

# The Contracting/Producing Ambiguity and the Collapse of the Means/Ends Distinction in Employment (Volume 66 Book 2)



The principal source of instability in the employment/non-employment distinction is neither imprecision in the legal tests nor the disjuncture between static legal categories and the changing organization of work away from industrial forms since the 1970s. Rather, it is the contradiction between equality and servitude embedded within the employment contract. The employment contract in the United States is a product of the nineteenth century incorporation of masterservant status relations into contracts for labor services. The legal rendering of masterservant authority as a contract collapses a fundamental distinction on which contemporary decision makers rely to differentiate employment from other work relationships the distinction between whether the alleged employer has a right to control the means and manner of the work, the process, as opposed to only a right to control the ends of the work, the product. It creates an ambiguity in employment between contracting (regarding the ends) and production (the means), or between contractual formation and performance.

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