POSSESSION AND POWER:

THE LEGAL CULTURE OF TENANCY IN THE UNITED STATES, 1800-1920

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ABSTRACT OF THE DISSERTATION

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As urbanization, emancipation, and the expansion of capitalized farming transformed the American landscape between 1800 and 1920, tenancy rates spiked in crowded cities, Southern cotton and tobacco fields, and Midwestern corn and wheat farms. Tenancy was neither the inevitable outcome of market forces, nor a hegemonic order imposed by a powerful few. Rather, its structures emerged from above and below. It emerged from thousands of small and large decisions made by politicians, judges, and attorneys, who expanded the role of law as a tool for growing the economy and widening opportunity for white men, while confining the rights of "racialized others" and women to participate equally in political, social, and economic life. It also emerged from the demands of white men of small property, who hoped tenancy could provide a path toward upward mobility, civic equality, and control over their households, and from complicated political negotiations between landed and commercial interests. And, it emerged from the legal and extralegal maneuvers of the dispossessed—freedpeople, single women, immigrants—who depended on tenancies as a way to secure a measure of independence. By comparing how landlord-tenant relations adapted to and shaped the political economy and

hierarchies of race, gender, and class in the North, South, and Midwest, this project has recovered tenancy's elusive place amid this process of legal transformation.

Acknowledgements

Unlike the tenants and sharecroppers I discuss in the following chapters, I have the privilege of paying my debts to my family first. Without the love, support, companionship, inspiration, and sound advice of my wife, Cara, I never would have had the bravery to enter graduate school, or the endurance to finish this project. She is also my sharpest editor, responsible for the best parts of this work and none of its faults. To my daughter, Nora, I am thankful for her unbelievably cheerful disposition, her rigorous nap schedule, and her willingness to be shuttled along to archives, libraries, and meetings as I have written the dissertation. I am also grateful to my parents, Alan and Elaine Wolkoff, for giving me the emotional and financial support that has carried me through college and two graduate degrees, and for understanding my winding path to this doctorate. I also want to acknowledge the support of my brothers, Jay and David, my sisters-in-law Melissa Vazquez and Sara Rappaport, my mother-in-law Carolyn Vazquez. and my many friends from high school and college who have stuck with me through the years.

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Introduction

At the dawn of the 1894 growing season, an African-American widow named Babe Toney made an oral contract to plant corn and cotton on fields owned by Colonel Littleberry A. Ellis in Waller County, Texas.[1] Toney and her three children spent the spring planting rows of crops under the supervision of a prison guard who served the landlord as an overseer. In May, this manager kicked her off the land. Surprisingly, the story did not end with her dispossession. That September, when the crops were ready for market, Toney filed a complaint in Waller County court, demanding a partition of the crop and seeking "exemplary" damages against her overseer and her wealthy, politically-connected landlord. With an attorney's assistance, she made an unusual claim, presenting herself to the court and jury not as a worker wrongfully terminated on a contract, but as a co-owner of the crop itself entitled to an undivided one-half share of the property. In other words, she claimed the status of Colonel Ellis' business partner. After losing before the trial court, she took her case to an appellate court, which found in her favor. Babe Toney's fleeting victory was an exceptional moment in the long struggle of American renters to carve out a space of autonomy within the overbearing system of law, custom, debt, interpersonal intimacies, and public and private violence afforded to those who could not or would not own land.

Toney's odds of success were long. Born in the final months of the Civil War, she could not read or write, and her family depended on cotton in years of declining

[1] Tignor v. Toney, 35 S.W. 881 (1896).

commodity prices.[2] Colonel Ellis, like Babe Toney, made his way in a world the war had transformed. He was one of the wealthiest planters in Texas, the scion of early white settlers of Texas and Mississippi and a veteran of General Hood's Texas Brigade. He is best remembered for opening a 5,235-acre sugar plantation in Sugar Land, Texas, in 1878 worked by convicts leased from the Texas prison system. He affectionately named his prison camp (now known as the Texas Department of Criminal Justice's Central Unit) for his daughter, Sartaria.[3]

Toney's work conditions and eventual dispossession were commonplace for African-American sharecroppers. Ellis employed a local "manager and agent," C.H. Tignor, to hire Toney, furnish her with supplies, and supervise her work. Tignor regularly worked stints as a guard at the Harlem Plantation, a prison farm just a few miles away from Sartaria.[4] Under this arrangement, the manager, Tignor, lived on the farm, divided a lot of land to Toney, and supplied her with land, tools, work animals, and feed for the teams. In exchange, Toney "agreed to cultivate the land in a good and farmer-like manner" and "was to receive one-half" of the corn and cotton "as her part, and Ellis was to receive the other half." In spring 1894, after Toney had broken the land, planted the seed, and watched the cotton plants begin to rise in the warm Texas sun, Tignor betrayed

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[2] 1900 U.S. census, Waller County, Texas, population schedule, Justice Precinct 1, p. 16, dwelling 326, family 326, "Ba" Toney; digital image, Ancestry.com, accessed January 30, 2015, http://ancestry.com.

[3] Lewis E. Daniell, *Types of Successful Men of Texas* (Austin: 1890), 442-43; Texas Department of Criminal Justice, *History of the Texas Department of Criminal Justice* (Nashville: Turner Publishing, 2004), 61; City of Sugar Land, *Images of America: Sugar Land* (Charleston, SC: Arcadia, 2010), 11.

[4] Texas, Prison Employee Ledgers, 1861-1938, Harlem Plantation Pay Roll, December 1887; digital image, Ancestry.com, accessed January 31, 2015, http://ancestry.com.

her. The manager would not let her use the work animals, ejected her from the land "by threats, force, and violence," and claimed full possession of the crops.

In challenging this act of theft in court, Toney may have been emboldened by the legacy of black political strength in Waller County. From the 1870s to mid-1880s, Republicans ran this black-majority county, and African Americans held prominent local offices and represented the county in the state legislature. Not until 1886 did Democrats take control of the county, the result of a split in the Republican ranks. Yet two black men remained in the powerful role of county commissioner as the county entered the Populist moment. A "cross-filing" of Democratic and Republican politicians, including some African-American leaders, held the line against a local Populist insurgency. Still, in the year before Toney's suit, danger loomed on the horizon for the county's African-American voters, as the Democratic partisans known as "Jaybirds" burned down the county courthouse on March 15, 1893. Following these dramatic events, Toney's case was more than a claim for stolen crops. For Toney and her unnamed attorney, it may have been an act of political protest against an expanding regime of white supremacy.[5]

Beyond an act of political protest, Toney's legal claim on the crops defied the conventions of a race-bound economy. Toney argued that her oral contract made her and the landlord "tenants in common in the crops," drawing on a legal distinction more commonly employed in the North and West than in the cotton-growing regions of the South.[6] Tenancy in common was different than sharecropping because it meant that the laborer actually owned an undivided share in the crop being grown; by contrast, the

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[5] Frank Spindler, "Concerning Hempstead and Waller County," *Southwestern Historical Quarterly* 59, no. 4 (1956): 455-60.
[6] Henry Wade Rogers, "Farming on Shares," *Central Law Journal* 15 (1882): 465-69.

landlord owned the entire crop under traditional sharecropping agreements, and the croppers did not get their share of the product until after their rent and advances were paid. This structure of undivided co-ownership may have been common in the Upper South, but it was rare in the Black Belt, where landlords refused to admit any claims of partnership by their workers.[7] In Toney's case, the jury discredited her claims to a joint tenancy, and she lost the case.

But two years later, an intermediate Texas appeals court in Galveston considered her petition and reversed the lower court's decision. While he thought that "the evidence to show what [the contract] was is very meager," Chief Justice Christopher Columbus Garrett, a Democrat, nevertheless accepted her claim of co-ownership and ordered the county court to rehear her demand for partition and punitive damages. Years of continuances filed by the landlord's attorney, however, suggest that Ellis avoided paying Toney her share of the 1894 crop; on January 8, 1901, the local trial court dismissed the case for "the want of prosecution."[8]

To the sharecropper, "the government is the landlord," African-American sociologist Charles S. Johnson wrote in 1934.[9] This view of sharecroppers as not just landless, but utterly powerless, remains commonplace today. Yet Babe Toney's story suggests that unlanded people experienced a more complicated legal culture at home and

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[7] On the contested line between partnership and sharecropping, compare Donald L. Winters, "Postbellum Reorganization of Southern Agriculture: The Economics of Sharecropping in Tennessee," *Agricultural History* 62, no. 4 (1988): 1-19; and, Thavolia Glymph, "Freedpeople and Ex-Masters: Shaping a New Order in the Postbellum South, 1865-1868," in *Essays on the Postbellum Southern Economy*, ed. Thavolia Glymph and John J. Kushma (Arlington, TX: Texas A&M University Press, 1985), 48-72.

[8] Toney v. Ellis, County Court of Waller County, minute book C, p. 135, January 8, 1901. Microfilm. Texas State Library, Austin.

[9] Charles S. Johnson, *Shadow of the Plantation* (Chicago: University of Chicago Press, 1934), 208.

in the public sphere.[10] Even as her landlord, lessee of one of Texas' largest convict labor camps, hired a prison guard to supervise her work, Toney believed that her household's labor had the same economic, legal, and social value as her landlord's provision of fields and farm supplies. Even as decades of statutory reforms and judicial decisions attacked the idea of sharecropping as a joint venture, and Jim Crow laws denied African Americans equality at law, Toney convinced one judge to respect and protect her property rights against theft. Although women had tenuous claims to property in the late nineteenth century, Toney won ownership of the crops by claiming a legal identity associated with masculine independence. Joint tenancy was the way that spouses, siblings, and businessmen shared property rights. Toney asserted that she was not a propertyless and dependent "servant" of her landlord, as sharecropping law would ordinarily hold, but an equal partner in an agricultural business.

While Toney's case was exceptional and localized, it stands for a wider set of strategies used by tenants and sharecroppers across the nineteenth century United States to defend the autonomy of their families and households against the power of their landlords. Yet we know little about the counters of these conflicts. This omission is surprising, considering the heavy burdens that unlanded people bear in historical writing

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[10] This argument builds on scholarship identifying informal arbitrations among African-Americans during and after slavery, along with evidence of labor organizations and military officials policing landlord-tenant relations. Eric Foner, *Nothing but Freedom: Emancipation and its Legacy* (Baton Rouge: Louisiana State University Press, 1983), 102; Julie Saville, *The Work of Reconstruction: From Slave to Wage Laborer in South Carolina, 1860-1870* (Cambridge: Cambridge University Press, 1996), 179-94; Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge, MA: Harvard University Press, 2003), 176; Dylan Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2002), 45-192.

on the United States. Historians across American regions draw on the lives of nineteenth-century renters to explain how global economic revolutions transformed families, the environment, and the nature of labor. Critical political events—the American Revolution, the Anti-Rent movement of the 1840s, the antebellum rise of the Young America and Republican parties, Reconstruction, and Populism—had material roots in the struggles of tenants, and played out within the dynamics of race, class, and gender established by landlord-tenant relations.[11] Indeed, unlanded households are not invisible in American historiography, but tenancy, as a contested institution and vital center of power, remains obscure. Few writers consider tenant households a subject of independent study. Instead, historians treat tenancy as an abstract gauge of inequality and social immobility. In doing so, they have missed how even those who, like Babe Toney, struggled to achieve legal equality in the long nineteenth century could find tenancy law to be a foundation for a qualified kind of freedom.

By analyzing tenancy on its own terms, *Possession and Power* recovers a set of complex social relations hidden in plain sight, drawing upon local and appellate court records, government investigations, business and family correspondence, and oral histories. This project illuminates what rights white and African American renters expected when a drought or flood ruined a season's corn, a landlord and a merchant competed over an indebted tenant's cotton, or a bankrupt widow scrambled to sell her

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[11] Terry Bouton, *Taming Democracy: "The People," the Founders, and the Troubled Ending of the American Revolution* (New York: Oxford University Press, 2007); Charles W. McCurdy, *The Anti-Rent Era in New York Law and Politics, 1839-1865* (Chapel Hill: University of North Carolina Press, 2001); Mark A. Lause, *Young America: Land, Labor, and The Republican Community* (Urbana: University of Illinois Press, 2005); Steven Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850-1890* (New York: Oxford University Press, 1983).

family's furniture before the landlord could seize it for rent. Through formal law, informal practice, and strategic alliances with political and economic allies, renters defended a measure of autonomy within a legal system that conflated ownership of property with control of one's family, time, and labor.

Possession and Power presents three case studies that explore the lived experience of tenancy in the long nineteenth century and tenancy's accommodation to the social and cultural norms, political alliances, and environmental conditions of different regions: Antebellum cities in the Mid-Atlantic region, post-Reconstruction North Carolina, and turn-of-the-twentieth century Iowa. Historian Harold D. Woodman has suggested that "if capitalist social relations have similar laws concerning property and labor relations, similar laws do not produce identical results."[12] This study builds on a growing historiography that breaks down the scholarly walls around American regions and links local movements to a common outcry against the changes wrought by industrial capitalism.[13] Still, the substance of its chapters is necessarily local, building a national narrative through neighborhood-level stories about the lived experience of a legal culture—as legal historian Harry Scheiber once put it, the "mundane" rules that shaped

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[12] Harold D. Woodman, *New South-New Law: The Legal Foundations of Credit and Labor Relations in the Postbellum Agricultural South* (Baton Rouge: Louisiana State University Press, 1995), 114.

[13] Daniel Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, MA: Belknap Press, 2000); Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State, 1877-1917* (Chicago: University of Chicago Press, 1999); Heather Cox Richardson, *West from Appomattox: The Reconstruction of America after the Civil War* (New Haven: Yale University Press, 2007); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper Perennial, 2002); W.E.B. DuBois, *Black Reconstruction in America, 1860-1880* (1935; repr., New York: Free Press, 1998).

everyday life—and moments of rupture defining new property arrangements.[14] Households and local places of governance, I contend, rather than national institutions, belong at the center of the analysis because they were at the front lines of the challenges of industrial society.[15] These local outcomes provide insight into a national discourse about what property, citizenship, and free labor meant for the unlanded over an era marked by urbanization, emancipation, and capitalized farming. And, they illuminate the legal and extralegal ways that tenants achieved, maintained, or lost the rights of possession in the land and its product.

Studying tenancy at the granular level also reveals how a shifting balance between political and economic pragmatism and ideologies of race, gender, and class shaped property rights in this formative period of law. In the antebellum North, merchants, manufacturers, tenement dwellers, and market-minded tenant farmers aligned to block the ambitions of New York's urban and rural landlords. In the post-Reconstruction South, these tensions played out in the complicated politics of North Carolina, where the efforts of "Redeemers" to divest a broad class of farmers of the traditional property rights of

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[14] Harry Scheiber suggests that the "mundane" topics "in fact are the very areas of law that define the parameters of property rights . . . the real world, in sum, of privileges, immunities, and obligations within which the farm enterprise has to function." Harry Scheiber, "Law and American Agricultural Development," *Agricultural History* 52, no. 4 (1978): 452-53.

[15] American legal scholars have been debating the role of property law in shaping economic relations for over a century, but empirical studies of extra-legal negotiations among classes or household members are not abundant. Models for this approach include Andrew Wender Cohen, *The Racketeer's Progress: Chicago and the Struggle for the Modern American Economy, 1900-1940* (Cambridge: Cambridge University Press, 2004); and, Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (Cambridge: Cambridge University Press, 2003). Important theoretical works from legal scholarship include Robert Ellickson, "Unpacking the Household: Informal Property Rights Around the Hearth," *Yale Law Journal* 116 (2006): 226-328; and, Duncan Kennedy, "The Stakes of Law, or Hale and Foucault!" *Legal Studies Forum* 15, no. 4 (1991): 327-66.

tenants fostered a fleeting alliance among black sharecroppers, white tenant farmers, and elite jurists. The efforts of white North Carolinian tenants to maintain their hold over their small worlds had parallels in early-twentieth century Iowa, where tenants and sharecroppers drew the line at leases that demanded too much imputed labor without long-term security for their investments. Across these regions, the real politics of tenancy and its legal politics did not neatly align.

A. Tenancy and the Historiography of American Law and Capitalism

Making sense of this variety over a long time span challenges the way historians of the United States describe the path of law, economic relations, and the household, complicating both progressive and declensionist narratives of American legal history. Consensus scholars of the mid-twentieth century offered progressive narratives of American liberalism, positioning law as an instrumental tool for expanding economic opportunities in the nineteenth century. Critics of this "release of energy" principle offered a darker narrative, finding law to be a means of cementing class power behind a neutral façade of contractual consent and property rights.[16] Scholars of race and gender

[16] While both offered instrumentalist views of law's role in social change, legal historians J. Willard Hurst and Morton Horwitz represent how such narratives can bolster competing ideological positions. In *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1964), Hurst argued that nineteenth-century courts responded to commercial interests by, among other innovations, giving a "contract emphasis" to lease relations. Hurst, 9. Judges abandoned "surviving vestiges of feudal incidents" in leases in favor of a contractual standard that both delegated authority to individuals to satisfy their economic ambitions and "invoked the compulsive force of the state to set a framework for dealing." Hurst, 15. Morton Horwitz's *The Transformation of American Law, 1780-1860* (Cambridge, MA: Harvard University Press, 1977), xv, recognized Hurst's insight that "the contractarian ideology" of judges in the nineteenth-century could be both instrumental and laissez-faire. In property law, judges adopted a less absolute view of a landowner's rights, finding that the

have since intervened in both narratives by demonstrating how law masked a broader policy of defining and dividing legal persons from legal subjects. American legal history, in this view, is defined less by class conflict than the consistent struggles of "dependents"—white women, "racialized others," and people with disabilities—to become rights-bearing citizens and to use those rights in pursuit of justice.[17]

The historiography of American tenancy has followed a similar path. By the 1970s, so-called neo-Marxist and neoclassical historians were engaged in a heated debate about the political economy of the postbellum South, testing out historian C. Vann Woodward's powerful reinterpretation of the era in *The Origins of the New South* (1951). Denying Woodward's view that the crop lien was a strange fruit of Reconstruction, economic historians portrayed Southern sharecropping as a risk-sharing strategy, negotiated between cash-strapped landowners and propertyless workers in response to the dire poverty and credit crisis of the postbellum years. By contrast, Marxist interpretations of tenancy focused on the coercions of market and law underlying landlord-tenant relations. The market for leases, emerging from a combination of inequitable land

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utility of an improvement, such as a mill dam, could trump a neighboring landowner's right to be free of interference. Contract law also changed, reflecting the triumph of a "will theory" of contract rejecting the equitable notion of "fair exchange" in favor of evidence of the parties' mutual agreement. In Horwitz's view, the goal of these innovations was creating a predictable commercial environment that disguised coercion behind neutral contract rules and business custom. Horwitz, 201. Horwitz's analysis has proven influential to Marxist analysis of the rise of markets in the early republic; historian Charles Sellers roots the market revolution in a "legal revolution," with lawyers serving as "the shock troops of capitalism." Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846* (New York: Oxford University Press, 1992), 47. For a classic critique of "legal functionalism," see Robert W. Gordon, "Critical Legal Histories," *Stanford Law Review* 36 (1984): 57-125.

[17] For an outstanding synthesis of this scholarship, see Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (Cambridge: Cambridge University Press, 2010), 159-206

distribution policies and rising global demand for agricultural and industrial goods, commodified land and forced its occupants into the cash nexus. Southern economic transformations, in this view, were part of a global process that intensified land use in cities and the countryside, and pressured unlanded farmers to grow cash crops for the market or face eviction.[18]

Meanwhile, mid-to-late twentieth century historians of the Midwest were more interested in debating Gates than Marx: Paul Wallace Gates, whose research on American land policy began during the New Deal years. His work, which spanned from Kentucky squatters to Illinois land speculators to California's land barons, centered on the claim that a failed system of land distribution compromised the "Jeffersonian Dream" of a nation of yeoman farmers. Those trained in quantitative methods pushed back against Gates' Midwestern "speculator thesis," arguing that tenancy did not stem from land monopoly, but was a rational economic choice for farmers, who could rent as a means of building a family farm and saving money toward land purchase in the future.[19]

Historians of both regions have largely moved on from these debates, with more recent studies focused on the varieties of land tenure forms across these regions, the range of labor opportunities and family survival strategies present in rural areas, the role of forced labor and incarceration in shaping the postbellum economy, and the ways that racism, gender, and class differentiated the experience of life on the land.[20] Yet, even as

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[18] Harold D. Woodman, "Sequel to Slavery: The New History Views the Postbellum South," *Journal of Southern History* 43, no. 4 (1977): 523-54.
[19] Donald L. Winters, "Agricultural Tenancy in the Nineteenth-Century Middle West: The Historiographical Debate," *Indiana Magazine of History* 78, no. 2 (1982): 128-53.
[20] R. Douglas Hurt, "Reflections on American Agricultural History," *Agricultural History Review* 52, no. 1 (2004), 4-8; Stephen A. West, "'A General Remodeling of Every Thing': Economy and Race in the Post-Emancipation South," in *Reconstructions: New*

social and economic historians have generally taken a middle position between choice and coercion in studying tenancy, we still lack a clear picture of its nuances as a system of local governance and household authority.

Indeed, tenancy remains on the margins of the "new" history of capitalism, reinforcing this subfield's problematic focus on economic elites. These studies have revived interest in the nuts-and-bolts of economic life—currency trading, commodities markets, insurance policies, mortgage banking—and the middlemen who linked regions and markets, but few have offered fresh analysis of tenancy's mechanics.[21] This is a

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Perspectives on the Postbellum South, ed. Thomas J. Brown (New York: Oxford University Press, 2006); Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992). The leading history of the postbellum political economy remains Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (Baton Rouge: Louisiana State University Press, 1996). Recent scholarship attempts to de-center the "sharecropper paradigm" as the site of Southern rural labor. Alex Lichtenstein, "Introduction: Rethinking Agrarian Labor in the US South," *The Journal of Peasant Studies* 35, no. 4 (2008): 621-35. In particular, highly-capitalized agricultural regions such as Louisiana's sugar country and the rice-producing Carolina low country turned to cash wages early in the Reconstruction period. Wages were an outgrowth of customary compensation schemes developed under slavery. Wage labor offered freedmen a means to obtain "both a measure of personal autonomy and a sense of collective self-determination." John C. Rodrigue, *Reconstruction in the Cane Fields: From Slavery to Free Labor in Louisiana's Sugar Parishes, 1862-1880* (Baton Rouge: Louisiana State University Press, 2001). See also Saville, *The Work of Reconstruction*; Leslie Schwalm, *A Hard Fight for We: Women's Transition from Slavery to Freedom in South Carolina* (Urbana: University of Illinois Press, 1997); J. William Harris, *Deep Souths: Delta, Piedmont, and Sea Island Society in the Age of Segregation* (Baltimore: Johns Hopkins University Press, 2001).

[21] Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014); Sven Beckert, *The Empire of Cotton: A Global History* (New York: Alfred A. Knopf, 2014); Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge, MA: Harvard University Press, 2012); Christopher Clark, "The Agrarian Context of American Capitalist Development," in *Capitalism Takes Command: The Social Transformation of Nineteenth-Century America*, ed. Michael Zakim and Gary J. Kornblith (Chicago: University of Chicago Press, 2012); Edward J. Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill, NC: University of North Carolina Press, 2001).

problem. First, in ways that have yet to be fully explored, tenancy had a central place in the evolution of nineteenth-century credit relationships, which helped define emerging ideas about contract, bankruptcy, and insurance, and develop the nation's agricultural and urban landscapes. Tenancy was also embedded in complicated business networks, and depended on a variety of brokers, including bankers, supply merchants, building contractors, property managers, and attorneys. Second, leaving tenancy on the fringes of American capitalism reinforces the tendency of this scholarship to elide analysis of race and gender. Global commodities markets must be understood in relation to local environments of production, which tenants created as they formed households, bargained for leases, experienced the risks of farming and urban life, balanced the competing demands of family security and the market, and resisted the encroachments of their landlords. By studying the layers of power within tenancy relationships from family to middlemen to landlords and the state, this project develops a grassroots model for understanding the social meanings of capitalism in the long nineteenth century.

In fairness to historians of capitalism, legal historians and law professors have only scratched the surface in explaining tenancy's relevance to the histories of labor, family, and the economy. Because so much of its practice operated outside the courts, the historiography of nineteenth-century American landlord-tenant law is underdeveloped.[22] And even at moments of sustained interest in tenancy, most academic research has had a

[22] By contrast, the study of twentieth-century urban tenancy is broad and continues to expand. Recent works include Roberta Gold, *When Tenants Claimed the City: The Struggle for Citizenship in New York City Housing* (Urbana: University of Illinois Press, 2014), and Robert Fogelson, *The Great Rent Wars: New York, 1917-1929* (New Haven: Yale University Press, 2013). In addition, a vast literature captures the history of public-sector rental housing in the United States and around the world. Nancy Kwak and Sean Purdy, "New Perspectives on Public Housing Histories in the Americas," *Journal of Urban History* 33, no. 3 (2007): 357-74.

normative focus. During the 1970s and 1980s, writes law professor Gerald Korngold, "landlord-tenant law captured the imagination of a generation of young lawyers, imbuing them with a belief that the law could indeed respond to new theoretical models and idealistic visions of social justice." But much of the historically-oriented literature emerging from this radical moment was teleological, tracing the origins of the "revolution" in tenant rights of the mid-twentieth century, through which renters and their allies demanded uniform statutory protections against eviction, rent increases, and unsanitary housing.[23] Other writers mapped changes in landlord-tenant law before the 1960s through the lens of case law and treatises, but did not consider the political, social, cultural, or economic environment in which the law operated. These articles created a static picture of landlord-tenant relations, favoring normative assumptions over

[23] Gerald Korngold, "Whatever Happened to Landlord-Tenant Law?," *Nebraska Law Review* 77 (1998): 704. This moment of excitement did not last; Korngold notes that 222 articles were published on landlord-tenant and eviction law between 1967 and 1973, but between 1991 and 1997, only 110 articles were published on these topics.

description and historical analysis.[24] *Possession and Power* reopens the scholarship by evaluating the lived experience of landlord-tenant relations.[25]

B. The Social Landscape of Landlord-Tenant Law

Certainly, historians have drawn on landlord-tenant law and practice for stunning examples of nineteenth-century law's oppressions. As a legal system governing relations among people with stark differences in wealth, education, and political influence, landlords bent tenancy law to their needs through carefully-worded contracts, legislative action, judicial sympathy, and the threat of violence. Landlords enjoyed expedient civil and criminal debt collection remedies and strict lease forfeiture rules, and expected

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[24] As legal historian Lawrence Friedman commented in 1983, "I rather suspect that important recent changes in [landlord-tenant] law had roots in events in 1900 or 1942, or whatever; but we simply don't yet have enough perspective to recognize those events. A lot of what happens on the surface is ratification, though this is important in its own right and calls for explanation as well." "Edited Transcript of Proceedings of the Liberty Fund, Inc., Seminar on the Common Law History of Landlord-Tenant Law," *Cornell Law Review* 69 (1984): 628. Legal histories of tenancy include Mary Ann Glendon, "The Transformation of American Landlord-Tenant Law," *Boston College Law Review* 23, no. 3 (1982): 503-76; and, Earl Phillips and Thomas M. Quinn, "The Legal History of Landlord-Tenant Relations," in *Tenants and the Urban Housing Crisis*, ed. Stephen Burghardt (Dexter, MI: The New Press, 1972). An example of the stagnation thesis is Charles Donohue, Jr., "Change in the American Law of Landlord and Tenant," *The Modern Law Review* 37, no. 3 (1974): 242.

[24] Morton Horwitz, *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy* (New York: Oxford University Press, 1992), 145-68.

[25] This dissertation is not a treatise on the law of landlord and tenant. Readers interested in the broad range of legal issues that intersected with tenancy can consult several legal treatises published in the nineteenth and early twentieth centuries, including volumes edited by John Neilson Taylor and Herbert Thorndike Tiffany, which have been revised through many editions. Both are available on Google Books. John Neilson Taylor, *A Treatise on the American Law of Landlord and Tenant* (New York: 1844); Herbert Thorndike Tiffany, *A Treatise on the Law of Landlord and Tenant*, 2 vols. (Chicago: Callaghan, 1912). Another extensive collection of tenancy laws focused on the South is Charles S. Mangum, Jr., *The Legal Status of the Tenant Farmer in the Southeast* (Chapel Hill: University of North Carolina Press, 1952).

tenants to shoulder many of the costs of improving the land and housing. Moreover, landlords often dictated the credit terms that householders had to obey. Legal historians point to this imbalance in power to illustrate how the consolidation of formal law into a system of individual rights in the late nineteenth century effectively deprived ordinary people of legal recourse, particularly as it subsumed older forms of informal justice.[26] A landlord's property rights and political power could easily overwhelm the ability of poor tenants to mount a fight, even if the law afforded tenants reciprocal legal remedies.

Yet, perhaps counter-intuitively, the categories at stake in landlord-tenant relations were not coterminous with class, race, or even gender. In 1880, a New York City "tenant" might be the lessee of an entire apartment building, a family who rented a two-room apartment from that lessee, a garment worker who rented a room from that family, or any number of commercial tenants, from blacksmiths to subterranean bakeries. Meanwhile, in North Carolina, a tenant could be the scion of a wealthy family attempting to run a plantation, or a yeoman white farm family in search of better lands, or an African-American household chained by debts to the soil. In Iowa, tenants were sons awaiting inheritances, fathers retired from farming, widows managing their children's estates, and down-on-their-luck families moving each year to a new place.

Given this variety, tenants did not usually see themselves as a class, even though the law classed them together, often in ways that competed with cultural common sense. This project identifies specific laws and legal decisions that consolidated class power and denigrated the legal authority and labor rights of African Americans, immigrants, and

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[26] Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 286-98.

white women, but finds that the system as a whole did not arrive through the consistent instrumental vision of any one interest. As a result, a second-order interest in land was not necessarily a reflection of second-class citizenship.

The drama of landlord-tenant relations, then, was not just within legislative debates or judicial decision-making, but in the everyday efforts of landowners, farmers, merchants, workers, and their families to sort out what they owed one another. Though few of their disputes ever reached a court of law, legal norms shaped how they settled differences: the set of social practices, legal cases, and statutory legislation called "landlord-tenant law." It was never a static or hegemonic order. The finer details of these laws varied by state and might change every legislative session, and landlords and tenants could modify many of these default rules to suit the nature of their agreements.

Paradoxically, the law's parochialism lent it a kind of national identity during the long nineteenth century. After 1920, landlord-tenant law became a highly stratified field, with special laws for urban housing, commercial real estate, and agricultural enterprises, enforced by thousands of state and federal courts and agencies. During the long nineteenth century, by contrast, tenancy law was a neighborhood affair, largely governed by a township magistrate's interpretations of state law and local ties of kinship and commerce. Few lawyers anywhere claimed a specialty in this branch of law, but most knew enough to draft a lease, mediate everyday disputes about property rights and labor, and file the right papers to collect past-due rents. Typically, their challenge was not in understanding the law, but in figuring out the local networks that defined the outcomes of tenancy disputes. Only rarely did landlord-tenant disputes reach county-level or appellate courts.

On their own, tenants and sharecroppers turned to "weapons of the weak" more often than legal remedies: slowing down work, spreading rumors, letting fences rot, or leaving drainage ditches choked with weeds. These strategies were especially potent when landlords lived some distance from their rental properties, and depended on local agents to monitor the land.[27] Tenants fled from failing or abusive arrangements, engaged in collective and individual resistance by forming unions, cooperative organizations, and political parties, made alliances with local power brokers, and enforced ideas of moral economy, such as absconding with property in the legal possession of the landlord in order to claim what amounted to a customary lien.[28]

Legal action was more likely when conflicts within tenancy relations spilled over into the broader social and economic landscape. Landlord-tenant disputes became

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[27] Tenancy disputes were battles over values, and they occurred daily through "an exchange of small arms fire, a small skirmish, in a cold war of symbols" between classes. James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985), 22. Pete Daniel suggests that the "offstage" story of peasant resistance in the South awaits further research. Pete Daniel, "The Legal Basis of Agrarian Capitalism: The South Since 1933," in *Race & Class in the American South since 1890*, ed. Rick Halpern and Melvyn Stokes (Oxford, UK: Berg Publishers, 1994), 82. This theme is also developed in J. William Harris, "The Question of Peonage in the History of the New South," in *Plain Folk of the South Revisited*, ed. Samuel C. Hyde, Jr., (Baton Rouge: Louisiana State University Press, 1997), 122; and in Hahn, *Roots of Southern Populism*, 163. "Whatever the law may have dictated," Hahn writes, "these matters were hammered out in daily and yearly confrontations."

[28] *The Tenant Movement in New York City, 1904-1984*, ed. Ronald Lawson and Mark Naison (New Brunswick, NJ: Rutgers University Press, 1986); Robin D.G. Kelley, *Hammer and Hoe: Alabama Communists During the Great Depression* (Chapel Hill: University of North Carolina Press, 1990) and Kelley, "'We Are Not What We Seem'": Rethinking Black Working Class Opposition in the Jim Crow South," *Journal of American History* 80, no. 1 (1993): 75-112.; Gerald Jaynes, *Branches Without Roots: Genesis of the Black Working Class in the American South, 1862-1882* (New York: Oxford University Press, 1986), 280-300; Debra A. Reid, "Furniture Exempt from Seizure: African-American Farm Families and Their Property in Texas, 1880s–1930s," *Agricultural History* 80, no. 3 (2006): 336–57; Nell Irvin Painter, *Exodusters: Black Migration to Kansas after Reconstruction* (New York: Alfred A. Knopf, 1977).

entangled within local ties of kinship, debt, social obligation, and politics. Renters formed alliances with a wide cast of local people—country lawyers, politicians, merchants, building contractors, and rival planters—whose ideological sympathies or economic interests aligned with their own. These were not equal partnerships. Obtaining justice under landlord-tenant law often depended on the patronage of the legally privileged, whether a city merchant seeking to undercut a landlord's first right to a tenant's debts, or a patrician like the Mississippi Delta's William Alexander Percy, who despised his "nouveau riche" neighbors for running exploitative plantations "without those ancestral hereditaments of virtue which change dirt into a way of life."[29]

The persistence of legal localism in the relations between landlords, tenants, and their broader communities qualifies how historians understand the legal culture of the long nineteenth century and the transition from local ordering to individual rights-based citizenship. From her exhaustive study of antebellum county court records from North and South Carolina, legal historian Laura F. Edwards finds that rights-based citizenship overturned antebellum conceptions of public order rooted in the legitimization and defense of customary rights, including the possession of property by white women and African Americans who had few legal rights of ownership. Under this antebellum localism, "possession" and "ownership" meant different things. Ownership was defined by "state law, compiled in written texts and applied by professionals, which adjudicated private issues and protected the abstract rights of individuals," while possession referred to "a social fact that has legal standing, despite its marginality within formal law,"

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[29] William Alexander Percy, *Lanterns on the Levee: Recollections of a Planter's Son* (New York: Alfred A. Knopf, 1941), 283.

involving "a range of contingent, often ill-defined claims established through specific, concrete circumstances, not a set of formal, legal abstractions."[30]

Edwards' distinction between possession and ownership helps explain why landlord-tenant law remained largely localized and grounded in "social fact" well after property law as a whole had become abstracted and rooted in individual rights. Rather than being absolute, the landlord's property rights in his tenant household's land, chattels, and labor remained ambiguous, forming a ongoing point of contest even after the landlord's superior right to rent became institutionalized across the rural United States after the Civil War. Informality persisted, but mainly as the prerogative of propertied and poor white men. Through extralegal strategies too dangerous for most African Americans to attempt, white sharecroppers in the South and Midwest drew on their political and social connections with the local rural power structure to maintain possessory authority in their households, even when the law stripped them of crop ownership and control of their family's labor.

So what did landlords and tenants make of this exceptionally local, layered, and flexible system of power? Primarily, both sides relied on it to protect the interests of their households, both within the tenancy agreement and outside its boundaries in the community. Landlords wanted security against tenants who broke their contracts, seeking to skip out on their debts or to gain leverage during periods of labor demand for better terms. Owners also wanted to preserve and build as much capital as possible, at the lowest expense, through legislation that punished wasteful agricultural practices and private agreements requiring tenants to put down fertilizer, develop irrigation, build

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[30] Edwards, *The People and Their Peace*, 134.

fences, and leave any improvements they built behind at the end of the lease. Tenants, in turn, wanted to maintain as much authority as they could over their family's labor, time, and property. As heads of households, tenants sought to create gendered hierarchies within their leaseholds in an approximation of landed independence, even as they contented with inequalities in relations with their landlord bosses and outside creditors.

C. Tenancy, Household Government, and the "Jeffersonian Dream"

Rural communities, after all, sheltered more than a few men like the lawyer, landlord, bootlegger, and serial philander Needham E. Ward of Selma, North Carolina, who told his life story to Mary A. Hicks, an interviewer for the Federal Writers' Project in 1939. Ward's story reveals the license that some landlords took as they blurred their business and personal relationships with tenant families. Ward was a lapsed Baptist but a "Mormon at heart," calling himself "an old fool who is wishing for an impossible future with a number of lovely wives and whole house of children." Born in 1876 to a white family that lost everything during the Civil War, he worked as a farm hand for a "pompous and vulgar" landlord. Ward married his landlord's daughter, and his father-in-law paid for Ward's law degree "to make a gentlemen" of him. Ward hated the law—he resented having to represent defendants "when they were so plainly guilty"—and wanted to return to farming. With his father-in-law's money, Ward bought a plantation, rented out his land to tenants, and supervised their work.[31]

[31] Mary A. Hicks and Edwin Massengill, "Just a Mormon at Heart," March 23, 1939, typescript in Federal Writers' Project life histories files, file 522, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill (hereafter cited as SHC).

One of his tenant's wives, "Sarah," became his "new love" in 1916. He justified their affair by accusing her husband, "Bob," of abuse. "Her husband didn't care so much for her because he would allow her to cut the wood, plow, chop, dig ditches, and grub like a man. He never gave her a kind word and she was like a grateful dog when anyone spoke kindly to her." Now, Ward must have recognized the hypocrisy of a landlord accusing a tenant of working his labor force too hard, but it was a convenient excuse for him to display his generosity. One day, when Bob was in town "on a spree," Ward "took the ax from her hands and cut the wood for her. She was very grateful and our affair of twelve years duration began then."[32]

As the nation readied to enter the Great War, Ward got himself appointed to the local draft board, "a juicy plum that fell into the laps of only good Democrats." Ward sent his tenant Bob to the army, hoping that he would never return. "I felt like David, too, who had his captain killed to get his wife." Bob was angry to be drafted while his crops were still growing. Ward promised to gather the crops and give the profits to Sarah. Ignoring his gossiping neighbors and "cold" wife, Ward "was determined to show Sarah what real living meant." When Sarah's husband returned in 1919, recovering from exposure to toxic gas and unable to farm, Ward continued his economic and sexual relationship with his tenant's household, setting them up as managers of a brickyard in the 1920s and partnering in a bootlegging business by the end of the decade, all so he could stay close to Sarah. When the authorities caught up with their moonshine sideline, Ward paid Bob to take the blame and serve the sentence. If Ward's story is to be believed, Bob knew nothing of the affair until he got out of jail and spotted the lovers coming out of a

[32] Ibid.

boardinghouse together. Sarah talked Bob out of shooting his old boss with the landlord's own gun, and Ward and Sarah parted forever.[33]

Needham Ward's confessions provide an unapologetic look at how landlord-tenant relations structured the experience and exercise of power at the most intimate level. Ward blamed Bob for his own cuckolding because of the way he mistreated his wife, without acknowledging the possibility that Bob could not pay his rent without exploiting her labor. Ward held his power as a landlord over Bob's head to make him work. When Bob turned this pressure on his wife, Ward again profited, both as a taker of rents and the heroic savior of calloused hands. The landlord then used his political influence to remove Bob from the scene, pulling his draft number to send him to the frontlines of a horrific war, and later making him take the fall for a criminal operation that kept Sarah nearby and easy profits flowing in. Bob's recourse was, by Ward's admission, to embezzle as much as he could get away with from their business partnerships. Ultimately, these intimacies nearly led to murder. Greed, passion, and power intertwined as Bob, Sarah, and their landlord made a life together on the land.

Tenancy's impact on the family did not escape the attention of national policymakers. When a Congressional panel held a hearing on problems in cotton agriculture in Babe Toney's home state of Texas in 1915, its chief investigator, Commissioner Charles Holman, described how the post-Civil War reinvention of tenancy had created a crisis in the autonomy of farming households. Sharecropping households like Toney's were an itinerant "casual laborer" force, rootless families moving from farm to farm every year. Sharecropping laws "less than 50 years in origin" deprived the tenant

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[33] Ibid.

of "rights of unmolestment such as [were] implied for the tenant in the laws of feudal origin." This pattern of interference, he argued, contrasted with a waning Northern ideal in which "the tenant is still the farmer and the landlord has a relation somewhat similar to that of the bondholder or the owner of stock in a corporation" because he held ownership and drew interest on the investment."[34] Particularly as more white families entered the crop lien system, Holman and the agricultural reformers of his day worried that tenancy impoverished families and undermined men's power to be proprietors.

Indeed, an entire field of studies known as "land economics" developed, in part, to research tenancy's economic and social impact. Richard T. Ely, a leading Progressive economist, and his University of Wisconsin students defended tenancy as a many-natured thing, emphasizing the differences between industrious Northern and Midwestern white tenants and the "negroes of our South." Tenancy was a rung on the ladder toward land ownership for whites, Ely wrote in 1919, but a caste status for African Americans and others of the "lower strata," for whom "tenancy is the proper goal or permanent resting place; for this results from a permanent differentiation of human qualities."[35]

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[34] U.S. Commission on Industrial Relations, *Final Report and Testimony*, S. Doc. 64-415, vol. 9 (1916): 8,952; Kyle G. Wilkison, *Yeoman, Sharecroppers, and Socialists: Plain Folk Protest in Texas, 1870-1914* (College Station, TX: Texas A&M University Press, 2008), 116; Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley: University of California Press, 1997), 89; James R. Green, *Grassroots Socialism: Radical Movements in the Southwest, 1895-1943* (Baton Rouge: Louisiana State University Press, 1978), 309. The Census Department, in fact, failed to account for these shifts in property rights when it reported the occupational status of sharecroppers in the decades after the Civil War, making tenancy statistics unreliable. George K. Holmes, "Supply and Wages of Farm Labor," *Yearbook of the Department of Agriculture* (Washington, DC: GPO, 1910), 189-90.

[35] Richard T. Ely and Charles J. Galpin, "Tenancy in an Ideal System of Landownership," *American Economic Review* 9, no. 1 (1919): 182.

Ely and Holman's central concern was not inequality—both saw a place for tenant agriculture within a competitive and racially-stratified economy—but in power struggles within landlord-tenant relations that undermined the authority of male tenants as household heads. Independence was illusory when landlords intervened with impunity in their tenants' lives, dictating the crops they grew, the debts they could afford, and the time children could spend in school.

In essence, landlordism had a contested place within a chain of authority deeply rooted in the American constitutional order, which delegated white male landowners the power to control their domestic dependents (wives, children, unmarried siblings, servants, and, before emancipation, enslaved people) and represent the interests of their households in the political sphere.[36] Most early republican elites assumed that only those with landed property could make political choices without the coercion of others influencing their votes.[37] Tenants, by implication, were subordinated under the umbrella of the landlord's household.

Yet, during the early republic, property requirements swiftly declined as a barrier for white men to participate in politics. By 1855, only three states required citizens to own property in order to vote, and even these outliers offered exemptions.[38] Urbanization was an important driver of this change. Rural Americans became renters and boarders

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[36] Carole Shammas, *A History of Household Government in America* (Charlottesville: University of Virginia Press, 2002).
[37] Gordon Wood, *The Radicalism of the American Revolution* (New York: Vintage, 1993); Drew McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill: University of North Carolina Press, 1996).
[38] Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (2000; New York: Basic Books, 2009), 314. Native-born citizens were exempt from Rhode Island's property requirements. South Carolina offered a residency alternative to property ownership. New York exempted white men from property requirements, retaining them in order to exclude African-Americans from the suffrage.

when they left family farming to live in booming industrial cities. They often joined working-class communities formed by artisans who had abandoned their employers' households to form autonomous neighborhoods. Even members of the urban elite found themselves renters in crowded city centers.[39] Meanwhile, in the South, ownership of enslaved people became a more critical marker of status than landholding, providing planters with a foundation for securitizing some of the nation's greatest fortunes, and offering men of small property a way to claim authority at home and the public sphere.[40]

An expanding market economy forced lawmakers to reconsider the linkage of land tenure and citizenship. As one Virginia suffrage reformer argued during an 1830 debate, the logic of denying voting rights to tenants rested on their status as debtors:

> [I]f this be the rule of exclusion, how many freeholders, think you, will be excluded? I ventured to affirm at least one half or three-fourths: is there not that proportion indebted to their neighbours, their merchants, to the Banks, &c., by account, by bond, and by trust deed, or otherwise; and will not a debt have the same influence upon a freeholder, as upon a tenant or other non-freeholders?[41]

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[39] Paul E. Johnson, *A Shopkeeper's Millenium: Society and Revivals in Rochester, New York, 1815-1837* (New York: Hill and Wang, 1978); Elizabeth Blackmar, *Manhattan For Rent: 1785-1850* (Ithaca: Cornell University Press, 1990).

[40] Steven Hahn's study of the Georgia Upcountry argues that antebellum tenants "retained many of the features of farm ownership" and viewed themselves as rising up the agricultural ladder. Only after the Civil War did tenancy become problematic, as legal structures and debt obligations turned many tenants into wage laborers. Hahn, *Roots of Southern Populism,* 68-69. Even antebellum yeoman who did not own slaves "could not separate their power as masters from that of their planter neighbors." They could not challenge the prerogatives of property because their power to command obedience within their small households depended on the plantation regime: "Yeoman farmers had conceded too much to property to resist effectively its logic." Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995), 91, 114. On slaves as social and economic capital, see Baptist, *The Half Has Never Been Told*; and, Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, MA: Harvard University Press, 1999).

[41] *Proceedings and Debates, Virginia State Convention of 1829-30* (Richmond, VA: 1830), quoted in Robert W. Gordon, "Paradoxical Property," in *Early Modern*

If tenancy was primarily a debt relationship, what distinguished a landlord from any other creditor or employer who might demand political obedience as a condition of their contracts?

Tenancy was never a simple market transaction, however, because it was also a domestic relation. For white men without land, becoming a tenant was an alternative means of becoming an independent "head" who could exert control over his wife, children, servants, and slaves. In a nation grounded in the idea of landownership as the root of political liberty, renters fought to establish tenancy as an institution that would allow the tenant to be the "proprietor of his person and capacities" without property in land, and offer "freedom from dependence on the wills of others."[42] Put another way, they tested whether the status of tenant degraded a man into a legal subject—a failure like Bob, who lost his wife's affections and his own freedom to his landlord's whims—or earned him a set of privileges confirming his legal personhood, particularly as the property and labor-controlling head of a household.

D. The Ascendance of Tenancy in the Long Nineteenth Century

The outcome of these struggles remained uncertain with tenancy's expansion after the Civil War. Abusive agents and lascivious landlords were at the end of a broader spectrum of legal and extralegal coercions facing tenants in every region where renting was prominent. From the crowded tenements of New York City, to the bountiful corn and

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Conceptions of Property, ed. John Brewer and Susan Staves (New York: Routledge, 1996), 103.

[42] C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (New York: Oxford University Press, 1962), 3.

grain farms of the Midwest, and the depleted cotton lands of the defeated Confederacy, the relations between landlords and tenants were a daily test of the promise of *unlanded* independence.

By the end of the nineteenth century, American cities and hinterlands had become more unequal and stratified than before. Rural communities suffered under the pressures to produce commodity crops for booming cities and a global market.[43] "Had [Walter Hines] Page's imaginary Forgotten Man materialized in flesh and blood," historian C. Vann Woodward once wrote, "he would probably have been a wan figure clad in blue denim, clearly recognizable as a farmer—most likely, a tenant farmer."[44] In the Midwestern grain and corn belts, rates of farm tenancy would more than double between 1880 and 1920, with over forty percent of farmers working land they did not own. These tenant farmers were not a proletariat, however, and usually could bargain for the power to work rented land without a landlord's supervision and to retain ownership of the growing crop.[45] Some farmers were born into tenant families and stayed renters for life, unable to

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[43] Works highlighting the links between nineteenth-century rural and urban development include Marc Linder and Lawrence S. Zacharias, *Of Cabbages and Kings County: Agriculture and the Formation of Modern Brooklyn* (Iowa City: University of Iowa Press, 1999); William Cronon, *Nature's Metropolis: Chicago and the Great West* (New York: W.W. Norton, 1991); and, *The Countryside in the Age of Capitalist Transformation: Essays in the Social History of Rural America*, ed. Steven Hahn and Jonathan Prude (Chapel Hill: University of North Carolina Press, 1985). Eric Hobsbawm, *The Age of Capital: 1848-1875* (New York: Vintage Books, 1975), 205-227, provides a classic Marxist analysis of the global interconnections between industrialization and agricultural modernization.

[44] C. Vann Woodward, *Origins of the New South, 1877-1913* (1951; Baton Rouge: Louisiana State University Press, 1971), 406.

[45] Gavin Wright, "American Agriculture and the Labor Market: What Happened to Proletarianization?" *Agricultural History* 62, no. 3 (1988): 182-209.

afford land in counties dominated by absentee landowners.[46] Others saved enough money to become landowners by middle-age, inherited land from parents, or chose renting late in life after selling their lands to neighbors or children.[47] For white farmers, Midwestern tenancy was not an immobile structural order. "Tho we have many tenants," economist Benjamin H. Hibbard wrote in 1912, "we do not have, outside of a few instances, a tenant system," and no tenant "class" existing "outside the colored tenants of the South."[48]

By 1920, nearly two-thirds of the African-American and white farmers of the Deep South, and almost half of the farmers in the Upper South, were renters.[49] Composed of black and white farmers, this tenant class was an invention of property and contract law. After the Civil War, Southern lawmakers had transformed the traditional meaning of tenancy by introducing and codifying the sharecropping system.[50] Under these laws,

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[46] Paul Wallace Gates, "Frontier Estate Builders and Farm Laborers," in *The Jeffersonian Dream: Studies in the History of American Land Policy*, ed. Allan G. Bogue and Margaret Beattie Bogue (Albuquerque: University of New Mexico Press, 1996), 23-39.
[47] Richard T. Ely, "Tenancy in an Ideal System of Landownership," *American Economic Review* 9, no. 1 (1919); Allan G. Bogue, *From Prairie to Corn Belt: Farming on the Illinois and Iowa Prairies in the Nineteenth Century* (1963; Ames: Iowa State Press, 1994); Margaret Beattie Bogue, *Patterns from the Sod: Land Use and Tenure in the Grand Prairie, 1850-1900* (Springfield, Ill: Illinois State Historical Library, 1959); Donald L. Winters, *Farmers Without Farms: Agricultural Tenancy in Nineteenth-Century Iowa* (Westport, CT: Greenwood Press, 1978), 78-91; Mark Friedberger, *Farm Families & Change in Twentieth-Century America* (Louisville: University of Kentucky Press, 1988). Similar "family strategy" occurred on tenant farms in Ontario. Catharine Anne Wilson, "Tenancy as a Family Strategy in Mid-Nineteenth Century Ontario," *Journal of Social History* 31, no. 4 (1998): 875-96.
[48] Benjamin H. Hibbard, "Tenancy in the Western States," *The Quarterly Journal of Economics* 26, no. 2 (1912): 374.
[49] Jeremy Atack, Fred Bateman, and William N. Parker, "Northern Agriculture and the Westward Movement," in vol. 1 of *The Cambridge Economic History of the United States*, ed. Stanley L. Engerman and Robert E. Gallman (Cambridge: Cambridge University Press, 2000), 317-18.
[50] Woodman, *New South-New Law*; Barbara J. Fields, "The Advent of Capitalist Agriculture: The New South in a Bourgeois World," in *Essays on the Postbellum*

relatively few unlanded families could claim the common law protections that renters enjoyed from arbitrary eviction and trespass, nor could they freely sell the crops they grew on the market. The law defined them as something different: sharecroppers. Sharecroppers were farmers without farms who did not pay rent to a landlord, but rather were paid a share of the crops they grew at the end of the season after all their debts were paid. The landowner's control over the crop was secured by a kind of ownership known as the landlord's lien for rent. Each year, sharecroppers gambled that they could grow enough cotton or tobacco to make a profit after their costs for mules, fertilizer, food, medical bills, and labor were deducted from their share. Landlords and merchants would only lend to farmers willing to grow these cash crops, creating a "lock-in mechanism" that encouraged overproduction. Particularly in cotton-growing regions, which suffered years of low crop prices, sharecropping was a bad bet that mired farmers in an inescapable cycle of debt.[51]

Those who left farming to settle in America's industrial centers—including millions of immigrants from Eastern Europe, Mexico, and East Asia, where a land crisis fostered by booming populations and agricultural enclosure pushed scores off the land—also encountered a new set of challenges under the urban tenancy system.[52] Unlike sharecroppers, city tenants held exclusive possession of land and the buildings on it. But the landlord's hands-off attitude worked against the urban tenant's ability to secure a

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Southern Economy, ed. Thavolia Glymph and John J. Kushma (College Station: Texas A&M University Press, 1985), 73-94.

[51] The standard treatment of the "lock-in mechanism" is Roger L. Ransom and Richard Sutch, *One Kind of Freedom: The Economic Consequences of Emancipation* (Cambridge: Cambridge University Press, 1977), 162-64.

[52] John Bodnar, *The Transplanted: A History of Immigrants in Urban America* (Bloomington: Indiana University Press, 1985), 1-56

habitable home. Because the landlord owed a tenement dweller nothing but the land itself, the renter promised to pay the rent without any guarantee that his apartment would be safe or sanitary. In some cities, tenants whose homes burned to the ground were still responsible for timely rent payments. Those who tried to improve their standard of living through repairs or improvements were likely to forfeit their "sweat equity" at the end of their lease. Indeed, even renters with a lease could be evicted with little notice or due process.[53] Urban tenants could profit from their leaseholds by subletting rooms to other families, but such survival strategies exacerbated their overcrowded conditions. While middle and upper class tenants had the economic leverage and legal sophistication to contract away these pitfalls, most poor tenants could not. These burdens fell heavily on working-class women, who served as an unpaid labor force within their own homes or were employed as domestic laborers for the elite.[54]

Urbanization, immigration, and the rise in farm tenancy were interlinked, as were the legal and extralegal remedies landlords in cities and the countryside employed to secure their rents. In antebellum cities, if tenants failed to pay the rent, landlords could seize tenants' personal property to cover the default. Known as the landlord's "distress"

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[53] Richard H. Chused, "Landlord-Tenant Courts in New York City at the Turn of the Twentieth Century," in *Private Law and Social Inequality in the Industrial Age: Comparing Legal Cultures in Britain, France, Germany, and the United States of America,* ed. Willard Steinmetz (Oxford: Oxford University Press, 2000), 411-34; Jared N. Day, *Urban Castles: Tenement Housing and Landlord Activism in New York City, 1890-1943* (New York: Columbia University Press, 1999), 17-21, 96-98; Blackmar, *Manhattan For Rent*, 213-49.

[54] Dolores Hayden, *The Grand Domestic Revolution: A History of Feminist Designs for American Homes, Neighborhoods and Cities* (Cambridge, MA: MIT Press, 1982); Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York: Oxford University Press, 1994); Sarah Deutsch, *Women and the City: Gender, Space, and Power in Boston, 1870-1940* (New York: Oxford University Press, 2000).

remedy, property seizure became a method of managing failure, similar in practice, if not in form, to the fledgling bankruptcy laws of the early republic. When a tenant did not pay her rent, a landlord had priority over her tenant's other creditors to seize whatever goods the tenant had in her apartment or her rented farm. Ownership of land provided a legal basis for jumping ahead of other creditors in line for a debtor-tenant's possessions. Under the common law, landlords had no claim on tenant property until *after* a rent default. But because tenants could hide their personal property without much difficulty, distress became an ineffective remedy for protecting the security interests of landlords. By the time the landlord claimed his distress remedy, his tenant's valuables would be gone. Even if the seizure was successful, the landlord lost a significant portion of the property to sheriff's fees, had to return property exempted under the homestead laws to poor tenants, and was not guaranteed a fair market price when the impounded property was finally auctioned to the public.

With common law principles of domestic sanctity blocking landlords from entering tenant homes until it was too late, the landed lobbied for new security interests. One was the crop lien. Under statutes passed in states from New Jersey to Arizona in the nineteenth century, landlords obtained, automatically or by contract, an ownership interest in their tenants' personal property sufficient to cover the rent. This landlord's lien vested at the beginning of the lease. Property covered under the lien—usually valuable chattels like crops, farm equipment, buggies, and livestock—could not be removed, mortgaged, or sold by the tenant without the landlord's permission. Although courts held them in suspicion, crop liens were justified as a means of providing credit to tenant households who otherwise lacked the means to rent.

But the lien idea was a promiscuous one. A variety of interest groups, from farm laborers to mechanics to suppliers of irrigation, demanded a right to claim a place in the priority line. The most important rival to the landlord's crop lien was the chattel mortgage. Merchants and landlords loaned cash to tenants who posted their personal property as collateral for the debt, or sold mules, buggies, and farming tools to tenants while retaining a mortgage on the property to secure payment. Although their functions often blurred—a landlord might secure his rent with a crop lien and also extend credit to his tenant through a chattel mortgage—these security instruments frequently created debt disputes among landlords, tenants, and merchants and laid the foundation for the twentieth-century system of secured transactions so vital to the development of the American consumer market. These new forms of debt challenged older ideas of unlanded independence, giving tenant households new sources of autonomy in goods, rather than land. The reinvigoration of the distress remedy as the chattel mortgage and crop lien was a critical but unheralded innovation in American finance, which changed the ways that poor people could obtain credit and create households.

Between the years of the early republic and the early twentieth century, tenancy law took a new shape. At the beginning of this long nineteenth century, tenancy law defined rented households as autonomous and patriarchal spaces, where the renter held full ownership of his personal property and control over his family's labor and its fruits. The landlord hovered over the scene, but had little to do with the tenant family until the rent was due. Yet by the end of this period, landlords and merchants secured more powerful means for controlling the property and labor of renters. By understanding how tenants bargained around these rules, lobbied for fairer ones, or built alliances against

their landlords, we gain a more dynamic view of an institution shaping the lives of millions of people across lines of race, class, sex, and region.

E. Property, Tenure, and the Struggle for Household Autonomy

Legal antonyms are deceptive. A renter is not the opposite of a landowner, any more than a master is the opposite of a servant, or a husband is the opposite of a wife. Rather, these pairings represent a set of legal rights and obligations that arise when people enter into these relationships. At their root, both fee simple (absolute) ownership and tenancy are means of claiming autonomy—that is, exclusive possession of land or other property—for a period of time, whether for a year or one's life, against other people and the state. As Legal Realist scholars of the early twentieth century instructed lawmakers and judges, property was not "a relation between people and things," it was "a relation between people."[55] The right to exclude was a form of publicly sanctioned coercion, shared by owners and tenants alike, that households could use to claim rights, contract debts, demand compensation, and command labor.

Accordingly, tenancy appealed to landless farmers' desire for independence, even when it pulled them into crushing debts. "The tenant when he rents land is his own manager," explained O.B. Stevens, Georgia's agricultural commissioner and a critic of the crop lien system, in 1901. "He controls his own affairs; he goes when he pleases and

[55] Stuart Banner, *American Property: A History of How, Why, and What We Own* (Cambridge, MA: Harvard University Press, 2011), 101; Barbara H. Fried, *The Progressive Assault on Laissez Faire: Robert Hale and the First Law and Economics Movement* (Cambridge, MA: Harvard University Press, 2001).

he comes when he pleases; he is under control of nobody at all."[56] The problem of landed independence since the nineteenth century has centered on the power of men to control their households. "The most successful system of farming," agricultural reformer W.J. Spillman wrote in 1902, "is that which gives the largest profit, leaves the soil in condition to yield maximum crops, and brings to the farmer *and those dependent on him* the largest measure of happiness."[57] Tenancy and its related forms were among several ways that men fought for household autonomy through property, which, depending on the era, could include the labor of wives, children, servants, and enslaved people.[58]

Ownership was, of course, no guarantee of independence. Few landlords could claim absolute and unmediated control of their land: some were the agents or subtenants of landowners; some were widows holding "life tenancies" in the land until their death; and nearly all were subject to encumbrances on the land that limited their power, from property taxes and mortgages to assessments for irrigation and easements for railroads. Both Midwestern settlers and Southern freedpeople bought land on contracts resembling leases, often paying their mortgages with a share of the crop and risking swift forfeiture in the event they missed a payment.[59] Landowners in both regions "double-farmed": to

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[56] U.S. Industrial Commission, *Report of the Industrial Commission on Agriculture and Agricultural Labor*, H.R. Rep. No. 57-179, vol. 10, at 909 (1901).
[57] W.J. Spillman, "Systems of Farm Management in the United States," *Yearbook of the Department of Agriculture* (Washington, DC: 1902), 343. Emphasis added.
[58] In this light, "tenant" or "renter" are imprecise ways to describe the many devices that non-proprietors used to legally occupy and exploit land owned by others. An incomplete list includes (1) customary rights to land (such as plots reserved for the slaves' economy and common hunting and grazing lands), (2) leases of land for shares of the crop, a fixed payment, or "sweat equity" improvements to the property, (3) housing as a condition of waged or unfree labor, and (4) subleasing arrangements and boarding out.
[59] Bogue, *Patterns in the Sod*, 104-107; Contract and Agreement signed by A.H. Arrington and William H. Rentfrow, December 16, 1868, file 44, subseries 3.1.2, Archibald Hunter Arrington Papers, MS 3240, SHC.

establish a homestead, they bought marginal lands or plots too small to farm efficiently, and then earned income by renting or sharecropping farms owned by others.[60] In cities, too, property-owning families subdivided their holdings among many possessors, often paying ground rents to an absent title holder while collecting payments from tenants on annual leases, boarders staying for a shorter term, and business or manufacturers occupying lower floors and basements. Those tenants, in turn, might carve out a portion of their lease for rent to a subtenant family.[61] Whether as struggling yeoman farmers or wealthy absentee owners, landowning families shared common strategies with tenant households for managing the land, paying their debts, and supervising the labor of dependents and hired hands.

Whatever their survival strategy, few tenant households or small freeholders could afford to operate along strict patriarchal lines or adhere to a clear separation between private and public spheres. Men depended on the labor of wives, children, relatives, and hired hands to cover their debts. The economic foundation of tenancy was family labor, and no household could arrange a lease without guaranteeing sufficient "force" to pay the rent. The word "force" had a "technical meaning" when put into a lease: "it does not mean a six-shooter or a bowie knife or a 10-inch battery; it means a

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[60] *Beyond Forty Acres and a Mule: African American Landowning Families since Reconstruction*, ed. Debra A. Reid and Evan P. Bennett (Gainesville: University Press of Florida, 2012); Sharon Ann Holt, *Making Freedom Pay: North Carolina Freedpeople Working for Themselves, 1865-1900* (Athens, GA: University of Georgia Press, 2003); Valerie Grim, "African American Landlords in Rural South, 1870-1950: A Profile," *Agricultural History* 72, no. 2 (1998); Loren Schweninger, *Black Property Owners in the South, 1790-1915* (Urbana: University of Illinois Press, 1990).

[61] Day, *Urban Castles,* 7-29.

battery of children with the woman at their head."[62] In rural regions, commodity agriculture pressured rural families to organize their lives around the demands of the crop, the landlord, and very often the merchant. While patriarchal households were the norm, unmarried freedwomen like Babe Toney also turned to tenancy as way to maintain "a minimal amount of control over their own productive energies and those of their children."[63] Field labor by women and children, white and black, became "part of the natural order of things."[64] These relations paralleled decentralized industrial production in the cellars and dimly lit apartments of Northern tenements that turned households into contracted labor for manufacturers or merchants. To create a space of household autonomy, heads of tenant families—generally men, but sometimes single, separated, or unmarried women like Baby Toney— faced exploitation by landlords for their rents and merchants for their debts, while staying afloat by contracting the labor of their household dependents.[65] Independence had a high price.

Such pressures compromised the autonomy of households in all tenure classes, threatening the republican model of household governance. As historian Carole Shammas

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[62] U.S. Commission on Industrial Relations, *Final Report and Testimony*, S. Doc. 64-415, vol. 10 (1916): 9,060 (Testimony of Patrick S. Nagle).

[63] Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (New York: Alfred A. Knopf, 1985), 46. Along with forms of tenancy, working-class black women depended on wage work to maintain independent households. Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (Cambridge: Cambridge University Press, 2008), and Sharon Ann Holt, *Making Freedom Pay*. In doing so, they relied on the strength of their community networks to obtain higher wages and better working conditions. Tera Hunter, *To 'Joy My Freedom: Black Women's Lives and Labors After the Civil War* (Cambridge, MA: Harvard University Press, 1997).

[64] Rupert B. Vance, *Human Factors in Cotton Culture* (Chapel Hill: University of North Carolina Press, 1929), 161-62.

[65] Evelyn Nakano Glenn, *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* (Cambridge, MA: Harvard University Press, 2002); Boydston, *Home and Work.*

argues, the "disintegration of the powers of the household head" was more central to the meaning of modernity in the nineteenth century than industrialization or urbanization.[66] Public governance of the home widened, as a judicial and administrative infrastructure developed for mediating relations among husbands and wives, parents and children, and employers and domestic servants. Mandatory school laws, child labor restrictions, minimum wage rules, women's property acts, domestic violence laws, divorce liberalization, and anti-cruelty statutes protecting animals and children from abuse all represented efforts to break down the lines between public and private spheres that cloaked male household heads with significant power.[67] Employers also encroached on

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[66] Shammas, *Household Government in America*, xiii-xiv. Sidney M. Finger, *Civil Government in North Carolina and the United States: A School Manual and History* (New York, 1900): 14-15 (Government "means the art of directing and controlling"; this extension of authority begins in the home in the form of "family government," transfers to teachers in the form of "school government," and then vests in public officials with the power of "civil government"). Historians of the nineteenth-century South pay significant attention to the transformation of Southern households, but have not focused on tenancy as a driver of legal conflict within the household. Gregory P. Downs, *Declarations of Dependence: The Long Reconstruction of Popular Politics in the South, 1861-1908* (Chapel Hill: University of North Carolina Press, 2011); Glymph, *Out of the House of Bondage*; Laura F. Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997), Peter Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 1995); Victoria Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill: University of North Carolina Press, 1992); Elizabeth Fox-Genovese, *Within the Plantation Household: Women in the Old South* (Chapel Hill: University of North Carolina Press, 1988); McCurry, *Masters of Small Worlds.*

[67] Eileen Boris, *Home to Work: Motherhood and the Politics of Industrial Homework in the United States* (Cambridge: Cambridge University Press, 1994); Susan J. Pearson, *The Rights of the Defenseless: Protecting Animals and Children in Gilded Age America* (Chicago: University of Chicago Press, 2011); Linda Gordon, *Heroes of Their Own Lies: The Politics and History of Family Violence, Boston, 1880-1960* (Urbana: University of Illinois Press, 2002); Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985); Stephen Lassonde, *Learning to Forget: Schooling and Family Life in New Haven's Working Class, 1870-1940* (New Haven: Yale University Press, 2008); Hendrik Hartog,

the prerogatives of the household head. Leading studies of this change have focused on the industrial North, where, historian Amy Dru Stanley writes, "hireling men" thought of themselves as "wage slaves," and complained that they were "dispossessed of both their labor's proceeds and the service of their wives" by the expansion of capitalism.[68]

By focusing on how the normative subjects of labor history, industrial white male workers, believed that employers were encroaching on their authority as household heads, historians have obscured the ways that tenant households headed by people from a range of backgrounds—white men of small property, former slaves, widows and single women—responded and adapted to the changing relations between family, market, and state.[69] The experiences of this heterogeneous group offer a new perspective on how power operated at the local level in the long nineteenth century.

Man and Wife in America: A History (Cambridge, MA: Harvard University Press, 2000); Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999).

[68] Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998), 164.

[69] An insightful critique of the "artisan to workers" narrative, urging historians to focus on the common struggles of unfree and low-waged laborers against a legally coercive labor system, is in Seth Rockman, *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore* (Baltimore: Johns Hopkins University Press, 2008), 8-12. Andrew Wender Cohen's analysis of turn-of-the-century Chicago craft unions offers suggestive parallels between the ideologies of small craft producers and tenant households. Tenant households and small producers have been left out of the labor history narrative, but both shared a fear of corporate power, whether from national industries or monopolistic landlords. Both working classes operated in an environment without significant barriers between employer and employee, and developed customary systems of labor organization that may have limited the absolute property rights of their employers. Andrew Wender Cohen, *The Racketeer's Progress: Chicago and the Struggle for the Modern American Economy, 1900-1940* (Cambridge: Cambridge University Press, 2004). Anthropologist Jane Adams raises a concurrent point in her research on Southern Illinois tenant farmers, finding that their relationships with their landlords "tended to be highly personal and involved far more than selling labor for a wage." Jane Adams, *The Transformation of Rural Life: Southern Illinois, 1890-1990* (Chapel Hill: University of North Carolina Press, 1994), 126.

F. Land, Credit, and Labor: A Legal History of Capitalism from the Bottom Up

The following chapters chart how innovations in property law, credit, and labor relations reshaped tenant households and the meaning of tenancy as an institution of unlanded independence for white men of small property, white women, and African Americans. The story begins in the Mid-Atlantic states before the Civil War, where landlords and tenants fought over the extent of the intrusive common law "distress" remedy. Tenants and their allies entered a game of cat-and-mouse when the rent came due to hide their movable property from landlords. To prevent these invasions of domestic space, rural tenants, urban tenement dwellers, and city merchants joined to abolish this remedy in New York in the 1840s, but it soon shifted in place and form. Distress moved from urban centers to rural hinterlands, and was remade as two security interests, the chattel mortgage and the crop lien, which haunted millions of indebted American farmers in the late-nineteenth century.

The trends in land, labor, and credit underlying the transformation of Northern tenancy were integral to the creation of a free labor society in the postbellum South. The second chapter shows how the landlord's priority right to rent moved southward after emancipation and stirred decades of conflict about the meaning of freedom. As freedpeople lost political power and the hope of owning land, tenancy offered the chance to secure independent households. Legislative changes, however, solidified tenancy's slide into a legal structure that made everyday life seem, at times, no better than slavery. North Carolina's 1875 lien laws were the most landlord-friendly of any Southern state, but lawmakers quickly faced pressure within a dynamic political environment to mitigate

the worst excesses of landlord power and preserve the autonomy of male tenants, white and black, as household heads. They amended the law in 1877 to give tenants a remedy in case the landlord wrongly seized their portion of the crop. This created a legal puzzle: how could a renter be dispossessed of the crop without first having some mark of possession in it? As "mere croppers" continued to act in tenantish ways, court battles between landlords, merchants, and renters would test the true power of the landlord's lien in controlling rural households.

A lien, after all, meant nothing if labor disappeared. Law, debt, and violence ensured that renters honored their contracts, but some tenants and croppers were willing to take the risk of breaking their leases to get better deals. White tenants had far more leeway than African Americans to test the boundaries of the law. The third chapter analyzes the legal and extralegal ways that two white tenant farmers in eastern North Carolina dodged their cotton rents following a serious hailstorm in 1888. When their landlords refused to lower their fixed rent, the tenants went on strike, ousted their "subtenant" white and black growers, and sold their cotton in defiance of their landlords' lien, all under the legal justification of coverture: that their lease was not binding because their female landlord never consented to the renting of her lands. Their experience reveals how relations of debt and labor created a fragile pyramid of obligation. The Southern credit crisis was both economic and rooted in legal uncertainty. A single lease might govern the relations among several farming families and the many laborers and merchants serving them, leaving public mediators to muddle through a confusing and conflicting assortment of rights and obligations when things went wrong.

The fourth chapter examines how eastern North Carolina landlords used criminal law, rather than civil remedies, to enforce most tenancy agreements, and maps the patchwork of fields, storefronts, county courts, and appellate benches where criminal justice happened. If formal law was to serve the needs of the freedpeople, it would have to start here: This region was a Republican stronghold until the end of the nineteenth century, where two African-American lawyers served as public prosecutors in the years after Reconstruction. This chapter draws upon local court records, crime statistics, and the papers and memoirs of attorneys and judges to argue that white and African-American tenants and sharecroppers could achieve simple justice through formal law, but at a high cost to their family's economic autonomy and with unpredictable results.

The fifth chapter brings the issues of possession, debt, and remedy analyzed in the prior chapters to the Midwest, where absentee landlords relied on agents, tenants, and sharecroppers to turn soggy prairies into profitable farms. Midwestern tenants came much closer than Southern renters to approximating the rights and privileges of yeoman landowners, but their independence came increasingly under threat by the early twentieth century. Using the papers of the widow Julia Green Scott, who owned thousands of acres in Illinois and Iowa, this chapter shows how issues of authority, improvements, and labor control, including the enforcement of crop liens and criminal law remedies, shaped the legal expectations of landlords and renters in ways both parallel to and divergent from the South. Some Midwestern tenants became adept students of contractual bargaining, taking advantage of seasonal timing, local knowledge, and inertia to obtain better lease terms, stabilized rents, and compensation for installing fences and barns, breaking new fields, and hauling the drainage tiles that could boost land values by 500 percent. Other tenants

who tried to gain concessions by withholding labor or rent, however, found themselves swiftly punished. Landlords rarely turned to formal legal channels to collect rents or correct tenants, but did so to make examples to other tenants. Landlords could use even small violations of the lease, such as a tenant's failure to keep the farm free from weeds, as grounds for eviction. Landlords could also use the market to control tenant mobility. Because most tenants were subject to the landlord's lien for rent, few grain buyers were willing to take the risk of buying tenanted crops. And neighboring landlords refused to rent to tenants with a reputation for challenging their landlord's orders. Through the lease, the market, and the courts, Midwestern landlords pushed back against their tenants' informal understandings of their rights as small farmers on the make.

In sum, *Possession and Power* uses the social history of law to recover how the struggle for household autonomy shaped the lives of landlords and tenant families in the long nineteenth century. While this story has its share of villains—men like Needham Ward who used their power to rob, cheat, imprison, and kill tenants who had little recourse at law—and unknown heroes—women like Babe Toney who claimed public rights, but at a high cost—it is ultimately a narrative about ingenuity, compromise, and the costs of independence

Chapter One.

Every Man His Own Avenger:

Property Seizure and the Transformation of Tenancy in the Nineteenth Century

The landlords caught Mary Norris along the Passaic River at Acquackanonck landing, as she hurriedly loaded her belongings onto a ship heading back to New York City.[1] Norris had moved across the Hudson River to Paterson, New Jersey, in May 1823. Before she left New York, she arranged a year's rental of a house from two landlords and speculative builders, Ralph Romaine and John Kip for $120, payable, as was customary, each quarter. At a time when women had limited power to own property or form independent households, Norris took advantage of the flexibility of tenancy to join the growing ranks of Northern women who moved to cities alone and worked for wages.

Unfortunately for Norris, the house was still under construction when she arrived, and she had no choice but to live in its garret while Romaine finished the job. This makeshift bedroom was "uncomfortable" and, worse yet, "was connected with the part of another house in which men slept." Norris dwelled sometimes in the "partially furnished" kitchen and at other times in the home's storeroom. Norris continually asked Romaine to finish the garret bedroom, "and he always promised to do it next week but never did." In frustration, Norris fled to New York on June 16, less than two months into her lease. Her landlords followed her to the docks, and seized her furniture to cover her rent bill. Norris appears to have given them money and a sideboard in order to keep the rest of her furniture.

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[1] Romaine v. Norris, 8 N.J.L. 80 (1825).

Norris sued the landlords for trespass before a local justice of the peace, arguing that Romaine and Kip had no right to take her property in June because the first quarter's rent was not due until the end of July. Landlords could only seize tenant property to cover the rent after the payment was actually due. Norris won eighty-three dollars in damages. The landlords appealed to a trial court and lost again. This time, the judge assessed them for one hundred dollars in damages plus costs.

The landlords challenged the ruling to New Jersey's highest court, claiming that Norris should not have been allowed to bring evidence of her unsuitable living conditions before the lower courts. After all, nineteenth-century landlords had no legal responsibility to provide habitable housing; their obligation was merely to provide possession of the land for the term.[2] But Norris was not trying to prove that the landlords had breached their contract. Instead, the tenant was trying to prove the extent of the harm she suffered. A gendered appeal—that she had the right to present the circumstances that "induced her removal" from a home "not fit for a female to live in because not finished according to contract"—and a legal technicality about the timing of the distress itself won the case.

Under the common law that English colonists brought to North America, if a tenant failed to pay the rent, a landowner held the power to "distrain" the tenant's furniture, kitchenware, and crops to cover the default. This remedy also went by the apt name "distress." By the end of the nineteenth century, distress had faded from view. Legal writers in the nineteenth century described this change: while the 1856 version of John Bouvier's law dictionary remarked that "[t]he remedy by distress to enforce the payment of arrears of rent is so frequently adopted by landlords . . . that a considerable

[2] Compare Nichols v. Dusenbury, 2 N.Y. 283 (1849) (landlord's failure to complete building was not adequate grounds for breaking lease, and landlords could levy distress).

space will be allotted to this article," by 1892, this language was deleted, and the wordsmiths conceded that "[a]s a means of collecting rent . . . it is becoming unpopular in the United States, as giving undue advantage to landlords over other creditors in the collection of debts."[3] Judges attacked distress as a remedy unsuited for "the change in the business and intercourse of the world . . . and the facilities which an enlightened policy should afford to the meritorious pursuits of life."[4]

Distress had not truly disappeared, however, but took on new legal forms. This chapter poses an untested question within the historiography of American law and political economy: how and why did the distress remedy of the eighteenth century become the landlord's crop lien of the nineteenth century?[5] The answer changes the "origins" story of Southern sharecropping after the Civil War, showing how this tenancy regime arose not just within the local politics of emancipation and the global expansion of agricultural capitalism, but in relation to the social history of property in Northern farms and cities before the war.[6] Across the long nineteenth century United States,

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[3] *A Law Dictionary*, comp. John Bouvier, 6th ed., (1856), s.v. "distress," accessed January 30, 2015, http://www.constitution.org/bouv/bouvier_d.htm; *A Law Dictionary*, comp. John Bouvier and Francis Rawle, 15th ed. (1892), s.v. "distress."

[4] Trieber v. Knabe, 12 Md. 491 (1859).

[5] Recent studies of land, debt, and risk do not account for tenancy as a system of credit. Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge, MA: Harvard University Press, 2012); Christopher Clark, "The Agrarian Context of American Capitalist Development," in *Capitalism Takes Command: The Social Transformation of Nineteenth-Century America*, ed. Michael Zakim and Gary J. Kornblith (Chicago: University of Chicago Press, 2012); Edward J. Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill, NC: University of North Carolina Press, 2001).

[6] A vast literature traces the transition from slavery to sharecropping in the South, including Roger L. Ransom and Richard Sutch, *One Kind of Freedom: The Economic Consequences of Emancipation* (Cambridge: Cambridge University Press, 1977); Ralph Shlomowitz, "The Origins of Southern Sharecropping," *Agricultural History* 53, no. 3 (1979): 557-75; Gerald Jaynes, *Branches Without Roots: Genesis of the Black Working*

landlords and tenants in all regions grappled with a common issue of possession and power: to what extent did landlords control the property and labor of tenant households? Conflicts over property seizure among landlords, tenants, merchants, and other participants in tenancy relations were a volatile site for contesting these boundaries.

This chapter compares the history of three security measures that landlords and other creditors took to secure their debts with tenants: the distress remedy, the crop lien, and the chattel mortgage. I argue that the decline of distress in the mid-nineteenth century was followed by a period of legal innovation, as landlords developed lesser forms of tenancy—"tenancy in common" or sharecropping—more suited to the era's ideology of freedom of contract. With the passage of crop lien laws, merchants could lend more freely to farmers without land. Lenders also took mortgages on movable property, rather than land, to secure smaller debts. In turn, market-minded tenants became more entrepreneurial, contracting out their lease obligations to families of lesser property. Effectively, tenancy branched out in complex debt chains beyond its common law

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Class in the American South, 1862-1882 (New York: Oxford University Press, 1986); Edward Royce, *The Origins of Southern Sharecropping* (Philadelphia: Temple University Press, 1993); and, Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (Baton Rouge: Louisiana State University Press, 1996). Historians continue to debate the contours of the "standard" narrative of sharecropping's rise: its prominence in comparison to wage labor, its variations by region, its relative impact on the lives of white and black families, and its relation to patterns of landownership by former masters and slaves. Robert Tracy McKenzie, *One South Or Many: Plantation Belt and Upcountry in Civil War-Era Tennessee* (Cambridge: Cambridge University Press, 2002). For all of attention paid to this topic, few have analyzed sharecropping's relation to Northern antebellum tenancy or labor law. Exceptions to this rule are Harold D. Woodman, *New South-New Law: The Legal Foundations of Credit and Labor Relations in the Postbellum Agricultural South* (Baton Rouge: Louisiana State University Press, 1995); James D. Schmidt, *Free to Work: Labor Law, Emancipation, and Reconstruction, 1815-1880* (Athens, GA: University of Georgia Press, 1998); and, Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge: Cambridge University Press, 2001).

borders, laying the groundwork for agricultural relations in the postwar South and Midwest.

Before the Civil War, landlords had relatively weak legal protections when their tenants did not pay the rent. Their distress remedy was, at best, a retrospective means of managing failure. A tenant's inability or unwillingness to pay rent triggered a poor man's bankruptcy proceeding that gave landlords first right to payment. In response to distress, tenants played a cat-and-mouse game with their landlords to hide their often pitiful assets before the distress. After chasing down this property, paying fees to judicial officials who impounded and auctioned the property, and perhaps negotiating with a tenant's other creditors, a landlord might be left with pennies on the dollar to apply to the back rents. Yet even if landlords were weak, hostility to the distress remedy crossed regional and economical lines, leading to the remedy's abolition in New York in 1846. From Brooklyn to rural Delaware County, New York, to Reconstruction South Carolina, distress seemed a vestige of ancient privilege and an offense to the rights of free labor.

Despite this wave of indignation and reform, landlord power actually grew in the mid-nineteenth century with the passage of landlords' crop lien laws in the rural North, Midwest, and South. Without the crop lien in place, a tenant was "subject to this dormant right of the landlord" to order a distress, but he was "as much the owner of his effects as any other person would be who owned property and owned debts."[7] Crop ownership had afforded tenants autonomy in the way they managed their credit relations with landlords and merchants. "'I can pay in pro-*duce*,' is the offer which I was assured is constantly made on all occasions" by tenant farmers, observed Frances Trollope in her 1832 travel

[7] Morgan v. Campbell, 89 U.S. 381 (1874).

book, "and if rejected, 'Then we can't deal,' is the usual rejoinder."[8] Crop lien laws reduced landlords' risks by allowing them to take a lien on their renters' crops as a condition of their lease. In other words, they retained an interest in the property to secure the rent, giving them insurance on the labor of their renters' families.

But landlord's liens were only as powerful as their priority. As lawmakers and courts began liberally recognizing a range of "possessory" and "nonpossessory" security interests in the nineteenth century—liens for mechanics, laborers, seamen, innkeepers, irrigators, municipalities, and a host of other creditors; chattel mortgages taken by merchants on mules, buggies, and farming machinery—landlords too cash-poor to furnish their tenants ceded power to those who could. By allowing for personal, rather than real, property to stand for debts, chattel mortgages allowed renters to consume with limited interference from their landlord. Stripped of their distress remedy, and lacking power to demand their lien, landlords would increasingly find their priority compromised as they entered the twentieth century.

A. Distress in the Antebellum North

Historians of law, labor, and tenancy have analyzed the political battles over the distress remedy in light of decades of tension sparked by the market revolution in Northern cities and hinterlands. Opposition to distress crossed class lines. In the 1840s, New York City merchants and leaders of its Workingman's Party alike saw the distress remedy as a special privilege that robbed poor urban tenants of their meager property and cut off the payment rights of lenders and mechanics. Upstate, farm tenants on so-called

[8] Frances Trollope, *Domestic Manners of the Americans* (London: 1832), 197.

perpetual leases organized an anti-rent movement to repel sheriffs trying to seize their crops and livestock. To them, their absentee landlords' efforts to collect rents, particularly through invasive remedies like distress, was an offense to the rights of free laborers. Ironically, these tenants disguised themselves in what was described as "Indian" costume to protest their dispossession.[9] New York abolished distress in 1846, and efforts to end the remedy gathered national momentum amid the free labor enthusiasm of the era's politics. In October 1850, for example, Mercer County, New Jersey's Whigs passed a platform demanding the elimination of "odious distinctions" in law, including "abolishing the right of distress for rent, and placing landholders on the same footing with other creditors."[10] Ending distress was constitutive of the meaning of free labor in the Reconstruction South as well. In 1867, Freedmen's Bureau officials abolished distress to protect the earnings of the freedpeople from their former masters.[11]

To understand why distress felt so threatening to a broad range of people, it is vital to grapple with the place of tenancy in antebellum life. Unfortunately, historians do not know what portion of American farms were run by tenants before 1880, when the U.S. Census began tracking land ownership rates. Tenancy was common in both the antebellum North and South, but its presence has been hard to determine because of the

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[9] Elizabeth Blackmar, *Manhattan For Rent: 1785-1850* (Ithaca: Cornell University Press, 1990); David Montgomery, *Citizen Worker: The Experience of Workers in the United States with Democracy and the Free Market during the Nineteenth Century* (Cambridge: Cambridge University Press, 1995); Charles W. McCurdy, *The Anti-Rent Era in New York Law and Politics, 1839-1865* (Chapel Hill: University of North Carolina Press, 2001); Reeve Huston, *Land and Freedom: Rural Society, Popular Protest, and Party Politics in Antebellum New York* (New York: Oxford University Press, 2000); Mark A. Lause, *Young America: Land, Labor, and The Republican Community* (Urbana: University of Illinois Press, 2005).
[10] "Mercer Whig Convention," *State Gazette* (Trenton, NJ), October 21, 1850.
[11] "Liens on Crops," *Wilmington Journal* (Wilmington, NC), July 26, 1867.

inconsistent ways that census takers recorded property ownership.[12] A review by leading econometricians of the few case studies that have been performed suggests "that tenancy at the time of the Revolution was as high as it was a century later," hovering between ten and thirty percent.[13] Agricultural regions with the highest rates of tenancy generally had high land values because of their proximity to urban markets or transportation corridors, such as the truck farming neighborhoods of Queens and Brooklyn,[14] or Chester and Lancaster counties near Philadelphia, where 30 percent of married taxpayers owned no land in the years before the Revolution.[15] They also featured significant concentrations of wealth. Landlords in New York's Hudson Valley held tens of thousands of acres descending to them from Dutch land grants.[16] Large swaths of farmland in the Midwest were also seized and rented out by absentee landowners.[17] Speculation also reshaped urban land markets in the early nineteenth century. In New York City, the percentage of property-owning voters declined between 1790 and 1814 from 46.9 percent to 22.7 percent and the price of improved lands jumped from fifty dollars an acre after the

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[12] Frederick A. Bode and Donald E. Ginter, *Farm Tenancy and the Census in Antebellum Georgia* (Athens, GA: University of Georgia Press, 1986), 8-9. On Northern antebellum tenancy rates, see Donghu Yang, "Farm Tenancy in the Antebellum North," in *Strategic Factors in Nineteenth Century American Economic History: A Volume to Honor Robert W. Fogel*, ed. Claudia Goldin and Hugh Rockoff (Chicago: University of Chicago Press, 1992), 135-56.

[13] Jeremy Atack, Fred Bateman, and William N. Parker, "Northern Agriculture and the Westward Movement," in *Cambridge Economic History of the United States*, vol. 1, ed. Stanley L. Engerman and Robert E. Gallman (Cambridge: Cambridge University Press, 2000), 318.

[14] Marc Linder and Lawrence S. Zacharias, *Of Cabbages and Kings County: Agriculture and the Formation of Modern Brooklyn* (Iowa City: University of Iowa Press, 1999).

[15] James T. Lemon, *The Best Poor Man's Country: A Geographical Study of Early Southeastern Pennsylvania* (Baltimore: Johns Hopkins University Press, 1974), 94.

[16] McCurdy, *The Anti-Rent Era*, 10.

[17] Paul Wallace Gates, *Landlords and Tenants on the Prairie Frontier: Studies in American Land Policy* (Ithaca: Cornell University Press, 1974).

Revolution to $250 per acre by 1800. "Land monopoly" may have been limited on a national scale, but its impact was deeply felt at the local level amid the era's dynamic economic transformations.[18]

While older European practices played through landlord-tenant relations, American tenants were not tied by feudal obligation to the land. A lease, in its barest form, spelled out a simple agreement. The tenant's obligation was to pay rent, customarily through the crops grown on the land. The landlord's duty was to provide the tenant with undisturbed possession of the land and buildings for a term. Unless the lease said otherwise, the landlord had no responsibility for offering the tenant housing or assisting him with growing crops, nor did he have the right to interfere with the tenant's operations. As a result, tenants enjoyed much of the autonomy associated with yeoman farming, but also shared its risks.

Competing interests within the landlord and tenant classes complicated efforts to reform leasing and the practice of distress. Diverse ownership and leasehold patterns defined the multilayered nineteenth-century urban real estate market. A tenant might be the owner of a brothel, hotel, or boardinghouse, or the renter of a room in single-family home. Historian Wendy Gamber's study of boardinghouses suggests that "[i]n cities and many towns, people of all classes were at least as likely to be living in boardinghouses as in homes," and many people living in homes were actually renters.[19] A landlord could be

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[18] Blackmar, *Manhattan For Rent*, 40.

[19] Wendy Gamber, *The Boardinghouse in Nineteenth Century America* (Baltimore: Johns Hopkins University Press, 2007), 3. See also Andrew Sandoval-Straus, *Hotel: An American History* (New Haven: Yale University Press, 2007).

the widowed proprietor of a boardinghouse or, like Trinity Church, the holder of ground rents to much of lower Manhattan.[20]

Further, a landlord's remedies depended on the nature of his or her leasehold: a hotel or innkeeper had different legal rights and duties than the landlady of a boardinghouse or an immigrant subtenant who managed a tenement, which was a fact that some landlords ignored or used to their advantage. Under the common law, for example, an *innkeeper* was liable for the safety of his or her guest's possessions, but could hold those goods in the lieu of rent, while a *boardinghouse keeper* was not obliged to protect chattels or allowed to seize them in the event of default. Yet there is evidence that boardinghouse keepers enforced customary liens, seizing tenants' trunks and even, in an extreme example, a boarder's child.[21] Likewise, if a customer sued an innkeeper for the value of luggage stolen under his watch, the hotelier might argue that he was actually running a boardinghouse and not responsible for the loss, or that the guest had been living on the premises so long as to be a de facto boarder.[22]

Absconding proved to be the main way that poor tenants gained leverage over landlords with few legal obligations to their tenants beyond possession of the land. While they had little success in organizing housing reform movements, New York City tenants

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[20] Jared Day raises a similar point in his study of early twentieth-century tenement landlords, urging historians to consider "the intense conflict that existed within the real estate industry between property owners of all classifications." Jared N. Day, *Urban Castles: Tenement Housing and Landlord Activism in New York City, 1890-1943* (New York: Columbia University Press, 1999), 3.

[21] Gamber, *Boardinghouse*, 47-48.

[22] See also Springer v. Lewis, 22 Pa. 191 (1853) (boardinghouse keeper described himself as a "farmer" to take advantage of agricultural homestead laws); Race v. Olridge, 90 Ill. 250 (1878) (widowed boardinghouse keeper claimed homestead exemption on ground that she was operating a household, not a business; held that widow's adult female friend and two servants constituted a "family" and widow was "head of the household").

could earn concessions or forbearance from landlords by threatening to flee with unpaid rent. [23] Because of this threat, distress aided a broad class of property managers. Urban landlords were often actually subtenants who managed rental properties and had to collect enough rent to pay their own landlords and earn a marginal profit.[24] As a result, some tenants fought to preserve distress, such as boardinghouse keepers who rented rooms and needed an expeditious remedy for defaulting boarders,[25] and used the remedy even where it was illegal.[26]

To prevent tenants from absconding or using their meager resources to settle their debts with other creditors, landlords enjoyed the right under the common law distress remedy to seize enough tenant property to cover the rent.[27] In both rural and urban settings, leases provided expedient remedies that a landlord could use by right to collect the rent. Historians (and newly-minted lawyers) rarely pay attention to remedies—they are more interested in substantive rights. But without a remedy, no right can be vindicated at law. Ordinary contracts are litigated in formal and informal settings. To obtain satisfaction on a breached contract, a party negotiates; if that fails, he goes to court. Only after obtaining a judgment can the aggrieved party collect his damages. By

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[23] Blackmar, *Manhattan for Rent*, 249.
[24] Day, *Urban Castles*, 15.
[25] Noxon v. Glaze, 11 Colo. App. 503 (1898) (Illinois statute provided boardinghouse keeper with lien on boarder's baggage and furniture).
[26] Thomas Butler Gunn, *The Physiology of New York Boarding-Houses*, ed. David Falik (1857; New Brunswick: Rutgers University Press, 2009), 155 ("Immediately beneath the bar, and only accessible to the landlord or his agents . . . was 'the baggage room,' a small, damp, rat-haunted cellar, always kept securely locked—ostensibly for the better preservation of the boarder's property, in reality to keep it from him, in case of default or demur against the payment of any sum the landlord might think proper to extort—according to law.")
[27] Note that some states did not recognize distress, but did adopt analogous remedies, like the *mesne* process of Massachusetts. Potter v. Hall, 3 Pick 368 (Mass. 1825).

then, his opponent may have hidden his assets, transferred them to a spouse or relative, or fled the jurisdiction. On the instrumental ground of protecting the rent for such tactics, antebellum legal commentators defended the adoption of this ancient rural remedy and its expansion into the new business of urban tenancy, with little consideration of the complexities behind its enforcement.[28]

Chancellor James Kent, a towering figure in the creation of New York's post-Revolutionary legal system, believed that without the threat of seizure, tenants would not pay their rent on time, hindering investment by "moneyed men" who lacked security "against the negligence, extravagance and fraud of tenants."[29] Because the distress remedy could be applied almost immediately to secure the rent and cut other creditors in line, it was "by far the most important means in the landlord's possession for the collection of rent," wrote John Neilson Taylor in his 1848 treatise on landlord-tenant law. Taylor considered the remedy an "efficient" way for a landlord "to secure to himself a

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[28] The history of the distress remedy—and of American landlord-tenant law more generally—has been told as a story of instrumental transformation. And such a focus matches the outlook of many nineteenth-century judges, lawmakers, treatise writers, and interest groups, who spoke the language of progress in evoking the need to reform property, contract, and tort law regimes.

In urban leasing, the result was far less elegant. In *Manhattan for Rent,* historian Elizabeth Blackmar shows how a functional conception of property rights created a battle of "property against property" in the city's antebellum real estate market. She highlights how the landlord's distress remedy fostered this split: while landed interests insisted on the importance of distress as an incentive for housing construction, merchants and manufacturers feared the seizure of their warehoused goods and tools. The 1840s depression, which subjected many middle-class women to the deprivation and humiliation of the distress remedy, and the simultaneous Anti-Rent riots in upstate New York, also triggered efforts to expand distress exemptions. Yet if instrumental thinking led judges and legislators to abolish distress, Blackmar argues, it failed to change the fundamental dynamic of landlord-tenant relations, where "absolutism had triumphed as the means to entrepreneurship." Blackmar, *Manhattan for Rent*, 260.

[29] John Neilson Taylor, *A Treatise on the American Law of Landlord and Tenant* (New York: 1844), 229. (Quotation marks omitted.)

regular return and remuneration for the tenant's occupation" through recourse to the tenant's goods.[30] This elite view worked its way into popular defenses of distress, such as newspaper editorialists who claimed the remedy bolstered the spending power of the poor and working-class. "Exempt the furniture from distraint," wrote a Baltimore editorialist in 1824, "and a poor family will not be able to get a house to live in without giving security for the rent."[31] Personal property, then, was to provide collateral both for the landlord's investment in housing and the tenant's debt to the landlord.

In addition to its function as a security, the ancient law of distraint continued to hold sway in the early republic because of its supposed efficiency. Perhaps worse than absconding tenants, according to Chancellor Kent, was the prospect of landlords facing "the slow process of a suit at law for their rent," leading to "vexatious and countless law suits" often "detrimental to the public welfare."[32] Counter to Chancellor Kent's hopes, however, distress produced many conflicts between landlords and tenants in the streets and the courts. Landlords had effectively created a special bankruptcy proceeding giving them priority over other creditors to the assets of tenants and a police infrastructure to protect their property rights. Renters, in turn, developed a series of bankruptcy protections for their meager property, from fraudulent transfers to homestead exemptions.

The central mediator of this poor man's bankruptcy was the judicial officer. American state laws forbid landlords from acting as their own avengers, and required them to call upon judicial officers, such as marshals, bailiffs, and constables, to seize

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[30] Taylor, *Treatise*, 227.
[31] *Baltimore Patriot*, January 1, 1824.
[32] Taylor, *Treatise*, 229. (Quotation marks omitted.)

their tenant's goods.[33] A landlord had to commence the distress correctly, as "any material error here will vitiate all future transactions, and render the landlord a trespasser."[34] Indeed, a landlord who hoped to enter his tenant's property without legal process had better be prepared: a tenant might justifiably resist his entry and could certainly bring an action in trespass,[35] although lawmakers had lowered the consequences of error for landlords by limiting a tenant's recovery in a trespass action to "special damages."[36] In order to invoke the officer's authority, statute required landlords to obtain a warrant of distress accompanied by a sworn affidavit describing the amount of rent due and time period when rent accrued.[37] Once authorized, the landlord's judicial officer had the right to enter the tenant's premises (only during the daylight, and, technically, only through unbarred doors and windows),[38] make an inventory of goods adequate to cover the rent, seize and impound the property, and hire appraisers to value the goods.[39]

While involving a judicial officer may have lowered the risk of violence between landlord and tenant, public regulation contributed to lawlessness in other ways. Without a sufficient police infrastructure, tenants could easily abscond with property that the landlord would claim as remedy for rent default. In 1829, attorney Thomas Phoenix complained to the mayor how "[i]t frequently happens that non residents . . . and masters

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[33] 2 N.Y. Rev. Stat. 501 § 3 (1829).
[34] Taylor, *Treatise*, 244.
[35] 2 N.Y. Rev. Stat. 504 § 28 (1829).
[36] "If, therefore, a landlord commences his proceedings right, but should afterwards carry them on wrong, he is only chargeable as a trespasser from the time when the wrong commenced, and not from the original taking of the goods; and all the injured party can recover, is the actual damage he has sustained in consequence of the irregularity." Taylor, *Treatise*, 275-76.
[37] 2 N.Y. Rev. Stat. 501 § 8 (1829).
[38] Taylor, *Treatise*, 242-43.
[39] Taylor, *Treatise*, 246, 268.

of vessels who are about to leave the City after having violated the law escape with impunity in consequence of my not being able to obtain an officer in time for that purpose."[40] Landlords similarly depended on the availability of judicial officers to seize tenant goods before it was too late.

In their efforts to expeditiously enforce the landlord's distress, judicial officers ended up capturing property that did not belong to the tenant. By "necessity," officers could distrain any chattels on the leased premises, including personal property owned by a tenant's guests, customers, subtenants, or boarders who might have occupied a room in the house.[41] By the mid-nineteenth century, third-party property enjoyed exemption from distraint in many states owing to the chilling effect it could have on commerce.[42] For example, courts and legislators decided that when the owners of horses sent their animals to livery stables to be fed and cared for, the owner of the stable could not seize the horses for rent in the event that the lessee of the property was in default.[43] Elite observers like the treatise writer John Neilson Taylor observed this development with dismay, not simply because of the "fraud" and "delay" that would result, but also because he suspected that a tenant could defeat the entire system of distress by cleverly subleasing his interest to a subtenant, who was "a mere stranger to the landlord."[44]

When the judicial officer came knocking on the door, tenants and their allies commonly negotiated with the landlord to stop the seizure. This bargaining was similar to

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[40] "Levi Arncker in Phoenix office to be a Marshal Jan. 3d 1829," Mayor Walter Bowne Papers, file 1, box 1201, microfilm, New York City Municipal Archives.
[41] Taylor, *Treatise*, 247.
[42] *The American and English Encyclopedia of Law,* David S. Garland, et.al, 2nd ed. (Northport, NY: 1898), s.v. "Distress."
[43] Youngblood v. Lowry. 2 McCord 39 (South Carolina Const. Ct. of Appeals, 1822).
[44] Taylor, *Treatise*, 248.

the way that other debtors avoided losing their property when facing bankruptcy in the roiling antebellum credit system. Sometimes the landlord, fearing a total loss, would promise to forestall distress in exchange for some token of good faith. In March 1815, prominent New York City Democratic-Republican politician Mangle Minthorne set about to collect $453.50 from "Frederick Rigger, a poor man." Minthorne had inherited a fan-shaped parcel of land west of Bowery Lane. By the early nineteenth century, New York had outgrown its traditional boundary north of City Hall, pulling the old Bowery farms in the path of tenement development.[45] For four years, Rigger had been leasing a building and its grounds on this property from Minthorne. Each year, Rigger paid Minthorne only half of the rent due on the lease, and the landlord lowered his rent in the fourth year "on account of the badness of the times." But Minthorne's forbearance ended as Rigger "was about to move away, and had removed his most valuable effects from the premises."

The landlord attempted to recover a small portion of the rent by obtaining a distress warrant, which ordered two city marshals to seize whatever personal property was left on the tenant's premises. Before he auctioned the goods, he tried to make a deal with Rigger's brother to discharge the tenant's debt in exchange for one hundred dollars. Rigger's brother declined. Minthorne then directed the marshals to give back to Rigger "all his beds, bedding, clothing and tools of his trade" and return any of Rigger's borrowed or leased items to their original owners. In the end, the distress yielded just fifty dollars, a fraction of Rigger's debt.[46]

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[45] "Manhattan Past: Bowery Number 3," accessed January 30, 2015, http://www.manhattanpast.com/2013/bowery-number-3/.
[46] *National Advocate* (New York), March 16, 1815.

Rigger's distress became a point of political showmanship. Minthorne's Clintonian rivals tried to paint him as heartless landlord who used the distress remedy to squeeze a little more rent from penniless tenants; Minthorne's backers at the *National Advocate* used the incident to show the politician's concern for the poor, as he allowed them "to remain upon his lands year after year when they are not able to pay him the rents."[47] Minthorne's decision to return his tenant's leased and borrowed goods, however, was the most telling aspect of the skirmish. If Minthorne kept property that rival creditors held a claim upon, such as furniture sold on credit, they might sue him or give him unappealing credit terms in future dealings. Though Minthorne could employ his common law right as a landlord to cut in front of other creditors' priorities in this transaction, such a move might damage his ability to obtain favorable loans, endorsements, and leeway from these creditors in the future.[48]

Another common practice shared by tenants with other debtors in the broader credit system was appealing to a wealthier family member, neighbor or acquaintance to prevent a distress. In December 1823, Mary Moulton asked Louisa Catherine Johnson Adams, wife of then-Secretary of State John Quincy Adams, for help. She told Adams "that she, being herself ill, with a family of children, two of whom were also ill with the measles, and otherwise in extreme necessity," owed Alexander Kerr, her landlord, $125. The landlord intended to sell her furniture—a move that would push her further into ruin, as she planned to pay him back by renting furnished rooms in her house to boarders. To stop the seizure, John Quincy Adams signed a note on Moulton's behalf, promising to

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[47] *National Advocate* (New York), March 16, 1815.
[48] The intricacies of this system are described in Balleisen, *Navigating Failure*, 26-32.

stand for the debt in three months if it remained unpaid. Kerr took this note as payment for the debt. Scandal erupted when a Washington bank protested and returned the note.[49]

In addition to finding a surety, tenants shamed their landlords. Mid-nineteenth-century urban landowners bridled at the "enmity" they faced when they dispossessed poor tenants of their homes. "We object to promulgating the idea, now so generally entertained," complained "POOR LANDLORDS" to the *New York Daily Times* in January 1855, "that the demands of a landlord are more unjust than that of the merchant for his wares, the Editor for his paper, the lawyer or physician for his fee, or the mechanic for his wages."[50] But shelter was not like other commodities in the antebellum city. When landlords used distress, they opened their tenants' lives to public scrutiny and degraded their efforts to build a separation between home and market.

New York lawmakers tried to reinforce this separation through homestead exemptions.[51] The homestead laws reflected reformers' assumptions about what the poor needed to survive. An 1815 New York law exempted ten sheep (with their fleece), one cow, two pigs (with their pork), "all necessary wearing apparel and bedding, necessary cooking utensils; one table, six chairs, six knives and forks, six plates, and six tea cups and saucers" from distress, offering the poor clothes, milk, and a measure of domestic comfort.[52] These exemptions gradually expanded, and in 1842, New York's legislature created an exemption allowing tenants to protect $150 worth of goods from distraint.[53]

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[49] *Daily National Journal* (Washington, DC), September 9, 1824.
[50] Editorial, "Relief for the Poor: The Tyranny of Landlords," *New York Daily Times*, January 5, 1855.
[51] Taylor, *Treatise*, 250-60.
[52] *Commercial Advertiser* (New York), February 13, 1816; Blackmar, *Manhattan for Rent*, 224.
[53] Blackmar, *Manhattan for Rent*, 225.

Reformers also intervened in the contractual liberties of the poor by making these exemptions non-waivable. Whether tenants wanted to give up all of their goods to settle their rent or not, legislators proposed limiting their right to contract to such terms in light of the severe poverty that might result.[54]

Homestead exemptions tested the limits of public regulation in the antebellum city. For example, in 1821, one Baltimore legislator's effort to introduce minimal distress exemptions for Maryland began with widespread enthusiasm, only to end in failure; an editorialist "hope[d] for the sake of the poor, and the cause of charity never to behold another experiment of the kind."[55] Its own initiator, John Barney, came to disown it. According to his account, published in the *Baltimore Patriot*, Barney drafted a bill to aid "destitute women and children being turned into the street without a blanket to cover them" by exempting beds and bedding from distress.[56] He had no compunction about using the law to regulate the "heartless few" who would sell a four-dollar blanket to make up a small debt, and neither did the House of Delegates, which unanimously supported his measure.[57] The Senate rejected the bill, but then, chastened for its parsimony, created its own, more comprehensive, exemption act.[58] The enacted bill provided a blanket fifty-dollar exemption for "bed, bedding, wearing apparel, or other necessary articles of housekeeping."[59]

While some hailed this as "*An Act of Humanity,*" writers representing the needs of petty landlords questioned how widows and children who depended on tenant income

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[54] "Pennsylvania Governor's Message," *New York Herald-Tribune*, January 9, 1874.
[55] *Baltimore Patriot*, January 1, 1824.
[56] *Baltimore Patriot*, April 4, 1821.
[57] Ibid.
[58] Ibid.
[59] *Baltimore Patriot*, March 2, 1821.

would survive without the remedy.[60] Another letter writer, calling himself "a POOR LANDLORD," criticized the city for placing its public burdens on small-time landowners who might lose their own roof without effective remedies against their poor tenants. Not only was POOR LANDLORD assessed for city improvements, but he also feared he would not collect his rent: "I assure you the heat of either is sufficient to consume me."[61] Barney felt the heat, too. He called for bill's repeal only a few weeks later, believing that the exemption made it harder for the poor to obtain housing and for landlords to avoid tenant fraud. "I have no hesitation in declaring my present conviction," he wrote, "that the relative connection between landlord and tenant, is of too delicate a character to be interfered with by any legislative imposition whatever."[62]

If intervention, negotiation, and shame did not work, officers would "expose" the tenant's goods to sale, either at a remote auction site or on the premises. Newspaper advertisements for auctions reveal the variety of situations a judicial officer might encounter in enforcing a landlord's distress warrant. One distraint for house rent led to an auction of "three Beds and Bedding and Furniture of every necessary description," along with "a valuable Saddle Horse."[63] Also in the mix were farms and commercial properties. An 1820 Constable's Sale near Baltimore "at Shady Grove, near the six gun battery," offered "Two Patches of Irish Potatoes, as they now stand in the ground, a quantity of Cabbages, sundry articles of Household Furniture, and all the garden Utensils . . . ."[64] Another Baltimore sale that year involved a brickyard "near the Spring Gardens"

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[60] *Baltimore Patriot*, March 10, 1821.
[61] *Baltimore Patriot*, March 15, 1821.
[62] *Baltimore Patriot*, April 4, 1821.
[63] *American & Commercial Daily Advertiser* (Baltimore), November 6, 1819.
[64] *American & Commercial Daily Advertiser* (Baltimore), September 7, 1820.

with "About 15,000 raw Bricks, 3 Sheds and Lumber, 1 lot of pine Wood, 7 Wheelbarrows, 1 Dust Mill and Apparatus, 3 lots of burnt Bricks, 2 kilns and one lot of Lumber."[65]

Distress sales rippled across the urban marketplace, particularly when commercial tenants like merchants, manufacturers, or warehouse owners went under. The remedy gave landlords first right to a tenant's personal property, even if the tenant had previously assigned his goods to other creditors under a bankruptcy proceeding;[66] as a New Jersey judge explained, "no injury is really done to creditors, because all calculate on the liability of the goods to satisfy the arrears of rent."[67] Distress also conflicted with efforts by merchants and factory owners to use chattel mortgages to secure loans on their goods and manufacturing equipment.[68] In 1820, Charles Buehme's Baltimore brick-making business failed, and his landlord Henry Zollickoffer distrained Buehme's investments in sheds, kilns, and wood, and the raw and finished bricks he had on the lot.[69] The list of losers was probably extensive: banks or other credit institutions that might be unpaid for loans to Buehme's business; customers who had paid for bricks they had ordered; vendors who sold Buehme lumber; contractors who remained unpaid for constructing

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[65] *American & Commercial Daily Advertiser* (Baltimore), October 12, 1820.
[66] Hamilton v. Hamilton, 25 N.J.L. 544 (1856).
[67] Hoskins v. Paul, 9 N.J.L. 110 (1827).
[68] On the history of antebellum chattel mortgage law, see George Lee Flint, Jr., "Secured Transactions History: The Impact of Textile Machinery on the Chattel Mortgage Acts of the Northeast," *Oklahoma Law Review* 52 (1999): 303-76, and George Lee Flint, Jr., "Secured Transactions History: The Northern Struggle to Defeat the Judgment Lien in the Pre-Chattel Mortgage Era," *Northern Illinois Law Review* 20 (2000): 1-67.
[69] *American & Commercial Daily Advertiser* (Baltimore), October 12, 1820.

improvements on the premises; and Buehme's uncompensated employees. All of these creditors were secondary to the brickyard's landlord.[70]

When judicial officers seized tenant property, held it in impoundment, and finally auctioned it at public sale, they charged landlords and tenants for a range of expenses. New York's 1817 fee schedule showed how these costs added up. At a minimum, the constable would charge $2.50 for taking an inventory, hiring appraisers, advertising the sale, and filing a return afterwards. An additional quarter would be levied if the sale date was postponed. In addition, the landlord or tenant was required to pay whatever cartage fees the constable incurred. Finally, constables charged on a sliding scale for "poundage" fees—the cost of holding and maintaining chattels, some of which had demanding needs, like livery costs of a horse.[71] Even if the rent was paid before the distress sale, the constables were entitled to half of that poundage fee, along with whatever expenses they had already incurred.[72] New York constables, then, stood to profit whether the parties reached a rent settlement or not. By contrast, a Maryland constable would not earn poundage fees "unless he actually receive[d] the money" from auctioning the goods he impounded. According to one Maryland newspaper, fixed, one-time mandatory fees protected "the ignorant and poorer classes of unfortunate debtors" from "a *swindling*

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[70] The creditors of an upstate New York blacksmith, Marquissee, faced a similar situation after the blacksmith's landlord distrained his goods for a $16.70 rent default. The property, according to the blacksmith, was actually worth $34.50. The distraint "caused a pressure upon him by his creditors" and his business had suffered from the loss of his property—leading a jury to award him $150 in damages. Marquissee v. Ormston, 15 Wend. 368, 369 (NY 1834).

[71] At the low end, these rates included a ten percent cut of the rent collected on a sale for amounts not exceeding ten dollars. At the highest end, constables levied a flat fee of $2.65 for the first fifty dollars collected and then two percent on the rest. *National Advocate* (New York), May 29, 1817.

[72] *National Advocate* (New York), May 29, 1817.

practice pursued by some Constables, of obtaining repeatedly executions, for the same debt, and doing nothing more with them, than giving notice to the debtor, that he has such execution, and charging him with the poundage fee thereon."[73] Another striking difference between the profitability of office in New York and Maryland concerned penalties for a constable's malfeasance. An official who overcharged for services in New York faced a twenty-five dollar fine, while a Maryland offender would be fined one hundred dollars, of which half would go to county school funds and half would be given as a reward "to the informer."[74] The profits of office were higher and the penalties for error were lower in New York than in other states, which made the likelihood of abuse—and calls for reform—much greater.

Tenants responded to the threat and practice of distress through extralegal remedies, political interventions, and in court, through procedural and substantive challenges. With the exception of the rural Anti-Rent protests in the upper Hudson Valley, Northern tenants did not come together as a class to oppose landlord power; rather, tenants protest consisted most often of individual decisions to move or escape with rent unpaid—actions that "undermined the predictability of (and on some occasions limited the level of) profit that could be extracted from housing."[75] In the first decades of the nineteenth century, distress became a less efficient method than elite lawmakers like Chancellor Kent hoped because tenants built uncertainty into the remedy's application.

A cat-and-mouse game unfolded over the course of many distress actions. Although New York law did not require landlords to give notice of distress to their

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[73] *Easton Gazette* (Easton, MD), May 5, 1821.
[74] *National Advocate* (New York), May 29, 1817; *Easton Gazette* (Easton, MD), May 5, 1821.
[75] Blackmar, *Manhattan for Rent*, 249.

tenants until after the seizure,[76] anticipating the process was not difficult as the end of the lease term approached, and a defaulting tenant could defend his or her property in various ways. Some resisted with violence. In the 1840s, upstate *rentier* landlords employed distress to take the property of tenant farmers who refused to pay rents that had been customarily waived. Farmers dressed in Native American costume attacked sheriffs who attempted to seize their property.[77] A New York City tenant "met his landlord and the constable at the door with a carving knife" in 1845 to resist distress. [78]

More commonly, tenants hid their goods before or during the distress. Some transferred ownership to a third-party—often another creditor. New York lawmakers imposed serious penalties on tenants and anyone who knowingly assisted a tenant in concealing or removing goods from distraint, levying a penalty double the value of those goods.[79] If their valuables were small enough, tenants enjoyed a sartorial exemption from distress. Clothes and jewelry could not taken from their wearer under a distress warrant, based on the common law theory, described by the United States Supreme Court in 1891, that "[t]he right to one's person may be said to be a right of complete immunity; to be let alone."[80]

Under the laws of some states, a tenant might avoid distress simply by locking up his or her goods, though if the lock *happened* to be broken by a passing vandal or thief,

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[76] 2 N.Y. Rev. Stat 504 § 24 (1829).
[77] McCurdy, *The Anti-Rent Era,* 163-167
[78] Blackmar, *Manhattan for Rent*, 226n30; Christine Stansell, *City of Women: Sex and Class in New York, 1789-1860* (Urbana: University of Illinois Press, 1986).
[79] 2 N.Y. Rev. Stat 503 § 17 (1829).
[80] Union Pacific Railway v. Botsford*,* 141 U.S. 250 (1891) ("[N]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference from others, unless by clear and unquestionable authority of law.").

then no law stopped the landlord from legally seizing the tenant's goods. The Maryland Court of Appeals held that a landlord could not legally break open the lock on a shed where the tenant had hid his tobacco from distress, though it noted that if the lock was "forcibly broken open by a person not acting under the authority, or sanction, or at the instance of the landlord, or his bailiff," then the landlord could take advantage of the opening to seize his tenant's goods.[81]

Locks were no barrier to New York landlords, who enjoyed the extraordinary remedy of breaking and entering private property to collect back rents. They could apply for a search warrant from a justice of the peace to hunt for goods "kept in any house, out-house, or other place, for the purpose of preventing their being seized as a distress for rent . . ." Acting under warrant, the landlord's officer was not bound by traditional common law rules limiting his access to locked spaces, and "if need be," he was empowered "to break open such house, or any enclosed place, and to seize such goods as a distress."[82] New York's provision was modeled on English law. Similar policies became part of the distress law of other states, including Mississippi, Virginia, West Virginia, and New Jersey.[83] New York landlords risked little when they used search warrants to break into people's homes. In the District of Columbia, for example, the landlord would be deemed a trespasser if he obtained a search warrant that failed to turn

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[81] Dent v. Hancock, 5 Gill 120 (Md. 1847). Many landlords probably benefited from such convenient acts of vandalism.
[82] 2 N.Y. Rev. Stat. 503 § 18 (1829).
[83] 11 George II, c. 19, § 7; Miss. Rev. Stat., Part III, c. VIII, Title 8, Article 1 § 28 (1836); *Woodfall's Law of Landlord and Tenant* (New York: 1890), 1:723.

up any "fraudulently and clandestinely removed" chattels.[84] New York law did not make this presumption.

Because the judicial officers who seized tenant property were the same men who chased after stolen property, sorting out the historical evidence on landlord search and seizure is not easy. The practice was common enough that legal commentators included blank search warrants for landlords pursuing fraudulently removed goods in the back of their treatises.[85] A sampling of "watch returns" of New York City's Police Office in 1829, 1838, and 1841 confirms that magistrates issued warrants to search specific properties or persons in the years before the abolition of distress—sometimes as often as four or five times in a month.[86] But the magistrates did not specify why they authorized the search warrant. Whether in pursuit of stolen or absconded goods, search and seizure often yielded little. Of the fourteen search warrants issued between September and December of 1829 (a year of relatively consistent and detailed recordkeeping), half turned up nothing.[87] Even with this draconian remedy, landlords could not count on tenant goods to cover the rent.

When landlords did seize personal property, tenants fought distress in court, bringing actions for replevin, trespass, and irregular or excessive distress.[88] They could bring substantive challenges to the scope of the distress, arguing that the landlord's agent

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[84] A System of Civil and Criminal Law for the District of Columbia and for the Organization of the Courts therein, S. Doc. No. 22-85, at 203 (1833).
[85] John Van Ness Yates, *A Collection of Pleadings and Practical Precedents* (Albany: 1837), 573; Taylor, *Treatise*, 448.
[86] New York City Police Office, Watch Returns, Roll #17 (September-December 1829), Roll #25 (August-December 1838), and Roll #26 (March-June 1841), microfilm, New York City Municipal Archives.
[87] New York City Police Office, Watch Returns, Roll #17 (September-December 1829), microfilm, New York City Municipal Archives.
[88] Taylor, *Treatise*, 355-93.

took more property than necessary to satisfy the default or seized exempt items. They could also raise procedural defects in the distress proceeding. Some tenants took advantage of their landlord's unequal legal status to avoid distress. Coverture laws, for example, limited the legal defenses of female landlords. In 1841, Baltimore landlord Rachel Knight brought a distress for rent against her tenant, Mary Parsons, seizing seven dollars worth of goods. Parsons countersued in a replevin action and won on the ground that Knight "had a husband living in the city" and "a lady cannot bring suit in her own name while her husband is living."[89] Similarly, in 1878, a female tenant in Philadelphia challenged her landlord's distress on the ground that, as a married woman, she was "incompetent" to sign her lease and, therefore, not bound by its distress clause.[90] The legacy of slavery also helped tenants avoid distress. In 1866, a Maryland appeals court held that a black landlord bringing a distress action could not introduce a "colored witness" to testify against his white tenant. The court held that because the law permitted black people to be landlords, they had the right to enjoy the remedies attendant to leaseholds, including distress. Yet, while an African-American landlord could swear out a distress warrant, he could not actually testify against a white man under oath.[91]

After the Revolution, Americans reformed distress to fit within the boundaries of due process, and it became an important, if at times volatile, way to finance housing construction in booming nineteenth-century cities. Distress created a priority lien for landlords, a patronage system for city constables, and a form of security deposit through personal property for tenants. Property seizure caused suffering and humiliation for

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[89] *The Sun* (Baltimore, MD), September 16, 1841.
[90] "Gleanings in the Courts," *Philadelphia Inquirer*, March 21, 1878.
[91] "Local Matters: Negro Testimony," *The Sun* (Baltimore, MD), February 15, 1866.

tenants, guests, customers, and innocent bystanders whose property got caught in the dragnet. In response, legislators and common-law courts built exemptions and procedures into the landlord's remedy that limited its efficiency and gradually calcified its power in cities. By the middle of the nineteenth century, urban landlords increasingly relied on summary process statutes to quickly remove tenants who did not pay the rent, rather than relying on distress, a remedy likely to trigger absconding, violence, or legal challenge.[92]

B. Crop Liens

In 1864, New Jersey sharecropper Abraham Guest's efforts to claim the status of "tenant" challenged a novel system of share-renting that was changing the way landlords and tenants financed and operated agricultural relationships. His case anticipated a conflict that would prove central just a few years later to the terms of emancipation in the South and the creation of an agricultural empire in the West. The distress remedy had already shown itself to be an unreliable source of compensation when urban tenants failed to pay the rent. Mid-nineteenth century tenement landlords increasingly turned to summary remedies for rent collection to obtain money judgments against delinquent tenants, rather than chase down absconded personal property of little value. In the

[92] Despite its questionable fidelity to the Fourth and Fourteenth Amendments of the United States Constitution, the remedy lingered on in commercial leases and agricultural tenancies. For example, Pennsylvania codified distress in the Landlord and Tenant Act of 1951, and the propriety (and, eventually, constitutionality) of distraint remained a contentious issue onward. Mountcastle v. Schumann, 39 Pa. D. & C.2d 522 (Pa. Com. Pl. 1966), (unreasonable distraint for rent arrearage); Note, "The Philadelphia Constable," *University of Pennsylvania Law Review* 104 (1956): 508-42 (criticizing practice of distress by constables); Allegheny Clarklift v. Woodline Industries of Pennsylvania, 514 A.2d 606 (1986) (distress unconstitutional under Fourteenth Amendment to U.S. Constitution); but see Luria Bros. v. Allen, 672 F.2d 347 (3d Cir. 1982) (no state action in application of Pennsylvania distraint law).

countryside, landlords could still depend on distress to gather valuable chattels: livestock, grain, and agricultural implements. Yet as the following case of *Guest v. Opdyke* suggests, landlords had the chance to institute a more rigorous system of control by reshaping the nature of their relationships with renters. By hiring farmers on shares, landlords had the legal authority to claim an ownership interest in the crop as it was being grown, and did not have to wait until after the rent was due to seize it.

In April 1860, Abraham Guest, a white farmer from Somerset County, made a verbal agreement to work on shares for two tenants, Peter Gulick and Charles Bodine.[93] The tenants rented land from a landlord named John Opdyke. Guest's wife, two children, and a farm laborer shared a home next to the family of one these tenants, Peter Gulick. Gulick did not own land, but he did own $1300 in personal property, making him more than twice as wealthy as Guest, who held about $600 in goods.[94] The tenants agreed to furnish Guest with seeds and work animals to grow, gather, and thresh a harvest of wheat and rye. After the harvest, Gulick and Guest would divide the grain by the bushel, and each would keep half.

Gulick and Bodine did not pay their rent when it came due next April. In July 1861, the landlord served written notice on Abraham Guest not to remove the grain because the tenants owed him $216 in rent. Then, Opdyke obtained a distress warrant ordering the constable to seize the grain in the sheaf and sell it. New Jersey law had expanded the traditional scope of distress beyond its English common law roots. Not only

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[93] Guest v. Opdyke, 31 N.J.L. 552 (1864).
[94] 1860 U.S. census, Somerset County, New Jersey, population schedule, Bedminster Township, p. 42, dwelling 318, family 325, Peter Gulick, and dwelling 319, family 326, Abraham Guest; digital image, Ancestry.com, accessed January 30, 2015, http://ancestry.com.

could landlords seize "any hogs, horses, cattle, or stock" belonging to the tenant that grazed on the land, they now could take any wheat or produce "growing or being" on the rented land, which was "an amplification of its English prototype." The landlord could claim a lien on the growing crop if the rent went unpaid. After Opdyke's constable took the grain, Guest sued Opdyke to recover one half of its value and won. Guest seems to have argued that his landlords were Gulick and Bodine, not Opdyke. He had no lease with Gulick and Bodine's landlord, giving Opdyke no right to seize Guest's share of the crop.

In the depths of the Civil War, the landlord, Opdyke, appealed to the New Jersey Court of Errors and Appeals, where he found a court sympathetic to the needs of the landed. Guest, the court emphatically stated, was not a tenant of Gulick and Bodine, but something altogether different, a "tenant in common" who held a joint and undivided interest in the crop with them before division. Finding otherwise "would be attended with much inconvenience, if not positive mischief." The court explained that "[l]andlords are induced to put out their farms, in this mode, to tenants who are poor, relying, as they imagine, on the certainty that their share of the produce cannot be diverted nor in anywise encumbered." Farmers working on shares did not hold full ownership of the crops they grew on the land they occupied. Landlords took a property interest in their renters' crops from the commencement of the tenancy. "Whereas, if these agreements are complete leases, the title to the crops produced vests in the occupier, and the landlord would have no claim upon them until a division should have been made, and then his share would come to him as a *reditus* or rent." If the holder of a "complete lease" did not pay his rent, the landlord had to rely on distress to capture whatever non-exempt assets were left on

the land; by contrast, those working land on shares could not take the crops off the land without first settling up with the landlord or the tenant they worked for. The high court reasoned that because the crops belonged jointly to Guest and the tenants, and the state's landlord-tenant law allowed landlords to claim any crops growing on the land, all of the crops were fair game for the distress as long as they were on the premises.

Unlike a traditional tenant, Guest did not own the crops he grew, and he could not claim any of the homestead exemptions that New Jersey legislators passed in 1851 to mitigate the harshness of the landlord's distress remedy.[95] To save them "from being stripped of the actual necessaries of life by force of legal process," the tenants that Guest worked for could claim up to $200 in personal property that the landlord could not take as rent. Guest was a third-party to the landlord-tenant relationship defined by New Jersey law, leaving him with no entitlement to save what amounted to a third of his household's property from the constable's grasp.

This form of security became known as the crop lien. By 1920, more than half of the American states, along with the Philippines, Puerto Rico, the District of Columbia, and Quebec, enacted statutes giving landlords an interest in the crops their renters grew to raise capital.[96] By mortgaging the output of the tenants' production, rather than the land itself, labor generated its own capital resources and the landlord did not have to mortgage his own land to finance the operation.[97] In the South, this transformation shifted the source of agricultural credit in an even more revolutionary way, from the human beings

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[95] Lucius Q.C. Elmer, *A Digest of the Laws of New Jersey*, 2nd ed. (Philadelphia: 1855), 204.
[96] Annotation, "Subject-Matter Covered by Landlord's Statutory Lien for Rent," 9 *American Law Reports* 300 (1920).
[97] Richard Kilbourne, *Debt, Investment, Slaves: Credit Relations in East Feliciana Parish, Louisiana 1825-1885* (Tuscaloosa: University of Alabama Press, 1995), 156.

that grew the crops to the cotton and corn they produced. Crop liens also promised to reinforce the power of landlords to control the credit relationships between tenants and third-parties, whether they be share-renters like Abraham Guest or merchants supplying mules and fertilizer.

Southern dependence on the crop lien is well understood. Before the war, agricultural middlemen, or "factors," could rely on human chattel to collateralize a planter's market risks. Historians have discovered a massive credit architecture backed by chattel mortgages on human beings. Enslaved people possessed value for their productive and reproductive labor, but also as a store of wealth. In an environment of cash-scarcity and low land values, planters used the market value of slaves to borrow and lend money.[98] By claiming their freedom, African-American slaves dispossessed the master class of its main source of credit. The postwar crop lien laws were designed to promote agricultural development by allowing creditors to claim the growing crop as a security interest. In the immediate aftermath of emancipation, this demand for credit was acute; former slaveholders, who generally had no desire to sell their land to the freedpeople or sign them to tenancy contracts, needed loans to purchase agricultural supplies and hire workers.

Although some Republicans continued to push for land redistribution in slavery's aftermath, most conceded that "self-possession," rather than property ownership, would both protect the freedpeople's citizenship and sustain a functioning export market in cash

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[98] Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014); Kilbourne, *Debt, Investment, Slaves;* Harold D. Woodman, *King Cotton and His Retainers: Financing and Marketing the Cotton Crop of the South, 1800-1925* (Lexington: University of Kentucky Press, 1968).

crops.[99] Yet because most agricultural workers did not control the means of production—land, mules, and the fertilizers necessary to draw cotton out of leached soils—they needed credit to establish independent households and grapple with the "Long Pay" endemic to commercial agriculture. Money only came in once a year when cash crops went to market.[100] As one defender of crop liens wrote in 1884, this new system of credit offered "the security to which the parties themselves were powerless to provide." By allowing future harvests to collateralize present debts, "It put the tenant in possession of those means of prosperity which ordinarily only wealth can purchase."[101]

Writing in 1888, the North Carolina Supreme Court believed the crop lien was "of modern origin and growth" and required by "the multiplying wants and necessities of society."[102] Antebellum states had competing positions on its legitimacy, which was bound up in questions fundamental to the rise of capitalist agriculture in the nineteenth century. A crop lien was a security interest in something that had no tangible existence. "Exactly on what credit is based on under the crop lien law," wrote the editors of *Southern Cultivator*, "it would be hard to define."[103] Postbellum agricultural reformers agreed that this system was built on troubling premises. "What sort of man is this factor," asked John Dymond, vice president of the Louisiana Sugar Experiment Station, "that accepts a security that doesn't exist, that is subject to the vicissitudes of frost and flood,

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[99] Levy, *Freaks of Fortune*, 104-29.
[100] Jaynes, *Branches Without Roots*, 46-48 and 224-49.
[101] *Raleigh Register*, April 30, 1884.
[102] Gwathmey v. Etheridge, 99 N.C. 571 (1888).
[103] *Southern Cultivator*, January 1883.

of drought and disease?" Only a merchant, he concluded, who could be "the legal dictator of the whole business."[104]

In the civil law tradition, mortgaging an inchoate product did not produce judicial hand-wringing about the meaning of possession or the dangerous consequences of mortgaging one's prospective labor. Landlords, according to the seventeenth-century French legal scholar Jean Domat, had, by law, "the preference on the fruits that grow" on rented land to secure the rent. "For these fruits are not so much his pledge as they are his property, till he has got payment of his rent." Furthermore, the tenant's "movables" were "engaged to the landlord of the house, and preferably to other creditors, for his security, not only of his rent, but of the other consequences of his lease; such as dilapidations" caused by the tenant.[105] By contrast, many common law jurisdictions denied the validity of a mortgage grounded in an executory (unperformed) contract.[106] The crop lien was truly an innovation in Anglo-American property law, allowing the products of the land to be encumbered without having to mortgage the land itself.[107]

A Southern judiciary that had few qualms about commodifying human labor before the war now raised concerns about recognizing property in promises. Even in an era that celebrated contractual freedom, lawmakers recognized that certain agreements should be void or voidable as a matter of public policy. As subsequent chapters will show, judges and politicians became particularly concerned with the crop lien system when it led white families into poverty. Crop liens unleashed an alarming self-executing

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[104] John Dymond, "Credit, Its Relation to the Present Condition of Agriculture," *Southern Cultivator*, November 1887.
[105] Jean Domat, *The Civil Law in Its Natural Order*, trans. William Strahan (1720; repr., Boston: 1850), 1:684-85.
[106] Otis v. Sill, 8 Barb. 102 (N.Y. Sup 1849).
[107] Kilbourne, *Debt, Investment, Slaves*, 139.

machinery for production and risk-taking, encouraging farmers to gamble their households into debt and become "a mere toiler for interest payments."[108] North Carolina Reverend R.H. Whitaker remembered how the "crap lien," as he called it, given by farmers to local merchants, helped his neighbors buy "such things as they severely wanted" and left them "feeling highly elated" at their good credit. But at the end of the year, when debts went unpaid, "the crap lien began to draw, and it kept on drawing. It drew all the cotton and the corn, the wheat and the oats, the shucks, the hay and the fodder, the horses and the mules, the cows, the hogs and the poultry, the farm utensils and the wagons, the carriage and the buggy." If the debt was still unsatisfied, creditors could enter the home, seizing furniture and furnishings, "the table, the plates and the dishes, the cups and the saucers, the knives and the forks, and, when it had gotten everything else, it reached for the dish rag, and wiped up the whole concern, not leaving even a grease spot."[109]

For all of the risk associated with creating property in the promise of human labor, the crop lien was often defended as a facilitator of household independence, or a kind of quasi-proprietorship short of landed freedom. Without the lien, the Raleigh *News & Observer* claimed in 1892, landlords would not agree to tenancy contracts, and all agricultural workers would become mere laborers under their watch, creating a system of "serfdom" along Russian lines.[110] Yet the crop lien created a payment system in which the tenant or sharecropper's household economy depended on speculation; as Georgia

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[108] *Southern Cultivator*, January 1883.
[109] R. H. Whitaker, *Whitaker's Reminiscences, Incidents and Anecdotes: Recollections of Other Days and Years: Or, what I Saw and Heard and Thought of People Whom I Knew, and what They Did and Said* (Raleigh: Edwards & Broughton, 1905), 102.
[110] *News & Observer* (Raleigh), April 29, 1892.

farmer J.H. Hale told a Congressional inquiry in 1900, the farmer "is tempted to plant more than he ought, that is, more than he has ability to pay."[111] Renters applied to their landlords for advances throughout the year, and all of these debts were subtracted from their final settlement after the crop was divided. Contrast this long bet with the assurance (such as it was) that industrial wage laborers enjoyed of weekly or monthly cash payments. Northern reformers set up savings banks in the mid-nineteenth century to encourage workers to use their income as a source of security for their families.[112] When the Freedman's Bureau opened its banking branches across the Reconstruction South, it promised a similar kind of independence to the freedpeople, who were by-and-large wage workers or sharecroppers rather than yeoman farmers.[113] Creating a household based on the temptation of an annual, lump-sum payment seemed comparatively unstable and generative of deviance, from the burst of spending that accompanied having cash-in-hand, to the dangers of "idleness" associated with the slack-periods between seasonal labor demands.

But the imperative for credit in an era of deflation was undeniable, and between 1867 and 1920, state legislatures across rural America adopted the crop lien one by one. The judiciary followed. In 1873, the United States Supreme Court heard a Louisiana case about the validity of a mortgage on a cotton crop that had not yet been sown. Splitting the difference, it held that the mortgage was not effective when the seeds remained in their sacks, but once the crops grew, then the lien would attach and the mortgage would be

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[111] U.S. Industrial Commission, *Report of the Industrial Commission on Agriculture and Agricultural Labor*, H.R. Rep. No. 57-179, vol. 10, at 380 (1901).
[112] Ann Fabian, *Card Sharps and Bucket Shops: Gambling in Nineteenth-Century America* (1990; repr., New York: Routledge, 1999), 40-41.
[113] Levy, *Freaks of Fortune*, 104-49.

binding.[114] Seven years later, North Carolina's judiciary had no trouble recognizing an exception to the old common law exhortations against making promises of contingent property. If one owned a "substance" that could yield "future products" with "a potential and prospective existence," then a transferable property interest could exist. It drew on agricultural examples from United States Supreme Court Justice Joseph Story's antebellum treatise on sales: One could sell "wine a vineyard is expected to produce, or the *grain that a field is expected to grow*; or the milk that a cow may yield during the coming year."[115] Remarkably, these agricultural examples obfuscated the question of human labor power. Who did the milking, picking, and harvesting? Did a landlord have property in labor mostly performed by a tenant's wife and children? It was one thing to create a property interest out of nature: that is, to separate its dividends from its capital stock. It was another thing to create a property interest out of the human labor that husbanded nature.

After states passed the crop lien laws, the judiciary deferred to their authority. Witness North Dakota, a world away from North Carolina, where tenants similarly found themselves drawn into the lien system to get by. A 1892 case revealed how one tenant made a deal to pay back his debts by promising to grow a series of future grain harvests

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[114] Butts v. Ellett, 86 U.S. 544 (1873). The Georgia Supreme Court would later describe the property laws of growing crops as a "mystic maze of uncertainty and confusion." Bagley v. Columbus Southern Ry., 98 Ga. 626 (1896).

[115] Cotten v. Willoughby, 83 N.C. 75 (1880) (emphasis in original). In the 1616 case of *Grantham v. Hawley*, 89 Eng. Rep. R. 281, English judges recognized the doctrine of "potential existence," holding that if a seller owned a piece of land or an animal, the non-existent potential crops or young produced by that property could be prospectively sold. Justice Story introduced this doctrine to American jurisprudence in the case of *Mitchell v. Winslow*, 2 Story 630, 6 Law Rep. 347 (Cir. Ct. D. Me. 1843), but state appellate courts split on the doctrine's validity. David Cohen and Albert B. Gerber, "The After-Acquired Property Clause," *University of Pennsylvania Law Review* 87 (1939): 635-61.

until the debt was paid. That state's high court bemoaned this development. "To the profession the policy of authorizing a party to thus indefinitely incumber his future crops may appear of doubtful benefit and of dangerous tendency, but these considerations are for the legislature, and not for the courts."[116]

North Carolina lawmakers agreed that long-term mortgaging of prospective crops offended public policy and, amid the fervor of the Populist movement in the late nineteenth century, actually banned the mortgaging of crops to secure advances beyond the current year. "Political economists assure us that even the civilized world is never more than two crops ahead of starvation," wrote the North Carolina Supreme Court in 1890. "If, therefore, it is legalized that the crops of future years can be conveyed or mortgaged, it would be possible for powerful syndicates to forestall the market, and control the very means of existence of a whole people."[117] Bind the toilers and their crops for one year, and the civilized world feasted; bind them on a future crop, or worse, allow that labor to become abstracted and traded as commercial paper, and moneyed men would control every factor of agricultural production: capital, labor, and land.

This confusion about the rights of landowners and creditors extended from the ordinary relationships between landlords and tenants to the giants of America's industrialization. In 1912, International Harvester was the foremost manufacturer of farming equipment in the world and one of America's most formidable conglomerates, a model for the vertically-integrated corporation. Scale was the source of its power but posed obstacles to its bottom line. International Harvester grew through the perfection of mass production and the expansion of its distribution network, which extended from the

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[116] Merchants' Nat. Bank of Devils Lake v. Mann, 2 N.D. 456 (1892).
[117] Loftin v Hines, 107 N.C. 360 (1890).

Heartland to Europe and South America. Selling tractors, threshers, and binders depended on an extensive network of salesmen posted in county seats and crossroads towns across rural regions. These salesmen depended International Harvester's ability to extend easy credit terms to the farmers who bought its products. The landlord's lien made tenant farmers an uncertain credit risk.

Of course, salesmen and debt collectors had very different perspectives about the risks of dealing with tenants. "When a sale is lost, no one need to know it but the individual salesman who makes the failure. If he is successful, all know it," wrote F.A. Kauffman, manager of the company's collection department, in 1912. "When the collector succeeds, the returns are swallowed up and forgotten; but when he fails the record stands, for every past due unpaid obligation is evidence of the failure of a collector." Collectors faced "fierce competition" for the debtor's dollar against his other creditors, particularly in years of disappointing harvests: relatives, doctors, lawyers, merchants, and "the chief" all demanded a share of the farmer's cash.[118]

For many of International Harvester's collectors, "the chief" standing in the way of their work was a landlord holding property rights in their tenant's crops. The landlord's lien took priority over these chattel mortgages if they were recorded after the lease began.[119] When his career began in the late nineteenth century, E.F. Dickinson's collection territory was Iowa. Riding through corn fields in a buggy, he experienced "no specially startling adventures" and never had "to seek the nearest exit from a farmer's premises by a menacing pitchfork." Dickinson learned that the essence of the job was not confrontation, but diligence, observation, patience, and attention to "human nature."

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[118] F.A. Kauffman, "A Talk on Collections," *The Harvester World* (August 1912).
[119] Jarchow v. Pickens, 51 Iowa 381 (1879).

In the company's monthly magazine, he advised his fellow debt collectors to think twice before giving up on old claims. "A case in point. In early spring, at the end of a long day's drive, there remained but one man on the list to be interviewed. To see him meant going two or three miles farther and consequently getting back to town quite late at night." The trip seemed futile. The debtor was an Iowa tenant farmer, and "not a progressive" one. A visit the year before yielded no payment because "the preferred claim of the landlord had more than exhausted his resources for meeting any machine obligations." Dickinson had visited again, but declined to press for payment after seeing a quarantine notice for smallpox on the tenant's house. This time, Dickinson was luckier. The tenant had just sold some hogs, "and had not yet had time to get the proceeds into other channels of circulation."[120] Even with the crop lien in place, Dickinson and his colleagues could make their collections, but it demanded immersion into the rhythms of rural life and markets.

By the late nineteenth century, agricultural landlords in most commodity crop regions of the United States had lobbied for and secured a lien on the cotton, tobacco, and grain grow by their tenants and sharecroppers under the lease. Courts that otherwise hesitated to recognize this form of inchoate security overcame their scruples in light of the perennial credit crisis facing commercial agriculture. The crop lien gave the landlord a property interest in the growing crop at the commencement of the lease, making it a far more powerful remedy than distress, which only allowed the landlord to seize tenant property after a default. But as the struggles of International Harvester's collectors

[120] E.F. Dickinson, "Never Ignore the Old Claims," *The Harvester World* (August 1912).

suggests, a new security interest, the chattel mortgage, would soon challenge the crop lien's preeminence and raise questions about the meaning of land as a source of authority.

C. Promiscuous Liens

From the start of the crop lien system, landlords had to compete with a variety of statutory liens fending for preeminence in the labor and property produced by tenants and sharecroppers. In most states, laborers and mechanics, including farm workers, could claim a lien on the product of their labor, whether it be the construction of a livery stable or ten bushels of corn. They did so by filing paperwork in the county court that encumbered the real estate or chattel with a lien that had to be paid off before the owner could sell the property.[121] For example, farm workers who used a landowner's threshers to gather bonanza wheat harvests had the power to file liens on the machinery itself to secure their wages.[122] To encourage development, legislatures awarded irrigation interests superpriorities over landlords in arid states like Texas.[123]

The most important rival to the landlord's lien for rent was the chattel mortgage. Just as they disfavored the crop lien, common law jurists were troubled by mortgages of personal property, suspecting them to be vehicles for fraud because the borrower retained possession of the property under mortgage. For example, a lender might loan money to a borrower under the belief that he could use the borrower's horse and buggy as collateral for the loan, only to later find out that the borrower had given a "nonpossessory" interest

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[121] Leonard A. Jones, *A Treatise on the Law of Liens, Common Law, Statutory, Equitable, and Maritime*, 2nd ed. (New York: 1894); Samuel L. Phillips, *A Treatise on the Law of Mechanics' Liens on Real and Personal Property*, 2nd ed. (Boston: 1883).
[122] Chuck v. Garrison, 75 Cal. 199 (1888).
[123] Texas Bank & Trust Co. v. Smith, 108 Tex. 265 (1917).

in the team to a third-party.[124] By the 1830s, states passed chattel mortgage recording acts to clear up this confusion, making a creditor responsible for publicly filing his chattel mortgage in order to assert priority over other creditors. As discussed above, chattel mortgages collateralized lending by merchants and manufacturers in the antebellum North, and were fundamental to the antebellum Southern economy. Chattel mortgages on human beings were effectively the basis for much of the region's circulating currency.

In the postbellum South, along with much of the rest of late-nineteenth century rural America, mortgages of personal property again became a fundamental source of credit. Merchants would acquire an interest in a farmer's personal property to secure a loan. Mules and heavy equipment made good collateral. Alternatively, merchants sold products to farmers through purchase-money mortgages, creating a payment schedule through which the farmer could become the free-and-clear owner of the goods.

In the context of landlord-tenant relationships, chattel mortgages presented opportunities and risks for landowners and renters alike. Commodity agriculture required fertilizer, horses and mules, and a variety of equipment, from the humble hoe, harness, and plow to oil-powered tractors, harvesters, binders, and threshers. Landlords could either risk their own credit by furnishing tenants with these inputs—and many of the most powerful landlords in the South, Midwest, and Far West profited handsomely from the high prices charged "on time" at their commissaries—or they could assign a portion of their interest in the crop to merchants. Unlike the distress remedy, which only a landlord could use, crop liens and chattel mortgages were transferable property interests unshackled to the land itself. Merchants could become possessors in the crop when

[124] Doane v. Eddy, 16 Wend. 523 (NY 1837).

landlords assigned them the crop lien, and they took on added security through chattel mortgages—a nonpossessory interest in the things they sold to tenants.

Chattel mortgages often meant the difference between independence and peonage for white farm tenants and African-American sharecroppers in the postbellum South. Renters who owned valuable chattels, like plows, buggies, and mules, could mortgage the value of that property to merchants to obtain loans of cash. With money in hand, renters bought goods at a significant cash discount, avoiding the high interest rates given to propertyless tenants, croppers, and hired hands. Conversely, renters without personal property could purchase agricultural supplies and work animals by giving the seller a chattel mortgage in the goods. Merchants willing to take this risk gave some poor farmers the productive property they needed to move from hired hand to sharecropper. Unlanded farmers who owned mules and plows and had the resources to support a labor force could obtain leases on more favorable terms than those who depended on the landlord for furnish.

"But how valuable were these assets in collateralizing debt arrangements?" asks Richard H. Kilbourne in his detailed empirical study of credit in nineteenth-century Louisiana.[125] It is true that landlord's priority lien over all of a tenant's personal property, and, to the extent it was enforceable in a racist judicial system, the laborer's lien, stood in the way of a merchant's right to collect these debts.

But consider the mule.

Kemp P. Hill had been in North Carolina's mule trading business since he drove a two-horse wagon as a teenager in the 1880s with the mules he had bought following

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[125] Kilbourne, *Debt, Investment, Slaves*, 157.

behind. “Fact is, mules and horses were the power of the farm,” he recollected in 1939, the last days of his business, as mechanization gradually spread through the Southern cotton industry. Hill’s “wagon train” followed the sessions of the superior court as it moved from county to county. Farmers descended on the county seat on court days, providing mule salesmen with a ready market of growers in need of mules to restart their cotton operations. Without money to buy mules, most farmers engaged in barter, exchanging “old scrub cattle or timber or anything we could turn into a profit” for mules. Initially, Hill supplemented mule trading through ranching. He exchanged mules for cattle, fattened them up for a few weeks, and shipped them by railroad to Virginia and Maryland, where they could be sold for cash. He plowed that money back into mules, traveling to St. Louis to buy them in lots of thirty for about fifty dollars each. It cost fifty dollars to ship them back to North Carolina, where they sold for $175 to $225 each. But ranching was a messy business—“We had to do all that horn waving and cutting right there in the pasture to get ‘em fit for shipping”—and Hill was happy to shift from the cattle-slaughterhouse-mule circuit to cash or credit sales once farmers “began to get some more money in this section.”[126]

Mules proved an effective basis for chattel mortgages because of their utility. Mules were critical to running a plow, but they also did a range of other cash-generating activities, from carrying crops and truck to market to providing the horsepower needed to drag logs to sawmills. Not only would there always be demand for a reliable mule, but the animals were known for their toughness at the plow, resistance to disease and the

[126] Harry Fain, “Horse Trader,” March 20, 1939, typescript in Federal Writers’ Project life histories files, file 376, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill.

elements, and ability to subsist on less costly feed than horses.[127] Mules that toiled in mines pulling cartloads of coal might not last five years, but those put to work on cotton farms might live for twenty years and were estimated to have a depreciation of ten percent a year.[128]

Mules also offered an opportunity for merchants and buyers to engage in speculation. Breeders, wholesalers, merchants, and purchasers who sold or exchanged their mules within the local community had to create convincing narratives about the value of their draft animals. Some of these sellers profited through fraud, as suggested by the abundance of breach of warranty cases preserved in civil court archives, but local knowledge and concern for reputation mitigated this risk. "Once, almost every southerner, black or white, male or female, young or old, knew something about mules," writes historian George B. Ellenberg in a recent study of the Southern mule, "and probably a good deal."[129] By treating an animal well, an owner could recover some of its value. In 1885, for example, the merchant B.N. Fields of Lenoir County, North Carolina, sold a black mule to farmer J.G. Cox, promising that the animal was "sound" despite the fact that the mule "had been starved out." The mule's suffering was Cox's opportunity: Fields made an unwritten deal that the buyer could purchase the mule at the discounted price of $110 "and mend him up a little" and then return the animal in the fall, when he

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[127] George B. Ellenberg, *Mule South to Tractor South: Mules, Machines, and the Transformation of the Cotton South* (Tuscaloosa: University of Alabama Press, 2007), 20-24.
[128] "Gasoline Locomotives in a Pennsylvania Mine," *Coal Age* 5, no. 16 (1914): 647; H.K. Gayle and E.R. Lloyd, "The Economy of Mule Production in the South and Methods of Management," *Bulletin of the Mississippi State College Agricultural Station* (1915): 14.
[129] Ellenberger, *Mule South to Tractor South*, 5.

would buy it back for $125.[130] Another profit-center for merchants who sold mules was the cost of upkeep. A farmer who needed feed might get it from the merchant who sold him the animal. When a farmer's mule was sick, he would often turn to the mule trader for medicine. Feed and medical bills could get added to the chattel mortgage. If the farmer failed to pay back his debt on the mule on time, the merchant could foreclose on the mortgage and seize the animal or claim its equivalent value from the borrower.

As a productive and durable chattel, a speculative pursuit, and a living thing that demanded maintenance, mules powered tenant agriculture and provided a source of capital that renters and merchants drew upon to build commercial relations that could stand apart from the landlord's lien. As historian Sharon Ann Holt has shown, North Carolina tobacco sharecroppers climbed the property ladder through chattel property, rather than land, ownership, using the accumulation of livestock to store wealth.[131]

Like crop liens, chattel mortgages drew borrowers into a credit system necessary to rise out of poverty, but posing tremendous risk. Many borrowers were illiterate, and gave their assent to these agreements with an "x" without being able to read what they had signed away. Critics pointed to the potential for abuse behind this custom. "How many liens have been recorded in the county clerk's office," Charles Otken asked in his 1894 polemic, *The Ills of the South* "whose fatal cross mark was never made by a black hand?"[132] Alabama sharecropper Ned Cobb swore he would never sign a note again after discovering that he had unwittingly agreed to pledge his mules and other chattel property

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[130] Fields v. Cox, Civil Action Papers, Lenoir County Superior Court, 1887-1889, image 194, North Carolina Division of Archives and History, Raleigh (hereafter NCDAH), accessed July 1, 2015, https://familysearch.org.
[131] Sharon Ann Holt, *Making Freedom Pay: North Carolina Freedpeople Working for Themselves, 1865-1900* (Athens, GA: University of Georgia Press, 2003), 39.
[132] Charles H. Otken, *The Ills of the South* (New York: 1894), 172.

as collateral for his landlord's debts with a local merchant. He essentially gave his landlord a blank check. This document gave the landlord's creditor permission to seize Cobb's property in the event that his landlord could not meet his obligations.[133]

The chattel mortgage system also undermined efforts by postbellum lawmakers to shield households from ruin through homestead exemptions. In the nineteenth century, every American state but Oregon established a standard exemption of real and personal property from seizure in the event that a household was insolvent.[134] A legal expression of the era's domestic ideology, homestead exemptions were meant to protect the home from the dangers of cascading market failures and spendthrift husbands, "[t]he object being, to establish homesteads, as institutions in the family economy, and in the interest of society."[135] According to historian Steven Hahn, lenders in postwar Georgia demanded that borrowers waive the homestead exemption to obtain credit, which had the practical effect of nullifying it. Unsecured lenders refused to provide loans without this agreement, risking the limited independence that owning chattel and real property might bestow on tenants, croppers, and yeoman farmers.[136]

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[133] Theodore Rosengarten, *All God's Dangers: The Life of Nate Shaw* (Chicago: University of Chicago Press, 1974), 159.
[134] Carole Shammas, Marylynn Salmon and Michel Dahlin, *Inheritance in America from Colonial Times to the Present* (New Brunswick, NJ: Rutgers University Press, 1987), 86.
[135] Dellinger v. Tweed, 66 N.C. 206 (1872).
[136] Steven Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850-1890* (New York: Oxford University Press, 1983), 195. Even with these waivers in place, however, creditors might struggle to enforce them in court. In 1895, a Georgia law firm attempted to foreclose on the property of a widow whose husband had waived the exemption; their client saw no reason to wait "for a possibly healthy widow to shuffle off for the sake of collecting this claim. We must fight it out now." But with many of the mortgage documents in disarray, the widow's attorney threw enough obstacles in the creditor's path that the law firm gave up the fight. "About the only thing to do is to sit down until old lady Ellis dies and then try again." John Taylor to A.L. Richardson, 5 September 1895, file 10, box 13, Brooks-Estes-Taylor

By contrast, North Carolina judges more strictly policed these waivers—even refusing to enforce one made under Georgia law.[137] A borrower could only waive the homestead exemption on real property in writing.[138] North Carolina law, however, did not describe how a borrower could legally waive the exemption on *personal* property. Early on, to satisfy merchants worried about their solvency, borrowers included language on promissory notes disclaiming any right to the exemption. On the Fourth of July, 1876, Wiley Tomlinson of Wilson County borrowed $49.09 at eight percent interest from a merchant, agreeing "that I will not claim any homestead or personal property exemptions on any final process issued for the collection of this note, and expressly waive the same." While it may have held moral authority, such a waiver was not legally binding; the North Carolina Supreme Court held in 1877 that nothing would stop a borrower from retracting a waiver and claiming his or her personal property exemption before the execution of a judgment.[139]

Merchants worked around this protection by assuming a "special interest" in their debtor's personal property. Most yeoman farmers, tenants, and sharecroppers could not obtain a personal loan based on their reputation alone, and had to leverage their property to secure advances. When a borrower (mortgagor) gave a mortgage or deed of trust on his personal property—say, his horse named Kate—the merchant (mortgagee) obtained legal

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Papers, MS 2533, Hargrett Rare Book & Manuscript Library, University of Georgia, Athens.

[137] Exchange Bank v. Appalachian Land & Lumber, 128 N.C. 193 (1901).

[138] Beavan v. Speed, 74 N.C. 544 (1876).

[139] Branch v. Tomlinson, 77 N.C. 388 (1877). A majority of American states held that attempted waivers of debtor's exemption rights were void as a matter of public policy. With the exception of Pennsylvania, state courts upholding waivers, including Alabama, Georgia, Virginia and Louisiana, had statutory or constitutional provisions permitting waiver. See K.H. Larsen, "Validity of contractual stipulation or provision waiving debtor's exemption," *American Law Reports 2d* 94 (1964): 967.

title over the chattel for the term of the instrument and reserved the right of possession.[140] Kate was now encumbered property. If Kate's owner (the mortgagor) failed to pay the note underlying his mortgage on Kate, the merchant (mortgagee) could foreclose on the horse and use the proceeds to pay off the mortgage debt. By giving a chattel mortgage, the borrower had effectively "bargained away" his right to protection under the homestead laws, and could not retract this contract when foreclosure was imminent. Under the North Carolina Supreme Court's interpretation of the exemption laws, "the property was liable for the mortgage debt first and the debtor's exemption was allotted only in the amount of the surplus."[141] In other words, if Kate was sold for one hundred dollars at auction on the courthouse steps, and her former owner owed $120 on the note, the merchant could sue him for the difference, regardless of the exemption. If Kate sold for $130, her former owner could keep the difference of ten dollars and shield that surplus from other creditors as exempt property.

Along with potentially bankrupting households, chattel mortgages put unlettered borrowers at risk of arrest. In 1880, the *Charlotte Democrat* warned the borrower to be "very cautious in signing any agreement which he does not expect to follow out to the very letter," because creditors seeking to foreclose on a chattel mortgage could file criminal charges against borrowers who "willfully" failed to deliver the mortgaged property.[142] In his autobiography, Neb Cobb recalls how a merchant-planter, Lloyd Albee, entrapped his father, Haynes Shaw, for selling a mortgaged cow. Albee was not

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[140] Debts not exceeding $300 could be secured with a deed of trust on personal property. William H. Battle, comp. *Revisal of the Public Statutes of North Carolina*, ch. 35, § 31-33 (Raleigh: 1873).
[141] Montford v. Grohman, 36 N.C. App. 733 (1978), citing Gaster v. Hardie, 75 N.C. 460 (1876).
[142] "Mortgages," *Charlotte Democrat*, March 19, 1880.

satisfied with earning profits from Shaw's debt, and wanted to control his labor directly as an unfree laborer on his farm. Shaw owned half a dozen cattle, and wanted to sell one of them. When Shaw came to Albee to get permission to sell the cow—Albee, like most furnishing merchants, held a mortgage on the cattle to secure his debtor's payment—the merchant gave him an oral promise that he could sell it. Shaw sold the cow and gave Albee the proceeds. Albee then arrested Shaw, claiming that his debtor had sold the cow without his written permission. Locked up in Beaufort, Alabama, on fraudulent charges, Shaw agreed to a landlord's offer to "buy" him out of jail and work on his farm without "knowin definitely what he was agreein to": that he was taking the place of a sharecropper whom the landlord had murdered a year before.[143]

In the Upper South, by contrast, farm renters and hired hands had more success in using the value of their chattel property to slowly ascend from hired hand to cropper to renter or landowner. Borrowing on chattel property may have been widespread, but mortgage holders could not count on winning cases of disposing mortgage property brought in the superior court. In Craven County, North Carolina, between 1880 and 1902, one-third of the twenty-one cases of "disposing of mortgaged property" were thrown out of court for not being a "true bill," and another third were entered as "Nol Pros" or "Not Guilty."[144] These cases ordinarily arose when borrowers attempted to sell mortgaged property to third parties. In January 1889, for example, Edgecombe County merchants

[143] Rosengarten, *All God's Dangers*, 27-31.
[144] Superior Court Docket Books, 1880-1902, Craven County, NCDAH.

S.S. Nash & Company accused Jack Summerlin of selling a mortgaged buggy with the intent to defraud his creditors.[145]

To what extent Upper South merchants practiced the frauds identified in the Lower South remains to be determined. Local judges had a financial incentive to hear debt actions, as a reliable source of their fees was drafting orders to repossess mortgaged property. Merchants sought "to 'jerk' by claim and delivery or detinue" property "that people bought and can't finish payin' for."[146] A farm tenant from North Carolina's Onslow County reported in 1887 that tenants in his eastern district often had no idea what they were bargaining for when they gave a chattel mortgage. By the end of the season, "Big per cent, has eaten up crop, cattle and mule, and threatens his household plunder, and often menaces his liberty, because he has mortgaged property that cannot be found." The tenant urged the legislature to pass a law requiring all mortgages to be witnessed by a "disinterested man" who would ensure that the written agreement matched the verbal understanding between debtor and creditor.

This supervision, the tenant hoped, would avoid the confusion that led to criminal prosecutions, when the borrower "may say that he did not know such and such article was in the mortgage; it makes no difference."[147] Chattel mortgages often contained the signatures of witnesses and justices of the peace, suggesting that borrowers had some sense of what they were getting into when they made these risky deals. Coercion, rather than fraud, was the mark of these agreements, and when borrowers became desperate,

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[145] State v. Jack Summerlin, file 1890, Criminal Action Papers, 1890-1895, Edgecombe County, NCDAH.
[146] William E. Hennessee, n.d., "The Magistrate," typescript in Federal Writers' Project life histories files, file 512, SHC.
[147] North Carolina Bureau of Labor Statistics, *First Annual Report* (Raleigh: 1887), 133.

they "consumed" the mortgaged property, subjecting themselves to potential criminal charges. "While it is generally understood that men can't be imprisoned for debt," a farmer from North Carolina's Stokes County, a tobacco-growing region, explained in 1893, "I think I can give several instances in which men have been imprisoned for debt for fertilizers to raise tobacco when the tobacco didn't bring enough money to pay for fertilizer used under it, but having given a mortgage on the grain crops, necessity and hunger compelled them to use it, and they were prosecuted for using mortgaged property."[148]

What was the relationship between the crop lien and the chattel mortgage? While their function as debt instruments tended to blur in practice, they derived from different ideas about value and served different masters. Crop liens began as an augmented form of the distress remedy, consolidating the authority that the law gave to landowners to develop and exploit real property. Chattel mortgages, by contrast, cut land out of the debt structure, assigning transferable value directly to natural and human labor, whether in the form of human beings, animals, or productive property. The preeminence that the law gave to the landlord's lien, however, stacked the contest in favor of landed power and proved vital to giving tenant agriculture a prominent place in the United States after emancipation. Without their lien, landowners, finding leasing to be too risky, might have consolidated their properties and formed large plantations run by wage hands, rather than parcel them into smaller holdings managed by sharecroppers or tenant farmers. Without the crop lien, chattel mortgages would have become the main source of capital for small farmers, particularly in regions where land prices were depressed, and commodity

[148] North Carolina Bureau of Labor Statistics, *Seventh Annual Report* (1893), 73.

agriculture would likely have lost its self-perpetuating cotton "lock in." Farmers could secure their debts with tangible assets rather than future products whose value fluctuated and was generally in decline.

As the distress remedy declined in power in American cities, two security interests backed by property seizure—the statutory lien and the chattel mortgage—increasingly entered the relations between landlords and tenants in rural America. By the end of the nineteenth century, few agricultural tenancy relationships formed without one of these security interests serving as a protection for the landlord, the tenant, the merchant who loaned agricultural supplies, the water company that irrigated the rented soil, or the laborers who picked crops or operated farm machinery. With so many people claiming a legal right to the tenant's labor and property, "priority" was never a certain matter, and it was inextricably linked to the privileges of race, gender, and class fundamental to law in the long nineteeneth century.

On May 17, 1894, a reporter for the *New York Times* discovered Sarah Goldberger and her four children living on the sidewalk in front of their tenement home at 19 Allen Street on the Lower East Side. "Piled on the sidewalk were the household effects of the poverty-stricken family, and Mrs. Goldberger, a delicate woman, sat watching and brooding over her misery, while her husband was away looking for assistance to find a shelter for his wife and children." Goldberger, speaking through an interpreter, told the reporter that her husband was an unemployed cloakmaker, and that she could not work after giving birth three months before. When their money ran out and they could not come up with four dollars to pay a half-month's rent, their landlords Wolf

Solomon of 92 Ludlow Street and his "fat, well-preserved" wife obtained a warrant of eviction to throw them out of their two-room apartment. The three day's grace afforded by the summary process laws were not enough to find help from their equally poor friends, and "at 4 o'clock Wednesday afternoon a Marshal came, and with no gentle hand had the miserable assortment of furniture carried out of the house and piled upon the sidewalk." Goldberger hoped to find shelter before the rain destroyed her furniture.[149]

Sarah Goldberger's furniture was worth nothing to her immigrant landlords; quickly turning over the apartment was what mattered. After all, many Lower East Side landlords were actually tenants who subleased apartments to cover their rent to an absentee owner, and slum landlords who owned their properties had to pay heavy debts to builders and immigrant loan associations.[150] The intensity of land use in urban centers meant that landlords needed to keep apartments filled with rent-paying tenants, swiftly remove those who did not pay, and use the civil courts to obtain cash judgments against renters that could be enforced through wage garnishment.[151]

Meanwhile, a thousand miles south in Dougherty County, Georgia, sociologist W.E.B. Du Bois traveled through a land cursed with a "pall of debt," where "the merchants are in debt to the wholesalers, the planters are in debt to the merchants, the tenants owe the planters, and laborers bow and bend beneath the burden of it all."[152] Merchants had become the brokers of the crop lien system. They executed chattel

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[149] "On the Sidewalk with Her Children," *New York Times*, May 18, 1894.
[150] Day, *Urban Castles*, 7-29.
[151] More research is needed into the practices of wage garnishment, including its variations by state and region and its place in the landlord-tenant context. Bradley A. Hansen and Mary E. Hansen, "The Evolution of Garnishment and Wage Assignment Law in Illinois," *Essays in Economic & Business History* 32 (2014): 19-46.
[152] W.E.B. Du Bois, *The Souls of Black Folk* (1903; repr., New York: Dover, 1994), 78.

mortgages on the wagons and mules of African-American tenant farmers, obtained mortgages on the crop "as soon as the green cotton-leaves appear above the ground," issued weekly "rations" at high interest to tenants along with small loans for the doctor, the druggist, and the blacksmith, and encouraged renters to buy buggies they could not afford in years of high cotton prices. "The security offered for such transactions—a crop and a chattel mortgage—may at first seem slight," Du Bois wrote, and merchants still complained "of cotton picked at night, mules disappearing, and tenants absconding." Nevertheless, through the "bonds of law," merchants and landowners had left the county's black majority with few options besides "pauperism and crime," as they controlled the crop during the season and subtracted most of renters' share of the harvest for rent and supplies, leaving a little, "if, as sometimes happens," to give "to the black serf for his Christmas celebration."[153]

Thanks to the crop lien and the chattel mortgage, rural tenancies became risky and often miserable ventures. Tenants gambled their family's entire livelihoods—a year's worth of grain, a sturdy mule, or a thresher—in the hope of earning a surplus that might lead them to landed independence. Merchants became important intermediaries in landlord-tenant relations, as they brokered the short-term credit needs of landowner and renter in the many months before the harvest was sold. Buying real property remained the goal for white and black tenant farmers, and land formed the basis for many loans, and, to a limited extent, underlay a secondary market in farm mortgages by the end of the nineteenth century.[154] Property interests in the crop itself and the chattels that powered the farm gave liquidity to the rural economy, though, as subsequent chapters will show,

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[153] Du Bois, *Souls*, 90.
[154] Levy, *Freaks of Fortune*, 150-90.

access to credit on lenient terms was only likely to flow to white men with influence in their local communities.

Whether by choice or necessity, landlords—who, like tenants, were engaged in a diverse range of commercial, agricultural, and residential ventures— increasingly ceded their priority lien to host of other interests over the course of the twentieth century. Landlords could not expect priority simply by virtue of land ownership, particularly in bankruptcy proceedings. As a federal district court wrote of the impact of the Bankruptcy Act of 1898, which established a permanent system of federal bankruptcy courts, "[l]andlords' liens, once treated as superpriorities, have steadily been emasculated."[155]

Yet if landlords had been unmanned, the taking of personal property to satisfy creditors became an indispensable component of the growing administrative state and the merchant's "Land of Desire."[156] Throughout the nineteenth century, American cities used distraint sales as a way to recover unpaid property taxes, and the federal government confiscated goods from those who failed to pay excise taxes.[157] But the threat of state-imposed distress became most apparent to Americans after World War I, as Internal Revenue agents warned taxpayers to share in the burden of the new income tax system or lose their property.[158] The market for consumer products, too, expanded with the help of preferential liens for merchants selling cars, furniture, and other goods tied to the thing

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[155] Thomas v. Gulfway Shopping Center, 320 F.Supp. 756, 765 (S.D. Tex. 1970).
[156] William Leach, *Land of Desire: Merchants, Power, and the Rise of a New American Culture* (New York: Vintage, 1993), 123-30, 299-302, describes the rapid expansion of installment buying and consumer charge accounts between the 1880s and the 1920s, but does not pursue the issue of repossession.
[157] *Newburyport Herald* (Newburyport, MA), August 12, 1814; "Laws of the United States," *Ontario Messenger* (Canandaigua, NY), March 21, 1815.
[158] "Pay Income Tax or Lose Your Home," *Daily Herald* (Biloxi, MS), June 6, 1921.

itself. Joining chattel mortgages on crops and mules were merchant's liens on automobiles and tires. A Chevrolet dealer in Mebane, North Carolina, was known for "taking a chattel mortgage on a mule as trade-in on a new car sale."[159] By the mid-twentieth century, legal reformers struggled to balance a "single lien idea" with the variety of chattel security methods in circulation for the consumer, business, and agricultural markets.[160] The tenant right's revolution of the 1960s also fractured distress, restricting it in many states to commercial leases, where parties were presumed by judges and legislators to have more equal bargaining power.[161] Distress became subsumed into a more complicated series of creditor-debtor relationships as the connection between land and things detached. Instead, as the thing in itself became the site of contest, a landlord who hoped to recover on a debt had to get in line.

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[159] J. Ronald Oakley, *Mebane* (Charleston, SC: Arcadia, 2012), 35. (Quotation marks omitted).
[160] J. Francis Ireton, "The Proposed Commercial Code: A New Deal In Chattel Security," *Illinois Law Review* 43 (1948-1949): 794-818.
[161] Matter of Great Basin Holding Corp., 9 B.R. 79 (Bkrtcy. Nev., 1981).

Chapter Two.

Tenancy and the Meaning of Freedom:

Racism, Politics, and North Carolina's Landlord-Tenant Acts, 1865-1890

The United States Senate commenced a special hearing in January 1880 on the economic and political problems that led thousands of black farmers and artisans known as "Exodusters" to flee the South for Kansas and Indiana in 1879. Much to the incredulity of many of his fellow witnesses, James E. O'Hara, one of North Carolina's most prominent African American leaders, claimed to know "no difference made by the law between white and colored people." Racism in the courts did not drive the Exodusters, "but I will say that we have one law in North Carolina which I think bears badly, both to the landlord and the tenant."[1] This chapter analyzes the social, economic, and political context that produced a hotly-contested succession of tenancy laws in the years of Reconstruction and Redemption, and uncovers how elite jurists, landlords, merchants, and white and African American tenants and sharecroppers responded to and reshaped these laws in the legislatures and courts.

Like the leaders of every other Southern state facing the postwar economic crisis, North Carolina Republicans passed laws in the late 1860s encouraging agricultural lending by allowing landlords to claim a lien on their tenants' crops. Following the lead of the Freedmen's Bureau, Republican lawmakers demanded that crop lien arrangements

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[1] Select Comm. to Investigate the Causes of the Removal of the Negroes from the Southern States to the Northern States, S. Rep. No. 46-693, pt. 1, at 50 (1880) (hereafter Exodus Hearings). On the hearings, see Nell Irvin Painter, *Exodusters: Black Migration to Kansas after Reconstruction* (New York: Alfred A. Knopf, 1977), 253-55; Heather Cox Richardson, *The Death of Reconstruction: Race, Labor, and Politics in the Post-Civil War North, 1865-1901* (Cambridge, MA: Harvard University Press, 2001), 173-82.

be put in writing to be legally enforceable. Though most freedpeople left slavery without formal educations, they shared the hopes of white Republican allies that bargaining and written contracts could protect their rights as tenants and sharecroppers. When Democrats came to power, they amended the landlord-tenant statutes in 1875 to make the landlord's possession of the growing crop absolute and moot the distinctions that the state's Republican-led supreme court had drawn among the rights of tenants, croppers and servants and the admissibility of written and oral contracts. I call this transition a time of rural simplification, in which the legislature attempted to collapse a resurfacing feudal patchwork of agricultural property laws into a dichotomy of landowners and labor.[2] Under Democratic rule, all renters had the possessory rights of sharecroppers.

By collapsing the distinction between tenant and sharecropper, the legislature provoked backlash from a wide coalition subjected to landlord power. In the aftermath of the war, most North Carolina sharecroppers were former slaves looking for a more secure foothold in agriculture than the low wages and constant supervision of wage work on their old plantations, arrangements that often felt no better than slavery. The racial demographics of tenancy changed in the twenty years between the Civil War and the Exodus hearings, however, as tens of thousands of white yeoman farmers in the piedmont region shifted from subsistence agriculture to cash crop production; cotton production increased almost 168 percent even as the global price for the commodity plummeted,

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[2] "Radically simplified designs for social organization," writes anthropologist James Scott, "seem to court the same risks of failure courted by radically simplified designs for natural environments." James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998), 7. In the postbellum American South, agricultural simplification, in the form of cotton and tobacco monoculture, was stimulated by legal simplification: sharecropping and the crop lien.

driving farmers into foreclosure and tenancy.[3] Some renters were minor landowners, too, and others commanded the labor of dozens of laborers each season as contracted overseers. The great variety of experiences of landowning and tenancy ripped open any hope for consistency in the law.[4] An interracial, cross-regional coalition of lawmakers passed a remedial procedure in 1877 intended to protect the future property rights in the crop of the expansively defined tenant-cropper class. Renters and creditors could protest a landlord's wrongful seizure of the crop by filing a complaint and posting a bond, after which they were "allowed to retain possession of the property."

After years of debates and amendments to the landlord-tenant laws, some witnesses at the Exodus hearings defended them as a spur to investment and a defense against attacks on property rights, including those of African-American farmers. E.B. Borden, a farmer and banker from Goldsboro, described the law as a protection for landowners from the "thriftless tenant" who used his crop as collateral for loans with merchants "and thereby cut the landlord out of his rent altogether."[5] Borden's neighbor Napoleon Higgins, a black landlord who was a free person of color before the Civil War, confirmed the law's necessity. The owner of 485 acres of land that he rented to black sharecroppers for a third of the cotton crop and on fourths and for a fixed rent to white

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[3] Paul D. Escott, *Many Excellent People: Power and Privilege in North Carolina, 1850-1900* (Chapel Hill: University of North Carolina Press, 1985), 174-79.

[4] Three forms of agricultural production were common in the postbellum South: centrally-managed "new business plantations" operated by black wage workers, tenant farms operated by white and black families with limited landlord supervision, and yeoman farms dependent on merchant credit. Harold D. Woodman, "Reconstruction of the Cotton Plantation," in *Essays on the Postbellum Southern Economy*, ed. Thavolia Glymph and John J. Kushma (College Station, TX: Texas A&M University Press, 1985), 114. On the varieties of Southern agricultural organization after the Civil War, see Jack Temple Kirby, *Rural Worlds Lost: The American South, 1920-1960* (Baton Rouge: Louisiana State University Press, 1987), 25-50.

[5] Exodus Hearings, 212.

renters, Higgins said it was "a good law" because it secured him a lien on his tenant's property until the rent was paid, "and I think I am entitled to that." Higgins lived about five miles from the land he rented to the white renters, and he worried that they would steal the cotton "if I did not have the law to back me; and they are just as apt to run it all of as not when they start."[6]

Higgins admitted that he was "on the other side of that question" of the fairness of the law from his renters.[7] Most tenants and sharecroppers were former slaves, and they chafed at the power the lien gave landlords to shape the terms of their work, domestic lives, and pay. Samuel L. Perry, a leader in the Exodus movement from eastern North Carolina, explained the anger his constituents felt that landlords could "forbid a man moving any part of the crop till his rent is paid, and it leaves that to the landlord to settle himself; he is the man to say about that as to whether advances are made." Although tenants had a legal remedy allowing them to challenge arbitrary seizures of their crops, it would not prevent the injustices of the crop lien system if, as Perry insisted, the freedpeople "cannot feel that their former masters will ever recognize them as their equals" and "cannot stand up to a white man and demand their rights" in the courts, the legislature, and the fields.[8]

Though they stood at opposite sides of the landlord-tenant divide, both Higgins and Perry understood their common vulnerability as African Americans in the post-Reconstruction order without a legal system that respected and protected their property, homes, and families. Racism, "the assignment of people to an inferior category and the

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[6] Exodus Hearings, 261.
[7] Exodus Hearings, 263.
[8] Exodus Hearings, 285.

determination of their social, economic, civic, and human standing on that basis,"[9] made formal legal remedies an unpromising path for justice. Black landlords could not work with white tenants who skipped out on the rent with impunity. For indebted African-American sharecroppers, even with a formal legal remedy, lawsuits were expensive, time-consuming, provoked violence, and jeopardized their standing as trustworthy workers. Flight seemed a better solution than trying their luck in courts dominated by former masters.

Nevertheless, in the decades following its passage, an exceptional set of African-American sharecroppers, along with several landless white men and women, either sued their landlords for civil damages under the law, or drew on its language to overturn their convictions on criminal charges of stealing the crop. When their cases were appealed to the North Carolina Supreme Court, croppers often gained a sympathetic audience before judges who interpreted tenancy law in ways meant to reign in the abuses of local officials through an ostensibly "race neutral" set of rules. Because the tenancy laws classified white men of property and the poorest freedmen together as one legal identity, judges understood that their decisions would undermine the ability of men of both races to sustain independent households. Preserving hierarchies of gender was paramount, even if the net result was to elevate the rights of African-American sharecroppers. Other judges used tenancy cases as a platform for enforcing consistency in the law, even if the results

[9] Barbara J. Fields, "Whiteness, Racism, and Identity," *International Labor and Working-Class History* 60 (2001): 48-56.

might seem absurd to lay or legal audiences. It was better to free a thief, in this view, than to erode the foundations of the common law. [10]

Whatever their underlying theory, these decisions undermined the law's consistency and reinforced the postbellum economy's racial divisions as North Carolina approached the era of Jim Crow. Unlanded white farmers increasingly understood that their tenuous legal claims to the crops made the courts an unreliable source of justice, and they looked to informal sources of law to preserve a modicum of independence. Meanwhile, black sharecroppers reached the "nadir" of the postwar years with a deep well of precedents to draw upon, but with little power to bring them up.[11]

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[10] On the importance of evaluating appellate law as historical evidence, legal historian Mark Tushnet writes: "As descriptions of structures of thought, judicial opinions are not incomplete in the way they are as descriptions of practice. Further, because they are public documents designed to convince, judicial opinions set out premises accepted quite widely and attempt to gain assent to a particular result by showing how that result can be derived from those premises." Mark V. Tushnet, *The American Law of Slavery, 1810–1860: Considerations of Humanity and Interest* (Princeton: Princeton University Press, 1981), 19.

[11] Studies of North Carolina's post-Reconstruction history grapple with its "progressive mystique," the paradox of a state with "a reputation for enlightenment and a social reality that was reactionary." William H. Chafe, *Civilities and Civil Rights: Greensboro, North Carolina, and the Black Struggle for Freedom* (New York: Oxford University Press, 1980), 5-7; Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: University of North Carolina Press, 1992); Leslie Brown, *Upbuilding Black Durham: Gender, Class, and Black Community Development in the Jim Crow South* (Chapel Hill: University of North Carolina Press, 2008). A thorough study of the North Carolina Supreme Court's post-Civil War decision-making suggests that the court may have performed a "doorkeeper" function for mid-twentieth-century civil rights reform. "The court did not conceive of using its power to foster social or economic equality, but it made clear, in cases coming before it, that the law would be applied evenhandedly to blacks and whites, regardless of whether the result harmonized or clashed with the established order." Joseph A. Ranney, "A Fool's Errand? Legal Legacies of Reconstruction in Two Southern States," *Texas Wesleyan Law Review* 9, no. 1 (2002): 54. North Carolina's judiciary was not exceptional in this regard, as appellate judges like Alabama's Thomas Goode Jones balanced a comfort with racial hierarchy with public opposition to lynching, debt peonage, and the denial of due process, based on an ethical conviction "to follow scrupulously the letter of

A. Reconstruction and the Evolution of the Crop Lien

"I have the honor to inform you that the papers in this case have been placed in my hands, having been referred to me for action," wrote Major Charles E. Compton, Subassistant Commissioner for the Bureau of Refugees, Freedmen, and Abandoned Lands' office in Goldsboro, North Carolina, on May 9, 1867, to the landlord of a freedwoman, Mrs. Pridgen. In the year following emancipation, her landlord furnished the land, farming equipment, mules, and feed for the team, and Pridgen secured a labor force and provided board for her workers. The arrangement proceeded without incident until Pridgen and her hands had gathered the crop. The landlord owed her about seven hundred dollars. Under his military authority, Major Compton demanded that that the landlord "settle with Mrs. Pridgen or her duly authorized agent on the within claim or report to these Head Quarters why you should not do so."[12]

Pridgen's case was among thousands of labor disputes that the Freedmen's Bureau settled by force in the years immediately following the Civil War. Unable to testify against their white employers in the civil courts under the regime of the "Black Codes," freedpeople depended on this parallel system of justice to defend their civic and

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state and federal law, to follow the oaths he had taken." Paul M. Pruitt, Jr., *Taming Alabama: Lawyers and Reformers, 1804-1929* (Tuscaloosa: University of Alabama Press, 2010), 63. Laura F. Edwards, by contrast, raises doubts about the power of formal equality to remedy inequalities in the postbellum South. "Because labor relations were individualized and privatized in this way, workers had to fight and refight the same battles just to maintain what little ground they had already won. In fact, they had to fight to gain a public hearing at all." Laura F. Edwards, "The Problem of Dependency: African Americans, Labor Relations, and the Law in the Nineteenth Century South," *Agricultural History* 72, no. 2 (1998): 340.

[12] Bureau of Refugees, Freedmen, and Abandoned Lands, Office of Subassistant Commissioner, Goldsboro, North Carolina, Roll 15, Letters Sent, Vol. 1, p. 45-46, accessed on February 3, 2015, familysearch.org.

economic rights. Bureau agents believed that without their oversight, whites would steal the wages of African American workers and use threats or whippings to coerce the freedmen to work.[13]

The Bureau's efforts to turn slaves and masters into employers and employees corresponded with a broader reshaping of labor relations throughout the United States and other post-emancipation societies.[14] With the end of slavery, Southern states

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[13] Roberta S. Alexander, *North Carolina Faces the Freedmen: Race Relations During Presidential Reconstruction, 1865-1867* (Durham: Duke University Press, 1985), 102

[14] Despite significant variations in landed labor systems, all agricultural regions shared a common set of ideological concerns surrounding emancipation, free labor, and the global expansion of commercial agriculture.

As Eric Foner writes, demography and geography are poor predictors of a post-emancipation settlement: the persistence of a plantation economy depends on the ability of landholders to control the size, power, and independence of the free labor force. In comparison to British post-emancipatory agricultural regimes dominated by imported "coolie" laborers or "directly supervised wage workers," Foner argues, Southern sharecropping actually "afforded agricultural laborers more control over their own time, labor, and family arrangements, and more hope of economic advancement" and was viewed threateningly by the planter class. In the West Indies and the Southern United States, freedpeople and planters battled over immigration, control of labor, customary property rights, fencing laws, and taxation. But these conflicts occurred within different "political cultures": Southern freedpeople claimed legal rights stemming from an expectation of equality before the law, while West Indian peasants eschewed full political participation in favor of a right to be left alone. Eric Foner, *Nothing but Freedom: Emancipation and its Legacy* (Baton Rouge: Louisiana State University Press, 1983), 14-15, 45, 47-71. To some extent, British and American societies also represented divergent legal cultures. Robert Steinfeld points out that laborers working in England for much of the nineteenth century had no right to quit and employers could obtain injunctions or criminal sanctions forcing them to obey their contract. Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge: Cambridge University Press, 2001), 6.

The legal order of agricultural labor in post-emancipation societies also depended upon the relationship between the landed elite and the state. Steven Hahn finds the Southern postbellum planter class significantly less equipped to maintain hegemony over both its workforce and the white yeomanry than comparable landed elites in Prussia and Brazil because of its exclusion from federal power. Similarly, Peter Kolchin argues that federal authorities in both the United States and Russia were able to directly manage the transition between slavery and freedom through a reconstruction program because the former masters in both states had weak authority within the central government and could

incorporated the Northern ideology of free labor and its legal underpinning, freedom of contract, into landed labor relationships. Yet the meaning of free labor was unclear. Some Bureau agents thought free labor required the heavy-handed use of state power to fix capitalist social relations for the benefit of the planter class and control labor mobility, while others designed a more laissez-faire approach that sought to develop a marketplace of freely contracting employees "with little place for legal compulsion."[15] And, as Mrs. Pridgen's illustrates, some agents deployed state power to insure fairness to a politically disempowered tenant.

These competing ideas reflected an ongoing debate in the North about how the state should control the relations between employers and employees. Conservative jurists supported an activist state. They believed it was the public's responsibility to strictly enforce labor contracts—whether the contracted labor was black or white—to promote the security interests of employers and, to some extent, workers, who would enjoy protection from arbitrary firings during the contract term. Conservatives sanctioned wage forfeiture as a standard employer remedy, holding that an employee who quit breached the duty to obey the contract in its "entirety." By contrast, nineteenth-century economic liberals opposed the entirety doctrine and sought to create a more fluid labor market allowing workers to break a contract without losing their right to unpaid wages.

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not initially resist efforts to bring freedpeople into the power structure. Steven Hahn, "Class and State in Postemancipation Societies: Southern Planters in Comparative Perspective," *American Historical Review* 95, no.1 (1990): 75-98; Peter Kolchin, "Some Thoughts on Emancipation in Comparative Perspective: Russia and the United States South," *Slavery and Abolition* 11 (1990): 355.

[15] James D. Schmidt, *Free to Work: Labor Law, Emancipation, and Reconstruction, 1815-1880* (Athens, GA: University of Georgia Press, 1998), 147, 150.

Conversely, this flexibility allowed employers to fire them at will.[16] Both sides agreed that free labor did not mean the freedom to do nothing: antebellum lawmakers in the North and South passed vagrancy laws that, in places with labor shortages, turned the state into a labor bureau that assigned unemployed white and black workers to year-long contracts.[17]

In North Carolina, Assistant Commissioner Eliphalet Whittlesey imposed the conservative entirety doctrine on the contracts his Freedmen's Bureau agents supervised. He aimed to apply the rules impartially, giving newly freed people the same protections or sanctions as the law granted any "tenant." Under Whittlesey's framework, if freedpeople quit a contract or violated its terms through misbehavior, poor work habits, or absence from sickness, they would forfeit some or all of their wages, but employers who fired workers without justification would have to support the laborer and his or her family through the duration of the contract. To protect their contingent wages, under General Orders No. 32, issued on May 30, 1867, military authorities abolished distress for rent and gave laborers "preference to all others" for money earned in growing the crop.[18]

When Pridgen brought her claim against her landlord, in fact, the sharecropping system was in its infancy. Instead, former masters and most Freedmen's Bureau agents preferred wage labor contracts. Whittlesey and his agents expected most former slaves to become wage hands working on contracts, not unlike the terms offered to the class of

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[16] Ibid., 14.
[17] Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998), 128; Schmidt, *Free to Work,* 65.
[18] "Liens on Crops," *Wilmington Journal* (Wilmington, NC), July 26, 1867.

industrial workers that was increasingly replacing skilled artisans in the industrial North. Landlords wanted to keep blacks in labor arrangements as closely resembling slavery as possible, with subsistence wages and strict oversight. Some Bureau officials saw closely supervised wage work as an incubator for teaching the rhythms of industrial labor to the freedmen, while others agreed with the cynical calculations of industrialist and former abolitionist Edward Atkinson that low-waged, self-furnishing free labor would yield more cotton per acre at a lower cost than slavery ever could.[19] Other Northerners more sympathetic to African American hopes for autonomy worried that renting would lead the freedpeople into peonage, as they fell into debt paying for their land and supplies. Most freedpeople wanted to be yeoman farmers. If they could not buy land, African Americans turned to working on shares because cropping contracts were less restrictive than wage labor agreements, allowed them to work with less supervision, and maintain greater control over their households.[20]

After a few years of experimentation, sharecropping emerged as a compromise between laborers and landlords across the postwar South. The tenure form had precedents in antebellum turpentine camps, on farms leased to free people of color on shares, and across the Northern states, where courts considered landowners and sharecroppers co-owners of the crop until division.[21] Although exact path toward sharecropping varied in each Southern community, the underlying motive was a credit crisis. Former masters did

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[19] Edward Atkinson, *Cheap Cotton by Free Labor* (Boston: 1861), 11.
[20] Alexander, *North Carolina Faces the Freedmen*, 104-112.
[21] Ira Berlin, *Slaves Without Masters*: *The Free Negro in the Antebellum South* (New York: Oxford University Press, 1981), 60; Marjorie Mendenhall Applewhite, "Sharecropper and Tenant in the Courts of North Carolina," *North Carolina Historical Review* 31, no. 2 (1954): 134-49; Henry Wade Rogers, "Farming on Shares," *Central Law Journal* 15 (1882): 465-69.

not have enough cash on hand to pay weekly or monthly wages, nor could they obtain short-term credit because their primary form of collateral—four million human beings—was free. Nearly half of the wealth in the antebellum Cotton Kingdom was in slave capital, which underwrote a system of bonds and circulating notes as good as paper currency. Planters held on to their land, but its low value made it poor collateral for short-term loans. As a result, they were cash poor until the end of the year, when they flooded the market with cotton and tobacco. Oversupply depressed prices, and after the planters paid their debts to merchants who furnished their operations, they often had little left to pay their workers. As Assistant Commissioner Whittlesey wrote at the start of the 1866 growing season, North Carolina landlords had increasingly turned to paying the freedpeople in kind at the end of the year because "landowners are much embarrassed for money to reward labor."[22] Because the crops they grew became their wages, sharecropping seemed more secure than trusting that a planter would have the cash on hand to pay wages at the end of the contract.

Draconian labor laws also motivated freedpeople to sign sharecropping agreements. First, children who did not work for their families could be forced into unpaid "apprenticeships" under former masters, creating an imperative for the freedpeople to shield their children through tenancy contracts that incorporated household labor.[23] Second, vagrancy laws, which predated the Civil War across the United States,

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[22] Gerald Jaynes, *Branches Without Roots: Genesis of the Black Working Class, 1862-1882* (New York: Oxford University Press, 1989), 48.

[23] Laura F. Edwards, "'The Marriage Covenant is at the Foundation of all Our Rights': The Politics of Slave Marriages in North Carolina after Emancipation," *Law and History Review* 14, no. 1 (1996): 101-105; Karin L. Zipf, *Labor of Innocents: Forced Apprenticeships in North Carolina, 1715-1919* (Baton Rouge: Louisiana State University Press, 2005).

criminalized unemployment of African Americans, particularly when they fled rural poverty to cities. In North Carolina, "any person" who had the ability to labor yet failed "to apply himself and his family" to an "honest occupation" was liable to be brought before the township's justice of the peace, who could impose a fine of up to fifty dollars and one month's imprisonment. The justice of the peace had the power to release the "vagrant" with a recognizance promising "his industrious and peaceable deportment"; in practice, this meant releasing him to the custody of a landlord or employer, who would force the vagrant to work off his fine through a labor contract.[24]

As sharecropping became widespread, landlords, sharecroppers, and merchants raised legal questions that went to the heart of the new political economy and the rights of free laborers of any race. Sharecroppers wanted the legal rights of traditional tenants, such as an ownership interest in the crops they grew and protection from arbitrary eviction and intrusive supervision. They often found allies in the new class of furnishing merchants who replaced the antebellum system of cotton factors. These merchants could obtain goods and credit directly from Northern wholesalers, providing sharecroppers with cheaper products than landlords could offer. Merchants hoped to elevate the property rights of sharecroppers, so that they could use the growing crop as collateral for purchases made at their stores.

Seeking to block the ambitions of merchants and the autonomy of their former slaves, landlords denied that cropping was a partnership or a traditional tenancy and narrowed the terms by which a cropper could claim possession of the land and its

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[24] *Laws and Resolutions of the State of North Carolina Passed by the General Assembly at Its Session 1873-1874*, ch. 176 (Raleigh: 1874) (hereafter cited as *N.C. Laws*, with appropriate dates).

product. They wanted the legal system to divest this new class of black and white farmers of the privileges of land possession and turn them into wage workers, not tenants. This re-categorization offered a legal advantage for landlords beyond the goal of securing first rights to the crop. Losing the legal status of "tenant" meant compromising a set of legal privileges grounded in the land providing access to credit and control over time and production. Without the protections of tenancy—the right to full possession of land for a term—sharecroppers would become "servants" at law.

Fights over the boundaries of a sharecropper's domain predated the Civil War. As they heard cases dealing with the rights of unlanded white people, antebellum courts considered the issue by distinguishing between the "estates in land" held by tenants and sharecroppers. Tenants possessed the land under their leases, giving them the same rights as any absolute landowner to exclude trespassers, including the landlord. Croppers, by contrast, held no estate in land; they were paid in a share of the crop, and did not have the right to bring a claim in trespass. Their rights were wholly contractual, and not based on the privileges of land possession. As a result, sharecroppers had to actively demand the right to keep a landlord from entering the land during the lease; that right did not arise automatically by law.[25]

These default principles made tenancy a more exclusive form of tenure than cropping. North Carolina courts had long confirmed the tenant's right to exclude his or

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[25] Applying rules of nineteenth-century contract law to the principles of ancient property law, courts interpreted the tenant's lease as a fully executed (complete) contract: an exchange of land possession for a promise to pay rent. A lease incorporated the right to exclude the landlord by default. Denton v. Strickland, 48 N.C. 61 (1855). A cropping agreement was an executory (incomplete) contract. In its simplest terms, it was a promise to pay wages in-kind as compensation for a season's labor. Neal v. Bellamy, 73 N.C. 384 (1875).

her landlord, and even sue for damages caused by a landowner's trespass onto rented lands. In 1856, a white woman, Elizabeth Hatchell, sued her landlord, William Kimbrough, in Caswell County Superior Court for damages to her person and property stemming from his wrongful eviction. She and her children paid Kimbrough a rent of half of their crop each year, and the landlord furnished her with a horse. On a winter's day, Kimbrough decided to kick the Hatchell family off his land in dramatic fashion: he ordered his slaves to "throw off the roof the house, and haul it away in his wagon." And then it snowed. Hatchell had to build a make-shift roof, laying rails on the denuded joists and spreading quilts over them to keep out the snow. Exposure to this "intense cold" led to an infection "which fell into her eye." The lower and high courts agreed that Kimbrough bore responsibility for her injuries for forcibly entering and "breaking the plaintiff's close."[26]

In the aftermath of the Civil War, the Republican-dominated North Carolina Supreme Court was careful to distinguish the rights of tenants and croppers relative to the right to exclude. Without a clear line, the court worried that violence would erupt when landlords entered a sharecropper's land to seize crops. In 1867, a white Granville County farmer named Boyd made a bargain with a landowner, Burwell, that the landlord would "furnish a certain quantity, of guano, and seed wheat, and the land; that he (Boyd) was to sow, reap and gather the wheat, and that out of the crop Burwell was first to have the value in wheat, of the guano and seed furnished by him, and the remainder was to be divided between them in the proportions respectively of 1/4 and 3/4." On a Friday during the harvest, Burwell came to his renter's house and asked him to work on Saturday. Boyd

[26] Hatchell v. Kimbrough, 49 N.C. 163 (1856). The court specifically distinguished this case, however, from that of a "cropping" contract.

declined, and said he would take the weekend off. The landlord decided to "thresh the balance," and brought his own wagon into the field to gather the crop. Boyd and his sons stood in the way. The renter threatened to kill his landlord's horses and "cut at Burwell several times with an axe." Burwell knocked Boyd down with a stick, and Burwell fell when one of the renter's sons struck him with a hoe. Burwell struck the first blow, but he was deemed not guilty of assault and battery. Because Boyd was "a mere cropper," his landlord "had a right to enter the field, for the purpose of getting his share of the crop." Boyd was in the wrong for blocking his path.[27]

Just as the courts were opening the borders of a sharecropper's leasehold, North Carolina legislators expanded the power of landlords to control the growing crop. A conservative legislature that enacted the Black Codes and rejected the Fourteenth Amendment passed the state's first crop lien law in 1867. While ostensibly a boon to merchants—the law gave a superior lien to "any person or persons" who advanced money to a debtor—it undermined this goal with a proviso that a landlord's "proper share" for rent would remain unmodified by this otherwise superior lien.[28] "Proper share" was the common law right of landlords to claim rent before the tenant could sell crops on the market—the distress remedy discussed in chapter one.[29] In practice, this meant that a landlord could defeat the rights of any rival creditor in the crops of his tenants or sharecroppers in the event that there was not enough of it to go around.

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[27] State v. Burwell, 63 N.C. 661 (1869). Landlords had the right to use force to prevent removal of the crop by a renter. State v. Austin, 123 N.C. 749 (1898).

[28] An Act to Secure Advances for Agricultural Purposes, *N.C. Laws, 1866-1867*, ch. 1, pp. 3-4.

[29] The North Carolina Supreme Court interpreted section 13 of the Landlord-Tenant Act of 1867 as "intended as a substitute for the old English remedy of distress which was long ago held to have been abolished in this State." Harrison v. Ricks, 71 N.C. 7 (1874).

Ironically, North Carolina had abolished distress after the Revolutionary War. In 1800, the state's high court decided that allowing landlords to maintain the status of preferred creditors simply by virtue of land ownership was "utterly irreconcilable to the spirit of our free republican government."[30] Enslaved people, after all, represented far more economic and social value than land did. Early republican Southern jurists viewed the distress remedy as a threat to the power of landed and unlanded white men to control the labor and property of their households.[31]

With most freedpeople still working for wages or in squads on their former masters' plantations, and few white yeoman serving as tenants, the early law's ambiguities went unchallenged the courts.[32] Disputes that rose to the appellate courts tended to be among landowners renting to propertied white lessees—labor contractors—and not between former masters and slaves. A case from Mississippi suggests the confusion that emerged when postwar legislatures began liberalizing the credit relations among landowners, tenants, and merchants. Mississippi passed the South's first crop lien law after emancipation on February 18, 1867 "for the encouragement of agriculture." The

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[30] Dalgeish v. Grandy, 1 N.C. 249 (1800).

[31] In a 1793 case before the South Carolina court of common pleas, for example, a slaveowner brought an action for replevin against a landlord who seized his slave while the slave was "accidentally" on the premises of a tenant who defaulted on his rent. The jury ignored the instructions by the majority of the court, which held that a third party's slave was liable for distress under those circumstances, and sided with the dissenting justice, who argued for an exemption, "as negroes had a will of their own, and the strictest watching could not, at times, prevent them from visiting their acquaintances in a neighbouring plantation or yard." Bull v. Horlbeck, 1 Bay 301 (S.C. 1793).

[32] The only published landlord-tenant case to reach the North Carolina Supreme Court before 1869 arose from an inheritance dispute over the rents from a deceased landlord's property. In *Lewis v Wilkins*, 62 N.C. 303 (1868), the court held that a contract to carry on farming operations was "a sort of agricultural partnership," and not a landlord-tenant relationship. Because the landlord's "partner" furnished twenty-one hands and paid some of the farm's expenses, he was not a "mere 'cropper'" nor was he a tenant.

law protected the landlord's rent by preventing any judgment creditor of a tenant from seizing tenant property without satisfying the landlord's lien of up to one year's rent.[33] During the 1867 growing season, Sunflower County, Mississippi landowner Mary P. Marye leased a plantation to the partnership of James M. Wadlington and Isaac Dyche. The partners obtained supplies from two merchants by mortgaging the crops they intended to grow on the rented land. In December 1867, the partners owed their landlord $3600, and she seized the corn and cotton on the land, along with five mules and a wagon. The merchants sued the landlord for the value of the property she seized, claiming they had the right to take it under their mortgage. The court agreed with the merchants. "Rent is not a lien per se on goods found on the demised premises," the Court wrote. "It binds as a lien only when the goods are seized under an attachment for rent. The tenant may, until the goods are so attached, sell or mortgage the same, bona fide and for valuable consideration, notwithstanding the fact that rent is due."[34] In essence, the Mississippi court reinforced the distress principle: that tenants had the right to dispose of crops grown on the land without a landlord's interference, and that a landlord's property rights began when the rent was due.

In 1869, faced with the entangled problems of shaping a post-emancipation labor regime for unlanded freedpeople and sorting out the property and credit rights of merchants, landlords, and tenants, North Carolina's Republican-led legislature set the legal terms of postbellum sharecropping by firmly establishing the landlord's priority

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[33] Harold D. Woodman, *New South-New Law: The Legal Foundations of Credit and Labor Relations in the Postbellum Agricultural South* (Baton Rouge: Louisiana State University Press, 1995), 5.
[34] Marye v. Dyche, 42 Miss. 347 (1869).

lien.[35] Under the Landlord-Tenant Act of 1869, a landlord did not have an automatic lien on the crop. His or her possession of the crop did not arise by default. And unlike the distress remedy, the landlord could not claim an inchoate right to the crops after the tenant failed to pay the rent. That privilege was not part of the deal. But the landlord could make an agreement in writing with a "lessee of land" to pay him a share of the crop as rent "or to give him a lien on the whole crop, or any part thereof, as a security for the performance of any stipulation contained in the lease." In other words, the law anticipated that the landlord would make the crop lien a condition of the lease. Once landlord and tenant struck this agreement, the crop would "be deemed and held to be vested in possession in the lessor" until the landlord agreed to discharge the lien in writing. The landlord would now have legal possession of the crop during the term of the tenant's lease. Tenants who signed such leases effectively surrendered their common law property rights over the growing crop.

Even as they elevated the power of landlords, North Carolina Republicans believed that contractual bargaining, rather than possession of an interest in property, would best balance the interests of landlords and the freedpeople who composed the majority of people entering crop lien agreements in the years immediately following the war. When they entered tenancy contracts, former slaves became the creditors of their landlords, foregoing payment during the term of the contract in exchange for a defined share of the product at its end. As the debtors of their own labor force, planters used their political power to ensure that their priorities would be secure when their creditors—their

[35] *News & Observer* (Raleigh), September 18 and September 21, 1880.

former property—entered debt relationships with outsiders by demanding a lien—"a species of property"—on their workers' production.

The statute provided two remedies for the landlord against a tenant who did not honor the lien: a lawsuit in civil court for "delivery of personal property" or a criminal action for removing the crop, which could be brought against the absconding tenant or "any person with knowledge of said lien" who removed the crop from the landlord's grasp.[36] In theory, this meant that an outside creditor, like a merchant who sold guano or a mule to a tenant, could be sued or even thrown in jail for cutting a landlord in the payment line. But, as we will see in the case of *Harrison v. Ricks* (1874), landlords who failed to put the agreement in writing could not claim the protection of this law in court.[37]

The editors of the Democratic Party's newspaper, the Raleigh *News & Observer*, would later claim that these laws were "imported into North Carolina from Ohio by Judge [Albion] Tourgee, and are found substantially in the laws of nearly all the States of the Union."[38] Albion Tourgée was a veteran of the Union Army who moved to North Carolina after the war and became a Republican politician, judge, and outspoken advocate for extending equal civic and economic rights to the freedpeople. The editors were right to identify the rough parallels between Northern tenancy law and the Reconstruction-era crop lien, but they ignored a critical difference. Sharecropping existed in the antebellum North and West, but courts in those states deemed croppers to be "tenants in common in the crops."[39] Tenancy in common was unlike most Southern

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[36] An Act in Relation to Landlord and Tenant, *N.C. Laws, 1874-1875*, ch. 156, § 13-15, pp. 359-60.
[37] Harrison v. Ricks, 71 N.C. 7 (1874).
[38] *News & Observer* (Raleigh), September 18, 1880.
[39] Rogers, "Farming on Shares," 465-469.

sharecropping arrangements because it gave the renter an *undivided* share in the crop being grown; by contrast, the landlord owned the entire crop under North Carolina's crop lien laws, and the croppers did not receive their share of the product until after their rent and advances were paid.[40]

Albion Tourgée's plans for structuring landlord-tenant relations likely had some basis in his home state's law, but the result differed significantly from Ohio law. The Ohio Supreme Court laid out the rules of tenancy in common in 1862, confirming the state's long-standing custom that a landlord had "a lien upon or property in the growing crop until the rent reserved is satisfied" but the rent was "the joint production of the lessor's land and the labor of the lessee."[41] Under this pattern, landlord and tenant co-owned the growing crop. The tenant could not remove the crop before paying the landlord's rent (that is, the landlord's share of the crop), but the tenant could use his anticipated share of the crop during the period of the lease as collateral for loans, giving the tenant a measure of economic independence from the landlord. Once the rent was paid, the tenant's property rights fully vested. Although agricultural historian Donald Winters argues that this structure of undivided co-ownership was common in Tennessee in the sharecropping contracts governing white and black renters, it was rare in most of the cotton South, where landlords refused to acknowledge any claims of partnership by

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[40] Under North Carolina's landlord-tenant acts of 1867 and 1869, a tenancy in common would only arise in the unusual situation where a landlord made an unwritten contract with a tenant to be given a share of the crop as payment for rent and advances. Harrison v. Ricks, 71 N.C. 7 (1874). Under the Landlord-Tenant Act of 1875, the landlord was deemed to have automatic control over the growing crop whether or not the grower styled himself a tenant or cropper.

[41] Case v. Hart, 11 Ohio 364 (1862).

their workers.[42] North Carolina's Landlord-Tenant Act of 1869 made this point explicitly, providing that landlords and tenants were not partners "unless they so contract."[43]

Along with formalizing the landlord's lien, Republican lawmakers enacted a broader system of liens to give other "classes" of economic actors an opportunity to claim a place in the credit line. In theory, the most important to the freedpeople was a lien that laborers, including sharecroppers, could file in the event that their employers withheld their wages.[44] Wage forfeiture did not just impact the cropper who stopped work: it also took food out of the mouths of the subtenants, hired hands, spouses and children who labored under the cropper's authority. Laborer's liens were designed to stop wage theft by giving workers the right to attach the property they produced through their labor: crops grown by agricultural workers; houses, fences, or other improvements built by mechanics and carpenters; or timber chopped by loggers.

No matter what their race, sharecroppers rarely benefited from the laborer's lien. The lien was unenforceable if the cropper broke the contract by quitting, or, as was more common, the landlord made work impossible by cutting off credit or denying the cropper use of mules or farming equipment. Furthermore, sharecroppers had little recourse if they were evicted, constructively or by force, before the share was divided.[45] Nor could they

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[42] Legally, landlord and tenant were not partners, but the extent to which they saw themselves as such varied based on factors like race, kinship, and location. Winters speculates that black croppers in Tennessee may have gained this higher legal status through resistance, persuasion, and "the owners' growing confidence that blacks would work on their own without the close control of a labor arrangement." Donald L. Winters, "Postbellum Reorganization of Southern Agriculture: The Economics of Sharecropping in Tennessee," *Agricultural History* 62, no. 4 (1988): 6.
[43] *N.C. Laws, 1868-1869* , ch. 156 § 3.
[44] N.C. Const. of 1868, art. XIV § 4; *N.C. Laws, 1868-1869*, ch. 117 § 14.
[45] Harold D. Woodman**,** "Post-Civil War Southern Agriculture and the Law," *Agricultural History* 53, no.1 (1979): 334-35.

obtain an order to attach this property and sell it under court supervision. Instead, laborers had a lien that they could enforce *after* the crop was sold, giving them a priority right to the proceeds over rival creditors.[46] A final hurdle was correctly filing the lien and withstanding the challenges of adverse creditors. Even though the North Carolina Supreme Court judged farm labor to be "a very meritorious creditor," it required that workers "must comply strictly, certainly, substantially, in all material respects, with the requirements of the statute," opening the door for merchants and other lienholders to tie up the laborer's claim through formalistic parsing of the lien.[47]

The 1888 case of *Cook v. Cobb* illustrates the strategic risks and rewards of laborer's liens for unlanded farmers. In 1886, Edgecombe County farm hand James W. Cook, a "mulatto," filed a lien, drafted by Justice of the Peace J.M. Spragins, simply stating that his employer, William Cook, owed him "For labor on farm for 8 months and 4 days, at $10 per month," less a credit to cash for five dollars. His boss, William Cook, a wheelwright and farmer, was also his father.[48] Why did James file a lien against his father's crop? James' father owed money to a merchant, John F. Shackelford. The merchant ordered Joseph Cobb, "claiming to act as sheriff," to seize the crop. James Cook filed the lien to protect his share of the crop that his father had lost to his own debtors. When Sheriff Cobb refused to honor James Cook's lien for labor, the farm hand sued the sheriff and won his case in the lower court.

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[46] "Servants or laborers in agriculture who by their contracts in writing are entitled to a part of the crop as wages; such part of the crop cannot be sold under an execution against the employer or owner of the land." *Busbee's North Carolina Justice and Form Book*, ed. Quentin Busbee (Raleigh: 1878), 352.
[47] Cook v. Cobb, 101 N.C. 68 (1888).
[48] 1880 U.S. Census, Edgecombe County, North Carolina, population schedule, Tarboro Township, p. 40, dwelling 455, family 467, William Cook; digital image, Ancestry.com, accessed April 29, 2015, http://ancestry.com.

The Supreme Court later overturned the verdict. This lien was not enforceable, the court ruled, as it did not let adverse creditors know when and where the laborer had worked, "nor particularly that he labored on the crop of his employer on which he intended to obtain a lien." And, in the name of defending the rights and knowledge of adverse creditors, a laborer could not re-write a lien he filed, even if he had initially drafted it incorrectly. Everything had to be fully disclosed in the lien filed with the county to put adverse creditors on notice of the laborer's rights.[49]

The emergence of Southern sharecropping, then, was both part of a national process in which labor relations became liberalized, yet also outside of it, retaining and even expanding some of the unfree labor practices that Northern lawmakers had attacked as unfitting a free citizenry. These included the entirety doctrine, imported into contracts supervised by Freedmen's Bureau and inscribed in the stringent demands of the laborer's lien; vagrancy and apprenticeship laws, which gave landlords leverage to draw freedpeople into cropping contracts; the distress remedy, the underlying credit principle structuring the landlord's priority in the crop; and master-servant law, which threatened to turn tenants into "mere croppers" with no rights to own the crop or have security in their leasehold.[50]

B. Freedom of Contract, Autonomy, and the Crop Lien

Justice William Blount Rodman of the North Carolina Supreme Court ran a large slave plantation before the war, and served in the Confederate Army as a quartermaster

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[49] Cook v. Cobb, 101 N.C. 68 (1888). Conversely, attorneys for agricultural renters and laborers voided indictments for removing the crop and other property crimes by attacking the formal correctness of the charging documents. See chapter four.
[50] Steinfeld, *Coercion, Contract, and Free Labor*, 321.

and military judge. After Appomattox, he declared himself an independent who leaned Republican. As a historian would later write of his contested legacy, he "was classified by some as a scalawag and by others as a man of great learning capable of rapid and wise adjustment in a difficult time."[51] In 1874, he wrote two landmark opinions on the law of sharecropping, *Haskins v. Royster* and *Harrison v. Ricks*, that embodied the ambiguities of free labor under Republican rule. Rodman demanded that landlords follow the Landlord-Tenant Act of 1869 strictly to prove they had reached a consensual agreement with their renters. At the same time, his opinions degraded the legal authority of sharecroppers, pushing them away from the traditional rights of tenants and toward the status of a servant class.

This question—tenant or servant?—had powerful implications. As historians of labor and gender have continually demonstrated, the meaning of freedom was the most important question that all Southerners faced following emancipation. Particularly outside the context of large plantations, the balance of power and the level of independence built into these relationships could vary significantly and blur the differences between wage work, cropping, and renting. Some postwar leaseholders faced strict oversight by landlords, while others did not, and white tenants had easier access to "autonomous tenancy" than African-Americans.[52] "Cropper" could mean a propertyless, wage-earning dependent, or, in the classic antebellum definition, it could refer to an employer of hired labor on rented land—an overseer. In 1873, for example, the Georgia Supreme Court held that a sharecropper, Charles Barron, whose landlord, Thomas Barron, furnished him with land and mules and promised to pay him one-third of the crop

[51] Applewhite, "Sharecropper and Tenant," 139.
[52] Edwards, *Gendered Strife and Confusion*, 88-91.

was "a contractor, not a servant," in part because the cropper furnished hands to grow the crop.[53]

North Carolina's first major legal test of tenancy as relationship of household governance was the 1874 case of *Haskins v. Royster*. The case was grounded in a complicated sharecropping agreement between a Granville County landlord and eight illiterate farmers.[54] On January 1, 1871, John R. Hawkins furnished "Thomas Eastwood, white man + Sam Wilkerson Colored" with land on his plantation to grow corn, tobacco, and oats. A household of freedpeople—known in labor parlance as "four and one half hands," but as a family as Ellis, Harriet, Lawyer, Horace, Amy, and Jim Wilkerson—would do much of the work, collecting their pay as "shares of the portion of crops they the said Eastwood + Wilkerson may draw." Under their written contract, the landlord would generally "draw one fourth of all the crops" on the land, along with "one half of the remaining three fourths of all the crops made on such lands." Hawkins added additional provisions securing himself a minimum draw of "5 or 6 thousands" of the renters' corn "as his undivided crop," and also reserved powers to "Direct" Eastwood and Wilkerson to clear pinelands for planting tobacco. The landlord furnished these men with "necessary tools" for farming along with two horses that would be under the landlord's control "at all times." If Eastwood, Wilkerson, or the hands received money or provisions from the landlord, he would "retain enough of their crops to pay all such claims at a fair neighborhood cash price for said crops."

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[53] Barron v. Collins, 49 Ga. 580 (1873).
[54] Haskins v. Royster, case 10,916, box 435, 1873-1875, image 44, North Carolina State Supreme Court Case Files, NCDAH, accessed February 20, 2015, familysearch.org/.

Hawkins' disciplinary clauses were harsh. Even though the hands already worked under two layers of supervision—that of their household head, Jim Wilkerson, and the men Jim Wilkerson answered to, Eastwood and Sam Wilkerson—Watkins reserved the power to direct the hands, and discharge them at will if he felt they were being "insolent" or "disrespectful" to him or his family. If he fired a hand, he would immediately force the worker to give up his or her house and leave the plantation, and keep a "proportionate part of all the crops" he or she grew, "loosing all their labors and time done by them on the farm." Hawkins added three more penalties at the end of the contract. If any of these workers "loose any unnecessary time without the consent" of the landlord, they would owe him fifty cents per day. If Hawkins decided the crops "should require extra labour," he could hire more workers and deduct a share of their cost from Eastwood and Wilkerson's pay. Finally, if Eastwood and Wilkerson bought fertilizer, that expense would also be proportionately deducted from their share of the crop. Eastwood, Wilkerson, and the hands marked their assent to the contract with an "X."[55]

On March 7, 1871, a neighboring planter, Fabian A. Royster, convinced these croppers to quit and work for him for the rest of the year. Haskins sued Royster under the state's enticement law, which provided a cause of action for "enticing or harboring a servant."[56] He claimed two thousand dollars in damages.[57] Royster denied any knowledge of the contract between Hawkins and his croppers.[58] When the case got to trial in April 1873, Albion Tourgée, serving as the judge of the Superior Court in Person County,

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[55] Ibid., images 51-53.
[56] *N.C. Laws*, *1865-1866*, ch. 58, p. 122; *N.C. Laws*, *1866-1867*, ch. 124, p. 197.
[57] Haskins v. Royster, North Carolina Supreme Court Case Files, image 56.
[58] Ibid., image 57.

decided that Hawkins "was not entitled in law upon his complaint to recover" and never let the case get before a jury.

Tourgée did not say on the record why he ruled against Hawkins, but the best-selling novel he later wrote about the experiences of African-American farmers in Reconstruction North Carolina, *Bricks Without Straw* (1880), explores his horror at the meaning and practice of enticement law. In a chapter ironically entitled "The Majesty of the Law," the county sheriff visits Tourgée's protagonist, the aspiring black yeoman Nimbus, at his two hundred acre tobacco farm, and serves him a summons to appear in court. Nimbus must answer charges filed by a neighboring planter that he enticed away one of his sharecroppers. The sheriff assures Nimbus that he can beat the planter's claim for the crushing sum of one thousand dollars, but hints that "law is the most uncertain thing in the world." Nimbus denies recruiting the planter's cropper, and says that he only hired the worker because his boss "throwed him out in de big road." Nimbus is shocked that such a cause of action even existed. With a wink, the sheriff says he can "take care" of the charges if Nimbus sells his fertile land to him. "It is part of a plan to break you up, Nimbus," a local preacher decides.[59]

Tourgée's personal effort to block the enforcement of the enticement laws failed. Hawkins appealed to the Supreme Court and won. His lawyers submit two briefs on his behalf, while Royster offered none. In his majority opinion reversing Tourgée, Justice Rodman held that Hawkins had the right to bring an enticement claim against another landowner who poached his sharecroppers. In a sign of the dialogue between the Northern and Southern "labor questions," he bolstered his view by "quoting copiously"

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[59] Albion Tourgée, *Bricks Without Straw* (New York: 1880), 266-73.

from a Massachusetts high court opinion regarding the enticement of shoemakers.[60] In *Walker v. Cronin* (1871), the Massachusetts court upheld the applicability of enticement law, traditionally used to protect a master's entitlement to the services of those working in his household—his children, indentured servants, and apprentices—to contractual relationships between industrial employers and factory operatives.[61] Even if the doctrine of enticement "sprang from the English statute of laborers, and was confined to menial service," wrote the *Walker* court, "it is founded upon the legal right derived from the contract, and not merely upon the relation of master and servant, and that it applies to all contracts of employment, if not to contracts of every description." Here, Rodman upheld the validity of enticement laws in the sharecropping context not just as a matter of contractual right, but as a logical protection for the master-servant relationship of landlords and sharecroppers. "By cropper, I understand a laborer who is to be paid for his labor by being given a portion of the crop. But such a person is not a tenant, for he has no estate in the land, nor in the crop until the landlord assigns him his share. He is as much a servant as if his wages were fixed and payable in money." Enticement laws reinforced the gendered notion that renting or laboring upon the land of others created a relationship of dependency that public power had to shield from the interference of outsiders.

In dissent, Justice Reade rejected the application of master-servant law to sharecropping contracts. To Reade, enticement law had no place in landlord-cropper relations because sharecroppers were not servants. He argued that the meaning of "servant" had to be defined strictly; it was a domestic relationship implying dependence

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[60] On the connections between postbellum Northern and Southern labor ideologies, see Richardson, *The Death of Reconstruction.*

[61] Christopher Tomlins, *Law, Labor, and Ideology in the Early American Republic* (Cambridge: Cambridge University Press, 1993), 283.

and reciprocal obligations of service and maintenance. A labor contract, however, was not a domestic relationship, but one brokered between contractual equals. Reade learned the difference between dependence and autonomy the hard way. Reade's father, a farmer from the Piedmont, died when he was young, and he had to support his family as a farm laborer, a tanner, and an assistant at a carriage shop.[62] As someone who rose from yeoman poverty to success as a politician, lawyer, and planter—by the Civil War, which he opposed, he owned nineteen slaves—he understood the need for judicial action that tempered what he called "unconscionable" agreements. The only security that poor men had from unfair agreements "is for the Courts utterly to ignore them. And yet, instead of ignoring this contract, the most important principles are subjugated to sustain it." The court's majority had brought the sharecroppers under the umbrella of master-servant relations "without the element of maintenance on the part of the master."

The gendered nature of Reade and Rodman's disagreement was explicit: Converting the landlord-tenant relationship into one between masters and servants, Reade wrote, was a blow against the state's interest "that all her citizens, laborers and employers alike, should have the spirit, behavior and independence of manhood." The tenant, in other words, ought to be the master of his own household, not the dependent in that of another. The expansion of master-servant law in agricultural tenancy degraded free labor, putting both black and white men in the position of dependents. While both jurists clung to a vision of agricultural life tied to the paternalistic fantasies of the prewar agrarian elite, they sharply disagreed about what the new era would mean for the "domestic"

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[62] *NCpedia*, s.v. "Edwin Godwin Reade," by Buck Yearns, published January 1, 1994, http://ncpedia.org/biography/reade-edwin-godwin; On Reade's ideology of domesticity, see Edwards, "'The Marriage Covenant is at the Foundation of all Our Rights,'" 87-90.

relation of tenancy. Justice Rodman saw no inconsistency between enticement law and freedom of contract, imagining that adult tenants and croppers were apprentices of a sort to the landowner whose reciprocal obligations of service would preclude a mobile labor market. Justice Reade also expressed nostalgia for slavery, but argued that domesticity was an inappropriate scale for understanding landlord-tenant relations. It would condone extreme imbalances of power and deny the ability of workers to maintain their own families.[63]

Rodman and Reade also disputed the role of courts as arbiters of tenancy relations. Both Rodman and Reade believed that contract—the exchange of promises—implied legal equality. A landlord could not make a legally binding contract with a worker who was a minor (that was the right of the child's parents) or was mentally incompetent. But Rodman's analysis stopped with the finding of consent; by contrast, Reade believed that contractual equality was also a substantive question, going to the heart of the agreement itself.

While Rodman held the contracts before him with some disdain, claiming their heavy penalties "are not to be commended as precedents," Reade wrote that the agreements were "worse than slavery." Hawkins' plantation exemplified how the new crop lien system promoted the abuse of power. As landlord, he automatically was the owner of the corn, oats, and tobacco until he divided it with Eastwood and Wilkerson, and, as the Supreme Court held five years before in *State v. Burwell*, he could freely enter the leasehold to boss them and their families. Hawkins then added terms to the contract—which none of its signers but Hawkins could read—giving himself tremendous authority

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[63] Haskins v. Royster, 70 N.C. 601 (1874).

to judge and punish the croppers. If these men or their hands quit or were fired before division, they lost any claim on these crops. Further standing in the way of an even bargain was illiteracy. According to the 1870 census, one-third of the state's people over the age of ten could not read or write: a quarter of whites and 89 percent of African Americans.[64] Reade was disturbed that "ignorant" men like Eastwood and Wilkerson fell prey to these penalties "without requiring like stipulations" from the landlord. In turn, the enticement law discouraged rival planters from offering fairer terms to the croppers out of fear of prosecution, including the imposition of double damages.

In a second decision released during the 1874 term, *Harrison v. Ricks*, Justice Rodman applied his views on freedom of contract and the meaning of sharecropping to the most publicly visible conflicts in landlord-tenant relations: disputes between landlords and merchants. In January 1871, Ben F. Moss, a cotton grower in Nash County, made an oral agreement to rent a farm from George Ricks. Their arrangement sounded a lot like what historians would call sharecropping: Ricks "was to furnish the teams (two horses) to make the crop, the farming utensils and feed for the teams, and to supply him with corn and bacon during the year; and that he, Moss, was to furnish and pay for the labor, and give the defendant one-half of the crop for rent of the land." The difference, as the court would make clear in its opinion, was the direction of this commodity flow. Moss was to "give" one-half of the crop to Ricks "for rent"; a cropper, by contrast, was paid in a share of the crop that he did not own before division.

Conflict arose between Moss and Ricks in June, when the landlord Ricks ordered Moss to clear a portion of his land. Moss said no; "such clearing not being a part of his

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[64] Alexander, *North Carolina Faces the Freedmen,* 167-68.

agreement, he refused to do it." Ricks retaliated by cutting off Moss's credit line. Moss responded by asking a merchant, John A. Harrison & Son, for a loan. In exchange for $120 in advances, Moss gave Harrison & Son a lien on his one-half share of "all that is made on the farm." After Moss harvested the crop, his landlord "took and carried it away" without his consent, leaving him nothing to pay his outside creditors (or his own workforce, for that matter!). Harrison & Sons sued Ricks, claiming that he had disposed of cotton that rightfully belonged to them. In Spring 1874, the Nash County Superior Court ruled against the merchants, holding that their lien on Moss's crops was a nullity: Moss was a mere cropper who did not hold good title on the cotton, corn, and fodder he grew.

The merchants appealed, and the case soon took a remarkable turn. Again, Justice Rodman took center stage in promoting his form of free labor ideology. For lawyers who remained confused about the state of the law, Rodman insisted that the cases on the tenant-cropper distinction were "singularly uniform" and had produced a clear set of rules: tenants had an estate in the land and a resulting property interest in the crops; croppers had no estate in the land. "Consequently, although he has, in some sense, the possession of the crop, it is only the possession of a servant, and is in law that of the landlord."

Rodman then took the case in an unexpected direction. Servants did not own the crop, he insisted, but a tenant only became a servant if he agreed to the status in writing; otherwise, the tenant effectively possessed the ownership interests of a "tenant in common in the crops." Rodman interpreted the landlord-tenant acts of 1867 and 1869 to incorporate this Northern property idea as a default. He held that if the tenant made a

verbal agreement to pay the landlord rent in exchange for a lease on agricultural land, then the tenant owned an undivided property right in his respective share of the output. Because so many tenancy relationships were governed by unwritten contracts, Rodman's interpretation significantly disturbed the emerging sharecropping system, making the central question of possession highly unpredictable. Merchants used unwritten tenancy contracts to their advantage, making third-party agreements with tenants that undermined informal labor arrangements. Without a lease, the landlord had no lien on the crops, giving the tenant an ownership interest that he could use to get outside financing.

Why didn't Ricks, who must have understood the consequences of denying credit to a cash-starved, market-oriented farmer, save himself the trouble of potential litigation and get it in writing? By the time Moss and Ricks were fighting over the scope of the contract—whether it included extra labor for the landlord—it was too late to draft a new agreement. Both sides were too invested in the year's planting to attempt a renegotiation, and if Moss had even a passing familiarity with the law, he would have never agreed to a contract that would cut him off from outside credit. Even if they had wanted to draft a written lease, one or both parties were probably illiterate and neither was likely to have the competency and confidence to draw up a contract. Hiring an attorney to draft the document and paying fees to file it with the county would present another hurdle.

Perhaps the simplest explanation for the reluctance to contract was the novelty of written contracts between social classes that had stood in stark relations of owner and chattel just a few years before. Workers feared that contract would produce slavery by another means and restrict them from pursuing all of the rights that came with their hard-fought liberty, even if that meant something as basic as visiting distant family members

or taking a fishing trip.[65] Yet written contracts had the potential—if not, as the Hawkins lease makes evident, the actuality—to control the abuse of power and restrict efforts by former masters to control the lives of the freedpeople outside their basic obligation to satisfy the landlord's lien. It is no wonder, then, that some landlords preferred to keep their labor arrangements flexible and unwritten. Humble tenancy contracts were part of the broader African-American mission to obtain the education denied to them under slavery and use it to obtain the rights of full citizens.[66] When they signed their annual cropping or wage labor contracts, some freedpeople expected the landlord or his agent to read the terms of the contract out loud and in the presence of a trusted witness who could testify in court—sometimes a justice of the peace, or at other times a fellow sharecropper. When Pete Plummer, an illiterate black farm laborer, signed an annual contract with Nash County, North Carolina, planter A.H. Arrington in 1870, the agreement was witnessed by the landlord's son and a man named William Wilkins, who marked his presence to the contract with an "x."[67] Having a written contract avoided the factual disputes that arose out of oral contracts—a landlord's word against his tenant's—that would presumably be decided by a white jury in the landlord's favor. The Republican turn to contract and policies supporting a free market in labor were a concession to Northern capital and a blow to the aspirations of most of the freedpeople and yeoman white farmers for a

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[65] Leon F. Litwack, *Been In the Storm So Long: The Aftermath of Slavery* (New York: Alfred A. Knopf, 1979), 292-386.
[66] Heather A. Williams, *Self-Taught: African American Education in Slavery and Freedom* (Chapel Hill: University of North Carolina Press, 2009).
[67] Contract signed by A.H. Arrington and Pete Plummer, March 23, 1870, file 48, subseries 3.1.2, Archibald Hunter Arrington Papers, MS 3240, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill.

lifestyle of safety-first agriculture. But contract did have the virtue of forcing landlords to put their promises in writing, if only to obtain the protections of law.

C. Rural Simplification in the era of Redemption

The legislature's concern with written contracts, which Justice Rodman pushed to its logical extent when he penalized a landlord's non-compliance through the forfeiture of his lien, fell quickly with Redemption. In 1875, as Democrats took control of the legislative process and passed thirty amendments to the Constitution of 1868, they made a point of eliminating the categorical ambiguities that had opened space for the ambitions of merchants and the autonomy of tenants. Their 1875 amendments to the landlord-tenant statutes made the landlord's possession of the growing crop absolute and mooted the distinctions that the Supreme Court had drawn among tenants, croppers and servants and between written and oral contracts. "The effect of this law was to give the landlords overwhelming statutory power of their tenants," writes Harold Woodman, "more, in fact, than they enjoyed in other states."[68] One opponent of the law, Senator Romulus Z. Linney of the western, white-majority Piedmont county of Alexander, "regarded this bill as wiping out all relation between the tenant and landlord, and putting his whole crop in the landlord's possession."[69]

Before, the public authority behind landlord-tenant relations rested on the power of contract. The legislature's policy was to protect the interests of landlords first, but in exchange, lawmakers wanted to see some proof that contractual bargaining underlay the agreement. If the tenant was going to choose the path of cropping, renouncing his

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[68] Woodman, *New South-New Law*, 53.
[69] *Raleigh Sentinel*, February 15, 1875.

property rights in the crop until after division and turning himself into a "servant," then the agreement had better be in writing. An unwritten agreement would not have the backing of law. Now, this bargaining process, however fictitious, was cleared away. The landlord's lien was automatic, whether the tenancy arrangement was written or verbal. This statutory lien was a property right that attached as soon as the landlord rented his land and provided advances to his tenants. Rural relations were simplified: all tenants were croppers, and no tenants held "possession" of the crop until after the landlord's division. Because he owned the crop, the landlord's lien on it was "preferred to all other liens." Merchants like John A. Harrison & Son could continue to provide food and supplies to tenants, but they could not cut the landlord in the payment line. If a merchant sought a lien to cover an advance to a tenant, his priority would always be secondary, unless the landlord assigned him the right to claim a superior lien.[70] Endorsing the crop liens of tenants to merchant suppliers would become a common way for landlords without the time, connections, or resources to furnish their croppers.[71] Whether the merchant or landlord held the lien, croppers and tenants remained dependent on a landowner's authority to collect their share of the crop. In the interest of promoting capitalist agriculture, North Carolina's lawmakers had decisively turned against their new-found faith in contractualism and their older suspicion that "[j]ustice does not make

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[70] An Act to Amend Chapter Sixty-Four of Battle's Revisal, "Landlord and Tenant Act," *N.C. Laws, 1874-1875*, ch. 209, pp. 281-83. The statutory lien should not be confused with the common law distress remedy. As discussed above, it was unclear whether distress existed in North Carolina at all. Even if it did, the distress remedy was not a property right. It arose when the rent came due, only covered the amount of rent owed, and was not assignable. It was irrelevant to cropping contracts, as the cropper could not legally owe rent to a landlord, but was due a wage payment.

[71] Roger L. Ransom and Richard Sutch, *One Kind of Freedom: The Economic Consequences of Emancipation* (Cambridge: Cambridge University Press, 1977), 147.

a distinction in favor of a creditor whose debt arises from the lease of land rather than that of him who has hired a chattel."[72]

Democratic Party backers of the 1875 reforms claimed they were acting in the interests of agricultural renters, who lacked the education and bargaining power to negotiate written tenancy contracts, and of merchants, who feared extending credit where the property interests of their debtors were unclear. The Republican system of written contracts led to confusion, dispute, and litigation among tenants, landlords, and merchants. By subjecting all types of contracts to the landlord's lien, Senator Joseph B. Stickney, of the eastern plantation county of Pitt, argued, "[t]he plainest, simplest man could understand it, and it covered the whole ground." Senator H.S. Cook of the central Piedmont county of Forsyth added that this reform, by making the landlord's lien paramount by default, would settled the vexing question of whether "the cropper could not claim his homestead as against the landlord." Under the 1868 state constitution, Radical Republicans enacted a homestead exemption that allowed debtors to shield five hundred dollars in personal property and one thousand dollars in real estate from creditors; by automatically vesting ownership of the crop in the landlord, the 1875 reform prevented tenants and croppers from claiming the undivided crop as part of their homestead.[73]

Supporters also defended oral contracts as fair and efficient. One of the originators of the 1875 amendments, Senator W.T.R. Bell of coastal Carteret County, claimed that "the colored people were more liable to have fraud practiced on them under a written than under a verbal contract." Illiteracy, he suggested, made verbal agreements

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[72] Dalgeish v. Grandy, 1 N.C. 249 (1800).
[73] *Raleigh Sentinel*, January 25, 1875.

a more transparent way to reach a meeting of the minds. "Let the colored man understand he's to make his contract in words and he will take with him witnesses to hear and understand words and the landlord can't sit in his room and draw up the writing to his own advantage."[74] Senator Milton Selby of nearby Hyde County argued that written contracts were too formal and costly. They were more "stringently enforced" than verbal agreements, binding the wills of landlord and tenant alike. Written contracts demanded the time of a lawyer to "draw it up" and of tenants to travel to the courthouse to have the contract registered.[75]

At several readings of the bill on the Senate floor, Craven County's Richard Tucker offered an amendment to the Landlord-Tenant Act to limit the scope of the landlord's lien on crops, provisions, and advancements to *written* agreements. Tucker, the first of several African-American senators to serve from that majority-black eastern county, was born enslaved in 1818 and trained as a carpenter in the city of New Bern. Following the war, he rose to prominence as a leader in the city's large African-American community, serving as a delegate to the second Freedmen's Convention in 1866, a justice of the peace, and a state representative in 1870 and 1872. He was one of New Bern's wealthiest black artisans by 1870, owning one thousand dollars in real estate, a coffin-making and undertaking business, and a general store.[76] Senator Tucker had tried to get consideration of this lien reform bill indefinitely postponed in December 1874—it had emerged from the Senate Committee on Judiciary "with a recommendation that it do not

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[74] Ibid.
[75] *Raleigh Sentinel*, February 15, 1875.
[76] Catherine W. Bishir, *Crafting Lives: African American Artisans in New Bern, North Carolina, 1770-1920* (Chapel Hill: University of North Carolina Press, 2013), 288-89

pass"—but the Senate's leadership forced it onto the table in January 1875.[77] Claiming a cross-racial labor constituency, Tucker "said that we the working people—white and colored—in North Carolina don't want to work on any man's land without written agreement." In Tucker's reasoning, a written contract spoke for itself, while tenants and croppers relying on oral agreements could not defend themselves from fraud without challenging the character and memory of their bosses in court. Senator W.T.R. Bell, Tucker claimed, "admits that [landlords] can skin us under a written agreement, and now they want to take two chances at skinning us."[78]

Along with the issue of literacy, the Senate debated the impact of the reform law on the state's distressing credit picture. By the mid-1870s, a landlord-merchant class was coalescing across the South that furnished yeoman farmers, tenants, sharecroppers with the teams, fertilizer, farming equipment, and packaged food they needed to grow cash crops. The most successful storeowners invested profits in land, foreclosed on real property mortgaged to them for furnish, and bought land in tax sales, while planters secured extra profits and a dependent labor force by furnishing their croppers and hands and carrying their debts over from one year to the next.[79] Saying he "represented not only the enlightened majority, but all the people of his county," Senator W.B. Shaw of coastal Currituck County said the bill encouraged landlords to inflate the prices of goods they

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[77] *Journal of the Senate of the General Assembly of the State of North Carolina at Its Session of 1874-1875* (Raleigh: 1875), 97, 146 (hereafter cited as *N.C. Senate Journal,* with appropriate date).
[78] *Raleigh Sentinel*, January 25, 1875.
[79] Ransom and Sutch, *One Kind of Freedom*, 146-48.

sold to tenants and added to the rent bill.[80] If their lien came first, landlords could push out rival furnishers and take advantage of their local monopoly to overcharge tenants.

But many landlords were running their farms on the margins, and were just as dependent as their tenants on merchant suppliers. Senator James T. LeGrand of Richmond County, in the state's southern Sandhills region, speaking "as a farmer," opposed the landlord's automatic lien as "unjust to the laboring man" because it made it riskier for merchants to advance supplies to tenants, driving up the already ruinous rate of interest on agricultural loans—twenty-six percent, according to the *Raleigh Sentinel*.[81] "[A] great many of our landlords being insolvent, the tenants must get their supplies form some other source," yet the landlords remained first in line to claim the crops.[82] Democrats attacked this problem through bills to lower the state's maximum rate of interest to six percent and to permit the forfeiture of debts or the charge of a misdemeanor offense where the rate of interest exceeded eight percent. As the *Raleigh Sentinel*'s editors conceded, "Free money" was the enemy of a developing agricultural economy like North Carolina's.[83]

But even if the landlord's lien raised the cost of credit, it simplified the channels through which commodities got to market. While contemporary legislators did not publicly raise the issue, latter-day observers applauded North Carolina's model of simplification as a necessary protection for the good faith purchaser—the most important legal constituent of a nationalizing commodity market. In 1932, economist Clarence Foreman wrote the first (and probably only) treatise on the national state of agricultural

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[80] *Raleigh Sentinel*, January 25, 1875.
[81] *Raleigh Sentinel*, February 8, 1875.
[82] *Raleigh Sentinel*, February 15, 1875.
[83] *Raleigh Sentinel*, February 2, 1875.

lien laws. He argued that the quasi-feudal privileges of the landlord to possession, combined with the messy problems arising from the tenant-cropper distinction, had thrown commodity production into disarray. The question of priority contaminated the stream of commerce, turning impersonal commodities into suspect property. Removing the producer from distribution channels solved the problem. By taking away possession, the cropper was "not likely to transfer fraudulently such produce to market or to operate openly as a hindrance to trade and commerce. At least the purchasing public is reasonably protected against the legal menace to the general welfare . . ."[84] No merchant or buyer could claim to be a purchaser without knowledge of a landlord's lien. All direct sales or credit relations between an agricultural renter and a commodity buyer or merchant were risky, because of this statutory presumption that any cotton or tobacco that a renter brought on his own account to the market was contraband. "The principle of *caveat emptor* applies with full force to the case."[85]

Senator Tucker's amendment to exclude verbal contracts from the landlord's lien was voted down, and on February 15, 1875, the Landlord-Tenant Act passed the Senate with a two-thirds majority of twenty-three to nine, and was ratified by the House of Representatives on March 19.[86] But the political miscalculation in the language of the simplification bill produced a backlash that led to legislative retreat. By collapsing the distinction between tenant and cropper, the legislature was subjecting a wide coalition to landlord power, from African-American sharecroppers to yeoman white tenants to labor contractors who managed large plantations on behalf of absentee owners.

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[84] Clarence Foreman, *Rent Liens and Public Welfare: An Economic and Legal Adjustment of Industry* (New York: Macmillan, 1932), 175.
[85] Belcher v. Grimsley, 88 N.C. 88 (1883).
[86] *N.C. Senate Journal, 1874-1875,* pp. 329-30; *N.C. Laws, 1874-1875*, ch. 209, p. 283.

The legislature responded to simplification with complication, in the form of a new remedial procedure intended to protect the property rights, such as they were, of the expansively defined tenant-cropper class. During the 1875 debates, a supporter of the proposed law, Senator W.F. French of Robeson County, proposed "a provision to compel the lessor to stop the sale until the lien was decided," allowing for an intermediate process that gave the tenant or cropper the right to contest the seizure.[87] Following his suggestion, North Carolina lawmakers passed an amendment to the 1875 landlord-tenant law at the 1876-1877 legislative session defining how tenants or their "assigns" (merchants) would negotiate with landlords over ownership of the crop. Senate President Thomas J. Jarvis of Pitt County brought the bill to the floor of the House on January 11, 1877, on the thirty-first day of the session.[88] When it came up for a vote in March 1, it passed by an overwhelming margin of eighty-eight to ten, enjoying bipartisan and cross-regional support, and then sailed through the Senate.[89] As its drafter, Davidson County Representative Marshall H. Pinnix reminded voters in 1880, an election year when the Republican Party made the repeal of this 1877 law part of its platform, "88 voted for the bill, including *every Republican, both white* and colored."[90]

In its first section, this reform reinforced the fundamental structure of the new order: that, absent an agreement to the contrary, when land was "rented or leased by agreement, written or verbal, for agricultural purpose," or cultivated by a cropper, the lessor would be "vested in possession" of "any and all crops" raised on the land. The

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[87] *Raleigh Sentinel*, January 25, 1875.
[88] *Journal of the House of Representatives of the General Assembly of the State of North Carolina at Its Session of 1876-1877*, 191 (hereafter cited as *N.C. House Journal*, with appropriate dates).
[89] *N.C. House Journal, 1876-1877*, 660-61; *N.C. Senate Journal, 1876-1877*, 774.
[90] M.H. Pinnix, "Landlord and Tenant Acts," *Charlotte Observer*, August 27, 1880.

lessor would remain in possession of the crop until a number of conditions were met. Renters had to pay all of the rent and perform "all the stipulations" defined in the lease. Any damages in lieu of performance had to be paid. And, tenants and croppers had to repay the landlord for "all advancements made and expenses incurred in making and saving said crop." If the tenant or cropper removed the crop before covering all of these debts, the landlord could bring a civil suit against the buyer to cover his priority lien.

For those concerned about the rights of the good faith buyer, this law sent a clear signal: there was no such thing.[91] Under the law, renters could be producers, but they could not be distributors. Their role in the markets was solely within the "common law circle" of domestic production, and their only connection to commerce was through the intermediation of their landlord.[92] Removing the crop before division without the landlord's consent was a criminal act, as was consuming any of the crop for purposes of running the farm or feeding its tenant families.[93] Yet the black market in cash crops continued, as evidenced by the laws produced by Southern legislatures every fall and winter attempting to shut it down. North Carolina lawmakers, for example, passed a law in the 1874-1875 session making it a misdemeanor "to buy or sell seed cotton or unpacked lint between the hours of sunrise and sunset."[94] They also strengthened laws

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[91] "Given the nature of the lien laws, few local buyers could claim the status of innocent buyer, although buyers at a distance occasionally did." Woodman, *New South-New Law*, 42n29.

[92] Foreman, *Rent Liens and Public Welfare*, 6.

[93] Efforts by Representative William E. Clarke, who represented a majority-black constituency from Craven County, to decriminalize consumption on the farm failed. He proposed an amendment providing: "That no person shall be deemed guilty of a misdemeanor who uses corn or fodder for the purpose of maintaining the stock on said farm, or for the necessary sustenance of the laborers and their families employed in making said crops." *N.C. House Journal, 1876-1877*, 660.

[94] *N.C. Laws, 1874-1875*, ch. 70.

prohibiting the sale of goods held under chattel mortgages. Those who sold, bought, "or in any way" assisted in disposing of mortgaged property were guilty of a misdemeanor.[95]

In fact, in its second section, the Landlord Tenant Act of 1877 actually facilitated this illegal market (or, we might say, this free market) in crops. Whether responding to the complaints of wealthier capitalist tenants, whose credibility as debtors was undermined by this act of legislative overreach, or to working-class African-American croppers, who remained under the aegis of a still potent state Republican Party, the reform act created a remedial process when the landlord failed "to make a fair division of said crop." Like the "laborer's liens" that had been on the books in North Carolina since the 1868-1869 legislative session, this reform offered a way for a renter to protect his or her share of the product.[96] Unlike the laborer's lien, this act was not restricted "to that class of persons who were totally dependent upon their manual toil for subsistence."[97] Any "lessee or cropper" could bring a civil lawsuit against a landlord "to recover such part of the crop as he in law and according to the lease or agreement may be entitled to." This included contracts made by verbal agreement, despite the efforts of Representative Willis Bagley of Perquimans County to limit the second section to "written" agreements.[98] This remedy was not a lien on the crop, "but it certainly does so to some extent in effect," wrote the North Carolina Supreme Court's Augustus Merrimon; any

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[95] *N.C. Laws, 1874-1875*, ch. 215.
[96] *N.C. Laws, 1868-1869,* ch. 117.
[97] Whitaker v. Smith, 81 N.C. 340 (1879) (holding that an overseer, whose "business is not to labor but to oversee those who do work in subjection to his authority," was not entitled to a laborer's lien).
[98] *N.C. House Journal, 1876-1877*, 660.

other interpretation, he believed, would be "a mockery of him whose labors had contributed to the production of the crop."[99]

Given the high hurdles to a tenant or cropper's recovery under the 1877 act, the most remarkable change the remedy introduced was at the level of legal discourse rather than legal practice (see chapter three). To build the remedy, the legislature had to rethink what it meant by "possession." In effect, through judicial interpretation, its language ended up constructing a regime more related to the partnership principles of "tenancy in common" than the legislature had ever intended. Building on the new language, a series of appellate cases in the following decade expanded the rights of tenants and sharecroppers to claim justification in seizing the crop before division, assert a partnership interest with their landlords, and even beat criminal prosecution for stealing the crop.

North Carolina's Supreme Court first considered what this new remedy would mean for the evolving "entirety" doctrine: had the legislature finally given agricultural renters the chance to quit their contracts without losing all of their pay? In 1878, an Edgecombe County landlord, Pauline Newman, and Richmond Pender, a black tenant farmer, made a standing-rent contract. Newman was the daughter of German immigrants and wife of a merchant, Charles Newman. Pender agreed to cultivate Newman's land and to divide its proceeds with the landlord. But Pender would keep all of the cotton, except for two bales promised to the landlord. The contract said nothing about which party would have possession of the crop before its division. Pender worked the land through the end of the year, and, in April 1879, he removed seven bales of cotton and five barrels

[99] Rouse v. Wooten, 104 N.C. 229 (1889)

of corn from the premises. Landlord Newman charged Pender with "unlawfully and willfully" taking the crops without his consent and before his lien was satisfied. Pauline Newman's prosecution was likely spurred by her husband's own financial difficulties, as his business fell into bankruptcy in December 1878.[100] After a series of continuances, Pender's case reached the Edgecombe County Superior Court in April 1889. The county's solicitor, the African-American lawyer John Henry Collins, won a conviction before a mixed-race jury.[101]

Pender, who was literate,[102] may have been the first cropper to successfully navigate the remedy created under the 1877 reform act and reach the state supreme court. To Chief Justice William Smith's exasperation, Pender was not represented by an attorney and submitted no supporting papers describing how the lower court had erred. Through the intervention of Dossey Battle and Frank Powell, Democratic Party leaders who were both attorneys and newspaper editors, and the solicitude of the trial judge, J.C.L. Gudger, Pender had not even been required to post a bond for the appeal. The court condescended to the appellant, and searched for some legal grounds for overturning the judgment more specific than Pender's claim for simple justice.

Chief Justice Smith rejected Pender's title to the crop because the 1877 act put legal ownership in the landlord until division. Upholding Pender's conviction, Smith

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[100] State v. Pender, 83 N.C. 651 (1880); Ellett v. Newman, 92 N.C. 486 (1885). After Charles Newman tried and failed at another mercantile business in nearby Halifax County, he and his wife would be sued for fraudulent transferring assets away from creditors.

[101] State v. Pender, case 12,624, box 525, North Carolina State Supreme Court Case Files, accessed February 20, 2015, familysearch.org/.

[102] 1880 U.S. Census, Edgecombe County, North Carolina, population schedule, Upper Fishing Creek Township, p. 52, dwelling 523, family 523, Richmond Pender; digital image, Ancestry.com, accessed January 30, 2015, http://ancestry.com.

proceeded to describe what the pleading process ought to look like under the 1877 act's remedy. Pender had been charged with "willfully and unlawfully" taking the crop. Smith pointed out that the landlord did not have to prove wrongful intent to win under the remedy. It was enough to show that the cropper had "fraudulently" removed and disposed of the crop against the landlord's rights "and tending to defeat the lien for rent."

While this interpretation lightened the landlord's burden of proof, the court also clarified the defenses that a cropper could offer against a prosecution. If the worker could prove that he removed the cotton "in good faith and for the preservation of the crop," then he might beat a prosecution under the law. Smith appeared to be chipping away at the mighty fortress of the entirety doctrine: that there could be grounds that would justify a cropper's decision to quit and not preclude partial payment for the work he had done.

A year later, Chief Justice Smith heard a case under the new remedy typical of Redemption-era labor practices that again led him to question the relations of power between landlords and sharecroppers. Alexander Curtis leased a one-horse tobacco farm in Granville County from Abner Veazey and agreed to grow the tobacco in exchange for a horse, farm implements, and use of the land. At harvest, Curtis and Veazey divided the crop equally, and Curtis stored his share in barn and smokehouse located on the leased property. Veazey and others broke into the storage sheds and took the tobacco. Curtis could not stop them; he "was intimidated and overawed by their demonstrations of violence." Curtis sued Veazey and his confederates in the superior court for unlawfully taking his property. The landlord argued that he could rightfully enter the cropper's leased land and take the tobacco, even though they had divided it, because he was still its legal possessor under the Landlord-Tenant Act of 1877. Judge Augustus Sherill Seymour,

born in New York and a "staunch Republican," disagreed, and instructed the jury that if it believed the landlord took the tobacco, then the landlord owed damages to his cropper. The jury sided with Curtis and the landlord appealed.[103]

In a brief opinion, published in January 1881, Chief Justice Smith upheld cropper Curtis's recovery on the ground that, upon division, Curtis owned the tobacco as his "sole individual property." When the landlord and his crew invaded Curtis's barn, he was trespassing on a clear property right. Smith's analysis could have stopped there, but he pressed the point further. Curtis's property rights were initially secured and undivided, he wrote, because Curtis and Veazey were "partners in making the crop." Landlord Veazey offered land, horse, and feed; cropper Curtis brought his labor and supervision, and both split the "gross products" in the end.[104] Smith's interpretation of business practice reflected the actual social relations of tobacco farming—particularly among white landlords and white tenants, who enjoyed "autonomous tenancy"[105]—but, as law professor Samuel Fox Mordecai tersely reflected in 1916, this ruling created "some

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[103] *NCpedia*, s.v. "Augustus Sherrill Seymour," by Gertrude S. Carraway, published January 1, 1994, http://ncpedia.org/biography/seymour-augustus-sherrill/.

[104] Curtis v. Cash, 84 N.C. 41 (1881). Similary, in another landlord-tenant dispute heard during the same judicial term, Chief Justice Smith held that where a landlord furnished "the outfit and land" to the tenant and provided money to run the cotton plantation, and the tenant would "hire hands and superintend the making of the crop," and both parties agreed to share in the cost of operations and profits equally, then a partnership existed. Reynold Bros. v. Pool, 84 N.C. 37 (1881). But Chief Justice Smith would soon qualify his interpretation, holding that the attributes of partnership—"community of interest" in property and profit—did not exist between a cropper and a landlord. Neither party owed "any account of expenditures made by either"; unlike a joint venture, cropping was an arrangement "which should encourage farming without subjecting the owner of the farm to the debts incurred by the person who cultivates it." Day v. Stevens, 88 N.C. 83 (1883) Conversely, Chief Justice Smith wrote, tenants in common could not assert the lien laws against one another unless one the parties actually owed a debt "for labor or materials supplied" to the other; the relation of debtor and creditor would not be implied. Grissom v. Pickett, 98 N.C. 54 (1887)

[105] Edwards, *Gendered Strife and Confusion*, 88-91.

consternation . . . in legal and business circles" by undermining the bright line rules dividing the law of sharecropping from partnership law.[106]

During the court's February 1882 term, Chief Justice Smith fidelity to the language of the new remedy furthered muddied the distinctions that the legislature had tried to draw between landlords, tenants, and sharecroppers. In the case of *Wilson v. Respass*,[107] the plaintiffs were tenants of James T. Respass who were to "deliver" one-half of their 1881 harvest of cotton to the landlord in exchange for land, mules, and farming implements. In November, Respass seized the cotton and refused to allow the tenants, Wilson and Ebon, to enter the property. Wilson and Ebon obtained a temporary restraining order against their landlord, ordering that "the crops and the land be restored to the possession of the [tenants] and sold" under a court-appointed receiver or clerk. But a lower court judge overturned the order.

When Wilson and Ebon appealed this decision to the high court, Chief Justice Smith agreed with the substance of their complaint but denied its procedural correctness. Restraining orders were a judicial "interference" with contractual relationships, and were "wholly unnecessary" in the present case, where the legislature had outlined a specific procedure for relief. This was not a case where a debtor was bankrupt, and his creditor needed the court's oversight to ensure that money owed would not be fraudulently conveyed to a third-party. Rather, the tenants in this case always had "actual and subservient possession" of the crops, while the landlord had "legal possession" based on

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[106] Samuel Fox Mordecai, *Law Lectures* (Raleigh: Commercial Printing Co., 1916), 110. The North Carolina Supreme Court soon disowned this decision. Day v. Stevens, 88 N.C. 83 (1883); Belcher v. Grimsley, 88 N.C. 88 (1883).
[107] Wilson v. Respass, 86 N.C. 112 (1882).

his lien, and both parties had procedural remedies for "adjusting a controversy" between them.

The court had highlighted a core tension built into the simplification act and its 1877 amendment. A tenant or cropper could not employ a remedy claiming that he was dispossessed of the crop without first having some mark of possession in the cotton, tobacco, or corn. The statutory language itself incorporated this problem: The lessee, cropper, or assignee was "allowed to *retain* possession of the property" after posting bond and bringing an appeal of a wrongful seizure. The gap between "actual and subservient possession" and "legal possession" reopened a jurisprudential space that common law purists would lament and attorneys would exploit.

This grey area marked a larger transition in the history of law in North Carolina. Robert Watson Winston, a Granville County lawyer whose career was just beginning in the early 1880s, found that his fellow attorneys' "pig-headed attitude" about the adoption of statutory codes "gave me a decided advantage" in court despite his inexperience. The law, he wrote in his 1937 memoirs, was caught between "the old common-law practice" and "the new-fangled Code which the Yankee Colonel Tourgee had brought down from New York and superimposed upon our jurisprudence." While veteran lawyers "were busy quoting musty opinions of Marshall and Ruffin and Gaston," he learned the statutory laws that were replacing these decisions and creating logical puzzles for the appellate courts.[108]

No issue tested the meaning of "possession" under the 1877 landlord-tenant law remedy more than larceny. In *Curtis v. Veazey* and *Wilson v. Respass*, Chief Justice

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[108] Robert Watson Winston, *It's a Far Cry* (New York: Henry Holt, 1937), 123.

Smith struggled to understand how renters who claimed ownership rights in the crop could do so without having some fundamental property interest in it. Did "actual possession" make the tenant a co-owner of the crop? How far would the courts push this language? A young attorney from Wadesboro, North Carolina, John D. Pemberton, wanted to know. Like many novice lawyers, Pemberton was looking for a case to make his reputation, and he found an ideal test case during the local session of the Superior Court.

George Copeland was born enslaved in 1836 and died a free man in 1935.[109] For at least one year in his very long life, Copeland farmed on shares for an Anson County, North Carolina landlord, Marcellus Whitehead Mowery. Under their arrangement for the 1881 growing season, Mowery furnished Copeland with a team and farming implements "and was to have half of the crop." Copeland was obliged to pay for those supplies, grow the crop, and haul it on Mowery's wagon to this landlord's gin, where they would divide it. During the harvest season, as Copeland ferried a load of cotton to the gin, he was spotted throwing two bags of seed cotton off of the wagon. An unnamed witness "watched the cotton until about dark, when he saw [Copeland] come and take up the two bags and carry them off." That night, Mowery led a posse of a half-dozen white men to Copeland's house and arrested him without a warrant. "No threats were made or promises to induce him to confess, but he was told he had better tell all he knew about it." Copeland told them that they could find the cotton fifty yards away from his house. He was arrested and charged with a felony, larceny.

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[109] Anson County, North Carolina, death certificate, George Copeland, May 28, 1935, North Carolina Death Records, 1908-1967, NCDAH; digital image, Ancestry.com, accessed June 20, 2013, http://ancestry.com.

Pemberton tried to win the case by molding the judge's instructions to the jury—in other words, forcing the judge to publicly define what exactly "larceny" meant for sharecropping. Pemberton argued that charging sharecroppers with the larceny of an undivided crop was inconsistent with the Landlord-Tenant Act of 1877. To commit larceny, the thief had to take something that did not belong to him. North Carolina sharecroppers, he claimed, gained an ownership interest in the crop under the 1877 Act, making them co-possessors of the cotton with their landlords until it was divided. Judge Jesse F. Graves disagreed. He told the Anson County jurors that if they believed that the cropper "picked the cotton and put it in the sacks or bags and afterwards put it on the wagon, and then threw it off, and afterwards the same evening came and feloniously took and carried it away with the intent to steal it," they could convict Copeland of larceny. The jurors did, and Copeland was sentenced to twelve months of hard labor at the penitentiary for stealing a dollar's worth of cotton.[110]

Copeland's case would be lost to history but for his bold decision to appeal his conviction to the Supreme Court in Raleigh, the state capital over one hundred miles away. Pemberton helped his client win the right to appeal without paying fees, and likely was the person who put together a team of well-known Raleigh attorneys (and future justices of the state supreme court), Armistead Burwell and Platt D. Walker, to argue the appeal. But Copeland's most important, and unlikely, supporter was also from Anson County: Associate Supreme Court Justice Thomas S. Ashe, a Wadesboro lawyer who had

[110] State v. Copeland, 86 N.C. 691 (1882); State v. Copeland, case 13,473, box 569, North Carolina State Supreme Court Case Files, 1881-1882, image 538, accessed February 20, 2015, http://familysearch.org/.

served in both the Confederate and United States Congresses and was a member of the state's first postwar Supreme Court led by Democrats.

George Copeland's conviction for larceny became a test case of the new statutory regime of criminal law and its compatibility with the landlord's lien and older notions of justice. For Copeland, the outcome meant the difference between freedom and a year of forced labor; for the elite white lawyers, the case was a puzzling question of statutory interpretation. Attorneys for both sides and the court understood plainly that the legislature wanted to give landlords control of the crop until they could account for any expenses their tenants and croppers incurred during the season—this was state policy even under Carpetbagger rule. Yet the 1877 Act also created a legal path for tenants, croppers, and merchants to contest a landlord's seizure of the crop. But what was the underlying *right* that gave rise to this *remedy*?

When Copeland's appeal reached his overflowing docket, Justice Thomas Ashe deduced a property right within the remedies of the Landlord-Tenant Act of 1877. He conceded that under these facts, Copeland *should* have been guilty of common law larceny, the non-consensual and "felonious taking and carrying away the personal goods of another, with the intention of appropriating the same to one's own use." Copeland threw bags of cotton off a wagon in a secluded spot and then returned at night to take them home without his landlord's permission. But under the new law, the legislature had changed the meaning of possession. Ashe held that, under a strict reading of the act, Copeland had "actual possession" of the cotton until he threw the cotton off the side of the wagon, and even then, he had not abandoned possession. Landlord and cropper shared a kind of co-ownership in the crop, which afforded Copeland "rightful and exclusive"

possession and "an interest in the cotton." When Copeland returned at dusk to pick up the cotton sacks, he was reclaiming property that remained under his control. He could not steal something he already possessed. By contrast, his landlord's possession "was at most only constructive" under the 1877 Act. Agricultural timing and custom undermined the scope of the larceny statute: The only way that Copeland could be properly charged under the law, Ashe maintained, was if he had brought the cotton to the gin—the moment of division—and then secretly carried it away. Ashe sent Copeland's file back to Anson County for a rehearing.[111]

Justice Ashe's opinion in Copeland's case did not go unnoticed. Later that year, a Durham County cropper was arrested for stealing wheat from his landlord after it had been harvested, threshed, and locked up in a house on the landlord's property. In his defense before the trial court, the cropper's attorney urged the lower court judge to adopt Justice Ashe's interpretation of the intersection between common law larceny and landlord-tenant law: that even if the cropper took the wheat with "dishonest intent," he could not be convicted of taking goods that were still under his actual possession. The judge chafed at this jury instruction, the cropper was convicted of larceny, and he appealed. The Supreme Court revisited and defended Justice Ashe's decision, even as it denied the cropper's appeal on its factual grounds. Ashe may have strictly construed the tenancy laws "for conscience sake" to avoid extending a remedy disproportionate to the offense.[112] But for the court's majority, legal consistency tied their hands. "We felt driven to this conclusion," wrote Justice Thomas Ruffin, Jr. After the passage of the Landlord-

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[111] State v. Copeland, 86 N.C. 691 (1882).
[112] Applewhite, "Sharecropper and Tenant," 147. See also Justice Ashe's opinion in State v. Powell, 94 N.C. 920 (1886) (Holding that a two year prison sentence was impermissible for misdemeanor of removing the crop).

Tenant Act of 1877, "it seemed to us impossible to determine otherwise than we did, without doing violence to every analogy of the law."[113]

Copeland's case did not alter the dark course of Southern criminal justice, and the superior courts would dispose of over a thousand larceny prosecutions every year by the end of the century (see chapter four). Nevertheless, the appellate decisions that followed it brokered the meaning of shared possession between landlords and renters. A landlord did not have "the right to manage or dispose of the crop at his will and pleasure," wrote Justice Merrimon in an 1883 dispute over a tenant's failure to pay a standing rent of four hundred and fifty pounds of cotton. Should the landlord "undertake to pervert his right of possession" by harming the rights of the lessee, the law provided a remedy. But the tenant was also bound to respect the landlord's lien: "whenever" the landlord's right to possession was denied or obstructed, or the tenant consumed the crops or removed them from the property, the landlord's statutory remedy could be put to use.[114]

Even though the legislature had formally dissolved the distinctions between tenants and croppers, judges, prosecutors, and local grand juries continued to speak in terms of joint possession. One 1883 indictment from Madison County charged that a "tenant," George McCoy, "feloniously did steal, take and carry away" two bushels of corn valued at two dollars, "the said two bushels of corn being the joint and undivided property, goods, chattels, and moneys" of McCoy and his landlord, J.G. Roberts. Building on his earlier decisions, Justice Ashe upheld a lower court's decision to throw

[113] State v. Webb, 87 N.C. 558 (1882).
[114] Livingston v. Farish, 89 N.C. 140 (1883).

out this indictment. A joint tenant could not steal property held in common with the landlord.[115]

Landlord-tenant law remained a focus of partisan politics and electoral campaigns throughout the 1880s. An 1880 meeting of "representative colored men" in Raleigh protested landlord abuses under "the nefarious law" of the landlord-tenant acts.[116] Republicans would introduce bills to strengthen the hands of tenants and croppers against landlords in the following years, but these reforms consistently failed.[117] Tenancy then became a centerpiece of fusion politics in the 1890s—at least in the minds of Democratic critics who argued that Republican victory would destroy North Carolina agriculture by eliminating the crop lien.[118] Claiming to represent the best interests of croppers, the Democrat's *News & Observer* argued that without this source of credit, landlords would not take the risk of contracting with sharecroppers. Instead, the "tenant class will soon become only laborers," and will be "localized on the farms," leading to a system "similar to the serfdom of Russia."[119] Debates over the extension of landlord power often broke down along sectional lines, although alliances could shift as eastern North Carolina politicians weighed the value of working-class black votes.

"What is the definition of a lien?" asked Justice Ashe in an 1885 opinion. "It is simply the right to have a demand satisfied out of the property of another."[120] As the North Carolina legislature wrote and re-wrote its landlord-tenant laws, it added remedial

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[115] State v. McCoy, 89 N.C. 466 (1883).
[116] Frenise A. Logan, "Factors Influencing the Efficiency of Negro Farm Laborers in Post-Reconstruction North Carolina," *Agricultural History* 33, no. 4 (1959): 187-88.
[117] Deborah Beckel, *Radical Reform: Interracial Politics in Post-Emancipation North Carolina* (Charlottesville: University of Virginia Press, 2011), 153.
[118] *News & Observer* (Raleigh), August 27, 1892.
[119] Ibid., April 29, 1892.
[120] Thigpen v. Leigh, 93 N.C. 47 (1885).

language that forced a conservative judiciary to rethink the possessory rights of renters. The landlord's lien provided one form of possession, but the tenant or cropper's "actual possession" constituted another form of quasi-ownership. Courts and legislators continued to debate the new boundaries of these labor relationships, and landlords, tenants, and their counsel used the vagueness of these laws to their advantage. Sharecroppers, tenants, and agricultural laborers appeared legally indistinct from a distance, but looked different up close. Lawmakers could still insist, as one did in 1885, that "[t]here is marked distinction between a servant by indenture and a tenant by contract."[121]

And judges reinforced the point. In 1890, when landlord Stanhope Hoover was tried for enticing a laborer named Jackson to break his lease with his landlord, the high court overturned Hoover's conviction. Even though his contract made him responsible for paying a cash rent and included an informal "understanding that Jackson was to work for the [landlord] whenever he needed Jackson," the laborer was not a servant "for the reason that Jackson was not in the employment of the prosecutor. The relation between them was that of landlord and tenant."[122] Or, in 1902, when Eula Parker's husband became sick and died in the middle of a growing season, this court upheld the widow's "interest" in the crops that her late husband grew as a sharecropper: even if "croppers" were considered servants at law, the Supreme Court believed "the term is not in harmony with

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[121] "The Landlord and Tenant Bill," *News & Observer* (Raleigh), January 27, 1885.
[122] State v. Hoover, 107 N.C. 795 (1890). See also State v. Etheridge, 169 N.C. 263 (1915): "A tenant and cropper are more independent of the landowner than is a servant, and neither owes him the duty of allegiance or of rendering service, as growing out of their relation to him."

the language of the statute" providing a remedy for growers denied their share of the crop.[123]

However their relationship was defined, both parties remained locked in a risky venture, with high stakes on both sides. Justice Ashe laid out these positions plainly. Croppers had little choice but to rely on the good intentions of their employers; if they abandoned the crop mid-season, they would get nothing. But a landlord, too, hired croppers at his own risk, "for he must know that the cropper has it in his power to desert his crop and leave it uncultivated." A lien meant nothing if labor disappeared.[124]

Historian Pete Daniel has suggested that in the years before the New Deal, when federal intervention into the Southern economy forever reshaped the relations of land, labor, and credit, "the interplay between legislative and judicial bodies remained spirited" at the state level, and the propertyless might expect some harbor from the bench.[125] Because of North Carolina's diverse geography, economy, and racial demographics, lawmakers struggled to create a system of landlord-tenant law that balanced landlord-tenant rights in ways that satisfied their constituencies. Republicans recognized the difference between tenants and "croppers," and tried to implement a system along Northern lines that would promote a free labor hierarchy, with unmistakable racial

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[123] Parker v. Brown, 136 N.C. 280 (1904).
[124] Thigpen v. Leigh, 93 N.C. 47 (1885).
[125] Pete Daniel, "The Legal Basis of Agrarian Capitalism: The South Since 1933," in *Race & Class in the American South since 1890*, ed. Melvyn Stokes and Rick Halpern, (Oxford, UK: Berg Publishers, 1994), 83. In a response within that collection, however, Martin Crawford finds that Daniel "considerably overestimated the extent to which state law, and the court system that construed and enforced it, acted to protect the rights of the region's farm tenant population in the pre-New Deal era." Martin Crawford, "The Legal System and Sharecropping: An Opposing View," in *Race & Class in the American South,* 105.

significance. To promote agricultural credit and protect the rights of third-party buyers, Democrats responded with a new law that flattened the differences between tenants and sharecroppers as crop possessors; both could not claim legal ownership until settling with the landlord. The Redeemers also countenanced the expansion of criminal remedies for breaking contracts, reviving methods that Northern states had deemed unworthy of a free citizenry.

The Supreme Court generally did not evaluate challenges to these laws as questions about civil rights; there are few citations to the federal or state constitutions in landlord-tenant cases, and the court rarely made specific reference to the racial identity of the litigants at all. They reviewed the statutes in light of their consistency with common law principles of possession, property, and contract to test whether they violated the economic liberties of agricultural workers. In doing so, they read the ideologies of their times into this old law, like Edwin Godwin Reade, proclaiming the state's highest interest was "that all her citizens, laborers and employers alike, should have the spirit, behavior and independence of manhood."[126] The court defined manhood—or, to be more accurate, household independence—in a particular way. It did not mean the right to forcibly claim the labor or property of others, whether that meant a tenant's nighttime removal of the crop or a landlord's enforcement of a peonage contract through criminal process. Manhood was the right to support a household through labor without fraud or coercion. The job of the courts was to police the relations between landlords and tenants and prevent either side from taking advantage.

[126] Haskins v. Royster, 70 N.C. 601 (1874).

The question remains: Was George Copeland's case a masterstroke of judicial form over substance, or did it embody something more meaningful to Justice Ashe's audience? As a subsequent chapter will discuss, the decision did nothing to stop larceny from becoming the most important public regulator of the landlord-tenant relationship. The superior courts sent thousands of people into the prison system and forced labor for crimes as petty as stealing a chicken or a pair of pants. Ashe's decision both elevated and threatened the marginal remedies available to tenant farmers at law. On one hand, Ashe recognized that retaining the possession of the crop before division changed the meaning of a tenant or cropper's ownership interest, giving them "actual possession" for the term of the season. Establishing this status of quasi-ownership opened the door for a range of property contests for years to come. On the other hand, nothing stopped the legislature from responding to Ashe's formalism with a more clearly drafted law. The fact that this did not happen, that the Landlord-Tenant Act, as amended in 1877, remains largely unchanged today says something about the settlement between legislature and judiciary, landlord and tenant, and white and black in the years after Reconstruction.[127]

[127] N.C. Gen. Stat., ch. 24, art. 2 (2014), last accessed February 20, 2015, http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_42/Article_2.html

Chapter Three.

Evils Already Present:

The Resilience of Sharecropping in an Environment of Legal Risk

North Carolina tenant farmers W.E. Cox and Lafayette Dillahunt despaired as they surveyed the muddy, blighted acres of their Jones County farm. Disaster struck on June 4, 1888, when a hailstorm swept through this "seven horse" leasehold of corn and cotton fields and flattened many of the rising plants. "The cotton looked like a stream of molasses down the row," observed a neighboring farmer.[1] Dillahunt told J.L. Moore, one of the four "subtenants" who rented land from him, "that all of us might as well quit as the crop was about ruined and we would not make enough to pay the rent."[2] 1888 was shaping up poorly for farming on the sandy soils of North Carolina's inner coastal plain. A grower in adjoining Lenoir County called the season "extraordinary," inflicting loss "from both wet weather and drought."[3] As farm tenants on a five-year lease, Cox and Dillahunt owed their landlords a fixed rent of ten bales of cotton annually. They needed to grow a surplus above the rent to make a profit for the year and cover their debts to their workers and merchant creditors. Even if the damage was not severe, the storm pushed their operations to the margin.

While their hired hands and subtenants cleaned up the mess and cleared out the weeds growing amid the surviving cotton plants, Cox and Dillahunt traveled about fifteen

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[1] Pollock v. Dillahunt, Civil Action Papers Concerning Land, 1885-1894, Lenoir County, North Carolina Division of Archives and History (hereafter NCDAH), Raleigh (testimony of A.W. Oxley), last accessed February 20, 2015, http://familysearch.org.
[2] Pollock v. Dillahunt, J.L. Moore testimony.
[3] North Carolina Bureau of Labor Statistics, *Second Annual Report* (1888), 412.

miles to the town of Kinston to make a deal with their landlords' agent and son, attorney William D. Pollock. To reduce the year's rent, they asked to switch their fixed rent lease into a share tenancy, which was more customary in the county. Instead of paying ten bales of cotton in rent each year, Cox and Dillahunt would pay their rent with one-fourth of the cotton and one-third of the corn. But after a visit to the plantation, the landlords decided that the year's crop was salvageable and declined to reduce the rent. "It looked like they had a heavy rain and wind," William D. Pollock testified, but he believed the damage was not widespread.[4] The tenants protested by calling off work in their own fields and stopping the subtenants who leased land from them from farming. Cox and Dillahunt blocked one subtenant from borrowing a team for ten days, and permanently denied use of the mules to another.

The tenants justified their intransigence with a legal strategy. They hired a lawyer to look at their lease, and he determined that they "had no contract" because their landlord did not have title over the property. The land belonged to his wife, and she did not the sign the lease, making it invalid. They went to William D. Pollock to see "if he would make the lease good. He said yes, that he was honor bound to do so, and that nothing was lacking but his mother's signature."[5] But as the summer became fall, the parties never reached a written agreement. Unsure if their lease was binding, Cox and Dillahunt continued to manage the farm but invested little time or money in improving the land. By winter, trespassing cattle would topple the deteriorating fences surrounding the property.[6]

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[4] Pollock v. Dillahunt, W.D. Pollock testimony.
[5] Pollock v. Dillahunt, Dillahunt testimony.
[6] Pollock v. Dillahunt, George Rhodes testimony.

Confusion reigned on the plantation. With eviction looming, Cox and Dillahunt scrambled to cover their costs for the season, and broke the law by selling two bales of cotton without their landlords' permission. In October, the landlords obtained a court order removing the tenants from the land, but they stayed put. Although Pollock hired an overseer and day workers to replace the tenants, Cox and Dillahunt continued to gather and house the crops.

Meanwhile, the case moved from the fields to the local courts. The Pollocks filed a motion to eject the tenants in November 1888 before a justice of the peace, adopting the tenants' position, ironically, that the parties did not have a binding lease. This local judge ruled against them, and the landlords appealed to the superior court. In March 1889, the tenants agreed to surrender possession of the land to the Pollocks, but the issue of who owned the crop went to a judicial referee. After a season of struggle and strife, a court faced the perennial postbellum question of who owned the cotton: The tenant farmers and their subtenants who grew it? The landlords who rented out the plantation? Or the merchant who furnished the tenants and landlords?[7] Surprisingly, the referee awarded most of the value of the cotton crop to the tenant farmers. Because Cox and Dillahunt had no binding contract, he decided, they were never tenants at all, leaving the purported landlords with no statutory right to seize the cotton. The referee's strict interpretation of contract law overlooked the labor strikes, forcible evictions, cotton theft, and withheld rent that led the parties into court.

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[7] In his classic study of Deep South cotton culture, sociologist Arthur F. Raper called this decision "The Black Belt's Riddle." Arthur F. Raper, *Preface to Peasantry: A Tale of Two Black Belt Counties* (1936; repr., Columbia, SC: University of South Carolina Press, 2005).

Landlords, tenants, and their creditors reached hundreds of thousands of settlements each year across the South, and we will never know what happened in more than a few of them. Most debt disputes never reached a courthouse or the storefront office of a justice of the peace, but were settled between creditor and debtor informally. Statute books and case law preserve the formal laws of tenancy and sharecropping, but deriving the informal "rules, regulations, and customs that allow settlement of differences without recourse to formal law, the legislature, and the courts" is far more challenging.[8]

From the perspective of modern legal theory, the formal-informal gap can seem like a false dichotomy. All agreements between people are *informal*—that is, subject to private resolution—until one of the parties appeals to authority outside the contractual relationship. Few landlords or croppers expected that their everyday conflicts would merit a judge's intervention. Yet all of their agreements were *formal*, in the sense that public power ordinarily sets the ground rules for capitalist social relations, creating certain rights and duties that cannot be voluntarily waived and punishing certain behavior through civil and criminal remedies. All informal practice operated in the shadow of these formal rules.

Even as the existence of formal public authority gave potency to private agreements, North Carolina's people, like most nineteenth-century Americans, rejected a positivist view of contract law. They did not concede that the authority to hold property, make contracts, and enforce them derived from the state, or, as we might say today, that law is a social construction. Rather, "contract reconciled human authority and obligation," writes historian Amy Dru Stanley, "imposing social order through personal

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[8] Harold D. Woodman, "Post-Civil War Southern Agriculture and the Law," *Agricultural History* 53, no. 1 (1979): 321.

volition rather than external force."[9] Whatever the limits set by formal law, ordinary people drew authority from natural rights and other popular conceptions of law in making private agreements, interpreted contracts in light of customary practices, and often relied on communal institutions, rather than courts, to enforce them.[10]

Nevertheless, the revolution in property rights following the Civil War fed agricultural labor and credit relations with a heaping serving of positivism. Any exhortations about the natural order of things between workers and their employers had to reckon with a generation of radical public policy: the violent abolition of slavery, the imposition of a martial law governing labor contracts, and the creation of a new system of landlord-tenant law that automatically vested landowners with possession of the crop and provided remedies, like landlord's crop liens, that had once been held in suspicion and contempt.[11] The formal law of property and contract was no longer the province of the elite, but instrumental to the everyday experience of rural people and foundational to their understanding of their rights and responsibilities.[12]

In their daily routines, renters, landlords, and merchants referred to their legal or economic statuses loosely. Rather than holding a fixed place on an agricultural ladder from hired hand to landlord, cultivators negotiated to secure a constellation of resources.

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[9] Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998), 2.
[10] Laura F. Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997), 64; James D. Schmidt, *Free to Work: Labor Law, Emancipation, and Reconstruction, 1815-1880* (Athens: University of Georgia Press, 1998).
[11] Antebellum North Carolina courts disfavored priority liens for landlords. Dalgeish v. Grandy, 1 N.C. 249 (1800) ("[j]ustice does not make a distinction in favor of a creditor whose debt arises from the lease of land rather than that of him who has hired a chattel").
[12] Compare Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, 2009): 286-298.

Wage laborers legally dispossessed of land worked customary plots of cotton and vegetables on Saturdays. African-Americans who owned marginally productive land "double-farmed" by renting an extra plot of cotton to earn a surplus. Entrepreneurial tenant farmers like Cox and Dillahunt subdivided their leaseholds to subtenants, acting as landlords to poorer cultivators without the credit to sign a lease directly with a landowner. Within families, sons leased land from fathers, widows held tenancies for life on land that would descend to their children, and husbands could be tenants of their wives even as they held themselves out as masters of their household. Personal relationships based on customary practice, social authority, shared interest, and the coercive power of debt and violence, held the system together. Into this tangled set of relations, lawmakers reconstructed landlord-tenant law to deal with the "fertile source of litigation" surrounding the rights of competing creditors.[13]

To explain how conflicts over settlement moved from the fields to the courtroom, this chapter focuses on the struggle of a pair of white tenant farmers in Jones County, North Carolina, to recover from a heavy hail storm in June 1888. Nature was an unpredictable force in landlord-tenant relations, but as the state's commissioner of labor wrote in 1889, the problems afflicting farmers were "not all found in bad seasons, for the statistics of the country for more than a decade abundantly show that the bad seasons only make the evils already present more sorely felt, and that, with the best seasons, poverty, want, and consequent depression, are out of all due proportion among our people."[14] Those "evils already present"—crop liens, high-interest chattel mortgages, and

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[13] Note, "Some Judgments—How to Enforce Them," *North Carolina Law Journal* 1, no. 7 (1900-1901): 262.
[14] North Carolina Bureau of Labor Statistics, *Third Annual Report* (1889), 8.

wage theft—worsened the odds for the gamble that was cash crop agriculture, and drew tenants, sharecroppers, landlords, and merchants into the courts. In addition, limits on the power of women to own and manage real property under the state's coverture laws played a central role in the formation and supervision of tenancy contracts and the resolution of conflicts among these actors.

These legal structures tied participants in the sharecropping system together in complicated ways, and when tenants attempted to change the terms of their agreements—bargain out of the formal law—they produced a cascade of unforeseen consequences. When the tenants' crop faltered and they sought to escape the responsibilities of their contract, Cox and Dillahunt became enmeshed in a previously invisible knot of relationships. Putting their exceptional experience in context reveals how the stasis of sharecropping simplified the legal complexities of this unfree market. Sharecropping persisted because of a credit crisis: not just a lack of capital, as historians and economists generally argue, but because law, custom, and social status undermined the likelihood of trust and consensual settlements.[15]

[15] The rise and persistence of sharecropping in the postbellum South has long intrigued historians and economists, who have carefully traced the origins of the institution and the way it created a "backwards" or "transitional" political economy. Most characterize sharecropping as an unplanned accommodation to the social revolution and economic crisis following the war. Few participants in the system believed it would last. Landowners doubted the efficiency of sharing risk and reward with renters, and hoped to move to either fixed-rent leasing, which guaranteed them a steady rate of return, or wage labor, which offered more control over production. Merchants lacked the security they needed to offer better credit terms. Sharecroppers hoped to save enough money to buy land in order to escape the system altogether, but found that only through renting on shares could they maintain independent households. See chapter two.

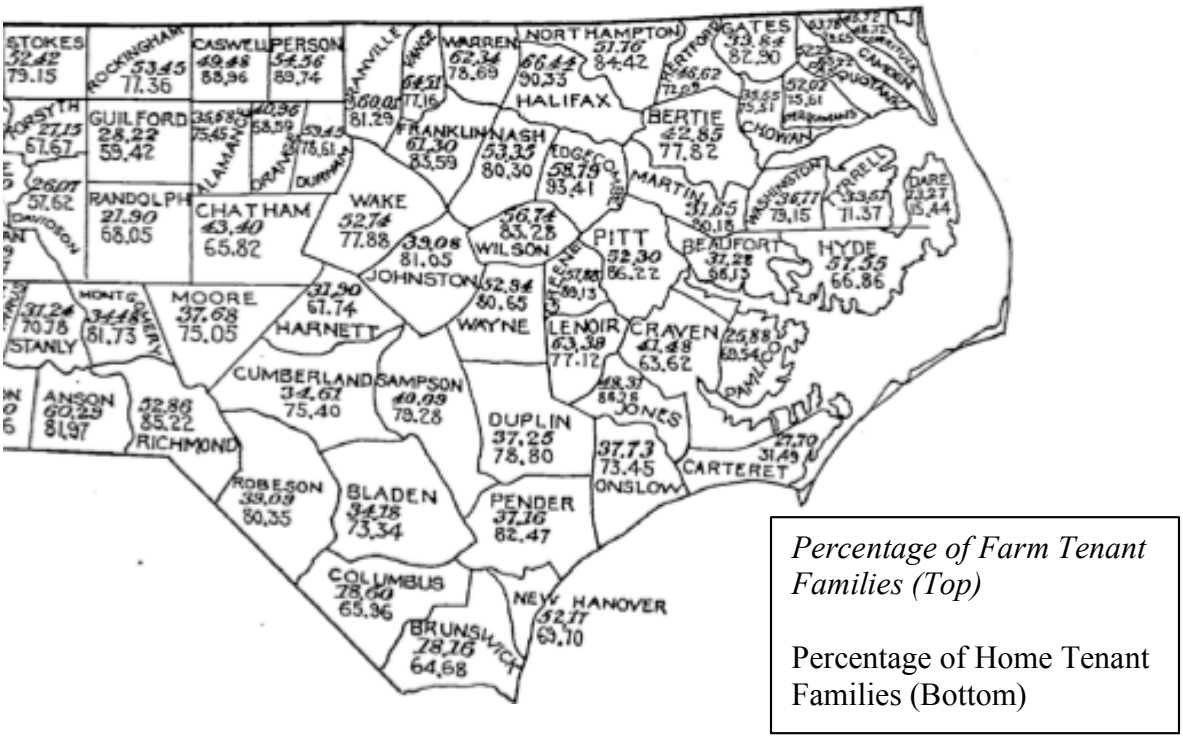

Figure 3-1: Tenancy in Eastern North Carolina, 1890[16]

A. Land, Labor and Contract

Whether the season was good or bad, the laws and customs of the sharecropping system framed how landlords, tenants, workers, and creditors managed rights in the crop. Most landless farmers in Jones County adapted to the unpredictable seasons by working on shares. They made contracts each year with landowners to grow cash crops—cotton, tobacco, corn, and fodder—in exchange for a portion of the harvest. In theory, landowner and tenant shared the risk of gain and loss, as each kept a set percentage of the crop at

[16] U.S. Department of the Interior, Census Division, *Report on Farms and Homes: Proprietorship and Indebtedness in the United States at the Eleventh Census: 1890.* (Washington, D.C.: 1896).

settlement. Depending on their assets, experience, and connections, sharecroppers might demand anywhere from a quarter to three-fourths of the crops they grew.[17]

Cox and Dillahunt decided to try something different. Like tenant farmers in the North and the Midwest, they preferred to pay a fixed amount of the crop each year as rent and keep whatever surplus they made over that portion. By potentially destroying their surplus, the hailstorm threatened their profits for the year. If they had stuck with sharecropping, their landlord would have had to take the loss, too. Cox and Dillahunt still may have suffered from the bad year, but the established rules and relationships of the sharecropping system would have at least assisted the parties in settling entitlements to the crop. By stepping outside the typical sharecropping framework, Cox and Dillahunt lost the predictability of this system and upset a precarious balance of relationships.

Cox and Dillahunt worked land in the center of the inner coastal plain of eastern North Carolina. Once the state's antebellum plantation belt, the region emerged as a center of Republican political strength after the war, forming the southern reaches of the gerrymandered "black second" Congressional district, which continued to send black representatives to Washington until the end of the century.[18] Many of its slave plantations had broken up, making it a region of smaller landholdings than the cotton lands further

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[17] On the varieties of sharecropping and share-tenancy agreements, see Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (Baton Rouge: Louisiana State University Press, 1996).

[18] North Carolina Democrats created the "black second" in 1872 to confine Republican strength to the eastern counties where African Americans composed a popular majority. Described by North Carolina Governor Tod R. Caldwell as "Extraordinary, inconvenient and most grotesque," the district included ten counties stretching from the Virginia border to the central Atlantic coastal plain: Warren, Northampton, Halifax, Edgecombe, Wilson, Wayne, Lenoir, Craven, Greene, and Jones. Eric Anderson, *Race and Politics in North Carolina, 1872-1901: The Black Second* (Baton Rouge: Louisiana State University Press, 1981), 4-5.

south. Landowners in Jones County, where Cox and Dillahunt rented land, and neighboring Lenoir County depended heavily on tenant labor. In a state where "farm tenant families" ran about forty-two percent of the farms, U.S. Census officials determined that non-owners operated about two-thirds of Lenoir County's farms and around half of the farms in Jones County in 1890.[19] "This section of the county is very fertile producing cotton, corn, wheat, oats, rye, &c.," boasted a Lenoir County landlord to North Carolina's labor bureau in 1887. "The average production of cotton for the county is nearly a half bale [250 pounds] to the acre, in this immediate section we average much more than that."[20] But the productivity of the land varied significantly in a region dotted with swampland and porous, sandy soils suitable only for timber. Cox and Dillahunt did not expect to raise more than fifteen or sixteen bales on the sixty-five acres of cotton land they managed.[21]

Land tenure patterns were diverse. "Land, landlords, tenants and laborers are so different that each has to choose for himself as to which plan is best suited to his case," reported a Jones County landlord.[22] Landlords and tenants planned these agreements on

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[19] U.S. Department of the Interior, Census Division, *Report on Farms and Homes: Proprietorship and Indebtedness in the United States at the Eleventh Census: 1890.* (Washington, D.C.: 1896).
[20] North Carolina Bureau of Labor Statistics, *First Annual Report* (1887), 100
[21] Pollock v. Dillahunt, Dillahunt testimony.
[22] North Carolina Bureau of Labor Statistics, *First Annual Report* (1887), 100. The cultivator's wealth and status was the central variable in choosing a tenancy contract. Waged workers typically did not own or rent any productive property and expected to be paid in daily, weekly, or monthly installments. Room and board were often part of the pay. Sharecroppers, by contrast, managed their own households. Instead of regular wages, they were paid with a share of the crop at the end of the year. They depended on advances of food, fertilizer, work animals and agricultural supplies to produce that crop. Whether the loan came from a landlord or a merchant, all of these expenses would be deducted from the sharecropper's wages at season's end. A cropper's major asset was

early winter Saturdays before the growing season, gathering at "country stores, at crossroads, in backyards, and on front porches" to size each other up.[23] Did the landlord want to stick with the black farmers he had known since he was a child, or would he experiment with untested white labor from the western counties? Was the tenant a hard worker who had a big enough family to plant the acres he wanted to rent? Or was he leaving his old employer on bad terms accused of being "shiftless"? Was the landlord successful enough to furnish adequate fertilizer, healthy mules, and a decent house? Or was he too poor to get credit on good terms, and likely to pass those costs on to his tenants? "A poor man's word don't go as far as a rich man's word," recalled a Georgia sharecropper.[24] And was the land productive enough to yield a better crop than the one before?

Cox and Dillahunt were middling members of the most autonomous and propertied class of tenants. As true tenants, they paid rent to a landlord in cash or in kind, owned mules, plows, and other agricultural tools, and ordinarily looked to supply merchants, rather than landlords, for credit. They gave chattel mortgages on their personal property or mules to obtain advances of money, which they used to pay cash prices for goods rather than the higher credit price. Chattel mortgages limited the borrower's risk by giving the lender recourse only to a specific item of property—often a mule, cow, or buggy—rather than offering a general lien on all the crops grown in a

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human capital, defined in this context as his reputation for hard work and his control over a "force" of family members and hired hands. See Wright, *Old South-New South*.

[23] Rupert B. Vance, *Human Factors in Cotton Culture* (Chapel Hill: University of North Carolina Press, 1929), 152.

[24] Jane Maguire, *On Shares: Ed Brown's Story* (New York: W.W. Norton, 1976), 45.

season.[25] "Our landlord never bothers us," said F.B. Brewer, a white farmer who had been a tenant in Wilson, North Carolina, since he was born at the turn of the twentieth century. "We ain't never asked him for anything, and he seems just satisfied to let us alone." Brewer spoke of farm work as better choice than wage labor at cotton and lumber mills or town living. "It cost too much to live in town. Out here we don't have to worry about being laid off if the mill closes down or not getting paid if one gets sick." Getting a good job in town, Brewer said, meant having "pull" and voting the right way. Ironically, tenant farming seemed to maintain, rather than sink, the old free labor vision: "Out here everybody is his own boss, or his wife is, and he can vote or not as he pleases."[26] Not only could tenant farmers maintain a sense of quasi-ownership, but they had the power to be *bosses* in ways denied to industrial workers.

Conversely, true tenancy suited landowners who did not want to actively supervise families of sharecroppers or direct the labor of wage hands. Cox and Dillahunt's landlords, the Pollock family, lived in Kinston, the county seat of Lenoir County, about fifteen miles away from their plantation along the Trent River in Beaver Creek Township. William Andrew Jackson Pollock, a doctor in his early seventies and a retired farmer, had married into one of Kinston's leading merchant families, the Loftins, and moved his practice into town. The Pollocks were members of the "town clique," serving the "merchants, bankers, commission agents, and sundry other functionaries"

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[25] On the advantages of chattel mortgages as a form of short term credit for African American tenants, see Sharon Ann Holt, *Making Freedom Pay: North Carolina Freedpeople Working for Themselves, 1865-1900* (Athens, GA: University of Georgia Press, 2003), 39.

[26] Stanley Coombs and Edwin Massengill, "Some People Are Destined to Never Have Anything," June 28, 1939, typescript in Federal Writers' Project life histories files, file 329, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill (hereafter SHC).

who ran the financial machinery of the agricultural economy.[27] His spouse, Rachel Anne Loftin Pollock, was his third wife. She was over twenty years younger than him, and was the actual owner of the land. Pollock had "been farming and looking after farms forty or fifty years" by the time he began leasing out his family's property to Cox and Dillahunt.[28] Renting provided an annuity to Pollock and his wife. The Pollocks delegated the responsibilities of farming and labor management to white tenants and of oversight to a "general agent," their son, William D. Pollock, a twenty-five-year-old attorney who had recently joined the bar.[29]

Tenant Lafayette Dillahunt and agent William D. Pollock were children during the Civil War and their families emerged from war and Reconstruction with their fortunes intact. If both families were elite, they represented different centers of power in the New South. Dillahunt was the thirty-two-year-old son of Lafayette Dillahunt, Sr., a landowner with eight children who had a seat on the board of county commissioners.[30] In this role, his father was one of Jones County's most important local officials, responsible for levying property taxes, maintaining roads, managing schools, and preserving public order. Despite his father's position, Lafayette Dillahunt, Jr., entered his thirties landless and unmarried.

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[27] Lawrence Goodwyn, *The Populist Moment: A Short History of the Agrarian Revolt in America* (New York: Oxford University Press, 1978), 67.
[28] Pollock v. Dillahunt, Testimony of W.A.J. Pollock.
[29] 1880 U.S. census, Jones County, North Carolina, population schedule, Beaver Creek Township, p. 30, dwelling 278, family 278, W.A.J. Pollock; digital image, Ancestry.com, accessed January 30, 2015, http://ancestry.com.
[30] 1880 U.S. census, Jones County, North Carolina, population schedule, Cypress Creek Township, p. 4, dwelling 8, family 8, Lafayette Dillahunt; digital image, Ancestry.com, accessed January 30, 2015, http://ancestry.com; *Branson's North Carolina Directory* (Raleigh: 1889), 403. On the powers of the county commissioners, see *Busbee's North Carolina Justice and Form Book*, ed. Quentin Busbee (Raleigh: 1878), 216-27.

Many young men in Dillahunt's situation leased land from their parents. In the Midwest, this practice allowed sons to build up experience and capital, and eventually buy out their parents or invest in new land.[31] But in the South, the strength and ubiquity of chattel mortgages and crop liens could bind sons to their father's debts, suffocating their prospects for mobility. For example, in 1888, Lenoir County landowner Joshua Rouse hired his twenty-three year old son, William, to grow cotton for a quarter share of the crop and make a rice harvest. William balanced sharecropping with attending school for two months in the summer, when he hired a hand to gather the crop. William hoped that raising a bale of cotton would give him enough money to own a team free and clear of mortgage debt. "What I was working for," he later testified, "was to get hooks off my bay mare." But the arrangement was frustrating to William, who began asking around for a tenancy on a neighbor's plantation. "I was getting mighty tired working for my father, was getting nothing but my victuals + clothes." What made the situation riskier for William was that his father gave a lien on William's crops to a merchant. "I never intended to work with a man who gave mortgages," William testified. When the harvest was in, the merchant seized William's rice because Joshua failed to pay his debts.[32] Neither family members nor creditors carefully distinguished between personal and household property and labor. By obtaining a tenancy outside his father's control,

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[31] See chapter five.

[32] Rouse v. Wooten, Trial Transcript, Civil Action Papers, 1887-1889, Lenoir County, NCDAH, last accessed February 20, 2015, http://familysearch.org. William Rouse eventually won his case against the Wootens for the wrongful taking of fifty dollars; on appeal, the Supreme Court found that these merchants should have known that Joshua Rouse was not just William's father, but also his landlord, and therefore had a priority lien over William's crop. Rouse v. Wooten, 104 N.C. 229 (1889).

Dillahunt was attempting to build his personal credit within the community and avoid the risks of mixing business and family.

By contrast, Dillahunt's peer and supervisor, William D. Pollock, was not waiting for his ascendancy into the rural hierarchy. Like his father, and his half-brother, John A. Pollock, both physicians, William D. Pollock sought professional status: he went to college at the University of North Carolina, and trained as a lawyer. He may have been the landlord's son, but his aspirations pointed toward office in Kinston and, he surely hoped, the capital at Raleigh. Land was a source of income for political pursuits, and not a way of life.[33]

The tenants entered the lease with eyes wide open. They had worked this land before and understood its potential and pitfalls. Even William D. Pollock admitted "[t]he land was not in good condition in 1888."[34] During the 1886 and 1887 seasons, Dillahunt worked a smaller section of the Pollock plantation, and the landlords believed he could be trusted with the land for a longer term. Much of the pressure to sign a long-term lease came from Dillahunt and his business partner, W.E. Cox, who wanted the security of five year's time to invest in the land and recover the costs of their improvements. In their three-page lease, the Pollocks created rules that underlined their hope of deriving rentier income without overtaxing the land or their time. Yet as they would soon learn, drafting a

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[33] In Pollock's time, North Carolina's Congressional delegation included numerous landowners, including the major eastern North Carolina landlords Furnifold Simmons and John Humphrey Small. Their records include many pages of correspondence with local agents, lawyers, and tenants about conditions on their plantations. See John Humphrey Small Papers and Romulus A. Nunn Papers, David M. Rubenstein Rare Book & Manuscript Library, Duke University, Durham, North Carolina (hereafter cited as DU).

[34] Pollock v. Dillahunt, W.D. Pollock testimony.

lease did not guarantee the enforceability of its terms; it was "a very intricate legal paper, and one that will tax the abilities and care of the best informed scrivener."[35]

Many of their landowning neighbors doubted that tenant farming was the best way to work the soil. "The tenant system will not work successfully," argued a Lenoir County farmer, who believed that "many of the best farms in this and other sections of the county have been run down and well nigh ruined and exhausted by this system."[36] One-year leases gave landlords flexibility to enroll new renters, but left tenants with little incentive to care for the soil's fertility next year. "It is not customary among farmers to maintain fences, dig ditches," Dillahunt testified, "for a lease of one year." Landlords believed tenants spent too much time at leisure, and not enough time maintaining and improving their rented farms.[37]

Whatever the harms of tenancy or sharecropping to the efficient and sustainable use of the soil, many landlords compared it favorably to the alternative, "the almost insufferable inefficiency of farm labor, white and black."[38] Even the owner of "the best farm" in his part of Jones County struggled to manage a wage labor force composed of African American cultivators. "To get the work of four men I usually keep six in sight, as they will not all come every day in the week."[39] Landlords complained that "[l]aboring people do not value time as they should" and they hoped to offset the declining price of

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[35] *The Justice of the Peace* 1 (1900): 18.
[36] North Carolina Bureau of Labor Statistics, *Second Annual Report* (1888), 412.
[37] "They work too little; finish their crops in July and play around until time to save it; get that done by the first of December, and play around until March or middle of February at best," claimed a Wayne County landlord in 1888, "then buy guano, let fences and ditches go, until they get heels over head in debt, and then say the land is no good and off they go to find a better place and leave the land owner with the empty bag to hold." North Carolina Bureau of Labor Statistics, *Second Annual Report* (1888), 422.
[38] North Carolina Bureau of Labor Statistics, *First Annual Report* (1887), 92.
[39] North Carolina Bureau of Labor Statistics, *First Annual Report* (1887), 100.

cotton and the rising price of fertilizers and equipment with greater productivity from their workers.[40] These landlords viewed hired hands as less skilled and reliable than tenants who stayed on a plantation for many years and had an incentive to improve the property. The laborer's contract with an employer might last just a day, while renters had to gamble a year's labor and, often, their personal property for a payday in November or December.

By contracting with Cox and Dillahunt for five years, the Pollocks hoped to maintain and expand the plantation without the burdens of active management. A fixed rent of ten bales a year guaranteed them passive income, and conservation provisions inserted into the lease ensured that their tenant-managers would not strip the land to meet this price. Knowing that corn was hard on the soil, they wanted their renters to let the cornfields "lie out each alternate year unless they highly manure it." They could use the cotton fields every year, but had to use sufficient manure on that land, too. "Potatoes, field Peas, Turnips, and Tobacco + a garden patch" were allowed, but "no Pea Vines are to be pulled up, nor at any time are any manure to be carried off of said plantation." The renters had to restore the cotton land's fertility with marl. The lease provided different rules for putting marl on the farms cultivated by the lessees and the subtenants who would rent from them. Cox and Dillahunt had to marl ten acres of each "horse farm" of twenty-five acres they cultivated, while the subtenants had "to put 40 to 50 bushels of marl on 5 acres of each horse farm they may cultivate." The landlords also mapped out a plan of development for the five years of the lease. They wanted their renters to bring in the old, sandy fields by "the hammock, the River field and Negro-grave yard field" into

[40] North Carolina Bureau of Labor Statistics, *Fifth Annual Report* (1891), 86.

cultivation. The Pollocks also required the renters to do all necessary ditching and maintain a "substantial" fence. To attract a labor force, the Pollocks agreed "to pay for Plank, Nails, Shingles [and] Boards" needed to repair two tenant houses on the land and build two new ones.[41]

Lessees Cox and Dillahunt were now labor contractors, answerable to their landlords regarding the condition of the land and its yield. Their management strategy relied on delegation. Cox and Dillahunt estimated they were working a "seven horse farm." They picked out "the best land on the place" and ran a "two horse farm" on it, and divided up the rest to four subtenants. They also collected rents from four farmers who lived nearby and cultivated about twenty acres of oats on their leasehold.[42]

Along with their arrangements with the landlords, subtenants, and neighbors, Cox and Dillahunt had to manage their own partnership. The details of their venture are schematic. Dillahunt contributed insider knowledge to the project. He was familiar with the land and its potential for development, having worked the land in 1886 and 1887; Cox joined him in 1887. Cox provided the financing to improve the land—he estimated $200 to $300 invested in new ditches and fences—by collecting on various notes and mortgages he owned.[43] Dillahunt owned a team of mules and borrowed money from merchant A. Mitchell to buy another.[44] Despite pooling their resources, the tenants did not have enough cash or credit to buy supplies and hire laborers. The labor of two men and their mortgaged mules was not enough to keep up the fences, maintain the drainage

[41] Pollock v. Dillahunt, Exhibit A.
[42] Ibid., W.A.J. Pollock testimony; Dillahunt testimony.
[43] Ibid., Cox testimony.
[44] Ibid., A. Mitchell testimony.

ditches, replant old fields, and fertilize, plant, chop, harvest, and store the crops on a two-horse farm.

Both these tenants and their landlords looked to merchants for credit. Debt was inescapable for farmers attempting to grow cash crops for the market. Profit depended on the use of fertilizers. Planting cotton on the less productive northern fringes of the Cotton Belt, North Carolina tenants had to buy hundreds of dollars worth of fertilizer every year at considerable interest.[45] Tenants who could negotiate better terms with landlords would demand that the landowner pay for this costly input.[46] But only the most powerful landowners, such as the owners of estates stretching over thousands of acres in the cotton belts further south, could claim to be their own bank. Landlords who had good relationships with their bankers gave a personal note to secure a line of credit. These loans were keyed to the seasons: "so much for furnishing, planting, chopping, and picking."[47] Landlords would either lend this money (at a marked up interest rate) to their tenants and croppers or "stand in" for their tenants or laborers' debts with the banker or merchant. When they stood in for debts, landlords often limited a debtor's credit to ten or fifteen dollars per month. Thousands of decaying slips of paper in the archives of merchants and landlords attest to the variety of things in circulation under this system, from fertilizer to shoes.[48] When landlords lent directly to tenants or croppers, they

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[45] Studies of North Carolina tenancy from the 1920s show that about fifty percent of tenants relied on merchant credit, paying interest rates that averaged twenty-six percent. Eighty-eight percent of black tenants bought fertilizer "on time," spending an average of $254 and paying a thirty-five to thirty-nine percent interest rate. Vance, *Cotton Culture,* 177-78.

[46] Herring v. Armwood, 130 N.C. 177 (1902).

[47] Vance, *Cotton Culture*, 155.

[48] Most collections of merchant or landlord papers contain some of these scraps. An extensive collection of them is housed in the T.G. Patrick Papers, Thomas D. Clark

secured the debt through their statutory lien, which covered the rent and any "advancements" given in "good faith" to the tenant for the purpose of making the crop. Furnishing did not only include advancements for productive property, but also "small items of charge for shoes, snuff, calico, and the like" enjoyed by the tenant and his laborers. These goods were considered a form of payment in kind, and their cost was deducted from the tenant's wages at the end of the season.[49]

Cox and Dillahunt asked merchant S.H. Loftin, banker and owner of a Lenoir County general store, for $100, but he refused to provide the advance if the landlords were unwilling to stand in for the debt. Typical of the close ties between merchants and larger landlords in the New South, Loftin was the sister of landlord Rachel Anne Pollock, and he actually sold the plantation to the Pollocks in 1874.[50] Pollock testified that the tenants visited him after being turned down for the loan, "and Loftin agreed to let them have it upon my endorsement."[51] After Loftin extended this credit, his interest in the operation deepened; by the end of the disastrous season, the landlords would rely on Loftin to pay for jute bagging and other costs of gathering the crop.[52]

Having secured a five-year lease, credit, and four subtenants to manage much of the property, Cox and Dillahunt looked locally for wage hands to help them plant, chop,

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Collection, University of Kentucky Archives, Louisville. On Southern merchants and consumption, see Ted Ownby, *American Dreams in Mississippi: Consumers, Poverty, and Culture, 1830-1998* (Chapel Hill: University of North Carolina Press, 1999); and, Thomas D. Clark, *Pills, Petticoats, and Plows: The Southern Country Store* (Norman: University of Oklahoma Press, 1944).

[49] Ledbetter v. Quick, 90 N.C. 276 (1884).

[50] Deed Book Y, p. 457, Land Records, Jones County, North Carolina; W.D. Pollock, Jones County, North Carolina Estate Files, NCDAH, last accessed February 20, 2015, http://familysearch.org/.

[51] Pollock v. Dillahunt*,* W.D. Pollock testimony.

[52] Ibid.

and harvest the crops and develop the land and its infrastructure. Most of these workers were former slaves or their children. Although sharecropping remains the paradigm for post-emancipation labor relations, wage labor may have been the dominant way that African American farmers of all tenure classes accumulated savings in the postwar. Most wage workers were field hands working on verbal contracts with a landlord or tenant. They did not own productive property, but by custom had access to a vegetable garden and cotton patch.[53] They had less control over their working hours than sharecroppers who had possession of a tract of land. In mid-summer, cotton croppers looked forward to the "lay-by" period, which gave them time to fish, hunt, tend to garden plots, visit family, attend church and community events and work off the plantation. By contrast, remembered sharecropper Ed Brown of Georgia, "you couldn't join in the fun if you was on wages and your time belong to the bossman. After you laid by the crop he'd have you cuttin logs at the sawmill, doin road work, and cuttin ditches. On rainy days you'd be in the crib shuckin corn or haulin black manure or compost, or cleanin out fence corners."[54] The families of sharecroppers, tenants, and small landowners also performed wage work off the farm they occupied on weekends and after the harvest. These forms of domestic and artisan production outside of the farm household's contractual duties to a landlord were not supplemental: they may have been the best means for rising up the slippery property ladder of Southern rural life.[55]

In sum, entrepreneurial, or "true," tenants stood between landowner and laborer and held significant power over both. Even though, by North Carolina law, tenants and

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[53] North Carolina Bureau of Labor Statistics, *Tenth Annual Report* (1896).
[54] Maguire, *On Shares*, 44.
[55] Holt, *Making Freedom Pay*.

sharecroppers had the same contingent ownership rights over the crop, written contracts secured true tenants more power than ordinary sharecroppers to manage production on the farm. All tenants and sharecroppers were labor contractors to some extent, but the entrepreneurial tenants' power extended beyond their own farm household into the lives of the many families they supervised. Because they looked to merchants for credit, tenants complicated bilateral landlord-tenant relations by adding a powerful third-party to the mix. Their credibility as intermediaries depended on their ability to control land, labor, and credit.

B. Revolt of the Lessees

Why did the tenants think they could get away with it? Cox and Dillahunt's maneuvers to change their lease after the hailstorm rested on three powerful assumptions about the Southern agricultural economy. The first was structural: As long-term tenants managing labor within a contested labor system, they assumed that their landlords would rather forgo a portion of the rent than find new help mid-season. The second was relational: They were not landlords, but they did hold contractual power over their subtenants, which allowed them to swiftly respond to the crisis created by the hailstorm and gain leverage against the Pollocks. The third was technical: Although bound by a lease, they denied its authority because their female landlord never gave her consent to the contract.

The tenants decided to strike in June, a pivotal month in the cotton-corn season. Cotton farms in the Upper South were smaller and more labor and fertilizer intensive than those in other regions. It was "walking" farming, with a grower standing behind a mule

rather than riding a cultivator pulled by two or four work animals, as was more common in the flat alluvial reaches of the Cotton Belt. Cotton growers in this region also had a longer winter than farmers on the western and southern ends of the Cotton Belt. They might begin to clear up dead cotton and corn stalks as early as January or February, but planting would not begin until late April. By the end of May, about a month after planting, the cotton was ready to chop with handheld hoes. Croppers and tenants put their families to work getting rid of the grasses that crowded out the growing crop. "Next to picking it is the most laborious process in the cultivation," wrote University of North Carolina Sociologist Rupert Vance, who estimated that each acre of cotton demanded fifteen to twenty-five hours of labor to chop by hand. During the same month, farmers also had to find time to tend to their corn, which demanded two and a half days per acre. The combined demands of cotton and corn put labor at a premium during the early summer.[56]

In addition to taking advantage of seasonal urgency, Cox and Dillahunt may have been confident that their landlords would not easily find replacements. Southern labor law was among the most harshly regulated systems of worker control in the country, yet operated in an environment of constant labor turnover.[57] These contradictory truths added leverage to their demands. To keep workers from quitting their labor contracts mid-season, Southern legislatures passed enticement laws making it a criminal misdemeanor for an employer to hire away the employee of another. By June, most of the county's available workers would have already signed up for a labor contract for the season,

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[56] Vance, *Cotton Culture*, 161.
[57] William Cohen, *At Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control, 1861-1915* (Baton Rouge: Louisiana State University Press, 1991).

whether as a wage hand, a cropper, or a tenant. Unless the Pollocks could negotiate a "gentleman's agreement" to buy out the contract of a neighboring planter's worker, they risked criminal prosecution if they hired away a contracted laborer.[58] Furthermore, agricultural renters were unlikely to quit their contracts mid-season because landlords owned the crop. Tenants and croppers potentially forfeited their wages if they left before division. Likewise, vagrancy laws and, by the 1890s, contract enforcement laws made unemployment and the breaking of many labor agreements a criminal offense. When a tenant fled with an unpaid debt, he could be subject to a civil lawsuit, prosecuted for a property crime, or be beaten or killed. He would also jeopardize his credit-worthiness and the standing of his family in the eyes of other employers and merchants.[59] It took years to build a reputation as a reliable worker entitled to credit.[60]

In response to these forms of legal and extralegal coercion, thousands of African Americans in eastern North Carolina fled agriculture in the 1880s. A region with virtually no immigrants, North Carolina's "black second" district experienced two major waves of out-migration following Reconstruction. Between 1879 and 1880, several thousand African Americans left Lenoir County and its surroundings for Indiana, stirring up sufficient concern among national Democratic politicians (who feared Republican colonization of a swing-state) and local Republicans (who worried about losing their

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[58] Raper, *Preface to Peasantry,* 172.
[59] A landlord refused to rent land to Alabama sharecropper Ned Cobb or anyone else in his family because Cobb's cousin had worked on the farm before, "bucked" his bosses orders, and got "cleaned" out. Theodore Rosengarten, *All God's Dangers: The Life of Nate Shaw* (Chicago: University of Chicago Press, 1974), 111.
[60] Gavin Wright, *Old South-New South.*

constituents) for Congress to hold hearings on the so-called "exodus."[61] A resurgent movement encouraged ten thousand African Americans to leave the second district for Mississippi and other parts of the Black Belt between 1889 and 1891. Twenty years of flight and "whitecapping," the use of physical and economic violence to replace African-American workers with whites, produced significant shifts in the region's demography. Jones County, a site of significant white vigilante violence and voter suppression during Reconstruction, changed from 57 percent African American to 54 white between 1870 and 1890, and never elected a Republican congressional candidate again after 1888.[62] Amid these demographic shifts, the Pollocks might have faced significant hurdles to obtaining laborers they could control.

But labor market conditions alone would not win the negotiation. The success of Cox and Dillahunt's strike depended on controlling their own labor force. Stopping work on their two-horse farm was simple enough. William D. Pollock saw only one person working in Cox and Dillahunt's fields by the end of summer, a woman, who left because they "refused to pay her."[63]

Less clear was whether the tenants could keep their "subtenants" out of the fields they subleased. The four subtenants' payment structure resembled a tenancy because they paid a rent to their bosses in kind for access to the land. If they were croppers, by contrast, Cox and Dillahunt would pay them a share of the crop once they had fully accounted for the costs of production. The distinction in tenures mattered: If they were

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[61] Select Comm. to Investigate the Causes of the Removal of the Negroes from the Southern States to the Northern States, S. Rep. No. 46-693, pt. 1 (1880).
[62] Deborah Beckel, *Radical Reform: Interracial Politics in Post-Emancipation North Carolina* (Charlottesville: University of Virginia Press, 2011), 69-70; Anderson, *Race and Politics*, 9-11.
[63] Pollock v. Dillahunt, W.D. Pollock testimony.

truly subtenants by law, they would have possessory rights in their land, including the right to exclude Cox and Dillahunt from the property. Under the common law, trespassing on the leasehold of another was inherently damaging, "if nothing more, the treading down the grass or the herbage."[64] To protect that right, true tenants could bring a range of criminal and civil charges against trespassers, including their landlords, for such acts of dispossession during the term of their leases.[65]

Although the subtenants testified that they paid rent to Cox and Dillahunt, the effective terms of possession and supervision this labor arrangement mirrored a traditional sharecropping agreement. First, the subtenants did not own their own mules, and depended on the tenant managers to supply them. Second, Cox and Dillahunt dictated the crop mix grown by the subtenants and entered the sublet property at will, freely demanding that the subtenants stop work on their command. Finally, and most importantly, the subtenants had no property rights in the growing crop. It was in Cox and Dillahunt's possession until division at the end of the season. The notion that the subtenants were paying rent was a legal fiction, because these men would not have held possession of the crop until the tenant managers first accounted for their share.

These conditions put the subtenants in a troubling place near the end of a chain of debts. If Cox and Dillahunt failed to pay the rent, the Pollocks could send a sheriff to seize enough of the crop to cover the debt, including crops growing on the subtenants'

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[64] Dougherty v. Stepp, 18 N.C. 371 (1835).
[65] State v. Leary, 136 N.C. 578 (1904); State v. Davenport, 156 N.C. 596 (1911); Mosseller v. Deaver, 106 N.C. 494 (1890); Barneycastle v. Walker, 92 N.C. 198 (1885); Seawell v. Person, 160 N.C. 291 (1912).

lands, as those "crops are the lessee's crops for purposes of securing the rent."[66] In essence, the landlord's lien was umbrella covering any side agreements made among the people working the land. The landlord had no contractual relationship with the subtenants, who were "but agencies employed" by Cox and Dillahunt to fulfill their bargain with the landlords.[67] By no fault of their own, the subtenants might be left with little to show for a year's work whether or not they joined the strike.

Cox and Dillahunt tried to attract two of the subtenants to their cause by promising a proportionate reduction in their rent to one-fourth of the cotton and one-third of the corn. These men, J.L. Moore, a white renter, and John Green, an African American, were more aligned with the Pollocks than with the entrepreneurial tenants. Moore had rented a portion of the Pollocks' land in previous seasons. Perhaps because the land was known as the Pollock plantation, Moore thought of himself as having a direct relationship with the Pollocks—at one point calling himself the "tenant" of the Pollocks—even though his sublease was with Cox and Dillahunt. Indeed, when the Pollocks eventually retook possession of the land, Moore stayed on the farm in their employment.[68] John Green also appealed through Cox and Dillahunt to the landlords to be "released" from his obligations to pay a fixed rent to Cox and Dillahunt. Green, described by census takers as a black "farm laborer" in his twenties, grew up in Beaver Creek Township and likely had a personal relationship with the landlords.[69] With only

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[66] Montague v. Mial, 89 N.C. 137 (1883) (otherwise, subletting "might defeat the security given under the statute, and render it inoperative.") See generally chapter 2.
[67] Moore v. Faison, 97 N.C. 322 (1887).
[68] Pollock v. Dillahunt*,* J.L. Moore testimony, 507.
[69] Two African American men from Beaver Creek Township named John Green match the description in the case: a single farm laborer named "John Green" and a farm laborer

thin descriptions of their contracts, it is hard to understand why Moore and Green thought that the Pollocks had the authority to change their obligations to the tenant managers. Perhaps Cox and Dillahunt encouraged this misunderstanding to convince the subtenants that they shared a common enemy rather than legally antagonistic interests.

While they tried to build solidarity with the two more reputable subtenants, Cox and Dillahunt marginalized the other two, Tom Harrison and John Shephard. Unlike Moore and Green, neither one testified in this case. Witnesses described both men as poor farmers settled on the least productive soils of the plantation. When disaster struck, Cox and Dillahunt tried to cover their losses by pushing them off the land. They stopped Tom Harrison from having a team for ten days, and permanently denied John Shephard access to the mules. By cutting these laborers out of the tenancy, Cox and Dillahunt could keep all of the surviving cotton and corn for themselves and direct the subtenants' mules toward more profitable operations.

Cox and Dillahunt acted with legal impunity. Agricultural workers whose wages came in the form of a portion of the crop had a weak claim on this property if they were evicted for cause before the share was divided.[70] Under the wage forfeiture law common in most nineteenth-century states known as the "entirety" doctrine, laborers gave up their right to payment if they quit a labor contract or were fired for good cause before the end of the term. Unless the contract said otherwise, courts assumed that the worker's payment depended on completing the contract, which, in the case of agricultural laborers, might not happen until the end of the growing season. In 1886, the North Carolina Supreme

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who was the son of Norris Green named "John D. Green." Norris Green's household bordered the Pollock plantation. U.S. Manuscript Census, Jones County, 1880.

[70] Woodman, "Post-Civil War Southern Agriculture," 334-335.

Court softened this rule, holding that laborers could seek compensation for partial performance on a case-by-case basis. Hired hands—workers who were paid fixed wages by the day, week, or month—had a much stronger legal claim to such "ratable compensation" than sharecroppers or subtenants like Shephard and Harrison whose employers would pay them in a share of the crop they had contracted to grow at the end of the year.[71] "Although this savage rule of the old law quoad entire contracts is greatly relaxed," North Carolina law professor Samuel Fox Mordecai wrote in 1916, "it would seem still to be retained as to croppers" because courts viewed the nature of their contracts differently. The entirety doctrine was a "default" rule that judges applied in the absence of express contractual payment terms. Because a sharecropper's wages were undefined until settlement, this default rule applied if the cropper quit or was fired mid-season. By contrast, a wage laborer's wages were fixed by contract in advance, making ratable compensation simple to calculate.[72]

Rather than pursue a costly recovery in civil court, Shephard and Harrison were more likely to take the law into their own hands by seizing their estimated share of the crop. But under the state's landlord-tenant laws, croppers and tenants had limited room to

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[71] In *Chamblee v. Baker*, North Carolina's Supreme Court upheld a lower court's award of back wages to a farm labor who had signed a contract for about a year's labor but abandoned the contract in mid-September "without legal excuse." The court justified its decision on the facts that the laborer had expected to be paid a monthly wage of ten dollars, and that the employer "sustained no damages" from the laborer's leaving. The parties understood "that the wages were to be paid as the work progressed, and the [laborer's] necessities may have required, that he should not be delayed until the end of the year." *Chamblee v. Baker*, 95 N.C. 98 (1886). On the entirety doctrine as a tool of labor control, see Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (New York: Cambridge University Press, 2001).

[72] Samuel Fox Mordecai, *Law Lectures* (Raleigh: 1916), 110

claim justification in withholding rent or seizing a portion of the crop.[73] The North Carolina Supreme Court, in fact, had to reverse itself on this issue. In a 1901 decision, the court sided with a tenant, arrested under an indictment for removing the crop, on the grounds that the lower court was wrong to exclude evidence of his landlord's failure to live up to their contract.[74] Only three years later, hearing an appeal from Lenoir County, the court changed its mind. Apologizing to the tenant for creating a misimpression of the law, the court confirmed that tenants and croppers had no right to remove the crop to protest a landlord's contractual breach. "We do not think that the words used are open to reasonable doubt" even if "we may think it harsh or even unjust." Giving too much power to the tenant was "certain to bring about litigation," and that was never the legislature's intention.[75]

Instead of suing their tenant managers or absconding with the crop, Harrison and Shephard went directly to the landlords for help. They hoped that the Pollocks would finance their small share of the operation and save them from dispossession. Their son and agent, however, had a dim view of these men. W.D. Pollock "advanced some for Harrison but refused to advance for Shephard. Shephard was a poor tenant." Shephard's crop of about five acres of cotton and five acres of corn would be a total loss.[76]

Even if Cox and Dillahunt could control their labor force, striking was a self-defeating prospect for agricultural tenants whose livelihood depended on how much they

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[73] North Carolina, *Public Laws, 1876-1877,* ch. 283, § 6 (Mar. 12, 1877), 553, made a tenant or cropper's nonconsensual removal of the crop a misdemeanor. A similar law, applicable only to written tenancy agreements, was passed under the earlier postwar landlord-tenant legislation. North Carolina, *Public Laws, 1868-1869,* ch. 156, § 13-15 (April 10, 1869), 359-360.
[74] State v. Neal, 129 N.C. 692 (1901)
[75] State v. Bell, 136 N.C. 674 (1904).
[76] Pollock v. Dillahunt, W.D. Pollock testimony.

produced. A season without chopping or picking would leave the tenants liable for a debt far exceeding their income and with reputations so wrecked they would never be able to rent another plot of land in the county or as far as gossip would reach. The Pollocks might even have them arrested and jailed for failing to pay the rent.

Looking for another way out, Cox and Dillahunt brought their problems to a local lawyer, who reviewed their lease and realized that novice attorney W.D. Pollock had made a critical mistake. Imagine the look of relief on the tenants' faces when they realized that the law could get them out of this unwinnable fight. The true owner of the land, Rachel Anne Loftin Pollock, never signed the lease, making the contract voidable. Through the culture and practices of coverture, in force in North Carolina well into the early twentieth century, the tenants now had a justification for breaking their promise that a court might uphold.

Although she was, by written deed, the landowner, Rachel Pollock's husband signed the lease and her son oversaw the property's management. Under the nineteenth-century law of coverture, husbands serve as the agents of their households, engaging with the marketplace and civil society, while wives were expected to manage the domestic realm and the raising of children. The courts gave shape and meaning to these principles, finding that a husband was "entitled to the society and to the services of his wife" and that wives could not "contract to render those services to another without his consent." In exchange, husbands were bound to support their wives and children.[77] Under coverture, ownership and management were ordinarily divided when wives owned property separately from their husbands.

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[77] State v. Robinson, 143 N.C. 620 (1907).

Coverture was undergoing a legal transformation in the years when the Pollocks leased their plantation. Before the Civil War, married women in North Carolina could not legally own property or make contracts separately from their husbands. Lawyers worked around these common law restrictions through equity: women could own property separately from their husbands and make contracts through an equitable trust, which held ownership of the assets. If a married woman made a contract, she was not personally bound on the contract, but her separate property became responsible for it, "an obligation *in rem*" (in the property). This "peculiar" solution effectively created an "artificial person" to bear a married women's liability.[78] Under the state constitution of 1868 and its enacting legislation, these equitable workarounds became obsolete. Amid the upheavals of Reconstruction, corporate property became marital property. Although married women became vested with legal title over their real and personal property as a separate estate, they could only lease, mortgage, or sell this property with the written assent of their husbands.[79] "Her common-law disabilities still continued," wrote North Carolina Supreme Court Justice Robert M. Douglas in 1898. Women's property acts were "restrictive, and not enabling."[80]

Opponents of coverture, such as the Chief Justice of North Carolina's Progressive-era Supreme Court, Walter Clark, argued that women's citizenship depended

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[78] Thomas Ruffin, "Married Women Before the Law in North Carolina," *North Carolina Journal of Law* 1, no.5 (1904): 233.

[79] "No woman during her coverture shall be capable of making any contract to affect her real or personal estate, except for her necessary personal expenses, or for the support of her family, or such as may be necessary in order to pay her debts existing before marriage, without the written consent of her husband, unless she be a free trader as hereinafter allowed." *Public Laws, North Carolina, 1871-1872*, ch. 193, § 17 (1872), 334.

[80] Sanderlin v. Sanderlin, 122 N.C. 1 (1898).

on the right to control property, make contracts, and be fully responsible for their choices, even if those decisions led to fraud, insolvency, or imprisonment.[81] Proponents of legal "chivalry" argued that coverture adequately preserved a women's right to control her separate estate and protected these assets from a spendthrift husband. Courts of law were no place for a woman to vindicate her rights. "It would add nothing to her grandeur, her sublimity, her happiness and her civilizing influence over our homes," argued the prominent eastern North Carolina attorney Benjamin B. Winborne in 1904:

> to dress her in rubber pantaloons, heavy boots, and cow boy jackets, and send her out to the 'Bush Courts' of the Justices of the Peace of the State, to contend with the shylocks and sharpers, for a pound of her flesh, and a portion if not all, of her separate property, while her offspring are at home crying for her love and attention. Let the law throw more safeguards around her.[82]

These safeguards included the unilateral right to cancel agreements that violated the law.

As a result, coverture was a destabilizing force in landlord-tenant relations because either party had the option of canceling a contract that did not comply with the statutory protections. Typical cases began when a merchant tried to recover a debt taken

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[81] Walter Clark, Address, "The Legal Status of Women in North Carolina: Past, Present, and Prospective," May 8, 1913, North Carolina Collection, University of North Carolina at Chapel Hill. Extending the full right of contract to women also meant subjecting them to its penalties, which, in North Carolina agriculture, could mean imprisonment for removing the crop. In *State v. Robinson*, 143 N.C. 620 (1907), for example, the North Carolina Supreme Court held that a married female sharecropper was not liable on her contract based of the laws of coverture. A wife could not contract her services to a person other than her husband without his consent, and there was no evidence on the record that he gave his permission to make the labor contract. In his dissent, Chief Justice Clark wrote that because the law did not "incapacitate a married woman to work a crop as tenant or on shares," it ought to make them "liable to the criminal law to the same extent as any one else for receiving advances on such crop and afterwards abandoning the work." Having assumed this risk, a sharecropping woman should also be entitled to the profits of the arrangement without her husband's interference.

[82] B.B. Winborne, "Married Women," *North Carolina Journal of Law* 1 (1904): 412.

out by a landlord or tenant and secured by his wife's separate estate. Without the wife's written consent, the transaction was voidable, making the separate property judgment-proof. Courts blamed the merchants for their own "folly" in believing that the husbands they negotiated with had the power of the purse.[83] Their lack of consideration extended to more sympathetic creditors, too. Laborers risked wage forfeiture when seeking payment from separate estates.[84]

In the Pollock case, coverture was a sword for the tenants and a shield for the landlords. The tenants first introduced the issue, arguing they were not responsible for obeying the terms of the lease because its signers did not have capacity to make it. To the

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[83] Married women holding separate estates won nearly all appeals brought by merchants claiming debts made by their husbands. See Branch v. Ward, 114 N.C. 148 (1894), Bray v. Carter, 115 N.C. 16 (1894), Rawlings v. Neal, 122 N.C. 173 (1898), J.L. Thompson Co. v. Coats, 174 N.C. 193 (1917), and Pocomoke Guano Co. v. Colwell, 177 N.C. 218 (1919). But compare Bazemore v. Mountain, 121 N.C. 59 (1897), which held that a landowning married woman was liable for debts contracted on her separate estate by her "no account" husband with a merchant to furnish her tenants. The court held that because the rents from the separate estate were the family's only source of income, and the wife had no resources of her own to pay for her tenant's furnish, the merchant's supplies constituted a "necessary" expense that could be charged to the separate estate. Only a year later, the court pulled back from the implications of this decision for the meaning of the separate estate, asserting that *Bazemore* "carries the doctrine in that direction as far as we feel at liberty to go." Any further, it believed, and women would lose their statutory protection over their estates under coverture. Sanderlin v. Sanderlin, 122 N.C. 1 (1898).

[84] Bevill v. Cox, 107 N.C. 175 (1890). Hendrik Hartog's study of divorce and separation highlights how coverture provided some women with legal power to avoid their husband's debts, noting that "wives—or their lawyers—so often claimed coverture as a right, against the contrasting claims of husbands that their wives had become competent and capable legal individuals who ought to be held responsible for their own debts." Hartog, *Man and Wife in America* (Cambridge, MA: Harvard University Press, 2000), 38. Compare Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill & Wang, 1998); Norma Basch, *In the Eyes of the Law, Women, Marriage, and Property in Nineteenth Century New York* (Ithaca: Cornell University Press, 1982); Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1984); Reva B. Siegel, "The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860-1930," *Georgetown Law Review* 82, no. 7 (1994): 2127.

landlords, this argument was a hollow legality. "My wife knew of the terms of the lease," William Andrew Jackson Pollock testified, "and knew what was the amount of the rent."[85] Everyone involved in drafting the lease understood that Rachel Pollock had agreed to the terms, but her consent could not be proven without her signature. Without a valid lease, the tenants maintained that they would not honor their obligations.

During a series of meetings in Kinston following the storm, the tenants used the faulty lease as their primary bargaining chip. Dillahunt told the landlords that "if they wished they could take the place back in the fall and take the crops unless they made the lease good." Dillahunt also proposed a resolution to the strike. "I told them if they would pay my expenses on the crop I would go on and finish it rather than quit the crop."[86] Finally, Dillahunt "offered to leave the dispute to any three men in Jones County." Farmers often turned to informal groups of arbiters to settle disputes and avoid the costs, delay, and formality of courts.[87] But the Pollocks, who would file suit in Lenoir County, could wisely doubt the impartiality of mediators from a neighboring county where their tenant's father, Lafayette Dillahunt, Sr., filled the powerful role of county commissioner. Perhaps next year, the Pollocks would find that taxes on their 1000 acres of Jones County fields, swamp, and timber had mysteriously increased.

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[85] Pollock v. Dillahunt, W.A.J. Pollock testimony.
[86] Pollock v. Dillahunt, Dillahunt testimony.
[87] "We would advise every farmer to avoid disputes, and, above all, keep out of the courts. If your neighbor is dissatisfied, go to him and propose to submit the matter to arbitration. Even make a concession sooner than go to law." "Lawsuits Among Farmers," *Southern Planter,* August 1886. Farming associations like the Agricultural Wheel and the Patrons of Husbandry expected members to settle petty disputes through arbitration panels composed of fellow members. "Our Legal Briefs," *Southern Cultivator*, February 1887; "The Patrons of Husbandry," *Southern Cultivator,* March 1896.

When the tenants brought the unsigned lease to William D. Pollock's attention in the summer, the novice attorney promised to correct the error. But he never fixed the lease. The tenants' threats and actions convinced the Pollocks that they did not want to work with these men beyond the current season. Instead of adding his mother's signature to the original lease, William D. Pollock decided to throw out the old contract and make the tenants sign a new one. In October, 1888, the Pollocks offered the tenants an amended lease, which strengthened their legal power to kick out the tenants by adding a new clause allowing the landlords to "reenter on the said land and dispossess" Cox and Dillahunt for failing to conform to the lease's conditions. To combat any inference that the lease was drafted against the property rights of its owner, and thereby invalid, the clerk of the superior court "privately examined" Rachel Pollock on October 15, 1888, and confirmed "that she doth still voluntary assent thereto."[88] Cox and Dillahunt declined to accept the new lease. It was a smart move: leases of land for three years or more were "void unless put in writing and signed by the party to be charged therewith."[89] The landlords had taken the option opened by coverture to make a new lease, but created a legal mess. Not only did they have no contract going forward, but their rights to the present year's crop were also in doubt.

In the absence of agreement, the landlords decided to act. After the tenants rejected the second lease and failed to pay the initial installment of their rent in October, William D. Pollock "demanded peaceable possession of the land." When Cox and Dillahunt refused to leave, he "told them I would have to take out papers."[90] Pollock

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[88] Pollock v. Dillahunt, Plaintiff's Exhibit.
[89] *Busbee's North Carolina Justice and Form Book*, 335.
[90] Pollock v. Dillahunt, W.D. Pollock testimony.

obtained an order of removal on October 16, 1888, and sent a sheriff to seize the tenants' "entire crop of cotton, corn, fodder, potatoes, rice, ground peas, oats, and other produce," which remained largely ungathered in the fields. His uncle and financial backer, S.H. Loftin, posted the $200 bond needed to back the seizure.[91] From late October through February, Pollock and an overseer, George W. Rhodes, scrambled to take over the operations of the tenant farm and turn a profit. Cotton was still standing unpicked in weed-choked fields as late as January.[92]

Striking gave Cox and Dillahunt leverage during the growing season, when the labor market was tight, but by the fall, Pollock could draw on a pool of African-American families seeking wages by the day to pick the cotton, dig up the potatoes, haul and shuck the corn, stack the peas, and split rails. "We hired labor to house the crop," he testified. "We got labor as cheaply as we could and soon as we could."[93] The availability of poor black laborers willing to work for fifty cents a day saved the crop. "There is no trouble about getting hands to house crops in that section," a neighbor testified.[94] The workers included farm families like "E. Murphy + his 3 girls," who earned one dollar in total for a day shucking corn. Struggling subtenant Tom Harrison also found work under the new management, earning fifty cents a day for gathering potatoes.[95]

Despite their landlords' efforts to evict them, Cox and Dillahunt stayed on the farm in the fall. They disregarded their landlords' lien, bringing two bales of cotton to New Bern to sell. Although this sale was illegal, Dillahunt said that the Pollocks

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[91] Ibid., Plaintiff's Exhibit.
[92] Ibid., E.E. Hoover testimony.
[93] Ibid., W.D. Pollock testimony.
[94] Ibid., E.E. Hoover testimony.
[95] Ibid., Plaintiff's affidavit of expenses.

customarily allowed tenants to bring a portion of the crop to market before division to raise cash to pay the expenses of fertilizing the soil and picking the crop.[96] The tenants claimed to have the best of intentions—they wanted to help their landlords harvest the crop—but William D. Pollock testified that they "obstructed" his efforts. Pollock said that they "refused to lend me a basket in which to pick cotton" and would not "lend me the scales to weigh the cotton and I had to stop the hands and wait until I could send to Trenton [about four miles away] for scales."[97] In his defense, Dillahunt explained that he could not lend a basket "because [Pollock] took everything" when he ordered the sheriff to seize the crop, including feed for his mules. Rather than watch them starve, Dillahunt sold his team "at half price."[98] He also defaulted on his debt to merchant A. Mitchell, who repossessed his remaining mule.[99]

After the hailstorm, the tenants thought they should be excused from paying a rent too high to succeed on an undeveloped plantation during an unpromising year. When claims of fairness did not sway their landlords, they developed a set of legal and extralegal justifications for breaking the contract based on their market position, their own labor contracts, the law of coverture, and their authority as white men. The Pollocks, too, responded with a mixture of informal and formal strategies, establishing their ownership of the crop by force and legal remedy. It would take a court to sort out which side was right.

C. Settlement and Unsettlement

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[96] Ibid., Dillahunt testimony.
[97] Ibid., W.D. Pollock testimony.
[98] Ibid., Dillahunt testimony.
[99] Ibid., A. Mitchell testimony.

Although they formally surrendered possession of the land in March 1889, Cox and Dillahunt continued to pursue their rights to the 1888 crop in court. The Pollocks claimed the right to keep the full value of the rent of ten bales of cotton—about $400—plus the cost of advancements and damages of $200, which reflected their costs for gathering and housing the cotton, corn, ground peas, and other crops. The tenants argued that that the full value of the crop was $1,400. They claimed ownership of all of this crop, except for the value of a reasonable rent of no more than one-fourth of the cotton and one-third of the corn. The tenants also doubted that the cost of gathering and housing the crops was more than sixty dollars. Both the landlords and the tenants owed money to the same merchant, Rachel Anne Loftin Pollock's brother, S.H. Loftin, for the expenses of making this crop. This merchant, however, was not named as a party in the lawsuit. On its face, the dispute was a basic question of fact grounded in custom and market: what was the value of the crop and a fair rent for the land? Underlying the factual dispute was a deeper balance of rights. When would the law sanction the breaking of contracts? How did the outcome vary when the tenant or sharecropper was black or white, politically connected or disfranchised?

Under North Carolina law, neither tenants nor sharecroppers held legal ownership of the crop before settlement. Possession awaited a full accounting of the debts they owed to the landlord and, if they had secured advances elsewhere, to a merchant. These calculations tested a complicated set of financial and legal arrangements when the hierarchy of capitalist agriculture competed over control of the harvest. Many of the cases marked "landlord and *tenant*" in the appellate records were actually disputes between

landlords and creditors over rights to the crop.[100] They fell under the capacious heading of landlord-tenant law because the legal status of the parties involved—landlord, tenant, subtenant, sharecropper, hired hand—determined how the crop would be distributed.

Settling this chain of obligation and debt began informally, with the division of the crop. Landlords with small-scale holdings would travel to the farm two or three times during the cotton-growing harvest to monitor the weighing of the cotton as tenants, croppers, and laborers brought it in from the field. A scale could be as basic as two jute bags balanced on a wooden tripod. Once the landlord and the growers divided the crop, they might house it on site or haul it by wagon to a cotton gin for processing and shipment. Absentee landlords or merchants holding chattel mortgages on the crop expected their tenants and croppers to bring the crop directly to a cotton gin, where the gin operator would weigh the product and determine each party's respective share.

After the crop was picked, housed, and processed, the accounting began. For tenants and sharecroppers, a fair settlement depended on nature, the market, and their whims of their creditors. When they made credit agreements in the beginning of the season, tenants, croppers, and farm owners guessed how much their land could yield and borrowed enough to cover the costs of production. "People calculate in the spring to make too much," noted a Richmond County landlord, "and when gathering time comes, it finds them behind." Nature took the first cut. A tenant who gave a $200 mortgage on his crop to a merchant might find that after a season of drought or too much rain, he had a short crop worth only $150. "So when he comes to settle with the merchant he finds himself fifty dollars behind; and so on, he keeps falling behind until the first thing he

[100] Woodman, "Post-Civil War Southern Agriculture and the Law," 330.

knows, he is sold out, root and branch."[101] The same could be true in seasons of abundance; if a surplus of cotton or tobacco flooded the market, the price would be lower than amount borrowed, leaving the borrower with a loss.

But even in years where price and yield met expectations, borrowers fell behind. Fraud hit African American borrowers the hardest, because their access to formal and informal redress was so narrow under the expanding regime of Jim Crow. Landlords and merchants tallied their accounts and saddled black debtors with higher-than-promised interest rates, bills for goods never purchased, and withheld wages. Some landlords cheated him and "got mighty nigh all I made," remembered sharecropper Addy Gill, while others "looked out" for him and helped him prosper.[102] Good landlords, according to Northampton County's Roland Maddrey, kept a dual set of account books, so that "every time a bag o' fertilize is bought or a dollar's borrowed it's set down in my book and theirs just alike." And they wrote-off small debts. "Last year the colored feller that had a crop with me fell behind $36, but when he moved I let him take his share of the corn away with him. I say let 'em have the corn. You can't strip a man right down to the bottom like that."[103] But many tenants and croppers found it unthinkably dangerous to

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[101] North Carolina Bureau of Labor Statistics, *Second Annual Report* (1888), 417.
[102] Addy Gill, Interview, *Slave Narratives: A Folk History of Slavery in the United States from Interviews with Former Slaves* 11, pt. 1 (Washington, DC: Library of Congress, 1941), 326, last accessed February 23, 2015, http://memory.loc.gov/mss/mesn/001/111.pdf/.
[103] Bernice K. Harris, "Sharecropping's the Best," n.d., typescript in Federal Writers' Project life histories files, file 419, SHC. Born in 1897, African-American sharecropper Andrew Strong of Pitt County, North Carolina, also remembered having dual account books with his furnishing merchant. Andrew Strong, interview by Karen Ferguson, August 3, 1993, interview 723, audiocassette, Behind the Veil: Documenting African-American Life in the Jim Crow South, John Hope Franklin Research Center, DU (hereafter cited as Behind the Veil Project), last accessed February 23, 2015, http://library.duke.edu/digitalcollections/behindtheveil_btvnc06022/.

challenge a lender's estimation of their debts without the support of a powerful patron.[104] Bessie Mills Spicer, born near Kinston in 1913, recalled that her sharecropping parents knew arithmetic and tracked how much their landlord owed them, but "back then what the boss man said went."[105]

In Dillahunt and Cox's case, of course, the tenants were white men of property with unmediated access to their landlords and the civil courts. What distinguished the Pollock case from an ordinary settlement was not just the relative power that the tenants enjoyed, however, but the way that the landlords set the terms of engagement by seizing the crops before division. The Pollocks claimed their tenants' crops while most of the cotton and corn remained standing in the fields. It was their statutory right. Under the first section of the Landlord-Tenant Act of 1877, a landlord could bring "a claim for the delivery of personal property" against tenants, sharecroppers, or creditors who removed a portion of the crop without the landlord's consent. The Pollocks did not need to wait until division to bring this action because the tenants were openly selling the undivided crop down the Trent River in New Bern. Even if, as Dillahunt claimed, such sales were customary, they technically violated the law, giving the landlords grounds to call the sheriff.

Unsurprisingly, merchant S.H. Loftin was underwriting the preemptive seizure. The best predictor of whether a landlord-tenant dispute would actually get to court was

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[104] William Alexander Percy, *Lanterns on the Levee: Recollections of a Planter's Son* (1941; repr., Baton Rouge: Louisiana State University Press, 1973), 283. For examples of patronage, see T.J. Woofter, Jr., *Landlord and Tenant on the Cotton Plantation* (1936; repr., New York: De Capo Press, 1971), 204-205.

[105] Bessie Mills Spicer, interview by Rhonda Mawhood, August 12, 1993, interview 721, Behind the Veil Project, last accessed February 23, 2015, http://library.duke.edu/digitalcollections/behindtheveil_btvnc06020/.

the presence of third parties with a strong financial or legal stake in the case. In fact, most of the civil suits brought to the Lenoir Superior Court in the late 1880s were among the merchant class; landlords and tenants appear as collateral participants in these disputes.[106] Given the variety of other creditors in play and the likelihood that the tenants would sell more of the crop at market, Loftin surely put pressure on the Pollocks to make the seizure before the harvest was over to protect their mutual interest in the crops.

Loftin also worried that the landlords would let the debt slide to the next year, a common practice for those on longer-term leases. In September 1885, for example, Halifax County landlord Thomas Carroll allowed his fixed-rent tenant J.E. Bennett to gradually pay back his rent following a "short" cotton crop. Bennett then wrote to his landlord in December and January, promising to do his best to pay it back. "I have tried Every where I knew of to borrow it but it seems impossible for me to do that." After paying his bills for guano and property taxes, there was "less than nothing left." But he promised that this year's crop "is better than I Ever seen it." "I think you will get a fair rent this time, which is more than have got for several years past."[107] Bennett planted tobacco in 1886, but barely earned enough to pay for the guano plowed under it.[108] In May 1887, Bennett again asked for forbearance, claiming that all of his neighbors were equally distressed by low crop prices.[109]

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[106] Some cases were debt suits among local storeowners, seeking to collect the balance on past due notes. Others were instigated by wholesalers from Baltimore, Philadelphia, and Newark against shopkeepers who defaulted on ninety-day notes issued to finance their purchase of fertilizer, farming implements, and packaged food. See generally Civil Action Papers, 1880-1900, Lenoir County, NCDAH.
[107] J.E. Bennett to Thomas Carroll, January 22, 1886, Correspondence: 1870-1914, Thomas Carroll Papers, DU.
[108] Ibid., September 28, 1886.
[109] Ibid., May 19, 1887.

For a sense of how suing the tenants directly would have saddled him with heavy and unprofitable burdens, Loftin might have considered the case of a Lenoir County neighbor, Patrick Byrum. In 1888, Byrum was farming "on the land of W.C. Hines." He was also his wife's tenant, working land she owned as her separate property."[110] This tenant owed money to a merchant, Henry Dillon. The merchant sent a sheriff to serve papers on Byrum and clear out enough of his property to cover the debt. The sheriff took "one ox, one mule, Hogs, Cotton, corn, fodder, Rye, Rice, Syrup, Potatoes, cotton seed + farming implements." By law, Byrum had five days to challenge this seizure, but he declined, and the sheriff delivered the property to the merchant's custody.[111]

Selling this property at auction netted $451.37, but that amount was offset by the cost of labor and land. The sheriff subtracted $158.23 from that sum for the cost of labor. Three "hireling" workers took about twenty dollars in laborer's liens on the crop and had to be compensated. Another $139.23 went to the hands who brought in the crop. And the landlord got his annual rent of twenty-five hundred pounds of lint cotton. "The land rent had to be paid before I could sell or dispose of anything," the sheriff reported. "[A]fter I had settled with Landlord the above items were advertised + sold as stated."[112] Managing the liquidation of a tenant farm was much more complicated way of collecting a debt than the merchant's preferred remedy of the default, or uncontested, judgment.[113]

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[110] Dillon v. Byrum, Civil Action Papers, 1888, Lenoir County, NCDAH.
[111] Ibid., Sheriff's Affidavit.
[112] Ibid., Memorandum of personal effects sold for account of Patrick Byrum, December 6, 1888.
[113] Creditors looking to expedite debt collection had the right to "split up" their accounts against a debtor and bring separate actions before a justice of the peace. By allowing them to bring larger debts under the justice of the peace's $200 limit, they multiplied the fees that the judge could collect from the debtor. Caldwell v. Beatty, 69 N.C. 365 (1873). This strategy helped merchants avoid the delay of filing the action with the Superior

Unlike Patrick Byrum and most other indebted tenants, Cox and Dillahunt challenged the seizure of their crops in a trial before a local justice of the peace. This strategy was a long-shot. Tenants stood little chance of beating a crop seizure when their obligations were written in their lease. Instead of serving as a place of restitution for agricultural workers, township-level justice of the peace courts were largely forums for creditors to obtain uncontested judgments against debtors. If, as was common, a debtor did not file an answer to a debt suit, a default judgment would enter against him.

Justices of the peace earned their fees by collecting debts, much like the sheriffs hired by merchants and landlords to seize debtor property. Many served as pet tribunals for powerful merchants. Around the turn of the century, Clarence E. Fesperman of Salisbury, North Carolina, was indebted to a merchant who had advanced him money to open a store. Although Fesperman had no legal training, this creditor advised him to get out of the furnishing business, and to take up the judge's robes. "I'm going to get you appointed a justice of the peace. All you have to do is get a vacant room near the court house (an' I've got one empty, I'll let you have cheap) and sit there and try small cases." Fesperman admitted that his merchant backer was the source of much of his fees. "He give me lots of cases himself against people owing him." His decisions favored creditors. "I always figure a man ain't going to sue another man out of a clear sky, you might say, and I always give judgment for the plaintiff, if I see there's a lot of argument for the

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Court, cut other creditors in line, and ensure that they would have a favorable forum for bringing their suit. But they had to do the paperwork right. One promissory note could not be collected in separate suits, but "a series of separate charges for goods sold and delivered at different times, or for labor performed at different times," could be the subject of different actions. Kearns v. Heitman, 104 N.C. 332 (1889).

plaintiff. If I see there's a lot of argument for the defendant, I shade the amount and that seems to work fine for both.[114]

Renters sought justices of the peace with an eye towards settlement. In 1939, Eric Norfleet, magistrate in the eastern county of Northampton, claimed that he tried to keep landlord-tenant cases out of court because he knew that illiterate tenants could not prove the terms of their oral contracts against the "complete itemized account" of the landlord. "Instead, I talk the situation over with the landlord, present the tenant's complaint, and as a rule I'm glad to say the landlord is usually reasonable and will settle the complaint satisfactorily."[115] Justices of the peace fashioned out-of-court compromises to save landlords, tenants, and the many witnesses they might call from the time and expense of trial.[116]

In the Pollock case, the parties stood too far apart to settle out-of-court. Furthermore, the landlords could not rely on their contract to pursue an uncontested judgment because the very basis of their argument was that no contract existed. The issue of crop ownership reached a judge during the Superior Court's August 1889 term. The

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[114] William E. Fesperman, "The Magistrate," n.d., typescript in Federal Writers' Project life histories files, file 512, SHC.

[115] Bernice K. Harris, "Eric Norfleet, Judge of Recorder's Court," February 11, 1939, typescript in Federal Writers' Project life histories files, file 458.

[116] Few records of these settlements exist besides marginal notations on the sides and backs of civil complaints and sheriff's warrants that the case was "off." One example survives in the files of a shoemaker and part-time justice of the peace from Forsyth County, E. Burton Linville. On December 19, 1898, farmer Joseph Nelson and his creditor, William Westmoreland, met at the justice's home to discuss a compromise. Nelson owed Westmoreland for furnishing his tobacco crop. The justice of the peace negotiated a delay of the trial, during which possession of the crop would remain under the farmer's control. Any tobacco sold would have to be applied to the debt. In March 1899, with trial still pending, the parties reached another out-of-court settlement through the mediation of two justices of the peace. Farmer Nelson paid $4.19 to his creditor, ending the matter. Nelson v. Westmoreland, December 19, 1898, file: 1842-1905, E. Burton Linville Papers, DU.

court assigned the case to W.R. Allen, an attorney who served as a judicial referee, a common practice to handle the overflowing docket of this overtaxed court of civil and criminal jurisdiction.[117] By this point, the issue of tenure was settled—the tenants agreed to vacate the land—but the referee was asked to decide who owned the 1888 crops.

After gathering two-dozen pages of testimony at a hearing on September 27, 1889, the referee took the tenants' side even as he adopted the landlords' contentions about their contractual negotiations. Cox and Dillahunt did not have a binding lease with the Pollocks because Rachel Pollock never gave her written consent to their original contract. She could have cured the problem by signing the original lease, but she chose not to. Instead, she attempted to nullify that agreement by drafting a new one, which Cox and Dillahunt never signed. The result was two unilateral contracts, but no binding agreement.

At this point, Referee Allen could have implied the existence of a reciprocal landlord-tenant agreement based on abundant evidence of the social and economic relations between the parties. But he didn't. Instead, he decided that because the Pollocks had repudiated the contract, "the relations of the parties so far as the right to recover possession of the crops is concerned were as if no such writing had ever been made," which meant "the relation of landlord and tenant did not subsist so as to entitle the plaintiff to an action for the possession of the crops." Even if that relation were imputed, he added, the landlords did not have the right to seize the crops when they did because "the crops were ungathered and not ready for division." The referee awarded the tenants $800 to compensate them for losing the crops, along with costs and interest. With cotton

[117] Pollock v. Dillahunt, Reference to W.R. Allen.

selling at forty dollars a bale, their compensation equaled twenty bales of cotton, or twice their annual rent under the original contract.[118]

Cox and Dillahunt's bargaining strategy worked far better than they could have planned. By stopping work, they pushed their landlords to make two legal blunders—repudiating their lease and prematurely pushing out their tenants—in the interest of saving the crop. Referee Allen's ruling must have shocked the expectations of the Pollocks and their son, although there is no evidence that they appealed it. The tenants' behavior trampled on the landlords' statutory rights as property owners and offended the era's ideology of contract, yet the referee did not even mention the tenants' labor strike *once* in his eight-page report. Given the overwhelming power afforded to landowners, they could expect a court to ratify a repudiation and eviction where their tenants threatened their lien. While an exceptional outcome, this case preserves in fine detail the nature of tenancy's legal culture in a place where family ties, political influence, and legal inequalities defined by race and gender emboldened some unpropertied white men to act above the law.

William D. Pollock must have learned a valuable lesson about the law. He went on to have a successful career in law and politics, becoming mayor of Kinston in 1892 and a Democratic Party insider serving on the staffs of Progressive-era Governors Aycock and Glenn. As a naval reservist, Lieutenant Pollock led one of the first military divisions to suppress the Wilmington Riots of 1898, "and for six days and nights he and his boys did outpost duty in the worst holes and corners of 'Brooklyn,' 'Gooseneck,' and

[118] Ibid., Referee's Report.

'Dry Pond' without one hour's rest."[119] His legal practice also soared, thanks to the abundant legal problems in store for his best client, S.H. Loftin, after his bank collapsed at the turn of the century. Loftin racked up five thousand dollars in legal fees to his nephew. As their fortunes diverged, relations between the two men never healed. Another Loftin nephew saw an "eloquently" dressed Pollock laugh at the disgraced merchant on the courthouse steps of Kinston, asking him when he would get some "decent clothes."[120]

Lafayette Dillahunt also turned to politics, obtaining the position of county sheriff in 1891.[121] Now he would be the man who rounded up the livestock and pigs, tied heaving piles of cotton and grain to his mule-drawn buggy, and carted away the dreams of the county's debtors. He died a few years later. Dillahunt's estate, administered by his father, contained $120.89, two horses, one mule, and two notes for $16 and $11, "said notes doubtful."[122]

All relations of property and contract have a hidden history. Despite decades of legislative, judicial, bureaucratic, and scientific efforts to systematize agricultural relations, each season was unpredictable. When the crop was short, draft animals became sick, labor went on strike or abandoned the fields, or a merchant claimed a portion of the year's yield for an old debt, the law of landlord and tenant attempted to manage the rights

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[119] "Professional Men in Kinston" (1906), available at http://files.usgwarchives.net/nc/lenoir/industrial/issue21.txt. On the Wilmington Riot, see the *Final Report of the 1898 Wilmington Race Riot Commission* (2006), available at http://www.history.ncdcr.gov/1898-wrrc/report/Chapter5.pdf.
[120] S.H. Loftin, North Carolina Estate Files, Lenoir County, NCDAH, last accessed February 20, 2015, http://familysearch.org/.
[121] *Public Laws, North Carolina, 1891*, ch. 116 (Raleigh: 1891), 103-104.
[122] Lafayette Dillahunt, Jr., North Carolina Estate Files, Jones County, NCDAH, last accessed February 20, 2015, http://familysearch.org/.

of multiple claimants to the fruits of the land. But what held this system together? At one level were the personal relationships between landowners, agricultural workers, and merchants, and the shifting alliances that followed from relations of kinship, patronage, and credit. At another level were the legal relationships among these claimants, including the often-significant distinctions between hired hand, sharecropper, subtenant, and tenant. Hanging over the personal and the legal was the state. Not only did the state have the power to recreate the contractual remedies available to landlords, tenants, and merchants, but it could make criminal a range of behaviors once held to be customary and exclude African Americans from access to the courts and police, leaving them vulnerable to vigilante violence.

In the environment of credit constituted by agricultural rhythms, what remains remarkable about these cases is the way that tenants and croppers insisted on their rights as contractors entitled to equal treatment under the law, even as the law singled out landlords as special interests based on their rights as property-holders. Sometimes, as Cox and Dillahunt discovered, the way to beat the system was to undercut it root and branch.

To understand the persistence of sharecropping, scholars must take a closer look at what they mean by the credit crisis of the South. When entrepreneurial tenants like Cox and Dillahunt contracted out of sharecropping, they strained a complicated set of social and financial arrangements. Sharecropping structured the everyday relations of power among landlords, farm laborers, and merchants, and it endured because of the law's uncertainty. Layers of statutory and common law rules, interpersonal contracts, customary practices, and the everyday coercions of debt and violence made the impact of

simple adjustments to the sharecropping system hard to predict. The stasis of sharecropping simplified the legal complexities of this unfree market.

Chapter Four.

The Spirit of the Laws: Tenancy, Debt, and Crime in North Carolina, 1865-1920

During his final term as a United States Congressman in February 1900, George Henry White testified before the Congress' Industrial Commission on Agriculture and Agricultural Labor about the crisis facing African-American farmers in the black-majority second district of eastern North Carolina. Two decades after the Exodus hearings, the crop lien system had become a commanding institution shaping the boundaries of freedom, leaving many an indebted renter "mortgaged to the land himself."[1] An African-American legislator and former public prosecutor, White described a web of laws and customary practices that had made rent collection a criminal procedure, turning landlords, overseers, and merchants into their own prosecutors.[2] As White explained, "[i]t is difficult for man to live on premises for a time without violating any law—if not the spirit, some part of the letter. [The landlord] uses that as a lever to hold them over, under a promise of immunity from prosecution in the courts. Frequently that is true."[3]

Drawing on local and appellate court records, landlords' business and family correspondence, and government reports, this chapter builds on George Henry White's testimony to explain how the largely African-American households of tenant farmers, sharecroppers, and hired hands in eastern North Carolina negotiated the agricultural

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[1] U.S. Industrial Commission, *Report of the Industrial Commission on Agriculture and Agricultural Labor*, H.R. Rep. No. 57-179, vol. 10, at 419 (1901) (hereafter cited as *Report of the Industrial Commission*).
[2] On his career, see Benjamin R. Justesen, *George Henry White: An Even Chance in the Race of Life* (Baton Rouge: Louisiana State University Press, 2001).
[3] *Report of the Industrial Commission,* 420.

credit system, avoided the traps set by their landlords and creditors, and navigated a judicial system that had slipped out of their control in the postbellum years. It begins by establishing the jurisdictional lines of the North Carolina court system, the powers of its judges, court officers, and attorneys, and the informal and formal bargaining that surrounded judicial decision-making and the enforcement of criminal law. It then focuses on three areas of criminal law—larceny, removing the crop, and false pretenses—to develop a clearer picture of how working-class and often illiterate people engaged with the North Carolina legal system and understood their legal rights and remedies.

Figure 4-1: George Henry White[4]

North Carolina's criminal justice system ultimately adopted most of the worst features of postwar Southern justice, yet was distinguished by important differences, particularly in the years preceding the devastating mass disfranchisement campaigns of the late twentieth century. Like in the Cotton Belt of the Deep South, African-American

[4] *Wikipedia*, s.v. "George Henry White," last modified May 2, 2015, https://en.wikipedia.org/wiki/George_Henry_White.

families composed the majority of the farm labor population in the mixed-agricultural eastern counties of rural North Carolina. But this region's relatively cold climate, thinner soils, and access to urban markets meant that the region had a more diverse economy than the Cotton Belt, cheaper land, and a more politically empowered black working class.[5] George Henry White was the most prominent of a substantial cadre of local judicial, legislative, and administrative leaders who were African-American or depended on black voters to stay in office. If simple justice was going to occur anywhere in the former Confederacy, it would have to start here.

Yet even the most sympathetic magistrates and sheriffs were limited by the deep structures of inequality created by postwar lawmakers. George Henry White opened his remarks by attacking the homestead exemption laws, enshrined by Republican lawmakers in the state's 1868 constitution, which allowed debtors to shield $1,000 worth of real estate and $500 worth of personal property from creditors. Voicing a common complaint, White claimed "nearly all debts that could be collected in the absence of the homestead are now reduced to criminal offenses." White conceded that "the homestead law was intended as a benefit to the poor man" but it created the unintended result of pulling simple debt cases into the criminal justice system. The landlords, he believed, were "almost forced for their own protection to invoke this criminal law to collect what

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[5] In Warren County, North Carolina, historian Steven Hahn speculates, "it is difficult to know just how much justice they secured," yet black officials did create a political base that withstood Redemption and protected black economic gains, perhaps contributing to the unusually high land ownership rate in this eastern county—almost one-third of black farm operators—by 1900. Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge, MA: Harvard University Press, 2003), 238, 245; Deborah Beckel, *Radical Reform: Interracial Politics in Post-Emancipation North Carolina* (Charlottesville: University of Virginia Press, 2011); Eric Anderson, *Race and Politics in North Carolina, 1872-1901: The Black Second* (Baton Rouge: Louisiana State University Press, 1981).

otherwise they could under the civil procedure."[6] Designed to shield the family economy from the dangers of this marketplace, ordinary people and elites alike blamed exemptions for raising the cost of credit and spurring lenders to collect debts by criminal and extralegal means. "If the homestead law was killed," argued a Harnett County tenant in 1887, "that would kill the mortgage system, and that would help the laboring man" by reducing the price of goods bought "on time."[7] Critics assumed that access to credit would expand if the legislature eliminated exemptions and made "every man's coat on his back responsible for the debts he contracts."[8]

Besides reducing access to credit, lawmakers believed that homestead exemptions produced vigilantism and unduly expand the reach of criminal law. If most litigants were immune from money judgments, asked North Carolina Supreme Court Justice Richard Pearson in an 1872 opinion, "how can a man prevent another from uttering slander or seducing a daughter, or from instituting a malicious prosecution, if he has no mode of recovering damages?" The irony was that a policy designed to protect the home was actually hurting it by taking away its offensive options. The only alternative, Pearson suggested, was "to provide a public remedy in the stead of the private remedy, by making all such injuries, indictable as misdemeanors." The path of the law would not be toward a system in which all harms could be abstracted into monetary terms, but would remain punitive and sanguinary, a legal culture in which "every one is put at the mercy of the vicious and ill-disposed, and will be driven in the absence of all protection, either by

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[6] *Report of the Industrial Commission,* 418.
[7] North Carolina Bureau of Labor Statistics, *First Annual Report* (Raleigh: 1887), 128.
[8] North Carolina Bureau of Labor Statistics, *Eighth Annual Report* (Raleigh: 1894) 176-77.

indictment or by civil action which can be made effectual, to take the law, into his own hands."[9]

Unlanded families in George Henry White's district, and across the South, were already living in Justice Pearson's dystopia. Although the federal and state constitutions banned imprisonment for debt, every man's body, not just his coat, could be liable for the risks he took under the crop lien system to keep his family fed, clothed, and sheltered. White informed the Industrial Commission that landowners used criminal remedies to recover debts, enforce labor agreements, and, among a few landlords "of very small caliber," entrap tenant households into debt peonage.[10]

Law enforcement began in the household, as landlords punished renters and hired hands with criminal law for petty infractions. Under North Carolina's larceny statutes, for example, theft of even small amounts of property was a felony. White testified that during his eight-year's service as a local prosecutor in the 1880s, North Carolina law failed to distinguish between petty and grand larceny. As a result, he brought cases against "a good many men who were sent to the penitentiary for stealing a chicken worth 25 cents," often for terms of six months to one year. Larceny charges were easy for landlords to prove and expensive for the accused to fight; many tenants and croppers got their cases dropped by agreeing to work off their fines through labor to their landlords.

Landlords could also turn to the criminal sanctions available under landlord-tenant law and the chattel mortgage system. As discussed in earlier chapters, the landlord-tenant laws of North Carolina allowed landlords to bring criminal charges against tenants who removed a crop without paying their rent or advances. A tenant with

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[9] Dellinger v. Tweed, 66 N.C. 206 (1872) (Pearson, J, dissenting).
[10] *Report of the Industrial Commission,* 421.

an unpaid lien, said White, "could not use a peck of potatoes or meal" on rented or sharecropped land without a landlord's permission, or he could face prosecution, fines, and imprisonment.[11] White could also have discussed how tenants and small landowners who gave chattel mortgages on their real or personal property to merchants could be arrested if they attempted to "dispose" of mortgaged property without first paying off their debts to their creditors (see chapter one).[12] In addition, in 1889, North Carolina lawmakers passed a law punishing contract breaking as an act of fraud.[13] With the support of local justices of the peace and prosecutors, who earned fees through prosecuting these offenses, landlords used criminal law to extort the labor and resources of tenants and their families.

The outcome of these cases, however, was unpredictable, particularly when they were heard at the superior courts, which stood between the local justice of the peace and the Supreme Court. One superior court judge who served during White's term "positively refused to notice any stealing of a watermelon or a little chicken as too trivial a matter for a court of justice to take up" and would require him to drop the charges and enter a "nolle prosequi" into the record.[14] Stealing a piece of fruit could bring a felony charge in North Carolina, but prosecutors had discretion not to pursue the case.[15] This was not an uncommon decision. Around one-fifth of the criminal cases disposed of in the state's superior courts were marked "nolle pros" in statistics gathered by North Carolina's

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[11] Ibid., 416.
[12] *Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Session of 1873-1874*, ch. 31 (Raleigh: 1874) (hereafter cited as *N.C. Laws*, with appropriate date).
[13] William Cohen, *At Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control, 1861-1915* (Baton Rouge: Louisiana State University Press, 1991), 240.
[14] *Report of the Industrial Commission,* 417.
[15] *N.C. Laws, 1868-1869*, ch. 251 (Raleigh: 1869).

attorney general at the turn of the twentieth century.[16] More remarkably, a review of superior court docket books from George Henry White's home district of Craven County between 1880 and 1902 shows that prosecutions for removing the crop without satisfying a landlord's lien were a tiny portion of the court's docket and produced just one finding of guilt in its chambers.[17] As discussed in chapter two, legal formalism undermined the laborer's lien but also elevated the rights of a renter's "actual possession" in the crop, allowing croppers like George Copeland to escape criminal prosecution. Such tactics became critical for lawyers defending renters from the criminalization of agricultural life.

A. The Politics of Debt Collection

Planter A.H. Arrington was among the most powerful men in Nash County, North Carolina, before and after the Civil War. By convincing the men and women he once owned to work for him as wage laborers and sharecroppers, and furnishing them with farming supplies, food, and the spelling books they desperately needed to rise out of poverty, he kept his family's place in the county's rural elite. Arrington understood that his land had little worth without his laborers' diligent work. He cultivated loyalty from some of his former slaves by selling them land or setting them up as overseers.[18] But for most of the African Americans who left slavery with the last name Arrington, it was the annual cycle of debt that kept them laboring on the Arrington family plantations. In

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[16] See generally, *Biennial Report of the Attorney General of the State of North Carolina.*
[17] Criminal Docket Books, Craven County Superior Court, 1880-1902, North Carolina Department of Archives and History, Raleigh (hereafter NCDAH).
[18] One of Arrington's former slaves, W.W. Arrington, testified before the U.S. Senate in 1880 about his experiences as a salaried plantation manager, and described his boss as "a perfect gentleman, if there ever was one." Select Comm. to Investigate the Causes of the Removal of the Negroes from the Southern States to the Northern States, S. Rep. No. 46-693, pt. 1, at 252 (1880) (hereafter cited as Exodus Hearings).

December 1867, Arrington carefully compiled the expenses each worker had incurred and deducted them from the grower's wages. He rolled these debts into the labor contracts he drafted for the following year.[19] Every year, his account books show that some of his croppers and hands quit before paying for their furnish, preferring to forfeit their wages than wasting their time in fruitless labor. On August 17, 1869, Westley Griffin "quit work," leaving the landlord's account books with unpaid debts for molasses, corn meal, bacon, tobacco, and hams.[20] Enforcing labor discipline demanded a robust system of contract enforcement. Yet designing this structure was no straightforward process.

Court records only capture hints of the debt collection practices used by landlords and merchants. Most collections occurred in the shadow of the law, through informal settlements often paid through the debtor's labor. Rina Bailey paid her debts to Anson County merchant J.T. Saunders by washing his clothes, while Lander Lindsey worked at his store, cut wood, and picked cotton.[21] In letters written to their landlords or overseers, renters begged forbearance, promising to pay their debts when the time was right: when the harvest was in; when crop prices went up; when their sick wife or son recovered from illness. Occasionally, debtors used threats of violence to forestall debt collection. A debtor named C.E. Sears was overheard threatening his creditor A.H. Arrington with a

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[19] Memorandum for Settlements, December 17, 1867, file 43, subseries 3.1.2, Archibald Hunter Arrington Papers, MS 3240, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill (hereafter cited as Arrington Papers).
[20] Account of Westley Griffin, file 47, vol. 14, p. 48, Arrington Papers.
[21] J.T. Saunders Ledgers, 1908-1910, David M. Rubenstein Rare Book & Manuscript Library, Duke University, Durham, North Carolina.

"whiping."[22] At other times, debtors fled the county with whatever assets they could carry, putting themselves out of reach of the local sheriff.

Indebted white householders had far more room to negotiate with their lenders than black families, particularly since they were more likely to own land and personal property that was exempted under the homestead laws. A.H. Arrington's son, the merchant John P. Arrington, was warned by his attorney to seek "liberal compromise" with debtors who would be quick to turn to their homestead rights.[23] Another Arrington son, Samuel, warned his brother, Joseph, not to take on too much risk in his Nash County mercantile business. Getting credit was "easy" compared to the challenge of making settlements with debtors.[24]

By design, homestead laws had never provided much protection for North Carolina's African-American tenant families. Southern lawmakers passed these exemptions "as a useful tool to keep land out of the hands of freedmen and, in time, to re-establish the economic supremacy of white plantation owners."[25] As the conservative *Raleigh Sentinel* wrote in defense of the exemptions when they were under scrutiny during the state's Democratic Party-led 1875 constitutional convention, "[t]he white men of the State are principally interested in this Law. The 80,000 black Republicans have

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[22] D.W. Williams to A.H. Arrington, 5 February, 1868, file 12, Arrington Papers.
[23] Joseph J. Davis to John P. Arrington, 30 September 1874, file 16, Arrington Papers.
[24] S.L. Arrington to Joseph Arrington, 3 January, 1896, file 18, Arrington papers.
[25] Alison D. Morantz, "There's No Place Like Home: Homestead Exemption and Judicial Constructions of Family in Nineteenth-Century America," *Law and History Review* 24, no. 2 (2006): 15; James W. Ely, Jr., "Homestead Exemption and Southern Legal Culture," in *Signposts: New Directions in Southern Legal History*, ed. Sally E. Hadden and Patricia Hagler (Athens, GA: University of Georgia Press, 2013): 289-314; Paul Goodman, "The Emergence of Homestead Exemption in the United States: Accomodation and Resistance to the Market Revolution, 1840-1880," *Journal of American History* 80, no. 2 (1993): 491-96.

few or no homesteads; they never have got that Forty acre homestead their lying Republican leaders promised to give them."[26] Although black asset ownership increased significantly by the end of the nineteenth century in North Carolina, the homestead exemption's core supporters were yeoman white farmers who owned land and productive property and were indebted to landlords and merchants.

Landlord-tenant laws passed after the war severely weakened the homestead exemption. With the exception of wage hands, whose obedience to a contract was usually unsecured by a lien on crops or personal property, tenants and croppers *automatically* waived the exemption on their prospective earnings once they entered a rental contract: the exemption did not apply to crops grown on rented land because, under the Landlord-Tenant Acts, the landlord was the legal possessor of the growing crop. The exemption only applied to property owned free-and-clear by the debtor, and tenants and croppers did not legally own the crop until all of their liens to the landlord were paid.[27]

When a renter's debt was high enough, and informal remedies failed, his landlord or merchant would try to collect the debt in the courts. But when landlords or merchant went after small debts, they found that criminal law was far more expeditious than the contractual remedies provided under landlord-tenant law. Broke tenants and croppers were too cash poor to pay a cent on civil judgments. Instead, criminal law, along with other "extra-economic means" of coercion, backed their rights as creditors, creating a system in which incarceration, fines, forced labor, and violence allowed landlords to win

[26] *Raleigh Sentinel*, July 28, 1875.
[27] Hamer v. McCall, 121 N.C. 196 (1897).

judgments that let them secure the control of labor. Criminal judgments also were a means for households to discipline their family members and servants.[28]

Before the American Revolution, the coercive force of the law on behalf of creditors was unalloyed. Insolvent debtors could be arrested and kept in jail until they paid their debts. During the early republican period, a wave of reform ended imprisonment for debt across the North. The end of bodily takings for debt was rooted in the ideology of free labor, the changing meaning of failure in a capitalist economy, and the practical operations of the credit system.[29] The drive to end imprisonment for debt marked a broader reconsideration of the meaning of contract in an age of free labor. Freedom of contract, as legal historian Robert Steinfeld argues, was a negative right: it meant statutory restrictions on the power of employers to impose penal or pecuniary remedies on their workforce.[30] Although American employers typically could not employ penal sanctions to enforce labor contracts, they could depend on wage forfeiture remedies to control labor mobility. While divisions remained among states, particularly in agricultural regions with seasonal labor demands, postbellum lawmakers increasingly protected workers from both imprisonment for breaking contracts and wage forfeiture.

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[28] Compare England, where capitalist market relations gradually obscured the extralegal force backing the extractive authority of landowners to the rents of tenants and wage-workers. Ellen Meskins Wood, *The Origin of Capitalism: A Longer View* (London: Verso, 2002).

[29] Bruce Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2009); Edward J. Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill, NC: University of North Carolina Press, 2001); Scott A. Sandage, *Born Losers: A History of Failure in America* (Cambridge, MA: Harvard University Press, 2005); Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900* (Madison: State Historical Society of Wisconsin, 1974).

[30] Robert Steinfield, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge: Cambridge University Press, 2001), 315.

At the level of formal law, at least, North Carolina followed this trend after the Civil War. Its landlords and merchants had weaker remedies for collecting debts than their contemporaries in other states of the defeated Confederacy. When they rewrote North Carolina's constitution in 1868, Republican lawmakers included a provision that "there shall be no imprisonment for debt, except in cases of fraud."[31] Furthermore, unlike neighboring legislators, North Carolina lawmakers did not punish contract breaking with imprisonment in the first two decades after the war.[32] Politicians representing the interests of landlords introduced contract enforcement laws regularly during legislative sessions, but legislators resisted expanding criminal penalties for breaking contracts, claiming that punitive remedies would be a "source of oppression and corruption" and that the basis of contract should be "mutual confidence." It would be better for employer and employee to separate, remarked Wilson County Senator Henry G. Connor, a conservative Democrat, during the 1885 legislative session, than to be "held together by fear of indictment."[33]

Further complicating the criminal remedies available to landlords were the political swings of the postbellum years, which changed the character and ideological agenda of the local judiciary. Without judicial support, they could not reliably obtain and enforce judgments against renters. Most landlord-tenant cases began when the landlord or merchant holding a tenant's debt visited a township's justice of the peace, sometimes

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[31] N.C. Const. of 1868, art. I, § 16.

[32] Note that during the reign of the Black Code, lawmakers passed a law that imposed a $200 fine on agricultural laborers who broke their contracts. Alexander, *North Carolina Faces the Freedmen,* 56.

[33] *News & Observer* (Raleigh), January 24, 1885. This "bill for better protection of land-owners" was adversely reported out of committee. Perhaps its defeat is unsurprising, as the law would have made it a misdemeanor for *either party* to break a contract of rent "written and witnessed."

known as the magistrate. A network of justices of the peace spread across hundreds of townships constituted the first and usually only court when a landlord charged a tenant or cropper with removing the crop, disposing of mortgaged property, or other debt-related crimes. "He is always with the people," wrote the editors of the *North Carolina Journal of Law* in a 1904 essay celebrating this ancient office. "His court is open all the time for all purposes, so he is brought and kept in closest touch with the people and per force becomes their adviser in many matters where the amount involved is too small to warrant the employ of counsel."[34] The wide scope of a magistrate's duties meant that he was involved in nearly every legal aspect of life in a rural township: assigning guardianships for orphans, sanctioning marriage, probating wills, and all of the complications in between. A sampling of North Carolina counties from 1889[35] suggests that most rural people lived within a few miles of a justice of the peace, while town dwellers were likely

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[34] "The Justice of the Peace," *North Carolina Journal of Law* 1, no. 4 (1904): 160.

[35] Coastal Perquimans County, with a population of 9,468 evenly divided between whites and African-Americans, had five lawyers but thirteen justices of the peace (one for every 728 people), with three magistrates established in the county seat of Hertford and two or three in each of the surrounding townships. At only 220 square miles, this county had one magistrate for every seventeen square miles. The 500 square miles of Anson County, in central North Carolina on the border with South Carolina, had a larger population but similar demographics as Perquimans (9,212 African Americans and 8,788 whites) and thirty-nine magistrates in eight townships, a ratio of one justice of the peace to every 461 people and twelve square miles. Anson advertised only four lawyers. Edgecombe County, in central-eastern North Carolina, had 26,179 people (18,223 black and 7,956 white), eighty-six justices of the peace in fourteen townships (one for every 304 people), and twenty practicing lawyers. Edgecombe was the same geographic size as Anson, but had a relatively low magistrate-to-land ratio of 5.8. With 19,729 people (13,067 black and 6,662 white), Craven County was double the size of Perquimans yet had almost five times as many justices of the peace—sixty-two spread across nine townships, or one for every 318 people—and twenty-one practicing lawyers. But this low ratio was deceptive given the large size of the county. At 900 square miles, Craven citizens had access to one magistrate every 14.5 square miles. Still, much of the county's population lived in or near New Bern, a city of 8,000, putting a magistrate within a close walk of almost half of the people. *Branson's North Carolina Directory* (Raleigh: 1889), 215-17, 517.

to have a justice of the peace in their neighborhood. Each county was divided into several townships, and each township was supposed to have three justices of the peace chosen by the legislature to serve for six-year terms. Densely settled townships supported additional magistrates.[36]

This familiarity suited the variety of settings where the parties could meet. Justices of the peace in coastal Perquimans County sometimes held court amid the understated dignity of Hertford's Georgian-style cupola-topped courthouse.[37] But they also met in the county's storefronts, the back of commercial buildings, and homes. Magistrate D.E. Winslow heard criminal complaints in his office in the country store of Arthur Nereus Winslow.[38] When Clinton Proctor of Parkville township accused F.W. Humphlett of assault in 1908, justice of the peace T.J. Nixon commanded the sheriff to arrest Humphlett and bring him "before me, at my office in Winfall or my Home."[39] The justice of the peace's wide jurisdiction over everyday problems, and his accessibility to the poor and well-heeled alike, made his office a common setting for resolving disputes in North Carolina's rural counties.

The politics of emancipation and Jim Crow in North Carolina shaped the structure of these local courts and the ability of tenants and sharecroppers to choose magistrates sympathetic to their needs. In the aftermath of the Civil War, Republicans hoped the

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[36] *N.C. Laws, 1876-1877*, ch. 141, §. 4. Mayors could also share jurisdiction over all the "powers and duties" given to the justice of the peace within their respective city or town. *N.C. Laws, 1871-1872*, ch. 195, § 1.
[37] Catherine W. Bishir, *North Carolina Architecture* (Chapel Hill: University of North Carolina Press, 2005), 208n28.
[38] State v. Havord Jones, Criminal Action Papers, Perquimans County, vol. 28, image 156, NCDAH, accessed February 20, 2015, familysearch.org/.
[39] State v. F.W. Humphlett, Criminal Action Papers, Perquimans County, vol. 27, image 353, NCDAH, accessed February 20, 2015, familysearch.org/.

office of township magistrate would provide freedpeople with the means of self-government through local rule. The 1868 state constitution gave voters the right to elect local public officials, creating a framework for self-taught cadre of grassroots leaders—teachers, artisans, storekeepers, and farmers—to become sheriffs, tax collectors, and judges.[40] George Henry White's father, a free person of color before the war who owned a farm and produced turpentine and naval stores, became one of isolated Columbus County's first postbellum justices of the peace.[41]

Democrats regained a legislative majority in 1870 and pushed forward a series of amendments to the state constitution that attacked home rule. In 1877, they established the "county government system," which gave the Democrat-dominated legislature control of justice-of-the-peace appointments.[42] Appointed justices of the peace, in turn, would elect the county commissioners. These men had wide powers over local governance, such as assessing property and school taxes, and creating jury lists.[43] The county government system was an undisguised blow against African-American officeholders. At the end of the 1876-1877 legislative session, thirty members of the House of Representatives from eastern and central North Carolina signed a protest of the new order, questioning why "their voice is stifled, and the powers which belong to the people are transferred to the few members that compose the majority party in the General Assembly," the Democrats. Why did the people retain the power to elect members of the Supreme and Superior Courts, yet "be deprived of the right to select the magistrates, who are to decide between

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[40] Beckel, *Radical Reform*, 66.
[41] Justensen, *George Henry White*, 13.
[42] *N.C. Laws*, 1876-1877, ch. 141, pp. 226-29.
[43] On the powers of the county commissioners, *Busbee's North Carolina Justice and Form Book*, ed. Quentin Busbee (Raleigh: 1878), 216-27.

neighbor and neighbor at their very doors?"[44] The intimacy of local officeholders and their constituents was exactly the problem for Democrats. Historian Eric Anderson suggests that, in black-majority districts, "A dozen magistrates (or constables, or postmasters) were far more provocative than one or two county officers or a state legislator."[45] These provocations were particularly true for offices that required inquiry into the private lives of white constituents.[46]

In the first year of the county government system, political expediency allowed some African Americans to be nominated to serve as magistrates. On the heels of the passage of the county government act, a committee of white members of the House of Representatives protested that the Democrats would abandon their commitment to white supremacy and allow for the appointment of African-American justices of the peace.[47] George Henry White testified in the statehouse during the 1881 legislative session that Democrats had appointed a local justice for his home district of Craven who was "one of the blackest and one of the meanest men in the county."[48] In legislative sessions

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[44] *Journal of the House of Representatives of the General Assembly of the State of North Carolina at Its Session of 1876-1877* (Raleigh: 1877), 875-876 (hereafter cited as *N.C. House Journal*, with appropriate dates); Frenise A. Logan, "Black and Republican: Vicissitudes of a Minority Twice Over in the North Carolina House of Representatives, 1876-1877," *North Carolina Historical Review* 61, no. 3 (1984): 321-24.
[45] Eric Anderson, *Race and Politics*, 251.
[46] In 1871, black Republican power broker James H. Harris dissuaded an African American leader from running for county coroner, worrying that a white man would not care to have an African American enter his parlor to hold an inquest. In 1873, another black politician from Wake County, Friday Jones, criticized Harris for running for the office of clerk of the superior court. Jones claimed that white women, whose separate property could not be sold or leased without their witnessed consent, would not want to bring such a privy examination before an African American clerk. John H. Haley, *Charles N. Hunter and Race Relations in North Carolina* (Chapel Hill: University of North Carolina Press, 1987), 31.
[47] *N.C. House Journal, 1876-1877*, pp. 872-74.
[48] *News & Observer* (Raleigh), January 29, 1881.

following 1877, however, little attempt was made to create racial balance in magistrate appointments.[49]

Still, African American leaders would serve as justices of the peace in North Carolina counties with black majorities after Redemption. They were poised to expand their ranks during the fusion era of the 1890s, which overturned the county government system and returned the nomination and election of the local judiciary to voters. "Those Negro Magistrates can issue warrants to be served anywhere in the county and that Negro constable can serve a warrant anywhere in the county," Joseph Arrington observed after election day in November 1896. "Nearly all the Magistrates in Edgecombe County are Negroes and today's paper stated that there were twenty five elected in Wilmington."[50] In Halifax County, as many as twenty-nine black magistrates held office in 1898.[51] But this proved to be a fleeting victory, as the violent disfranchisement campaigns of the late 1890s blocked thousands African Americans and many working-class whites from the voting booths. In 1896, approximately 120,000 African-American men were registered to vote in North Carolina. That number dropped to just 6,000 in 1904.[52]

Both mass disfranchisement and the reconstitution of the local magistrate were part of the national Progressive movement to reform American political, economic, and social life in response to the disruptions of the industrial era.[53] Legal reformers attacked political offices they saw as inefficient, corrupt, and incapable of handling complicated issues. How could "a highly technical and specialized body of law" be administered,

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[49] Anderson, *Race and Politics*, 57.
[50] Joseph Arrington to Hattie Arrington, November 9, 1896, file 18, Arrington Papers.
[51] Anderson, *Race and Politics*, 251.
[52] Beckel, *Radical Reform*, 204.
[53] Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: University of North Carolina Press, 1992).

asked one law professor, "when we elevate farmers, blacksmiths, carpenters, shoemakers, plumbers and every conceivable kind of laborer and tradesman to the bench of a court of justice?"[54] These reformers sought to centralize judicial power into a hierarchy of appointed or elected chambers whose judges were lawyers receiving a fixed salary. Their courts also specialized, focusing on specific areas of public and private regulation, such as family law, criminal punishment, labor and housing mediation that once constituted the free-flowing responsibilities of the magistrate.[55] Reformers hoped to keep the office of the magistrate out of the hands of unlettered and venal officeholders and ensure that "respectable" white men ran an office that influenced and controlled domestic life and African-American labor. In 1877, lawmakers expanded a network of inferior courts whose jurisdiction paralleled the justice of the peace in misdemeanor crimes, and in 1905, it delegated authority to towns to establish police courts responsible for trying petty crimes.[56] The office of the justice of the peace became more professionalized in the early twentieth century, as trained lawyers joined their ranks. This new generation of "J.P." preferred to be called "magistrates"; as one old-timer joked of this trend, "seems like they

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[54] Chester H. Smith, "The Justice of the Peace System in the United States," *California Law Review* 15, no. 2 (1927): 124.

[55] Nicholas R. Parrillo, *Against the Profit Motive: The Salary Revolution in American Government, 1780-1940* (New Haven: Yale University Press, 2013); Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (Cambridge: Cambridge University Press, 2003).

[56] By *N.C. Laws, 1868-1869,* ch. 178, a range of officials—justices of the peace, mayors, police superintendents, and other "chief officers of incorporated towns"—gained the concurrent power to issue process to apprehend those accused of criminal offenses. In 1877, the legislature gave counties the power to establish "inferior courts." *N.C. Laws, 1876-1877*, ch. 10. Such inferior courts could have concurrent or greater jurisdiction than the justices of the peace, but their decisions had to be appealable to a superior court. North Carolina's Supreme Court provided a history of these developments in *Rhyne v. Lipscombe*, 122 N.C. 650 (1898) (Clark, J.), and *State v. Shine*, 149 N.C. 480 (1908).

think it is more legal soundin'" and it directed attention away from the joke that "'J.P.' stood for 'Judgment for the Plaintiff.'"[57]

Magistrate courts promised freedom from the delay, high fees, technicalities and statutory boundaries of law courts. In counties where the Superior Court opened just twice a year, the office guaranteed "that speedy justice should be brought home with slight cost to the people."[58] Yet, when it came to their rights as debtors, whether the magistrate's court was a helpful or pernicious thing for African-American tenants and croppers depended on the political affiliations, bias, and relative wealth of the judges themselves. Although older forms of discretionary and highly-localized judicial practice had been subsumed into a formalized judicial culture in the postwar years, majority-black voting districts in North Carolina often supported African-American and white Republican magistrates who could bend the law in favor of indebted tenants and croppers.[59] One such justice of the peace, the African-American merchant and postmaster Washington Spivey, led a campaign in the early 1890s to defend the land rights of black farmers and artisans who established the informal settlement of James City during the Civil War. While supporting the everyday efforts of the James City residents to evade

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[57] William E. Fesperman, "The Magistrate," n.d., typescript in Federal Writers' Project life histories files, file 512, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill (hereafter cited as SHC).
[58] "The Justice of the Peace," *North Carolina Journal of Law*, 161-64.
[59] Compare Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 64-99.

their landlord's rent collectors, he fought the landlord's property rights in court, bringing two appeals before the state's high court.[60]

Given this discretionary authority, landlords and merchants fought to fill these courts with their loyal servants. Justices of the peace were not paid a fixed salary. Instead, they supported themselves through the fees they charged for drafting contracts, wills, and leases, issuing marriage licenses, judging minor criminal cases, and declaring judgments on debts. Landlords and merchants often kept magistrates in business by bringing their cases to a favored judge.[61] Conversely, defendants could apply to have their case transferred to a different magistrate, like John Beal of Catawba County, who had "causes of difference Between his Brother and the Justice of the Peace" hearing his trial for assault.[62] Legal reformers charged that taking "pecuniary reward" out of the J.P. system would "elevate the character of their magistrates" and encourage them to "be independent of the one side or the other."[63]

Justices of the peace had wide discretion in the ways they heard evidence, applied the law, and issued sentences and punishments. "In the Justices' courts of the country there are generally no lawyers to prepare cases and explain them to clients," wrote John

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[60] Joe A. Mobley, *James City: A Black Community in North Carolina, 1863-1900* (Raleigh: North Carolina Department of Cultural Resources, Division of Archives and History, 1981).

[61] Attorneys like Romulus A. Nunn tracked the appointments of magistrates and shopped for justices of the peace they thought would be amenable to their positions. On December 20, 1904, for example, Attorney Nunn wrote to a newly-qualified justice asking for "all the necessary blanks to do business. I have several cases I want to bring before you soon after the holidays." Romulus A. Nunn to Parzillai Holton, 20 December, 1904, letters 1904, box 1, Romulus A. Nunn Papers, David M. Rubenstein Rare Book & Manuscript Library, Duke University, Durham, North Carolina (hereafter Nunn Papers).

[62] State v. John Beal, January 8, 1903, *Justice's Criminal Docket, 1896-1911*, Sidney W. Wilkinson Papers, DU.

[63] "The Justice of the Peace," *North Carolina Journal of Law*, 164.

Homsher, editor of a monthly journal circulated to Pennsylvania's justices of the peace in 1899. "The people will come with the facts of the case, but all the rest remains for the Justice alone to do."[64] Catawba County justice of the peace Sidney Wilkinson urged compromises in many criminal actions, particular when defendants pled ignorance of the law.[65] In 1901, North Carolina's state bar criticized justices of the peace for failing to enforce the law and collect fines because of "the question of cost" to the defendants, practices that undermined the authority of the office in the eyes of its subjects and encouraged lawlessness.[66] In turn, when African American tenants and sharecroppers were denied the power to vote for their magistrate, they also lost the power to shape an institution that might bend the law toward ideas of customary or natural justice.

B. Criminalizing daily life

Custom, after all, was at the heart of agricultural life. North Carolina's farm renters and laborers had to maintain a double consciousness of their property rights. When they entered labor agreements with landlords or tenants, they were customarily given common possession of the land, tools, farm animals, and supplies needed to raise a crop. Those assuming the status of tenant or sharecropper had "actual possession" of the growing crops until the harvest was divided. And they could, with varying degrees of

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[64] *The Justice of the Peace* (Lancaster, PA) 1 (1899): 2.
[65] State v. James Cornelius (horse theft), April 13, 1909, *Justice's Criminal Docket, 1896-1911*, Sidney W. Wilkinson Papers, DU.
[66] "We are sorry to say it, but it is nevertheless the truth, that the ordinary magistrate, does not, as a court, have a decent respect from those who are before him. Many men care very little for the dignity of the magisterial office and are often extremely rude in the presence of the court." Note, "Enforcement of the Law," *North Carolina Law Journal* 2, no. 1 (1901): 31.

trust, borrow the landlord's wagon to go to town or attend church, hold school on the property, grow a market garden, and spend Saturdays working on their own cotton plot.

These customary rights, however, could be taken away without notice. Most farm workers did not have written contracts with their employers, and those who did rarely found them to be rights-widening documents. North Carolina criminal law, like the laws of other southern states, penalized a wide range of everyday practices. Growers had to figure out ways to protect their property rights within a system that constantly exposed them to dispossession. They had to be shrewd observers of power to survive.

One freedom that agricultural workers struggled to preserve in the postwar years was the right to bear arms. Although it was illegal to carry a concealed weapon in North Carolina—lawmakers worried that the "advantage given by such concealment is a temptation to use the weapon" and a threat to public order—a person could do so on "his own land" in the name of self-defense.[67] Tenancy was not a bar to this right. "What is meant by *his own premises* and *his own land*, is not that he must have a legal title to the land," explained Justice Thomas Ashe in 1885, "for, we think, one who is in the occupation of land as a tenant at will or at sufferance, would, in the meaning of the statute, be the owner thereof." Tenure mattered when it came to judging the right to carry concealed weapons. Employees, servants, and hired hands did not have this right, because they had "no interest in the land and no dominion over it."[68]

This distinction was a foundation for racial disparities in the way that North Carolina prosecutors charged people with weapons crimes, and provided landlords with a pretext for bringing charges against renters and laborers. Most rural households, whether

[67] State v. Bridgers, 169 N.C. 30 (1915).
[68] State v. Terry, 93 N.C. 585 (1885).

African American or white, owned guns, but because black families were less likely to own land, African Americans worked on the premises of others more often than whites. Living in segregated and underpoliced neighborhoods, and facing the ever-present horror of lynch law, carrying a weapon became a necessary means of self-defense. Equally important to the disparity was the broad range of weapons that fell under the concealed carry laws. The list included "any pistol, bowie-knife, dirk, dagger, slung-shot, loaded cane, brass, iron or metallic knuckles or razor or other deadly weapon of like kind," such as a butcher's knife. Tools carried by farmers and artisans, such as pocket knives, hammers, hatchets, or carving knives could bring a deadly weapons charge if carried with "unlawful and wilful purpose," the intent to use it "as a weapon of assault and defense."[69] The law did not excuse those who carried concealed weapons while hunting.[70] In 1927, a sociologist found that African Americans in North Carolina faced the charge of carrying a concealed weapon far more often than whites. In a state that was about two-thirds white, whites were charged 350 times with carrying a concealed weapon between 1924 and 1925, while African Americans faced 408 charges of the offense. A more common weapons charge held against whites was assault with a deadly weapon. Ironically, the median fine for carrying a concealed weapon—fifty dollars—was higher than the median fine of forty dollars for actually using a deadly weapon in an assault.[71]

The bottom line was that white men of property feared an armed laboring population. Although he defined "on his premises" broadly in his 1885 decision in *State v. Terry*, Justice Ashe applied it narrowly when it came to an African-American farm

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[69] State v. Erwin, 91 N.C. 545 (1884).
[70] State v. Woodfin, 87 N.C. 526 (1882).
[71] Frances S. Wilder, "Crime in the Superior Courts of North Carolina," *Social Forces* 5, no. 3 (1927): 423-27.

hand who might easily be confused for a sharecropper. Leroy Terry lived with his father on a large plantation in Johnston County. His landlord owned the land where he slept each night, and also an adjoining parcel a mile away where Terry worked as a "hireling." Terry might go days without ever leaving his landlord's property. One day in the field, the landlord accused Terry of neglecting his work. Terry allegedly got mad, insulted his boss, and drew a pistol from his coat. The landlord brought concealed weapons charges against Terry, which he contested without the aid of counsel. Terry argued that because he had never left his landlord's premises for a moment that day, he remained within the exception provided by the concealed weapons law for renters. But to the court, he was a "mere servant," and had no reasonable claim of proprietorship in the land.[72]

Another set of laws allowing landlords to criminalize customary behavior surrounded larceny. As George Henry White's Congressional testimony suggests, larceny was a common way for landlords to police their workforce. In 1889, the clerks of each county's superior court began collecting and reporting the outcome of criminal prosecutions to the state.[73] According to this data, larceny was the most common charge brought in the eastern, black-majority counties of North Carolina between the 1890s and 1910s. White landlords contrived many of these prosecutions. With such broad powers to monitor their workers' consumption and punish trifle offenses, landlords used larceny prosecutions to correct "shiftless" laborers and legally bind them. When he served as a

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[72] State v. Terry, 93 N.C. 585 (1885).

[73] Recognizing its potential for corruption, North Carolina reformers wanted to do away with the fee-based system of public prosecutions, in which solicitors earned their pay from successful prosecutions. But they needed some way of determining what a fair wage might be for a salaried prosecutor. The volume of cases, they reasoned, could serve as a proxy for an appropriate salary. *Biennial Report of the Attorney General of the State of North Carolina* (Raleigh: 1886), 12.

superior court judge from 1889 to 1895, Robert Watson Winston observed "that thousands of cases of stealing and fighting, which formerly had been punished by the overseers, were now on the dockets."[74] As solicitor, George Henry White brought many such cases before Judge Winston. Larceny was a potent weapon in an environment where ownership of productive property was often uncertain and shaped by the laws and customs dividing tenants, sharecroppers, and hired hands.

In practice, the lines between these classes of workers were blurry, as were the property rights workers could expect in these roles. As discussed in chapter three, tenants were often white men who rented land in order to profit from the labor of hired hands and sharecroppers. Although they did not have legal possession of the crop—that was deemed to be the property of the landlord—they did have the right to claim possession against anyone else, including their workers, against whom they could bring prosecutions for larceny. When George Thomas, a resident of the city of Asheville, who did not live on the cornfield he rented on the outskirts of town, indicted a man named Will Higgins for stealing ten cents worth of standing corn from his land, he was right to describe the corn as the "property of George Thomas." An appeals court rejected Higgins' claim that Thomas could not charge him with larceny because Thomas rented the land for a rent of one-third of the crop. As Thomas testified at trial, "I have charge of the field."[75]

These layers of delegation divided the property rights of renters and wage hands. Hired hands, who often constituted the majority of the black agricultural workforce in plantation regions of eastern North Carolina, could make no claim of ownership on the

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[74] Robert Watson Winston, *It's a Far Cry* (New York: Henry Holt, 1937), 210.
[75] State v. Higgins, 126 N.C. 1112 (1900); State v. Higgins, case 20,058, box 981, North Carolina State Supreme Court Case Files, NCDAH, accessed February 21, 2015, familysearch.org/.

crop, and generally did not own land, work animals, or farm tools, but some did own homes distant from the fields they worked, like some of the 281 African-American farm laborers who occupied homes in James City in 1880.[76] By contrast, sharecropping families secured different privileges. Delegated the responsibility for managing a household workforce, heads of sharecropping households were "generally given a house with garden patches, fuel and places to raise poultry and pigs, and are furnished with horse and wagon to go to church and to mill, and work for a part of the crop."[77] Yet these rights were rarely written down. George Henry White testified that renters might have the right to "a little garden patch," but "there is no law in reference to that at all. It is simply the will of the landlord."[78] Landlords could summarily take away these privileges and charge workers with theft for engaging in customary practices, like raising and slaughtering a chicken that, as personal property covered under the landlord's unsatisfied lien, fell under the boss' ownership.

Along with revoking customary privileges, landlords could prosecute tenants, croppers, and hired hands for larceny of crops that customarily were not private property. Under the common law, theft of growing crops was not punishable as larceny. In 1811, however, North Carolina lawmakers identified specific cash crops whose removal could subject the alleged thief to a larceny charge. During the 1868-1869 legislative session, North Carolina legislators expanded the scope of larceny further: one could be prosecuted not just for taking cash crops like cotton and tobacco, but also to stealing "any fruit,

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[76] Joe A. Mobley, *James City: A Black Community in North Carolina, 1863-1900* (Raleigh: North Carolina Department of Cultural Resources, Division of Archives and History, 1981), 68.
[77] North Carolina Bureau of Labor Statistics, *Eighth Annual Report* (Raleigh: 1894), 87.
[78] *Report of the Industrial Commission,* 416-17.

vegetable, or other product cultivated for food or market."[79] This capacious definition strengthened the rights of landowners against pilfering, and reflected the growing economic importance of truck farming. But it also threatened to criminalize the gathering of uncultivated fruit, nuts, and berries, and the consumption of sweet potatoes, collards, corn, peaches, apples, and vegetables that renters grew in their home gardens. Foraging was a vital part of customary practices of exchange. In her recent study of small farmers in southeastern North Carolina, for example, historian Adrienne Petty describes how women and children picked and preserved wild-growing grapes and other fruit from forests and fallow fields. "After picking the grapes, they cut off some of the vines to make jump ropes. They used canned grapes in pies, for wine making, for fruitcakes at Christmas, and for medicinal purposes."[80]

In the fall of 1877, cotton cropper Clark Liles was indicted by the Anson County grand jury of larceny for stealing "one gallon of figs of the value of sixpence." The fig tree stood in a cotton field owned by Liles' landlord, Thomas P. Dabbs, but the figs were not grown for market; Liles "was in the habit of using them in his family." Dabbs' larceny charges stuck, and Liles appealed his conviction to a sympathetic Supreme Court. His defense team based the appeal on agricultural custom. The larceny statute, they argued, only prohibited the taking of products "cultivated for food or market." The court agreed with a narrow construction of the law. "Figs are sometimes cultivated, and so are blackberries, but not always," wrote Justice William P. Bynum, a Republican. "But it was never intended by this statute to make blackberries growing in fence corners or

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[79] *N.C. Laws, 1868-1869,* ch. 251. State v. Ballard, 97 N.C. 443 (1887).
[80] Adrienne M. Petty, *Standing Their Ground: Small Farmers in North Carolina Since the Civil War* (New York: Oxford University Press, 2013), 81.

persimmons on a tree standing in an abandoned old field, the subject of larceny. Figs sometimes grow in waste places and without cultivation."[81]

The Supreme Court's theory of property in *State v. Liles* distinguished between capitalized crops and food that grew without human labor, which could not be claimed as exclusive property even on privately-owned land. Yet the court's decision did not overturn a landlord's right to punish renters for consuming or selling cultivated fruits and vegetables grown at sufferance on customary garden plots. Many North Carolina landlords, believed George Henry White, "will not invoke the exact letter of the law," but he had participated in "cases in court where some fellow has indicted persons for gathering even out of the little garden spot."[82]

Tenants and croppers also risked prosecution when the productive property they borrowed on the job was damaged or stolen. If a work animal suffered an injury in the field, a landlord could indict a worker for the damages. Landlords frequently criticized sharecroppers and hired hands for mistreating the mules they borrowed for the season. Animal owners brought these charges under statutes criminalizing injury to property and cruelty to animals. These laws protected the property interests of owners, but they also embodied a growing national sentiment for legislation enforcing the humane treatment of animals and children.[83] In 1875, two children from Hendersonville, Lila Ripley and Jessie McMunn, wrote to the North Carolina legislature, "praying to put a stop to working animals that are blind or lame, and also to prevent overburdening and overworking

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[81] State v. Liles, 78 N.C. 496 (1878).
[82] *Reports of the Industrial Commission*, 416-17.
[83] Susan J. Pearson, *The Rights of the Defenseless: Protecting Animals and Children in Gilded Age America* (Chicago: University of Chicago Press, 2011).

them."[84] In 1906, Jonathan R. Chalk charged W.H. Couch with "overdriving" his horse and won before the justice of the peace, who awarded him ten dollars in damages plus the costs of the prosecution. Couch must have disagreed with the line that the judge drew between the ordinary cruelties of agricultural life and the extraordinary ones, as he appealed this ruling to the superior court.[85]

Rural workers also had to be cautious when they borrowed their landlord's cart or buggy to travel to town, visit relatives, or attend church. The trust underlying this practice took years to build, but could evaporate in a moment of anger or caprice. On the day after Christmas in 1907, Perquimans County's J. Herbert Gatling charged George O. Williams and Roland Rhodes with the "temporary use" of his horse. They "did take his horse from my premises, for temporary use without any authority + refused to surrender said horse, willfully + unlawfully."[86] In September 1912, Jesse Pallard of Edgecombe County was convicted of temporarily using a horse and sentenced to four months in jail "with leave to hire out."[87]

Tenancy could not work without shared understandings between landowners and workers about the common use and shared possession of productive property. Larceny prosecutions and related crimes of custom revealed the hollowness of these arrangements and the risks that renters faced when they put their trust in tradition. These examples also show the importance of legal status in shaping the types of prosecutions a landlord could

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[84] *Raleigh Sentinel*, February 6, 1875.
[85] State v. W.H. Couch, Criminal Action Papers, Perquimans County, vol. 24, image 176, NCDAH, accessed February 20, 2015, familysearch.org/; State v. Ishmel Yancey, Criminal Action Papers, 1884, Edgecombe County, NCDAH.
[86] State v. George O. Williams and Roland Rhodes, Criminal Action Papers, Perquimans County, vol. 35, images 362-67, accessed March 2, 2015, familysearch.org.
[87] State v. Jesse Pallard, Criminal Docket, 1906-1927, Edgecombe County, p. 237, NCDAH..

use against his workers. Even if tenants, sharecroppers, and hired hands shared a common alienation from the growing crop, wild or cultivated, their rights differed markedly when it came to the right of self-defense. Being on one's own premises still had a powerful meaning, at least within the context of formal law, even if home was a rented cabin. This line between customary right and formal law would also have important implications for renters when they used extralegal methods to defend their contingent wages.

C. Removing the Crop: From Informal Practice to Formal Litigation

Another informal practice that was criminalized in the postwar years was when a renter seized of a portion of the crop to secure his contingent wages. Under the landlord-tenant laws discussed in chapter two, North Carolina landlords had the right to bring criminal misdemeanor charges in the township-level courts of the justice of the peace against tenants and sharecroppers who took the crop from the fields before it was formally divided. While a lack of sources makes reconstructing the record of tenants and sharecroppers in township-level courts difficult, evidence from magistrates' records and Superior Courts, where a minority of these cases were appealed, suggests that relatively few landlords brought charges against tenants and croppers for removing the crop, and that the remedy's main purpose was to use the threat of bail, fines, and imprisonment to extort a settlement. When tenants and croppers challenged landlords, however, they developed legal strategies framed by the structure of the courts themselves. In the informal setting of a justice of the peace's office, they drew on personal connections and notions of natural justice to obtain leniency. When they appealed to the Superior Court,

by contrast, they attacked the formal correctness of their accusers' claims and took advantage of the structural flaws of the system to escape prosecution.

Documenting the frequency of landlord-tenant cases in magistrate's courts and the relative success of tenants and sharecroppers in obtaining fair trials is challenging. Justices of the peace did not write opinions or expect their decisions to have precedential weight outside their tiny jurisdictions and they were not required to be rigorous record-keepers. "His court having no clerk nor official seal," wrote the *North Carolina Journal of Law* in 1904, "is still held not to be a court of record, although he is required to keep and preserve a docket and transmit the same to his successor."[88] Because their files were essentially private business records, we are left with scattered evidence—a few bound volumes of dockets and the abstracts of cases that magistrates sent to higher courts—about how justices of the peace settled landlord-tenant conflicts.[89]

Considering the dozens, if not hundreds, of landlord-tenant relationships present in each township of North Carolina's cash crop regions, the records suggest that very few landlords bothered to use available criminal remedies to prosecute their tenants or croppers for removing the crop. One surviving docket of cases heard in the majority-white county of Catawba by justices of the peace Sidney Wilkinson and W.C. Caldwell between 1879 and 1912 records only one such prosecution. In that case, a landlord, P.E. Kale, charged Lester Setzer with entering his cornfield on September 12, 1903, and

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[88] "The Justice of the Peace," *North Carolina Journal of Law*, 159.

[89] Although required by law to report the disposition of cases in their courts to the clerk of the county superior court, few did so. "In one county, with thirty justices, the reports became so irregular that the clerk got after the justices, sent them blanks, explained the law to them, and for once got a report from every one," wrote a University of North Carolina researcher in 1928. "The next time there was just as much indifference as ever, only four reporting." Paul W. Wager, *County Government and Public Administration in North Carolina* (Chapel Hill: University of North Carolina Press, 1928), 226.

taking "a lot of fodder without giving notice" to the landlord of the crop's removal. Kale got a warrant and had Setzer arrested five days later. Before the case went to trial, the landlord told Setzer that if he gave him "as good fodder and a like amount as he got himself he was Satisfied." Setzer admitted to the judge that he took the fodder. Judge Wilkinson decided to suspend judgment if Setzer paid the costs of the prosecution. Weighing on the side of clemency was Setzer's youth and blood relationship with his accuser.[90]

Prosecutions for removing the crop gave landlords leverage to demand the rent or obtain compensation if the tenant or cropper absconded with the crop. The threat of criminal action alone was often enough to force a settlement. For example, in November 1896, landlord and attorney William B. Rodman, Jr., threatened to jail a tenant who had not paid the rent. "If he does not make some satisfactory arrangement" by his court date, "I will prosecute him for removing crop without complying with his contract."[91] Writing from Washington, D.C., North Carolina Senator Furnifold Simmons occasionally ordered his local attorney, Romulus Nunn, to threaten his tenants with criminal process. On January 3, 1902, Simmons wrote to Nunn that he had been too "loose and indulgent" with his farms, and needed stricter oversight to collect his rents and mortgages.[92] By the end of the year, Nunn was pressuring Simmons' tenants H.G. Rowe and Charles McMillan to

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[90] State v. Setzer, September 17, 1903, *Justice's Criminal Docket, 1896-1911*, Sidney W. Wilkinson Papers, DU.
[91] William B. Rodman to R.T. Bonner, 18 November, 1896, William B. Rodman, Jr., Letterbook, vol. 7, p. 73, East Carolina University Digital Collections, accessed May 14, 2014, http://digital.lib.ecu.edu.
[92] Furnifold Simmons to Romulus Nunn, 3 January, 1902, letters: 1902, box 1, Nunn Papers.

pay their rent in ten days or face prosecution.[93] Simmons was "anxious" to prosecute Rowe for removing the crop; Nunn promised that he would have his rents soon.[94]

Annotations on the backs and sides of indictments for removing the crop suggest how the threat of prosecution induced the tenant or cropper to "satisfy" the landlord with the rent. In the spring of 1908, Perquimans County landlord W.J. Halsey, representing his wife's property interests in court, claimed that in two prior growing seasons, tenant William Smith had removed the crop before paying his twenty-five dollar rent and "doing his repairs." The grand jury ended up marking the cases as "not true" bills, likely because, as a justice of the peace wrote on the indictment, the tenant had "satisfied" the landlord outside of court.[95] Likewise, in January 1908, L.E. Taylor of Perquimans County charged E.W. Turpin, a cropper working the Gillian farm, with disposing of crops and selling a horse and cart that Taylor held a mortgage upon. The case appeared to end once the defendant "satisfied the Complainant."[96] And in October 1905, George Barrow of Perquimans County accused Frank Mitchell of stealing fifty dollars worth of cotton, but then paid Mitchell's bail.[97] Creditors like the Halseys and Taylor agreed to drop the prosecution in exchange for the cropper's payment of the costs of the prosecution and an agreement to pay back the value of the crop. The cropper might avoid a fine or imprisonment, but would return to the same conditions of debt, poverty, and desperation

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[93] Romulus Nunn to H.G. Rowe, 30 December, 1920, letters: 1902, Nunn Papers.
[94] Furnifold Simmons to Romulus Nunn, 10 January, 1903, letters: 1903, Nunn Papers; Romulus Nunn to Furnifold Simmons, 19 January, 1903, letters: 1903, Nunn Papers.
[95] State v. William Smith, Criminal Action Papers, Perquimans County, vol. 32, images 436-440, NCDAH, accessed March 2, 2015, http://familysearch.org/.
[96] State v. E.W. Turpin, Criminal Action Papers, Perquimans County, vol. 34, images 158-161, NCDAH, accessed March 2, 2015, http://familysearch.org/.
[97] State v. Frank Mitchell, Criminal Action Papers, Perquimans County, vol. 29, images 330-332, NCDAH, accessed March 2, 2015, http://familysearch.org/.

that led him or her to remove the crop in the first place. The office of the justice of the peace, then, provided a ready forum for quick settlements of rent disputes, with the statute penalizing removal of the crop serving as a remedy that landlords deployed when they wished to set an example.

Not all tenants and sharecroppers agreed to a settlement. If they lost their case before the justice of the peace, they sometimes appealed the ruling to the county's Superior Court. In contrast to the shabby reputation of the magistrate's office, the bar and the local people who flocked to the county seat on court days held Superior Court judges in high esteem. The 1868 state constitution created the Superior Court as a more disinterested forum for settling criminal and civil disputes than the township magistrate. Tenants and sharecroppers denied justice in their township could post a bond and challenge their magistrate's rulings when the Superior Court came to town.

According to reports published by the state's attorney general, only a few dozen tenants and sharecroppers appealed cases of removing the crop or disposing of mortgaged property in the superior courts each year at the turn-of-the-twentieth century.[98] Appeals imposed a high cost in money, time, and social reputation. Courts waived some of the appeal costs if the defendant could prove his or her status as a pauper.[99] But all defendants awaiting an appeal before the Superior Court had to post a bond, binding them

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[98] Unfortunately, the attorney general did not collect data on the disposition of these appeals. An empirical study of the outcomes of misdemeanor cases requires county-level review of the criminal court docket books. The attorney general collected information on how many cases of removing the crop came to the superior courts during a few of these years: between 1896 and 1897, 36 cases were disposed of; between 1897 and 1898, 38 cases; and, between 1903 and 1904, 40 cases. See *Biennial Report of the Attorney General,* 1897, 1898, and 1904.

[99] Many poor defendants were able to reach the Supreme Court without paying required fees through the liberal granting of "in forma pauperis" status.

to another debt system. "In the meantime," Justice Robert M. Douglas of the state supreme court, a Republican, wrote in 1904, "the tenant can starve, or subsist upon charity."[100] Even if they never were convicted and sentenced, simply posting bond and facing the costs of a prosecution was disastrous to the finances of most rural workers and their families. To secure release from jail pending trial, a defendant called on family, friends, and employers to post security. These bailors were "jailers of his own choosing." Usually, bail was a promise to pay money to the court, but it could also include a mortgage of chattel property. In the many months or years before trial, a defendant on bail was "esteemed to be as much in the prison of the court by which he is bailed as if he were in the actual custody of the proper jailer."[101] Bail became another debt that limited the mobility of workers.

For the very few croppers and tenants who brought appeals to the Superior Court, however, chances of avoiding a conviction were good. A review of superior court docket books from George Henry White's home district of Craven County between 1880 and 1902 shows that these debt-related crimes were a small portion of the Superior Court's docket and that only *one* of the cases resulted in a finding of guilt in its chambers. Most of the defendants in these trials identifiable in census records were African American.[102] Of the twenty-three cases of removing the crop, ten resulted in a "Nol Pros," three were thrown out by grand jurors who decided that the prosecutor did not have the evidence for a "true bill," six produced a "Not Guilty" verdict, one case was dismissed, one ended

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[100] State v. Neal, 129 N.C. 692 (1901) (Douglas, J., concurring).
[101] Pickelsimer v. Glazener, 173 N.C. 630 (1917) (Internal quotation marks omitted).
[102] Sixteen of the twenty-three defendants were identifiable in the manuscript census records for Craven County. Thirteen of the defendants were "Black" or "Mulatto" and three were "White."

with a continuance, one was remanded to the justice of the peace for a new trial, and just one produced a finding of guilt, after the defendant pled guilty and agreed to pay the costs of the prosecution after the judgment was suspended.[103] Some tenants used this forum offensively, as well: In an 1889 case, an African-American tenant, William Holloway, unsuccessfully attempted to tax his landlord with the costs of a wrongful prosecution after a Craven County jury found him not guilty of "disposing of crop."[104]

One explanation for their success on appeal was that the Superior Court was truly overburdened. Voters in each judicial district elected one Superior Court judge to the court for a fixed term, but that judge did not stay within the lines of the district. Instead, he had the taxing chore of riding circuit "from the sea to the mountains," rotating among the various districts.[105] The goal was to prevent judges from creating legal fiefdoms, but it produced a logistical puzzle. No judge was allowed to hold court in the same district "oftener than once in four years," and the judges had to move swiftly enough to ensure that each county enjoyed at least two terms of court each year.[106] Originally, only *nine* Superior Court judges managed the thousands of cases reaching their courts each year. In 1885, the legislature added three more.[107] George Henry White told the Industrial Commission that "[w]e have 96 counties and 12 judges, and each judge has about 8

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[103] These cases were brought on several different charges: Larceny of growing crops, disposing of crop, removing crop, and removing crop without paying rent. Although the name of the charge itself varied over time, the substantive crime was the same.
[104] State v. William Holloway, Fall 1889, Criminal Docket Book, 1889-1902, p. 46, Craven County Superior Court, NCDAH. One's accusers could be sued to pay the costs of a prosecution if a court found the prosecution to be "frivolous and malicious." State v. Roberts, 106 N.C. 662 (1890).
[105] Winston, *It's a Far Cry*, 217-18.
[106] Rhyne v. Lipscombe, 122 N.C. 650 (1898) (Clark, J.).
[107] *Biennial Report of the Attorney General* (1886), 3.

counties, and sits about 6 months, and it takes them about 2 years to get around."[108] Although the permanent clerks of the Superior Court and judicial referees handled much of the civil litigation (see chapter three), criminal matters remained backlogged until the judge made his biannual visit.[109]

Delay was inevitable in a court system that met so infrequently. A veteran attorney remarked "that not ten percent of the cases brought originally in the Superior Courts of North Carolina are tried at the second term, but that the length of time runs from six months all the way to ten years, and even longer."[110] Delay might represent trial strategy—an effort to wait for passions to cool or memories to fade, and witnesses to move away. Or it could follow from the tardiness of a circuit-riding judge or his eagerness to get out of town sooner with a "skimmed" docket.[111] Diligent judges worked with the solicitor to weed out the uncontested matters and the "short" cases that did not require many witnesses and saved most of their time for more complicated cases.[112] Low-stakes landlord-tenant appeals were often the first to be dropped.

The pressure to generate fees, however, encouraged solicitors to prosecute minor charges like removing the crop or petty larceny that they might have otherwise disposed of through extrajudicial settlements. Like justices of the peace, North Carolina prosecutors did not earn a fixed salary. Instead, they were paid in fees for each successful conviction. Solicitors had the potential to earn a lot of money in office. In 1875, Solicitor

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[108] *Report of the Industrial Commission*, 417.
[109] The situation changed in the early twentieth century, as the legislature responded to the backlog by "establishing courts for the trial of petty misdemeanors, without jury, preserving the right to a jury trial by giving the right of appeal and trial de novo in the superior court." State v. Shine 149 N.C. 480 (1908).
[110] Charles W. Tillett, "The Delays of the Law," *American Law Review* 46 (1912): 361.
[111] Winston, *It's a Far Cry*, 219.
[112] Ibid., 206.

J.C.L. Harris guessed his office could generate between three thousand and five thousand dollars a year in fees; no other state office paid a salary of five thousand dollars a year.[113] The state's attorney general called the fee system "wrong in principle and pernicious in practice" in 1886.[114] Fee-based prosecution had its defenders, too, who believed that fiscal incentives would ensure the even-handed administration of justice in communities where formal prosecution would be unpopular.[115]

Indeed, as elected officials, solicitors were driven by their political instincts. In the black-majority second district, African American attorneys John Henry Collins and George Henry White held the solicitor's office in the 1870s and 1880s. Once elected, White's authority as solicitor gave him discretion to mitigate the worst abuses of the legal powers given to landlords, but he still had to make enough convictions to satisfy an interracial, cross-class constituency and pay his bills. Decades after serving as judge for the second district, Robert Watson Winston believed Solicitor White was harsh on black defendants to bolster his credibility with white jurors and earn his fees.[116] During his years in office, however, the Democratic *New Bern Daily Journal* complained that, under White's "polite" but "incompetent" watch, taxpayers could not rely on the public prosecutor to bring or win criminal actions. "None but the baldest cases of guilt are convicted without the aid of other counsel."[117]

In addition to considerations of judicial economy and prosecutorial politics, tenant success was boosted by the presence of counsel. Every county had its handful of general

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[113] Anderson, *Race and Politics*, 64n7.
[114] *Biennial Report of the Attorney General* (1886), 12.
[115] Parrillo, *Against the Profit Motive.*
[116] Winston, *It's A Far Cry*, 210.
[117] "The Black District: Asks for a Much Needed Change," *Raleigh Register*, January 16, 1885 (citing the *New Bern Daily Journal*).

practitioners who followed the Superior Court's circuit. Judge Winston remembered his days as a novice lawyer in the 1880s, struggling to pay his office rent and attract clients. "I kept long office hours, attended public gatherings, and got acquainted with the county people, made speeches here and there and was always spoiling for a fight."[118] Winston's willingness to take and win a lost cause—a horse thief whose confession he got excluded on a technicality—accelerated the growth of his practice "by leaps and bounds."[119] A lawyer could represent the poor and disfranchised without jeopardizing his legal career and political prospects or undermining the hardening foundations of Jim Crow justice. But this flexibility decreased as lawyers became settled in their practice. Given the intimacy of the small town legal community and its "brother" attorneys, better established lawyers avoided bringing cases against large landlords or defending their workers from criminal charges as a conflict of interest.

In four of the ten of the cases of removing the crop marked "Nol Pros," tenants and croppers were able to get the charges dismissed by fleeing the county. Prosecutors sought continuances and finally dropped charges when defendants disappeared. For example, in the Spring of 1885, African-American farmer Jim Dudley brought an appeal of his conviction for removing the crop before the Craven County superior court with the backing of E.H. Carpenter, who posted a $100 bond. But Dudley never showed up in court, nor did he appear when his name was called a year later. When the marshal again failed to locate Dudley before the fall, 1886, session of the court, the prosecutors gave up,

[118] Winston, *It's a Far Cry*, 123.
[119] Ibid., 131.

entering a "Nol Pros."[120] Dudley was not the only defendant to jump bail, and as railroad lines opened up throughout rural regions of the South in the 1870s and 1880s, extradition from "foreign" (out-of-state) jurisdictions proved to be an increasingly contentious issue. Northern governors worried that Southern states would ask for the return of fugitives whose only crime was the failure to pay a civil debt. Northern governors said that extradition on these grounds violated constitutional bans on imprisonment for debt.[121]

In three of the cases, technicalities invalidated the indictment, and the grand jury did not find a "true bill." In the face of damning facts, one of the best defenses a tenant or cropper could make was a formalistic parsing of his indictment. For example, in 1883, without the aid of counsel, Frank Merritt convinced the Supreme Court to throw out his conviction for removing the crop on the ground that the charge did not follow the exact language of the statute. The indictment charged him with removing "without satisfying all liens on said crop" when it should have said, "before satisfying all liens held by the

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[120] State v. Jim Dudley, Criminal Docket Book, 1880-1888, Craven County Superior Court, NCDAH.

[121] Governors customarily handed over fugitives to their home states when the defendant was accused of a serious crime, but no national law required it. Northern governors worried that Southern states were abusing their extradition privileges. "The temptation to the unscrupulous to procure its use on trumped-up charges, for the purpose of collecting debts or obtaining jurisdiction in civil actions, or in other improper cases, is very great," argued Goodwin Brown, a representative of New York's governor, "and it is only by the most stringent regulations that such uses can be prevented." During the first multi-state conference on extradition, held at the Murray Hill Hotel in New York City in August 1887, Daniel Barnard, the representative from New Hampshire, suggested that extradition would revive the ghost of the Fugitive Slave Act. "To my mind, the Constitution never contemplated that every petty offense should become a matter of extradition," Barnard testified. "I have grave doubts whether the decision of Justice Taney would be indorsed at the present time by the Supreme Court." Such cases would force Northern states to violate their own constitutions by facilitating imprisonment for debt. *Proceedings of the Inter-State Extradition Conference*, ed. Goodwin Brown (Albany, NY: 1887), 10, 27.

lessor or his assigns on said crop."[122] In his 1886 report, North Carolina Attorney General Theodore Davidson argued that the courts should have the power to save a "quashed" indictment by allowing the prosecution to amend it and immediately proceed to trial.[123] Signaling his office's frustration with this defense strategy, the attorney general appealed a motion to quash an indictment for removing the crop granted by Superior Court Judge Graves in 1890. Chief Justice Merrimon, ordinarily a strict constructionist when evaluating prosecutions under the Landlord-Tenant Act, caved to the state's position, finding that the indictment was "not so definite and precise in some respects as it might, perhaps ought to, be" but was not fatally defective.[124]

North Carolina statutes criminalizing a tenant or sharecropper's removal of the crop before satisfying the landlord's lien were a powerful form of leverage that landlords used to collect debts and bind renters, even if the available evidence suggests that they rarely resulted in convictions. Because cases of removing the crop were ordinarily settled at the local level, justices of the peace commanded a central role in shaping the outcomes. As North Carolina's judicial system moved from local rule to the centralized county government system and narrowed opportunities for grassroots leaders to participate in its operations, the chances for working-class tenants and croppers to plead their case before sympathetic courts based on customary claims of right declined.

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[122] State v. Merritt, 89 N.C. 506 (1883). Note that if a justice of the peace drafted a defective warrant or process, a higher court could amend the document on appeal without having to dismiss the case. Only indictments originating the superior court, such as felony charges like larceny, would be quashed on the grounds of a defective indictment. State v. Norman, 110 N.C. 484 (1892).

[123] *Biennial Report of the Attorney General* (1886), 10.

[124] State v. Smith, 106 N.C. 653 (1890).

Instead of trusting in custom, the most successful defendants drew on legal formalities, such as errors in the indictment, to win their cases on appeal, or they took advantage of the structural weaknesses of the judicial system—overburdened dockets and lackluster extradition policies—to escape trial altogether. This turn toward formalism became more critical, however, when North Carolina lawmakers introduced a new class of crimes at the turn of the century, "false pretenses" laws, whose legal underpinnings disturbed a conservative judiciary otherwise comfortable with a draconian labor regime.

D. The Transformation of Debt Peonage

Under the North Carolina's constitutional provision ending imprisonment for debt "except in cases of fraud," a debtor should not have been incarcerated for breaking a contract. Where was the fraud in abandoning an agreement made by consenting adults? Yet this legal logic was integral to enforcing debt peonage. Workers who broke employment contracts were presumed to have had wrongful intent by signing a contract that they knew they would break. The fraud was making a "false pretense," a knowing misrepresentation of the worker's true intentions. Conceptually, it was no different than writing a bad check, marketing a sick horse for top dollar or selling a piece of real estate owned by someone else.[125]

North Carolina lawmakers expanded the meaning of fraud in the late 1880s to criminalize contract breaches without offending the state constitution. Legislators passed the state's first contract enforcement laws in 1889 and 1891, and expanded them in 1905

[125] The broad meaning of "false pretenses" presents a challenge to the historian, as well. When county clerks recorded a prosecution for "false pretenses," they rarely described the underlying circumstances of the alleged fraud.

and 1907.[126] The language of the state's first contract enforcement act, passed in 1889 and amended slightly in 1891, was similar to laws passed earlier in other Southern states, making it a misdemeanor to "obtain any advances" in cash or kind in exchange for labor "with intent to cheat or defraud" the lender by failing to "commence or begin any work" meant to repay those advances "without a lawful excuse."[127] Because this was a criminal law, the element of intent was critical to proving guilt for "false pretenses." The solicitor had to show that the worker took advances from his employer with the consciousness that he would break the contract and never pay back the debt.

Less than a year after the passage of the amended contract enforcement law, an agricultural laborer tried and failed to challenge the law's constitutionality. On October 24, 1891, William Norman made an agreement with J.R. Beasley to pick cotton in his fields in coastal Beaufort County. The harvest season allowed rural people to earn quick cash when demand for their labor was at its peak. Norman secured an advance on his paycheck before he started work, receiving one dollar, one pound of flour, and meat, worth a total of $2.09. He took the goods and never showed up for work. On October 26, Beasley obtained a warrant from a justice of the peace charging Norman with false pretenses and won a conviction and a three-dollar fine, which Norman appealed to the superior court. The court found him guilty of the crime and denied his motion to arrest the judgment on the grounds that false pretenses laws violated the state's constitutional ban on imprisonment for debt. Attorney Charles Frederick Warren, a Democratic state senator representing Beaufort County and a future justice on the state supreme court, appealed Norman's case. "The humblest negro became the biggest man in the land to

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[126] Cohen, *At Freedom's Edge*, 241.
[127] *N.C. Laws, 1889*, ch. 444, p. 423. It was amended by *N.C. Laws, 1891*, ch. 106, p. 98.

Warren when that negro's case was in his care," remembered one of this attorney's eulogists. "The strongest storms of public clamor against his client swayed him not the slightest nor caused him to abate one jot or one tittle in the defense of his cause."[128] Supreme Court Justice Walter Clark agreed with Warren that the state had to prove more than a breach of contract to prosecute a worker under the law; the constitutional prohibition on imprisonment for debt "except in cases of fraud" demanded proof of the worker's intent to defraud. But the court maintained that there was nothing facially unconstitutional with the law. "Ordinarily it might be somewhat difficult to show such intent, in the absence of admissions of the defendant," but the appellants had never raised an objection to the sufficiency of the evidence of intent at hand.[129]

In 1909, now-Chief Justice Clark had a chance to revisit his decision in *State v. Norman.* The intervening two decades marked the nadir of black civil rights in North Carolina, with the failure of the Force Bill, the United States Supreme Court's decision in *Plessy v. Ferguson*, the Wilmington Riot of 1898, mass disfranchisement, and a burst of lynchings in a state that had prided itself on its exceptionality to racist violence. But these years of crisis also brought federal investigators—the predecessors of the Federal Bureau of Investigation—to the South to hunt down cases of debt peonage as forms of enslavement. Bourbon leaders such as federal district Judge Thomas Goode Jones of Alabama identified peonage as a pressing problem for the New South. In a 1903 ruling, Judge Jones defined peonage as "the situation or status in which a person is placed, including the physical and moral results of returning or holding such person to perform

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[128] "Presentation of the Portrait of Charles Frederick Warren, 1 September, 1914," 169 N.C. 767, 772 (1915).
[129] State v. Norman, 110 N. C. 489 (1892).

labor or service, by force either of law or custom, or by force of lawless acts of individuals unsupported by local law, 'in liquidation of any debt, obligation, or otherwise.'"[130] By 1908, the wheels were in motion for the most important test case of debt peonage to reach the United States Supreme Court, black agricultural worker Alonzo Bailey's appeal of his imprisonment for breaking Alabama's false pretenses law.[131]

Yet following the lead of other Southern states, North Carolina legislators expanded their arsenal of criminal sanctions for breach of labor contracts in the early twentieth century. In 1905, the legislature passed a new contract enforcement law specifically making tenants and croppers in certain counties criminally liable for willfully abandoning a crop without good cause after obtaining advances from the landlord. Interestingly, the landlord would also be guilty of a misdemeanor if he willfully failed to make those promised advances.[132]

The state's new false pretenses law and its old system of coverture would soon intersect. In 1905, a married African-American woman from Sampson County, Betsy Robinson, was hired to manage a farm.[133] Her husband lived with her on the weekends but spent his weeks working in neighboring Harnett County. One day in June, the landlord ordered Robinson and her children to work in the fields on the next Friday, but

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[130] Peonage Cases, 123 F 679 (M.D. Ala. 1903).
[131] Pete Daniel, *The Shadow of Slavery: Peonage in the South, 1901-1969* (1972; repr., Chicago: University of Illinois Press, 1990).
[132] *N.C. Laws, 1905*, ch. 297, pp. 333-34, and *N.C. Laws, 1905*, ch. 299, pp. 334-35, both provided criminal remedies for landlords *and* tenants to enforce contracts for advances, but the respective laws applied to different counties.
[133] 1900 U.S. census, Sampson County, North Carolina, population schedule, Westbrook Township, p. 4, dwelling 99, family 101, Betsy "Robbinson"; digital image, Ancestry.com, accessed July 8, 2015, http://ancestry.com. Notably, Robinson's family is recorded as owning a farm in Sampson County. It seems likely that her family was "double-farming" by renting or cropping a nearby property to earn a surplus.

Robinson refused, saying her children were sick and could not work for two weeks. She later returned to the fields, but the landlord ordered her family to leave the land, and had her arrested under North Carolina's "false pretenses" law for abandoning the crop before paying the advances she owed to the landlord. She received a sentence of thirty day's imprisonment. On appeal, Robinson's attorneys convinced the North Carolina Supreme Court's majority that Robinson was not liable on the contract based of the laws of coverture. A wife could not contract her services to a person other than her husband without his consent, and there was no evidence on the record that Robinson's husband gave his permission to make the labor contract. Justice Platt D. Walker, a Democrat from the city of Wilmington elected to the bench in 1903, in the aftermath of the Wilmington Riots and mass disfranchisement, prioritized household sanctity over the landlord's security, for "if we should hold a married woman to be bound by a contract for her services entered into, not only without the consent, but against the will, of her husband, it might prove disastrous to the marital relation, and be productive of a long train of most evil consequences."[134]

Chief Justice Walter Clark saw himself as the court's Progressive voice, and supported efforts to extend women's rights to contract, hold property, obtain protection from domestic violence, and vote.[135] In his concurrence in *State v. Robinson*, he drew upon transatlantic precedents, discussing the progress of women's emancipation in England, and outlining the implications of equality for women as contractual actors. In

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[134] State v. Robinson, 143 N.C. 620 (1907).
[135] "The Legal Status of Women in North Carolina: Past, Present, and Prospective," Address by Chief Justice Walter Clark Before the Federation of Women's Clubs, New Bern, N. C., 8 May, 1913. North Carolina Collection, University of North Carolina at Chapel Hill.

his estimate, the court was being short-sighted about the implications of its ruling. Extending the full right of contract to women also meant subjecting them to its penalties, which, in North Carolina agriculture, could mean imprisonment for removing the crop. Because North Carolina law did not "incapacitate a married woman to work a crop as tenant or on shares," it ought to make them "liable to the criminal law to the same extent as any one else for receiving advances on such crop and afterwards abandoning the work." Having assumed this risk, a sharecropping woman should also be entitled to the profits of the arrangement without her husband's interference.[136]

Even as the state's appeals court dodged the question of the law's constitutionality, North Carolina's trial courts had already taken a cue from federal judges by resisting the enforcement of the law. In September 1906, Willie Pridgeon appealed his conviction for "Violating Contract" to the superior court of Edgecombe County. In June 1907, the superior court overturned his conviction, holding that the act was unconstitutional.[137] In 1908, Superior Court Judge W.R. Allen, sitting in Greene County, dismissed an indictment brought under the false pretenses law on jurisdictional grounds. As a misdemeanor offense, it should have been brought before a justice of the peace.[138] Only a few months later, when Judge Allen had moved to Martin County, he again heard a false pretenses case, properly commenced in an action before the justice of the peace. Agricultural laborer Tim Williams was appealing his conviction for false pretenses. Judge Allen dismissed the case on the ground that the law violated the state constitution.

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[136] State v. Robinson, 143 N.C. 620 (1907) (Clark, C.J., concurring).
[137] Edgecombe County, Criminal Docket 1906-1927, 42.
[138] State v. Wilkes, 149 N.C. 453 (1908).

The state stood its ground and appealed Judge Allen's ruling. Given the opportunity to consider the statute's constitutionality, Chief Justice Clark overturned the law as written because it incorporated "no element of fraud." It allowed tenants, croppers, and landlords to face imprisonment for breaking a contract, but did not require prosecutors to prove wrongful intent. Tellingly, Clark's dissatisfaction with the law was based on its constitutional infidelity, not its underlying value to the policing of landlord-tenant relations:

> Speaking only for myself, there is nothing, however, which forbids the General Assembly to authorize the imposition of the fine, upon the tenant or the landlord, for the conduct described in the statute; but the party could not be imprisoned for nonpayment of the fine or costs, since that would be to allow by indirection what cannot be done directly.[139]

Another debt peonage law, passed in 1905, amended the 1889 false pretenses law to make it easier to prosecute these cases. The statute provided that making a promise to work, obtaining advances, and then breaking the contract was "presumptive evidence of the intent to cheat and defraud at the time of obtaining such advances and making such promise or agreement" The law shifted the burden of proof onto the defendant to show that he did not have such a wrongful intent; that is, that his acts did not speak for themselves.[140] Alabama had an identical law on its books, and in 1911, the United States Supreme Court had declared this presumption of evidence to be a direct violation of the Thirteenth Amendment. "What the state may not do directly it may not do indirectly," Justice Charles Evans Hughes wrote. "If it cannot punish the servant as a criminal for the mere failure or refusal to serve without paying his debt, it is not permitted to accomplish

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[139] State v. Williams, 150 N.C. 802 (1909).
[140] *N.C. Laws*, 1905, ch. 411, pp. 422-23.

the same result by creating a statutory presumption which upon proof of no other fact exposes him to conviction and punishment."[141]

Just one month after the release of the Hughes' landmark opinion, North Carolina had its own mini-*Bailey* trial. Hezekiah Griffin was a farm tenant from Union County. Like many others, Griffin became entangled in a credit relationship with his landlord after relying on the landlord to get out of jail on a charge of assault and battery. In August 1908, the landlord paid his fines and costs, putting Griffin deeper into debt. The tenant tried to pay the landlord back by farming and cutting cross-ties for ten cents each, but Griffin eventually gave up and moved away from the land "to support his family." The landlord "seized [Griffin's] hog, farming tools, flour and meat for his debt, although he had no mortgage on them." Then, the landlord filed criminal charges against Hezekiah Griffin for false pretenses. Under the 1905 amendments to the 1889 false pretenses law, the landlord had no trouble making the charges stick. Griffin made a promise to work, obtained advances based on that promise, and broke the contract. He was presumptively guilty.

Perhaps sensing a change in the wind, the law firm of Williams, Lemmond & Love brought Griffin's case on appeal to the state Supreme Court. Although the question of the constitutionality of this evidentiary presumption "was not discussed in the briefs or at the bar," Justice George H. Brown decided that, in light of the *Bailey* opinion, "we must take notice of the inherent defect of this attempted rule of evidence." Adopting the *Bailey* court's reasoning in full, Brown called the presumption of fraud behind the law of false pretenses "an arbitrary mandate, there being no rational connection, tending to

[141] Bailey v. Alabama, 29 U.S. 219 (1911).

prove fraud, between the fact proved and the ultimate fact presumed." Because Alabama's false pretenses law was identical to North Carolina's, the court held that the United States Supreme Court's decision was binding.[142]

Debt peonage in its various forms would continue to haunt North Carolina and the South for decades to come.[143] Ten years after *Griffin*, the high court had to remind a Bertie County justice of the peace of Chief Justice Clark's ruling in *State v. Williams* that the law allowing landlords to arrest absconding tenants "without requiring any allegation or proof of fraud" was unconstitutional. "This right of a citizen to contract and deal with another is itself among the liberties and vested rights protected by constitutional guaranties, and should always be carefully upheld by the courts."[144] False pretenses cases lived on outside of the law and also through the medium of freedom of contract. Creditors became more adept at satisfying these constitutional requirements by proving fraud through their contractual agreements with debtors. A borrower who received advances and pledged to pay that debt with past-due wages or personal property could be indicted for false pretenses. The crime was not failing to pay the debt, "but the failure to apply certain property which, in writing, has been pledged for its payment."[145] Once a debt

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[142] State v. Griffin, 154 N.C. 611 (1911). See also Pocomoke Guano Co. v. Colwell 177 N.C. 218 (1919): Clark J. ("no creditor has a right to the personal services of the debtor, or, what is the same thing, to collect payment of the value thereof from one to whom he renders services, and thus make a contract which the debtor and the employer did not make. Such claim as this is simply an assertion of 'peonage,' and if it could be enforced the creditor could follow the debtor around wherever he might go, and compel his services through the medium of an employer. It is too late in the world's history to assert such doctrine.")

[143] Note, "Imprisonment for Debt in North Carolina," *North Carolina Law Review* 1 (1922): 229-231.

[144] Minton v. Early, 183 N.C. 199 (1922).

[145] State v. Torrence, 127 N.C. 550 (1900). State v. Yarboro, 194 N.C. 498 (1927) analyzes a law permitting imprisonment for writing bad checks.

attached to property, rather than labor, it was constitutional because the creditor was its legal possessor.

Along with creating criminal penalties for violating the landlord's lien and disposing of mortgaged property, North Carolina lawmakers, judges, and attorneys expanded the power of landlords and other creditors to collect debts and demand labor from poor tenants by broadening the meaning of larceny and fraud and strengthening contract enforcement laws. Despite a level of legislative ambivalence about the scope and necessity of these laws and attacks by agricultural laborers and judicial reformers on them, forms of debt peonage became commonplace ways that landlords could use criminal remedies to protect their rents.

The blurred lines between contractual and criminal remedies made the outcomes of common disputes between landlords and tenants uncertain. When a landlord weighed a season's cotton harvest and it seemed too light, or a sharecropper dropped the harness on an old mule furnished by his landlord, giving up hope that he had the means to finish a season's planting, a choice had to be made. Would the landlord invoke the criminal law, riding to the justice of the peace's office at a country crossroads to swear out a warrant for his tenant's arrest? Would the cropper, facing a year without pay, demand the wages he had earned for months of labor in the civil courts?

If their goal was simply restitution—the restoration of property to its proper owner—then contract law should have been enough to settle the problems. In the elegant imagination of contemporary legal theorists, money or time could fully compensate for injury. Conflicts among the propertied might be settled with cash or the division of land

or stock, but disputes among men and women who once stood in the positions of master and slave hinged on the desire for retribution—a moral basis for compensation.

"Trumped-up" charges were the hallmark of the postbellum property rights regime. To subdue and appropriate the labor of agricultural workers, North Carolina legislators dramatically increased the value of humble property in the eyes of the law. Larceny prosecutions and a range of misdemeanor charges for taking and mis-taking property exemplified how postbellum legislators, lawyers, and jurists defined and protected the rights of merchants and landlords against the customary claims of their workforce for a fairer share of a crop or a more equitable payment arrangement. Larceny prosecutions gave landowners and merchants the power to punish agricultural workers on a whim, leaving the disfranchised in constant dread of arrest for acts constituting everyday rural life. With its overburdened judges, fee-based prosecutors, and convict-run plantations and road crews, the system encouraged a volume of quick and uncontested trials and agreements to work off fines and prosecution fees through labor contracts. Its churn produced a class of unfree men and women laboring in indentured servitude, at roadsides, and labor camps.

Simple justice was possible in North Carolina, but it came at a high cost and was unpredictable. Some tenants and croppers operated within the legal system, hiring lawyers or relying on the patronage of their employers or former owners to challenge their accusers. Attorneys representing tenants, croppers, and hired hands developed strategies for undermining these prosecutions, from delaying trials to attacking the wording of indictments. Sometimes entire legal communities—including the solicitor who prosecuted the case, the jury who rendered the guilty verdict, and the judge who

ordered the sentence—joined petitions urging the governor to pardon white and African-American prisoners, viewing their convictions as legally correct but offensive to principles of natural justice or morality.[146] Outside of courts, tenants drew on networks of kin and neighbors to organize against landlord abuses of power through open and hidden acts of resistance. Others felt no choice but to abandon these relationships after an arrest, spurred to flee their home for points unknown.

[146] The governor pardoned dozens of convicts every year, which were published in the annual session papers of the legislature.

Chapter Five.

First Class Tenants:

The Problem of Improvements in Midwestern Tenancy, 1890-1920

In January 1941, a "Veteran Tenant" from Iowa wrote to *Wallace's Farmer* to share how his family survived hard times as a farm tenant and failed landowner. Over seventy years old, "Veteran Tenant" had moved more than twenty times in his farming career though Missouri and Iowa, never staying on any place more than nine years. He leased farms with broken fences, manure piled high against the barn, hen houses filthy with manure, lice, and fleas, and homes infested with bed bugs. When he and his wife and six children were not busy raising crops, growing vegetables, and tending to stock and poultry, they took time to clean up the farm and break in new fields. "In a few years of hard work cleaning up and putting waste land into cultivation, and mowing and destroying weeds, and raising good crops, the farm took on a different aspect."[1]

By repairing the deteriorated farms of his absent landlords, "Veteran Tenant" increased the value of the land, leading his landlords to raise the rent or sell the farms at a premium. Either way, "Veteran Tenant" had to find a new lease and start over. Moving inflicted heavy costs on his family. They had to change schools and buy new textbooks for the children. Unable to afford the expense of moving larger improvements, he abandoned them to the next tenants. Property he did move—loads of hay, chicken coops, and furniture—would get damaged or destroyed when it fell off the wagon or was soaked in the rain. The tenant, who eventually bought a farm but lost it during the Great

[1] "I Am a Veteran Tenant," *Wallace's Farmer and Iowa Homestead*, Jan. 11, 1941.

Depression, was "determined to play the game straight" and not follow other defeated farm tenants who "played crooked and lost their reputations." Nevertheless, he foresaw a dark future of "land being farmed by a few men with tractors, three or four of them without families": a landscape of absentee owners interested only in extracting profits who cared little for farming as a way of life. "When a man is denied the privilege of making an honest living for his family," the farmer concluded, "he is going to revolt." *Wallace's Farmer* conceded that "no one simple answer" would cure the maladies of absenteeism. "Certainly a state law providing compensation to the tenant for improvements made by him would have made things better."[2]

The problem of improvements, so central to understanding the true cost of tenancy to rural households, had no easy solution. Economist Henry George catapulted to international fame in the 1880s through his proposal for a "Single Tax" on the "unearned increment": a landlord's power to extract extra rents through no work of his own, thanks to the labor invested by his tenant, the shrinking availability of good land, and the rising cost of farm commodities.[3] Yet to landowners (and many tenants hoping to become freeholders), rising rents were not unearned, but compensation for risk. Landlords spent tens of thousands of dollars on building materials, farm equipment, work animals, and drainage systems, and often covered the costs of property taxes and mortgage interest. Rather than appropriate and redistribute the unearned increment to tenants, early-twentieth century federal and state reformers established credit programs to encourage land ownership. With few legal avenues for redress or social movements to organize their activism, Midwestern tenants who could not or would not buy land were largely left on

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[2] Ibid.
[3] Henry George, *Progress and Poverty* (1879).

their own to bargain with their landlords for a fairer deal that compensated them for the imputed income their landlords earned from their household's labor.

By analyzing how Midwestern landlords and tenants negotiated the scope, length, and risks of agricultural leaseholds, this chapter breaks from the dichotomy of choice and coercion central to how historians have debated the meaning of tenancy. Tenancy cannot be defined simply as the tragic result of a coercive land market, or the expression of a tenant's economic rationality. The relationships of Midwestern landlords and tenant households, as in Northern cities and Southern cotton fields, were contingent and local, shaped by law, custom, nature, personal relationships, and the competing interests of managers, contractors, hired laborers, and merchant suppliers. At times, Midwestern landlords attempted to enforce the modes of control we associate with Southern sharecropping and racism—crop liens, wage theft, and criminal sanctions—but they did not always succeed in establishing dominance over renters or creating a class of debt peons. Unlike African-American tenants and croppers, whose lack of access to Southern courts made mobility their primary form of leverage, white Midwestern tenants earned bargaining power through longevity. Their landlords valued stability over control, and turned to the courts only when absolutely necessary to maintain order.

In the Midwest, few archives preserve the contested purposes and meaning of tenancy as a system of labor, credit, and land development better than the century's worth of letters and account books left by prairie landlords Matthew T. Scott and his widow, Julia Green Scott. This chapter picks up where Margaret Beattie Bogue's 1959 classic *Patterns in the Sod* ends, with landlord Matthew T. Scott's death in 1891. After years of neglecting a million-dollar estate, Bogue writes, Julia Green Scott and her agents sought

to "restore and replace outworn improvements, to conserve the land, to attract the best tenants available, and to increase rental income."[4] Scott's papers provide a uniquely personal view of how the transformation of rural life in the early twentieth century impacted the legal and social relations between landowners and tenant households. When Scott began investing in modern housing, sturdier corn cribs and costly drainage tiles, her tenants faced a dilemma: was it worth the risk to be "first class" renters, paying higher rents for greater yields on leases that had to be renewed each year? Drawing on two decades of detailed correspondence between prairie landlord Julia Green Scott, her team of agents, and her many tenants, this chapter develops two case studies showing how the problem of improvements pitted the tools and resources of tenant households against the power of landowners and their agents in the "golden age" of Midwestern agriculture. Modernization also reshaped the role of local government as a mediator of labor relations and a provider of public improvements.

[4] Margaret Beattie Bogue, *Patterns from the Sod: Land Use and Tenure in the Grand Prairie, 1850-1900* (Springfield, Ill: Illinois State Historical Library, 1959), 112.

Figure 5-1: Julia Green Scott[5]

The first case study focuses on a decade of conflict between one tenant, Richard Pierce, Julia Scott, and her agent, George Strohl, as Pierce tested whether the campaign of improvement would lead his family to profit or ruin. By engaging in rent and labor strikes, Pierce earned concessions that stabilized his rent, compensated him for his improvements, and allowed him to save enough money to start his own farm. When other tenants followed his strategies, however, they risked their livelihoods in a marketplace of land and commodities designed to protect the legal and economic interests of landlords.

The second case study follows the relationship between Julia Scott and her agent and nephew Lewis Stevenson to illustrate how land management was usually a family affair for landlords as well as tenants. Julia Scott's letters to Stevenson, whom she treated like a son, reveal a constant worry about the cost of drainage, houses, barns, manure,

[5] "Julia Green Scott," McLean County Museum of History, accessed February 16, 2015, http://mchistory.org/research/resources/julia-green-scott.php.

farm equipment, and other supplies on her farms and her suspicions that tenants, merchants, and her own staff were running up unwarranted bills. Scott had a different investment horizon than her staff. Her agents often were paid on commission and had a financial interest in projects that could boost yields within a season. Scott, who was born more than twenty years before the Civil War, doubted she could see a return on her investments within her lifetime and was skeptical about the promises and capabilities of drainage engineers. As his aunt wavered on her commitment to improvement, Stevenson struggled to build a tenant force he trusted. Lacking the market power to attract "high grade" tenants and the gravitas to discipline the households he got, Stevenson depended on a mixture of informal solutions and formal civil and criminal remedies similar to those enjoyed by Southern landlords to extend his power across a landed empire.

A. The Drainage Boom and Midwestern Tenancy

In the first two decades of the twentieth century, American farmers outside of the Cotton South experienced "the golden age of American agriculture." After a long slump in the late nineteenth century, prices of farm commodities rose high enough to leave growers with a healthy profit after paying their costs, giving farmers "parity," meaning purchasing power that matched or exceeded that enjoyed by other American workers.[6] Across the United States, farmers took advantage of this prosperity by investing in mechanization and cultivating lands once thought too marginal for commodity agriculture. In many of the arid landscapes stretching west of the 100th Meridian, farmers adapted to the dry environment by organizing public and private reclamation projects that

[6] R. Douglas Hurt, *American Agriculture: A Brief History* (West Lafayette, IN: Purdue University Press, 2002), 221.

channeled water from rivers and mountaintops toward the fields.[7] Midwestern landscapes presented the opposite problem: vast stretches of wetlands, ponds, and prairie potholes that belied homogenizing survey lines.

Armed with steam and gasoline-powered tractors pulling an array of labor-saving equipment—planters, cultivators, reapers, threshers, and combine harvesters—and inspired by a mixture of Progressive idealism, capitalist hunger, and messianic zeal, a generation of Midwesterners attempted to make the landscape uniform. "With his giant steam shovels, dredges and engines he corrects nature's defects and deformities and makes glad the waste spots of earth," extolled Iowa State Senator Charles A. Carpenter to a 1912 convention of Iowa drainage experts. "He is a modern John the Baptist in a wilderness of swamp, slough and morass, crying, 'Prepare ye the way,' and corn is his profit."[8] Farmers living along waterways built embankments to protect their crops from seasonal flooding. To boost yields, they dug surface drainage ditches or installed clay and cement tiles underground to pull water out of the soil and lower the water table. Farmers had been improvising tiling systems since the 1830s, but could now install them on a large scale at lower cost with pre-cast parts, mechanized equipment, and public subsidies.[9]

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[7] Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York: Pantheon Books, 1985).
[8] C.A. Carpenter, "Back to the Land," *Proceedings of the Eighth Annual Meeting of the Iowa State Drainage Association* (1912): 32.
[9] Hugh Price, *Wetlands of the American Midwest: A Historical Geography of Changing Attitudes* (Chicago: University of Chicago Press, 1997), 203-237; Marion M. Weaver, *History of Tile Drainage in American Prior to 1900* (Waterloo, NY: 1964); Margaret Beattie Bogue, *Patterns from the Sod*, 107-108; Allan G. Bogue, *From Prairie to Corn Belt: Farming on the Illinois and Iowa Prairies in the Nineteenth Century* (Chicago: University of Chicago Press, 1963), 84.

Drainage engineers and tile manufacturers published magazines, organized conferences, lobbied state and local governments, and ran advertisements promoting the benefits of these plumbing systems. Soils with a lower water table allowed roots to spread farther and deeper into the ground. Dry soils let roots breath easier and were warmer, allowing farmers to plant earlier in the season. Adding air also triggered chemical changes in the soil that improved its fertility. Like oxygenated iron rusting orange, aeration turned insoluble soil into plant food, and attracted earthworms, whose tunnels added more air to the ground. Aeration also encouraged cover crops such as alfalfa and clover to release nitrogen, further improving the soil's potency. In dry seasons, too, drainage evened out agricultural yields. Because their roots could reach deeper into aerated soils, crops weathered droughts better on drained lands. Finally, drainage allowed farmers to use mechanized farming equipment more efficiently and without fear of getting stuck in the mud.[10]

Drainage fundamentally changed the American landscape and its law of property. These Midwestern drainage initiatives accelerated a widespread and now largely forgotten process: the destruction of more than half of America's wetlands. The Midwest and California experienced the greatest losses, with more than 80 percent of their base wetlands destroyed for agriculture and urban development by the 1980s. The tiling boom also reshaped property rights in the Midwest, as it did in all reclamation projects on wet and dry land, by investing public authorities with unprecedented powers to control how individual landowners developed their lands and managed water. County-level drainage districts built large drains and outlets across private property lines and required

[10] "Benefits from Tile Drainage," *The Irrigation Age* 20, no. 4 (1905): 116.

landowners within the drainage watershed to pay assessments for these improvements.[11] Along with paying this tax, farmers had to spend their own money to build lateral connections to these systems. "It was poor economy indeed," writes Margaret Beattie Bogue, "to pay heavy assessments for the construction of dredge ditches and then to neglect laying the tile which would make them effective."[12] Landowners faced similar pressure to invest in improvements across the turn-of-the-century United States, as counties and cities levied assessments for paving streets and installing sewers, utilities, and irrigation systems, and imposed laws requiring farmers to fence their livestock.[13]

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[11] B.J. Price, "Some Legal Phases of the Drainage Problem," *Report of the Annual Meeting of the Iowa State Drainage Association* (1908): 28-46.
[12] Bogue, *Patterns in the Sod*, 107.
[13] Adrienne M. Petty, *Standing Their Ground: Small Farmers in North Carolina Since the Civil War* (Oxford: Oxford University Press, 2013), 55-74; Shawn Kantor, *Politics and Property Rights: The Closing of the Open Range in the Postbellum South* (Chicago: University of Chicago Press, 1998); Steven Hahn, "Common Right and Commonwealth: The Stock-Law Struggle and the Roots of Southern Populism," in *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward*, ed. J. Morgan Kousser and James M. McPherson (Oxford: Oxford University Press, 1982); Margaret Garb, *City of American Dreams: A History of Home Ownership and Housing Reform in Chicago, 1871-1919* (Chicago: University of Chicago Press, 2005), 86-116; Stephen Diamond, "The Death and Transfiguration of Benefit Taxation: Special Assessments in Nineteenth-Century America," *Journal of Legal Studies* 12, no. 2 (1983): 201-40.

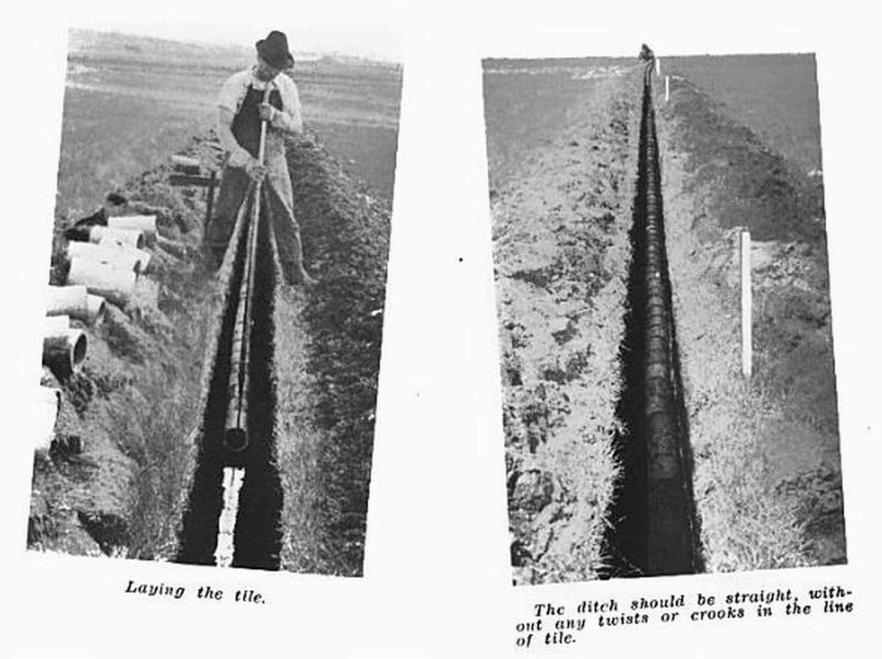


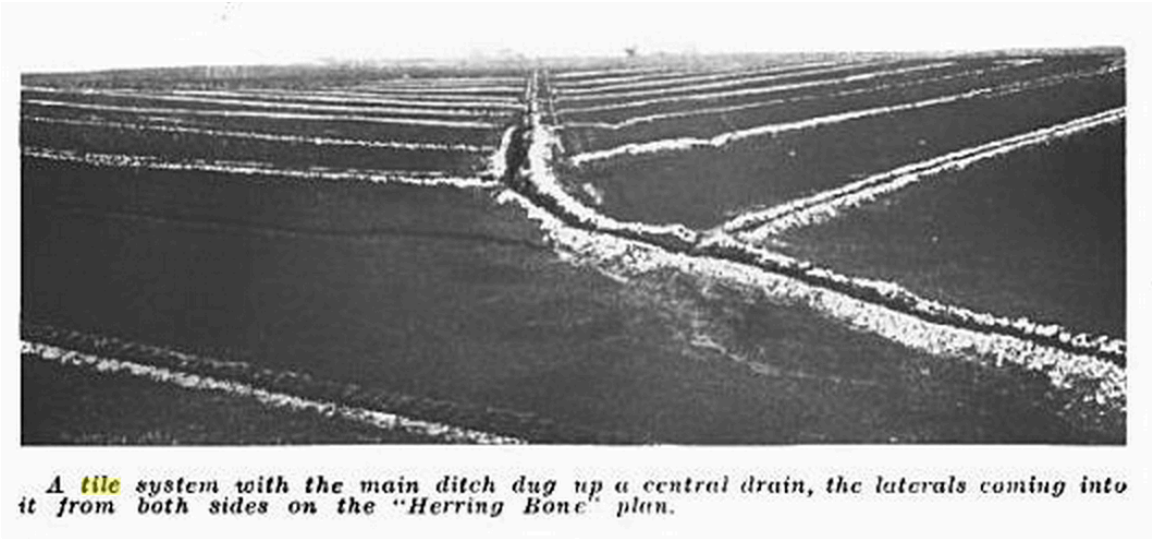
Figure 5-2: Laying the Tile (1918)[14]

With corn and grain prices rising, draining the land held the potential for great profits. Corn yields on wet Illinois lands rose 50 percent at the turn-of-the-century after the installation of drainage tiles, leading land values to rise 500 percent on improved soils.[15] "Men from the eastern states saw the possibilities of these swampy areas after draining," reported Charles E. Sims, manager of a Minnesota tiling company, to a convention of drainage engineers in 1912, "and accordingly they bought liberally." By 1911, public and private drainage projects installed more than 175,000 miles of clay and

[14] James A. King, *Tile Drainage* (Mason City, IA: Mason City Brick & Tile Co., 1918), 27. With the sponsorship of the Mason City, Iowa, Brick & Tile Company, King, a professor of farm management at Iowa State College, leader in the state's Drainage Association, and farm owner, published a "Plain English" book on tile drainage to encourage adoption of the technology. The book provided instructions for laying efficient tile systems and explained "how and why tile will benefit a large percentage of our lands and increase our INCOMES."

[15] Ann Vileisis, *Discovering the Unknown Landscape: A History of America's Wetlands* (Washington, DC: Island Press, 1997), 127. Mary R. McCorvie and Christopher L. Lant, "Drainage District Formation and the Loss of Midwestern Wetlands, 1850-1930," *Agricultural History* 67, no. 4 (1993).

cement tiles across a V-shaped region extending north from Des Moines. Estimating that Iowa farmers would eventually pay "the stupendous sum of 450 million dollars" to drain their lands, Charles E. Sims compared the feat to the building of the Panama Canal, a project "of first magnitude in the history of the development of our country."[16] Between 1906 and 1920, Illinois, Indiana, and Iowa drained almost 30 percent of their wetlands, with north central Iowa retaining just 1 percent of its swamps.[17]



A tile system with the main ditch dug up a central drain, the laterals coming into it from both sides on the "Herring Bone" plan.

Figure 5-3: Model Drainage System (1918)[18]

Tenancy, which proved so vital to commodifying the urban land market in the North and creating a post-emancipation economy in the South, was also a means for absentee landowners to turn Midwestern wetlands into profitable farms. Tenancy was among several modes of organizing agricultural production and development in the rural Midwest.[19] Landowners farmed the land themselves, sold it on contract to settlers (with a seller-financed mortgage or "crop-sale contract" used to secure future payments), or hired

[16] Charles E. Sims, "Cement Drain Tile in Iowa," *The Iowa Engineer* 12, no. 5 (1912): 141.
[17] Vileisis, *Discovering the Unknown Landscape,* 127.
[18] James A. King, *Tile Drainage*, 27.
[19] Bogue, *Patterns in the Sod*, 104, 87.

overseers and wage workers to manage and develop the property. Absentee owners preferred tenancy as a means of covering their taxes and interest payments while spending as little as possible in the farm. Conversely, tenancy was an attractive option for farmers who had a labor force of family members and wanted to profit from high commodity prices, but lacked the capital to purchase large sections of fertile and well-located land, pay taxes and assessments, buy modern farming equipment, and install tile drainage. Between 1880 and 1920, farm tenancy rates in Illinois rose from 31.4 percent to 42.7 percent. In Iowa, the rise was even greater, from 23.8 percent of farms in 1880 to 41.7 percent in 1920. These rates were comparable to the percentages of farm tenancy in North Carolina and Tennessee in 1920.[20]

The drainage boom placed new stresses on this hands-off approach to management. Traditionally, landlords leased to renters who provided their own farming equipment and shared the cost of improving the land. Absentee landlords added the installation of tiling to the list of duties—spreading manure, trimming hedges and weeds, building fences—required under these leases. Even as tiling became a standardized process, engineers and tiling contractors were in short supply. To manage the high cost of labor, landlords often required tenants to do much of the unskilled work of tiling, including digging and filling drainage ditches and hauling the tiles to these channels. Farmers who were "by nature handy" could do the work with very little instruction, according one Iowa tiler, and "learn more about the work in three days than many whom

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[20] Jeremy Atack, Fred Bateman, and William N. Parker, "Northern Agriculture and the Westward Movement," in vol. 1 of *The Cambridge Economic History of the United States*, ed. Stanley L. Engerman and Robert E. Gallman (Cambridge: Cambridge University Press, 2000), 317-18

they trust the work to have learned about in a lifetime."[21] Landlords also expected tenants to pay higher rents once the systems were in place.

On the Scott farms, most tenants performed their tiling duties without objection, carrying on the backbreaking work with the hope that higher yields would offset the costs of their uncompensated labor and the risk that they could not afford higher rents in the future. But one tenant household led by Richard Pierce, son of one of his county's early homesteaders, wanted cash payment for this labor and written guarantees that it could stay on the land at a fixed rent. Pierce's conflicts with Scott and her agents illustrate how tenants could exploit the flaws of absentee management, but also the risks they took when they challenged the legal and economic power of landlords and merchants.

B. Section Fourteen and the Limits of Absenteeism

Section 14, Township 86 North, Range 33 West of the 5th Prime Meridian: one square mile just south of a branch line of the Chicago & Northwestern Railroad as it passed through central Iowa. Matthew T. Scott, a Kentucky-born land speculator and town builder, saw abundance in these relatively well-drained and rolling 640 acres about seventy-five miles from Des Moines in Calhoun County. Scott had spent a lifetime buying tens of thousands of acres of farmland, town lots, and mines from central Illinois to Deadwood, South Dakota. When Scott died in 1891, he left control over most of this land to his widow, Julia Green Scott, and making her one of the wealthiest landlords in the Corn Belt. The vice-president and later president general of the National Society of the Daughters of the Revolution, Julia Scott lived over four hundred miles away in a

[21] F.O. Nelson, "The Relation Between the Landowner and the Man Who Lays the Tile," *Report of the Annual Meeting of the Iowa State Drainage Association*, (1908): 26.

thirty-five room mansion in Bloomington, Illinois. She depended on local agents to supervise her tenant farms, collect rents, and answer the complaints of the renters.[22]

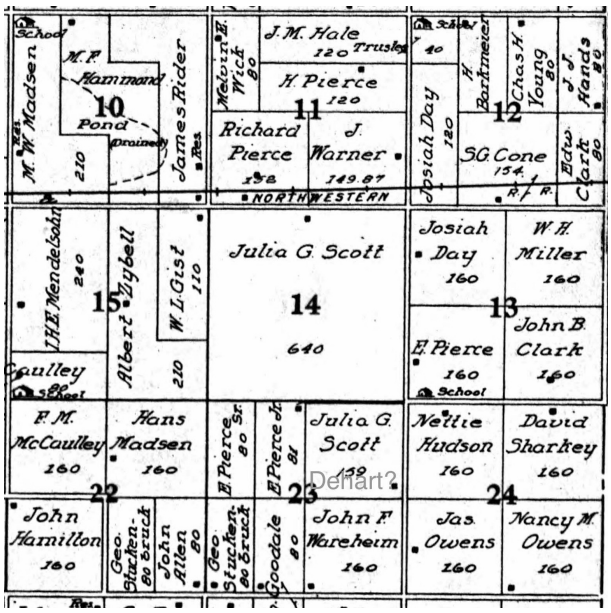

Figure 5-4: Section Fourteen, Calhoun Township, Calhoun County, Iowa (1911)[23]

On the southeastern border of Scott's land was a quarter-section owned by one of the township's settlers, Ephraim Pierce. Born in England in 1846, Ephraim Pierce married an immigrant from southern Quebec named Cornelia Marshall in 1867 and, in 1870, was a tenant farmer of modest means in Dekalb County, Illinois. In the 1870s, the family moved westward to set up a farm in booming Calhoun County.[24] Only 147 people

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[22] Bogue, *Patterns in the Sod*.

[23] Map of Calhoun Township, *Standard Atlas of Calhoun County, Iowa* (Chicago: George A. Ogle, 1911), 33.

[24] Dekalb County, Illinois. Marriage certificate (6 October 1867) Pierce-Marshall, in Jordan Dodd and Liahona Research, comp., *Illinois, Marriages, 1851-1900*, accessed March 2, 2015, http://ancestry.com/; 1870 U.S. census, Dekalb County, Illinois, population schedule, Malta, p. 17, dwelling 114, family 115, Ephram Pierce; digital image, Ancestry.com, accessed March 2, 2015; " 1880 U.S. census, Calhoun County, Iowa, population schedule, Calhoun Township, p. 11, dwelling 100, family 100, Ephram Pierce; digital image, Ancestry.com, accessed March 2, 2015.

lived in the county in 1860. By the end of the century, over 13,000 people had followed the railroad to Calhoun County, seeking homesteads on its flat, loamy black soil.[25] The Pierce family prospered. In 1895, they shared a household with seven children—six boys and a girl.[26]

When Pierce's sons struck out on their own at the turn-of-the-century, they joined a land market much different than their immigrant parents had encountered in Iowa's frontier days. Farm development moved rapidly across the state in the late nineteenth century. In 1850, Iowa had 14,805 farms comprising 2.7 million acres. By 1870, settlers had established 116,000 farms of 15.5 million acres. At the turn of the century, 229,000 farms containing 34.6 million acres checkered the state.[27]After two generations of homesteading, speculative purchases, and land development, the average value of an acre of Iowa soil rose from $6.09 in 1850 to $43.31 in 1900.[28]

Land was more expensive in 1900, and mortgages were harder to secure and afford. When railroads and land speculators sold land to settlers in the 1870s, they often asked for relatively low down-payments of ten or twenty percent of the price and might waive interest payments or even pay the local tax bill to encourage the purchase. By the end of the century, however, lenders required as much as a 62 percent down payment for Iowa farm land. Some prospective buyers found that they could secure more land at a

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[25] U.S. Census, 1860 and 1900. On Calhoun's nineteenth-century development, see Beaumont E. Stonebraker, *Past and Present of Calhoun County, Iowa: A Record of Settlement, Organization, Progress and Achievement* (Chicago: Pioneer Publishing, 1915).
[26] 1895 Iowa Census, Calhoun County, population schedule, Calhoun Township, p. 70, dwelling 31, family 32, Ephram Pierce; digital image, accessed November 6, 2014, http://familysearch.org/.
[27] Donald L. Winters, *Farmers Without Farms: Agricultural Tenancy in Nineteenth-Century Iowa* (Westport, CT: Greenwood Press, 1978), 11.
[28] Ibid., 20.

lower up-front cost by renting. Tenancy grew rapidly, from 23.8 percent of Iowa farms in 1880 to 34.9 percent in 1900.[29]

Richard Pierce, the family's fourth son, began renting Calhoun County farms at the turn-of-the-century with a younger brother serving as a farm hand. His brother William Grant Pierce rented a farm nearby with his wife, five-year-old daughter, and a "hired man," their eighteen-year-old brother Frank.[30] With his brother, Frank, Richard Pierce secured an annual lease with Julia Scott to rent the fourteenth section in their township. Within the next decade, Richard Pierce and other family members purchased quarter and eighth-sections on three sides of Scott's land. Her tenant farm remained an undivided square separating their patchwork of family farms. Her location may have been irksome to the Pierces, but it made them an obvious choice for tenants, as they could efficiently cultivate the lands under one plow.[31]

As Richard Pierce saved his profits from raising corn, oats, and barley to buy land near his father, dozens of frustrated and often furious letters between Scott and her agents reveal how he defied his landlord's demands to work more for less income and fewer privileges. The triangular conflicts between landlord Julia Scott, agent George Strohl, and the household of tenant Richard Pierce emerged from the challenge of combining agricultural modernization within a tenancy system. By dividing the land into multiple streams of income—the landlord's rent, the agent's commission, the tenant's share, the tiler's wages, and the drainage district's assessments, along with the imputed labor of the

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[29] Winters, Farmers Without Farms, 12-36.
[30] 1900 U.S. census, Calhoun County, Iowa, population schedule, Calhoun Township, p. 37, dwelling 193, family 198, Richard Pierce; digital image, Ancestry.com, accessed September 19, 2014.
[31] *Standard Atlas of Calhoun County, 1911*, 33.

Pierce family and the prospective inheritance of Julia Scott's daughters and son-in-laws—tenancy and modernization created competing ideas about time and value for the many people working section fourteen. The Pierces wanted to rent the land long enough to buy their own homestead, but not so long that they invested their best years in soil that would never be their own. Strohl pushed his boss to install drainage to maximize the land's profitability in an era of price parity, yet was limited by the broader push for drainage across the county and the stickiness of existing tenancy agreements. Scott was the most patient of all, having spent a lifetime directing others to break the prairie and harvest its bounty. What appalled her most was not the impositions of her tenants or the pleadings of her agents, but the pressures she faced as an absentee owner to pay for improving her neighbors' land. Here was a problem that could not be localized on section fourteen, but extended across her agricultural empire.

Three agents split the task of supervising Scott's farms in Calhoun County. In January 1898, Scott signed a new contract with James Colter, a tenant of some of her lands and a manager for the Scott family, to act as her agent for signing farm leases and collecting rents in Iowa and Illinois, and empowered him to "distrain for rent or take all + any other lawful proceedings necessary if tenants fail to pay their rent."[32] To relieve Colter of his extensive responsibilities, Scott hired A.J. McDermott, a Calhoun County landowner and broker in "real estate, loans, collections and insurance," to look after the

[32] Bogue, *Patterns in the Sod*, 111. Agency agreement, signed by James Colter, 1 January 1898, file: January-March 1898, box 3, MS 330, Matthew T. Scott Papers, Division of Rare and Manuscript Collections, Cornell University Library, Ithaca, New York (hereafter cited as Scott Papers).

Pierce farm in June 1904.[33] A few years later, Scott asked George W. Strohl, a stock dealer and manager of Scott's cattle ranch in Strahan, Iowa, to keep an eye on her Calhoun County lands.[34] Although Strahan was in Iowa's southwest corner, near Omaha, Nebraska, Strohl owned a half-section of 320 acres in Calhoun County close to Scott's holdings.[35]

Strohl was unhappy with the way that Colter and the local man, McDermott, were running things in Calhoun County. In February 1906, Strohl reported to Scott that McDermott "rather works for the people there-about than for the parties by which he is employed" and had not visited the tenant farms since Colter's last visit. Strohl believed that the Pierces were "manufacturing bills" against Scott for unnecessary repairs, including a $6.80 bill for repairing a well on their tenant farm, which Colter paid without asking Scott's permission.[36] A month later, McDermott protested to Strohl that Scott had not paid him a sufficient salary to cover his time for two years of overseeing the tenant farm.[37] Strohl dutifully forwarded his fellow agent's letter to Scott, adding his doubts that a local agent was necessary in Calhoun County that year.[38] Strohl suspected that Scott's local agent was working against her interests by colluding with her tenants.

Problems in Calhoun County began in the early months of 1906, when Strohl proposed that Scott deepen her investment in a drainage project on Richard Pierce's

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[33] A.J. McDermott to George Strohl, 13 February 1906, file: February-March 1906, box 4, Scott Papers.
[34] George Strohl to Julia Scott, 2 February 1906, file: February-March 1906, box 4, Scott Papers. I have retained George Strohl's unconventional spellings in the succeeding quotations.
[35] Map of Union Township, *Standard Atlas of Calhoun County, 1911,* 31.
[36] Strohl to Scott, 2 February 1906, file: February-March 1906, box 4, Scott Papers.
[37] A.J. McDermott to George Strohl, 6 March 1906, file: March-April 1906, box 4, Scott Papers.
[38] Strohl to Scott, 8 March 1906, file: February-March 1906, box 4, Scott Papers.

leasehold. The Pierces voiced a willingness to haul heavy ten-inch tiles to the site, and Strohl urged her to install more tiles on her farm in order to "make it a proper and substantial drain."[39] By the fall, however, the Pierces had refused to haul any more tile, finding nothing in their lease that compelled them to do the work. Additionally, the Pierce brothers "threw on ground" some of their rent corn to protest ongoing problems obtaining water for their ranching operations.[40]

Strohl was appalled by their insolence and urged his boss to find new tenants, "fair men or men of some [honor] to them selves at least."[41] Strohl brought their lease to an attorney, who agreed with the tenants' interpretation of its terms. The Pierce brothers could not be forced to haul tiles under the lease. Strohl's attorney also told him that there was no legal way to force the tenants to put their corn in the farm's crib. They had to pay a portion of their corn crop as rent, but the lease did not require them to store it in the crib, even if that was customary practice and necessary to preserve its quality. Strohl's solution was to order the tenants to either sell the corn immediately or store it in an off-site elevator.[42] Frustrated with his inability to control the Pierces from a distance, and annoyed with Scott's complaints about his expense account—bills for railroad and livery fare, boarding at hotels, and a seventy-five-dollar salary—he offered to resign as her agent and put rent collection in the hands of a Calhoun County grain buyer.[43]

In January 1907, Strohl was still on the job, but had no success in collecting rent from the Pierce brothers. Richard Pierce would not pay until the landlord fixed his well.

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[39] Strohl to Scott, 2 February 1906, file: February-March 1906, box 4, Scott Papers.
[40] Strohl to Scott, 7 December 1906, file: December 1906, box 4, Scott Papers.
[41] Ibid.
[42] Ibid.
[43] Strohl to Scott, 12 December 1906, file: December 1906, box 4, Scott Papers.

Pierce claimed that his lease required Scott to provide him with water, and that he was forced to sell his cattle because he had no water for them to drink.[44] The lease, Strohl conceded, required the landlord "to furnish plenty of water"; "while it dont state in what way whether by wells or creek," he wrote, "it is the intention of this contract to have the water at there comand when they wish to use the same." Strohl was unwilling to hear another "Bluff" from Richard Pierce, finding it impossible "to met on any peaceble terms." Even if Scott had no legal obligation to fix the well, "[t]hey will give us moor trouble then two well would cost."[45] Scott agreed, and Strohl promised to fix the well and "then see that they do there part of contract."[46] By withholding the rent, Pierce won concessions from an agent unwilling to bear the expense of litigation.

Finally, in March 1907, tensions seemed to cool. Strohl went over-budget to fix the well and install a sturdier pump on the Pierce farm. With the advice of "two good lawyers," Strohl convinced Richard Pierce to accept a settlement of twenty-five dollars for the damage he claimed from the broken well, which was half of his original demand. And the agent and tenant reached a compromise about sharing the costs of hauling tiles. Strohl paid Pierce forty dollars for his labor in moving the drain tiles the previous year. But he declined to give Pierce a five-year lease in exchange for working on the drainage project, reminding the tenant that Scott never rented her lands for more than a year at a time, "but if Tenents were agreeable and did the right thing by you they would always have the prefrance." Strohl also paid Richard Pierce's wife, Nora, three dollars and ninety

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[44] Strohl to Scott, 26 January 1907, file: January 1907, box 5, Scott Papers.
[45] Strohl to Scott, 2 February 1907, file: February 1907, box 5, Scott Papers.
[46] Strohl to Scott, 18 February 1907, file: February 1907, box 5, Scott Papers.

cents for cooking twenty-six meals for the men who installed the new well. The Pierces paid about a hundred dollars in pasture rents they had withheld.[47]

This settlement held for a year, but by January 1908, Strohl looked for a new tenant to replace the Pierces, who were also looking for a way out. Richard Pierce was willing to give up his option to lease section fourteen in 1909; he wanted higher pay for hauling tiles and believed he could rent cheaper land elsewhere that was already tiled.[48] A sticking point was whether the landlord would compensate him for the labor he put into the tenant farm. He offered to sell Scott the improvements his household had built on her land, including wire fencing, sheds, hen and coal houses, a windmill, and a water tank.[49]

Pierce did not want to leave the lease without some compensation for his labor. Pierce could simply take his improvements with him when the lease ended, but Scott might sue him for their value. Under the common law of tenancy, any "fixtures" installed by a tenant were the property of the landlord and could not be removed without the landlord's permission. A tenant's buildings, fences, and fruit trees legally transformed from movable property to part of the real estate. Like the distress remedy, the law of fixtures had been reshaped by statute and judicial decisions in the nineteenth century to better match commercial custom. Tenants obtained the right to remove the "trade fixtures" they built on the land as long as the property was installed "to aid in the conduct of a calling exercised for the purpose of pecuniary profit," although the law reserved landlord ownership in the fixture if the tenant's calling was "exclusively agricultural in

[47] Strohl to Scott, 31 March 1907, file: March 1907, box 5, Scott Papers.
[48] Strohl to Scott, 3 February 1908, file: February 1908, box 5, Scott Papers.
[49] Strohl to Scott, 5 January 1908, file: January 1908, box 5, Scott Papers.

its nature," making it tougher for farm renters to keep their improvements.[50] In weighing a tenant's right to remove, courts looked to the nature of the improvement. Fixtures that were attached to the ground and hard to move, like a ninety-foot high grain silo or rose bushes whose roots extended three or four feet into the ground, tended to lose their identity as chattels.[51] Courts also considered the intentions of the landlord and tenant when the fixture was installed. For example, in 1926, the Iowa Supreme Court found that a tenant who built a hog house on his leasehold, but also raised hogs on other land, did not have the intention to leave this property behind when the lease was up; as part of a broader farming operation, the hog house was a movable chattel, not a fixture permanently attached to the land.[52]

Legal or not, moving a shed or fence was costly, and tenants often tried to sell their fixtures to the landlord rather than bring them to their next farm. Tenant sheds and barns "are not worth buying," agent Lewis Stevenson told Julia Scott, "but the new tenants have to have some place to keep their things."[53] Stevenson bought out the "shed + granary, his part of the barn, barb + hog wire around farm," of a tenant named Slater for $126, down from his asking price of $141.50. "We figured just what the lumber + wire was worth to him + being in place as it is it is worth considerably more to you."[54] Tenants

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[50] Ray v. Young, 160 Iowa 613 (1913). The Iowa Supreme Court based its reasoning on cases in Herbert Thorndike Tiffany, *A Treatise on the Law of Landlord and Tenant*, 2 vols. (Chicago: Callaghan, 1912), 2:1570–1574.
[51] William M. Howard, "What Constitutes Trade Fixture: Modern Cases," *American Law Reports 5th* 107 (2003): 311; Dakota Harvestore Systems, Inc. v. South Dakota Dept. of Revenue, 331 N.W.2d 828 (S.D. 1983); In re Flores De New Mexico, Inc., 151 B.R. 571 (Bankr. D. N.M. 1993) (applying New Mexico law).
[52] Speer v. Donald, 201 Iowa 569 (1926).
[53] Lewis Stevenson to Scott, 26 September 1910, file: August-September 1910, box 6, Scott Papers.
[54] Stevenson to Scott, 4 December 1911, file: December 1911, box 6, Scott Papers.

also held "quitting farm" sales of their improvements and personal property to the renters who followed them.

Figure 5-5: Moving House (Emmet, Iowa, 1936)[55]

Pierce did not press the matter of buying out his improvements during the 1908 growing season, as he extended his lease with Scott until 1910. Nevertheless, by September 1908, Richard Pierce was growing impatient with his prospects on this farm. He told Strohl that the leasehold was too large for his household to handle, and that his brother would only stay on a farm that was tiled. The Pierce brothers decided they would not plow that fall until their landlord gave a clear answer about whether she would install drainage.

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[55] The original caption to this Russell Lee photograph taken for the Farm Security Administration states: "Roy Merriot getting ready to move a transportable house. He is a tenant of a 160 acre loan company farm which has recently been sold, and is now holding a 'quitting farm' sale. This is the third farm he has lost in the last ten years." Russell Lee, photographer, December 1936, from Farm Security Administration – Office of War Information Photographs, Yale University Photogrammar Project, accessed February 18, 2015, http://photogrammar.yale.edu/records/index.php?record=fsa1997021314/PP.

Strohl advised his boss to let them out of the lease early.[56] Instead, Scott decided to move forward on the drainage tiling, asking her agent to hire a crew to put in the heavy eighteen-inch tile large enough to fully drain section fourteen.[57] Despite this show of good faith, the Pierces decided to press their advantage by refusing to plow in the fall, an essential preparation for growing wheat and cereal crops in the spring. "It is an almost universal practice in many sections of the West," noted a soil expert in 1907.[58] Strohl found nothing in the Pierce lease that compelled the tenants to fall plow. As with the earlier dispute in 1906, the Pierces wanted a five-year lease and a limit on their tile-hauling responsibilities to moving and burying relatively light six-inch tiles used to build lateral branches on the eighteen-inch main drainage line. Strohl believed the Pierces were "fooling along about giving me a defnet answer as to whether they would stay or not thinking after it were to late to get a Tenent who could handle the farm that you would make some consesion rather than missing having it in crop."[59] Their work stoppage was meant to pressure Scott into lightening their workload and lengthening their lease.

In January 1909, Richard Pierce took the surprising step of contacting Scott directly to negotiate the terms of a new lease or a buy-out. As Strohl wrote contemptuously to his boss, "he must think you were Easy to work I supose he thought you would not consult me about this and he would make a deal direct with you and then give me the laugh after wards." Pierce sent a letter to Scott through a local bank asking

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[56] Strohl to Scott, 26 September 1908, file: September 1908, box 5, Scott Papers.
[57] Strohl to Scott, 19 November 1908, file: November-December 1908, box 5, Scott Papers.
[58] Stevenson Whitcomb Fletcher, *Soils: How to Handle and Improve Them* (New York: Doubleday, 1907), 134.
[59] Strohl to Scott, 9 December 1908, file: November-December 1908, box 5, Scott Papers.

her to consider a long-term lease, or if not, to buy his buildings at a fair price; "of corse he well know I woulden give him what it cost new," Strohl wrote her, "and that is why he is writing you through the bank." Scott appeared willing to give in to Pierce's demands for a long-term lease without heavy tiling duties, believing it would be hard to find another tenant who could grow crops as well. Her agent thought his success had more to do with naturally rolling and well-drained land than farming skill, and that Pierce did not have the leverage he imagined to get a better leasehold, "as he is very well knowen in that country and Every one has a dislike to do Buisness with him he is a cronick kicker about anything . . ."[60] Scott and Strohl's dispute reveals the competing goals of landlord and agent. Scott prioritized stability, viewing the Pierce family as a reliable, if not always pliable, source of rents. Strohl valued control, and hope to replace the Pierces with tenants less confident in their ability to extract demands from the landlord. His honor was at stake.

Julia Scott ignored her agent and granted most of Pierce's requests. In a contract she drafted in her own handwriting on January 12, 1909, she declined to give Richard Pierce a five-year lease on section fourteen, but did promise to give him the option to renew the lease for the next five years at the current rent. In exchange, Pierce would haul, at no cost to Scott, all tiles six inches or smaller. Pierce would also be responsible for hauling and stringing along seven and eight-inch tiles on the project, but he would get paid at the rate of a dollar per ton for half of each load of the heavier tiles he delivered.[61] Stohl remained unhappy that he had to keep working with the Pierce brothers, but by

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[60] Strohl to Scott, 7 January 1909, file: January-February 1909, box 5, Scott Papers.
[61] Agreement to haul tiles for Julia Scott, Bloomington, Illinois, signed by Richard Pierce, 12 January 1909, file: January-February 1909, box 5, Scott Papers.

early March, he found them "very cordial and agreeable" to his surprise. The brothers wanted to "fix up the farm" and asked Scott for money to plant fruit trees.[62] Scott paid for the trees and fences for the orchard, which the Pierces installed.[63] After a rent strike in 1906 and a work stoppage in 1908, the Pierce household seemed ready to put down roots in their leasehold.

Meanwhile, the tiling project on section fourteen faced delays and unexpected costs. "Still it rains!!!!!!" exclaimed a local tile supplier, who could not deliver the drains because heavy June storms flooded the roads.[64] As bills for materials arrived in Scott's mailbox in Bloomington, she raised questions about the need for such an extensive drainage system on her lands. Section fourteen's tilers ordered 80,000 tiles, while a comparably-sized project on a farm in hilly Mills County, Iowa, owned by Scott's daughter required just 22,000 tiles with a smaller diameter.[65] She was right to doubt these estimates for materials. Despite efforts at professionalizing the field, tile drains were still installed on a "guess work basis": the uncertainties of hydrology meant that "one engineer recommends tile of twice the capacity which another considers sufficient."[66] Labor also proved costlier than expected. Strohl complained that "we could use 500 men in Calhoun County to do tiling or tile work." He told Scott that one hundred and thirty-nine public drainage projects were underway in Calhoun County alone, along with several cooperative ventures between neighboring farmers and lateral drains installed by individual farmers. The labor shortage meant that contractors were paying three dollars a

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[62] Strohl to Scott, 6 March 1909, file: March 1909, box 5, Scott Papers.
[63] Strohl to Scott, 21 June 1909, file: June-July 1909, box 5, Scott Papers.
[64] L.P. Carter to Strohl, 6 June 1909, file: June-July 1909, box 5, Scott Papers.
[65] Strohl to Scott, 17 August 1910, file: August-September 1910, box 6, Scott Papers.
[66] A. Marston, "Some Unsolved Problems in Drainage Engineering," *Report of the Annual Meeting of the Iowa State Drainage Association* (1908): 19-21.

day for "the unprofesional Part of the diging."[67] Digging the drainage lines, hauling and laying the tile in them, and filling in the ditches cost nearly as much as the materials.[68] While most of the drains on the Mills County farm were three feet deep, some of the drainage ditches in Calhoun County had to be dug nine feet into the soil.[69] Adding to the challenge was the discovery of "Quick Sand" on some of the Scott land.[70] Tiling contractors expected prompt payment, and would boycott employers with a bad reputation for paying wages.[71] On January 1, 1910, Strohl reported that some tilers quit because Scott's payments came too slowly.[72]

In part, Scott and her agent paid a premium for workers in a tight labor market on section fourteen because the Pierces would not do the work. Scott's January 1909 contract with the Pierces did not require them to fill ditches or to pay for wage laborers to do the work in their place. The Pierce brothers strictly interpreted their contract with Scott to confine the scope of their labor. To Strohl's frustration, they followed their contractual duty by hauling the tiles to the site of the drainage ditch, but refused to fill in the ditches after the tiling crews laid the drains. The agent believed that "no reasonable tenent would have thought anything about filling ditches."[73] The Pierces would not follow the unwritten expectation that tenants would do the unskilled but labor-intensive work of covering drain tiles with soil.

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[67] Strohl to Scott, 25 July 1909, file: June-July 1909, box 5, Scott Papers.
[68] Strohl to Scott, 6 August 1909, file: August 1909, box 5, Scott Papers.
[69] Strohl to Scott, 17 August 1910, file: August-September 1910, box 6, Scott Papers.
[70] Strohl to Scott, 24 June 1910, file: June-July 1910, box 6, Scott Papers.
[71] Strohl to Scott, 2 November 1909, file: November-December 1909, box 5, Scott Papers.
[72] Strohl to Scott, 1 January 1910, file: January 1910, box 6, Scott Papers.
[73] Strohl to Scott, 8 September 1909, file: September 1909, box 5, Scott Papers.

"I will be glad when this drainage project is finished," Strohl complained to Scott, "as it Seams that I am Placed between two fires and they Prety close."[74] Caught between intransigent tenants, a suspicious boss, and striking tilers and suppliers, Strohl's solution was to pay the costs of the drainage project out of his own funds. In May 1910, the tilers were "howling there heads off" about unpaid wages, Strohl wrote to Scott's son-in-law Charles S. Bromwell, so he paid them out of his own checking account.[75] Otherwise, the laborers could file a mechanic's lien on section fourteen to secure payment.[76] Julia Scott wanted to call the projects off, but Strohl continued to pay the workers, who had already delivered tiles to section fourteen and other tenant farms nearby. Stopping work might also spur litigation from her tenants, who, unlike the Pierces, had hauled the tiles without pay in anticipation of the larger yields to come in future seasons. Strohl thought denying them the benefit of this improvement was unfair "and it might cause the Tenents to want damages which I bleave they could collect if you fail to do your Part of contract to Put in the Tile already hauled by them."[77] As his boss Julia Scott continued to worry about the escalating costs of these improvements, Strohl threatened to resign. "I don't consider it any honor," he wrote her in July 1910, "for to be an agent and take the abuse I have in the Past 6 months."[78] Strohl thought his boss was acting against her own interests when she condoned tenant misbehavior, was late on paying contractors, and took a short-sighted view of improving the land.

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[74] Strohl to Scott, 26 May 1910, Box 6, Folder: April-May 1910, box 6, Scott Papers.
[75] Strohl to Charles S. Bromwell, 9 May 1910, file: April-May 1910, box 6, Scott Papers.
[76] Strohl to Bromwell, 5 June 1910, file: June-July 1910, box 6, Scott Papers.
[77] Strohl to Scott, 10 June 1910, file: June-July 1910, box 6, Scott Papers.
[78] Strohl to Scott, 28 July 1910, file: June-July 1910, box 6, Scott Papers.

Richard Pierce's maneuvers had put his agent and landlord at odds about the drainage project, and, to George Strohl, they were undermining his power over Scott's other Calhoun County tenants. He blamed Pierce for "Trying to Poison the minds of all the Tenents against me" by raising their expectations about what the landlord would provide to her renters and challenging Strohl's authority to command their labor.[79] In September 1909, an "avrigge tenent," C.O. Bowden, made demands "a little out of line" to Strohl, including a "hog tight fence," an improvement that Scott never furnished to any of her renters. Strohl suspected that Bowden's neighbor, Richard Pierce, was his "advisor as to what to demand."[80]

Pierce's contagion soon spread to a tenant named Algot Johnson, whom Strohl had once praised as a "very neat clean farmer."[81] In June 1910, Johnson stopped hauling tiles, saying that he and his sons were too busy in the fields to be working on the drainage project on his leasehold. He also began pushing the agent for a new house and well.[82] Strohl thought Richard Pierce was behind Johnson's demands.[83] The agent believed that Johnson had time to haul the tile, but spent this leisure time traveling to town in his buggy to play pool. Johnson already had a house that did not need to be destroyed and rebuilt just to suit this tenant. And no contractors would do the work, anyway, because they could not stand his "abusive talk" and would not work there "at any price."[84]

On their face, Algot Johnson's housing requests were not unusual. Tenants often asked Scott and her agents for materials to rebuild their shelters. Many of the tenant

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[79] Strohl to Scott, 15 June 1910, file: June-July 1910, box 6, Scott Papers.
[80] Strohl to Scott, 22 September 1909, file: September 1909, box 5, Scott Papers.
[81] Strohl to Scott, 6 May 1910, April-May 1910, box 6, Scott Papers.
[82] Strohl to Scott, 5 June 1910, file: June-July 1910, box 6, Scott Papers.
[83] Strohl to Scott, June 15, 1910, file: June-July 1910, box 6, Scott Papers.
[84] Strohl to Scott, July 5, 1910, file: June-July 1910, box 6, Scott Papers.

homes on the Scott farms were in bad shape and offered poor shelter from Iowa's brutally cold winters. But Johnson, a new tenant, broke the gendered conventions of landlord-tenant relations on the Scott farms when he asked for a new home. Julia Scott rewarded loyal tenants with improvements to their properties, but she carefully doled out these projects, believing that tenants would take advantage of "any disposition to generosity on my part."[85] Likely to encourage her maternalistic spirit, most of the appeals came from the wives of tenants—women whose labor was otherwise largely invisible in Scott's records. For example, the wife of tenant J.J. Cornell asked Scott for a new porch and roof, worrying that the roof might collapse in a storm.[86] Tenant William Jordan's wife asked for paint and wallpaper to control a bedbug infestation in her home.[87] Mrs. Thomas Slater asked for a new house, finding the old one not fit for living.[88] Algot Johnson's request was an unusual breach of this protocol.

Strohl wanted to teach Johnson and his fellow tenants a lesson about their rights and obligations. In September 1910, Strohl served Johnson with a notice to vacate his tenant farm, on the grounds that Johnson violated his lease when he refused to haul tiles. Unwilling to accept an apology from the tenant, Strohl ordered Johnson to leave and replaced him with "good men . . . who will not want a modern home built and who will care for what they have." The new tenants, he boasted, would pay fifty cents more per acre for renting grassland. Johnson's reputation was sunk, and he would not be able to find a new lease because none of the "buisness People" of the county would give him a

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[85] Scott to Lewis Stevenson, 31 December 1914, file: November-December 1914, box 8, Scott Papers.
[86] Mrs. J.J. Cornell to Scott, 25 August 1908, file: August 1908, box 5, Scott Papers.
[87] Mrs. William Jordan to Scott, 21 February 1913, file: February 1913, box 7, Scott Papers.
[88] Strohl to Scott, 5 October 1910, file: October 1910, box 6, Scott Papers.

positive reference.[89] Johnson ended the year with a good crop, but would not pay his cash rents, claiming a $150 credit for the cost of hauling water resulting from the landlord's failure to fix his well—another strategy from the Pierce playbook. In response, the agent put all of the local grain buyers on notice "that if they get his grain that I Expect them to Pay the cash rent."[90] Rather than make a settlement with Johnson over his labor in hauling the water, Strohl felt "compeld to make an Example of this" by filing a lawsuit for the rent, "as all the Tenents will just do as they wish and I for one wont Stand for it."[91] Formal action proved unnecessary, as Johnson agreed to pay $390 for his grassland cash rents.[92] Through the power of the lease, the market, and the courts, Strohl cornered his rebellious tenant and demonstrated to the other renters the risks of following Pierce's example.

Tiling had shaken contractual relations on the Scott farms, and as the cement drains sucked water out of the ground, landlord and agent entered a new set of conflicts with neighbors and the local government. By October 1910, Strohl proudly reported to his boss that their tiling project on the Pierce farm had produced one of the best sections of land in Iowa.[93] Just as Scott was completing the drainage project on section fourteen, however, the county had begun a public drain line across a broader watershed that included a portion of this section. Scott was among the landholders assessed for the cost of the improvement. "It were by your draining the Pearce farm that fooled the People into this drainage," Strohl speculated. "The water was drownding the People below your

[89] Strohl to Scott, 28 September 1910, file: August-September 1910, box 6, Scott Papers.
[90] Strohl to Scott, 12 January 1911, file: January-February 1911, box 6, Scott Papers.
[91] Strohl to Scott, 30 January 1911, file: January-February 1911, box 6, Scott Papers.
[92] Strohl to Scott, 4 March 4, 1911, file: March-April 1911, box 6, Scott Papers.
[93] Strohl to Scott, 14 October 1910, file: October 1910, box 6, Scott Papers.

farm" and the public drain was designed to funnel it off their lands.[94] She sued the drainage district to avoid or lower the assessment, arguing that she was effectively paying twice for the benefits of drainage. She did not want to be forced to contribute to the public system when she already had paid $8,000 to build private drainage on her own lands. She claimed to derive no benefit from the public drain, nor had she harmed her neighbors, because all of her water drained into a reservoir on her own land.[95] Fruitless bargaining and litigation would follow, at the cost of more than $200 in legal fees.[96] Drainage commissioners were a "law unto themselves," Scott's lawyer, E.C. Stevenson, told her agent, and their assessments were very hard to overturn on appeal.[97] Scott's installation of private drainage was proving costly in labor, materials, and lawyers.

Despite Scott's investments, Richard Pierce told Strohl that he would not pay a higher rent on the improved land.[98] He did not have to, of course, as Pierce and Scott had negotiated a fixed-rent for five years beginning in 1909 with the option to renew the lease annually. By then, Richard Pierce owned a quarter section of land immediately north of Scott's section fourteen. As Pierce transitioned from renter to landowner, he pressed Scott and Strohl for a second time to compensate him for improvements he brought to her land.

And, once again, Richard Pierce's impatience with his landlord's oversight led to trouble. In October 1911, Pierce threatened to withhold his cash rents unless Scott built a

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[94] Strohl to Scott, 22 December 1910, file: December 1910, box 6, Scott Papers.
[95] Objections to Assessment of Benefits in the Matter of Drainage District #113, Calhoun County, Iowa, signed by Julia Scott, n.d., file: December 1910, box 6, Scott Papers.
[96] E.C. Stevenson to Scott, 1 December 1911, file: December 1911, box 6, Scott Papers.
[97] E.C. Stevenson to Strohl, 15 September 1910, file: August-September 1910, box 6, Scott Papers.
[98] Strohl to Scott, 23 June 1911, file: June 1911, box 6, Scott Papers.

wind mill and wire fencing around the land. Strohl checked with his attorney to see if Iowa law permitted a tenant to compel his landlord to make improvements.[99] Pierce acted on his own to buy building materials, assemble the improvements, and deduct the costs from his rent. When Strohl again pressed him for his overdue rent in January 1912, Pierce would not pay, believing that these investments offset the rent. The agent conceded to his boss that a lawsuit for the rent would be pointless, "as the wind mill and fencing which is already built and would be needed when Pearces leave the farm."[100]

Pierce's accounting began to look less ethical after merchants Cottong and Peterson of Lake City sent a bill to Strohl in March 1912 for Pierce's lumber, posts, and wires. Strohl would not pay the merchants, saying that neither he nor Scott ever gave permission for their tenant to make these charges on their account.[101] In October 1912, Cottong and Peterson sued Scott for $222, filing a lien on section fourteen to secure the judgment. Scott's attorney countersued the merchants for a thousand dollars in compensatory and punitive damages, claiming that this lien was malicious and groundless.[102] Strohl wanted to fight this claim "to the biter End," reminding Scott that Iowa's law of fixtures prevented a tenant like Pierce from moving "a Single Post" from rented land. Pierce would be "taught a good lesson" when they forced him to pay his debts to the merchants.[103]

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[99] Strohl to Scott, 7 October 1911, file: September-October 1911, box 6, Scott Papers.
[100] Strohl to Scott, 20 January 1912, file: January-February 1912, box 7, Scott Papers.
[101] Strohl to Scott, 11 March 1912, file: March 1912, box 7, Scott Papers.
[102] Strohl to Scott, 27 October 1912, file: October 1912, box 7, Scott Papers; Answer and Counterclaim to Plaintiffs' Complaint in the case of Cottong & Peterson v. Julia G. Scott, signed by George Strohl, 23 October 1912, file: October 1912, box 7, Scott Papers.
[103] Strohl to Scott, 10 November 1912, file: November 1912, box 7, Scott Papers.

On February 23, 1913, the long war between Agent George Strohl and Tenant Richard Pierce ended with a telegram. Strohl had written to Scott that day, letting her know that merchant's suit over the fencing would be delayed until the next term and urging her to compromise the claim out of court. They had always needed the fence and the Pierces built it well.[104] He raised this point in a letter earlier in the year: It was their manner of acting without permission, and not the fence itself, that was the problem. Strohl was glad that their lease had run its course.[105] Just as Strohl was encouraging Scott to end the lawsuit, Scott's son-in-law, Carl Vrooman, sent a telegram to the landlord asking her to relieve Strohl of his agency.[106] Years of conflict about his expenses and the costs of improvement, along with Scott's hope that her daughter and son-in-law would settle down into being her farm agents, meant that Scott did little to defend her agent from being pushed out, even she admitted it was a "sad wrench" in her plans to restore her family to the daily management of the lands.[107]

Humbled Strohl and unbroken Pierce left Scott's correspondence to rather similar circumstances. Strohl tendered his resignation to Scott a week after Vrooman demanded his firing, and continued to press her for the payment of his commissions in the succeeding months.[108] Strohl remained a landowner in Calhoun County, but his farm was saddled with a $12,000 mortgage, and he had failed repeatedly to convince Scott to buy

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[104] Strohl to Scott, 23 February 1913, file: February 1913, box 7, Scott Papers.
[105] Strohl to Scott, 11 January 1913, file: January 1913, box 7, Scott Papers.
[106] Telegram, Carl Vrooman to Scott, 23 February 1913, file: February 1913, box 7, Scott Papers.
[107] Scott to Lewis Stevenson, 24 February 1913, file: February 1913, box 7, Scott Papers; Stevenson to Scott, 14 March 1913, file: March 1913, box 7, Scott Papers.
[108] Strohl to Scott, 1 March 1913, file: March 1913, box 7, Scott Papers.

him out.[109] Richard Pierce, meanwhile, moved his family across the road from section fourteen to the land he had purchased a few years before. As a landowner, Pierce was also incorporated into a drainage district, and, by Strohl's estimate, had to pay a $1,600 assessment on his quarter section.[110] This tax was a heavy burden for the fledgling freeholder. According to the Iowa state census of 1915, Pierce had only earned $1,500 in the previous year as a farmer. His farm was worth $12,000, but he would have to work hard to keep up the payments on his $9,000 mortgage.[111]

During more than a decade of renting, Richard Pierce made numerous threats not to pay his rent—throwing his rent corn on the ground to rot and withholding his cash rents for grazing on pasture land—until the landlord followed her lease obligations to provide water or pay for new fencing. When Scott and her agents were slow to build these improvements, Pierce and his family installed them and sent her the bill. Pierce also expected compensation for the fixtures he built when his lease ended. Furthermore, he threatened not to plow the land unless the landlord completed a drainage system on section fourteen, and then would not haul tiles to the drainage project and bury them with soil without extra pay. Through his adept understanding of his contractual rights within the landlord-agent dynamic, Pierce tested the limits of absenteeism in these boom years of Midwestern agriculture and land improvement, giving us a detailed look at complicated relations of power structuring the lives of tenant farmers, landowners, agents, and merchants across the Midwest.

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[109] Strohl to Scott, 2 March and 13 March 1912, file: March 1912, box 7, Scott Papers.
[110] Strohl to Scott, 22 December 1910, file: December 1910, box 6, Scott Papers.
[111] "Richard Pierce," Iowa Census 1915, Calhoun County.

C. A Strenuous Life: Agency, Power, and Landlord-Tenant Relations

In 1910, Julia Scott's nephew, Lewis Stevenson, began managing large sections of her landholdings. In an era obsessed with masculine performance, Stevenson's physique did not impress the hardy farmers he supervised. He weighed just one hundred and twenty-six pounds, was prone to migraines and neurotic episodes, and was missing the shoulder and pectoral muscle from one side of his body following a childhood shooting accident. He was also a son of privilege, living in the long shadow cast by his father, the Vice President of the United States under Grover Cleveland's second administration, Adlai Stevenson.

Figure 5-6: Lewis Stevenson[112]

Lewis Stevenson would never live up to his family's expectations. As a youth, he dropped out of Exeter and never completed high school. Without a profession or family trade to motivate this chronic neurasthenic, Stevenson emulated Theodore Roosevelt's

[112] *Wikipedia*, s.v. "Lewis Stevenson," last modified September 3, 2014, http://en.wikipedia.org/wiki/Lewis_Stevenson.

call to pursue a "strenuous life," joining the explorer John Wesley Powell on an 1887 expedition to chart parts of Colorado and Montana. In 1893, he married Helen Louise Davis, daughter of a wealthy Midwestern newspaper editor and a fellow sufferer of neurasthenia. After separating just a few years into their marriage, they reunited and spent ten years traveling across the country as Lewis Stevenson tried his luck at a range of enterprises. He superintended a copper mining venture in New Mexico, served as business manager to William Randolph Hearst's *Los Angeles Examiner*, and ran an oil venture in Denver, Colorado, with frequent sojourns to sanitariums at Battle Creek, Michigan, and Summit, New Jersey. Stevenson family biographer Jean H. Baker describes these years as Lewis Stevenson's "pathological version of American mobility," a time when Helen Stevenson "measured her life by rented houses."[113] Finally, in 1907, both settled in Bloomington, Illinois, where Helen Stevenson had bought a home in her own name. Helen brought a five-hundred acre farm in Indiana into the marriage, and her husband decided to devote his energies to making it run better.[114] Within a few years, he convinced his aunt, Julia Scott, to let him manage some of her lands. While his peers were moving to big cities to pursue careers in banking, brokerages, and manufacturing, his biographer writes, "Lewis became a throwback."[115]

Like George Strohl, Lewis Stevenson's adventures in agency were punctuated by conflicts with his boss and the tenants he supervised over the extent of his authority, the cost of maintaining and improving the lands, and the challenge of enforcing order across long distances. Stevenson's close relationship with his aunt, however, encouraged him to

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[113] Jean H. Baker, *The Stevensons: A Biography of an American Family* (New York: W.W. Norton, 1997), 198-99.
[114] Ibid., 111, 198, 185-220.
[115] Ibid., 204.

make his hopes, fears, and frustrations far more visible to Scott than even a hot-tempered manager like Strohl would have dared. From his faltering attempts to break the soil on an overgrown and flooded Iowa farm to his efforts to establish "precedents" when tenants were sloppy at choosing seed corn or keeping up hedges, his letters offer an unusually personal perspective on the customs and law of landlord and tenant in the Midwest and the ways that family relations shaped land management.

Stevenson's relationship with his beloved aunt was never easy. "I fell down a full flight of steps today + hurt my hip badly," he wrote during one melodramatic exchange, "but it didn't really hurt me as much as your letter."[116] Scott hired him at the beginning of 1910, amid the tensions of the Calhoun County drainage project, hoping that a family member would be more trustworthy than a hired agent like George Strohl. Scott told her nephew that "I have been cheated out of my eyes tiling – but it will be different with you to inspect and oversee it + send me the bills."[117] Even as she trusted Stevenson to monitor her affairs, she offended him by demanding he obtain a surety before engaging in the agency. Their business relationship was structured in the form of a tenancy, a legal form not dissimilar from the lessee-managers who ran "new business plantations" for absentee owners in the South.[118] Scott agreed to lease about one-third of her lands to Stevenson over a seven-year term.[119] As a tenant, Stevenson paid her a portion of the rents he collected on these farms. His tenants, in turn, were actually subtenants of Julia Scott. To

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[116] Lewis Stevenson to Scott, 26 September 1910, file: August-September 1910, box 6, Scott Papers.
[117] Scott to Stevenson, 14 February 1910, file: February 1910, box 6, Scott Papers.
[118] Harold Woodman, "Reconstruction of the Cotton Plantation," in *Essays on the Postbellum Southern Economy*, ed. Thavolia Glymph and John J. Kushma (College Station, TX: Texas A&M University Press, 1985), 114.
[119] Scott to Stevenson, 14 February 1910, file: February-March 1910, box 6, Scott Papers.

further secure her rents, Scott required Stevenson to obtain sureties who would pay his rent in the event he could not. Family or not, Scott told her nephew that it would be "imbecility" not to have a guarantor because of the risks of tenant agriculture.[120] "I am not willing to be at the mercy of people that may fall out" with him, she wrote to Stevenson, "or make claim against you" in the course of the agency.[121]

Scott and Stevenson also struggled to find a system of accounting that made both feel secure. Writing from Louisville, Kentucky, Scott complained to her nephew "the life is pretty nearly drained out of me by demands for money" from agents, tenants, contractors, and local tax collectors.[122] To keep track of these expenses, Scott preferred to pay creditors directly for costs arising from her farms, but as her agent Strohl learned during the Calhoun County tiling campaign, merchants and labor contractors would quit or sue if payment was too slow. In practice, Stevenson and the other agents paid creditors out of their expense accounts, and then submitted the receipts to Scott for reimbursement. Stevenson often grew exasperated with his aunt for effectively taking advances on her staff, an accusation that Scott, writing from a hotel in Paris in June 1912, denied. [123] "We were doing a lot of work," he wrote Scott in defense of money spent on her Monona County, Iowa, farm, "and the men, lumber dealers, carpenters, hardware men, seedmen, steam-plow men, etc., needed their money and had to be paid at the time." He urged her to adopt the "general practice" of using a local bank as a broker to hold funds on reserve, pay bills, and render an account.[124]

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[120] Scott to Stevenson, 5 February 1910, file: February-March 1910, box 6, Scott Papers.
[121] Scott to Stevenson, 14 February 1910, file: February-March 1910, box 6, Scott Papers.
[122] Scott to Stevenson, 1 April 1910, file: April-May 1910, box 6, Scott Papers.
[123] Scott to Stevenson, 20 June 1912, file: April-June 1912, box 7, Scott Papers.
[124] Stevenson to Scott, 1 July 1912, file: July-August 1912, box 7, Scott Papers.

Another customary accounting practice that fostered mistrust was Stevenson's reimbursement system with the tenants. Scott and Stevenson's leases combined three types of rents. First, tenants generally paid a share of their crops as rent to the landlord. Second, most paid a cash rent for the use of grassland. Renting pasture was less expensive than buying feed for livestock. Third, under "stock-share" leases, tenants who ranched more extensively split the income they earned from raising and selling livestock with the landlord.[125]

The second form of rents, pasture rents, served as a kind of seasonal credit between landlord and tenant, and paid for many of the small-scale investments that tenants made on their lands. Stevenson explained how this worked in response to Scott's complaint in February 1915 that he was too slow in collecting the pasture rents. Stevenson wrote that it was unrealistic to expect the tenants to pay them until he compensated their outlays during the year. For example, Stevenson paid a tenant $208.05 for pulling stumps and willows on five-and-one-half acres of her land and clearing a drainage outlet. Out of that money, the tenant sent Scott $187 for pasture rent for the past two years. The fungibility of cash rents allowed Stevenson to finance improvements through the capital generated by the land itself. As long as the landlord was willing to reimburse the tenant's expenses, little money might change hands.[126]

Stevenson experimented with other partnerships with tenants that he hoped would improve the land without significant interference from his aunt or protest from the renters. On his first year on the job, he worried about gaining the respect of the tenants,

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[125] The Iowa Supreme Court provided a legal history of stock-share agreements in Federated Mut. Implement & Hardware Ins. Co. v. Eng, 178 N.W.2d 321 (1971).
[126] Stevenson to Scott, 2 February 1915, file: January-June 1915, box 8, Scott Papers.

who were at first "offended" by his reforms "but have now accepted" them.[127] One persistent concern was the tenants' failure to spread manure on their fields. Until tenants agreed to haul manure, Stevenson withheld promised improvements on their farms. Although Julia Scott told tenant Tom Cornell she would build him a new cook-house, Stevenson would not construct it until the tenant bought a manure spreader to conserve the land's fertility.[128]Another solution was for the landlord to build barns and sheds to encourage tenants to invest in livestock. Having cattle produce manure on site was much cheaper than shipping it in by rail, and building modern barns would provide a positive "example to all your other tenants" of proper husbandry.[129] He forwarded a letter from a tenant who wanted Scott to buy the materials for building a barn. This tenant chided the landlord for being "tormented" about the cost of materials, when he was willing to build it for free.[130] Scott thought that Stevenson's plan would never work; in her experience, "it would take seventy years to manure a farm from stock."[131]

Scott was similarly skeptical about her nephew's efforts to form ranching and dairy partnerships with his tenants. As manager of his wife's farms, Stevenson sometimes entered in joint ventures with his tenants to raise stock. As a condition of the lease, landlord and tenant owned the animals and their offspring jointly, and shared the proceeds of their sale.[132] On the Livingston County, Illinois, farms he supervised,

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[127] Stevenson to Scott, 23 September 1910, file: August-September 1910, box 6, Scott Papers.
[128] Stevenson to Scott, 19 May 1911, file: May 1911, box 6, Scott Papers.
[129] Stevenson to Scott, 7 October 1910, file: October 1910, box 6, Scott Papers.
[130] Stevenson to Scott, Jan. 31, 1910, 2:133.
[131] Scott to Stevenson, Jan. 19, 1910, 2:124.
[132] Lease between Helen D. Stevenson, lessor, and O.T. Parker, lessee, Vermillion County, IN, March 1, 1907, file: January-July 1907, box 1, MS 356, Lewis G. Stevenson

Stevenson encouraged tenants to buy dairy cows by endorsing the notes of renters who were "poor" and had "little or no credit at the banks." At $80 to $100 each, good milk cows were too expensive for tenants to purchase. Stevenson encouraged Scott to join him in these partnerships.[133] Scott was not interested in expanding this credit scheme. She did not want to risk her capital (and protect her nephew from loss) by underwriting the sale of cows to tenants she did not know. "I think a tenant who cannot start a herd . . . is not the man for me to guarantee."[134] If Stevenson wanted to get into the cattle business with the tenants, she advised him to make his ownership interest in the livestock clear. "I do not want any complications with tenants, but I do [heartedly] approve of dairies." Sell the cattle to the tenants, she suggested, and take a mortgage on the chattel to secure the debt.[135]

Stevenson and Scott also disagreed about spending money for improving the land or reducing the cash rents owed by tenants for their sweat equity. Why pay $375 to clear stumps from twelve acres of land, she asked Stevenson, when the land only cost $80 an acre to purchase; "at $8 an acre rent, it will take me 45 years to get that $375.00 back without interest." Rather than invest prospectively in land improvements, Scott preferred to let her tenants take the initiative by gradually getting new acres under cultivation "without expense" to her.[136] That was the way her husband developed land in the pioneer days, and she saw no reason to change course.[137]

Papers, Division of Rare and Manuscript Collections, Cornell University Library, Ithaca, New York (hereafter Stevenson Papers).
[133] Stevenson to Scott, 18 June 1911, file: June 1911, box 6, Scott Papers.
[134] Scott to Stevenson, 28 June 1911, file: June 1911, box 6, Scott Papers
[135] Scott to Stevenson, 1 July 1911, file: July-August 1911, box 6, Scott Papers.
[136] Scott to Stevenson, 8 October 1910, file: October 1910, box 6, Scott Papers.
[137] Bogue, *Patterns in the Sod*, 100-101.

Scott's organic theory of land development contrasted with Stevenson's speculative approach. His toughest project as her manager was putting her riparian lands along the Missouri River in Monona County, Iowa, into cultivation. For years, Scott's tenants on these farms suffered from devastating floods and muddy conditions that made growing crops and transporting them to market challenging. Tenants expected the landlord to furnish them with seed wheat, as they did not want to risk their own seeds in the wet soil.[138] Some of the land, however, was hard and compacted, making it difficult for a tenant to break the land without heavy machinery. As he made a tour of this county on the western border of Iowa in October 1910, Stevenson decided that simply fixing up houses, barns, and corn cribs on this land would not attract reliable tenants. The flood risk was too high. An Illinois tenant farmer who had expressed interest in some of the land said he would not take it even if he got to keep two-thirds of the corn and grain and graze on the pasture for free.[139]

To turn a profit on this land and reduce the costs for tenants, Stevenson advised Scott to hire workers to break the land. Instead of leasing it in large tracts, he urged her to rent it in more affordable forty- and eighty-acre parcels.[140] He also hired laborers to build a dyke along the Missouri River[141] and planned a tiling project using steam shovels that could cut through six inches of frost, an improvement on the "hand work" of digging that made the Calhoun County project slow and costly.[142] Scott was skeptical that an "experiment" with machine tiling would lead to better results than in Calhoun County,

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[138] W.B. Whiting to Scott, 17 August 1906, file: May 1907 [misfiled], box 5, Scott Papers.
[139] Stevenson to Scott, 20 October 1910, file: October 1910, box 6, Scott Papers.
[140] Ibid.
[141] Stevenson to R.V. Fairchild, 30 October 1910, file: October 1910, box 6, Scott Papers.
[142] George Strohl to Stevenson, Nov. 6, 1910, file: November 1910, box 6, Scott Papers.

reminding her nephew of her preference to let farms mature without her investment.[143] Nevertheless, Stevenson moved forward, believing that these improvements would encourage better tenants to move to Monona. "Such people I never saw, Shiftless + utterly without ambition," he complained to Scott in March 1911. "But this is the way I got Helen's bottom land in Indiana worked + I will do the same here in time."[144] Stevenson's local supervisors on these projects reported slow progress during the winter and spring of 1911. Dyke construction went according to plan—even coming in under budget—but owing to bad weather, engine trouble, and sickness, two teams of steam-plow operators took months to break only a portion of the land.[145] In May 1911, W.B. Whiting, one of Stevenson's Monona agents, conceded that it would take a year to "subdue this farm."[146]

Scott's reluctance to invest in her lands frustrated Lewis Stevenson's efforts to attract trustworthy tenants in a competitive market for leases. His copy of the Fall 1908 catalog of the Northern Iowa Land Company brought this problem to his attention in glossy detail. Page after page of "IOWA FARM BARGAINS" for sale at low prices and "favorable terms" were followed by advertisements for farms for rent near Independence, Iowa, at one-half of the crop or about four dollars an acre. Most of these eastern Iowa farms were half or quarter-sections and only a few miles from town, where tenants could enjoy school and church. A few were close to railroad lines, and nearly all advertised

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[143] Scott to Stevenson, 8 December 1910, file: December 1910, box 6, Scott Papers.
[144] Stevenson to Scott, 25 March 1911, file: March-April 1910, box 6, Scott Papers.
[145] Fairchild to Stevenson, 3 December, 1910, file: December 1910, box 6, Scott Papers; Stevenson to Scott, 25 March 1911, file: March-April 1910, box 6, Scott Papers; Whiting to Stevenson, 10 April 1911, file: March-April 1910, box 6, Scott Papers; Stevenson to Scott, 11 May 1911, file: May 1910, box 6, Scott Papers.
[146] Whiting to Stevenson, 13 May 1911, file: May 1910, box 6, Scott Papers.

improvements. A 240 acre farm two miles from Independence featured "Good, level, prairie land, partly tiled; 10-room house; good double corncrib; hog and chicken houses; granary, well and wind-mill, on main road."[147] When Stevenson listed a four hundred acre farm for rent in April 1910, potential tenant C.E. Camphill wanted to know "location—near what town, distance to school, improvements, no. of acres in cultivation, trees, etc."[148] Tenants wanted to make sure their families would be housed in reasonable comfort, and that their children would have opportunities to attend school and work on the farm. With successful farming so dependent on the imputed labor of their wives and children, married men sought farms where labor-saving technologies were already in place. Some had attended high school or college-level agricultural training,[149] and all were expected to have the sophistication to fill out the rent cards that Julia Scott used to track their annual yields. "I will keep no tenant who is not intelligent enough to fill out his card," she ordered.[150]

The tenants in the best bargaining position already had a secure lease and good references, and were looking for more profitable farms. Stevenson had a hard time convincing one potential renter to lease a farm on halves that was not stocked with manure. After estimating his profits from "a good crop" of corn and oats, and subtracting his expenses for rent, seeds, manure, the labor of husking and shucking the corn, threshing the oats, stacking the hay, and growing the clover, the material costs of coal to

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[147] Northern Iowa Land Company, "Farms for Rent," *Farm Catalogue* (1908): 13, file: October-December 1908, box 1, Stevenson Papers.
[148] C.E. Camphill to Stevenson, 22 April 1910, file: April-May 1910, box 6, Scott Papers.
[149] Walter V. Rothlisberger to Stevenson, 17 April 1910, file: April-May 1910, box 6, Scott Papers.
[150] Scott to Stevenson, 28 February 1912, file: January-February 1912, box 7, Scott Papers.

power the threshing and shelling machines, and bills for blacksmithing, harness-making, and groceries, the interested tenant wrote, "I cant figure where the gain in cash to me comes in." He suggested to Stevenson that "if the clover seed and Manure"—250 tons of it—"was delivered at the farm at your expense I would think of trying to rent this farm."[151] Stevenson complained to Scott that pushing these costs onto the tenants and failing to pay for repairs lowered the rents Stevenson shared with his aunt and dissuaded a "high grade man" from working for him.[152]

Stevenson was weary of the "stupid tenants" who were slow to pay the rent and did not honor their leases or follow his ideas for boosting yields, such as carefully inspecting the seed corn before planting.[153] Like Scott's other agents, Stevenson worked a wide territory, and only visited the tenant farms three times a year to monitor planting, weeding, and harvesting, leaving his tenants with significant autonomy over the daily management of their farms. He wrote many of his letters to Scott at train stations as he tiredly waited for a connecting train. Eventually, his aunt bought him an automobile "exactly suited" to his work.[154] Another technology that helped Stevenson overcome distance was the telephone. In January 1910, for example, he spent $2.60 calling tenants, merchants, and other agents from his home in Illinois.[155] Telephone connections allowed distant managers to monitor local prices for farm commodities and order tenants to sell

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[151] Frank Hisner to Stevenson, 22 September 1909, file: July-December 1909, box 1, Stevenson Papers.
[152] Stevenson to Scott, 15 October 1910, file: October 1910, box 6, Scott Papers.
[153] Stevenson to Scott, 13 October 1911, file: September-October 1911, Scott Papers.
[154] Stevenson to Scott, 23 September 1910, file: August-September 1910, box 6, Scott Papers.
[155] Central Union Telephone Company, Toll Line and Messenger Service Bill for Lewis Stevenson for January 1910, issued February 1, 1910, file: January 1910, box 6, Scott Papers.

when the price was right without the delay of the mail.[156] Many of Stevenson's calls in January 1910 were to tenant Chris F. George, likely to warn him to pay his rent; on January 12, he drafted a distress warrant to seize the farmer's property after three calls earlier in the month.[157]

Like Southern landlords, Stevenson held statutory liens on his tenants' crops to protect his rents. His Indiana lessees fell under a landlord's lien "fully as severe as the agricultural rent liens of our southern neighbors," according to economist Clarence Foreman, who wrote a comparative study of agricultural rent liens in 1932.[158] Indiana law vested the landlord with title over the crops during the term of the lease. Iowa law, however, gave the tenant possession of these crops until the rent was due; as an Iowa lawyer explained in 1914, the share tenant "has the same exclusive right to the crops while growing" as a tenant who paid cash rent, "and the landlord has no right to control them in any way nor any right to the portion due him as rent until it is set apart to him"[159] In practice, possession did not amount to much when the landlord's lien covered the growing crops. If a tenant sold the crops without paying his rent, the landlord could seize those crops from the buyer or sue the buyer for the value of the crops. This rule applied even to buyers who had no knowledge of the landlord's lien.[160] Clarence Foreman considered Iowa law "similar in content and fully as radical in its enforcement upon

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[156] O.G. Harper to Scott, 27 September 1912, file: September 1912, box 7, Scott Papers.
[157] Distress warrant drafted by Lewis Stevenson against Chris F. George, unsigned, January 12, 1910, file: January 1910, box 6, Scott Papers.
[158] Clarence Foreman, *Rent Liens and Public Welfare: An Economic and Legal Adjustment of Industry* (New York: Macmillan, 1932), 163.
[159] Ezra C. Ebersole, *Encyclopedia of Iowa Law* (Des Moines: Ebersole Publishing, 1914), 507.
[160] Blake v. Counselman, 95 Iowa 219 (1895).

property to which it attaches" as Mississippi's landlord's lien laws.[161] In all these regions, tenanted crops were suspect property. Without their landlord's mediation, renters had limited power to freely sell their goods in the market.

Standard form Midwestern leases included the landlord's lien as a default term, but to attract better tenants, Scott's agents sometimes crossed out this term. Without the lien in place, tenants could mortgage the growing crop to merchants to obtain supplies, like the tenant on Scott's Redenis farm who gave a mortgage on his crop to buy feed for his cattle from a merchant.[162]

When tenants were late with the rent, Scott's agents could use the traditional distress remedy to seize enough of the crop to satisfy the rent, though there is little evidence that she used it. Landlords obtained a warrant ordering the county sheriff to distrain the tenant's chattel property. In August 1910, for example, Champaign County, Illinois, landlord J.H. Hedrick filed a distress warrant against his tenant A.G. Van Meter for $780 in back rents. The landlord "levied upon two cribs full of corn on the farm, padlocked the doors and nailed a copy of the notice for his tenant to read."[163] To cover their rents, landlords and their agents also checked local property records to see if they could get hold of any tenant property that was not mortgaged to a third party.[164]

As discussed in chapter one, the distress remedy had significant limitations as a landlord remedy. Tenants with strong ties to the community could turn this bankruptcy-like process in their favor. As a writer for *Wallace's Farmer* remembered in 1947, "when

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[161] Foreman, *Rent Liens and Public Welfare*, 127.
[162] James Colter to Scott, 11 February 1904, file: February-March 1904, box 4, Scott Papers.
[163] "Hedrick Levies on Corn Crop," *Urbana Daily Courier*, August 28, 1910.
[164] A.J. McDermott to Strohl, 6 March 1906, file: March-April 1906, box 4, Scott Papers.

the landlords got tough, the tenants got tough, too. That was when we had 'penny' sales." When distrained goods were auctioned in Iowa during the early years of the Great Depression, for example, "The tenant's goods were sold off, but cows went at 5 cents apiece, to the neighbors. And there were gas pipes handy for any bidder who had other ideas. The neighbors gave the cows—and other stuff—back to the tenant after the sale."[165] Given their procedural hurdles, Scott and her agents used distress and other rent collection actions sparingly.[166] Only one distress warrant appears in her correspondence. It was to be levied against a tenant named Chris F. George, who owed Stevenson $300 for rent on a section of McLean County, Illinois, land.[167] The warrant was unsigned, and perhaps never enforced. Under the lease, George owed $600 annually, payable in cash, "for which amounts said George agrees to give two notes of three hundred dollars each endorsed by his father, Claus F. George." The distress warrant was likely a means for Stevenson to enforce George's father duties as a surety on the second installment of the rent.[168] Distress seizures were uncommon because of their procedural risks and the fact that the landlord's lien narrowed the ability of tenants to abscond with the crop.

With the backing of the landlord's lien, Scott and Stevenson's leases took on many of the attributes of Southern cropping agreements. In February 1903, Julia Scott signed a year-long lease of a portion of her Iroquois County land in northeastern Illinois

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[165] "If a Tenant Can't Pay His Rent, Should He Lose His Shift, or Half the Value of the Crop?" *Wallace's Farmer*, April 5, 1947.

[166] Julia Scott's disinclination toward formal legal action was also true under her husband's management. Margaret Bogue surveyed the nineteenth-century court records of four Illinois counties where Matthew T. Scott owned land and found only nine examples of litigation between Scott and his tenants. Bogue, *Patterns in the Sod*, 101.

[167] Distress warrant drafted by Lewis Stevenson against Chris F. George, unsigned, January 12, 1910, file: January 1910, box 6, Scott Papers.

[168] Lease between Lewis Stevenson, lessor, and Chris F. George, lessee, February 9, 1909, Box 6, Folder: Mar. 1909, Scott MSS.

to Martin Henke. The lease first described the various quarter-sections and lots that Henke possessed under the agreement. Below this handwritten description is the first of eight finely-printed covenants spread across its two pages that limited Henke's right to exclude his landlord and agent from the land and to sell or encumber the crops without their permission. Henke owed Scott one-half of all the crops he grew on the land and four dollars per acre for pasture land. He could not "sell, encumber, market or remove, or cause or suffer to be removed, any kind of grain, crop or product of said premises until after said landlord shall have first received and accepted her just and full share thereof" by delivering the grain to a local merchant and storing the corn in cribs on the tenant farm. Henke also owed Scott affirmative duties beyond paying the rent, such as planting clover, spreading manure, keeping up the hedges, paying (or working out) road taxes, not committing "voluntary waste," and making sure that the threshing machines did not clog with the burrs of Canadian thistles. Scott and her agent reserved "the right at all times of ingress and egress" to enter the leasehold.[169]

Stevenson incorporated similar rights of entry when he leased his aunt's lands to tenant farmers. In a five-year lease of Chenoa, Illinois, lands on halves between himself (as lessee of Julia Scott's land) and tenants Julius Funk and Yance Bennett, Stevenson reserved "the right of absolute control of all the policies under which any work is done on said land, both as to how said land shall be farmed, and including the sale of all products coming to said Stevenson under said lease or otherwise, the collection and handling and

[169] Lease between Julia Scott, lessor, and Martin Henke, lessee, February 21, 1903, file: Jan.-Feb. 1903, box 3, Scott Papers. See also Lease between Julia Scott, lessor, and William Charles, lessee, March 1, 1904, file: Feb.-Mar. 1904, box 4, Scott Papers.

custody of all moneys and the disbursement of the same, rending proper account therefor."[170]

Criminal law also helped Stevenson and his fellow agents keep order on distant farms. As in the South, removing the crop without the landlord's permission was a form of larceny if a landlord's lien was in place. A 1902 Iowa statute, for example, created criminal penalties for "any tenant of farmlands, with intent to defraud," who "shall sell, conceal, or in any manner dispose of any of the grain, or other annual products" covered by the landlord's lien.[171] Iowa's high court wrote that the law was in the nature of a civil action—coercive, not punitive—less interested in "the denunciation and punishment of crime" than on giving the landlord the authority to collect the rent by forcing the tenant into a settlement.[172] Scott's agents held this power in reserve. In January 1915, agent J.F. Summers reminded tenant T.C. Bowman that if he continued trying to "beat the rent," he would face "a good chance of getting sent to the penitentiary."[173]

When supervising tenants he suspected of mischief, Stevenson took steps to protect Scott's property from theft or vandalism. Ordinarily, agents encouraged landlords to build storage cribs on their property to hold corn and grain. Storing these commodities on their own farms allowed landlords to avoid paying fees to grain elevators until they could be sold at the season's best prices.[174] Stevenson, however, thought the risk of a low price was less important than the chance that the men "of a very low order" who ran his

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[170] Lease between Lewis Stevenson, lessor, and Julius Funk and Yance Bennett, lessees, August 19, 1909, file: August 1909, box 5, Scott Papers.
[171] *Acts and Joint Resolutions of the Twenty-Ninth General Assembly of Iowa*, ch. 146 (1902).
[172] State v. Ashpole, 127 Iowa 680 (1905).
[173] J.F. Summers to Scott, 22 January 1915, file: January-June 1915, box 8, Scott Papers.
[174] O.G. Harper to Scott, 22 October 1912, file: October 1912, box 7, Scott Papers.

isolated western Iowa farms would steal the crop. He required them to sell the crop as soon as it was harvested to lower the risk of theft—in other words, at the bottom of the market.[175] Stevenson also devised informal ways to control a tenant named Trimble, who worked a Monona County farm. Stevenson did not like Trimble from the beginning of his tenure because he thought the tenant did not have the tools or the labor force necessary to handle the land.[176] Fearing he was a "desperate sort of character" who would burn down his landlord's property, Stevenson raised his insurance limit to $500 on the buildings that Trimble rented.[177]

As intermediaries in rent disputes, elevator men, grain buyers, and merchants became cornerstones of policing landlord-tenant relations. At times, these local brokers served landlords as rent collectors.[178] More often, their rent collection role was indirect. Under their leases, tenants were directed to deliver their crops to merchants, elevators, and buyers in nearby towns. Those intermediaries converted the crops into cash and divided the proceeds between landlord and tenant after deducting their processing and storage fees. Scott's agents asked the brokers to withhold money from tenants if they had unpaid balances for rent or supplies.[179] For example, Lewis Stevenson required a tenant named Harry Trickle to deliver his grain to a local elevator operator, who withheld the portion that covered Trickle's rent and sent the cash directly to Stevenson.[180] Brokers

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[175] Stevenson to Scott, 25 November 1911, file: November 1912, box 6, Scott Papers.
[176] Stevenson to Scott, 12 September 1910, file: August-September 1910, box 6, Scott Papers.
[177] Stevenson to Scott, 27 August, 1913, file: August-September 1913, box 7, Scott Papers.
[178] Strohl to Scott, 12 December 1906, file: December 1906, box 4, Scott Papers.
[179] Saunemin Elevator Co. to Scott, 19 October 1908, file: October 1908, box 5, Scott Papers.
[180] Stevenson to Scott, 2 March 1915, file: January-June 1915, box 8, Scott Papers.

contacted the landlord or agent if they were unsure if the landlord's lien had been released. Even if acting in good faith and without knowledge of the lien, a third-party who bought encumbered crops was liable to the landlord for the value of the rent.[181] In January 1910, the Saunemin Elevator Company asked Stevenson how much corn rent to deduct from the amount due to a tenant named White. "Has he any contracts not filled," the elevator man asked, "and what is it?"[182] The landlord's lien empowered Scott's agents to block their tenants from selling crops on an open market. They ordered local brokers to boycott tenants who did not pay their rent. In February 1915, Stevenson wrote to Scott that he had finally extracted cash rents from tenant Robert Stacks after a "long dispute." He admitted being "exceedingly lucky" for collecting the crops, "and succeeded in doing it only by not allowing any of the elevators in the neighborhood to buy his grain."[183]

In his management of farms owned by himself and Scott, Lewis Stevenson developed a range of informal and formal methods for controlling tenants he might only see three times a year. He encouraged his aunt to invest in the farms to attract candidates he trusted to work for him. Stevenson created partnerships with tenants to raise their financial stake in the operation and channel their energies toward conservation. He reserved rights of entry and control over the crop in his leases, and counted on local buyers and elevator men to honor his lien. And, if necessary, he turned to civil lawsuits and the police to enforce his authority. Stevenson made examples of recalcitrant tenants to set "precedents" for others to follow. Two problems—theft and waste—particularly drove him to punitive measures against the tenants.

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[181] Hodges v. Trans-Mississippi Grain Co., 161 Iowa 496 (1913).
[182] Saunemin Elevator Co. to Stevenson, 10 January 1910, file: January 1910, box 6, Scott Papers.
[183] Stevenson to Scott, 7 February 1915, file: January-June 1915, box 8, Scott Papers.

Stevenson's initial test of the power of criminal law came in his first year as a farm manager. When Stevenson's family settled in Illinois after a decade of itinerancy, Stevenson set to work putting his wife's land into order. In March 1907, he signed a one-year lease with a farmer named Orm T. Parker for about three hundred acres of land in Vermillion County, Indiana, "together with all houses, barns, buildings of all sorts + horses, cows, calves, hogs, farm implements, tools, corn, small grain, hay, straw, etc., belonging to me." Stevenson furnished "all tools and stock" but remained the owner of these supplies, "and said tools and stock must invoice as much at expiration of lease as at commencement."[184] Among his $601.07 in disbursements for the first half of 1907, Stevenson shipped Parker $147.50 in modern plowing equipment, including a Bully Boy 6 shovel pivot beam plow and a 14 x 16 Defiance cutaway disc harrow, along with $16.50 in millet seed,[185] and gave Parker a twenty dollar loan.[186]

Landlord and tenant agreed to certain cost-sharing measures: the tenant paid for a third of the seed; the landlord paid for two-thirds of the cost of shelling and threshing; the tenant made all repairs, but the landlord provided building materials; the tenant got to keep the wheat that was already sowed in the ground when he entered the lease, but he paid for it "by cutting hedge and making fence." Stevenson kept the lease's standard provisions regarding Parker's duties to "take good care" of these structures, to plow the land at least six inches deep and plant the corn in check rows, and "to properly cultivate and care for the hedges, trees and shrubbery," but he crossed out provisions requiring

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[184] Lease between Helen D. Stevenson, lessor, and O.T. Parker, lessee, Vermillion County, IN, March 1, 1907, file: January-July 1907, box 1, Stevenson Papers.
[185] Receipts, file: January-July 1907, box 1, Stevenson Papers.
[186] Statement of Helen D. Stevenson Farm Account from January 1 to May 1, 1907, file: January-July 1907, box 1, Stevenson Papers.

Parker to keep burrs off the property, to spread manure, or to maintain the farm's ditches.[187]

Parker's autonomy was rooted in his responsibilities as an overseer. The lease required this tenant "to oversee farm work and collect all rents from other tenants" on Helen Stevenson's Vermillion County lands. If the provisions were more hands-off than those in Stevenson's later years, the rent was much higher than the customary halves. Parker owed the landlord "Two-thirds of all the crops and two-thirds of the increase of stock; said payment to be made on the day that said stock or crops are sold." But Stevenson had limited control over these crops during the term of the lease, as they crossed out the standard lease provisions providing the landlord with a lien on the crop and the expedient right of repossession if tenant "shall from any cause fail to comply with all his agreements herein . . ."[188]

Stevenson began to question his tenant's honesty in November 1907, after receiving a report that Parker was colluding with hog buyers to "short weigh" the hogs raised on their farm. Fred Moore and Willis Jenkins ran a farm in Georgetown, Illinois, and agreed to buy "a lot of hogs" from Stevenson in October 1907. Orm T. Parker and another tenant, Edward Yount, drove a wagon of hogs to these buyers. When they arrived at the farm's gate, Parker asked the buyer, Moore, whether Stevenson had arrived yet to make the deal. He had not. "These hogs have been weighed once," Parker told the buyer, "you make them weigh about Two Hundred pounds light and I will divide with you." In an affidavit—written to defend himself from any potential criminal charges—Moore

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[187] Lease between Helen D. Stevenson, lessor, and O.T. Parker, lessee, Vermillion County, IN, March 1, 1907, file: January-July 1907, box 1, Stevenson Papers.
[188] Ibid.

testified that he refused Parker's offer, saying "I expect to die some time and I dont want to go to hell for stealing a hog."[189] In a separate affidavit, Edward Yount confirmed that Parker had proposed short-weighing the hogs, and that Moore refused to do it.[190]

According to Moore's affidavit, Parker told him that short-weighing was just customary practice. "Them other fellows do that way with me." The fraud was simple and easy to hide. When they put the hogs on the scale, tenant and buyer would agree to shave a few pounds off the weight of each hog. They would split the value of those extra pounds between them, and the landlord would receive a slightly smaller share of his hog. Later in the day, one of the hogs escaped from the pen and ran into a nearby field. As Parker, Yount, and Moore chased after it, the buyer criticized Parker for trying to steal from his boss, saying "that was not the way to get even with a man, you are there on the farm and you ought to know when you get your one-third." Parker thought his landlord had it coming to him: Stevenson was a "Dam Shit ass" or a "Dam Rascal."[191]

With affidavits in hand, Stevenson had the evidence he needed to charge his tenant with fraud. Parker made a plea for mercy, offering to make a full accounting of all his property crimes against Stevenson and his wife and compensate them with cash and an apology. Parker signed a confession (written in Stevenson's handwriting) on January 17, 1908, admitting a range of misdeeds beside his failed attempt to short weigh with Moore. Parker let his brother take a load of 1,300 pounds of hay from Stevenson's land, sell it, and split the profits with him. The tenant stole from Stevenson's farm to invest in

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[189] Affidavit of Fred C. Moore, November 21, 1907, file: November 1907, box 5, Scott Papers.
[190] Affidavit of Edward Yount, November 21, 1907, file: November 1907, box 5, Scott Papers.
[191] Affidavit of Fred C. Moore, November 21, 1907, file: November 1907, box 5, Scott Papers.

the land he owned nearby, taking fifteen dollars worth of clover and timothy seed and charging $1.05 to Stevenson "for work which was done for me." He also sold fifteen dollars worth of Stevenson's corn. Finally, he inculpated a hog buyer named Guy Robbins in a separate short-weighing plot, writing that he received ten dollars from the buyer "as the result of an agreement to cheat Stevenson + divided the spoils." If Stevenson agreed not to prosecute him, Parker would "gladly pay for the things taken" and to "write you on each Thanksgiving day for five years" to thank him and affirm that he had not committed any other crimes. He also promised to keep his son Cyril in school for four years. In total, Parker paid Stevenson $329.28 to settle the "every claim against him" and to "leave everything on the property as I found it . . . or pay the difference."[192]

Along with pursuing cases of theft, Stevenson made examples of tenants who did not obey the labor requirements defined by their leases. Stevenson did not want to repeat agent George Strohl's experiences with Richard Pierce in the tenancies he supervised. In March 1912, he proudly informed Julia Scott that he had successfully sued a former tenant for the costs of trimming hedges on his leasehold. When Stevenson discovered that the tenant had let the hedges become overgrown, he evicted the tenant and hired a laborer

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[192] Orm T. Parker to Stevenson, 17 January 1908, file: January 1908, box 5, Scott Papers. Stevenson continued to develop a case against Guy Robbins, the commission merchant in Chicago with whom Parker had conspired to defraud the landlord. Robbins denied any knowledge of such plots. "The only thing I can think of that he could make such statement is that he brought a drove of hogs that did not weigh as much on the scales at the pens as they are sure to [shrink] and he ask me to pay him half of the [shrink] but I did not give it to him." Guy Robbins to Stevenson, 26 November 1907, file: August-November 1907, box 1, Stevenson Papers. Because livestock inevitably lost weight in transit, it was easy for a buyer and tenant to hide a false weighing behind the customary shrinkage of the animals. In response to Parker's confession, Robbins denied any fault, telling Stevenson he "bought the hogs of you in a fair strait deal." Guy Robbins to Stevenson, 14 February 1908, file: January-March 1908, box 1, Stevenson Papers.

to do the work. Stevenson then sued the tenant for the cost "to establish a precedent."[193] Stevenson won a $58.20 judgment against the tenant in court, at the cost of $21.20 in attorney's fees.[194]

Ousting a tenant for failing to control vegetation was a harsh remedy with deep roots in Anglo-American tenancy law. Under the "waste" doctrine, landlords could sue tenants for acts of commission and omission that changed the land. If jurors or judges determined that the tenant had permanently damaged the "inheritance," they might order the tenant to forfeit the land or pay damages. But the American law of waste was relatively liberal. Unlike in England, where courts strictly construed the meaning of waste to prevent tenants from changing the land, American courts held tenants to the standard of "prudent husbandry": what would a freeholding farmer do?[195] One Iowa jury, for example, refused to enforce a forfeiture clause requiring a tenant "to use every effort to kill and destroy" invasive cockleburs on his leasehold. The infestation was so severe that the weeds would persist until the land went back to pasture for at least five years. Neither the jury nor the high court believed that eliminating the weeds was a reasonable expectation.[196]

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[193] Stevenson to Scott, 30 July 1911, file: July-August 1911, box 6, Scott Papers.
[194] Stevenson to Scott, 4 March 1912, file: March 1912, box 7, Scott Papers
[195] For an overview of nineteenth century waste cases, see "Commission of waste as ground for forfeiture of lease," 3 *American Law Reports* 672 (1919); Jedediah Purdy, "The American Transformation of Waste Doctrine: A Pluralist Interpretation," 91 *Cornell Law Review* 563 (2006); Morton Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, MA: Harvard University Press, 1977), 54-58; Stuart Banner, *American Property: A History of How, Why, and What We Own* (Cambridge, MA: Harvard University Press, 2011), 18-19; John G. Sprankling, "The Antiwilderness Bias in American Property Law," *University of Chicago Law Review* 63, no. 2 (Spring 1996): 519-590.
[196] Quinn v. Tobiasen, 153 Iowa 650 (1912).

Under the theory of "voluntary waste," landlords brought claims against tenants whose land use decisions harmed the estate or depleted its resources. Typical voluntary waste claims involved tenants who chopped down more wood than they needed for fuel and fences or opened up new mines or oil wells. Julia Scott's tenants were often careful to ask her permission before chopping down trees in her land, particularly on the timber-poor prairies of the Midwest or on riverfront farms where trees served as an erosion control and windbreak. One of her Monona County, Iowa, agents thought she was being too restrictive when she forbid a tenant from using timber on the land for fences. It was cheaper to cut down trees she already owned than to purchase fence rails for the tenant.[197]

Second, tenants faced claims for permissive waste. Midwestern courts commonly heard cases like Stevenson's hedge dispute, through which landlords cancelled leases after tenants failed to plow deeply, clear weeds, keep up their homes, haul manure, stack the hay, or plow the stubble left after the harvest. "It is not for us to inquire into the purposes of the parties in introducing the condition, or to express the opinion that in this respect the contract is a harsh one," wrote the Iowa Supreme Court in 1879, as it reversed a lower court's decision not to enforce a forfeiture clause for waste. "All we can say is: the parties voluntarily entered into the contract; they are bound by it, and must submit to the consequences provided for in case of its breach."[198] The threat of forfeiture pushed tenants to make settlements with their landlords that would save their leaseholds.[199]

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[197] W.B. Whiting to Scott, 24 December 1908, file: December 1908, box 5, Scott Papers.
[198] Patton v. Bond, 50 Iowa 508 (1879). A third theory of waste, called ameliorative waste, allowed landlords to punish tenants who changed the estate's character even as they increased the economic value of the land. The classic cases on ameliorative waste involved life tenants in urbanizing areas who converted single-family homes into apartment buildings or vacant lots into factories.
[199] Faringer v. Van De Hoef, 188 Iowa 323 (1920).

Forfeiture cases grounded in the misuse of land provided a powerful backing for landlords to engage in wage theft. Tenants like Richard Pierce, who pushed back against the encroaching labor demands of their landlords, were the exception. Instead, landlords could steal tenant labor through strictly-worded contracts that required affirmative investment of time into tasks that might otherwise be contracted out to wage laborers. Scott and Stevenson's leases, with their careful descriptions of the duties of their tenant farmers to haul and bury tiles, cut hedges, maintain roads, pull weeds, plant clover, and keep grazing cattle out of muddy fields, made the standard of husbandry clear. If tenants protested, landlords had the option of kicking them off the land in the middle of a lease, jeopardizing their prospects of enjoying their share of the crop at the end of the season.

Julia Scott's case against the Pinkerton family of Calhoun County, Iowa, in 1917 illustrates the disastrous consequences of lease forfeiture for tenant households. The Pinkertons held a lease on a Scott farm during the 1916 season, when war in Europe sent corn and wheat prices to record levels. For alleged violations of the terms of their lease, Scott's agent (and her son-in-law's brother), Hiram Vrooman, ordered them to leave the farm, bringing a lawsuit in the local district court to cancel their contract. The Pinkertons got a lawyer and fought back, but lost at the district court and the Iowa Supreme Court, which upheld the lower court's finding that the lease had been violated.[200]

After the case was over, Pinkerton's wife wrote directly to Julia Scott in an appeal to her conscience. Fundamentally, she could not understand the grounds for their eviction. "I feel as tho I must tell you and it was not because we could not farm good

[200] Scott v. Pinkerton, 168 N.W. 117 (Iowa 1918). The court did not describe the specific grounds of forfeiture in its published decision, and the underlying case file has not been preserved.

enough, for Mr. Pinkerton is a good farmer as any of his neighbors will tell you." Pinkerton did not harm the land, but only worked to improve its value. "Mr. Pinkerton left the same amount of ground plowed that was plowed when we moved there he also done work about the tiling and remodeling for to pay for the 25 [bushels] of corn he bought of you." Defending themselves from Vrooman's lawsuit cost them $500, and they had to spend another fifty dollars to sue for a withheld payment of oats due to them. Mrs. Pinkerton concluded that Vrooman's purpose was "to take all our work and in return give or make us all the Trouble he could." She attached a bill for $188.70, reflecting her sons' labor of sorting and shelling the corn and digging tiling ditches. With the last days of the war in Europe in the backdrop, she asked Scott to pay her sons their "honestly earned money," as "my boys will be called to the colors and give their very lives if need be as much to protect you and yours as any one else . . ."[201]

The Pinkerton case shows the weakness of contract as a means of protecting the interests of tenants and the persistence of traditional landlord remedies like the waste doctrine. Although it secured this family exclusive tenure for a year, their lease incorporated strict forfeiture terms that Scott's agent employed to powerful effect. Such summary evictions were rare, but they put other Scott tenants on notice of their landlord's power to remove them if they disobeyed her.

Many wealthy American families looked to Western farmlands as a source of steady dividends, but most of them did not turn landlordism into a family enterprise.[202] In

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[201] Mrs. P.F. Pinkerton to Scott, 26 October 1918, file: July-December 1918, box 8, Scott Papers.

[202] Elizabeth Blackmar, "Inheriting Property and Debt: From Family Security to Corporate Accumulation," in *Capitalism Takes Command: The Social Transformation of*

the early twentieth century, the widow Julia Green Scott attempted to revive her family's prairie landholdings and convince her nephew and daughters to supervise her tenant farms and bring them up to modern standards. As her nephew, agent, and lessee, Lewis Stevenson learned that a dual-rental market had developed in the Corn Belt. Prime lands, located near towns, schools, and railroad lines, attracted well-capitalized renters who planned to grow bumper crops and raise large herds. Though many of these "first class" tenants sought prime lands to reduce the labor burdens of their wives and children, land's value resided in its qualities as a commodity. Subprime lands, like Scott's soggy and isolated Monona County farms, were less appealing to experienced tenants and demanded more attention from agents to become profitable. Rather than curing his neurosis, running an empire on the cheap put stress and financial demands on Stevenson that he ended up turning on his wayward tenants. Learning from his early mistakes, Stevenson used informal and formal methods for controlling tenant behavior and protecting his rents. His most innovative solution, however, was to rethink his family's absentee land management practices. Rather than rely on tenants to improve the land, he proposed that Scott develop farms with her own capital—an idea that she would grudgingly come to accept. In exchange for the stability and low-cost of long-term tenants, Stevenson hoped for higher rents and educated farmers who could afford to invest in mechanization. It was a different model of landlording, one in which the possession of land and the ownership of productive property could be mutually exclusive.

Nineteenth-Century America, ed. Michael Zakim and Gary J. Kornblith (Chicago: University of Chicago Press, 2012).

In December 1912, economist E.W. Kemmerer wrote in the *American Economic Review* of a revolution in the rural political economy. With the closing of the public domain, farmers would no longer be like miners, extracting a commodity until it was exhausted and then moving to new lands, but manufacturers devoted to preserving their capital and maximizing its returns. Land and machinery were the farmer's capital, fertility his power, and crops and livestock his output. Small-scale family farming, he predicted, would decline, but land would actually be cultivated more intensively thanks to the "efficient utilization of good machinery and of power." Kemmerer called for greater public investment in agriculture, arguing that technology had made farmland a safe bet by lowering the risks of crop failure.[203]

In the era of highly-capitalized and federally subsidized agriculture that Kemmerer correctly foresaw for the twentieth century, the pattern of tenancy that structured the Scott farms came under increasing strain. In California and other regions of the arid West, landowners shifted from ranching and the cereal crops favored by tenants to vertically-scaled growing operations producing fruit and vegetables for a national market all year long. Rather than lease land for annual terms, landowners hired managers to run their lands, and contracted out the labor to succeeding generations of migratory people from China, Japan, the Indian Subcontinent, Mexico, and the American heartland. In the South, which did not face California's labor shortage, sharecropping persisted as the dominant agricultural system until the 1930s, when the methods of agricultural consolidation and mechanization pioneered in California entered the cotton fields with federal support. In the Midwest, too, tenancy was transformed under the technocratic

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[203] E.W. Kemmerer, "Agricultural Credit in the United States," *American Economic Review* 2, no. 4 (1912): 852-72.

ethos.[204] Tenant households faced the same market risks as freeholding farmers, but could not enjoy as much of the profit when investments in tiling, fencing, barns, and storage paid off. The best years could also be the worst, as landlords converted high yields into higher rents. With the laws of improvements and liens firmly sheltering the landlord's interests, owner and tenant often shared little common ground.

[204] An excellent discussion of the convergence of competing regional "modernities" in American agriculture is in Jack Temple Kirby, *Rural Worlds Lost: The American South, 1920-1960* (Baton Rouge: Louisiana State University Press, 1987), 1-22. See also Deborah Fitzgerald, *Every Farm a Factory: The Industrial Ideal in American Agriculture* (New Haven: Yale University Press, 2003).

Conclusion

As urbanization, emancipation, and the expansion of capitalized farming transformed the American landscape between 1800 and 1920, tenancy rates spiked in crowded cities, Southern cotton and tobacco fields, and Midwestern corn and wheat farms. Tenancy was neither the inevitable outcome of market forces, nor a hegemonic order imposed by a powerful few. Rather, its structures emerged from above and below. It emerged from thousands of small and large decisions made by politicians, judges, and attorneys, who expanded the role of law as a tool for growing the economy and widening opportunity for white men, while confining the rights of racial minorities and white women to participate equally in political, social, and economic life. It also emerged from the demands of white men of small property, who hoped tenancy could provide a path toward upward mobility, civic equality, and control over their households, and from complicated political negotiations between landed and commercial interests. And, it emerged from the legal and extralegal maneuvers of the dispossessed—freedpeople, single women, immigrants—who depended on tenancies as a way to secure a measure of independence. By comparing how landlord-tenant relations adapted to and shaped the political economy and hierarchies of race, gender, and class in the North, South, and Midwest, this project has recovered tenancy's elusive place amid this process of legal transformation.

Both legal elites and ordinary people in the nineteenth-century United States liked to think of themselves as contractual actors, free agents whose power came from the right to choose, rather than from the privileges they derived from property, title, race, or

gender. Landlord-tenant law evolved in conversation with this ideology, emerging less as a system of absolute rights afforded to landowners than as a framework for contracting, setting rules that applied by default to the relations between landowners and renters. The law bounded a landlord's reach into his tenant's household, and limited the tenant's right to bargain away too much to secure a lease. To protect the landlord's rents, tenancy law restricted the tenant's power to obtain credit without his landlord's consent. But it also lent fluidity to the markets by guiding how space could be divided and possessed by many people at once, including those without the means or legal right to own land.

Tenancy's place in a market economy was unclear, not just because it was dressed in the language of feudal privilege, but because the politics of property were so nebulous in the long nineteenth century. In weighing the relative rights of landowners and renters, lawmakers pivoted among competing interests, including rural and urban, backcountry and coast, black and white, kin and stranger, merchant and landlord, and propertied and propertyless. With the landlord and tenant "classes" each broad-based and fluid, the real politics of landlord-tenant law—moments when landlords and tenants acted to advance perceived class interests—and the legal politics of tenancy did not neatly align.

In the antebellum years, tenancy emerged as a political crisis in New York, Baltimore, and other booming cities, where efforts by landlords to enforce their distress remedy conflicted with the interests of powerful commercial actors and the welfare of poor households. It also triggered violent confrontations in rural New York counties where tenancy dominated. To New York's market-oriented tenant farmers, their landlords' priority right to rent offended their liberties as free white laborers.

Lawmakers reigned in the power of the distress remedy, but landlords responded by carving out lesser forms of tenancy—"tenancy in common" or sharecropping—designed to protect their property rights in ways more complementary to contractualism. Merchants now lent more freely to unlanded farmers, whose debt obligations to the landlord were abstracted into crop liens and transferable. Tenants, in turn, became entrepreneurs in their own right, softening the sting of landlessness for white men who could delegate their lease obligations to other households. The effect of these antebellum developments was to expand the number of people with a stake in the landlord-tenant relationship, laying the groundwork for agricultural relations in the postwar South.

Former slave owners, white yeoman farmers, and freedpeople did not plan to be part of this complicated system of Northern free labor. They sorted out its uncertainties in ways reflective of a society still at war with itself and in accordance with a longer-term process of formalizing Southern legal culture driven by legal elites.

The political and economic context of postwar justice was critical to the development of tenancy as a gendered and racist system. Emancipation did not shake the belief of white men in their authority to govern their households and the labor of African Americans. Republican and Democratic lawmakers in North Carolina and other Southern states protected this power by maintaining coverture and other restrictions on women's property rights and mobility into the twentieth century. In 1877, North Carolina's "Redeemers" further consolidated the power of white men by stripping voters of the power to elect local officials, like sheriffs and justices of the peace, who might bend the law toward informal norms in ways that could bolster the fortunes of freedpeople. In effect, the county government system liberalized the political economy of tenant

agriculture, creating a safety valve for white yeoman caught in the expanding system's reach.

Both formal law and informal practice proved to be interlocking strategies for Southern landlords and renters seeking redress. Legal formalism was not simply the province of the powerful. This project has identified an exceptional set of cases in which African-American sharecroppers either sued their landlords for civil damages or refused to take plea bargains when arrested for property crimes. Farmers like Babe Toney and George Copeland bore the considerable financial, social, and emotional cost of the formal legal process to achieve simple justice. When their claims transcended the township level, sharecroppers sometimes found a sympathetic audience before superior and supreme courts. Some of these judges interpreted tenancy law in ways meant to reign in the abuses of local officials through an ostensibly "race neutral" set of rules, and others used tenancy cases as a tool for enforcing consistency in the law, even if the results might seem absurd to lay or legal audiences. If formalism could be a means for the disfranchised to appeal to a higher authority, informal legal practice generally reinforced a local landscape of privileges, whether through the forbearance of a patron or through insider settlements between landlords, merchants, and justices of the peace, all of whom might be kin or business associates.

Through informal legal practice, unlanded farmers like W.E. Cox and Lafayette Dillahunt could work around the formal rules defining them as propertyless dependents. Their case highlights these complexities in miniature: white tenants, unwilling to accept the limits of sharecropping, who drafted a contract that gave them more rights than North Carolina's landlord-tenant laws otherwise provided. When that agreement proved

unprofitable, they broke the contract, drawing on the law of coverture to undermine their landlord's contractual rights. They then turned to informal labor norms to get their way—the right of white men to steal black labor and to protest without fear of arrest or violence—and the formal law of property. Indeed, an arbitrator's insistence on formal compliance with the law of coverture won the tenants' case.

Midwestern white tenant farmers felt even more emboldened than their Southern cousins to defy their landlords' demands. Landlords in the Midwest could only expect pliant tenants if they paid for it by keeping rents reasonable and farms up-to-date, and could not count on the same level of coercion imposed on families without political rights. Yet, as in the South, contract was a double-edged sword for Midwestern tenants. Particularly when their landlords expected them to invest their time and resources into improvements that stayed part of the real estate, tenants needed to carefully define their property rights and options to stay afloat. Contracts protected their tenure, but also outlined dozens of small offenses that could give rise to forfeiture. While Midwestern landlords enforced far fewer pretextual penalties than Southern landlords against offending tenants and sharecroppers, the possibility was always lingering in writing.

Both Southern and Midwestern tenants and sharecroppers shared a common break on their mobility and ability to leverage it for higher compensation or lower rent: the crop lien. This legal innovation offended nearly everyone involved in the agricultural economy: an insult to free labor; a wrench in the gears of capital; a threat to the nation's ability to feed itself; and, a spur towards speculation, profligacy, and insolvency. A financial instrument intimately tied to family labor, its impact had expanded beyond the landlord-tenant relation by the late nineteenth century into the relations between

landowners and their merchant creditors and was a central issue in the Populist movement.

Historian C. Vann Woodward once suggested that members of the Farmers' Alliances and the Populist Party were "always more interest-conscious than class-conscious, and there was much to be said for the contention that in a struggle between an industrial capitalism and a colonial agrarianism, farmers big and little were in the same boat."[1] But those boats were racially segregated, with inter-class solidarity among white agrarians coming at the expense of alliances among white and black sharecroppers. Racism divided and defeated efforts to build a political movement that could transcend regional and party lines. Even when Populism succeeded politically, its answer to the crop lien, the subtreasury system, simply enforced the inequalities already present in the sharecropping system. Subtreasury credit aided landowners in avoiding debts to merchants and buyers, but did little to help farmers who had no property interest in the crop until it was divided. Fundamental challenges to the tenure system brought by tens of thousands of "Black Populists" were violently suppressed.[2]

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[1] C. Vann Woodward, *Origins of the New South, 1877-1913* (1951; Baton Rouge: Louisiana State University Press, 1971), 193-94. Lawrence Goodwyn made this argument more forcefully, arguing that "[r]elative degrees of agricultural poverty did not play a decisive role" in Populist recruitment and politicization. Lawrence Goodwyn, *The Populist Moment: A Short History of the Agrarian Revolt in America* (New York: Oxford University Press, 1978), 181. By contrast, Charles Postel highlights the structural factors limiting the ability of tenants to form or participate in Alliance cooperatives, and the role of racism in shaping Populist ideas about black, Mexican, and Chinese labor. Charles Postel, *The Populist Vision* (New York: Oxford University Press, 2007), 123-26,180-85. See also Michael Schwartz, *Radical Protest and Social Structure: The Southern Farmers' Alliance and Cotton Tenancy, 1880–1890* (Chicago: University of Chicago Press, 1976); and, Harold D. Woodman, "The Political Economy of the New South: Retrospects and Prospects," *Journal of Southern History* 67, no. 4 (2001): 789-810.

[2] Omar H. Ali, *In the Lion's Mouth: Black Populism in the New South, 1886-1900* (Jackson, MS: University Press of Mississippi, 2010).

Although pockets of white tenant radicalism in East Texas and Oklahoma followed the end of Populism, most white tenant farmers in the South settled into a new set of expectations about the role of land ownership in their lives. Even as it literally degraded their power to control their family's labor and property, white men had too much to lose by aligning themselves in interracial coalitions with their fellow renters. Instead, white tenants sought autonomy and security in their identity as labor bosses. The brutal repression of black dissent, meanwhile, put in place a different set of rural rhythms, grounded in deference, acts of hidden resistance, and flight to the North and more remote parts of the South.

In both the South and Midwest, the informal nature of local legal culture absorbed the social tensions among poor and propertied whites that might otherwise lead to violence or political protest. Formal legal remedies like lease forfeiture, debt seizure, and criminal sanctions for removing the crop were rare and generally only employed as a warning to rival creditors seeking to jump the landlord's priority or to other tenants considering disobedience. Because a landlord's rights in the crops were legally superior to all others, white tenants and croppers gained leverage through local family and market connections and the control of labor within the household and among the workers they hired. As long as white tenants imagined themselves as men on the make and doubted that the law would be applied strictly to them, the system held its authority.

If the landlord was the government, as New Deal-era sociologist Charles S. Johnson and many since have suggested, it was because the landowner appropriated authority otherwise delegated to white male household heads. The capriciousness of local law, in other words, extended the petty tyranny of the male patriarch into the structures of

township and county governance. Legal rights and the privileges of race, class, and gender were inextricable, as were the ways that networks of kinship, commercial ties, and personal relationships crossing racial lines defined legal insiders and outsiders. Within this environment, everyday disputes between landowners, renters, and their associates became places where ordinary people sorted out the meaning of possession and power in the long nineteenth century.

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