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THE PERSPECTIVE OF LAW ON CONTRACT

Aditi Bagchi*

INTRODUCTION

Contract is an essential component of the first-year curriculum in American law schools. But law students do not all take the same course in contracts. More so than in countries where students in different classes, even universities, are given common examinations, American law students draw something of a lottery in their assignment to particular law professors.

The aspects of that lottery most immediately salient to law students may concern the pedagogical style and personality of their professors. But arguably more important, even than the subject matter covered by a particular course, is the picture of contract and contract law offered to students. Although students have their own direct experiences with contract, they might plausibly take their first-year course to present the definitive legal perspective on contract.

What is the perspective of law on contract? This Article will consider two dimensions of the perspective we offer students. Part I will consider how we present the nature of contract law. That is, it will explore the extent to which traditional methods of teaching unduly underplay indeterminacy and disagreement. In that Part I distinguish between inductive and deductive legal reasoning and suggest we may give short shrift to the former in teaching. Part II will consider the attitude of the law toward contract as a social practice. Here I distinguish between internal and external perspectives on law and suggest that many professors may be inclined to systematically favor one perspective over the other. We should strive to help students integrate those perspectives.

I. INDUCTIVE AND DEDUCTIVE REASONING IN CONTRACT LAW

Traditional contract courses emphasize doctrine. More rigorous

* Many thanks to Larry Cunningham and the editors of this journal for inviting me to participate in this symposium.

variants of doctrinally focused classes may emphasize logical continuity between doctrines. They might tease out underlying principles of contract to which the law appears committed, whether it be the requirement of agreement or the objective character of agreement, and demonstrate how those principles play out in one area after the other. In showing contract law to be more than an ensemble of isolated legal rules pertaining to the enforcement of agreement, a “cohesion” approach illuminates how rules hang (or fall) together, their common presuppositions as well as their tensions.

Presenting contract law as a body of law that aspires to regulate exchange in a consistent way reveals law at its best. The idea that rules constrain or direct—even if they do not fully determine—the ways in which powerful actors in our legal order adjudicate disputes between private persons who find themselves at the mercy of a court is the essence of the rule of law. If contract professors can show how the rule of law operates in an area so fundamental to commercial exchange and social order, we will have imparted something important to not only the practice of law but also the professional identity of budding lawyers.

The cohesion approach, which is doctrinal teaching at its best, proceeds by working through a set of classic and a few contemporary cases, each of which stands in for some doctrine or doctrinal development. The cases selected for students are usually ones that come closest to articulating key principles expressly.¹ If the rules amount to a three-part test, then all the better. Sometimes selected cases also (or instead) offer the most elaborate justification for the related legal rule² or the most detailed and systematic application of it.³ Sometimes they have especially compelling facts that demonstrate either the suitability or limits of the rule.⁴ Casebook authors appear to apply similar criteria because we see the same cases in numerous casebooks.⁵

1. For example, most casebooks use *Ricketts v. Scothorn*, 77 N.W. 365 (Neb. 1898), to illustrate promissory estoppel, and *Hoffman v. Red Owl Stores, Inc.*, 133 N.W.2d 267 (Wis. 1965), to illustrate the possibility of pre-contractual promissory estoppel.

2. See, e.g., *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965) (discussing unconscionability).

3. See, e.g., *Frigalment Importing Co. v. B.N.S. Int'l Sales Corp.*, 190 F. Supp. 116 (S.D.N.Y. 1960) (interpreting ambiguous term).

4. See, for example, the oft-used *Raffles v. Wichelhaus*, (1864) 159 Eng. Rep. 375 (Exch.); 2 Hurl. & C. 906, to illustrate failure of agreement, and *Sherwood v. Walker*, 33 N.W. 919 (Mich. 1887), to illustrate mutual mistake.

5. Each of the cases cited above, *supra* notes 1–4, appears in IAN AYRES & GREGORY KLASS, *STUDIES IN CONTRACT LAW* (8th ed. 2012); RANDY E. BARNETT, *CONTRACTS: CASES AND DOCTRINE* (4th ed. 2008); LON L. FULLER, MELVIN ARON EISENBERG & MARK GERGEN, *BASIC CONTRACT LAW* (9th ed. 2013); FRIEDRICH KESSLER, GRANT GILMORE & ANTHONY T. KRONMAN,

Although the thrust of this Article is to emphasize differences in the perspective on contract we offer students, what standardization we do see in classrooms results from the convenience of assigning casebooks that have preselected a set of cases, a set that is, again, substantially overlapping across casebooks. Those cases amount to a canon that even seasoned practitioners might refer to as representative of certain key legal rules. For example, one might long refer to the *Hadley* principle (of *Hadley v. Baxendale*⁶) to stand in for the idea that damages are limited to those foreseeable to the other party, or to *Wood v. Lucy, Lady Duff-Gordon*⁷ for the idea that a duty of good faith will be implied to cure apparent lack of mutuality in an agreement that was intended to be enforceable.

A common canon has advantages and disadvantages. From a pragmatic standpoint, it must be reassuring to law students that their grasp of the essential rules is not entirely contingent on the idiosyncrasies of their professors, especially as our idiosyncrasies are often rather apparent and not always reassuring on their face. It is also useful for attorneys to have a shorthand and common reference for fundamental rules. The common law is more common if students from law schools in different states, studying under professors with various priorities, come away with a common understanding of the most important rules and even the most important justifications offered for them. We cannot speak of an internal point of view⁸ if there is no common perspective shared by participants in the legal system. Without such an internal point of view, the cohesion and doctrinal unity that we might aspire to impart to students would be an illusion.

A legal canon comes with costs, however, just as there are costs to a literary canon, philosophical canon, or to a single history of any development or event.⁹ First, legal rules are indeterminate. Law students often resist indeterminacy, and depending on the perceived authority of their professor, may attribute the indeterminacy of her answers to reflect only her own uncertainty. In fact, indeterminacy is an essential feature of

CONTRACTS: CASES AND MATERIALS (3d ed. 1986).

6. (1854) 156 Eng. Rep. 145; 9 Ex. 341.

7. 118 N.E. 214 (N.Y. 1917).

8. See H.L.A. HART, THE CONCEPT OF LAW 79–88 (Penelope A. Bulloch & Joseph Raz eds., Clarendon Press 2d ed. 1994) (1961) (introducing the idea of an internal point of view in law).

9. For problems with a literary canon, see LEE MORRISSEY, DEBATING THE CANON: A READER FROM ADDISON TO NAFISI (2005). For problems with a philosophical canon, see FEMINIST REFLECTIONS ON THE HISTORY OF PHILOSOPHY (Lilli Alanen & Charlotte Witt eds., 2004) and PHILOSOPHY IN HISTORY: ESSAYS ON THE HISTORIOGRAPHY OF PHILOSOPHY (Richard Rorty et al. eds., 1984).

law generally—perhaps universally¹⁰—but at least of the common law.¹¹ The indeterminate application of legal rules and precedent to individual cases creates the space in which those rules evolve, and in which justice can be done for particular litigants whose facts depart from precedent in ways for which any formal articulation of the rule will not take adequate account.

There are a number of obvious ways in which we might attempt to impart the fact of indeterminacy to students. We might give them cases and ask them to apply them to facts and show that they and their peers arrive at radically different results, thus illustrating a simple feature of how the mind works. Or we might present them with apparently contradictory cases, as we often do in certain areas. For example, *Hill v. Gateway*¹² and *Klocek v. Gateway*¹³ neatly show how very smart judges construct offer and acceptance differently on very similar facts. Jurisdictional differences, such as those that surround the parol evidence rule or the plain meaning/contextualist rules on extrinsic evidence, begin with judges diverging at some point.¹⁴ The cases in which they self-consciously turn—often while emphasizing continuity—reveal the multiple paths available to that court under existing precedent.

But another important way in which the fact of indeterminacy is revealed to students, and remains salient to lawyers throughout their careers, is the fact of perpetual disagreement about law and its application. To the extent lawyers refer to a canon that inevitably reflects one strand of law, albeit a dominant one, we artificially stifle genuine disagreement about the state of the law, its reasoning, and its merits.

Even if it turns out that all things considered we benefit from a common core of cases that most students read, there is a more substantial pedagogical loss to presenting these cases to students in a pre-selected fashion. The method inherently favors the deductive aspect of legal thinking. We deduce the appropriate disposition of a case from legal rules when we invoke a general rule and apply that rule directly to

10. See generally JEREMY WALDRON, *LAW AND DISAGREEMENT* 166 (1999); Mark Tushnet, *Defending the Indeterminacy Thesis*, 16 QUINNIAC L. REV. 339 (1996).

11. See, e.g., G.W.F. HEGEL, *ELEMENTS OF THE PHILOSOPHY OF RIGHT* § 211, at 241 (Allen W. Wood ed., H.B. Nisbet trans., Cambridge Univ. Press 1991) (1821) (advocating codification in order to avoid the indeterminacy of the common law); JULIUS STONE, *LEGAL SYSTEM AND LAWYERS' REASONINGS* 235–98 (1964).

12. 105 F.3d 1147 (7th Cir. 1997).

13. 104 F. Supp. 2d 1332 (D. Kan. 2000).

14. See *Masterson v. Sine*, 436 P.2d 561 (Cal. 1968) (stating more permissive parol evidence rule); *P. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 442 P.2d 641 (Cal. 1968) (stating more permissive rule for introduction of extrinsic evidence to decide ambiguity of term).

our facts. But inductive reasoning, which in principle is not rivalrous but merely precedes deductive reasoning, is often regarded as the distinctive hallmark of common law reasoning.¹⁵ That is, though we might apply a rule deductively, we infer it in the first place from myriad cases. Especially in an era of electronic searching on Westlaw and Lexis, we do not stop with one statement of a legal rule. Rarely does a single formulation suffice to explain how a case should be handled, at least those cases that justify the time and attention of commercial litigators. In order to construct the nuanced formulation a lawyer needs, either for purposes of advising a client or in briefing to a court, an attorney must combine elements of the rule gathered from multiple cases, and she must combine them in the most elegant, logical, and normatively compelling way.

The usual method by which students learn contract rules is wholly unlike the manner in which they will acquire more subtle knowledge of the law later in practice. Although we may have good reason for proceeding as we do, we do not normally challenge them to extract a rule from cases but instead identify a case that ostensibly states the rule. We do not normally challenge them to construct a nuanced version of the rule from multiple cases; instead we discuss the application of the formulation offered to precisely those facts from which that formulation arose.

Consider an analogy to legal rules as formulas that predict (or determine) points on a graph, points that represent the outcomes of particular cases. Our usual way of teaching law might suggest that we use substantive considerations of equity or policy to construct the formula. We then apply that formula to individual cases. But in reality, in the practice of law that formula is not constructed from reason alone. We do not plot points, or determine case outcomes, by applying the formula to facts. Rather, at any given moment of decision about what the rule is, we already have thousands of data points but do not agree on the formula. We draw a line through the data points in order to construct a formula and then apply that formula to additional inputs—the facts of a new case—in order to extrapolate from precedent. Using a preselected set of cases that appears to present fixed and determinate rules distorts the process of legal reasoning because it makes it look like legal

15. See BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 22–23 (1921) (“The common law does not work from pre-established truths of universal and inflexible validity to conclusions derived from them deductively[, but i]ts method is inductive, and it draws its generalizations from particulars.”); Arthur L. Corbin, *What is the Common Law?*, 3 AM. L. SCH. REV. 73, 75 (1912) (describing common law as “creation of law by the inductive process”).

reasoning consists primarily in the application of a formula to new inputs, rather than the earlier construction of that formula from existing data points.

Given time constraints and the risk aversion of first-year law students, it is difficult to pursue meaningful alternatives to the common core. We cannot humanely assign them 300 cases from which to extract each legal rule we expect them to learn—even though that may be what they end up doing at a law firm. But there are some alternatives we can pursue in a partial way. First, we can systematically seek out apparently conflicting cases and ask them to apply the law of both cases (without choosing between them) to new facts, forcing students to synthesize and construct rules on their own. Second, we can focus less on the admittedly important skill of close reading and better cultivate the equally important skill of skimming. Students often come to class with each case heavily marked up. Some attempt to memorize the facts, rule, result and even procedural history of cases. We might lower these expectations and assign more cases, explicitly instructing them to skim for the important information. We can use class discussion to help them understand what they should have looked for, what they should focus on next time.

Third, we can ask students to argue, either orally or in writing, issues from two sides. This would highlight for students the malleability of the law, pushing them to identify the indeterminacies in law and practicing the all-important skill of persuasion. At present, because our common core may feed an illusion of determinacy, exercises in legal reasoning have the quality of explanation. While judges of general jurisdiction sometimes do need the law explained to them, clients pay more for effective persuasion, and the development of law depends on a bar that is capable of helping judges make new law with the best arguments on either side at hand.

The essential distinction of this Part has been that between inductive and deductive reasoning in the common law. The next Part will consider another distinction among legal perspectives on contract, that between internal and external perspectives on law. Both inductive and deductive reasoning might be offered within an internal perspective on contract. Deductive reasoning might be doctrinal or thematic in the way described earlier, or it might be more normative. We have to try harder to ensure that students acquire a balanced perspective on the role of inductive and deductive reasoning in the law, and are able to integrate them in their practice. Similarly, we must strive to ensure that students come away with a balance between the internal and external perspectives on law and assist them in integrating those perspectives over the course of their time

in law school.

II. INTERNAL AND EXTERNAL PERSPECTIVES ON CONTRACT LAW

Internal and external perspectives on law fundamentally differ in the attitude they assume toward both legal rules and legal practice, and toward the social activity of contracting.

An internal perspective takes seriously the reasons that actors within the system give for their own behavior.¹⁶ Internal explanations for judicial behavior are ones that we can expect judges to accept. For example, judges might agree that they are more willing to award specific performance when there is little cost to the court of monitoring performance. But they would deny that they award remedies based on the color of plaintiffs' hair. Even if judges believe that they decide most cases based on precedent alone, rather than equitable or policy considerations, judges would still accept reasons cited in internal perspectives as valid reasons they might in principle invoke.

Similarly, the reasons for legal rules and judicial decision-making offered in an internal perspective are ones that litigants could reasonably accept as valid reasons that appropriately bind them.¹⁷ Litigants would reject a ruling as unfair and "out of bounds" were they to learn, rather than merely suspect, that the judge had decided based on the prestige of their respective counsel. But we might expect even the losing party to be more accepting, rather than more resentful, of her loss if she were told that the judge had applied a statute, and that a Congressional committee

16. By internal perspective I mean something akin to but less rigorous than what legal philosophers refer to as "conceptual explanation" or "pragmatism." I isolate here one element of their approach, i.e., that a theory's reasons for legal rules be compatible with the reasons given and accepted by actors within the legal system. See Jody S. Kraus, *Legal Theory and Contract Law: Groundwork for the Reconciliation of Autonomy and Efficiency*, in 1 LEGAL AND POLITICAL PHILOSOPHY: SOCIAL, POLITICAL, & LEGAL PHILOSOPHY 395-410 (Enrique Villanueva ed., 2002) ("[C]onceptual explanation" aims "to identify a concept, or set of concepts that render the phenomena sought to be explained maximally 'coherent' [so as to capture its] immanent, inherent, intrinsic, or internal rationality or intelligibility, deep structure, animating or underwriting principles, logical consistency, or theoretical or conceptual unity."); JULES L. COLEMAN, *THE PRACTICE OF PRINCIPLE: IN DEFENCE OF A PRAGMATIST APPROACH TO LEGAL THEORY* 3-12 (2001).

17. The transparency of reasons behind the exercise of state power and the possibility of citizens accepting those reasons go to the legitimacy of state action. See AMY GUTMANN & DENNIS THOMPSON, *WHY DELIBERATIVE DEMOCRACY?* 7 (2004) (describing deliberative democracy as "a form of government in which free and equal citizens (and their representatives), justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible").

had drafted the relevant provision in order to solve certain observed problems in commercial contracting. Internal reasons have the mark of legitimacy because they are open (they do not depend on secrecy for their efficacy) and they take legal reasoning to be sincere and transparent.

Legal philosophers have been most deeply committed to understanding law from this perspective.¹⁸ Especially in private law, but in public law as well, they take their task to be the illumination and elaboration of law as we know it, in a way that is recognizable to its participants. Although philosophers are skeptical, economic legal reasoning might also be regarded as internal, at least with respect to contract law. Economists appear more willing to describe legal reasoning as misguided where it departs from their own; the significance of their intellectual enterprise does not turn, in their own eyes, on its correspondence to an existing legal order. Nevertheless, whatever their skepticism about statutory law, economists are on the whole quite sanguine about the common law.¹⁹ They believe that the common law has evolved into a largely efficient body of law.²⁰ Although they might describe this as at least in part the product of the invisible hand at work in legal evolution, the process by which judges respond to market pressure is one that involves some judicial attention to the efficiencies of possible rules. In that respect, economists, like philosophers, believe that the reasons they offer for why one rule might be preferable to another are the kinds of reasons that interest judges and inevitably interest socially responsible persons. Their brand of legal reasoning does not depend on opacity for efficacy, in contrast to external perspectives.

External accounts of contract law are incompatible with the self-understanding of participants in the legal system. They reject the reasons actors give for their own decisions, identifying other social, political, and economic reasons that are inconsistent with judges' own accounting. That inconsistency threatens to be delegitimizing and even destabilizing. Once the acknowledged reasons for legal decisions fall outside recognized boundaries, the boundary between law and politics crumbles and we are left with just another arena for political struggle. In that case it is not clear what lawyers and legal scholars are doing: are we merely erecting an elaborate ruse for the exercise of power? If that is the case,

18. See Kraus, *supra* note 16; COLEMAN, *supra* note 16.

19. See Nuno Garoupa & Carlos Gómez Ligüerre, *The Syndrome of the Efficiency of the Common Law*, 29 B.U. INT'L L.J. 287 (2011) (surveying the legal economic literature on the common law).

20. See Daniel Klerman, *Jurisdictional Competition and the Evolution of the Common Law*, 74 U. CHI. L. REV. 1179 (2007) (discussing evolutionary claims in legal economics).

on what grounds do we expect litigants to abide by judicial decisions? What guidance can case law have for people deciding how to conduct their lives and interact with others? Law quickly appears morally arbitrary and our enterprise less noble than we like to think. The external perspective might disillusion students at just the moment when they are eager to learn how to use law as a tool for justice.

Yet arguably only an external perspective allows for deeply critical analysis of the legal order, as well as the larger social, political, and economic orders from which it arises and which it in turn supports. Such critique is all the more essential and powerful when lodged against the law and social practice of contract, which is the bedrock of a market economy. Contract law has profound implications for the ordinary patterns of civil life in a polity, and is *the* mechanism by which social resources are allocated among persons. Contract law thus goes to the heart of essential questions of the political order. We need to ensure students are equipped with the analytic tools by which to assess that order from the ground up.

Law professors are often more conservative than their counterparts elsewhere in the university, perhaps because we are so concerned with understanding the legal system from the inside out. But lawyers are also often important agents for political and social reform, and we prepare our students to perform this important function only when they are able to step out of the closed system and explain it on terms that, precisely because they are critical, may not be palatable to insiders.

Two methodologies or approaches to contract law that are decidedly external are political economy and critical legal studies. What both methods share, in contrast to dominant approaches to contract law, is a focus on the distributive consequences of legal rules. The absence of sustained attention to distribution by prevailing economic and philosophical theories of contract is not a coincidence. It is facially presupposed by one of the most notable features of common law contract: its bilateral structure. That is, in contract disputes one private person brings a claim against another. Plaintiff does not bring a claim against “the system,” or the legal order, or the institution of contract. Plaintiff makes the fairly narrow claim that defendant has breached their contract. That contract alone is the legal source of the obligation plaintiff seeks to vindicate—not tort, or moral principles vaguely ensconced in the law, or other involuntary duties that might frame their commercial exchange. It takes some theoretical footwork to explain how matters of institutional justice bear on the bilateral claims that private litigants

make against each other.²¹

How then, do political economy and critical legal studies incorporate distributive concerns into their explanation of contract doctrine? Neither method presumes a relationship between bilateral justice and institutional justice. Both explain rules without presupposing that rules implement justice at all. Instead, they focus on the *motivation* of powerful actors. That is, by showing how rules favor certain groups over others, they show what reasons winners have for promoting particular rules, and how the legal system might actually operate as still another political arena in which familiar winners prevail at the expense of familiar losers. As I will discuss further below, political economy and critical legal studies differ in important ways: they do not posit the same causal mechanisms in their explanations of *how* power translates into favorable legal rules. More important, political economy as a method is not inherently delegitimizing in the way that critical analysis of legal rules intends to be. Nevertheless, both represent a sharp rebuke to internal perspectives on the law, accusing internal perspectives of romantic idealization, or worse, serving as a deluded apologia for the already powerful. Scholars from an external perspective are in turn rebuked for deep cynicism, possible paranoia, and most dangerously, a lack of respect for the normativity of law and its importance to the project of a rule of law.

Although I have only observed a few contract law professors in the classroom, my impression is that professors tend to gravitate to either an internal or an external perspective, based in substantial part on their own research agendas. This is evident in how professors talk about the material they teach, the readings they assign, and the kinds of questions they pose in examinations. Although the sharpest divide may be between the internal and external perspectives as contrasted here, even within the internal perspective, legal economists and legal philosophers are sometimes dismissive of the methodologies and utility of considering contract from the other's viewpoint. Given the sincerity with which professors hold their objections to certain methods, it may be unrealistic to call upon them to be methodologically agnostic in their teaching.

There is, though, a loss to teaching from one perspective alone. For teacher-scholars, we miss an opportunity to remain engaged with a broader range of legal scholarship than we might use in our own writing. More important, we owe our students a broader perspective than our

21. See Aditi Bagchi, *Distributive Justice and Contract*, in *PHILOSOPHICAL FOUNDATIONS OF CONTRACT LAW* (Greg Klass, George Letsas, & Prince Saprai eds., forthcoming 2014) (arguing that distributive justice does in fact inform bilateral obligations between litigants).

own. However erroneous we may deem a particular perspective, it may be one that resonates with some students more than our own, and helps them make sense of the law or their intuitions about it (which may be critical) more than our own. Just as emphasizing deductive over inductive methods artificially diminishes the appearance of disagreement *in* the law, eschewing perspectives other than our own in teaching artificially diminishes the appearance of disagreement *about* the law. Even if students are, through the heroic efforts of a Registrar, assigned to first-year professors of a range of methodological proclivities, most will not be able to apply those methodologies to the material in each class without some assistance in their first semesters. By the end of their law school career they may have developed that important intellectual skill: that is, to be able to hear someone talking about a subject matter from one perspective and extrapolate rival perspectives on that same subject matter from the one presented. For that reason, methodological pluralism is less important in upper-year courses. But in first-year contracts, we ought to move back and forth between internal and external perspectives, helping students construct a synthesized, albeit tentative, perspective that they can revise over the course of their careers.

I will now go through several interdisciplinary perspectives on contract in greater detail. The aim is to highlight the distinctive value in each. In addition to philosophy, economics, political economy, and critical legal studies, each of which I have touched on briefly above, I will also consider psychology and legal realism as potentially internal perspectives. Although these methods do not exhaust the array of ways in which legal scholars today write and think about contract, they cover a large swath of the relevant range. And although these perspectives in law may not easily co-exist within the attitudes of individual contract law professors, I will suggest how we might begin to integrate these into the perspective we present law students. More important than the particular method of integration I propose is the imperative to integrate them in some manner, such that law students are not left with the sense that these are entirely alternatives to each other, or worse, that the only legitimate perspective is the one to which they happen to be exposed.

A. *Philosophy*

The most important philosophical theory of contract is the promissory theory.²² This view of contract is compelling on its face. After all, the

22. See CHARLES FRIED, *CONTRACT AS PROMISE: A THEORY OF CONTRACTUAL OBLIGATION* (1981); Daniel Markovits, *Contract and Collaboration*, 113 *YALE L.J.* 1417, 1448 (2004) (arguing

first section of the Restatement defines contract as “a promise or a set of promises.”²³ Promises are obligations to particular other persons that we assume by communicating an intention to do so; so too are contractual obligations. To be sure, there are problems with the promissory view of contract but it offers a way of thinking about the moral content of contractual obligation in a systematic way that can piggyback on a rich philosophical literature. Contracts as promises invite us to think about why promises are binding, when they are binding and when they are not, when their breach gives rise to a remedial duty, and what the relationship should be between the moral obligations that attend promise and the legal obligations recognized by contract law. These questions nicely track many of the key questions in contract. For example, if contractual commitments are promises, why do we enforce promises that are made in exchange for consideration, or those that give rise to reliance, but not others? Why must a promise be accepted to become contractual? In interpreting obligations, why does objective intent prevail over subjective intent? What are the conditions under which we are morally excused from voluntary obligations, and are those conditions the ones under which we should be legally excused? What remedial obligations arise after breach of an ordinary promise, and how do those inform our liability upon breach of a legally binding agreement? Although it is possible to offer a cohesive account of contract law without systematically engaging these moral questions, treating questions of contract to be in part questions about promise gives students an accessible and systematic way to consider essential features of common law contract.

There are alternatives to the promissory theory within the philosophical perspective. Consent theory, championed by Randy Barnett, focuses on what justifies state enforcement of contract, with no presumption that moral obligations per se justify legal liability.²⁴ Contrasting the promissory and consent theories of contract is a good way to tap students’ own intuitions about the relationship between law and morality.

Other philosophical approaches abound. What they have in common is that they take seriously the moral language in cases, in which legal liability seems contingent on moral responsibility. More so than any

that “[c]ontract presents a special case of promise” and that contract is a “class of promises”); Jody S. Kraus, *The Correspondence of Contract and Promise*, 109 COLUM. L. REV. 1603 (2009); Seana Valentine Shiffrin, *The Divergence of Contract and Promise*, 120 HARV. L. REV. 708 (2007).

23. RESTATEMENT (SECOND) OF CONTRACTS § 1 (1981).

24. Randy Barnett, *A Consent Theory of Contract*, 86 COLUM. L. REV. 269 (1986).

other interdisciplinary perspective, philosophy of law self-consciously aspires to offer an account of contract that resonates with case law reasoning and the style of argument in which ordinary litigants engage. Private law is distinctively moralistic in its tone, vocabulary, and structure. Whatever its limitations, the philosophical perspective makes more sense of contract law as know it, read it, and practice it than any other. It would be difficult to teach cases without engaging in at least some casual philosophical talk but even contract law teachers disinclined to pursue this literature in depth could use the analytic rigor of philosophical analysis to improve the rigor of in-class legal reasoning and to show students that law is intimately related to other areas of moral life with which they are already familiar.

B. *Economics*

Economic analysis of law has become dominant in contract scholarship. Even legal scholars not formally trained in economics use the basic concepts and vocabulary of law and economics. Those who make recommendations that are at odds with traditional economic analysis feel compelled to offer explanation for their deviance. The intellectual dominance of economic thinking in the American legal academy—though not outside it—is sufficient reason for us to take economic analysis of law seriously. Judges and policymakers are increasingly attentive to economic analysis.²⁵ To ensure that students can argue persuasively to these audiences, we must ensure that our students are minimally proficient in it.

But there is more to be said on behalf of legal economics than that. Putting behavioral economics aside for the moment, economics tends to assume that people are rational and pursue their material self-interest. The literature implies or argues that courts should be welfare-maximizing, and it implicitly or explicitly assumes that wealth maximization is a legitimate proxy for welfare maximization by liberal courts.²⁶ These assumptions may be flawed, but they capture deep strands in liberal thinking about the appropriate attitude of the law. If the

25. See, for example, courts' use of economic analysis in *State Oil Co. v. Khan*, 522 U.S. 3, 20–21 (1997) (antitrust); *Business Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011) (review of SEC regulation); *National Federation of Independent Business v. Sebelius*, __U.S.__, 132 S. Ct. 2566, 2613–20 (2012) (Ginsburg, J., concurring) (Patient Protection and Affordable Care Act); *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 442 (1984) (copyright).

26. See Richard A. Posner, *The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication*, 8 HOFSTRA L. REV. 487 (1980); Richard A. Posner, *Utilitarianism, Economics, and Legal Theory*, 8 J. LEGAL STUD. 191 (1979).

philosophical literature taps into our intuition that the legal responsibility has something to do with moral responsibility, even if the former cannot be equated with the latter, the economic literature taps into our intuition that the law must usually take us as we are, and that it cannot and should not attempt to paint too fine a portrait of its subject. Whether we are in fact rational, we might wish the state to assume that we are. Whether we are in fact moved by considerations other than the pursuit of wealth, we might prefer a contract law that facilitates collective wealth maximization rather than other more personal goals that we differentially value, and for which we may not wish to engage the support of state institutions. Support of a market economy is at least among the essential functions of contract law, and economic analysis is critical to understanding how rules perform that function.

Students who identify with progressive politics sometimes resist legal economics. But this resistance is misguided and worth challenging gently. Although legal economists might tend to take wealth maximization as a policy goal, whatever our policy ends, economic analysis helps us understand how to operate the lever that is contract law, in order to achieve our policy goals. For example, students committed to more equitable distribution of material resources might resist the idea that contract rules should be designed to maximize transactional surplus without attention to how that surplus is distributed between the parties. Similarly, they might reject economists' rejection of bargaining power (at the time of contract) as usually irrelevant; some students would instead use law to correct for imbalances of bargaining power. Without suggesting that there is a definitive answer to questions of this type, students that wish to steer the law in another direction need to understand the ways in which rules can be expected to alter outcomes, or not. They need to understand the relationship between rules, contracting behavior, and micro and macro outcomes. Only then can they plausibly use rules to promote outcomes different from the ones they now observe.

C. *Psychology*

There has been a surge in recent work in the psychology of contract.²⁷

27. See, e.g., OREN BAR-GILL, *SEDUCTION BY CONTRACT: LAW, ECONOMICS, AND PSYCHOLOGY IN CONSUMER MARKETS* (2012); Christine Jolls, Cass R. Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 *STAN. L. REV.* 1471 (1998); Tess Wilkinson-Ryan, *Do Liquidated Damages Encourage Breach? A Psychological Experiment*, 108 *MICH. L. REV.* 633 (2010); Tess Wilkinson-Ryan & Jonathan Baron, *Moral Judgment and Moral Heuristics in Breach of Contract*, 6 *J. EMP. LEG. STUD.* 405 (2009). See generally Russell Korobkin, *Daniel Kahneman's*

That work has been offered as a corrective to both philosophical and economic accounts of contract law. Philosophical theory often proceeds as if we all share common intuitions about the morality of promise, agreement, and contract itself. Such starting assumptions are necessary and usually resonate with enough people, and with enough of the case law, to justify the effort of drawing out the moral implications of those assumptions. But empirical studies in psychology that directly inquire about people's views of moral obligation are important to tethering moral-philosophical analysis of contract.²⁸

Behavioral psychology has also fathered a whole area within economics: behavioral economics. Scholars working in behavioral economics show how the assumptions in economic models are often misguided, and justify legal rules that may not be justified on a more realistic model of human behavior. Especially because consent is critical to philosophical and economic analyses of contract, psychological insights about the severe limitations to the quality of our consent under various circumstances should lead us to question how much of our legal rules we want to rest on assumptions about robust consent, and to search out alternative grounds for legitimacy.²⁹ This will be especially important in the context of standard form contracts, or other contracts involving persons who are unlikely to read and understand the terms of their agreements.

Rethinking the psychological assumptions in other theories of contract is a valuable payoff from attention to the psychology of contract. But that literature has another, more subtle payoff as well. The subject of contract law is a highly abstracted contracting party. For the most part, the move from status to contract entailed deliberate inattention to features of particular parties. We do not want to know too much about a person's situation in life in the context of adjudicating contracts, we might think, because we risk having their entitlements in contract law turn on social facts that judges are poorly situated to determine and to which they will assign inconsistent and inappropriate significance.

Influence on Legal Theory, 44 LOY. U. CHI. L.J. 1349 (2013).

28. See Tess Wilkinson-Ryan, *Legal Promise and Psychological Contract*, 47 WAKE FOREST L. REV. 843 (2012); Tess Wilkinson-Ryan & David A. Hoffman, *Breach Is for Suckers*, 63 VAND. L. REV. 1003 (2010).

29. See Russell Korobkin, *Bounded Rationality, Standard Form Contracts, and Unconscionability*, 70 U. CHI. L. REV. 1203 (2003); see also Joshua D. Wright & Douglas H. Ginsburg, *Behavioral Law and Economics: Its Origins, Fatal Flaws, and Implications for Liberty*, 106 NW. U. L. REV. 1033, 1053–54 (2012).

Although we do not want to lift the veil on the contracting subject completely, nor do we want the presumed subject of contract law to depart too radically—or at least, arbitrarily—from natural persons as we know them (or corporations, as we know them to operate under the control of natural persons). To the extent philosophical presumptions about persons depart from the reality of our cognitive processes, moral theorizing about contract might be irrelevant to persons with our actual capacities. To the extent economists presume persons to operate more rationally than they do, or define rationality in ways that do not correspond to even our idealized behavior, economists will no longer shed light on how legal rules relate to behavior and outcomes.

This is not to say that philosophers and economists should be limited to discussing only what we flawed people, with our actual messy psychologies do or can do. But we must be careful when our assumptions about the subject of contract law depart from natural persons. We might have good reason to depart: because we wish the state to respect autonomy in persons even if they are not capable of exercising it, or because we wish to hold persons responsible for choices even where we would not have expected them to choose differently. But artificial assumptions, though they may be justified, should be made consciously. Psychological perspectives on contract force us to do that.

D. *Legal Realism*

Unlike the other perspectives considered thus far, legal realism is a perspective homegrown within law schools, not imported from other departments in the university. In some ways, we need not worry that this perspective might not get its due in a particular classroom. It was so influential that “we are all legal realists now.”³⁰

But though we may now all aspire to be “realistic” about the law, legal realism had some more subtle insights that could be overlooked, or at least, not conveyed to students. Part I focused on the fact of indeterminacy in the law. Legal realism made this feature central.³¹ It emphasized the open-endedness of doctrine and the inevitability of

30. Joseph William Singer, *Legal Realism Now*, 76 CALIF. L. REV. 465, 467 (1988) (reviewing LAURA KALMAN, *LEGAL REALISM AT YALE: 1927-1960* (1986)); see also Gary Peller, *The Metaphysics of American Law*, 73 CALIF. L. REV. 1151, 1152 (1985).

31. See Brian Leiter, *American Legal Realism*, in *THE BLACKWELL GUIDE TO THE PHILOSOPHY OF LAW AND LEGAL THEORY* 52–53 (Martin P. Golding & William A. Edmundson eds., 2005); Hanoch Dagan, *The Realist Conception of Law*, 57 U. TORONTO L.J. 607, 607–10 (2007); John Hasnas, *Back to the Future: From Critical Legal Studies Forward to Legal Realism, or How Not to Miss the Point of the Indeterminacy Argument*, 45 DUKE L.J. 84 (1995).

lawmaking by common law judges.³² Interestingly, it did not take this exercise of authority to be de-legitimizing. To the contrary, though legal realists were skeptical about scholarly talk about the law, they were rather optimistic about the law itself. In particular, the fact-driven process of adjudication makes possible, on this view, legal evolution that keeps pace with changing social facts. Legal realism eschews the formality of philosophical and economic models that would have doctrine turn (in most cases) on apparently eternal “facts” about the moral structure of agreement, or dynamics of bargaining and market behavior. Although neither philosophy nor economics expressly rests on obviously unattractive claims about the irrelevance of social facts, neither is focused on the contingent nature of their theories of contract. Legal realism sees law as responsive to social fact, and for the better.

Two opposing schools of thought about contract in particular might be seen to stress the core insight of legal realism. First, relational theory claims that contract law should take better account of the social relationships that accompany the legal relation of contract.³³ Social facts, especially the social norms that govern those relationships, should be incorporated into judicial decision-making. Relationalists are associated with the view that the law should support the norms of private relationships by enforcing them, or recognizing them by interpreting contractual obligations in their light and offering remedies that take into account the impact on the underlying relationship.³⁴ As legal realists would, relationalists sometimes suggest that judges already take into account the norms of contractual relationships; they advocate that they do this more explicitly and systematically.

On the other side, formalists eschew such calls for contextualism. But they do so on reasoning that is also realist, in that they too think that the manner of contract interpretation pursued by courts should depend on social facts about commercial contracting.³⁵ Formalists in contract theory argue that judges should sharply limit the evidence they hear about context and restrict themselves to plain meaning because parties draft agreements with that expectation, and would not want judges to

32. Brian Leiter, *Rethinking Legal Realism: Toward a Naturalized Jurisprudence*, 76 TEX. L. REV. 267, 275 (1997).

33. See Ian R. Macneil, *Relational Contract Theory: Challenges and Queries*, 94 NW. U. L. REV. 877, 881–82 (2000).

34. *Id.* at 900.

35. See Jody S. Kraus & Robert E. Scott, *Contract Design and the Structure of Contractual Intent*, 84 N.Y.U. L. REV. 1023 (2009); Alan Schwartz & Robert E. Scott, *Contract Interpretation Redux*, 119 YALE L.J. 926 (2010).

engage in guessing games about which norms parties wished to enforce, and which they did not.³⁶ Thus, formalists in contract also justify their position with respect to the social practice of contracting and the interaction between interpretive rules and contract design.

Most professors of contract law probably spend some time talking about the choice between contextualist and formalist interpretation, as that choice corresponds to jurisdictional differences in the rules pertaining to parol evidence and the admissibility of extrinsic evidence. Noting the lessons of legal realism expressly casts that debate in an interesting light. Its call for responsiveness to social fact highlights empirical questions about how contract operates on the ground, the preferences of contracting parties, and the capacity of judges to be responsive to those preferences on a case-by-case basis.

I include legal realism as an internal perspective here because, as argued above, inductive reasoning that extends precedent to the facts in particular cases in ways that are not wholly determined by any single, authoritative formulation of a legal rule is at the heart of the common law model. It is not, nor did legal realists perceive it to be, a dirty secret about the common law. They did not claim, after all, that legal rules do no work, only that they mediate between past and new cases and that it would be a mistake for observers of the legal system to reify what insiders know to be flexible and evolving. In our teaching, it is useful to highlight the insights of legal realists and thereby caution against accidental assumptions about legal process that we now generally reject upon reflection.

E. Critical Legal Studies

Critical legal studies is sometimes spoken of in the past tense, but arguably it too so successfully permeated legal discourse that we are, to some extent, all crits now. It has been the most important fully external perspective on the law to receive sustained attention.

Like legal realists, critical legal theorists are skeptical of claims about the law's formal purity.³⁷ But though these empty formalisms may be indeterminate in themselves, critical theorists do not view the law as ultimately indeterminate. To the contrary, the ideological power structures that manifest in legal doctrine may be quite predictable. Law is, after all, not a bubble within which judges and other lawmakers are

36. Kraus & Scott, *supra* note 35; Schwartz & Scott, *supra* note 35.

37. See Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561, 564 (1983).

shielded from politics. Powerful groups in society—whether those are defined by wealth, race, or sex—use the law to perpetuate their hegemony.³⁸ The normative justifications to which the law appeals distract us from the best explanation for legal rules and the political consciousness and mobilization that we need to make them more just. That is, at least, the heart of critical legal theorists' claims. They add politics and power to the legal realist narrative. In so doing, critical theorists make legal theory considerably more realistic—and biting.

Some critical legal studies in contract have been more successful than others in shifting prevailing views of contract. Duncan Kennedy's *Form and Substance in Private Law Adjudication* and his *Distributive and Paternalist Motives in Contract*³⁹ have both been highly influential. They are widely cited even by those unsympathetic to his politics.⁴⁰ Scholarship focusing on class and the ways in which law develops and is applied to the material advantage of the lawmaking class has been well-received relative to other critical work, even if operates as a reality check on the classical view of contract rather than a substitute for it.

Critical work on sex and race in contract has operated as a less consistent corrective. On the one hand, casebooks do sometimes include a note or reference an article that deconstructs a case from the perspective of sex. Deconstruction from the vantage of sexual politics may be especially productive in the context of *Lumley v. Wagner*,⁴¹ *Wood v. Lucy, Lady Duff-Gordon*,⁴² or *Vokes v. Arthur Murray, Inc.*⁴³ Some professors might reference race in the context of disparate pricing or the relationship between racial experience and preferences for formality in contracting.⁴⁴ But it is unclear how much time professors

38. See Robert W. Gordon, *New Developments in Legal Theory*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 281, 286 (David Kairys ed., 1982); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *HARV. L. REV.* 1331, 1351–52 (1988); Duncan Kennedy, *Antonio Gramsci and the Legal System*, 6 *ALSA F.* 32, 32 (1982); Douglas Litowitz, *Gramsci, Hegemony, and the Law*, 2000 *BYU L. REV.* 515.

39. Duncan Kennedy, *Distributive and Paternalist Motives in Contract and Tort Law, with Special Reference to Compulsory Terms and Unequal Bargaining Power*, 41 *MD. L. REV.* 563 (1982); Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 *HARV. L. REV.* 1685 (1976).

40. See William Fisher, *Introduction to Duncan Kennedy*, in *THE CANON OF AMERICAN LEGAL THOUGHT* 647, 650–57 (David Kennedy & William W. Fisher III eds., 2006).

41. (1852) 42 Eng. Rep. 687 (Ch.) 693 (availability of specific performance for personal service contracts).

42. 118 N.E. 214 (N.Y. 1917).

43. 212 So. 2d 906 (Fla. Dist. Ct. App. 1968) (contract voidable for undue influence).

44. Some articles on race and contract include Ian Ayres, *Fair Driving: Gender and Race*

spend on these casebook asides in class. Without classroom time, it is unclear how seriously students take these issues. Even professors unpersuaded that deconstructive accounts are accurate would do well to challenge their students to think through them. For many students, the sexual and racial biases of the law are intuitive and potentially delegitimizing; professors who fail to acknowledge them risk leaving those students vaguely skeptical and silent. But quite possibly the students who need to hear it the most are those for whom deconstruction is entirely alien and unintuitive. Professors should challenge those students to defend their priors against the skepticism of their peers.

F. *Political Economy*

Political economy is a rich social science as housed in political science departments, but it is only sporadically used in legal scholarship. Two kinds of political economy are worth distinguishing.

First, there is the branch of legal economic scholarship that concerns judicial behavior and its determinants.⁴⁵ That literature uses institutional features, such as judicial elections, tenure or partisanship to predict judicial outcomes. Although it tends to rely disproportionately on evidence from Supreme Court decision-making, it makes more general claims about judicial motivation. For obvious reasons, such a

Discrimination in Retail Car Negotiations, 104 HARV. L. REV. 817, 819 (1991) (disparate pricing); Ian Ayres, *Further Evidence of Discrimination in New Car Negotiations and Estimates of its Cause*, 94 MICH. L. REV. 109, 110 (1995) (same); Anthony R. Chase, *Race, Culture, and Contract Law: From the Cottonfield to the Courtroom*, 28 CONN. L. REV. 1 (1995) (meta-discourse); Anne-Marie G. Harris, *Shopping While Black: Applying 42 U.S.C. § 1981 to Cases of Consumer Racial Profiling*, 23 B.C. THIRD WORLD L.J. 1, 4 (2003) (disparate pricing); Emily M.S. Houh, *Critical Interventions: Toward an Expansive Equality Approach to the Doctrine of Good Faith in Contract Law*, 88 CORNELL L. REV. 1025 (2002) (good faith doctrine); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987) (on formality).

45. See, e.g., CASS R. SUNSTEIN ET. AL., *ARE JUDGES POLITICAL? AN EMPIRICAL ANALYSIS OF THE FEDERAL JUDICIARY* (2006); Frank B. Cross & Emerson H. Tiller, *Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals*, 107 YALE L. J. 2155 (1998); Stephen M. Feldman, *The Rule of Law or the Rule of Politics? Harmonizing the Internal and External Views of Supreme Court Decision Making*, 30 LAW & SOC. INQUIRY 89 (2005); Nicola Gennaioli & Andrei Shleifer, *The Evolution of Common Law*, 115 J. POL. ECON. 43 (2007); Timothy R. Johnson, *Information, Oral Arguments, and Supreme Court Decision Making*, 29 AM. POL. RES. 331 (2001); Eric Rasmusen, *Judicial Legitimacy as a Repeated Game*, 10 J.L. ECON. & ORG. 63 (1994); Theodore W. Ruger et al., *The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking*, 104 COLUM. L. REV. 1150 (2004); Frederick Schauer, *Incentives, Reputation, and the Inglorious Determinants of Judicial Behavior*, 62 U. CIN. L. REV. 615 (2000); Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, 62 U. CHI. L. REV. 1371 (1995).

perspective is deeply incompatible with the self-understanding of participants. Nevertheless, this external check on our assumptions about the neutrality of institutional design should inform more deliberate construction of institutions to promote the kind of judicial behavior we prefer; or at least, it should chasten those who would speak too naively about legal process.

There is a less cohesive but arguably still more important type of political economic work about the law. I refer to scholarship on various aspects of contract regulation that shows how interest group constellations promote or preserve particular pieces of legislation. For example, there has been work on the regulation of mortgages and consumer finance.⁴⁶ This work is reminiscent of critical legal studies except that instead of focusing on the role of ideology, it details the ways in which political processes determine legal content. As statutory law, even in the law governing private exchange, comes to overshadow the common law, such political economic accounts become more important. As law schools make deliberate efforts to train students to read and apply statutes, educating students about the dynamics of regulation in a fundamental area like contract will both give them a broader view of contract law and its sources, and also prepare them for similar analysis of legislation in other areas.

CONCLUSION

Internal perspectives on law dominate in the classroom, and for good reason—though the result is not necessarily a good one. We have good reason to privilege the internal perspective of the law because law school is the only place, outside of practice, where students can acquire this perspective. It is the one they need to inhabit when they practice.

However, the aggregate result is less obviously favorable. Although individual students need to be trained in the internal perspective in order to be effective lawyers, they need to be exposed systematically to the external perspective in order to develop sophisticated and complete professional identities, and in order to be the agents of political change and reform that lawyers have traditionally been. External perspectives are important to professional identity because lawyers need to do more

46. See Atif Mian, Amir Sufi & Francesco Trebbi, *The Political Economy of the US Mortgage Default Crisis*, 100 AM. ECON. REV. 1967, 1997 (2010); Victoria F. Nourse & Jane S. Schacter, *The Politics of Legislative Drafting: A Congressional Case Study*, 77 N.Y.U. L. REV. 575, 591 (2002); Edward L. Rubin, *Legislative Methodology: Some Lessons from the Truth-in-Lending Act*, 80 GEO. L.J. 233 (1991).

than navigate the law; at the end of the day, they need to be able to situate themselves in society. For work to be intellectually and personally satisfying, they must be able to account for their own role. They cannot do this without ever stepping back and critically assessing the claims the law makes on its own behalf. And without taking that step back, they will not be able to effectively identify the minor and major changes that will improve the law, and the social order of which it is an essential part.

Some law students come out of their first year feeling a bit schizophrenic, having been taken back and forth between internal and external perspectives in various courses. This is surely better than having wandered through their first year with a naively simplistic view of the law. But it does not necessarily follow from the methodologically pluralistic approach recommended here. In principle, we should try not just to offer multiple perspectives to our students but also to help them integrate those perspectives.

For example, we might spend some precious class time on the question of which causal explanations for legal content undermine legitimacy, and which can be reconciled with internal accounts. Political economic accounts of legislation usually seem to be intended to delegitimize the law in question; but we might just as well embrace the politics that underlie law as the concrete form that democracy takes. We might think that democratic production of law, even in the indirect case of judge-made law in the common law, will be responsive to the policy considerations that economists advocate, or the moral considerations on which legal philosophers dwell. Law may be over-determined, in that more than one explanation for it exists; even as we come to appreciate it as a contingent object of deep disagreement.

There is more than one way to make sense of the apparently competing truths of multiple perspectives. However one proceeds, the project of integration is essential because the distinctive perspective of law on contract is precisely the integrated one. We must do more than individually translate scholarship in other fields that pertain to law, or even apply their methods to subject matter with which lawyers are especially adept. After translation comes integration. It is imperative that we undertake that in our teaching, even where our writing adopts a particular view.

For while integration in legal scholarship may take place over the course of a literature without deliberate management, it is more likely to take hold in the mind of a law student with the assistance of her instructor. If each law student were to have each core class taught by someone of a distinct methodology, we might leave to students the task

of integration. But in first-year courses, this is a tall order. Few students are lucky enough to draw such a diverse range of first-year professors, and many would not attempt to synthesize a perspective of their own—especially when unchallenged to do so. Whatever our individual slant on contract, it is incumbent on us to at least help our students with this process of integration.