The following excerpt describes the legal and economic regime that historians commonly refer to as "debt peonage."

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"Every Man His Own Avenger: Landlord Remedies and the Antebellum Roots of the Crop Lien and Chattel Mortgage in the United States,"

Law and History Review 35 (2017): 131, 143-49

III. Crop Liens

In 1864, New Jersey sharecropper Abraham Guest's efforts to claim the status of "tenant" challenged a novel system of share-renting that was changing the way landlords and tenants financed and operated agricultural relationships. His case anticipated a conflict that would prove central just a few years later to the terms of emancipation in the South and the creation of an agricultural empire in the West. The distress remedy had already shown itself to be an unreliable source of compensation when urban tenants failed to pay the rent. Mid-nineteenth century tenement landlords increasingly turned to summary remedies for rent collection to obtain money judgments against delinquent tenants, rather than chase down absconded personal property of little value. In the countryside, however, landlords could still depend on distress to gather valuable chattels—livestock, grain, and agricultural implements—in lieu of unpaid rent. However, as the following case of *Guest v. Opdyke* suggests, landlords had the chance to institute a more rigorous system of control by reshaping the nature of their relationships with renters. By hiring farmers on shares, landlords had the legal authority to claim an ownership interest in the crop as it was being grown, and did not have to wait until after the rent was due to seize it. Sharecropping, then, was not a unique product of emancipation, but had developed as a model for distributing risks among landowners, entrepreneurial tenants, and landless Northern farmers before the war.

In April 1860, Abraham Guest, a white farmer from Somerset County, made an oral agreement to work on shares for two tenants, Peter Gulick and Charles Bodine. [51] The tenants rented land from a landlord named John Opdyke. Guest's wife, two children, and a farm laborer shared a home next to the family of one of these tenants, Peter Gulick. Gulick did not own land, but he did own $1300 in personal property, making him more than twice as wealthy as Guest, who held approximately $600 in goods. [52] The tenants agreed to furnish Guest with seeds and work animals to grow, gather, and thresh a harvest of wheat and rye. After the harvest, the tenants and Guest would divide the grain by the bushel, and each would keep half.

Tenants Gulick and Bodine did not pay their rent when it came due next April. In July 1861, the landlord served written notice on Abraham Guest not to remove the grain because the tenants owed him $216 in rent. Then, Opdyke obtained a distress warrant ordering the constable to seize the grain in the sheaf and sell it. New Jersey law had expanded the traditional scope of distress beyond its English common law roots. Not only could landlords seize "any hogs, horses, cattle, or stock" belonging to the tenant that grazed on the land, they now could take any wheat or produce "growing or being" on the rented land, which was "an amplification of its English prototype." After Opdyke's constable took the grain, Guest sued Opdyke to recover one half of its value and won. Guest seems to have argued that his landlords were Gulick and Bodine, not Opdyke. He had no lease with Gulick and Bodine's landlord, giving Opdyke no right to seize Guest's share of the crop.

In the depths of the Civil War, the landlord, Opdyke, appealed to the New Jersey Court of Errors and Appeals, where he found a court sympathetic to the needs of the landed. Guest, the court emphatically stated, was not a tenant of Gulick and Bodine, but something altogether different, a "tenant in common" who held a joint and undivided interest in the crop with them before division. Finding otherwise "would be attended with much inconvenience, if not positive mischief." The court explained that "[l]andlords are induced to put out their farms, in this mode, to tenants who are poor, relying, as they imagine, on the certainty that their share of the produce cannot be diverted nor in anywise encumbered." If the holder of a "complete lease" did not pay his rent—tenants like Gulick and Bodine—the landlord had to rely on distress to capture whatever non-exempt assets were left on the land; by contrast, "tenants in common" working land on shares could not take the crops off the land without first settling up with the landlord or the tenant they worked for.

Unlike a traditional tenant, Guest did not own the crops he grew, and he could not claim any of the homestead exemptions that New Jersey legislators passed in 1851 to mitigate the harshness of the landlord's distress remedy. [53] To save them "from being stripped of the actual necessaries of life by force of legal process," the tenants that Guest worked for could claim up to $200 in personal property that the landlord could not take as rent. As a "tenant in common," Guest was a third party to the landlord–tenant relationship defined by New Jersey law, leaving him with no entitlement to save what amounted to a third of his household's property from the constable's grasp.

This form of security became known as the "crop lien." By 1920, more than half of the American states, along with the Philippines, Puerto Rico, the District of Columbia, and Quebec, enacted statutes giving landlords an interest in the crops their renters grew to raise capital. [54]By mortgaging the output of the tenants' production, rather than the land itself, labor generated its own capital resources and the landlord did not have to mortgage his own land to finance the operation. [55] In the South, this transformation shifted the source of agricultural credit in an even more revolutionary way, from the human beings that grew the crops to the cotton, corn, and tobacco they produced. Crop liens also promised to reinforce the power of landlords to control the credit relationships between tenants and third parties, whether they were "tenants in common" such as Abraham Guest, or merchants supplying mules and fertilizer.

Southern crop lien laws may have been modeled on Northern agricultural practices; however, they diverged in a significant way from antebellum precedents. In North Carolina, for example, the editors of the state Democratic Party's newspaper, the Raleigh *News & Observer*, claimed in 1880 that the crop lien laws were "imported into North Carolina from Ohio by Judge [Albion] Tourgee, and are found substantially in the laws of nearly all the States of the Union."[56] Albion Tourgée was a veteran of the Union Army who moved to North Carolina after the war and became a Republican politician, judge, and outspoken advocate for extending equal civic and economic rights to the freedpeople. The editors were correct in identifying the rough parallels between Northern tenancy law and the Reconstruction-era crop lien, but they ignored a critical difference. Sharecropping existed in the antebellum North and West; however, courts in those states deemed croppers to be "tenants in common in the crops" who owned an *undivided* share in the crop being grown. By contrast, the landlord owned the entire crop under most Southern crop lien laws, and the croppers did not receive their share of the product until after their rent and advances were paid. [57]

The postwar crop lien laws were designed to promote agricultural development by allowing creditors to claim the growing crop as a security interest. In the immediate aftermath of emancipation, this demand for credit was acute; former slaveholders, who generally had no desire to sell their land to the freedpeople or sign them to tenancy contracts, needed loans to purchase agricultural supplies and hire workers. Although some Republicans continued to push for land redistribution in slavery's aftermath, most conceded that "self-possession," rather than property ownership, would both protect the freedpeople's citizenship and sustain a functioning export market in cash crops. [58] However, because most agricultural workers did not control the means of production—land, mules, and the fertilizers necessary to draw cotton out of leached soils—they needed credit to establish independent households and grapple with the "long pay" endemic to commercial agriculture. Money only came in once a year when cash crops went to market. [59] As one defender of crop liens wrote in 1884, this new system of credit offered "the security to which the parties themselves were powerless to provide." By allowing future harvests to collateralize present debts, "It put the tenant in possession of those means of prosperity which ordinarily only wealth can purchase." [60]

Writing in 1888, the North Carolina Supreme Court believed that the crop lien was "of modern origin and growth" and was required by "the multiplying wants and necessities of society."[61] Antebellum states had competing positions on its legitimacy, which was bound up in questions fundamental to the rise of capitalist agriculture in the nineteenth century. A crop lien was a security interest in something that had no tangible existence. "Exactly on what credit is based on under the crop lien law," wrote the editors of the agricultural journal *Southern Cultivator,* "it would be hard to define." [62]

In the civil law tradition, mortgaging an inchoate product did not produce judicial hand-wringing about the meaning of possession or the dangerous consequences of mortgaging one's prospective labor. Landlords, according to the seventeenth century French legal scholar Jean Domat, had, by law, "the preference on the fruits that grow" on rented land to secure the rent. "For these fruits are not so much his pledge as they are his property, till he has got payment of his rent." Furthermore, the tenant's "movables" were "engaged to the landlord of the house, and preferably to other creditors, for his security, not only of his rent, but of the other consequences of his lease; such as dilapidations" caused by the tenant. [63] By contrast, many common law jurisdictions denied the validity of a mortgage grounded in an executory (unperformed) contract. [64] The crop lien was truly an innovation in Anglo-American property law, allowing the products of the land to be encumbered without having to mortgage the land itself.[65]

A Southern judiciary that had few qualms about commodifying human labor before the war now raised concerns about recognizing property in promises. Even in an era that celebrated contractual freedom, lawmakers recognized that certain agreements should be void or voidable as a matter of public policy. Judges and politicians became particularly concerned with the crop lien system when it led white families into poverty, much like the Northern lawmakers who passed homestead exemptions protecting poor white families from distress seizures. Crop liens unleashed an alarming self-executing machinery for production and risk-taking, encouraging farmers to gamble their households into debt and become "a mere toiler for interest payments." [66]

North Carolina Reverend R.H. Whitaker remembered how the "crap lien," as he called it, given by farmers to local merchants, helped his neighbors buy "such things as they severely wanted" and left them "feeling highly elated" at their good credit, but at the end of the year, when debts went unpaid, "the crap lien began to draw, and it kept on drawing. It drew all the cotton and the corn, the wheat and the oats, the shucks, the hay and the fodder, the horses and the mules, the cows, the hogs and the poultry, the farm utensils and the wagons, the carriage and the buggy." If the debt was still unsatisfied, creditors could enter the home, seizing furniture and furnishings, "the table, the plates and the dishes, the cups and the saucers, the knives and the forks, and, when it had gotten everything else, it reached for the dish rag, and wiped up the whole concern, not leaving even a grease spot." [67]

For all of the risk associated with creating property in the promise of human labor, the crop lien was often defended as a facilitator of household independence, or a kind of quasi-proprietorship short of landed freedom. Without the lien, the Raleigh *News & Observer* claimed in 1892, landlords would not agree to tenancy contracts, and all agricultural workers would become mere laborers under their watch, creating a system of "serfdom" along Russian lines. [68]However, the crop lien created a payment system in which the tenant or sharecropper's household economy depended on speculation; as Georgia farmer J.H. Hale told a congressional inquiry in 1900, the farmer "is tempted to plant more than he ought, that is, more than he has ability to pay." [69] Renters applied to their landlords for advances throughout the year, and all of these debts were subtracted from their final settlement after the crop was divided. Contrast this long bet with the assurance (such as it was) that industrial wage laborers enjoyed of weekly or monthly cash payments. Creating a household based on the temptation of an annual, lump-sum payment seemed comparatively unstable and generative of deviance, from the burst of spending that accompanied having cash in hand, to the often highly racialized dangers of "idleness" associated with the slack periods between seasonal labor demands. But the imperative for credit in an era of deflation was undeniable, and between 1867 and 1920, state legislatures across rural America adopted the crop lien one by one. The judiciary deferred to their authority. [70]

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