

Rounding the Square Peg: Matsumura's Redefining of Status Regulatory Schemes

Author : Aníbal Rosario-Lebrón

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Kaiponanea T. Matsumura, *Breaking Down Status*, 89 **Wash. U. L. Rev.** __ (forthcoming Jan. 2021), available at [SSRN](#).

The COVID-19 pandemic has highlighted the precarity in which millions of people live in the United States. In his forthcoming article, *Breaking Down Status*, Kaiponanea T. Matsumura shows us how this precarity is intrinsically linked to the law's inevitable (or perhaps willful) insistence on regulating important social, economic, and personal relationships through a status-based regulatory system. To discuss the obsolescence and ineffectiveness of this scheme and how it should be reformed to one in which status is defined independently from contract and adapted to the current social and legal landscape, Matsumura uses as a case study two statuses that are seldom thought today to be interrelated: worker classification and marital status.

This approach in and of itself is a great contribution to the scholarship of status. By taking this viewpoint, Matsumura is able to survey the typology of status. While dissecting the taxonomy of status, he establishes how the concept has been applied interchangeably to refer to interrelated legal and non-legal phenomena. This ambiguity has obscured the scholarly discussions about status-based regulation by selectively focusing on one of its aspects. As laid out in the article, this selective approach can be seen best in the social normative *vis a vis* legal effects critiques to *Obergefell*.

Yet, Matsumura has more in his hat than just a taxonomic study of status to enhance our understanding of its problems in our current regulatory scheme. After expanding on the undertheorized concept of status, Matsumura examines gig workers and non-marriages. By summarizing the transformation of romantic relationships (i.e. the rise on cohabitation and the corresponding decline in marriage) and in the market (i.e. the decline of the employer-employee relationship and the rise of non-long-term employees), the article shows how the regulation of marriage and employment have grown obsolete in light of the current social landscape. The lagging between how statuses are defined and how people have rearranged their relationships make existing legal approaches to statuses obsolete, resulting in an ineffective regulatory scheme. Its ineffectiveness is best epitomized by the remarks of a judge trying to apply employee regulations to Lyft's gig workers by saying that it was like being "handed a square peg and asked to choose between two round holes."

The square pegs are the current relationships workers established with their employers and the growing number of non-marital relationships. The round holes are the vestiges of the Blackstonian households. Matsumura explains how the status regulation of workers and non-marriages are, even after their many changes, still embedded in the regulation of master-servant and husband-wife relationships, respectively. This uncovering not only challenges our notions that the market and marriage have grown in opposite directions notwithstanding their common origin in the *pater familias*, but it also adds to the debunking of Henry James Sumner Maine's long-held evolutionary wisdom that the law evolves from status to contract.

The article shows that any changes we have experienced in the regulation of status towards a contractual scheme by adding more customization power to the parties is always halted by the need to

balance parties' autonomy against lawmakers' interests in regulating efficiently and addressing vulnerability. This inescapable reality of the conflicting interests between moving to contract to grant greater control to individuals over the legal consequences of their relationships and the lawmakers' wishes to advance socio-political interests such as privatizing welfare, protecting parties with less bargaining power, and dictating the social meaning of the relationships themselves forces contracts to fold back into status.

Consequently, Matsumura questions the desirability of moving to a full contractual scheme and defends the theory that statuses, albeit inevitable, can be effective and powerful regulatory tools. Here, perhaps, lies the greatest contribution of the article. Matsumura invites us to look at the regulation through status independently from contract and proffers a multi-layer design to think of its reform.

He identifies three axes that in the status literature have been discussed and critiqued in isolation. The first axis (aggregation/disaggregation) addresses whether the bundle of legal consequences associated with a status are kept together or disentangled. The second axis (binarism/pluralism) focuses on the number of categories under which an individual could be classified. The final axis (boundary policing) deals with the entering and exiting of the status. In other words, its concerns are when and how to determine whether an individual falls within the status and how people transition in and out of their statuses.

With this taxonomy, Matsumura attempts to identify design questions to guide us in our reform efforts of romantic and work relationships (and beyond) which would not focus on a selective or single aspect of status. He invites us with these categories to find combinations to round the square peg or square the round holes so that we can disrupt our regulatory scheme.

This invitation resonated with me in multiple levels. First, as a proposer of [abolishing marriage](#) and using other proxies to regulate the granting of privileges and rights to families, including non-traditional families such as cohabiting couples, polyamorous units, and non-sexual families, I questioned myself about whether I have been engaging in selective critiques of statuses or whether I have been really rethinking marital status outside the Blackstonian household in a comprehensive way. It also invited me to rethink in more detail the third relationship of the Blackstonian household, that of the father and the children, and how we can disrupt its status regulation.

I am sure reading Matsumura's article will invite similar and more profound reflections from family law scholars and authors in other areas. But most importantly, it will be a great departing point for rethinking how we regulate essential social, economic, and personal relationships to construct a more egalitarian world.

Editor's Notes: For another review of this article, also published today, see Brian Bix, [A Status Breakdown](#), JOTWELL (November 3, 2020).

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