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Mobilizing for farmworker rights in an era of shifting legal and governance opportunities

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Citation

Canfield, M. C., & Dias-Abey, M. (2023). Mobilizing for farmworker rights in an era of shifting legal and governance opportunities. *Michigan Journal Of Law And Society*, 2, 1-36. Retrieved from <https://hdl.handle.net/1887/3704700>

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Note: To cite this publication please use the final published version (if applicable).

**MOBILIZING FOR FARMWORKER RIGHTS IN AN ERA OF
SHIFTING LEGAL AND GOVERNANCE OPPORTUNITIES**

Matthew Canfield and Manoj Dias-Abey

TABLE OF CONTENTS

INTRODUCTION	3
MAPPING OPPORTUNITIES AVAILABLE TO CONTEMPORARY FARMWORKER MOVEMENTS	7
<i>Governance Opportunities: Industry Structures and Private Regulation</i>	8
<i>Legal Opportunities</i>	12
STUDY DESIGN AND METHODS	13
THE COALITION OF IMMOKALEE WORKERS.....	15
<i>International and Domestic Anti-trafficking Law: Shaping and Utilizing a Legal Opportunity</i>	17
<i>Targeting Fast Food Chains and Supermarkets: Recognizing and Exploiting Governance Opportunities</i>	19
FAMILIAS UNIDAS POR LA JUSTICIA	22
<i>Legal Opportunities and the Formation of FUJ</i>	24
<i>Targeting the Distributor: Mobilizing Governance Opportunities</i>	27
THE CONTEXTUAL NATURE OF LEGAL AND GOVERNANCE OPPORTUNITIES	31
CONCLUSIONS	35

MOBILIZING FOR FARMWORKER RIGHTS IN AN ERA OF SHIFTING LEGAL AND GOVERNANCE OPPORTUNITIES

*Matthew Canfield and Manoj Dias-Abey**

Farmworker movements have often been at the forefront of efforts to use the law to achieve social justice. While past generations of farmworker movements in the United States won gains by innovatively using state law and economic tactics to improve their working conditions, farmworkers today face a shifting landscape of law and governance stemming from the development of global value chains. This Article analyzes how contemporary farmworker movements are exploiting both “legal opportunities” and what we term “governance opportunities”—strategic openings for action arising from the contingent industry structures and private governance of global value chains. We analyze two cases of recent farmworker mobilization: Coalition of Immokalee Workers (CIW) in Florida and Familias Unidas por la Justicia (FUJ) in Washington State. By comparing the strategic decisionmaking and processes through which these movements ultimately found success, we show how legal and governance opportunities are interdependent and interactive. Our analysis suggests that the governance opportunities that social movements pursue are highly dependent on the contingent legal contexts in which they operate. Legal opportunities provide important symbolic and constitutive effects for farmworker movements, but as we show, governance opportunities can provide movements with greater leverage and allow them to expand beyond the limited legal protections provided to farm labor. Examining the tactics of farmworker movements—workers that face multiple forms of marginalization—therefore offers significant insights into the strategic opportunities for social change amidst the changing relationship between public and private governance.

Keywords: *Labor, social movements, farmworkers, global value chains, legal mobilization, private governance*

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INTRODUCTION

Farmworkers remain among the most marginalized workers in the United States. Their legal dispossession—through enslavement, illegalization, and exclusion—has been a defining feature of American labor history. Not only do farmworkers labor in some of the most dangerous conditions, but they also face some of the most difficult challenges to improve their working conditions. In the face of vehement opposition from their employers, farmworkers have developed highly creative uses of the law to improve their labor conditions. The work of the United Farm Workers (UFW) is perhaps the most storied example of this struggle. By pioneering a winning strategy combining worker organizing and social movement activism, the UFW managed to transform labor conditions on Californian farms.¹ However, the extent to which the UFW drew upon legal resources in their struggle is often underemphasized. A rare exception is Gordon (2005), who has worked to uncover the role played by the law in the UFW's campaign as it defended its members against criminal prosecutions and employer suits, used constitutional rights to create a more conducive organizing environment, and commenced litigation against employers to gain political leverage.² Using these legal tools and conventional and innovative forms of labor contention, the UFW managed to win hundreds of collective agreements with farm employers, influenced the enactment of collective bargaining legislation for farmworkers in California, and spawned a broad social movement that brought the plight of farmworkers to the forefront of national consciousness.³

The UFW was at its peak in 1979, and in the ensuing forty or so years, much has changed. Contemporary farmworker advocacy groups face changes in the organization of agricultural production and distribution, a shifting transnational legal terrain, and a socio-political context in which there are growing concerns about the sustainability and equity of food

1. RANDY SHAW, *BEYOND THE FIELDS: CESAR CHAVEZ, THE UFW, AND THE STRUGGLE FOR JUSTICE IN THE 21ST CENTURY* (2008); *see also* MARSHALL GANZ, *WHY DAVID SOMETIMES WINS: LEADERSHIP, ORGANIZATION, AND STRATEGY IN THE CALIFORNIA FARM WORKER MOVEMENT* (2010).

2. Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers' Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. PA. J. LAB. & EMP. L. 1 (2005).

3. *See generally* PHILIP L. MARTIN, *PROMISE UNFULFILLED: UNIONS, IMMIGRATION, & THE FARM WORKERS* (2003).

systems. Agri-food systems, like other economic sectors, are now increasingly ordered through regional and global value chains (GVCs).⁴ That is, food production is increasingly dominated by large chains of producers, distributors, processors, and retailers linked together through contractual relationships that determine the creation and (uneven) capture of value. These changes have radically altered the regulatory and legal landscape. Although state law remains a significant source of power and authority, competing networks of private and public actors now play a key role in producing norms through private legal orderings and “soft law” standards—a phenomenon that scholars have described with a multitude of overlapping terms, including “regulatory capitalism,”⁵ “transnational governance,”⁶ and “transnational law.”⁷ In this landscape of legal pluralism, GVCs are shaped by regional, national, and international legal regimes, and are themselves important sites of transnational governance.⁸

Socio-legal scholars have charted the shifting opportunity structures that exist within these new forms of governance—whether those emanate from industry structures and inter-firm relations⁹ or from private regulation in the form of corporate codes of conduct, voluntary standards, and third-party certifications.¹⁰ Mobilization around these new opportunities has generated significant debate among scholars of labor, and of farm labor

4. Jason Konefal et al., *Supermarkets and Supply Chains in North America*, in SUPERMARKETS AND AGRI-FOOD SUPPLY CHAINS: TRANSFORMATIONS IN THE PRODUCTION AND CONSUMPTION 270 (David Burch & Geoffrey Lawrence eds., 2007); see, e.g., Olga Memedovic & Andrew Shepherd, *Agri-food Value Chains and Poverty Reduction: Overview of Main Issues, Trends and Experiences* (U.N. Indus. Dev. Org., Working Paper No. 12/2008, 2012); see Joonkoo Lee, Gary Gereffi & Janet Beauvais, *Global Value Chains and Agrifood Standards: Challenges and Possibilities for Smallholders in Developing Countries*, 109 PROC. NAT'L ACAD. SCI. U.S. 12326 (2012).

5. David Levi-Faur, *The Global Diffusion of Regulatory Capitalism*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 12 (2005).

6. MARIE-LAURE DJELIC & KERSTIN SAHLIN-ANDERSSON, TRANSNATIONAL GOVERNANCE: INSTITUTIONAL DYNAMICS OF REGULATION (2006).

7. Peer Zumbansen, *Defining the Space of Transnational Law: Legal Theory, Global Governance, and Legal Pluralism*, 21 TRANSNAT'L L. & CONTEMP. PROBS. 305 (2012).

8. See Kevin B. Sobel-Read, *Global Value Chains: A Framework for Analysis*, 5 TRANSNAT'L LEGAL THEORY 364 (2014); IGLP Law and Global Production Working Group, *The Role of Law in Global Value Chains: A Research Manifesto*, 4 LONDON REV. INT'L L. 57 (2016).

9. Rachel Schurman, *Fighting “Frankenfoods”: Industry Opportunity Structures and the Efficacy of the Anti-Biotech Movement in Western Europe*, 51 SOC. PROBS. 243, 248-51 (2004); Rachel Schurman & William Munro, *Targeting Capital: A Cultural Economy Approach to Understanding the Efficacy of Two Anti-Genetic Engineering Movements*, 115 AM. J. SOCIO. 155, 161-64 (2009).

10. Sébastien Mena & Daniel Waeger, *Activism for Corporate Responsibility: Conceptualizing Private Regulation Opportunity Structures*, 51 J. MGMT. STUD. 1091 (2014).

more specifically.¹¹ A shared concern among scholars and activists is that opportunities in private governance may already be constrained by the desires of capital and therefore offer only limited improvements.¹² Such critiques emphasize the need for rights-based regulation rooted in state labor law. But others suggest that private governance may in some circumstances provide opportunities beyond those available within state law,¹³ particularly within the ossified context of contemporary U.S. labor law.¹⁴ In these debates, state law and private governance are often cast as opponents to each other, rather than as interacting strategic resources that are shaped by contingent contexts. In this Article, we therefore take an empirical approach to examine how farmworkers are navigating the shifting regulatory environment. We ask: How are contemporary farmworker movements assessing this shifting regulatory terrain? Why do they decide to pursue some opportunities over others? How do the opportunities they pursue shape and constrain their efforts to transform their working conditions?

We analyze two different farmworker movements that recently found significant success in different agricultural sectors, geographical areas, and regulatory contexts: the Coalition of Immokalee Workers (CIW) and Familias Unidas por la Justicia (FUJ). The former, CIW, began organizing migrant farmworkers working in the tomato sector in the early 2000s in Florida, a state with few labor protections for farmworkers. Today, the CIW is known for the “Fair Food Program” (FFP), a private regulatory arrangement that has enrolled over fourteen major fast-food companies, supermarket chains, and food service organizations to improve wages and

11. See Sandy Brown & Christy Getz, *Privatizing Farm Worker Justice: Regulating Labor through Voluntary Certification and Labeling*, 39 GEOFORUM 1184, 1188 (2008).

12. Brown & Getz, *supra* note 12; see Jill Esbenshade, *A Review of Private Regulation: Codes and Monitoring in the Apparel Industry*, 6 SOCIO. COMPASS 541 (2012); see also Mathias Koenig-Archibugi, *Does Transnational Private Governance Reduce or Displace Labor Abuses? Addressing Sorting Dynamics Across Global Supply Chains*, 11 REGUL. & GOVERNANCE 343 (2017).

13. See Greg Asbed & Steve Hitov, *Preventing Forced Labor in Corporate Supply Chains: The Fair Food Program and Worker-Driven Social Responsibility Combating Human Trafficking*, 52 WAKE FOREST L. REV. 497 (2017); see also Aaron Gladstone, Note, *Worker Driven Social Responsibility Agreements: A New Future in Labor Rights Protections*, 44 FORDHAM INT'L L.J. 549 (2020); Juliane Reinecke & Jimmy Donaghey, *Towards Worker-Driven Supply Chain Governance: Developing Decent Work Through Democratic Worker Participation*, 57 J. SUPPLY CHAIN MGMT. 14 (2021).

14. Cynthia L. Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527 (2002).

working conditions for farmworkers primarily in the tomato sector. The latter, FUJ, began organizing on a large berry farm in Washington State in 2014, and within one year, started mobilizing alongside farmworkers in Mexico. Drawing on both Washington State's more expansive legal protections for workers in the agricultural sector and strategic opportunities emanating from the berry value chain, FUJ became the second farmworker organization to win a collective labor contract in Washington State's history. CIW and FUJ drew on different strategies and approaches due to the distinct contexts in which they were working, but they found success by leveraging opportunities emerging from both state law and global value chain governance. Comparing these two cases sheds light on important, overlooked opportunities emerging from state law and private governance.

Through our comparative analysis, we explore how each movement drew on both legal opportunities and “governance opportunities”—a term we use to consolidate insights from scholarship on industry structure opportunities¹⁵ and global value chain governance.¹⁶ Our comparison of these two movements reveals that legal opportunities play a constitutive role in shaping the strategies and tactics vis-à-vis private governance. Both movements initially turned to the contingent legal opportunities arising from their local jurisdictions. We show that these different legal contexts conditioned the ways in which they then pursued governance opportunities. While scholars and activists alike have become increasingly interested in the replicability of various labor movement tactics, our analysis suggests that the interaction between law and governance opportunities ultimately shapes strategies, possibilities, and constraints for movements.

We begin by mapping the different opportunities available for contemporary farmworker movements. In doing so, we weave together two areas of scholarship that have each investigated the strategic decisionmaking of social movements, but within the different realms of state law and regulatory governance—that is, scholarship on legal opportunities and what we call governance opportunities. We then analyze the two case studies

15. See Schurman, *supra* note 10; Schurman and Munro, *supra* note 10.

16. Gary Gereffi, John Humphrey & Timothy Sturgeon, *The Governance of Global Value Chains*, 12 REV. INT'L POL. ECON. 78 (2005); Peter Gibbon, Jennifer Bair & Stefano Ponte, *Governing Global Value Chains: An Introduction*, 37 ECON. & SOC'Y 315 (2008).

described above. Different state laws, GVC structures, and strategic visions of justice shaped each struggle. Nonetheless, as we show, both movements effectively leveraged both legal and governance opportunities to secure lasting changes to their employment conditions. Analyzed together, these case studies not only illustrate that farmworkers continue to be creative pioneers in the mobilization of emergent opportunities, but also illuminate important dynamics between these opportunities that must be understood as part of a constitutive and interactive process.

MAPPING OPPORTUNITIES AVAILABLE TO CONTEMPORARY FARMWORKER MOVEMENTS

Farmworker movements have long worked in some of the most dangerous and precarious occupations. Unlike other labor movements in the United States, farmworkers' rights to collectively bargain were never recognized by the federal government due to what has been referred to as "agricultural exceptionalism."¹⁷ However, their position at the intersection of both public and private forms of oppression have led them to be among the most dynamic labor movements in the United States.¹⁸ As workers at the margins of the law, they offer an important lens through which to understand the relations between opportunities emerging from different normative regimes.

Today, farmworkers are navigating both changing legal contexts and structures of production. As they do so they face difficult strategic questions about which opportunities they should leverage. A key tenet of social movement theory is that collective action is influenced by the contingent possibilities and constraints that originate from outside movements.¹⁹

17. Guadalupe T. Luna, *An Infinite Distance: Agricultural Exceptionalism and Agricultural Labor*, 1 U. PA. J. LAB. & EMP. L. 487 (1997).

18. CLETUS E. DANIEL, *BITTER HARVEST, A HISTORY OF CALIFORNIA FARMWORKERS, 1870-1941* (1982); WALTER KENNETH BARGER, *THE FARM LABOR MOVEMENT IN THE MIDWEST: SOCIAL CHANGE AND ADAPTATION AMONG MIGRANT FARMWORKERS* (1994); DIONICIO NODÍN VALDÉS, *ORGANIZED AGRICULTURE AND THE LABOR MOVEMENT BEFORE THE UFW: PUERTO RICO, HAWAII, CALIFORNIA* (2011); CURTIS MAREZ, *FARM WORKER FUTURISM: SPECULATIVE TECHNOLOGIES OF RESISTANCE* (2016); SUSAN L MARQUIS, *I AM NOT A TRACTOR!: HOW FLORIDA FARMWORKERS TOOK ON THE FAST FOOD GIANTS AND WON* (2017); GABRIEL THOMPSON, *CHASING THE HARVEST: MIGRANT WORKERS IN CALIFORNIA AGRICULTURE* (2017).

19. See generally CHARLES TILLY, *FROM MOBILIZATION TO REVOLUTION* (1978).

While scholars have disagreed over how to conceptualize “opportunities,”²⁰ there is nonetheless consensus that recent political, legal, and economic changes have expanded some opportunities for social movements while foreclosing others. In response, scholars have sought to sharpen their analyses of the opportunities that may shape social movement mobilization in the context of neoliberal globalization.²¹ Yet while scholars have developed a variety of new concepts to describe the opportunities emerging from private regulation,²² these opportunities have often been conceptualized without adequately analyzing their interaction and relationship with those opportunities emerging from state law. As GVCs proliferate as a mode of governance, however, socio-legal scholarship suggests that the relationship between public and private governance for workers is critical in shaping their working conditions.²³ Below, therefore, we recount how socio-legal scholars have conceptualized the opportunities emerging from state law and private governance and their limits for understanding contemporary farmworker movements.

Governance Opportunities: Industry Structures and Private Regulation

Over the last several decades, neoliberal globalization has led to major changes in the way that goods, including food, are produced. Goods are now mostly produced in GVCs, in which “lead firms” coordinate and control the production of commodities by multiple suppliers located in

20. See, e.g., Jeff Goodwin & James M. Jasper, *Caught in a Winding, Snarling Vine: The Structural Bias of Political Process Theory*, 14 SOCIO. F. 27 (1999); Ruud Koopmans, *Political. Opportunity. Structure. Some Splitting to Balance the Lumping*, 14 SOCIO. F. 1, 93 (1999); DOUG MCADAM ET AL., DYNAMICS OF CONTENTION (2001).

21. Mattias Wahlström & Abby Peterson, *Between the State and the Market: Expanding the Concept of ‘Political Opportunity Structure’*, 49 ACTA SOCIOLOGICA 4, 363 (2006).

22. See, e.g., Schurman, *supra* note 10; Mena & Waeger, *supra* note 11.

23. César A Rodríguez-Garavito, *Nike’s Law: The Anti-Sweatshop Movement, Transnational Corporations, and the Struggle over International Labor Rights in the Americas*, in LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY 64 (Boaventura de Sousa Santos & César A Rodríguez-Garavito eds., 2005); see Luc Fransen & Brian Burgoon, *Introduction to the Special Issue: Public and Private Labor Standards Policy in the Global Economy*, 8 GLOB. POL’Y (SPECIAL ISSUE) 5 (2017); see also, Jennifer Bair, Mark Anner & Jeremy Blasi, *The Political Economy of Private and Public Regulation in Post-Rana Plaza Bangladesh*, 73 INDUS. & LAB. REL. REV. (SPECIAL ISSUE) 969 (2020).

many geographic locations.²⁴ Although apparel, automotive, and electronics production are the paradigmatic examples of production through GVCs,²⁵ GVCs are gaining increasing importance in the global agri-food system as corporate consolidation has expanded across food systems.²⁶ These changes in production are radically altering the regulatory and legal landscape, as well as the labor conditions for workers in agriculture and other sectors.

Socio-legal scholarship on regulation and governance on GVCs has conceptualized the relations between corporate entities within commodity chains as a critical form of *governance*. The term ‘governance’ is a capacious term, but at its core, it refers to the shifting locus of norm production from the state to multi-actor networks. In the GVC literature, governance is most often used to indicate the control and coordination of suppliers by lead firms.²⁷ Lead firms, however, depend on more than simply power and domination to coordinate the production process, and inter-firm relationships are characterized by the complex interaction of power, control, cooperation, dependency, and trust.²⁸ Socio-legal work has therefore expanded the focus on the control and coordination between two nodes in a GVC to include the entire chain.²⁹ In addition, more recent scholarship has sought to expand the term governance to include a variety of arenas of norm-construction that influence how power operates in capitalist production.³⁰

In response to the rise of private governance, trade unions and other social movements, have sought to exploit opportunities arising from the

24. See Jennifer Bair, *Global Commodity Chains*, in *FRONTIERS OF COMMODITY RESEARCH* (Jennifer Bair ed., 2008); Gary Gereffi, *Global Value Chains in a Post-Washington Consensus World*, 21 *REV. INT’L POL. ECON.* 9 (2014).

25. See BEVERLY J. SILVER, *FORCES OF LABOR: WORKERS’ MOVEMENTS AND GLOBALIZATION SINCE 1870* (Margaret Levi et al. eds, 2003); RICHARD M. LOCKE, *THE PROMISE AND LIMITS OF PRIVATE POWER: PROMOTING LABOR STANDARDS IN A GLOBAL ECONOMY 174-181* (2013).

26. See Jennifer Clapp, *The Rise of Big Food and Agriculture: Corporate Influence in the Food System*, in *A RESEARCH AGENDA FOR FOOD SYSTEMS* (Colin Sage ed., 2022).

27. See Gereffi, Humphrey & Sturgeon, *supra* note 17.

28. See generally MARCUS TAYLOR & SÉBASTIEN RIOUX, *GLOBAL LABOUR STUDIES* (2017).

29. See Gibbon, Bair & Ponte, *supra* note 17.

30. E.g., Elizabeth Havice & Liam Campling, *Where Chain Governance and Environmental Governance Meet: Interfirm Strategies in the Canned Tuna Global Value Chain*, 93 *ECON. GEOGRAPHY* 292(2017); Stefano Ponte & Timothy Sturgeon, *Explaining Governance in Global Value Chains: A Modular Theory-Building Effort*, 21 *REV. OF INT’L POL. ECON.* 195 (2014).

organization of industries and wider market relationships.³¹ Scholars across various disciplines and sub-fields have developed different concepts to analyze these dynamics. For example, to describe the opportunities arising from the surrounding political economic environment, Schurman devised the concept of the “industry opportunity structure.”³² According to this framework, social movements can make gains by taking into consideration four important aspects of the corporate and industry environment: (1) market structure and behavior of firms; (2) relationships between firms and between firms and regulators; (3) corporate culture in a firm or industry; and (4) the nature of goods or service being produced. Subsequent work has developed this idea in several directions, carefully delineating both the corporate and industry opportunities that might be relevant. Soule and King identified several characteristics of firms which social movement actors can exploit to their advantage, such as public positions professed by CEOs, the nature of corporate governance, and firm visibility and reputation.³³ In a similar vein, other scholars have suggested pertinent industry dynamics that will affect whether social movements are able to achieve their objectives—these include, the number of product markets activists seek to change, degree of market integration and concentration, dependence of firm profits on changeable legal rules,³⁴ and the brand identity of large corporations.³⁵

Based on these studies, scholars have developed different hypotheses about the conditions under which social movements may successfully leverage private governance. Mena and Waeger suggested that whether movements can successfully exploit these opportunities are likely to depend on factors such as the organizational structure of the private regulation,

31. Tim Bartley, *Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions*, 113 AM. J. SOCIO. 297, 301-06 (2007); Schurman & Munro, *supra* note 10; Sarah A. Soule & Brayden King, *Markets, Business, and Social Movements*, in THE OXFORD HANDBOOK OF SOCIAL MOVEMENTS (Donatella della Porta & Mario Diani eds., 2014).

32. Schurman, *supra* note 10.

33. Soule & King, *supra* note 32.

34. Ethan B. Kapstein & Joshua William Busby, *Social Movements and Market Transformations: Lessons from HIV/AIDS and Climate Change*, 60 INT'L STUD. Q. 317 (2016).

35. See Tim Bartley & Curtis Child, *Shaming the Corporation: The Social Production of Targets and the Anti-Sweatshop Movement*, 79 AM. SOC. REV. 653 (2014).

robustness of the rules, and their effectiveness as a regulatory tool.³⁶ Bartley's comparative transnational research has also highlighted the importance of political economic asymmetries on social movements' abilities to take advantage of opportunities emerging from GVC governance.³⁷ Movements in states conditioned by global capital, he demonstrated, may have less power in mobilizing these opportunities. Schurman and Munro emphasized that the "characteristics of industries *within* particular links in a chain and the relationships of power and dependency among actors *along* the chain" can also impact industry opportunity structures.³⁸

Yet despite the vast scholarship on this subject, the literature remains fragmented by different disciplinary and conceptual approaches. For example, Schurman and Munro's concept of industry opportunity structures captures some of these dimensions of governance within GVCs, but it focuses primarily on industry structures and relations among private actors or the *implicit* forms of governance within GVCs.³⁹ Meanwhile Mena and Waeger's concept of "private regulation opportunity structures" is focused exclusively on the *explicit* forms of governance through codes of conduct, standards, and other publicly articulated norms. Therefore, we deploy the term "governance opportunities" to refer to the implicit or explicit non-state norms governing the production process. These norms are shaped by a variety of factors including broader industry and market structures as well as the cultural associations related to firms or goods.

An appreciation of the variety of governance opportunities available to modern labor movements, however, must be complemented by an understanding of the variety of legal opportunities available. As Rodríguez-Garavito identified, labor movements can, given the right circumstances, take advantage of the "legal kaleidoscope" of public and private arrangements that characterize the contemporary legal landscape.⁴⁰ Indeed, labor movements and those seeking to improve their working conditions

36. Mena and Waeger, *supra* note 11, at 1103-07.

37. See TIM BARTLEY, RULES WITHOUT RIGHTS: LAND, LABOR, AND PRIVATE AUTHORITY IN THE GLOBAL ECONOMY 54 (2018).

38. Schurman & Munro, *supra* note 10, at 161-62.

39. See Schurman & Munro, *supra* note 10.

40. Rodríguez-Garavito, *supra* note 24, at 86.

often turn to state law in an effort to challenge the power of capital. Farmworkers are no exception.

Legal Opportunities

Socio-legal scholars have developed a vast literature on how labor movements engage in legal mobilization.⁴¹ While research on legal mobilization focuses on different elements and units of analysis,⁴² those particularly interested in the ways that social movements assess and strategically leverage the opportunities emerging from their legal context have developed the concept of “legal opportunities.”⁴³ Scholars interested in legal opportunities have sought to identify the legal variables that “represent the degree of openness or accessibility of a legal system to the social and political goals and tactics of individual and/or collective actors.”⁴⁴ Several variables identified include: the rules regulating access to courts, the availability of legal stock, funding and resources for litigation as well as more contingent factors such as judicial receptivity to particular arguments and judicial composition. Scholars now prefer to use the term “legal opportunity” rather than “legal opportunity structure” because while some

41. See Paul Burstein, *Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity*, 96 AM. J. SOCIO. 1201 (1991); MICHAEL W. MCCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* (1994); Laura Beth Nielsen, *The Work of Rights and the Work Rights Do: A Critical Empirical Approach*, in THE BLACKWELL COMPANION TO LAW AND SOCIETY 63, 70–72 (Austin Sarat ed., 2008); Scott L. Cummings, *Hemmed In: Legal Mobilization in the Los Angeles Anti-Sweatshop Movement*, 30 BERKELEY J. EMP. & LAB. L. 1 (2009); Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, 35 L. & SOC. INQUIRY 561 (2010); SHANNON GLEESON, *PRECARIOUS CLAIMS: THE PROMISE AND FAILURE OF WORKPLACE PROTECTIONS IN THE UNITED STATES* (2016); Mary Gallagher & Yujeong Yang, *Getting Schooled: Legal Mobilization as an Educative Process*, 42 LAW & SOC. INQUIRY 163 (2017); MICHAEL W. MCCANN & GEORGE I. LOVELL, *UNION BY LAW: FILIPINO AMERICAN LABOR ACTIVISTS, RIGHTS RADICALISM, AND RACIAL CAPITALISM* (2020).

42. E.g., Emilio Lehoucq & Whitney K. Taylor, *Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies?*, 45 LAW & SOC. INQUIRY 166 (2020).

43. See generally Peter K. Eisinger, *The Conditions of Protest Behavior in American Cities*, 67 THE AM. POL. SCI. REV. 11 (1973); DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930–1970* (2d ed. 1999); TILLY, *supra* note 20.

44. Lisa Vanhala, *Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK*, 46 L. & SOC'Y REV. 523, 527 (2012); see also Chris Hilson, *New Social Movements: The Role of Legal Opportunity*, 9 J. EUR. PUB. POL'Y 238 (2002); ELLEN ANN ANDERSEN, *OUT OF THE CLOSETS AND INTO THE COURTS: LEGAL OPPORTUNITY STRUCTURE AND GAY RIGHTS LITIGATION* (2006); LISA VANHALA, *MAKING RIGHTS A REALITY? DISABILITY RIGHTS ACTIVISTS AND LEGAL MOBILIZATION* (2010).

aspects of the litigation process are structural, others are much more contingent. Indeed, although the language of “opportunity” connotes something that is pre-existing, the literature has also been attentive to the ways in which activists can create and shape legal opportunities.⁴⁵ Recent work has also highlighted that legal opportunities may extend beyond judicial matters to include the administrative state.⁴⁶

As we have argued above, just as scholars have developed a more precise conceptual framework to understand how and why social movements may turn to litigation, the regulatory capacities of the territorial nation-state are transforming. While state law continues to play a significant role, there has been a proliferation of other sites of governance overseen by a variety of regulatory institutions and utilizing several different regulatory technologies. The expansion of rulemaking/enforcement processes beyond the domain of states has led socio-legal writers to challenge the analytical dominance of state law because it obscures the multiple fields or “levels” of ordering that generate authority, shape social relations and constitute subjects.⁴⁷ What therefore requires urgent attention is the way in which legal opportunities interact with governance opportunities and whether this may be constructive or destructive to the design and execution of social movement campaigns.

STUDY DESIGN AND METHODS

This Article analyzes two cases of recent farmworker mobilization in North America. The two farmworker organizations involved have been recognized as leading farmworker organizations in the United States—FUJ for winning the second-ever farmworker collective bargaining agreement for over 500 berry pickers in Washington State, and CIW for establishing the cutting-edge FFP that establishes a fairer deal for tomato harvesters in

45. ANDERSEN, *supra* note 45; Vanhala, *supra* note 45.

46. See CHARLES R. EPP, MAKING RIGHTS REAL: ACTIVISTS, BUREAUCRATS, AND THE CREATION OF THE LEGALISTIC STATE (2009); Janice Fine & Tim Bartley, *Raising the Floor: New Directions in Public and Private Enforcement of Labor Standards in the United States*, 61 J. INDUS. RELS. 252 (2019).

47. EVE DARIAN-SMITH, LAWS AND SOCIETIES IN GLOBAL CONTEXTS: CONTEMPORARY APPROACHES (2013); WILLIAM TWINING, GENERAL JURISPRUDENCE: UNDERSTANDING LAW FROM A GLOBAL PERSPECTIVE (2009).

Florida. Both organizations are led by workers who have been involved in recent campaigns to improve their working conditions. The two cases that are analyzed in this Article have been selected on the basis that they are paradigmatic cases.⁴⁸ The CIW has managed to leverage various legal and governance opportunities to develop a sector-wide form of labor governance. In contrast, the FUJ has opted for a more traditional form of labor governance by negotiating a collective agreement with an employer. These strategies represent two contrasting models of how contemporary farmworker groups are mobilizing to improve their working conditions. Other farmworker organizations such as Farm Labor Organizing Committee and Migrant Justice follow a path very similar to the CIWs. Alternatively, farmworker groups such as the UFW and Christian Labor Association's Local 17, adopt an organizing model similar to FUJ. In this way, the CIW and FUJ can be said to be representative of different models of modern farmworker activism.

The two cases were studied by the two authors independently, and each author engaged in different methods in their study of these mobilizations. Dias-Abey analyzed the strategies and tactics of CIW through a review of the academic literature, grey literature, news media, industry news, and by carrying out semi-structured interviews with key players in the organization (interviews spanning 1-3 hours were carried out with three key members of the CIW in 2018). Canfield undertook ethnographic fieldwork with FUJ as a volunteer for FUJ between 2013-2015. As a volunteer, he worked with allied organizations to coordinate donations during strikes, accompanied the workers to meetings with legislative representatives, organized boycotts, conducted surveys of workers to assist in organizing, and spoke with workers and the organizations that supported them through much of their process of organizing. Despite these different initial approaches of data collection, each author attended to the process by which each movement strategically apprehended and mobilized different opportunities in their fight to improve their working conditions. The authors then worked together to analyze their data sources and analyze the different opportunities that each movement mobilized. Together the

48. Bent Flyvbjerg, *Five Misunderstandings About Case-Study Research*, 12 *QUALITATIVE INQUIRY* 219 (2006).

authors developed comparative chronological and thematic analyses, coding each opportunity to examine how it emerged and consequences.

There are, of course, some limitations to the case study method that need to be acknowledged. The main one is that any findings cannot be easily generalized due to the small sample size. Although the case studies are representative of broader trends in farmworker activism, studying closely their respective campaigns should not be taken to indicate that other farmworker groups have campaigned in similar ways. However, the case studies in this Article are being used to uncover underlying dynamics, rather than to make pronouncements about what would work in all circumstances. They offer us a useful way to understand the heterogeneous ways that farmworkers are engaging with the organization of industrial agricultural production and legal regulation to make gains for a very marginalized group of workers.

THE COALITION OF IMMOKALEE WORKERS

The CIW is one of the United States' most renowned farmworker organizations. It is responsible for developing a private regulatory initiative, called the Fair Food Program (FFP), which governs labor conditions on several of the largest tomato farms in Florida. The main signatories of the FFP are fast food chains and supermarkets that purchase large volumes of tomatoes from Florida each year. Signatories are required to purchase all their Floridan tomatoes from growers complying with a private code of conduct (Code of Conduct), although they retain the freedom to source tomatoes from alternative places. The Code of Conduct regulates a comprehensive suite of labor conditions, including hiring practices, wages, sexual harassment, and health and safety. Since farmworkers are exempt from most federal labor and employment laws, and Florida does not regulate working conditions at the state level, the Code of Conduct makes an enormous difference for Florida's tomato workforce. A number of scholars have examined the FFP and concluded that several unique features make it an effective form of labor regulation: a robust set of labor standards that includes higher piece rates and a requirement to directly employ workers, a strong focus on worker education, multiple channels for workers

to make a complaint without fear of retribution, a comprehensive auditing process by an organization independent from the growers, and enforcement via meaningful market sanctions for non-complying growers.

The CIW has been active in Immokalee, Florida—the epicenter of Florida’s tomato growing area—since the early 1990s. Initially, the CIW sought to improve working conditions for farmworkers by organizing work stoppages on individual farms to apply pressure on employers. The twin challenges of organizing an undocumented workforce and attempting to compel employers with low profit margins convinced the CIW to shift strategy. Florida’s fresh tomato industry displays oligopolistic tendencies because it is dominated by a handful of large growers who sell their product to the large-scale buyers, primarily fast-food companies and supermarkets.⁴⁹ The CIW soon realized that these buyers were fiercely protective of their brands and might be coerced into changing their purchasing practices if an impactful national campaign could threaten their brand image. The relationship of control and dependence between buyers and growers, as well as the buyers’ fear around their brand identity, presented a governance opportunity that the CIW identified and exploited.

An examination of the national campaign that led to the creation and implementation of the FFP reveals the importance of also recognizing, shaping, and exploiting an important legal opportunity. In the late 1990s, an unprecedented amount of national and international attention was being directed towards sex trafficking. The CIW intervened in these debates to foreground the importance of addressing labor trafficking. It did so by helping shape national legislation and participating in criminal prosecutions of crew leaders operating in Florida who were engaging in forms of coerced labor. Highlighting the prevalence of these practices in the tomato value chain was a crucial aspect of the national campaign that the CIW ran between 2000 and 2010 to pressure buyers to sign up to the FFP. These efforts led to the development of Immokalee’s infamous reputation

49. Gary Gereffi, Joonkoo Lee & Michelle Christian, *US-Based Food and Agricultural Value Chains and Their Relevance to Healthy Diets*, 4 J. HUNGER & ENV’T. NUTRITION 357 (2009); see Gary D. Thompson & Paul N. Wilson, *The Organizational Structure of the North American Fresh Tomato Market: Implications for Seasonal Trade Disputes*, 13 AGRIBUSINESS 533 (1997).

as the “ground zero for modern slavery” in the United States.⁵⁰ Another critical message that the CIW advanced during the campaign was that improving underlying labor conditions was the ultimate solution to eradicating forced labor from Florida’s tomato fields. As early as 2002, Laura Germino, one of the CIW’s founders, argued that the solution to labor trafficking “is attacking the root causes and modernizing agricultural labor relations so workers have more power.”⁵¹

*International and Domestic Anti-trafficking Law: Shaping and Utilizing a
Legal Opportunity*

Anti-trafficking norms promulgated at the international and national levels proved to be an important legal opportunity for the CIW, which it not only exploited but also helped shape. Between 1994 and 2008, a transnational legal order started to cohere to address sex and labor trafficking.⁵² The apogee of these efforts was the negotiation of an international framework to deal with transnational crime in 2000, which included the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.⁵³ Significantly, the negotiations yielded a common definition of trafficking that encompassed sexual exploitation and forced labor. The United States was a driving force in this process, although it did not formally ratify the Protocols until 2005. In the intervening period, the United States enacted domestic legislation to deal with human trafficking, which culminated in the passage of the Trafficking Victims Protection Act of 2000 (TVPA).⁵⁴ The TVPA created new offenses, increased penalties, and increased

50. John Bowe, *Nobodies*, THE NEW YORKER, (Apr. 13, 2003), <https://www.newyorker.com/magazine/2003/04/21/nobodies> [<https://perma.cc/TKG9-FBBK>].

51. Micah Maidenberg, *Florida Employers Guilty of Slavery*, LAB. NOTES (July 31, 2002), <https://www.labornotes.org/2002/07/florida-employers-guilty-slavery> [<https://perma.cc/2DBZ-QN4R>].

52. Paulette Lloyd & Beth A. Simmons, *Framing a New Transnational Legal Order*, in TRANSNAT'L LEGAL ORDERS (Terence C. Halliday & Gregory Shaffer eds., 2014).

53. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *adopted* Nov. 15, 2000, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003).

54. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

protections for victims (e.g., by the creation of a special T-visa for trafficked victims).⁵⁵

This legislation proved to be an important legal opportunity for the CIW, although the CIW had to first work to amend it. In the period leading up to the TVPA's passage, media coverage tended to be focused on sex trafficking rather than labor trafficking.⁵⁶ An exception to this trend was the news coverage of the prosecution of Miguel Flores in 1997, which received national prominence.⁵⁷ Flores was a Florida-based labor contractor who, along with his business partner Sebastian Gomez, was found guilty in 1997 of slavery, extortion, firearms charges and a range of other offenses and sentenced to fifteen years in prison. The CIW first discovered the existence of this trafficking operation through its contact with farmworkers, then continued to pressure the U.S. Department of Justice and the FBI to pursue the matter when they initially showed limited interest, and finally, participated in the prosecution by providing key witnesses.⁵⁸ The original version of the federal bill to deal with trafficking only contained a prohibition against sex trafficking, until Representative Sam Gejdenson, a Democrat, influenced by events such as the Flores prosecution, managed to include labor trafficking.⁵⁹ As identified in the legal opportunity literature, legal opportunities can be actively shaped by social movement actors rather than merely drawn on.⁶⁰

As well as the agenda-setting and drafting phases of the legislative process, the CIW's influence extended to the implementation phase.⁶¹ In addition to the Flores case discussed above, the CIW participated in eight other prosecutions involving forced labor on Florida's farms between 1997 and 2010. In some of these cases, the CIW had discovered the existence of the labor trafficking operations and applied pressure on government authorities to prosecute. In others, they provided vital evidence gathered

55. *Id.*

56. Amy Farrell & Stephanie Fahy, *The Problem of Human Trafficking in the U.S.: Public Frames and Policy Responses*, 37 J. CRIM. JUST. 617, 620–22 (2009).

57. KEVIN BALES & RON SOODALTER, *THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY TODAY* (2010).

58. MARQUIS, *supra* note 19, at 38–44.

59. JOHN BOWE, *NOBODIES: MODERN AMERICAN SLAVE LABOR AND THE DARK SIDE OF THE NEW GLOBAL ECONOMY* 56–57 (2007).

60. ANDERSEN, *supra* note 45, at 57.

61. Phone Interview with Laura Germino, Founding Member of the CIW (May 15, 2018).

through its own efforts. These prosecutions received significant attention, with stories placed in prominent publications such as the *New Yorker*,⁶² *Tampa Times*,⁶³ and *New York Times*.⁶⁴ These prosecutions had two important effects. First, as a result of the prosecutions, the issue of labor trafficking, particularly in the agricultural sector of the Southeast region of the United States, gained national notoriety and ensured that the government diverted resources for its eradication. Second, as the CIW's stature grew through its participation in trafficking prosecutions throughout the 1990s and 2000s, the organization gained greater legitimacy. In recognition of the CIW's important role in the anti-trafficking field, the CIW received numerous awards. Laura Germino, one of the CIW's co-founders, was recognized by the US State Department as a "Trafficking in Persons Hero." The growing recognition of CIW as well as the wide knowledge of the presence of forced labor in the tomato value chain later proved to be crucial in the efforts to persuade actors to implement the CIW model of labor governance.

Targeting Fast Food Chains and Supermarkets: Recognizing and Exploiting Governance Opportunities

While exploiting the legal opportunities was an important first step, the CIW's campaign only started to gain traction once it had mapped and engaged a variety of governance opportunities. The CIW's main insight was to circumvent the growers who employed farmworkers (often through intermediaries) and instead target the corporate entities that purchased Florida's fresh tomatoes. Florida is the second largest supplier of fresh tomatoes to the United States market, and together with California, represent close to 70 percent of fresh tomatoes produced in the United

62. Bowe, *supra* note 51.

63. Evelyn Nieves, *Fla. Tomato Pickers Still Reap "Harvest of Shame,"* WASH. POST (Feb. 28, 2005), <https://www.washingtonpost.com/archive/politics/2005/02/28/fla-tomato-pickers-still-reap-harvest-of-shame/ae78079b-b1a7-48d1-b22d-50cd6e067c58/> [https://perma.cc/742K-EK72].

64. Eric Schlosser, *A Side Order of Human Rights*, N.Y. TIMES (Apr. 6, 2005), <https://www.nytimes.com/2005/04/06/opinion/a-side-order-of-human-rights.html> [https://perma.cc/7Q4A-DHBY].

States.⁶⁵ Even though imports from Mexico have been gradually increasing since the passage of NAFTA and the attendant lowering of trade barriers, domestic production still accounted for 40 percent of domestic consumption in 2015.⁶⁶ Buyers increasingly favor purchasing tomatoes from Florida growers through contractual arrangements rather than on the open market, which increases the control that buyers can exercise.⁶⁷ The CIW sought to use these relationships of control and dependence to their own advantage.

The CIW recognized that buyers were not going to intervene in the employment practices of their suppliers of their own volition. However, the CIW foresaw that the risk of being publicly associated with forced labor might persuade these companies to take action. One group of buyers was fast-food chains, which were fiercely protective of their brand image after a series of scandals in the closing decades of the twentieth century.⁶⁸ Brand image in the fast-food sector is increasingly seen as being affected by corporate social responsibility standards.⁶⁹ In addition, similar to the food retail sector, competition to satisfy consumer demand for ethical sourcing has become an important imperative.⁷⁰ This meant that both groups of major purchasers had vulnerabilities arising from their corporate identity. By exploiting the anti-trafficking legal opportunity, the CIW was able to draw attention to the issue of forced labor in the tomato value chain and gain the attention of fast-food companies and supermarkets.

The CIW began its campaign in 2000 by targeting the fast-food company Taco Bell. Taco Bell was an obvious choice of target because of its associations with Mexican culture. Brandishing posters and placards featuring phrases, such as “Taco Bell makes farm workers poor” and “From

65. Maria P. Perez, Luis A. Ribera & Marco A. Palma, *Effects of Trade and Agricultural Policies on the Structure of the U.S. Tomato Industry*, 69 FOOD POL'Y 123 (2017).

66. Zhengfei Guan, Trina Biswas & Feng Wu, *The US Tomato Industry: An Overview of Production and Trade*, IFAS EXTENSION, UNIV. FLA. (Apr. 24, 2018), <https://edis.ifas.ufl.edu/publication/FE1027>.

67. Gereffi, Lee & Christian, *supra* note 50.

68. ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL* (2001).

69. Monika J.A. Schröder & Morven G. McEachern, *Fast Food and Ethical Consumer Value: A Focus on McDonald's and KFC*, 107 BRIT. FOOD J. 212 (2005).

70. Jason Konefal et al., *Supermarkets and Supply Chains in North America*, in *SUPERMARKETS AND AGRI-FOOD SUPPLY CHAINS: TRANSFORMATIONS IN THE PRODUCTION AND CONSUMPTION* 270 (David Burch & Geoffrey Lawrence eds., 2007).

the hands of a slave,” the CIW made the public case against Taco Bell. At first, Taco Bell was unwilling to agree to the CIW’s terms, citing the fact that the working conditions of its suppliers had little to do with the company. After a grueling five-year campaign, Yum! Foods (which owned the Taco Bell chain) eventually capitulated. Aside from the threat that the campaign posed for Taco Bell’s brand image, joint effort with student allies in the Student/Farmworker Alliance managed to cause tangible commercial damage to the company by removing existing or preventing new Taco Bell restaurants opening on 23 campuses.⁷¹ After further campaigning, the CIW was able to pressure McDonalds in 2007 to agree to its terms. Burger King and Subway followed suit in 2008, and Chipotle and Mexican Grill signed in 2012.

Besides fast-food corporations, the other major customers of Florida’s tomatoes are supermarkets. In 2008, Whole Foods voluntarily joined the FFP. Walmart’s accession to the FFP in 2014 was more surprising, and potentially more transformative, because Walmart also agreed to apply the FFP to its tomato growers in Georgia, South Carolina and Virginia, in addition to its strawberry and apple suppliers.⁷² While a range of factors influenced Walmart’s decision, the potential existence of forced labor in its supply chains likely posed a problem for a company in which Evangelical Christianity is regularly invoked.⁷³

The anti-trafficking norms that had provided the CIW with enormous leverage against the fast-food companies and supermarkets were also to prove enormously influential against the growers. Initially, the growers insisted that implementation was a matter for buyers to resolve with the CIW and refused to pass on the extra payment offered by the buyers. The growers cited practical and legal impediments to implementing the FFP and argued that they could not be held responsible for the instances of slavery uncovered because growers did not directly employ the farmworkers

71. MARQUIS, *supra* note 19.

72. Interview with Sean Sellers, Director of Strategic Partnerships, Worker-Driven Social Responsibility Network, Sarasota, Florida (Feb. 15, 2018).

73. BETHANY MORETON, *TO SERVE GOD AND WAL-MART: THE MAKING OF CHRISTIAN FREE ENTERPRISE* (2009).

(since workers were mostly employed through labor contractors).⁷⁴ The continued revelations regarding forced labor on Florida's fields, however, changed the calculus for the growers. On 20 December 2008, an article in the *Fort Meyer News* named the two largest tomato growers in Florida, Six L's (now Lipman Produce) and Pacific Tomato Growers, as direct beneficiaries of labor trafficking.⁷⁵ In 2010, Publix, Florida's largest grocery chain, refused to purchase tomatoes from Florida until it could be assured that slaves did not pick their tomatoes.⁷⁶ This proved to be the turning point which split the united front of the growers and led to a growing number joining the FFP. As a result of the growers' submission, the Code of Conduct has been in place since the 2011-2012 growing season.

While the FFP now covers all of the major tomato growers in Florida (as well as some in other states such as Georgia, Tennessee and South Carolina) and the major food retail, fast food and food service companies, there are a few notable holdouts. Wendy's and supermarket chains like Publix, Kroger and Costco, refuse to join. Taking advantage of shifting political and governance opportunities, more recent campaigns have sought to frame the campaign's demands in terms of ending sexual harassment on the fields and have tried to target some of Wendy's shareholders such as Goldman Sachs and BlackRock.⁷⁷

FAMILIAS UNIDAS POR LA JUSTICIA

Familias Unidas por la Justicia (FUJ) is an independent farmworker union that was founded in 2013 in Burlington, Washington. From the beginning of its campaign, FUJ garnered attention both regionally and

74. *Ending Abuses and Improving Working Conditions for Tomato Workers: Hearing of the Comm. on Health, Educ., Lab., and Pensions*, 110th Cong. 31-37 (2008) (statement of Reggie Brown, Executive Vice President, Florida Tomato Growers Exchange).

75. *Worker to Judge: "Bosses should not beat up the people who work with them". . .*, COALITION IMMOKALEE WORKERS (Dec. 20, 2008), https://ciw-online.org/blog/2008/12/navarrete_sentencing/ [<https://perma.cc/8P6E-Z22V>].

76. MARQUIS, *supra* note 19, at 93.

77. Rinku Sen, *These Farmworkers Know How to End Sexual Harassment in the Fields. Will Wendy's Listen?*, THE NATION (Mar. 15, 2018), <https://www.thenation.com/article/archive/these-farmworkers-know-how-to-end-sexual-harassment-in-the-fields-will-wendys-listen/> [<https://perma.cc/4B5K-Z88F>]; see GAY W SEIDMAN, BEYOND THE BOYCOTT: LABOR RIGHTS, HUMAN RIGHTS, AND TRANSNATIONAL ACTIVISM 121 (2007).

nationally due the region's active labor movement and local concern about sustainable food systems. Six years later, FUJ became the second agricultural operation in the state to work under a collectively bargained labor contract. From the beginning of its campaign, FUJ articulated a more traditional demand for union recognition at a single site of agricultural employment, Sakuma Brothers Farms (Sakuma). This demand was shaped by two contextual factors. First, Sakuma is, by far, the largest single agricultural operation in the region—it grows on over 1,000 acres and directly employs 500 workers at peak harvest. Second, the workers that Sakuma employs are migrant seasonal workers that live in labor camps owned and managed by Sukuma Brothers Farmers, and housing conditions were a major source of grievance.

While the value chains and employment contexts in which FUJ and CIW work differ, FUJ also turned to both legal and governance opportunities in their efforts to improve their wages and working conditions. FUJ relied on progressive labor laws in Washington State that extend to farmworkers, including protecting their right to organize (but stops short of providing farmworkers with collective bargaining rights). Legal opportunities mobilized early in FUJ's campaign conferred the organization with regional and national recognition, affirmed that their employers had acted unlawfully, and helped solidify FUJ's legitimacy as a trade union. However, invoking these legal opportunities was not enough to convince their employer to bargain with them. As a result, FUJ began to mobilize governance opportunities embedded within the fresh berry value chain. Unlike tomatoes, in which buyers operate as the lead firm, the lead firm in the fresh berry value chain is a single distributor—the multinational corporation Driscoll's. By organizing a national boycott of Driscoll's berries, FUJ, with other labor organizations, compelled Driscoll's to develop a corporate code of conduct that recognized workers' rights to collectively bargain. It was this code of conduct that FUJ leveraged to compel their employers to collectively bargain with them. As a result of their six year-long campaign in Washington Courts and along the value chain, workers were able to significantly alter labor conditions not only at Sakuma, but across Washington State and the entire value chain for fresh berries. A brief analysis of FUJ's campaign reveals how FUJ mobilized the

legal opportunities and governance opportunities available to them, and how these opportunities shaped its strategies and demands.

Legal Opportunities and the Formation of FUJ

FUJ was formed at the height of the harvest in the summer of 2013 after a worker at Sakuma was summarily fired for complaining about the day's piece-rate. Workers had previously engaged in work stoppages to improve their working conditions, but the event tapped into workers' widely held grievances. They drafted a list of demands, asking that their employer reverse the termination of their colleague, raise wages, pay overtime, and improve the conditions of the temporary housing provided for its workers. When management agreed to rehire the fired worker but failed to address their other demands, the workers reached out to a nearby farmworker advocacy organization, Community to Community Development (C2C) in Bellingham, Washington, seeking advice and support. In the ensuing weeks, they assembled a committee to represent them and named themselves *Familias Unidas por la Justicia*. After engaging in several additional work stoppages, FUJ negotiated higher piece-rates for blueberry and blackberry pickers, and Sakuma agreed to pay \$6,000 in wages for minors who had been underpaid by the farm. Many of their other demands went unmet.

In the first season that they were organizing, Sakuma hired private security officers to intimidate workers and prevent supporters from accessing the labor camps where the workers lived. With the help of a few allied legal organizations, FUJ was able to leverage several legal opportunities. First, FUJ brought a claim in the local Skagit County Superior Court against their employer on the basis of Washington's Little Norris-LaGuardia Act⁷⁸ (LNLA) to stop the private security officers from intimidating workers and supporters. A product of labor struggles in Washington State in the early twentieth century, the LNLA protects the organizing activities of all workers. The court ordered a temporary restraining order against the security guard firm and FUJ returned to court

78. WASH. REV. CODE. § 49.32.020 (2010).

several times over the next month to enforce the original court order.⁷⁹ Second, based on the relationships developed with local law firms, workers filed a class-action lawsuit in the U.S. District Court for the Western District of Washington on behalf of 400 farmworkers, alleging several violations under federal and state agricultural employment laws, including failure to provide rest breaks, to pay workers for all hours worked, to keep records, and to comply with agreed work arrangements.⁸⁰

Washington state's progressive labor laws provided what legal opportunity scholars refer to as "legal stock" for FUJ.⁸¹ These legal opportunities conferred material benefits on the organization and had two constitutive effects. In terms of material benefits, the lawsuits provided job security for workers that were organizing their peers, and later, back wages for workers who had suffered wage theft.⁸² As for constitutive effects, the litigation helped formalize their organization and identity as a union seeking collective recognition. When workers formed FUJ in July 2013, the organization was informal and served only to coordinate what was then a more organic and spontaneous process of organizing in response to their employer's actions. However, when workers realized that they could rely on Washington State law to protect their employment during the following growing season if they formed a more formal labor organization, they pursued more traditional union organizing techniques. Late in the growing season of 2013, FUJ managed to establish majority support through card campaigns. The President of FUJ told assembled workers that protecting their jobs was one of the key reasons for forming a formal union. The lawsuits also provided public support and legitimacy for FUJ as a labor organization. Their legal battles were featured in local labor and alternative media. Washington's labor movement quickly took note of the nascent

79. *Familias Unidas Por La Justicia v. Sakuma Bros. Farms, Inc.*, No. 13-2-01641-1 (Wash. Super. Ct. 2013) (granting plaintiffs' motion for temporary restraining order and order to show cause).

80. Washington State's Agricultural Employment Standards provides that "[e]very employee shall be allowed a rest period of at least ten minutes, on the employer's time, in each four-hour period of employment." WASH. ADMIN. CODE § 296-131-020(2) (1990).

81. ANDERSEN, *supra* note 45, at 12.

82. In June 2014, Sakuma settled the second part of the federal wage-and-hour claim for \$850,000, while denying any wrongdoing. It paid \$500,000 towards damages incurred by the workers, which amounted to \$1,221.30 in back pay for each of the affected workers, and the remaining amount went towards legal fees. See Paige Cornwell, *Sakuma Brothers Berry Growers to Pay \$850,000 Settlement*, SEATTLE TIMES (June 12, 2014, 6:24 PM), <https://www.seattletimes.com/seattle-news/sakuma-brothers-berry-growers-to-pay-850000-settlement/> [<https://perma.cc/AVR7-HP44>].

union, offering material support for striking workers through donated goods. The region's large population of consumers who were likewise committed to equitable and sustainable food systems also began to lend support to the workers by providing donations when workers went on strike and by joining them at protests.

During their first year of organizing, a third legal opportunity emerged when Sakuma attempted to fire striking workers and replace them with workers hired through the H-2A guestworker program. In April 2014, Sakuma filed an application with the Washington State Employment Security Department to hire 438 guestworkers from June to October of 2014. FUJ sent letters to the U.S. Department of Labor providing evidence that a willing domestic labor force already existed. The letter also sought to make the Department aware of the labor dispute between Sakuma and FUJ. According to the Immigration and Nationality Act (INA), which authorizes the H-2A programs, employers must comply with all applicable laws regarding pay and housing, and employers must not take action against workers who have filed complaints or engaged in labor disputes.⁸³ In May 2014, Administrative Law Judge Richard M. Clark rejected Sakuma's request for H-2A guest workers based on numerous problems related to housing, the hiring of minors, and rates of pay.⁸⁴ The use of this legal opportunity allowed workers to keep their jobs and prevent Sakuma from using a replacement workforce that would have reduced the FUJ's bargaining power.

By the fall of 2014, the utilization of these legal opportunities enabled FUJ to garner significant public support. C2C won the Food Sovereignty Prize from the US Food Sovereignty Alliance and FUJ was recognized by the Washington State AFL-CIO as an affiliated union—the first independent farmworker union.⁸⁵ However, public support was not enough to compel Sakuma to collectively bargain with their workers. Given

83. See Immigration and Nationality Act, 8 U.S.C. § 1188 (2012).

84. Gabrielle E. Clark, *Coercion and Contract at the Margins: Deportable Labor and the Laws of Employment Termination Under US Capitalism (1942–2015)*, 43 LAW & SOC. INQUIRY 618–46 (2018).

85. U.S. Food Sovereignty Alliance, *U.S. Farmworkers and Palestinian Farmers Share 2014 Food Sovereignty Prize*, U.S. Food Sovereignty Alliance (Sep. 9, 2014), <http://usfoodsovereigntyalliance.org/2014-prize/> [<https://perma.cc/8PSL-C8Y8>]; David Groves, *Familias Unidas por la Justicia Affiliates with the WSLC*, STAND (Dec. 7, 2015), <https://www.thestand.org/?p=45464> [<https://perma.cc/S7RX-4ENU>].

that Washington State does not provide agricultural workers with collective bargaining rights, farmworkers looked to other points of pressure they could leverage within the berry GVC.

Targeting the Distributor: Mobilizing Governance Opportunities

The FUJ established boycott committees in Bellingham, Seattle, and Olympia to put pressure on purchasers of local berries to avoid Sakuma's products.⁸⁶ However, since Sakuma marketed very few berries under its own name, boycotting its berries proved unworkable because it was difficult to explain to consumers how to adhere to the boycott. Organizers working with FUJ therefore conducted research on the fresh-berry value chain to understand the industry structure and where they might be able to apply pressure. The research uncovered that several branded products such as Häagen-Dazs (an ice cream producer and retailer) contained Sakuma berries and that Sakuma Farms supplied Driscoll's, a major berry distributor with a recognized brand name. The FUJ therefore began to call for a boycott of Häagen-Dazs and Driscoll's. The local Häagen-Dazs store quickly replied sympathetically and pledged to investigate the issue, but it soon became unclear how much the company was actually sourcing from Sakuma.⁸⁷ FUJ therefore decided to focus on Driscoll's because it also had a brand name with broad consumer recognition.

Driscoll's is the largest berry distributor in the world and the lead firm in the value chain for fresh berries in the United States.⁸⁸ A privately held company, it has operations in eighteen countries across five continents to distribute strawberries, blackberries, blueberries, and raspberries. To source

86. See generally Liz Jones, *Berry Pickers Call for Boycott Of Sakuma Brothers Farms*, KUOW (Aug. 20, 2013, 3:58 PM), <https://archive.kuow.org/news/2013-08-20/berry-pickers-call-for-boycott-of-sakuma-brothers-farms> [<https://perma.cc/XP3Z-JBUB>].

87. See Ansel Herz, *Sakuma Brothers Berry Boycott: Workers at a Farm Outside Seattle Demand Better Conditions and Wages*, THE STRANGER (Oct. 2, 2013, 4:00 AM), <https://www.thestranger.com/news/2013/10/02/17869474/sakuma-brothers-berry-boycott> [<https://perma.cc/4PZ6-LSUW>]; see also Ansel Herz, *Striking Haagen Dazs Berry Pickers Return to Work*, THE STRANGER (July 17, 2013, 12:30 PM), <https://www.thestranger.com/blogs/2013/07/17/17275137/striking-haagen-dazs-berry-pickers-return-to-work> [<https://perma.cc/79P9-HT9Z>].

88. Marianna Kantor, *Smart Predictions for The World's Largest Berry Producer*, FORBES (June 19, 2020, 3:27 PM), <https://www.forbes.com/sites/esri/2020/06/19/smart-predictions-for-the-worlds-largest-berry-producer/?sh=425dafbb4df5> [<https://perma.cc/CXE7-KBBB>].

its berries, the company works with four hundred to five hundred independent growers, which collectively employ around 115,000 farmworkers.⁸⁹ As the lead firm in the fresh berry value chain, Driscoll's has substantial power over growers because of its proprietary berry cultivars, brand recognition, and capacity to distribute cooled berries throughout the world. Indeed, Driscoll's has cultivated its brand identity primarily around the quality and flavor of its berries.⁹⁰ While it exercises more formal oversight over the quality of berries, its governance over labor conditions is implicitly organized through its relationships with independent growers. By organizing a boycott of Driscoll's, FUJ hoped to inflict some economic pain by tarnishing the company's reputation, to in turn compel it to take more responsibility for the labor conditions within the value chain, and ultimately force Sakuma to bargain with FUJ.

In 2014, the boycott was primarily focused locally in the Pacific Northwest. This changed in the following year when thirty-thousand berry pickers went on strike in San Quintín, Mexico. The eruption of labor unrest in Baja, California had significant implications for the fresh berry value chain and Driscoll's in particular. Workers in San Quintín were employed by BerryMex, a subsidiary of Reiter Affiliated Companies (RAC), which is the largest fresh multi-berry producer in the world. Not only is Driscoll's RAC's only customer, but the connection between Driscoll's and BerryMex is even more direct, since the CEOs of RAC and Driscoll's are brothers.⁹¹ While a shared target created an obvious link between the two labor struggles, another key factor further strengthened the ties between the two groups; workers across the fresh berry value chain in both Baja Mexico and the West Coast of the United States are primarily indigenous Oaxacans (Triqui, Mixteco, and Zapotec speakers). The cultural and linguistic connection between the workers led workers in FUJ and at BerryMex to begin coordinating through the *Frente Indígena de Organizaciones*

89. MARY SHELMAN, DRISCOLL'S: HARNESSING DIGITAL TECHNOLOGY TO DELIVER DELIGHT 3-9 (2017).

90. See Frances Dillard, *How Driscoll's has Navigated the Reinvention of its 100-Year-Old Brand*, FORBES (Nov. 21, 2017, 9:43 AM), <https://www.forbes.com/sites/onmarketing/2017/11/21/how-driscolls-has-navigated-the-reinvention-of-its-100-year-old-brand/> [<https://perma.cc/N36X-42UF>].

91. Stephanie Metzinger, *A Family Tradition: Reiter Brothers Build a Berry Legacy*, W. GROWER & SHIPPER MAG., Aug. 4, 2016, <https://www.wga.com/wgs-magazine/a-family-tradition-reiter-brothers-build-a-berry-legacy/> [<https://perma.cc/55MP-EMD4>].

Bionacionales, a cultural and political coalition of organizations that fight for the rights of indigenous peoples across Mexico and the United States. These connections were also aided by personal connections since some of the workers in San Quintín had been formerly involved in earlier UFW campaigns in Western Washington and with the CIW.⁹²

By joining together to draw attention to the poor labor conditions in the Driscoll's-controlled fresh berry value chain, workers in Baja Mexico and Washington State expanded the boycott.⁹³ In 2015, a growing number of consumers joined their campaign, including several organizations that wrote letters to Driscoll's signed by nearly ten-thousand individuals and organizations.⁹⁴ The pressure led Driscoll's to set up a meeting with members of FUJ and concerned NGOs. While Driscoll's expressed its support for Sakuma, it also responded to the campaign by rolling out two programs: first, a corporate code of conduct to guide labor relations on the farms with which the company contracted, and second, for some of the company's producers outside of the United States, the joining of new third-party fair trade certification programs.⁹⁵ Driscoll's corporate code of conduct, which it called its "Worker Welfare" standards, was based on the ILO Declaration on Fundamental Principles and Rights at Work.⁹⁶ As a result of the inclusion of the ILO standards, the Worker Welfare standards specifically recognized the right to freedom of association of agricultural laborers and the right to collective bargaining. These labor standards went well beyond the labor protections available to farmworkers under US

92. ANNELISE ORLECK, "WE ARE ALL FAST-FOOD WORKERS NOW": THE GLOBAL UPRISING AGAINST POVERTY WAGES 214 (2018).

93. See Sean McNulty, *Berry Boycott: Labor Disputes in Baja California Spill onto the Central Coast*, SANTA MARIA SUN (May 19, 2015), <https://www.santamariasun.com/news/berry-boycott-labor-disputes-in-baja-california-spill-onto-the-central-coast-14802336> [<https://perma.cc/4K3L-2MRP>].

94. *Driscoll's Berry Boycott and Labor Dispute Intensifies: Nearly 10,000 Consumers Tell Driscoll's: Don't Do Business with Sakuma Brothers Farm until they Negotiate Fairly with Farmworkers*, FAIR WORLD PROJECT (March 25, 2016), <https://fairworldproject.org/wp-content/uploads/2015/03/03-25-15-FWP-Driscolls-Petition-Final.pdf> [<https://perma.cc/LY65-MJVV>].

95. See generally *Labor Standards Updates: Message from Soren Bjorn, President, Driscoll's of the Americas*, DRISCOLL'S (last visited June 21, 2023), <https://www.driscolls.com/about/thriving-workforce/updates> [<https://perma.cc/9JNJ-Y9GE>].

96. INTERNATIONAL LABOUR ORGANIZATION [ILO], DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK (1998).

domestic law. As part of the Worker Welfare standards, Driscoll's also introduced third party audits of their independent growers.⁹⁷

Over the following year, the FUJ pushed Sakuma to comply with the Worker Welfare standards, but it steadfastly refused to recognize the Union. Over the course of 2015 and 2016, therefore, FUJ continued both to mobilize remaining legal opportunities as well as the governance opportunity they had successfully exploited through the development of Driscoll's Worker Welfare standards. In 2015, as a result of a lawsuit brought by FUJ in 2013, the Washington State Supreme Court decided that farmworkers across the state were entitled to ten-minute breaks during which they had to be paid the prevailing wage.⁹⁸ For FUJ, the case had the effect of conferring additional legitimacy on their organization and garnering media attention. It therefore helped FUJ intensify their boycott of Driscoll's, mobilizing the governance opportunity they had created by demanding that the corporation honor its promise to ensure freedom of association for workers employed at its growers as required under the Worker Welfare standard. During the 2016 season, workers and their allies staged numerous actions against Driscoll's, including actions outside their Watsonville headquarters that were featured in national publications.

As a result of the growing pressure, Driscoll's helped to mediate a Memorandum of Understanding between FUJ and Sakuma, which established a process for holding a secret ballot to determine majority support for the FUJ (modeled on California's Agricultural Labor Relations Act).⁹⁹ The MOU required Sakuma to begin negotiations for a binding agreement covering working conditions if FUJ won their union election.¹⁰⁰ In September 2016, farmworkers voted in a ballot to have FUJ represent them, with 77% voting in favor. In July 2017, after almost one year of negotiations, Sakuma signed a two-year labor contract with the FUJ. The contract guaranteed a \$15 minimum wage, set up a process for workers and management to calculate a fair piece-rate, established a grievance

97. Press Release, Driscoll's, Sakuma Brothers & FUJ: Boycott Resolution (last visited June 21, 2023), <https://www.driscolls.com/about/thriving-workforce/sakuma> [<https://perma.cc/Q9ZF-5D74>].

98. *Demetrio v. Sakuma Bros. Farms, Inc.*, 355 P.3d 258 (2015).

99. Driscoll's Press Release, *supra* note 98.

100. *U.S.: Sakuma opens door for potential union recognition*, FRESH FRUIT PORTAL (Jul. 8, 2016), <https://www.freshfruitportal.com/news/2016/07/08/u-s-sakuma-opens-door-for-potential-union-recognition/> [<https://perma.cc/83T3-GW2L>].

procedure, and prevented arbitrary dismissals. As part of the contract, FUJ agreed to end its boycott of Driscoll's.

THE CONTEXTUAL NATURE OF LEGAL AND GOVERNANCE OPPORTUNITIES

It is clear that both the CIW and FUJ faced difficult legal and economic circumstances when they tried to improve the wages and working conditions of their members. Since agricultural workers are excluded from the federal collective bargaining system, they do not enjoy the meager benefits of ossified labor laws, which might have provided a defense against unfair labor practices by the employer and a process to ensure the longevity of any agreed bargain. While FUJ could call on limited rights under state law to protect labor organizing, the CIW lacked even these limited protections in Florida. In addition, both farmworker movements face an increasingly consolidated market for agricultural produce, which imposes severe constraints on organizing workers and institutionalizing gains. While in the tomato industry this power has been exercised by consolidated buyers, in the fresh berry value chain it is distributors that hold power over the value chain. In both, however, brand name corporations have captured control over the value chain, making growers increasingly beholden to their demands. Farmworkers, who are already marginalized as a result of their immigration and minority status, face an uphill battle to obtain decent labor standards against these powerful forces. However, the CIW and FUJ demonstrate that even in this hostile legal and economic terrain, legal and governance opportunities remain for movements with the knowledge, creativity, and perseverance to recognize and exploit them.

Comparing these two cases reveals how legal opportunities—both those actively created and those already existing—played a critical role in the development of each movement. The CIW was able to participate in the prosecution of labor contractors using forced labor to publicly demonstrate how far labor conditions on Florida's farms had deteriorated. The CIW not only made use of this legal opportunity but also actively shaped it. The FUJ was able to call on state labor protections to guard their nascent organizing efforts and then intervene in the H-2A approval process

to prevent Sakuma Farms from hiring a labor force to replace politicized workers. However, as the legal mobilization literature highlights, the law offers benefits to movements that go beyond merely instrumental gains.¹⁰¹ Both the CIW and FUJ's utilization of the law shows that it had important constitutive effects. For FUJ, the existence of state labor regulations protecting the Union's freedom to organize allowed it the chance to pursue an antagonistic strategy that centered on their workplace. Indeed, the existence of these laws helped to constitute its identity as a labor union. For the CIW, participation in prosecutions was a central vector through which it gained legitimacy in the eyes of other actors, built relationships with sympathetic allies, and set in train a strategy that focused more on the sector than a single workplace. In this way, for both organizations, legal opportunities were constitutive of their identity, relationships with other actors, and ultimately, the strategy pursued.

Exploiting these legal opportunities did no more than spur their fledgling campaigns. To make meaningful gains, the CIW and FUJ had to gain an understanding of how their respective farm product was brought to the market via GVCs, and the resulting governance opportunities those respective processes created. Mapping the relevant GVC and key actors revealed the corporations and sectors that each movement could target in their campaign. For the CIW, the fast-food chains, supermarkets, and food service companies acted as the lead firms with the power to drive progressive changes if they could be enlisted to help. For FUJ, the lead firm in the fresh berry chain was a single distributor: Driscoll's. Both the CIW and FUJ realized that they had to go beyond the immediate employer in order to wage a campaign in an era of globalized food production.

By mapping and exploiting the governance opportunities in their value chains, each movement was also able to surpass the limited support offered by law. Although legal opportunities afforded each movement a measure of public legitimacy, governance opportunities enabled each movement to construct alliances with individuals and groups with shared concerns not only about farmworker labor, but also about other "values" that were operating within value chains. Indeed, FUJ and CIW partnered with workers from other sectors in their mobilizations, as well as with growing

101. MCCANN, *supra* note 42, at 10.

food movements that have emerged out of concern about the health and environmental consequences of the industrial food system. Schurman emphasizes that the nature of the goods produced by any industry or value chain is a key dimension of what confers industry opportunity structure with strategic openings and closures.¹⁰² Similarly, Bartley and Child emphasize firms' cultural vulnerabilities, particularly extending from branding¹⁰³—a set of legally trademarked symbols through which corporations seek to convey meanings to consumers but which in turn may be challenged and resignified by consumer and social movements.¹⁰⁴ This cultural dimension of value chain governance is often overlooked in much of the literature on GVC governance, which tends to emphasize only the economic elements of value.¹⁰⁵

The cultural meanings and values that facilitated alliances between diverse constituencies and groups in both FUJ and CIW's movements point to an important cultural dynamic between legal and governance opportunities. Socio-legal scholars have long maintained that the cultural meanings and resonance of legal decisions may play a much stronger role than the results of litigation itself.¹⁰⁶ Farmworker labor movements have sought to leverage legal decisions in culturally resonant ways. FUJ, for example, campaigned locally to "honor labor" and to remind people of their role as critical and exploited workers in the food system. The CIW's focus on labor trafficking was translated into culturally resonant frames around "modern slavery." Although these efforts to mobilize the meanings produced by legal opportunities were important in building alliances, it was by mobilizing governance opportunities that both movements were able to further expand and strengthen their networks with groups that may have had different concerns. Like legal opportunities, governance opportunities therefore may be most effective when their cultural meanings are leveraged by social movements to facilitate movement building. The cultural

102. Schurman, *supra* note 10, at 251.

103. BARTLEY & CHILDS, *supra* note 36.

104. ROSEMARY J. COOMBE, *THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW* (1998).

105. Havice & Campling, *supra* note 31.

106. E.g., STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS* (2d ed. 2004); MCCANN, *supra* note 42; MICHAEL PARIS, *FRAMING EQUAL OPPORTUNITY: LAW AND THE POLITICS OF SCHOOL FINANCE REFORM* (2010).

meanings produced through litigation may therefore play an important role for movements as they seek to pursue governance opportunities.

However, despite the achievements of FUJ and CIW, contemporary forms of agricultural production create a challenging environment for farmworker groups. Furthermore, existing legal arrangements create and distribute value and power along GVCs in ways that marginalize farmworkers. For the CIW, the substantive gains won through the Fair Food Agreement are dependent on buyers' commitment to purchasing tomatoes from Florida producers. Since the Fair Food agreements do not require them to purchase any particular quantity, buyers could shift their supply chains to Mexico or other countries with cheaper labor if they so choose—what scholars of value chains refer to as global labor arbitrage. In fact, we are already seeing an increase in Mexican tomatoes coming to the United States.¹⁰⁷ Similarly, FUJ signed only a short-term contract with their employer, which means that the new collective agreement might be a transient gain. If Sakuma decides not to bargain in the future, it would be very difficult for FUJ to assemble the same counter-networks to leverage Driscoll's Worker Welfare standards. Furthermore, research on global value chains suggests that labor and social movements that are more dependent on international investment are often less able to take advantage of governance opportunities due to state policies that favor capital investment over labor movements.¹⁰⁸ This is borne out by our comparative analysis as well. While farmworkers in Washington were able to mobilize the governance opportunity emerging from the fresh berry value chain, workers in San Quintín struggled to leverage Driscoll's Worker Welfare standards. Workers' inability to form an independent union with company recognition reflects major differences in state law between workers in Sakuma and Berry Mex. These findings suggest that, in the absence of corresponding legal opportunities, governance opportunities alone may not be enough for labor movements to improve their working conditions.

The foregoing analysis demonstrates that legal and governance opportunities need to be apprehended and exploited in a highly contextual manner. Not only do legal opportunities vary depending on the jurisdiction

107. GUAN, BISWAS, AND WU, *supra* note 67, at 3.

108. BARTLEY, *supra* note 32.

in question, GVCs span across various geographies with diverse political-economic structures, configurations of power between dominant actors, and social and cultural institutions. Additional complexity results from the fact that legal and governance opportunities interact in a myriad of ways, which creates openings for movements as well as deprives them of others. This means that the successes of one movement cannot be simply replicated in another context. This is not to say that movements cannot seek inspiration from each other and learn lessons about successful and not so successful strategies, but that the act of transplanting one successful mode of organizing to another needs to be highly sensitive to place and time.

CONCLUSIONS

In this Article, we proposed that it is important to study the relationship between legal opportunities emanating from state law and governance opportunities that arise from the organization of agricultural production through GVCs. While socio-legal scholars have long maintained the significance of state-based legal opportunities for social movement actors, and scholars of governance have maintained that private power can be leveraged for social gains, it is our contention that analyzing the interactive relationship between both is likely to have important implications for social movements that must navigate contemporary state-market relationships. Analyzing one to the exclusion of the other not only risks internalizing the constraints of supply-chain governance into our socio-legal analyses, it also overlooks the multiplex role of states in structuring the conditions of GVCs.¹⁰⁹

Our comparative study suggests that bottom-up socio-legal analyses of the contextual factors that drive labor and other social movements to mobilize legal and governance opportunities is central to understanding these matrices of power. Any such analysis will necessarily be highly contextual since the legal environment and particular value-chain dynamics

109. Rory Horner & Matthew Alford, *The Roles of the State in Global Value Chains: An Update and Emerging Agenda* (Glob. Dev. Inst. Working Paper Series No. 2019-036, 2019); Marion Werner, *Geographies of Production II: Thinking Through the State*, 45 PROGRESS IN HUM. GEOGRAPHY 178 (2021).

will yield different opportunities. Nonetheless, our analysis also points to some potentially cross-cutting insights. First, we found that legal and governance opportunities played a critical role in constituting the strategic visions and aims of the farmworker movements that we studied. While farmworker movements, like other labor movements, are today pursuing a range of different strategies, our study suggests that the early opportunities that movements apprehend play a key role in shaping organizational development and demands. Second, our study reveals critical cultural dynamics of both legal and governance opportunities often overlooked—whether those be the effects of legal decisions on the collective identity of workers movements, the cultural resonance of particular kinds of goods and services, or the meanings associated with particular brand identities—that created opportunities for both of the organizations that we studied. Finally, our study suggests that in the absence of legal opportunities, governance opportunities alone may fail to provide sufficient leverage for farmworker movements. Even as a group that has been excluded from most of the federal labor protections offered to other workers, farmworkers can still create and make use of legal opportunities that do exist. And when legal and governance opportunities are mobilized creatively, they can yield important gains for workers' movements.