

# “Breaking Bad” Contracts: Bargaining for Masculinity in Popular Culture

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# “BREAKING BAD” CONTRACTS: BARGAINING FOR MASCULINITY IN POPULAR CULTURE

LENORA LEDWON\*

## ABSTRACT

This Article examines the award-winning television show, *Breaking Bad*, to illustrate how the idea of a contract in popular culture can become inflected with a style of retrograde masculinity. Deals in *Breaking Bad* take place in the classic contract imaginary, which resembles the classic Western shootout: two antagonists face each other down in a duel. The show interrogates the frontier thesis, with its links to the American Dream and dangerous masculinities, through the ruthless contracts of Walter White.

*I celebrate myself, and sing myself,  
And what I assume you shall assume,  
For every atom belonging to me as good belongs to  
you.*

—Walt Whitman, *Song of Myself*<sup>1</sup>

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## INTRODUCTION

What do contracts in American popular culture tell us about masculinity? Do “real men” make contracts? Are contracts symbols of strength or weakness, cooperation or capitulation? Do they signify freedom or servitude, or something else altogether? This Article examines the popular television show, *Breaking Bad*, to reveal the popular culture links between a certain kind of classic, one-on-one contract and a potentially toxic type of Wild West masculinity.

The Emmy award-winning show, *Breaking Bad*, which ran for five seasons on AMC, was one of the most-watched series on cable television.<sup>2</sup> It also garnered its fair share of academic attention, although not from a contracts perspective.<sup>3</sup> Vince Gilligan, the creator

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2. The show, which aired on AMC from 2008–2013, garnered numerous accolades and awards, including sixteen Emmy Awards, and was one of the highest-rated television series of all time. See *Breaking Bad*, IMDB, <http://www.imdb.com/title/tt0903747> [<http://perma.cc/XV5G3J42>]; *Breaking Bad*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Breaking\\_Bad](https://en.wikipedia.org/wiki/Breaking_Bad) [<http://perma.cc/UNR7PVSU>].

3. Recently, a number of scholars have analyzed the series. See, e.g., THE METHODS OF *BREAKING BAD*: ESSAYS ON NARRATIVE, CHARACTER AND ETHICS (Jacob Blevins & Dafydd Wood eds., 2015) (collection of essays on the series from literary and philosophical perspectives); David R. Koepsell & Robert Arp., *A Fine Meth We've Gotten Into*, in *BREAKING BAD AND PHILOSOPHY: Badder Living Through Chemistry* viii (David R. Koepsell & Robert Arp eds., 2012) (essay collection addressing a variety of philosophical issues in the series, including existentialism, sense of self, morality, good and evil, etc.); ELLIOTT LOGAN, *BREAKING BAD AND DIGNITY: UNITY AND FRAGMENTATION IN THE SERIAL TELEVISION DRAMA* (2016) (analyzes the dramatic stakes of dignity in the series); AMANDA D. LOTZ, *CABLE GUYS: TELEVISION AND MASCULINITIES IN THE TWENTY-FIRST CENTURY*

of this series about a mild-mannered high school chemistry teacher who becomes a ruthless drug lord, has called it a contemporary Western.<sup>4</sup> Gilligan also famously described the show as the transformation of Mr. Chips into Scarface.<sup>5</sup> *Breaking Bad* is filled with contract issues. The abundance of contracts may not be surprising; the manufacture and sale of goods is central to the storyline. Since the good in question is methamphetamine, many of the interrelated deals are subject to the defense of illegality. What is surprising is how the idea of a contract becomes inflected with particular tropes of American Westerns and retrograde masculinity. *Breaking Bad*, as a post-Recession contemporary Western, illuminates the vexed connections between contracts and masculinity in American popular culture.

This Article will suggest that the Western tropes in *Breaking Bad* put a particular type of masculinist, rough-justice spin on the illegal contracts that drive the plot, so that the show ends by privileging these (illegal) and rather old-fashioned, face-to-face private contracts. In celebrating this classic contracting style, the series also celebrates a dangerous type of masculinity. *Breaking Bad* makes us admire its protagonist, Walter White, precisely for his deal-making and contractual ingenuity, even while we shudder at the body count he leaves in his wake. Walt uses contracts to do terrible things, but we want him to succeed because then he will have agency; he will have power at a time when the middle classes are pretty powerless. He will have some measure of freedom. His power comes from his making numerous one-on-one deals, often sealed with little more than a handshake. The contracts he makes are his bid for freedom, a freedom associated with Westerns and the expansionist ideology of a frontier.

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89 (2014) (includes discussion of *Breaking Bad*, *Hung*, and *The Shield* in particular as shows that suggest the dangers of adhering to a gender script in times of economic crisis); BRETT MARTIN, DIFFICULT MEN: BEHIND THE SCENES OF A CREATIVE REVOLUTION: FROM *THE SOPRANOS* AND *THE WIRE* TO *MAD MEN* AND *BREAKING BAD* (2014) (focuses on male-centered television shows of the late nineties through the early 2000's as a golden age of excellence in television); *BREAKING BAD: CRITICAL ESSAYS ON THE CONTEXTS, POLITICS, STYLE, AND RECEPTION OF THE TELEVISION SERIES* (David P. Pierson ed., 2014) (collection of analytical essays focusing on the series and ranging from philosophy to literature to economics). Additionally, the New Mexico Law Review recently had a special issue on *Breaking Bad*, with essays on topics such as attorney-client privilege, plea bargaining, and more. *Breaking Bad and the Law*, Special Issue, 45 N.M. L. REV. (2015). None of these very interesting sources address the topic of contracts in the series.

4. Q&A: *Creator Vince Gilligan—Part II*, AMC, <http://www.amc.com/shows/breaking-bad/talk/2008/02/qa-vince-gillig-1> [<http://perma.cc/24LXZNZK>].

5. See, e.g., Martin Miller, *The End Nears for Walter White of 'Breaking Bad'*, L.A. TIMES (Sept. 1, 2012), <http://articles.latimes.com/2012/sep/01/entertainment/la-et-st-break-ing-bad-vince-gilligan-20120901> [<http://perma.cc/9NHW85VW>].

However, while championing agency and freedom, the show also simultaneously critiques the traditional American frontier thesis, the expansionist dream of more—more money, more territory, more everything. The complex dynamics between promises, social/familial bonds, and contracts in *Breaking Bad* expose a profoundly dangerous answer to the question: “what does it mean to be a man?” Contracts in *Breaking Bad* (both their making and their breaking) prove crucial to constructing a particularly harmful form of masculinity.

This Article will: (1) provide a brief plot summary of *Breaking Bad*; (2) discuss pertinent background on the Western genre (including a focus on key themes and tropes such as the frontier, freedom, and masculinity); (3) examine how *Breaking Bad* both subverts and paradoxically reinforces these Western themes and tropes in the context of contractual promises by associating contractual freedom with dangerous masculinities; and (4) conclude by suggesting an alternative vision linking promises and bonds with masculinity in the poetry of Walt Whitman.

## I. BACKGROUND INFORMATION

### A. Plot Summary of Breaking Bad

*Breaking Bad* tells the story of Walter White, a high school chemistry teacher, trying to make ends meet in post-Recession suburban Albuquerque.<sup>6</sup> Walt is a nebbishy guy at the beginning of the series, the type of sad sack who is ignored at his own fiftieth birthday party.<sup>7</sup> He has a pregnant wife (Skyler) and a teenaged son with cerebral palsy (Walt, Jr.).<sup>8</sup> Walt cannot make ends meet with his meager salary as a high school chemistry teacher, so he works a second job at a car wash, where he washes the cars of his more affluent students.<sup>9</sup> The day after his fiftieth birthday, Walt is diagnosed with terminal lung cancer.<sup>10</sup>

Walt’s extended family includes his brother-in-law (Hank) and Hank’s wife, Marie (Skyler’s sister).<sup>11</sup> Hank is a macho DEA agent,

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6. See *Breaking Bad: Pilot* (AMC television broadcast Jan. 20, 2008) (Season 1, Episode 1). A brief word about citations to the series is in order here. Since *Breaking Bad* is available in a variety of formats (including DVD and online streaming formats such as Netflix), subsequent citations will always include the season and episode number in order to assist interested readers in finding particular episodes.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

who, in a patronizing gesture, takes the meek Walt along on a local meth bust to witness real men at work.<sup>12</sup> (Guns! Drugs! Violence! Power!) While on the drug bust, Walt notices one of his former students, Jesse Pinkman, evading law enforcement.<sup>13</sup> Walt is impressed by the large sums of money to be made in illegal meth production and thinks this could be a way to provide for his wife, son, and unborn daughter after he is gone.<sup>14</sup> He decides to partner with Jesse in the meth business.<sup>15</sup> Walt will supply the scientific know-how and chemistry acumen and Jesse will handle the distribution of the product.<sup>16</sup> Subsequently, the series traces Walt’s transformation from Walter White, mild-mannered teacher, to Heisenberg, ruthless drug lord.<sup>17</sup> Walt transforms by taking on a selfish, hyperaggressive form of masculinity.<sup>18</sup> Walt becomes successful by being very adept at making (and breaking) deals. Over the course of the series, Walt’s methods become more and more vicious. He leaves death and destruction in his wake, eventually alienating all who loved him.<sup>19</sup>

Significantly, the poetry of Walt Whitman plays a crucial role in the series. Whitman’s poetry functions in the series thematically and also as a plot device. Thematically, Whitman offers an alternative way of being in the world, a gentler, more connected type of masculinity. Whitman is the great American poet of adhesiveness and connections, and his poetry haunts the series. Walter White is something like Whitman’s evil twin or doppelgänger (in fact, the names are almost identical—Walter White and Walt Whitman). But where Whitman would view bonds and promises as ways to connect, Walt views contracts as a means to power. Walter White corrupts the ideal of Whitman’s bonds into unscrupulous contractual power plays. Finally, from the plot perspective, a copy of Whitman’s *Leaves of Grass*, inscribed by one of Walt’s victims, is the final clue that

12. *Breaking Bad: Pilot*, *supra* note 6.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. “Heisenberg,” the name Walt picks for his alter ego, is a reference to the quantum scientist, Werner Heisenberg.

18. Brian Faucette comments that Walt’s transformation illustrates Judith Butler’s influential idea that gender is performative: “For Butler both masculinity and femininity are products of social expectations rather than a biological fact. Gender is best understood for Butler as a performance that is linked to questions of power, voice, and the continued production of what are perceived as ‘normative models’ of gender behavior.” Brian Faucette, *Taking Control: Male Angst and the Re-Emergence of Hegemonic Masculinity in Breaking Bad*, in *BREAKING BAD: CRITICAL ESSAYS ON THE CONTEXTS, POLITICS, STYLE, AND RECEPTION OF THE TELEVISION SERIES* 73, 75 (David P. Pierson ed., 2014) (citing JUDITH BUTLER, *GENDER TROUBLE* 33 (1999)).

19. See Miller, *supra* note 5.

leads Hank to discover Walt's secret identity as Heisenberg.<sup>20</sup> That episode of unmasking is titled after the death-themed Whitman poem, *Gliding o'er All*.<sup>21</sup>

### B. Western Tropes in *Breaking Bad*: *Frontiers and Masculinity*

Series creator Vince Gilligan has called *Breaking Bad* a contemporary western.<sup>22</sup> The Western is perhaps the most American of genres. The show clearly references a number of recognizable American Western tropes, such as: cowboys, outlaws, black hats, shoot-outs, loyalty to your partner, revenge, justice, violence, the cowboy code of respect ("Say my name"), freedom, the frontier, and the desert, to name just a few.<sup>23</sup> But is this enough to make something a Western? What precisely is a Western?

It is difficult to generalize about the Western. John Cawelti notes that, "[u]nlike the detective story, the western formula is not defined by a fixed pattern of action."<sup>24</sup> It may be more accurate to speak of "Westerns" than of "the Western." In American popular culture, there are a variety of different Westerns, each inflecting the genre in its own way. Some Westerns have taken on hybrid aspects of other genres (such as science fiction or horror), while other Westerns remain more in the classic mode. So, for example, there are Science Fiction Westerns, such as *Firefly*, and Zombie Westerns, such as *The Walking Dead*, as well as more "traditional" Westerns such as *Deadwood*.<sup>25</sup>

Despite all its many permutations, the Western does have one essential requirement: a frontier.<sup>26</sup> The frontier can be a physical

20. *Breaking Bad: Gliding Over All* (AMC television broadcast Sept. 2, 2012) (Season 5, Episode 8).

21. WALT WHITMAN, *Gliding o'er All*, in *LEAVES OF GRASS AND OTHER WRITINGS* 232 (Michael Moon ed., 2002).

22. *Q&A*, *supra* note 4.

23. *Id.*

24. JOHN G. CAWELTI, *ADVENTURE, MYSTERY, AND ROMANCE: FORMULA STORIES AS ART AND POPULAR CULTURE* 192 (1976).

25. See, e.g., UNDEAD IN THE WEST: VAMPIRES, ZOMBIES, MUMMIES, AND GHOSTS ON THE CINEMATIC FRONTIER xix–xx (Cynthia J. Miller & A. Bowdoin Van Riper, eds., 2012); STEPHEN MCVEIGH, *THE AMERICAN WESTERN* 219 (2007).

26. Cawelti comments,

[t]he element that most clearly defines the western is the symbolic landscape in which it takes place and the influence this landscape has on the character and actions of the hero. This is, I think, why this particular formula has come to be known by a geographical term, the western, rather than by a characterization of the protagonist's form of action . . . . The symbolic landscape of the western formula is a field of action that centers upon the point of encounter between civilization and wilderness, East and West, settled society and lawless openness.

boundary between civilization and wilderness, that space which is outside the reach of civilized law. The frontier also can be a metaphysical concept deeply complicated by ethnocentrism and exploitation (of both land and people).<sup>27</sup>

Any discussion of the idea of the frontier must include historian Frederick Jackson Turner's influential "frontier thesis."<sup>28</sup> In 1893,

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CAWELTI, *supra* note 24, at 193. In a subsequent scholarly work, Cawelti elaborates, "[T]he Western is a story which takes place on or near a frontier and consequently the Western is generally set at a particular moment in the past." JOHN G. CAWELTI, *THE SIX-GUN MYSTIQUE SEQUEL* 20 (Bowling Green State University Press 1999).

A sampling of the many and varied influential scholarly works analyzing the Western include the following: NEIL CAMPBELL, *THE RHIZOMATIC WEST: REPRESENTING THE AMERICAN WEST IN A TRANSNATIONAL, GLOBAL, MEDIA AGE* 4 (2008) (analysis of the idea of the West from a transnational perspective); CAWELTI, *supra* note 26, at 20 (in-depth analysis of the American popular culture genre of the Western); *POSTWESTERN CULTURES: LITERATURE, THEORY, SPACE* xi (Susan Kollins ed., 2007) (collection of essays on postwestern culture, including critical regional studies and national and transnational concerns); *THE PHILOSOPHY OF THE WESTERN* 5 (Jennifer L. McMahon & B. Steve Csaki eds., 2010) (collection of essays analyzing philosophy of Westerns in film); MCVEIGH, *supra* note 25, at 218–19 (very good overview of the Western including literature, film and television); *UNDEAD IN THE WEST*, *supra* note 25 (collection of essays on aspects of the Western in crossover genres); *CONTEMPORARY WESTERNS: FILM AND TELEVISION SINCE 1990* (Andrew Patrick Nelson ed., 2013) (collection of essays analyzing two decades of Western conventions from literary and cultural perspectives); RICHARD SLOTKIN, *GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN TWENTIETH-CENTURY AMERICA* (1992) (highly influential study analyzing the continuing ideological influence of the Western in America and one of three volumes on the mythology of the frontier); JANE TOMPKINS, *WEST OF EVERYTHING: THE INNER LIFE OF WESTERNS* 6 (1992) (excellent analysis of the genre, including analysis that the Western developed in part as a response to the novel of domesticity); JEFFREY WALLMANN, *THE WESTERN: PARABLES OF THE AMERICAN DREAM* (1999) (analysis of the cultural mythology underlying Westerns); WILL WRIGHT, *SIX GUNS AND SOCIETY: A STRUCTURAL STUDY OF THE WESTERN* 15 (1975) (classifies Western films into four categories: the classical plot of the lone stranger who cleans up a troubled town, the vengeance story, the transition theme where society is the villain, and the professional plot where the heroes are professional fighters for hire).

27. As Richard Slotkin notes,

[t]he Myth of the Frontier is arguably the longest-lived of American myths, with origins in the colonial period and a powerful continuing presence in contemporary culture. Although the Myth of the Frontier is only one of the operative myth/ideological systems that form American culture, it is an extremely important and persistent one. Its ideological underpinnings are those same 'laws' of capitalist competition, of supply and demand, of Social Darwinian 'survival of the fittest' as a rationale for social order, and of 'Manifest Destiny' that have been the building blocks of our dominant historiographical tradition and political ideology.

RICHARD SLOTKIN, *THE FATAL ENVIRONMENT: THE MYTH OF THE FRONTIER IN THE AGE OF INDUSTRIALIZATION, 1800–1890* 15 (1985). Additionally, "West" is not simply a place, but rather a process and an ideology: "The history of the frontier is a unifying American theme, for every part of the country was once a frontier, every region was once a West." ROBERT V. HINE & JOHN MACK FARAGHER, *THE AMERICAN WEST: A NEW INTERPRETIVE HISTORY* 11 (2000).

28. Frederick Jackson Turner, *The Significance of the Frontier in American History*, in *THE TURNER THESIS: CONCERNING THE ROLE OF THE FRONTIER IN AMERICAN HISTORY* 3 (George Rogers Taylor ed., 3rd ed. 1972).



Turner stated that, “[t]he existence of an area of free land, its continuous recession, and the advance of American settlement westward, explain American development.”<sup>29</sup> Turner believed that the frontier created the American character:

American social development has been continually beginning over again on the frontier. This perennial rebirth, this fluidity of American life, this expansion westward with its new opportunities, its continuous touch with the simplicity of primitive society, furnish the forces dominating American character. . . . In this advance, the frontier is the outer edge of the wave—the meeting point between savagery and civilization.<sup>30</sup>

Thus, according to Turner, the frontier experience is what makes Americans: “The frontier is the line of most rapid and effective Americanization.”<sup>31</sup> Significantly, the frontier creates real men. It transforms weak, effete Europeans into rugged Americans.<sup>32</sup>

This frontier thesis was an optimistic story of progress (at least if you were white and male). To Turner, America began as a frontier, and the frontier was another name for opportunity: “Since the days when the fleet of Columbus sailed into the waters of the New World, America has been another name for opportunity.”<sup>33</sup> How is one to succeed in this land of opportunity, this frontier environment? Not by cooperation with others, but by individual effort and determination.<sup>34</sup> New historians have rightly pointed out the dark

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29. *Id.*

30. *Id.* at 4.

31. *Id.* at 5.

32. As Alf Walle notes,

[t]he ancestry of most Americans came from the old world where, Turner suggested, individual strength had become submerged beneath the dictates and priorities of a complex culture and an overbearing society. Nonetheless, Turner continued, the challenge of a raw frontier helped such civilized weaklings to regain a degree of self reliance and personal strength that had atrophied in a more sedentary Europe.

ALF H. WALLE, *THE COWBOY HERO AND ITS AUDIENCE: POPULAR CULTURE AS MARKET DERIVED ART* 188 (2000).

33. Turner, *supra* note 28, at 27.

34. “The modern American believes that each person shall be allowed to rise or fall in the workaday world as his own grit and ability decrees,” commented historian Ray Billington, adding,

[s]uch a system could operate only in a land of equal opportunity, where the dispossessed could begin life anew without too much difficulty, where new jobs were being created to absorb an expanding population, and where resources were so abundant that all could share in their wealth without governmental intervention in the role of umpire. Only in frontier America did this combination of beatitudes exist. Hence American individualism is the product of the frontiers experience. So men reasoned in the nineteenth century, and so many believe today.

side of Turner’s analysis: the frontier thesis is a story of violent conquest, an often misogynistic story that sanctions the exploitation of indigenous peoples and natural resources.<sup>35</sup> Yet, the frontier thesis remains firmly embedded in American popular culture.<sup>36</sup> Westerns, in particular, must grapple with the persistence of the frontier thesis, given that the frontier is the most essential characteristic of a Western.

*Breaking Bad* is a Western primarily because it is in dialogue with the ideology of the frontier thesis. But it also is a Western because the series makes abundant visual and verbal allusions to Hollywood Westerns (the harsh desert setting, shootouts, Native Americans, bar fights, scorpions, train robberies, the black hat Walt dons when he becomes Heisenberg, etc.).<sup>37</sup> One effect of the show’s visual and thematic references to Westerns is to subtly (and ironically) remind the viewer of the most basic element of the Code of the West—a cowboy’s word is his bond.<sup>38</sup>

The pilot episode begins in the desert, a frontier setting where Walt and Jesse have gone in their modern-day covered wagon (appropriately, a Winnebago) in order to cook meth.<sup>39</sup> The isolation and deadly grandeur of the numerous desert shots reinforces the Western motif of the frontier as a place where men are tested. The desert is the place of danger and betrayal, but also the place of opportunity (Walt’s crooked attorney, Saul, resignedly comments: “It’s always

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Ray A. Billington, *Frontier Democracy: Social Aspects*, in *THE TURNER THESIS: CONCERNING THE ROLE OF THE FRONTIER IN AMERICAN HISTORY* 160, 163–164 (George Rogers Taylor ed., 3rd ed. 1972). This belief in frontier individualism runs counter to the necessity for cooperation in frontier communities: “The West was in truth an area where cooperation was just as essential as in the more thickly settled East.” *Id.* at 165.

35. MCVEIGH, *supra* note 25, at 142 (citing PATRICIA LIMERICK, *THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST* (1987)).

36. As Stephen McVeigh notes, “[t]he effects of [Frederick Jackson Turner’s] ‘frontier thesis’ continue to be felt to the present day, even if the thesis itself has been effectively deconstructed by successive waves of historians.” *Id.* at 21. In politics, the frontier and allusions to Westerns are perennial favorites of presidents from both political parties. John F. Kennedy exhorted Americans to be pioneers on a New Frontier, and Ronald Reagan cannily tapped into the “cowboy president” mystique. See HINE & FARAGHER, *supra* note 27, at 531. More recently, George W. Bush evoked Western rhetoric when he called for the capture of Osama Bin Laden, “Dead or Alive.” See *Bush Says Bin Laden Wanted Dead or Alive*, ABC NEWS (Sept. 17, 2001), <http://abcnews.go.com/Politics/story?id=121319> [<http://perma.cc/K2LM9RNA>].

37. Commenting on the visual style of *Breaking Bad*, Brett Martin notes, “[I]t [the series] employs and empties the entire filmic bag of tricks—from high-speed time-lapse montages to wide-open landscapes that are more John Ford than anything a revisionist western like *Deadwood* could ever allow itself.” BRETT MARTIN, *DIFFICULT MEN: BEHIND THE SCENES OF A CREATIVE REVOLUTION: FROM THE SOPRANOS AND THE WIRE TO MAD MEN AND BREAKING BAD* 276 (2013).

38. Jean Braucher, *Cowboy Contracts: The Arizona Supreme Court’s Grand Tradition of Transactional Fairness*, 50 ARIZ. L. REV. 191, 194 (2008).

39. *Breaking Bad: Pilot*, *supra* note 6.

the desert.”)<sup>40</sup> The desert is where Walt negotiates his dream of masculine power. The desert is where Walt buries his drug money and where a rival robs Walt of all his barrels of cash except for one, which Walt rolls, Sisyphus-like, across the unforgiving landscape.<sup>41</sup> Finally, at the end of the series, it is into the desert that Jesse escapes his enforced slave labor in a meth lab, driving off into the sunset.<sup>42</sup>

The desert in *Breaking Bad* is a place of violence and death, a setting for shootouts, and even the location for a great train robbery. But as a representation of the frontier, the desert also is symbolic of the American dream. Numerous shots in the series linger ironically on the New Mexico license plate logo: “Welcome to New Mexico: Land of Enchantment.”<sup>43</sup> What is more enchanting than a dream of success?

Plot points and dialogue pay knowing homage to the Western. When Walt takes on his Heisenberg persona, he often puts on a dark hat.<sup>44</sup> Echoing many a scene from Westerns, Walt warns Jesse, “[m]aybe it’s time for you to . . . get out of town.”<sup>45</sup> Jesse replies that he has always wanted to go to Alaska (another frontier-like space in the American imagination).<sup>46</sup> Walt and the enforcer, Mike, engage in that time-honored Western tradition—having a brawl in a saloon.<sup>47</sup> Native Americans once again get screwed over by the white man.<sup>48</sup> Characters evoke legendary Western gunfighters. Mike tells Walt, “[j]ust because you shot Jesse James don’t make you Jesse James.”<sup>49</sup> But more significant than all the many allusions to Westerns is the show’s interrogation of the frontier thesis as it is linked with masculinity.

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40. *Breaking Bad: Confessions* (AMC television broadcast Aug. 25, 2013) (Season 5, Episode 11). One commentator notes that the vast space of the desert creates a sense of timelessness, and a sense of a space where anything can happen and disappear. Ensley F. Guffey, *Buying the House: Place in Breaking Bad*, in *BREAKING BAD: CRITICAL ESSAYS ON CONTEXTS, POLITICS, STYLE, AND RECEPTION OF THE TELEVISION SERIES* 155, 169 (David P. Pierson ed., 2014).

41. *Breaking Bad: Ozymandias* (AMC television broadcast Sept. 15, 2013) (Season 5, Episode 14).

42. *Breaking Bad: Felina* (AMC television broadcast Sept. 29, 2013) (Season 5, Episode 16).

43. See, e.g., *Breaking Bad: Confessions*, *supra* note 40.

44. *Breaking Bad: Granite State* (AMC television broadcast Sept. 22, 2013) (Season 5, Episode 15) (white hats and black hats, representing good and evil, are iconic images in Westerns).

45. *Breaking Bad: Confessions*, *supra* note 40.

46. *Id.*

47. *Breaking Bad: Thirty-Eight Snub* (AMC television broadcast July 24, 2011) (Season 4, Episode 2).

48. For example, in the first season, it is Walt’s fault that the Native American janitor is fired from his job. *Breaking Bad: Crazy Handful of Nothin’* (AMC television broadcast Mar. 2, 2008) (Season 1, Episode 6).

49. *Breaking Bad: Hazard Pay* (AMC television broadcast July 29, 2012) (Season 5, Episode 3).

At its core, *Breaking Bad* is in dialogue with the foundational ideology underpinning the traditional Western—the frontier thesis as representative of the American Dream.<sup>50</sup> The idea of the frontier is the idea of freedom and limitless economic opportunity. Turner’s particular take on the American Dream also invites readers to understand the frontier’s potential to take weaklings and transform them into real men (recall once more series creator Vince Gilligan’s description of the show as the transformation of a mild-mannered teacher, Mr. Chips, into the ruthless drug lord, Scarface). Sounding like a prospector in the California Gold Rush, Walt tells his attorney, Saul, “[t]here is gold in the streets, just waiting for someone to come scoop it up.”<sup>51</sup> A real man takes his (manifest) destiny in hand, and conquers the world.

A frontier setting in a Western suggests that life will be challenging, a matter of survival. So *Breaking Bad*, of course, is set in the West: suburban Albuquerque.<sup>52</sup> The new frontier is the middle class suburb, where families desperately struggle after the financial crisis of the Great Recession. O pioneers!

Over the course of *Breaking Bad*, Walt lives his life by the frontier thesis. He ruthlessly uses (and abuses) contracts, promises, and societal ties as a means to his end of creating an empire. Walt feels he has lost out on the American Dream because of a bad deal he made in the past (he sold out his stake in a company he cofounded and later the company became wildly successful).<sup>53</sup> His contractual maneuvering and deal-making are his attempts to make his will manifest in the world, through a particularly toxic expression of masculine identity in his Heisenberg persona.

The true alternative to the type of masculinity personified by the arrogant drug lord, Heisenberg, is not that of the nebbishy teacher, Walter White, but that demonstrated by the poet, Walt

50. “[W]esterns are fundamentally allegories of the American dream.” WALLMANN, *supra* note 26, at 17. Jeffrey DiLeo comments that the series engages with an illusory “neoliberal magical realism” such that “anyone strapped with debt can become an entrepreneur in the free market if they are willing to ignore their moral and social conscience by engaging in violent criminal activity that destroys lives and society.” See Jeffrey R. DiLeo, *Flies in the Marketplace: Nietzsche and Neoliberalism in Breaking Bad*, in *THE METHODS OF BREAKING BAD: ESSAYS ON NARRATIVE, CHARACTER AND ETHICS* 26, 27 (Jacob Blevins & Dafydd Wood eds., 2015).

51. *Breaking Bad: Madrigal* (AMC television broadcast July 22, 2012) (Season 5, Episode 2).

52. *Breaking Bad: Pilot*, *supra* note 6.

53. The exact nature of the bad deal is never fully revealed, but it is clear that Walt feels extreme bitterness over the success of Gray Matter. Walt believes he was forced out of a company whose success was based in large part on his original work.

Whitman. Whitman not only is the preeminent poet of the American West, but also the great poet of adhesiveness, of connections between people.<sup>54</sup> Whitman's poetry is a crucial plot device in *Breaking Bad*, since it is a volume of *Leaves of Grass* that directly results in Hank realizing that Walt is Heisenberg.<sup>55</sup> However, Whitman's poems are more than just a plot device; they serve as a subtle reminder of the importance of bonds among people, and an example of an alternative masculinity, a masculinity that is not founded on power relations but rather on love and connection.<sup>56</sup>

## II. PROMISES, BONDS AND CONTRACTS IN *BREAKING BAD*

*Breaking Bad* is filled with promises, contracts, deal-making, and social/family bonds, which is simply another way to say it is about life. As we may remember from first-year contracts class, a promise is a necessary but not sufficient element of a contract.<sup>57</sup> The Restatement (Second) of Contracts tells us, "[a] promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made."<sup>58</sup> A contract is a legally enforceable promise: "[a] contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty."<sup>59</sup> Generally, "contract," has more formalistic

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54. As J. Bakker notes, "[t]o Whitman America was, metaphorically speaking, the West, regardless of whether you were born and raised in New York, California, Texas, Cuba, or in the North or the South of the United States." J. BAKKER, *THE ROLE OF THE MYTHIC WEST IN SOME REPRESENTATIVE EXAMPLES OF CLASSIC AND MODERN AMERICAN LITERATURE: THE SHAPING FORCE OF THE AMERICAN FRONTIER* 113 (1991).

55. *Breaking Bad: Gliding Over All*, *supra* note 20.

56. While *Breaking Bad* makes Whitman's poetry the most explicit counterpoint to the workings of the Frontier Thesis, the series briefly alludes to another great artist of the West: Georgia O'Keefe. In Season Three, Jesse and his girlfriend, Jane, discuss seeing an exhibit of O'Keefe's paintings, including numerous paintings of the same door in different seasons, different times, and different light. Jesse is not impressed with the lowly subject matter (a door) and expresses the opinion that painting the same door over and over again is just a crazy attempt to get something just right. Jane responds that O'Keefe was exploring different aspects of the same thing, trying to make a particular moment last. The discussion is a lovely little bittersweet moment (it is Jesse's memory, a brief flashback after Jane's death). *Breaking Bad: Abiquiú* (AMC television broadcast May 30, 2010) (Season 3, Episode 11). What is particularly interesting about the door discussion is that O'Keefe's doors are also borders, thresholds, liminal spaces which may open on a new frontier or remain closed. A door can be the beginning or the end; it can open or shut in your face.

57. RESTATEMENT (SECOND) OF CONTRACTS ch. 1, § 1 (AM. LAW INST. 1981).

58. RESTATEMENT (SECOND) OF CONTRACTS ch. 1, § 2 (AM. LAW INST. 1981).

59. RESTATEMENT (SECOND) OF CONTRACTS ch. 1, § 1 (AM. LAW INST. 1981).

connotations than “promise.” We may make promises casually, not believing we will be legally bound. (“I will meet you for lunch tomorrow,” or “I’ll bring donuts for the meeting.”) “Contract” has connotations of a serious undertaking, fraught with legal implications. (“I contracted with the roofer for a new roof.”)

A bond is something different than either a contract or a promise, although bonds surely influence the promises and contracts we make. A bond is a relational connection. A bond is what holds things together. In the *Oxford English Dictionary*, the first meaning of the noun “bond” is “[a]nything with which one’s body or limbs are bound in restraint of personal liberty.”<sup>60</sup> The idea of a bond as a restraint on liberty has implications for masculinity—a marriage bond can be understood as a restraint on certain types of sexual liberty. In the field of chemistry, “[t]he force that holds atoms together . . . is . . . a chemical bond.”<sup>61</sup> So we may even think of bonds as involving connections at the molecular level. As Whitman wrote, “every atom belonging to me as good belongs to you.”<sup>62</sup>

Contract law, as one commentator notes, “affords private parties the power of lawmaking.”<sup>63</sup> If contracts belong to the private sphere, then most governmental intrusions would seem to be paternalistic and should be limited to concerns for public health or safety. Freedom of contract means that, generally speaking, people are free to enter into whatever contracts they want, and that courts will enforce their agreements. One exception is for illegal contracts. An illegal contract is void, and thus has no legal effect and is unenforceable in court. The rationale is to deter illegal contracts by making them unenforceable.<sup>64</sup>

Many of Walt’s contracts are illegal, because of the nature of what he manufactures and sells: an illegal drug. (The deals also rarely

60. *Bond*, OXFORD ENGLISH DICTIONARY (electronic version, May 2015).

61. JANET RAE-DUPREE & PAT DUPREE, *ANATOMY AND PHYSIOLOGY WORKBOOK FOR DUMMIES* (2d ed.) (2015) (ebook) (emphasis removed).

62. WALT WHITMAN, *Song of Myself*, in *LEAVES OF GRASS AND OTHER WRITINGS* 26 (Michael Moon ed., 2002).

63. Avery W. Katz, *Contract Theory—Who Needs It?*, 81 U. CHI. L. REV. 2043, 2046 (2014). Katz states, “[c]ontractual obligations are primarily created by decentralized non-state actors pursuing their own goals and plans, not by state officials making law and policy for society at large.” *Id.*

64. See Adam B. Badawi, *Harm, Ambiguity, and the Regulation of Illegal Contracts*, 17 GEO. MASON L. REV. 483, 483 (footnote omitted) (2010) (“The primary justification for this non-enforcement—which leaves the parties in the position that courts find them—is to deter these bargains from forming in the first place.”); Juliet P. Kostritsky, *Illegal Contracts and Efficient Deterrence: A Study in Modern Contract Theory*, 74 IOWA L. REV. 115, 118–19 (footnote omitted) (1988) (“[Courts] have indicated that withholding judicial relief deters illegal contracts because parties will shun unenforceable transactions.”).

follow the niceties of contractual requirements such as the Statute of Frauds, which requires a writing for the sale of goods over \$500.)<sup>65</sup> Since these deals are unenforceable in a court of law, Walt must resort to violence, power plays, and the corrupt norms of the meth world to enforce the deals.<sup>66</sup>

Freedom and masculinity are implicated in the many contracts and promises that Walt makes throughout the series. Shouldn't people be free to buy what they want? Doesn't a real man choose freedom? Over a drink and some (illegal) Cuban cigars, Walt has an interesting conversation with Hank, his brother-in-law, concerning the fact that certain goods may have been illegal in the past (alcohol during Prohibition, for example) but are now perfectly legal.<sup>67</sup> How does one draw the line? Walt tries to suggest that such line-drawing is just an arbitrary governmental decision (Hank disagrees).<sup>68</sup> Later in the series, Walt's lab assistant, Gale, also makes a freedom of contract argument when he suggests that grown adults should be able to purchase whatever they want.<sup>69</sup> As Gale says, "[t]here's crime and then there's crime. . . . I'm definitely a libertarian."<sup>70</sup>

There are essentially two types of contracts operating in the series, distinguishable by the method of contracting: remote contracting and face-to-face contracting. First, there are faceless, remote, bureaucratic transactions. These contracts drive the plot from day one, as it is Walt's inability to pay the medical bills his insurance does not cover that makes him willing to enter upon a life of crime.<sup>71</sup> His paltry health insurance as a public school teacher simply will not cover the best (expensive) treatments he requires for his illness. Later, Hank also faces health insurance limits, prompting Skyler to figure out a way to use Walt's illicit money to pay for Hank's physical therapy.<sup>72</sup> This first kind of contract is never done face-to-face.

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65. U.C.C. § 2-201 (AM. LAW INST. 294).

66. See, e.g., *Breaking Bad: Pilot*, *supra* note 6.

67. *Breaking Bad: A No-Rough-Stuff-Type Deal* (AMC television broadcast Mar. 9, 2008) (Season 1, Episode 7).

68. *Id.*

69. *Breaking Bad: Sunset* (AMC television broadcast Apr. 25, 2010) (Season 3, Episode 6).

70. *Id.*

71. *Breaking Bad: Pilot*, *supra* note 6. In the episode, *Cancer Man*, Skyler makes an appointment for Walt with the best oncologist, who is not in their HMO and charges \$5,000 for a consultation. The treatment the doctor prescribes will be \$90,000, and Walt initially does not want to leave his family with such burdensome debts. *Breaking Bad: Cancer Man* (AMC television broadcast Feb. 17, 2008) (Season 1, Episode 4).

72. *Breaking Bad: Kafkaesque* (AMC television broadcast May 16, 2010) (Season 3, Episode 9) (The best physical therapy is not covered by Hank's government insurance, so Walt and Skyler surreptitiously arrange for payment.).

There is no negotiating, no one-on-one opportunities to craft a deal with the faceless insurance companies.

The second kind of contract is a one-on-one, face-to-face transaction. This type of contract permeates the series. These numerous deals include actual illegal contracts (deals for making or selling drugs; money laundering; murder for hire; etc.) as well as more run of the mill enforceable contracts (purchasing an RV, etc.).<sup>73</sup> All these deals are done in person, between offeror and offeree. These contracts take place in the realm of neoclassical economics, where each individual is assumed to be a rational maximizer of self-worth.<sup>74</sup>

This second kind of contract (formed one-on-one) is surprisingly common in *Breaking Bad*. Examples include: the marriage contract; contracts for goods; contracts for services; business partnership agreements; real estate transactions; contracts for the sale of intellectual property; agreements to set up a trust; and promises for charitable donations, among others.<sup>75</sup> These deals are abundant in the series and their very abundance illustrates the importance of contractual interactions to Walt’s transformation into Heisenberg. An overview of some of the person-to-person contracts follows.

#### A. *Marriage and Family Bonds*

The promises that are part and parcel of the marriage contract are constant sites of negotiation between Walt and Skyler. When Skyler first learns of Walt’s illegal drug business, she protests, “I didn’t marry a criminal.”<sup>76</sup> Walt responds, “[w]ell, you’re married to one now.”<sup>77</sup> Walt seems to be asserting that the marriage contract still stands (for better or for much, much worse). They are still married, whether or not he has become a criminal. Skyler is not convinced that the deal should be ongoing under these circumstances, and she later seeks legal help, considering whether to get a divorce and dissolve the marriage contract.<sup>78</sup> Subsequently, when Walt is in full hypermasculine Heisenberg mode, declaring that he will be the

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73. See, e.g., *Breaking Bad: Pilot*, *supra* note 6.

74. In actuality, such in person deals are no longer the norm. Nowadays, most of our contracts are form contracts with remote, faceless entities with no opportunity for actual bargaining. Particularly when it comes to consumer transactions, we live in a world of large corporations and pre-drafted form contracts.

75. See, e.g., *Breaking Bad: Pilot*, *supra* note 6.

76. *Breaking Bad: Más* (AMC television broadcast Apr. 18, 2010) (Season 3, Episode 5).

77. *Id.*

78. *Breaking Bad: No Más* (AMC television broadcast Mar. 21, 2010) (Season 3, Episode 1).



one to protect his family, Skyler replies: “[s]omeone has to protect this family from the man who protects this family.”<sup>79</sup>

## *B. Contracts for the Sale of Goods*

### *1. Selling Goods on eBay*

Buying and selling goods is crucial to the plot from the first episode.<sup>80</sup> However, meth is not the only good that is bought and sold in the series. In the pilot episode, we see Skyler packaging some items to sell on eBay in order to get a little extra cash (a way for the struggling middle class family to help make ends meet).<sup>81</sup> Having his wife sell things on eBay because he cannot provide enough income must be emasculating to Walt.<sup>82</sup>

### *2. Sale of a Motor Vehicle*

When Walt and Jesse decide they need a mobile meth lab in the pilot episode, they purchase an old Winnebago with Walt’s meager life savings.<sup>83</sup> (That his entire savings are barely enough for an old RV speaks volumes.) This vehicle serves as the modern covered wagon for the partners’ first trip into the harsh and unforgiving landscape of the desert—a trip that comes perilously close to ending, as many frontier journeys ended, with death.

### *3. Sale of a Handgun*

In a secretive meeting with a gun seller, Walt buys an illegal handgun (an untraceable gun with no serial numbers).<sup>84</sup> When Walt asks the seller if it’s good to have an unregistered gun if he has to shoot someone, the seller says not necessarily, because New Mexico is a “Stand Your Ground” jurisdiction.<sup>85</sup> As the seller puts it, “[t]his is the West, boss. New Mexico’s not a retreat jurisdiction. Man steps

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79. *Breaking Bad: Cornered* (AMC television broadcast Aug. 21, 2011) (Season 4, Episode 6).

80. *Breaking Bad: Pilot*, *supra* note 6.

81. *Id.*

82. *Id.* (To drive home the point, Skyler only half pays attention to Walt during a sexual interlude, because she is checking eBay on the computer.)

83. *Id.*

84. *Breaking Bad: Thirty-Eight Snub*, *supra* note 47.

85. *Id.*

to you bent on doing you harm, you got every right to plant your feet and shoot to kill.”<sup>86</sup>

#### 4. *Sale of Drugs*

Of course, the primary good that Walt manufactures and sells is illegal—meth. Lots and lots of meth. As a commodity that is literally addictive, Walt’s pure blue meth is in great demand.<sup>87</sup>

### C. *Contracts for Services*

#### 1. *Lawyer/Client Contracts*

Numerous contracts for services occur throughout the series, including many highly illegal services such as murder for hire. In the *Better Call Saul* episode, Saul, a criminal lawyer (in both senses of the phrase), enters into an attorney-client contract with Walt and Jesse to help them evade legal problems with their ongoing drug business.<sup>88</sup>

#### 2. *Agreement for Corpse Disposal*

Early in the first season, Walt and Jesse agree that a coin toss will determine who has to dispose of a corpse and who has to kill a dangerous drug dealer tied up in the basement.<sup>89</sup> Walt loses the coin toss, but is reluctant to murder someone in cold blood.<sup>90</sup> Jesse tells him: “We flipped a coin, okay? You and me. You and me! Coin flip is sacred! Your job is waiting for you in that basement, as per the coin!”<sup>91</sup> (The parties to a contract are free to agree on how the agreement will be made, even if that process is the flip of a coin.)

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86. *Id.*

87. As one scholar notes, Walt’s blue meth is, “a perfect example of a commodity—his blue meth perpetuates its own consumption, its own demand that can only be fulfilled by Walter’s supply.” Dafydd Wood, *Flies and One-Eyed Bears: The Maturation of a Genre*, in *THE METHODS OF BREAKING BAD: ESSAYS ON NARRATIVE, CHARACTER AND ETHICS* 11, 22–23 (Jacob Blevins & Dafydd Wood eds., 2015).

88. *Breaking Bad: Better Call Saul* (AMC television broadcast Apr. 26, 2009) (Season 2, Episode 8).

89. *Breaking Bad: Cat’s in the Bag . . .* (AMC television broadcast Jan. 27, 2008) (Season 1, Episode 2).

90. *Id.*

91. *Breaking Bad: . . . and the Bag’s in the River* (AMC television broadcast Jan. 27, 2008) (Season 1, Episode 3).

### 3. *Murder for Hire*

Murder for hire is a classic example of a services contract that is illegal and unenforceable, and this type of deal occurs several times during the series. For example, Walt hires a gang of thugs to murder ten inmates in prison (the inmates are potential witnesses against Walt).<sup>92</sup> Additionally, at one point Walt even hires a hitman to kill Jesse.<sup>93</sup> One commentator calculates that over the course of the series Walt is responsible in one way or another for twenty-seven murders.<sup>94</sup>

### 4. *Agreement for Services Cooking Meth*

Walt and Jesse enter into a deal to provide their meth cooking services to Gus Fring.<sup>95</sup> They end up like factory workers working on a high-tech assembly line.<sup>96</sup> Walt's unhappiness with being a lowly worker rather than the boss (as well as his fear that Gus is going to kill him) are reasons Walt decides to have Gus killed.<sup>97</sup>

### D. *Business Partnerships*

In the pilot episode, Walt and Jesse enter into a partnership to manufacture and distribute meth.<sup>98</sup> This bond between the two men is the heart of the series. Significantly, Walt imposes his will on Jesse. Jesse is reluctant to partner up with his old high school chemistry teacher, who seems to be such a weak failure of a man.<sup>99</sup> However, Walt blackmails Jesse into teaming up with him.<sup>100</sup> Walt is on his path of transformation during which he will assume a particularly dangerous type of masculinity. While he was literally impotent at the beginning of the pilot episode (his wife absent-mindedly gives him a hand job for his birthday, but Walt is unresponsive), by the end of the pilot he surprises Skyler in bed with his newly acquired sexual confidence—"Walt, is that you?" she asks him

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92. *Breaking Bad: Gliding Over All*, *supra* note 20.

93. *Breaking Bad: To'hajiilee* (AMC television broadcast Sept. 8, 2013) (Season 5, Episode 13).

94. Greg Goelzhauser, *The Political Geography of Plea Bargaining in Federal Death Penalty Cases*, 45 N.M. L. REV. 641, 642 (2015).

95. *Breaking Bad: Más*, *supra* note 76.

96. *Id.*

97. *Id.*

98. *Breaking Bad: Pilot*, *supra* note 6.

99. *Id.*

100. *Id.*

in bed.<sup>101</sup> Significantly, in the pre-credit sequence of the pilot, Walt has no pants.<sup>102</sup> He is frantically driving an RV through the desert, while wearing nothing but a gas mask and his tighty-whities.<sup>103</sup> By the end of the series, Walt-as-Heisenberg has made it very clear who wears the pants in all his relationships.

Later, after Walt arranges to have Gus killed, Walt, Jesse, and Mike go into the meth business together.<sup>104</sup> After their first cook, Walt is angry because the final amount of money they made was less than when he was working for Gus.<sup>105</sup> Jesse tells Walt that he is “looking at it wrong,” because under Gus they were employees, but as owners they make more considering the volume of output.<sup>106</sup>

### *1. Contract for the Purchase of a Business and Its Assets*

Walt buys the carwash from his old boss.<sup>107</sup> Walt and Skyler will use the carwash business to launder the drug money.<sup>108</sup> Walt takes great satisfaction in being on top and humiliating his old boss.<sup>109</sup> Walt takes his former boss’s framed first dollar off the wall, smashes the glass, and uses the dollar to buy a soda from a machine.<sup>110</sup>

### *E. Gift Promise/Donations on a Charity Website*

Walt, Jr. sets up a website to solicit funds for his Dad’s cancer treatments.<sup>111</sup> In reality, Walt is funneling some of his illegal cash into the site.<sup>112</sup> Walt feels humiliated by what he perceives as his

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101. As Ray Bossert notes, the entire first episode runs Walt through a gauntlet of ef-feminizing experiences. “Crime restores Walt’s sense of masculinity, and therefore restores his interior sense of pride—the *hubris* that often leads to *hamartia*.” Ray Bossert, *Macbeth on Ice*, in *BREAKING BAD AND PHILOSOPHY: BADER LIVING THROUGH CHEMISTRY* 65, 71 (David R. Koepsell & Robert Arp eds., 2012).

102. *Breaking Bad: Pilot*, *supra* note 6.

103. *Id.*

104. *Breaking Bad: Hazard Pay*, *supra* note 49.

105. *Id.*

106. *Id.*

107. *Breaking Bad: Open House* (AMC television broadcast July 31, 2011) (Season 4, Episode 3). Skyler convinces Walt to purchase the business by telling him that the owner, Walt’s old boss, insulted Walt’s manhood.

108. *Id.*

109. *Id.*

110. *Breaking Bad: Cornered*, *supra* note 79.

111. *Breaking Bad: Phoenix* (AMC television broadcast May 24, 2009) (Season 2, Episode 12).

112. *Id.*

son's begging on his behalf.<sup>113</sup> Walt thinks this makes him look weak and less than a man.<sup>114</sup>

#### *F. Real Property Contracts*

##### *1. Landlord/Tenant Agreements*

Jesse rents an apartment from Jane.<sup>115</sup> Jane adds an interesting "DBAA" fee to the rental agreement—"Don't Be An Asshole."<sup>116</sup>

##### *2. Contract for Sale of Real Property*

Jesse dupes his parents into selling him the house he thinks is rightfully his, at a very low price because there used to be a meth lab in the basement.<sup>117</sup>

#### *G. Sale of Shares in a Company/Sale of Intellectual Property*

Much of Walt's bitterness stems from the fact that he apparently sold out his share very cheaply in a company that became extremely profitable. ("Gray Matter" was the name of the company, with "gray" alluding to a combination of the last names of the founders—White and Schwartz.)<sup>118</sup>

#### *H. Promise to Carry Out a Trust*

In the final episode, Walt forces his former business partners in Gray Matter (Gretchen and Elliott) to agree to take Walt's drug

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113. *Id.*

114. *Id.*

115. *Breaking Bad: Breakage* (AMC television broadcast Apr. 5, 2009) (Season 2, Episode 5).

116. *Id.*

117. *Breaking Bad: Caballo Sin Nombre* (AMC television broadcast Mar. 28, 2010) (Season 3, Episode 2).

118. In season two, Walt confronts his former girlfriend/business partner, Gretchen, and angrily asserts he was forced out of the company. Gretchen responds that he was the one who left. *Breaking Bad: Peekaboo* (AMC television broadcast Apr. 12, 2009) (Season 2, Episode 6). The show never makes it entirely clear what the truth of the matter was as far as Walt's leaving Gray Matter, but Walt clearly feels wronged and carries a grudge toward his former business partners throughout the series. For an analysis of the intellectual property implications of Walt's business partnership in Gray Matter, see Michael C. Mims, *Don't Bake—Litigate! A Practitioner's Guide on How Walter White Should Have Protected His Interests in Gray Matter, and His Litigation Options for Building an "Empire Business" Through the Courts, Not the Cartel*, 45 N. M. L. REV. 673, 681 (2015).

profits and put them in a trust for his family.<sup>119</sup> Gretchen and Elliott only agree because Walt convinces them he has hitmen following them who will kill them if they do not comply.<sup>120</sup>

The above variety of examples gives a taste of the scope and importance of contracts and promises in the series, and suggests how some of those deals had profound implications for Walt’s sense of masculinity.

### III. WORK AND CONTRACTING FOR MASCULINITY

Work is one of the preeminent ways we define ourselves in America, and this has particularly been the case for American men.<sup>121</sup> To use a Western example, consider that, “[a] *cowboy* is defined by the work that he does.”<sup>122</sup> In a post-recessionary period when work is scarce, masculine anxieties about self-worth may become exacerbated. Walt is, to a large extent, defined by his work, and his work is directly tied to his sense of masculinity.

“What does a man do, Walter?” asks drug kingpin Gus Fring.

A man provides for his family. . . . When you have children, you always have family. They will always be your priority, your responsibility. And a man—a man provides. And he does it even when he’s not appreciated or respected or even loved. He simply bears up, and he does it because he’s a man.<sup>123</sup>

Walt takes Gus’s advice very much to heart, although that does not stop Walt from arranging to have Gus killed. Taken to extremes, this idea of masculinity, that “a man provides,” leads Walt to commit horrible crimes, and lose his family’s love. Such a limited notion

119. *Breaking Bad: Felina*, *supra* note 42.

120. *Id.*

121. Discussing three recent television series which focus on American men’s financial struggles (*Breaking Bad*, *Hung* and *The Shield*), Amanda Lotz comments:

[t]hough financial crises primarily inspire the illegal actions of the three “any man” protagonists that begin their series as law-abiding citizens, gender is just as centrally implicated in this economic crisis because the gender script the men adhere to in their personal pride and sense of self leads them to make crises involving the support of the family theirs alone to bear.

LOTZ, *supra* note 3, at 88–89 (footnote omitted). She adds, “[t]he series construct the core problem the men face as related to limited financial means, though gender roles are inextricable from issues of men’s work, ‘duty’ of provision, and earning power.” *Id.* at 91–92.

122. BLAKE ALLMENDINGER, *THE COWBOY: REPRESENTATIONS OF LABOR IN AN AMERICAN WORK CULTURE* 3 (1992).

123. *Breaking Bad: Más*, *supra* note 76.

of masculinity reduces masculinity to money.<sup>124</sup> Rather than, “a man loves his family,” or “a man shares his burdens with his spouse,” masculinity is reduced to providing. Providing what? More. Being a man/being a good provider becomes Walt’s warped excuse for his fierce adherence to the frontier thesis. Eventually, masculinity becomes simply about brutal power. Walt believes the end justifies any means, and is puzzled when Skyler does not agree. He tries to convince Skyler to accept the awful things he has done because his motivation was to provide for his family:

WALTER: I’ve done a terrible thing. But I did it for a good reason. I did it for us. That [pointing to duffel bag filled with cash] is college tuition for Walter Junior—and Holly[,] eighteen years down the road. That is health insurance for you and the kids. For Junior’s physical therapy, his SAT tutor. It’s money for groceries, for gas, for birthdays and graduation parties. Skyler, that money is for this roof over your head[:] the mortgage that you are not going to be able to afford on a part-time bookkeeper’s salary when I’m gone.<sup>125</sup>

If Walt’s true motivation was to provide for his family, he would have stopped his criminal activities after he reached his set goal. In season two, with great specificity, Walt calculates that he needs \$737,000 and then he can stop making meth.<sup>126</sup> After Walt and Jesse witness a horrifying act of violence during a drug deal, Walt decides to continue cooking meth, reasoning as follows:

Adjusting for inflation—a good state college—adjusting for inflation, say \$45,000 a year, two kids, four years of college . . . \$360,000. Remaining mortgage on the home, \$107,000. Home equity line, \$30,000; that’s \$137,000. Costs of living: food, clothing, utilities, say two grand a month? That should put a dent in it, anyway. 24K a year provide [sic], for say, 10 years. That’s \$240,000, plus 360 plus 137: . . . Seven-thirty-seven. \$737,000, that’s what I need. That is what I need. You and I both clear about 70 grand a week. That’s only 10 ½ more weeks. Call it . . . eleven. . . . [E]leven more drug deals and always in a public place from now on. It’s doable. Definitely doable.<sup>127</sup>

124. As Laura Hudson notes, “[m]oney and masculinity are deeply linked by the series. . . . This link between manliness, money, and power is a dangerous one for people who accept it.” Laura Hudson, *Die Like a Man: The Toxic Masculinity of Breaking Bad*, WIRED (Oct. 5, 2013, 6:30 AM), <http://www.wired.com/2013/10/breaking-bad-toxic-masculinity> [<http://perma.cc/6VR8G7T9>].

125. *Breaking Bad: I.F.T.* (AMC television broadcast Apr. 4, 2010) (Season 3, Episode 3).

126. *Id.*

127. *Breaking Bad: Seven Thirty-Seven* (AMC television broadcast Mar. 8, 2009) (Season 2, Episode 1).

But Walt does not stop. Instead, he always seeks just a little bit more. On more than one occasion, when Walt is asked how much more he needs, he simply responds, "more."<sup>128</sup> His sense of self-worth becomes enmeshed with possessing power. "Never give up control," says Walt.<sup>129</sup> In accord with the expansionist ideology of the frontier, by season six, Walt declares, "I'm in the empire business."<sup>130</sup> What ostensibly began as Walt's scheme to provide for his family degenerates into his intractable desire for empire. This is the dark side of the frontier thesis: an expansionist ideology conflated with an unhealthy and dangerous masculinity.

There is one moment when Walt seems to do some soul-searching. It occurs in the season three episode, *Fly*.<sup>131</sup> How truly authentic Walt's soul-searching is may be debatable, since Walt has been working to the point of exhaustion and Jesse has drugged him with a sleeping pill. Working in the high-tech lab preparing meth, Walt becomes obsessed with a fly that is buzzing around.<sup>132</sup> He wants to keep the product from becoming contaminated, and goes to extreme lengths to try to kill the fly.<sup>133</sup> Jesse worries that Walt is obsessing over something insignificant, saying, "[l]ook, I like making cherry product, but let's keep it real, alright? We make poison for people who don't care. We probably have the most unpicky customers in the world."<sup>134</sup>

Nevertheless, Walt continues obsessively searching for the fly, while musing over the direction he has taken in life: "There was some perfect moment that passed me right by."<sup>135</sup> He is trying to think of a moment when he had enough money to quit but before Skyler discovered he was cooking meth. Walt considers different potentially perfect moments to have died: "After Holly was born? . . . Before the surgery?"<sup>136</sup> He finally settles on the night he happened to meet Jane's father in a bar.<sup>137</sup> (Earlier, Walt purposely let Jane choke to death on her own vomit.)<sup>138</sup> Thinking back to that evening, and the strange coincidence of encountering Jane's father, Walt the scientist says:

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128. See, e.g., *Breaking Bad: A No-Rough-Stuff-Type Deal*, *supra* note 67. Also, in *Gliding Over All*, Skyler shows Walt a huge pile of his money and asks, "How much is enough? How big does this pile have to be?" *Breaking Bad: Gliding Over All*, *supra* note 20.

129. *Breaking Bad: Hermanos* (AMC television broadcast Sept. 4, 2011) (Season 4, Episode 8).

130. *Breaking Bad: Buyout* (AMC television broadcast Aug. 19, 2012) (Season 5, Episode 6).

131. *Breaking Bad: Fly* (AMC television broadcast May 23, 2010) (Season 3, Episode 10).

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Breaking Bad: Fly*, *supra* note 131.

138. *Breaking Bad: Phoenix*, *supra* note 111.



[T]he universe is random, it's not inevitable, it's simple chaos. It's subatomic particles in endless, aimless collision. . . . What is it telling us . . . ? [H]ow could that be random? . . . [T]hat was the moment. . . . I should never have left home. . . . I was at home watching TV, some nature program about elephants. . . . [I]f I had just lived up to that moment, and not one second more that would have been perfect.<sup>139</sup>

Ironically, such a perfect moment can never exist for Walt, because he is driven to want more. Walt implicitly recognizes the toxicity of this expansionist mentality when he tells Jesse in that same episode that they must continue cooking, and admits that, “[i]t’s all contaminated.”<sup>140</sup> “It” being not just the meth, but Walt’s life.

By the end of the series, Walt finally admits to a selfish motive for his work, telling Skyler, “I did it for me. I liked it. I was good at it . . . . I was alive.”<sup>141</sup> But of course Walt has always been physically alive. What made things different was his quest for power. By “alive,” he seems to mean powerful, imposing his will on others, having masculine power and privilege in a way he did not while he was just a mild-mannered high school teacher.

The majority of the contracts and promises Walt makes relate to his work as a manufacturer and distributor of meth. Walt is very good at his work. One of the guilty pleasures of the series is watching how Walt ingeniously uses science to solve problems so that he is able to continue making and selling meth. In this respect, the series has an element of “competence porn”—shows about people who are very, very competent in what they do.<sup>142</sup> Whether it is mixing up the purest blue meth, facing down a rival drug lord by holding a bag of explosive chemicals, or creating a battery for the Winnebago so that he and Jesse can escape death in the desert, Walt becomes very capable over the course of the series.<sup>143</sup> His

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139. *Id.*

140. *Breaking Bad: Fly*, *supra* note 131.

141. *Breaking Bad: Felina*, *supra* note 42.

142. Urban Dictionary defines “competence porn” as “a plot with a type of character who is insanely good at something.” *Competence Porn*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=competence+porn> [<http://perma.cc/EYE9S25J>].

143. Walt disguises a bag of fulminated mercury (an explosive) to look like meth in order to threaten a rival drug lord with an explosion. *Breaking Bad: Crazy Handful of Nothin'*, *supra* note 48. Walt ingeniously makes a battery in the desert. *Breaking Bad: 4 Days Out* (AMC television broadcast May 3, 2009) (Season 2, Episode 9). Other memorable examples of his “MacGyver-ing” use of science include Walt’s using the powder from Etch-A-Sketch toys to make thermite (*Breaking Bad: A No-Rough-Stuff-Type Deal*, *supra* note 67) and his use of a truck-sized industrial magnet to erase a computer drive held in a police evidence storage room (*Breaking Bad: Live Free or Die* (AMC television show July 15, 2012) (Season 5, Episode 1)).

competence comes from his knowledge of science—“Yeah, science!” as Jesse approvingly says.<sup>144</sup> And with his new success, Walt takes on a new masculine persona. This type of masculinity is particularly destructive (to men as well as to women), and it is linked to the Western genre.<sup>145</sup>

We saw that Turner in his frontier thesis postulated that interacting with the frontier was what created the essential American character.<sup>146</sup> Significantly, that prototypical American character was male.<sup>147</sup> The dark side of the heroic frontiersman conquering the wilderness is the violent, rapacious anti-hero.<sup>148</sup> As Richard Slotkin famously notes, the mythology of the frontier enables violence and racism.<sup>149</sup> Indeed, as Walt becomes more and more proficient at deal-making, he becomes more violent towards others and even towards his own family (in season two, Walt attempts to rape his wife).<sup>150</sup>

Work becomes an end in and of itself. Work makes the man. The better Walt gets at his work, the harder and more masculine he becomes. “It was a hard land, and it bred hard men to hard ways,” a line from a classic Western, is a fitting explanation of the Western ethos.<sup>151</sup> Similarly, Walt is the post-recession frontiersman in a deadly

144. *Breaking Bad: A No-Rough-Stuff-Type Deal*, *supra* note 67. Walt Whitman is similarly enthusiastic over science, in *Song of Myself*, when he writes, “Hurrah for positive science! long live exact demonstration!” WALT WHITMAN, *Song of Myself*, in *Selections from Leaves of Grass* 1, 16 (1961).

145. As Jane Tompkins notes,

[f]eminist theorists have shown how movies force women to look at women from the point of view of men, seeing women as sex objects, forcing women to identify against themselves in order to participate in the story. Westerns do this more than most narratives, and the attitudes toward oneself that form over a lifetime of seeing oneself trivialized and degraded are extremely difficult to undo. But in the very act of harming women in this way Westerns also force men into parts that are excruciating to perform, parts that, given the choice, they probably would not have wanted to play.

Tompkins, *supra* note 26, at 17.

146. Stephen McVeigh explains that, “[c]rucially for Turner, the further significance of the frontier lay in the creation of the American character facilitated by the repeated return to ‘the meeting point between savagery and civilization.’” Or to put it another way, Turner is suggesting that interaction with the conditions of the frontier made Americans American.” MCVEIGH, *supra* note 25, at 23.

147. Scholars have demonstrated that the idea of the frontier has had very different resonances for women than for men. *See, e.g.*, ANNETTE KOLODNY, *THE LAND BEFORE HER: FANTASY AND EXPERIENCE OF THE AMERICAN FRONTIERS, 1630–1860* xii (1984).

148. RICHARD SLOTKIN, *REGENERATION THROUGH VIOLENCE: THE MYTHOLOGY OF THE FRONTIER, 1600–1800* 5 (1973).

149. *Id.*

150. *Breaking Bad: Seven Thirty-Seven*, *supra* note 127.

151. LOUIS L’AMOUR, *HELLER WITH A GUN* 15 (1955), quoted in JANE TOMPKINS, *WEST OF EVERYTHING: THE INNER LIFE OF WESTERNS* 11 (1993). Tompkins notes that the harrowing scenes of danger in such Westerns,

[m]ake work their subject. They transfer the feelings of effort and struggle that belong to daily life into a situation that gives them a point, usually the

struggle for survival on the frontier zone that is the endangered middle class. The desert is a deadly, unforgiving landscape in Westerns in general and in *Breaking Bad* in particular. Numerous key scenes of violence, theft, and dangerous bargains occur in the desert. In the last season in particular, Walt does some very dangerous, high stakes bargaining in the desert with a rival drug lord.<sup>152</sup> The scene culminates with Walt insisting that the rival give him respect by saying his name (per the Code of the West): “Say my name.”<sup>153</sup>

Walt becomes increasingly ruthless in his deal-making as the series progresses. Not all of these deals are illegal (although a great many of them are). But significantly, the great majority of the deals in *Breaking Bad* are made in a one-on-one, face-to-face negotiation process. In other words, these deals take place in the classic contract imaginary, which resembles the classic Western shootout—two cowboys face each other down in a duel and only one wins. Underlying the traditional bargain rationale for contracts is the assumption that the bargain is freely entered into, as well as the notion of consideration (that each party only chooses to contract if the deal is worth it for that party). But the deals in *Breaking Bad* have clear winners and losers; and the winner is the one who can out-macho the other side. The deals and promises in *Breaking Bad* strongly suggest that the world of contracts is a private world. Intrusions from outside (the DEA, the police, the government) are unwelcome and to be avoided. *Breaking Bad* privileges old fashioned, one-on-one deal-making.<sup>154</sup>

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preservation of life itself. . . . Protagonists crawl across deserts on their hands and knees, climb rock faces in the blinding sun, starve in snowbound cabins in the mountains, walk or ride for miles on end with all but mortal wounds, survive for long periods of time without water, without shelter, without sleep.

*Id.* at 12–13.

152. *Breaking Bad: Say My Name* (AMC television broadcast Aug. 26, 2012) (Season 5, Episode 7).

153. *Id.* John Cawelti notes that, “[t]he ‘Code of the West’ is in every respect a male ethic and its values and prescriptions relate primarily to relationships between men.” CAWELTI, *supra* note 26, at 43. While this code addresses various unspoken norms of masculine behavior, one of its most pertinent aspects for *Breaking Bad* is the cowboy’s insistence on respect. Consider, for example, Owen Wister’s classic Western novel, *The Virginian*. In a famous scene, the hero and villain are engaged in a semi-deadly game of cards when the villain calls the hero a nasty name (“[Y]ou son-of-a—”). The Virginian understands the difference between friendly trash-talking versus a deadly insult, and responds by demanding, “[w]hen you call me that, *smile*.” OWEN WISTER, *THE VIRGINIAN* 29 (1902). Wister was a Harvard Law School graduate whose wildly popular Western novel, *The Virginian*, has at its heart the question of what it means to be a man. See G. EDWARD WHITE, *THE EASTERN ESTABLISHMENT AND THE WESTERN EXPERIENCE: THE WEST OF FREDERIC REMINGTON, THEODORE ROOSEVELT, AND OWEN WISTER* 7 (1968).

154. However, the deals in *Breaking Bad* generally are not ones of transactional fairness. They are not what Jean Braucher has called, in the context of Arizona traditional

The deals themselves are often done informally, oral promises sealed with a nod of the head or a handshake. But they are backed up with the implicit or often explicit threat of violence. In one early deal from the first season, Walt learns to use the threat of violence to make a contract.<sup>155</sup> Jesse has just attempted to make a deal with a meth distributor, Tuco, but Tuco savagely beats Jesse and steals Walt's product.<sup>156</sup> Walt returns to the scene in full Heisenberg persona. Walt has shaved his head, since his hair is falling out from chemo, and he puts on a sinister black hat.<sup>157</sup> Walt brings in a bag of explosives to the negotiation, disguised as a bag of meth.<sup>158</sup> He throws a piece to the ground, in a show of violence and power.<sup>159</sup> He then threatens to blow up everyone unless Tuco agrees to his terms for a distributorship deal.<sup>160</sup> Tuco agrees.<sup>161</sup>

The violence underpinning deals continues to the bitter end. In the last season, consider what happens when Walt asks his wealthy former partners, Gretchen and Elliott, to set up a trust to ensure Walt's drug money goes to his family.<sup>162</sup> Elliott, clearly hoping to get rid of Walt by seeming to agree, says, "[o]kay, Walt, sure, that sounds reasonable. So what happens next?"<sup>163</sup> Walt replies, "I guess we shake on it. And I leave."<sup>164</sup> Walt shakes Elliott's hand, and Gretchen's hand, and then Walt asks, "I can trust you to do this?"<sup>165</sup> Elliott replies, "[y]es. Absolutely you can."<sup>166</sup> At that point, Walt signals out the window, and red sniper laser lights hit both Elliott and Gretchen on their chests.<sup>167</sup>

Walt cautions Elliott and Gretchen:

Don't move. Don't dare move a muscle. You don't want them to think you're trying to get away. Just breathe. Just this afternoon I had an extra two hundred thousand dollars that I would have loved dearly to leave on top of this table. Instead, I gave it to the

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contract law, "cowboy contracts," meaning contracts entered into by "a person who is honest, trustworthy and straightforward, so that you can rely on his few words." Braucher, *supra* note 38, at 194.

155. *Breaking Bad: Crazy Handful of Nothin'*, *supra* note 48.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Breaking Bad: Crazy Handful of Nothin'*, *supra* note 48.

162. *Breaking Bad: Felina*, *supra* note 42.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

two best hit men west of the Mississippi. Now, whatever happens to me tomorrow, they'll still be out there, keeping tabs. And if, for any reason, that my children do not get this money, a kind of countdown will begin. Maybe a day or so later. Maybe a week, a year. When you're going for a walk in Santa Fe or Manhattan or Prague, wherever, and you're talking about your stock prices, without a worry in the world, and then suddenly you'll hear the scrape of a footstep behind you, but before you can even turn around, pop! . . . Darkness.<sup>168</sup>

Is contract law on the side of civilization or wilderness? Is contract a device for freedom or for restraint? Walt sees these deals as giving him agency, allowing him some power in the world just when he feels most powerless. But the contracts he negotiates, enforces, and often breaks, are kind of wild contracts. They are negotiated within the violent norms of the meth world, as a means of restraint and order, but too often they fail in maintaining any kind of civilized order. Bonds break down, including family bonds. The promises which began as part of Walt's plan for order dissolve into chaos and violence.

This is the paradox of the series. The contracts Walt makes are his bid for freedom, but his tragic and solitary end is not so much a failure of contract as a failure of imagination. Walt has thrown in his lot with the Heisenbergs of the world, believing wholeheartedly in the frontier thesis. He might have done better to follow the poetic vision of Whitman.

#### IV. WALT WHITMAN AND BONDS

What would Walt (Whitman) do? Walt Whitman's presence haunts *Breaking Bad*. The series makes at least three very pointed allusions to Whitman, not to mention the similarity of the name "Walter White" to "Walt Whitman." First, the gentle and geeky chemist, Gale, recites Whitman's poem, *The Learned Astronomer* to Walt and inscribes a copy of *Leaves of Grass* to Walt: "To my other favorite W.W. It's an honor working with you. Fondly, G.B."<sup>169</sup> Second, that same copy of *Leaves of Grass* is the final clue that convinces Walt's

168. *Breaking Bad: Felina*, *supra* note 42.

169. Gale recites *I Heard the Learned Astronomer* for Walt. *Breaking Bad: Sunset*, *supra* note 69. Miguel Santos-Neves notes that, "Whitman's celebration of individuality and self-realization resonates with Walt, an interpretation supported by Walt's actions as he leaves behind his meek middle class life of quiet desperation, for a life of unleashed inner drives in pursuit of self fulfillment—consequences be what they may." Miguel E. H. Santos-Neves, *Our "word . . . is half someone else's": Walt and the Literary Echoes of Whitman*, in *THE METHODS OF BREAKING BAD: ESSAYS ON NARRATIVE, CHARACTER AND ETHICS* 62, 70 (Jacob Blevins & Dafydd Wood eds., 2015).

brother-in-law that Walt is the drug lord, Heisenberg.<sup>170</sup> Finally, the episode in which Hank discovers the damning inscription in *Leaves of Grass* is titled after a somber Whitman poem, *Gliding Over All*.<sup>171</sup> But Whitman's significance is not limited to these three overt examples. Whitman implicitly offers a different model for masculinity. If Walter White uses contract as a tool to impose his will on others, Walt Whitman understood promises and social bonds as powerful connecting forces in a relational world. *Leaves of Grass* proves to be Walt's downfall in more ways than one. Walt's great weakness is that he does not understand or honor Whitman's notion of connections.

Whitman began his working life as an unhappy schoolteacher, just as Walter White begins in *Breaking Bad*.<sup>172</sup> Among the major themes in Whitman's poetry are: the West, comradeship, and work.<sup>173</sup> We see these same major themes in *Breaking Bad*. Walter White is living the West's frontier ethos (although not in a way consonant with Whitman's ideals). His fraught comradeship with his partner, Jesse, is the principal relationship in the series. Finally, Walt's work is what keeps him going, what gives him a sense of self-worth as a man. Being ultracompetent in manufacturing meth, in using science and technology to create the purest compound, is what Walt does.

Whitman's poetry celebrates labor. Consider, for example, his poems, *A Song for Occupations* and *I Hear America Singing*.<sup>174</sup> As one commentator notes, "[i]n his verse Whitman delighted in the new machine ('the many-cylinder'd steam printing press') and the new terminology ('daguerreotyping'). . . . He strung out litanies of the trades and tools; he hymned the glories of technology."<sup>175</sup> Walt uses his scientific know-how to engage in a very basic, "manly" type of work: he makes things. Whitman's worker, however, represents

170. *Breaking Bad: Gliding Over All*, *supra* note 20.

171. *Id.*

172. Whitman did not enjoy being a rural schoolteacher: Of one teaching post, he wrote in an 1840 letter, "O, damnation, damnation! thy other name is school-teaching and thy residence Woodbury." M. JIMMIE KILLINGSWORTH, *THE CAMBRIDGE INTRODUCTION TO WALT WHITMAN 2* (2007) (citing to JOANN P. KRIEG, *A WHITMAN CHRONOLOGY* 10 (1998)).

173. Among Whitman's major themes are: one great America, democracy, individualism, brotherhood, industry and labor, sex, mysticism, and pantheism (the soul becoming). Martin S. Day, *Whitman's Themes and Images* (from MARTIN S. DAY, *A HANDBOOK OF AMERICAN LITERATURE* (1975)), *reprinted in* READINGS ON WALT WHITMAN 78–81 (Gary Wiener, ed., 1999).

174. WHITMAN, *A Song for Occupations*, in *LEAVES OF GRASS* 177 (Michael Moon ed., 2002). Also, in *I Hear America Singing*, Whitman describes men at work: "[t]he carpenter singing his as he measures his plank or beam,/The mason singing his as he makes ready for work, or leaves off work,/the boatman singing what belongs to him in his boat, the deck-hand singing on the steamboat deck,/The shoemaker singing as he sits on his bench, the hatter singing as he stands . . ." *Id.* at 12.

175. Day, *supra* note 173, at 79.

the type of generous democratic ideal that Walt would never understand.<sup>176</sup> Generous, caring, Whitman's speaker says, "[i]f you remember your foolish and outlaw'd [sic] deeds, do you think I cannot remember my own foolish and outlaw'd [sic] deeds?"<sup>177</sup> But that type of compassion is something Walt does not understand.

It is as a poet of the body, celebrating the connections among people, that Whitman has the most to offer someone like Walter White. "I celebrate myself, and sing myself,/And what I assume you shall assume,/For every atom belonging to me as good belongs to you."<sup>178</sup>

For Whitman, human connections are foundational not only for democracy, but for joy in a life well-lived. Connections, bonds, adhesiveness, these qualities exist at the atomic level.

Walter White, the high school chemistry teacher, understands science. In the pilot episode, Walt tells his class of uninterested students, "[c]hemistry is . . . well, technically chemistry is the study of matter, but I prefer to see it as the study of change."<sup>179</sup> Walt changes over the course of the series. He changes physically. His very cells change from his lung cancer and also from the chemotherapy. His hair starts falling out and he shaves his head, taking on a leaner, more sinister appearance.<sup>180</sup> He changes emotionally as well. He becomes harder, ruthless, avaricious, and even murderous. He transforms from Mr. Chips to Scarface, from Walter White to Heisenberg. His transformation into this form of dangerous masculinity destroys his bond with his family. In season two, Walt even misses the birth of his daughter in order to do a drug deal.<sup>181</sup> While Walt initially tries to hide his secret identity, he also feels great hubris in his new powerful masculinity and he clearly wants to be known as a new, powerful man. By season four, he is affronted that Skyler does not recognize the true extent of his change. Skyler worries that he is in over his head and is in danger. He replies, "[y]ou clearly don't know who you're talking to, so let me clue you in. I am not *in* danger, Skyler. I *am* the danger. A guy opens his door and gets shot and you think that of me? No. I am the one who knocks."<sup>182</sup>

Despite these changes, Walt never changes his conception of chemistry as purely scientific, leaving no room for human connections

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176. WHITMAN, *A Song for Occupations*, *supra* note 174, at 178 ("Neither a servant nor a master I,/ I take no sooner a large price than a small price, I will have my own whoever enjoys me,/ I will be even with you and you shall be even with me.").

177. *Id.*

178. WHITMAN, *Song of Myself*, *supra* note 1, at 26.

179. *Breaking Bad: Pilot*, *supra* note 6.

180. *Breaking Bad: Crazy Handful of Nothin'*, *supra* note 48.

181. *Breaking Bad: Phoenix*, *supra* note 111.

182. *Breaking Bad: Cornered*, *supra* note 79.

or for the idea of the soul. Early on, after Walt has committed his first murder and is disposing of the gruesome liquefied human remains, he has a flashback to a time when he and a former girlfriend were studying the chemical composition of the human body. Walt totals up the components, but they only add up to a bit over 99%. Something is missing. "What about the soul?" asks Gretchen. "There's nothing but chemistry here," Walt replies.<sup>183</sup>

Are the vile liquefied remnants of a body all that there is to a person? As far as Walt is concerned, the answer is yes. He does not adhere to Whitman's visionary ideals of the intangible human connections that underpin and sometimes even transcend the science of the physical body.

Walt does maintain one very strong, albeit vexed, connection throughout the entire series. Walt's primary relationship over the course of the show is not so much with his wife, Skyler, or his son, Walt, Jr., but with his partner, Jesse. The relationship between Walt and Jesse is the kind of powerful bond we see between partners in a Western (think Butch Cassidy and the Sundance Kid).<sup>184</sup> Like Whitman's notion of comradeship or adhesiveness, the bond between partners in Westerns is one of the strongest of bonds. A partner is someone for whom you would sacrifice your own life. In fact, although Walt at one point is willing to kill Jesse, Walt ends the series by taking a bullet for Jesse.<sup>185</sup> This intense male-male homosocial relationship is the engine that drives the plot.<sup>186</sup>

Walt's bond with Jesse begins as a teacher-student relationship, then becomes something like a father-son relationship, and eventually evolves into a partnership. However, Walt corrupts the nature of his bond with Jesse by constantly seeking the upper hand, the dominant position. Walt consistently uses contracts and promises to manipulate Jesse. Initially, Walt blackmails his former student, Jesse, into being his partner:

WALT: Short speech. You lost your partner today. What's-his-name, Emilio? Emilio is going to prison. The D.E.A. took all your money, your lab. You got nothing. Square one. But you know the business, and I know the chemistry. I'm thinking maybe you and I [could] partner up.

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183. *Breaking Bad: . . . and the Bag's in the River*, *supra* note 91.

184. *Butch Cassidy and the Sundance Kid* (20th Century Fox 1969).

185. *Breaking Bad: Felina*, *supra* note 42.

186. In her writings, Eve Kosofsky Sedgwick has noted and explored the implications of such omnipresent male bonding in Western literature. See EVE KOSOFSKY SEDGWICK, *BETWEEN MEN: ENGLISH LITERATURE AND MALE HOMOSOCIAL DESIRE* 1 (1985); EVE KOSOFSKY SEDGWICK, *EPISTEMOLOGY OF THE CLOSET* 1 (1990).



JESSE [laughs]: You—you wanna cook crystal meth. You . . . you and me.

WALT: That's right.

JESSE [laughs]: Wow.

WALT: Either that, or I turn you in.<sup>187</sup>

When Gus Fring, drug kingpin, says he won't work with a drug addict like Jesse, Walt insists that Jesse is essential and completely obedient.<sup>188</sup> Walt refuses to make a deal without Jesse being included.<sup>189</sup> However, note Walt's justification for including Jesse: that Walt can control his weaker partner. Later on, Walt has no qualms about refusing to pay Jesse his fair share of profits while Jesse is using drugs. Walt acts paternalistically and also selfishly, by refusing to pay until Jesse is clean.<sup>190</sup> Still later, Walt is very protective of Jesse, showing great loyalty in the face of Gus's threat to kill them both.<sup>191</sup> Walt reasons with Gus, "[y]ou kill me, you have nothing. You kill Jesse, you don't have me."<sup>192</sup>

Their relationship has the intense qualities common to that of partners in the Western. Each partner is willing to kill for the other (and at various points, each wants the other to die). Jesse saves Walt's life by shooting the innocent chemist, Gale, and in the final episode, Walt takes a bullet in order to save Jesse's life.<sup>193</sup> Walt's strongest bond in the series is with Jesse, although Walt corrupts their relationship with his frontier thesis tactics.

Bonds do not only operate in a person-to-person context: they also exist within a societal context. As far as Walt is concerned, society has broken its bond with him, and so he feels no compunctions about breaking any social contract he may have as a citizen.<sup>194</sup>

187. *Breaking Bad: Pilot*, *supra* note 6.

188. *Breaking Bad: Mandala* (AMC television broadcast May 17, 2009) (Season 2, Episode 11).

189. *Id.*

190. *Breaking Bad: Phoenix*, *supra* note 111.

191. *Breaking Bad: Box Cutter* (AMC television broadcast July 17, 2011) (Season 4, Episode 1).

192. *Id.*

193. *Breaking Bad: Felina*, *supra* note 42.

194. In this regard, one scholar notes, *Breaking Bad*, therefore, allegorically represents a broken relationship between masculinity and the social bond of American culture, a broken connection hastened by the constant state of emergency in which Americans have lived after multiple post-millennial catastrophes (9/11, Katrina, Great Recession, Sandy Hook and so on). Jason Landrum, *Say My Name: The Fantasy of Liberated Masculinity*, in *THE METHODS OF BREAKING BAD: ESSAYS ON NARRATIVE, CHARACTER AND ETHICS* 94, 95 (Jacob Blevins & Dafydd Wood eds., 2015). Similarly, others have noted the self-reliance aspects of neoliberalism in the series: "Neo-liberalism's economic-rational individualism is conflated with aggressive, hyper-masculine behavior in the series." David P. Pierson, *Breaking Neoliberal? Contemporary Neoliberal Discourses and Policies in AMC's Breaking*

Is there still a social contract when you are an outlaw? Is it really possible to ever be "outside" of law? Jesse comments on the unfairness of having to pay taxes on illegal gains: "What's the point of being an outlaw when you got responsibilities?"<sup>195</sup>

### CONCLUSION

In large part, Walt views all bonds and contracts as restraints on his personal freedom rather than as connections with others. Thus, he feels free to break his deals as easily as he makes them, all in the name of freedom to achieve his goals. In the show's final season, there are several lingering camera shots of a New Hampshire license plate, with the state slogan, "Live Free or Die."<sup>196</sup> Ironically, Walt is virtually imprisoned in New Hampshire at the end of the series, hiding out in a remote, snowbound cabin.<sup>197</sup> Although Walt will die a violent death, has he lived a life that is free? What does it mean to live free? Freedom of contract means that individuals are free to choose what bargains they will make. Walt clearly agrees with his libertarian lab assistant, the chemist, Gale Boetticher, when Gale justifies selling an illegal drug by taking freedom of contract to an extreme. Gale reasons that, if people want something, they should be able to buy it.<sup>198</sup>

What type of man does Walt become? He becomes the bad guy, but he is reluctant to admit that to himself. Unlike Walt, Jesse understands he is complicit in evil. Jesse ruefully says, "I accept who I am . . . I am the bad guy."<sup>199</sup> Walt twists freedom of contract to his own ends. He uses contracts to help create his new masculine persona as Heisenberg. He bargains in order to acquire a harmful masculinity, one that is lethal to others and also to himself. For Whitman, freedom includes the freedom to connect with others; for Walter White, freedom is power over others.<sup>200</sup>

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Bad, in *BREAKING BAD: CRITICAL ESSAYS ON THE CONTEXTS, POLITICS, STYLE, AND RECEPTION OF THE TELEVISION SERIES* 15, 26 (footnote omitted) (David P. Pierson ed., 2014).

195. *Breaking Bad: Kafkaesque*, *supra* note 72.

196. *Breaking Bad: Felina*, *supra* note 42; see also *Breaking Bad: Live Free or Die* (AMC television broadcast July 15, 2012) (Season 5, Episode 1).

197. *Breaking Bad: Granite State*, *supra* note 44.

198. *Breaking Bad: Sunset*, *supra* note 69.

199. *Breaking Bad: No Más*, *supra* note 78.

200. Santos-Neves notes, "[d]espite sharing a vocabulary of democratic ideals with Whitman, *Breaking Bad* carefully reveals the moral shortcomings of a world oriented by market forces and unfettered individuality. It dramatizes the moral consequences of a neo-liberal ideology taken to its logical conclusion through a *reductio ad absurdum* method of exposition." Santos-Neves, *supra* note 169, at 71.

What, if any, are the virtues of contracts in *Breaking Bad*? In the end, as Walt lies dying, surrounded by the death and destruction he caused, he smiles. He has lived up to a particularly damaging kind of masculinity and so has died on his own terms. He has provided for his family, although by doing so he broke all family bonds. That is the reason he had to get Elliott and Gretchen to set up a trust for his family. When Gretchen tells him that he should just give his drug money to his children himself, Walt replies: "I can't. My wife and son hate me. They won't take my money."<sup>201</sup>

Walt has one remaining bond at the end: his complicated bond with Jesse. Walt saves Jesse from death in the final shootout.<sup>202</sup> Walt has rigged up an automatic machine gun from his car, and he drags Jesse to the ground to save him from the gun battle. Embracing Jesse, knocking him to the ground, Walt literally takes a bullet for his former partner. Taking a bullet for your partner is an iconic Western moment. Then, assuming Jesse will want to kill him—it's the manly thing to do, after Walt's numerous acts of betrayal—the wounded Walt tells Jesse to go ahead and shoot.<sup>203</sup> However, Jesse refuses to kill Walt, even though Walt urges him to do so.<sup>204</sup> Instead, the battered and scarred Jesse drives off into the desert.<sup>205</sup> Perhaps he will light out for the territories, like a modern-day Huck Finn, searching for one more frontier far from civilization. Will he repeat the toxic masculinities Walt has been modeling? Jesse has been changed by his partnership with Walt, he is both physically and emotionally scarred, but he has refused to fully embrace the poisonous masculinity Walt has enacted. Jesse's final exit, screaming and crying while driving off into the desert, is a complicated moment of freedom.

As for Walt, he could have used a little of Whitman's insights. Walt (Whitman) the poet could have helped Walt (White) the scientist understand the missing elements in the formula.<sup>206</sup> Walt understands the art of the deal very well, and so he rises to become the ruthless drug lord, Heisenberg. But Walt fails to understand the profound nature of a bond. Walt Whitman and Walter White have very different understandings of the meaning of a bond. The scientist pursues his goals by breaking things apart, by breaking bonds. The poet understands bonds in terms of a democratic ideal of adhesiveness,

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201. *Breaking Bad: Felina*, *supra* note 42.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Breaking Bad: . . . and the Bag's in the River*, *supra* note 91 ("The soul?" as a young Walt said to Gretchen, "[t]here's nothing but chemistry here.").

of connection. Something new is created with each new bond or promises, but things are destroyed when bonds are broken. Perhaps the scientist should have listened to the poet.

Is contract law on the side of civilization or wilderness? Is it a device for freedom and self-actualization or control and restraint? In *Breaking Bad*, Walt becomes very adept at making deals. He sees these deals as giving him agency, allowing him power at a time when he feels most powerless. But the contracts he negotiates, enforces, and breaks, are wild contracts. He negotiates them within the violent norms of the meth world, as a means of imposing his will on a chaotic world. Too often, the deals fail in maintaining any kind of civilized order. Bonds break down, including most importantly, Walt's family bonds. The promises which began as part of Walt's plan for order dissolve into chaos and violence.

This is the paradox of the series. The contracts Walt makes are his bid for freedom, but his tragic and solitary end is not so much a failure of contract as a failure of imagination. Walt has thrown in his lot with the Heisenbergs of the world, believing wholeheartedly in the frontier thesis. He might have done better to spend more time reading Whitman.