African "Renaissance" and U.S. Trade Policy

Hunter R. Clark*

A foutra for the world and worldlings base!
I speak of Africa and golden joys.¹

I. Introduction

President Bill Clinton made history when he stepped onto the tarmac at Kotoka International Airport outside Accra, the capital of Ghana, in March 1998. His visit, the first by a U.S. President to any of the six states he toured over an 11-day period, marked a turning point in economic relations between the U.S. and sub-Saharan Africa.² To paraphrase an astronaut, the President’s one small step onto African soil was a giant leap toward establishing a trade policy aimed at ending what one observer has called “Africa’s invisibility” to U.S. investors.³


¹ William Shakespeare, The Second Part of King Henry IV act 5, sc. 3.

² Sub-Saharan Africa, also known as the African subcontinent, or simply as the sub-Sahara, refers to the region below the Sahara Desert. The 48 sub-Saharan nations are: Angola, Benin, Botswana, Burkino Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cote d’Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zaire, Zambia, and Zimbabwe.

To the pulsating beat of African drums, Ghana's president Jerry Rawlings introduced the President to a wildly enthusiastic crowd of up to a half-million admirers gathered in Accra's Independence Square. Clinton told the assembled throng, "I am proud to be the first American President ever to visit Ghana. And to go on to Uganda, Rwanda, South Africa, Botswana, and Senegal. It is a journey long overdue. America should have done it before, and I am proud to be on that journey." The President also told his hosts, "I want to build a future partnership between our two people, and I want to introduce the people of the United States through my trip, to the new face of Africa."

That new face, according to Clinton, is of a continent poised for what he called a "new African renaissance." He declared:

With a new century coming into view, old patterns are fading away: The Cold War is gone; colonialism is gone; apartheid is gone. Remnants of past troubles remain. But surely, there will come a time when everywhere reconciliation will replace recrimination. Now, nations and individuals finally are free to seek a newer world where democracy and peace and prosperity are not slogans but the essence of a new Africa.

Africa has changed so much in just 10 years. Dictatorship has been replaced [in] so many places. Half of the 48 nations in sub-Saharan Africa choose their own governments, leading a new generation willing to learn from the past and imagine a future. Though democracy has not yet gained a permanent foothold even in most successful nations, there is everywhere a growing respect for tolerance, diversity and elemental human rights.

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5 Remarks to the People of Ghana in Accra, 34 WEEKLY COMP. PRES. DOC. 483, 484 (Mar. 23, 1998).
6 Id. at 484.
8 Remarks to the People of Ghana in Accra, supra note 5, at 484.
He went on to observe, “[A] decade ago, business was stifled. Now, Africans are embracing economic reform. Today from Ghana to Mozambique, from Cote d’Ivoire to Uganda, growing economies are fueling a transformation in Africa.” According to the President, that transformation has made Africa ripe for trade and U.S. investment.

The first part of this article will examine the Clinton administration’s African trade policy and the validity of the assumptions upon which it is based. Foremost among these assumptions is that sub-Saharan Africa is poised for a renaissance inspired by a new generation of leaders who are committed to democratization and economic growth in accordance with free market principles. The administration believes that this renaissance is best-nurtured to the mutual benefit of the U.S. and Africa through trade and private investment policies that emphasize African democratization and overall political, social, and economic reform. This is a dramatic departure from past policies that focused primarily on Africans’ value as strategic proxies or pawns, instead of on the continent’s potential for joint partnership in the world economic community.

The six states that the President visited in March and April of 1998—Botswana, Ghana, Rwanda, Senegal, South Africa, and Uganda—were evidently selected because of their exemplary willingness to commit to the goals the administration would like to see other African states pursue. Eventually, the U.S. would like to see its bilateral relationship with South Africa used as a model for its relations with all the states of the region as South Africa’s president Nelson Mandela has made an express commitment to combine democratization with economic development, foreign investment, and trade.

The second part of this article will analyze competing assertions and criticisms concerning the African trade bill passed by the U.S. House of Representatives in 1998. The bill sparked controversy at home and in Africa. The President’s domestic critics complained that his trip to Africa was little more than a cynical attempt to use African trade policy to solidify his support among wealthy democratic donors, and to woo members of the

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9 *Id.* Tense moments followed Clinton’s address when he descended the dais to shake hands with frenzied well-wishers. Some in the crowd surged through police barriers in an attempt to touch or get a closer view of the U.S. President. According to one eye witness account, “The rush toward him caused some people to get crushed. ‘Get back!’ Clinton shouted fiercely. ‘Back off!’ ” Harris, *supra* note 4.

Congressional Black Caucus to vote against his impeachment. Meanwhile, both African and African American leaders criticized the administration for allegedly minimizing African nations' need for continued foreign aid and debt relief.

Special attention will be devoted to the divisions that the administration's African trade policy has caused within the African American community. Finally, the article will also recommend ways in which U.S. trade and investment policy toward Africa should be modified or adjusted to more realistically reflect goals that are economically and politically feasible.

II. THE CLINTON ADMINISTRATION'S AFRICAN TRADE POLICY

The Clinton administration's sub-Saharan African trade policy was embodied in the African Growth and Opportunity Act (the "African trade bill"), which the U.S. House of Representatives approved on March 11, 1998. The U.S. Senate also considered its own versions of the bill. The 105th Congress adjourned before final action could be taken on the legislation and hence the House-approved version of the bill died. A new African trade bill has, however, been reintroduced in the 106th House. If enacted, it would accomplish many of the original bill's objectives, but at this writing its passage is not by any means assured. In the meantime, the Clinton administration has moved to implement as much of its African trade policy as can be effectuated without Congressional approval. This is

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11 See, e.g., Thomas Sowell, Editorial, Clinton apology the usual sham, CHI. SUN-TIMES, Apr. 18, 1998, at 20; infra p. 289.
12 See infra pp. 297, 305-306.
possible because the President enjoys wide discretion and authority in the foreign relations arena.\textsuperscript{18}

The African trade bill was structured around five overall objectives: increased trade between the U.S. and sub-Saharan Africa; increased U.S. investment in the sub-Sahara; the development of the sub-Sahara’s private sector; the enhancement or revitalization of the region’s infrastructure; and sub-Saharan political and economic reform.\textsuperscript{19} The African trade bill called for, among other things:

1. Creation of a joint U.S.-sub-Saharan Africa Trade and Economic Cooperation Forum that would bring U.S. and African cabinet level officials together on a regular basis to discuss the removal of trade barriers between the U.S. and sub-Saharan states.\textsuperscript{20}

2. Elimination of U.S. import quotas on African textiles.\textsuperscript{21}

3. Extension of import tariff concessions to African states under the Generalized System of Preferences (GSP) for a ten year period, thereby increasing African access to U.S. markets.\textsuperscript{22}

4. Establishment, under the auspices of the Overseas Private Investment
Corporation (OPIC), of two investment funds. One, a half-billion dollar infrastructure investment fund, would be used to finance infrastructure improvements in Africa, such as the building of roads, bridges, railways, power plants, and telecommunications networks. The other, a $150 million equity fund, would be used to encourage American small businesses to invest in Africa.

(5) Taking the first, formative steps toward the creation of a U.S.-Africa free-trade zone.

(6) Creation of a new position of Deputy Trade Representative for Africa within the Office of the U.S. Trade Representative who would be devoted full-time to U.S.-African trade matters.

The trade bill's chief supporters insisted that African economic growth is manifestly in the U.S. national interest. They defined that interest primarily in terms of American investment opportunities and jobs.

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23 See H.R. 1432, supra note 13, § 11.
24 See id. § 11(b)(3)(B).
25 See id. § 11(b)(3)(A).
26 See id. § 7.
27 See id. § 13.

Let me give my colleagues a taste of what can happen. Last year I held a hearing before the Subcommittee on Small Business Exports, which I chair, on the subject of the Overseas Private Investment Corporation, OPIC. A wonderful lady born in Africa and now residing in Massachusetts, Monique Maddy, testified how her small telecommunications firm was able to contribute both to economic development in Africa and increased U.S. exports to Africa.

She won a deal, thanks to a political risk insurance package from OPIC, to build wireless public telephones which operate on debit cards instead of coins for Tanzania. This contract resulted in the export of $4.5 million worth of goods and services from 8 supplier companies in 7 States: Texas, New Jersey, Washington, Georgia, Missouri, and North Carolina. In addition, 60 jobs were created in Tanzania.

Because the African Communications Group did so well with the Tanzania sale, Ms. Maddy subsequently won a larger sale to Ghana with OPIC's help. This will result in the export of approximately $65 million worth of goods and services from the United States and create 500 jobs in Ghana. Without OPIC, most likely these deals would have gone to our
However, the strategic and humanitarian advantages of a partnership with Africa were not overlooked. For example, during the President's stay in Ghana, White House National Security Adviser Samuel R. "Sandy" Berger stated at a press briefing:

We have a growing stake in Africa's success. It is a market of 700 million people with trade to Africa already 20 percent greater than our trade to the former Soviet Union; 100,000 Americans' jobs are directly tied to exports to Africa. But we have far from realized the full potential. Our trade with Africa is only 1 percent of all U.S. trade; 7 percent of Africa's imports are American. So there are clearly economic opportunities there.

But just as important, perhaps more important, strategically and from a humanitarian perspective, stability in Africa based upon evolving democracy, respect for human rights, [and] sustainable development will make an enormous difference for the United States. It's the difference between having partners with whom we can tackle common challenges, from drugs and disease to the environment, and failed states that are thrown into tragic chaos.

We spent, for example, $2.2 billion in our military humanitarian relief effort in Somalia, a failed state that imploded. The more that we can help to contribute to stability in Africa, the better off we will be.  

European competitors.

My home State of Illinois is another example of the phenomenal growth of exports to Africa. South Africa alone is Illinois's 20th largest export destination, totaling $389 million for 1996. The leading exports to South Africa are industries where Illinois excels: chemical, earth-moving equipment, agricultural machinery, and aviation parts.

From the Chicago-land area, exports to South Africa grew 148 percent between 1993 and 1996, starting at $74 million and increasing to $184 million. In Rockford, Illinois, exports to South Africa grew 29 percent, jumping from $2 million in 1994 to $2.6 million in 1995, the latest date for which we have export statistics.

Id.

30 Press Briefing by Sandy Berger on Africa Trip, supra note 7, at *1-*2. According to the U.S. Department of Commerce, international trade in the U.S. amounted to roughly $622.8 billion in exports, and $791.3 billion in imports, during 1996, the most recent year for which the statistics are available. See U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS,
The trade bill's supporters were absolutely unwilling to concede Africa's markets to other foreign suppliers, despite the competition's early lead. By the administration's estimate, the 6.7% market share which the U.S. claims in the region lags significantly behind the 7.2% share enjoyed by Japan, or the 30% share of the European Union (EU). Nevertheless, according to Chester A. Crocker, Director of the Corporate Council on Africa and a former Assistant Secretary of State for African Affairs in the Reagan Administration:

Africa is the second-fastest growing region in the world, if you take it in aggregate. There is opportunity for American exporters in a whole series of fields like, for example, agricultural equipment, transportation equipment, agricultural research, eco-tourism, mining, petroleum, of course, the basic industries of Africa. There are jobs for Americans in Africa, if Africa gets on its feet.

The privatization of the subcontinent's telecommunications enterprises holds particular promise, some of which already is being realized by U.S. companies. For example, SBC Communications, a so-called "Baby Bell" based in San Antonio, Texas, acquired an 18% share of Telkom, South Africa's state-run company. The decision to partially privatize Telkom (the South African government retained a 70% interest in the firm) was based on the appeal of "reduced tariffs, extra calls and higher tax revenues that have followed such moves in other countries." If current market trends are an accurate indication, SBC stands to profit handsomely, especially from the growing South African consumer demand for mobile phones. The Economist reported:

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31 See A Comprehensive Trade and Development Policy for the Countries of Africa, supra note 28.


33 See supra note 29.


35 Id.
The bright spot for Telkom is mobiles. Since 1993, when the devices were first licensed, the number of users has rocketed from 12,500 to about 1.6m, making South Africa one of the world's largest markets for mobile phones outside the OECD [Organization for Economic Cooperation and Development]. In a country where public phones are almost non-existent (people steal them for their value as scrap metal), the cellphone is a must for the well-off and a status symbol for everyone else. Nervous drivers like to know they can call for help if they break down somewhere dangerous. A recent letter to the Sowetan raged against immoral township girls who sleep with any man who owns a mobile phone.

Telkom is one of two mobile providers. It is a partner of Britain's Vodafone in a joint venture called Vodacom, which claims a million subscribers. Its estimated pre-tax profits are 500m rand ($100m) on sales of perhaps 1.8 billion rand [$360 million]. MTN, the other mobile firm, with fewer customers, but wealthier ones, probably has similar revenues. The good times are likely to continue, even after a third mobile license is granted this year, probably to a black-owned consortium with foreign partners.\

In addition to creating jobs, investment, and other opportunities for Americans, the trade bill was designed to help transform Africa by permanently changing the way business and politics are conducted. By increasing U.S. trade and investment, the legislation intended to provide Africans with a measure of prosperity, while at the same time making African countries less vulnerable to the whims or dictates of foreign aid donors.

Furthermore, the measure was seen by at least one of its backers as "a first step toward replacing aid with trade, with starting Africa on the road to catching up with other regions of the world in economic development."
The legislation's "trade, not aid" approach comes at a time when U.S. domestic political support for foreign aid programs is dwindling. U.S. humanitarian aid to Africa peaked in 1994 at $1.3 billion. Since then, it has declined to about $700 million annually.

donor-recipient relationships, and toward economic partnership, the bill will strengthen bilateral political ties.

By promoting growth, the bill will bolster political stability and give African nations the wherewithal to address environmental crime, health, and other problems of mutual concern.

Id.


Before World War II, there was no such thing as foreign aid. The colonial powers—Britain, France, the Netherlands, Belgium, Portugal, Spain, and Italy (Germany had lost its overseas possessions at the end of World War I)—were responsible for the administration and development of their colonies. Occasionally, the United States or American banks made loans to small, destitute countries within their sphere of influence, and, in the case of Haiti, had no compunction about sending in the Marines to collect what was owed.

But foreign aid as we know it today was a product of the Cold War, when the United States and the Soviet Union vied with one another to buy clients on every continent. It is not clear that Washington or Moscow got its money's worth. The former colonial powers in Europe at least managed to preserve a degree of influence and a mercantile edge. But the United States, which lavished more than $400 billion abroad, could only get Third World nations to vote with it in the United Nations about 15 percent of the time.

Id.

Nevertheless, Hempstone, who served as U.S. Ambassador to Kenya during the Bush Administration, concludes that foreign aid can still play a role that benefits the U.S. He writes:

Food aid, while it may not encourage development, enables us to dispense food surpluses, salve our consciences, and provide some employment for Americans, while also saving lives. Development aid can help create healthier societies abroad, contribute to overseas sale of American products, and again, create at least a few jobs at home. Even a small amount of military aid, the hardest kind of assistance to justify, helps to keep the military establishments of the world on our side.

The trick is to get the right mix.

Id. at 88-89.


40 See id.
The EU has also expressed a reluctance to provide Africa with aid. For example, the Lome IV Convention,\(^{41}\) which is the basis for the trade and development relationship between the EU and the developing African, Caribbean, and Pacific ("ACP") states, expires early in the year 2000.\(^ {42}\) The EU has stated its desire to restructure the Lome framework in a way that will produce what EU Development Commissioner Joao de Deus Pinheiro has called "a more adult relationship" between the EU and the ACP.\(^ {43}\) Such a relationship would mean "more mutual trade and less economic dependency."\(^ {44}\)

In order to achieve this result, the EU plans to make aid and preferential trade arrangements with the ACP states dependent upon democratization, equality for women, and improved financial management in the ACP countries.\(^ {45}\) As Commissioner Pinheiro put it, "where countries produce good [democratic] results, they will be better supported."\(^ {46}\) In addition to the preferential market access they have been accorded, EU aid to ACP countries is expected to total some $13 billion over the five-year period 1995-2000.\(^ {47}\)

The House version of the African trade bill explicitly called upon sub-Saharan states to implement economic and political reform; establish market incentives and private sector growth; eradicate poverty; and recognize the "importance of women to economic growth and development."\(^ {48}\) Achieving the last two goals—eradicating poverty and, in effect, according women equal rights—would radically alter the social structure of traditional African societies where tremendous wealth disparities are commonplace, and women have been customarily relegated to subservient status.

The economic reforms which the African trade bill encouraged are


\(^{44}\) Id.

\(^{45}\) See id.

\(^{46}\) Id.


consistent with long-standing U.S. international investment policy. As enunciated by President Ronald Reagan in 1983, that policy is premised on the assumption that "an open international investment system responding to market forces provides the most efficient mechanism to promote global economic development."\(^{49}\) (Emphasis added.) With its emphasis on free market principles, the U.S. view has consistently been that "[g]overnment intervention in the international allocation of investment resources can retard economic growth," and in fact tends to do so.\(^{50}\) In accordance with these principles, the African trade bill aimed to reduce or limit the role of government in Africa's developing economies; to promote the privatization of inefficient state-run industries; and to ensure national treatment for foreign investors and the prevention of illegal expropriation of property.

The trade bill promoted the idea of democratization, defined broadly as adherence to the rule of law, representative government, and respect for human rights.\(^{51}\) From its inception, the U.S. has asserted that the legitimate exercise of government power derives from the consent of the governed, expressed through democratic mechanisms that allow for full participation in the political process. The failure or refusal to provide truly representative government gives impetus to what James Madison called the "violence of faction," which undermines social, political, and economic stability.\(^{52}\) An unstable climate is not conducive to investment.

According to Madison, liberty has many advantages, including a "tendency to break and control the violence of faction."\(^{53}\) Therefore, in the U.S. view, representative democracy is the most effective means of creating the type of stable climate in which private investors prosper. Generally speaking, President Clinton has asserted that "stability in the 21st century will require high levels of freedom."\(^{54}\) More specifically in regard to the sub-Sahara, the administration's position is that "democratization is underway in Sub-Saharan Africa, and its success is crucial for economic development and

\(^{49}\) Statement on International Investment Policy, II PUB. PAPERS 1243, 1246 (Sept. 9, 1983).

\(^{50}\) Id.

\(^{51}\) See infra notes 56-59 and accompanying text.

\(^{52}\) THE FEDERALIST NO. 10, 105 (James Madison) (John C. Hamilton ed., 1892).

\(^{53}\) Id. at 104.

political stability in the region." 55 In short, the administration believes that democratization and economic development are linked inextricably.

Therefore, the African trade bill proposed eligibility requirements designed to promote African political reform. Under the trade bill’s eligibility provisions, the President would have made two affirmative determinations regarding any sub-Saharan state that applied for programs, projects, or financial assistance under the bill. The first would have been that the country in question “does not engage in gross violations of internationally recognized human rights.” 56 The second would have been that the applicant state “has established, or is making continual progress toward establishing, a market-based economy.” 57

Factors indicating the satisfaction of these eligibility criteria included: the protection of private property against expropriation; a “fair judicial system”; according national treatment to foreign investors and “other measures to create an environment conducive to foreign investment”; elimination of government corruption; minimal government intervention in the market through such devices as price controls or subsidies; support for the growth of the private sector, including a “new generation of African entrepreneurs”; and adherence to the rule of law, including equal protection, due process, and the right to a fair trial. 58

The Clinton administration’s policy has already achieved some measure of acceptance among African leaders. At the Entebbe Summit for Peace and Prosperity that was part of his visit to Uganda, the President joined the rulers of Congo, Ethiopia, Kenya, Rwanda, Tanzania, and Uganda in signing a joint declaration of principles with the stated objective of putting into practice their new partnership. The leaders issued a joint communiqué which endorsed the African Growth and Opportunity Act as a “major step forward in U.S.-African economic relations.” 59 The communiqué also recognized that stability depends on the “sustainability of African democratization,” and endorsed “the core principles of inclusion, the rule of law, respect for human rights, the equality of all men and women, and the right of citizens to

55 A Comprehensive Trade and Development Policy for the Countries of Africa, supra note 28, at subsection “Goal of Administration’s Trade and Development Policy”.
57 Id.
58 See id.
regularly elect their leaders freely and to participate in the decision-making which affects them."\(^{60}\)

The Entebbe joint communiqué is more than merely a symbolic achievement; it embodies unilateral declarations that are binding on the signatory states under international law. The International Court of Justice (ICJ) has ruled that a state may be legally bound by its own declarations given publicly with the intention of being bound by the declarations' terms. This is certainly what appears to be the case in regard to the declarations contained in the Entebbe joint communiqué. The ICJ expressed itself clearly on this point when it declared in the Nuclear Tests cases that:

> It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration.\(^{61}\)

### III. The Status of Women and African Trade Policy

In regard to the treatment of women, certain practices that are widespread throughout the sub-Saharan, such as female circumcision and polygyny,\(^{62}\) appall western sensibilities.

The term "female circumcision" refers to "a variety of genital operations [e.g., clitoridectomy] performed in traditional societies, generally as part of an initiation ritual. The operations involve excising varying portions of the female genitalia, depending on the custom of the practicing society."\(^{63}\)

\(^{60}\) Id. at 501.


\(^{62}\) For the purposes of this article, the terms "polygyny" and "polygamy" are used interchangeably to refer to the practice of having two or more wives or concubines at the same time.

Female circumcision has been practiced for over 2,500 years. Today, it is prevalent in approximately 40 nations, 28 of which are in Africa. The practice is common in such disparate regions as Malaysia, Indonesia, southern parts of the Arabian peninsula, Pakistan, parts of the former Soviet Union, Oman, Bahrain, South Yemen, Peru, Brazil, eastern Mexico, and among the Australian aborigines, but is most prevalent in the Middle East and Africa. By one estimate, a majority of the two million girls who are at risk of being circumcised each year live in Africa. The practice not only causes intense pain but carries with it grievous medical and psychological consequences.

Nevertheless, efforts to eradicate female circumcision in the African subcontinent have for the most part failed. Adult women as well as men in emerging nations reject being "dictated to" in regard to their customs by former colonial powers they regard as insensitive to their long-standing cultural traditions. As one scholar has observed:

Given the history of Western colonialism in many of the nations in which [female] circumcision is practiced, this perception of imperialism is especially offensive. African feminists have often reacted with bitter resentment to non-Africans' condemnation of the practice. Clearly, ethnocentric eradication efforts which devalue the intelligence and cultural integrity of a different community will provoke resistance to, rather than facilitate, change. Thus, reformers must avoid alienating their audience and must recognize that manipulation of women's bodies is not unique to African cultures but occurs in Western cultures as well.

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65 See id.
66 See Brennan, supra note 63, at 373 n.3.
67 See Sussman, supra note 64, at 197.
68 See Brennan, supra note 63, at 379-80.
69 For a discussion of past attempts to limit female circumcision in Africa, see Sussman, supra note 64, at 237-242.
70 See Brennan, supra note 63, at 375-79; Sussman, supra note 64, at 211-15.
71 Sussman, supra note 64, at 212-213 [citations omitted].
Those who defend female circumcision assert that it serves legitimate and desirable social purposes, such as promoting wifely fidelity and preparing adolescent females to endure the future pain of childbirth. Based on past experience, human rights activists fear that outlawing female circumcision would only drive the practice underground where it could thrive unmonitored with no outside control over safety and sanitation.

At the same time, cultural proponents of polygyny justify it as protective of women. Among other things, they assert that the practice of polygyny assists in the accumulation of wealth, allows women to share the burdens of child-rearing, and ensures postpartum celibacy so that women can space their child-bearing.

Another example of an African custom which affronts Western sensibilities is the "reed dance," practiced by the Zulu and Swazi tribes in South Africa. The reed dance is an annual ritual during which tribal kings choose virgin child brides from among thousands of scantily clad pubescent girls.

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72 See Brennan, supra note 63, at 374, 389.

73 See Brennan, supra note 63, at 397. The practice has, however, been outlawed in the U.S. by the Female Genital Mutilation Act of 1996, 18 U.S.C.A. § 116 (West Supp. 1998). That act directs U.S. representatives to international financial institutions such as the World Bank to vote against loans to nations with a known history of practicing female circumcision, unless those nations have implemented educational programs designed to prevent the practice. 22 U.S.C.A. § 262K-2 (West Supp. 1998).

In addition, the U.S. Department of Justice Board of Immigration Appeals has recognized a young woman's fear of being circumcised by her tribe, the Tchamba-Kunsuntu Tribe of northern Togo, as grounds for granting her asylum in the U.S. See In Re Fauziya Kasinga, Interim Decision (BIA) 3278 (June 13, 1996), available in WESTLAW, FIM-BIA Database, 1996 WL 379826 (BIA).

74 See Brennan, supra note 63, at 370 n.14.

75 For a description of the reed dance by a reporter who recently observed the rite at the Enyokeni Royal Residence in South Africa, see Donald G. McNeil, Jr., Zulu Virgins Celebrate Their Bodies, Themselves, N.Y. TIMES, Sept. 22, 1998, at A3:

To Western eyes, it may seem odd that 2,000 girls who are here to be sternly lectured about virginity are also heavily pressured to strip off almost every stitch of their clothing.

But that's the reed dance.

And to the Zulu, the custom makes perfect sense. The proof that a virgin is a virgin is that she is proud of her pure body. Some of the girls dancing before King Goodwill Zwelithini recently even wore beadwork aprons with the words "intombi nto"—"straight girl"—beaded into them.

The reed dance is a Zulu and Swazi rite of spring danced before the King every September, when spring comes to the Southern Hemisphere.
These sorts of customs and attitudes may explain why Africans were smug about the sex scandals that surrounded Clinton at the time of his Africa visit. As one columnist who accompanied the President noted dryly:

As Mr. Clinton traveled through Ghana and Uganda, Africans were puzzled that Americans could be upset at their President over something so trivial as adultery. Polygamy, after all, is still widespread in some tribes. And in a continent run by Big Men, both malign and benign, nobody understands why the rules should be so strict for the American Big Guy.\textsuperscript{76}

Against this backdrop it comes as no surprise that entrepreneurial opportunities for African women are limited by economic realities and formal marketplace arrangements. Informal markets may hold greater opportunity for women and for the realization of the gender participation goal of the administration's African trade policy. Men dominate the ownership and management of the lucrative "formal sectors" of the sub-Saharan economies: large firms and small businesses. Because African women often do not speak a European language and "generally have less

education to qualify for formal sector employment, loans, or programs... they are more likely to be informal sector traders and vendors.”

The informal economy has expanded throughout Africa, especially in African countries where state control of the economy has been reduced or eroded. Such expansion is advantageous to women as it allows women to avoid discriminatory bureaucratic regulation. By contrast, the formal sector's administrative apparatus, which grants licenses, approves bank loans, and imposes burdensome accounting requirements, has been called a primary "mechanism of male control over women." But the informal sector "is not an ideal environment for doing business, both because of limitations placed on it and because of its lack of official support and methods of capital accumulation." Under these circumstances, women find it difficult to acquire enough capital to expand their operations or improve their management skills. Also, their networks and contacts are restricted to those engaged in other small-scale enterprises.

However, the fact that African women face discrimination has not kept them from making crucial contributions to their economies. In fact, African women are primarily responsible for the food supply to large urban areas, such as Harare, Zimbabwe; Kinshasa, Congo; and Nairobi, Kenya, as well as for provisioning their own households and villages. Unfortunately, the significance and extent of their economic participation is understated or overlooked. And while some progress has been made toward forging a sense of female solidarity in order to confront economic and social inequities, African working women, like their male counterparts, remain deeply divided by ethnic rivalries and socioeconomic distinctions. Meanwhile, the male political leadership—no African nation is governed by a woman—remains for the most part unresponsive to African women's aspirations.

The African trade bill was designed to promote increased economic opportunities for African women. In fact, one of the bill's stated purposes was to support economic self-reliance for sub-Saharan states "committed to [recognizing]... the importance of women to economic growth and

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78 Id. (citation omitted).
79 Id. (citations omitted).
80 See id. (citations omitted).
The bill did not, however, make specific provision for accomplishing this goal. Nevertheless, the administration's commitment to improving the status of women through its African trade policy has succeeded in raising some sub-Saharan leaders' awareness of gender inequalities. This is evidenced by the Entebbe joint communiqué, which recognizes the equality of men and women. The extent to which African women stand to benefit from an African trade policy that emphasizes gender equality has already been demonstrated.

IV. DOMESTIC CRITICISM OF THE CLINTON ADMINISTRATION'S AFRICAN TRADE POLICY

The President's harshest domestic critics dismissed his African trade initiative as a self-serving political maneuver. These critics saw the initiative itself, as well as the timing of Clinton's Africa visit, as a cynical attempt to shift the public's focus from the President's political scandals. However, these critics overlook the fact that the formulation and timing of the administration's African trade policy was directed by Congress, not by the President.

In 1994, Congress responded to World Trade Organization ("WTO") concerns about the "economic marginalization of some countries, particularly those countries in Africa," by enacting section 134 of the Uruguay Round Agreements Act ("URAA"). Section 134 of the URAA required the President to "develop and implement a comprehensive trade and development policy for the countries of Africa," and to report to Congress annually for five years on progress made toward implementing that trade and development policy. At the time, the U.S. effectively had no trade policy toward Africa.

The required annual reports followed. Then, on April 21, 1997, White House and Congressional officials opened negotiations on legislation that

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81 H.R. 1432, supra note 13, § 3(4).
82 See supra note 60 and accompanying text.
83 See supra note 29.
evolved into the African Growth and Opportunity Act, which passed the House on the eve of the President's African departure.\textsuperscript{88} His trip, therefore, was timed to coincide with House passage of the African trade bill, and the need to promote the bill in the Senate, as well as to gain its acceptance among African leaders.

Clinton's opponents also charged that the Africa trip had less to do with trade and open investment than with solidifying the President's political support among African Americans, one of his core constituencies, by manipulating their sentiments about their ancestral homeland. To put it bluntly, the President was accused of using the lure of lucrative trade deals to buy black votes in Congress that could be used to defeat the impeachment effort.

To support their assertions, the President's critics pointed to the number of prominent African American business and political leaders included in the presidential entourage, described by one reporter as the "most racially diverse to accompany a U.S. President abroad."\textsuperscript{89} In fact, Clinton's traveling group included at least 16 members of the Congressional Black Caucus, which then had 38 total members, 37 in the House and one in the Senate.\textsuperscript{90} Among other notable blacks who accompanied the President were Reverend Jesse L. Jackson, a two-time presidential contender who served unofficially as Clinton's special envoy to Africa; former NAACP president Kweisi Mfume; Denver mayor Wellington Webb; Ilyasah Shabazz, a Mount Vernon, New York municipal official who is a daughter of the late Malcolm X; Alma Brown, senior vice-president of Chevy Chase Bank and widow of the late U.S. Secretary of Commerce Ron Brown; and Robert L. Johnson, founder of Black Entertainment Television and a major Democratic Party contributor.\textsuperscript{91}

As further evidence that Clinton aimed to appease African Americans, his critics pointed to the President's use of an Ugandan venue to issue what was tantamount to an official apology for slavery. Some African American leaders had in the past called upon the U.S. government to somehow redress

\textsuperscript{88} See Baker, supra note 86.
the wrongs that slavery, as well as the era of racial segregation that followed it, perpetrated upon the African American people.

For example, Michigan congressman John Conyers, ranking Democrat on the House Judiciary Committee and the President's point man against chairman Henry Hyde (R-Illinois) in the committee's impeachment inquiry, introduced legislation in January 1997 that, if adopted, would have established a commission to determine reparations due the descendants of slaves by the U.S. government. The bill envisioned a system by which the U.S. would compensate African Americans for slavery in much the same way that Germany has agreed to compensate victims of the Holocaust.

During the President's stay in Uganda, Jesse Jackson went so far as to imply that African countries might also be entitled to reparations for U.S. slavery. At a press briefing in Uganda, Jackson told reporters, "Africa subsidised American development. African labour, African raw materials, Africans were commodities on the stock exchange. So much of America's foundation rests with Africa. Africa is the creditor, America is the debtor." News accounts of Jackson's remarks did not state whether he had quantified the present-day value of that subsidy, or the formula he would use for calculating it. Presumably, such a calculation could serve as the basis for negotiating reparations owed African states by the U.S., or owed by the U.S. to individual African Americans who are descended of slaves.

As a moderate alternative to the Conyers bill, Congressman Tony P. Hall (D-Ohio) in June 1997 proposed a simple apology in the form of House Concurrent Resolution 96, a single, contrite sentence which read, "Resolved by the House of Representatives (the Senate concurring), That the Congress apologizes to African-Americans whose ancestors suffered as slaves under the Constitution and laws of the United States until 1865." When Hall introduced the resolution, he explained,

It is a very simple idea. The Congress apologizes. It is a powerful message.

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93 For a discussion of German reparations to Jewish Holocaust victims, see David Binder, Germany to Pay Jewish Victims of Nazis, N.Y. TIMES, Nov. 7, 1992 at 3.
When a brother wrongs a brother, he apologizes. That is the foundation for beginning again. That is the price for restoring lost trust. This is the only way to start over. It is a simple gesture. It carries deep meaning. And it is the right thing to do.

When an institution wrongs a people, so it is again the right thing to do. In the name of all Catholics, Pope John Paul II apologized for violence during the 16th century Counter-Reformation and he asked for forgiveness.

Forty years after the Holocaust, the legislature of East Germany apologized for the atrocities committed against the Jews.

Just last month, British Prime Minister Tony Blair apologized for the failure of his country to fully respond to the thousands of deaths during the Irish potato famine of the mid-19th century.

It has been 134 years since slavery ended. Since that time, Congress has taken proud strides forward, done some wonderful things, including civil rights laws. But it is not enough.\textsuperscript{96}

Despite Hall's and Conyers's efforts, however, the Congressional Black Caucus and major civil rights organizations have never considered the question of reparations or an apology for slavery as important as other policy initiatives.\textsuperscript{97}

\textsuperscript{96} 143 CONG. REC. H3890, H3891 (daily ed. June 18, 1997) (statement of Rep. Hall). For a discussion of measures that may be demanded by way of apology under international law, see BROWNLEE, supra note 61, at 461. Brownlee only goes so far as to conclude that "Measures demanded by way of apology should today take forms which are not humiliating or excessive." \textit{Id.} (citing ELLERY C. STOWELL, INTERVENTION IN INTERNATIONAL LAW 21-35 (1921)).

In addition to the apologies enumerated by Congressman Hall, Pope John Paul II in 1997 released a document entitled \textit{We Remember: A Reflection on the Shoah}, an official apology for the role the Roman Catholic Church played in the Holocaust. The apology was, however, rejected as inadequate by Jewish groups that conduct formal relations with the Vatican. \textit{See} Hanna Rosin, \textit{Catholic Apology Inadequate, Jewish Groups Say}, WASH. POST, Aug. 29, 1998, at A14.

Clinton's advisers were opposed even to an apology, fearing it would alienate centrist white voters who object to the notion that they are somehow responsible for slavery, which happened generations ago.\textsuperscript{98}

However, to the consternation of his opponents, Clinton was able to minimize the domestic political impact of his slavery remarks. He couched his words astutely in terms of a desire for improved relations with African states based on a willingness to break with the discarded practices and policies of the past. He linked slavery with other discredited policies such as the expedient way in which the U.S. conducted the Cold War, often to the detriment of emerging African states' interests, and the early U.S. support for South African apartheid. The President went so far as to issue a blanket apology for what he called U.S. "ignorance and neglect" of Africa.\textsuperscript{99}

In remarks he made to government officials, gathered with more than a thousand schoolchildren in a meadow near the rural hamlet of Mukono, Uganda, Clinton conceded:

It is as well not to dwell too much on the past, but I think it is worth pointing out that the United States has not always done the right thing by Africa. In our own time, during the Cold War, when we were so concerned about being in competition with the Soviet Union, very often we dealt with countries in Africa and in other parts of the world based more on how they stood in the struggle between the United States and the Soviet Union than how they stood in the struggle for their own people's aspirations to live up to the fullest of their God-given abilities.

\textsuperscript{98} See Bennet, \textit{supra} note 97. \textit{But see} Milloy, \textit{supra} note 97:

The Conyers commission would, no doubt, point out that it doesn't matter whether white people came to these shores after slavery was abolished. Virtually all white people, because of their race, benefited from slavery. And no matter how poor they were when they came here, they could always feel better about themselves because at least they weren't black.

Only African Americans suffered about 300 years of slavery in America, then were set free to endure psychological traumas that were deliberately ignored and allowed to pass on through the generations. No other group has endured a century of wholesale lynching, terrorism and Jim Crow-style segregation in America—and then been told, after 30 years of civil rights legislation, that the playing field was level.

\textsuperscript{99} See \textit{infra} note 100 and accompanying text.
And, of course, going back to the time before we were even a nation, European-Americans received the fruits of the slave trade. And we were wrong in that, as well. Although, I must say, if you look at the remarkable delegation we have here from Congress, from our Cabinet and administration, and from the citizens of America, there are many distinguished African-Americans who are in that delegation who are making America a better place today.

But perhaps the worst sin America ever committed about Africa was the sin of neglect and ignorance. We have never been involved with you, in working together for our mutual benefit, for your children and for ours, as we should have been."

In reporting the speech, The New York Times emphasized the domestic implications of the President's slavery remarks. The Times pointed out that West Africa, not the Ugandan region, was the "real center" of the 18th and 19th century slave trade. Therefore, the newspaper concluded, Clinton's remarks "seemed addressed as much to his audience back home as to those who heard him speak . . . [in Uganda]."

Administration officials, for their part, were quick to downplay Clinton's contrition. After all, as one pundit put it, "too much apologizing can make the President look weak back home." Besides, in the view of some of his advisers, emphasizing the past only detracted from the President's preferred discussion of Africa's potential. One White House source complained, "The problem is [the President] announces that we want to talk about the new Africa, and those [slavery] comments are not about the future." To quiet the impact of the President's pronouncements, Jesse Jackson called Clinton's comments regarding slavery "statement enough on that matter." Jackson insisted, "The question is where shall we go from here."

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100 Remarks at the Kisowera School in Mukono, Uganda, 34 WEEKLY COMP. PRES. DOC. 490, 491 (March 24, 1998) (emphasis added).
101 See Bennet, supra note 97.
102 Id.
104 Id.
105 Bennet, supra note 97.
106 Id.
The President's critics also complained that influential democratic party contributors who traveled with Clinton stood to benefit financially from the administration's African trade policy. In fact, Republican National Committee chairman Jim Nicholson went so far as to label the President's African excursion a "fund-raising safari." These democratic party donors included the likes of Maurice Tempelsman and Ron Burkle, both of whom are white. Tempelsman made his fortune as a diamond trader, and is reportedly well-connected to South Africa's DeBeers diamond syndicate. In both 1995 and 1996 he made six-figure contributions to the democrats. Burkle is a Los Angeles, California supermarket executive who is also a six-figure Democratic party donor. He has in the past loaned his Beverly Hills mansion to Clinton for fund-raising events.

At a press briefing in Cape Town, South Africa, White House press secretary Michael D. McCurry dismissed these and other Republican complaints. As to the inclusion of Democratic party contributors in the Clinton entourage, he admitted, "Obviously some of them are political contributors." But, he added, "Some of them contribute to the Republican Party in excess to what they contribute to the Democratic Party."

McCurry went on to defend the racial composition of the President's travel group, stating, "This was not a delegation assembled by quota." Nonetheless, McCurry conceded that the President was anxious to establish his credibility and good intentions among African leaders by showcasing how the U.S., a former practitioner of slavery and racial segregation, has "empowered people of minority backgrounds to be in authoritative positions and policymaking roles."

Whether that goal was achieved is a matter of conjecture. African sensibilities regarding African Americans are complex. For example, according to a former U.S. ambassador to Kenya, "African-Americans have the double disadvantage in African eyes of being the descendants of slaves..."
and being perceived as second-class citizens in the United States."\footnote{HEMPSTONE, supra note 38, at 85.}

Be that as it may, the President's goal went beyond the desire to impress his African hosts with American multi-culturalism. In his discussion of the travel group's diversity, McCurry insisted, "This is, in part, a delegation assembled by interests. And there were very substantial interests, on the part of the Congressional Black Caucus, in this trip."\footnote{Apple, supra note 91.}

Not all of those interests coincided with the President's desire to see his African trade bill become law. In fact, the Black Caucus was so divided over the legislation that it could not agree on a definitive statement for or against it.\footnote{See Phillips, supra note 90.} Thus the African trade bill has represented a rare exception to the overall support that Clinton has enjoyed among African Americans.

The depth of that support became clear in the wake of the Monica Lewinsky scandal, after Clinton admitted to, and apologized for, an inappropriate relationship with the former White House intern. Despite calls for Clinton's resignation or impeachment, a New York Times/CBS News Poll conducted on August 19 and 20, 1998 revealed that an astounding 94% of African Americans questioned approved of the job Clinton was doing as President, compared with 60% of whites.\footnote{Katharine Q. Seelye, In Surprise Speech, Clinton Seeks to Forgive and Be Forgiven, N.Y. TIMES, Aug. 29, 1998, at A1.} Jack E. White, an African American journalist who is a senior correspondent for Time had tried to explain Clinton's phenomenal appeal among blacks to Time's readers in the magazine's March 30, 1998 edition. He wrote:

This is a President who connects with blacks so strongly that some of us jokingly maintain that he's only passing for white. No President has forged such abiding personal relationships with African Americans, or put so many in positions of real authority. That helps explain why blacks, more than any other group, have remained loyal to Clinton throughout his current [Lewinsky] ordeal: we've been treating him like one of our own.\footnote{Jack E. White, My Dungeon Shook, TIME, Mar. 30, 1998, at 46, 46.}
Similar sentiments were expressed to Clinton directly by African American leaders on August 28, 1998. The President was invited to join a 35th anniversary celebration of the 1963 March on Washington, D.C., and Martin Luther King, Jr.’s immortal “I Have a Dream” speech, delivered from the steps of the Lincoln Memorial. The ceremony was held in a small church in the Oak Bluffs section of Martha’s Vineyard, Massachusetts, where freedmen and fugitive slaves first settled over 200 years ago. Clinton, who was vacationing on Martha’s Vineyard with his family, attended the services along with a racially mixed crowd of some 400 people. Those in attendance heard African American Congressman John Lewis (D-Georgia), a leader of the student sit-in movement in the 1960s, praise the President. Lewis called Clinton “my friend, my brother,” and declared, “I’ve been with you from the beginning. And I will stand with you now till the end.”

Charles Ogletree, Jr., a prominent African American law professor at Harvard, assured the President, “This is not a fair-weather crowd.” Ogletree made specific mention of Clinton’s stands on such issues as abortion, race, and health care before telling the President, “I want you to know that the people here understand and feel your pain, believe in redemption and are here because of you and are here with you through thick and through thin.”

122 Seelye, supra note 119.
123 Clinton Honors King “Dream” Speech, supra note 121.

George Wallace was, for example, a man who throughout the 1950s and 1960s opposed racial integration bitterly. According to Lewis, “[a]lthough he [Wallace] never pulled a trigger or threw a bomb, he created the climate of fear and intimidation in which those acts were deemed acceptable.” Id.

Later in his life, however, Wallace expressed remorse and sought “forgiveness from the same African-Americans he had oppressed.” Id. When Lewis met Wallace in 1979, Lewis extended his forgiveness to him. Lewis explained:

I can never forget what George Wallace said and did as Governor, as a national leader and as a political opportunist. But our ability to forgive serves a higher moral purpose in our society. Through genuine repen-
Later, Henry Louis Gates, Jr., W.E.B Du Bois professor of the humanities and chair of the Afro-American studies department at Harvard University, told reporters, "We are going to the wall with this president."\textsuperscript{125} Gates went on, "People are acting like they want the man [Clinton] to bleed in public, and I think he's bled enough."\textsuperscript{126} He concluded, "Those that want him to do more in public have ulterior motives."\textsuperscript{127}

Against this backdrop, any assertion that Clinton's African trade bill, or his trip to Africa, was designed or timed to shore up his political support among blacks for a possible impeachment battle seems ludicrous.

V. AFRICAN AMERICANS' DIVIDED REACTION TO CLINTON'S AFRICAN TRADE POLICY

The African trade bill risked alienating segments of otherwise near unanimous African American support for the President. On the one hand, African Americans tend to take defiant pride in their African heritage. Any policy that might empower Africa as a joint partner in world affairs appeals to African Americans' desire for racial solidarity with black brothers and sisters in the ancestral homeland. On the other hand, elected African American representatives must respond to their own core constituencies, which are similar to those of the Democratic party's. Most significantly, this means organized labor. As a general rule, labor unions oppose trade liberalization, which they see as a threat to American jobs. Democratic leaders have responded to labor's concerns, most notably through their consistent opposition to the North American Free Trade Agreement (NAFTA).\textsuperscript{128}

\textsuperscript{125} Seelye, \textit{supra} note 119.

\textsuperscript{126} Id.


\textsuperscript{128} A comprehensive discussion of the impact, for better or worse, that NAFTA has had on the U.S., Mexico, and Canada is beyond the scope of this article. So is an assessment of the overall system of international economic interdependence and institutions put in place after World War II, most notably the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) which administers it. For an enlightening discussion of the GATT/WTO system and the policies that underlie modern international economic relations, see JACKSON ET AL., \textit{supra} note 18, at 1-39.
Democratic opponents of the African trade bill compared it with NAFTA, concluding that, if anything, it was even more harmful from labor's perspective. During debate over a proposed rule change that would have expedited consideration of the African trade bill by the House, Congressman Joe Moakley (D-Massachusetts), ranking minority member of the House Rules Committee, declared, "[If my colleagues thought NAFTA was bad for American workers' rights, if they thought NAFTA would cause irreparable environmental damage, wait until they get a load of this African trade bill. It looks like we have not learned anything from NAFTA's mistakes." Only 92 democrats joined 141 republicans to pass the African trade bill in the House; 101 democrats, and one independent, opposed the legislation.

Democratic members of Congress who are black understand that they must follow organized labor's lead or risk electoral defeat. However, this is not to say that adhering to labor's position necessarily sacrifices personal beliefs for the sake of political expediency. At least several members of the Black Caucus are known to be "suspicious of free trade itself" as indeed risking jobs and lowering wages at home by exploiting cheap labor and lax environmental protections abroad.

But even members of Congress who are not philosophically opposed to free trade recognize that in this case, liberalized trade with Africa poses a particular threat to African American textile workers. The Wall Street Journal has reported:

Although many African-American business executives back the [African trade] bill, it isn't an easy call for some blacks in the textile-rich South. That is because, among other provisions, the bill would allow African textiles and apparel makers free access to U.S. markets. Supporters see the textile provision as a boost for African businesses, while U.S. textile workers—a large portion of whom are African Americans—see it as a threat to their jobs.

According to the Union of Needletrades, Industrial and Textile Employees, about half of all textile workers in the southern U.S. are African Ameri-

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130 Phillips, supra note 90.
131 Id.
The union predicted that if the African trade bill was enacted, thousands of them and other workers would lose their jobs. But the U.S. International Trade Commission contradicted this assessment. A report prepared by the commission said that at most, the bill would have put only 676 U.S. workers out of work. Other backers of the African trade bill pointed out that African textiles accounted for less than 1% of the $46 billion worth of textiles and apparels imported by the U.S. during 1996. They asserted that even if all duties and quotas on African textiles were lifted, the production capacity of African producers would limit exports to the U.S. to a maximum of only $1.2 billion by the year 2005, an amount that is "not much in the vast U.S. economy, but big business for [African nations such as] Kenya, Mauritius or Lesotho." However, Africans were not the only textile manufacturers that opponents of the trade bill feared. Opponents were perhaps even more afraid of Asian producers who might transship their textiles into the U.S. through Africa if duties and quotas on African textiles were lifted. Ordinarily, the rule of origin principle is applied to prevent or deter transshipments. Under NAFTA, for example, exporters are required to certify the true origin of their goods. The House version of the African trade bill would have put a more elaborate deterrence mechanism in place. The President would have been required to submit to Congress an annual report on the volume of African textiles imported into the U.S. from each sub-Saharan state covered by the African trade bill. A high volume of imports disproportionate with a

132 See id.
133 See id.
134 See id.
135 See id.
136 Id.
137 "Transshipment" refers to the practice of shipping goods from one country, like China, to a second country, such as Ghana, for shipment to a third nation, like the U.S. If the goods were relabeled in the second nation—stamped, for example, "Made in Ghana"—Chinese garments could be shipped into the U.S. on the pretext that they were African. Thus Chinese textiles and apparels producers could take advantage of any duty-free treatment accorded African textiles, or circumvent U.S. import quotas that might otherwise be applied against Chinese goods. For a further discussion of transshipment, see James R. Cahill et al., United States Customs and Trade Regulation: Important Issues for Clients, 13 AM. U. INT'L L. REV. 1019, 1041-43 (1998).
138 See Cahill, supra note 137, at 1043.
139 See H.R. 1432, 105th Cong. § 8(c)(2) (1998).
given state’s estimated production capacity would have indicated that the nation was engaged in transshipments. This evidence could then have been used by the President to terminate for two years the duty-free status accorded the offending African country.\textsuperscript{140}

Furthermore, the African trade bill would have directed the President to ensure that sub-Saharan nations had “a functioning and effective visa system and enforcement procedures to guard against unlawful transshipment of textile and apparel goods and the use of counterfeit documents.”\textsuperscript{141} African states covered by the trade bill would have been required to cooperate fully with the U.S. in preventing circumvention of applicable textile import quotas.\textsuperscript{142}

The bill’s supporters downplayed the potential threat to U.S. workers that transshipments would have posed under the trade bill. During the House debates on the bill, Congressman Howard Berman (D-California) stated, “Opponents [of the bill] . . . warn that the no-tariff, no-quota policy will spark a massive increase in illegal transshipment of goods from Asia. While illegal transshipment is always a concern, they again overstate the case.”\textsuperscript{143} He emphasized, “The bill contains strong provisions to prevent illegal transshipment.”\textsuperscript{144}

Another of the bill’s backers, Congressman William Jefferson (D-Louisiana) asked rhetorically, “Why do we say to Africa, we cannot trust you to work with our customs people, with our government, on the transshipments issue, when we do not say it to every other country in the world?”\textsuperscript{145} He continued,

Transshipment is not [a new] issue, it is an issue as old as time. Every time we had to do a trading arrangement, we worried about transshipment, and every time we do that, we deal with the transshipment question as best we can. The African nations to me ought to be insulted by the way we are approaching this bill, because what we are saying is we

\textsuperscript{140} See id. at § 8(d)(2) (1998).
\textsuperscript{141} Id. at § 8(d)(1)(A) (1998).
\textsuperscript{142} See id. at § 8(d)(1)(B) (1998).
\textsuperscript{144} Id. at H1041 (statement of Rep. Berman).
trust them less than we trust the rest of the world to cooperate with us on transshipment questions. What is the basis for that?\footnote{Id.}

Nevertheless, some rank-and-file textile workers felt that the African trade bill indeed threatened their jobs. At least one African American employee at the Pillowtex Corporation’s Fieldcrest Cannon Plant in Columbus, Georgia, said he wished that “all the congressmen would come around and talk to textile workers and understand how we feel about losing our jobs.”\footnote{Phillips, supra note 90.}

Understandably, some members of the Black Caucus find themselves “caught between the proverbial rock and a hard place—their desire to do something meaningful for the land of their ancestors and the need to protect the interests of the textile workers, many of them black, who are their American constituents.”\footnote{John Farmer, Editorial, \textit{Africa trade bill tests black leaders}, \textit{STAR-LEDGER} (Newark, N.J.), Mar. 12, 1998, at 019.}

One African American congressman, Representative Melvin Watt (D-North Carolina) was reportedly so distraught that for a time he refused even to discuss his views on the legislation. His aide explained, “In essence, he wants to support it. [But] he’s elected by his constituents. He’s not elected by people in Africa. It’s a very delicate issue.”\footnote{Phillips, supra note 90.}

A group of prominent African Americans urged the Senate not to pass the bill unless it was modified significantly. In an open letter to members of the Senate, dated May 7, 1998, these leaders attacked the House version of the bill on a number of grounds. Among other things, they criticized the legislation as an attempt to impose a “trickle down” economic model on Africa.\footnote{\textit{African Americans Urge Senate to Modify Africa Trade Bill}, \textit{AFR. NEWS SERV.}, May 13, 1998, available in WESTLAW, ALLNEWSPLUS Database, 1998 WL 11854326.} This model, they wrote, is “based on broad privatizations of government assets through divestiture, cuts in domestic spending and corporate taxes, and the granting of new rights to foreign investors to acquire African natural resources and other assets without limitation, including those which are required to be privatized by external ‘experts.’”\footnote{Id.} They asserted that this model, typified by the IMF’s structural adjustment program,
has caused African countries significant harm.\footnote{Id. For a discussion of the modalities for implementing economic structural adjustment policies and the attendant problems to which those policies can give rise, see Benjamin Lubinda Ngenda, \textit{Comparative Models of Privatization: A Commentary on the African Experience}, 21 \textit{Brook. J. Int'l L.} 179 (1995).}

Moreover, the authors of the May 7 letter complained that the African trade bill did not adequately address the need to provide African countries with relief from crushing foreign debt burdens. The authors warned:

Capital outflows or debt repayment from Africa exceed capital inflows in aid and other forms of assistance. Indeed, debt service takes more than 80% of Africa’s export earnings, and is rising. Yet, the only reference in the [African trade] bill to debt reduction/relief is contained in a non-binding “sense of the Congress” provision. Indeed, even this hortatory language refers to the benefits of debt relief for countries that meet the bill’s harsh conditionalities.

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Failure to address Africa’s crushing debt burden belies any serious attempt to establish a mutually beneficial partnership with Africa.\footnote{African Americans Urge Senate to Modify Africa Trade Bill, supra note 150.}

The letter called for a commitment from the Senate to forgive African debt obligations to the U.S.\footnote{See id.} Furthermore, it asked that the bill be amended to require U.S. representatives to multilateral lending institutions to vote in favor of forgiving Africa’s debts to those institutions.\footnote{See id.} Lastly, the May 7 letter requested an amendment to the trade bill that would “stress the importance of continued and increased aid to Africa . . . .”\footnote{Id.}

Further evidence of the extent to which the African trade bill divided the African American community was that Reverend Jesse L. Jackson and his
son, Representative Jesse L. Jackson, Jr. (D-Illinois), found themselves on different sides of the issue. The Reverend Jackson, in his capacity as President Clinton's unofficial special envoy to Africa, supported the House version of the bill while his son opposed it.

The May 7 letter was signed by Randall Robinson, president of TransAfrica, which is regarded as the most influential lobbying group on Capitol Hill for African and Caribbean affairs. According to Robinson, the African trade bill provided little more than the means by which white business interests could exploit cheap African labor. Robinson told one commentator, "This bill can be manipulated so that it means nothing to the average African." He continued, "It [the African trade bill] may even do incalculable damage in stopping African-based development. Many African countries embrace it because they see it as all or nothing. But just as Africa was colonized physically, it is now about to undergo de facto economic colonization." Furthermore, Robinson has criticized the Clinton administration for failing to adequately address concerns about human rights violations in sub-Saharan Africa. Robinson has used oil-rich Nigeria, the most populous African state, as an example. In Nigeria a military regime has nullified free elections, and in November 1995, hanged poet Ken Saro-Wiwa, a Nobel laureate, for his environmental activism and opposition to military rule. Robinson has called upon the U.S. to impose an embargo on Nigerian oil. He told an interviewer, "All we [in the U.S.] have done is issue the toothless rhetoric of condemnation. The only language the Nigerian leaders will understand is oil sanctions, but there is no hint of any." By one estimate, Nigeria supplies about a tenth of the oil used for gasoline in the United States.

Robinson also has charged the U.S. government and American business interests with complicity in the civil war that brought Laurent Kabila to power in the newly renamed Democratic Republic of the Congo, formerly Zaire. Kabila's dictatorial predecessor Mobuto Sese Seko was ousted

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158 Id.
159 For a discussion of the circumstances surrounding Ken Saro-Wiwa's execution and the international condemnations of Nigeria which followed it, see Howard W. French, Nigeria Executes Critic of Regime; Nations Protest, N.Y. TIMES, Nov. 11, 1995, at § 1, 1. See also William Boyd, In Memoriam: Death of a Writer, NEW YORKER, Nov. 27, 1995, at 51.
160 Jackson, supra note 157.
161 See id.
162 See id.
by several groups of rebels including Kabila in 1997. Since then, Congo has been a battleground of warring factions divided into Angolan and Rwandan-Ugandan spheres of influence. Meanwhile, the war against Mobuto's forces has spilled across the Congolese border and threatens to engulf neighboring countries.

To Robinson, allegedly complicitous American conduct in Congo is part of an ongoing pattern of subversive, destabilizing intervention in the internal affairs of African states. He has written, "[W]hat the United States has done to Zaire and much of Africa—done with gloves so as to leave no fingerprints—is unpardonable." He asserts:

Zairians, Somalis, Liberians, Angolans, Sudanese, Kenyans appear to have destroyed their own societies without accomplices. No news account fingers point at the American partners who comment coolly and with reasoned detachment on the wreckage they have wrought . . . . Americans, black and white, have only gotten to see the mute husks of failed African nation states.

These and similar assertions may or may not be wholly accurate or altogether fair.

VI. POTENTIAL PROBLEMS WITH THE CLINTON ADMINISTRATION'S AFRICAN TRADE POLICY

There are valid reasons for criticizing, or at least questioning, the validity of the assumptions upon which the Clinton administration's African trade policy is based.

The characterization of what is now occurring in Africa as a "renaissance" inspired by a generation of "new leaders" committed to democratization and free market principles is somewhat misleading. On one hand, a younger

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164 See id.
165 See id.
166 Jackson, supra note 157 (quoting Randall Robinson).
167 Africa: The New Princes Fall Out, ECONOMIST, May 23, 1998, at 43, 43 (defining "new leaders" as an "America-invented term for the military princes" who "were supposed to be cleaning up the [African] continent and leading it into the 21st century.").
leadership appears to have emerged to replace the so-called "toad kings" who were their dictatorial predecessors. The trend began two decades ago when Jerry Rawlings and the late Thomas Sankara came to power in Ghana and Burkina Faso, respectively. Since then, men such as Meles Zenawi of Ethiopia, Isaias Afwerki of Eritrea, Yoweri Museveni of Uganda, Paul Kagame of Rwanda, and Laurent Kabila of Congo, have likewise replaced despotic regimes that were often propped up by the United States, the former Soviet Union, or the former European colonial powers.

The toad kings, including the likes of Idi Amin in Uganda, Jean-Bedel Bokassa of the Central African Republic, Kenya’s Daniel arap Moi, Cameroon’s Paul Biya, and Zaire’s Mobutu Sese Seko, gave sub-Saharan African leadership an image of brutality and profligacy. As some observers have pointed out, “[t]he legacy of their generation is obscene.” The following facts speak for themselves:

Among Sub-Saharan Africa’s 590 million people, almost half live on less than one dollar a day and lack safe drinking water. More than one-third have no health care. Tuberculosis, malaria, hepatitis, and AIDS run rampant, and preventive measures are minimal. Nearly half the adult population is illiterate, and worker productivity in most countries is among the lowest anywhere. Africa’s aggregate per capita income is lower than that of any region but south Asia. In fact, under the last generation of rulers, the continent grew poorer with every passing decade. Even if Africa’s aggregate growth doubles over the next nine years, its per capita income in 2006 would still be five percent lower than it was in 1974.

Moreover, as their nations grew ever more aid-dependent, the toad kings enriched themselves at their people’s expense. The late Stokely Carmi-
a devoted pan-Africanist whose call for "Black Power" inspired American black militancy in the U.S. in the 1960s, left the United States in 1969 for the promised land of Africa. He changed his name to Kwame Ture, and took up residence in the People's Revolutionary Republic of Guinea. Exasperated by the behavior of the continent's rulers, he offered a dismal assessment of African leadership shortly before his death from cancer in 1998. He told a reporter, "Leaders in Africa are so corrupt that we are certain if we put dogs in uniforms and put guns on their shoulders, we'd be hard put to distinguish them."173

Yet even the new leaders, while "far more responsive, accountable, and egalitarian than any of their predecessors," resist guidance on democracy, and take a cultural relativist stance on human rights.174 "Cultural relativism" is a doctrine which justifies "departure from human rights standards in international law on cultural grounds."175 According to one expert,

Cultural relativism is essentially an anthropological and sociological concept loosely grounded in the theory of moral relativism. The notion is that cultures manifest so wide and diverse a range of preferences, morality, motivations, and evaluations that no human rights principles can be said to be self-evident and recognized in all times and all places. Moral relativism is not very influential in modern philosophy, but cultural relativism has been used frequently as an argument against the universality of human rights.

Cultural relativists, in their most aggressive conceptual stance, argue that no human rights are absolutes, that the principles that one may use for judging behavior are relative to the society in which one is raised, that there is infinite cultural variability, and that all cultures are morally equal or valid. Put into philosophical calculus, the relativist says that "truth is just for a time or place" identified by the standards of one's cultural peers. Relativism thus shifts the touch-

174 Connell & Smyth, supra note 170, at 94.
stones by which to measure the worth of human rights practice. To suggest that fundamental rights may be overridden or adjusted in light of cultural practices is to challenge the underlying moral justification of a universal system of human rights, reflecting the autonomous individual nature of the human being.\footnote{id. (citations omitted).}

The new leaders may be characterized appropriately as pragmatists who have given up on Marxism but are still distrustful of capitalists. They are committed to political and social reform but believe that democratization must take a back-seat to economic development. By one assessment, they have "introduced market reforms plus a measure of democracy, though not on a western model."\footnote{Africa: The New Princes Fall Out, supra note 167, at 43.} To say that they have brought about an African "renaissance" is probably an overstatement. Most troubling is that they seem inclined to engage in regional military interventions for motives that are not readily apparent to outside observers.\footnote{See generally id. (describing conflicts between Ethiopia and Eritrea).}

Because the new leaders seem to desire good relations with the West, the U.S. has tried to accommodate them. For example, at the Entebbe Summit for Peace and Prosperity, President Clinton won a stated commitment to democratization from the rulers of Congo, Ethiopia, Kenya, Rwanda, Tanzania, and Ghana.\footnote{For a discussion of the Entebbe joint declaration of principles, see supra notes 59-60 and accompanying text.} At the same time, however, the African leaders received a promise from the President that the U.S. will "pursue a dialogue on democratization that . . . recognizes that there is no fixed model for democratic institutions or transformation; explores alternative approaches to the democratic management of cultural diversity; and takes into account differences in historical experience."\footnote{Communique: Entebbe Summit for Peace and Prosperity, supra note 59, at 501.}

This suggests that future dialogue with the U.S. over democratization and human rights will be premised on the validity of the cultural relativist point of view. As one U.S. government official put it during Clinton's Africa trip, "It's not that we have a double standard. It's that we have varying standards
based on historical context."^{181}

Regardless of the context, the fundamental assumption that Africa can both be democratized and saved economically through even the most enlightened trade and foreign investment policies is an open question. The sheer scale and extent of the subcontinent's suffering, poverty and deprivation may be beyond the capacity of those whose most heart-felt desire is to improve the situation. Some scholars even question whether the states of Africa can survive as they currently exist. One scholar applied the precepts of John Rawls' political liberalism to Africa's modern post-colonial era.^{182} His conclusion was that "even under the fairly conservative notion of Rawls' philosophy, the viability of the post-colonial state in Africa remains highly doubtful."^{183}

Africa's former colonial rulers are blamed for drawing the boundaries among African nations in a way that makes it impossible for African states to achieve within their disparate populations the kind of constitutionalism of consensus that would create tolerance and stability. African leaders are criticized for "inaction, continued civil strife, cross-border interventionism and periodic genocidal wars" which are interpreted as modern extensions of

\[^{181}\text{James C. McKinley Jr., A New Model for Africa: Good Leaders Above All, N.Y TIMES, Mar. 25, 1998, at A14. See also Thomas W. Lippman, Albright Treads Carefully Among African Leaders, WASH. POST, Dec. 15, 1997, at A24 (describing a 1997 visit by U.S. Secretary of State Madeleine K. Albright to various African nations). The author states: [A]ll around Africa last week, Secretary of State Madeleine K. Albright has been pulling her punches a bit on democracy and human rights. It isn't that she has failed to stress U.S. support for individual rights and political freedom—she has, at every stop, urged leaders to turn away from repressive practices. But that message has been tempered by an acknowledgment that even the most forward-looking African leaders are fighting for political and economic survival, and Washington is willing to cut them some slack. "Those who would build democratic institutions and market-based economies... face tremendous obstacles; societies weakened by protracted and brutal conflicts, devastated government institutions and the legacies of authoritarian rule," Albright said in the keynote speech of her seven-nation tour. Id.}


\[^{183}\text{Dore, supra note 182, at 1301.}
intolerant tribalism. It has been suggested that African states which are in a dysfunctional state of collapse should be replaced by regional confederations organized "along appropriate ethnic and cultural lines." One suggested solution would be for the advanced African states to form an African Security Council that would assume responsibility for maintaining continental peace and security.

Other people are more sanguine. Most notable among them is South African president Nelson Mandela. Mandela believes that increased trade and foreign direct investment can and do have a crucial role to play in achieving African political stability and prosperity. In 1993, before he assumed the South African presidency, Mandela published in Foreign Affairs an article that made clear his views as to the direction South African foreign policy should take under the ensuing rule of his party, the African National Congress ("ANC"). He wrote with eloquence about the key role that trade and foreign investment would play:

> It is obvious to me that the primary components of our international economic relations, which must feed our development strategy, are the strengthening of our trade performance and our capacity to attract foreign investment. In addition we must examine the possibilities of obtaining technical and financial assistance from the developed industrialised countries. We do not expect foreign investment to solve our economic problems, but we understand that it can play a very valuable role in our economic development.

> The ANC believes the most important way to attract foreign investment is to create a stable and democratic political environment. Also important is the development of legitimate, transparent and consistent economic policies. Foreign companies should be treated as domestic companies, obeying our laws and gaining access to our incentives, and the ANC is committed to the principle of uniform treatment. And while we do not plan to provide exclusive incentives

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184 Id. at 1317.
185 Id. at 1318.
186 See id. at 1318.
for all foreign investors, we realize it might be necessary to make special arrangements to attract the kind of investment that will make a real difference in South Africa.\textsuperscript{187}

Because this declaration is consistent with the principles embodied in the African trade bill, the Clinton administration has endeavored to make South Africa the centerpiece of its African trade policy. On March 26, 1998, Clinton told the South African parliament, "America has a profound and pragmatic stake in your success, an economic stake because we, like you, need strong partners to build prosperity."\textsuperscript{188} He emphasized, "[s]imply put, America wants a strong South Africa; America needs a strong South Africa. And we are determined to work with you as you build a strong South Africa."\textsuperscript{189}

The two countries do not, however, agree on all matters. During Clinton’s March 1998 visit to South Africa, Mandela made clear that South Africa is determined to pursue its own independent foreign policy. This includes maintaining friendly ties with nations like Libya, Iran, and Cuba, which the U.S. considers rogue regimes.\textsuperscript{190} Mandela rejected out of hand any trade agreement with the U.S. that would limit South Africa’s transactions with other countries, declaring "we resist any attempt by any country to impose conditions on our freedom of trade."\textsuperscript{191} Such differences may explain the failure of U.S. and South Africa to reach agreement on a bilateral investment treaty.

Moreover, South African deputy president Thabo Mbeki, who will likely succeed Mandela as president in 1999, expressed his view during Clinton’s


\textsuperscript{188} Address by the President to the Parliament of South Africa in Cape Town, 34 WEEKLY COMP. PRES. DOC. 509, 510 (March 26, 1998).

\textsuperscript{189} Id. See also Albright Says South Africa Is a Model for Ties With U.S., N.Y. TIMES, Dec. 14, 1997, at 6 (“Secretary of State Madeleine K. Albright today held up the United States’ relationship with South Africa as an example of the type of ties it wants with countries across Africa.”).


\textsuperscript{191} Charles William Maynes, The Perils of (and for) an Imperial America, 111 FOREIGN POL’Y 36, 44 (1998). In contrast to South Africa’s commitment to trade with all nations, the U.S. has, since 1993, imposed, or threatened to impose, unilateral economic sanctions 60 times against 35 nations that represent over 40% of the world’s total population. See id.
visit that "[T]he formula: trade, not aid, is wrong." He explained, "The [South African] economy today cannot generate the resources that are required to address all those urgent problems of poverty which face us." Foreign aid is an emotive issue across Africa and threats to remove or replace it will spur fear and resentment.

When he visited Clinton at the White House in September 1998, Mandela echoed Mbeki's sentiments, emphasizing his nation's need for continued assistance. He called it a "grave injustice" to judge South Africa's economic performance by western standards, reminding his audience, "We have parents who have never seen the inside of a school, who cannot write their names." He went on, "Suddenly, without any previous training, they [the South African people] are called upon to run a developed country with modern ports and harbors, with modern communications . . . with a sophisticated banking and financial system." He concluded, "Judge us from the background from which we come . . . We came from years in prison, from the bush, from exile and from the underground."

VII. CONCLUSION

In conclusion, even this brief analysis suggests ways in which the Clinton administration's African trade policy should be modified.

First, the argument that Africa is in need of debt relief in addition to the kind of development incentives contained in the African trade bill is compelling. So is the view that Africa will remain aid dependent for some time to come. Therefore, the U.S. should work toward obtaining meaningful debt relief for hard-pressed African countries. Also, the U.S. should soften its "trade, not aid" stance and commit to continued assistance to Africa where it would be useful and is needed.

Second, the notion that Africa's new leaders have or are on the verge of precipitating an African renaissance should not be overstated. The new leaders are pragmatic men whose commitment to democratization, human

193 Id.
194 See id.
196 Id.
197 Id.
rights, and free market principles is tempered by their cultural relativism. Nonetheless, there is promise in their ascendance and hope can be drawn from the demise of the toad kings they replaced.

Africa's new leaders may have no choice but to move their nations along the development path prescribed by the U.S. In both the U.S. and the EU, domestic political support for foreign aid is diminishing. Also, attitudes have changed now that colonialism, the Cold War, and apartheid have ended. Today, the rest of the world feels freer to expect more from Africa in terms of the role it plays as a joint partner in world affairs. In the years ahead, more will be expected from African leaders in terms of how they manage their economies, and treat their people.

To the extent that all of this is true, the Clinton administration's African trade policy, as embodied in the African Growth and Opportunity Act, with some changes, is visionary, wise, and well-intentioned.