Exploitation in the Jim Crow South: The Market or the Law?

Jennifer Roback

MOST AMERICANS BELIEVE that the economic oppression of blacks in the Jim Crow South was the natural result of white racism. According to this view, southern whites were so economically dominant that —given their views on race—the regime of segregation and job discrimination that prevailed in the South was the inevitable result. Indeed, the Civil Rights Act of 1964 can be said to reflect this idea in its prohibition against discrimination by private citizens. But many scholars of the Jim Crow era, impressed by mounting evidence that state and local governments played a crucial role in shoring up the edifice of discrimination, now question this view.

Understanding the exact role of government in the creation of the segregated South is crucial to designing policies for ending segregation. The standard interpretation argues that whites were able to impose segregation on the job market without any special help from the government. If this is correct, then civil rights laws that seek to control private behavior, like those that we have today, may be the only way to prevent discriminatory outcomes. The other interpretation argues that effective discrimination could not persist without the active assistance of government. The latter thesis relies heavily on the theories of economist Gary Becker. Becker holds that in a free market employers and other economic actors would lose money if they indulged their "taste" for discrimination. Thus there is constant economic pressure to drive discrimination out of the market. This thesis would suggest that the government will be more effective in combating segregation if, instead of regulating private decisions, it scrutinizes carefully the racial impact of its own policies, especially those that interfere with competitive markets.

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Jennifer Roback is an assistant professor of economics, Yale University. This text is adapted from a longer article forthcoming in The University of Chicago Law Review, *Fall 1984.*

Before we decide which view is better, let us explore the economics of the southern labor market during the Jim Crow era, defined roughly as the period from *Plessy* v. *Ferguson* (1896) to *Brown* v. *Board of Education* (1954). I use a beginning date in the mid-1890s because scholars generally agree that full-scale racial segregation in every area of life did not get under way until about then. That decade saw the disenfranchisement of blacks and hence the end of black political participation in virtually every southern state. Once disenfranchisement was a fact, other forms of segregation and discrimination followed, including the labor laws discussed here.

For most of this time, the southern agricultural economy was dominated by white planters who were heavy employers of black labor. The planters wanted to collude to hold down black wages, both to increase their own profits and to solidify the dominant position of the white race. Throughout the Jim Crow period, they pleaded with one another to hold the line on black wages. "White men must stick together" was the common theme, expressed in the newspapers and magazines of the time.

But as Robert Higgs shows in his book *Competition and Coercion* (1977), class interest and white solidarity were not adequate to overcome the economic incentive for individual planters to offer higher wages to blacks. Despite all the admonitions, white employers competed vigorously with one another for black labor, and blacks frequently left lower-paying jobs to take higher-paying ones. The planters, however, had a weapon to combat those defections: labor laws designed to limit migration of black workers and to limit increases in their wages. These laws may best be understood as attempts to enforce an otherwise unenforceable labor-market cartel among white employers. The laws were necessary, in other words, to do what racial prejudice could not do by itself.

The Jim Crow Laws

Four basic types of legislation aided the enforcement of a labor-market cartel. These were (1) enticement laws and contract-enforcement laws, designed to restrict competition in the labor market to a time at the beginning of each contract year; (2) vagrancy laws, designed to prevent blacks from having periods of unemployment during which they could shop for higher wages; (3) emigrant agent laws, designed to restrict the activities of labor recruiters; and (4) the convict-lease system, which increased the effective punishment for blacks convicted of breaking the other laws. As Table 1 shows, most of these laws were passed in the 1890s or later.

Enticement and Contract-Enforcement Laws. The enticement laws, which were directed primarily at white employers, made it a crime for an employer to "entice" a laborer who had a contract with another employer. Their purpose was to prevent employers from actively competing with each other for contract labor. Ten of the eleven southern states that passed such laws made enticement a criminal rather than a civil offense. The contract-enforcement laws, which were directed primarily at black farm laborers, imposed criminal sanctions for the breach of an employment contract. In *The Shadow of Slavery* (1972), Pete Daniel writes, "Under such laws . . . a laborer who signed a contract and then abandoned his job could be arrested for a criminal offense. Ultimately his choice was simple: he could either work out his contract or go to the chain gang."

The economic motivations behind the enticement and contract-enforcement laws were similar. Both sets of laws sought to limit competition for farm labor by mandating that it could only take place legally at the beginning of the contract year.

Vagrancy Laws. The second type of law used to enforce the labor-market cartel was the vagrancy law, which essentially made it a crime to be unemployed or out of the labor force. Alabama's vagrancy law, passed in September 1903, was fairly typical. It defined a vagrant as "any person wandering or strolling about in idleness, who is able to work, and has no property to support him; or any person leading an idle, immoral, profligate life, having no property to support him. . . ." Although vagrancy was usually considered a misdemeanor, this does not mean that the punishment was trivial: misdemeanants were often sentenced to state or county chain gangs.

Table 1

DATES OF PASSAGE OF THE JIM CROW LABOR LAWS

State	Vagrancy	Enticement	Contract Enforcement	Emigrant Agent	Convict Leasing
Virginia	1904			1924	1900–1910
North Carolina	1905	1905	1889	1891	1880–1890
South Carolina	1893	1880	1908	1891	1880–1890
Georgia	1895	1901		1876	1880–1910
Florida	1905	1865	1891	1903	1880–1920
Kentucky					1880–1890
Tennessee	1875	1875		1917	1880–1900
Alabama	1903	1866	1885	1879	1880–1915
Mississippi	1904	1890	1906	1912	1880–1890
Arkansas	1905	1875	1907		1880–1890
Louisiana	1908	1890			1880–1900
Texas	1909			1929	

Notes: Reconstruction ended in 1877. The first disenfranchisement amendment to a state constitution (South Carolina's) was adopted in 1895. The Supreme Court decided *Plessy* v. *Ferguson* in 1896.

Sources: Available on request.

Obviously, a statute that makes unemployment a crime reduces the amount of searching for new and more remunerative employment; more important, it vastly increases the cost of being out of the labor force altogether. Blacks who traveled, even to visit relatives, faced the possibility of arrest. And blacks who were not working—that is, who were out of the labor force—were often rounded up as vagrants and put to work on local public-works projects or farms. As William Cohen has written, "So common were such practices that the Atlanta *Constitution* could quip to the police: 'Cotton is ripening. See that the 'vags' get busy' " (*Journal of Southern History*, 1976).

Emigrant-Agent Laws. The third type of statute was the emigrant-agent law, enacted to limit the activities of agents who recruited labor from one state or county for work in another. These laws regulated the white recruiters rather than the black workers and required agents to be licensed at fees of up to $5,000 for each county in which the recruiting took place. They were often passed in reaction to a wave of outmigration, and many of the states raised the fees and penalties periodically in response to increased outmigration.

By the time of the "great migration" of blacks to the North during World War I, we find the city of Montgomery, Alabama, passing an ordinance forbidding persons from enticing laborers to leave the city to take employment elsewhere, under penalty of a $100 fine or up to six months at hard labor, or both. The scope of the ordinance was far-reaching. Any person who printed, published, wrote, delivered, posted, or distributed any advertisement, pamphlet, or newspaper persuading people to leave the city was an emigrant agent under the law.

The main economic effect of the emigrant-agent laws was to make it more costly for black laborers to find out about job opportunities outside their local market area. The fact that the city of Montgomery attempted to keep its laborers from straying beyond even the city limits shows how narrowly the local labor area might be characterized. The laws could be and were evaded, but not without cost to the agents and the laborers themselves.

The Convict-Lease System. The final prop to the labor-market cartel was the convict-lease system, a statutory practice of leasing out state or county convicts to private firms. Convict leasing was widely used in the South, especially during the 1880s. Unlike forms of convict labor in which the government maintains control over the day-to-day management of the prisoners, the lease system relinquished that control to the lessee firm. In at least one respect, the lease system was worse than slavery. The slaveholder could expect to profit from a slave's future output for his entire working life and thus had an incentive to maintain the slave's health. But the lessee firm had no interest in keeping a convict alive past the end of his sentence or contract period, since the man had no "scrap" or "resale" value. The death rates on these chain gangs illustrate this difference: mortality rates were as high as 45 percent a year.

The significance of the convict-lease system was that its victims were often black misdemeanants, such as violators of the vagrancy and contract-enforcement statutes. The cost of breaking any law can be gauged by a combination of the probability of punishment and the severity of punishment. We have no direct measure of the probability of being punished for vagrancy or contract jumping, but a 45 percent chance of punishment by death certainly must have provided a powerful incentive for black laborers to stay out of the clutches of the local sheriff.

Postbellum Southern Agriculture

To see why these labor laws evolved in the way they did, we must examine the agricultural sector of the South more closely. The Civil War had brought physical and financial devastation to the southern states, destroying much of the region's material capital and wiping out family fortunes. Agriculture, the South's primary business, was and is capital-intensive and risky. Resources must be committed at the beginning of the season, but financial returns do not come until the end of the season. Emancipation increased this riskiness, putting former slave owners and others who managed farms in the position of being unable to guarantee the availability of labor during the crucial planting and harvesting seasons. For a plantation to succeed, something had to be done to ensure a steady flow of labor.

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Some planters simply hired laborers on a daily or weekly basis, but those who did so faced the risk that other planters would offer higher wages and lure their workers away. This was a particularly crucial problem at harvest time when the work could not be delayed, a fact that raised the value of the laborers during harvest and made planters particularly vulnerable to immediate competition. In effect, hiring workers on a short-term basis meant paying them the day-by-day value of their marginal product. Wages would be low in mid-season and relatively high during planting and harvesting.

Planters resisted this approach for a number of reasons. They believed they were being cheated when they had to pay high wages during the peak seasons. They disliked not knowing for sure whether they would have workers when they needed them. And finally, they undoubtedly were offended at the sight of their former slaves leaving jobs whenever they chose—and for higher wages to boot. A better arrangement, one that most planters seemed to prefer in the immediate postbellum period, was a year-long contract—with the laborer paid a steady wage over the life of the contract.

This system, however, had some disadvantages. A fixed-wage contract pays wages that are higher than the value of the worker's labor during some periods and lower during others. Thus, sometimes the employer will be giving implicit advances on the employees' wages and at other times the employees will be making implicit payments to the employer. For agricultural workers, the harvest is the high-productivity time when they earn less than the value of their labor; during the rest of the contract period, they are receiving implicit advances from the employer.

The most obvious flaw in the fixed-wage contract system was therefore that it gave the workers an incentive to cheat on the contract by quitting right before the harvest and then hiring out as day laborers. This reasoning served as the rationale for the contract-enforcement and enticement statutes. The assistant attorney general of Mississippi argued in 1917 that enticement laws were a necessity "in an agricultural state where long time contracts are made and monies necessarily advanced in anticipation of the fulfillment of a contract." In short, if the planter offered a fixed-wage contract, he faced the risk that the employees would breach the contract at harvest time. On the other hand, if the planter hired and paid employees on a short-term basis, he still could not guarantee that he would have enough harvest labor. Also, he could not predict the harvest wage that the competitive market would demand.

With all these problems it would have been surprising if some alternative form of contract had not emerged. In fact, as early as 1867, "a majority of planters and laborers were ready to explore alternative crop-making arrangements," according to economic historian Joseph Reid (*Journal of Economic History*, March 1973). Such alternatives—sharecropping contracts and rental contracts—became widespread soon after the Civil War.

Under a typical sharecropping contract, the worker, or "cropper," provided labor for the whole season in return for a share of the crop (usually a quarter to a half) when it was sold, while the landlord provided fertilizer, mules, equipment, and management skills. Some contracts specified noncultivation tasks, such as barn repair and the like, and stipulated that the cropper would receive a smaller share of the crop if he failed to perform these tasks. Sharecropping contracts still involved employer advances to the workers—which the employer, who usually marketed the entire crop, would simply deduct from the cropper's share before settling up. But the practice succeeded in reducing the employer's default risk considerably by giving the worker an incentive to stay and work out the contract. Since the worker had a stake in the crop on that particular farm, he was not likely to abandon his job, even for the promise of a high wage; and he was less likely to shirk in his effort than he would under a fixed-wage contract.

Rental contracts differed from sharecropping contracts in that they usually required the tenant to pay a fixed rent for the land he cultivated—sometimes a fixed dollar amount, sometimes a fixed quantity of the crop. The rental system placed all the risk of crop failure on the tenant and, even more than sharecropping, minimized his incentive to shirk or run away. Both kinds of arrangements actually made the tenants much more vulnerable to breach of contract than they had been, because they often had to rely on the landlord's calculation of their earnings at the end of the season. In fact, most authors who discuss the period emphasize the weak position of the indebted tenants relative to the landlord.

In short, sharecropping and rental arrangements could reduce the problems the laws were meant to address and indeed were used by a significant number of employers. By 1880, 28 percent of southern farms were sharecropped and 17 percent were rented, large enough percentages to suggest that the contract-enforcement and enticement statutes were not really needed for agricultural stability.

The Impact of the Laws

If the laws were not really needed to ensure agricultural stability, they nonetheless provided southern planters with certain definite advantages. In particular, they kept workers from migrating from the low-wage southern agricultural sector to higher-wage northern and southern cities. Such migration would have tended to raise agricultural wages and decrease other wages until the wages in the various sectors were equal. The resulting system can justly be regarded as one of exploitation, since black workers were not earning the wage they would have earned had they (and their potential employers) been left free to move and change jobs as they wished.

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The contract-enforcement and enticement laws reduced competition for labor directly, while the vagrancy and emigrant-agent laws reduced it indirectly by curbing mobility from one area to another. Emigrant agents functioned very much like labor arbitrageurs, bringing costly information about jobs in higher-wage areas to workers in lower-wage areas. The emigrant-agent laws made this type of arbitrage more costly and hence reduced the amount of information available to black farm laborers. This, in turn, must have increased the costs involved in moving to a new location. Note that there could be extensive mobility *within* a local area, so that some local markets were effectively competitive; but mobility between counties or states was in many cases quite limited.

There is anecdotal evidence to support the view that blacks were restrained from leaving a county or state not only by law but by unofficial force and the threat of force. Emmett J. Scott reports numerous instances of legal and extralegal violence designed to prevent blacks from moving to northern cities, including harassment at train stations and the actual delaying of trains (*Negro Migration during the War*, 1920). Cohen's 1976 article gives another example:

> In September 1937 Warren County, Georgia, cotton growers sought to prevent the farmers of adjoining Glascock County from enticing away their black laborers. Desperate for hands, the men from Glas-

cock County had offered almost to double the rate being paid for cotton pickers in Warren County. Unwilling to abide by the law of supply and demand, Warren County planters mobilized to stop the depletion of their labor force. Sheriff G. P. Hogan described the ensuing events: "There was no trouble, although a number of [the Warren County men] carried guns and fired them into the air. They told the pickers there was plenty of cotton to pick in Warren County and asked them to stay home and pick it. They decided to stay."

There is also statistical evidence to support the view that the laws limited mobility. The first is evidence on productivity, drawn from Stephen DeCanio's excellent econometric study. The second consists of demographic evidence on the relative mobility of blacks and whites in the southern states. Both of these data sources focus on the beginning of the Jim Crow period, in an attempt to learn whether the rise of Jim Crow in the 1890s was associated with any significant change in either productivity or migration.

The Productivity Evidence. Stephen DeCanio carried out a thorough econometric study of agricultural productivity for ten states in his book *Agriculture in the Post-Bellum South* (1974). Using decennial census data, he calculated an economic measure of factor productivity for blacks and whites in southern agriculture from 1870 to 1910. If the laws were successful in hampering black mobility, the greater relative supply of black farmers should have caused a decline in their marginal productivity relative to white farmers.

In the period from 1870 to 1890, most states had still not passed the major Jim Crow laws: only Tennessee had a vagrancy law, for example. Black labor was at least as productive as white during this period, with the single exception of Arkansas in the decade 1870–1880. During the decade 1890–1900, two more states (South Carolina and Georgia) passed vagrancy laws. And it was in these states—plus Alabama, which had passed contract enforcement in 1885—that black productivity fell below white.

The next decade saw the enactment of vagrancy laws in all seven of the other ten states, along with a number of other Jim Crow laws. This time black productivity fell below white in three of those seven states. There was one counter-trend: in Georgia, which had passed a vagrancy law in the previous decade, black productivity caught back up with white productivity.

Another way to look at DeCanio's data is this. In three of the ten states, black productivity was equal to white during the whole forty-year period. These states were Texas, Florida, and Tennessee—states on the fringe of the Old South and not, as the Deep South was, dominated by plantation culture. The other fringe state, North Carolina, had higher black productivity throughout the period. In five of the remaining six Deep South states, vagrancy laws were closely associated with lower black productivity, although the effect seemed to wear off in Georgia and began before the vagrancy law was passed in Alabama. The only Deep South state that did not show any effect, Louisiana, passed its vagrancy law very late in the period under study (as did Texas). Thus, despite some noise in the data, DeCanio's evidence is broadly consistent with the hypothesis that restrictive labor laws, particularly the vagrancy laws, succeeded in depressing black wages.

Migration Evidence. Data on mobility within states are not readily available, but we do have data for net migration in and out of states. If the restrictive legislation was effective in reducing black mobility, black migration rates should have been cut relative both to their previous levels and to the migration rates for whites.

Table 2 displays net migration rates for each race by state and decade from 1870 to 1910. The first thing to note is that both whites and blacks were mostly migrating out of the South during this period. The exceptions were Florida, the southwestern states of Arkansas and Texas and, to a lesser extent, Louisiana. Clearly, the general westward movement of the American population took place within the South as well.

The second observation is that in the first decade under study, the net migration rates were roughly equal for the two races in almost all the states. By the next decade, however, black migration in Tennessee, Alabama, and Mississippi fell relative both to white migration and to previous black migration. In the 1890s the pattern extended to include Georgia,

Table 2
MIGRATION RATES FOR TWELVE STATES, BY RACE, 1870–1910
(per 1,000 whites or 1,000 blacks)

	Rates of Net Migration			
	1870–1880	1880–1890	1890–1900	1900–1910
Virginia				
White	−28	−50	−32	−35
Black	−83	−101	−115	−89
North Carolina				
White	−13	−29	−49	−52
Black	−24	−85	−82	−54
South Carolina				
White	33	−58	−32	−22
Black	38	−36	−91	−107
Georgia				
White	−39	−56	−40	−31
Black	−39	18	−18	−18
Florida				
White	79	166	52	156
Black	21	131	160	189
Kentucky				
White	−45	−83	−46	−107
Black	−65	−98	−34	−92
Tennessee				
White	−90	−75	−71	−101
Black	−87	−54	−34	−81
Alabama				
White	−61	−26	−61	−38
Black	−80	−11	13	−29
Mississippi				
White	−72	−135	−83	−36
Black	40	−24	−2	−39
Arkansas				
White	132	42	−118	−74
Black	193	215	−11	67
Louisiana				
White	−45	−36	19	26
Black	2	14	−24	−26
Texas				
White	347	80	59	25
Black	84	35	32	−19

Source: Hope T. Eldridge and Dorothy Swaine Thomas, *Population Redistribution and Economic Growth, United States, 1870–1950,* vol. 3 (1964), tables A1.19 and A1.22.

Kentucky, and Arkansas. These migration trends cannot be linked as strongly to state-by-state changes in legislation as can the productivity differences. But it is clear that some force was operating to reduce black migration in these six states of the central South.

The Law versus the Market

Many influential whites in the South had an interest in keeping blacks from switching jobs easily or moving North. Individually, each specific white employer did not want to lose its workers; and collectively, white planters in general benefited from the low wages that arose from the general intimidation of the black populace. Privately, however, each employer could profit by "cheating" on the labor market cartel, by offering higher wages as inducements to the laborers. When social pressure, economic power, and custom proved insufficient to prevent such "cheating" and enforce discrimination against blacks, the southern elite resorted to restrictive labor laws. The evidence indicates that the laws were invoked to keep the market from bettering the condition of blacks.

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To the extent that racial exploitation requires the backing of the law, there are important implications for modern policy. One is that it is government, not private individuals, that must be restrained if disfavored minorities are to make substantial economic progress. At first glance, this may seem a strange recommendation, but we should keep in mind that a main focus of the Civil Rights Act of 1964 is the prohibitions on various discriminatory actions by government. The economic progress many blacks have made since 1964 may very well have resulted from these new curbs on government rather than from the far more visible prohibitions on discrimination by individuals.

The Jim Crow period also provides an interesting related lesson on the ability of market forces to combat discrimination. Racism was at least as prevalent in the Jim Crow period as it is now. Communities were smaller and more cohesive, making enforcement of social norms easier than today. Yet social and economic pressures by themselves were not enough to enforce a regime that called for the exploitation of black labor. This suggests that those same market forces could serve minorities well today—and that the benefits of a competitive economy go beyond those of prosperity to include social justice as well. ■