LEGAL CONFLICT AND CLASS STRUCTURE: THE INDEPENDENT CONTRACTOR-EMPLOYEE CONTROVERSY IN CALIFORNIA AGRICULTURE

MIRIAM J. WELLS

This article examines the interconnection between legal conflict and class structure in American agriculture. Law, as seen in the example of the California strawberry industry, is intimately involved in the transformation of economic systems and class relations and is itself affected by those changes. The impact of the law on social class varies across industrial subsectors and over time. In this case legal distinctions, in the context of changing political pressures and technoeconomic constraints on production, have encouraged the adoption of sharecropping. This form of production alters the legal status, economic interests, and subjective identification of workers, thus creating a new basis for future class interrelations.

I. INTRODUCTION

This article explores the relationship between the law, economic organization, and social class in contemporary American agriculture. I will use the analysis of a recent court case to support my argument that legal structures and conflicts play a key role in the evolution of modern class structures, a role that varies across historical periods and across industrial subsectors of the economy. Specifically, the impact of the law on social class depends on the technological and economic conditions confronted by particular industries and on the character and strength of political mobilization and resistance. In industries such as the one I examine here, the law has deeply penetrated socioeconomic relationships, to the extent that it has become one of the forces of production. While class is commonly defined in terms of the relationship of a set of individuals to the economic means of production, I will show that in advanced in-

This research has been supported by the Agricultural Experiment Station and the College of Agricultural and Environmental Sciences of the University of California, Davis. I am especially grateful to Marty Bennett, Jane Collier, Ben Orlove, Bernadette Tarallo, and Beverly Lozano for their invaluable suggestions on sources and analysis and to the latter two for their assistance in legal documentary research.

dustrial societies class also defines, and is defined by, a relationship to political categories and resources.

The court case in question, *Alonzo Real* v. *Driscoll Strawberry Associates, Driscoll Berry Farms*, 603 F.2d 748 (9th Cir. 1979), deals with the increasing replacement of wage laborers by sharecroppers in the California strawberry industry. From World War II through the mid-1960s, almost all California berry farms used wage laborers; over the subsequent decade, however, approximately half of the acreage in the central coast region and over one-fourth of the acreage statewide was converted to share farming. This form of production and its subsequent modifications have reorganized the class structure of the industry in that they redefine the rights and responsibilities of labor suppliers and farm owners. Sharecroppers' employment contracts identify them as independent subcontractors; *Real*, however, charged that they are employees. The resolution of this question is of political and economic significance since most of the protective laws extended to farm workers since the mid-1960s do not cover independent contractors.

This controversy, therefore, concerns the class status of strawberry sharecroppers and raises the more general question of the relationship between legal processes and social stratification. There is increasing recognition that the two are related, although the nature of their interconnection is a matter of debate.[1] Until recently most studies in legal anthropology and sociology adopted a structural-functional perspective, viewing legal systems as concretizations of the moral boundaries of a society and as ways to contain the stresses arising inevitably from resource scarcity (Collier, 1975: 124–125; Moore, 1970: 282). From this point of view, legal statuses are seen as reflecting collective understandings as to the rights and obligations appropriately allocated to different groups, and legal institutions and agents are regarded as the means through which social predictability and harmony are achieved (Durkheim, 1933; Gluckman, 1955; Llewellyn and Hoebel, 1941; Malinowski, 1926).

More recently, Marxist analyses have directed attention away from the role of the law in reflecting or achieving social consensus and toward its role in social conflict. From this perspective legal statuses have been seen primarily as weapons in class struggle that institutionalize an unequal distribution of rights and obligations and thus hamper the efforts of the less

[1] A substantial tradition in legal anthropology and sociology has located the sources of legal conflicts in deviant individuals and in definitions of deviant acts rather than in the social system as a whole. See the excellent reviews of the field by Collier (1975) and Moore (1970).

potent to gain power. While such analyses introduce a valuable new dimension to our understanding of the role of law in society, some Marxist approaches have been overly instrumental and determinist, treating the legal system as simply a tool of the ruling class and a means of preserving domestic order so as to maintain and promote dominant economic interests (see, for example, Currie, 1971; Quinney, 1974).

There is increasing evidence, however, that the law bears a more complex relationship to class conflict. For example, Thompson's recent analyses (1975; 1976) of eighteenth-century English laws show that legal stipulations were both a product and a cause of ongoing negotiations between social strata. Dahrendorf (1968: 169–170, 227) adds another dimension to tool-of-domination views of the law through his demonstration that legal categories may actually provide an institutional forum and identity to oppositional groups that then seek to change the rules of the game. Similarly, while studies show that most lawyers do serve the middle and upper classes by ensuring the orderly transmission of property and by drafting contracts to facilitate business transactions (Mayhew and Reiss, 1969), in some periods lawyers emerge who are advocates for the lower classes (Blumberg, 1970; Friedman, 1973).

In this study I build on these more nuanced conflict approaches with the aim of demonstrating that the legal system is a much more active and changeable element in class interrelations than is customarily acknowledged. The perspective I develop here is that the law is not solely or mechanically a tool of domination; rather, it can variously disguise, reflect, reinforce, and/or undermine the existing distribution of prestige, power, and privilege. Over time, legal structures bear a dialectical relationship to human behavior: As individuals abide by or challenge economic relationships, they simultaneously confront legal relationships. These confrontations may occur in the courts as well as on the job, and they change both the law and social class. The fact that economic relationships are thoroughly penetrated by the law has important implications for our understanding of the causes, processes, and consequences of socioeconomic change. Not only have legal statuses become part of class resources, but when conflicts between social classes take place in the courts the impacts are much more far-reaching than localized on-the-job struggles between employers and employees. In addition, the law introduces a distinctive dimension to the "manufacturing" (Burawoy, 1979) of class consciousness and consent to economic arrangements, one that

must be examined if we are to understand the processes and outcomes of socioeconomic change.

This analysis draws on an ongoing investigation, begun in 1976, of the changing structure of agriculture in California.[2] The study has focused on the central coast district where sharecropping is concentrated, a region dominated by the contiguous Pajaro and Salinas valleys in Santa Cruz and Monterey counties and including the Santa Maria Valley in Santa Barbara and San Luis Obispo counties. In 1981 these counties had 45 percent (4,869 acres) of the state's strawberry acreage, 40 percent ($86,797,000) of the production value, and the highest per-acre yields in the world (CSAB, 1982). Because of inadequate official data sources and the controversial nature of the sharecropping revival, it is difficult to obtain reliable statistics on the dimensions of this trend. The estimates of the county agricultural commissioners and farm advisers and of the statewide industry organization, the California Strawberry Advisory Board (CSAB), provide the most reliable information available.[3] In 1983 the CSAB president estimated that, conservatively speaking, one-third of the 918 berry growers in the state were sharecroppers and that they were almost exclusively concentrated in the central coast region.[4] The county advisers and agricultural commissioners concurred, estimating that by the early 1980s from 40 percent to 60 percent of the berry acreage and growers in the Pajaro, Salinas, and Santa Maria valleys were involved in sharecropping. There was virtually no share farming in the producing regions to the south, where proximity to the Mexican border increases the proportion of illegal aliens in the labor

---

[2] Between 1979 and 1984 in-depth interviews were completed with 53 growers, 67 farm workers and sharecroppers, and 85 members of production cooperatives in the strawberry industry, and all aspects of production and marketing were observed. County farm advisers, agricultural commissioners, state and federal employment officials, university researchers, marketing agents, union representatives, public interest lawyers, and spokespersons for grower and processor organizations were consulted repeatedly. The impact of union activity on the industry has been reconstructed from the above interviews, from the review of union contracts and state statistics on work stoppages, and from a perusal of the *Salinas Californian* and the *Watsonville Register-Pajaronian* from 1970 to 1983. Analysis of *Real* was made possible through interviewing lawyers and sharecroppers and studying the court records, the depositions, and the arguments of both plaintiffs and defendants in this and a second case brought by strawberry sharecroppers in California (*Alvara* v. *Driscoll Strawberry Associates, Santa Maria Farms*, Nos. 79-CE-1-SM, 79-CE-2-SM (Cal. Agricultural Labor Relations Board 1979)). Extensive research into the history of labor legislation and the cases establishing precedents for the sharecropper suits was essential in establishing the wider legal context.

[3] See Wells (1984a: 3–6) for a detailed discussion of the field and analytical methodology used in determining the extent of strawberry sharecropping.

[4] Telephone interview (Oct. 26, 1983).

market, facilitates replacement of workers, and undermines union organization.

In the following discussion I will: (1) describe the contemporary technological, economic, and political constraints on California strawberry production; (2) examine the legal treatments of sharecroppers to clarify the appeal of sharecropping for berry farmers; (3) explore the dynamics of this particular legal struggle; and (4) reflect on the implications of this example for our understanding of the law and social class.

II. TECHNOECONOMIC CONSTRAINTS ON CALIFORNIA STRAWBERRY PRODUCTION

Since World War II, advances in plant breeding and production technology, improvements in transport, and the development of the quick-freezing technique have combined with natural climatic advantages to make California the national and international leader in strawberry production.[5] California strawberries are produced from February through November, as compared with the one- or two-month producing season in most other regions. The state's production grew from 4.2 percent of the national berry crop in 1942 to 72.2 percent in 1981. State yields per acre increased from 2.9 tons in 1941 to 23.9 tons in 1981, as contrasted with a 1981 average of 3.7 tons per acre for the United States excluding California (Bain and Hoos, 1963: 12, 29, 128, 132; CSAB, 1982: 6–7).

In this highly efficient production system, the cost and quality of hand labor have emerged as the major determinants of profitability. Since the war the labor demand has increased to a level that is far beyond the ability of a farm family to supply, with the current requirement being from 2.5 to 3 persons per acre, or 12 to 15 workers for a small farm of five acres at peak harvest. Labor is the largest single production cost, constituting 53.5 percent of first-year costs in the central coast region (Welch *et al.*, 1980: 406). Existing harvest machines destroy the plants and damage the berries so that they cannot be sold on the fresh market. Since California's harvests are so long and bountiful and since high quality permits over three-fourths of the crop to be directed to the higher-priced fresh market, mechanization has not been an alternative to this reliance on hand labor (*The Packer*, 1977: 12). The cost of labor is especially important because growers have no control over the rising costs of land, finance, transportation, and supplies. Since

[5] See Wells (1984a) for a more detailed discussion of the economic constraints on strawberry production in the pre- and post-World War II periods.

the strawberry market is relatively competitive and product demand is fairly constant, monopoly and product differentiation have not been means of increasing profit. Finally, because of California's substantial regional productive advantages, corporate flight has not been an attractive means of increasing control over labor costs.

Not only the cost of labor but also the quality of labor is of concern to growers. The fragility of the fruit, along with the need to constantly manicure and weed the plants in the course of harvest, means that workers must exert care, some skill, and judgment. Crop yields are a function of carefully monitored planting and harvest schedules, and harvest selection, handling, and packing are prime determinants of market price (Mitchell *et al.*, 1964). As a result, most strawberry field workers are heavily supervised, and growers prefer to hire the same individuals year after year. Because of the perishability and the tremendous yields and dollar value of the crop, harvest interruptions pose a substantial financial threat to farm owners.

In sum, the economic and technological constraints of California strawberry production make the quality and cost of hand labor crucial to the industry, and neither geographical relocation, mechanization, nor market dominance is a viable means of ensuring profitability.

III. POLITICAL CONSTRAINTS AND STRAWBERRY LABOR

Since the mid-1960s, changes in the political context of production have made it increasingly difficult for strawberry growers to control the quality, quantity, and price of labor through wage contracts. Three political developments were especially influential in setting the stage for the adoption of share farming: (1) changes in federal immigration law, especially the termination of the Bracero Program; (2) the rise of agricultural unionism; and (3) the extension of state and federal protective legislation to seasonal farm workers.

A. The Bracero Program

From World War II until 1964 almost all California berry growers employed Mexican wage workers who were recruited and managed by the federal government under the Bracero Program. This program, which began as a wartime emergency agreement with Mexico, was initiated and continued through the combined pressure of California growers and Southern cotton farmers (Hawley, 1966; Jones, 1970). Under this program

the federal government set low minimum standards for farm workers' wages, housing, and working conditions. It expressly authorized growers' associations to advise local employment offices as to the numbers, timing, and skill levels of needed workers. The berry growers I interviewed were unanimous in their praise of this program, lauding the contract workers' diligence and the extent to which the labor supply was tailored to the industry's specific needs. With the mechanization of cotton in the 1950s, however, support for the program began to wane. In the early 1960s it came under direct attack from the newly organized United Farm Workers union (UFW), which, together with established urban labor unions and national civil rights activists, charged that the Bracero Program undermined the well-being of domestic labor. It was this opposition that led to the program's discontinuation in 1964 (Bach, 1978; Craig, 1971).

B. The Rise of Agricultural Unionism

The end of the Bracero Program was both a cause and an expression of a changed balance of power between agricultural labor and capital in California. Another dimension of this change that was crucial for the strawberry industry was the increasing organization of agricultural workers and the concentration of union pressure on the berry-producing central coast region of the state.

By the mid-1960s, the UFW was emerging as the most powerful agricultural union in the nation's history. It had achieved a substantial membership among California farm workers and began a protracted and often violent series of strikes, boycotts, and interunion disputes. In August 1970, after signing contracts covering some twenty-thousand jobs in the table grape industry (Sosnick, 1978: 325), the UFW launched a major organizing drive on the large vegetable farms of the central coast. The drive culminated on August 24 in the largest strike in California agricultural history, as approximately ten thousand workers left the fields (Majka and Majka, 1982: 203–205). Although lettuce farms were the major intended targets, production on all farms came to a virtual standstill for three weeks, resulting in an estimated $2.2 million dollar loss for the central coast berry industry (Federal-State Market News Service, 1972: 2, 30).

Only one UFW contract was signed in the berry industry, but the strike demonstrated graphically to berry growers the dangers of their proximity to the hub of union activity. It also revealed an unanticipated and growing solidarity among harvest workers in diverse crops. In this as in other agricultural

industries (Majka and Majka, 1982: 282; Sosnick, 1978: 345), it was union intrusion into managerial prerogatives that elicited the most vociferous opposition from growers.[6] Central coast berry growers feared that UFW contracts would undermine the traditional hierarchy of authority in the fields and make berry production chaotic and unprofitable. They especially objected to the UFW-proposals of a hiring hall, the workers' right to veto new machinery, limitations on the use of pesticides, and worker "ranch committees" to enforce contracts (*Watsonville Register-Pajaronian*, May 20, 1971: 1). Although the union has secured few formal contracts in the strawberry industry in the years since the general strike, the central coast continues to be the major focus of UFW pressure, which has raised regional wage rates and kept alive the threat of unionization (Johnston and Martin, 1984).

C. Farm Workers and Protective Legislation

The mid-1960s were also a watershed in the climate of protective legislation for farm workers. Legislative changes were especially marked in California, where the UFW had built effective alliances with urban labor unions, civil rights leaders, and liberal legislators and where prolonged strife in the fields had seriously destabilized agricultural production and marketing (Majka and Majka, 1982: 233, 291; Sosnick, 1978: 354). In order to understand the current impact of this legislation, it is useful to reflect first on its historical intent and evolution.

During the New Deal, the federal government moved from being a mildly interventionist, business-dominated system to an active broker-state that incorporated agricultural and industrial business interests into political bargaining at the national level (Skocpol, 1980: 156). In this period the federal government increasingly began to regulate managerial discretion and to establish programs that increased the security of wage laborers (Burawoy, 1983). Especially important in effecting this change were the National Labor Relations (Wagner) Act (NLRA), (29 U.S.C. § 160 (1935)), which defined unfair labor practices and granted employees the right to organize and bargain collectively; the Fair Labor Standards Act (FLSA) (29 U.S.C. § 203 (1938)), which established minimum wage levels and overtime pay standards; and the Social Security Act (SSA) (42 U.S.C. § 301 (1935)), which provided relief for unemployed, disabled,

[6] According to Majka and Majka (1982: 282ff.), the UFW has been more effective than any previous unionization effort in agriculture in moving beyond wage demands to exert control over labor processes.

widowed, and retired persons. These major pieces of New Deal legislation institutionalized a new concept of citizenship that ensured equal civil, political, and social rights for all strata of society (Marshall, 1965: v–xxii, 71–134)[7] and acknowledged an obligation to protect wage laborers, a category of individuals whose security was seen to be particularly precarious in the unregulated functioning of the market.

Despite the intent of this legislation "to extend the frontiers of social progress" by "ensuring to all our able-bodied working men and women a fair day's pay for a fair day's work," (Scher and Catz, 1975: 575)[8] several significant categories of employees were excluded from coverage, some initially and some as the acts were later amended.[9] First, and most important for our purposes, was the exclusion at the outset of agricultural laborers under all three acts on the grounds that agriculture is an industry in which labor protections are unfair and unnecessary.[10] It was not until 1955, with the limited coverage of agricultural workers under the SSA, that their legal status began to change. The real turning of the tide came in the mid-1960s, when the State of California established a minimum wage for agricultural labor (1963) and farm workers were included under the federal FLSA (1966). In 1974 a minimum employ-

---

[7] When it passed the NLRA, Congress declared a national policy of eliminating obstructions to the free flow of commerce, some of whose major causes were seen to be:

> (1) The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining [which] lead to strikes . . . obstructing commerce . . . (2) the inequality of bargaining power between "employees" and "employers" . . . [which] . . . burdens . . . commerce . . . by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries (§ 1, 49 Stat. 449 (1935), 29 U.S.C. § 151 (1964)).

This same market-bolstering intent was articulated during the passage of the FLSA (Scher and Catz, 1975: 575).

[8] See *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 706 *passim* (1945); *United States* v. *Rosenwasser*, 323 U.S. 360 *passim* (1944).

[9] See Gorman (1976), Lee (1966), and Millis and Brown (1965) for analyses of the ways that New Deal protective legislation was undermined and restricted in subsequent years.

[10] This point of view was promoted by agribusiness interests who were heavily represented in Congress during the New Deal and whose support was essential for the passage of urban labor protections (Gorman, 1976: 31; Lee, 1966; Morris, 1966: 1951ff.). This conception, which holds considerable sway up to the present (Martin, 1983), maintains that farm labor already has enormous bargaining power, first, because of the perishable nature of agricultural commodities and the consequent need for uninterrupted harvesting and marketing and, second, because of farmers' lack of control over weather, production, prices, and markets. Moreover, it is argued that the social relations on farms are already harmonious and family-like, thus making legal protections superfluous (Morris, 1966: 1968–1985).

ment age of twelve years was established for agricultural work under the FLSA, and in 1975, years of UFW lobbying culminated in the enactment of the California Agricultural Labor Relations Act (CALRA) (§ 1 CAL. LAB. CODE §§ 1140-1166 (1975) (revised Mar. 26, 1982)). This act gave California farm workers protections comparable to those in the NLRA. It was based on NLRA definitions and precedents and voiced a comparable intent "to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations . . . [and] to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state" (§ 1140). In 1976 California State Unemployment Insurance and Workers' Compensation Insurance were extended to farm workers, and state overtime pay standards were set for adult males.

In sum, it would be inaccurate to say that since the mid-1960s farm laborers have gained legal protections equivalent to those of urban workers. Not only are they still excluded from coverage under the NLRA, but the standards established for farm labor are lower than those for urban labor. Moreover, a series of distinctions as to the characteristics of covered agricultural employers and employees excludes a substantial portion of the rural work force.[11] Despite these limitations in coverage, however, since the mid-1960s the wages, working conditions, and other protections of farm workers have been increasingly stipulated by the law.

IV. SHARECROPPERS AND THE LAW

Given the key role that control over the cost and quality of labor plays in strawberry production, and given the increasing

[11] For example, although the FLSA formally brought farm laborers under its protection in 1966, it excluded workers on farms that had employed less than five hundred person-days of labor during each quarter of the preceding year. In addition, the act exempted a large group of seasonal hand-harvest laborers who had been paid on a piecework basis, who had worked less than thirteen weeks the previous year, and who had commuted to work from permanent residences. Moreover, the work time of these seasonal workers could not be counted toward the FLSA's person-day requirements. Given these exemptions and exclusions, only 513,000 agricultural employees, or about 2%, of the national farm labor force were afforded protection under the FLSA in 1966 (Scher and Catz, 1975: 577). In 1974 the FLSA was again amended, but this only slightly alleviated the person-day requirements for agricultural laborers to include commuting hand-harvest pieceworkers who would have previously been excluded by the five hundred person-day requirement. In addition, workers who were employed on any farm that was part of a qualifying conglomerate were protected by the act's minimum wage coverage. This latter provision was an extension of the concept of employer, thereby establishing that a controlling business is in reality the joint employer of the controlled business's employees (ibid., pp. 578–579).

political constraints on growers' deployment of agricultural employees, the potential benefits of utilizing nonemployee, independent contractors are considerable. To clarify the legal context of this economic decision, it is useful to explore the application of protective legislation to sharecroppers.

Beyond the general question as to whether agricultural laborers are eligible for workers' benefit programs, three specific categorical exclusions compound the limitations to their coverage: the exemption of sharecroppers, independent contractors, and supervisors. First, according to 26 U.S.C. ch. 3121(b) (16) (1954) of the Internal Revenue Code, sharecroppers are not considered to be covered employees for purposes of Social Security tax withholding. In 1976 migrant farmworkers who cultivated and harvested cucumbers in Ohio and whose employers called them sharecroppers, although they had no written contracts to this effect, were found to fall under the sharecropper exemption (*Sachs* v. *United States*, 422 F. Supp. 1092 *passim* (Dist. Ct. Ohio 1976)). This decision rested on the fact that the roles of these workers fit one of the sharecropping exceptions as set out in the Internal Revenue Code:

> Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—
> (a) Such individual undertakes to produce agricultural or horticultural commodities on such land,
> (b) the agricultural or horticultural commodities produced by such individuals, or the proceeds therefrom, are to be divided between such individuals and such owner or tenant, and
> (c) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced (26 U.S.C. § 3121(b) (16) (1954)).

The propriety of the sharecropper exclusion and the *Sachs* ruling have recently been challenged on the grounds that they mistakenly assume that share farmers invariably have more control than employees over the conditions, process, and product of their labor (*Raymond J. Donovan v. Ernest Gillmore et al.* (1982)).[12] The actual distribution of control over production between landowners and different sorts of share tenants can, however, be quite variable, a matter which the Senate Committee on Finance deemed critical in determining sharecroppers' status as employees when Social Security coverage was initially extended to agricultural workers.[13] Nonetheless, *Sachs* contin-

[12] 535 F. Supp. 154, *appeal dismissed*, 708 F.2d 723 (N.D. Ohio 1982).

[13] The designation of sharecroppers as employees for Social Security pur-

ues to guide the application of Social Security tax withholding for sharecroppers.

The FLSA and the CALRA have no special sharecropper exemption. In fact, the legislative history of the FLSA specifically addresses the coverage of sharecroppers to eliminate any confusion:

> It is intended that the minimum provisions of the Act be extended to certain sharecroppers and tenant farmers. The test of coverage for these persons will be the same test that is applied to determine whether any other person is an employee or not. Employer, employee, and employ are all defined terms in the Act. Coverage is intended in the case of certain so-called sharecroppers or tenants whose work activities are closely guided by the landowner or his agent. These individuals, called sharecroppers and tenants, are employees by another name. Their work is closely directed; discretion is non-existent. True independent-contractor sharecroppers or tenant farmers will not be covered; they are not employees (H. Rep. No. 1366, 89th Cong., 2d Sess. (1966)).

The extent of control over production by the direct producer is the major variable distinguishing the most inclusive exemption to the FLSA, the CALRA, and the SSA: the exemption of the independent contractor. All three acts oppose the covered category of "employee" to the exempt category of "independent contractor." The meaning of each term has been established over time through the application of certain common law tests. The most familiar test has arisen in the interpretation of the SSA and involves five criteria, as outlined in Table 1.

While these protective laws draw on a common body of

---

poses was discussed by the Senate and published in *Proposed Amendments to the Social Security Act: Hearings on H.R. 7225 before the Committee on Finance, United States Senate*, 84th Cong., 2d Sess. (statement of Matt Triggs) (1956). Revenue Ruling 55-538, 1955 I.R.B. 313, identified the following diacritica to distinguish a sharecropper who is an independent contractor from one who is an employee:

1. The share farmer paid a proportionate share of fertilizer and insecticides.
2. The share farmer agreed to pay for extra labor necessary for cultivation, raising, and harvesting of crops.
3. Owner and share farmer agreed to the types of crops to be grown, the location of areas to be planted, and the plat of land the share farmer would work.

The ruling defined the indicators of an employer-employee relationship as follows:

1. The owner of the land furnishes the seed and plants it.
2. The owner determines time for planting and periodically inspects.
3. The crops are sold by the owner and the money distributed to the share farmer after deductions have been made for advances and other charges.

Table 1. Criteria of Independent Contractor and Employee*

	Independent Contractor	Employee
Degree of outside control over worker	lesser	greater
Opportunity for profit or loss	greater	lesser
Investment in the facilities	greater	lesser
Permanancy of the relationship	lesser	greater
Skill required in the operation	greater	lesser

* As summarized in *Donovan*, 3-4.

legal definitions and precedents, over time some common law distinctions have been modified as they apply to a particular act. One important such modification is the stipulation that the independent contractor status under the FLSA is more inclusive than the common law principles generally applied under the SSA, so that an individual deemed an employee under the FLSA may yet be found an independent contractor under the SSA.[14] Case law has established that in enacting the FLSA, Congress intended to remedy recognized inequities in the national economy. As a result, it had in mind instances other than those involving a technical definition of employee and employer. As stated in *United States* v. *Silk*, 331 U.S. 760 (1947), "Congress intended the term 'employee' to encompass persons in the borderland between the servant and the independent contractor whose living is earned performing services in the regular course of another's business."

Similarly, the CALRA applies to all workers involved in agriculture, except those excluded from coverage under the NLRA, as amended.[15] Following the Taft-Hartley amendment

[14] Fair Labor Standards Act §§ 1, *passim*, 161(b), 29 U.S.C.A. §§ 201 *passim*, 216(b) (1938). The guidelines set out by the Supreme Court in *Rutherford Food Corporation* v. *McComb*, 331 U.S. 722 (1947), are the most influential for establishing employee status for the purposes of the FLSA (Scher and Catz, 1975: 581).

[15] For the purposes of the CALRA, "agriculture" includes

> farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . , the raising of livestock, bees, furbearing animals, or poultry, and any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market (California Agricultural Labor Relations Act pt. 3.5, ch. 1, § 1140.4(a), CAL. LAB. CODE §§ 1140–1166.3 (1975) revised Mar. 26, 1982).

It should be noted that this definition eliminates the historical controversy

to the NLRA in 1947, independent contractors and supervisors were expressly excluded from protection under the act. For the NLRA, determination of independent contractor status has usually involved the common law "right of control" test. According to Section 2, Chapter 3, of the NLRA, if a person completes a job by his or her own methods and is not subject to an employer's control over how the work is performed, that individual is deemed an independent contractor. If an individual is subject to an employer's control, or right to control, the end result and means or method of conducting the work, he or she is deemed an employee. Over time, the National Labor Relations Board has come to interpret independent contractor status more broadly, considering: (1) the entrepreneurial aspects of the alleged employee's business, including the right to control; (2) the alleged employee's risk of loss and opportunity for profit; and (3) the alleged employee's proprietary interest in his or her dealership (Gorman, 1976: 28–30).

Whether an individual is deemed an independent contractor for purposes of the CALRA and the NLRA, that person can be excluded from coverage if he or she is determined to be a supervisor. Unlike most other designations in protective labor legislation, supervisorial status is decided not by an evaluation of the entire economic context, but rather by the presence of authority over *any one* (or more) of certain defining activities (*NLRB* v. *Edward G. Budd Manufacturing Company*, 169 F.2d 571 *passim* (6th Cir. 1948)). Section 2 (11) of the NLRA defines a supervisor as

> any individual having authority, in the interest of an employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

It is not only independence but the issue of allegiance that underlies the exclusion of supervisors from labor protections. Since supervisors are hired by employers to represent them, employers are considered to have a right to expect the loyalty of these agents. Over time, the authority to hire and fire has become the most important criterion employed in deciding supervisorial status, with the attendant concern as to how much independent judgment or discretion is involved in the exercise

---

surrounding the NLRA as to whether packing-house workers are covered agricultural employees (see Morris, 1966).

of such activities as hiring, firing, and directing workers (Gorman, 1976: 36ff.).

So, although the protective laws vary somewhat in the criteria that establish coverage, there is precedent for excluding sharecroppers from the category of employees. The different definitions of the several laws, however, and the variations in concrete work relationships, raise a degree of uncertainty as to the appropriate coverage of different types of labor-supplier. As a result, employers' claims that their workers are exempt from protections tend to be accepted until challenged in the courts. Thus a farmer's representation of his workers as sharecroppers/independent contractors confers important advantages on the employer. For example, as *Alvara* established, these sharecroppers cannot join the union because they have the authority to hire and fire workers. Likewise, as alleged independent contractors, they are not subject to protections regarding child labor, minimum wage, or overtime pay. Nor do their employers pay for FICA, or state workers' compensation, disability, or unemployment insurance. As will be seen, sharecropping also has social organizational consequences that could be expected to undermine unionization.

In sum, sharecropping enables California strawberry growers to mitigate political sources of uncertainty and to improve their control over the price and quality of labor. It is this benefit that growers and farm advisors on the central coast identify as most important in their decision to switch from wage laborers to sharecroppers. It is important to note that while there was a precedent for strawberry sharecropping set by Japanese farmers who could not own land until the Alien Land Laws were repealed in 1954, the resurgence of sharecropping since the late 1960s has been motivated by entirely contemporary pressures and incentives; namely the end of the Bracero Program and the rise of farm unionism and protective legislation. As noted, this resurgence is particularly concentrated in the central coast region, the center of union activity.

V. THE *REAL* CASE: THE DYNAMICS OF A LEGAL STRUGGLE

As the amount of sharecropping rose by the mid-1970s to about half of the central coast berry acreage, a new form of class conflict emerged on some ranches: court suits initiated by sharecroppers against farm owner-operators.[16] Two such suits

[16] A Marxist notion of class, emphasizing ownership and control of the means of production as the defining features of the bourgeoisie and the lack of

have reached the courts in California, one centering around the coverage of sharecroppers under the FLSA (*Real*) and the other involving sharecroppers' coverage under the CALRA (*Alvara*). This section analyzes the legal struggle surrounding the first of these cases with the aim of explaining its causes, character, and consequences.

A. The Contending Parties

The original proceeding in *Real* was initiated on April 4, 1975, by a group of fifteen sharecroppers against Driscoll Strawberry Associates, Incorporated (DSA), and Donald J. Driscoll (Driscoll), doing business as Driscoll Berry Farms in the Salinas Valley. DSA was incorporated in California in 1953 by the descendants and friends of a long-time California berry-producing family. It is the major employer of share farmers as well as the largest, most profitable, and most vertically integrated berry grower–shipper in the state. At the time of the suit the corporation was "engaged in the growing and sale of strawberries in at least two states and two foreign nations," and it received a gross income from interstate sales of at least eleven million dollars (Complaint at 2, *Real*, N.D. Cal. filed Apr. 4, 1975). The corporation has its own research, quality control, and sales departments, and it has developed patented plant strains that for many years outproduced the University of California varieties used by other growers. Production of berries is contracted to growers on acreage stretching from the Watsonville-Salinas region in the north to the Santa Maria and Oxnard regions to the south. This geographical distribution of plantings, the patented plants, and the company's high grading standards yield bountiful harvests of premium quality. Most Driscoll growers are also associates of the core corporation; others are independent farmers.

Like most other California strawberry sharecroppers, the plaintiffs in *Real* were legal Mexican immigrant families, many of whom had previously been *braceros*, or wage laborers, on the same farm. According to interviews and court depositions, they were drawn to share farming in part by the promise of a stable job that could support the entire family and enable some to bring family members from Mexico and by hopes for a higher overall family income despite per-person earnings that are

---

such control and reliance on selling one's labor power for a living as the defining characteristics of the proletariat, is employed here (Braverman, 1974). Analytically, sharecroppers occupy a structural position between these two categories, a matter that is discussed in depth in Wells (1984b).

often below the regional wage rate. It was the vision of increased independence that particularly motivated individuals to become sharecroppers, however. They saw sharecropping as a step toward the treasured goal of becoming their own boss, eventually as independent owner-operators. While few Mexican sharecroppers actually made this transition, the successful examples kept the dream alive.

B. The Sharecropping Contracts

The legal structure of sharecropping is established by formal contracts that stipulate the status, rights, and obligations of each party. All DSA contractors have been required to use the contract drawn up by DSA since at least 1967 (ibid., p. 3). It is also used by many other growers in the industry. The contracts are signed by each individual sharecropper as the "Sub-Licensee," by the farm owner as the "Contractor," and by DSA, declared to be a "third party beneficiary" of the agreement. The contract, which was written in English at the time the suit was filed, consisted of seventeen legal-sized pages containing much legal terminology. Then, as now, the sharecropper generally signs the agreement only once, without negotiation. Pending adequate performance, the contract is extended each year by means of a one- or two-page addendum signed by all three parties. The contract can, however, be terminated within a period of five days "if at any time within the absolute discretion of [the contractor] it is determined, upon reasonable cause, that Sub-Licensee is, or will be, unable to complete his obligations under this agreement." According to interviews with sharecroppers and to court affidavits, many share farmers do not understand the detailed terms of the contract; what it signifies to them is that they are to be independent workers and that this status is guaranteed by the law.

According to the agreement, DSA grants its contractors license to grow a crop of its patented strawberries for a percentage of the market proceeds and the right to subcontract the growing of the crop to others, "subject to approval by DSA in each instance." The contract stipulates that at all times DSA exclusively owns both the plants and the crop derived from the plants. Sharecroppers are granted the right to grow strawberries on a described parcel of land that is owned or leased by the contractor, usually totaling from 2.5 acres to 3.5 acres. Farm owner-operators hire their own employees and use their own equipment to prepare the soil for planting, a process that in-

cludes surveying, leveling, cultivating, fumigating, and preparing the beds. The land is then delivered to the sharecroppers, who are paid to plant it. Sharecroppers agree to furnish all labor necessary to care for the land and plants during the growing season and to harvest and prepare the crop for marketing by DSA. Sharecroppers are empowered to hire and supervise all employees necessary to carry out their duties under the contract. Almost all sharecroppers do hire helpers during the harvest, usually friends and relatives, who are often illegal aliens from their home regions in Mexico.

The contract explicitly states that the sharecropper is an "independent contractor." The DSA contract also specifies that neither the contractor nor DSA "has assumed under this agreement any rights of supervision and control over the growing of the said strawberry crop" and that the sharecropper

> is in no sense the representative, servant, or employee of [the contractor] and . . . in growing the crop for the account of DSA shall be under the control of [the contractor] only as to the result of the work assigned to be performed by him and not as to the means by which the results are to be accomplished.

Driscoll sharecroppers are paid weekly a set percentage, typically from 50 percent to 55 percent, of the proceeds from the sales of their berries, minus half of the cost of crates and boxes, half the cost of precooling, loading, hauling, handling, and marketing, a per-crate assessment levied on all growers by the CSAB to pay for promotion and research, and a plant patent fee.

C. *The Legal Dispute*

It was the divergence between the contractual representation of the sharecroppers' independence and their experience of day-to-day dependence that spurred the initial suit. When Martin Alvara and fourteen fellow sharecroppers brought their case to the Salinas law office of Johnson, Riles, and Mandel,[17] their complaints were ones frequently expressed by California strawberry sharecroppers: that they were underpaid for their fruit and that the withholding of sales information and the requirement that the crop be sold through DSA restricted their ability to receive the highest return for their product as independent contractors. This dissatisfaction had persisted for years and had been expressed directly to Driscoll's foreman in

[17] The names of the law firm and prosecution attorney are pseudonyms.

several meetings the previous year. When these meetings resolved nothing, several of the sharecroppers approached a community development corporation promoting economic development for Hispanics in the area. Brandishing their contracts, the sharecroppers heatedly pointed out that legally they were independent contractors, as was so important to them from the outset. After discussing the matter at some length, the agency staff member urged the sharecroppers to bring a suit against the farm owners for constraint of free trade and monopolistic domination of the market. Agency representatives put the sharecroppers in touch with a local labor lawyer, James Steinberg, a staff lawyer with Johnson, Riles, and Mandel.

The sharecroppers' leaders and agency representatives instructed Steinberg to prepare an initial class action suit against DSA and Driscoll, as joint employers, on behalf of the estimated two hundred sharecroppers statewide that had signed DSA contracts. The charges were antitrust damages, fraud, misrepresentation, and breach of contract (Complaint at 2, *Real*). Specifically, the first six causes of action claimed that the defendants had restrained trade in the strawberry market by combining and contracting

> between themselves to establish an artificially low price to be paid . . . [to the plaintiffs] so as to maintain a sufficiently large operating profit margin to permit DSA to sell its berries at a price slightly higher than competing inferior varieties and lower than competing equal varieties and thus assure sales of its berries at the expense of its competitors (ibid., p. 4).

Moreover, the suit charged, DSA minimized and restricted production of berries, controlled the quantity and price of premium berries in the market, and "refused to render a true and accurate accounting" of sharecroppers' financial records, with the effect of preventing them from obtaining their just compensation (ibid., p. 5). In addition, the suit charged that the defendants further restricted the plaintiffs' "freedom to perform under the contract and conduct their business in a manner of their own choosing" (ibid., p. 8) by requiring them to purchase from the defendants all baskets, crates, and wire for picking and packing berries and by downgrading the plaintiffs' berries and requiring that rejected berries be left to rot in the fields rather than being marketed by the sharecroppers (ibid., p. 9). These actions, the complaint declared, were undertaken in intentional violation of the contractual status of sharecroppers as independent contractors.

After he filed the first statement of the case, Steinberg

took depositions from his clients, in the course of which he himself developed a different understanding of the case. In an interview, he said that after listening to depositions for a week, it became clear to him that the sharecroppers were not independent contractors at all but rather employees, and that it was their right to a minimum wage and overtime pay under the FLSA that was being violated. Consequently, Steinberg met with his clients and persuaded them to allow him to file a seventh cause of action, charging that the DSA contract was a "sham" whose misrepresentation was "deliberate, willful, and intentional and was designed to mislead and did mislead plaintiffs into not understanding their true status as employees" (ibid., p. 3). The complaint claimed unspecified damages for violations of the FLSA on the grounds that the relationship between the plaintiffs and the defendants was one of employee to employers because of the control the defendants exerted over the production process.

This amended complaint represented an interesting transformation in the theory of the case. Although the change was initiated by the sharecroppers' lawyer, he claims that it became accepted by an increasing number of his clients over the course of the dispute. He describes the sharecroppers as vacillating in their perceptions of their own class status between their independent representation in their contracts and their dependent experience in their daily working relations. Most continued to see themselves as independents whose freedom to conduct their businesses was illegitimately circumscribed by a large, monopolistic firm. At the same time, many began to see that their situation also resembled that of employees, and that if this were the case they should receive the protections granted other workers in the industry.

This latter point of view was the one that was to be pursued in the suit. This was in part because the antitrust case could not be won. DSA and Driscoll refused to answer many questions pertaining to their potential monopolistic role on the grounds that the information was privileged. In 1977 the United States District Court for the Northern District of California issued a summary judgment dismissing all charges on the grounds that the evidence was insufficient to warrant proceeding. Steinberg decided that it would be impossible to prove the antitrust case but that the FLSA charge was the crux of the matter. He believed that he could establish that there were sufficient controversy over the facts of the case and sufficient reason to believe that the plaintiffs might be employees employed jointly by DSA and Driscoll to obtain a reversal of the

summary judgment on the FLSA charge.[18] Consequently he appealed only the seventh amended cause of action to the United States Court of Appeals for the Ninth Circuit.

D. The Legal Decision

In his presentation of the appeal, the sharecroppers' lawyer identified key legal principles and precedents that were upheld almost in their entirety by the appeals court judge. Perhaps the most important of these principles was the notion that Congress enacted the FLSA with the broad purpose of remedying inequities in the labor field. As a consequence, the judge observed, a narrow interpretation of the statute's phrasing would violate its purpose, perpetuating "the difficulties for which the remedy was devised and . . . [inviting] adroit schemes by some employers and employees to avoid immediate burdens at the expense of the benefits sought by the legislation" (*Real*, 2894). Thus, the judge ruled that expanded definitions of employee and employer should be utilized in deciding coverage under the FLSA, and that the common law concepts of employee and independent contractor should not be considered determinant.[19] In doubtful situations, it is underlying "economic realities," not previously established legal classifications or contractual labels, that decide employment status. Moreover, the judge held, the "subjective intent" of the parties to a labor contract, that is, their own understandings as to whether one party is an employee, cannot override the realities of the economic relationship.[20] The judge cited case law demonstrating that possession of a single prerogative often thought to define independent contractor status, such as an individual's ability to hire and control his own helpers, does not prevent a finding that the individual is an employee in terms of the total range of underlying economic facts. In addition, with regard to possible coemployer status, the independent contractor status of one party (in this case Driscoll) acting as an employer of certain workers does not negate the possibility that the contractee may be a joint employer of those workers under the FLSA.[21]

---

[18] According to the law a summary judgment is an extreme remedy that may only be entered when there is no issue or dispute of material fact so that the party moving dismissal is incontrovertably entitled to prevail (*Real*, 2893).

[19] See ibid., pp. 2887–2888; Brief for Appellants at 14–22, *Real*, 2887–2888.

[20] Fair Labor Standards Act § 3 (1938), 29 U.S.C.A. § 203 (1938). See also *Real*, (2888); Brief for Appellants at 14, *Real*.

[21] Fair Labor Standards Act §§ 1–3 (1938), 29 U.S.C.A. §§ 201–203 (1938). See also *Real*, 2888–2896; *Mednick* v. *Albert Enterprises*, 508 F.2d 297, 301 *passim* (5th Cir. 1975); *Hodgson* v. *Griffin and Brand of McAllen*, 471 F.2d 235, 237 *passim* (5th Cir. 1973).

Through the statement of these guiding principles, the appeals court judge in effect dismissed several of the defendants' central arguments as to why the sharecroppers were independent contractors: because of the wording of their employment contracts, because they believed themselves to be such as indicated by their claiming self-employed tax status, and because they can hire and fire helpers. The judge's stated principles also rejected the defendants' claim that DSA and Driscoll could not be considered joint employers because Driscoll independently contracted with DSA.

In his evaluation of the case, the judge focused attention on the actual relations of production on strawberry farms, setting out six factors that should be weighed separately and together to determine whether these sharecroppers were employees and whether DSA and Driscoll were their joint employers. Not only were these factors a distillation of the major criteria argued by the plaintiffs, but the judge based his decision on the same precedent-setting cases that the plaintiffs had identified (Brief for Appellants, *Real*, June 23, 1977; *Real*, 2887, 2893–2896).

The first variable identified was the degree of the alleged employer's control over the manner in which the work is to be performed. Control is often cited as the single most important factor in determining an employer-employee relationship (*Donovan*, p. 4). It includes the amount of initiative, skill, judgment, or foresight required from the alleged independent contractor for the success of the enterprise (*Goldberg* v. *Whitaker House Cooperative*, 366 U.S. 28, 33, 81 (1961)), the amount of supervision by the alleged employer (*Rutherford*), and the existence of a "right to control" on the part of the employer (*Avis Rent a Car System* v. *United States*, 503 F.2d 423, 429 *passim* (2d Cir. 1974)). In the evaluation of this variable, the appeals court judge placed a great deal of weight on seven identical affidavits of sharecroppers that described the production process. He ruled that these affidavits, in conjunction with the depositions of the Driscoll foreman and sales manager, plainly showed that both DSA and Driscoll had substantial control over the sharecroppers' work (*Real*, 2894–2895). While sharecroppers exert some day-to-day judgment over their own and their helpers' labor, the types of plants to grow and how and when to plant them, as well as the manner and timing of weeding, watering, pruning, dusting for mildew, spraying for insect pests, fertilizing, and harvesting, are all determined initially by DSA's research department and then enforced by Driscoll's hired field supervisor. This supervisor watches for any deviation from ap-

proved routine production practices and informs sharecroppers of the necessity for sporadic treatments, such as the application of pesticides or the disking under of badly diseased plants. He even tells sharecroppers when they need to hire more helpers, and he calls them at home if they do not arrive in the fields at a specified hour. Although the supervisor represented his instructions as simply advice, he acknowledged that sharecroppers had never disobeyed him (Deposition of Kazumasa Mukai at 31, *Real*, Nov. 8, 1976). Moreover, according to their depositions the sharecroppers believed the foreman could fire them if he did not like the way they used their plots (Declaration of Rosalio Vela at 3–4, *Real*, Jan. 3, 1977). During the harvest season DSA exerts more direct control over production, since inspectors from DSA's sales department survey the fields weekly to estimate yields for marketing purposes, and DSA employees sort and grade the fruit according to DSA standards.

The second factor identified by the judge and the plaintiffs was the "alleged employee's opportunity for profit or loss depending on his managerial skill" (*Real*, 2894). The plaintiffs pointed out that the only significant initiative allowed the sharecroppers is the ability to request a certain size plot, a decision that is largely dependent on the size of their family (Brief for Appellants at 18, *Real*). The plaintiffs also noted that DSA's sales manager explicitly declared in his court deposition that "the risk of loss is completely on the grower" since the monetary investment is his (Deposition of William J. Crowley at 5, *Real*, Nov. 16, 1976). In short, argued the plaintiffs, a sharecropper's opportunity for profit primarily relates to the speed with which he does his job, that is, to his efficiency as a pieceworker. The judge agreed, pointing out that in all likelihood DSA ultimately determined the remuneration of sharecroppers through its decisions regarding quality standards and the number and type of plants sharecroppers receive. In addition, the judge observed that the

> opportunity for profit or loss depends more on the managerial skills of Driscoll and especially DSA in developing fruitful varieties of berries, in analyzing soil and pest conditions, and in marketing, than it does on the sharecroppers' own judgment and industry in weeding, dusting, pruning and picking (*Real*, 2895).

The third significant variable identified was the amount of the worker's investment in the materials and facilities required for his task or his employment of helpers. While sharecroppers do hire helpers, the judge found this fact to be counterbalanced by the contribution of the farm owner-operators in supplying

the land and the large capital investment in plants, fertilizers, pesticides, heavy machinery, and plastic mulch. Share farmers only provide hoes, shovels, and picking carts, equipment that wage workers in the industry also typically supply (Brief for Appellants at 17–18, *Real*; *Real*, 2895).

The fourth factor was the extent of the employer's control over the worker's terms of employment, including the degree of permanence of the working relationship. If the relationship is brief, it is presumed more likely that the worker is an independent contractor since he is less likely to subject himself to control over the details of his work. Repeated or seasonal contracts are considered evidence of an extended employment relationship (*Donovan*, pp. 8–9). In this regard, sharecroppers were found to have a working relationship more characteristic of an employee. The judge and the plaintiffs' lawyer pointed out that DSA essentially sets the terms of employment because it supplies the identical contracts that Driscoll must use. The sharecroppers simply sign the contracts, often without understanding them, since the contracts are written in English and are poorly explained (Declaration of Rosalio Vela at 4, *Real*). The judge also noted that Driscoll and DSA apparently share the right to hire and fire sharecroppers since the contract gives Driscoll the power to terminate the agreement at any time "within his absolute discretion," since share farmers believe that they must obey Driscoll's supervisor or be fired, and since DSA has the right to reject Driscoll's choices of sharecroppers (*Real*, 2895–2896). Nor do share farmers have the right typically enjoyed by independent contractors to choose their working hours since they are (or believe they are) subject to dismissal if they do not comply with the supervisor's schedule (Brief for Appellants at 16–17, *Real*).

The extent to which workers perform a specialty job was the fifth variable identified by the judge. Independent contractors are commonly associated with a degree of skill acquired through extensive education, although skills not requiring formal education may also be deemed of sufficient difficulty to warrant an independent contractor designation, as in the case of roofing contractors (*Donovan*, pp. 7–8). The plaintiffs' lawyer pointed out that picking strawberries is not a specialty job whose required skills are substantially different from those of strawberry wage laborers, since the only prior experience required for the job is picking strawberries (Brief for Appellants at 17, *Real*). The judge agreed that the sharecroppers' work is primarily physical labor requiring no special technical training or skill (*Real*, 2895).

The sixth and final variable raised was the extent to which the services performed are an integral part of the employer's business, as opposed to a peripheral, separable service. In this connection, the judge agreed with the plaintiffs that cultivating, picking, and packing strawberries are clearly a central part of the Driscoll–DSA berry producing operation (ibid.).

On August 8, 1979, the appeals court judge ruled that the plaintiffs had raised enough genuine issues of fact as to whether they were employees under the FLSA and as to whether DSA and Driscoll were their coemployers to preclude summarily dismissing the case. Consequently he reversed the earlier summary judgment and remanded the case for further proceedings. The text of his decision clearly showed that the judge believed there was merit to the sharecropper's charges. In interviews,[22] Steinberg, the plaintiffs' lawyer, declared unequivocally that he could have established the sharecroppers' employee status in the subsequent trial. The matter of determining the extent of damages, however, was extremely problematic since sharecroppers kept no regular records of hours and numbers of persons working. Steinberg believed that even if he could have established a rough estimate of the amount of overtime and minimum wage pay owed, not to mention attendant deductions for FICA and other security programs, the process of proof would be more costly than the likely amount of the settlement merited. According to Steinberg, his clients were confused as to the course of the trial at that point and accepted his judgment that settling out of court was the wisest course of action. As a result, the defendants paid an agreed-upon amount to the plaintiffs, and in March 1981 the case was closed.

E. The Dialectics of Legal Struggle

Real was the overt courtroom stage of a protracted struggle between farm owner-operators and workers in the strawberry industry regarding the conditions of and returns to work. Berry workers had attempted to further their interests collectively through the UFW and individually through negotiations with their foremen and employers. Farmers also utilized collective interest groups extensively during the Bracero Program and the 1970 strike (Wells, 1981). The adoption of sharecropping for them was an individual recourse that promised some relief from the pressures confronting the industry. It was a course of action pursued primarily by larger growers whose

[22] Telephone interviews (May 7 and Oct. 9, 1984).

scale made them likely targets for the union, rendered them subject to protective legislation, and hampered the close personalistic ties through which smaller berry growers discouraged unionization (ibid.). In short, the struggles in the regional fields, on individual farms, and in the courts are all part of a wider picture. It is useful here to place *Real* in this wider context and to draw out explicitly the dialectical relationship between the law and class struggle in this sector of agriculture. In this process both the law and social class have been changed, creating a new basis for their future interaction.

First, we should note that it was the existence of a legal category of worker, exempt from labor protections, that motivated growers to adopt sharecropping as a response to industry pressures. That is, the law, in the presence of certain political and technoeconomic constraints, fostered and became intimately involved in shaping a new form of economic organization.

Second, the initial adoption of sharecropping altered the social and economic relations among social strata. Sharecropping divides the work force into sharecroppers and wage laborers, categories with differing economic interests and legal prerogatives. In contrast to wage laborers, strawberry sharecroppers work as families on a set plot of land rather than as individuals on the whole farm, they are empowered to hire and fire additional workers, and their pay is determined on a share-of-market return rather than on an hourly-plus-piece-rate basis. Sharecropping also alters the social relations among workers. It divides the labor force into those who can and cannot join the union. The subdivision of large farms into small family units, the bonds of ethnicity, kinship, and friendship between sharecroppers and their hired helpers, and the illegal status of many helpers all work against unionization. While more research is necessary to determine the impact of these divisions on actual alliances in particular situations, we can see that sharecropping adds an element of complexity and ambiguity to class structure and class struggle.[23]

Third, their legal representation as independent by the sharecropping contracts constituted an important motivator for farm workers to become sharecroppers, became a strong element in their own self-perception, and later reinforced their

[23] The distinction that sharecroppers make between themselves and wage laborers in all industries is based on a perception of position and control over the production process. Thus it differs from the industry- rather than class-based distinctions that all labor providers in the strawberry industry make between themselves and workers in other crop industries.

sense of legitimacy in bringing suit against the owners. That is, the legal contract that provided an initial advantage to owners and established a new economic system, was appropriated in its meaning by workers, and ultimately spurred workers to challenge both the economic and the legal relationship.

Fourth, the actual process of litigation altered sharecroppers' perceptions of their status. Whereas the dimension of independence was most salient to them at the outset, the lawyer, the agency representatives, and the sharecroppers all reported that the latter became increasingly aware of their commonality with wage laborers as the details of day-to-day control were drawn out in testimony. Interestingly, the union also played a role in this shift. Although the union did not allow sharecroppers to be members, Cesar Chavez, the union's president, had worked as a sharecropper, viewed sharecroppers as disguised wage workers, and took special interest in the *Real* case. Several of the sharecroppers reported conversations with union organizers who tried to convince them that they were employees. Interviews conducted with the plaintiffs several years after the settlement indicate that the case left them with what could be called a "contradictory" class consciousness (Wells, 1984b). That is, they saw themselves as having been both illegitimately limited small businessmen and inadequately protected workers.[24] The process of litigation thus strengthened their identification as workers, raising to salience both of the identities suggested by their interstitial economic status.

Fifth, and significantly, interviews I conducted in the summer of 1985 with strawberry growers and other participants in the industry, suggest that *Real* and the other legal struggles over the status of sharecroppers have altered working relationships on the Driscoll farms and in the region as a whole. Two changes are apparent. First, county farm advisers, farmers, and Department of Labor employment officials all agree that the amount of sharecropping on the central California coast area has shrunk since the resolution of *Real*, falling from approximately 50 percent to perhaps 20 percent of the acreage. The explanation given is that sharecropping is "too much trouble" and potentially too costly in terms of likely claims for back wages if sharecroppers are found to be workers. Second, at least one

[24] Interviews conducted by the author in 1986-87 with other sharecroppers indicate that possession of a two-pronged self-perception is common. It is not unusual for the same individual in the same conversation to voice the conviction that he is an independent contractor and support this belief by reference to the contract, and then assert that he is an employee and support this conflicting belief by reference to the actual relations of production.

farmer has responded to the *Real* experience by increasing the amount of independence that his sharecroppers enjoy. He decreased the total amount of land he devoted to sharecropping, retained his best sharecroppers, and gave some of them loans to purchase small tractors for cultivating. He then set up a ranch committee, composed of his professional production managers and sharecropper representatives, to make some of the production decisions that arise in the course of the season, such as the timing of pesticide application.

Sixth, there is evidence that *Real* has stimulated changes in working relationships outside California. Since the decisions of appeals court judges are published, the judgment remanding the case for trial did have precedential import, even though the case was settled out of court. At this point *Real* has already been used by public interest lawyers attempting to establish the employee status of cucumber sharecroppers in the Midwest (*Donovan*, pp. 5, 12). The Midwestern experience is interesting in that it resembles the California case in terms of the presence of local political pressure and of crop-related constraints preventing such means of improving profitability as mechanization. According to the lawyers trying these cases, Midwestern cucumber growers followed the course of *Real* closely and received the idea of labeling their workers "sharecroppers" from that case. This took place at a time when the militant Farm Labor Organizing Committee was conducting an aggressive unionization drive in the Midwest.[25] In short, while more research would be necessary to firmly establish this correlation, preliminary evidence points to certain common features of industries adopting sharecropping. The interaction between the California and the Midwestern cases also emphasizes an important feature of court-based class conflict: It is visible to potential contenders who may be geographically or temporally dis-

[25] The pickling cucumber industry provides an interesting window into crop-specific variability in production constraints and legal impacts. The pickling cucumber industry has also been unable to mechanize due to crop-related constraints resembling those in the strawberry industry. Cucumber sharecroppers are migratory Mexican-American and Mexican families who do not hire and fire workers as do California strawberry sharecroppers and whose designation as sharecroppers is primarily the result of a peculiarity of cucumber pricing. That is, cucumbers in the Midwest and Texas are grown to be made into pickles and thus are priced according to the size per hundredweight: The smallest cucumbers receive the highest market prices from pickle processors. Paying workers half of the market proceeds ensures for the grower that the highest-priced cucumbers are picked. Paying workers by the hamper would encourage the undesirable tendency for the laborers to pick the largest cucumbers to more easily fill the hamper. From this vantage point, sharecropping in pickling cucumbers can be seen as a variation of piecework pay (*Donovan*, p. 23).

tant or both, and it can become a major component of these struggles.

Finally, although the process has just begun in this case, when differences between enterprise owner-operators and their workers reach the courts, these negotiations cumulatively work to change the law. Cases such as *Real*, the other California sharecropper cases, and the Midwestern sharecropper cases are establishing a legal perspective on a type of worker that did not exist when the laws were enacted. As demonstrated elsewhere (Wells, 1986), California sharecropping differs significantly from the more familiar examples of sharecropping in the United States such as cotton sharecropping in the post-bellum South and cash grain sharecropping in the Midwest and elsewhere. In many ways, in fact, contemporary strawberry sharecroppers have more in common with the variety of subcontractors and other putatively "independent" operators proliferating in such sectors of the economy as the garment industry and the computer industry (cf. Portes, 1982). The legal understanding of these latter occupations is also in the process of formation and is subject to considerable controversy, as witnessed by the recent senate hearings to amend the SLSA in order to facilitate industrial homework (*Fair Labor Standards Act: Hearings on S. 2145 before the Subcommittee on Labor of the Senate Committee on Human Resources*, 98th Cong., 2d Sess., pp. 1–161 (1984)). In short, court cases such as *Real* are part of a larger process that is generating a legal position on the burgeoning portion of the work force that now falls outside protective laws.

VI. CONCLUSION

Utilizing the example of the California strawberry industry, I have argued that the law plays a crucial and often neglected role in the relations between socioeconomic strata. I suggest that the impact of the law on social class varies over time and across subsectors of the economy and that it is especially dependent on the technological, economic, and political constraints facing particular industries. Important political forces in this regard include formal government policies and programs as well as the level of class mobilization and conflict. The evidence here suggests that protective legislation is especially determinant of class relationships in labor-intensive industries whose alternative means of increasing profitability are limited and in which workers are becoming increasingly organized and militant. In such instances, legal distinctions foster more complex and less oppositional class structures. This con-

trasts with the progressive simplification and polarization predicted by social theorists such as Karl Marx (see Giddens, 1971: pt. I) and Braverman (1974), and it reinforces views that posit an increasing differentiation of class structures (Poulantzas, 1974; Wright, 1976) and a more historically contingent pattern of development (Thompson, 1963; 1975; 1976).

The *Real* case demonstrates that the impacts of the law are much more variable and reciprocal than is often recognized. In this instance the law not only sustained and masked the existing distribution of power, but it also provided the impetus, the tools, and the forum for changing that distribution. The involvement of the law in economic relationships, I suggest, alters the dynamics of class struggle in important ways. Not only have legal statuses become a part of class resources, but court-based class conflicts differ significantly from those unfolding daily in the fields and on the shop floors. Court decisions as to what constitutes an employee are quite different in kind and consequence from the evaluations of workers as to who is part of their collective "we." The latter sort of discrimination is more situational, informal, and variable. The former not only posits a firmer set of identifying features but, in a context where employee status confers important benefits and where present judgments are made on the basis of carefully evaluated precedents, the ramifications of legal verdicts go far beyond the initial ruling. Thus legal decisions can shape social relationships that are temporally and geographically quite distant.

Lawyers play a role in this process that deserves more study. Rather than acting to maintain the status quo, as is most frequently documented (cf. Mayhew and Reiss, 1969), or simply conveying the wishes of his clients, in this case the lawyer actively intervened to alter his clients' views of their situation. In addition, research needs to move beyond the examination of legal structures and stipulations to study the impact of legal processes on class relations. In this case the process of litigation changed the plaintiffs' understanding of their problems and position and thus changed the remedy they sought.

The role of legal stipulations in forging agreement to economic arrangements is also worthy of note. In recent years there has been increasing interest in the impact of ideology on workers' consciousness of common cause and their consent to surplus extraction (cf. Burawoy, 1979; Marshall, 1983). However, insufficient attention has been paid to the impact of legal concepts on such attitudes. As demonstrated here, the law not only defines many of the rights and obligations of economic participants, but it also annoints those definitions with legal le-

gitimacy. The very legality of an economic status can, as we have seen here, help recruit individuals to occupations, construct their self-images, and foster challenges to economic relationships. We need more explorations of this process, I suggest, in different occupations and for different sociocultural groups.

The relevance of this case goes beyond the immediate industry and sector of the economy in which it was raised. An increased complexity of subcontracting arrangements has been a major barrier to enforcing labor legislation in all sectors of California agriculture in recent years.[26] Moreover, as noted, sharecropping and legal controversies comparable to the one discussed here have arisen in other labor-intensive agricultural industries in which production constraints and labor militance have created incentives comparable to those in the strawberry industry (*Donovan; Alfonso Salinas and Otilia Salinas* v. *United States*, No. B-82-140 (S.D. Tex. 1982)). Finally, unprotected subcontracting and small entrepreneurial roles have proliferated in the service and industrial sectors of many first and third world countries, posing serious challenges to the protections and solidarity of workers (Brecher, 1984; Peattie, 1980; Portes, 1982) and paralleling in function the reappearance of sharecropping in agriculture (Wells, 1984a). This evidence indicates the need for more intensive studies of industrial variability so that we can refine our understanding of the conditions under which the law is especially determinant of class relations and under which employers might seek to extend their control or evade their responsibilities by altering the legal status of their workers.

In conclusion, I have suggested that the relationship between the law and social class is dialectical: Legal structures and processes and class relations shape each other. While one must generalize cautiously from such limited case material, it is clear that at this historical juncture the law substantially penetrates economic relationships in the United States and in many other countries (cf. Burawoy, 1985). Today in American agriculture, as in urban industry, employers and employees position themselves vis-à-vis a legal framework to enhance their positions. Legal status constitutes an important element of class-based power, and class interests are often articulated in legal terms. When workers confront economic relationships they also confront legal relationships, which means that the law is

[26] This observation is based on interviews with labor lawyers and with officials of the California Agricultural Labor Relations Board and the California Department of Industrial Relations.

inextricably tied to the evolution of relative economic advantage. Since the law also helps forge attitudes toward economic arrangements, it affects the likelihood of economic transformation. In sum, the law has become in fact a force of production, an element that must be examined systematically if we are to understand the causes, form, and consequences of contemporary socioeconomic change.

REFERENCES

BACH, R. (1978) "Mexican Immigration and United States Immigration Reforms in the 1960s," 7 *Kapitalistate* 63.

BAIN, Beatrice M., and Sidney HOOS (1963) *The California Strawberry Industry: Changing Economic and Marketing Relationships.* Berkeley: University of California, Giannini Foundation Research Report No. 267.

BLUMBERG, Abraham S. (ed.) (1970) *The Scales of Justice.* Hawthorne, NY: Aldine.

BRAVERMAN, Harry (1974) *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century.* New York: Monthly Review Press.

BRECHER, Jeremy (1984) "Crisis Economy: Born-Again Labor Movement?" 35 *Monthly Review* 1.

BURAWOY, Michael (1985) *The Politics of Production: Factory Regimes under Capitalism and Socialism.* London: Verso.

——— (1983) "Between the Labor Process and the State: The Changing Face of Factory Regimes under Advanced Capitalism," 48 *American Sociological Review* 587.

——— (1979) *Manufacturing Consent: Changes in the Labor Process under Monopoly Capitalism.* Chicago: University of Chicago Press.

CSAB: CALIFORNIA STRAWBERRY ADVISORY BOARD (1982) *California Strawberry Newsletter: 1981 Annual Report.* Watsonville, CA: CSAB.

COLLIER, Jane (1975) "Legal Processes," 4 *Annual Review of Anthropology* 121.

CRAIG, R. (1971) *The Bracero Program.* Austin: The University of Texas Press.

CURRIE, Elliott (1971) "Sociology of Law: The Unasked Questions," 81 *Yale Law Journal* 134.

DAHRENDORF, Ralf (1968) *Essays in the Theory of Society.* Stanford: Stanford University Press.

DURKHEIM, Emile (1933) *The Division of Labor in Society*, trans. G. Simpson. Glencoe, IL: The Free Press.

FEDERAL-STATE MARKET NEWS SERVICE (1972) *Marketing California Strawberries, 1967–1971.* San Francisco: U.S. and California Departments of Agriculture.

FRIEDMAN, Lawrence M. (1973) "General Theory of Law and Social Change," in J. J. Ziegel (ed.), *Law and Social Change.* Toronto: York University Press.

GIDDENS, Anthony (1971) *Capitalism and Modern Theory: An Analysis of the Writings of Marx, Durkheim, and Max Weber.* New York: Cambridge University Press.

GLUCKMAN, Max (1955) *The Judicial Process among the Barotse of Northern Rhodesia*, 2nd ed. Manchester, ENG: Manchester University Press.

GORMAN, Robert A. (1976) *Basic Text on Labor Law, Unionization, and Collective Bargaining.* St. Paul: West Publishing.

HAWLEY, Ellis (1966) "Politics of the Mexican American Labor Issue: 1950–1965," 40 *Agricultural History 157.*

JOHNSTON, Gary W., and Philip L. MARTIN (1984) "Employment, Wages, and Benefits on California Farms," 17 *California Agriculture* 19.

JONES, Lamar B. (1970) "Labor and Management in California Agriculture, 1864–1964," 11 *Labor History* 23.
LEE, R. Alton (1966) *Truman and Taft-Hartley.* Lexington: University of Kentucky Press.
LLEWELLYN, K. N., and E. A. HOEBEL (1941) *The Cheyenne Way.* Norman: University of Oklahoma Press.
MAJKA, Linda C., and Theo J. MAJKA (1982) *Farm Workers, Agribusiness, and the State.* Philadelphia: Temple University Press.
MALINOWSKI, Bronislaw (1926) *Crime and Custom in Savage Society.* London: Kegan, Paul, Trench, Trubner.
MARSHALL, Gordon (1983) "Some Remarks on the Study of Working-Class Consciousness," 12 *Politics and Society* 263.
MARSHALL T. H. (1965) *Class, Citizenship, and Social Development.* New York: Anchor Books.
MARTIN, Philip L. (1983) "A Comparison of California's ALRA and the Federal NLRA," 1983 *California Agriculture* 6.
MAYHEW, Leon, and Albert J. REISS, Jr. (1969) "The Social Organization of Legal Contracts," 34 *American Sociological Review* 309.
MILLIS, Harry, and Emily Clark BROWN (1965) *From the Wagner Act to Taft-Hartley: A Study of National Labor Policy and Labor Relations.* Chicago: University of Chicago Press.
MITCHELL, F. G., E. C. MAXIE, and A. S. GREATHEAD (1964) *Handling Strawberries for Fresh Market.* Division of Agricultural Sciences, University of California, Extension Circular 527, Davis, California.
MOORE, Sally Falk (1970) "Law and Anthropology," *in* B. J. Siegal (ed.), *Biennial Review of Anthropology 1969.* Stanford: Stanford University Press.
MORRIS, Austin P. (1966) "Agricultural Labor and National Labor Legislation," 54 *California Law Review* 1939.
THE PACKER (1977) "Berry Mechanization Studied," 1977 *The Packer* 12.
PEATTIE, Lisa R. (1980) "Anthropological Perspectives on the Concepts of Dualism, the Informal Sector, and Marginality in Developing Urban Economies," 5 *International Regional Science Review* 1.
PORTES, Alejandro (1982) "The Informal Sector: Definition, Controversy, and Relations to National Development." Presented at the third seminar of the Working Group on Latin American Urbanization, Tepotzlan, Mexico (August 22–24).
POULANTZAS, Nicos (1974) *Classes in Contemporary Capitalism.* London: Verso.
QUINNEY, R. (1974) *Criminal Justice in America: A Critical Understanding.* Boston: Little, Brown.
SCHER, Howard S., and Robert S. CATZ (1975) "Farmworker Litigation under the Fair Labor Standards Act: Establishing Joint Employer Liability and Related Problems," 10 *Harvard Civil Rights–Civil Liberties Law Review* 575.
SKOCPOL, Theda (1980) "Political Response to Capitalist Crisis: Neo-Marxist Theories of the State and the Case of the New Deal," 10 *Politics and Society* 155.
SOSNICK, Stephen H. (1978) *Hired Hands: Seasonal Farm Workers in the United States.* Santa Barbara, CA: McNally and Loftin, West.
THOMPSON, E. P. (1976) *Albion's Fatal Tree: Crime and Society in Eighteenth Century England.* New York: Pantheon.
——— (1975) *Whigs and Hunters: The Origin of the Black Act.* New York: Pantheon.
——— (1963) *The Making of the English Working Class.* New York: Vintage.
WELCH, Norm, Art GREATHEAD, and J. A. BEUTEL (1980) *Strawberry Production and Cost in the Central Coast of California.* Berkeley: University of California, Agricultural Extension.
WELLS, Miriam J. (1986) "Sharecropping in the United States," in M. Chibnik (ed.), *Farm Work and Fieldwork: Anthropological Studies of North American Agriculture.* New York: Cornell University Press.
———(1984a) "The Resurgence of Sharecropping: Historical Anomaly or Political Strategy?" 90 *American Journal of Sociology* 1.
——— (1984b) "What is a Worker? The Role of Sharecroppers in Contemporary Class Structure," 13 *Politics and Society* 295.

——— (1981) "Social Conflict, Commodity Constraints, and Labor Market Structure in Agriculture," 23 *Comparative Studies in Society and History* 679.

WRIGHT, Erik Olin (1976) "Class Boundaries in Advanced Capitalist Societies," 98 *New Left Review* 3.

CASES CITED

Alvara v. *Driscoll Strawberry Associates, Santa Maria Farms*, Nos. 79-CE-1-SM, 79-CE-2-SM (Cal. Agricultural Labor Relations Board 1979).

Avis Rent a Car System v. *United States*, 503 F.2d 423, 429 *passim* (2d Cir. 1974).

Brooklyn Savings Bank v. *O'Neil*, 324 U.S. 697, 706 *passim* (1945).

Raymond J. Donovan v. *Ernest Gillmore et al.*, 535 F. Supp. 154, *appeal dismissed*, 708 F.2d 723 (N.D. Ohio 1982).

Goldberg v. *Whitaker House Cooperative*, 366 U.S. 28, 33, 81 (1961).

Hodgson v. *Griffin and Brand of McAllen*, 471 F.2d 235, 237 *passim* (5th Cir. 1973).

Mednick v. *Albert Enterprises*, 508 F.2d 297, 301 *passim* (5th Cir. 1975).

NLRB v. *Edward G. Budd Manufacturing Company*, 169 F.2d 571 *passim* (6th Cir. 1948).

Alonzo Real v. *Driscoll Strawberry Associates, Driscoll Berry Farms, Complaint*, No. C 75-661-LHB (N.D. Cal. filed Apr. 4, 1975); Deposition of Kazumasa Mukai (Nov. 8, 1976); Deposition of William J. Crowley (Nov. 16, 1976); Declaration of Rosalio Vela (Jan. 3, 1977); Brief for Appellants (June 23, 1977); Summary Judgment (Feb. 23, 1947); 603 F.2d 748 (9th Cir. 1979).

Rutherford Food Corporation v. *McComb*, 331 U.S. 722 *passim* (1947).

Sachs v. *United States*, 422 F. Supp. 1092 *passim* (Dist. Ct. Ohio 1976).

Alfonso Salinas and Otilia Salinas v. *United States*, No. B-82-140 (S.D. Tex. 1982).

United States v. *Rosenwasser*, 323 U.S. 360 *passim* (1944).

United States v. *Silk*, 331 U.S. 704, 716 *passim* (1947).

HEARINGS CITED

Hearings before the Subcommittee on Labor of the Committee on Labor and Human Resources on S. 2145, to Amend the Fair Labor Standards Act of 1938 to Facilitate Industrial Homework, Including Sewing, Knitting, and Craftmaking and for Other Purposes, 98th Cong., 2d Sess., pp. 1–161 (1984).

Proposed Amendments to the Social Security Act: Hearings of H.R. 7225 before the Committee on Finance, United States Senate, 84th Cong., 2d Sess., pp. 1-161 (1956).

STATUTES CITED

California Agricultural Labor Relations Act § 1, CAL. LAB. CODE §§ 1140-1160 (1975), revised Mar. 26, 1982.

Fair Labor Standards Act, 29 U.S.C. § 203 (1938).

Internal Revenue Code, 26 U.S.C. ch. 3121(b) (16) (1954).

National Labor Relations (Wagner) Act, 29 U.S.C. § 160 (1935).

Rev. Rul. 55-538, 1955 I.R.B. 313.

Social Security Act, 42 U.S.C. § 301 (1935).