
Introduction

*From Status-to-Contract.*¹ You will have heard Henry Maine's aphorism to the point of apathy, but if pressed you likely have something to say about its historical meaning, and the discussion will soon heat up. You might argue that status-to-contract captures dramatic shifts in the basis of the social structure, political power, and cultural discourse in the Victorian era. You might think that it accounts for increasing social mobility and dynamic options that emerged in political, economic and intimate life as persons became less constrained by ascribed social roles and structures of hierarchy. Or you might think that status-to-contract was a genuine but in the final analysis failed effort in these directions. Or perhaps you tend to see status-to-contract as an ideological feat serviceable in keeping masses of people immobile under capitalism while appeasing them with individualistic fantasies. Most likely you hold a complex version of social struggle and compromise, and of ideological complexity. Since Maine's incredibly popular anthropological foray, his generalization assumed a life of its own in popular and academic debates about liberal modernity. Conversations invoking it contain assumptions about "contract," "status," and the commitments that "status-to-contract" implied, which inform historical understandings of Victorian liberalism.

This book is a study of Victorian liberalism in contracts. It examines liberal thought as developed through, and as it developed, the concept of contract understood as the formal legal category of binding agreement, and the relations and human practices at which it gestured, most basically that of promise, most broadly the capitalist market order. It treats status-to-contract very seriously, yet intervenes in some accepted assumptions about its elements. Victorian liberalism was a serious effort to imagine existence beyond status, that is, beyond much that had made it meaningful for centuries; such a world, as Raymond Williams put it, "had no new forms, no

1 "[W]e may say that the movement of the progressive societies has hitherto been a movement from Status to Contract." Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas* (New York: Henry Holt, 1906), 165.

significant moments, until these were made and given by direct human actions.”² Status-to-contract is a historical construct without which the content of various elements of liberalism in contracts cannot be understood. Yet current understandings of the liberal effort in contracts need reconstructing from both ends of the formula. On the side of contract, historical accounts of its liberal content have been oscillating between atomism and social-collective approaches, missing out on forms of relationality in Victorian liberal conceptualizations of contracts which this study seeks to establish in their complexity, richness, and wavering appeal. On the side of status, the expectation of a move “from status” has led to a split along the liberal/radical fault line among those assessing liberalism’s historical commitment to promote equality. The split misses out on the possibility that liberalism functioned as a historical reinterpretation of statuses, rather than either an effort of their elimination or preservation. That reinterpretation effectively secured, yet also altered, status hierarchies. There is no teleology to such an account.

To examine liberalism in contracts beyond prevalent debates, this study places canonical realist novels in conversation with legal-historical knowledge about Victorian contracts.

Novels and Liberalism

As I introduce the logic and arguments of the chapters that follow, my methodological assumptions and terminological challenges will become clearer. Two clarifications, however, I want to offer upfront so as not to obscure the introductory discussion. One is the study’s methodological focus on novels. The cultural significance of realist fiction is too well established in scholarship on Victorian liberalism to require justification. I do, however, want to emphasize elements of particular relevance for the book.

Accounting for the place of fiction in modernity, and as a specifically modern idea, a dominant line of theorists, among them Lennard J. Davis, Robert Newsom and Catherine Gallagher, explains literary realism as an assertion of truth of a particular order: that of the probable or credible. Realist novels established a cultural standing and claimed to be realistic by describing factual events that did not happen – an openly admitted element of fictionality, but could have – hence different from mere deception.³ This order of truth claimed insight into the historical conditions of

2 Raymond Williams, *The English Novel from Dickens to Lawrence* (London: Hogarth Press, 1984), Introduction.

3 Lennard J. Davis, *Factual Fictions: The Origins of the English Novel* (New York: Columbia University Press, 1983); Robert Newsom, *A Likely Story: Probability and Play in Fiction* (New Brunswick, NJ: Rutgers University Press, 1988); Catherine Gallagher, “The Rise of Fictionality” in Franco Moretti, ed., *The Novel, Volume 1: History, Geography, and Culture* (Princeton, NJ: Princeton University Press, 2006): 336–63. On the communal extension

social existence, examined in concretized form. The novel's focus on the ordinary, the average and breaches of the average, its interest in both social expansiveness and depth psychology, its obsession with the tension between uniqueness and representation, the conventional forms underlying realist effects which came to be at once admitted, even centralized – as the history of aesthetics reveals, and yet overlooked, all were tied up with a focus on the immanent conditions of self in society. Representing that which could have happened constituted, by claiming to represent, historical subject positions, motivations and responses, patterns of relations, and social structures. In all of this, promissory relations became both formal and thematic infrastructure. As a genre, realist novels were a cultural site which recognized the centrality of promises for the liberal outlook and worked out the implications with painstaking attention. As I elaborate in Chapter 4, this is no surprise. Theories of literary realism often recognize its formal dependence on relationships, and promises were only the most formalized cases.⁴ Promises, in other words, lay at the core of the artistic modeling and interrogation of the Victorian capitalist order that realist novels were.

Sophisticated historical work examines liberalism in contract law in terms that resonate with these insights about literary realism. Contract law is understood as a substantiation of a capitalist social order premised on claims to already find that order: to develop doctrine and rules, to judge practice, and to institute legal relations, by claiming to observe the already-existing choices of individual agents within relationships and social structures fitting a liberal vision of the world. And of course promises were at the heart of this project, a point I will revisit below as I clarify the contract/promise relationality.

Both contract law and novels are appropriately viewed as sites that attempted to provide cultural scripts for the reading – and living – of contractual relations in a capitalist world. Such efforts are habitually understood in legal theory in terms of normativity, yet as work in the interdisciplinary of *Law and Literature* often demonstrates, normativity is generated ideationally no less than materially. Law has not been the sole

of this theory see Ayelet Ben-Yishai, *Common Precedents: The Presentness of the Past in Victorian Law and Fiction* (New York: Oxford University Press, 2013).

- 4 One theory that Chapter 4 does not examine is the so-called author-reader contract. At stake is a relationship between author and reader which some theorists have suggested is the very center of realism. See Brook Thomas, *American Literary Realism and the Failed Promise of Contract* (Berkeley, CA: University of California Press, 1997). I do not examine discursive uses of the author–reader contractual metaphor in Victorian culture at large and therefore cannot dispute its significance, then again, theoretically I do not want to accept or assume a-priori a particular meaning of contract or promise that would inform my treatment of the author-reader relationship, for that meaning is my basic question. As my discussion in Chapter 3 implies, if one is inclined to use contractual language for the author-reader relationship, relational liberalism might be fruitful.

or even the most important mode of norm-making in capitalism. Visions of human experience are produced in various sites of culture, of which the novel was in Victorian times of the most central.⁵ The novel's centrality does not in itself tell us anything a priori about its position vis-à-vis law. I will later have more to say about the implications of this study for accounts of law and literature. But it does imply historical relevance. As Bradin Cormack suggests, "legal analysis becomes critical by reopening the exclusionary discourse of law onto a more complex scene than that remembered as the image the law produces through and as its own historiography."⁶

Yet novels have remained oddly marginalized in contracts histories. In examining the question of liberalism in contracts, research drawing on literary sources (among others) which *has* formed conversations with Victorian contracts histories, unusual as it is, has been important for my work. It includes Margot Finn's work on credit relations, Irene Tucker's work on the problem of historicity in contractual liberal subjectivity, and work on the promise of marriage, for instance by Ginger S. Frost, Saskia Lettmaier, and Randall Craig. I draw on their and others' work in the following chapters, as well as on the broader field of Victorian liberalism, where cultural and literary histories habitually examine themes relevant to the history of contracts without directly addressing contracts histories. My analysis is narrower than much of this work in that its primary sources are novels, and broader in terms of its investigation of promissory types and conceptual concerns in contracts. The methodology is geared to reopen existing understandings and loci of debate in contracts histories.

In the chapters that follow I examine seven novels by different authors, published across the high Victorian era. The methodology is by no means exhaustive; I do not claim a comprehensive historical account. Rather, I have focused on a number of rich cultural expressions of liberal concerns with contracts across an era of rapid change and intense debates about the capitalist order. I do suggest, however, that the common streaks emerging across artistic diversity reveal something beyond isolated individual cases.

In Part I, I point to the liberal problematization of status-sociality in contracts, and to a dominant style of relational liberalism which emerged as an alternative to status, on the basis of six novels. The novels are viewed, as Claudia Klaver puts it in another context, as themselves historical

5 See for instance Sara Murphy, "The Law, the Norm and the Novel," in *Studies in Law, Politics and Society: Special Issue – Law and Literature Reconsidered*, ed. Austin Sarat (London: Emerald, 2008): 53–78.

6 Bradin Cormack, *A Power to Do Justice: Jurisdiction, English Literature, and the Rise of Common Law, 1509–1625* (Chicago, IL: University of Chicago Press, 2007), 28.

7 Claudia C. Klaver, *A/Moral Economics: Classical Political Economy and Cultural Authority in Nineteenth-Century England* (Columbus, OH: Ohio State University Press, 2003), xix.

events.⁷ That these novels are canonical, at least arguably so, is important. The canon has become contested not only due to controversies about borders emerging from divergent theories of realism, but also because canonization is troubling as a process of hegemony-consolidation. Yet that is the minimal generalization I do seek. Precisely the historical force attributed to the canon by its critics explains why reading it is justified in dialogue with legal history interested in hegemonic norm-making.

In Part II I work under the assumption that, as John Kucich puts it, “[w]ithout a sense of the interplay between individual creation and general cultural structures, we belie the complex ways in which experience is actually shaped for the sake of polemical convenience.”⁸ I read individual texts alongside broader historical developments in law that legal histories have recovered, so as to get a glimpse at, indeed, general cultural structures, as I explain further in a moment.

I have consciously avoided a delimitation of novels to those especially concerned with legal institutions, or whose authors had profound legal knowledge. I concur with Brook Thomas who, in a study of contract and realism in America, observes that “[w]hat fascinated ordinary people ... was not the legal doctrine ... but the idea of contract as a mode of social organization ...”⁹ The interest of this study is liberal thought as implicated with contract as a social relation and organizing principle of order. Legal mechanics of enforcement do at some points become important, but are not at the center of the analysis.

A second clarification concerns my use of “liberalism,” a concept almost hopelessly morphing into the theory of everything, the Humanities’ closest response to the ambitions of Physics. If, as Lionel Trilling argued, liberalism is “a large tendency rather than a concise body of doctrine,”¹⁰ at once historically concrete and wonderfully encompassing, then some specification is in order not by way of conclusive definitions, but rather as a matter of analytic choices and emphases.¹¹

In invoking “liberalism” I do not gesture at a specific political philosophy nor institutional politics of the Victorian Liberal party. Instead I gesture at an accumulation of ideas that manifest in dominant sites of Victorian social thought like law and novels which, through their generic structures, put abstract ideals under pressures of ongoing concretization. As a minimum,

8 John Kucich, *Repression in Victorian Fiction: Charlotte Bronte, George Eliot, and Charles Dickens* (Berkeley, CA: University of California Press, 1987), 33.

9 Brook Thomas, *American Literary Realism*, 1.

10 Lionel Trilling, *Liberal Imagination: Essays on Literature and Society* (New York: Viking Press, 1950), xi.

11 As Goodlad has recently urged, Lauren M.E. Goodlad, “Liberalism and Literature” in *The Oxford Handbook of Victorian Literary Culture*, ed. Juliet John (Oxford: Oxford University Press, 2016), 103–23.

these ideas revealed an interest in conceiving a social order no longer predominated by statuses, and in giving shape to processes of individualization involving some measure of discomfort with ascriptive accounts of human existence based on social place and role. This is close to what David Wayne Thomas describes as liberalism's assumption that individuals act within "a sociality to which they adhere through their own volition." However, as he also notes, in this phrasing there is already an overdose of atomism that I will want to complicate, hence my emphasis on the alternative of status-sociality against which liberal thought defined itself.¹² Within this status-problematizing project, I am interested specifically in the relation of individualization to Victorian concerns with the capitalist market order and its accommodation.

Novels, like contract law, have been repeatedly associated with Victorian capitalism. W.J. Harvey once argued that "[o]ne of the few Marxist generalizations about literature to hold up reasonably well when put to the test of detailed historical examination is the thesis that the development of the novel is intimately connected with the growth of the bourgeoisie in a modern capitalist system. From this social process derive the assumptions and value we may conveniently if crudely lump together as liberalism."¹³ There are endless echoes to this view in literary histories, similar ones about law in the histories of contracts – many of which are discussed in the chapters that follow, and increasingly in the past two decades, challenges and complications too. The liberalism I explore often complicated the ideological commitments and worldviews classically associated with the Victorian bourgeoisie, be they idealized domesticity and sphere separations, the meaningfulness of the private, the security of psychological interiority, the authority of classical political economy (in its popular versions at least) or else. Yet the positions which concern this study were not about external critique. By engaging questions about capitalist ethics like work or thrift, capitalist articles of faith like the market's promise of prosperity or the relation of economic to cultural capital, processes of identity formation under Victorian capitalism, or indeed material life in an industrializing and financializing economy, the texts I examine were at once interrogating and spinning the conditions of possibility of their emergent capitalist world.

In all of this, contracts and promises were central elements of thought and expression.

12 David Wayne Thomas, *Cultivating Victorians: Liberal Culture and the Aesthetic* (Philadelphia, PA: University of Pennsylvania Press, 2004), 14.

13 W.J. Harvey, *Character and the Novel* (London: Chatto & Windus, 1965), 24.

Victorian Liberalism and Contracts in History

The Victorian era is commonly described as “The Age of Contract.” This was the era in which the law of contract assumed its modern shape and became the conceptual center of private law. It was also the era in which liberalism came to hinge on contract as the basis of the economy, or more broadly relations in civil society, as opposed to contract’s much more salient role in earlier modernity in terms of political obligation and obedience to sovereign power, in the philosophy of the social contract.

I begin by examining what we know about liberalism in contracts from the most dominant strands of existing contracts histories. Chapter 1 reviews legal histories in the inclusionary sense of scholarship on Victorian contract law and contractual relations broadly understood, drawing on diverse historical schools – doctrinal, internalist, liberal, feminist, critical and cultural. I critically read between the lines of controversies for the implicit narratives that histories of contracts have generated from the late Victorian era to the twenty-first century. My interest in Chapter 1 is to clarify how histories provide an account of the concept of contract in Victorian liberal thought in terms of atomistic individualism, often despite an overtly critical perspective. In this account, promise represents a socially-disembedded expression of an individual will; the social structure is described in terms of separate spheres, with the market as a distinct domain driven by economic motive; and the promising person in the market – or the contracting person – is a rational agent. Contract’s “social” rivals – status included, have been collectivized and relegated to the role of external challenges, their operations for the most part unacknowledged in terms of the Victorian *liberal* conceptualization of contract itself, and certainly not in individualized terms, even as social alternatives sometimes aligned with the welfarist goals of political liberalism of late nineteenth century. A relational liberal vision of contract is almost completely absent from the dominant strands of contracts histories (with possible exceptions I note).

The following chapters, divided to two parts, begin a revision of our historical knowledge about Victorian liberalism in contracts.

From Status: Relational Liberalism in Contracts

Part I, *From Status*, argues for the historical significance of relational sociality as a liberal construct informing visions of contracts. By “relational sociality” I refer to a primary and fundamental explanatory and normative role for interpersonal and discrete relationships, with those individualized elements in them exceeding statuses emphasized. Relational liberalism in contracts challenged status-sociality, was indeed attractive *as* an alternative to status, but was also a challenge to atomism. The implications of relational liberalism therefore require a dual

emphasis: When read against the pressures of status ascriptions, the individualizing tendencies of relational liberalism should be acknowledged, yet its social tendencies should be kept in view when read against the histories of atomistic individualism.

To clarify the conceptual place of relational liberalism I open Part I with a discussion, rooted in the work of Mark Granovetter, of the analytic significance of making distinctions between forms of social embeddedness, particularly between status- and relational embeddedness, that theorists and historians of relationality tend to collapse together. Although, for reasons I explain, “embeddedness” is often a misleading term for my purposes, Granovetter’s distinctions are essential to the argument. I isolate relationality in order to explain its historical appeal for the liberally-oriented. Yet, for the same reason I do not propose to disperse it completely to its multiple individualized contexts, as some theories of relationality invite us to do: the liberal turn lay in the abstract idea of existence constituted by individualized relationships, frequently captured by the Victorian image of the web.

The chapters of Part I include readings in novels which engaged with promises intensively. My analyses straddle a wide array of promissory contexts, for instance, those of commerce, employment, land, and familial intimacy. In examining a multiplicity of promissory types I acknowledge and test the liberal aspiration of the Victorian era, described in contracts histories, to create a general category of contract based on a generalized idea of promise. Historians have repeatedly observed an imperialistic tendency in classical legal thought, first to recast a multiplicity of relations in promissory terms, and then to apply to them all a single set of ideas. Readings across various promises allow me to examine the scope described in contracts histories, and touch central concerns of Victorian culture invoked by contract. As the following account should clarify, my analytical position does not deny differences of promissory context, parties, or subject matter, nor does it overlook the insights of scholarship focused on particular promissory types. Indeed it draws on them. Across the diverse range of concerns and by virtue of its broadness, certain persistent understandings of capitalist existence can be observed in their full historical significance. The pervasiveness of these understandings, and their implications for liberalism in contracts beyond context-specific differences, would be difficult to appreciate in a study limited to a particular promissory type. Relationality, rather than either status or atomism, emerges as indeed a wide-ranging, context-crossing liberal effort.

Chapter 2 tackles the question of the economic domain’s construction as a separate sphere, the basic concern of contracts histories, speaking to liberal contracts’ relation to Victorian capitalism. I examine the question in William Thackeray’s *Vanity Fair* (1847), and Anthony Trollope’s *The Way We Live Now* (1875). My reading alternates between the two novels while I

focus on a central axis in both: credit-based efforts to gain social capital by two parallel protagonists, Becky Sharp and Augustus Melmotte. Thackeray and Trollope both pointed with displeasure to contracts' entanglement in status relations, particularly gender, class and nationality. Gender and class are familiar in historical contracts scholarship as Chapter 1 clarifies, yet contract's role as an exclusionary nationalist construct has gone almost unheeded despite the extensive literature on liberalism's nationalist or at least Eurocentric entailments.

The credit contract's entanglement in statuses led both Thackeray and Trollope to differentiate it from money, a process I read with current theoretical debates about money. Credit, both novels suggested, preserves a social memory contradicting the obliteration of history that the rule of money encouraged. The credit contract, often taken as the paradigm instrument of the Victorian market economy, was paradoxically construed by novelists as a cultural obstacle to a rational market.

Thackeray and Trollope understood at least some of contract's status entanglements as a problem. The critical impulse drove them to seek alternatives, but here differences are more telling than commonalities. The ideology of a rational economy premised on epistemological certainties was finally articulated in *The Way We Live Now* as a never-materialized alternative; Trollope was unable to see how contract could be a tool to such a market even as he coveted it. *Vanity Fair* preferred a moral vision of the social whole inflected by relational intersubjective intimacy, again one which remained unrealized in the narrative. Thackeray and Trollope represented, I suggest, two polar conceptual alternatives for the social order, located at the two ends of high Victorianism: the social order as metaphoric family, and the social order as separate spheres. The next chapters argue that the solution of novelists to pressures to imagine a contractual society often lay somewhere between these two unrealized alternatives. Relationality became a favored focus of promissory representations in the effort to shake statuses off. It was removed from a sentimental morality of *Vanity Fair*, but was also far from the vision of demarcated spheres that *The Way We Live Now* aspired.

Chapter 3 engages with the question of abstraction, a recurrent theme in contracts histories. The liberal atomism that histories describe transpired in various abstract iterations of individual agency, supporting a view of a rational market economy. Reading two mid-century novels, Elizabeth Gaskell's *Ruth* (1853) and Charles Dickens' *Bleak House* (1853), I argue that both exhibited a dramatic recoil from abstraction. In *Ruth* abstraction was treated literally, as a possible state of existence considered dangerous. In *Bleak House* abstraction was a moral choice rather than a factual condition, emerging in an (im)moral economy. Gaskell's and Dickens' positions complicate the argument that liberalism was prone to abstraction in consequence of social realities that had themselves become abstract under

capitalism.¹⁴ The experience of social life as abstract was then as now a matter of mediation. As Amanda Anderson's work on modern practices of detachment, discussed in the chapter, shows, abstraction was never an easy project. The alternative to abstraction, Chapter 3 argues, was a relational liberalism.

In *Ruth* we see a heroine (Ruth) falling from virtue in consequence of two continuous processes: a detachment of economic from relational concerns – a staging of a disembedded economy, cast as a generalization of the principle of prostitution – sex coupled with money, without love; and a consequent detachment from social meanings – a radical staging of Ruth as an abstract individual. These processes and their relational reversal, when Ruth is socialized by relationships, and learns to resist money without love, were dramatized through her evolving promissory agency. The novel's relational solution, however, was ultimately unstable, because Gaskell inflected her art with a competing transcendent morality. Gaskell's difficulty with liberal solutions assumed other forms with other novelists, but all of them betrayed how unsure a project liberalism was.

Bleak House's critique of abstraction was far reaching. My reading focuses on the web of credit in the novel, which was informed by Dickens' obsession with relational interdependencies – *Bleak House's* famed “connexions.” The moral imperative to always connect, never abstract, that Dickens posited in the narration of credit relations, I argue, made the web of credit disappear as a system: it was dispersed among the multiple relationalities of which it was made. It is therefore a small surprise that the credit web has not been a significant focus of readings of *Bleak House* concerned with its critique of systems and its political economy. *Bleak House's* narration of credit stood in direct opposition to the state order represented in the court and the police. The novel's liberal turn, I argue, depended on that implicit opposition between state and market, from which the credit web, for all its rapaciousness, emerged as a more attractive mode of social organization.

Representations of a relational economy, as both Gaskell and Dickens developed, thus should not be read as resistances to the capitalist order. They cannot be read into a history of the Polanyian “double movement” in which relationality was a defensive embedding response to an emergent market system. Instead, they were a form of implementation of a market economy. We should be able to see two implications: Novelists' emphases on the relational constitution of the economy serve as correctives to assumptions in contacts histories about the hegemony of atomism. At the same time, precisely the nonabstract mode of novelistic liberalism made the capitalist order alluring in its potential responsiveness, its complex creation of opportunities to exercise whatever agency could be got.

14 Recently made by Andrew Sartori, *Liberalism in Empire: An Alternative History* (Berkeley, CA: University of California Press, 2014).

Chapter 4 engages another theme of contracts histories: the liberal association of contract with freedom, supposedly the heart of contract's appeal as a principle of social order. With George Eliot's *Middlemarch* (1871) and Thomas Hardy's *The Mayor of Casterbridge* (1886) we see a move from the mid-century project of impressing on readers the importance of relationality for individual agency and for the morality of choice, toward explorations of the constraining implications of living in a web of relationships. The consciousness of constraints highlighted relationality as the basis of the liberal contractual order, yet reversed associations of contract with freedom.

In *Middlemarch* I read the parallel stories of three protagonists, Lydgate, Dorothea, and Fred, where the fictionalization of promises – most significantly the men's contractual debts and Dorothea's deathbed never-made-promise to her husband – is pivotal to the unfolding of plots dealing with relational interdependence, with all the suffocation involved. Eliot, I argue, gave artistic expression to the concerns of liberal philosophy with voluntary submission as an everyday necessity. Her tool for negotiating promissory suffocation was the practice of economy. While Dickens and Gaskell made room for the capitalist market through relational socialization, Eliot incorporated popular political-economic advice about economic prudence into the terms of meaningful existence in the web of constraints. Yet the advice finally falters and reveals Eliot's hesitation. Her ultimate achievement was in forming a non-naïve liberal consciousness: Eliot's liberalism offered a sense of hope that one could embrace without thereby being the fool who does not realize how limited it is, a position that resonates with us still.

Hardy, writing at the outskirts of high Victorianism and the margins of realism, was far more pessimistic. *The Mayor of Casterbridge* examined contractual constraint through the problem of masculinity in contracts. Reading Hardy's protagonist, Henchard, with histories of Victorian masculinity, I observe how an atomistic approach to contracts is associated with a particular vision of conventional masculinity, and represented as ruinous in a capitalistic world of tamed passions, where relational awareness is key to prosperity. I begin with the novel's brutal opening scene of wife sale, which foretells Henchard's downfall both causally and symbolically. The downfall plot is then narrated through junctions of promissory overload, in which the character of Farfrae appears as a foil for the novel's protagonist without the rigid masculine debasement. Viewing conventional masculinity as a victimizing imperative in modern capitalism, Hardy's art compensates for a blindspot in contracts histories, which have read the gender of contract from the perspective of women's exclusions, and have too often left the positive content of contract – its inclusions, to nongendered readings. Hardy highlighted the inescapable relationality of the capitalist order, but viewed it with suspicion.

Part I reassesses the history of liberalism in contracts, but is also in implicit dialogues with theoretical concerns in *Law and Literature*, and in contract theory, on which I would like to briefly comment.

Law, Literature and Relational Liberalism in Contracts

It is not my intention to frame literature as a corrective to law. I am not methodologically positioned to deny that the insights of relational liberalism I highlight in literature were marginalized in law, as existing histories imply, because this study does not compare novels with primary legal sources. However, I am inclined to speculate in another direction.

To contend that law developed a distinct liberalism is possible. Indeed, there are good reasons to think that generic differences between law and literature, particularly differentiated author functions, bolstered atomism in law.¹⁵ However, to imply that a dominant liberal view of contracts, which permeated a hegemonic cultural site like literary realism, was almost missing from law, is unconvincing even if one accepts the significance of genre differentiations, and more generally concedes a level of autonomy to law. The body of research on Victorian law and fiction has already dispelled any claims to unbridgeable distinctions between them on the level of ideology. A better hypothesis for the too-stark absence of relational liberalism from Victorian contracts histories, is that the narrative structures which have typified debates among contracts historians (explored in Chapter 1), have diverted attention from relationality as a distinct mode of liberalism. This has been the case even as the findings of some work in the field, particularly feminist history, already point to the presence of relational liberalism. At least in some areas of law prone to liberal idealizations, at least some of the time, relational liberalism must have inflected contracts.

Part I's contribution cannot be framed as a literary corrective to law even if we were to assume that atomism dominated law to the exclusion of other liberal visions, at least not in the romantic sense that the role of the literary sometimes assumes in *Law and Literature* scholarship. For instance, in a recent book Alison LaCroix and Martha Nussbaum associate novels with movements of social recognition which challenged the legal neglect of weakened social groups, and so argue that "[o]verwhelmingly, the eyes of the law were opened by novels."¹⁶ My analysis of relational liberalism in contracts can hardly fall into this framing. At the very least, if law was committed to atomism while novels embraced relationality, at stake were two ideological attempts to construe the capitalist order. My readings are

15 Anat Rosenberg, "The History of Genres: Reaching for Reality in Law and Literature," *Law & Social Inquiry* 39, no. 4 (2014): 1057–79.

16 Introduction to Martha C. Nussbaum and Alison L. LaCroix eds., *Subversion and Sympathy: Gender, Law, and the British Novel* (New York: Oxford University Press, 2013), 4.

interested as much in the manner of making capitalist structures attractive through the relational mode of thought, as they are in pointing to the blindspots of atomism. From this perspective, my claims offer correctives not to law but to views of literature as a subversive counter to law, in which law alone assumes the role of the suspected hegemony.

At the same time, Part I also diverges from another ideal position in *Law and Literature* scholarship, in which law and literature are described as ideologically convergent, mutually supportive hegemonic discourses. Hegemonic though they were, and entangled with the capitalist order, they were not speaking to a single and shared idea of liberalism. For generic reasons as well as due to liberalism's messy history as such, we should acknowledge internal complexity which does not easily align with a single delineation of liberal ideology. Complexities in liberalism have been increasingly elaborated in the cultural histories on which I draw in the following chapters.

Relational Contract Theory and Relational Liberalism in Contract

Contracts scholars are familiar with relational contract theory which originated with the American theorist Ian Macneil in the 1960s. Macneil framed his theory as an express alternative to the Victorian classical school which placed at the center of contracts the imaginary of the discrete transaction, rather than ongoing relations. Readers might fairly wonder if I am reading the theory back into history. I am not resistant to such a project in principle, and Macneil himself argued that his concept of contract was "the oldest of contracts."¹⁷ Moreover, one is never free from presentist concerns, and certainly without relational contract theory, and also, more broadly, present-day relational liberal philosophy, my language and imaginative frameworks in Part I would have been different. However, too quick a collapse of relational contract theory with this study's claims is probably unwarranted. The book is not structured by the analytic categories of relational contract theory but is rather a study of cultural meanings. More fundamentally, on the more abstract level of liberalism in contracts, Macneil's work in the twentieth century appeared to miss the novelistic point before it began. Everything associated with promises in novels, Macneil attributed to "non-promissory" elements. His exposé in *The New Social Contract* began by arguing that "promises are inescapably but fragments of any contractual relation."¹⁸ Yet a great part of relational liberalism in novels addressed promises.

17 Ian R. Macneil, *The New Social Contract: An Inquiry into Modern Contractual Relations* (New Haven, CT: Yale University Press, 1980), xii.

18 Macneil, *The New Social Contract*, 8. He expressed the same distinction much later, see Ian R. Macneil, "Relational Contract Theory: Challenges and Queries," *Northwestern University Law Review* 94 (2000): 877–908.

My readings of fictionalized promises purposely do not distinguish unenforceable from enforceable ones (i.e. contracts), and locate relational concerns in contracts already at the level of promise. To reexamine Victorian liberalism in contracts one would have to start with promises, for on many accounts, including Macneil's, they were the conceptual heart of the atomistic project. To clarify this point, consider briefly the place of promise between the history and theory of contracts.

Legal scholars generally agree that a contract is an enforceable promise (or set of promises), or, to relax the formulation – that contract involves a promise. The actual act or relation of promising, in other words, is a necessary element of contract. As Chapter 1 explains, historically it was classical legal thought, with its celebration of the individual will, that centralized contract around promise, itself understood as self-imposed obligation. Around the same time, Nietzsche articulated the radical implications of this assumption in forging a historically novel consciousness: “To breed an animal with the prerogative to promise – is that not precisely the paradoxical task which nature has set herself with regard to humankind?” Promise, he said, is “the *will's memory*”; the prerogative to promise underlay Nietzsche's account of the historical emergence of the “*sovereign individual*,” whose mastery-in-responsibility was an internalization of social straitjackets which he then wore with pride.¹⁹ Nietzsche had in mind earlier contractual discourses, but in 1887 he was cognizant of the power of promise to breathe life into the idea of the individual will. His radical reminder of the social process behind the celebration of the will recalls the not-too-distant history in which the English were rigorously debating the meaning of promise. As Victoria Kahn's history of early modern contractual discourse reveals, in the seventeenth century, when the language of contract became prominent in political theory, the English were acutely aware of the poetic power involved in the feat of the promising individual, and of the instability of such contingent emergence of obligation, rather than already convinced by liberal notions of autonomy and liberty, the stabilizing power of self-interest, or the presence of instrumental rationality. Promise and contract had not yet been liberalized.²⁰ By the Victorian era, the role of promise in contract as it is described by contracts histories, appears to have relied on a forgone conclusion that left an earlier richness and elasticity of concepts behind.

19 Friedrich Nietzsche, *On the Genealogy of Morality*, trans. Carol Diethe, ed. Keith Ansell-Pearson (Cambridge: Cambridge University Press, 2006), 35–6 (emphases in the original).

20 Victoria Kahn, *Wayward Contracts: The Crisis of Political Obligation in England, 1640–1674* (Princeton, NJ: Princeton University Press, 2004). On Kahn's account contract in fact first transformed promise, essentially secularized and conventionalized it. *Ibid.*, Chapter 4.

Within contract scholarship, the implications of the process of “promising” contract are easiest to grasp not through Victorian histories alone but through some of the theoretical debates that followed them in the twentieth and twenty-first centuries. If promise is a human relationship integral to contract, which is little contested, theories that challenge the atomism of the classical legacy, like Macneil’s, and that seek to instate communal and relational aspects in contract law, suggest that there are, or should be, other components or meanings to contract which exceed promise – exceed individual will; these theories therefore deny that promise is, or should be, the source of contract’s binding nature. Put differently, in theoretical debates over contract, promise often functions as a byword for the atomism associated by historians with classical legal thought. Implicitly accepting the historical association of promise with the individual will, such theoretical positions displace the basic question of promise history and philosophy about the meaning of promise, which was never entirely put to rest,²¹ onto contract; the question becomes: is contract exhausted by acts of individual will?²² The debate begins, however, with the historical process which made promise central for contract while implicitly assuming that it was a self-imposed obligation. This is a point Macneil did not challenge, but is central for this study’s analysis of Victorian liberal conceptualizations of contract.

Given the legal identification of the meaning of Victorian contract in promise (read: self-imposed obligation) which emerges from contracts histories, conceptualizations of promise are a necessary part of the analysis. Dealing only with enforceable promises in novels (a doubtful effort in itself), would overlook the locus of conceptualization. A Gordian knot between contract and promise was indeed pervasive, but not on the atomistic terms familiar from contracts histories.

21 I will not engage the extensive debates about promise in moral philosophy for my interest is in the particular way promise has been crystalized in thought on Victorian contracts. Suffice to mention the way that Arendt, who was indebted to Nietzsche in attributing to promises a central place in *The Human Condition*, also departed from him in keeping upfront the relational dependence of the promising person, whose own identity continually depended on recognition by others: “Without being bound to the fulfilment of promises, we would never be able to keep our identities; we would be condemned to wander helplessly and without direction in the darkness of each man’s lonely heart, caught in its contradictions and equivocalities – a darkness which only the light shed over the public realm through the presence of others, who confirm the identity between the one who promises and the one who fulfils, can dispel.” Hannah Arendt, *The Human Condition* (Chicago, IL: The University of Chicago Press, 1958), 237.

22 Jody Kraus, following up on the ongoing debate sparked anew in recent years, calls for an assessment of the basis of promise itself before moving on to its relation to contract. Kraus’s account, however, relies on a deontic moral theory to ground the familiar assumption that a theory of promise is necessarily a “theory of *self-imposed* moral responsibility,” under which obligations are created by virtue of the individual will. Jody Kraus, “The Correspondence of Contract and Promise,” *Columbia Law Review* 109, no. 7 (2009): 1603–49.

Beyond these points of difference from relational contract theory, it is worth observing that in seeking to show what contract meant “beyond promise” Macneil pulled together various forms of sociality, as other theorists of relationality often do, among them status and interpersonal relationships. For purposes of the historical argument of Part I, I re-differentiate these forms, as Victorians did.

With Status: Liberal Complexity Reassessed

Problematizing status, as explorations of relational liberalism did in novels, hardly meant statuses’ elimination. Thinkers today still face the problem of reconciling hard-wired group identities which had never disappeared and have in fact regained some of their charm – partly because they appear inescapable, partly on substantive grounds – with liberal ideals of universality, mobility, equality or autonomy.²³ In Part II I put aside the tensions between relational and atomistic liberalism in contracts, in order to examine the terms of coexistence of liberal ideals – contract among them – and status hierarchies. These hierarchies posed challenges for liberalism of any hue, as they still do. The difficulty that interests me in Part II in fact exceeds the problem of statuses, and touches the question of complexity as such, that is, the existence of apparently contradictory yet intertwined conceptual commitments in liberalism.

Victorianist scholarship has increasingly moved away from binary oppositions toward complexity across the full scale of questions that the concept of contract brings to the fore. Philosophies of individualism have been subjected to the scrutiny of diverse strands (as have varieties of capitalism in global perspective); political economy as well as its external critiques have been broken down to internal divides across time, among writers, among influences religious and secular; gender ideology is no longer seen as merely oppressive for women, but complex, with varieties and uncertainties which imply opportunities for women as well as obstacles for men. The same goes for particular systems that dominated the Victorian social order, like marriage and credit. The widening engagements with complexity have been implicated with a theoretical move beyond suspicious hermeneutics. These developments provide rich grounds for Part II, which seeks theoretical terms for historical complexity in Chapter 5, and examines their aesthetic enactment in Chapter 6.

Part II relies on two liminal sites: the promise of marriage, and Emily Brontë’s *Wuthering Heights* (1847). I therefore open it with a brief discussion of liminality in cultural analysis.

23 Benhabib for instance seeks to situate “reason and the moral self ... in contexts of gender and community.” Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Cambridge: Polity Press, 1992), 7.

Chapter 5 examines the coexistence of liberal ideals and statuses in the promise of marriage. Unlike previous chapters, my discussion turns not only on contract as a liberal ideal but also on romantic love, a liberal ideal central no less than contract in this context. To discuss the role of love I return to *Bleak House* and *Middlemarch*, where the love matches of female protagonists – Esther and Dorothea – are central to the plot, as are problems of class and gender from which love is inextricable. In discussing contract, however, I turn back to law, and explore findings of historians concerning broad legal processes, like developments in the doctrine and litigation practice of the promise of marriage. With both love and contract, literature and law, I examine the continuing power of gender and class hierarchies.

Debates among historians who address hierarchic power and inequality have oscillated between liberal and radical interpretations. At one pole the persistence of class and gender is treated as a matter of slow and difficult progress, at the other as the very essence of liberalism. Chapter 5 seeks a new interpretation, relying on the move between close readings and analyses of broad processes to observe shared structural responses.

The central possibility explored in Chapter 5 is that the coexistence of liberal ideals and statuses was a conceptually-patterned one. I examine two patterns: containment and withdrawal. Containment refers to efforts to rationalize and assimilate considerations of status within the conceptual frameworks of contract and love. In consequence, those considerations were reduced in magnitude, their effects and relevance redirected. By contrast, under withdrawal, the application of the liberal framework (contract, love) was bordered rather than expanded, leaving areas beyond it to forces of status, but the delimitation was construed as inconsequential because liberal ideals retained relevance in areas treated as the core of social relations; cultural energies were accordingly rechanneled. Both containment and withdrawal repositioned statuses vis-à-vis liberal ideals, at once preserving hierarchic powers and undermining their ability to serve as explanations and goals of social relations. These two effects allow us to view Victorian liberalism as, ultimately, a new interpretation of statuses. Containment and withdrawal functioned like cultural codes – historically contingent, unplanned, not coherently serviceable to any interest, power or normative aspiration, yet sticky through their embeddedness in culture. With these patterns there was no single trajectory to be expected, as present-day debates about identity politics, discussed at the close of the chapter, clarify.

Chapter 6 argues that in *Wuthering Heights* (1847), Brontë offered an early and sophisticated argument about the pattern of containment as a dominant liberal mode for handling internal tensions. *Wuthering Heights* hinged on promissory junctions, crucial among them Heathcliff's arrival as a broken promise. The novel's representations of promises clarified the

implications of containment as a patterned manner of handling, and maintaining, conceptual tensions in liberalism. At stake in *Wuthering Heights* was not only the problem of status hierarchies, but a messier set of ideas often considered problematic for liberal idealizations, among them irrationality, untamed passion, and the supernatural. My motivation in observing these tensions is not just to extend the argument about containment, but also, and more importantly, to point to an aesthetic enactment of the anguish that liberal structures of complexity were to evoke for the decades that followed. That anguish was registered in *Wuthering Heights*' troubled reception.

At the close of Chapter 6 I discuss some of the theoretical implications of ideological dysfunction, to which the patterns discussed in Part II speak. The implicit assumption of the functionality of ideology has dominated debates about the status-to-contract formulation. It should be abandoned if we are to take the formulation seriously as an effort to instate a new social order, yet acknowledge that statuses were never left behind.

The components and framework of status-to-contract were historically dramatic, yet on terms that have remained too often unacknowledged, and otherwise only partially and inconsistently conceptualized in contracts histories of the Victorian era. The following chapters endeavor to both demonstrate and conceptualize correctives.