Grass Tops Democracy: Institutional Discrimination in the Civil Rights Violations of Black Farmers

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Abstract

In this article Spencer D. Wood and Cheryl R. Ragar situate the civil rights violations of the Pigford v. Glickman, USDA lawsuit within a larger intersecting system of land, racial inequality and White normativity. Wood and Ragar show how land as a material basis of wealth has been disproportionately inaccessible to African Americans while simultaneously serving as a key form of wealth for upward mobility for White Americans. Discrimination on the part of the US Department of Agriculture has perpetuated and in many cases worsened the inequalities of access to land ownership between Blacks and Whites. The authors sketch out a connecting thread from Black landownership efforts in the mid-1930s through the class-action Pigford v. Glickman lawsuit with particular attention paid to the Consent Decree issued in 1999, and to the current administration's and 2008 farm bill efforts to remedy racial inequality in USDA programs. The primary focus of the article is to show how discrimination in access to operating credit fits within a larger institutional context of deprivation and oppression decreasing the likelihood of developing satisfactory injunction for the thousands of Black farmers who suffered at the hands of our public institutions.

Thus, the authors begin with an overview of one family's travails with the USDA then provide a brief background that introduces the Pigford case and frames the patterns of discrimination as learned behaviors within institutional contexts. They then discuss the community of Tillery and the Grant family, the Pigford Case and the Consent Decree, and last the hopeful changes embodied in the Obama administration and the 2008 Farm Bill. Finally, the authors conclude that the "grass tops" implementation of federal policy at local levels leaves too much room for the construction and maintenance of White spaces that reproduce systematic racial inequality in rural America.

Introduction

On the banks of the Roanoke River in Halifax County, North Carolina, lies the Matthew and Florenza Moore Grant family farm, a single-family homestead that was part of a New Deal experiment in land reform known as Tillery Farms. The farm now imperceptibly settling back into the alluvial soil lies mostly idle. What land is under till is rented out to a nearby farmer – one of only four functioning Black farmers remaining in the Tillery area. Unlike each of the other previous heads of the local chapter of the NAACP, Matthew Grant (deceased 2001) and his family has not lost their land to the White power structure that controls agriculture in the county. For the nearly twenty-five years prior to his death and the ten years since, the family has been in a battle with the USDA to make a living and save the land. Heroically, the land is still owned by the Grant family despite the protracted foreclosure dispute with the US Department of Agriculture (USDA) and the actions of county officials who enforce federal agricultural policy. The local implementation of federal agricultural policy via county committees primarily comprised of more well-off and mostly White farmers gives considerable power to local elites in what we call, "grass tops" democracy. The Grants battled this system for over thirty years and when a county committeeman threatened that "We are going to sell you out, Matthew," they knew full well what this meant.[1] Their story is not unique.

Instead, the story of the Grant family stands as an unfortunately typical case in the long, local, battle for the racialized control of America's farmland and the economic opportunity it entails. We return to it below as we sketch out a connecting thread from Black landownership efforts in the mid-1930s through the class-action Pigford v. Glickman lawsuit of the 1990s. One of the arguments we present here refers to "grass tops" democracy, where local elites have considerable leeway in making critical decisions regarding farming operations in their counties. In addition, while we highlight the legally contested administrative matters around access to credit that are central to the Pigford Case as perhaps the most visible difference between Black and White farmers, our primary focus is how Black farmers' interaction with the USDA fits within a larger institutional context of deprivation and oppression. This larger context involves racialized access to considerable amounts of real wealth and intersects with lingering, and perhaps renewed, racialized understandings of the social order.

Taken together, the racialized legacy and immense value of real assets created an unlikely context for the successful legal relief for thousands of Black farmers who suffered at the hands of our public institutions. This larger context is crucial to any understanding of credit and matters of racial equality and fits neatly with recent findings concerning the racialized effects from the housing mortgage crisis of the early 2000s.

We begin by overviewing a little known experiment in land reform from the 1930s that not only helped create Tillery, North Carolina, but also yields an example of a corrective strategy for ameliorating the longstanding inequalities between Blacks and Whites. We then provide a brief background that introduces the Pigford case and frames the patterns of discrimination as learned behaviors within institutional contexts. Next we discuss the community of Tillery and the Grant family, the Pigford Case and the Consent Decree, and the hopeful changes embodied in the Obama administration and the 2008 Farm Bill. Finally, we offer some thoughts on the current climate within the USDA in the aftermath of these legal findings.

The New Deal Origins of Tillery, North Carolina

The Resettlement Community of Tillery, North Carolina, was once several large plantations in Halifax County. Under Franklin D. Roosevelt's 1935-36 Resettlement Administration (RA), large tracts were purchased, improved, subdivided and ultimately sold as roughly 60 to 100 acre farms to qualified clients who did not own land.[2] In 1937 the program became part of the newly established Farm Security Administration (FSA) and comprised over one hundred rural resettlement communities nationwide.[3] The FSA sponsored many other projects, but the independent community projects have historically piqued the most interest. Of these, approximately thirteen were all-Black, with roughly one in each southern state. The resettlement projects were widely seen as experiments in Jeffersonian Democracy. Uniting a land planning view that poor land causes poor people, the resettlement communities were designed to provide good land and training to qualified families and ultimately provide a path out of poverty. The planners certainly realized that increased political participation was a likely outcome of wealth acquisition, though little was said of this directly. Instead, the principal goals were poverty alleviation and environmental improvement.

The Tillery project was the all African-American half of a racially divided resettlement community in Halifax County. The all-White portion was referred to as Roanoke Farms. All told, the two projects comprised 294 units on approximately 8,750 acres.[4] Like similar projects nationwide, homesteaders paid between $4,000 and $5,000 for roughly 50 to 60 arable acres. Each farmstead came equipped with a modern house, outhouse, well, smoke shack, barn, and chicken coop. The families received significant training on bookkeeping, housekeeping, food preservation, and, of course, farming.[5] Involvement in the government project required that participants accept the Farm Security Administration supervision. To be sure many bristled at the idea of being told how to plan and farm. In general, however, most welcomed the opportunity to have a place of their own.

Ultimately, largely anti-Roosevelt conservative forces in Congress attacked the FSA, charging that the government ought not to be in the landlord business nor other "non-traditional" and "un-American" activities.[6] In many regards their complaints were not entirely unfounded, as significant numbers of the proposed tenant purchasers never did acquire title to the land. Of course, many Southern elites knew full well just how profitable near slave-labor could be! Still, on principle, they argued that renting from the government was socialist and not in keeping with the spirit of competition and individualism they imagined stood foremost among the key ingredients of United States character.

While this was certainly a sore subject for many of the tenants, it is interesting to note, that one of the few elements of the program found desirable by the House Subcommittee was the utilization of local committees to make decisions about loans and agriculture in the county.[7] That is, with a political nod to Jeffersonian Democracy, the committee quickly identified the project shortcomings with regard to property ownership all the while reinforcing the non-democratic idea of elite decision-making at the local level. We call this "grass tops" democracy and suggest that it is a key component in the reproduction of racial inequality within rural landowning communities.

While from Washington, the project goals aimed to clearly challenge the protracted racial inequalities of the Deep South, even the progressive leadership had to tread lightly around the power of southern democrats. Still, the appointment of Will Alexander in 1937 as a director of the Farm Security Administration was a hopeful choice. Alexander had been brought in by Rex Tugwell, the head of Resettlement, to be the number two in the agency. He was an open critic of the more traditional agricultural programs, notably the Agricultural Adjustment Administration (AAA) and had recently co-authored *The Collapse of Cotton Tenancy* with Edwin Embree and Charles S. Johnson.[8] Alexander was no newcomer to the struggle for racial justice. He had co-founded and served as the first executive director of the Commission on Interracial Cooperation (CIC) founded in 1919 largely to combat lynching. He also served as an acting president of Dillard University in New Orleans.[9] As Tugwell resigned he made certain that Alexander would be the new head of the Resettlement Administration (RA). Alexander then stayed on as the agency was folded into the USDA as the Farm Security Administration (FSA). Such leaders had strong commitments to racial equality, yet were relatively powerless when local implementation took a decisively racist turn.[10] Even when funds were distributed relatively equitably at the federal level, state commissioners of the programs came from the ranks of the well connected, White men who had long controlled southern politics. Like other locally implemented federal programs, FSA projects often succumbed to the local, White, racist pressure with its deep ties to the land.

Two incidents illustrate clearly the differential treatment received by Black and White homesteaders on the Tillery and Roanoke Farms projects. First, the land ultimately sold to Black homesteaders was originally designated for White settlers. With this designation in mind, construction on houses began. Thinking the homes would be used by White families, several of the homes were constructed with two stories. Soon, however, White homesteaders complained that this land was prone to flooding as it lies along the Roanoke River. They requested that Black folks be settled in the floodplain while Whites should be settled on higher ground. Administrators then switched the two projects and halted construction of any additional two-story homes. True to their concerns, the river did flood in July of 1940 wiping out nearly half of the Tillery project.[11] Now controlled by a dam, flooding is much less of an issue, however, that natural calamity disproportionately affected Blacks, setting them back and erasing the progress they had made. In short, the racialized assignment of parcels resulted in increased risk for the Black participants that ultimately contributed to their long-term stability.

More protracted and disadvantageous, Black farms received fewer tobacco allotments than did White farms. Such an advantage for White farms, coupled with the "grass tops" county committee oversight regarding increases in allotments, multiplied many times over as comparable farms moved toward the present. It is well-known that commodity allotments tend to get bid back into the price of the land, thereby increasing the net worth and leveraging capacity of those who have them. In other words, those who have more allotments have a greater ability to gain even more over time, resulting in growing inequities between Black and White farms. Such institutionalized racial inequities become compounded over time and contribute to significant racialized advantages and disadvantages. Importantly, outside an informed historical view, these racialized differences appear normalized and a possibly explained as difference in business practices, farming know-how, and other individualized characteristics. That is, what began as a structural advantage at time one appears as an aptitude advantage at time two.

To be sure, White homesteaders were not perfectly pleased with the administration of the project in Halifax County. They complained bitterly that they did not have enough autonomy, were not given title to the land, and were instead simply sharecroppers on a government plantation.[12] In fact a good bit of the evidence used in the House investigation into the Farm Security Administration in 1943 centers around the Roanoke Farms project. In the course of the investigation, North Carolina Congressman Harold Cooley utilized a significant amount of evidence from the North Carolina projects to bolster his argument for liquidating the program.

Still, overall the RA and FSA did implement a progressive program of land reform. These small concentrations of Black-owned land, while miniscule in the overall picture of US agriculture, did embolden and empower the Black communities they entailed. The landownership gave rise to civic institutions largely coordinated and directed by members of local Black communities. With churches, schools, health clinics, and community centers situated squarely on Black-owned land, these communities were Black spaces, where alternative visions of democracy and racial identity could be explored and nurtured.

Not only did families in these communities convert their land ownership into upward mobility for their children by gaining access to the financial resources necessary to pursue higher education, they also converted their wealth into political power.[13] For example, Blacks in the New Deal resettlement community of Mileston, Mississippi, became central to the Mississippi civil rights movement precisely because they built institutions of democratic governance and political empowerment on the foundation of their nearly 10,000 acres of prime delta land.[14] That the 1997 Pigford v. Glickman class-action lawsuit alleging racial discrimination in agricultural disbursements drew on leadership from the New Deal resettlement community of Tillery, North Carolina highlights the continued significance of land ownership as a key to political power.

Situating Black Farmers Complaints in an Institutional Context of White Privilege

Today, Halifax County traces its proud independent roots back to colonial-era tobacco production and its nation-leading proclamation of independence from the British Crown, known as the "Halifax Resolves." Whites do, that is. The irony is not lost on local Blacks who chuckle incredulously if not with some resignation at the water tank that proudly displays the "Halifax Resolves 1776." The proclamation is a daily reminder of how independence and freedom are valued for Whites while quietly ignoring the role of slavery and bondage in the crafting of the county's history. The tank and its contradiction sits at the intersection of highways 561 and 301, about five miles as the crow flies from the family farm, now operated by Matthew Grant's son, Gary.

The Grant place has its own conflicted history. Stepping out of Gary's front door and looking east, you see, with a little imagination, a once-thriving agricultural enterprise surrounding Matthew and Florenza's (deceased 2001) house. The house, now occupied by Evangeline, Gary's sister and eldest daughter of the family, is a "project house" built around 1935, during the New Deal Resettlement Administration's experiment in land reform and active involvement in the area. The machinery, in sheds filled with the trappings of farm life, sits unattended as do the out buildings and garden. A glance northwest toward the timeless Roanoke reveals an innocuous brushy wood lying in the middle of a farm field, unkempt and untilled. The indentations scattered throughout the wood are the sunken graves of the former enslaved who once worked the plantation that has since been partitioned to yield part of the Grant farm.

The cemetery of the enslaved stands as a poignant reminder of the area's slave-holding past, connecting the struggles of the Grant family to a much larger and more inimical tradition of racism and racial inequality. The Grant family farm stands, listing for the time being, in staunch defiance of the persistent mechanisms used to maintain racial inequality. It represents emancipation, equality, and opportunity. Sharing physical and cultural space along a continuum from bondage to freedom the farm and cemetery symbolically encapsulate the colonial origins of global racism and nearly five hundred years of struggle.

That they lie within a county that celebrates its commitment to freedom and independence so unflinchingly might give one a pause for hope that change is near. However, as Gary Grant is fond of saying, "North Carolina has fooled the rest of the country with one word, 'North.'"

That the Resolves, cemetery of the enslaved, and family farm appear so close together seems at first glance to be little more than coincidence. Yet upon further reflection it reveals a more systematic set of interdependent institutions. These intertwined institutions of independence and bondage are elaborate and strategic in their efforts to achieve or maintain their desired goals. In the minds of African Americans and those involved in their long struggle for freedom, land ownership promises of self-sufficiency and independence ring loudly throughout the struggle. They also, of course, resonate with broader national values of citizenship. Yet equally strong is the undeniable evidence that access to property ownership is profoundly racially unequal. Between 1865 and 1985, African Americans increased their percentage of the total wealth in the United States from .5 percent to only around 1 percent.[15] The legacy of slavery, physically ever-present in the unremarkable woody stand on the Grant farm, is enduringly and intractably present in today's persistent racial inequality.[16]

When African Americans, led by Gary Grant and others, sued the USDA in 1997 for civil rights violations they were formally contesting only recent Departmental discriminatory practices. However, concern about the potential for discriminatory institutional behavior was anything but new. The US Department of Agriculture (USDA), the "people's department" as it was called when President Lincoln created it in 1862, had touted local implementation of agricultural policy for its ability to respond to local needs. Beginning in 1933, Black farmers, however, had complained about the decentralized administration of Departmental affairs. As they argued that the grass-roots democratic approach was really grass-tops and hardly democratic, representatives of the Southern Tenant Farmers' Union were concerned that the newly formed Farm Security Administration would remain housed within USDA. In fact, they pointed out, the USDA's county committee system was more akin to the fox guarding the hen house than to grass roots democracy.[17]

Of course, few foxes find much disagreeable about regular access to chickens and eggs, yet worry they will when the food source dries up. For them open access to a system that favored them had a normative presence that scarcely required critical reflection. As Jill Quadagno has documented, social welfare programs in the United States have, from their beginnings, served to perpetuate racial divisions rather than to mitigate them. Quadagno persuasively argues "efforts to use government intervention to extend positive liberties to African Americans clashed with the negative liberties of Whites to dominate local politics, to control membership in their unions, and to choose their neighbors" (6). Southern leaders, especially, fought efforts that would result in their loss of control. In practice, if not always outright intent, New Deal programs of the 1930s "instituted a regime that reinforced racial inequality," according to Quadagno (19). One clear example of this appeared in the crafting of the popular Social Security Act of 1935, which established guaranteed benefits to workers.

Excluded from these benefits, as part of a compromise reached with southern Democrats, were agricultural workers and domestic servants, effectively leaving out the vast majority of Black men and women of the day. Southern leaders feared both loss of labor and, perhaps even more, loss of power if Blacks (and poor Whites) had access to resources not directly controlled by them.[18]

It is within this context, then, that Black farmers expressed their concerns about the institution of FSA programs through the decentralized, locally-controlled USDA offices. Programs introduced at the federal level through the Resettlement Administration, first, and then the Farm Securities Administration were racially progressive in their intent to redistribute Southern farm land. Southern leaders, however, persuasively argued disbursement of federal funding had always flowed through individual states' systems, and federal officials agreed. For a brief moment during the New Deal, an alternative and progressive force from within the USDA worked to better the lives of rural Blacks, but it too was undermined by local racism. While this system presented an appearance of balanced neutrality, in practice this process resulted in loss of land and resources for Black farmers.[19] This remained one of the lasting tenets of the federal-state split in power, and it could be asserted that was a natural continuation of long-standing practice.

For the racially excluded, however, the persistence of the status quo is vexing and exhausting. This is why Blacks in Halifax County laugh at the county's proud declaration of independence from the Crown. From the bottom, Blacks see the unchanging structure of racial inequality that allows Whites to celebrate their important visions of independence while Black suffering goes profoundly unnoticed. As Quadagno and others suggest, even so-called progressive programs such as those introduced under the New Deal of the 1930s reinforced long-standing racial boundaries. It is one of the great tricks of history that our present reflects past choices while seeming so static, unchanging, and natural. Thus, past practices continue to uphold contemporary tensions. In 2009, Halifax County's all-White "tea party" protest against paying taxes was held at the local Harley Davidson shop in Roanoke.[20] Eerily similar to state's rights claims of the mid-1950s and 1960s, one tea party protester said, "This has to do with state's rights. The government is our agent. We do not work for the government."[21] In many regards such stands are angry outbursts against the meager redistribution of wealth associated with most public expenditures for social services. As in the 1950s, these new state's rights movements shroud language of racism within benign economic and political language. It is, as Bonilla-Silva has argued, a kind of symbolic racism that lets expressions of racial animosity flow freely under a new normatively acceptable form that derides the morals and work ethic of the welfare recipient while simultaneously equating welfare recipients and Blacks.[22] And furthermore, while subtle symbolic racism creates a plausible deniability of racist attitudes for Whites, a selective and excessively individualistic reading of history encourages a sense of righteous rejection of racist thinking. It is as though flying at night through the history of racial struggle, so to speak, Whites often reflect upon the day's travels with a self-congratulatory air of satisfaction in their progress.

Only when their own material wellbeing is threatened do they express concern. Like fish in water, Whites swim in a normative sea of White supremacy that becomes apparent only when it is weakened or they are removed.[23] Like fish out of water, Whites gasp with outrage when asked to make meaningful concessions toward ending profound racial inequality. More typically, however, Whites feel caring and altruistic as they keep careful count of each measure they concede to bring to heel individual racists. As long as real gains for Blacks are kept to a minimum and do not require noticeable sacrifice from Whites, new trappings of democratic inclusion are welcomed surface dressings of the all too familiar production of racial inequality. Policies that punish individual racists and establish formal procedures for inclusion that do not appear to preference racial categories are the order of the day and received with largely open arms. True equality is color-blind, in this view, all the while leaving unchecked the mountain of racially charged benefits that accrue from normative dimensions of structural advantage.

In many regards, this is how administrative duties even today are carried out in most of the nearly 3,000 county agricultural offices nationwide. Separate protocols, loan packages, and levels of supervision for Black and White clients are the norm. Berger and Luckmann, in their famous book on social construction, understood this well. For them, the regular and reciprocal interaction of individuals and groups leads to a set of habitualized understandings and patterns of interaction that eventually become institutionalized.[24] When these patterns become institutionalized they begin to look "natural" and in this way provide considerable guidance for our behaviors and decisions about our behaviors in many contexts. We think we know how to behave because that is what we think has always been done.

Of course these patterns of behavior are not benign, but rather are rooted in systems of power and privilege. When confronted with changing values and or edicts, actors often must choose among competing options that may all seem uncomfortable. So, despite strong encouragement and outright orders from Washington in the 1960s that county offices integrate, many county officials did not comply, in part out of fear of retaliation at the hands of local elites. For example, as Pete Daniel documents in his excellent summary of civil rights violations within the USDA, during a 1964 interview county FHA administrator Howard Bertsch bristled when he was told that other counties did appoint Blacks to leadership positions.[25] For Bertsch the choice of provoking powerful local political actors who wanted to maintain racial supremacy or fulfilling an order from Washington was a no-brainer. Instead, he gave the impression of working toward the Washington edict by implementing meaningless, or at a minimum demeaning, baby steps for Black county agricultural employees under his supervision. As John R. Commons famously defined, institutions are "collective action in restraint, liberation and expansion of individual action."[26] That is, institutions are not neutral, rooted as they are for Berger and Luckmann in habitualized social interactions. More directly, as legal scholar Havard has argued, defendants in the Pigford case were in the habit of creating White spaces.[27]

The process of creating White spaces has largely worked for rural America. As late as 1939, more than fifty percent of African Americans were rural. The roughly seven percent who remained by the end of the century were mostly destitute and landless. That the local offices of the USDA were involved in this erosion of Black landownership is undisputed. In 1997 Secretary of Agriculture Dan Glickman admitted, after convening a dozen listening sessions with Black and minority farmers around the country and conducting a thorough investigation into complaints of discrimination, that "Minority farmers lost significant amounts of land and potential farm income as a result of discrimination by [US Department of Agriculture] programs."[28] So, when John Zippert, a New York-born freedom rider who remained in Alabama working for the Federation of Southern Cooperatives, testified that in more than forty years of rural development work he has never met a Black farmer who has not been discriminated against, it makes unfortunate sense.[29] Further, for those who filed complaints with the office of civil rights of the USDA, the results were typically detrimental. On the one hand those who were successful were fearful that county agricultural leadership would retaliate. A small group of Mississippi farmers, upon winning discrimination complaints, had to face "the same county supervisors and county committeemen year after year [who in turn] used the fact that we filed these complaints and that that they had to attend civil rights training classes as a reprisal against us, from '91 to the present. … And what have we received? He walked out with his 25 years of retirement, leaving us with this debt over our head."[30] For most others, the complaints simply went ignored.

Amidst this corroded implementation of public policy, larger and more familiar forces of racism, industrialization, and modernization combined to push Blacks out of the South. The nearly complete removal of employed African Americans from rural areas by the mid-1980s left just around 4 million rural Blacks, very few of whom own any substantial amount of land. Moreover, the long history of Jim Crow and racial inequalities had leveled a devastating blow on their general well-being. What is all the more disturbing and amply illustrated in the testimonies of Black farmers found in the research for the 1997 Civil Rights Action Team report, is that, as Pete Daniel mentions, "Black farmers suffered their most debilitating discrimination during the civil rights era when laws supposedly protected them from racist policies."[31] The American dream of democratic participation and inclusion has been severely limited by the enduring forces of structural racism.[32]

The Historic Pigford v. Glickman Lawsuit

In 1997 North Carolina farmers and leaders Tim Pigford, Gary Grant, and Cecil Brewington along with John Boyd and other farmers from across the South led the way in suing then Secretary of the USDA Dan Glickman and his department for violating their civil rights in what has become the largest class-action civil rights settlement in the history of the country.[33] The suit charged that the USDA had failed to respond to claims of civil rights violations between 1983 and 1997, during which time the office of civil rights at USDA was unstaffed and unfunded.

More substantively, the claimants argued that they had been systematically discriminated against by the county offices of the Farmers Home Administration (FmHA). As the local face of the USDA and a lender of last resort for small and limited resource farmers, these county offices are exceptionally important for the carrying out of the day-to-day functions of the USDA. They argued that the offices of the USDA, in particular the FmHA, systematically discriminated against them and that when they complained to the civil rights division of the department, their complaints were not addressed.

Typical among the abuses were untimely delivery of loans, excessive scrutiny and rejection on mere procedural mistakes, and outright intimidation. Charles Tyner, whose son attended the famed North Carolina A&T, home of the first sit-ins during the civil rights movement, and crown jewel of the Black Land-Grant Colleges, operated about 300 acres in Northampton County, North Carolina. He testified before Civil Rights Action Team members about how he was told that his son did not have enough experience to farm and that their complaint was filed one day late. He said,

> A year ago, really February 9, 1994 we received this letter from FHA. "You lack sufficient training and experience and education to be successful in farming to assure reasonable re-payment for the loan requested." Shock, if we've ever received one, the letter was sent to my son who is Charles R. Tyner, Jr. who is a graduate of A&T State University with a major in agricultural education. Our family sent him there so that he could come back home and operate the farm. … So then we went out and, of course, we got other loans 'cause I worked somewhere else and my son's just a farmer, that's all he does, we produce chickens, hogs, the entire operation. So then, he did that, but then I appealed this process and I wrote a letter to Washington, D. C. to the appeal officer and I got a letter back saying that I was one day too late. The time had expired. One day, the time, and I really didn't have time to do this 'cause this was February now. We need to start plowing the fields [in] March so we really didn't have a lot of time. I was so shocked for one thing, but then I called and no one ever even picked up the telephone to even to have sympathy with me to say we're sorry, we just can't help you at this time and try again next year.[34]

These conditions were all the more significant because the FmHA worked as a lender of last resort. Consequently, only the most disadvantaged tended to utilize FmHA services. However, as Bruce Wilson pointed out being dependent on the USDA put one at a serious disadvantage especially given the significance of land ownership for economic opportunity in rural places. He stated,

> Throughout Philips County [AR] in 1948 African-American people controlled 52 percent of the land mass in Philips County. … African-American people owned as much as 3,000 acres of land, all of that has been taken due in part to the Agricultural Department which was the lender of first resort to small African-American farmers and the lender of last resort to large White farmers. … Anyone that has a sense of economics knows that all wealth comes from the land. If you do not have any land, you do not have any credit, without any credit you can't educate your kids, your kids can't go off to college, have a second generation that goes over into other occupations and become professional. … [Y]ou created a program where African American farmers had to compete with White farmers for the same money and had to bring up their credit spreadsheet to the office, the local office and look at the White farmer who has security and the Black farmer who just got a hope, White farmer's got the money.[35]

By October 9, 1998, the class was certified and included approximately 600 claimants. Less than one year later on April 14, 1999, Judge Paul Friedman issued his order approving the consent decree between the parties. The consent decree determined that cases would only be considered that occurred between 1981 and 1996 and authorized two tracks, A and B. Under the A Track, the class member was entitled to a maximum payment of $50,000 plus a $12,500 payment to the IRS and certain USDA-related debt relief. Under Track B, the burden of proof is much higher yet there is no upper limit on the recovery amount. Approximately 23,000 farmers met the eligibility requirements, though over 70,000 contend that they simply filed late. Of the 23,000, the vast majority chose to pursue the Track A settlement procedure, and only 172 opted for Track B. To date the lawsuit has resulted in the payment of nearly $1 Billion. (See Figure 1.)

Figure 1

National Statistics Regarding *Pigford v. Vilsack* Track A Implementation as of May 27, 2009

Prepared by the Office of the Monitor
using figures provided by the Facilitator.

Class	National	%
Eligible Class Members	22,719	100%
Track A	22,547	99%
Track B	172	1%

Track A Decisions	National	%
Total Track A Decisions	22,546	100%
Initial Track A Decisions		
Initial Adjudications Approved	13,369	59%
Initial Adjudications Denied	9,177	41%
Final Track A Decisions Adjusted for Reexamination Results		
Final Adjudications Approved	15,630	69%
Final Adjudications Denied	6,916	31%

Status of Payments	National
Cash Awards ($50,000)	$762,650,000
Non-Credit Awards ($3,000)	1,512,000
Dollars Track A Claimants Are Entitled to as IRS Payments	190,662,500
Total Debt Relief for Track A Class Members	38,082,668
A. Principal Amount of Debt Relief	26,258,074
B. Interest Amount of Debt Relief	11,824,594
Dollars Track A Claimants Are Entitled to as IRS Payments for Debt Relief	$6,564,518
Total Track A Relief	$999,471,686

Last, claimants excluded because they filed late were given until September 15, 2000, to submit an affidavit to an arbitrator explaining why they were unable to meet the deadline, and only under extraordinary circumstances were they admitted to the class. Other than resolving matters with the late filers, this primary portion of Pigford is complete. Late filers matter in part because there are so many of them. At last count there were over 70,000. If we assume that these late filers will have approximately the same 70 percent success rate as the timely filers, then there are likely another 49,000 or so valid complainants in the case. Hence, there are several problems with how the consent decree has played out. First, is the problem with late filers. It simply is the case that thousands of individuals did not receive a timely notice of the Pigford lawsuit.[36] Moreover, it seems arbitrary that valid claims of discrimination could be dismissed simply due to technical matters. For late filers this technicality resulted in an arbitrator determining whether claimants had a good excuse for missing the deadline. Very few of these cases were admitted (see Figure 2).

Figure 2: Status of the Late Claim Process*

Approximate number of Petitions to File Late Claims:	73,800
Approximate number filed before Sept. 15, 2000:	66,000
Number of petitions approved:	2,116
Number of petitions denied:	63,836
Approximate number of Requests for Reconsideration:	24,000
Approximate number filed within 60 days:	20,700
Number of reconsideration requests decided:	17,279
Number of reconsideration requests resulting in approval of petition:	113

Source: Arbitrator's Ninth Report on the Late-Claim Process, Pigford et al. v. Johanns and Brewington et al. v. Johanns, 11/30/2005.

As a burden of proof, claimants were required to identify a "similarly situated White farmer" who did receive benefits while the same were denied to the Black farmer. This was an extraordinarily high bar for many Black farmers to cross. Given the aging Black farm population and the legacy of Jim Crow that they grew up under, it seems very likely that many Black farmers would be unable to fulfill this standard. Initially many claims were denied based on this criterion, yet upon appeal have been admitted. Still, the extra burden placed on these claimants by delaying the process seems more akin to hoop jumping than fact finding.

The Current Departmental Leadership and Climate

Recent developments under the Obama administration suggest a more agreeable solution to the now decade-old Consent Decree and the more vexing problems of disparities in services. Secretary of Agriculture Tom Vilsack has issued what is perhaps the strongest statement yet against discriminatory behavior within the department. His poster-sized no-tolerance policy is displayed on the wall of the foyer to the Civil Rights Office. Even more promising is the appointment of Dr. Joe Leonard as Assistant Secretary for Civil Rights.

A native Texan whose grandfather farmed near Tyler, Leonard earned his PhD in history at Howard, writing on the civil rights movement in Louisiana. He has worked for the Rainbow PUSH coalition under Jessie Jackson in addition to the Black Leadership Forum, and the Congressional Black Caucus.[37] Last August Leonard visited farmers for the first time since his nomination. He came to Halifax County and attended a town hall meeting held in the New Deal Tillery Resettlement Community. Before arriving, he visited the local Farm Services Offices (the current name of the old FmHA) and reportedly told them, "I've come to work with you. But, just as I found my way here, I can find my way back.

And if you don't want to work with me, I will be back but with a very different attitude." As he entered the room, dressed casually, he could have been anyone. Although the county offices were expecting him, it seems unlikely they were expecting someone so forthright. Of course, he does not have authority to fire anyone in county offices, so time will tell whether his enthusiasm for justice is sufficient to create change. That he visited an office and came to Tillery were certainly steps in the right direction. However, we cannot help but be reminded of William M. Seabron, who in his dealings with "such dedicated racists" as those found within the USDA repeatedly met resistance and outright sabotage of his efforts.[38] Joe Leonard may be the best thing for race relations in the USDA since William Seabron, but no doubt he will encounter similar resistance.

Despite early proclamations of a post-racial world, the United States remains racially divided. In fact, by a number of measures the gap has widened in recent decades. For instance, the briefest of reviews regarding the current mortgage crisis reveals that minorities have been hurt much worse, and many via a host of discriminatory practices that perpetuate racial inequalities in wealth.[39] Banking giant Wells Fargo was added to the list of mortgage firms that actively pushed sub-prime loans onto otherwise prime-rate qualified Black borrowers.[40] Agents in these firms referred to Blacks as "mud people," earned bonuses by selling sub-prime packages to more qualified borrowers, and called such loans "foreclosure loans."[41] In what seems to be a lust for profit, these mortgage firms reversed the standard racist ploy of redlining by actively moving Blacks into any property so long as the financial package was substandard. Further, it appears as though these mortgage firms re-deployed the tactic of steering with a new twist. Rather than *physically* steering Black purchasers toward Black neighborhoods, mortgage firms like Wells Fargo have been accused of *financially* steering prime-rate qualified borrowers into subprime loans. It is worth noting that these cases are still working their way through the courts, and that to date some of the suits against Wells Fargo brought by municipalities have been dismissed yet both the Memphis and Baltimore cases remain.[42] Regardless of the final outcome, at a minimum the crude language and aggressive strategies of the agents more than suggest deeply racist attitudes. So, while segregation caused by real estate redlining and steering has had perhaps the most destructive impact of all on protracted racial inequality, subprime steering and reverse redlining may have disproportionately targeted the small amount of wealth amassed by Blacks since the mid-1970s.[43]

The Pigford case only gained national attention following the eruption of another racialized incident at the USDA in Spring 2010. Shirley Sherrod, a Black USDA employee was fired for seemingly discriminating against White clients. We now know that not only was Sherrod fired, she also was terminated via a cell phone call at the instruction of Secretary of Agriculture Tom Vilsack, who had discussed the matter with President Barack Obama. Within a few days she was reinstated after it was revealed that the indicting video clip was taken completely out of context and depicted her describing how she had learned a lesson about treating people fairly even though she had been tempted to treat the White clients as she knew many Blacks had been treated in the very offices she now coordinated.

In short, she was describing how she strove to overcome her own biases and wanted others to do so as well.[44] The swiftness of the administration in acting upon the unsubstantiated comments by Sherrod reveals a national desire to expunge *overt* racial prejudice, even as the racist structural practices that prompted Sherrod to share her own experiences remain firmly in place. Sherrod was terminated only hours after a video clip appeared on the public internet; the Pigford suit, which illustrates a long history of structural racism, drags along with resolution still years away.

Even as the Pigford process continues to unfold, minority and female employees at the USDA continue to encounter a significant amount of mistreatment similar to that experienced by Black farmers. Lawrence Lucas, USDA Coalition of Minority Employees President, claims that little has improved since the 1997 Civil Rights Action Team report found strong evidence of systemic mistreatment of minority employees within USDA. Even Secretary Vilsack has admitted the enormity of the persistent issues within the USDA. A release available on the USDA website admits that between 2001 and 2008, virtually no civil rights complaints were addressed, out of the more than14,000 filed during those years. The federal General Accounting Office (GAO) called out the USDA regarding employee civil rights abuses. As Jerry Hagstrom has reported, "In 1995 GAO charged that USDA was one of four federal agencies with 'no formal mechanisms' to hold agency heads accountable for affirmative employment programs."[45] While the problems of these minority employees have not received the national attention afforded minority farmers, it appears that the pattern of racist mistreatment is similar and perhaps worse.[46]

Complaints abound today regarding continued discriminatory practices in the USDA. In Halifax County, many Black agricultural borrowers are placed on "supervised" loans that require tedious approval for minor expenses. The supervision is oppressive and is reminiscent of practices under sharecropping. The process is demeaning and time-consuming in that it forces Black borrowers to make multiple trips for simple purchases. Farmers at Tillery have reported that it is common for Blacks to be placed on supervised loans. This means, that, for example, have to get invoices from their implement dealer for any expenditure, no matter how small, prior to acquiring the product. They then must take the invoice to the county office for approval. Only after receiving the approval are they permitted to return to the implement dealer and purchase the item. Whites, by contrast are given monthly expense accounts for incidentals and small purchases.[47]

For many, the relative autonomy of the local offices from Washington's influence stands as a hallmark of democratic governance. For M. L. Wilson, the chief architect of the voluntary domestic allotment program under Roosevelt and basis for our current crop subsidy programs, voluntary participation combined with local implementation was crucial. However, it is also the case that grass-roots democracy minimizes difference in status and power at the local level. Left unchecked, the roots are often trampled by the grass-tops. In short, this structural arrangement has been the source of the problems between Black farmers and the USDA.

Without transparency and accountability it allows for the continued development of and operation of the interconnected habituated patterns of institutional racism. While significant changes are underway such as increased funding for minority and limited resource farmers in the 2009 Farm Bill, the re-opening of Pigford for late claimants, and the appointment of change-oriented leadership within the USDA, the larger concerns of accountability and transparency in administration of USDA programs remain significant problems of grass tops democracy.

References

[1] Conversation with Gary Grant, n.d.

[2] Brian Q. Cannon, *Remaking the Agrarian Dream : New Deal Rural Resettlement in the Mountain West* (Albuquerque, NM: University of New Mexico Press, 1996); Richard A. Couto, "Heroic Bureaucracies," *Administration & Society*, 23, no. 1 (1991); Richard A. Couto, *Ain't Gonna Let Nobody Turn Me Round: The Pursuit of Racial Justice in the Rural South*, (Philadelphia, PA: Temple University Press, 1991); Donald Holley, "The Negro in the New Deal Resettlement Program." *New South* 27, Winter (1972): 53-65; Sidney Baldwin, *Poverty and Politics: The Rise and Decline of the Farm Security Administration* (Chapel Hill: University of North Carolina Press, 1968); Paul K. Conkin, *Tomorrow a New World: The New Deal Community Program*, (Ithaca: Cornell University Press, 1959); Herman Clarence Nixon, *Forty Acres and Steel Mules*, (Chapel Hill: University of North Carolina Press, 1938); Rexford G. Tugwell, "Cooperation and Resettlement," *Current History*, XLV, no. February (1937); Will W. Alexander "Rural Resettlement." *Southern Review*, I (1936).

[3] Baldwin, *Poverty and Politics;* Conkin, *Tomorrow a New World*.

[4] Select House Committee on Agriculture, "Farm Security Administration Hearings Before the Select Committee of the House Committee on Agriculture, to Investigate the Activities of the Farm Security Administration," 78th Congress, First Session, Parts 1-4, (Washington, D.C.: GPO 1944).

[5] Nixon, *Forty Acres and Steel Mules*.

[6] Select House Committee on Agriculture, *Activities of the Farm Security Administration: Report of Select Committee of the House Committee on Agriculture to Investigate the Activities of the Farm Security Administration*, (Washington: U.S. G.P.O., 1944), pp. 1-5.

[7] Select House Committee on Agriculture, *Activities of the Farm Security Administration*, p. 3.

[8] Richard S. Kirkendall, *Social Scientists and Farm Politics in the Age of Roosevelt*, (Columbia, MO: University of Missouri Press, 1966) p. 109; Charles S. Johnson, Edwin R. Embree, Will W. Alexander, *The Collapse of Cotton Tenancy: Summary of Field Studies and Statistical Surveys 1933-35*, (Chapel Hill: The University of North Carolina Press, 1935).

[9] See Baldwin, *Poverty and Politics*, pp. 95-96 for a summary of Alexander's background work and commitment toward fighting racism.

[10] For more on ways in which this divide played out in the Mississippi Delta region see Jane Adams and D. Gorton, "This Land Ain't My Land: The Eviction of Sharecroppers by the Farm Security Administration," *Agricultural History* 83 (Summer 2009), pp. 323-351.

[11] L. L. McClendon, Letter to C. B. Ferris. Record Group 96, Box 80, Folder 3, (1940).

[12] Select House Committee on Agriculture, "Farm Security Administration Hearings" Parts 1-4; L. L. McClendon, Letter to Howard H. Gordon. Record Group 96, Box 79, Folder 32 (1939).

[13] Lester M. Salamon, "The Time Dimension in Policy Evaluation: The Case of the New Deal Land-Reform Experiments," *Public Policy* 27 (Spring 1979) pp. 129-83.

[14] Spencer D. Wood, "The Roots of Black Power: Land, Civil Society, and the State in the Mississippi Delta, 1935-1968," PhD dissertation, (Department of Sociology, University of Wisconsin, Madison 2006).

[15] Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy*, (Berkeley: University of California Press, 1999).

[16] Joe Feagin. *Racist America: Roots, Current Realities, and Future Reparations*, 2nd ed. (New York: Routledge, 2010); Joe Feagin, "Slavery Unwilling to Die: The Background of Black Oppression in the 1980s," *Journal of Black Studies* 17, no. 2 (Dec. 1986), pp. 173-200.

[17] Special Committee on Farm Tenancy, "Farm Tenancy: Report of the President's Committee," (Washington, D.C.: U.S. GPO, 1937).

[18] Jill Quadagno, *The Color of Welfare: How Racism Undermined the War on Poverty*. (New York: Oxford University Press 1994).

[19] For more on the "ultimately flawed" application of the split in power between federal and state and local government, see Cassandra Jones Havard, "African-American Farmers and Fair Lending: Racializing Rural Economic Space." *Stanford Law & Policy Review* 12 (2001): 333-47.

[20] Lance Martin, "Tea Party Brews Protest Over Taxation, Spending," *Daily Herald*, (Roanoke Rapids, NC, April 16, 2009).

[21] Martin, "Tea Party Brews."

[22] Eduardo Bonilla-Silva, *Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in the United States*, (Boulder, CO: Rowman & Littlefield 2003).

[23] Feagin, *Racist America*; Michael K. Brown, Martin Carnoy, Elliott Currie, Troy Duster, David B. Oppenheimer, Marjorie Shultz, and David Wellman, *White-Washing Race: The Myth of a Color-Blind Society*, (Berkeley: University of California Press 2003).

[24] Peter L. Berger, and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*, (New York: Doubleday 1966).

[25] Pete Daniel, "African American Farmers and Civil Rights," *The Journal of Southern History*, 73 (no. 1 2007), pp. 3-38.

[26] John R. Commons, *Institutional Economics*, (New York: Macmillan 1934).

[27] Waymon Hinson and Edward Robinson, "'We Didn't Get Nothing:' The Plight of Black Farmers," *Journal of African American Studies*, 12 (2008) pp. 283-302; Havard, "African-American Farmers and Fair Lending, pp. 336-37.

[28] Civil Rights Action Team, "Civil Rights," p. 30.

[29] John Zippert, Testimony before the Committee on House Agriculture, "Agriculture Department Civil Rights Program," (September 25, 2002).

[30] Civil Rights Action Team, "Civil Rights," p. 8.

[31] Daniel, "African American Farmers," p. 4; Valerie Grim, "Black Participation in the Farmers Home Administration and Agricultural Stabilization and Conservation Service, 1964-1990," *Agricultural History* 70, no. 2 (1996) pp. 321-336.

[32] Manning Marable, "Structural Racism and American Democracy: Historical and Theoretical Perspectives," *Souls*, 3:1(Winter 2001).

[33] Pigford v. Glickman, No. 97-1978 (D.D.C April 14, 1999). Several related lawsuits are currently underway addressing discrimination toward Latinos, Native Americans, and Women.

[34] Charles Tyner, "Testimony Before the Civil Rights Action Team," (Halifax, NC, January 8, 1997).

[35] Bruce R. Wilson, "Testimony Before the Civil Rights Action Team," (Belzoni, MS. January 24, 1997).

[36] Federation of Southern Cooperatives, "Position Paper on Pigford Legislation," in author's possession (June 19, 2008).

[37] Joe Leonard, "Testimony," Nominations Hearing Of The Senate Agriculture, Nutrition And Forestry Committee, (April 1, 2009).

[38] Daniel, "African American Farmers," p. 7.[39] Gregory D. Squires, Derek S. Hyra, and Robert N. Renner, *Segregation and the Subprime Lending Crisis*, Briefing Paper #244, Economic Policy Institute (November 4, 2009); John Leland, "Homeownership Losses are Greatest Among Minorities, Report Finds," *New York Times*, (June 13, 2009), p. A16; Michael Powell and Janet Robert, "Minorities Affected Most as New York Foreclosures Rise," *New York Times*, (May 16, 2009), p. A1.

[40] Michael Powell, "Bank Accused of Pushing Mortgage Deals on Blacks," *New York Times*, (June 7, 2009), p. A16; Michael Powell, "Memphis Accuses Wells Fargo of Discriminating Against Blacks," *New York Times*, (Dec. 30, 2009), p. A15.

[41] Powell, "Bank Accused of Pushing Mortgage Deals."

[42] Martin, Andrew. 2011. "Redlining Suits Against Wells Fargo Are Allowed to Proceed." *The New York Times*, May 5.

[43] Squires et al., *Segregations and Subprime Lending*; Rakesh Kochhar, Ana Gonzalez-Barrerra, with Daniel Dockterman, *Through Boom and Bust: Minorities, Immigrants, and Homeownership*, Pew Hispanic Research Center, (May 12, 2009); City of Memphis and Shelby County v. Wells Fargo Bank, N.A., "Complaint for Declaration and Injunctive Relief and Damages," U.S. District Court for the Western District of Tennessee Western Division, (2009); Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Underclass*, (London: Harvard University Press, 1993).

[44] Peter Nicholas and Kathleen Hennessey, "Shirley Sherrod Dismissal a Rash Decision," *Los Angeles Times*. http://articles.latimes.com/2010/oct/07/nation/la-na-sherrod-usda-20101008 (accessed August 6, 2011).

[45] Jerry Hagstrom, "The Last Plantation," *Government Executive*, May 1, 1997. Available at http://www.govexec.com/features/0597s3.htm (accessed January 6, 2012).

[46] See Lawrence Lucas, "Open Letter to USDA Secretary Tom Vilsack," *OpEdNews.com*. http://www.opednews.com/articles/Open-Letter-To-USDA-Secret-by-Lucus-Lawrance-111026-74.html. October 26, 2011 (accessed January 6, 2012); "Secretary Vilsack's Efforts to Address Discrimination at USDA," *United States Department of Agriculture, Office of the Assistant Secretary for Civil Rights*. http://www.ascr.usda.gov/cr_at_usda.html (accessed January 6, 2012). See also, Hagstrom, "The Last Plantation." Hagstrom notes that USDA employees refer to the organization as "the last plantation." See also Seth L. Ellis, "Disestablishing 'the Last Plantation': The Need for Accountability in the United States Department of Agriculture. *Journal of Food Law & Policy*, 4 (2008) pp. 93-127.

[47] These findings are supported through conversations with black leadership in Halifax County, however, hard and fast data are not available. Further, a confidential source affiliated with the USDA in Washington, claims that nearly all black borrowers across the country were placed on supervised loans, yet admits that no systematic analysis has been conducted. A key implication of this finding is that county officials that were responsible for the supervision should share some of the responsibility for loan failures that occurred under their supervision. As important, is the realization that ill-intentioned county officials could sabotage black farms by providing poor, unwise, or untimely supervisory advice.