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HAROLD D. WOODMAN

POST-CIVIL WAR SOUTHERN AGRICULTURE AND THE LAW

Economic reconstruction in the South after the Civil War required far more than repairing damaged equipment, restoring neglected fields, and overcoming wartime shortages. It required a complete reordering of a slave society, the adjustment to, or, more precisely, the creation of a free-labor social system, with which neither blacks nor whites had had much experience. This social revolution centered on agriculture which had been and remained the South's leading economic sector, providing most of the region's wealth and employing the largest proportion of its labor force. Although the war brought some social reshuffling as a few gained and others lost fortunes, the distribution of landed wealth in the South remained nearly unchanged at the war's end.[1] Emancipation, of course, destroyed much of the wealth of the planter class, but, as the economists put it, emancipation brought not a loss of wealth to the South but a transfer of wealth from the slaveowners to the former slaves. Or, in more ordinary, and for our purposes, more useful language, the labor force remained, but the social organization that mobilized that labor force disappeared. Economic reconstruction may be seen as the building of a new social organization to replace the one destroyed by war.

Economic reconstruction had to begin immediately; its problems were far more pressing than those of political reconstruction. If people were to eat, they had to work. At the same time the process was long-

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[1] See Jonathan M. Wiener, "Planter Persistence and Social Change, 1850–1870," *Journal of Interdisciplinary History* 7 (Autumn 1976): 235–60; Kenneth S. Greenberg, "The Civil War and the Redistribution of Land: Adams County, Mississippi, 1860–1870," *Agricultural History* 52 (April 1978): 292–307.

term, lasting long after political reconstruction officially ended. The transformation of a slave society into one based on free labor took decades, requiring changes in political, social, and economic institutions as well as changes in the perceptions, outlook, expectations, and ideology of the population. This essay is concerned with one important aspect of that transformation—the evolution of the law relating to agriculture.

For the historian, law is a social phenomenon reflecting both the norms and the goals of a society as enunciated by the legislatures and the courts. Although the ideal is that law is always impartial and never arbitrary—it is said that we are a nation of laws, not men—it does not follow, even when reality approaches that ideal, that the law is somehow above the fray, unrelated to social and economic change. If some legal theorists and constitutional historians continue to stress abstract principles and the autonomy of the law and the legal process and if legal education often continues to emphasize fundamental ideas and basic legal skills while ignoring the relationship between law and political economy, most legal historians today seek to trace the connections between social and economic change and the development of the law.[2]

This point of view, which sees law as a form of social control, is especially useful in dealing with the agricultural South after the Civil War. Emancipation made the law of master and slave irrelevant; existing law concerning tenancy and free labor proved incomplete and inadequate to meet the needs of the new social relations. The new body of law altered the antebellum forms of social control and in the process both reflected and molded the new social relationships on the land.

The emphasis in this essay is on what is called the formal law, the enactments of legislatures and the rulings of courts. There are obvious dangers in relying exclusively on formal law when attempting to describe the workings of institutions and the relationships among classes. Some laws are openly flouted because penalties are slight, rarely assessed, or nonexistent. Unenforced laws or laws that are enforced in ways that do violence to the letter and spirit of the laws have far different effects from those that are vigorously and rigorously enforced,

2 There is a growing literature on the matter. I have found the following to be especially useful: Lawrence M. Friedman, *A History of American Law* (New York: Simon and Schuster, 1973); Friedman, *Contract Law in America* (Madison: University of Wisconsin Press, 1965); James Willard Hurst, *Law and Social Order in the United States* (Ithaca, N.Y.: Cornell University Press, 1977); Mark Tushnet, "A Marxist Analysis of American Law," *Marxist Perspectives* 1 (Spring 1978): 96–116; *Law in American History*, vol. 5 (1971) of *Perspectives in American History*, ed. Donald Fleming and Bernard Bailyn (Cambridge, Mass.: Charles Warren Center, Harvard University), a volume of original essays.

and the effects are different still when the laws are not uniformly enforced. Furthermore, access to the law requires information and entails expense; that the law provides protection, redress of grievances, or particular rights has little meaning to someone who is ignorant of the law's provisions or unable to pay legal fees.

Complicating matters even further is the existence of informal law —rules, regulations, and customs that allow settlement of differences without recourse to formal law, the legislature, and the courts. This informal law may be "legal" in the sense that it deals with matters which the formal law accepts or upon which it is silent; or it may be illegal in the sense that legislation and the courts have declared it so, but unless civil or criminal proceedings are undertaken, the formal law becomes immaterial.

A full study of the law and southern agriculture would therefore require an analysis of both the formal and the informal law. The goal of this essay is more limited. My purpose is to trace the ways in which the legislatures and the courts sought to deal with a wide range of new problems arising from emancipation and in so doing create the legal basis for a new dominant agricultural class based on a peculiarly southern free-labor system.

The attempt to return to production following the war raised problems that existing law and custom did little to solve. These difficulties were compounded by the disruption of the courts and the general uncertainties concerning the South's political status. Clearly, the freedmen now had to be paid to work, and the planters had no choice but to bargain with their former slaves to induce them to return to the fields. The yearlong written contract for wage labor, instituted by the army in occupied areas during the war and continued with the support of the Freedmen's Bureau after the war, gave southern labor relations a peculiarity from the start.[3] The contract was accepted by the landowner as a necessity to guarantee a labor supply throughout the year and was encouraged by the Freedmen's Bureau as a legal guarantee that workers would be paid for their labors. Contracts with farmhands were not unknown elsewhere. Midwestern farmers sometimes contracted with their hired hands, but, as David E. Schob notes, "It is not clear how many farmers actually negotiated formal contracts or whether these agreements always possessed legal power."[4]

[3] See J. Thomas May, "Continuity and Change in the Labor Program of the Union Army and the Freedmen's Bureau," *Civil War History* 17 (September 1971): 245–54.

[4] David E. Schob, *Hired Hands and Plowboys: Farm Labor in the Midwest, 1815–60* (Urbana: University of Illinois Press, 1975), 221. The size of the northern agricultural labor force grew during the nineteenth century, but in the corn belt in the

Even greater uncertainties concerning the legal status of contracts plagued the South, where many Freedmen's Bureau officials refused to enforce contracts they deemed unfair, where landlords wanted contracts that provided them with a work force that behaved much as it did under slavery, and where blacks, understandably enough, refused to contract and to work under conditions that differed little from slavery. Officially, the Freedmen's Bureau refused to force either party to sign contracts, but rather suggested model contracts which, if signed, it agreed to enforce. Landlords sought their goals in the legislatures under Johnson's reconstruction plan through the black codes, but these were short-lived. The blacks sought to improve their status by withholding their labor, refusing to agree to contracts that created conditions they deemed intolerable, but their general poverty and the withdrawal of aid by the Freedmen's Bureau reduced their bargaining power.

Adding to the confusion was another innovation—the widespread use of share wages, whereby planters with little working capital contracted with their workers to pay their wages in the form of a part of the crop. From the planters' point of view this method had two distinct advantages. First, they needed less working capital since no cash payments were made before the crop was sold; second, they had added guarantees that their work force would remain throughout the crop year because workers would not be paid until the crops were harvested. This peculiar form of wage payment resembled, but in fact was completely different from another scheme landlords began to use to get back into production—the leasing of land with the rent paid in the form of a share of the crop.

Both systems posed new problems. When the payment of wages or rent was delayed until the end of the year, the danger that payment would not occur became immediately apparent. Furthermore, workers and renters, without funds until the harvest, required support through the growing season, and again the question of repayment arose.

The uncertainties concerning federal reconstruction policy and the lack of experience in the operation of a free-labor system would have made matters confusing enough. Landlords, laborers, tenants, Freedmen's Bureau officials— all had very different perceptions of the obligations the contracts entailed. Moreover, the law, muddled, sometimes contradictory, and often silent, offered little guidance. Reports from

mid nineteenth century the relatively few hired hands that were employed were mainly family members, neighbors, or nearby town dwellers who worked during peak periods. See Allan G. Bogue, *From Prairie to Corn Belt* (Chicago: University of Chicago Press, 1963), 182–87.

the Freedmen's Bureau officials amply illustrate many of the problems.

One recurrent problem was outright fraud. Some planters contracted with workers to pay them a share of the crop only to drive them off at the end of the season without paying them their share.[5] When other planters were willing to divide the crop and pay the promised shares, conflicts often arose as to when the division should be made. R. K. Scott, the assistant commissioner in South Carolina, reported in November 1867 that the freedmen wanted "their portion [of cotton] on the ground as soon as ginned," but the planters wanted to pay the workers their share in cash after the sale so as not to "lose the opportunity of collecting dues for supplies &c advanced to their employees."[6] An agent in South Carolina reported that "the cotton planters desire to give the freedmen a share of the *net proceeds,* instead of cotton itself, hoping thereby to prevent dishonest traders from swindling the freed people or inducing them to steal cotton for the purpose of trading it for whiskey, brass jewelry &c."[7]

The length of the contract and the responsibilities of the workers were also disputed. Planters generally expected workers to remain at work until the end of the year. But the freedmen usually insisted that their responsibilities ended when they had grown and gathered a particular crop; land maintenance and preparation for the next year's crop, they insisted, were additional tasks for which they should receive additional compensation.[8] Identifying the shares opened additional conflicts which reflected the desire of the freedmen to escape the gang-labor system reminiscent of slavery. At first, most planters wanted the laborers to work in gangs as they did before emancipation; the freedmen would then receive their share as a group. But the freedmen preferred working particular areas and then being paid a share of the particular crop they cultivated and gathered.[9]

Clearly, in the first few years after the Civil War the inexperience of both planters and freedmen in the workings of a free-labor system

[5] Bureau of Refugees, Freedmen and Abandoned Lands, Bureau Records, Office of Commissioner, Synopses of Letters and Reports Relating to Conditions of Freedmen and Bureau Activities in the States, January 1866-March 1869, 3 vols. (handwritten copies) 1:28–37, 390, 438; 2:39, 140; 3: passim. (This can be found in Record Group 105, National Archives, Washington.) In January 1869 the assistant commissioner of Arkansas wrote that troops had been used to seize and hold the crops in order to insure the promised division (ibid., 3:80). On 15 May 1866 J. B. Kiddo, Texas assistant commissioner, taking the law into his own hands, issued a circular "giving the laborers a lien upon the crop" for their wages (ibid., 2:70).

[6] Ibid., 3:244.

[7] Ibid., 1:279, 492.

[8] Ibid., 1:413, 487; 2:129–32; 3:487.

[9] Ibid., 1:417.

and the absence of relevant law and custom contributed to these and similar problems. But behind the inexperience were sharp differences arising from the conflicting goals and interests of each class. The planter sought to return his lands to production using a reluctant labor force, while the freedman, without land or property, sought a status as far removed from slavery as possible. The planter wanted to maintain control of his property and the management of production in order to earn profits from his enterprise, but the freedman wanted to attain a large measure of independence, to exercise some control over management (hours and pace of work, crops to be planted, etc.), and to make purchases to meet his needs and desires as he himself determined. The ensuing conflict produced new laws and customs which determined the basic features of southern agriculture until well into the twentieth century.

Over the years a bewildering array of land-tenure arrangements emerged, but amid the variety two basic forms may be discerned. The first was tenancy, for which there existed a body of law concerning landlord and tenant. The second was sharecropping, a far less traditional tenure form, which grew out of the exigencies of the postwar adjustment and created a peculiar form of wage labor for which there was little legal precedent. Unfortunately, most historians have confused the two forms, in large part, I suspect, because some of the most commonly used historical sources often confused the two. For example, it was not until 1880 that the census differentiated tenants from owners in the general category of farm operators and not until 1920 that the census designated a category of sharecropper—and even then the cropper was listed as a special form of tenant. Because rent was often paid in the form of a share of the crop (giving it a superficial resemblance to sharecropping) and because landlords (and sometimes the courts) were occasionally imprecise in their use of language, the differences between the two forms have been widely misunderstood. Nevertheless, there were significant differences, and most contemporaries were well aware of them.

The law in every southern state, usually as early as the 1870s, sharply distinguished between the landlord-tenant relationship (which included payment of rent in the form of a share of the crop) and the landlord-cropper relationship. A South Carolina Court of Appeals succinctly summarized the difference:

> The fundamental distinction between the relationships of landlord and cropper and landlord and tenant is in the fact that the status of a cropper is that of a laborer who has agreed to work for and under the landlord for a

certain proportion of the crop as wages, but who does not thereby acquire any dominion or control over the premises upon which such labor is to be performed, the cropper having the right merely to enter and remain thereupon for the purpose of performing his engagement; whereas a tenant does not occupy the status of a laborer, but under such a contract acquires possession, dominion, and control over the premises for the term covered by the agreement, usually paying therefor a fixed amount either in money or specifics, and in making the crop performs the labor for himself and not for the landlord.[10]

The cropper, then, was a wage laborer, his wages being a portion of what he produced paid *to* him *by* the landlord. The tenant was a renter who paid rent *to* the landlord for use of the land; it did not alter that relationship if the rent was a portion of the crop produced.

The distinction was not mere pettifogging by lawyers and judges. On the contrary, it became the legal basis for differences in the treatment of those who worked the land and for differences in the rights and obligations of the parties involved. Although tenancy had existed in both North and South before the Civil War and continued after the war, the cropper relationship was confined to the South and was, with one

[10] Souter v. Cravy, 29 Ga. App. 557, 116 S.E. 231 (1923). For early court cases that clearly made the distinction, see Christian v. Crocker, 25 Ark. 327 (1869); Appling v. Odom, 46 Ga. 583 (1872); Lalanne Bros. v. McKinney, 28 La. Ann. 642 (1876); Betts, trustee v. Ratliff, 50 Miss. 561 (1874); Carpenter v. Strickland, 20 S.C. 1 (1883); Hunt v. Wing, 57 Tenn. 139 (1872); Horseley v. Moss et al., 5 Tex. C.A. 341, 23 S.W. 1115 (1893); Parrish v. The Commonwealth, 81 Va. 1 (1884); Moore et al. v. Linn et al., 19 Okl. 279, 91 P. 910 (1907). In Alabama, an Act of 9 February 1877 made the distinction which the courts thereafter followed. North Carolina is something of an exception. Courts in that state made the distinction as early as 1837: State v. Jones, 19 N.C. 544 (1837); Denton v. Strickland, 48 N.C. 61 (1855). The courts continued to make the distinction in the early postwar years: State v. Burwell, 63 N.C. 661 (1869); Wolston v. Bryan, 64 N.C. 764 (1870); Harrison v. Ricks, 71 N.C. 7 (1874). Then in the Landlord-Tenant Act of 1876–1877 the legislature abolished the distinction. The law stated that crops of both the tenant and the cropper were in possession of the landlord until he made the division. The effect was to abolish the legal rights of a tenant and make him a cropper. In Alabama the distinction, set down in law in 1877, was abolished in the Code of 1923 (Section 8807). Unlike North Carolina, however, the Alabama law abolished the landlord-cropper relation and made croppers as well as true tenants into tenants. A good discussion of the North Carolina situation is Marjorie Mendenhall Applewhite, "Sharecropper and Tenant in the Courts of North Carolina," *North Carolina Historical Review* 31 (April 1954): 134–49. The cropper relationship bears some similarities to the relationship courts have called "tenants in common in the crop." In this arrangement the "tenant" is not a full tenant in the sense of having complete control and possession of the land and crops raised on it, nor is he an employee due a part of the crop as wages. Rather, it seems, the landlord retains control of the land and he and his "tenant" have a joint interest in the crop. See Bradish v. Schenck, 8 Johns 151 (N.Y. 1811); Caswell v. Districh, 15 Wend. 379 (N.Y., 1836); Alwood v. Ruckman, 21 Ill. 200 (1859).

possible exception, a postwar institution.[11] Sharecropping became the South's new peculiar institution, a unique form of wage labor that grew up on the war-created debris of the old peculiar institution. Tracing the evolution of the system in the courts and the legislatures will provide the details of its operation and give insight into its significance for southern economic and social development after the Civil War.

Sharecropping was essentially the continuation of the use of share wages which, as I have indicated, enabled planters immediately after the war to return to production with a minimum of working capital and a maximum of season-long control of their work force.[12] So long as the workers continued to work in gangs under central direction by the planter or his overseer, no legal problem concerning the basic features of the relationship arose. The crop produced belonged to the landlord, but he was obligated by the terms of the contract to divide either the crop or the proceeds from the sale of the crop (recall, there was some dispute on this point) with the workers, the workers' shares being wages in kind (if the crop itself was divided) or money wages (if the proceeds were divided). But, when the freedmen insisted that they be given specific plots of land to work and receive their share from the crops grown on their specific plots, the legal situation became more murky. Two routes were available and both were taken, often without a clear understanding of the legal and operational results. The workers could remain wage laborers paid a specific portion of what they produced, or the workers could become tenants who paid a specific portion of what they produced as rent to the landlord.

The significance of this seemingly academic distinction becomes clear when we view it in terms of two other matters of concern to the planters—management or supervision and credit. Croppers and most tenants required credit (both for production and for consumption) over the long period during which the crops were planted, cultivated, and harvested. If the workers remained wage laborers (paid in cash or a share of the crop) the landlord retained his managerial control, but those

11 The exception, noted above, is North Carolina. Aside from the tenancy in common in the crop (noted above) I have found no evidence in court cases of the cropper relationship existing before the Civil War. See A. B. Book, "A Note on the Legal Status of Share-Tenants and Share-Croppers in the South," *Law and Contemporary Problems* 4 (October 1937): 539. Book was a member of the legal staff of the Agricultural Adjustment Administration (AAA) during the New Deal and in that capacity studied the law of landlord-tenant relations in each southern state. His typewritten memoranda, upon which I have relied heavily for guidance in the case reports, may be found in Record Group 16: Records of the Office of the Secretary of Agriculture, General Correspondence, Office of the General Counsel, AAA, File 466—Landlord-Tenant, National Archives, Washington.

12 Again, a possible exception to this is North Carolina.

who granted credit to the workers were left without security for their loans because the landlord retained ownership of the crop (the only source of security for loans) until the division.[13]

The crop-lien laws were designed to provide that absent security. The earliest laws, passed in the immediate postwar years, gave those who provided supplies needed to make a crop a lien on the proceeds of that crop when gathered.[14] These laws, all passed by legislatures elected under Johnsonian reconstruction policies, made no distinction among suppliers; *anyone* who advanced the necessary supplies received the statutory lien which was superior to any other claims on the crop except, in every case, the landlord's lien for rent. This exception in 1866–1867 was of minor significance insofar as the freedmen were concerned because very few were renting land at that early date. In fact, this exception merely carried forward a long-standing legal tradition that a landlord had a lien on his tenant's property to the extent of the rent due.[15] When the postwar laws were passed, landlords were not renting their lands; they were working their lands—or expected to work them —using wage labor paid in cash or in a share of the crop. The purpose of the first lien laws was to give security to those who advanced supplies

[13] The law was quite clear and undeviating in this matter. When the relationship was that of cropper and landlord, the landlord had possession and control of the entire crop until he made the division. When the relationship was that of landlord and tenant, the tenant had possession and control of the entire crop until he made the division. The courts never had trouble drawing these conclusions although they sometimes did have trouble deciding whether a particular contract or oral agreement created a landlord-tenant or a landlord-cropper relationship. In addition to the cases cited in note 10 above, see the following as examples among many: Ponder v. Rhea, 32 Ark. 435 (1877); Sentell v. Moore, 34 Ark. 687 (1879); Hammock v. Creekmore, 48 Ark. 264, 3 S.W. 180 (1887); Bourland et al. v. McKnight & Bros., 79 Ark. 427, 96 S.W. 179 (1906); Johnson v. Mantooth, 108 Ark. 36, 156 S.W. 448 (1913); Barnhardt v. State, 169 Ark. 567, 275 S.W. 909 (1925); Almand v. Scott, 80 Ga. 95, 4 S.E. 892 (1888); McElmurray v. Turner, 86 Ga. 212, 12 S.E. 358 (1890); DeLoach et al. v. Delk, 119 Ga. 884, 47 S.E. 204 (1904); Fields v. Harris, 34 Ga. App. 445, 129 S.E. 664 (1925); Holmes v. Payne, 4 La. App. 345 (1926); Jones v. Dowling, 12 La. App. 362, 125 So. 478 (1929); Lumbley v. Thomas, 65 Miss. 97, 5 So. 823 (1887); Alexander v. Zeigler, 84 Miss. 560, 36 So. 536 (1904); McCutchen v. Cranshaw et al., 40 S.C. 511, 19 S.E. 140 (1894); Malcolm Mercantile Co. v. Britt, 102 S.C. 499, 87 S.E. 143 (1915); People's Bank v. Walker, 132 S.C. 254, 128 S.E. 715 (1925); Turner v. First National Bank of Sulphur Springs, 234 S.W. 928 (Texas C.A., 1921); Brown v. Johnson, 118 Tex. 143, 12 S.W. (2d) 543 (1929).

[14] Ala., Jan. 15, 1866, *Acts, 1865–66,* p. 44; Miss., Feb. 18, 1867, *Acts, 1867,* p. 569; Ga., Dec. 15, 1866, *Acts, 1866,* p. 141; S.C., 1869, 13 *Stat.* 380; N.C., *Public Laws, 1866–67,* p. 3.

[15] A discussion of the law by a Tennessee court showed that the law giving a landlord a lien for rent went back at least to 1825: Schoenlau-Steiner Trunk Top & Veneer Co. v. Hilderbrand et al., 152 Tenn. 166, 274 S.W. 544 (1925), at 547. See also Case v. Hart, 11 Ohio 364 (1842); Esdon v. Colburn, 28 Vt. (2 Williams) 631 (1856).

(equipment as well as food and clothing) to workers to enable them to make a crop.

Problems became immediately apparent. One concerned the extent of the supplier's lien. If it extended only to the workers' shares and if, as was the case in the crop years immediately after the Civil War, the workers' shares did not cover the advances, the lien proved inadequate security. If the lien was on the workers' entire production the loans by the supplier became more secure, but it left the landlord without security, i.e., his portion of the proceeds of the crop might be taken by the lender. This situation helps to explain the planter complaints about merchants mentioned earlier and the violence directed against newcomers in the merchandising business, especially against northerners who moved in in large numbers to take advantage of the business opportunities.[16] Workers, landlords, merchants, all claimed rights to a gathered crop that was often too small to satisfy their combined claims.

But the law soon provided the landlord, if not the workers and merchants, with the protection he needed. In this context the legal distinction between a tenant and a cropper becomes relevant. If a cropper was merely an employee of the landlord and if the landlord therefore had possession and control of the entire crop until he divided it with his employees, it would follow that a lien for advances given by the worker to a merchant could not touch the landlord's share because the lien would not become operative until the landlord took his share and gave the employee his share.[17]

With the law interpreted in this way, the landlord had little reason to be concerned that the merchant would take his share via the crop lien (unless, of course, he borrowed from the merchant himself). But there were other, equally serious, problems. Behind the complaints against the merchants was the landlord's fear of losing control over his work force, a control he hoped to retain by supplying his workers himself. Merchants provided competition in the supply business, and the existing law which gave any supplier a lien seemed to protect this competition. Landlords sought and received legal redress. Under landlord pressure, each state enacted legislation that extended the landlord's lien for rent to cover also all landlord advances and made the land-

[16] For examples of violence directed against northern merchants see U.S. Congress, House, *The Ku-Klux Conspiracy: Report and Testimony Taken by The Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States,* 42 Cong., 2 sess., H. Rept. 22, 13 vols. (Washington: GPO, 1872), 3:41–45, 273, 284–85.

[17] See cases cited in note 13 above.

lord's lien for rent and advances superior to all other liens and mortgages.[18]

The new laws, passed by redeemer legislatures, gave the landlord the desired control over his labor force. If he rented his land, he had a statutory lien superior to all other liens for the rent; if he used cropper labor, the law considered the cropper a mere employee, giving possession and control of the crop to the landlord (employer), and therefore he could take his share of the crop as it was gathered;[19] and in both cases, if he advanced any supplies to make the crop, he had a statutory lien on the tenant or cropper's share of the crop for the value of the supplies advanced. Clearly, these laws increased the landlords' power in the black belt and limited that of the merchants. Other laws that prohibited or regulated the sale of seed (unginned) cotton and forbade the sale of cotton and other crops after sunset had the same effect.

Jonathan Wiener, who has studied this development in Alabama, notes that as a result the merchants shifted "toward the white yeomen areas outside the black belt, where they could continue to take crop liens without fear that the debtors' crops would go to planters instead of themselves."[20] This is certainly true not only in Alabama but in the other southern states as well. But the development of the furnishing merchant system in the hill country populated largely by white yeomen was as much the result of increased business opportunities in these areas as it was of diminished opportunities in the black belt. Hill country farmers also needed credit, and the expansion of cotton and tobacco acreage in these areas attracted merchants who provided supplies, consumption goods, marketing facilities, and credit.

18 Alabama: Mar. 8, 1871, *Acts, 1870–71,* p. 19. A Mississippi law in 1872 (*Acts, 1872,* ch. 107) gave "every employer" a prior lien on the crop of his employee. Laws in 1876 and 1877 (*Acts, 1876,* p. 109; *Acts, 1877,* p. 83) limited the landlord's lien for advances slightly. If the merchant had negotiated his lien before the landlord provided supplies and if the merchant notified the landlord of that fact, the merchant's lien would be superior to the landlord's for advances. The *Code of 1880,* sec. 1301 gave the landlord his lien without these reservations. See also Newman et al. v. Bank of Greenville et al., 66 Miss. 323, 5 So. 753 (1889). Georgia: *Acts, 1874,* p. 18 (which repealed a law of a year earlier giving the lien to *any* supplier) reserved the prior lien for supplies to the landlord. South Carolina: 16 *Stat.* 743 (1878). This law led to some confusion; it was unclear whether the landlord's lien for advances had to be in writing to be valid. The courts finally ruled it did not. Nexsen v. Ward et al., 96 S.C. 313, 80 S.E. 599 (1914). North Carolina: *Laws, 1876–77,* ch. 283, pp. 551–54. Louisiana: *Acts, 1874,* Act 66. Tennessee: Act of 1879 (*Mill & V. Code,* sec. 4283). Arkansas: *Acts, 1885,* p. 225.

19 North Carolina, as noted above, did not distinguish between tenants and croppers after the law of 1876. Both were considered croppers.

20 Jonathan M. Wiener, "Planter-Merchant Conflict in Reconstruction Alabama," *Past & Present,* no. 68 (August 1975), 88.

At the same time, however, ample opportunities remained for black belt merchants. Many continued to serve the landlords much as they had before the war, providing (as the prewar factors had done) supplies to the landlords who then passed these supplies on to their tenants and croppers. In such cases the landlord had a statutory lien on the crops of his tenants or croppers but the merchant could secure his loan with a mortgage on the landlord's crops and other property, including his land. Furthermore, many landlords preferred to rent land and allow their tenants to make their own arrangements for supplies, in which event the merchant supplier would have a statutory lien to secure his advances, a lien inferior only to the landlord's lien for rent. Laws in Georgia (1875) and in Alabama (1877) allowed landlords to assign their liens for supplies to a merchant and gave the merchant the landlord's lien when such assignments were made.[21] In other states it was always possible for the landlord to waive his lien for rent or advances or both.[22] But no assignment or waiver of the landlord's lien for supplies was required if the landlord declined to make advances. In the absence of the landlord's lien for supplies, the merchant's lien would prevail. Finally, black belt merchants found customers among the small landholders in the area just as the country stores had served such people before the Civil War.

Antagonism between merchants and landlords did not disappear. Indeed, many of the cases listed in the court reports under the general category, "Landlord and Tenant," concerned disputes between landlords and merchants over their rights to a crop produced by tenants and croppers. But these were minor disputes within the business class, easily settled under the new laws that provided the legal basis for a new landlord-merchant business class that came to dominate southern agriculture by the end of the nineteenth century. Sometimes landlords and merchants remained separate, the landowners preferring to rent their land to tenants, giving little or no direct supervision, occupying their time in other pursuits, and leaving the supply and credit business to local merchants. Sometimes landlords became merchants supplying their tenants and croppers. Then too, merchants often acquired land and became landlords when landowners to whom they advanced supplies and funds were unable to repay their debts.

21 Georgia: *Acts, 1875,* p. 20; Alabama, *Acts, 1876–77,* p. 75. Mississippi courts ruled that the landlord's lien was assignable although it is not entirely clear whether all the rights of the landlord went to the assignee. See Newman et al. v. Bank of Greenville et al., 66 Miss. 323, 5 So. 753 (1889).

22 Dreyfus et al., v. W. A. Gage & Co., 84 Miss. 219, 36 So. 248 (1904); Valentine v. Edwards, 112 Ark. 354, 166 S.W. 531 (1914); Foxworth v. Brown et al., 120 Ala. 59, 24 So. 1 (1898).

The same law that created a business class out of former slaveowners and country storekeepers transformed former slaves and self-sufficient yeomen into free workers and commercial tenant farmers. Failure to distribute land and to provide blacks protection from violence and intimidation, defeat of the Alliance and Populist reform efforts, and disfranchisement of the blacks and many whites deprived the former slaves and yeomen of the political and economic power to protect themselves while the laws of tenancy, sharecropping, and crop liens molded them into a rural working class dominated by the landlords and merchants. The laws defining the landowner-sharecropper relation made the cropper a wage worker paid in kind and subject to the rules and regulations set by his employer. The tenancy laws gave the tenant more control over his work regime and crop mix, but these legal rights had little meaning if, as was usually the case, he had to turn to his landlord or merchant for credit.

The lien laws, designed first to secure lenders whose customers lacked collateral other than a crop to be grown in the future and then to differentiate among the claims of various lenders, also contained provisions to protect the borrower. But the courts almost completely stripped away this protection, thereby tightening the control of the merchant-landlords over their work force. One such area of borrower protection coming under court scrutiny concerned the extent and duration of the lien.

The laws of each state explicitly stated that liens for advances were valid only against the particular crop for which they were made. In Alabama, however, the courts construed this limitation virtually out of existence when it ruled in 1888 that "when the tenant fails to pay any part of such rent or advances, and continues his tenancy under the same landlord, on the same or other lands, the balance due therefor shall be held and treated as advances to him by the landlord for the next succeeding year, . . . for which a lien shall attach to the crop of such succeeding year."[23] Mississippi courts were even more liberal, allowing borrowers to "agree" to let the lender apply the first proceeds from the current crop to a previous debt before making payments on the current year's lien.[24] Georgia courts were stricter in their interpretation, but they offered a simple device for lenders to overcome the problem: if the lender took all the borrower's goods—crops, tools, and personal possessions—to pay the debt and then returned these items, the returned goods then became an advance for the next year and

23 Powell v. State, 84 Ala. 444, 4 So. 719 (1888).
24 Hollingsworth et al. v. Hill et al., 69 Miss. 73, 10 So. 450 (1891).

came under the lien.[25] Thus, despite the literal meaning of the law, landlord-merchants could easily keep their borrowers in debt and preserve their lien to cover old as well as new debts.

When debts could be carried over in this manner lenders not only had added security for their loans but also added control over their work force. Should a good year follow a bad, the added income that a tenant or cropper might earn could be immediately appropriated to pay an old debt without additional recourse to the law. Moreover, a tenant or cropper whose old debts fell under the new year's lien would be unable to bargain for better terms elsewhere because a new lender would have an inferior lien and therefore scant security for his loans. The old lender, without fear of competition from others, could then apportion new loans in a manner best designed to secure himself from loss. A tenant or cropper without cash or an alternative source of loans had no choice but to accept the terms as offered. With control over expenditures the lender dictated production decisions. But his control extended also to the personal lives of his borrowers who required loans for food, clothing, medical attention, and luxury items. Completing the circle of control, the courts ruled that these personal loans were necessary for production and therefore were covered by the liens.[26]

His ability to accumulate some personal property gave the tenant or cropper a certain amount of independence, but lenders easily negated this potential interference with their control by requiring borrowers with personal property to give a chattel mortgage on such property in addition to the lien (which covered only the crop grown). Ending the year in debt in such circumstances meant that the borrower could lose everything he owned—be "closed out" was the term often used—and

[25] Parks v. Simpson, 124 Ga. 523, 52 S.E. 616 (1905); Fountain v. Fountain, 7 Ga. App. 361, 66 S.E. 1020 (1910); Harmon v. Earwood, 29 Ga. App. 399, 115 S.E. 502 (1923); Thornton v. Hinson, 30 Ga. App. 200, 117 S.E. 273 (1923). In North Carolina a landlord allowed a tenant to keep some corn, fodder, and seed although he was still in debt. The court ruled that the items kept constituted a new advance for the following year and thus was covered by the landlord's lien: Thigpen v. Maget, 107 N.C. 39, 12 S.E. 272 (1890).

[26] Evidence in an Alabama case showed a tenant indebted to his landlord "for various items of tobacco and snuff, for a sum advanced to relieve [tenant's] mules of a mortgage which was about to be foreclosed, and for a fee . . . paid [by the landlord] on the [tenant's] account for a lawyer." The court ruled that these could be considered a part of the landlord's lien for advances: "The statute confers a lien for everything useful for the purposes enumerated, or tending to the substantial comfort and well-being of the tenant, his family, or employees about the service": Donaldson v. Wilkerson, 170 Ala. 507, 54 So. 234 (1911). See also Cockburn v. Watkins, 76 Ala. 486 (1884). An Arkansas court even allowed a sewing machine to come under the landlord's lien for advances to make a crop, using much the same reasoning: Earl Bros. & Co. v. Malone, 80 Ark. 218, 96 S.W. 1062 (1906). The Georgia lien law (*Acts, 1873*, p. 43) included as supplies clothing, medical services, schoolbooks, and support for families.

then have these same items returned as an advance. Even personal property exemption laws designed to prevent the seizure of a given amount of personal property offered little relief to tenants and croppers. In Texas, for example, the law provided that the exemption did not apply to debts "due for rents or advances made by a landlord." The courts also ruled that croppers, because they were employees and had no stake or possession in the land, could not claim a personal property exemption.[27] Finally, even when an exemption might prevail, a borrower could waive his exemption, a waiver that lenders would require and most borrowers in need of supplies could not refuse.

The laws that made croppers employees rather than tenants and gave possession and control of the entire crop raised by croppers to the landlord until he divided it made it possible to use the criminal as well as the civil law to control croppers. Because the crop belonged to the landlord until he divided it, a cropper could be convicted of theft if he removed or sold any part of it before the division was made, and the one buying the goods would be guilty of receiving stolen merchandise.[28] Under such circumstances a landlord had the right to use force to prevent the cropper from taking any portion of the crop, even that portion which would eventually be his share.[29]

Laws designed to insure the fulfillment of contracts were supposed to offer some protection to tenants and croppers, but in fact they seldom did so; more often they increased the powers of the landlord-merchants. The most important legislation protecting the cropper was the laborer's lien laws. Enacted by radical legislatures in an attempt to insure that freedmen contracting to be paid in a share of the crop received their shares, these laws remained in force after the radical governments disappeared.[30] But the laborer's lien was inferior to that of the landlord

27 *Acts, 1874,* p. 55. A tenant could have a homestead exemption against lenders other than landlords (but it would end when his contract ended and he left the land), but a cropper had no homestead exemption at all. See Webb v. Garrett, 30 Tex. C.A. 240, 70 S.W. 992 (1902); Watson v. Schultz, 208 S.W. 958 (Tex. C.A., 1919).

28 Two South Carolina croppers were convicted of grand larceny for selling a part of the crop they raised before the landlord received his share and repayment for advances. The person to whom the cotton was sold was convicted of receiving stolen merchandise. The State Supreme Court upheld the conviction: State v. Sanders et al., 110 S.C. 487, 96 S.E. 622 (1918). See also Brown v. State, 2 Ga. App. 657, 58 S.E. 1070 (1907). In this case a Georgia cropper was convicted of theft under the penal code for selling a part of the crop before the landlord received his share and advances. The Court of Appeals reversed the conviction on the grounds that the evidence showed that the landlord had in fact received his share and advances. But the court did not dispute the applicability of the penal code.

29 State v. Austin, 123 N.C. 749, 31 S.E. 731 (1898).

30 Arkansas: July 23, 1868, *Acts, 1868,* p. 245. Mississippi: Apr. 5, 1872, *Acts, 1872,* p. 13 (making laborer's lien superior to *all* liens; *Code of 1880,* sec. 1361 (making laborer's lien superior *except* landlord's lien for rent and advances. Alabama: Feb.

for rent and supplies. This seriously weakened the laborer's lien. If, as was often the case, someone rented a large tract of land and then worked it by hiring sharecroppers, the croppers would have a laborer's lien for their share, but this lien would not take effect until the tenant that hired them paid his rent, and if, after doing so, he could not pay his croppers their share, they had no recourse.[31] Similarly, if a landlord rented land and provided supplies to a tenant who then hired wage workers or croppers, the landlord's lien for rent and advances would be superior to the laborer's lien.[32] However, it would appear (although the evidence is not entirely clear) that if a tenant hired wage laborers or croppers and mortgaged the crops to a merchant to supply the workers, the laborer's lien would be superior to the merchant's.[33]

If the laborer's lien was weakened by being subordinated to most of his employer's debts, it was further undermined by laws that deprived him of his lien if he failed to fulfill his contract. Although the courts consistently ruled against landlords who unlawfully forced their tenants and croppers to abandon the land and crops they worked, there were significant differences in the treatment of landlords and croppers or tenants. If the tenant or cropper voluntarily abandoned the crop on which he was working, he forfeited all wages or shares due him irrespective of how much of the work he had already completed. An Arkansas law of 1883 stated that in addition the cropper was liable to his employer for any money owed him.[34] If, on the other hand, a land-

9, 1887, *Acts, 1876–77,* p. 74. South Carolina: 14 *Stat.* 229 (1869) in which it is not clear if laborer's lien is superior to landlord's lien; 16 *Stat.* 410 (1878) in which laborer's lien is made inferior to that of landlord's for rent and advances. Georgia: 1873, *Acts, 1873,* pp. 42–43.

31 Rousey v. Mattox, 111 Ga. 883, 36 S.E. 925 (1900); Hamilton v. Blanton, 107 S.C. 142, 92 S.E. 275 (1917); Gardner v. Head, 108 Ala. 619, 18 So. 551 (1895); Hudson v. Wright, 1 Ala. Ap. 433, 56 So. 258 (1911); Land et al. v. Roby, 56 Texas C.A. 333, 120 S.W. 1057 (1909).

32 If a landlord rented land and supplied a tenant who then hired croppers, the landlord's lien for rent and advances would extend through the tenant to the tenant's croppers and thus be superior to the croppers' laborers' lien. See Gardner v. Head, 108 Ala. 619, 18 So. 551 (1895); Newman et al. v. Bank of Greenville, et al., 66 Miss. 323, 5 So. 753 (1889); Hollingsworth et al. v. Hill et al., 69 Miss. 73, 10 So. 450 (1891); Burgie v. Davis, 34 Ark. 179 (1879); Hunt v. Wing, 57 Tenn. 139 (1872).

33 See Sheeks-Stephens Store Co. v. Richardson, 76 Ark. 282, 88 S.W. 983 (1905); Watson v. May, 62 Ark. 435, 35 S.W. 1108 (1896); Birt v. Greene & Co. et al., 127 S.C. 70, 120 S.E. 747 (1924); DuRant v. Home Bank of Barnwell, 129 S.C. 283, 124 S.E. 12 (1924).

34 Hibbard v. Kirby, 38 Ark. 105 (188–); Latham v. Barwick, 87 Ark. 328, 113 S.W. 646 (1908); Harvey v. Lewis, 19 Ga. Ap. 655, 91 S.E. 1052 (1917); Payne v. Trammell, 29 Ga. Ap. 475, 115 S.E. 923 (1923); Salley v. Cox, 94 S.C. 216, 77 S.E. 933 (1913); Hardwick v. Page, 124 S.C. 111, 117 S.E. 204 (1923). In Louisiana, if tenants gave inadequate attention to their work the landlord could stop advances, repossess any of his property, and take over the crop: Harrison v. Goldberg, 133 La. 389, 63 So.

lord unlawfully forced the tenant or cropper to abandon the land and crop upon which he was working, his penalty was mild. In the words of an Arkansas court, the laborer wrongfully expelled could collect damages to the extent of what "he would have earned for his services under the contract if he had been permitted to perform the contract, less what he earned in other employment or could by reasonable effort have earned during the unexpired period."[35]

Tenants and croppers so hedged in by the law still had a way out. If pressed by one landlord, they could leave and find another, leaving the first landlord with an unfinished crop and and unpaid debt. This problem led landlords to seek further legal means to insure the inviolability of contracts. Legally, of course, those who signed a contract (or agreed orally to it) were bound to meet its stipulations and, as we have seen, both parties had legal recourse. Yet, in most cases, this had little meaning. A worker under the best of circumstances usually lacked the resources to hire a lawyer and sue his employer, and a black worker faced the added problems of racist lawyers, judges, and juries and the danger that his complaints would lead to physical violence. But the employer was little better off. He could count on a sympathetic judge and jury, but the amount involved was usually so small as to make litigation unprofitable. Even if the landlord received a favorable judgment, the absent worker, if he could be found, would surely be without resources and the judgment would be meaningless. One possible alternative would be to make the breaking of contractual obligations a criminal as well as a civil offense, in which case, a judgment could lead to the return of the offending worker under penalty of jail. The so-called anti-enticement laws which made it a criminal offense to contract with a worker or tenant already under contract and other laws making it a criminal offense to sign a contract and not fulfill it after receiving money or other advances were designed to impose criminal penalties for civil offenses. Despite their manifest unconstitutionality, many of these laws remained in force well into the twentieth century.[36]

59 (1913); Dixon v. Alford, 143 So. 679 (La. App., 1932); Dixon v. Watson, 143 So. 683 (La. App., 1932).

35 Somers v. Musolf, 86 Ark. 97, 109 S.W. 1173 (1908). In Georgia a case involved a black cropper who was first threatened and then beaten and shot by the landlord in an attempt to get the cropper to leave. The court merely ruled that this was illegal and the cropper had a right to his share: Bussell v. Bishop, 152 Ga. 428, 110 S.E. 174 (1921). See also Williams v. Cocke, 6 So. 774 (Miss., 1889); Rogers v. McGuffey, 96 Tex. 565, 74 S.W. 753 (1903); Fagan v. Vogt, 35 Tex. C.A. 528, 80 S.W. 664 (1904); Crews v. Cortez, 102 Tex. 111, 113 S.W. 523 (1908); Rupert v. Swindle, 212 S.W. 670 (Tex. C.A., 1919); Barnett v. Govan, 241 S.W. 276 (Texas C.A., 1922).

36 The Georgia antienticement law made it a criminal offense to hire someone already under contract. See *Acts, 1901,* p. 63, amended; *Acts, 1903,* p. 91; *Civil Code,*

By the beginning of the twentieth century a new legal system supported and legitimized a new agricultural South. More accurately, it helped to create two very different agricultural Souths. There was the South of *Tobacco Road,* of *The Grapes of Wrath,* of *Let Us Now Praise Famous Men,* a South of poverty, deteriorated soils, of lonely, isolated, and sickly tenants, absentee landlords, and exploiting furnishing merchants. There was also the South of the Mississippi Delta as depicted by William Alexander Percy in his *Lanterns on the Levee* or that same South from a very different perspective as described by organizers of the sharecroppers' union. It was the South of rich soils, carefully cultivated by closely supervised croppers using the best available equipment and methods to turn out millions of bales of cotton for a market that often could not absorb them. The same set of laws provided the legal underpinning of both Souths, dominated, despite their differences, by a new planter-merchant class exercising a degree of control over their work force far beyond that available to employers elsewhere in the nation.

The protection of the freedmen, which had been forced on unwilling planters by the Freedmen's Bureau and the radical legislatures, had

1910. The courts construed the law very strictly. In two cases I have found, the state supreme court overthrew earlier convictions: Polk v. Thomason, 130 Ga. 542, 61 S.E. 123 (1908); Steward v. Hill et al., 134 Ga. 596, 68 S.E. 328 (1910). The state supreme court declared the law unconstitutional in 1913 because it was an "unreasonable restriction on the right to contract": Fortune v. Braswell, 139 Ga. 609, 77 S.E. 818 (1913). Alabama (*Acts, 1900–1901,* Act 483 and Act 488) and Mississippi (*Acts, 1900,* ch. 101 and ch. 102) imposed criminal penalties on both the "enticer" and the laborer who was enticed. The Mississippi law was upheld in Petty et al. v. Legett, 38 So. 549 (Miss. 1905). South Carolina, Georgia, and Alabama enacted laws that declared that anyone who agreed to a contract, took an advance, and then failed to fulfill the contract could be convicted of fraud because he accepted the advance with intent to defraud: South Carolina: March 2, 1897, *Acts, 1897,* Act 286. Georgia: Aug. 15, 1903, *Acts, 1903,* p. 90. The Georgia Supreme Court found this law to be constitutional in Townsend v. State, 124 Ga. 69, 52 S.E. 293 (1905); see also Wilson v. State, 138 Ga. 489, 75 S.E. 619 (1912) and other cases cited therein. The law remained in force until 1942 when the United States Supreme Court declared it unconstitutional: Taylor v. Georgia, 315 U.S. 25 (1942). Alabama: October 1, 1903, *Acts, 1903,* p. 345, amended 1907, *Acts, 1907,* p. 636. The state supreme court found the law constitutional in Bailey v. State, 158 Ala. 18, 48 So. 498 (1908), but it was declared unconstitutional by the U.S. Supreme Court in Bailey v. Alabama, 219 U.S. 219 (1911). The Alabama legislature promptly reenacted substantially the same law with very minor changes on Mar. 9, 1911 (*General Laws, 1911,* pp. 93–94). On these and similar laws see Oscar Zeichner, "The Legal Status of the Agricultural Laborer in the South," *Political Science Quarterly* 55 (September 1940): 424–28; Pete Daniel, *The Shadow of Slavery: Peonage in the South, 1901–1969* (Urbana University of Illinois Press, 1972); William Cohen, "Negro Involuntary Servitude in :the South, 1865–1940: A Preliminary Analysis," *Journal of Southern History* 42 (Febraury 1976): 31–60.

been meager enough. But even much of this weak protection was later ignored and perverted. The written contract spelling out the obligations and the rights of employer and employee had been designed to discipline the freedmen (and the planters) to a new labor system. But it had also been designed to protect the freedmen's rights and to guarantee them a fair return for their efforts. Within a generation the contract, increasingly vague and usually oral, protected only the employers, its guarantees for the worker so hedged and limited by law and custom as to become meaningless. Share wages, which gave the workers a stake in their work and the potential to become partners in the enterprise became merely a peculiar form of wage labor; croppers not only lost all stake in farm management, but also found the discipline of the workplace extended to their nonworking hours. Merchant-landlords used the system of advances and the lien laws and their domination of the local officials to control housing, consumption patterns, and schooling on the pattern of the most completely domineered company town imaginable. The renting of land which might have marked the first step up the agricultural ladder signaled instead the loss of land by former owners. Only those who rented large tracts and then worked the lands with croppers had any hope of advancement; for most, renting meant marginal tenancy on decaying land with any profits skimmed off by absentee landlords and nearby merchants who controlled credit, marketing, and local politics.