxury resort? As an investment? Please! [Johnson] [i]s making himself and not Liberia richer.⁸⁴

A second comment picked up the question,

[h]otels are great, but they will not solve the problems of Liberia, as illustrated by the disparities in Jamaica. This is purely a money-making venture, which could have a potential upside of getting more people with money to visit Liberia. Will this help Liberians? I don't quite think so. There is already vast corruption within the country. Liberia must focus on infrastructure.⁸⁵

Additionally, Liberians who decry the loss of the Kendeja Cultural Center oppose the RLJ luxury hotel. The Kendeja National Cultural Center was established in 1964,⁸⁶ with the objectives of coordinating Liberia's cultural activities, preserving its treasures and folklore, fostering unity among its people, and promoting and marketing Liberia's cultural image worldwide.⁸⁷ The Cultural Center was the brainchild of legendary Liberian folk author, Bai Tamia Moore ("Moore").⁸⁸ Moore, a noted author, former Under Secretary of Cultural Affairs, and former Minister of Cultural Affairs and Tourism, envisioned the Cultural Center as "a symbol of peace and unity [and] a sacred ground meant for peaceful assembly and celebration of [Liberia's] rich culture."⁸⁹ The Center became the training ground for dancers from all sixteen of Liberia's tribal groups, and included theatres, traditional tribal homes, and a modern high school.⁹⁰ It also became the headquarters of the Liberian Cultural Troupe, which performed in Nigeria, Kenya, Morocco, Algeria, Somalia, Ethiopia, the former Zaire, Gambia, and Disneyland in California.⁹¹ Dubbed as Liberia's "cultural am-

84. Ap, *Liberia: Robert Johnson Aims to Make Coastal Resort a Luxury Vacation Destination*, ALLAFRICA (Aug. 1, 2008 1:05 PM), <http://allafrica.com/stories/200807300937.html>; <http://allafrica.com/stories/200807300937.html>

85. jrock885, *Liberia: Robert Johnson Aims to Make Coastal Resort a Luxury Vacation Destination*, ALLAFRICA (Jan. 21, 2009, 10:07 PM), <http://allafrica.com/stories/200807300937.html>.

86. GIRMA KIDANE, UNITED NATIONS EDUC., SCIENTIFIC & CULTURAL ORG., LIBERIA: PARTICIPATION AND CO-OPERATION FOR DEVELOPMENT PROGRAMMES AND INTERNATIONAL CAMPAIGNS 2 (Dec. 10, 1982), available at <http://unesdoc.unesco.org/images/0005/000548/054808 eo.pdf>.

87. James Kokulo Fasuekoi, *Kendeja: the Story of a "Sacred Land" Sold to U.S. BET Founder* (May 21, 2008), <http://www.liberianforum.com/Articles/Kendeja-the-story-of-a-Sacred-land-sold-to-U.S.-BET-founder.html>.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

bassadors," the Liberian Cultural Troupe even welcomed the visiting dignitaries of the 1979 OAU Conference held in Liberia.⁹²

Liberia's political upheavals almost destroyed the Center. President William Tolbert ("President Tolbert") had been a supporter of the Center, and after his death in the Liberian coup of 1980, government funding for Kendeja and the Liberian arts began to diminish.⁹³ Yet in the middle 1980s, Kendeja experienced a resurgence. The government refurbished the Kendeja Center which hosted local ballet troupes, the Kendeja All-Star band, the Pan-African ballet of Sierre Leone, and Guinea's *Les Ballets Africains*.⁹⁴ However, in 1990 the Liberian Civil War destroyed Kendeja's international prominence. President Charles Taylor's ("President Taylor") National Patriotic Front targeted artists working in Kendeja, killing some,⁹⁵ which discouraged foreign artists from visiting. Although it remained Liberia's artistic headquarters until the advent of the RLJ project, Kendeja had not regained its status as a regional artistic powerhouse.

Despite Kendeja's twilight, a sizeable portion of the Liberian artistic community opposed the lease of the land to Johnson. According to James Kokulo Fasuekoi ("Fasekoi"), former chief war dancer of the Liberian Cultural Ambassadors Dance Troup, "[t]he [] recent sale of one of [Liberia's] most valuable treasures, the Kendeja Cultural Center regarded as a 'Sacred Ground', to American Billionaire and BET founder, Robert Johnson is proof . . . that any thought of [Liberia's] present government advocating, protecting and encouraging culture preservation in Liberia is in itself delusional."⁹⁶ Nimely Vinny Napla, National Cultural Troupe former stage director and chief war dancer stated, "'I feel really hurt that this is happening to the Center.' [H]e blamed President Sirleaf for sacrificing the cultural village for monetary gains."⁹⁷ Liberian Folk Singer Fatu Gayflor, who also performed for President Sirleaf's campaign, stated "'I feel bad and disappointed at how the president took the matter. You cannot develop the country by trashing the cultural center.'"⁹⁸ According to Liberian columnist Gibson Thompson:

The sale of Kendeja . . . saddens me for a number of reasons. I am sad and disappointed that the history many of our children have not seen is being obliterated. . . . [T]he young ones who left Liberia . . . shall not see Kendeja if it is to be destroyed. . . . I am sad that the works of

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

one of Liberians great writers, and historian and cultural icon, Bai T. Moore, are being sold and destroyed.⁹⁹

Further, Liberians who understand the RLJ luxury hotel in the context of Americo-Liberian oppression of native Liberians also oppose the luxury hotel. The history of the American Colonization Society and the resulting relationship between the repatriated former slaves, “Americo-Liberians,” and the native Liberians is well known.¹⁰⁰ Fasekoi, an outspoken critic of Johnson’s administration, stated, “[t]hese so-called Americo-Liberians had come into a society that they didn’t understand and quite frankly they refused to understand over the years either out of fear or out of ignorance or just out of sheer incapacity or inability to comprehend the dynamics of [native Liberian] society.”¹⁰¹ Referring specifically to the Kendeja hotel Fasekoi said:

[I]t is evident today that [President Sirleaf] has done more harm to the natives’ cultures and traditions in . . . the short time she has been in power. An example of her cruelty against our ways of life includes the shutting down of the country’s national cultural village at Kendeja, displacing some 200 professional artists and the banning of our native languages through which we are able to reach our people living in the interior of the country.¹⁰²

Although Fasekoi did not explicitly claim that Johnson’s hotel sets Black Americans and Americo-Liberians against native Liberians of the interior, both regarding who benefits and who will comprise its clients, his comments could imply this perspective. In any event, this Liberian narrative must be understood as necessarily part of the RLJ hotel narrative, including the fact that President Sirleaf is an Americo-Liberian and attended Harvard University with Johnson.

Hotel workers claim they were promised high wages and have waged strikes in response to claims of low salaries. In October 2010, hundreds of hotel employees protested at the main-entrance of the RLJ hotel.¹⁰³ Alhaji Kromah (“Kromah”), a man claiming to be the leader of the workers, argued that hotel management promised workers \$500 dollars per month but workers were only being paid \$140 per

99. Gibson Thompson, *Do Not Sell Liberia's Soul [Kendeja] for Thirty Pieces of Silver*, LIBERIAN J. (Apr. 11, 2008), <http://www.theliberianjournal.com/index.php?st=news&sbst=details&rid=213>.

100. See, e.g., JEREMY I. LEVITT, *THE EVOLUTION OF DEADLY CONFLICT IN LIBERIA FROM ‘PATERNALTARIANISM’ TO STATE COLLAPSE* (2005), available at <http://www.cap-press.com/pdf/1249.pdf>.

101. James K. Fasuekoi, *Pres. Sirleaf Scorns Culture; Time to Defend our Cultural Values* (Guest Commentary), RUNNING-AFRICA TV ONE NEWS: SUPER VOICES FROM THE DIASPORAS, <http://africatv1.com/Dawala/?p=1682> (last visited Mar. 18, 2012).

102. *Id.*

103. *Liberia: ‘Go Slow’ at Kendeja Resort*, THE ANALYST (Oct. 20, 2010), <http://allafrica.com/stories/201010200876.html>.

month.¹⁰⁴ Liberia's national minimum wage is \$60; the Liberian government has opposed the strikes.¹⁰⁵

The strike may not evidence that hotel workers oppose the hotel. Some opponents view the strike as evidence that Liberia's luxury hotel, beyond provision of the jobs, is not benefiting Liberians. It is unclear exactly how many workers the hotel employs.

The government's response to criticisms regarding the displacement of Kendeja's National Cultural Center is that a new cultural center will be built at Margibi in Liberia at an unspecified date, and that the influx of jobs will counter any lingering resentment at the Kendeja's National Cultural Center's destruction.¹⁰⁶ From declassified emails between Liberian ambassadors, the Liberian government is aware of opposition to the hotel by Liberia's artistic community.¹⁰⁷ Although Isaac Jackson, Liberia's Assistant Minister for Culture, said that constructing a new cultural center at Margibi is a high priority, there has been no progress to relocate the people displaced by the destruction of the cultural center nor is any such progress foreseeable.¹⁰⁸ While the Liberian government acknowledges that relocation of the cultural center is a contentious issue, it is low on the list of poverty reduction priorities.¹⁰⁹ The government predicted good community relations and increased employment flowing from the hotel would counter lingering resentment over the displaced cultural center.¹¹⁰

There are allegations, to which the government has apparently not responded, that corruption has prevented the new cultural center from being built. Part of the original deal regarding the construction of the RLJ project was that Johnson would pay to relocate the residents of the Kendeja center and build a new cultural center at Margibi.¹¹¹ Johnson indeed made the necessary payments pursuant to his deal with the Liberian government to secure his fifty-year lease.¹¹² However, a former government minister has apparently been suspected of diverting the money allocated for relocation of Kendeja residents and construction of the new cultural center.¹¹³ The new

104. *Id.*

105. *Id.*

106. *Viewing cable 08MONROVIA1063, Liberia: Kendeja Cultural Center—No Progress*, WIKILEAKS.ORG., <http://wikileaks.org/cable/2008/12/08MONROVIA1063.html> (last visited Mar. 18, 2012).

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Kendeja Money 'Chopped'?*, NEW DEMOCRAT (Apr. 28, 2011, 10:49 AM), http://www.newdemocratnews.com/index.php?option=com_content&view=article&id=655:kendeja-money-chopped-&catid=58:corruption&Itemid=87.

112. *Id.*

113. *Id.*

cultural center at Margibi has yet to be built as of December 2, 2011, and the general problem remains unresolved. The Liberian government's position is that increased foreign investment, including the RLJ project, will bring in new jobs, and a new cultural center will be built in another location. Therefore, once the jobs are created and the new cultural center is built, the resentment will fade and appreciation will begin.

REFLECTIONS ON NORMATIVE CRITERIA AND AFRICAN AMERICAN INVESTMENT IN AFRICA

Given the historical centrality of the norm that African-American business in Africa must help African economic development; the RLJ project frames the question of the criteria for that norm. This question might be claimed to cover the full spectrum of African-American business aims, from Pan-African solidarity to investor perspectives demanding profitable financial returns. The question, however, goes to the *normative criteria* for assessing whether African-American businesses are fostering African economic development.

The concept of economic development, coming out of the decolonization movement, passing through the Cold War and its demise, and recently pushed visibly towards privileging investor perspectives in international law and national investment laws, is an ambiguous notion. Its performance indicators have conventionally referred to national macro increases in supposedly objective factors such as electric output, gross domestic product, exports, and perhaps per capita income. Within these indicators, especially those pushed by free trade ideology, assumptions arise about the volume of incoming foreign investment representing national economic development per se, so long as investors are welcomed by the host-country, its political and legal systems, and an absence of regulation and worker conflict. The general question of equitable distribution of benefits from such investments to the majority of the country's people especially in the short to middle run is pushed to the background.

Indeed there is a school of thought which persuasively argues, not least in the African context, that the general notion of development is a concept which has moved from Northern Hemisphere ex-metropolitan states to their former colonies as newly independent states. It is a concept which has defined third world states' needs in the global economic system, defined by the latter's inability to meet their needs and the dependence of the latter on the former to provide both the colonially-derived criteria and the economic assistance, with stringent con-

ditions, to continue the dependence, in chasing the ever-elusive goal of 'development'.¹¹⁴

We have seen that the history of African-American business perspectives in Africa is one of incorporating Pan-African solidarity aims and perspectives with the people of Africa directly connected to the business projects, even as investor profit perspectives are also included. Wider notions for the future empowerment of continental Africa, one way or another, have also been frequently included in African-American investment visions.

In the late 1960s and 1970s, the concept of economic development was spotlighted otherwise in Africa in a somewhat different context. Then, in southern Africa, apartheid South Africa and sympathetic economists were pushing the claims that Black South Africans and Africans in the South African currency area were greatly benefitted and being 'developed' by quantitative economic 'benefits' they received from the apartheid economy. Thus, the argument labeled the global anti-apartheid struggle as a threat to Black economic development in South Africa. The response from the anti-apartheid movement and allied commentators was strong and went to the very core concept of development: 'No development without liberation!'

The RLJ project presents a situation of limited Pan-African solidarity perspectives. It is confined to Liberia, a special historic case among African countries. It is so confined not only by the immediate goals and facts of the project, but also by Johnson's aforementioned statement of his own motivations and goals. Johnson's investment motivation of anchoring the emergence of an African-American private economic and political support system to the Liberian people and state, so as to replicate the support of many Jewish-Americans for Israel, represents little or no vision that this project should help or provide a model for helping the progress of empowering African peoples throughout the African continent. Such a notion only calls for a bilateral relationship between African-Americans and Liberia as a special African state.

That state is special not because of its relation to wider notions of African economic progress, but because of its dependence on American domination policies, including the historic forcible introduction of the former's slavery policies into the very birth of the Liberian state and national culture. Thus, the resonance of local opposition claiming the RLJ project helps continue Americo-Liberian national domination is significant. It tends to undercut the notion that Liberia as a particular state should be protected by African-Americans as a special

114. See, e.g., Natsu Taylor Saito, *Decolonization, Development, and Denial*, 6 FLA. A & M U. L. REV. 1 (Fall 2010).

“homeland”. At best, Johnson’s statement makes a weak normative claim; yet one which is not Pan-Africanist. It may indeed vaguely suggest, with his RLJ Development Enterprise Fund, a model for other African-American investments elsewhere in Africa to spread investment benefits more visibly and widely among local peoples. The stronger suggestion of the RLJ project is that investor profit perspectives regarding African-American projects in Africa must now retain clear priority in the African context, even at the cost of national development, cultural preservation, and Pan-Africanist progress.

The question is further framed by contrasting the aims of the RLJ money invested, which may or may not raise some national development objective indicators, and the perceived low promise of meaningful equitable distribution benefits to the majority of Liberians in a country which is fragile and desperately poor. Whether or not mediated by the potential of the RLJ Development Enterprise Fund, that question brings the historic legacy of African-American business in Africa into the present. The criteria for measuring the success of such projects have always incorporated a normative underpinning, Pan-Africanist to some degree, appraising the project’s vision of anticipated benefits to African peoples. That normative underpinning, as discussed herein, generally derives from the Black International Tradition.

That the RLJ project would cause the destruction of the revered Kendeja National Cultural Center should be perceived as an important factor of the project’s investment risk. Such risk must be defined to equally encompass the danger to the major human values and welfare of the local people and the national patrimony with the same authority as it now conventionally refers to threats to investors’ security of returned profits. Some other site for the RLJ project perhaps could have been arranged as a matter of great governmental priority, a priority ideally shared by Johnson. Indeed, both Johnson and the government did give this matter some priority by incorporating it in the structure of the basic investment deal; but, the priority did not rise sufficiently high to appreciate the Kendeja National Cultural Center as part of the national cultural patrimony and therefore to preserve it. The problem then evolved into an investor/governmental belief, perhaps driven by notions which included the RLJ project as a necessary engine of progress, that financial payment for relocation of displaced people and the promised construction of a designated new center at another location, was a sufficient offset for the destruction of this centerpiece of the national cultural patrimony. That its destruction was not considered is a testament to the insufficiency of the value of monetary payment compared with widely perceived irreplaceable values

of such cultural heritage being vital to the human future of this African nation's development.

Such destruction of African traditional culture comprises an historic trope for much foreign investment among African peoples. Foreign investment projects and subsidiaries represent (over the last half century) powerful notions of progress and utilitarian strategies of development as its handmaiden. Similar local questions and cultural challenges were possible with earlier African-American projects and aims in a more subordinated African context, even those of clear Pan-Africanist aims. Now, public African narratives on these issues may be sharper, including states such as Liberia which can especially benefit, in the conventional wisdom, from incoming foreign investment. African custom and traditional cultural wealth remain constitutive elements in Africans' collective self-identification, notwithstanding powerful thrusts of modernization aims which were inherent in the international phenomenon of decolonization.

This duality underscores the normative duty, including for incoming African-American investors, to make the balancing between the "progress" of investment projects and local African cultural costs be subject to some prior democratic transparent balancing process. That process must meaningfully include the local people of the affected culture(s), as well as the state's interests and those of the incoming investor. The need for such transparent democratic balancing is indeed a Pan-Africanist question. As in Liberia it is potentially a critical local political question, ramifying to both the authority interests of the government and the security interests of the investor. Thus, it demands resolution under normative criteria flowing from the Black International Tradition.

Against much profit-driven battering, we can only hope that such normative criteria continue to command authority in African-American business decisions in Africa throughout the 21st century.