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Toward a Sociology of Contract

Abstract: Economic sociology has neglected contract as an institutional foundation for market relations. It has also given inadequate attention to the role of forms of social difference such as race, gender, and sexuality in constituting market exchange. We argue that these omissions share common origins in the status/contract division that figured prominently in nineteenth-century sociological and legal thinking. In excavating these origins, we trace two alternative routes to "socializing the economy" associated with sociological and sociolegal traditions, respectively. The sociological approach rests on a dichotomous understanding of "status" and "contract," with the result that social ("status") relations are seen as regulating market exchange *from the outside*. By contrast, Legal Realists treat status and contract as copresent elements of social organization. Because status and contract are intertwined, they operate through the *internal constitution* of power and inequality in the bargaining relationship. We conclude by considering how insights from sociology and Legal Realism might be productively joined in analyzing the labor contract.

Keywords: contract, status, labor, economic sociology, Legal Realism

I. Introduction

A contract is a means of creating and enforcing an obligation—a promise backed by the sanction of the state (Pound 1931, 323). Ubiquitous both as a legal device that orders transactions in the market and as a social imaginary that shapes the self-understanding of liberal societies (Fraser and Gordon 1992; Stanley 1998; 2014; Abbott 2015), contract is nevertheless missing from one site where we might expect it to be present. As numerous scholars have observed, the otherwise thriving field of economic sociology paradoxically lacks a well-developed concept of contract (Suchman 2003; Swedberg 2003; Smith and King 2009; compare Dukes 2019). While economic sociologists have written voluminously on the market, the firm, networks, and other aspects of the institutional apparatus of capitalism, contract has not received similar attention. When contract does appear, it is typically as a synonym for

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the market or, less commonly, a way of naming the ideational regime of market capitalism. Thus, economic sociologists have not adequately considered contract as a relational technology that provides a legal infrastructure for market transactions, producing variation in the particular forms taken by exchange in modern capitalist societies.[1]

To be sure, contract is not *wholly* absent from the subfield, and indeed some of the most prominent economic sociologists have written on aspects of contractual relations, exploring contract as a feature of industrial organization (Marshall 1950; Selznick 1969; Dore 1983; Stinchcombe 1985; Streeck 1992; Dukes and Streeck 2023), the employment relation (Granovetter 1988; Kalleberg and Reeve 1992; Steinberg 2016), insurance markets (Heimer 1985), bankruptcy law (Carruthers and Halliday 1998), organ donation (Healy and Krawiec 2012), and intimate relationships from marriage to prostitution (England and Farkas 1986; Zelizer 2005). But these references to contract are sporadic and do not coalesce into a larger literature. Notably, sociologists who invoke contract tend to address economics or law rather than sociology (see Perrow 1986). Perhaps nothing better indicates the state of scholarship than the fact that in the first edition of the field-defining *Handbook of Economic Sociology* (Smelser and Swedberg 1994), the only references to "contract" in the index are to Williamson's (1994) chapter on transaction cost economics and Tilly and Tilly's (1994) chapter on labor and labor markets (in which they respond to Williamson's framework). Notably, these chapters are omitted from the second edition and "contract" does *not* appear in the index of the more recent *Handbook* (Smelser and Swedberg 2005).

Alongside the paucity of work on contract in economic sociology, we can point to another area where scholarship in the subfield is surprisingly thin: economic sociologists have paid little attention to how market processes are constituted through forms of social difference. In recent years, this deficiency has been the source of regular programmatic calls (see Bandelj 2019; Hirschman and Garbes 2021; Kornberg 2023), with some progress made in conceptualizing race (Robinson 2020; Korver-Glenn 2021; Norris 2023), gender and sexuality (Salzinger 2003; 2016; Zelizer 2005; Mears 2011; Hoang 2015; Krippner forthcoming), and citizenship status (Nakano Glenn 2002; Milkman 2020; Flores 2023) as central to the workings of market exchange. Notwithstanding these advances, the problem is longstanding and now seems endemic to the subfield. We again can turn to the first and second editions of *The Handbook of Economic Sociology* (Smelser and Swedberg 1994; 2005) for illustration. In the first edition of the handbook, Milkman and Townsley's (1994) chapter on "Gender and the Economy" took the subfield to task for its almost complete neglect of gender scholarship. A decade later, England and Folbre (2005) authored the chapter on gender and came to a similar assessment. Even more striking, outside of Light's chapter on "The Ethnic Economy" (Light and Karageorgis 1994; Light 2005), there was no chapter in the first or second edition of the *Handbook* (Smelser and Swedberg 1994; 2005) that dealt centrally with race or ethnicity. Race does not appear in the index of the first edition, and in the second edition, there is a single entry for "racial differences [in] consumption." This is especially remarkable given that sociology is arguably *the* science of social

[1] Our work builds on but differs from Suchman's (2003) important paper, "Contract as Social Artifact." While Suchman similarly observes the absence of studies of contracting in economic sociology, his intervention is largely a methodological one, suggesting that formal written contracts be deployed as a source of data in order to reveal the structure and meaning of relationships in market economies. While we find inspiration for our work in Suchman's analysis, our purpose here is less methodological than it is theoretical, seeking to understand what the absence of a concept of contract in economic sociology implies for the development of the field. Our program for a sociology of contract also differs from Suchman's in that we aim to move beyond the "contract as artifact" approach to a broader study of contract in the path of the Legal Realists, as we explain in Part IV of our article.

difference, with attention to race, gender, sexuality, citizenship, and other statuses understood as central to how social institutions are organized and produce effects in the world (see Ridgeway 2019).

The premise of this article is that these two problems are integrally connected to each other. But in order to find their relationship, we have to excavate the deep history of the discipline, returning to origins. Our purpose in the following pages is to explore both the absence in economic sociology of a well-elaborated concept of contract *and* inattention to forms of social difference in constituting market exchange by considering sociology's formation within the organizing dualisms of the liberal tradition (public/private, state/market, social/economic, collective/individual, coercion/freedom, etc.).[2] More specifically, we will suggest that economic sociology's double lacuna reflects the grounding of the discipline in the opposition between "status" and "contract" (arguably, the master division housing liberalism's many dichotomies) as two mutually exclusive modalities of human social organization (see Cooper 2017, 22). Following Maine's ([1861] 1931) influential formulation, classical sociological theorists insisted on understanding "modernity" in terms of the evolution of society from a system organized through relationships grounded in family and community to a market-based order in which contractual relations structured social life. In the former case, one's place in the social order was determined by "status," defined as a fixed social position given by law and social convention. In the latter case, voluntary "bargains" transacted in the marketplace determined one's trajectory through social space.[3]

While the evolutionary schemas of the classical thinkers fell out of fashion by the mid-twentieth century, the status/contract dichotomy was made suitable for a variable-oriented social science by flattening historical typologies into analytical ones (Bender 1978). Reconfigured as analytical categories rather than discrete stages of historical development, "status" and "contract" represented countervailing elements necessary for the comparative analysis of developed industrial societies (see Selznick 1969; Fox 1974; Streeck 1992). But while twentieth-century sociologists succeeded in lifting status and contract out of an evolutionary historical progression, the concepts continued to carry meanings not totally dissimilar from their nineteenth-century progenitors (compare Kahn-Freund 1967). Contract referred to the realm of voluntary agreements, undertaken in expectation of mutual benefit, a "consideration" in the language of law (Stanley 2014, 56). Status, by contrast, referenced rights and obligations gained by virtue of belonging to a particular category, whether legal (wife, worker, welfare recipient, prisoner/parolee, etc.) or social (race, gender, sexuality, etc.) (see Turner 1988; compare Selznick 1969, 62; Streeck 1992, 43, 51; Dukes and Streeck 2023, 6, 11). What made

[2] Liberalism is a tricky concept. We refer here to classic liberalism—that is, a body of thought that identifies the market as a self-ordering domain that stands opposed to state power—and *not* to the connotations of the term in contemporary American political discourse where "liberal" is a synonym for "left" or "progressive." For the most part, sociologists have not reflected deeply on how their discipline has been formed within the broad tradition of liberalism, a result of the severing of sociological from political theory. For notable exceptions to this statement, see Camic (1979), Collini (1983), Seidman (1983), Wallerstein (1991), Starr (1992), Somers (2008), Clemens (2009), and Abbott (2015).

[3] For Maine, the critical aspect that distinguished contract from status was its *voluntary* nature. In this regard, Maine treated as contractual any social situation that was freely chosen, *even if once chosen its terms were regulated by the state*. By contrast, status referenced circumstances in which an individual's capacities to choose were compromised (that is, the paradigmatic status relations were those that governed the care of infants and the insane). Maine's distinction was attenuated in later usages, as the role of the state in defining the terms of even a voluntarily-entered-into relationship (for example, marriage) came to be considered crucial in determining its character as status rather than contract (see Kahn-Freund 1967). Weber ([1922] 1978, 672–73), with typical acuity, handled this ambiguity by defining the "status contract": a relationship freely entered into that nevertheless involved the state in regulating its terms (Dukes and Streeck 2023, 7). Weber's thesis, consistent with Maine's broader argument, was that status contracts would be progressively displaced by "purposive contracts"—agreements in which both entry into *and* the terms of the relationship were freely determined by the parties to a bargain.

status distinct from contract for both classical and contemporary sociologists was that one could not "bargain away" one's position in a status hierarchy (Streeck 1992, 51, 74).

These well-worn concepts inform our own analysis, but in deploying them we seek to avoid what Dukes and Streeck (2023, 4) call an "unthinking application" of ideas that have a complex (and problematic) lineage. In what follows, we argue that the lingering influence of the status/contract schema is reflected in a dichotomous mode of thinking in the discipline that persists into the present—and can help account for the paradoxical absences in economic sociology noted above. Here we note a *dual displacement* engineered by the status/contract division: on the one side, contract (and the process of market exchange it undergirds) is treated as a socially barren terrain, itself not holding sociological content; on the other side, status is expelled from the domain of the market and considered as a "noneconomic" factor, with limited relevance for the study of market processes. The result, as Fourcade and Healy (2013) astutely observe, is a conception of the market as amplifying but not itself *generating* status inequalities that are viewed as originating outside the domain of contract relations (see also Scott 1986; Milkman and Townsley 1994).

Our intention in excavating the terrain formed by the status/contract dichotomy is to make categories that shape the discipline through their *absence* more readily available for sociological analysis and repurposing.[4] Our broader purpose is to consider alternative strategies for "socializing the economy," that is, for reclaiming the economy as a proper object of social analysis from neoclassical or laissez-faire economics.[5] In the pages that follow, we develop this analysis along two tracks. In Part II of the article, we examine the treatment of the concept of contract in the writings of the classical sociological theorists, with a particular focus on Durkheim's extensive explorations of the evolution of the contract form. We trace how the status/contract division imprinted the early formation of the discipline, noting that Durkheim drew on this dualistic model of social development, positioning the institution of contract as a *void* in his social theory. Since contract itself was empty, lacking in thick solidarities and other forms of social ordering, the emphasis in the Durkheimian approach was on the social institutions that regulated contractual relations *from the outside*.[6] We find a related externalization of regulation in more recent sociological theorizing. Here we examine how Polanyi's notion of "embeddedness" reworked the status/contract division and carried it into contemporary economic sociology. We suggest that the legacy of the Polanyian formulation of embeddedness (as well as later incarnations of this concept) is to import a dichotomous understanding of the relationship between status and contract from the classical sociological tradition, resulting in a thin concept of the market and ultimately eliminating contract from the purview of sociology altogether.[7]

[4] Here again we follow Dukes and Streeck (2023, 4), who make a similar excavation of status/contract in their important new book: "[W]e require a reconstruction of our inherited concepts and a better understanding of how they were connected to the circumstances of their time, so we can develop them further to match the circumstances of today."

[5] We use "neoclassical economics" and "laissez-faire economics" interchangeably in our discussion below. The latter term has an admittedly antiquated feel, but it has the advantage of being historically appropriate for the late-nineteenth- and early-twentieth-century social theorists whose writings we explore in our article. See Fried (1998) for a similar usage.

[6] Subsequent commenters typically refer to these external forms of regulation as the "noncontractual foundations [or conditions] of contract"—a term that Durkheim himself did not use.

[7] Our attention to Durkheim and Polanyi in the following discussion is necessarily selective, and some readers will miss a fuller analysis of the writings of Marx and Weber, among other progenitors of classical sociological theory. We give close attention to Durkheim and Polanyi because we see their work as most influential in establishing the foundation for what becomes the "embeddedness" paradigm in contemporary economic sociology (see Granovetter 1985; Block and Somers 2014). The point is debatable, of course.

In Part III of the article, we draw on the early-twentieth-century Legal Realists—writers who shared a great deal with Polanyi in terms of their overall goal of countering the worldview of laissez-faire economists (Block 2013)—in order to conceive the possibilities of an economic sociology based on an expanded notion of contract. Notably, Legal Realists directly confronted the status/contract division—which shaped the terrain of law just as it did the emerging field of sociology—and *rejected* it. Their analysis suggested that rather than discrete forms of social organization, historically or analytically, status and contract should be understood as mutually imbricated elements in any functioning economy. This reworking of a key instrument of liberal thought better positioned Legal Realists to theorize contract in ways that avoided the dichotomous modes of thinking that we suggest characterized sociological approaches to similar problems. Accordingly, Realist writers such as Morris Cohen and Robert Hale developed an analysis of the economy not by beginning from the division of social life into opposed realms of "status" and "contract," but instead by positing an expansive theory of contract that absorbed rather than excluded sociological content. As such, rather than conceptualizing contract as a domain that needs to be *externally* regulated and ordered by social institutions, the emphasis in the Realist approach is on the *internal* constitution of contractual relations by the delegation of public authority to private actors (Hale 1920; 1935; Cohen 1933).

Here we might express the difference between sociological and Legal Realist approaches in terms of a key problem that each tradition addresses, beginning from a different premise about the nature of contractual relations. Starting from a thin notion of contract, the sociological approach foregrounds the problem of how an economy organized around market exchange nevertheless achieves some measure of stability (Streeck 1992). In the sociological approach, then, order must be supplied by institutions external to contract (whether law or norms in the classical writings, or social ties in more recent economic sociology; on the latter, see Granovetter 1985). In contrast, the Realist approach starts from the presumption that contract *already* contains mechanisms of social ordering, not because the market is a self-regulating regime (as in the view of laissez-faire economists) but because delegations of state authority constitute contractual relations. Hence the problem that Legal Realists grapple with is not how to stabilize exchange externally but how contract institutionalizes relations of power and inequality (Fried 1998), including inequalities organized through status relations. In the one case, then, status operates on contract as an *external* constraint providing order or stability; in the other, status and contract are intermingled as elements each *internal* to the functioning of the economy.

Having laid out two alternative approaches to "socializing" the economy, we consider what can be learned from each in order to develop a more satisfying sociology of contract, generating a series of propositions focused on aspects of the labor contract. We suggest that each of the two traditions we explore has something to offer the other, in the process suturing the lingering remnants of the status/contract dichotomy into a more holistic analysis of economic processes. Legal Realism offers economic sociology a concept of contract that contains (rather than expunges) sociological content, providing a rich account of how power and coercion structure relations among parties to a "bargain." But notably, these relations of coercion are too narrowly conceived in the Realist paradigm as involving only social class: *capitalist* versus *worker* and *producer* versus *consumer* (Kennedy 1991). Here, we can draw on the more elaborate conceptual repertoires for analyzing status inequalities available in the broader discipline of sociology (if not in economic sociology proper, for reasons we elaborate), enabling a fuller understanding of the varied forms of social difference along which contract carries power and inequality into exchange (see Tilly 1998; Massey 2008; Ridgeway 2011; 2019; Brubaker 2015). Together, our proposed merger of sociological and sociolegal approaches posits contract as forming the organizational sinews by which social difference constitutes exchange in market

economies (compare Acker 1990; Ray 2019), advancing a generative analysis of a more fully socialized economy.

II. Socializing the Economy: Economic Sociology

While sociology as a discipline draws on diverse sources, classical sociological thinkers share a common scaffolding in the positing of two opposed modalities of social organization that are seen as comprising distinct historical stages in a progression toward "modernity" (or, less commonly, as countervailing elements in the same society). Notably, classical sociological theorists present these two modalities of social organization differently, but all broadly endorse a stark distinction between the affective (if also hierarchical) bonds of community and the impersonal (if also emancipatory) logic of market exchange (see Bender 1978). Marx's (1975) early writings on alienation, which presented a vision of a fragmented capitalist society standing against a prior (and lost) condition of wholeness or unity, offered one version of this dichotomy.[8] Maine's ([1861] 1931) formulation of the inexorable march from ancient societies based on *Status* to modern societies based on *Contractus* represented another version. Notably, Tönnies ([1887] 1957) drew on both Marx and Maine in his influential conceptualization of *Gemeinschaft* and *Gesellschaft* (Parsons [1937] 1967, 687). Like Maine, Tönnies discerned a movement from a communal society in which the individual was submerged into a larger whole organized around familial and kinship relations to one in which individuals broke free of prescripted social roles and pursued instrumental goals through impersonal relations of contract; like Marx, Tönnies was ambivalent about the "progress" this development represented and longed for a return to a communal order (even, as with Marx, a communal order remade through the intervening passage into modernity) (Dale 2010, 93–95).[9]

As Parsons noted ([1937] 1967, 686–94) in his astute commentary on Tönnies, the key distinction between these two forms of social organization is not that Gemeinschaft is "institutionalized" (in family, religion, custom, etc.), whereas Gesellschaft liberates the individual from institutional rules and structures. Both "community" and "society" are fully institutionalized, although in different ways. Gemeinschaft—the status order—is institutionalized *organically*, with the result that individual actions can only be understood "in the context of the wider total relationship between the parties . . . [that] transcends these particular elements" (ibid. at 691). By contrast, Gesellschaft—the order of contractual relations—constitutes social relationships only for the specific and limited purpose of achieving the immediate objective; there is no greater whole that anchors and gives meaning to individual actions. When I enter a store to buy a gallon of milk, my relationship to the clerk revolves around this transaction, and not on anything larger that we may (or may not) share in common. While we have not here entered the world of purely spontaneous agreements theorized by Smith and Spencer, it is critical to note that "the institutional rules are *external* to the relations in question, regulating them from the outside" (688, emphasis added).

This last point is of fundamental importance for understanding how contract recedes from the agenda of economic sociology by the mid-twentieth century. Here we can consider Durkheim's reworking of

[8] Marx's famous description of the passage from feudalism to capitalism in the *Manifesto* is also on point: "The bourgeoisie . . . has put an end to all feudal, patriarchal, idyllic relations. It has pitilessly torn asunder the motley feudal ties that bound man to his 'natural superiors,' and has left remaining no other nexus between man and man than naked self-interest, than callous 'cash payment'" (Tucker 1978, 475).

[9] For his part, Weber harbored some skepticism regarding Tönnies's formulation of Gemeinschaft and Gesellschaft (Springborg 1986, 187). Nevertheless, with his emphasis on rationalization in modern societies, Weber endorsed the same stark division: "The market and its processes . . . knows nothing of honor" (Weber [1922] 1978, 936).

the status/contract dichotomy as providing an essential link between Tönnies and later work in economic sociology. As Lukes (1985) has observed, Durkheim's ([1893] 1984) stylized contrast between "mechanical solidarity" and "organic solidarity" bore more than a superficial resemblance to Gemeinschaft and Gesellschaft.[10] Yet, notably, Durkheim rejected Tönnies's account of Gesellschaft as a form of social organization devoid of the meaningful forms of human connection that had characterized traditional village life. Indeed, Durkheim intended his concept of organic solidarity to suggest that modern industrial societies could produce social cohesion internally, as increased interdependence between individuals generated and sustained moral ties. Accordingly, industrial societies did not need to rely primarily on the imposition of external regulation in the form of a heavy-handed state to create social order, as Tönnies had suggested (Lukes 1985, 144–46). And yet, insofar as the institution of contract itself was concerned, Durkheim followed Tönnies's basic stricture that the institutional rules that regulate exchange must be external rather than internal to the contract relation. In this regard, Durkheim suggested that the modern consensual contract based on an ad hoc meeting of independent wills is not sufficient as a source of social order, but of necessity draws on elements outside itself.

What precisely are these "extracontractual" elements, and should they really be considered as *external* to the contract itself? Durkheim's formulation of the problem in *The Division of Labor* is full of complexities and ambiguities that merit careful consideration. Insofar as Durkheim referred to formal law and the state, he tended to discuss these as regulatory forces operating on contractual agreements from a position of exteriority: "[W]e know that a contract is not sufficient in itself, but supposes a regulatory system that extends and grows more complicated just as contractual life itself" ([1893] 1984, 302). Here this regulatory system and the contractual agreement undergirded by it are treated as foreign objects, developing together, but fully distinct. But of course, it is not only formal law that is necessary to stabilize contractual arrangements. In contesting Spencer's view of contract as reflecting the spontaneous alignment of individual wills (and anticipating contemporary theorists of "relational contracting" such as Ian MacNeil and Stuart Macaulay),[11] Durkheim noted the impossibility of forecasting all contingencies that might impinge on the realization of an agreement. "If . . . we had each time to launch ourselves afresh into these conflicts and negotiations necessary to establish clearly all of the conditions of the agreement, for the present and the future, our actions would be paralyzed" (Durkheim [1893] 1984, 161). But contracting parties do not reinvent the wheel every time they enter into a bargain, instead relying on past precedent, customary practice, and moral rules to bind their partners in exchange. In this sense, as Durkheim argued, "voluntary" agreements are not really voluntary. We may enter into bargains of our own volition, but once we sign a contract, other elements bear down on us. Now the "law of contract"—understood broadly to encompass not only formal rules but also the sedimented behavior reflected in social custom, longstanding tradition, and diffuse moral codes—"constitutes the [very] foundation of our contractual relationships" (ibid. at 161). In this context, it is less clear that these "extracontractual" supports are external to the contract at all. The contract and its supporting integument have begun to meld.

[10] Durkheim's choice of terminology is the source of some confusion, especially given Parsons's ([1937] 1967, 691) characterization of Gemeinschaft (corresponding to Durkheim's "mechanical solidarity") as constituting relationships "organically." Durkheim uses "organic solidarity" to characterize modern societies in reference to the manner in which differentiated roles are integrated through the division of labor, much as the functioning of different organs are coordinated within the organism ([1893] 1984, 85). Tönnies and Durkheim directly (and contentiously) engaged each other over how Gemeinschaft and Gesellschaft should be understood (see Aldous, Durkheim, and Tönnies 1972).

[11] We discuss the relational contracting paradigm in detail in Part IV of the article.

Fortunately, Durkheim's argument became less ambiguous in his later writings on contract, in which he elaborated on and developed the initial formulations offered in *The Division of Labor*. In a series of lectures originally delivered between 1890 and 1900 and first published in English in 1957 as *Professional Ethics and Civic Morals*, Durkheim offered a detailed history of the institution of contract, embedding within it the very status/contract division that also served as the scaffolding for his larger argument about the evolution of modern market-based societies. Accordingly, Durkheim ([1957] 1992, 176) distinguished between juridical bonds derived from "a state or condition in being, of things or of persons in relation" and "a state not yet in being of things or of persons, but simply desired or willed on both sides." Durkheim's analysis seemed to suggest that the latter circumstance, which corresponds to contract, is almost always dependent on the former, which corresponds to status. A marriage, for example, is a contract—an agreement entered into voluntarily—and yet it is entirely dependent on the institution of the family, which is most certainly not a voluntary relationship. In this manner, Durkheim argued that status relationships necessarily undergird contractual relations: "[M]en's wills cannot agree to contract obligations if these obligations do not arise from a status in law already acquired, whether of things or of persons; it can only be a matter of modifying the status and of superimposing new relations on those already existing. . . . The contract itself cannot constitute the primary foundations on which the right of contract exists" (ibid. at 177).

Durkheim illustrated this basic point by surveying the varied contractual arrangements that preceded the emergence of the modern consensual contract. These arrangements gain efficacy not merely by giving expression to the will of parties to a transaction, but by enacting an external state or condition that exists prior to and extends beyond the exchange (Durkheim [1957] 1992, 179). In this sense, the *blood covenant* binds not because of the pledge, but because in the mixing of blood the parties to the agreement are joined as one. Similarly, in a *real contract*, in which a material object is transferred between individuals, it is not the making of a promise but the invocation of the laws of property that gives the obligation force. The *solemn contract* moves closer to a consensual contract in that in this case the expression of the oath (and therefore the will of the parties) is foregrounded, but even here words must be uttered according to a specific formula in order to endow the exchange with a sacred quality. Ultimately, it is this ritual, and not the meeting of two wills, that makes the solemn contract binding. "If the solemn ritual is lacking, there is no contract," Durkheim observed (ibid. at 183).

Inevitably, as commercial relations grew more extensive with the development of the market, embedding every market transaction in such ritual formalities became increasingly cumbersome (Durkheim [1957] 1992, 191). As these rituals were abandoned, the consensual contract finally made its appearance in the development of market society. Yet even with the emergence of the modern contractual form, the nature of contract has not changed: "The binding force, the action, are supplied from without" (ibid. at 194). Whereas for centuries, the power of the contract to compel performances was understood "to reside . . . in the formula pronounced, the gesture made, the thing delivered" (204), now law and a generalized morality give force to contractual relations. Accordingly, Durkheim conceptualized the consensual contract as a void, a shadowy realm, *with everything important happening around it*.

Thus, for Durkheim, the status/contract dichotomy is manifested both in two distinct forms of social organization characterizing different historical stages in the evolution of society *and* two distinct organizing principles operating within the more recent formation. With regard to the first dimension, Durkheim followed Maine and Tönnies in distinguishing between an earlier stage of social development based on communal relations organized primarily around kinship-based affiliations and a later, modern stage organized around exchange in the market. With regard to the second dimension,

Durkheim suggested that the status/contract dichotomy reappears as a structuring principle *within* modern market-based society, as contract relations must be regulated "from without" (194) by enduring social relationships, custom, morality, and law. In this regard, status and contract are initially intermingled, but as market exchange becomes more firmly established, sociological content is increasingly expelled from contract relations.[12]

This move is a consequential one for the subsequent development of economic sociology, as Polanyi built his influential notion of "embeddedness" on the foundation provided by the classical sociological theorists (Beckert 2009, 42).[13] Thus, Polanyi (1968a, 83–84) adopted Maine's basic schema, but rather than viewing the inexorable march from status to contract as a progressive social development, Polanyi followed Tönnies in considering the premodern economy of status relations as the realm of true human community and the emergence of the market economy as reflecting a state of separation from that community (Dale 2010, 94; compare Özel 1997). Polanyi's (1968a; 1968c) indebtedness to Maine and Tönnies is most evident in his essays "Aristotle Discovers the Economy" and "Our Obsolete Market Mentality," in which he directly equated the condition of "embeddedness" to Gemeinschaft (or status) and the condition of "disembeddedness" to Gesellschaft (or contractus) (see Gemici 2008, 17–18; Dale 2010, 192).[14] In these writings, Polanyi treated the first condition as historically prior to the second, and considered each as reflecting distinct forms of social integration—reciprocity and redistribution in the case of "embedded" economies, and market exchange in the case of the "disembedded" economy:

> It is now possible to say that *status* or *Gemeinschaft* dominate where the economy is embedded in non-economic institutions; *contractus* or *Gesellschaft* is characteristic of the existence of a motivationally distinct economy in society. . . . *Contractus* is the legal aspect of exchange. It is not surprising, therefore, that a society based on *contractus* should possess an institutionally separate and motivationally distinct economic sphere of exchange, namely, that of the market. *Status*, on the other hand, corresponds to an earlier condition, which roughly goes with reciprocity and redistribution. As long as these latter forms of integration prevail, no concept of economy need arise. The elements of the economy are here embedded in non-economic institutions, the economic process itself being instituted through kinship, marriage, age-groups, secret societies, totemic associations, and public solemnities. (Polanyi 1968a, 84)

There are some difficulties associated with mapping Polanyian concepts onto the formulations of classical sociological theory in this fashion. In particular, Polanyi cannot reasonably be interpreted as theorizing historical "stages" in the way that this passage might seem to suggest (Gemici 2008, 19; Beckert 2009, 53; Peck 2013b, 1557), and indeed his dislike of evolutionary modes of theorizing underpinned his rejection of deterministic versions of Marxism (Polanyi 1968b, 156). Relatedly, embedded and disembedded economies do not for Polanyi exist as fully discrete types: "In the nature of things the development from embedded to disembedded economies is a matter of degree" (Polanyi

[12] A similar progression is evident in Weber's ([1922] 1978, 668–81) account of the evolution of "status contracts" and "purposive contracts": as contract relations converge on the modern, transactional form, the contract is less able to "hold" sociological content.

[13] Polanyi appears to have read but not deeply engaged Durkheim's writings. Instead, it appears that Durkheim and Polanyi were both influenced by Tönnies (see Dale 2016, 25). On the synergies between Durkheimian and Polanyian approaches (in spite of sparse evidence of a direct relationship between them), see Steiner (2009).

[14] Polanyi (1977, 47–49) similarly draws on Maine and Tönnies in formulating his embeddedness concept in his final (posthumous) work, *The Livelihood of Man*.

1968a, 82).[15] Nevertheless, there are critical insights that come from recognizing the influence of Tönnies in particular on Polanyi's thought.[16] Notably, Polanyi takes from Tönnies the key idea that Gemeinschaft and Gesellschaft—or embedded and disembedded economies—are each fully institutionalized in laws, norms, and culture. In other words, a society organized through contract depends on institutions in the same way that a society organized through kinship does, although the specific institutional basis of each society differs. In this regard, Polanyi's characterization of the economy as "disembedded" does *not* connote the self-regulating (in other words, deinstitutionalized) market of neoclassical theory (Peck 2013a, 1541; compare Cangiani 2011; 2021).[17] In fact, theorizing the distinct institutional structures of embedded and disembedded economies forms the basis of Polanyi's (1957; 1968a; 1968c; 1977) comparative project to understand the changing place of economy in society developed in his later work.

To appreciate this point, it is necessary to consider more fully what Polanyi means by "embeddedness" and "disembeddedness"—terms he used sparingly (or not at all, in the latter case) in *The Great Transformation* (Polanyi [1944] 2001) but elaborated on more systematically in later writings (see Polanyi 1968a; 1968b; 1968c; 1977, 47–49).[18] According to Polanyi, "embeddedness" references a situation in which the "economy"—understood broadly as the set of activities through which material provisioning is secured—is fully enmeshed in noneconomic institutions. In premodern societies, there is no separate "economic" institution corresponding to the pursuit of material provision, and there are no discrete "market" motivations geared to such activities ("hunger" or "gain"). Rather, the pursuit of one's livelihood is coterminous with the carrying out of kinship obligations, the seeking of political power, the observation of religious rituals, and other activities that constitute social life. Consequently, the pursuit of livelihood in premodern societies is governed by the diverse motivations that spring from these varied institutions and never itself experienced as distinctly "economic." By contrast, "disembeddedness" references a situation in which the economy has become differentiated from noneconomic institutions, generating its own specific set of motivations ("hunger" or "gain"), and organizing material activity in line with the image it projects of "economic man." In other words, in modern societies, the economy is institutionalized as a separate sphere, and is no longer experienced as intertwined with noneconomic institutions such as the family, politics, and religion (Özel 1997; Gemici 2008; Dale 2010; Krippner 2017). Identifying the emergence of the disembedded economy in the nineteenth century as a singular historical departure from every preceding form of social organization, Polanyi writes:

> In this way an "economic sphere" came into existence that was sharply delimited from other institutions in society. Since no human aggregation can survive without a functioning productive apparatus, its embodiment in a distinct and separate sphere had the effect of

[15] Concretely, this means that reciprocity, redistribution, and market exchange exist in mixed form in *all* societies, with one or another form of integration serving to coordinate the others. As with Durkheim, then, there is a tension here between the positing of a historical progression and the more analytical use of "status" and "contract" as elements present in any social order (see Gemici 2008).

[16] According to Dale (2016, 25), few other thinkers made a greater imprint on Polanyi's thought than Tönnies.

[17] As Cangiani (2011, 193, emphasis added) pointedly observes, "Market society [in Polanyi's analysis] is *instituted* as disembedded."

[18] In elucidating the concepts of embeddedness and disembeddedness in the context of writings produced after the publication of the *Great Transformation*, we follow the lead of Cangiani (2011, 178), who suggests that the paired concepts can best be understood in the context of Polanyi's "comparative theory of economic systems and institutional change." Notably, most readings of the concepts in contemporary economic sociology depend more fully on Polanyi's critique of market liberalism especially as presented in the *Great Transformation*, which results in a somewhat different interpretation than the one we present here (as discussed below).

> making the "rest" of society dependent on that sphere. This autonomous zone, again, was regulated by a mechanism that controlled its functioning. As a result, the market mechanism became determinative for the life of the body social. No wonder that the emergent human aggregation was an "economic" society to a degree previously never even approximated. "Economic motives" reigned supreme in a world of their own, and the individual was made to act on them under pain of being trodden under foot by the juggernaut market. (Polanyi 1968c, 63)

To restate, the key point here is that a disembedded economy—*no less than an embedded one*—is the product of specific institutional arrangements (Cangiani 2011; 2021). Accordingly, it is a particular way of configuring social organization—not nature—that dictates that social life takes a market shape ("making the 'rest' of society dependent on that sphere"). Although Polanyi is quite explicit in insisting that no economy (even a disembedded one) exists outside of an institutional framework (or, for that matter, outside of society),[19] the institutional arrangements of the disembedded economy nevertheless mimic the expectations of economic theory that the market operate as a "self-regulating" system (see Krippner 2017).[20] While this does not make the market *actually* self-regulating, precisely because specific institutional arrangements are necessary to produce this effect, appearances dictate otherwise. It is telling that Polanyi himself recognized, quite presciently, that his formulation would invite confusion:

> On the face of it, such a proposition [of the disembedded economy] must appear almost self-contradictory. It may seem to imply the very overestimation of the importance of the economy against which it ostensibly wishes to forewarn. However, this is by no means the case. To assert that market-centered habits tend to be accompanied by a certain kind of economic rationale is entirely compatible with an outright rejection of the fallacious view of a timeless predominance of the economic factor in human affairs. (Polanyi 1977, xlvi)

The last observation is critical, as it reminds us that Polanyi's analysis is a historical one (see Desan 2023). Here Polanyi is writing in the mode of Marx ([1867] 1992), who similarly took bourgeois economists to task for falsely generalizing conditions specific to industrial capitalism to all of human history (see Krippner 2017). But this is also where, for purposes of contemporary economic sociology, Polanyi's embeddedness/disembeddedness formulation proves most problematic. As we have suggested, when considered in a broad comparative framework (that is, against premodern societies organized through reciprocity and redistribution), Polanyi presents the "disembedded" economy as the product of historically specific institutional arrangements. When Polanyi explores features of markets by looking *within* capitalist societies, however, he provides an account that takes the neoclassical version of the market more or less at face value, as numerous scholars have noted (see Steiner 2009; Dale 2010; Peck 2013b; Gemici 2015; Holmes and Yarrow 2019; Özel 2019). In other words, Polanyi's market *in capitalism* conforms to the deinstitutionalized abstractions of economic theory, lacking a concrete account of buying and selling relations, much less a developed account of

[19] As Dale (2010, 202) notes, "The term [disembeddedness] does not denote the economy's separation from *society* but from non-economic institutions [such as family, politics, and religion]."

[20] Notably, there are strong echoes in Polanyi's writings of the more recent social science idea of performativity (Callon 1998; Mackenzie 2007; Mackenzie, Muniesa, and Liu 2008). As Block and Somers (2014, 107) observe, "[E]conomic theories and social science models do not represent and generalize already existing entities but rather *make* markets, economic practices, and indeed entire market societies." See Somers (2022) for an elaboration of the performative aspect of neoclassical theories of the market.

the legal apparatus of contract that constitutes these relations (Lie 1991).[21] To be sure, Polanyi's ([1944] 2001) narrative of the self-regulating market as developed especially in *The Great Transformation* theorizes the "double movement" as a mechanism by which the market comes to be enmeshed in protective measures imposed by the state as capitalism develops, resulting in a more complex and variegated social structure. But what is most important here is that these social protections are imposed on market exchange *from the outside* (Özel 2019, 137), enclosing the market in a set of legal rules and social conventions that prevent its destructive tendencies from eroding collective solidarities and attenuating the social bonds that hold society together. Here Polanyi, like Durkheim, followed Tönnies's original strictures: the institutional rules that govern market exchange—including law and social custom—must necessarily be *external* to relations of contract.[22]

How much do these arguments matter for the practice of contemporary economic sociology? The question is relevant because more recent sociological appropriations of embeddedness have attempted in different ways to pry the concept loose from Polanyi's formulation as we have presented it here. Among the most influential of such efforts is Granovetter's (1985) well-known social network version of embeddedness, which rejects the distinction that Polanyi sought to make between premodern and modern economies. More specifically, Granovetter argues that premodern economies were *less* embedded and modern economies *more* so than Polanyi made them out to be, with a greater role for market exchange in the former type of society and more elaborate personal relations governing economic activity in the latter. Since economic sociology has largely restricted its attention to modern market economies, this equates to the position that *all* economies are embedded (albeit in varying degrees) (compare Barber 1995). But notably, Granovetter's insistence that "embeddedness" be understood in terms of the concrete social ties that span market transactions results in a wholly different concept than the one Polanyi invoked (see Krippner 2001; Krippner and Alvarez 2007; Beckert 2009; Dale 2010; Cangiani 2011), useful for understanding interpersonal and interorganizational social structures but not for apprehending broad patterns that organize societies at a macro level. In this sense, Granovetter's concept is not Polanyian at all, and yet some of the difficulties with the Polanyian concept reemerge, as the social network construct also seems to cede the market (and its associated contractual apparatus) to neoclassical economics (see Peck 2005; Krippner and Alvarez 2007), positing a familiar dualism in which an (asocial) market mechanism is enveloped in social relations (here understood as network ties) that provide it structure and stability (Krippner 2001).

A second reinterpretation of Polanyi's concept, hewing much closer to the original, is the "always embedded economy" elaborated by Block and Somers (2014).[23] While this influential formulation of the embeddedness thesis differs from the Granovetterian version in many respects, Block and Somers share Granovetter's firm rejection of the distinction between premodern embedded and modern

[21] It is noteworthy that the study of modern market economies disappeared from Polanyi's research agenda in his later work, as he turned his attention entirely to the study of non-Western (that is, nonmarket) economies. However laudable this research program in reaching beyond the ethnocentrism of social science as practiced at the time, it nevertheless had the unfortunate effect of seeming to cede the study of market economies to formalist (that is, neoclassical) economists (see Peck 2013b).

[22] In treating Polanyian versions of the embeddedness thesis as suggesting that contract is *externally* regulated, the first author reverses in part her own earlier formulation (see Krippner and Alvarez 2007). The view we elaborate here has been informed by new insights in the literature (cited above), as well as our own deeper reading of especially the later works of Polanyi (1957; 1968a; 1968b; 1968c; 1977). See Somers (2022, 248–51) for a rebuttal of the position we articulate here that relies on ideational aspects of Polanyi's engagement with notions of contractual freedom.

[23] For a fuller engagement with Block and Somers's (2014) generative interpretation of Polanyi than we have space to elaborate here, see Krippner (2017).

disembedded economies. But this is accomplished not by setting aside Polanyi's concept but by engaging it deeply through a close analysis of Polanyi's published and unpublished writings. The result of this textual excavation is Block and Somers's (2014, chap. 3) suggestion that the notion of disembeddedness stands in deep contradiction to Polanyi's larger goal of contesting neoclassical understandings of the economy and must therefore be excised from the project (compare Gemici 2008). We arrive again, via a different route, at the formulation that *all* economies are embedded. More specifically, Block and Somers's (2014) argument hinges on the role of the countermovement that spontaneously emerges to protect "society" from the ravages of the self-regulating market. Since any attempt to institute an economy corresponding to the laissez-faire ideal threatens the very survival of society, it will immediately set off efforts to resist this development, resulting in the imposition of institutional rules and structures (for example, environmental regulations, protective labor laws, central banks, etc.) that forcibly prevent the full commodification of all social relations. The implication is that the self-regulating market can never come *fully* into existence: it is a utopian—in the sense of impossible—project (compare Block 2001). Politics—and even more pointedly, force and coercion—structure the market even at the height of laissez-faire capitalism (Block and Somers 2014, 10–11).

We find this argument convincing on its own terms as a reading of Polanyi's argument, but it also points to all-too-familiar conceptual problems.[24] Rather than theorizing the market as social "all the way down" (Peck 2013b, 1561), the market is here *made* social by virtue of a defensive reaction on the part of society against the encroachment of the market mechanism.[25] Moreover, it is the market that drives historical development forward, with "society" in the reactive position of containing its excesses and blocking its expansion. Mitchell's (2008, 1117) observation that the concept of embeddedness "always invokes some essential form of the economic" seems apropos in this context. As Mitchell elaborates, "Economic sociology [tends] to preserve a distinction . . . between the 'purely economic' and the broader social relations in which the economy is shown to be (partially) intertwined" (see also Krippner 2001). Some authors have suggested that these difficulties are semantic in nature, as the very language of embeddedness suggests an "encasing" or "framing" of the economic by the social, such that the economic is positioned as nonsocial (see Randles 2007, 423; Barry and Slater 2011, 292). While we agree that there are issues of language in play, we also suspect that the problem with the embeddedness concept runs deeper, reflecting the lingering traces of a dichotomous view of social organization inherited from classical sociological thought (compare Holmes and Yarrow 2019, 21).[26]

[24] Notably, Somers's (2022) most recent writings on Polanyi deemphasize the concept of embeddedness, and instead root his institutionalism in the notion of "pre-distribution"—an analysis that points, we believe, in the direction of the Legal Realists. Somers (2022, 244) writes, "Pre-distribution should not be confused with the more familiar concept of embeddedness, which as a metaphor is too easily interpreted as the self-regulating market being 'surrounded,' 'pressured,' and influenced from without by external political and social forces, while not fundamentally changing or restructuring the actual market contract."

[25] Block's (2001, xxvi) argument that the necessity of state actions to regulate land, labor, and money necessarily places the state "inside" the market is worth considering closely here, as it appears to unravel the distinction we are drawing in this article between sociological and Legal Realist efforts to socialize the economy. But notably, state action in Block's formulation is ex post, a defensive maneuver against a self-regulating market that *if left unchecked* would destroy society. In the Legal Realist perspective, to anticipate our arguments below, there is no ex post reaction against the market: it is simply a question of which set of rules determine bargaining endowments in the market, and how differently positioned social actors struggle over those rules. No circumstance is contemplated in which the market is free of such rules, *even as an impossible ideal that cannot be realized*.

[26] Our skepticism regarding the embeddedness concept does not in any way diminish our enthusiasm for Polanyi's institutional analysis as a basis for theorizing the economy (see Krippner 2001). For a useful attempt to read Polanyi's work for its generative potential as a research methodology rather than dwelling on the many conceptual tangles contained in Polanyi's elaboration of his framework, see Peck (2013b); compare Vidal and Peck (2012).

To summarize a lengthy discussion, we have suggested that sociological efforts to "socialize the economy" have taken shape in the shadow of the status/contract dichotomy, which provides a kind of deep structure undergirding the thought of both Durkheim and Polanyi (as well as the contemporary field of economic sociology, which draws on both of these thinkers). In this regard, Durkheim and Polanyi adopt parallel strategies for socializing the economy by retaining status/contract as the overarching framework for their analyses, but activating the "social" pole of the dichotomy as the principal source of order and stability in market economies. Notably, this solution rejects the classic liberal emphasis on contract as a self-ordering realm, while indirectly reinforcing the basic divisions molded by the status/contract dichotomy that are equally central to the ontology of liberalism (social/economic, public/private, collective/individual, coercion/freedom, etc.). Thus, contract is placed beyond the reach of sociology proper, and status is attenuated as internally structuring the domain of market exchange. Is there an alternative means of socializing the economy that does not leave contract in such a pristine state, and that ultimately breaks down rather than reinforces the organizing dualisms of the liberal tradition? This is precisely the question we next address through our exploration of the early-twentieth-century writings of the Legal Realists.

III. Socializing the Economy: Legal Realism

As Block (2013) has observed, the Legal Realists—thinkers such as Roscoe Pound, Karl Llewellyn, Robert Hale, and Morris Cohen[27]—share with Polanyian scholars a common project of undermining the foundations of laissez-faire economics.[28] However, while these two traditions start from similar premises—principally, the necessity (and inevitability) of state activity in structuring markets—the Legal Realists pivot from the status/contract dichotomy in a different direction than do economic sociologists, yielding ultimately very different results. Hence, the Legal Realists offer a second, contrasting method of "socializing the economy": rather than expunging sociological content from contract (and then placing emphasis on the social institutions that "embed" the market), Legal Realists inject sociological content—in the form of political power and social inequality—into contract relations. The result is to reject the status/contract division as the master frame undergirding social life in market societies, ultimately producing an expansive rather than impoverished notion of contract.

That the Legal Realists adopt a different approach to contract than do sociological thinkers reflects the different intellectual antecedents of the legal field.[29] To be sure, Maine's status/contract distinction

[27] Here we immediately confront difficulties with regard to how we are characterizing "Legal Realism" as a scholarly tradition. Leiter (1997) notes that Legal Realism has often been misinterpreted by scholars who read this body of work through the lens of Critical Legal Studies (CLS), overemphasizing questions of political economy while underplaying Realists' more central concern with judicial decision-making. Relatedly, Leiter (ibid. at 272) suggests that CLS scholars have amplified the importance of Hale in the pantheon of Realist thinkers—according to Leiter, a marginal figure in the Realist movement—while also including scholars such as Cohen and Pound who at least on occasion thought of themselves as writing in *opposition* to the Legal Realists. These complexities aside, we are less interested here in establishing the bona fides of the Legal Realists than we are in describing a loose affiliation of legal scholars who offered a sustained critique of the ideology of freedom of contract early in the twentieth century. We recognize that not all of the scholars we discuss self-identified as Legal Realists—at least consistently—but we discuss them together because of what we see as broad affinities in their approach to contract. Our treatment of Legal Realism most closely follows Singer's (1988) lengthy and informative review.

[28] We have not come across any indication of a direct relationship between Polanyi and the Legal Realists (but see Frerichs 2019). This is perhaps surprising given that both Polanyi and key writers in the Realist tradition found an institutional home at Columbia University (albeit not at the same time).

[29] The account presented here of the evolution of legal thought closely follows Kennedy's ([1975] 2006) influential analysis, supplemented by Horowitz (1977), Singer (1988), Kreitner (2007), and Halley (2011a; 2011b).

took hold of legal scholarship in the nineteenth century just as it did classical sociological theory.[30] For Maine, progressive social evolution involved on the one side the lessening importance of involuntary social obligations defined by custom and enforced by the state, and on the other, greatly increased latitude to form social relationships according to the free will of parties engaged in transactions (Singer 1988, 480). This widening gulf between voluntary and involuntary obligations was enshrined in the "will theory of contract," a legal doctrine that represented the hallmark of the "classical" tradition dominant in American law from the mid-nineteenth century until the early decades of the twentieth century (Kennedy [1975] 2006; compare Horowitz 1977). The will theory treated contract as reflecting a "meeting of the minds" of two (or more) individuals acting on their own volition. Notably, this doctrine divided law into a private realm of freely contracting agents and a public realm of regulated statuses comprising individuals whose capacity to contract is compromised (for example, wives, children, and the insane). Obviously, the arena of private law (that is, the will of the individual) was centered and privileged in this formulation, whereas public law (that is, the will of the state) was treated as residual and exceptional (Kennedy [1975] 2006; Singer 1988; Halley 2011a).

Notably, this conception presents a striking departure from prior understandings reflected in the thinking of earlier, preclassical legal theorists such as Theophilus Parsons. For Parsons, contract was all encompassing, offering a broad template for various forms of social exchange (Kennedy [1975] 2006; Singer 1988; Kreitner 2007; Halley 2011a). Its foundation was the *relation* rather than the *transaction* (Pound 1917, 212): contract gathered up in its wide embrace husband and wife, guardian and ward, master and servant, landlord and tenant, and bailor and bailee, among other predefined social relationships whose content was fixed by custom and regulated by law.[31] Under the classical regime, by contrast, contract ceased to be a container for predefined types of social relationships and instead was reworked as a generalized, abstract concept (Kennedy [1975] 2006; compare Horowitz 1977). In other words, contract had no content other than what transacting parties deemed appropriate in making an agreement (with the state merely agreeing to enforce that agreement, rather than intervening to shape its content); all else was cast off to the peripheral arena demarcated by status relationships actively regulated by the state. Conversely, and by the same maneuver, status ceased to be something that characterized *all* individuals—one's fixed place in the social order—to name *abnormal* individuals who occupied a situation that marked a legal impairment (Graveson 1953, 5; Kennedy [1975] 2006, 191–93; Singer 1988, 481; Halley 2011a, 3). Naturally, this development aligned with the emerging worldview of laissez-faire economics, as the progressive carving out of various kinds of status relationships from contract gradually redrew the boundaries around the economy, narrowing the conception of the "economic" to relationships located in the market (now fully severed from other social realms, such as the household) (see especially Halley 2011a; compare Kreitner 2007, 89). This development also served to reinforce the image of a private economy based on purely voluntary exchange as distinguished from the state-enforced relationships of mutual obligation sequestered in the family and other "noneconomic" sites.

[30] "Maine's teaching was so completely in accord with the individualism which characterized the traditional element of our law for other reasons and accorded so well with the absolute ideas which our law books had inherited from the eighteenth century that it soon got entire possession of the field" (Pound 1917, 210).

[31] Noticeably absent here is any clear distinction between status and contract as two broad principles organizing social life. In the preclassical period, as Kreitner (2007, 22) observes, "[C]ontract was an inclusive category that included societally imposed obligation with individually undertaken obligation." Indeed, Parsons's schema includes under the rubric of "contract" relationships that later migrate into "status," including, most notably, the marital relation (Kennedy [1975] 2006; Singer 1988; Stanley 1998; Halley 2011a). This migration was itself a product of legal scholars' growing fixation on drawing a clear distinction between voluntary and involuntary social obligations—a fixation that reflects the imprint of Maine's influential status/contract dichotomy on the legal field.

Legal Realism emerged in the early twentieth century as a reaction against the then-dominant paradigm of classical legal thought (Singer 1988), challenging its stark privileging of private over public, market over state, individual over collective, will over compulsion, with all of these dichotomies ultimately rooted in the master division of status/contract. In this regard, Legal Realists' departure from classical legal thought was immediately evident in their different orientation to the status/contract dichotomy. Pound (1917) was among the first of the thinkers associated with Legal Realism to directly address Maine, and he did so by flatly rejecting Maine's narrative of a progressive movement from status to contract. In fact, Pound (1917, 221; 1931, 557–58) saw the opposite progression occurring, as increasingly a society organized around *relations*—rather than individual bargains—seemed to be developing.[32] In this regard, Pound argued that Maine's status-to-contract thesis inappropriately applied the transactional orientation of Roman law to Anglo-American legal systems organized on a fundamentally different basis. More specifically, the common law grew out of the reciprocal rights and duties of feudalism, leading Pound to emphasize the customary obligations inscribed in various legal relationships over the express will of the parties to a contract. In the employment relationship, for example, what appear as market-based transactions organized through contract are in fact undergirded by status relations: "[D]uties and liabilities are imposed on the employer in the relation of employer and employee, not because he has so willed . . . but *because the nature of the relation is deemed to call for it*" (Pound 1917, 219; emphasis added). Similarly, in the cases of mortgagor and mortgagee, vendor and purchaser, and trustee and beneficiary, the Anglo-American jurist is guided by "rights and duties annexed to [these relationships]. . . no matter what the parties to them may intend" (ibid. at 216). Pound saw this "feudal" tendency becoming more pronounced under contemporary conditions in which the growing complexity of urban industrial society required greater interdependence, making the rugged individualism of the agricultural societies of the past increasingly ill-suited to modern conditions (Pound 1930). "Maine's generalization," Pound (1917, 219) opined, "has no basis in Anglo-American legal history, and the whole course of English and American law today is belying it unless, indeed, we are progressing backward."

Notably, while Pound's account reverses the direction of Maine's progression, he retained from Maine the notion of a historical sequence with a determinate direction. Others took a different lesson from these observations, seeing status and contract as fully intertwined in the course of historical development, and refusing the great dichotomy. Perhaps the most persuasive of writers taking this tack is Pound's student, R. H. Graveson (1953), who similarly begins from the observation that, contra Maine's Romanist aspirations, the common law is firmly rooted in feudal land-tenure arrangements. But no simple narrative describing a unidirectional movement from status to contract or contract to status can be discerned from this starting premise. In the feudal order, status was intimately connected to one's situation with regard to land tenure: the possession of a particular position in the social order enabled a given individual to lay claim to an estate. This claim was executed via a kind of contract—a mutual agreement that established an exchange of service for protection as the condition of access to land. But rather than the terms of this agreement being the simple expression of the will of the parties, the status of those persons engaged in the compact shaped the rights and duties of each. However, once the agreement was concluded and the estate granted, these rights and duties congealed into fixed social positions, inalienably attached to landlord and tenant. To summarize the complex social

[32] In emphasizing the importance of relations, the Legal Realists harkened back to the preclassical tradition, even while giving contract a more specific and delimited meaning. See Halley (2011b) for an especially thoughtful discussion of the relationship between Legal Realism and preclassical legal thought, with an emphasis on the affinities between Pound and Parsons.

relationships mediated by the formation of feudal estates, contract is here both the parent and child of status, and the same is true of the relationship of status to contract (Graveson 1953, 40, 53).

Thus, the dominant tendency among Realist writers has been to affirm status and contract as coconstitutive, without any necessary historical progression in one direction or another (see, Isaacs 1917; Llewellyn 1931; Cohen 1933; Radin 1943). Nevertheless, there is according to the analysis provided by the Legal Realists one historical development that does mark the evolution of law in the twentieth century, and this is the emergence of the standardized contract. Indeed, it is only a short step from Pound's (1917) observation that, in the Anglo-American tradition, specific legal relationships involve a set of rights and duties fixed by custom (rather than the free will of the parties) to the further observation that these customary arrangements result in form contracts suitable to an age of mass production and consumption. "In ordinary transactions," Issacs (1917, 38–39) observed, "people cannot or will not stop to make special agreements. . . . Therefore they find themselves governed by the statute with its prescribed insurance policy, its prescribed bill of lading, warehouse receipt, stock-transfer, negotiable instrument, articles of partnership, its prescribed type of sale." In the modern era, contracts are made in "wholesale lots" and administered mechanically to individuals who are subjected to the specified terms. This once again confounds any effort to clearly demarcate "status" and "contract" as standardized contracts contain elements of both (see Isaacs 1917, 39; Llewelyn 1931, 730; Seagle 1941, 276): these agreements are voluntarily entered into, and may under typical circumstances also be dissolved at will, but the terms of these "bargains" are applied to broad classes and cannot easily be customized to accord with individual desires and preferences.[33] In addition, given unequal bargaining power between those who "offer" and those who "accept" standardized contracts, these relationships may also involve a substantial degree of coercion (Llewellyn 1931, 731; Kessler 1943; Radin 1943).[34]

What is most striking about this analysis is that we have moved from status and contract as discrete (and in most instances, mutually exclusive) forms of social organization to elements present in varying degrees *in all social relations* (Isaacs 1917, 40).[35] Status and contract appear as intermingled rather than opposed, with contract relations now soaking up aspects of status that both sociological theory and classical legal thought had previously expunged from the domain of the market. Notably, this intermingling of status and contract serves to destabilize the entire edifice of classical legal thought, with its clear demarcation of voluntary and involuntary social relations. As we saw, for classical legal thinkers, contract corresponds to the realm of private law, an arena in which individual will alone dictates the terms of agreements between parties. In contrast, status belongs to public law, a realm in which the will of the state regulates the content of relationships between individuals unable, for a

[33] While the latter aspect of the standardized contract seems to equate to a "return to status" (Llewellyn 1931, 717; Kessler 1943), numerous commentators note the manner in which the status relations created by form contracts differ from ancient status (Seagle 1941; Radin 1943; Rehbinder 1971). Most notably, whereas ancient status produced a fixed social hierarchy, modern status law (particularly involving the welfare state, but also collective bargaining) seeks to mitigate social inequalities and promote social mobility (Rehbinder 1971, 948–49). Some writers in the sociological tradition—especially Marshall (1950) and Selznick (1969)—were similarly alert to the changed nature of status in a regime of "industrial citizenship."

[34] See Radin (2013) for a contemporary discussion of "boilerplate" contracts and coercion.

[35] As we noted in our discussion of Durkheim and Polanyi, the sociological tradition also treated status and contract as elements that might coexist in any given society, but this analytical usage was developed with reference to a historical one, in which status and contract (or, equivalently, embedded and disembedded economies) represented discrete *types* of societies. As a result, we suggest that the status/contract distinction retains a more dichotomous form in economic sociology than in Legal Realist treatments, even after the historical construct has been abandoned. For a recent effort to work against this dichotomous understanding of status/contract in economic sociology, see Dukes and Streeck (2023).

variety of reasons, to fully participate in contractual agreements. But critically, the standardization of contractual relations renders these distinctions almost meaningless. As Cohen observes:

> A citizen going to work boards a streetcar and drops a coin in the conductor's or motorman's box. This, or the buying of a ticket, is treated as a contract, and the courts and jurists speak of its "terms" and of the rights and duties under it. No one claims that there is any actual "meeting of the minds" of the passenger and the street railway corporation. There is no actual offer or acceptance—certainly no bargaining between the two parties. The rights and duties of both are prescribed by law and are the same no matter what, if anything, goes on in the passenger's mind, or in the corporation's, if it has any mind. . . . [W]e have here a situation in which the law regulates the relation between different parties and it is pure fiction to speak of it as growing out of any agreement of the wills of the parties. (Cohen 1933, 568–69)

The example may be a somewhat trivial one, but it speaks to a wide array of highly consequential transactions in our society in which elements of choice (that is, the will of the individual) and coercion (that is, the will of the state) cannot be clearly distinguished. Consider as a key example the labor market. Here the notion that the terms of employment are simply the result of a kind of voluntary (private) "bargain" made by the two parties to the transaction is just as fanciful as the notion that the passenger on the streetcar "bargains" with respect to his fare (Cohen 1933, 569; compare Selznick 1969, 135). Instead, what transpires in the labor market is a much more constrained interaction in which parties to the labor contract attempt to extract the performance of work on the one side, and the payment of a wage on the other. This could be construed as a kind of bargaining relationship, but it is one that relies heavily on coercive elements (Hale 1943). These coercive elements reflect the fact that, in the Realist analysis, the state is never fully "outside" of the transaction. Instead, the state endows each party with certain rights to withhold resources in their possession from the other; each person's legally sanctioned threat to withhold what the other needs constitutes the terms of the contract. As Hale explains:

> In our industrial society, an employee works in order to make a bargain with his employer and thus obtain the money with which to free himself from some of the restrictions which other people's property rights place on his freedom to consume. He induces the employer to pay him his wage by *threatening* not to work for him, and then not carrying out his threat. Not carrying it out involves temporary surrender of his liberty to be idle. He *must* surrender that liberty, under penalty of not having freedom to consume more than his present means would enable him to. (ibid. at 626)

Several aspects of this analysis of the labor contract are noteworthy. First, a contract is always made to escape a threat. In this sense, Legal Realism rejects the conventional notion that choice and coercion are necessarily opposed to each other. Instead, coercion is understood to operate in the background of choice, determining the range of available options (Kennedy 1991, 330; Fried 1998). Second, in contrast to the standard Marxist analysis of the labor contract, coercion is not only exercised by the "stronger" party against the "weaker." Instead, the labor market should be understood, in Fried's (1998, 47) apt phrase, as a "network of mutual coercion," in which capital is coerced by labor just as labor is coerced by capital. Critically, the outcome of this mutual coercion cannot be determined in

advance, but depends on the relative strength of each party engaged in struggle (Hale 1923, 477).[36] Third, what determines the relative strength of each party is none other than the state itself, which validates in varying degrees the power of capital and labor to withhold resources from the other, and thereby makes actionable the threat that each party leverages in striking "bargains." In the Realists' formulation, coercion in the marketplace operates as a state-sanctioned threat to exclude. As Jaffee (1937, 217, emphasis added) summarizes, "[P]roperty (of which contract and the right to contract, is an instance) equips the possessor with great powers of exclusion—*enforced or sanctioned by the law*—not in any way depending on consent, and this power to exclude is a source of regulating others' conduct, either as it prescribes complete exclusion or participation on terms."

Finally, and for our purposes, most importantly, the state's role in sanctioning threats imposed by capital or labor represents *a partial transfer of sovereignty* from the state to private actors (Cohen 1933, 586). Legal Realists identify the delegation of rulemaking authority and the enforcement of property rights as political decisions that constitute the distribution of coercive capacities in market relations by delimiting the plausibility and desirability of alternatives to market exchange. The key result is that private actions may be indistinguishable in their effects from governmental ones (Hale 1920, 453; 1935, 180), collapsing the distinction between public and private realms. As Cohen (1933, 586) summarizes, "[T]he law of contract may be viewed as a subsidiary branch of public law, as a body of rules according to which the sovereign power of the state will be exercised as between the parties to a more or less voluntary transaction."

Thus, rather than treating status and contract as opposed principles that distinguish a public realm based on the coercive power of the state and a private realm based on individual will expressed through voluntary agreements, Legal Realism treats these two elements as fully intertwined in relationships that span market transactions. Notably, in putting forward this analysis, Legal Realism upends not only classical legal thought but also the sociological tradition, which similarly rests on a starkly dichotomous understanding of status and contact as principles of social organization.[37] Accordingly, rather than expelling status relations to an extracontractual domain—either made central to social life (as in the sociological tradition) or peripheral (as in classical legal thought) according to the broader objectives of scholarly inquiry—Legal Realists conceptualize contract as *holding* social content.[38] In short, scholars associated with Legal Realism do not seek to "purify" contract of its sociological elements, but instead allow these elements to shape the form taken by market exchanges, offering a generative approach to studying economic processes that we suggest can be enhanced through engagement with sociological understandings of status relations. We turn to a consideration of how sociological and Realist insights might be fruitfully joined in the next section.

IV. Toward a Sociology of Contract

The Legal Realist tradition represents an attempt to socialize the economy that avoids reproducing the dualism of the status/contract dichotomy that we suggest continues to undergird contemporary

[36] The Legal Realists were centrally concerned with how the rewards of market exchange are distributed, an important issue that lies well beyond our scope here. See Fried (1998) for an incisive treatment of Hale's approach to questions of distributive justice.

[37] Here, we differ with Block (2013), who sees Legal Realism and economic sociology as fully compatible approaches. While we agree that Legal Realism shares with Polanyian economic sociology the same overarching goal of dethroning laissez-faire economics, we see scholars writing in these traditions as taking divergent paths to this objective.

[38] In this regard, Legal Realism draws on the expansive understanding of contract associated with preclassical legal thinkers such as Theophilus Parsons (1853).

work in economic sociology (compare Zelizer 2005, 43–44). We do not, however, advocate fully supplanting sociological research with scholarship that follows in the path of Legal Realism. Instead, we think each of these traditions has something to offer the other. In particular, we argue that while Legal Realism offers sociology a way to infuse its thin theory of contract with mechanisms of power operating through delegations of public authority to private actors, we also suggest that sociology offers Legal Realism a means to extend its thin conception of status as merely marking differences organized around social class position (see Kennedy 1991). Below we draw key insights from Legal Realism for economic sociology and comment on how a sociological approach in turn addresses some of Legal Realism's own limitations.

Before elaborating on these points, however, we note that we are not the first scholars to suggest that sociological and Realist traditions might productively be joined in order to remedy the inadequacies of neoclassical perspectives on the economy. Arguably, the "relational contract" perspective associated with Macaulay (1963; 1985) and MacNeil (1974; 1980; 2000) accomplishes just such a merger, bringing together the Durkheimian intuition that any given transaction is sustained by social institutions that exist before and endure after the moment of contracting with the Realist intuition that more important than any formal legal doctrine is what parties actually *do* in determining and executing their mutual obligations (see Gordon 1985; Suchman 2003).[39] Motivated to understand contracts "in operation," rather than in theory (Macaulay 1985, 466), these scholars foreground the role of norms—ranging from expectations of future transactions to communal sanctions—in organizing exchange (Macaulay 1963, 56; MacNeil 1974, 716–18).[40]

In addition to placing emphasis on the role of norms in governing contractual agreements, "relational contracts" also reflect the Durkheimian sociological tradition in an insistence that normative regulation occurs *external* to formal contracts, defining a space for "private ordering" in economic relations. As MacNeil (1974, 746–47, emphasis added) observes, "[T]he socioeconomic support of a transaction lies outside the exchange making up the transaction. . . .This support may be moral, economic, social, legal or otherwise, *but in any event it is external to the parties*" (compare MacNeil 1980, 36). Notably, MacNeil's formulation suggests that norms remain external to exchange even when they appear to reflect the purely "personal" traits or values of the parties. Macaulay (1985, 468; 2005, 381, 401) similarly places emphasis on normative regulations—sanctions like gossip and blacklisting—as part of "effective private governments" where participants are reluctant to invoke formal contract law, from origination to dispute settlement. But the failure of transacting parties to invoke the law does not mean that it is fully absent from exchange, and indeed the fact that it is not *necessary* to invoke the law signals something important about how power is circulating in these relationships in ways that may not be directly visible to the "empirical" observer—a critical insight of the Realist perspective.

[39] Macaulay (2005, 375) describes the related projects of "relational contracts" and the "new legal realism" as picking up on the Realists' call to integrate social science research with legal analysis, lamenting that while "[t]he classic realists talked about doing empirical research . . . relatively little was accomplished" (compare Schlegel 1995).

[40] There are other points of intersection between Durkheim and the Realists that are not foregrounded by Macaulay and MacNeil's analysis. In addition to emphasizing the role of norms, Durkheim also underscored the coercive elements of contract, seeing inequalities in society as structuring the bargaining relationship. As Durkheim ([1893] 1984, 319) writes, "If one class in society is obliged, in order to live, to secure the acceptance by others of its services, whilst another class can do without them, because of the resources already at its disposal, resources that, however, are not necessarily the result of some social superiority, the latter group can lord it over the former. In other words, there can be no rich and poor by birth without there being unjust contracts." The critical distinction between Durkheim's analysis and that offered by the Realists is that while for Hale and others these inequalities in bargaining endowments are pervasive and ubiquitous, for Durkheim they are exceptional and abnormal, constituting the "forced division of labor" (compare Beckert 2000). We are grateful to an anonymous reviewer for drawing our attention to this aspect of Durkheim's argument.

While MacNeil and Macaulay have made essential contributions in extending the classic Realist perspective, our proposed merger of sociological and Realist traditions differs from the relational contracting paradigm in foregrounding law (rather than norms) as a device that distributes bargaining power within economic exchanges. In addition, Legal Realism's critical insight that state rules operate in the background of every exchange means that even transactions occurring in the "shadow of the law" (Mnookin and Kornhauser 1979) should *not* be considered forms of *private* ordering (see Halley 2010, 48). Relatedly, having destabilized distinctions between public coercion and private choice, Legal Realists insist on the copresence of status and contract in market transactions. Crucially, this is not a matter of status operating on contract *externally* as a means of stabilizing exchange. Instead, a Realist orientation considers status and contract as mutually imbricated elements of exchange *internal* to any given transaction.

Following the Realist account, we can imagine status and contract intertwined in a variety of ways. Critically, status distinctions shape choices exercised both in *entering* contracts and in the *terms of bargaining* in the marketplace, as well as in the *adjudication of disputes* involved in enforcing these terms in the court system.[41] An individual enters a contract only in order to escape another's threat to withhold needed resources—a threat that under capitalism is enforced by the law of property (Hale 1923, 472–73). But as Hale (1943, 606) astutely observes, these are "threats which impinge with unequal weight on different members of society," as available alternatives always operate in the background (and sometimes the foreground) of choice. Relatedly, differently situated individuals will be able to bargain for different terms: "One who is endowed by nature or by superior educational opportunities with the ability to render services which are relatively scarce and for which there is great demand, may be able to insist on a high salary as the price of not withholding that ability from the employer. . . . And he may have a large measure of discretion (or liberty) in deciding just *how* he is to perform his work, whereas those who have to take inferior jobs may have to do just what they are told by superiors throughout the working day" (ibid. at 626–27). Iteratively, advantages or disadvantages in bargaining power will parlay into different accumulations of wealth, resulting in stronger or weaker compulsion to engage in future rounds of bargaining. Similarly, when courts systematically award (or fail to award) redress to individuals occupying particular social positions, they are also bestowing advantage (or disadvantage) in future bargains (as well as influencing what problems are brought before the court in the first instance).

Thus, we can elaborate a sociology of contract informed by Realist premises by attending to the role of the state in transferring its power to private actors who are differentially coerced in state-enforced "bargains." There are, however, limitations to the Realist approach that reflect what Kennedy (1991, 360–61) describes as a "single-minded focus on worker-owner and consumer-producer conflict," to the neglect of other axes of social difference and conflict.[42] While Hale (1920, 452; 1923, 477–78;

[41] We can consider these as three "phases" of the contractual relation: (1) entry; (2) negotiation of terms; and (3) adjudication and enforcement. In our discussion below, we emphasize the phases of entry and bargaining over adjudication and enforcement, reflecting the similar focus of the Realist scholars we analyze (particularly Hale). Another consideration determining our emphasis on the first two phases of contract is the fact that adjudication and enforcement have been extensively treated by critical legal scholars who have examined how statuses such as race and gender impinge on the resolution of disputes in the court system (see Williams 1994; Houh 2003; 2015; Keren 2013; 2019; Zalesne 2013).

[42] We note as a partial exception here the attention that Hale (1935; 1939; 1946), in particular, gave to race relations, particularly as related to the "state action" doctrine (suggesting that the US Constitution offers protection against discrimination perpetrated only by state entities, leaving private actors free to discriminate without sanction). But while Hale used Realist insights eroding the distinction between public and private power to undermine the state action doctrine,

1939, 587–58; 1943, 606, 626–27) observes that individuals are variably compelled to bargain and differently positioned to gain advantage in bargaining contests, *he cannot explain these differences except as derivations of property endowments distributed to members of different social classes.*[43] But the rules of property do not simply distribute bargaining power between workers and owners, but also between men and women, white and nonwhite persons, citizen and noncitizens, among many other (non-class-based) social groups that organize access to resources in society. Perhaps even more importantly, property is not the only source of power operating to shape bargains in the market (see Tomlins 1995). In fact, a whole range of statuses—many not based in property ownership, and putatively "noneconomic" in character (wife, student, welfare recipient, prisoner/parolee, etc.)—confer (or deny) legal privileges that impinge on who enters into bargaining and what terms they are ultimately able to obtain and enforce. Once we admit this more diverse cast of characters into the bargaining arena, we must recognize that power operates in the market not only by virtue of exclusion ("the threat to withhold"), but also by the capacity of stronger parties to directly harness the disciplinary powers of the state (see Hatton 2020; Zatz 2020b; 2021). Attention to the disciplinary—rather than exclusionary—powers of the state illuminates how contractual relations are continually reworked as social conditions change, with the implication that status should be understood as fully endogenous to contract.

We unpack each of these points in detail in our discussion below. Here, in fact, is where we see a critical opportunity for sociologists to build on the Realist critique while addressing its shortcomings. For if sociologists have been working with a socially thin conception of contract, the same cannot be said for their treatment of status. While economic sociology has underattended to forms of social difference in constituting market exchange—because the market is typically understood as merely amplifying rather than itself *generating* these status-based inequalities (see Fourcade and Healy 2013; compare Scott 1986)—concerns over the role of status hierarchies and categorical distinctions in shaping patterns of inequality are central to sociology writ large (see Tilly 1998; Massey 2008; Ridgeway 2011; 2014; 2019; Brubaker 2015). In this regard, we can pivot toward the more robust conception of status available in the broader discipline of sociology—understood as encompassing a wide range of durable social positions whose rights and obligations are created by law and fixed by social convention (see Turner 1988; compare Selznick 1969, 62; Streeck 1992, 43, 51; Dukes and Streeck 2023, 6, 11). Notably, this conceptualization includes both legal statuses delimiting specific social roles, such as wife, student, welfare recipient, and prisoner/parolee (Hatton 2020, 13), as well as social statuses defined by gender, race, and sexuality (among other forms of social difference) that intersect these positions and imbue them with (positive and negative) claims of worth.[44] In addition, this conceptualization has the advantage of providing a salient contrast to contract: while status is (relatively) fixed, contract is (relatively) fluid. Put simply, one does not negotiate one's way out of a

he did not extend consideration of race (or any other extramarket status) to his broader model of bargaining power in the labor market.

[43] Consider, as a particularly pointed example, Hale's (1939, 587) query in an article examining the limitations of constitutional protections of individual liberty: "But if all are equal before the law, how does it come about that they have unequal power to obtain economic liberty by economic pressure?" The answer, Hale suggests, is that "the law does not treat everyone equally." This line of analysis would seem to open the door to a consideration of various biases in the law operating along statuses defined by race and gender, for example. But Hale quickly closes the door to such an analysis, noting that the law cannot treat people equally "so long as we have inequality in private property." Property is the beginning and the end of every inquiry into inequality here and in other writings by Hale and other Realists.

[44] While it is conventional, following Weber's ([1922] 1978) influential formulation, to view status as honor or esteem accruing to comparatively ranked individuals or groups (see especially Ridgeway 2014; 2019), here we give less attention to this ranking aspect. As Selznick (1969, 62) notes, status does not *require* ranking, and since we want to observe precisely how status contributes to the creation of hierarchies inside the bargaining process, it seems appropriate to start from an understanding of status that does not build hierarchy into its definition.

status; its expectations are taken as given (see Streeck 1992, 51, 74). In contrast, the hallmark of contract is its *negotiability*: the terms may change according to the will of the parties.[45] Below we draw on this sociological conception of status to expand Realist insights about coercion inside contracts to encompass varied forms of status hierarchy beyond social class.

A. Four Propositions

In the remainder of this section, we elaborate on a series of propositions that follow from these considerations and guide our proposed sociology of contract. For purposes of elaboration, we give primacy to the labor contract, dealing with other contracts insofar as they impinge on the wage relation. But we think the broad outlines of our analysis should extend to other types of contracts in any market setting.

1. Property Rules Distribute Bargaining Endowments Along Various Axes of Social Difference

The Realist presumption is that coercive capacities in the market are distributed according to one's position as an owner or nonowner of property; accumulations of wealth constitute a bargaining endowment allowing one to make a credible (state-enforced) threat against another or effectively resist a threat that another presents. As we intimated above, however, the Realist intuition that property confers advantages in entering contracts, shaping the terms of the bargain and prevailing in disputes over enforcement, underattends to how the accumulation of property is itself shaped by status (beyond one's class position). The Realists' oft-repeated observation that there is variation in the coercive capacities enjoyed by different actors engaged in contracting does not account for how these differences come to be except by reference to prior rounds of bargaining in which one party was favored by a legal rule (or "bargain[ed] more shrewdly") (Hale 1922, 638). But as a more recent generation of critical legal scholars has emphasized, legal rules delimiting property rights themselves constitute and are constituted by broader systems of stratification—in other words, status differences (see Williams 1988; Harris 1993; Singer 1991; 1992; 2017; Gupta 2023).[46] Consider a zoning law that, by marking a particular area as residential or mixed-use, allows or disallows home-based enterprises, cohabitation with unrelated persons, and forms of self-sufficiency, such as large produce gardens (Garnett 2001; Vider 2021; also see Gupta 2015, 229). Such legal rules governing allowable uses of productive resources will directly affect available alternatives to selling one's labor power, strengthening or weakening one's bargaining position accordingly.[47] Notably, these rules do not operate in a neutral fashion but emerged to separate (white) suburban communities from (immigrant and nonwhite) inner-city communities, differently shaping possibilities for wealth accumulation (Freund 2007, 45–98; Gupta 2015; Rothstein 2017, 39–58). Relatedly, legal rules structuring who may acquire a mortgage on what terms have produced disparities in wealth accumulation across racial groups, historically and into the present (Massey and Denton 1993; Oliver and Shapiro 1995; Conley

[45] This is not to suggest that each party to a contract has equal power in determining its terms (the fiction of "freedom of contract" criticized by the Legal Realists). Indeed, in highly asymmetric bargains—such as those represented by standardized contracts—only one party may make modifications to the terms (Hale 1920, 452; compare Radin 1943; Kessler 1943).

[46] As Anderson (1990, 1807) notes, even "bargaining more shrewdly" will be shaped by gendered rules over who may initiate a proposal or must submit to power in a negotiation.

[47] Conversely, while restrictive zoning limits productive uses, these restrictions also sustain the value of residential property—in great part through exclusion—generating private wealth for zoned homeowners (McCabe 2016, 98–118; Lindsey and Teles 2017, 109–26).

1999; Rothstein 2017; Taylor 2019).[48] The resulting "racial wealth gap" directly intersects the labor market by shaping the fallback position of individuals entering (or refraining from entering) employment. Putatively neutral tax laws, similarly, have differentially impacted wealth accumulations among Black and white, as well as married and unmarried, taxpayers (McCaffery 1999; Brown 2022). Unpaid work in the home performed (overwhelmingly) by women—reflecting legal rules that determine the shifting boundaries of paid employment, a distribution of property rights (Zatz 2008)—is another site of unequal wealth accumulation (see Hochschild and Machung 1989; Milkman and Townsley 1994). These and many other examples demonstrate that the Realist reduction of coercive capacities conferred by control over property to the single dimension of social class is not tenable (compare Kennedy 1991, 100–05).

2. Legal Privileges Not Based on Property Ownership Also Shape Bargaining Endowments

As we have noted, the Realists gave primacy in their analysis to the relationship between employer and worker, on the one hand, and consumer and producer, on the other (Kennedy 1991). As such, the legal privileges that they imagined as shaping bargaining endowments were tightly tied to these relationships. While there is an appealing precision in this analysis, it is too narrow to accurately capture how bargaining happens even inside the employment relationship. Individuals engaged in bargaining carry into the relationship legal privileges (or liabilities) that are not based in property ownership. Here we take inspiration from feminist scholars who have drawn on Legal Realism to examine the operation of gendered power (see especially Olsen 1983). Drawing an analogy between the wage relation and the marital contract (Stanley 1988), these scholars suggest that just as the state operates in the background to shape the bargaining endowments of employer and worker in the labor market, so it also operates in the background to shape the bargaining endowments of men and women in the household (by changing, for example, the conditions under which one spouse may dissolve the partnership; see Halley 2010). Our goal here is to follow the lead of these writers in extending the range of legal privileges that are considered consequential in shaping bargaining, but to move beyond mere analogies in doing so. State-enforced rules governing marriage *directly* shape bargaining in the labor market, just as they do inside the household (compare Kennedy 1991, 98–99).

Making this move requires us to introduce a wide range of putatively "noneconomic" statuses to our consideration of bargaining in the labor market. Consider the noncitizen worker—immigrant or foreign guest worker—whose bargaining endowment is shaped by lack of access to the basic protections afforded to citizen workers (Nakano Glenn 2002; Ngai 2004; Hahamovitch 2011; Kim 2015; Milkman 2020; Parreñas 2022). Or consider the welfare recipient, who exchanges her labor in the market subject to punitive work requirements that attenuate the "threat to withhold" (Peck 2001; Collins and Mayer 2010; Soss, Fording, and Schram 2011). Parallel (if even more draconian) circumstances dictate the bargaining position of parole or probation labor—workers who are required to seek employment as a condition of release and subject to intensive state surveillance as they do so (Zatz 2020b; 2021; Purser 2021).[49] Workers inside prisons are not properly considered employees at

[48] Recent discussions of forms of "predatory inclusion" add another racialized dimension to the Realist emphasis on compulsion to enter contracts (see especially Taylor 2019). Seamster and Charron-Chénier (2017) extend the concept of "predatory inclusion" to markets for student debt, and Zatz (2020a) refers to "subordinated inclusion" to describe related processes in labor markets.

[49] Work requirements imposed on welfare recipients and parole and probation labor suggest that the flip side of the Realists' compulsion to *enter* a contract is the legally enforced inability to *exit* a contract (see Zatz 2020a). The issue of exit

all, and do not have access to minimum-wage requirements, overtime pay, or collective bargaining rights (Zatz 2008; Hatton 2020). Students who provide research assistance to professors and teach university classes, similarly, are subject to various rules that shape the degree to which they are considered employees, how (or whether) they may be remunerated, and whether they may unionize; the same applies to collegiate athletes, whose employment situation is also ambiguous and contested (see Hatton 2020). Other examples abound, but it is clear from the instances we have provided that bargaining endowments in the market extend far beyond the employer-employee and producer-consumer dyads foregrounded by the Realists.

3. Power in Bargaining Operates Not Only Through Exclusion But Also Through the Direct Disciplinary Power of the State

Consideration of these more varied status positions suggests a different mechanism of power operating inside the labor contract than capacities to exclude one's bargaining partner from access to needed (or desired) goods and services. Notably, what these various statuses (noncitizen, welfare recipient, prisoner/parolee, student, etc.) share in common is participation in institutions positioned formally outside the labor market—citizenship regime, welfare system, prison, school—where forms of power that can be characterized as "disciplinary" circulate (Foucault 1979).[50] In this regard, while participation in institutions outside the formal labor market potentially offers an alternative to selling one's labor power, altering the "threat to withhold," it may also become a site for the direct exercise of disciplinary authority by the state (Zatz 2020b).[51] Accordingly, we can consider the state's delegation of public power to private actors in the labor contract as flowing along two distinct channels: (1) the delegation via property of the power to exclude, as emphasized by the Realists; and (2) the delegation, less noted by the Realists, of the authority to discipline via (threatened) state violence.[52] Thus, rather than understanding the dynamics of labor markets solely in terms of the "micropolitics of exclusion" (Tomlins 1995, 89), this analysis points to how employers may harness the disciplinary power of the

from a labor contract is essential to jurisprudence surrounding the Thirteenth Amendment to the US Constitution. For insightful entry points into a large literature, see Steinfeld (1999), Goluboff (2007), Pope (2010), and Kim (2015).

[50] To be clear, disciplinary forms of authority circulate inside the labor market as well (Anderson 2017), although the role of the state in undergirding this authority is tacit and hidden rather than explicit and direct (Tomlins 1992). The Legal Realist project can be understood as revealing the relationship between "public" and "private" coercion as equally rooted in state power (Fried 1998).

[51] Sociolegal scholars have been centrally concerned with the disciplinary edge of law, especially through an engagement with Foucault (see Hunt 1992; Simon 1993; Rose and Valverde 1998).

[52] The Realists' inattention to disciplinary forms of authority makes sense in terms of their larger project to debunk the "liberty of contract" view dominant in jurisprudence at the time they wrote (see Fried 1998, chap. 2). The conventional "liberty of contract" perspective treated government as coercive by virtue of its reliance on direct mandates and prohibitions; private action, by contrast, was seen as not coercive because it depended on voluntary choice. The Realists attempted to erase the distinction between public and private by suggesting that in actuality coercion underlies choices in both domains. Once it was understood that power in the market operated not primarily by direct mandates or prohibitions, but by the state's role in shaping the background rules that defined available options, even nominally "free" choices could be seen as coerced. From this perspective, the rhetorical power of the Realist argument lies in subsuming "political" coercion into "economic" coercion: that is, whether public or private in nature, coercion in market societies primarily takes the form of "voluntary" (although coerced) choice rather than direct mandates. Even where governmental mandates are employed to elicit certain actions, they are rarely actually triggered, but merely *threatened*—in other words, choice is still operative. Notably, the Realists could also have eroded the distinction between public and private going in the other direction, subsuming "economic" coercion into "political" coercion by showing how private actors harness the disciplinary power of the state. But this would require starting from the proposition that coercion necessarily involves authoritarian forms of control (see Weber [1922] 1978, 729–31). Given that the Realists wished to distance themselves from the "liberty of contract" perspective, it is understandable that they sidestepped this issue altogether, neglecting the problem of disciplinary authority in the market.

state by threatening to deport immigrant labor and foreign guest workers (Nakano Glenn 2002; Ngai 2004; Hahamovitch 2011; Kim 2015; Milkman 2020; Parreñas 2022), subjecting welfare recipients to intensive state surveillance (Peck 2001; Collins and Mayer 2010; Soss, Fording, and Schram 2011), threatening workers on parole and probation who fail to comply with employers' demands with incarceration (Zatz 2020b; 2021; Purser 2021), and imposing various nonpecuniary sanctions on student workers and college athletes (Hatton 2020). These various disciplinary techniques remind us that the employment relationship is structured as a thoroughly despotic one (Anderson 2017), and this despotism runs as much through what Hatton (2020) calls "status coercion" as it does through the forms of "economic coercion" emphasized by the Realists.[53] As Tomlins (1995, 77) observes, "Disciplinary authority is an authority built on difference, not on the accumulation and monopolization of resources."

4. Status Remakes Contract

Attention to the disciplinary—rather than exclusionary—power of the state makes it clear that workers carry the state's disciplinary authority into the labor market by virtue of their engagement with institutions formally outside the labor market.[54] Focusing on the problem of disciplinary authority also illuminates how the labor contract is continually remade to meet changing social conditions. Consider the case of the flexibilization of the labor contract, arguably the most important reworking of the meaning of the employment relationship in the second half of the twentieth century (Kalleberg 2000; Hatton 2011; Hyman 2018; Milkman 2020; Dukes and Streeck 2023). Notably, the conventional sociological approach treats status as a source of "institutional rigidity" in the labor market and hence an obstacle to be overcome in achieving a flexible labor market (for example, Streeck 1992, 64–65). The image of status operating as an *external constraint* on contractual relations is clear here: a frictionless market jams up on the social prerogatives created by collective bargaining (compare Selznick 1969). But from the perspective outlined here, (extramarket) statuses may be a *source* of flexibility as much as rigidity in the labor market because *status remakes contract from the inside*—as when employers harness the disciplinary power of the state to create vulnerable labor (immigrant, guest worker, welfare recipient, prisoner/parolee, etc.). Consider as a particularly generative example the situation of mid-to-late-twentieth-century queer workers, whom Canaday (2023, 259) identifies as the "guest workers of the corporate office." These were workers whose relatively weak bargaining endowment was shaped both by the state's vigorous policing of homosexuality over much of the twentieth century and by the presumption (accurate or not) that these were workers without significant familial attachments. When in the middle decades of the twentieth century the expectation that (male) workers were breadwinners who supported families significantly constrained employers, hiring queers provided a "pressure-release valve" allowing relief from the Fordist family wage: "inexpensive, movable, and easily eliminated"

[53] Hatton (2020) uses "status coercion" to refer to the coercive capacities exercised by employers by virtue of depriving an individual of the privileges associated with occupying a particular social position, as when the professor's faint praise in a recommendation letter forecloses a career in academia. This stands in contrast to coercive capacities exercised through pecuniary incentives ("economic coercion") or the application of bodily force ("physical coercion").

[54] This proposition is especially evident when considering the evolution of the modern employment contract from master/servant laws governing domestic relations. As numerous scholars have observed (see Selznick 1969; Fox 1974; Steinfeld 1991; Orren 1991; Tomlins 1993; McEvoy 1998; Deakin and Wilkinson 2005; Steinberg 2016), the disciplinary power of the patriarchal household head over domestic servants was imported into the emerging employment contract over the course of industrialization. This power included both the capacity to coerce contracted laborers to remain with an employer for the full term of service and to complete assigned tasks under threat of imprisonment (Steinfeld 1991). Broadly, master/servant laws constituted the employment relationship as one of personal subordination, with an open-ended duty of obedience (Deakin and Wilkinson 2005, 61), while diluting employers' reciprocal obligations to care for the well-being of workers (Fox 1974, 188).

(Canaday 2023, 63–64).[55] In the later decades of the twentieth century, when deteriorating conditions across the economy motivated employers to move toward short-term labor contracts and dilute benefits even for higher-status workers, their prior experience with queer workers showed the way. Canaday (2023) speculates that corporations may have "learned" flexibility from their gay employees, eventually generalizing this labor form to nonqueer workers (see also Hyman 2018).[56] Thus, status here imprints contract in a way that does not permit us to consider status simply as an external constraint operating on contract; it is instead the very material from which contractual relations are constructed (and reconstructed) from inside the bargain.

Summarizing across these various propositions, sociological research on categorical status inequalities challenges Hale's assertion that "[bargaining] power itself is derived in part from the law's more or less *blind and haphazard* distribution of favors and burdens, in the shape of powers over others and obligations to others" (1920, 455, emphasis added). Rather than blind and haphazard, the distribution of bargaining power is constitutive of, and derivative from, structures of race, class, gender, sexuality, and the associated legal statuses (wife, noncitizen, welfare recipient, prisoner/parolee, etc.) in which these group affiliations produce social effects. Indeed, if we follow this idea to its logical conclusion, we can begin to imagine contracts as themselves forming the organizational sinews that carry social difference—in seemingly neutral, but in fact highly structured ways—into market exchange (compare Acker 1990; Ray 2019). Status and contract may at last break free of their long opposition and find themselves locked in an embrace that allows scholars new insights into the social space that we call the "market."

V. Conclusion

In this article, we have examined the absence of a well-elaborated concept of contract within economic sociology *and* the subfield's longstanding inattention to forms of social difference as constitutive of market exchange. Taking these problems as flipsides of the same (status/contract) coin, we have explored two contrasting strategies for "socializing the economy." The first of these strategies, associated with classical sociological theory, rests on Maine's familiar status/contract dichotomy, but revalorizes the two poles in favor of the "social." Polanyi's notion of "embeddedness" offers an illustration of this first approach, as contract is here purged of social content and then made subordinate to social relations that regulate market exchange from the outside. While offering an incisive critique of laissez-faire economics (see Block and Somers 2014), we suggest that this approach results not only in an impoverished theory of the market, but also reinforces dualistic thinking about the economy (compare Krippner 2001; Mitchell 2008; Gemici 2015). The second strategy for "socializing the economy" is associated with Legal Realism and takes a different tack. Rather than resting on a starkly dichotomous model of social development, the Legal Realists treat status and contract as analytically distinct but empirically coterminous principles of social organization. Critically,

[55] As Canaday (2023, 63) notes, women and people of color similarly provided a pressure-release valve for employers seeking to escape the constraints of the Fordist family wage, but these workers tended to be confined to lower tiers of the labor market, where labor contracts were already less stable and benefits less generous. In this regard, what was unique about queer workers was that they offered employers flexibility across the labor market, even in higher-status segments where the family-breadwinner model was paradigmatic.

[56] Milkman's (2020) recent analysis of immigrant workers offers something like the inverse of Canaday's argument: according to Milkman, the labor contract was made flexible *first*, causing privileged workers to leave these jobs and be replaced by immigrants. Here immigrant workers do not "cause" labor market flexibility but step into flexible sectors as these jobs are being abandoned by more privileged workers, taking on some of the attributes of these precarious jobs. If Milkman's analysis is correct, it suggests that not only does status remake contract, but *contract also remakes status*.

because status and contract are intertwined in any given transaction, they do not operate on each other externally, but through the internal constitution of variable social relationships. Thus, the market is not externally regulated by the state, norms, or social ties (as in the "embeddedness" formulation), *but is itself a form of state regulation* as private actors enact and embody the sovereign power of the state through the law of contract (see Cohen 1933, 586; Singer 1988, 491). This shift in perspective requires reconceptualizing what are typically regarded as mutually exclusive spheres of activity (status/contract, public/private, state/market, etc.) as institutional domains that substantially overlap, thinking less about differences in kind and more about differences in degree (Fried 1998), and collapsing rather than reinforcing the reigning dichotomies of liberal social thought. Ultimately, we suggest that a merger between sociological and Realist perspectives—in which sociology's more robust conception of status is joined to the expansive notion of contract developed by Legal Realist scholars—provides a more fruitful approach to socializing the economy than offered by either perspective alone.

REFERENCES

Abbott, Andrew. 2015. "The Future of the Social Sciences." 37th Annual Marc Bloch Lecture, Ecole des Hautes Études en Sciences Sociales, Paris, June 18, 2015.

Acker, Joan. 1990. "Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations." 4 *Gender and Society* 139.

Aldous, Joan, Emile Durkheim, and Ferdinand Tönnies. 1972. "An Exchange Between Durkheim and Tönnies on the Nature of Social Relation, with an Introduction by Joan Aldous." 77 *American Journal of Sociology* 1191.

Anderson, Elizabeth. 1990. "Women and Contracts: No New Deal." 88 *Michigan Law Review* 1792.

Anderson, Elizabeth. 2017. *Private Government: How Employers Rule Our Lives (and Why We Don't Talk About It)*. Princeton University Press.

Bandelj, Nina. 2019. "Academic Familism, Spillover Prestige and Gender Segregation in Sociology Subfields: The Trajectory of Economic Sociology." 50 *American Sociologist* 488.

Barber, Bernard. 1995. "All Economies Are 'Embedded': The Career of a Concept, and Beyond." 62 *Sociological Research* 387.

Barry, Andrew, and Don Slater. 2011. "Technology, Politics, and the Market: An Interview with Michel Callon." 31 *Economy and Society* 285.

Beckert, Jens. 2000. "Contract and Social Justice: Emile Durkheim's Theory of Integration of Modern Societies." In *Emile Durkheim: Critical Assessments of Leading Sociologists*, edited by W. S. F. Pickering, 290. Routledge.

Beckert, Jens. 2009. "The Great Transformation of Embeddedness." In *Markets and Society: The Great Transformation Today*, edited by Chris Hann and Keith Hart, 38. Cambridge University Press.

Bender, Thomas. 1978. *Community and Social Change in America*. Johns Hopkins University Press.

Block, Fred. 2001. Introduction to *The Great Transformation: The Political and Economic Origins of Our Times*, by Karl Polanyi, xviii. Beacon.

Block, Fred. 2013. "Relational Work and the Law: Recapturing the Legal Realist Critique of Market Fundamentalism." 40 *Journal of Law and Society* 27.

Block, Fred, and Margaret R. Somers. 2014. *The Power of Market Fundamentalism: Karl Polanyi's Critique*. Harvard University Press.

Brown, Dorothy. 2022. *The Whiteness of Wealth: How the Tax System Impoverishes Black Americans—And How We Can Fix It*. Crown.

Brubaker, Rogers. 2015. *Grounds for Difference*. Harvard University Press.

Callon, Michel. 1998. "The Embeddedness of Economic Markets in Economics." In *The Laws of the Markets*, edited by Michel Callon, 1. Blackwell.

Camic, Charles. 1979. "The Utilitarians Revisited." 85 *American Journal of Sociology* 516.

Canaday, Margot. 2023. *Queer Career: Sexuality and Employment in Modern America*. Princeton University Press.

Cangiani, Michele. 2011. "Karl Polanyi's Institutional Theory: Market Society and Its 'Disembedded' Economy." 45 *Journal of Economic Issues* 177.

Cangiani, Michele. 2021. "Market Society and the Institutional Theory of Karl Polanyi." In *Institutional Economics: Perspectives and Methods in Pursuit of a Better World*, edited by Charles Whalen, 78. Routledge.

Carruthers, Bruce G., and Terrence C. Halliday. 1998. *Rescuing Business: The Making of Corporate Bankruptcy Law in England and the United States*. Clarendon.

Clemens, Elisabeth S. 2009. "The Problem of the Corporation: Liberalism and the Large Organization." In *The Oxford Handbook of Sociology and Organization Studies: Classical Foundations*, edited by Paul Adler, 535. Oxford University Press.

Cohen, Morris R. 1933. "The Basis of Contract." 46 *Harvard Law Review* 553.

Collini, Stefan. 1983. *Liberalism and Sociology: L.T. Hobhouse and Political Argument in England, 1880-1941*. Cambridge University Press.

Collins, Jane L., and Victoria Mayer. 2010. *Both Hands Tied: Welfare Reform and the Race to the Bottom of the Low-Wage Labor Market*. University of Chicago Press.

Conley, Dalton. 1999. *Being Black, Living in the Red*. University of California Press.

Cooper, Melinda. 2017. *Family Values: Between Neoliberalism and the New Social Conservatism*. MIT Press.

Dale, Gareth. 2010. *Karl Polanyi: The Limits of the Market*. Polity.

Dale, Gareth. 2016. *Reconstructing Karl Polanyi: Excavation and Critique*. Pluto.

Deakin, Simon, and Frank Wilkinson. 2005. *The Law of the Labour Market: Industrialization, Employment, and Legal Evolution*. Oxford University Press.

Desan, Mathieu Hikaru. 2023. "Realist and Historicist Modes of Critique in Critical Sociology." 49 *Critical Sociology* 589.

Dore, Ronald. 1983. "Goodwill and the Spirit of Market Capitalism." 34 *British Journal of Sociology* 459.

Dukes, Ruth. 2019. "The Economic Sociology of Labour Law." 46 *Journal of Law and Society* 396.

Dukes, Ruth, and Wolfgang Streeck. 2023. *Democracy at Work: Contract, Status, and Post-Industrial Justice*. Polity.

Durkheim, Emile. (1893) 1984. *The Division of Labor in Society*. Free Press.

Durkheim, Emile. (1957) 1992. *Professional Ethics and Civic Morals*. Routledge.

England, Paula, and George Farkas. 1986. *Households, Employment, and Gender: A Social, Economic, and Demographic View*. Aldine.

England, Paula, and Nancy Folbre. 2005. "Gender and Economic Sociology." In *Handbook of Economic Sociology*, 2nd ed., edited by Neil J. Smelser and Richard Swedberg, 627. Princeton University Press.

Flores, Luis. 2023. "The Regulatory Politics of Home-Based Moneymaking After the American Family Wage." PhD diss., University of Michigan.

Foucault, Michel. 1979. *Discipline and Punish: The Birth of the Prison*. Vintage.

Fourcade, Marion, and Kieran Healy. 2013. "Classification Situations: Life-Chances in the Neoliberal Era." 38 *Accounting, Organizations and Society* 559.

Fox, Alan. 1974. *Beyond Contract: Work, Power, and Trust Relations*. Faber & Faber.

Fraser, Nancy, and Linda Gordon. 1992. "Contract Versus Charity: Why Is There No Social Citizenship in the United States?" 22 *Socialist Review* 45.

Frerichs, Sabine. 2019. "Karl Polanyi and the Law of Market Society." 44 *Österreichische zeitschrift für soziologie* 197. https://doi.org/10.1007/s11614-019-00328-5.

Freund, David M. P. 2007. *Colored Property: State Policy and White Racial Politics in Suburban America.* University of Chicago Press.

Fried, Barbara H. 1998. *The Progressive Assault on Laissez Faire: Robert Hale and First Law and Economics Movement*. Harvard University Press.

Garnett, Nicole S. 2001. "On Castles and Commerce: Zoning Law and the Home-Business Dilemma." 42 *William & Mary Law Review* 1191.

Gemici, Kurtulus. 2008. "Karl Polanyi and the Antinomies of Embeddedness." 6 *Socio-Economic Review* 5. https://doi.org/10.1093/ser/mwl034.

Gemici, Kurtulus. 2015. "The Neoclassical Origins of Polanyi's Self-Regulating Market." 33 *Sociological Theory* 125.

Goluboff, Risa L. 2007. *The Lost Promise of Civil Rights*. Harvard University Press.

Gordon, Robert W. 1985. "Macaulay, Macneil, and the Discovery of Solidarity and Power in Contract Law." 1985 *Wisconsin Law Review* 565.

Granovetter, Mark. 1985. "Economic Action and Social Structure: The Problem of Embeddedness." 91 *American Journal of Sociology* 481.

Granovetter, Mark. 1988. "The Sociological and Economic Approaches to Labor Market Analysis: A Social Structural View." In *Industries, Firms and Jobs: Sociological and Economic Approaches*, edited by George Farkas and Paula England, 187. MIT Press.

Graveson, R. H. 1953. *Status in the Common Law*. Athlone Press.

Gupta. Priya S. 2015. "Governing the Single-Family Home: A (Brief) Legal History." 37 *University of Hawai'i Law Review* 187.

Gupta, Priya. 2023. "Property and Race." In *Routledge Handbook of Property, Law, and Society*, edited by Nicole Graham, Margaret Davies, and Lee Godden, 399. Routledge.

Hahamovitch, Cindy. 2011. *No Man's Land: Jamaican Guestworkers in America and the Global History of Deportable Labor*. Princeton University Press.

Hale, Robert L. 1920. "Law Making by Unofficial Minorities." 20 *Columbia Law Review* 451.

Hale, Robert L. 1922. "Current Political and Economic Review." 10 *American Bar Association Journal* 638.

Hale, Robert L. 1923. "Coercion and Distribution in a Supposedly Non-Coercive State." 38 *Political Science Quarterly* 470.

Hale, Robert L. 1935. "Force and the State: A Comparison of 'Political' and 'Economic' Compulsion." 35 *Columbia Law Review* 149.

Hale, Robert L. 1939. "Our Equivocal Constitutional Guaranties." 39 *Columbia Law Review* 563.

Hale, Robert L. 1943. "Bargaining, Duress, and Economic Liberty." 43 *Columbia Law Review* 603.

Hale, Robert L. 1946. "Rights Under the Fourteenth and Fifteenth Amendments Against Injuries Inflicted by Private Individuals." 6 *Lawyers Guild Review* 627.

Halley, Janet. 2010. "Behind the Law of Marriage (I): From Status/Contract to the Marriage System." 6 *Unbound* 1.

Halley, Janet. 2011a. "What Is Family Law?: A Genealogy, Part I." 23 *Yale Journal of Law & the Humanities* 1.

Halley, Janet. 2011b. "What Is Family Law?: A Genealogy, Part II." 23 *Yale Journal of Law & the Humanities* 189.

Harris, Cheryl I. 1993. "Whiteness as Property." 106 *Harvard Law Review* 1701.

Hatton, Erin. 2011. *The Temp Economy: From Kelly Girls to Permatemps in Postwar America*. Temple University Press.

Hatton, Erin. 2020. *Coerced: Work Under Threat of Punishment*. University of California Press.

Healy, Kieran, and Kimberly D. Krawiec. 2012. "Custom, Contract, and Kidney Exchange." 62 *Duke Law Journal* 645.

Heimer, Carol. 1985. *Reactive Risk and Rational Action: Managing Moral Hazard in Insurance Contracts*. University of California Press.

Hirschman, Daniel, and Laura Garbes. 2021. "Toward an Economic Sociology of Race." 19 *Socio-Economic Review* 1171.

Hoang, Kimberly Kay. 2015. *Dealing in Desire: Asian Ascendancy, Western Decline, and the Hidden Currencies of Global Sex Work*. University of California Press.

Hochschild, Arlie, and Anne Machung. 1989. *The Second Shift: Working Parents and the Revolution at Home*. Viking.

Holmes, Christopher, and David Yarrow. 2019. "Economic Ideas." In *Karl Polanyi's Economic and Political Thought: A Critical Guide*, edited by Gareth Dale, Christopher Holmes, and Maria Markantonatou, 7. Agenda Publishing.

Horowitz, Morton. 1977. *The Transformation of American Law, 1780-1860*. Harvard University Press.

Houh, Emily. 2003. "Critical Interventions: Toward an Expansive Equality Approach to the Doctrine of Good Faith in Contract Law." 88 *Cornell Law Review* 1025.

Houh, Emily. 2015. "Sketches of a Redemptive Theory of Contract Law." 66 *Hastings Law Journal* 951.

Hunt, Alan. 1992. "Foucault's Expulsion of Law: Toward a Retrieval." 17 *Law & Social Inquiry* 1.

Hyman, Louis. 2018. *Temp: How American Work, American Business, and the American Dream Became Temporary*. Viking.

Isaacs, Nathan. 1917. "The Standardizing of Contracts." 27 *Yale Law Journal* 34.

Jaffe, Louis L. 1937. "Law Making by Private Groups." 51 *Harvard Law Review* 201.

Kahn-Freund, Otto. 1967. "A Note on Status and Contract in British Labour Law." 30 *Modern Law Review* 635. https://doi.org/10.1111/j.1468-2230.1967.tb02799.x.

Kalleberg, Arne. 2000. "Nonstandard Employment Relations: Part-Time, Temporary, or Contract Work." 26 *Annual Review of Sociology* 341.

Kalleberg, Arne, and Torger Reve. 1992. "Contracts and Commitment: Economic and Sociological Perspectives on Employment Relations." 45 *Human Relations* 1103.

Kennedy, Duncan. (1975) 2006. *The Rise and Fall of Classical Legal Thought*. Beard Books.

Kennedy, Duncan. 1991. "The Stakes of the Law, or Hale or Foucault!" 15 *Legal Studies Forum* 327.

Keren, Hila. 2013. "Consenting Under Stress." 64 *Hastings Law Journal* 679.

Keren, Hila. 2019. "Feminism and Contract Law." In *Research Handbook on Feminist Jurisprudence*, edited by Robin West and Cynthia Grant Bowman, 406. Edward Elgar Publishing.

Kessler, Friedrich. 1943. "Contracts of Adhesion—Some Thoughts About Freedom of Contract." 43 *Columbia Law Review* 629.

Kim, Kathleen. 2015. "Beyond Coercion." 62 *UCLA Law Review* 1558.

Kornberg, Dana. 2023. "Transactional Pathways and Racial Capitalisms." Paper presented at the American Sociological Association, Philadelphia, PA, August 18, 2023.

Korver-Glenn, Elizabeth. 2021. *Race Brokers: Housing Markets and Segregation in 21st Century Urban America*. Oxford University Press.

Kreitner, Roy. 2007. *Calculating Promises: The Emergence of Modern American Contract Doctrine*. Stanford University Press.

Krippner, Greta R. 2001. "The Elusive Market: Embeddedness and the Paradigm of Economic Sociology." 30 *Theory and Society* 775.

Krippner, Greta R. 2017. "Polanyi for the Age of Trump." 4 *Critical Historical Studies* 243.

Krippner, Greta R. Forthcoming. "Gendered Market Devices: The Persistance of Gender Discrimination in Insurance Markets." *American Journal of Sociology*.

Krippner, Greta R., and Anthony S. Alvarez. 2007. "Embeddedness and the Intellectual Projects of Economic Sociology." 33 *Annual Review of Sociology* 219.

Leiter, Brian. 1997. "Rethinking Legal Realism: Toward a Naturalized Jurisprudence." 76 *Texas Law Review* 267.

Lie, John. 1991. "Embedding Polanyi's Market Society." 34 *Sociological Perspectives* 219.

Light, Ivan. 2005. "The Ethnic Economy." In *Handbook of Economic Sociology*, 2nd ed., edited by Neil J. Smelser and Richard Swedberg, 650. Princeton University Press.

Light, Ivan, and Stavros Karageorgis. 1994. "The Ethnic Economy." In *Handbook of Economic Sociology*, 1st ed., edited by Neil J. Smelser and Richard Swedberg, 647. Princeton University Press.

Lindsey, Brink, and Steven M. Teles. 2017. *The Captured Economy: How the Powerful Enrich Themselves, Slow Growth, and Increase Inequality*. Oxford University Press.

Llewellyn, Karl. 1931. "What Price Contract? An Essay in Perspective." 40 *Yale Law Journal* 704.

Lukes, Steven. 1985. *Emile Durkheim: His Life and Work; A Historical and Critical Study*. Stanford University Press.

Macaulay, Stuart. 1963. "Non-Contractual Relations in Business: A Preliminary Study." 28 *American Sociological Review* 55.

Macaulay, Stuart. 1985. "An Empirical View of Contract." 1985 *Wisconsin Law Review* 465.

Macaulay, Stuart. 2005. "The New Versus the Old Legal Realism: 'Things Ain't What They Used to Be.'" 2005 *Wisconsin Law Review* 365.

Mackenzie, Donald. 2007. *An Engine, Not a Camera: How Financial Models Shape Markets*. MIT Press.

Mackenzie, Donald, Fabian Muniesa, and Lucia Siu, eds. 2008. *Do Economists Make Markets? On the Performativity of Economics*. Princeton University Press.

MacNeil, Ian R. 1974. "The Many Futures of Contract." 47 *Southern California Law Review* 691.

MacNeil, Ian R. 1980. *The New Social Contract: An Inquiry into Modern Contractual Relations*. Yale University Press.

MacNeil, Ian R. 2000. "Relational Contract Theory: Challenges and Queries." 94 *Northwestern Law Review* 877. https://doi.org/10.1177/14737795231188384.

Maine, Henry Sumner. (1861) 1931. *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas*. Oxford University Press.

Marshall, T. H. 1950. *Citizenship and Social Class*. Cambridge University Press.

Marx, Karl. (1867) 1992. *Capital*. Vol. 1. Penguin Books.

Marx, Karl. 1975. *Early Writings*. Translated by Rodney Livingstone and Gregor Benton. Penguin Books.

Massey, Douglas S. 2008. *Categorically Unequal: The American Stratification System*. Russell Sage Foundation.

Massey, Douglas S., and Nancy Denton. 1993. *American Apartheid: Segregation and the Making of the Underclass*. Harvard University Press.

McCabe, Brian J. 2016. *No Place Like Home*: *Wealth, Community, and the Politics of Homeownership*. Oxford University Press.

McCaffery, Edward J. 1999. *Taxing Women: How the Marriage Penalty Affects Your Taxes*. University of Chicago Press.

McEvoy, Arthur F. 1998. "Freedom of Contract, Labor, and the Administrative State." In *The State and Freedom of Contract*, edited by Harry Scheiber, 198. Stanford University Press.

Mears, Ashley. 2011. *Pricing Beauty: The Making of a Fashion Model.* University of California Press.

Milkman, Ruth. 2020. *Immigrant Labor and the New Precariat*. Polity.

Milkman, Ruth, and Eleanor Townsley. 1994. "Gender and the Economy." In *Handbook of Economic Sociology*, 1st ed., edited by Neil J. Smelser and Richard Swedberg, 600. Princeton University Press.

Mitchell, Timothy. 2008. "Rethinking Economy." 39 *Geoforum* 1116.

Mnookin, Robert H., and Lewis Kornhauser. 1979. "Bargaining in the Shadow of the Law: The Case of Divorce." 88 *Yale Law Journal* 950.

Nakano Glenn, Evelyn. 2002. *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor*. Harvard University Press.

Ngai, Mae N. 2004. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton University Press.

Norris, Davon. 2023. "Embedding Racism: City Government Credit Ratings and the Institutionalization of Race in Markets." 70 *Social Problems* 914.

Oliver, Melvin L., and Thomas M. Shapiro. 1995. *Black Wealth, White Wealth: A New Perspective on Racial Inequality*. Routledge.

Olsen, Frances E. 1983. "The Family and the Market: A Study of Ideology and Legal Reform." 96 *Harvard Law Review* 1497.

Orren, Karen. 1991. *Belated Feudalism: Labor, the Law, and Liberal Development in the United States*. Cambridge University Press.

Özel, Hüseyin. 1997. "Reclaiming Humanity: The Social Theory of Karl Polanyi." PhD diss., University of Utah.

Özel, Hüseyin. 2019. "Commodification." In *Karl Polanyi's Economic and Political Thought: A Critical Guide*, edited by Gareth Dale, Christopher Holmes, and Maria Markantonatou, 131. Agenda Publishing.

Parreñas, Rhacel Salazar. 2022. *Unfree: Migrant Domestic Workers in Arab States*. Stanford University Press.

Parsons, Talcott. (1937) 1967. *The Structure of Social Action*. Free Press.

Parsons, Theophilus. 1853. *The Law of Contracts*. William S. Heim.

Peck, Jamie. 2001. *Workfare States*. Guildford.

Peck, Jamie. 2005. "Economic Sociologies in Space." 81 *Economic Geography* 129.

Peck, Jamie. 2013a. "Disembedding Polanyi: Exploring Polanyian Geographies." 45 *Environment and Planning A* 1536. https://doi.org/10.1068/a46253.

Peck, Jamie. 2013b. "For Polanyian Geographies." 45 *Environment and Planning A* 1545.

Perrow, Charles. 1986. "Economic Theories of Organization." 15 *Theory & Society* 11.

Polanyi, Karl. (1944) 2001. *The Great Transformation: The Political and Economic Origins of Our Time*. Beacon.

Polanyi, Karl. 1957. *Trade and Market in the Early Empires: Economies in History and Theory*. Edited by Karly Polanyi, Conrad M. Arensberg, and Harry W. Pearson. Free Press.

Polanyi, Karl. 1968a. "Aristotle Discovers the Economy." In *Primitive, Archaic, and Modern Economies: Essays of Karl Polanyi*, edited by George Dalton, 78. Beacon.

Polanyi, Karl. 1968b. "The Economy as Instituted Process." In *Primitive, Archaic, and Modern Economies: Essays of Karl Polanyi*, edited by George Dalton, 139. Beacon.

Polanyi, Karl. 1968c. "Our Obsolete Market Mentality." In *Primitive, Archaic, and Modern Economies: Essays of Karl Polanyi*, edited by George Dalton, 59. Beacon.

Polanyi, Karl. 1977. *The Livelihood of Man*. Edited by Harry W. Pearson. Academic Press.

Pope, James Gray. 2010. "Contract, Race, and Freedom of Labor in the Constitutional Law of Involuntary Servitude." 119 *Yale Law Journal* 1474.

Pound, Roscoe. 1917. "The End of Law as Developed in Juristic Thought, Part II." 30 *Harvard Law Review* 201. https://doi.org/10.2307/1327774.

Pound, Roscoe. 1930. "The New Feudalism." 16 *American Bar Association Journal* 553.

Pound, Roscoe. 1931. "Contract." In *Encyclopedia of the Social Sciences*, edited by Edwin Robert Anderson Seligman and Alvin Saunders Johnson, 323. Macmillan Publishers.

Purser, Gretchen. 2021. "'You Put Up with Anything': On the Vulnerability and Exploitability of Formerly Incarcerated Workers." In *Labor and Punishment: Work In and Out of Prison*, edited by Erin Hatton, 213. University of California Press.

Radin, Margaret Jane. 2013. *Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law*. Princeton University Press.

Radin, Max. 1943. "Contract Obligation and the Human Will." 43 *Columbia Law Review* 575.

Randles, Sally. 2007. "Issues for a Neo-Polanyian Research Agenda in Economic Sociology." 13 *International Review of Sociology* 409.

Ray, Victor. 2019. "A Theory of Racialized Organizations." 84 *American Sociological Review* 26. https://doi.org/10.1177/0003122418822335.

Rehbinder, Manfred. 1971. "Status, Contract, and the Welfare State." 23 *Stanford Law Review* 941.

Ridgeway, Cecilia L. 2011. *Framed by Gender: How Gender Inequality Persists in the Modern World.* Oxford University Press.

Ridgeway, Cecilia L. 2014. "Why Status Matters for Inequality." 79 *American Sociological Review* 1.

Ridgeway, Cecilia L. 2019. *Status: Why Is It Everywhere? Why Does It Matter?* Russell Sage Foundation.

Robinson, John N. 2020. "Making Markets on the Margins: Housing Finance Agencies and the Racial Politics of Credit Expansion." 125 *American Journal of Sociology* 974.

Rose, Nikolas, and Mariana Valverde. 1998. "Governed by Law?" 7 *Social & Legal Studies* 541.

Rothstein, Richard. 2017. *The Color of Law: A Forgotten History of How Our Government Segregated America.* W. W. Norton.

Salzinger, Leslie. 2003. *Genders in Production: Making Workers in Mexico's Global Factories*. University of California Press.

Salzinger, Leslie. 2016. "Re-Marking Men: Masculinity as a Terrain of the Neoliberal Economy." 3 *Critical Historical Studies* 1.

Schlegel, John Henry. 1995. *American Legal Realism and Empirical Social Science*. University of North Carolina Press.

Scott, Alison MacEwen. 1986. "Industrialization, Gender Segregation, and Stratification Theory." In *Gender and Stratification*, edited by Rosemary Crompton and Michael Mann, 154. Polity.

Seagle, William. 1941. *The Quest for Law*. Knopf.

Seamster, Louise, and Raphaël Charron-Chénier. 2017. "Predatory Inclusion and Education Debt: Rethinking the Racial Wealth Gap." 4 *Social Currents* 199.

Seidman, Steven. 1983. *Liberalism and the Origins of European Social Theory*. University of California Press.

Selznick, Philip. 1969. *Law, Society, and Industrial Justice*. Russell Sage Foundation.

Simon, Jonathan. 1993. "For the Government of Its Servants: Law and Disciplinary Power in the Work Place, 1870-1906." 13 *Studies in Law, Politics, and Society* 105.

Singer, Joseph W. 1988. "Legal Realism Now." 76 *California Law Review* 465.

Singer, Joseph W. 1991. "Sovereignty and Property." 86 *Northwestern Law Review* 1.

Singer, Joseph W. 1992. "Re-Reading Property." 26 *New England Law Review* 711.

Singer, Joseph W. 2017. "Indian Title: Unraveling the Racial Context of Property Rights, or How to Stop Engaging in Conquest." 10 *Albany Government Law Review* 1.

Smelser, Neil, and Richard Swedberg, eds. 1994. *The Handbook of Economic Sociology*. 1st ed. Princeton University Press.

Smelser, Neil, and Richard Swedberg, eds. 2005. *The Handbook of Economic Sociology*. 2nd ed. Princeton University Press.

Smith, D. Gordon, and Brayden G. King. 2009. "Contracts as Organizations." 51 *Arizona Law Review* 1.

Somers, Margaret R. 2008. *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights*. Cambridge University Press.

Somers, Margaret R. 2022. "Legal Predistribution, Market Justice, and Dedemocratization: Polanyi and Piketty on Law and Political Economy." 3 *Journal of Law and Political Economy* 225. https://doi.org/10.5070/LP63259631.

Soss, Joe, Richard C. Fording, and Sanford F. Schram. 2011. *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race*. University of Chicago Press.

Springborg, Patricia. 1986. "Politics, Primordialism, and Orientalism: Marx, Aristotle, and the Myth of Gemeinschaft." 80 *American Political Science Review* 186.

Stanley, Amy Dru. 1988. "Conjugal Bonds and Wage Labor: Rights of Contract in an Age of Emancipation." 75 *Journal of American History* 471.

Stanley, Amy Dru. 1998. *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation*. Cambridge University Press.

Stanley, Amy Dru. 2014. "Contract." In *Keywords for American Cultural Studies*, 2nd ed., edited by Bruce Burgett and Glenn Hendler, 56. NYU Press.

Starr, Paul. 1992. "Social Categories and Claims in the Liberal State." 59 *Social Research* 263.

Steinberg, Marc W. 2016. *England's Great Transformation: Law, Labor, and the Industrial Revolution*. University of Chicago Press.

Steiner, Philippe. 2009. "The Critique of the Economic Point of View: Karl Polanyi and the Durkheimians." In *Markets and Society: The Great Transformation Today*, edited by Chris Hann and Keith Hart, 56. Cambridge University Press.

Steinfeld, Robert J. 1991. *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350-1870*. University of North Carolina Press.

Steinfeld, Robert J. 1999. "Changing Legal Conceptions of Free Labor." In *Terms of Labor: Slavery, Serfdom, and Free Labor*, edited by Stanley L. Engerman, 137. Stanford University Press.

Stinchcombe, Arthur L. 1985. "Contracts as Hierarchical Documents." In *Organization Theory and Project Management*, edited by Arthur Stinchcombe and Carol Heimer, 121. Norwegian University Press.

Streeck, Wolfgang. 1992. *Social Institutions and Economic Performance: Studies of Industrial Relations in Advanced Capitalist Economies*. SAGE Publications.

Suchman, Mark. 2003. "Contract as Social Artifact." 37 *Law & Society Review* 91.

Swedberg, Richard. 2003. "The Case for an Economic Sociology of Law." 32 *Theory and Society* 1.

Taylor, Keeanga-Yamahtta. 2019. *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*. University of North Carolina Press.

Tilly, Charles. 1998. *Durable Inequality*. University of California Press.

Tilly, Chris, and Charles Tilly. 1994. "Transaction Cost Economics and Organization Theory." In *The Handbook of Economic Sociology*, 1st ed., edited by Neil J. Smelser and Richard Swedberg, 283. Princeton University Press.

Tomlins, Christopher L. 1992. "Law and Power in the Employment Relationship." In *Labor Law in America: Historical and Critical Essays*, edited by Christopher L. Tomlins and Andrew J. King, 71. Johns Hopkins University Press.

Tomlins, Christopher L. 1993. *Law, Labour, and Ideology in the Early American Republic*. Cambridge University Press.

Tomlins, Christopher L. 1995. "Subordination, Authority, Law: Subjects in Labor History." 47 *International Labor and Working-Class History* 56.

Tönnies, Ferdinand. (1887) 1957. *Community and Society (Gemeinschaft und Gesellschaft)*. Translated and edited by Charles Loomis. Michigan State University.

Tucker, Robert C. 1978. *The Marx-Engels Reader*. 2nd ed. W. W. Norton.

Turner, Bryan S. 1988. *Status*. University of Minnesota Press.

Vidal, Matt, and Jamie Peck. 2012. "Sociological Institutionalism and the Socially Constructed Economy." In *Wiley-Blackwell Companion of Economic Geography*, edited by Trevor J. Barnes, Jamie Peck, and Eric Shepard, 594. Oxford University Press.

Vider, Stephen. 2021. "What Happened to the Functional Family? Defining and Defending Alternative Households Before and Beyond Same-Sex Marriage." In *Intimate States: Gender, Sexuality, and Governance in Modern US History*, edited by Margot Canaday, Nancy F. Cott, and Robert O. Self, 257. Chicago University Press.

Wallerstein, Immanuel. 1991. *Unthinking Social Science: The Limits of Nineteenth-Century Paradigms*. Basil Blackwell.

Weber, Max. (1922) 1978. *Economy and Society: An Outline of Interpretative Sociology*. University of California Press.

Williams, Neil G. 1994. "Offer, Acceptance, and Improper Considerations: A Common-Law Model for the Prohibition of Racial Discrimination in the Contracting Process." 62 *George Washington Law Review* 183.

Williams, Patricia. 1988. "On Being the Object of Property." 14 *Signs* 5.

Williamson, Oliver E. 1994. "Transaction Cost Economics and Organization Theory." In *The Handbook of Economic Sociology*, 1st ed., edited by Neil J. Smelser and Richard Swedberg, 77. Princeton University Press.

Zalesne, Deborah. 2013. "Racial Inequality in Contracting: Teaching Race as a Core Value." 3 *Columbia Journal of Race and Law* 23. https://doi.org/10.7916/cjrl.v3i1.2278.

Zatz, Noah. 2008. "Working at the Boundaries of Markets: Prison Labor and the Economic Dimension of Employment Relationship." 61 *Vanderbilt Law Review* 857.

Zatz, Noah. 2020a. "The Carceral State at Work: Exclusion, Coercion, and Subordination in Criminality at Work." In *Criminality at Work*, edited by Alan Bogg, Jennifer Collins, Mark Freedland, and Jonathan Herring, 496. Oxford University Press.

Zatz, Noah. 2020b. "Get to Work or Go to Jail: State Violence and the Racialized Production of Precarious Work." 45 *Law & Social Inquiry* 304. https://doi.org/10.1017/lsi.2019.56.

Zatz, Noah. 2021. "The Carceral Labor Continuum: Beyond the Prison Labor/Free Labor Divide." In *Labor and Punishment: Work In and Out of Prison*, edited by Erin Hatton, 133. University of California Press.

Zelizer, Viviana A. 2005. *The Purchase of Intimacy*. Princeton University Press.