Embedded Whiteness: Theorizing Exclusion in Public Contracting

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INTRODUCTION: WHAT IS NEW ECONOMIC SOCIOLOGY AND WHY
SHOULD CRITICAL LEGAL SCHOLARS CARE?

A. New Economic Sociology & the Social Market

Around the same time that Critical Race Theory ("CRT") was emerging as
a field in law in the mid-1980's, the term, "New Economic Sociology" ("NES") was
coined at a roundtable discussion at the 1985 annual meeting of the American
Sociological Association.1 Like CRT, NES was challenging fundamental
disciplinary principles and assumptions. Just as critical race theorists, or "race crits"
discussed the social construction of race, new economic sociologists argued for a
constructionist understanding of economic institutions. Rejecting the neoclassical
notion that economic actors are atomized decision makers, new economic
sociologists maintained that such actors are engaged in "interaction and structures of
interaction."2 In this sense, new economic sociologists have been arguing for an
understanding of economic institutions as social constructions as well as for the need
to incorporate social structure into the analysis of economic institutions and
phenomena. Otherwise stated, the "economic" merely refers to the social
organization of material production.

NES is "new" insofar as its practitioners do not hesitate to adopt a critical
stance with respect to microeconomics—parting ways significantly with
conventional wisdom on issues of market structure, production, pricing, distribution,
and consumption.3 The theoretical projects of new economic sociology have been
challenging three particular "fallacies" of neoclassical economic analysis: (1) that the
social is a realm separate from the economic; (2) that individuals make conscious
calculations about how to maximize utility; and (3) that the aggregation of
individual-level behavior is straightforward and unproblematic.4 The research
agendas of new economic sociologists have comprised studies in roughly three main
groupings: (a) networks theory; (b) cultural sociology; and (c) organization theory.

Each of these theoretical groupings have been influenced by the work of

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1. This genesis story of new economic sociology was provided by Richard Swedberg, a
leading scholar in the emerging field. Richard Swedberg, New Economic Sociology: What Has Been
2. Id.
3. Mark Granovetter, The Old and New Economic Sociology: A History and an Agenda, in
BEYOND THE MARKET PLACE: RETHINKING ECONOMY AND SOCIETY 89 (Roger Freidland & A.F.
Robertson eds., 1990).
4. Id. at 6-7.
Mark Granovetter, a leading figure in new economic sociology. In particular, Granovetter's idea of “structural embeddedness” provides a unifying concept that counters the conventional paradigmatic assumption regarding atomized decision-making by economic actors. His work defines the distinctiveness of new economic sociology by emphasizing the embeddedness of action in social networks. Granovetter's work on structural embeddedness is especially significant for critical legal theorists, particularly those who engage substantively in the areas of contracts, employment discrimination, and civil rights/affirmative action.

B. The Significance of Granovetter's "Structural Embeddedness" Theory

In 1985, Granovetter published an influential article in the *American Journal of Sociology* entitled, Economic Action and Social Structure: The Problem of Embeddedness. The piece would come to be viewed as influential in the emerging field of economic sociology. Granovetter set out to challenge the “gentlemanly assumption” of modern economic theory—that one’s “economic interest is pursued only by comparatively gentlemanly means.” If classical and neoclassical economists view economic actors as rational, self-interested beings, then the “Hobbesian question” on the problem of order arises: How can it be that those who pursue their own interest do not do so mainly by resort to force or fraud?

Granovetter critiqued answers supplied by mainstream economics as either undersocialized (explicit or implicit contractual agreements to prevent malfeasance such as “no compete clauses”) and under-explanatory (generalized morality—why we tip in places to which we expect never to return). Granovetter answers the question of why there is not more fraud and force in economic life by arguing that concrete interpersonal relations and structures (“networks”) explain observed economic behaviors more completely than institutional arrangements or generalized morality. In other words, trust is promoted and malfeasance is discouraged through the embeddedness of the economics in social relations and the social in economic relations.

Granovetter’s theory of structural embeddedness emphasizes the value of highly developed social networks established in industries' demand uncertainty (for example, the construction industry), involve frequent exchanges, complex tasks, and the social necessity of stable supply. In such industries, the structural embeddedness of economic relations takes the form of a network into which “third parties” frequently become integrated, eventually linking primary or general contractors and third party subcontractors in a common social process.

Structural embeddedness describes a process of information flow, as well as the development of norms and common understandings across economic groups. Mutual contacts enhance information sharing among players in the structure, placing constraints upon each player’s behavior. Thus, structural embeddedness safeguards economic exchanges through dissemination of reputational information. The widespread preference for interacting with individuals with a “good reputation” suggests that few want to rely upon the generalized morality of the market or specific institutional arrangements, hence the growth in service referral agencies (most

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6. *Id.* at 488.
recently, Craigslist, Ebay feedback, Deborah’s List, etc.). Structural embeddedness makes collective understandings, norms, and sanctions possible as parties share perceptions and institutionalize these beliefs through exchange or avoidance. Structurally embedded networks can be understood then as a low-cost means of insurance against contractual malfeasance of various sorts that could otherwise easily plague an industry, such as construction that involves complex tasks and multiple actors and where time is always “of the essence.”

The embeddedness argument is animated by classic economic rationality—that there is an economic incentive to be seen as trustworthy among those with whom you seek a continuing economic relationship to facilitate “repeat business” and client referrals. But embeddedness suggests non-classical rationales: (1) that longstanding in-group type interactions (usually involving no more than two to three subcontractors per trade) build social relationships that also create effective expectations of trust and abstention from opportunistic malfeasance; and (2) that economic actors derive “pleasure” or social rewards from such ongoing relations and social interactions that accompany their daily work—a pleasure diminished if they were to be submitted to a constantly changing cast of “strange work partners.” One can imagine the comfortable familiarity of the Black Contractors Association in Chicago, which has both a business and social reason for gathering, as does the Builders Association of Greater Chicago, or the white contractors association that recently brought suit against both Cook County and the City of Chicago with varying degrees of success.

Granovetter observes that his theory of structural embeddedness is particularly apt for the construction industry, where there are long-term relationships between “horizontally aligned” contractors and subcontractors who do not bid against one another. The structure of these interpersonal relations embedded in a close-knit community of construction personnel generates community standards for interaction that are superior at discouraging malfeasance to legal means or generalized codes. An economic efficiency that results from learning to interact on complex tasks with a limited number of repeat actors rationalizes limited hiring and the tightly knit structure of the market. The pleasure derived from undertaking stressful, time-bound complex tasks with people with whom you are familiar and comfortable, as well as the pleasure that inheres in this form of “community-building” is, however, a more purely social dynamic.

Social network analysis is central to Granovetter’s work on embeddedness. In fact, before his celebrated essay on embeddedness in 1985, he made two other foundational contributions to social network analysis—an article entitled, The Strength of Weak Ties, 8 and the book, Getting a Job.9 In these works, he developed the concept of social network as a relational structure. He forwarded the counter-intuitive insight that one’s success in finding employment is more dependent upon one’s “weak ties” to acquaintances on the perimeter of one’s social circles that

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bridge contacts to other sets of networks than upon one’s “strong ties” of family and close friends. The strength of weak ties analysis is related to the embeddedness theory emphasizing relational structures to both interpret economic behavior and phenomena. Both focus upon social networks to understand fundamental concepts of trust, solidarity, cooperation, power, norms, and identity in economic and social spaces.

C. Rethinking Affirmative Action Law & Policy

Granovetter’s work sheds critical light on assumptions routinely made in affirmative action law and policy by foregrounding how employment markets comprise social and cultural dimensions that necessitate more regulation than courts and lawmakers have been willing to extend. Granovetter’s analysis of industries that are heavily reliant upon information networks to safeguard exchanges has particular relevance to affirmative action in the construction labor market, where predominantly white general contractors rely upon other general contractors, suppliers, and majority subcontractors for their information on minority subcontractors seeking set-aside opportunities.

I THE PROBLEM OF EMBEDDED WHITENESS

In public contracting, insider information about third party subcontractors is highly sensitive and valued, and reputational information is critical to success in the industry. Embeddedness theory explains what is “social” about public contracting and why general contractors often do not simply hire the subcontractor submitting the lowest bid. However, applying Granovetter’s structural embeddedness approach to the racialized field of public contracting requires some elaboration of the original model, for the following reasons:

(A) It fails to incorporate into its theoretical framework the history of racial closure and exclusion in network formation as well as the variability of network analysis over fault lines of race, ethnicity, and nation, calling into question the applicability of network analysis to racialized markets and societies generally;

(B) It fails to link embeddedness expressly to white supremacy, a primary “network” that is grounded in racialized space and rooted in a history of segregation and social isolation. Here, a “geography of opportunity” analysis forwarded by economic geographers and critical sociologists is needed;

(C) It fails to link the efficiency of networks to racialization of the desired qualities of trust, reliability, and credibility. I suggest the need to extend embeddedness through a theory of “embedded whiteness” that takes racialization of markets and networks as fundamental.

A. Racial Closure in Network Formation

Granovetter’s network analysis grossly understates the significance of race
because it tends to focus upon aggregate outcomes without a particular focus upon race as a central organizing feature of economic and social life. As such, his social network analysis suffers from two major shortcomings for critical race theorists. First, it fails to explain or account for the experiences of communities of color. Second, lacking an understanding of historically grounded and contemporarily relevant racial closure in job markets, trade associations, labor, and community organizations, it runs the risk of missing the forest for the trees and even engaging a blame-the-victim logic.

1. Social Networks Analysis Does Not Translate Across the Racial Divide

Social network analysis exemplified in Granovetter's early formulations\(^\text{10}\) as well as in more recent “small worlds” or “six degrees of separation” cultural phenomena\(^\text{11}\) appear to have universal application and appeal across the races. Upon closer review, this presumed universality is unfounded. In his path-breaking study of 282 respondents in the Newton suburb of Boston, Granovetter concluded that professionals, managers, and technicians are more likely to get jobs through weak ties to acquaintances as opposed to strong ties to friends and family. Weak ties to acquaintances, unlike strong ties to family and close friends, were found to have contacts and information different from the jobseeker, thus expanding the pool of possible job resources.

However, Granovetter’s Newton study barely takes race into consideration. One methodological reason for the inattention to race is the survey set selected—professional, technical, and managerial male workers in Newton, Massachusetts (a Boston suburb). By Granovetter’s own admission, his selected sample of one hundred interviewees and 182 mail survey respondents yielded respondents that were “over 99 percent white.”\(^\text{12}\)

Despite the homogeneity of his sample, Granovetter seems to downplay demographic differences in constructing his theory, noting that the few studies on racial differences between Black and white blue-collar workers yielded mixed and often contradictory results. His data demonstrated no significant impact on the likelihood of using a particular job-finding method (personal contact, formal means, direct application) based on religion, “ethnicity” (which he does not define, but must mean white ethnicities in light of his limited sample), or educational level. In short,

10. See, e.g., Granovetter, \textit{Getting a Job}, supra note 10; Granovetter, \textit{The Strength of Weak Ties}, supra note 9.

11. Duncan Watts has been writing on the “small worlds” phenomenon, namely that even the most diverse individuals who do not know one another can be connected by a small number (usually six or less) of common acquaintances. See generally, Duncan Watts, \textit{Small Worlds: The Dynamics of Networks Between Order and Randomness} (1999); Duncan Watts, \textit{Six Degrees: The Science of a Connected Age} (2003). Indeed, John Guare’s Broadway play and the subsequent film version of \textit{Six Degrees of Separation} played upon stereotypical beliefs of whites that all African Americans are somewhat related to one another by six or fewer connections (in the film, a wealthy and sophisticated white New York couple is scammed by a con artist played by Will Smith, who claims to be the son of Sidney Poitier to gain entry into their privileged Park Avenue existence). See \textit{Six Degrees of Separation} (MGM 1993). Similarly, a celebrity-oriented and popularized “parlor game” draws upon social networks analysis proposes that any movie star can be linked to having worked with actor Kevin Bacon in six or less films. See Wikipedia, \textit{Six Degrees of Kevin Bacon}, http://en.wikipedia.org/wiki/Six_Degrees_of_Kevin_Bacon (last visited Feb. 24, 2009).

Granovetter suggests his counterintuitive “strength of weak ties” analysis holds up even for the “standard sociological variables” of religion, “ethnicity,” and educational level.\(^{13}\)

Moreover, when he later discusses applications of his “weak ties” analysis to African Americans, he acknowledges, “Blacks are at a disadvantage” in utilizing informal job networks, “because they are under-represented in the structure of employment itself.”\(^{14}\) However, like Gary Becker, he naively predicts that once Blacks are established in the workplace a “multiplier effect” can be expected. According to Granovetter’s application, other Black family members, friends, and acquaintances will be hired by word-of-mouth recruitment at the previously homogenous worksite in a “self-sustaining” process.\(^ {15}\)

Similarly, the much-hyped “small world” phenomenon, that everyone in the world can be connected to one another by less than six acquaintances, was also similarly criticized for having far less significance when race and class were taken into account.\(^ {16}\) Psychologist Stanley Milgram devised a study to see whether a given individual in Kansas or Nebraska could forward an envelope to an unknown Boston stockbroker through acquaintances in six links or less. Milgram claimed that twenty-nine percent of the envelopes reached their intended target on average in six links or less. But when subsequent follow-up studies replicated the experiment in more racially diverse settings like Los Angeles, the completion rate plunged to thirteen percent reaching African American targets, versus thirty-three percent for whites.\(^ {17}\)

In a 1983 follow-up essay reflecting on a decade of research since The Strength of Weak Ties was published, Granovetter appears both to admit his study’s racial limitations, and disturbingly, to blame the victim. Explaining why, contrary to his weak ties analysis, “the poor and insecure” must often make pervasive use of strong ties and adaptive “reciprocity networks” to ensure economic security and survival among neighbors; he cites to an ethnographic study of a “black, urban American, Midwestern ghetto,” that concludes that:

> Black families living in the Flats need a steady source of cooperative support to survive. They share with one another because of the urgency of their needs.... They trade food stamps, rent money, a TV, hats, dice, a car, a nickel here, a cigarette there, food, milk, grits and children.\(^ {18}\)

To his credit, when applying his theory to African Americans, Granovetter attempts to avoid “blaming the victim” as some in his field do who suggested Black job seekers merely need to better cultivate their informal labor market contacts.

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13. Id. at 16-17.
14. Id. at 133.
15. Id.
16. Playwright John Guare popularized the phenomenon in Six Degrees of Separation, which was later produced as a film starring Will Smith.
Instead, Granovetter had identified the structure of employment itself as the source of the problem, and African Americans' under-representation within it. While this explanation is less offensive than the blame the victim approach, it seems to beg or avoid the primary inquiry altogether: what is the relationship between (white) networks and maintenance of a structure of exclusionary employment? Without interrogating more closely and carefully, the interimbrication of racial networks and employment structures, the “applications” exercise seems rather superficial.

However, Granovetter then proceeds to advise the insecure poor to develop better informal networks and weak ties:

I would suggest that the heavy concentration of social energy in strong ties has the impact of fragmenting communities of the poor into encapsulated networks with poor connections between these units; individuals so encapsulated may then lose some of the advantages associated with the outreach of weak ties. This may be one more reason why poverty is self-perpetuating. Certainly programs meant to provide social services to the poor have frequently had trouble in their outreach efforts. From the network arguments advanced here, one can see that the trouble is to be expected.19

By attributing lost advantages to the heavily misplaced social energy of constructing reciprocity survival networks, Granovetter suggests that the poor are the source of their own “self-perpetuating” poverty that’s, unfortunately, “to be expected,” thereby unwittingly naturalizing racial and class subjugation.

2. The Centrality of Racial Closure

From a CRT perspective, Granovetter’s work would benefit from an understanding of the centrality of racial closure as a historically grounded practice foundational to the free labor movement and trade union development. Labor historians such as Alexander Saxton, Herbert Hill, and more recently David Roediger, have illustrated the racialization of “free labor” that equated only whiteness with free labor, while African American and Asian labor was associated with enslaved, indentured, or degraded labor.20 To illustrate only a few striking examples from trade or union membership requirements:

(a) The Brotherhood of Locomotive Engineers founded in 1873 racially limited membership in its constitution. “He shall be white born, or good moral character, sober and industrious . . . and able

19. Id. at 213 (emphasis added).
to read and write the English language." Its constitution was amended in 1925 to add "Mexicans, Indians, or those of Indian or Spanish-Mexican extraction are not eligible . . . but that Natives of Italy are eligible to membership." Similarly, the Brotherhood of Railroad Trainmen formed in 1883 required that applicants "be a white male, sober and industrious."22

(b) White cigar makers in California developed the white label in 1874 to indicate cigars that were made by white union men. On cigar boxes from this union, the union label that had a dragon on one side and the union mark with the words, "White Labor, White Labor" was reproduced with the following message inscribed:

Buy no cigars except
From the box marked
With the trade-union label,
Thus you help maintain the
White as against the Coolie23
Standard of life and work.

Such racial solidarity (and enmity) brings new meaning to the 1970's organizing slogan and song, "Look for the union label!"

(c) The National Association of Machinists required "a white, free born male citizen of some civilized country;"24

(d) The American Wire Weavers Protective Association: "Christian, white, male of the full age of 21;"25

(e) The Masters, Mates, and Pilots: "a white person of good moral character;"26

(f) The Brotherhood of Railway and Steamship Clerks: "a white person, male or female of good moral character."27

The historical significance of structures of discrimination in employment networks such as labor unions and trade unions is finally acknowledged by Granovetter in his 1994 afterword of his revised edition of Getting a Job. He supplements his earlier prescription for discrimination that focused primarily upon the employee by identifying a role of the employer: "The other side of the labor market, employers, also must be analyzed in any discussion of inequality."28 He proceeds to offer a long overdue discussion of the significance of Max Weber's

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22. Id.
23. Id. at 13.
24. FRANK E. WOLFE, ADMISSION TO AMERICAN TRADE UnIONS (1912), cited in Hill, Race & Ethnicity, supra note 22, at 22.
25. Id.
26. Id.
27. Id.
28. Id. at 170.
notion of social or racial “closure,” where one group of economic competitors seizes upon morphological distinctions of another group (race, language, religion, etc.) as a basis for exclusion from the labor marketplace. Although his slippery interchanging of race and ethnicity suggest an imprecise theorization of race and racism, Granovetter concludes the revised edition of the book by recognizing that how (racial and social) inequities are produced and reproduced is “the single research gap most in need of being filled.”

Sociologist Deirdre Royster fills the void nicely in *Race and the Invisible Hand: How White Networks Exclude Black Men from Blue-Collar Jobs*. In her ethnographic study of the experiences of twenty-five African American and twenty-five white men graduating from the same Baltimore public vocational school in the early 1990s, she examines how the school-to-work transition differs according to race. She found that decades after the school was desegregated from being almost exclusively white, segregated networks still governed the school-to-work transition. Royster’s in-depth interviews revealed a pattern of “rich, racially exclusive networks” among young and older white man “that assured even the worst young troublemaker a solid place within the blue-collar field.”

In contrast, segregation in housing, schooling, and a host of other socio-economic contexts prevented network overlaps between working-class African American and white men. As a result, Royster observed that “[B]lack men sought employment using a truncated, resource-impoverished network consisting of strong ties to other [B]lacks (family, friends, and school officials) who like themselves lacked efficacious ties to employment.” While their white teachers were verbally encouraging to them, the same teachers were more actively involved in providing job assistance and “munificent, concrete, network-based support” to white students. Once on the job, Black men had numerous episodes of discrimination from white male supervisors who not only failed to help them, but often racially harassed them with racial epithets.

Her study accounted for differences in academic performance, “character,” and “motivation” and still revealed racialized employment networks as being most salient in the life opportunities of these young men seeking to enter the work world. White men in her study described constant opportunities that “landed in their laps” not due to outstanding achievement or personal characteristics, but as a result of assistance from “older white neighbors, brothers, family friends, teachers, uncles, fathers, and sometimes mothers, aunts, and girlfriends (and their families), all of whom overlooked the men’s flaws.”

Granted, group solidarity and “homophily” are widely practiced among dominant and minority groups and therefore seem natural and unintentionally discriminatory. Groups simply seem to be favoring people like themselves and preserving opportunities for their members. The problem arises when group solidarity promotes racial closure by favoring in-group members and disfavoring

29. *Id.* at 170-77.
31. *Id.*
32. *Id.* at 141-42.
33. *Id.* at 182.
out-group members based on non job-related criteria or neutral-appearing criteria that are in effect racially contingent. In addition, homophily is neither immune to the historical context of segregation nor to contemporary power relations or hegemony. Thus, it should be unsurprising that scholars have identified race and ethnicity as the “strongest divides” in determining the structure of homophilic social networks.

Despite the widespread folk wisdom of “it’s not what you know, but who you know,” this aphorism obscures the racial context of “who you know,” or as one of Royster’s participants put it “[i]t’s not [just] who you know, it’s how they know you.” Royster’s study establishes that white men have an advantage over similarly situated African American men at every network layer, in both how the network functions as well as the quality of contacts available:

While black men mainly rely on workers, white men know both workers and bosses (or those who do the hiring). White contacts are able to make recommendations without having to consider racial patterns in the job setting, while black contacts must do so. White contacts can recommend young men for jobs in which the men have little or no training . . . . White men with contacts can be hired for desirable blue-collar jobs without interviews. Black men with contacts will be interviewed for all but the most menial jobs—and sometimes those too. With each job held, white men increase the density of their networks—the numbers of and overlaps between contacts. Black men occasionally expand their networks by a few people, usually other blacks who can provide minimal assistance.

Social network analysis has advanced discussions of inequality in employment by supplementing quantitative data about “human capital” investments to explain decision-making with an analysis of the importance of social contacts. An understanding of the structure of networks corrects utilitarian, self-interest seeking accounts of agency as well as culturally over-determined accounts. However, this increasingly popular form of analysis requires a sharp racial critique and understanding about how racial closure and racialized networks systematically operate to reduce the benefits of “embeddedness” or “weak ties” for people of color. The history of how “free labor” became conflated with “white labor” at the formative periods of the labor movement is integral to the analysis of social networks in racialized labor markets.

36. Id. at 179.
37. Id. at 177.
38. Granovetter, Embeddedness, supra note 6, at 486.
B. Segregated Opportunity Structures and Spatial Embeddedness

Granovetter’s theory of the embeddedness of action in social networks fails to adequately account for the synergistic and relational effect of various forms of racial segregation. Instead, Granovetter cautions against “oversocialized conceptions” of how society influences individual behavior as mechanical and static: “[O]nce we know the individual’s social class or labor market sector, everything else in behavior is automatic, since they are so well socialized.” Granted, his critique of such over-socialized accounts is directed at both Talcott Parsons’ influential work on “structural functionalism” in sociology and neo-classical scholarship like Gary Becker’s work in economics emphasizing role categories and identification (mother-son, employer-worker) to study the “economics of the family.” Such approaches are “oversocialized” insofar as they do not take into account that people have “particular relationships” and a history of relationships that create a structure of mutual expectations that extend far beyond the given categorical role descriptions. Granovetter similarly criticizes scholars who forward “generalized morality” to explain trust in economic exchanges as over-socialized approaches that relegate too much to culture and socialization to explain individual behavior, rendering relational and network structures irrelevant. He argues that choices are dynamic and embedded in “concrete, ongoing systems of social relations.”

Granovetter’s approach seems unreasonable and mediated in calling for a rejection of both theoretical extremes of under and over-socialized analyses of economic behavior. “Actors do not behave or decide as atoms outside a social context, nor do they adhere slavishly to a script written for them by the particular intersection of social categories that they happen to occupy.” While one may certainly agree with his admonition against both under- and over-determined analyses, critical race theorists will likely find Granovetter’s solution of emphasizing the role of concrete personal relations and network structures oddly under-socialized and race-skeptical.

Specifically, his failure to discuss how such relational and network structures are inextricably linked to one’s social and physical being and location is perplexing. Consider by comparison, the argument of critical geographer, Edward Soja: “[S]ocial relations become real and concrete, a part of our lived social existence, only when they are spatially ‘inscribed’—that is, concretely represented—

39. Id. at 487.
40. See TALCOTT PARSONS, THE SOCIAL SYSTEM (1951) (arguing that social structure consists of institutionalized patterns of normative culture that varies according to individual actors’ positions or roles such as “husband-father” or “wife-mother”).
41. See GARY BECKER, TREATISE ON THE FAMILY (1981).
42. Id. at 485-86, 489.
43. Granovetter, Embeddedness, supra note 6, at 487.
44. Giving equal time to the critique of undersocialized explanations for why there is not more malfeasance in business dealings, Granovetter forwards scholars who identify elaborate explicit and implicit contracts, such as deferred compensation plans, mandatory retirement, and no-compete clauses, as “clever institutional arrangements” that serve an economic purpose of preventing various forms of malfeasance in employment—“shirking” or absconding with company secrets. Reliance upon such clever institutional arrangements to explain the deterrence of malfeasance are undersocialized, he argues, because such arrangements obscure concrete personal relations and obligations inherent in them that deter malfeasance. Granovetter, Embeddedness, supra note 6, at 489.
45. Id.
in the social production of social space. . . . There is no unspatialized social reality. There are no aspatial social contexts." Soja's contention is even more salient for subjects of "American apartheid," who have had to negotiate social relations under the spatially organized systems of slavery, Jim Crow, and post-civil rights "hypersegregation." How can personal contacts, opportunities, and reputations be discussed as structures without having some discussion of, at the very least, housing segregation, transportation policy, racial stereotyping in the workplace or "working identities" based on race and neighborhood?

The answer may go back to the methodological choices made by Granovetter in his Newton, Massachusetts study. In selecting an over 99 percent white sample, the issue of historic segregation and its diverse contemporary effects on personal contacts and network structures falls off the radar. Or, the answer may also be rooted in Granovetter's own relational scholarly development. As a sociologist addressing economic phenomena, he seems to be focusing on the excesses of neoclassical economists and Parsonian sociologists, but certainly not critical race scholars. Absent this context, his cautionary warnings against oversocialized analysis (while resonating with anti-essentialist theorizing in CRT), seem regressively anti-structural, even anti-identity.

Critical race theorists employing new economic sociology may require making the "spatial turn." This turn would involve more than embracing the rich literature first developed by John Kain in economics on "spatial mismatch hypothesis" (the idea that job decentralization to the suburbs and residential segregation in the cities fosters an imbalanced labor supply to the disadvantage of African American urban jobseekers). Spatial mismatch hypothesis has produced significant work confirming the importance of "place" and employment opportunities, particularly for African Americans. However, its methodologies


47. Sociologists Douglas Massey and Nancy Denton identify five dimensions of spatial configuration—uneven, isolated, concentrated, clustered, and centralized—to measure segregation in U.S. cities. The cities that registered highly in four of the five dimensions were considered "hypersegregated." DOUGLAS MASSEY & NANCY DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1998).

rooted in measurement of commuting times, correlations between job accessibility with employment and compensation, and comparative labor market outcomes in suburbs and cities, primarily seek to answer the question of whether spatial mismatch exists, and not either why it exists, or what impact it has on social relations and networks.\footnote{49}

I advocate instead that race crits incorporate insights from interdisciplinary fellow travelers in urban planning, sociology, critical geography, and critical legal studies. These scholars are considering how “race, place, and space” affect economic, political, and social landscapes. The conceptual framework “geography of opportunity” addresses the social and relational impact of segregation. Urban Institute scholars George Galster and Sean Killen elaborate their model for the “geography of opportunity” to provide a more precise method to measure the impact of spatial configurations and social discrimination on opportunity. Significantly, these authors redefine the meaning of equal opportunity, provide metrics for measuring the “metropolitan opportunity structure” and develop a model to determine how decision-making of youth is impacted not only by one’s values and aspirations, but also perceived socio-structural constraints.\footnote{50}

Galster and Killen start by first redefining the meaning of “equal opportunity” to include a geographical dimension: “that markets and institutions have equivalent resources throughout the metropolitan area” or that “households have equal abilities to reside in locations where they deem markets and institutions most desirable.”\footnote{51} They then identify the key elements of a “metropolitan opportunity structure” that includes “housing, mortgage, criminal, and labor markets; local political, criminal justice, social service delivery, and educational systems (public and private) and local social networks.”\footnote{52} The authors articulate two ways in which geography can impact individual decision-making—through objective spatial variations in the metropolitan opportunity structure, as well as through subjective spatial variations in values, aspirations, and preferences in perceived opportunity sets that derive from spatial variations in the social network. They conclude by forwarding a hypothesis to explain the interaction between the structure (of segregation) and agency (individual decision-making by urban, segregated youth): Opportunity-challenged neighborhoods promote counterproductive choices among youth not only because of more binding actual and perceived limitations, but also because such truncated opportunities lead to a decision-making style that is less considered and analytical and more spontaneous and impulsive.\footnote{53}

Critical race theorists will no doubt embrace the primacy of structure in explaining constrained opportunities facing urban youth of color. The growing quantitative and qualitative geography of opportunity literature will also challenge

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51. \textit{Id.} at 10.

52. \textit{Id.} at 12.

53. \textit{Id.} at 28, 35-38.
race crits to take the conversation further to interrogate the specific interaction between structure and choice, to pursue appropriate interventions, and to broker greater opportunity in geographically-challenged areas (and to the extent possible, facilitate “moving to opportunity”). By so doing, we may begin to provide a way to get beyond the facile Bill Cosby critique, the alleged responsibility deficiencies of African Americans in urban poverty, and move toward a more socio-economic understanding about the fragile, interdependent nature of “the audacity of hope” by adopting a deeply structural understanding of how geographic opportunities map onto individual choices.\(^{54}\)

In sociology, Deirdre Royster forwards the notion of “segregated opportunity structures” that assists in connecting physical to relational structures and suggests a more refined understanding of how social networks do or do not operate in culturally (and physically) redlined communities. Spatially defined white neighborhoods and families provide physical, social, and psychological limits that often exclude others from intimate white settings. These off-limit, physically-controlled spaces (in the form of gated communities, traffic dividers, racial profiling as “community policing,” etc.) make it much less likely that racial actors will pursue networking opportunities that require some familiarity of white norms and expectations inherent to a cross-racial social exchange. In turn, the lack of contacts and awareness of existing negative racial stereotypes also affect African American subjects’ choices and their willingness to pursue or follow-up on white offers of assistance. Moreover, willingness aside, as Royster astutely observes based on her study, were African American men to engage such forward network behaviors cross-racially, it might likely be viewed as improper, overly aggressive, or evincing a sense of entitlement or “upptiness.”\(^{55}\)

To make social network analysis more workable to CRT, interdisciplinary scholars must expand beyond understanding residential segregation and social isolation as related to economic inequality primarily through “spatial mismatch” hypothesis—the physical gap between the location of urban dwellers of color and suburban job creation, and its cumulative impact. One might ask how the inquiry


\(^{55}\) ROYSTER, supra note 31, at 188.
into how action is embedded in social networks is transformed by the legacy of racial segregation. Embedded white networks are created in part and then "locked-in" or ossified by contemporary spatial relationships governed by race, class, and gender dynamics. Bringing CRT to NES means answering the question of not only why and how opportunities for job contacts and referrals are diminished by residential segregation and social isolation to cumulative effect, but also the question of why, for example, impoverished African Americans may not follow-up on offers of economic assistance by whites outside of their neighborhoods. A race-sensitive social network analysis would pay attention to how segregation and social (and psychological) distance inhibits mentoring opportunities and promotes unearned race-based perceptions, evaluations, and decisions.

Perhaps borrowing from economic geographers the notion of "spatial embeddedness" provides needed relief to Granovetter's ahistorical, non-spatial framework (for which geographical conditions and histories bear no explanatory power) and offers a way to integrate histories of segregation with relational structures. Taking up this challenge, multidisciplinary scholars are doing cutting-edge empirical and theoretical work. Spatial embeddedness would consider to what extent network cultivation and maintenance are territorialized (and racialized); how spatially-defined "local culture" creates norms and expectations inherent to a relational structure; and how embeddedness involves the interaction between territorially-based (and raced) relations or spaces (neighborhood, workplace, church, etc.) and transterritorial phenomena (trust, malfeasance, solidarity).

C. Racial Contingency of Trust and Malfeasance

In theory, social networks are important because they can plug holes left by "information failure" that would ordinarily yield a disjuncture between supply and demand. There may be a number of jobs available at a lamp-making factory, but if the "word of mouth" does not spread to employable workers, the openings will not be filled in a timely or cost-effective manner. According to Granovetter, a certain amount of "embeddedness" in a social network is helpful to circulate valuable reputational information about third parties to build "trust" and prevent "malfeasance." While this information system sounds plausible, even efficient, its deployment has a racially disparate impact that tends to favor whites and disfavor employees of color. To maintain that structural embeddedness is appealing for the economic reason of preventing malfeasance sidesteps the question of why white networks are so closely associated with reliability and trust.

To recall the roots of legally racialized credibility, one must harken back to blanket perceptions of untrustworthiness of Asians and their evidentiary incompetence as witnesses. In *Fong Yue Ting*, the Supreme Court upheld a lower


57. For an example of spatial embeddedness theorizing in economic geography, see Martin Hess, *Spatial Relationships? Towards are-conceptualization of Embeddedness*, 28:2 PROGRESS IN HUM. GEOGRAPHY 165 (2004).
federal court's order of deportation despite the production of "none but Chinese witnesses" that a Chinese laborer under threat of deportation was indeed a resident at the time of the passage of the 1882 Chinese Exclusion Act.\textsuperscript{58} Unable to produce "at least one credible white witness," the Court upheld the lower court's decision to deport.\textsuperscript{59} The racial prerequisite to evidentiary credibility was justified by the Court in part based upon its speculation that Congress had noted the "suspicious nature" and "loose notions" [of the obligation to tell the truth] of the Chinese in previous cases.\textsuperscript{60} \textit{Fong Yue Ting} illustrates the legal recognition by the highest court of the significance of white networks and the racialized definition of credibility and trust.

It appears that the racial contingency of defining "malfeasance" and "trust" continues in more contemporary settings. As Deirdre Royster's study found, working-class white men seemed to be "second-chance" kids for whom the "boys will be boys" adage would be easily adopted to explain and minimize a host of transgressions that might otherwise exclude one from gaining desirable employment opportunities. "It never seemed to matter that the men were not A students, that they occasionally got into legal trouble, that they lied about work experiences from time to time, or that they engaged in horseplay on the job." Royster further observed that there were "no significant costs" for white men "acting out":

[W]hite males' . . . experiences revealed a pattern . . . that assured even the worst young troublemaker a solid place within the blue-collar fold . . . . I learned of opportunities that kept coming, even when young men weren't particularly deserving. One young man had been able to hold onto his job after verbally abusing his boss. Another got a job installing burglar alarms after meeting the vice president of the company at a cookout—without ever having to reveal his prison record, which included a conviction for burglary.\textsuperscript{61}

Indeed, one striking statistic from Royster's study reveals that the white men who fared better in employment did so with a higher arrest record—twenty percent of the whites interviewed had been arrested, compared to only twelve percent of African Americans.\textsuperscript{62}

In contrast, African American working class men could rarely recover from relatively insignificant mishaps their white brethren took for granted as a rite of passage in Royster's study. In a related study of how arrest and conviction rates bear differently in employment opportunities according to race, Devah Pager's work made national headlines and provided fodder for presidential stump speeches.\textsuperscript{63} In her research of matched pairs of African American and white male applicants applying for entry-level jobs in Milwaukee, she found that it was easier for a white

\begin{itemize}
\item \textsuperscript{58} Fong Yue Ting v. U.S., 149 U.S. 698, 731 (1893).
\item \textsuperscript{59} Id. at 729.
\item \textsuperscript{60} Id. at 730.
\item \textsuperscript{61} ROYSTER, supra note 31, at 182-83.
\item \textsuperscript{62} Id. at 95-96.
\end{itemize}
convicted felon to get a callback interview than an African American with a clean record. White applicants' rate for callback interviews ranged from seventeen percent if they disclosed they had been incarcerated for eighteen months for cocaine possession, thirty-four percent if they did not.

By comparison, African Americans were called back for second interviews only fourteen percent of the time even with a clean record, which dropped to only five percent, if they disclosed the same eighteen-month prior incarceration. Moreover Pager's study noted that in three separate incidents, employers screened Black applicants more closely, asking whether they had any criminal record before accepting their application. None of the white applicants were similarly pre-screened for criminality.

The significance of the racialization of the "mark of a criminal record" takes far greater significance in a society where young African American men have a twenty eight percent likelihood of coming into contact with the criminal justice system, a rate that rises to over fifty percent for young African American men who are high school dropouts. Some might point out that if African American youth have a greater likelihood of involvement with the criminal justice system, then employer wariness about young African American male job applicants is not intentionally discriminatory, but merely reflecting statistical realities. However, this line of argument, in addition to normalizing "statistical discrimination," ignores discriminatory treatment within the criminal justice system that culminates in African American youth having an arrest rate that is twice that of white youth. For example, in a study of 233 juvenile probation officers' reports, George Bridges and Sara Steen attempted to explain why African American youth were receiving harsher sentencing recommendations than their similarly situated white peers. They found a disturbing, recurring pattern whereby probation officers would attribute the crimes of African American youth to character flaws, personal irresponsibility, and bad attitudes—"internal factors," while white youth simply got caught up in unfortunate "external factors" of bad home environments, lack of role models, etc.

Similarly, in her comprehensive study of a California elementary school, sociologist Ann Ferguson observed a racial sorting system that more heavily penalized youth of color with negative individual characteristics. At the school in question, although the school was half African American and one-third white, ninety percent of the students in the "at risk" intervention program were African American males. Ferguson attributed these unbalanced statistics in large part to discriminatory perceptions and practices of teachers—predominantly white females—who disproportionately singled out African American boys for disciplinary measures while permitting similar disruptions and misbehaviors from other students. As such, the targeted group of youth quickly became identified as "troublemakers" (as opposed to "schoolboys") whose transgressions were described as "predatory,"

65. Id. at 959-60.
66. Id. at 939.
“dangerous,” or “cunning”—i.e., more adult-like with permanent significance than “boys will be boys” dismissals of “mischief.”68

The variable of race is determinative in these studies of “troublemaking” and “malfeasance,” revealing how contingent these seemingly neutral economic concepts are upon social categories of difference.69 Until new economic sociologists can disaggregate white normativity from the concept of malfeasance, social network analysis and the embeddedness approach will have limited analytic value for critical race theorists.70 To reiterate, “it’s not who you know, but how they know you” that matters most for raced subjects of social networks.

II.APPLYING EMBEDDED WHITENESS TO AFFIRMATIVE ACTION IN PUBLIC CONTRACTING

Thinking through economic sociologists’ understanding of structural embeddedness from a critical race perspective leads to an “embedded whiteness” analysis, here applied to affirmative action in the construction industry. Courts have analyzed affirmative action using a strict scrutiny standard of review to ascertain whether race-conscious remedies are based upon a compelling state interest and whether they are sufficiently “narrowly-tailored.” Such “cost-benefit” approaches71 presuppose that the cure may be worse than the disease. Courts have historically feared affirmative action as a “racial spoils system” that is seemingly endless in operation given its alleged self-interested, unprincipled72 nature. Note, for example, Justice O’Connor’s concern along these lines expressed in her Grutter opinion’s suggestion of a twenty-five year “sunset” provision73 for affirmative action remedies.

Perhaps this temporally bounded, cure-averse approach to affirmative action reflects the structural truth about the relationship between markets (the “economic”) and discrimination (the “social”) and the ideological necessity of denying that

68. ANN A. FERGUSON, BAD BOYS: PUBLIC SCHOOLS IN THE MAKING OF BLACK MASCULINITY (2000). See also Love-Lane v. Martin, 355 F.3d 766 (4th Cir. 2001) (African American teacher demoted as Assistant Principal and reassigned her after she complained about white female teachers disproportionately and harshly disciplining African American boys and low-income students).


70. See generally CHARLES TILLY, DURABLE INEQUALITY (1998) (Charles Tilly has begun to theorize how structures of inequality interact with social networks and explores the relational origins of inequality).


72. ALEXANDER BICKEL, THE MORALITY OF CONSENT 133 (1975) (Alexander Bickel is most famous for his interpretation of affirmative action legislation as responding to primarily self-interested motivations, thus necessitating some elevated form of constitutional review. Stating,

[t]he lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society. Now this is to be unlearned and we are told that this is not a matter of fundamental principle but only a matter of whose ox is gored.

EMBEDDED WHITENESS

According to Nobel Laureate Gary Becker, employers who have a “taste for discrimination” will eventually price themselves out of the market, suggesting that the market is more or less “self-correcting” of its discriminatory impulses. Becker never asks the by now obvious embedded whiteness question: What if the “market” itself is socially rooted in, and structured by, the “taste for discrimination”? This largely unarticulated assumption by courts—that the economic sphere exists apart from the social and should be left to its own devices, free of interference from the corruptible political sphere of legal remedy unless exacting standards and safeguards can be met—rationalizes judicial skepticism towards affirmative action as a remedy to be embraced in the same spirit with which Jim Crow segregationist regimes were rejected. Instead, both “benign” and “invidious” discrimination based upon race meet the same strict scrutiny fate in judicial review, an otherwise incoherent outcome.

Economic sociologists have established that too much embeddedness can be detrimental to an industry; as over-reliance upon well-established network ties can result in tight cliques that fragment overall social connectivity. Affirmative action would be seen as a welcome corrective mechanism to offset the problem of tight cliques and over-embeddedness from this perspective. Once it is clear that industries may be operating within a structure of embedded whiteness, courts should consider a standard of review in affirmative action cases akin to the “mixed motive” proof structure in employment discrimination cases, certainly not requiring the “narrow tailoring” of a cost-benefit logic that abstracts from the market’s racial closure reality.

The construction markets are often economic relations embedded in relations between prime contractors, cities or municipalities, and subcontractors, relations premised upon the sociality of whiteness. It is an industry where insider information is highly sensitive and valued, and where reputational information is critical to success in the industry. The underlying assumption in such a close-knit community is that “communication, discretion, and trust are facilitated by social similarity.” The overwhelming whiteness of the construction industry can be viewed as both a cause and effect of market embeddedness and explains how over generations, the construction industry racially reproduces itself, and why in the void of affirmative action, there has been so little progress in racial and gender integration in the construction industry.

Whiteness generally enhances trust among horizontally and relatively equal
actors by aiding the particularized information flow and reputational assessments of safe exchanges. In turn, the information flow by insiders institutionalizes whiteness of the prime contractors and professionals by diminishing the possibility of malfeasance of minority subs to majority general contractors within the relative safety of embedded networks. Where affirmative action policies exist, the white network is even more critical to evaluating which minority subcontractors are “safe” to do business with.

This assessment not only turns on one’s reputation for performance according to contractual demands. But “social” demands of white general contractors’ interactive norms under affirmative action mandates may decide with whom they bestow their bidding privileges to subcontractors of color. Inadequately deferential or grateful subs may find that they did not fulfill the unstated bona fide occupational qualification (“BFOQ”) of affirmative action hiring—that of making the employer feel racially good about himself. And this social imperative may largely turn on the underlying unequal economic relations: subcontractors unwilling to “self-exploit” or engage in fraudulent schemes of general contractors may find themselves in violation of the unstated BFOQ (which incorporates what Lani Guinier and Gerald Torres refer to as the “racial bribe”).

For example, according to testimony by Asian contractors eventually excluded by the City of Chicago from its AA plan (think racial pitting versus racial bribe) in its aim to comport with federal district court judge James Moran’s admonition to narrowly tailor their plan, general contractor expectations of social interactions premised upon inequality and outright fraud were part of the economic bargaining process.

One Asian female contractor testified about one white general contractor who contacted her about providing “work” for a city project with affirmative action goals:

Instead of providing plans and specifications [for me to submit] a bid on even just a portion of the work, I was asked if it were OK to just provide a labor rate with a 5% markup. This contractor would even provide the employees to be put on my payroll. We are a contractor that is ready, willing and able, yet not only are we not being called on the no-goals work, even on some of the goal-oriented work we are offered only pass-through deals.

Another subcontractor spoke of the common problem faced by minority subcontractors of “no pay” or “slow pay”:

White general contractors would require us to do additional work

77. LANI GUINIER & GERARD TORRES, THE MINERS CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY 224-25 (2002) (describing the twin goals of the racial bribe as “diffus[ing] the previously marginalized group’s oppositional agenda” and “offer[ing] incentives that discourage the group from affiliating with black people”).

outside the scope of our project. The general contractor promised us they would issue a change order, but after completion, they never did and left us at the mercy of the owner. We were never paid for this work and it was a great loss to our company. This happened on projects such as the Metra Railroad and several city projects.79

Thus it should be clear that embedded whiteness provides protection against malfeasance by the less powerful against the powerful, but not the other way around:

Embeddedness (in horizontal relations) + Whiteness = Trust

Embeddedness (in hierarchical relations) + “Otherness” = Malfeasance

It should be noted that while some structural embeddedness may be useful to deter malfeasance among equals, economic sociologists have established that too much embeddedness can be detrimental to an industry, as over-relying upon well-established network ties can result in tight cliques that fragment overall social connections. With a critical race theory/economic sociologist-informed understanding of the construction industry, affirmative action should be seen as a welcome social mechanism to offset the problem of tight cliques and over-embedded whiteness.

Once it is established that industries are operating within a structure of embedded whiteness, courts should apply a more relaxed standard of review for affirmative action in such cases that would be more analogous to the “mixed motive” proof structure in employment discrimination cases and would not require “narrow tailoring.” Evidentiary standards would pay more heed to anecdotal accounts of exclusion from the labor market, upon the assumption of racial closure under embedded whiteness.

In addition, courts should credit more fully anecdotal evidence of malfeasance by majority contractors vis-à-vis minority contractors under affirmative action programs as partial proof of embedded whiteness. These are initial musings of the significance of an economic sociological approach to affirmative action law. But perhaps most importantly, courts should adopt standards for statistical disparity studies that emphasize the historic problem and contemporary reality and structure of embedded whiteness in the construction industry. Courts should do so by shifting from a Beckerian “taste for discrimination” implicit assumption that discrimination is costly to the discriminator to one that understands the operation and importance of whiteness to social referral and feedback networks. With this approach, there would be far less emphasis on the availability/underutilization evidentiary standard to one that measures more simply the referrals by general contractors for private and public contracts, as well as the jobs gained by minority subcontractors when affirmative action was used and when it was not.

79. Id. (testimony of Natu Gohil, Sumit Construction Company)).
CONCLUSION

Any meaningful conversation about the utility of social network analysis will have to consider the salience of how race and racism impact the “strength of weak ties” or “embeddedness” approaches. To address racial blindspots in the otherwise rich literature of new economic sociology, race crits need to proceed with caution and to further inquire into how racial closure, segregated opportunity structures imposed by racialized space, and the racial contingency of “trust” and “malfeasance” alter the standard analysis forwarded in social capital and social networks analyses. Only by taking race and social networks seriously will critical race theory be able to provide a more textured explanation for accounts of contemporary racism that synthesize the role of structure with the role of agency.

How might embedded whiteness be applied more broadly in the law? Legal injuries flow not simply from the transparency of white norms, but also from the structure and power of white networks to cultivate and distribute information about employees of color. It is this “structural” element of the network, that is both social and economic, that provides its formidable force as white supremacy.

If we think about embedded whiteness, it opens up inquiries into new second-generation discrimination claims, such as “quid pro quo” racial harassment, racial tokenism, or what I call racial mascotting. Only those who pass social muster (the “social litmus test”) and can be “trusted” to make whites feel comfortable in the pursuit of greater harmony and economic efficiency at the workplace will be those who are deemed fit for employ. Unofficial reports and reference checks are key to ascertaining the candidate’s likelihood of fulfilling the unstated BFOQ of affirmative action era hiring. A theory of embedded whiteness seeks to explain the dominance of white insider networks that can destroy or elevate the careers of people of color and other outsiders merely by use of a back-door whisper campaign—a back door whisper campaign that would never see the light of public and polite evaluative discussions on the merits, thereby leaving no legal footprints on its victims.

I close by reiterating a call for greater emphasis on the socio-structural in critical theorizing so that we may more effectively address the myriad of increasingly subtle, seemingly invisible injuries of white supremacy in the twenty-first century. By recognizing how embedded whiteness and white normativity are in the operation of social networks that include and exclude for material gain, critical race theorists begin to surface the racial contingency of seemingly neutral processes.


81. See Devon Carbado & Mitu Gulati on the similar “racial palatability” criterion adopted as an unwritten job requirement. Carbado & Gulati, Corporate Ladder, supra note 48, at 1674-75.