Migrant Workers
and Minimum Wages

Regulating the Exploitation
of Agricultural Labor
in the United States

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The Statutory Origins of Agricultural Exceptionalism: The New Deal Racist Ratification of Sweatshops

Cheap labor has been the life-blood of the plantation system and an attack on low labor incomes in the South would be interpreted...as a mortal blow.¹

It is...probable that the New Deal's rejection of agricultural labor is at the root of the farm workers' Rechtlosigkeit.²

Only thirty-eight per cent of farm workers today are entitled to the federal minimum wage.³ Even of these, one-fifth nationally and one-third in the South are, according to their employers' own statements, unlawfully paid wages below that level.⁴ Moreover, 

¹E. Lewis, Black Cotton Farmers and the AAA, 13 Opportunity 72, 72 (1935).
employers in the thirty-one states without a minimum wage law applicable to agriculture can lawfully pay those who are excluded from FLSA a dollar or even ten cents an hour.\(^5\)

That it is precisely those workers most urgently in need of state intervention for the subsistence wages that the labor market withholds from them who are denied its protection has characterized FLSA from its inception. At the time the law went into effect in 1938, with the bulk of low-wage workers employed in industries exempt from coverage, only 300,000 of the initially 11,000,000 covered employees were earning less than, and hence stood to benefit from, the statutorily mandated minimum wage of twenty-five cents per hour.\(^6\)

Farm workers are also the only numerically significant group of adult minimum-wage workers wholly excluded from the premium overtime provision of FLSA on the basis of a criterion unrelated to firm-size.\(^7\) Almost half of all farm workers subject to the minimum wage provision of FLSA work more than forty hours per week; these overtime hours, in turn, account for between one-sixth and one-seventh of all subject work hours.\(^8\) In some instances, migrants work in excess of 100 hours weekly at the minimum wage.\(^9\) This exclusion from the statutory entitlement to time and one-half for overtime hours thus deprives an already very low-paid stratum of much needed income.

Many agricultural employers, particularly in the South and Southwest, face a perfectly elastic labor supply: "it appears to them that they can secure all the workers they need at any given wage rate. They do not feel any necessity to raise wages to attract additional workers."\(^10\) This unique labor market, marked by a permanent surplus of workers with no alternative to working more than forty hours per week at (or even below) the minimum wage, is


\(^7\)29 U.S.C. § 213.

\(^8\)Holt, Elterich, & Burton, Coverage, tab. 8.6 at 459, tab. 8.8 at 461, tab. 8.10 at 463; in 1981 mandatory overtime compensation could have increased farm workers' weekly earnings by 13.7 per cent.

\(^9\)Irrigators on citrus farms in the Rio Grande Valley fit this description.

\(^10\)Vernon Briggs, Jr., Comments in 4 REPORT OF THE MINIMUM WAGE STUDY COMM'N at 475, 478-79.
the product of a long history of policies formulated and implemented by governments at all levels. Hispanic and black workers perform most of the agricultural labor done by employees who are subject to the minimum wage provision of FLSA but are excluded from its maximum hours provision. This concentration of Blacks and Hispanics in such a vulnerable position within the division of labor is rooted in the still virulent vestiges of institutional racism.

This chapter traces the origins of this aspect of agricultural exceptionalism to the New Deal.

I. The Racist Underpinning of the New Deal Coalition

The exclusion of farm workers from coverage under FLSA (and other New Deal economic legislation) has traditionally been analyzed as having arisen "as a necessary political compromise without which it would have been impossible to inaugurate a most important reform in American institutions." But this specification of political compromise with the interests of agricultural employers in general conceals more than it reveals about the dynamics of the New Deal. For racial prejudice against southern Blacks, which

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11 See supra ch. 1.
14 The only relevant New Deal statute that cannot unambiguously be traced back to a racially discriminatory intent is the NLRA. It, too, excluded the two occupational groups encompassing the bulk of black workers in the South—agricultural and domestic employees; apart from the children of employer-parents, they were also the only groups excluded from coverage. Ch. 372, § 2(3), 49 Stat. 449, 450 (1935). See generally, Austin Morris, Agricultural Labor and National Labor Legislation, 54 Calif. L. Rev. 1939, 1951-56 (1966); Note, The Constitutionality of the NLRA Farm Labor Exemption, 19 Hastings L.J. 384, 384-86 (1968). Race may not have been the predominant motive because:

Farmers as a class [were] opposed to any form of labor organization. Attempts by the I.W.W. in the past to organize the migratory harvest hands have helped to give farmers a distaste for unionization of farm labor, a sentiment which deepened into hostility because of the tactics of
resulted in their virtually complete and unconstitutional expulsion from participation in the political life of the South and, hence, congressional and presidential political processes, went hand in hand with the overwhelmingly agricultural orientation of the political and economic power of the South and the overrepresentation of Southern Democrats in Congress.\(^{15}\) Inevitably, the interests and goals of especially rural southern white supremacy shaped the policies of the Democratic Party, President, and Congress.

The Democratic Party that promoted Franklin Roosevelt was a "classical alliance of city bosses of the North and barons of the South" that believed in little beyond states' rights and federal patronage...." This "classical partnership between northern bosses and southern and western agrarians" began to be undermined in the 1920s when the new racial, ethnic and sexual composition of the northern urban electorate triggered demands by metropolitan Democratic organizations for a greater role within the Party. After becoming President, "Roosevelt's first step was to heal the split within the alliance. He was admirably qualified to reunite the classical party" insofar as "he was also (and he never let the South forget it) a Georgian by adoption...perhaps more at ease with farmers than precinct committee-men or trade unionists."\(^{16}\) Roosevelt "more than any other northern Democratic leader...understood and empathized with the Southerners and their problems. ... As for blacks, it never occurred to him to question


white supremacy."

The blatantly racist electoral procedures of the southern states insured the long seniority of, and hence stranglehold on Congress by, southern congressmen, "who fervently believed in the necessity of maintaining the traditional caste and class structure." This configuration of power led Roosevelt to "believe[] that he would lose the support of these Southerners if his administration made any direct attempt to reform traditional racial and class patterns...." Because he was "[u]nwilling to risk schism with Southerners ruling committees, Roosevelt capitulated to the forces of racism," agreeing "to modify or water down the New Deal in its practical operation in the South...."

Consequently, the executive and legislative branches, by acquiescing in the preservation of political white supremacy, insured that intrusions into the socioeconomic sphere were as minimal and peripheral as possible. If even "[a]id to Southern Negroes would disturb existing social and economic relationships," the application of constitutional standards to their civil and political rights was out of the question. Thus not only did the New Deal fail to enact any civil rights legislation, but Roosevelt, ignoring a sharp increase in lynchings, also refused to oppose a Southern filibuster of an anti-lynching bill for fear that it would trigger Southern retaliation against the administration's pending economic legislation.

This unremitting accommodation of southern racism represented more than the ordinary dynamics of pluralist political compromise because the deliberate denial of socioeconomic and political rights to a disenfranchised minority was made possible by


20Id. at 72. Even Harold Ickes, the Secretary of Interior and perhaps the most outspoken high-ranking New Deal advocate of equal rights for Blacks, assured racist Southern senators that he had no intention of attacking segregation. John Kirby, Black Americans in the Roosevelt Era 33-34 (1980).

southern domination of leadership positions in Congress during the New Deal:

Throughout the thirties, the representatives of Dixie...controlled over half the committee chairmanships and a majority of leadership positions in every New Deal Congress. The combination of a seniority rule determining access to congressional influence, a one-party political tradition below the Mason-Dixon line, and a Democratic weakness outside the South prior to 1930 resulted in legislative hegemony for the advocates of white supremacy.22

Southern domination of the New Deal legislative process was exemplified by the leadership of the Seventy-Fifth Congress, which enacted FLSA. In 1938, Southerners chaired the Senate Agriculture, Appropriations, and Finance Committees and the House Agriculture and Ways and Means Committees, while five of ten Democrats on the all-powerful Rules Committee were Southerners. The House Speaker and Majority Leader were also Southerners. The same committee chairmen presided during the Seventy-Fourth Congress, which passed the Social Security Act and the National Labor Relations Act. "So long as the New Deal did not disturb Southern...racial patterns, these leaders would support it..."23

Southern political leadership was not merely one sectional force among many engaged in the routine competition of regional interests: "Except on race legislation, the South was not ‘solid’ in Congress."24

We ought to be both specific and candid about the regional interest that the Democratic party of the South has represented in national affairs. [T]here is one, and only one, real

21 SITKOFF, A NEW DEAL FOR BLACKS at 45.

22 CONGRESSIONAL DIRECTORY, 75th Cong., 3rd Sess. 175, 177, 193, 204, 205, 259 (1937); id., 74th Cong., 1st Sess. 175, 177, 192, 204 (1935); JAMES PATTERSON, CONGRESSIONAL CONSERVATISM AND THE NEW DEAL 132 (1967). Cf. id. at 42-44, 179, 186, 193-98; DONALD GRUBBS, CRY FROM THE COTTON: THE SOUTHERN TENANT FARMERS' UNION AND THE NEW DEAL 57 (1971). The power of the southern racist delegation was so great that even Sen. LaFollette, whose Comm. on Education & Labor held scores of hearings on Violations of Free Speech and Rights of Labor, never dared investigate thepeonage of black sharecroppers because southern senators opposed such hearings too strenuously. DAVID CONRAD, THE FORGOTTEN FARMERS: THE STORY OF SHARECROPPERS IN THE NEW DEAL 173-74 (1965). See also Edward Schapsmeier & Frederick Schapsmeier, Farm Policy from FDR to Eisenhower: Southern Democrats and the Politics of Agriculture, 53 AGRIC. HIST. 352, 353-60 (1979).

24 PATTERSON, CONGRESSIONAL CONSERVATISM at 330.
basis for southern unity: the Negro. ... We need to be even more exact. [I]t is not the Negro in general that provides the base for white Democratic unity in national affairs: it is fundamentally the rural Negro in areas of high concentrations of colored population. It is here that whites are relatively fewest, that the plantation system of agriculture is most highly developed, that the economic system is most dependent upon black workers, and that the white-black socio-economic system, commonly thought to be characteristic of the entire South, is most highly developed. Here we find the persistent strain of southern unity.

The maintenance of southern Democratic solidarity has depended fundamentally on a willingness to subordinate to the race question all great social and economic issues that tend to divide people into opposing parties.25

More specifically still, the generator of the South's racist politics was the so-called Black Belt--an area encompassing some 200 counties the majority of whose populations was black, stretching from Virginia to Texas, with the densest core extending from South Carolina to eastern Arkansas and Louisiana. It "sketches the section of the nation where the smallest proportion of the adults exercise the franchise and it defines the most solid part of the Solid South. White supremacy and its instrument, the white primary, are more sacred than any other political tenets." It was here that "terroristic methods [were] used to disenfranchise the Negro": "With the financial, educational and religious institutions maintaining the status quo and keeping the Negro 'in his place,' the threat of violence always hangs over his head and violence frequently is used upon slight provocation."26

The institutionalized racist ideology of the Black Belt plantation society not only dominated the South politically, but also formed the linchpin of the whole southern economy. It was the nodal point at which all the southern racist political-economic forces opposing the application of a federal minimum wage to southern black farm workers converged. Perhaps the most blatant example of this interwovenness of the political and economic was to be found in the person of Senator Byrd of Virginia. As reported by the then head of the Resettlement Administration:

"I know what's the matter with Harry Byrd," Franklin [Roosevelt] said to me one time when Byrd was objecting to a resettlement project in Virginia. "He's afraid you'll force him to pay more than

25V. Key, Jr., Southern Politics in State and Nation 315-16 (1949).
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10 cents an hour for his apple pickers." Harry Byrd was the apple king of the Shenandoah and so his interest was direct.27

With "literally millions of farm laborers in the Black Belt...eagerly awaiting an opportunity to work for wages even smaller than are now being paid to textile and steel workers in southern cities," nothing less than the preservation of a virtually inexhaustible supply of the nation's cheapest labor was at stake: "The South can hope to be nothing but the Orient of this nation so long as its wages and working conditions are determined by the competition of plantation workers accustomed to practically no money and a minimum diet."28

From this overarching macropolitical-economic complex flowed the panoply of extralegal and unconstitutional measures that planters and their agents undertook to preserve their quasi-captive labor force.29

II. New Deal Racial Discrimination Against Farm Workers Before FLSA

The basis for exemption of agricultural labor from the Fair Labor Standards Act was laid during the operation of the National Industrial Recovery Act.30

To understand the historical-institutional context of the exclusion of farm workers from FLSA, it is necessary to sketch the treatment accorded racial minorities (chiefly Blacks) under earlier New Deal social-economic legislation. This retrospective is necessary because, by the time FLSA was drafted, the exclusion of farm workers from related legislation had become such a fixed

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27Rexford Tugwell, The Democratic Roosevelt 447 n.7 (1957).
28Raper, Preface to Peasantry at 6.
component of New Deal politics that the drafters no longer consciously took the issue into consideration.  

A. The National Industrial Recovery Act (NIRA)

The NIRA exerted a potent two-fold influence on subsequent New Deal treatment of Blacks and farm workers insofar as its administration by the National Recovery Administration (NRA) entailed both discrimination against black industrial workers in the South and exclusion of farm workers. A major purpose of the NIRA was to stimulate the economy by insuring that depression-induced competitive wage-cutting would not feed under-consumptionist tendencies standing in the way of a cyclical recovery. By establishing codes of fair competition on an industry-by-industry basis, the NIRA sought to increase purchasing power by fixing minimum wages and maximum hours.

1. Discrimination Against Black Industrial Workers in the South. Black workers were largely excluded from the wage and hour benefits of the NIRA by virtue of their concentration in two sectors of employment for which no codes of fair competition were established--agriculture and domestic service. But even in industries where codes did exist, intentional anti-black discrimination prevailed:

[S]everal provisions...enabled employers to pay white workers more than blacks. Some codes provided that certain jobs in an industry would be covered by NRA while other jobs would not, and these "occupational classifications" frequently were arranged so that


34 Morris, Agricultural Labor and National Labor Legislation at 1945-51; WOLTERS, NEGROES AND THE GREAT DEPRESSION at 150.
minimum wage scales covered only that work which was generally performed by whites.\textsuperscript{35}

This strategy was pursued, for example, in the cotton textile industry in the South. More than a hundred codes with geographical classifications permitting the payment of lower minimum wages in the South camouflaged racial differentials. Where an industry (such as fertilizers) was largely composed of black workers, it was classified as "southern"; where, on the other hand, a southern industry (such as cotton textiles) employed few blacks, the code provided for only marginal differences between southern and non-southern wages.\textsuperscript{36}

President Roosevelt, who was required to approve each code, publicly expressed his support for such provisions: "It is not the purpose of the Administration, by sudden or explosive change, to impair Southern industry by refusing to recognize traditional differentials."\textsuperscript{37} And with few Blacks represented at code hearings--in contravention of the statutorily imposed obligation of representativeness--and "local control of compliance machinery mak[ing] it almost impossible for the Negro to seek effective re­dress," Congress and the Administration insured the continued subordination of southern Blacks.\textsuperscript{38}

\section{2. The Exclusion of Farm Workers from NIRA Codes}

It is my opinion that very early in any study of the agricultural labor problem in Florida, a division should be made between White labor and Black labor, so that proper attention may be given to certain racial conditions and habits.\textsuperscript{39}

\begin{thebibliography}{9}
\bibitem{35} Id. at 124-25.
\bibitem{36} Id. at 126, 128-30; John Davis, \textit{What Price National Recovery?} 40 \textit{Crisis} 271 (1933); \textit{idem, Blue Eagles and Black Workers}, \textit{New Republic}, Nov. 14, 1934, at 7.
\bibitem{37} \textit{Leverett Lyon ET AL., The National Recovery Administration} 328 n.9 (1935); NIRA \S~3(b), 48 Stat. at 196.
\bibitem{39} Philip Murphy, Chief, Commodities Purchase Sect., Memorandum to AAA Adm'r (Feb. 20, 1935), National Archives (NA), Record Group (RG) 145: Dept' of Agric.: Subject Correspondence 1933-35, Folder: Citrus Fruit.
\end{thebibliography}
At the administrative agency level, the issue of the inclusion of farm workers appeared at first as a dispute between the NRA on the one hand and the Department of Agriculture (USDA) and its subordinate Agricultural Adjustment Administration (AAA) on the other. The NIRA and the Agricultural Adjustment Act (AAAct), cornerstones of the so-called first New Deal, were coordinated efforts to overcome the depression. Although the AAAct did not deal with labor issues, under the NIRA neither the provision establishing procedures for promulgating codes of fair competition nor that creating employees' right to organize under these codes expressly excluded agriculture.

Codes were voluntary: no industry was required to present one. Since the quid pro quo for complying with a code was exemption from the anti-trust laws, which did not pose a problem for agriculture, agricultural industries had little incentive to present a code, especially since the AAA attended to their interests by means of marketing agreements. Whether Congress intended the NIRA to cover agricultural labor is not at issue here. For even had Congress intended to cover agricultural labor, a number of institutional and organizational factors militated against effective coverage. While the NRA interpreted "industry" to mean employers, "[t]he AAA...took the position that the interests of agricultural workers would be amply safeguarded as a consequence of the benefits to be enjoyed by the farmers who enjoyed them." Since

40Ch. 25, 48 Stat. 31 (1933).
41NIRA, §§ 3, 7(a), 48 Stat. at 196, 198.
42Id. § 5, 48 Stat. at 198. Although §§ 3(d) and 7(c) of the NIRA provided for the possibility of imposing a code on an industry, "no codes were imposed on industry." Woodbury, Limits of Coverage at 2 n.*.
43A nearly contemporaneous study concluded that "[n]o such Code was submitted by any group of farmers to place their labor under code provisions." Id. at 3 n.[**], 21. Yet the files of the Secretary of Agriculture contain a Code of Fair Competition submitted by Agricultural Industry (file stamped Nov. 20, 1933), which included very liberal labor and maximum hours provisions. NA, RG 16: Gen'l Correspondence of the Office of the Sec'y of Agric., 1933, Tray 194, Folder: Agl. Labor. Moreover, "the legal division of the AAA held that a code covering farm labor was authorized under the Recovery Act"; and even the Bureau of Agricultural Economics of the USDA "drafted a code to be applicable to agriculture and agricultural labor," although it ultimately recommended that it not be adopted. Woodbury, Limits of Coverage at 3 n.[**]. Finally, the authors of the Report of the Interdepartmental Committee Appointed to Investigate Labor Conditions in the Florida Citrus Industry stated in 1934 that the NIRA was arguably intended to include farm labor within its scope. Id. 35, 37 (reprinting Report).
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Farm workers were little organized and "[a]ttempts by the I.W.W. in the past to organize the migratory harvest hands ha[d] helped to give farmers a distaste for unionization of farm laborers...the specific problems of agricultural laborers received little consideration in Congress in the framing of the NIRA and the AAA."44

It is unclear whether racist considerations motivated this neglect of farm workers during the first one hundred days of the New Deal. At that particular juncture a more generalized solicitude for the interests of farmers may have played the dominant part. However, the subsequent exclusions of farm workers from the NRA codes for the "allied" citrus packing, cotton ginning, and tobacco warehousing industries, and their clear import for the largely non-white workers on the plantations of the South and (secondarily) of the industrialized farms of California and Arizona, did embody the racist motivation that underlay all the later exclusions from New Deal legislation.

The conflict over the coverage under the NIRA of agriculture-related industries—which as an extension of primary agricultural production employed many of the same workers otherwise classified as agricultural45—was not easily resolved. The joint administration by the NRA and AAA of industries bordering on agriculture underwent a complicated series of changes. Using his authority under the NIRA, President Roosevelt in mid-1933 delegated his functions and powers to the Secretary of Agriculture "with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof" except those relating to the labor provisions of the NIRA.46 A subsequent executive order enlarged the number of industries to include those "engaged principally in the handling of...[a]gricultural commodities...up to the point of first processing off the farm, including all distribution, cleaning, or sorting, ginning, threshing or other separation, or grading, or canning, preserving, or packing, of such commodities occurring prior to such first processing." The order also provided that any question arising as to whether a specific industry was included among those delegated to the Secretary of Agriculture "was to be finally and conclusively determined by

44 Id. at 3, 4.
45 Id. at 16, 20.
46 Exec. Order No. 6182, § 8(b) (June 26, 1933). This executive order defined the industries involved as those "engaged principally in the handling of milk and its products, tobacco and its products, and all food and foodstuffs."
agreement between the Secretary of Agriculture and the Administrator of the NRA, or, failing that, by the President.\textsuperscript{47}

By the beginning of 1934 only six codes had been approved for industries falling within the jurisdiction of the AAA, which had a mandate to promote and protect the interests of farmers; among other policies the Agricultural Adjustment Administration sought...elimination of groups of workers who might be termed agricultural, from the scope of codes; [and] elimination of industries from NRA codes which might be deemed to fall within the scope of agricultural production.\textsuperscript{48}

As a result of pressure exerted by industries that sought codification but whose codification was being frustrated by these policies, a new executive order re-delegated to the NRA codification of all industries in question subsequent to the first processing except that all price, marketing, and production control questions were subject to approval by the Secretary of Agriculture. Virtually none of the seventeen enumerated industries employed agricultural-type labor.\textsuperscript{49}

The citrus growing and packing industry, which claimed to be outside the jurisdiction of the NRA on the ground that it was engaged solely in agricultural production or employed only agricultural workers, assumed the leadership in aggressively resisting subjection to the NRA.\textsuperscript{50} In order to understand this dispute it is necessary to sketch the structure of the Florida citrus industry, which deviated from the southern cotton plantation system: "The pattern of land ownership and control, and the corresponding labor-employer relations in Florida, resemble[d] in many ways those in California."\textsuperscript{51}

\textsuperscript{47}No. 6345 (Oct. 20, 1933).
\textsuperscript{48}Woodbury, \textit{Limits of Coverage} at 8.
\textsuperscript{49}Exec. Order No. 6551 (Jan. 8, 1934) (pecan shelling being the exception). A second group of industries remained within the jurisdiction of the Secretary of Agriculture pursuant to the restriction of the previous orders that "the determination and administration of provisions relating to hours of labor, rates of pay, and other conditions of employment" fell within the authority of the NRA. In this group were included industries engaged in the handling, processing or storing of milk, oleomargarine, cotton and cotton seed and their products, including ginning, and fresh fruits and vegetables "up to and including handling in wholesale markets." \textit{Id.} § II.
\textsuperscript{50}Woodbury, \textit{Limits of Coverage} at 12, 15.
\textsuperscript{51}Jameson, \textit{Labor Unionism in American Agriculture} at 327. In the prewar political campaigns to shape or amend legislation so as to exclude industries "allied with agriculture," it was the fruit and vegetable, in particular, citrus, companies of California in collaboration with their own and southern racist congressmen that played
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Under the control of large integrated grower-shippers, intensive agriculture in Florida became one of the most highly industrialized fields of agriculture. Structurally the industry is highly centralized, and it uses quasifactory methods of growing, packing, and shipping produce. ... The majority of growers are rather passive absentee owners, dominated financially and commercially by a few large companies which pack and ship the fruit for market. These establishments usually buy the fruit "on the tree," and hire the labor as well as provide the equipment required for harvesting operations. Many of them specialize also in "caretaking" the groves of individual owners for stipulated fees; they hire the maintenance labor required for plowing, planting, fertilizing, spraying, pruning and thinning.52

Labor in Florida was inherited largely from among displaced plantation sharecroppers. During the 1930s the share of non-whites (almost exclusively Blacks) among hired farm laborers in Florida reached almost two-thirds.53 These black workers 'faced the traditional 'Jim Crow' laws in many fields of social and occupational activity. They tend[ed] to lack recourse to legal action to protect themselves from exploitation by whites, and consequently...suffered violence and intimidation from extralegal groups such as the Ku Klux Klan.'54 As a result of centralized production, the grove workers, pickers, and packers were all employees of the packing houses, lived in towns, and were recruited from the same general industrial labor market. Nevertheless:

The citrus packing houses wished to have all the labor,

\[\text{the most prominent part. See Arthur Ross, Agricultural Labor and Social Legislation 133-264 (Ph.D. diss. U. Cal. Berkeley, 1941); Morris, Agricultural Labor; Daniel, Bitter Harvest.}\]

52Jamieson, Labor Unionism in American Agriculture at 328. Based on such operations, Florida and California ranked first and second respectively according to the number of farms reporting 100 or more hired laborers in March 1940. Of 304 such farms (employing 58,256 workers), 76 (employing 14,808 workers) were located in Florida and 63 (employing 11,876 workers) in California. BOC, Analysis of Specified Farm Characteristics for Farms Classified by Total Value of Products 135, 148, 154 (1943).

53Calculated according to BOC, Fifteenth Census of the United States: 1930, 4 Population: Occupations, by States, tab. 11 at 353, 355 (1933) (60.9 per cent); idem, Sixteenth Census of the United States: 1940, 3 Population: The Labor Force, pt. 2, tab. 13 (65.8 per cent).

54Jamieson, Labor Unionism in American Agriculture at 328.
including packing house labor, declared "agricultural" and exempted from the scope of the National Recovery Administration labor codes. The NRA tended to cover all wage earners in all codified industries...save only those specially exempted. Accordingly, if the Citrus Packing Industry was subject to a code, all employees of this industry were subject to the labor provisions unless they were exempted by the terms of the code. But the Citrus Packing Industry...was not required, except from the pressure of public opinion, to apply for a code, and in that event, the labor employed in that industry would not enjoy the benefits of coverage. So far as concerned the type of labor involved, the work appeared to partake of the character of industrial rather than of agricultural labor.

In 1933 the NRA promulgated a definition of agricultural labor that had been approved by the AAA: "When workers are employed in processing farm products or preparing them for market, beyond the stage customarily performed within the area of production, such workers are not to be deemed agricultural workers." Issuance of this definition with its ambiguous term, "area of production," led the citrus growers to conclude "that they were not expected to present an NRA code." The AAA, in turn, "interpreted this definition as authorizing exemption...of workers engaged in handling and processing operations...if employed within the 'area of production.'" The upshot of the ensuing correspondence between citrus workers and unions in Florida and the NRA was the issuance of a new definition substituting "on the farm" for the vague "within the area of production." The AAA, however, refused to agree to this change and began negotiating a marketing agreement without reference to an NRA labor code. By December

55Woodbury, Limits of Coverage at 16, 36-37.
57The NRA later stated that "no Executive or Administrative Order appears to have been issued granting exemption to agricultural labor. Though the definition was thus drawn up and approved, the purpose seems never to have been carried out by formal action." Woodbury, Limits of Coverage at 17.
58Id. at 18. "The NRA...regarded the existence of the definition as an obstacle to the coverage of workers who might under it be termed agricultural. On the other hand, when it came to incorporating the definition of agricultural worker in the codes as a class exempt by the statute, the NRA Legal Division objected." Id.
59NRA Release No. 692 (Sept. 8, 1933); Fed. Doc. Center, Suitland, MD, Consolidated Unapproved Codes, RG 9, Box 6153. Cf. letter from W. Woolston (NRA, Lab. Advisory Bd.) to Wayne Raylor (AAA) (Sept. 7, 1933) (stating Bd.'s position that, contrary to view of AAA, packing done in places other than farms is industrial in character); id.
1933, marketing agreements without labor code provisions were in effect for the citrus industry in Florida, Texas, Arizona, and California. In January 1934, the NRA, despite the urging of the Foods Division of its own Labor Advisory Board, acquiesced in the accomplished fact created by the AAA and reinstated the earlier definition.60

These disputes were not mere interagency jurisdictional squabbles. In late 1933 and early 1934 members of the bi-racial United Citrus Workers of Florida were conducting a number of important organizational strikes against which the employers used "the usual forms of terrorism." It was in this context that the AAA steadfastly opposed inclusion of labor provisions in Florida citrus marketing agreements, thus helping large-scale employers of non-white labor maintain their dominance.61 As a result of these joint efforts by the federal government and the citrus industry, which established the precedent of excluding farm workers from federal labor legislation, approximately 200,000 largely non-white citrus workers were deprived of the protective benefits of labor codes.62

The policy of the AAA with regard to promulgating a code with labor provisions for the cotton ginning industry, which employed upwards of 100,000 workers, was even more blatantly racist. Here, again, employers claimed exemption on the ground that their employees were agricultural workers. Yet:

In many cases the same Negro farm hands who picked the cotton in the fields were also employed in the cotton ginning operation.

60Woodbury, Limits of Coverage at 19-20; Release No. 2781.

61Report of the Interdepartmental Committee at 35-36. The AAA claimed that inclusion of labor provisions "would require some supervision of the increased income resulting from the agreement [which raised the prices of Florida oranges "appreciably"] among those whom we class as producers and those who work for these producers as laborers" at a time when the AAA was receiving complaints from farmers about high wages. Memorandum from J. Tapp, Ass't Dir. of the Commodities Div. of the AAA, to the Sec'y [of Agriculture] (April 10, 1934); NA, RG 145: Dep't of Agric., Subject Correspondence 1933-35, Folder: Agric. Workers. In fact, the wages in the Florida citrus industry were so low that the district director of the Civil Works Adm'n, who initially threatened that workers who quit their jobs would be ineligible for work relief, later announced that "packing houses and groves must assure a 'living wage' before clients would be cut off relief rolls." Jamieson, Labor Unionism in American Agriculture at 331; Report of the Interdepartmental Committee at 35.

Where the identical individuals were not hired, others with the same general agricultural background were employed. The operators urged that higher wages paid to labor in cotton ginning would affect labor costs in the cotton fields, since the workers would demand the same pay. The Agricultural Adjustment Administration supported the industry in this contention.

The National Recovery Administration, on the other hand, was faced with similar but opposite problems in the possible tendency of lower paid cotton ginning labor to pull down industrial wage rates for somewhat similar tasks or to present problems of unfavorable competition through lower labor costs to industrial employers. The National Recovery Administration consequently insisted that labor in the cotton ginning industry was industrial and subject to a labor code.63

Although the Advisory Council of the NRA issued a recommendation that an "agricultural worker becomes...an industrial worker whenever he leaves the land and enters any plant, factory, or other establishment in which agricultural products are processed or prepared for the market," neither the NRA nor the AAA officially supported it. Ultimately the cotton ginning industry successfully avoided codification.64

The cotton ginning industry exemplified the way in which the AAA and the NRA dealt with so-called industries allied with agriculture such as raw peanut milling, pecan shelling, and loose leaf tobacco, all of which employed "unskilled labor of the same type as found employment in agriculture."65 In these industries the NRA approved codes providing for lower minimum wages on grounds that its own Division of Review deemed racist:

The justification adduced—the relatively low living costs in agricultural communities—was not the sole or even the principal ground for lower rates.

The relative inefficiency of the type of labor employed was often alleged as a ground for lower rates for these industries. In certain of these industries, a large proportion of the unskilled labor was Negro. Though no open racial differential or discrimination

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63Woodbury, Limits of Coverage at 20; cf. id. at 30. The cotton ginning industry, like citrus, was not expressly listed as under the jurisdiction of the NRA or AAA. Id. at 12.

641 NRA, ADVISORY COUNCIL DECISIONS No. 2 (June 26, 1934); Woodbury, Limits of Coverage at 20-21; Theodore Saloutos, THE AMERICAN FARMER AND THE NEW DEAL 182 (1982).

was admitted in any NRA code, a low rate might be demanded by industry employing largely Negro labor as requisite to its continuing innoperation [sic]. In some cases the fact that labor was light repetitive work and was carried on largely by female workers, in some cases Negro and Mexican female labor, was advanced by industry as a reason why it could afford only a low rate.66

This racial accommodation was of a piece with the NRA's entire codification policy towards black industrial labor in the South. In tandem with the undisguised partisan policy of the AAA on behalf of large employers of non-white laborers, the NRA not only was party to the exclusion of hundreds of thousands of industrial workers from codes on the ground that they were agricultural employees, but also created the basis on which such workers later would be excluded from the protection of FLSA, and extruded, through amendment, from coverage under the Social Security Act.67

B. The Agricultural Adjustment Act (AAAct)

Under the AAAct, the centerpiece of New Deal farm legislation, "Negro tenant farmers and sharecroppers were the first to be thrown off farms as a consequence of the crop-reduction policy." This rural Black removal program was implemented most effectively on cotton plantations, "the South’s basic social and economic institution...until the 1940s."68

The New Deal with its cotton restriction program, its relief expenditures, and its loan services, has temporarily rejuvenated the decaying plantation economy. ... The various federal resources which come into this region tend to be spent in conformity with the plantation, the philosophy and practices of which root back into slavery. New techniques of exploitation have been evolved.69

66 Id. at 57-58. See generally, Selden Menefee & Orin Cassmore, The Pecan Shellers of San Antonio (1940).
When, in 1935, a group of liberal officials within the USDA and the AAA sought to guarantee the right of tenants to remain on the land during the life of the AAA contract,

and in the process seemingly threatened the existence of the southern caste and class system, they ran afoul not only of the influential southern congressmen, but also of such New Deal stalwarts as Henry Wallace...and the AAA Administrator Chester Davis, who believed that...the conditions of all farmers could be improved substantially without launching a frontal assault on traditional southern practices.\textsuperscript{70}

Secretary of Agriculture Wallace was "very much aware of the adverse effect the Triple-A was having upon the lives of the lowly sharecroppers. He was not insensitive to the plight of these poor people, but he was trapped in a moral paradox." This "moral paradox," characteristic of the entire New Deal, was resolved in the customary fashion--through accommodation of rural southern racist interests.\textsuperscript{71} Wallace's "fear of repercussions among the Southerners in Congress was overriding," he confided years later, in his decision to purge the AAA of the pro-tenant officials. Had he not carried out the purge, he would have had to resign to "make way for someone else who could get along with the men from the South in Congress."\textsuperscript{72}

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\textsuperscript{70} Wolters, Negroes and the Great Depression at 56-57.
\textsuperscript{71} Edward Schapsmeier & Frederick Schapsmeier, Henry A. Wallace of Iowa: The Agrarian Years, 1910-1940 at 202 (1968).
\end{flushright}
In the event, Bill Camp, one of the nation's largest cotton growers, and Cully Cobb, who as head of the AAA Cotton Section "implanted into AAA policies all the prejudices acquired from a lifetime of work with the white southern agricultural establishment" and "unabashedly represented the planter class," arranged for the chairman of the Senate Agriculture Committee, "Cotton" Ed Smith of South Carolina, the chairman of the House Agriculture Committee, Fulmer of South Carolina, the majority leader of the Senate, Robinson of Arkansas, and the Chairman of the Senate Finance Committee, Harrison of Mississippi, to call on President Roosevelt. They issued him an "ultimatum" that unless the aforementioned USDA officials "were fired, no major farm legislation Roosevelt might want would be passed." Soon thereafter Wallace issued an executive order cancelling the telegrams that the officials had sent advising cotton farmers that they were obligated to retain the same tenants on their plantations when they signed AAA contracts; the officials were then purged.

Related to the issue of the creation by the AAA of an "enclosure movement," which led to the expulsion of largely black sharecroppers from the plantations, was that of the skewed division of benefit payments as between landlords and croppers for taking land out of cotton production pursuant to AAA contracts in 1934 and 1935. In order to gain the cooperation of as many landowners as possible, those "operating with sharecroppers...were offered nearly 90 per cent of the total payment." In the end, the AAA "found no way of writing a contract that would guarantee the cropper his share of the benefit payments." Even the minimal benefits formally

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76HENRY RICHARD, COTTON AND THE AAA 140 (1936); EDWIN NOURSE ET AL.,
accruing to sharecroppers were frequently appropriated by landlords. If a cropper did not sign the contract, he received no benefit checks. Often the landlord did not obtain the written consent of the cropper; for although the latter was legally a lien-holder, "it was not likely that...he would be regarded as being on an equal footing with other persons interested in the crop, such as mortgagees or the landlord. This was particularly true in the black belt where most of the croppers were Negroes."77

This accommodation of racist imperatives at the highest levels of the USDA mirrored the attitudes and practices of the state and county extension officials upon whom devolved the implementation of AAA policies.78 While many AAA administrators were themselves southern landlords, "[m]ost officials hesitated to take any step that might alienate Southern landlords."79 By contrast, "[n]ot a single Negro served on an AAA county committee throughout the South"; with

the day-to-day management of the New Deal in the South...in the hands of the hierarchy that had traditionally oppressed Afro-Americans and still stood to profit by discriminating against blacks...[and] because the most powerful whites in the South kept the records and wrote the reports that determined the activities of the AAA, the Resettlement Administration, and the Farm Credit Administration, blacks never shared equitably in the benefits from these programs.80

The AAA Administrator believed that the aborted plan to ameliorate conditions for sharecroppers and tenants would have "put AAA into the reform business...under conditions which might lead to

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77Paul Bruton, Cotton Acreage Reduction and the Tenant Farmer, 1 LAW & CONTEMP. PROBS. 257, 262 (1934).
78Raymond Daniell, AAA Aims at an End to Share Cropper, N.Y. Times, April 22, 1935, at 7, col. 2. Landlords traditionally took half of the product of the cropper's labor. Rupert Vance, Human Factors in the South's Agricultural Readjustment, 1 LAW & CONTEMP. PROBS. 275, 285 (1934).
79Richard Kirkendall, Social Scientists and Farm Politics in the Age of Roosevelt 98 (1982 [1966]); see also Rupert Vance, The Negro Agricultural Worker Under the Federal Rehabilitation Program 201, 211 (n.d. [1934]).
80Sitkoff, A New Deal for Blacks at 53, 48.
Migrant Workers and Minimum Wages

revolutionary outbreaks in the South. Although this "revolutionary" specter was not communist but merely that of equal civil and political rights for rural Blacks, "[a] concession to the sharecropper class [wa]s not only one to labor but one to the Negro as well."82 White supremacists were particularly alarmed by the biracial membership of the Southern Tenant Farmers’ Union (STFU)--the chief vehicle of these putative "revolutionary outbreaks"--which had been founded in 1934. They deployed the full range of legal and illegal powers to crush the movement. Official and vigilante "terror and violence" reinforced the message.83 President Roosevelt, for fear of embarrassing the re-election campaign of Senator Robinson of Arkansas (the majority leader) and undermining southern congressional support for his legislative program, refused even to mediate between the STFU and the planters.84

C. Social Security

Southerners worried about its [Social Security’s] implications for race relations. "The average Mississippian," wrote the Jackson Daily News, "can’t imagine himself chipping in to pay pensions for able-bodied Negroes to sit around in idleness on front galleries, supporting all their kinfolks on pensions, while cotton and corn crops are crying for workers to get them out of the grass."85

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81 SCHLESINGER, THE COMING OF THE NEW DEAL at 78-79.
82 Lewis, Black Cotton Farmers and the AAA at 72.
Statutory Origins of Agricultural Exceptionalism

Plantation owners resisted extension of social security programs to their laborers because even a modest level of income security and supplements would have tended to raise workers' reservation wage, thus weakening their confinement to a quasi-captive labor market. At the congressional hearings in 1935, the NAACP put Congress on notice that the Social Security bill would exclude 3.5 million of 5.5 million black workers because they were employed as farm workers or domestics: "The more it [the NAACP] studied the bill, the more holes appeared, until from a Negro's point of view it looks like a sieve with the holes just big enough for the majority of Negroes to fall through." Congress promptly dispelled southern racist concerns by excluding agricultural and domestic employees altogether—and hence the vast majority of southern black workers—from coverage. The

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88 Social Security Act, ch. 531, §§ 210(b)(1) and (2), 49 Stat. 620, 625 (1935). Census data indicate that in 1930 Blacks in the eleven states of the Confederacy accounted for 61.7 per cent of all farm wage laborers and domestic servants; these two occupations accounted for 25.4 per cent of all gainful black workers in those states. Calculated according to BOC, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, 4 POPULATION: OCCUPATIONS, BY STATES, table 11 (1933). By 1940 the figures had risen to 68.9 per cent and 24.5 per cent respectively. Calculated according to idem, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, 3 POPULATION: THE LABOR FORCE, pt. 2-5, table 13 (1943). These data, however, vastly understate the occupational concentration of southern Blacks. The category of farm wage laborers excluded unpaid family workers, sharecroppers and tenants. The magnitude of this omission can be gauged by the fact that "the bulk of Negro gainful workers in the South are engaged in raising cotton which involved some 698,839 tenant families or slightly over three million Negroes." Frank Davis, The Effects of the Social Security Act upon the Status of the Negro 30-31 (Ph.D. diss. State U. Iowa, 1939). The figures also deliberately understate the extent of black domestic employment because the most restrictive definition of domestic employment was used in order to avoid inaccuracies caused by defective enumeration procedures. See BOC, FIFTEENTH CENSUS OF THE UNITED
actual discriminatory impact of the Social Security Act (SSA) on Blacks corresponded closely to the NAACP's predictions. By 1940, 78.1 per cent of employed white workers were receiving wage credits under the old-age and survivors insurance program compared to only 53.0 per cent of Blacks.89 That even half of black workers received wage credits is explained by the fact that some excluded workers also worked in other, covered employment. Substantially similar occupational exclusions from the unemployment compensation provisions of the SSA also produced a disproportionately exclusionary impact on Blacks.90

This indirect exclusion of Blacks from the old-age pension provisions of the bill did not satisfy southern congressmen, who bitterly attacked the old-age assistance provision because it gave the federal government the power to dictate to the states how much should be paid to whom.91

In this position, Senator Byrd [of Virginia] was supported by nearly all of the southern members of both committees, it being very evident that at least some southern senators feared that this measure might serve as an entering wedge for federal interference with the handling of the Negro question in the South. The southern members did not want to give authority to anyone in Washington to deny aid to any state because it discriminated against

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89 Calculated according to U.S. Bd. of Old-Age & Survivors Insurance, Handbook of Old-Age and Survivors Insurance Statistics: Employment and Wages of Covered Workers: 1940, table 5 at 8 (1943); BOC, Sixteenth Census of the United States: 1940, Population: The Labor Force, pt. 1 at 11 (1943). The data also fail to reflect the sizable population of Mexican origin in Texas, which was classified as white in 1940 and was omitted for 1930. But see BOC, Fifteenth Census of the United States: 1930, 5 Population: General Report on Occupations at 86-91. If black sharecroppers and tenant farmers in the eleven southern states are included (together with the narrowest definition of domestic employment), exactly half of the southern blacks employed in 1940 were excluded from employee status.

90 Telephone interview with Wilbur Cohen, one of the drafters of the Social Security Act and a former Sec'y of HEW (May 1985); §§ 907(c)(1) and (2), 49 Stat. at 643; Davis, Effects of the Social Security Act at 97.

91 Economic Security Act at 71-78.
Negroes in the administration of old age assistance.92 This racist opposition made it "apparent that the bill could not be passed as it stood and that it would be necessary to tone down all clauses relating to supervisory control by the federal government."93

This statutory accommodation of southern racism, masked as states' rights,94 was part and parcel of "the reluctance of the dominant race to provide for aged Negroes, Mexicans and Indians [which] accounted for a part at least of the slowness of the Southern States, and for the failure of Oklahoma and New Mexico to take action during the old-age pension movement in Congress." Since "Southern mores" included "the assumption that the standard of living of the Negro and his cost of living do not rise above the barest subsistence...of the Negro share-croppers and cotton tenants," "there was a tendency to grant lower sums, especially in the South, to aged Negroes than to aged Whites." The circle of discrimination was completed by "[t]he lack of federal administrative authority to fix the standards for personnel selection [which]...made it possible for the Southern States to consistently exclude the negro from any appointments."95

D. Discrimination by Other New Deal Agencies

Because "Federal agencies dared not challenge entrenched habits," "[i]nexorably discrimination stalked Negroes in every Federal program." Only the most prominent examples are highlighted here.96

Civilian Conservation Corps (CCC). Despite the express congressional prohibition of the use of racially discriminatory criteria


93Witte, Development of the Social Security Act at 144.

94SSA, § 2, 49 Stat. at 620.

95Davis, Effects of the Social Security Act at 198, 157, 149; Franklin, From Slavery to Freedom at 538.

96Tindall, Emergence of the New South at 545. See generally, John Davis, A Black Inventory of the New Deal 42 Crisis 141 (1935); Sitkoff, The Impact of the New Deal on Black Southerners.
in enrolling young men in the CCC, directors in a number of southern states either refused to enroll any Blacks or permitted only token representation. When Southerners objected to the inclusion of Blacks in the CCC, President Roosevelt, characterizing the issue as "political dynamite," asked that his name 'be not drawn into the discussion' and acquiesced completely in the restrictions on Negro enrollment. Secretary of Labor Frances Perkins, an interdepartmental supervisor of the CCC, did, to be sure, permit the director of the U.S. Employment Service, who selected young men for the CCC on behalf of the DOL, to express his disapproval of discrimination. "But as soon as he reached a point where she thought he might cause the President embarrassment, she silenced him." Consequently, under the director of the CCC, Robert Fechner, a Southerner, exclusion of Blacks from the program in the South at the outset gave way to underrepresentation and segregated camps together with discrimination against black supervisors.97

Farm Security Administration (FSA). At the FSA, which was administratively subordinate to the Secretary of Agriculture, "[m]ost of the leaders...were southerners [who] adhered fairly consistently to southern attitudes and practices regarding race in matters pertaining to allocation of loan and grant funds, personnel and appointments, cooperative and group enterprises, resettlement projects and public information activities." Where, on the other hand, a more independently minded agency head sought to resist racist patterns, the political power of the alliance of Southern Democrats and the Roosevelt Administration sufficed to thwart innovations. Thus when Will Alexander, the first administrator of the FSA, appointed Blacks to state advisory committees, Senator Byrnes of South Carolina told him to back off. When Alexander refused to comply, Byrnes went directly to Secretary of Agriculture Wallace, who "retreated."98


98 Sidney Baldwin, Poverty and Politics: The Rise and Decline of the Farm Security Administration 279, 307 (1968); see also Paul Mertz, New Deal Policy and Southern Rural Poverty 193-95 (1978) (discrimination by loan committees against black applicants); Donald Holley, The Negro in the New Deal Resettlement Program, 45 AGRIC. HIST. 179 (1971).
Tennessee Valley Authority (TVA). At the TVA "local officials denied blacks their proportionate share of jobs and relegated them to the least skilled, lowest paying tasks" within an overall pattern of segregation. The TVA also constructed "lily-white" homesteads, totally excluding Blacks, even in model towns such as Norris, Tennessee, which was owned and controlled by the federal government.99

Relief Programs. Since the federal relief programs initiated during the depression years channeled their funds to the States, which administered them, relief had to accommodate the specifically agrarian racism of the South: "Because Negroes were usually among the people most in need of welfare, many southerners also had racial objections to heavy relief payments. [I]n the South, they complained, it [relief spending] raised the Negro to the white man's economic level and created a shortage of cheap farm labor."100

Southern landlords left no doubt that even the elimination of the threat of starvation, which relief payments to rural Blacks barely achieved, sufficed to endanger their power: "Ever since federal relief...came in you can't hire a nigger to do anything for you." "I don't like this welfare business. I can't do a thing with my niggers. They aren't beholden to me any more. They know you all won't let them perish."101

Payments by the Federal Emergency Relief Administration (FERA), the chief New Deal relief agency from 1933 to 1935, to rural black families "ran considerably lower* than those to Whites.102

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100 PATTERTON, CONGRESSIONAL CONSERVATISM at 145. See also VANCE, NEGRO AGRICULTURAL WORKER UNDER THE FEDERAL REHABILITATION PROGRAM at 226 ("discrimination against Negroes...in some areas of the South in the administration of public relief...was exercised in an effort to keep relief expenditures for Negroes in line with low wages prevailing in agriculture").


102 TINDALL, EMERGENCE OF THE NEW SOUTH at 480, 547. See also ARTHUR RAPER & IRA DE A. REID, SHARECROPPERS ALL! 233 (1941) (showing differentials ranging from 33 to 191 per cent in favor of Whites); Kifer, The Negro under the New Deal at 211-18; WEISS, FAREWELL TO THE PARTY OF LINCOLN at 57-59.
"Similar differentials appeared in the work-relief programs." The advent of the Works Progress Administration (WPA) in 1935 was accompanied by a drastic reduction in wages below the thirty cents per hour established by the short-lived Civil Works Administration in the South in 1933-34, a cut described at the time as "a concession by the federal government to Southern opposition to the payment of Negroes of wages of thirty cents an hour." Racially discriminatory work-relief in the form of geographic wage differentials and classification into unskilled occupations was virtually preordained by the fact that even as late as May 1940 the WPA employed only eleven Blacks among its more than ten thousand supervisors in the South.

The WPA performed two functions on behalf of southern planters. On the one hand it created a racially bifurcated wage structure that deterred workers from remaining on the relief rolls:

Negro workers accustomed to relatively low standards of living...may be denied WPA employment on the ground that they are not in need whereas workers accustomed to relatively higher standards of living may be declared eligible for such employment even though they have as large and possibly larger resources than the former. Similarly, since workers are denied WPA employment if they refuse private employment at pay prevailing in the community for the type of work offered, Negro workers refusing jobs at prevailing rates of $3.00 or $4.00 a week may be denied WPA employment whereas white workers might not be required to accept jobs at such rates if these were lower than those customarily paid white workers.

On the other hand the WPA forced (chiefly non-white) workers off the rolls outright when planters demanded an immediate supply of the cheapest possible labor:

In 1936 [WPA Administrator] Harry Hopkins began a practice of closing WPA projects and releasing workers during the cotton-picking season. ... The purpose was not to create an oversupply of labor...but soon it became apparent that officials in the mid-South had joined in a drive to undermine the Southern Tenant Farmers Union. Several state relief agencies developed elaborate procedures to prevent the diversion of surplus farm workers to relief. In Louisiana regulations stipulated that relief

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103 TINDALL, EMERGENCE OF THE NEW SOUTH at 480, 481; Davis, Survey of the Problems of the Negro under the New Deal at 10.

104 TINDALL, EMERGENCE OF THE NEW SOUTH at 548.

105 DONALD HOWARD, THE WPA AND FEDERAL RELIEF POLICY 291 (1943)
offices should consider sharecroppers for WPA referral only after consultation with the plantation management or the usual source of credit.\textsuperscript{106}

This pattern repeated itself in the Rio Grande Valley, where fruit and vegetable farmers were able to induce FERA officials "to displace all Mexican casuals who had got on their relief rolls in the city [San Antonio] during the winter so the area might have its accustomed supply of cheap...labor."\textsuperscript{107}

III. The Intent and Impact of the Original Exclusion of Farm Workers from FLSA

A. Legislative History

The legislative history of the exclusion of farm workers from FLSA is meager because the bill as drafted by the Roosevelt Administration and introduced by Representative Connery and Senator Black already contained this exclusion.\textsuperscript{108} Indeed, agricultural laborers constituted the sole industrial group--apart from executive, administrative, supervisory and professional employees--wholly excluded from the bill.

The precursor of FLSA originated in the office of Secretary of Labor Perkins in the mid-1930s as a long-term substitute for the wage and hour standards that would (and did) become void when the Supreme Court eventually held the NRA codes unconstitutional. Of crucial importance was the fact that "[t]he President decided upon a comprehensive minimum wage and maximum hour bill, partly as a measure for reuniting the party." Any legislative measure

\textsuperscript{106}\textsc{tindall, emergence of the new south} at 479-80.

\textsuperscript{107}\textsc{Vance, negro agricultural worker under the federal rehabilitation program} at 228-29.

calculated to reunite the Democratic party in the spring of 1937 had to accommodate the plantation interests of the southern wing of the party. This political constellation of forces specifically precluded minimum wages for black farm laborers: "the South's misgivings about social change derived in considerable measure from the fact that almost any kind of change might challenge the bi-racial system. Wage and hour laws were resisted because they might mean equal wages for Negroes and whites."110

This acquiescence in the racially motivated sectional demands of the largest solid bloc of Democratic voting strength was reflected in Roosevelt's message to Congress of May 24, 1937 in which he urged support of the minimum wage bills introduced that day. He alluded, albeit in the code language adapted to the modern forms which the 'peculiar institution' had assumed, to the needs of the South: "Even in the treatment of national problems there are geographic and industrial diversities which practical statesmanship cannot wholly ignore." The committee reports in both houses of Congress echoed the President's call for "having due regard to local and geographic diversities."111

Testimony before the congressional committees was replete with references to the patterns and practices of de facto exclusion of Blacks under earlier New Deal legislation. Thus John Davis, representing the National Negro Congress, testified that:

In the period of the N.R.A. code hearings Negro workers were helpless to defend themselves against demands, especially by representatives of southern industry, for longer hours and lower wages for those occupations, industries and geographic divisions of industries in which the predominant labor supply was Negro. Unorganized and without perceptible collective bargaining power, the Negro worker was soon singled out by pressure groups of employers as the legitimate victim for all manner of various differentials.

Davis stressed that "the bill now under consideration makes possible even worse differential treatment of Negro workers." The chief vehicle of discrimination remained: "Negro domestic and agricultural

laborers—representing the bulk of Negro labor—have had no benefits from the Social Security Act or other protective legislation.\textsuperscript{112}

In the congressional debates themselves southern representatives openly articulated the racially discriminatory purpose behind the de facto exclusion of Blacks from FLSA. As Representative Wilcox of Florida observed:

Then there is another problem of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor. So long as Florida people are permitted to handle the matter, this delicate and perplexing problem can be adjusted.... You cannot put the Negro and the white man on the same basis and get away with it. Not only would such a situation result in grave social and racial conflicts but it would also result in throwing the Negro out of employment and in making him a public charge. There just is not any sense in intensifying this racial problem in the South, and this bill cannot help but produce such a result.

\textit{Those who know the facts know that when employers are forced to pay the same wage to the Negro that is paid to the white man the Negro will not be employed. This in turn will mean that he will be thrown onto the relief roll to be fed in idleness. ... This bill, like the antilynching bill, is another political goldbrick for the Negro.\textsuperscript{113}}

His colleague, Edward Cox of Georgia, stated for the record that:

\begin{quote}
The organized Negroes of the country are supporting it [the FLSA] because it will, in destroying state sovereignty and local self-determination, render easier the elimination of racial and social distinctions.... I say to you that these local problems cannot be so administered. It is...dangerous beyond conception to try to so adjust all of these intimate questions of daily life.\textsuperscript{114}
\end{quote}

"The organized Negroes of the country" must have gotten this message, for the National Urban League urged its locals not to push too strongly for passage of FLSA lest they rally southern opposition.\textsuperscript{115}

\begin{footnotes}
\textsuperscript{112}\textit{FLSA Hearings} at 571, 573, 574.  \\
\textsuperscript{113}82 Cong. Rec. 1404.  \\
\textsuperscript{114}82 Cong. Rec. App. 442.  \\
\textsuperscript{115}NANCY WEISS, \textsc{The National Urban League 1910-1940}, at 306 (1974). FLSA provided for the establishment of industry committees, which were authorized to recommend to the Wage and Hour Administrator intra-industry classifications for the purpose of reaching a universal minimum wage of forty cents per hour during the
\end{footnotes}
B. Why the Minimum Wage was Irreconcilable with the Southern Plantation System

On the exclusion of farm workers from FLSA hinged not the profitability of the farm sector in general, but rather the continued viability of the southern plantation system, which rested on unconstitutional forms of exploitation and oppression. Unlike any other type of farming in the United States in the 1930s, the plantation system was absolutely dependent for its survival on the unimpeded exploitation of large numbers of (chiefly) black farm workers at wages far below the national average. The rural oligarchy could maintain itself only if it preserved its unchallenged pseudo-feudal control over its quondam slave labor force. Given the central role of the plantation in the political economy of the South, federal imposition of an agricultural minimum wage even remotely approaching the level prevailing on northern farms would have undermined the specific racist underpinnings of the plantation system. It was this peculiar chain of vital interests that formed the basis of southern opposition to the exclusion of farm workers from FLSA (as well as other socioeconomic legislation).

The vast majority of farm workers who would have been covered under FLSA would have been non-white employees of southern and southwestern farmers. The wages of these workers were so far below any proposed national minimum wage, whereas those of white employees of northern farmers were already so close to or in excess of the proposed minimum, that even on a purely economic level southern black farm workers would have been the only clear winners and southern planters the only clear losers had FLSA covered agricultural employment.

1. The Unconstitutional Structure of the Plantation Labor
System. Ever since the abolition of slave labor, southern agricultural employers, supported by the state governments they controlled, had been seeking a regime of quasi-free labor that ensured a stable labor force at the lowest possible cost. Modernized versions of post-Civil War legislation designed to suppress market-induced labor mobility still flourished in the South at the time FLSA was being debated. These statutory schemes to evade the Thirteenth Amendment's prohibition of involuntary servitude demonstrate that the unique quality of plantation labor relations underlay the South's distinct sectional-racist position with respect to FLSA.

So-called false pretense laws were "one of the most important of all the statutes...framed to keep agricultural laborers on the plantation for the duration of their contracts...." North Carolina, Florida, Georgia, South Carolina, and Alabama, for example, used the threat of imprisonment "to force plantation croppers, tenants and workers to carry out their contracts faithfully and completely" by criminalizing the act of obtaining advances with an intent to defraud and wilfully to fail to begin or to complete contractually agreed upon work.\(^\text{116}\) The Georgia statute, which the U.S. Supreme Court held repugnant to the Thirteenth Amendment in 1942, contained "no material distinction" from the Alabama statute that the Supreme Court had held contrary to the Thirteenth Amendment three decades earlier.\(^\text{117}\) The Florida statute, which the state legislature had re-enacted several times--most recently as late as 1943--was "substantially the same" as the Alabama statute. Since the provision of the Florida act that made mere refusal to perform labor, once an advance had been made, prima facie evidence of intent to defraud "was known to be unconstitutional and of no use in a contested case, the only explanation we can find for its persistent appearance in the statute is its extra-legal coercive effect in suppressing defenses." From the availability of a general and comprehensive Florida statute outlawing the obtaining of money by false pretenses as well as from the repeated re-enactment of the statute in the face of Supreme Court decisions holding such statutes unconstitutional, the Court concluded that "[w]here peonage has existed...it has done so chiefly


by virtue of laws like the statute in question." The resulting
unfreedom, which survived World War II in Florida, was rooted in
the fact that "[w]hen the master can compel and the laborer cannot
escape the obligation to go on, there is no power to redress and no
incentive above to relieve a harsh overlordship or unwholesome
conditions of work."\textsuperscript{118}

Not satisfied with controlling this aspect of the labor
relationship, planters also caused their state legislatures to enact
complementary legislation

prohibiting the "enticing" of croppers, tenants and laborers from
their employers. Farm hands might be kept on the plantation by
threat of economic loss and legal punishment, but planters still had
to eliminate the danger of outside interference.... The chief
competitors for the cheap and tractable labor supply...were, first,
the industrial enterprises of the North and to a lesser extent those
of the South, and secondly, farm operators, who because of labor
shortages or other crises had to secure immediate extra help. In
order to eliminate the danger from the first source, some states,
notably Alabama, Georgia, Mississippi and South Carolina, have
placed prohibitory restrictions upon employment agents who solicit
and send labor out of the state.\textsuperscript{119}

In addition, Alabama, Arkansas, Georgia, Louisiana, Mississippi,
North Carolina, and South Carolina all enforced criminal provisions
punishing enticement of agricultural laborers under contract to other
farm employers.\textsuperscript{120}

This complex of legislation, which permitted "whites to use
Negro labor when and as they chose," and restored "to the landlord
legal control of the crops and laborers on the post-Civil War

\textsuperscript{118}Pollock v. Williams, 322 U.S. 4, 9, 15, 16, 18 (1944). \textit{See generally}, Jerrell

\textsuperscript{119}Zeichner, \textit{Legal Status} at 426. The pertinent statutes are: Ala. Code §§ 696, 697,
3980 (1928) ($5,000 annual agent fee plus up to $2,500 per county); Ga. Code § 92-
506 (1933) ($1,000 per county); Miss. Code, Supp. App., Privilege Tax Code No. 116
at 442 (1930) ($500 per county); S.C. Code §§ 1377, 1378 (1932) ($500 annually per
county).

\textsuperscript{120}Ala. Code §§ 3986, 3987 (1928); Digest of Stats. of Ark. § 8600 (1937); Ga. Code
plantation after 1865," was a state-sponsored effort to insure that the emancipation of the slaves assumed optimally beneficial forms to their erstwhile owners and then-employers. The overpopulation of the rural South with sharecroppers, tenants, and wage laborers created an oversupply of labor that depressed wages to a fraction of the level prevailing on northern farms. Where laborers sought to extricate themselves from this vicious circle by offering their labor to higher-paying employers, enforcement of these state laws suppressed the normal workings of supply and demand on the labor market. If a labor shortage arose nevertheless, cotton farmers could still rely on the WPA to help out by requisitioning laborers on its payrolls to pick cotton at the prevailing rate. Those who refused were permanently released from the relief rolls "in accordance with WPA policy" in the southern states.

When and where even these weapons did not suffice to override the forces of supply and demand, plantation owners had recourse to more effective self-help measures. Thus a front-page headline in The New York Times in 1937 read: Armed Farmers Hold Cotton Pickers on Job; Refuse to Let Negroes Take Higher Pay Offer. This incident is especially illuminating because the vigilantes in Warren County, Georgia, where Blacks accounted for two-thirds of the population, were planters, whereas the enticers lived in Glasscock County, where the proportion of small white farmers was relatively large. The planters' action underscored the fact that economic-racist animus was specific to the plantation--"a feeling, on the part of the planters, of a sort of collective ownership of the workers in the community."

2. The Unique Dependence of the Plantation System on Low-Wage Black Labor. The urgency of excluding farm workers from

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122 Armed Farmers Hold Cotton Pickers on Job; Refuse to Let Negroes Take Higher Pay Offer, N.Y. Times, Sept. 16, 1937, at 1, col. 6-7. Cf. CASH, THE MIND OF THE SOUTH at 312, 420; CONRAD, FORGOTTEN FARMERS at 8-11. On a similar incident in 1941, see Ross, Agricultural Labor at 6 n.3.

123 Sept. 16, 1937, at 1, col. 6.

124 MYRDAL, AMERICAN DILEMMA at 1243 n.78. See also AM. CIVIL LIBERTIES UNION, PEONAGE IN GEORGIA (March 1938) (reproduced in SOUTHERN TENANT FARMERS UNION [STFU], PAPERS, 1934-1970 [microfilm reel no. 7]); supra ch. 1.
FLSA as a peculiarly southern, race-oriented issue can be traced through a chain of interconnected relations. First, agriculture was predominantly a southern industry and the South was the only predominantly agricultural region of the country. In 1930, fifty-three per cent of all persons engaged in agriculture, but only nineteen per cent of those engaged in manufacturing, worked in the South. During the 1930s, half or more of the country's farms and farm population were located in the South. Whereas 21.5 per cent of the gainfully employed in the United States were employed in agriculture in 1930, the corresponding shares in Mississippi, Arkansas, South Carolina, Alabama, North Carolina and Georgia were 66.0, 57.6, 50.1, 48.0, 43.8 and 42.8 per cent respectively.125

Second, southern agriculture was overwhelmingly dominated by cotton. From two-thirds to five-sixths of all farms in the Cotton Belt States were classified as cotton farms. Fifty-five to sixty per cent of the world's annual supply of cotton was grown on the forty-two per cent of the South's cropland that was dedicated to cotton.126 With southern farmers depending on cotton and tobacco for two-thirds of their cash income, "[n]o other similar area in the world gambles its welfare and the destinies of so many people on a single crop market year after year."127 Including working members of sharecropper families, the 2,348,000 sharecroppers and farm laborers in the cotton states accounted for one-fifth of all persons engaged in agriculture in the United States in 1935.128

Third, cotton as well as the region's other major


126O. Baker & A. Genung, A Graphic Summary of Farm Crops figs. 4 and 5 at 5 (USDA Misc. Pub. No. 267, 1938) (S.C., Ga., Ala., Miss., Ark., La., and Tex.); Vance, Negro Agricultural Worker Under the Federal Rehabilitation Program table II at 77, supp. tab. xiii (unpaginated) (cotton farm defined as one at least forty per cent of the value of whose output attributed to cotton); Vance, Human Factors in the South's Agricultural Readjustment at 262.


crops—tobacco, rice, and sugar—were all large-scale, labor-intensive operations. In the mid-1930s, 88 worker-hours were required on the average to produce one acre of cotton compared to 6.1 hours for wheat and 22.5 hours for corn.\textsuperscript{129} Fourth, Blacks in the South were more dependent than Whites on agriculture. In 1940 about one-third of white males, but more than one-half of black males in the South were farmers or farm laborers. Blacks, moreover, were "almost wholly confined to the Cotton Belt."\textsuperscript{130}

Fifth, between 1930 and 1940 the number of sharecroppers in the eleven states of the Confederacy decreased dramatically—from 721,268 to 509,814, while the share of black sharecroppers rose from 53.1 per cent to 58.1 per cent. Sixth, the vast majority of tenants and sharecroppers worked on cotton plantations. The extraordinary size of the (largely Mississippi Delta cotton) plantation was captured by a special census study in 1939 which enumerated 12,160 plantations employing 169,208 families that included upwards of a million workers. With the average plantation employing fourteen "wage hand" and cropper families, fifty-one plantations (fifty of which were located in Mississippi and Arkansas) employed one hundred or more families. Seventh, Blacks predominated on the plantations, "operating" almost four-fifths of all tenant (including cropper) farms on them. In the Mississippi Delta cotton plantation area almost all sharecroppers were black.\textsuperscript{131}

\textsuperscript{129}\textsc{Rupert Vance}, \textit{Human Geography of the South} 177-225 (2d ed. 1935 [1932]; \textsc{William Holley et al.}, \textit{The Plantation South} 1934-1937, at 115-18 (1940); \textsc{Folsom & Baker}, \textit{Graphic Summary} at 4; \textsc{Rupert Vance}, \textit{All These People: The Nation's Resources in the South} 218 (1945); \textsc{John Hopkins}, \textit{Changing Technology and Employment in Agriculture} table 40 at 118, table 41 at 123, table 43 at 131 (differential between the Mississippi Delta cotton region and the prime Northern corn and small grain areas even greater); \textsc{Eldon Shaw & John Hopkins}, \textit{Trends in Employment in Agriculture}, 1909-36 at 130-39 (1938).

\textsuperscript{130}Calculated according to \textsc{BOC}, \textit{Comparative Occupation Statistics for the United States} 1870-1940 at 196, 200; \textsc{Folsom & Baker}, \textit{Graphic Summary} at 25.

\textsuperscript{131}\textsc{BOC}, \textit{Sixteenth Census of the United States: 1940, 3 Agriculture: General Report} table 22 at 178-88 (1943); \textsc{Myrdal}, \textit{American Dilemma} at 233; \textsc{BOC}, \textit{Special Study, Plantations, Based upon Tabulations from the Sixteenth Census of the United States, 1940}, tab. 16 at 86, tab. 17 at 88-90, tab. 25 at 113 (n.d. [ca. 1943]). The study defined a plantation as a "continuous tract or closely adjacent tracts of land in which five or more families (including one cropper or tenant family) are regularly employed, and which tracts are operated as a single working unit in respect to central farm headquarters and to the control of labor, cropping systems, and farming operations." \textit{Id.} at v. On plantations in Mississippi, where almost half of all those enumerated were located, Blacks "operated" almost nine-
Eighth, Blacks worked on the plantation proper where they could be closely controlled and supervised, whereas white tenants predominated on small holdings in outlying areas where they worked more independently. Consequently, "[t]he cropper has practically no voice in deciding what crops to grow, or what methods to follow in cultivation," while "[a]lways the planter has been accustomed to complete political rule over the cropper." This transparent fusion of political and economic domination led some contemporary observers to conclude that "[t]he plantation community is essentially feudalistic" and "the Negro...in the position of a tenant peasantry with semi-feudal attachment to the land."

Ninth, Blacks received lower wages than white workers. Statistically this differential was insured by the fact that wages were generally lower on plantations and the per capita incomes of sharecropper families were even lower than the wages of formally employed wage laborers. Moreover, the success of the cotton plantation also hinged on the massive use of unpaid labor of black women and children.

Tenth, Blacks tended to remain in a permanently dependent position, "many seek[ing] work as croppers in their old age, whereas white farmers by that time commonly achieve ownership, if they

132 MYRDAL, AMERICAN DILEMMA at 243-44. "One of the leading objections to plantation labor other than negro is the difficulty of supervision, although one class may be as efficient as the other in farming ability." C. BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION 23 (1928).


134 RAPER & REID, SHARECROPPERS ALL! at 26; VANCE, NEGRO AGRICULTURAL WORKER at 126. For similar observations, see V. LENIN, NOVYE DANNYE O ZAKONAKH RAZVIITIA KAPITALIZMA V ZEMLEDELII, pt. 1: KAPITALIZMA I ZEMLDELIE V SOEDINENNYKH SHTATAKH AMERIKI, in 27 V. LENIN, POLNOE SOBRANIE SOCHINENII 129, 142 (5th ed. 1962 [1915]); DAVIS ET AL., DEEP SOUTH at 255-538; GRUBBS, CRY FROM THE COTTON at 15; ERSKINE CALDWELL, TENANT FARMER 21 (1935).

135 MYRDAL, AMERICAN DILEMMA at 240; RAPER, PREFACE TO PEASANTRY tab. X at 55. BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION at 29; KARL BRANDT, FALLACIOUS CENSUS TERMINOLOGY AND ITS CONSEQUENCES IN AGRICULTURE, 5 SOC. RESEARCH 19, 33 (1938); VANCE, HUMAN FACTORS IN THE SOUTH'S AGRICULTURAL READJUSTMENT at 272. The vast majority of sharecroppers with working wives and daughters were black. FOLSBOM & BAKER, GRAPHIC SUMMARY at 5, 7. The total labor of the working family members was the equivalent of that of two adults; BRANDT, FALLACIOUS CENSUS TERMINOLOGY AND ITS CONSEQUENCES IN AGRICULTURE at 31-32.
This huge reservoir of inter-generationally recruited black workers trapped in lifelong subordinate status contradicted one of the most cherished ideological fictions underlying the farm policy of the USDA:

In the general farming territory the agricultural laborer is one of the steps in the agricultural ladder and, if farming conditions are corrected, is an important stage in the progress through tenancy to ownership. There has not been established a definite group of agricultural laborers in great farming sections. Hence, any approach which proceeds from the assumption of the usual employee-employer relationship found in industry, is likely to be wrong.  

The not-so-hidden agenda of the New Deal USDA was to combat that approach, which appeared to be gaining momentum with "[t]he rapidly developing close affiliation of agricultural workers and industrial workers." When a 1937 USDA memorandum stated that "for the first time in the history of American agriculture...large groups of agricultural workers...are being swept along by the same powerful forces as are the workers in industry," its authors had in view workers on the plantation in the broader sense of a socio-economic complex extending geographically along the coasts and southern border from California to Virginia:

Plantation workers belong to an economically and socially submerged racial group. Thus, agricultural labor has not been thought of as an occupation which should give adequate support to its members. ... The modern variant of the plantation may well employ white Americans of pioneer ancestry. But the agricultural industry has been organized, and the mentality of the agricultural employer has congealed, on the basis of apprentice "hired men" and colored wage hands.

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137 Memorandum from A. Black, Chief of Bureau of Agric. Econ., to Paul Appleby, Office of Sec'y of Agric. (June 4, 1937) (copy furnished by Wayne Rasmussen, Chief, Agric. Hist. Branch, USDA). But see William Ham, Farm Labor in an Era of Change, in USDA, Yearbook of Agriculture 1940 at 907, 909-10 (1940) (belated, wartime-related recognition of the existence of a stratum of farm laborers who would never advance up the "agricultural labor").
138 Memorandum for Secretary of Agriculture Wallace from Comm. on Agricultural Labor [USDA], Section II: The Interest of the Department of Agriculture in Agricultural Labor at 2 (Sept. 4, 1937) (copy furnished by Wayne Rasmussen).
139 Ross, Agricultural Labor at 84. See also Paul Taylor & Tom Vasey,
But even if agricultural employment relations were becoming assimilated to the industrial model, "[t]he aristocracy of the South [w]as not going to put up with any nonsense about sharecroppers unions and the like."140

Eleventh and last, plantations witnessed a trend toward the displacement of sharecroppers (and other tenants) by wage laborers during the 1930s. Planters were impelled to convert sharecroppers into wage laborers not only by the attendant elimination of burdensome capital advances, but also and especially by the financial incentive of no longer having to share AAA cotton benefits with them.141

As planters faced the necessity of conducting their operations with an increasingly black and waged labor force, the need to retain their traditional controls free from federal regulation increased as well. The peculiar urgency inhering in the intense opposition of plantation owners to the inclusion of farm workers in FLSA owed as much to their fear of the Act's application to their sharecroppers as to their wage workers. These fears were well founded since workers frequently shifted between sharecropper and wage laborer status and only one-tenth of black tenants (including sharecroppers) in the South were cash tenants—the highest tenure rank and the only one that could plausibly be regarded as non-employees.142 Moreover, the

Contemporary Background of California Farm Labor, 1 RURAL SOC. 401 (1936).

140 Lewis, Black Cotton Farmers and the AAA at 72.

141 ALEXANDER, ARKANSAS PLANTATION at 57, 59; BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION at 22-23; JAMIESON, LABOR UNIONISM IN AMERICAN AGRICULTURE at 287; GRUBBS, CRY FROM THE COTTON at 22-23; MYRDAL, AMERICAN DILEMMA at 254, 257; RUPERT VANCE, FARMERS WITHOUT LAND 7 (1937); DAVIS ET AL., DEEP SOUTH at 283-84; Rain, Snow Defied by Sharecroppers, N.Y. Times, Jan. 12, 1939, at 5, cols. 4-6. The higher the price and yield of cotton, the more advantageous it was to the planter to employ wage laborers; but once daily wage rates rose beyond the range of $1.00-$1.25, no plausible combination of price and yield would induce a planter to prefer wage workers to sharecroppers. National Farm Labor Problem at 506-507; ALEXANDER, ARKANSAS PLANTATION at 59-60.

142 MYRDAL, AMERICAN DILEMMA at 245. Contemporary agrarian sociologists severely criticized the BOC for classifying sharecroppers as farm operators rather than as farm laborers. Ross, Agricultural Labor at 18; Brandt, Fallacious Census Terminology and its Consequences in Agriculture; STERNER, THE NEGRO'S SHARE at 12-13; FOLSOM & BAKER, GRAPHIC SUMMARY at 8. Planters tended to employ workers as wage laborers at seasonal peaks. RAPER, PREFACE TO PEASANTRY at 152-54, 252. Cf. LOUIS DUCOFF, WAGES OF AGRICULTURAL LABOR IN THE UNITED STATES 22
prevailing statute and case law in a number of southern states already treated sharecroppers as employees for various purposes.143

3. The Racial-Sectional Distribution of Farm Workers.

Although more than one-quarter of all farm laborers in the United States were black or "Other Races" than white in 1930, fifty-five per cent of farm laborers in the eleven states of the Confederacy were non-white; they in turn accounted for eighty-seven per cent of all black farm workers.144 The largest concentrations of "Other Races"
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(presumably largely Hispanic and possibly Japanese or Chinese) were located in Arizona, New Mexico and California, where they accounted for forty-one per cent of all farm workers. Non-whites in these fourteen states constituted fifty-three per cent of all farm laborers there, who in turn formed forty-four per cent of all farm laborers in the United States. Conversely, only a minuscule number of non-white farm workers lived in the remaining states. In the eighteen states comprising the Small Grain, Western Dairy, Corn, and Eastern Dairy Areas and accounting for three-eighths of all farm laborers and the vast majority of non-southern family farms, only two per cent of farm workers were non-white.

By 1940, non-whites accounted for more than one-third of farm laborers nationally. The racial-regional distribution of farm laborers shows a significant concentration in the border States of the West and Southwest. The remaining 67,899 black farm workers, more than three-fifths were returned for the "border" States of Maryland, Kentucky, Oklahoma and Missouri.


In 1940, 26.7 per cent (514,602) of all (1,924,890) persons returned as employed farm laborers were non-white. Calculated according to BOC, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, 3 POPULATION: THE LABOR FORCE, pt. 1: U.S. SUMMARY tab, 62 at 89-90 (1943) [BOC, 1940, LABOR FORCE]. The apparently unchanged share of non-white farm laborers during the 1930s was a significant understatement caused by the fact that the census classified "Mexicans" as White in 1940. Id., pt. 2: ALABAMA-INDIANA 2 (1943). This re-classification particularly distorted the composition of the work force in Texas and California. Another definitional change may have produced a further understatement of the number of non-whites. Whereas in 1930 data were collected for "gainful" workers (regardless of whether they were currently employed) above the age of ten, in 1940 persons who were "employed" and above the age of fourteen were recorded. Id. at 3. Because a disproportionately large share of minority farm workers was unemployed and/or between the ages of eleven and fourteen, their numbers were artificially depressed. As an indicator of the undercount of non-white workers: Blacks alone in 1930 accounted for 19.7 per cent of all farm workers, whereas by 1940 they accounted for 25.1 per cent of the total.
workers was even more skewed in 1940 than in 1930. In the South, Blacks alone accounted for fifty-three per cent of farm workers as against forty-eight per cent in 1930. Black farm workers in the South as a share of all black farm workers rose to ninety-two per cent, while southern agriculture increased its share of all farm workers from 35.5 to 43.4 per cent. The relative (and absolute) size of the black farm work force in the aforementioned eighteen northern states shrank: while the aggregate agricultural wage-labor force in those states decreased to 32.2 per cent of the national total, the share of Blacks declined to a negligible 0.9 per cent.148 If the huge southern sharecropping force, including unpaid family members, had been added to those returned as wage laborers by the census, the share of non-whites in the national and southern farm work force would have been even higher.

4. The Racial-Sectional Impact of a Farm-Size-Based Exemption from FLSA. The original bill as introduced in Congress excluded the employees of employers who employed fewer than a fixed number of employees (whereby this number was left blank). This size exclusion was ultimately deleted from the bill. Instead, the requirement that the employee be "engaged in commerce or in the production of goods for commerce" served as a surrogate for the small employer exclusion.149

Although there is no determinate equivalence between firm-size and coverage in terms of interstate commerce, the DOL used six employees as the surrogate definition of local (intrastate) business.150 Given the more seasonal nature of farming, a higher threshold might

Between 1930 and 1940 the total number of farm workers declined by 29.6 per cent, whereas that of black farm workers decreased by only 10.3 per cent. If "Mexicans" had been classified as "other" in 1940 and if the total number of "other" farm workers had diminished at the same rate as that of black farm workers, the total minority share would have amounted to slightly more than one-third. BOC, 1940, LABOR FORCE, pt. 1, tab. 62 at 89-90.

148§ 6(a) of bill and Act; John Forsythe, Legislative History of the Fair Labor Standards Act, 6 LAW & CONTEMP. PROBS. 464, 483-85 (1939).

be more appropriate (although many farmers with no employees produce for interstate commerce). The following calculations are based on a cut-off point of ten or more hired laborers.

It is not possible to determine precisely what proportion of farm workers who would have been excluded from FLSA—had agricultural coverage been subject to the same intrastate commerce/small employer exemption as other industries—was non-white at the time the Act was debated and enacted. It is possible, however, to determine the geographical location of farm workers by race, and derivatively and indirectly, by farm-size.151

151 The use of census data for this purpose presupposes that the states in which farm workers were returned as living were also the states in which they were employed. Since there was relatively little relevant non-white South to North seasonal migration, the data from the census of population for 1930 and 1940 in combination with those from the census of agriculture employment for 1930, 1935 and 1940 may plausibly serve as a surrogate for the state of employment. In "the complete absence of broad and authoritative material" on the number of migrant farm workers in the 1930s, the most appropriate approach is to review the estimates made for various crops or geographic areas that took the racial/ethnic composition of the migratory work force into account. *National Farm Labor Problem* at 149-50 (testimony of William Ham, USDA). For the late 1930s, three broad "dominant racial types" of migrant farm workers were distinguished: (1) "Mexicans" in the Southwest and in sugar beets in the North Central States; (2) Blacks in the cotton states of the Southeast; and (3) Whites in Kentucky, southern Missouri, northern Arkansas, eastern Oklahoma and New Jersey. H.R. REP. NO. 369: REPORT OF THE SELECT COMMITTEE TO INVESTIGATE INTERSTATE MIGRATION, 77th Cong., 1st Sess. 353 (1941). For the most part, migration north of the Mason-Dixon line and west of the Mississippi was restricted to Whites (including the Pacific Northwest and the wheat belt). *Id.* at 338, 354, 357; *National Farm Labor Problem* at 148, 385; Paul Taylor, *Migratory Labor in the United States*, 44 MONTHLY LAB. REV. 537, 538-39 (1937); Bowden, *Farm Employment* at 1252-57. The vast majority of black migrants migrated within the South to Florida (citrus and sugar cane) and Louisiana (sugar cane), and along the Eastern seaboard (various crops). A smaller number migrated as far north as New Jersey, New York and Connecticut, harvesting potatoes and truck crops. Taylor, *Migratory Farm Labor* at 538-39; *National Farm Labor Problem* at 145-46, 319-54, 458, 461; N. Tolles, *A Survey of Labor Migration between States*, 45 MONTHLY LAB. REV. 3, 13 (1937); McWilliams, *ILL FARES THE LAND* at 168-85.

The only significant group of non-whites migrating from the South or Southwest to work in the North in the 1930s was a contingent of largely Mexican-Americans from Texas who cultivated sugar beets in Colorado, Michigan, Ohio, Nebraska, Minnesota, North Dakota, and Wisconsin. In 1939 it was estimated that of 93,100 contract sugar beet workers fifty-seven per cent were "Mexicans." *National Farm Labor Problem* at 442; see also REPORT OF THE SELECT COMMITTEE TO INVESTIGATE INTERSTATE MIGRATION at 147-48, 338. But even this sole example of significant South to North non-white migration is irrelevant to the present purpose of showing that, since northern farmers by and large employed white workers at the level of the minimum wage set by FLSA in 1938, they had no economic motivation to
Relatively few farms employed any hired labor at all and still fewer employed large numbers of workers. In 1935, only one in seven (967,594 of 6,812,350) farms employed any hired labor, while fewer than one per cent employed four or more workers, and not even one-quarter of one per cent employed eight or more workers. In short: "Only the plantations of the South and a comparatively few farms elsewhere [w]ere too large for family operation."152

Farms in the South with the greatest concentration of black farm laborers accounted for forty per cent (2,770,671) of all farms, twenty-five per cent (242,625) of all farms using any hired laborers, and fifty-five per cent (6,277) of all (11,410) farms reporting ten or more hired laborers. If the states in which other non-white farm laborers were concentrated (California, Arizona, and New Mexico) are included, these fourteen states accounted for seventy-eight per cent (8,856) of all farms using ten or more hired laborers. In turn, these 8,856 farms accounted for eighty per cent (196,617) of all (244,132) farm laborers employed on farms with ten or more hired laborers.153 The twelve North Central States, the locus of the family farm, accounted for one-third of all farms in 1935 but only six per cent of hired farm laborers on farms with ten or more such

oppose coverage of their employees. Sugar beet workers stood outside this framework altogether because their wages—alone among farm workers'—were set by the USDA pursuant to the Sugar Act. On their wages, see National Farm Labor Problem at 450; see also id. at 1018-19, 458-64 (lower wage rates set for southern sugar cane workers); DUCOFF, WAGES OF AGRICULTURAL LABOR tab. 43 at 85; id. at 32-33; Elizabeth Johnson, Wages, Employment Conditions and Welfare of Sugar Beet Laborers, 46 MONTHLY LAB. REV., 322 (1938); SELDEN MENESEE, MEXICAN MIGRATORY WORKERS OF SOUTH TEXAS 19-26 (1941). Even if the sugar-beet industry had had an economic motivation to oppose coverage, the racial dynamic in the use of Mexican labor was, by the time of the Depression, sufficiently analogous to that in the South that this industry, too, would not have been viable without a racially oppressed low-paid labor force. See supra ch. 1 § IV. A significant number of Hispanic farm laborers also migrated within Texas and California as well as to Arizona, but such migration does not affect the present discussion of the geographic-racial composition of the farm work force. National Farm Labor Problem at 149.

153TURNER, A GRAPHIC SURVEY OF FARM TENURE at 1; calculated according to Julius Wendzel, Distribution of Hired Farm Laborers in the United States, 45 MONTHLY LAB. REV. 561, 568 (1937).

152Calculated according to Wendzel, Distribution of Hired Farm Laborers tab. 1 at 564, tab. 2 at 565; BOC, CENSUS OF AGRICULTURE, 3 GENERAL REPORT tab. 11 at 166-67 (1935). Since the census of agriculture was conducted in January, the data "may underestimate the proportion of Negroes," who were concentrated in cotton production. DUCOFF, WAGES OF AGRICULTURAL LABOR at 21. See generally, BENJAMIN FREE, SEASONAL EMPLOYMENT IN AGRICULTURE (1938).
Wage labor was heavily concentrated on the relatively few larger plantations and industrialized farms in certain discrete geographic areas specializing in cotton, citrus, sugar, and fruits and vegetables. These were the Mississippi Valley of Arkansas and Mississippi, the Black Belt of Alabama, Georgia, and South Carolina, southeastern Louisiana, Florida, the Rio Grande Valley, Corpus Christi, and Black Prairie districts of Texas, the Salt River Valley of Arizona, and California—all areas in which non-white farm workers predominated, on whose extraordinarily cheap labor the owners were crucially dependent.\(^{155}\)

In summary, then, only a minuscule number of agricultural employers would have been affected by FLSA coverage.\(^{156}\) But they would have been almost exclusively southern planters and California

\(^{154}\)Wendzel, Distribution of Hired Farm Laborers tab. 1 and 2 at 564-65. Nationally 14.8 per cent of all farm laborers worked on farms with ten or more hired laborers. The greatest centralization of farm employment was found in Arizona (65.0 per cent), Louisiana (44.9 per cent), Florida (42.2 per cent), and California (37.3 per cent). Calculated according to id. table 2 at 565. These data are for January 1935. Estimates for July of that year indicate that the major relative shift was in favor of California. Id. at 568. Inclusion of sharecroppers among hired laborers would have increased the figures for the South. Id.; Bowden, Farm Employment at 1248-49; National Farm Labor Problem at 122-23.

\(^{155}\)BOC, Fifteenth Census of the United States: Census of Agriculture: 1930: Large-Scale Farming in the United States 1929 tab. 6 at 27 (1933). See also BOC, Census of Agriculture: 1940: Analysis of Specified Farm Characteristics for Farms Classified by Total Value of Products tab. 6 at 103-54 (1943) (farmers with 100 or more employees concentrated in South and Southwest); CARL TAYLOR ET AL., DISADVANTAGED CLASSES IN AMERICAN AGRICULTURE 32-36 (FSA, Soc. Research Rep. No. 8, 1938); National Farm Labor Problem at 123, 135; Ross, Agricultural Labor at 274, 321; ALEXANDER MORIN, THE ORGANIZABILITY OF FARM LABOR IN THE UNITED STATES 97-98 (1952) (in the Mississippi Delta cotton areas, where the vast majority of wage laborers were hired in gangs of ten or more, "[v]irtually all of the...wage laborers [we]re Negroes"); BRANSEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION at 22 ("practically all common laborers working for wages in the plantation are negroes, except in Texas and southern Louisiana where the Mexican has recently come to play an important secondary roll [sic]. Indians...are also used as plantation labor in the coastal plain section of the Carolinas").

\(^{156}\)Cf. Hearings before the House Select Comm. to Investigate the Interstate Migration of Destitute Citizens, 76th Cong., 3rd Sess. Part 8 at 3365, 3369 (1941) (statement of Frances Perkins, Sec'y of Labor, and Philip Fleming, Wage and Hour Adm'r, defining industrialized agriculture as the approximately 63,000 farms employing four or more employees at least six to eight months—or "regularly"—annually and accounting for 1.5 per cent of all farms and one-third of all farm wage earners).
factory-farmers, who were "able to subject their workers to unusual legal disabilities. They...preferred to use racial groups with subordinate social status.... Although slavery and serfdom [were] forbidden in the United States, second-class citizenship [was] still the badge of agricultural labor."\(^{157}\)

5. The Enormous Agricultural Wage Gap Between North and South. The significance of the sectionally dichotomous distribution of the (hypothetically) covered non-white agricultural labor force becomes clear in juxtaposition with the sectional wage gap prevailing in the 1930s. Northern farmers who were already paying their employees at or near what was to become the lawful minimum wage had little or no economic incentive to oppose inclusion of farm workers. Indeed, many industrial employers who were already paying wages in excess of the minimum wage supported FLSA precisely as a tool of inter-sectional competition in order to deprive southern industry of its considerably lower wage level. As Senator "Cotton" Ed Smith put it: "Any man on this floor who has sense enough to read the English language knows that the main object of this bill is...to overcome the splendid gifts of God to the South."\(^{158}\)

Consequently, it is historically more convincing that opposition to inclusion of farm workers was not a general demand of 'the farm lobby,' but rather a specific component of the peculiar sectional struggle conducted by plantation interests to maintain their power at the expense of rural Blacks. The plausibility of this reasoning is enhanced by the fact that after FLSA became law, the National Farmers Union, the members of which were smaller farmers who employed few if any workers, advocated application of FLSA to farm workers on the ground that it would restore fair competition between small and larger farmers.\(^{159}\)

The wage gap between the South and the other states was

\(^{157}\)Ross, Agricultural Labor at 5. See generally, Daniel, Bitter Harvest; Jamieson, Labor Unionism in American Agriculture at 284; Nourse et al., Three Years of the Agricultural Adjustment Administration at 350.


\(^{159}\)Proposed Amendments to the Fair Labor Standards Act at 722 (statement of Russ Smith, Leg. Sec'y, NFU, reiterating position adopted by organization at its convention in 1944).
Migrant Workers and Minimum Wages

enormous. For example, on July 1, 1937, daily farm wage rates (without board) ranged from eighty cents in South Carolina to $3.15 in Connecticut—a ratio of almost four to one. On Oct. 1, 1937, the regional averages amounted to:

<table>
<thead>
<tr>
<th>Region</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pacific</td>
<td>$3.08</td>
</tr>
<tr>
<td>New England</td>
<td>2.73</td>
</tr>
<tr>
<td>Middle Atlantic</td>
<td>2.54</td>
</tr>
<tr>
<td>Mountain</td>
<td>2.42</td>
</tr>
<tr>
<td>East North Central</td>
<td>2.37</td>
</tr>
<tr>
<td>West North Central</td>
<td>2.24</td>
</tr>
<tr>
<td>West South Central</td>
<td>1.34</td>
</tr>
<tr>
<td>South Atlantic</td>
<td>1.25</td>
</tr>
<tr>
<td>East South Central</td>
<td>1.11</td>
</tr>
</tbody>
</table>

The only regions with averages below the national average

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160 CROPS AND MARKETS 145 (1937). See generally, John Black, Agricultural Wage Relationships: Geographical Differences, REV. ECON. STATISTICS, May, 1936, at 67. These regional wage rates underestimate the gap. During this period the only national time-series was compiled by the USDA on the basis of quarterly responses of voluntary farmer-correspondents who provided information on monthly and daily rates with and without board. The rates generated by these compilations suffered from a number of significant defects. First, farmers were not asked what they paid their workers, but rather about the "Average rates being paid to hired farm labor at the present time in your locality." R. Hale, RELIABILITY AND ADEQUACY OF FARM WAGE RATE DATA Exh. F (1940) (reproducing USDA, Agric. Marketing Serv., Oct. [1939] Gen'l Schedule). Since "[a] preponderance of the returns is from operators of general crop and livestock farms," while "schedules sent to other lists of fruit, truck, dairy, and similar special reporters do not carry questions concerning wage rates," "it is doubtful if wage rates paid on such farms are adequately represented in the regular quarterly sample." Id. at 4. Second, since the coverage of piece-rates as well as of the earnings of employees hired through labor contractors was spotty, id., and since these workers along with hourly employees "constitute[d] the bulk of the hired workers on the large farms," broad inter-regional comparisons of wage rates are the most meaningful. National Farm Labor Problem at 1029 n.52. Third, before 1939 only the wages of male farm workers were used as weights for computing regional and national averages. U.S. BUREAU OF AGRIC. ECON., FARM WAGE RATES, FARM EMPLOYMENT AND RELATED DATA 2 (1943). The significance of this weighting procedure derives from the fact that "the hired workers on American farms, outside the South, were predominantly native born white men. Only among Negroes was there a large proportion of female workers." William Ham, The Status of Agricultural Labor, 4 LAW & CONTEMP. PROBS. 559, 563 (1937). Moreover, children formed an appreciable part of the labor supply only in the South (and in special crop areas). Id. Cf. BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION tab. 8 at 25, 26 (29 per cent of plantation acreage cultivated by women and children in 1920, virtually all of whom were black).

161 HALE, RELIABILITY AND ADEQUACY OF FARM WAGE RATE DATA Exh. B at 10, 4.
were the three covered by the South, where the regional daily average approached one dollar. On April 1, 1937, for example, the daily wage rates (without board) ranged from eighty cents in South Carolina to $1.35 in Virginia. Since black farm workers were paid less than Whites, they were doubtless being paid significantly less than one dollar per day in the late 1930s.\(^{162}\) In the northern and western regions of the country, on the other hand, wages were near or in excess of $2.50 per day.\(^{163}\)

If an average workday of ten hours is applied to these regional daily wage rates, farmers outside the South were, on the eve of FLSA's enactment, already paying the twenty-five cent per hour minimum wage required by the Act when it went into effect in 1938.\(^{164}\) Farm workers in the Cotton Belt, on the other hand, were

\(^{162}\)Texas, Florida, and North Carolina were the only other southern states with averages in excess of $1.00 daily. 14 CROPS AND MARKETS 73 (1937). In 1938 President Roosevelt was paying his three black farm workers in Warm Springs, Georgia twenty dollars per month—slightly more than the state average. The governor, Gene Talmadge, had written to Roosevelt in 1935 denouncing the size of federal stipends issued by the WPA as a danger to the supply of hired farm labor. In reply, Roosevelt sarcastically alluded to Talmadge's approval of daily wage rates of forty to fifty cents for ten to twelve hours of work. FREIDEL, F.D.R. AND THE SOUTH at 68-69.

\(^{163}\)Although a few North Central States—e.g., Wisconsin, Kansas and Nebraska—exhibited average daily rates closer to two dollars, this relatively low level was meaningless since very few farm workers there worked for daily wages without board (7.9 per cent compared with 20.6 per cent nationally). HALE, RELIABILITY AND ADEQUACY OF FARM WAGE RATE DATA tab. 3 (data for Oct. 1, 1939); cf. USDA, INCOME PARITY FOR AGRICULTURE pt II.—EXPENSES OF AGRICULTURAL PRODUCTION: Sect. 1.—THE COST OF HIRED FARM LABOR, 1909-38 (Preliminary) 12 n. 8 (1939) (with data for 1927 showing similar distribution). These were the states of "[t]he traditional hired man" par excellence, who was an "apprentice...enjoy[ing] the same simple standard of living as a farm family." Ross, Agricultural Labor at 8-9. A special collection of data from volunteer crop reporters in 1938 relating to the daily rates paid for harvesting grain revealed that farmers in these three states were paying near or above $2.50 daily in addition to providing two or three meals, whereas their counterparts in the South offered little more than one dollar and one meal per day. HALE, RELIABILITY AND ADEQUACY OF FARM WAGE RATE DATA, tab. 4. Cf. FOLSOM & BAKER, GEOGRAPHIC SUMMARY at 12-13 (map of regional wage differentials derived from 1930 census).

\(^{164}\)A study of farm workers' hours conducted by the USDA in 1939-40 was methodologically flawed and severely limited as a basis for calculating minimum wage rates because the respondents were, once again, by and large general crop and livestock farmers whose workers were hired typically by the month or day. "It is doubtful whether these working hours reflect the conditions characteristic of piece workers...[who] generally work longer hours than other farm workers in order to maximize their earnings through the performance, within the limited season, of as much work as possible." NATIONAL FARM LABOR PROBLEM at 1030. The hours reported
being paid about ten cents per hour—about forty per cent of the federal minimum wage; and black farm workers in the South were being paid even less.\textsuperscript{165} Consequently it was southern planters employing largely black farm workers who had by far the greatest incentive to oppose coverage of farm workers under FLSA. This incentive was not merely economic, but went to the root of preserving their domination of the entire racist system of political-economic relations in the rural South.\textsuperscript{166} This opposition was so inclusive that it

\begin{itemize}
\item for the South were underestimated because the major crop, cotton, which required the greatest amount of labor, was typically paid by the piece. DUCOFF, WAGES OF AGRICULTURAL LABOR at 28. If, on the other hand, the relatively long hours reported in the northern livestock and dairy regions for "the traditional hired man," who as a permanent year-round employee was paid by the month, are mismatched with the daily wage rates (without board) paid to an entirely different group of workers whose wages served as surrogates for the rates of all farm workers in those states, significant underestimates of hourly rates can result. HOPKINS, CHANGING TECHNOLOGY AND EMPLOYMENT IN AGRICULTURE at 23-25. In spite of these methodological problems, the regional average deviated but little from the estimated national average of 10.0 hours per day. They ranged from a low of 9.1 hours in the Pacific region to a high of 10.4 in the West North Central States. In all three regions encompassing the South the average was 9.7 hours. National Farm Labor Problem tab. 7 at 1030. Since California fruit and vegetable pickers were largely paid by the piece, it may be assumed that the hours for the Pacific region were underestimated. Id. at 1026; DUCOFF, WAGES OF AGRICULTURAL LABOR at 28-29. Because it is no longer possible to go behind these data, the overestimates and underestimates are compromised here by assuming a ten-hour day in all regions. Cf. id. table 36 at 77. But see BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION at 29, 42 ("The workday on the plantation is from 'sun to sun,' except where the plantations are near a factory. Such plantations usually have a 10-hour workday...").
\item That black farm laborers in the South were earning even less than the aforementioned day rates is confirmed by the crucial fact that in the late 1930s, "the average daily earnings of cotton pickers were lower than the prevailing day rates (without board) in nine of the 13 States and were equal to the day rates in 2 other States." DUCOFF, WAGES OF AGRICULTURAL LABOR at 86. Anecdotal information confirms these extraordinarily low wages: (1) the largely black day laborers of eastern Arkansas were reported earning only seventy-five cents for a sunup to sundown workday on cotton plantations in 1936; letter from H. Mitchell (founder of the STFU) to Gardner Jackson (May 6, 1936) (reproduced in STFU PAPERS, 1934-1970 [microfilm reel 3]); (2) their counterparts across the Missouri border were still earning the same rate three years later; Rain, Snow Defied by Sharecroppers, N.Y. Times, Jan. 12, 1939, at 5, cols. 4-6; and (3) in Alabama daily farm wages were as low as sixty cents in 1937; Farm Laborers and Cotton Field Workers Union, No. 20471, A.F. OF L., A CALL TO ALABAMA'S FIRST AGRICULTURAL WORKERS WAGE CONFERENCE (April 18, 1937) (reproduced in STFU PAPERS, 1934-1970 [microfilm reel no. 4]).
\item A further indicator of the crucial sensitivity of Cotton Belt planters to wage increases was the fact that expenditures for labor bulked proportionally larger on
extended to the adoption of any federal minimum wage at all for fear that a rise in southern industrial wages would deplete the supply of farm labor and thus undermine an important source of their power--the total dependence of a huge overpopulation of black laborers and sharecroppers. Had Congress included farm workers under FLSA and had sharecroppers been deemed planters' employees, imposition of a minimum wage of even fifteen to twenty cents an hour would have shaken the foundations of the plantation as a system of regional subjugation of Blacks. In the event, the socioeconomic policies of the New Deal--and not least the agricultural exclusions--further depressed farm wages in the South vis-à-vis industry and other regions.

The legacy of these racially motivated exclusions of the New Deal is the current exemption for so-called small farm employers from the minimum wage and for all agricultural employers from mandatory premium overtime. Whether this vestige is still racially motivated or merely the result of legislative inertia, non-white farm workers remain disproportionately affected by their isolation in a subminimum wage sector. As the next chapter will show, migrant farm workers are also still subject to vestiges of pre-modern authority relations.

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167 As they were when farm workers were finally included in 1966. See infra ch. 6.
