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By: Quinn Hill, Staff Member

My grandfather was a farmer. Customarily, he and my grandmother had a large family, comprised of six children: four boys and two girls. Big families were almost a necessity for small farmers in rural Mississippi, since the children were able to help in the toil of that enterprise. From a remarkably young age, my dad (the oldest of the siblings) was picking cotton, driving mules, bailing hay, and once the farm became mechanized, operating a tractor and its many accoutrements. If any spare hands were needed at a neighbor's farm, my dad and his brothers would pitch in. Thus, as a child living on a small farm, life was as much, if not more so, about work as it was about play, and the work, to be sure, was very, very hard.

Today, with a more evolved and sophisticated economy, an interesting and difficult question emerges: Was my dad a child laborer? According to the Secretary of Labor, the answer is unclear. Passed in 1938, the Fair Labor Standards Act permits the Secretary of Labor to designate guidelines for the employment of minors.^[i] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn1) Under both the Act and the Secretary's guidance, a child may be employed in agriculture by his parent or by one standing in loco parentis, at any time.^[ii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn2) While a child above the age of twelve may work at another's farm with express parental or guardian consent,^[iii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn3) any child below that

age is prohibited from being so employed.[iv] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn4) Further, any employment outside of a family or guardian-run agricultural operation is subject to certain limitations; employment that entails tasks that the Secretary deems “hazardous” is prohibited, notwithstanding express parental consent.[v] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn5) It is amusing to note that my dad and his brothers performed many of these tasks on neighbors’ farms, thus violating – though unknowingly – the Act’s express prohibitions.[vi] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn6) Considering the phalanx of federal regulations and broad statutory provisions, my dad could most certainly have been classified a child laborer.

Concerns over child labor are ongoing. Indeed, the United Nations has pledged to eliminate child labor by 2020.[vii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn7) Recently, the United Nations reported a steep decline in the international incidents of child labor.[viii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn8) However, it is uncertain as to how much the decline is due to a change in values as opposed to economic depression, and the U.N. stressed that child labor remains a problem of global significance.[ix] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn9) The cacao industry in particular has experienced international backlash over many of the producing countries’ use of child labor.[x] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn10) In 2001, several cacao producing corporations signed the Harkin-Engel Protocol, a document outlining a kind of war on child labor, signaling, at least on paper, an acknowledgment that the “worst forms of child labor” are a problem worthy of eradication.[xi] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn11) Interestingly, the Harkin-Engel Protocol defines “child” as anyone under the age of eighteen.[xii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn12)

Without a doubt, as a nation’s economy advances, so too must its economic ethos. A quick glance at the Fair Labor Standards Act’s provisions on child labor evinces an increased focus on classroom, as opposed to occupational, education.[xiii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn13) However, the very fact that the prohibition against child labor found its statutory articulation in the more general, and generally applicable, Fair Labor Standards Act, shows that the prohibition was part of a larger shift in cultural and economic values that transcended the discrete guidelines of the Act. Recognizing the larger framework within which a prohibition against child labor arose within the United States exposes an obvious problem with single-minded platforms such as the Harkin-Engel Protocol, for such prohibitions are a development of a cultural and economic paradigm shift that cannot be artificially enforced. While cacao industry leaders have attempted to implement the Harkin-Engel Protocol’s guidelines – initiating, for instance, more holistic programs aimed at tackling the child labor from a variety of areas, including greater mechanization of the harvesting process, and increased education of cacao farmers[xiv] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_edn14) -- for the most part, this industry-by-industry approach leaves the larger economic universe at the status-quo.

To be sure, the “worse forms of child labor” are an immediate threat to so many children worldwide; their plight is real, and all nations – particularly, developing nations – should take steps to move children out of the workforce and into the classroom. However, as the Western nations should know from history, and my dad knows from experience, child labor exists within a gray area of the ever-evolving economy and culture of a nation. Thus, the only true solution to the problem of child labor is neither an industry-by-industry prohibition nor a worldwide boycott of goods procured through the use of that labor. Instead, the solution lies in the wholesale development of each nation’s entire economy; only through economic advancement of the nation as a whole can labor shift to those more able to handle its burdens, while maintaining economic output capable of supporting the next generation.

[i] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_ednref1) See 29 U.S.C. 213(c)(2).

[ii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_ednref2) 29 U.S.C. 213(c)(2); 29 C.F.R. § 570.70(b).

[iii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_ednref3) 29 U.S.C. 213(c)(1)(B).

[iv] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_ednref4) Id.

[v] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_ednref5) 29 U.S.C. 213(c)(2); 29 C.F.R. § 570.70(a).

[vi] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_ednref6) See 29 C.F.R. § 570.71. “Hazardous occupations” are listed in this statute.

[vii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_ednref7) Randeep Ramosh, UN Unveils Plans to Eliminate Child Labour by 2020, The Guardian Online, Oct. 28 2012, <http://www.theguardian.com/world/2012/oct/29/un-eliminate-child-labour-2020>.

[viii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_adminf8) Patrick Barra, Use of Child Workers is Declining, The Wall Street Journal Online, Sept. 23 2013, <http://online.wsj.com/news/articles/SB10001424052702303983904579091211679247966>.

[ix] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_adminf9) Id.

[x] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_adminf10) Child Labor in the Production of Cocoa, United States Department of Labor Website, <http://www.dol.gov/ilab/programs/ocf/cococa/> [last visited Nov. 17, 2013].

[xi] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_adminf11) Id. A copy of the Harkin-Engel Protocol may be found at <http://www.harkin.senate.gov/documents/pdf/HarkinEngelProtocol.pdf>. In Article 3 of the Protocol, the “worst forms of child labor” are defined ambiguously as those comprising “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

[xii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_adminf12) Harkin-Engel Protocol, *supra*, art. 2.

[xiii] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_adminf13) 29 U.S.C. § 213(g)(1) and (4)(B)(i) (limiting employment to non-school hours); see also, 29 C.F.R. § 570.123(a) (stating that an exemption based upon “out of school out” is inline with Congressional intent behind the FLSA).

[xiv] (http://www.blogger.com/blogger.g?blogID=8202935745006855383#_adminf14) See, e.g., The Hershey Company’s Learn to Grow Program,

<http://sundline.mentet.com/news/2013/07/16/7278816.htm> [last visited Nov. 17, 2013] (emphasizing increases in both farmer education and a more efficient, less labor intensive harvesting process, along with funding for child education).

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