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Contracts scholarship beyond Materialisierung

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DIALOGUE AND DEBATE: COMMENT

Contracts scholarship beyond *Materialisierung*

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Abstract

This comment aims to show how Klaus Eller's paper on 'The Political Economy of Tenancy Contract Law'[1] raises the stakes of private law scholarship and contributes to the larger project of remodeling legal institutions in a progressive direction. The comment starts by contextualising the rapid spread of the Law and Political Economy (LPE) movement; illustrates through examples the generative impact of LPE on contemporary contracts scholarship; and highlights two strands of Eller's original contribution to such literature: a welcome reflection on the value and limits of *Materialisierung*, and a radical widening of the private law inquiry to include institutional dimensions of legal reform. The point of fostering such new directions is not to ditch the very logic of private law and its endogenous mechanisms of justice, which are still essential to progressive legal work. What is no longer tenable is to keep seeking socially oriented solutions exclusively within the private law arsenal of possibilities, even when it has become obvious that only a synergic approach can produce accurate diagnoses of – and perhaps cures for – the structural predicaments of the market economy.

Keywords: contract law; political economy; critical legal theory; institutional competence

1. LPE: why now

Much has been happening in recent years under the banner of Law and Political Economy. LPE is now variously referred to as a scholarly *blog*, a *project*, a *movement*, a *manifesto*, and even an *ecosystem*.[2] Its tent is large. LPE courses, seminars, and conferences have mushroomed in law schools all over the United States (USA) and Europe, and are quickly reaching further shores.[3] Dating the birth of LPE is not an easy task, both because the core LPE ideas have historical roots in multiple strands of critical legal thought and because several academic communities in the global north claim ownership of the LPE agenda.[4] It is nevertheless important to understand LPE as a phenomenon of our times, with unprecedented sprouting of reflections on the role of law in the *production* of economic inequality and social exclusion. Katharina Pistor's *Code of Capital*[5] takes center stage here, but no less relevant, as we shall see, are the critical insights of scholars such as Angela Harris,[6] co-founder of the Journal of Law and Political Economy.[7]

[1]K Eller, 'The Political Economy of Tenancy Contract Law-Towards Holistic Housing Law' 1 (4) (2022) European Law Open 987.

[2]E George, 'A Message from the Managing Editor' (2020) 1 Journal of Law and Political Economy 186.

[3]<https://lpeproject.org/syllabi/> accessed 15 December 2022.

[4]See I Kampourakis, 'Bound by the Economic Constitution: Notes for "Law and Political Economy" in Europe' (2021) 1 Journal of Law and Political Economy 301, 302 ('[T]he foundational premise of LPE, that law is constitutive of the economy, has profound roots in European legal and social theory.').

[5]K Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press 2019).

[6]AP Harris, 'Race and Essentialism in Feminist Legal Theory' (1990) 42 Stanford Law Review 581.

[7]<https://escholarship.org/uc/lawandpoliticaleconomy/about> accessed 16 December 2022.

The proliferation of LPE initiatives has been so rapid since the late 2010s as to raise the question of why now. In lieu of an answer, which may only come when the dust settles, let us recall here the trans-Atlantic political upheaval of the last decade, epitomised by two events of shocking importance: on the USA side, Donald Trump's rise to power; in Europe, the largely unanticipated success of the Brexit movement. Causation is hard to establish, but the correlation is worth noting: LPE bloomed in the immediate aftermath of such developments. Both events required a radical rethinking of the liberal agenda, which had clearly failed to galvanize its traditional constituencies.[8] And both events were major triggers for progressive legal scholars. It became evident that what had been done, through legal research, to promote economic and social inclusion had somehow missed the mark; that reforms, even if well intentioned, had not done enough to remedy historical inequalities and disenfranchisement, and had in fact enabled and entrenched new market dynamics which, in turn, had widened wealth gaps both locally and on a global scale. LPE today calls, appropriately, for more intentional analyses, linking law-mediated power structures with growing disparities and political alienation. To be sure, this kind of inquiry, looking at 'the role of law in structuring social relations, power, and justice in market society',[9] has been the staple of critical legal scholarship for a long time.[10] What is new is its large scale adoption and regained academic prominence.[11]

The exuberance and success of LPE initiatives depend heavily on the renewal of contracts scholarship. Contract law is one of the legal institutions that are constitutive of both local and global political economies. Along with private property, the idea of legally enforceable obligations stemming from the free assent of two or more parties is indeed at the heart of socio-economic organisation in countless contexts. A focus on contract law is therefore essential in a conversation whose goal is to inquire how these institutions could be remodeled to face pressing contemporary challenges.[12]

2. LPE and the contractual archetype

Exactly a century ago, Robert Hale published a piece that is now central to the LPE canon.[13] The core intuition of Hale's famous Article, 'Coercion and Distribution in a Supposedly Non-Coercive State', was twofold: first, law creates power hierarchies by *fiat*, eg granting owners a power of coercion against non-owners; second, legal discourse normalises such coercive dynamics until they fade from sight and blend in with a supposed state of nature – as is the case when workers or consumers with no alternatives are portrayed as agreeing *freely* to exploitative contract terms. As a result of basic, and therefore hard to question, property and contract rules, the distribution of wealth is skewed *ex ante*, and egalitarian renewal can only come – if ever – *ex post* through fiscal redistribution.

Much has changed over the past 100 years, yet some things are only more so. Radical market transformations, such as globalisation and financialisation, have 'intensified capitalism'[14] and ratcheted up its dynamics to unfathomable heights. Adapting Hale's analysis to present times, some scholars are electing as a target of critique the many contemporary reincarnations of the

[8]D Kennedy, 'A Left of Liberal Interpretation of Trump's "Big" Win, Part One: Neoliberalism' (2017) 1 Nevada Law Journal Forum 98.

[9]Y Benkler, *Syllabus: Workshop on Law and Political Economy* (Harvard Law School 2023) <https://lpeproject.org/syllabi/hls-lpe-seminar/> accessed 15 December 2022.

[10]D Kennedy, 'The Stakes of Law, or Hale and Foucault!' 15 (1991) Legal Studies Forum 327.

[11]MW Hesselink, 'Reconstituting the Code of Capital: Could a Progressive European Code of Private Law Help Us Reduce Inequality and Regain Democratic Control?' 1 (2022) European Law Open 316.

[12]A Beckers, KH Eller and PF Kjaer, 'The Transformative Law of Political Economy in Europe' 1 (4) (2022) European Law Open 749.

[13]RL Hale, 'Coercion and Distribution in a Supposedly Non-Coercive State' 38 (1923) Political Science Quarterly 470.

[14]JT Nealon, *Post-Postmodernism: or, The Cultural Logic of Just-in-Time Capitalism* (Stanford University Press 2012).

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classic contractual archetype: freedom of contract and presumed symmetry of power and status between the parties. Like neoliberalism[15] and often riding on its coattails, this archetype is strangely resilient to historical failures, and pops up with vigor in disparate legal contexts – domestic, transnational, or international. Luke Herrine, speaking for the LPE project in 2019, offered a concise depiction of this idealised contractual pattern and explained, in agenda-setting terms, why it is still important to wrestle with it.

> Theories based on the contractual ideal have proven especially useful for justifications of capitalist ordering. When the law has taken such theories too seriously, it has found it easy to endorse and even mandate all sorts of market-mediated exploitation as necessary to a free society. Lochner and its ilk were supposed to protect freedom of contract, after all.... Thinking about [contract law from the perspective of political economy] requires dealing with contracts not as the shadows of an ideal Form but as institutions shaped by socio-legal context. It requires dealing with the law of contract not as a self-contained and coherent body of judge-made doctrine but as an overlapping set of rules that deal with different contractual forms in different contexts.[16]

In line with this call to action, there has been heightened attention to specific sectors of the market in which a caricatured version of contractual freedom paves the way to regressive distribution. As if transposing Hale's insight onto the financial markets of the 21st century, Bruce Carruthers observes:

> The idea that private financial actors simply want to escape government oversight and regulation is simplistic as private interests find the coercive powers of the state too useful to forgo. Instead, such actors engage law selectively to create a more certain environment for themselves and their profit-seeking activities. Contract law adds certainty to financial transactions. . .. Formal law remains a critical anchor for finance, for only through law can claims over intangible assets and cash flows be realised with certainty.[17]

The problem is not new, of course, and progressive private law scholars have long pleaded for the policing of oppressive contractual clauses to protect – say – borrowers or small investors from the usual perils of the financial jungle: foreclosures, evictions, loss of collateral, etc. This ongoing project of private law reform constantly updates and adapts to new areas the techniques of *materialisation* – a socially conscious process famously developed in the course of the 20th century: when a party to a contract is significantly 'weaker' than the other, the assumption of parties' formal equality must be suspended, and protective terms must be added to the basic contractual scheme as devised and imposed by the 'stronger' party.[18] But what about contracts that have long been the object of regulatory intervention, purged of unfair clauses, accessorised with mandatory terms, and infused with rights protection? What if, in spite of such corrective interventions, the resulting distribution of wealth in any given market remains stubbornly lopsided, still penalising weaker parties in predictable and systemic fashion? This is where Klaas Eller's article[19] – the contracts piece in this collection – takes new steps and moves the ball further.

[15]C Crouch, *The Strange Non-Death of Neoliberalism* (Polity Press 2011).

[16]L Herrine, 'Contextualizing Contract Law' (2019) <https://lpeblog.org/2019/02/28/contextualizing-contract-law-and-lpe-101-reading-list/> accessed 15 December 2022.

[17]BG Carruthers, 'Law, Governance, and Finance: Introduction to the Theory and Society Special Issue' 49 (2020) Theory and Society 151.

[18]H Dagan, '"New Private Law Theory" as a Mosaic: What Can Hold (Most of) It Together?' 23 (2022) German Law Journal 805, 814–5 (offering an account of *Materialisierung* as theorised by F Wieacker and then J Habermas).

[19]Eller (n 1).

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3. Eller and the limits of materialisation

As a contracts scholar joining a conversation on law and political economy, Eller chooses as his object of critique the law of landlord–tenant agreements. This is per se a meaningful choice. Rental agreements are nothing like the stark, idealised form of contract identified by Herrine as both obsolete and problematic. Landlord–tenant relations have long been understood as in need of a special legal framework not to be found in the architecture of 19th-century codifications. Tenants were among the first type of contractual parties (before workers and long before consumers) for which legal systems all over Europe provided some form of protection above the baseline of corrective justice. Landlord–tenant agreements now ordinarily include important mandatory terms, such as warranties of habitability; tenants in breach may receive statutory protection from eviction; and in several contexts, rent control is politically and socially accepted. In German federal law, in particular, tenants were already identified as structurally more vulnerable than landlords over a century ago. Through several steps of materialisation, this niche of contract law was sheltered from the stark logic of the market – ie the capitalist extraction of maximum ownership value enabled by crude notions of property and contract. Why does Eller, a progressive scholar clearly preoccupied with the dearth of social justice in contemporary contract law, adopt this particular entry point into the conversation? Why focus on an amply materialised, socialised, constitutionalised,[20] or embedded strand of contract law, which arguably is 'no longer. .. dominated by negative freedom and formal equality'?[21]

Eller's move is actually very effective. First, the topic straddles both property and contract law – very much in line with Hale's *Coercion* piece and already cutting through canonical partitions. Second, it shows how politically and economically regressive outcomes result not just from 'cold' contract rules of neoliberal imprint, but also in the context of seemingly protective contractual arrangements. Shielding needy tenants from the demands of greedy landlords is still a laudable goal,[22] but sorely insufficient as a paradigm for social justice in today's housing markets. The causes of the dearth of affordable housing in Berlin (as in countless cities in the world) are varied and interlocked.[23] There's the financialisation of real estate, which turns home ownership into an asset for speculation; there's the problem of collateralisation, which exposes owners to the vagaries of bubble bursts and repossession; there's the freedom of movement of capital, which enables enormous demand from everywhere for particular sites on the planet's surface. And, of course, each of these phenomena is enabled by codes, rules, or more simply by the political choice not to regulate, which enables the contractual overreach of individual landlords. Eller's powerful message is that *Materialisierung* is now past its prime. Landlord–tenant agreements have been ameliorated for decades, but that is no longer a sufficient recipe for justice. External, structural forces are at play as a result of broken political processes as well as unmoored globalisation. It is time for fresh, broad, and painstakingly contextual analyses.[24]

[20]H-W Micklitz, 'Constitutionalization, Regulation and Private Law' in S Grundmann, H-W Micklitz and M Renner (eds), *New Private Law Theory: A Pluralist Approach* 166 (Cambridge University Press 2021).

[21]Dagan (n 18) 807.

[22]I Domurath and C Mak, 'Private Law and Housing Justice in Europe' (2020) 83 Modern Law Review 1188, 1220 (positing that private law can still play an important 'role in a complex system of ensuring housing justice.').

[23]It is common knowledge that '[I]n Berlin ... rents have been soaring for years, fuelled in large part by hedge funds and private equity firms buying up swathes of the city's property over several decades.' K Connolly, 'Berlin's Rent Cap Is Illegal, Germany's Highest Court Rules' (*The Guardian*, 15 April 2021) <theguardian.com/world/2021/apr/15/germany-highest-court-rules-berlin-rent-cap-illegal> accessed 15 December 2022.

[24]Domurath & Mak (n 22) 1220 ('a new, holistic approach concerning the various dimensions of the right to housing in private law in Europe is required, encompassing its substantive and procedural sides, its social and economic elements, and its different content in the public and private realms.').

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4. Contract law and institutional reimagination

Crucial to Eller's analysis is the question of institutional competence – and here, by 'institutions' we no longer refer to legal constructs like contracts or property, but rather to organised structures with decision-making and steering power. The choice of one institutional site versus another requires investigating the features of each – their design, composition, and ideological framework. Which institutional path, in any given context, can prove the most transformative – the most conducive to a more equitable and principled organisation of local and global markets? This inquiry connects Eller's piece to the larger quest for institutional re-imagination that runs through this collection.

The effort to enhance the social justice yield of private law, and contract law in particular, normally proceeds through two alternative sites: courts, where general principles and fundamental rights may tilt the scales in favor of structurally weaker parties; and legislative arenas, where some terms could be made mandatory, other terms simply outlawed, and others yet grey-listed. There is, as well, the possibility of complementing legislative reform with third-branch solutions, such as those developed by regulatory agencies, with or without input from stakeholders. The choice between such alternatives is often intertwined with another type of institutional query: law reform may be best placed at the vertex of a federal (or otherwise multi-level) system, or onto a lower layer of decision-making, politically and physically closer to the base – as per the logic of subsidiarity. In turn, given the political winds blowing in each place and time, the choice of one level versus another may completely determine the distributive outcomes of any given reform.

None of this is, in theory, within the purview of private law scholarship. Yet, as Eller demonstrates, it is hard to conceive of private law reform without understanding, and taking into account, the question of institutional strategy. The particular institution endowed with the power to steer market dynamics at any given point in time may lack the political will, or the capacity, or both to enact desirable reforms. Recall the story at the heart of Eller's Article:

> [Berlin's rent cap] was hailed internationally as a triumph by those striving to retain a social mix in cities[.]. .. But landlords and property investment lobbyists argued it was inappropriate and illegal for the state to meddle with the private market. The legal case was brought by landlords backed by politicians from the conservative Christian Democratic Union/Christian Social Union alliance and the pro-business Free Democratic party[.][25]

In reply, the German Federal Constitutional Court rehashed old taxonomies. In a nutshell: the contract by which people rent or lease a living unit remains in the eyes of the law a deal between two parties; the matter is already covered by general civil law principles and also by special legislation, at the federal level, dating back many decades; it is socially sensitised civil law, yet civil law nonetheless; urban policy is for the *Länder*; civil law is for federal powers. As a consequence of such clear-cut partitions, the Land of Berlin found itself deprived of the competence to establish a rent cap, and tenants were left again to their own devices.

Now, in the abstract, an equitable reform of housing markets in major German cities could very well be pursued through federal legislation. There's nothing intrinsically wrong in considering equitable housing a matter of federal law-making as opposed to an issue for local government. Indeed, problems connected to the global flow of money could definitely use comprehensive solutions at the national (and indeed international) level.[26] The problem is that at the German federal level, in spring 2021, there was evidently no political will to hold the rents down. The Court's

[25]Connolly (n 23).

[26]The phenomenon is obviously global: 'Since the neoliberal turn, real estate has become an increasingly vital store of investment. Geographical shifts in manufacturing have combined with relaxed capital controls, extreme wealth concentration, and the advent of complex financial instruments to reconfigure the capitalist political economy. In recent decades, residential real estate – particularly in formerly industrialised cities – has become a magnet for extractive economic ventures, with deterritorialised flows of capital decamping in gentrifying urban neighborhoods for the purpose of unlocking the value of

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deferral to that particular arena, far from enabling equitable solutions, got in the way of progressive reform.

This is not the place to engage in depth with the Court's legal reasoning, but a brief counterfactual may be appropriate here: the Court could arguably have reached a different conclusion by acknowledging how porous the private/public boundary actually is in this context. As a matter of both fact and law, it is hard to conceive of urban policy without the ability to intervene on residents' cost of living. And it is even harder to squeeze landlord–tenant relations into the straightjacket of private law, given how many external forces intervene to shape such relations. Yet, as observed, the Court's decision hinged on the private–public distinction in its coarsest version. Once again, the deployment of a stark, hyper-private model of contractual relations served the conservative goal of freeing landlords from the strictures of rent control. Quoting Herrine again, 'the decontextualised contractual ideal can serve ideological functions[.]'[27]

At this stage of contract law evolution, as Unger would put it, the law of contracts and its theory may have already 'accomplished [the] first step of insistence upon the effectiveness of the enjoyment of rights[.]' *Materialisierung* and its ilk, arguably, have done exactly that over the 20th century. But it is now up to the scholars of this century to take 'the missing second step of institutional re-imagination and reconstruction.'[28] And that requires hard work.

5. Opening up contract law research

One important implication of the LPE agenda, fully illustrated by Eller's intervention in this debate, is that private law reform must contemplate many variables in its equation, including big-picture shifts in institutional competence flowing from revisited private-law taxonomies. This is easier said than done. As is normal at a time of renewal, manifestos abound in the camp of law and political economy. More difficult is to move from the programmatic stage to the actual implementation of hard research agendas.

It may be helpful therefore to outline, at the end of this comment, two ways in which contracts law research is truly beginning to pick up the LPE gauntlet: first, by 'plotting the land,' ie identifying the plurality of legal, economic, and political factors that result in exploitative market dynamics *before* delving into private law analysis; second, deepening the attention to the experience of contracts on the ground, asking whether the path to autonomy in any given context might be less pervious to some groups than others because of tilted social scales.

Eller's land plotting work is in fruitful dialogue with a rising generation of USA scholars who rightfully interrogate all the legal and extra-legal frameworks within which private agreements, even if dipped in social oil, still yield skewed wealth distribution on a massive scale. Rory Van Loo, a USA-based scholar of consumer law, exemplifies valiantly this kind of contract law scholarship:

> The data indicate that consumer market failures raise prices to consumers by well over a trillion dollars annually, aided by sophisticated algorithmic pricing; that this overcharge worsens economic inequality; and that consumer law . . . can reduce overcharge when designed well. The preliminary state of the evidence underscores the need for regulatory monitoring of markets to calibrate consumer law's potential as a tax alternative. . . . There are strong normative foundations for making macroeconomic distribution an explicit goal of consumer law.[29]

"underperforming assets."' J Whitlow, 'Law and Countervailing Tenant Power in the Real Estate State' (2 June 2022) <https://lpeproject.org/blog/law-and-countervailing-tenant-power-in-the-real-estate-state/> accessed 15 December 2022.

[27]Herrine (n 16).

[28]RM Unger, 'Legal Analysis as Institutional Imagination' 59 (1996) Modern Law Review 1, 6.

[29]R Van Loo, 'Broadening Consumer Law: Competition, Protection, and Distribution' 95 (2019) Notre Dame Law Review 211.

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Accordingly, Van Loo's work is dedicated to unearthing the structural causes of consumers' overcharge: how concentrated is the market, and why?[30] What is the effect of intermediary platforms such as Amazon? Which institutional site controls the resolution of consumer-seller disputes?[31] The result is a composite research agenda, which requires, in addition to the ordinary private-law toolkit, a keen understanding of antitrust, regulatory possibilities (including the creation of new institutions for the supervision of consumer contracts), pre- and post-litigation settlements, and so on. Not for the faint of heart, but absolutely rewarding. Similar inquiries are to be found in the realm of employment contracts – another historically materialised area of private autonomy. Here, again by way of example, the LPE-inspired research of Brishen Rogers does not suffer disciplinary boundaries and takes on the entire architecture of labor/capital relations (law, politics, economics, or sociology of globalisation) in contexts where private arrangements yield systemically skewed distributive effects. One such context is the predicament of Uber drivers, regularly hired as independent contractors to bypass the more protective regime of employment contract law.[32]

The second path to contracts scholarship renewal comes from Critical Race Theory, which insists on foregrounding the identity of contracting parties – ie their belonging to communities that are either historically racialised or otherwise systemically penalised as market participants. Does identity change the way in which private parties experience the law of contract on the ground? This is a dimension with which Eller's Article does not engage, though one that would certainly belong in an inquiry about rental agreements in some de-facto segregated neighborhoods of many European capitals. Here, too, we are witnessing a steep acceleration of scholarly inquiries. Building on the insights and evocative tales of Patricia Williams[33] as well as on empirical contract law research,[34] USA scholars are increasingly focusing on reasons why the contractual justice available to some groups is not accessible to others. Charles Calleros, in particular, is promoting the use of teaching materials that, next to canonical cases, discuss 21st-century judicial opinions wherein contract doctrines intersect civil rights issues.[35] *Barfield*, for instance (a case concerning the experience of persons of colour seeking bank-teller services) is a perfect springboard for classroom discussions on the doctrine of consideration.[36] At the same time the facts of the case aptly sensitise first-year law students to the idea that a self-contained, identity-indifferent analysis of contract law may vastly overestimate the level of social justice resulting from ordinary patterns of contracts enforcement.

CRT is notoriously divisive in the USA political context, but to this day it holds a solid place in USA legal academia. Across the European continent, there is arguably even more resistance to the sort of legal inquiry prescribed by CRT scholars, especially among jurists of private-law extraction. Change, however, is in the air. The recent decision by the French judiciary to demand that the SNCF pay compensation for the systemic discriminatory treatment of Moroccan workers is opening fresh and fundamental queries.[37] Notably, the defense counsel for SNCF emphasised that the company had fully complied with contractual terms. But what historical and political forces had normalised, for decades, the use of different employment contracts for different

[30]R Van Loo, 'In Defense of Breakups: Administering a "Radical" Remedy' 105 (2020) Cornell Law Review 1955.

[31]R Van Loo, 'Federal Rules of Platform Procedure' 88 (2021) University of Chicago Law Review 829.

[32]B Rogers, 'Employment Rights in the Platform Economy: Getting Back to Basics' 10 (2017) Harvard Law and Policy Review 479.

[33]PJ Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Harvard University Press 1991) ch 8 'The Pain of Word Bondage (a tale with two stories)' 146.

[34]I Ayres, 'Further Evidence of Discrimination in New Car Negotiations and Estimates of Its Cause' 94 (1995) Michigan Law Review 109.

[35]C Calleros, 'Talking about Race in the Contracts Course: Interface with Civil Rights Laws, Part II – Consideration' (6 June 2020) <https://lawprofessors.typepad.com/contractsprof_blog/2020/06/guest-post-by-charles-calleros-talking-about-race-in-the-contracts-course-interface-with-civil-right-1.html> accessed 15 December 2022.

[36]*Barfield v Commerce Bank, NA*, 484 F3d 1276 (10th Cir 2007).

[37]*Cour d'appel Paris* n° 15/11747 (31 January 2018).

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groups of workers? Lionel Zevounou is presently tackling this inquiry, and broader scholarly initiatives are investigating the history of contractual practices characterised by open or covert discrimination.[38] To the research agenda of the law and political economy of private agreements, critical race scholars add a new issue – one that truly cannot be addressed through identity-blind corrections of contractual overreach.

In sum, contracts scholarship gets harder in the age of LPE and requires way more effort than it used to. This is not to imply that the very logic of private law – its relative insulation from context, its endogenous mechanisms of interpersonal justice[39] – must be exploded. It is still essential to remain aware of traditional disciplinary boundaries and of the varying juridical techniques that can be applied in different legal frameworks.[40] What is no longer tenable is to keep seeking socially oriented solutions exclusively within the private law arsenal of possibilities, even when it has become obvious that only a synergic approach can produce accurate diagnoses of – and perhaps cures for – the structural predicaments of the market economy.

Competing interests. The author has no conflicts of interest to declare.

[38]L Zevounou, 'Discrimination Based on Race: The Example of Moroccan SNCF Workers in France' (Conference: *Colonialism and the EU Legal Order*, University of Copenhagen, 29–30 September 2022).

[39]H Collins, 'Interpersonal Justice as Partial Justice' 1 (2022) European Law Open 413.

[40]OO Cherednychenko, 'Rediscovering the Public/Private Divide in EU Private Law' 26 (2019) European Law Journal 27.

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