Questions About Contracts
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Introduction

What are we to make of contracts? We know that most written contracts do not embody all of the expectations of the contracting parties. Nevertheless, we believe that “serious scholarly consideration of contracts as things” may reveal new insights about contracting parties. The purpose of this article is to describe what we are likely to find if we take the terms of contracts seriously.

Focusing on contract terms does not mean that we are ignoring other forces that determine the governance structure of the relationship (i.e., markets, statutes, regulations, common law). One of the expected benefits of studying contracts more closely is that we will have a better understanding of the context in which contracts are negotiated, maintained, adapted, and enforced.

Empirical studies of contractual terms have become more common over the past decade, though most empirical studies appear in economics journals. As a result of this concentration of effort in one field, the range of questions addressed by empirical studies of contractual terms is narrow, focusing almost exclusively on transaction cost economization.

Part I offers a brief intellectual history of the empirical study of contractual relationships. Part II contains a survey of empirical work on contracts in the leading journals in economics, financial economics, law, management, sociology, and law, economics and organizations. Part III proposes a typology of contract provisions.

I. Empirical Study of Contractual Relationships

When Stewart Macaulay began teaching Contracts at Wisconsin in 1957, he was 26 years old. He had never practiced law, and he did the sensible thing by adopting the casebook used by his more experienced colleagues: LON FULLER, BASIC CONTRACT LAW. Macaulay’s father-in-law – Jack Ramsey, the retired General Manager of S.C. Johnson & Son – was not impressed.

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Contracts are always more than the contract document. We have long known the many reasons for this: Words do not have a fixed meaning that every speaker of the language will translate in the same way. We create the meaning of written language by bringing the words some measure of context, background assumptions, our experiences, and, too often, our bias, ignorance, and stupidities.


Also in 1991, the Journal of Law & Economics published papers presented at a conference organized by Ronald Coase on “Contracts and the Activities of Firms.” In his introduction to the conference, Coase wrote: “In organizing this conference, I was impelled by the belief (in which I am not alone) that theory is outrunning our knowledge of the facts in the study of industrial organization and that more empirical work is required if we are to make progress.” Ronald H. Coase, Contracts and the Activities of Firms, 34 J. L. ECON. 451 (1991).

with the casebook. According to Macaulay, Ramsey “thought that much of it rested on a picture of the business world that was so distorted that it was silly.”

To assist Macaulay in gaining real-world perspectives on contracts, Ramsey arranged for a series of meetings with corporate executives that became the basis of Macaulay’s seminal article, “Non-Contractual Relations in Business: A Preliminary Study.” As indicated by the title, Macaulay’s focus in this piece was on the extent to which parties regulated their behavior without the assistance of written contracts. During the course of his interviews, he found that “many, if not most, exchanges reflect no planning, or only a minimal amount of it, especially concerning legal sanctions and the effect of defective performances.” He also discovered that business people frequently adjusted their contractual obligations without dispute, and that “[d]isputes are frequently settled without reference to the contract or potential or actual legal sanctions.”

Macaulay met Ian Macneil at a summer workshop for young contracts teachers held at New York University in 1962. Macaulay already had written “Non-Contractual Relations in Business,” and he presented the paper at a meeting of the American Sociological Association held in Washington D.C. immediately following the NYU workshop. At the time, Macneil was writing doctrinal pieces about contract law. His work on “relational contracts” didn’t begin to emerge until the mid-1960s, with the earliest pieces emanating from his work in Africa. Though his subsequent work on relational contracts was highly abstract and theoretical,

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5 Macaulay, Crime and Custom, supra note __, at 249.


7 Id. at 9.

8 Id. at 10.

9 Email from Stewart Macaulay to Gordon Smith (October 3, 2006).

10 Id.


13 IAN R. MACNEIL, CONTRACTS: INSTRUMENTS OF SOCIAL CO-OPERATION – EAST AFRICA (1968); Ian R. Macneil, The Tanzania Hire-Purchase Act, 2 E. AFRICAN L.J. 84 (1966). Macneil’s work in Africa, funded by the Ford Foundation and a Fulbright Fellowship, was part of a larger “law and development movement” that envisioned legal reform as the catalyst for economic development. This vision, coupled with the belief that developing nations were not producing lawyers equipped with the requisite skills, led to an emphasis on legal education, as described by Thomas Carothers:

> Programs emphasized legal education, particularly the goal of trying to recast methods of teaching law in developing countries in the image of the American Socratic, case-oriented methods ... [and] encouraged lawyers and legal educators in developing countries to treat the law as an activist instrument of progressive social change.


Macneil claims that he “was simply exploring and trying to make sense of reality, the reality of what people are actually doing in the real-life world of exchange.”\textsuperscript{15}

Legal scholars were slow to embrace Macaulay and Macneil.\textsuperscript{16} When the derivative legal scholarship began to emerge,\textsuperscript{17} it focused primarily on the implications of relational contracting theory for legal doctrine,\textsuperscript{18} along with some interesting and important work on the subject that first caught Macaulay’s eye, the non-contractual dimensions of contractual relationships.\textsuperscript{19} Until recently, however, most legal scholars have avoided studying the content of contracts,\textsuperscript{20} though two lines of research deserve some mention here as being almost empirical.


\textsuperscript{16} Robert Gordon once referred to the work of Macaulay and Macneil as "remarkable, if up until now rather lonely, accomplishments." Robert W. Gordon, \textit{Macaulay, Macneil, and the Discovery of Solidarity and Power in Contract Law}, 1985 WIS. L. REV. 565, 578. As suggested by this comment, work on relational contract theory prior to 1985 was sparse, but Stewart Macaulay has observed, “It is my impression that writers in our field have paid much more attention to Ian's work since Gordon wrote, and, in my view, people should not attempt to write about contracts until they have studied Macneil.” Stewart Macaulay, \textit{Relational Contracts Floating On A Sea Of Custom? Thoughts About The Ideas Of Ian Macneil And Lisa Bernstein}, 94 NW. U. L. REV. 775, 776 (2000).

\textsuperscript{17} Papers published in the NORTHWESTERN UNIVERSITY LAW REVIEW connection with the excellent symposium entitled “Relational Contracting Theory: Unanswered Questions” reveal the dedicated interest in legal doctrine among those who write about relational contracts. See, \textit{e.g.}, Jay M. Feinman, \textit{Relational Contract Theory in Context}, 94 NW. U. L. REV. 737, 737 (2000) ("I want to situate Macneil's relational contract theory within the story of the development of contract law"); Eric Posner, \textit{A Theory of Contract Law Under Conditions of Radical Judicial Error}, 94 NW. U. L. REV. 749, 751 (2000) ("If Macneil is right, and courts cannot resolve contractual disputes by discovering initial contractual intentions on the basis of documents and other evidence, cannot use such intentions (even if they exist) to guide behavior late in the life of a relational contract, cannot enforce contracts in a way that maximizes their value ex ante, cannot fill in gaps by imagining the hypothetical bargain – then what should the courts do?"); Robert E. Scott, \textit{A Case for Formalism in Relational Contract}, 94 NW. U. L. REV. 847, 847 (2000) ("the central task in developing a plausible normative theory of contract law is to specify the appropriate role of the state in regulating incomplete contracts"); and Richard E. Speidel, \textit{The Characteristics and Challenges of Relational Contracts}, 94 NW. U. L. REV. 823, 838 (2000) ("a continuing challenge is for courts to recognize the special characteristics of relational contracts and to develop a set of default rules that are more responsive to the problems that those characteristics generate").

\textsuperscript{18} The results were unimpressive. As noted by Melvin Eisenberg, “there is no law of relational contracts.” Melvin A. Eisenberg, \textit{Why There is No Law of Relational Contracts}, 94 NW. U. L. REV. 805 (2000). Eisenberg makes more than a descriptive claim. He concludes: “What relational contract theory has not done, and cannot do, is to create a law of relational contracts.” \textit{Id.} at 821.


First, a large number of contract law scholars have focused on consumer contracts, particularly on arbitration provisions\textsuperscript{21} and other “boilerplate.”\textsuperscript{22} In most instances, this work does not focus on the content of specific contracts or variations in the terms of contracts—which are largely standardized—but rather the effect of such provisions on contract negotiations or legal doctrine.

Second, relying on incomplete contract theory, discussed in more detail below, a number of law professors are exploring various issues of contract design.\textsuperscript{23}

In the mid-1970s, economist Oliver Williamson noticed Ian Macneil’s work on relational contracts, which Williamson described as “much more expansive, nuanced, and interdisciplinary (mainly combining law and sociology) than any I had seen previously.”\textsuperscript{24} Williamson had been thinking about “markets and hierarchies”\textsuperscript{25}—terms that roughly parallel Macneil’s spectrum of discrete and relational contracts\textsuperscript{26}—and over the course of a decade or so, Williamson used these thoughts as the foundation for “transaction cost economics” (TCE).

Though the “theory of the firm” often is treated as a “theory of the corporation,” it could just as well be called a “theory of relational contracts.”\textsuperscript{27} After all, Coase launched the theory of the firm by using an employment relationship as the model “firm.”\textsuperscript{28}

Early work on TCE relied heavily on informal theoretical arguments.\textsuperscript{29} Later contributions formalized and expanded the theory of TCE.\textsuperscript{30} More recently, empirical work on TCE has blossomed.\textsuperscript{31}

\textit{Arbitration Clauses, 2001 U. ILL. L. REV. 695; Florencia Marotta-Wurgler, Are ‘Pay Now, Terms Later’ Contracts Worse for Buyers? Evidence from Software License Agreements (working paper 2006); Florencia Marotta-Wurgler, Competition and the Quality of Standard Form Contracts: An Empirical Analysis of Software License Agreements (working paper 2006).}


\textsuperscript{24} Oliver Williamson, \textit{MECHANISMS OF GOVERNANCE} 355 (1996) (referring to Macneil’s treatment of contracts in his article \textit{The Many Futures of Contracts}, 47 S. CAL. L. REV. 691 (1974)).


\textsuperscript{27} \textit{But see,} Claire Hill, \textit{Law & Economics in the Personal Sphere}, 29 L. SOC. INQUIRY 219, 250 (2004) (“There are relational contracts, and there are firms.”).

II. Survey of Empirical Studies of Contracts

This section surveys empirical studies of contracts from 1990 through 2006. Of course, the empirical study of contracts did not begin in 1990, but the purpose of this survey is not to develop a comprehensive account of extant learning on contracts. Instead, this survey is intended merely to reveal the sorts of questions that researchers ask about contracts. As one would expect, given the intellectual history in the last section, the researchers who study contracts empirically tend to be economists, and they tend to ask the same questions time and again.

Most of the empirical studies in the survey focus on one aspect of the contract. A smaller number of studies attempts to describe and analyze the entire system of rights.


allocation. The survey does not include articles – found frequently in law journals – in which the authors used stylized contract terms, illustrative contracts, or contracts in judicial opinions. Nor does the survey include studies that focus on the external effects of forming certain contractual relationships, rather than on the contracts themselves. Dispute resolution in various contractual settings is a popular topic, but articles in this genre are excluded from the survey. A few of the articles included in the survey aim primarily at methodological advances and secondarily at substantive insights, but they are included.

Many scholars are interested in contractual change. Many more are interested in governance structure. Almost no one analyzes contract terms using concepts like identity, branding, learning, or strategy – each of which is among the types of provisions described below.

[Expand the description of the survey.]


After reading empirical studies by economists, you might be tempted to believe that the only purpose of contracts is to prevent opportunism. While TCE offers important insights about contractual choice, TCE does not purport to explain all contract provisions. In this section, I describe eight types of contract provisions, including TCE (“governance”) provisions. The motivation underlying this typology is my belief that the terms of contracts matter.


TCE frames the discussion of contracts around the concept of opportunism, which Williamson defined as “a condition of self-interest seeking with guile.” Under this view, the

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42 WILLIAMSON, THE ECONOMIC INSTITUTIONS OF CAPITALISM 30 (1998). He also observed:

I do not insist that every individual is continuously or even largely given to opportunism. To the contrary, I merely assume that some individuals are opportunistic
potential for opportunism arises because contracting parties cannot foresee all future contingencies. They are constrained by bounded rationality. Bounded rationality precludes the possibility of drafting complete contracts. When one of the contracting parties invests in an asset that cannot move from one use to another without losing productive value (what Williamson calls asset specificity), the other contracting party can engage in “holdup.”

Holdup occurs when one contracting party threatens another with economic harm unless concessions are granted by the threatened party. The power of holdup exists only within contractual relationships, not in initial contract negotiations, and results from the investment of relationship-specific assets by the threatened party. Anticipation of holdup is said to motivate the structure of contractual relationships. In particular, the potential for holdup is said to encourage contracting parties to enter into long-term relationships or to vertically integrate.

Oliver Williamson has argued that contractual protections alone often are inadequate and that contracting parties must “exchange hostages” to protect themselves against opportunism. Ronald Coase has eschewed opportunism as a meaningful motivation for contractual structure.

some of the time and that differential trustworthiness is rarely transparent ex ante. As a consequence, ex ante screening efforts are made and ex post safeguards are created. Otherwise, those who are least principled (most opportunistic) will be able to exploit egregiously those who are more principled.

*Id.* at 64.

Actually, bounded rationality is more complex than being limited in cognitive competence. It might also include an inability to negotiate future plans because parties “have to find a common language to describe states of the world and actions with respect to which prior experience may not provide much of a guide.” Oliver Hart, *Firms, Contracts & Financial Structure* 23 (1995). Finally, bounded rationality might include an inability to write contracts in such a way that they can be enforced by a third party. *Id.*

*Williamson, Mechanisms, supra* note 13, at 59.


suggesting that reputational constraints usually prevent opportunistic behavior.\textsuperscript{48} Despite Coase’s objections, empirical research weighs heavily in favor of TCE’s core predictions.\textsuperscript{49}

\textbf{b. Price & Quantity Provisions}

Most contracts contain price and quantity provisions. Sale agreements contain a price to be paid by the buyer and a quantity of product to be provided by the seller. Investment agreements contain the amount to be invested and the number of securities to be issued. Land contracts contain a description of the property to be sold and a statement of the sales price. While some of these terms may be structured in a manner that has governance or other effects, the dollar and quantity values generally are determined by the relative bargaining power of the parties.

Price and quantity provisions fulfill one of the most basic functions of contracts: memorializing the agreement of the parties to avoid subsequent confusion.\textsuperscript{50} Of course, parties who draft written contracts do not always achieve this ideal, and such contracts raise questions regarding the proper role of interpretation.\textsuperscript{51}

\textbf{c. Compliance Provisions}

Many contractual relationships are heavily regulated and contain provisions that are driven less by governance concerns than by regulatory compliance. For example, tax implications affect the issuance of convertible preferred stock in venture capital financings,\textsuperscript{52} the use of limited liability companies rather than corporations,\textsuperscript{53} the structure of executive compensation,\textsuperscript{54} and many other corporate governance issues.\textsuperscript{55}

\textbf{d. Branding Provisions}

In his case studies of the Google and MasterCard initial public offerings,\textsuperscript{56} Victor Fleischer found evidence of a “branding effect” of legal infrastructure. The branding effect is not aimed at reducing the potential for opportunism by a counterparty to a contract, but rather at

\textsuperscript{48} Ronald H. Coase, \textit{The Nature of the Firm: Influence}, 4 J. L. ECON. & ORG. 33, 44 (1988) (“the propensity for opportunistic behavior is usually effectively checked by the need to take account of the effect of the firm’s actions on future business”).

\textsuperscript{49} Macher & Richman, supra note __.

\textsuperscript{50} See Lon L. Fuller, \textit{Consideration and Form}, 41 COLUM. L. REV. 799, 800-04 (1941) (describing the three functions of written contracts as evidentiary, cautionary, and channeling functions).


increasing the attractiveness of a product to present and future users or improving the image of a company in the eyes of regulators, judges, and juries.  

Brands are not focused on the transmission of information, but instead on the creation of meaning. Thus, commentators often describe branding through references to emotional – or even religious – concepts. Brand meanings are created through stories, and those stories have many authors. Fleischer justifiably adds “deal structures” to the list of stories that contribute to a brand’s identity.


58 See Bobby J. Calder & Steven J. Reagan, Brand Design, in KELLOGG ON MARKETING 58 (2001) (“To market, we have to go beyond the product. We must transcend whatever the product is as a physical or objective entity. We must create and convey the meaning of the product.”). The meaning of a brand is separate from the markers of that brand. Douglas Holt illustrates the distinction as follows:

Consider a new product that a company has just introduced. Although the product has a name, a trademarked logo, unique packaging, and perhaps other unique design features – all aspects that we intuitively think of as the brand – the brand does not yet truly exist. Names, logos, and design are the material markers of the brand. Because the product does not yet have a history, however, these markers are empty. They are devoid of meaning. Now, think of famous brands. They have markers, also: a name (McDonald’s, IBM), a logo (the Nike swoosh, the Travelers umbrella), a distinctive design feature (Harley’s engine sound), or any other design element that is uniquely associated with the product. The difference is that these markets have been filled with customer experiences. Advertisements, films, and sporting events use the brand as a prop. Magazines and newspapers articles evaluate the brand, and people talk about the brand in conversation. Over time, ideas about the product accumulate and fill the brand markers with meaning. A brand is formed.

DOUGLAS B. HOLT, HOW BRANDS BECOME ICONS 2-3 (2004):

59 See, e.g., JAMES B. TWITCHELL, BRANDED NATION: THE MARKETING OF MEGACHURCH, COLLEGE, INC., AND MUSEUMWORLD 12 (2004) (“The taste of Evian is not on the palate but in the imagination”); ROBERT B. SETTLE & PAMELA L. ALRECK, WHY THEY BUY: AMERICAN CONSUMERS INSIDE AND OUT 70 (1986) (“By pairing the brand name of the product with stimuli that naturally elicit positive emotional responses from people, over many repetitions, consumers learn to associate the brand with positive emotions. When they think of the brand they’ll have good feelings about it.”).


61 See SETH GODIN, ALL MARKETERS ARE LIARS: THE POWER OF TELLING AUTHENTIC STORIES IN A LOW-TRUST WORLD (2005). Godin explains the importance of storytelling, in part, by appealing to the same reasoning that underlies the use of signals: “Stories are shortcuts we use because we’re too overwhelmed by data to discover all the details.” Id. at 2. Ultimately, however, Godin’s message is that stories convey meaning rather than information. See, id. at 8 (“A great story is true. Not true because it’s factual, but true because it’s consistent and authentic.”).

62 HOLT, supra note 39, at 3 (“A brand emerges as various ‘authors’ tell stories that involve the brand. Four primary types of authors are involved: companies, the culture industries, intermediaries (such as critics and retail salespeople), and customers (particularly when they form communities).”).
e. Identity Provisions

Social identity theory was developed to explore issues of intergroup discrimination.63 Though the literature speaks of “in groups” and “out groups,” the focus is predominantly on individuals. Organizational theorists have extended social identity theory to the organizational context,64 suggesting that firms sometimes act according to the “logic of appropriateness” rather than the “logic of consequence.”65

The notion of identity may explain why many innovative agricultural businesses elect to organize as cooperatives rather than as limited liability companies. Traditional cooperatives are member financed and member controlled. The distinctive feature of cooperatives is that they are organized to create benefits for their members other than financial returns on investment.66

Within the past few years, several states have adopted new statutes allowing cooperatives to create two classes of members: patron members and investor members.67 Businesses that have organized under these statutes tend to be small, innovative firms, often operating in the agricultural sector.68 The cooperative form offers no tax, governance, or other regulatory advantages over the limited liability company, but the founders of these firms often feel that a cooperative is simply the appropriate form for their business. This is not a TCE story, but a story about identity. Or – to use a word common among business consultants – authenticity.


Organizational theorists have created an impressive literature on organizational learning,69 which is related to, but distinct from, individual learning.70 While learning by individuals does not necessarily lead to changes in individual behavior, many organizational theorists conceive of organizational learning as organizational change.71

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67 The National Conference of Commissioners on Uniform State Laws (NCCUSL) is drafting a Uniform Cooperative Association Act, which is scheduled to be approved in 2008.


69 For a useful description of the origins and development of research in organizational learning, see Anne S. Miner & Stephen Mezias, Ugly Duckling No More: Past And Futures Of Organizational Learning Research, 7 ORGANIZATION SCIENCE 88, 88 (1996).

70 See Daniel H. Kim, The Link Between Individual And Organizational Learning, 35 SLOAN MGMT. REV. 37 (1993) (observing that “organizations ultimately learn via their individual members. Hence, theories of individual learning are crucial for understanding organizational learning.”).

In their seminal work in the field, Richard Cyert and James March describe firms as adaptive learning systems. Under this view, firms address uncertainty by developing standard operating procedures. The efficacy of these procedures is tested through experiences that lead to change: effective procedures are retained, and ineffective procedures are modified. Organizational change of this sort is incremental.

Subsequent writing in the field distinguished incremental and radical change. Whereas incremental change focuses on local outcomes, radical change affects an organization’s fundamental commitments. These concepts might prove especially useful to scholars interested in time-series analyses of contractual change, but the mere recognition that organizations learn suggests an important avenue of inquiry in the present context: do contracts contain provisions that are designed to enhance or capture learning opportunities?

In the venture capital context, for example, an obvious candidate for such analysis is staged financing. Venture capitalists often invest in contexts characterized by extreme uncertainty. In some instances, portfolio companies have clear goals but uncertain paths to attain those goals. In other instances, portfolio companies have unclear goals. In either circumstance, venture capitalists value opportunities to make midstream adjustments. Staged financing hardwires such opportunities into the structure of the venture capital investment relationship.

The traditional explanations for staged financing rely on principal-agent theory. According to Paul Gompers, venture capitalists improve monitoring of their portfolio companies through staged financing. And I argued that entrepreneurs benefited from staged financing because they “would rather have the risk of dilution inherent in staged financing than the certainty of dilution that would follow from lump sum financing.”

Both of these explanations rest on the assumption that staged financing is an incentive device used to align the interests of venture capitalists and entrepreneurs. Learning theory

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73 This distinction travels under various labels. See, e.g., Argyris & SchöN, supra note __, at 2-3 (1978) (distinguishing between single-loop learning, which “permits the organization to carry on its present policies or achieve its present objectives,” and double-loop learning, which “involv[e] the modification of an organization’s underlying norms, policies and objectives”); C. Marlene Fiol & Marjorie A. Lyles, Organizational Learning, ACAD. MGMT. REV. 803, 807-08 (1985) (distinguishing lower-level learning, which “leads to the development of some rudimentary associations of behavior and outcomes,” and higher-level learning, which “aims at adjusting overall rules and norms rather than specific activities or behaviors”); Mark Dodgson, Technology, Learning, Technology Strategy and Competitive Pressures, 2 BRITISH J. MGMT. 132, 139-40 (1991) (distinguishing tactical learning, “which has an immediate problem-solving nature,” from strategic learning, “which extends beyond immediate issues and involves firms developing skills and competences which provide the basis for future, perhaps unforeseen, projects”).


75 The contractual provision that allows for staged financing is the “right of first refusal.” See D. Gordon Smith, Team Production in Venture Capital Investing, 24 J. CORP. L. 949, 966 (1999) (“At each stage, the Venture Capitalist typically has a right of first refusal, allowing the Venture Capitalist to participate in the financing by purchasing the number of new shares sufficient to ensure that the Venture Capitalist retains a steady level of ownership in the company”).


77 Smith, Team Production, supra note __, at 968.
suggests, however, that staged financing would be valuable, even in a world without opportunism. By requiring periodic evaluations of the state of the relationship, staged financing encourages learning.

g. Strategic Provisions

When contracting parties enter into the same form of relationship repeatedly, they might find some provisions strategically advantageous. For example, Robert B. Ahdieh suggests that adherence to or deviation from “boilerplate” may provide signals to potential negotiating partners.  

A second form of strategic provision arises from attempts by contracting parties to minimize the aggregate contracting costs. According to Robert Scott and George Triantis, vague terms like “best efforts” and “commercial reasonableness” clauses may be useful in helping parties to balance the front-end and back-end costs associated with contracting.

h. Legacy Provisions

Legacy provisions are holdovers from prior deal documents. They come in two varieties: (1) incongruous legacy provisions simply do not belong in the contract and their presence suggests inattention or incompetence on the part of the contract drafter, and (2) suboptimal legacy provisions have functional significance in the contract, but the content of these provisions would be different in the absence of inertia.

Conclusion

In his well-known article introducing the concept of the business lawyer as “transaction cost engineer,” Ron Gilson suggests that “the tie between legal skills and transaction value is the business lawyer's ability to create a transactional structure which reduces transaction costs and therefore results in more accurate asset pricing.” In the foregoing sections, I suggest that business lawyers may be doing much more than transaction cost economization.

80 Stephen J. Choi & G. Mitu Gulati, Innovation in Boilerplate Contracts: An Empirical Examination of Sovereign Bonds, 53 Emory L.J. 929 (2004) (“Change not only takes time, but also comes in stages – as we describe it, there is first an interpretive shock, then a lengthy period of adjustment, and only then a big shift in terms.”); Peyton H. Young & Mary A Burke, Competition and Custom in Economic Contracts: A Case Study of Illinois Agriculture, 91 Am. Econ. Rev. 559 (2001) (concluding that “regional customs form a compromise between completely uniform contracts on the one hand, and fully differentiated contracts on the other”).
82 Id. at 255. For an interesting test of the value added by lawyers, see C.N.V. Krishnan & Paul A. Laux, Legal Advisors: Popularity Versus Economic Performance in Acquisitions, (working paper 2003) (“The market for M&A advisory services does not exhibit evidence of Gilson’s conjecture, at least as reflected in stock returns.”).
83 Gilson recognized that lawyers play a role in regulatory compliance, but argued:

[B]usiness lawyers frequently function in a world in which regulation has made few inroads. For these lawyers the critical role of law is that a court will enforce whatever the
The purpose of this Article is to argue for a more complete study of contracts. TCE provides many potential insights, but it does not purport to offer an exhaustive account of contract terms. The typology presented here is a first step toward understanding contracts more fully.

Id. at 247.
Appendix I
Journals Reviewed

Economics

Financial Economics

Law, Economics, and Organizations
Rand Journal of Economics

Sociology
American Journal of Sociology
American Sociological Review

Management
Academy of Management Journal
Academy of Management Review
Strategic Management Journal
Organization Science
Management Science
Administrative Sciences Quarterly
Law
Northwestern University Law Review, vols. 84-100 (1990-2006) (vol. 100 #1)

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84 These 20 law reviews are taken from a recent ranking by Ronen Perry, The Relative Value of American Law Reviews: Refinement and Implementation (working paper 2006).
Appendix II


