

International Studies in the Theory of Private Law

Revisiting the Contracts Scholarship of Stewart Macaulay

— On the Empirical and the Lyrical

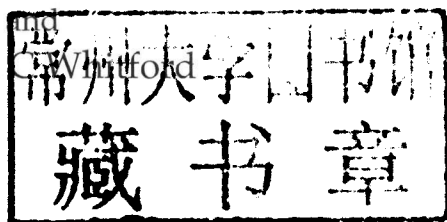
Edited by
Jean Braucher
John Kidwell
William C Whitford

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E-mail: orders@isbs.com
Website: <http://www.isbs.com>

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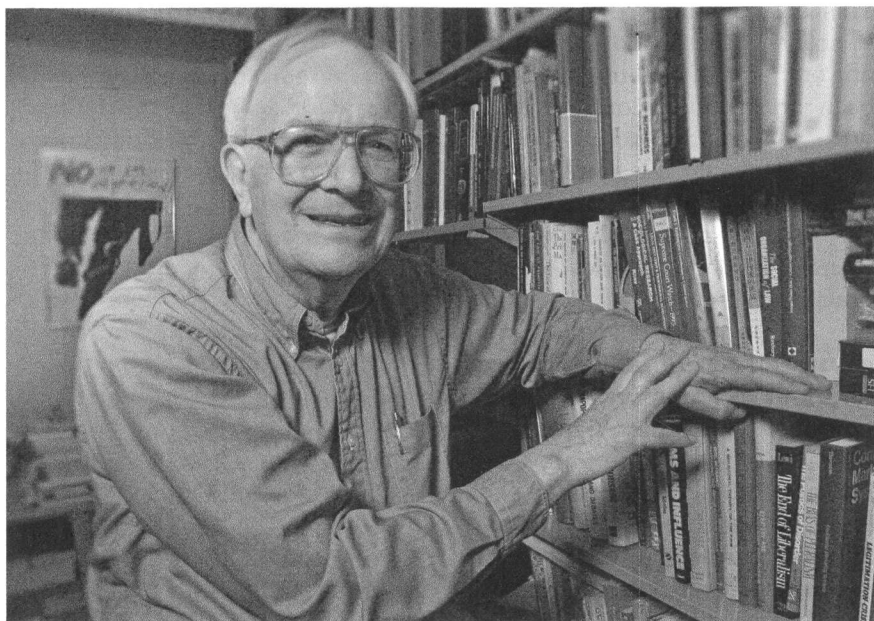
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REVISITING THE CONTRACTS SCHOLARSHIP OF STEWART MACAULAY

This book contains the papers prepared for a conference held at the Wisconsin Law School in 2011 to honour the work of Stewart Macaulay, one of the most famous contracts scholars of his generation. Macaulay has been writing about contracts and contract law for over 50 years; the 1960s were particularly productive years for him, when he introduced many novel ideas into the scholarly world. Macaulay's foundational work for what is now called relational contract theory was published during this period. Macaulay is also known for his use of empirical research and interdisciplinary theories to illuminate our knowledge of contracting practices.

The papers in this volume reflect, in diverse ways, on the subsequent influence and the contemporary relevance of Macaulay's work. All the contributors are important contracts scholars in their own right: David Campbell and John Wightman from the UK, Brian Bix, Jay Feinman, Robert Gordon, Claire Hill, Charles Knapp, Ethan Leib, Deborah Post, Edward Rubin, Carol Sanger, Robert Scott, Gordon Smith, Josh Whitford (with Li-Wen Lin) and William Woodward from the USA. The volume also reproduces Macaulay's most cited paper, 'Non-Contractual Relations in Business', and excerpts from two other important papers of his, 'Private Legislation and the Duty to Read – Business Run by IBM Machine, the Law of Contracts and Credit Cards', and 'The Real and The Paper Deal: Empirical Pictures of Relationships, Complexity and the Urge for Transparent Simple Rules'.

International Studies in the Theory of Private Law: Volume 10



Stewart Macaulay in his office at Wisconsin Law School

International Studies in the Theory of Private Law

This series of books edited by a distinguished international team of legal scholars aims to investigate the normative and theoretical foundations of the law governing relations between citizens. The context for such investigations of private law systems is set by important modern tendencies in systems of governance. The advent of the regulatory state marks the withdrawal of the state from direct control and management of social and economic activity, and the adoption instead of procedural regulation and co-regulatory strategies that promote the use of private law techniques of ordering and self-regulation in social and economic interactions between citizens. The tendency known as globalisation and the corresponding increases in cross-border trade produce the responses of transnational regulation of commerce and private governance regimes, and these new systems of governance challenge the hegemony of traditional national private law systems. Furthermore, these tendencies towards transnational governance regimes compel an interaction between different national legal traditions, with their differences in culture and philosophy as well as their differences based upon variations in market systems, which provokes questions not only about competing policy frameworks but also about the nature and adequacy of different kinds of legal reasoning.

The series encompasses a diverse range of theoretical approaches in the examination of these issues including approaches using socio-legal methods, economics, critical theory, systems theory, regulation theory, and moral and political theory. With the aim of stimulating an international discussion of these issues, volumes will be published in Germany, France and the United Kingdom in one of the three languages.

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Christian Joerges, *University of Bremen*

Antoine Lyon-Caen, *Université de Paris X-Nanterre*

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James Q Whitman, *Yale Law School, New Haven CA*

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Preface

Overview

Stewart Macaulay began his extremely productive academic career at the Wisconsin Law School in 1957. He was assigned to teach Contracts as his first course. The pre-eminent scholar at the Law School at that time was Professor Willard Hurst, a man who had pioneered interdisciplinary scholarship in law schools. Hurst was renowned for how generous he was in giving time and assistance to his younger colleagues.¹ Not long before, Macaulay had begun a very successful marriage and intellectual collaboration with Jacqueline Ramsey.² Jacqueline's father, John R (Jack) Ramsey, had been general manager of SC Johnson & Sons, a worldwide manufacturing company with headquarters in Racine, Wisconsin. Conversations with his father-in-law led Macaulay to conduct an extensive empirical study of business practices and then write the paper that became his most famous article, 'Non-Contractual Relations in Business – A Preliminary Study'.³ Hurst was very interested in this paper and connected Macaulay to some prominent sociologists of the day, leading to its publication in the *American Sociological Review*.⁴ Hurst thus helped to launch Macaulay in a direction that has resulted in his recognition as a leading scholar in both contracts and the interdisciplinary study of law.

Throughout the 1960s, both before and after the publication of this most famous paper, Macaulay published other articles that, though not as well known, nonetheless broke new paths in contracts scholarship and have

¹ S Macaulay, 'In Memoriam: Willard's Law School?', (1997) 1997 *Wisconsin Law Review* 1163, 1170 (describing the ways in which Hurst was an 'ideal mentor').

² Macaulay credits his late wife with making his career possible, not the least because until her death she edited all his publications: 'A Jackie edit was thorough and challenging. She had to understand every sentence and see why it was where it was in the manuscript.' S Macaulay, 'Crime and Custom in Business Society', (1995) 22 *Journal of Law and Society* 248–58.

³ In addition to Jack Ramsey's influence on 'Non-Contractual Relations in Business', his correspondence with Frank Lloyd Wright concerning the Johnson building in Racine inspired a later article. S Macaulay, 'Organic Transactions: Contract, Frank Lloyd Wright and the Johnson Building,' (1996) 1996 *Wisconsin Law Review* 75, fn a (noting that Jacqueline Macaulay found her father's correspondence with Frank Lloyd Wright).

⁴ For fuller accounts of the circumstances surrounding the preparation and publication of Macaulay's most famous article, see Macaulay, 'In Memoriam' (n 1) 1170; Macaulay, 'Crime and Custom' (n 2) 248–58. The article has been included in an anthology of the 20 most important works of American legal thought. D Kennedy and W Fisher, *The Canon of American Legal Thought* (Princeton, Princeton University Press, 2006) 445–59.

proved highly influential. Macaulay became, along with his good friend, Ian Macneil, one of the two legal theorists to participate in the founding of what has become known as relational contract theory. Sparked by Macaulay's formal retirement (though he continues to teach and write), the Wisconsin Law School decided to host a conference revisiting his early scholarship and reflecting on its impact on subsequent contracts scholarship. Sixteen well-known contracts scholars from the UK and the USA were invited to present papers and all responded affirmatively. The conference was held in Madison on 21–22 October 2011. Fifteen of the papers were later revised and are included in this volume.

This volume begins with a reproduction of Macaulay's most famous article. It also provides excerpts from another article from the 1960s, 'Private Legislation and the Duty To Read – Business Run by IBM Machine, the Law of Contracts and Credit Cards',⁵ and from a more contemporary Macaulay article that is much commented upon, 'The Real and the Paper Deal: Empirical Pictures of Relationships, Complexity and the Urge for Transparent Simple Rules'.⁶ Preceding these excerpts there is a bibliography of all of Macaulay's major publications.

We have divided the 15 conference papers into four sections, as shown in the Table of Contents. Such categorisations are inevitably oversimplifications, and perhaps even misleading. There are cross-currents in many of the papers that could have led to placement in a different section. What is common to all the papers is that they refer to one or more of Macaulay's early contracts articles, reflecting on their influence on subsequent scholarship by others and their relevance to current developments.

In the first section there are four papers that discuss the relationship of Macaulay's work to contract and legal theory. Robert W Gordon, in 'Is the World of Contracting Relations One of Spontaneous Order or Pervasive State Action? Stewart Macaulay Scrambles the Public–Private Distinction', describes how Macaulay's work makes it difficult to maintain that there is a strong public/private dichotomy, despite the importance of that distinction to so many of the most influential works on contract theory. Edward Rubin, in 'Empiricism's Crucial Question and the Transformation of the Legal System', relates Macaulay's commitment to empirical studies to theories about how equilibriums in social and legal theory and practice get dislodged and readjusted. Rubin draws on the important work of Niklas Luhman and Gunther Teubner. Robert Scott, in 'The Promise and the Peril of Relational Contract Theory', identifies two schools of thought in American relational contract theory – one identified with the law and economics tradition and the other with the law and society tradition. Scott

⁵ S Macaulay, 'Private Legislation and the Duty To Read – Business Run by IBM Machine, the Law of Contracts and Credit Cards' (1966) 19 *Vanderbilt Law Review* 1051.

⁶ S Macaulay, 'The Real and the Paper Deal: Empirical Pictures of Relationships, Complexity and the Urge for Transparent Simple Rules' (2003) 66 *Modern Law Review* 44.

calls for the two schools to respect each other's traditions and to draw together, in order not to become overwhelmed by contract theorists who pay no attention to empirical studies on contracting behaviour. Jay Feinman, in 'Ambition and Humility in Contract Law', explores the rich theoretical organisation of contract and legal system policies developed in Macaulay's early article, 'Private Legislation and the Duty to Read'.⁷ Feinman concludes that Macaulay's theoretical construct continues to be powerful both as description and as a tool for critical evaluation of contract law in action.

The second section also contains four papers, all dealing in various ways with contractual practices between businesses. David Campbell, in 'What Do We Mean By the Non-Use of Contract?', defends the relevance of legal rules to contracts between businesses, but argues that our traditional legal theory – classical contract law – needs to be discarded, in favour of a theory that understands that co-operation, not adversarialness, is the core principle reflected in both contractual behaviour and, as properly understood, contract law. Li-Wen Lin and Josh Whitford, in 'Conflict and Collaboration in Business Organisation: A Preliminary Study', present empirical findings in their quantitative study of the dynamics between co-operation and conflict in inter-organisational networks; they argue that not only dyads but also triads of allied businesses need to be examined to understand these dynamics. Their paper also traces how Macaulay's 'Non-Contractual Relations in Business – A Preliminary Study' anticipated and influenced many of the themes in contemporary economic sociology. Claire A Hill, in 'What Mistakes Do Lawyers Make in Complex Business Contracts, And What Can and Should be Done About Them?', offers a typology of mistakes lawyers make in written contracts created in complex business deals and speculates why these mistakes persist. Because of the limited (though not negligible) impact of the content of written contracts on how businesspeople behave in contract performance, she concludes that the mistakes do little harm and perhaps even some good. Brian Bix, in 'The Role of Contract: Stewart Macaulay's Lessons from Practice', emphasises Macaulay's critique of formalism in both legal education and scholarship, as well as Macaulay's teaching that the true subject of contract law is the actual practices and promises of business people and other parties engaged in transactions.

Our third section contains papers concerning contractual relations where at least one party is an individual, acting in a consumer or other non-business capacity. Ethan Leib, in 'What is the Relational Theory of Consumer Form Contract?', argues that the doctrine of 'reasonable expectations' offers the best judicial tool for policing consumer deals and that

⁷ Macaulay, 'Private Legislation' (n 5).

the key question is what counts as a reasonable expectation, a question that he believes should be empirically evaluated. Carol Sanger, in 'Acquiring Children Contractually: Relational Contracts at Work at Home', addresses use of contracts to provide for post-adoption visitation rights. She draws upon the relational approach to contracts generally and also on an article published by Jacqueline and Stewart Macaulay in 1978, 'Adoption for Black Children: A Case Study of Expert Discretion'.⁸ Charles Knapp, in 'Is There a "Duty to Read"?', examines recent case law concerning this sometimes asserted duty and develops a suggested judicial methodology for deciding whether to hold parties to a signed writing. He argues that reading should not be conceived of as a duty and that assent in these circumstances should be no more than a rebuttable presumption.

The final section contains four papers using relational contract theory to critique various contract doctrines. William J Woodward Jr, in 'Restitution Without Context: An Examination of the Losing Contract Problem in the *Restatement (Third) of Restitution*', builds upon Macaulay's 1959 article, 'Restitution in Context'.⁹ Woodward examines the Restatement's complex compromise approach to the losing contract problem, which is to use the 'contract rate' to set recovery, and questions both its normative premises and predicted effects. John Wightman, in 'Contract in a Pre-Realist world: Professor Macaulay, Lord Hoffmann and the Rise of Context in the English Law of Contract', explores a number of opinions by Lord Hoffmann in English House of Lords (now the Supreme Court) decisions, and argues that these decisions have allowed prevailing business practices, of the type effectively studied and exposed by Macaulay, to influence the application of historic doctrines of neoclassical contract law, particularly with respect to the availability of consequential damages. Deborah Post, in 'The Deregulatory Effects of Seventh Circuit Jurisprudence', critiques several contract law opinions by Judges Richard Posner and Frank Easterbrook of the Seventh Circuit Court of Appeals (in the USA), arguing that they fail to use Macaulay's commitment to understanding what is actually happening in a transaction to help reach a result that is fair and just. Gordon Smith, in 'Doctrines of Last Resort', offers a view about why such contract law doctrines as good faith, fiduciary duty and unjust enrichment play an important role in controlling opportunistic party behaviour. Such behaviour is mostly deterred by informal social sanctions, as Macaulay has observed, but in Smith's view these 'doctrines of last resort' play an important supportive role precisely when informal sanctions prove inadequate.

⁸ J Macaulay and S Macaulay, 'Adoption for Black Children: A Case Study of Expert Discretion' in R Simon (ed), *Research in Law and Sociology: An Annual Compilation of Research* (Greenwich, JAI Press, 1978) 265–318.

⁹ S Macaulay, 'Restitution in Context' (1959) 107 *University of Pennsylvania Law Review* 1133.

MACAULAY'S TEACHING MATERIALS

No accounting of Stewart Macaulay's impact on the world of the academic study of contract law and behaviour would be complete without some discussion of the contracts teaching materials that bear his (and our) names.¹⁰ Since no paper describes these materials, we provide a brief account here. These materials express a distinct point of view, closely associated with Macaulay's early contracts scholarship. They use the term 'Law in Action' to describe their perspective, which emphasises how legal doctrine influences or fails to influence the behaviour of contracting parties (and others). The materials include several in-depth contextual discussions of contractual interactions, why litigation occurred, and how the litigation affected the relationship.¹¹ They stress that law is not free and that the haves often come out ahead. The approach is challenging for both teachers and students, a point acknowledged in an introductory chapter:

One major theme of the course is that things are not as they seem. But debunking can be upsetting. It can lead to a resigned cynicism that undercuts any effort toward bettering the world. It is true that naïve idealism may seriously mislead those whose goal is to effect change . . . We think good lawyers are skeptical idealists, aware of how the system works but unwilling to retreat into an easy cynicism.¹²

These materials have their origin in Macaulay's early teaching career. When Macaulay began teaching at Wisconsin in 1957 and was assigned Contracts as a class, he adopted a casebook co-authored by Malcolm Sharp, one of his mentors as a Bigelow Fellow at the University of Chicago Law School.¹³ That casebook emphasised competing themes of autonomy and a minimal state as opposed to regulation as a way of achieving social justice. Macaulay immediately began to supplement the casebook with materials emphasising the law in action. Later his long-time colleagues and casebook co-editors, Whitford and Kidwell, joined the Wisconsin law faculty, and both used and contributed to the growing set of supplementary materials. When the other great relational contract legal theorist of the era, Ian Macneil, produced his first casebook in 1971, Macaulay and his Wisconsin contracts colleagues adopted it.¹⁴ It was not many years

¹⁰ S Macaulay and others (eds), *Contracts: Law in Action*, 3rd edn (New Providence, LexisNexis, 2010).

¹¹ The materials were significantly influenced by Richard Danzig's important book, *The Capability Problem in Contract Law*, first published in 1978 (Mineola, Foundation Press) and intended as a supplement to a traditional Contracts casebook. Macaulay and his colleagues contributed importantly to Danzig's initial book.

¹² Macaulay and others, *Contracts: Law in Action* (n 10) 26–27.

¹³ F Kessler and M Sharp, *Contracts: Cases and Materials* (New York, Prentice-Hall, 1953).

¹⁴ I Macneil, *Cases and Materials on Contracts: Exchange Transactions and Relationships* (Mineola, Foundation Press, 1971). The Wisconsin contracts teachers actually used a pre-publication draft of these materials and offered feedback to Macneil before publication.

later, however, when a Wisconsin supplement to the Macneil casebook began growing. Within the decade the supplement had become so voluminous that the Wisconsin contracts group abandoned the Macneil casebook and began teaching from their own materials that were produced annually by the very efficient 'Copy Shop' at the Wisconsin Law School. For the next decade and more the materials received annual revisions, contributed to by all of Macaulay's colleagues at Wisconsin who were teaching Contracts. The materials were finally stabilised and published, initially in 1993.¹⁵ For the current third edition, published in 2010, Jean Braucher of the University of Arizona College of Law joined the group of editors.¹⁶ The casebook is now adopted in approximately 15 law schools.

DEBTS OF GRATITUDE

Our greatest debt of gratitude goes to the authors of the papers that make up this volume. We also are indebted to many other academics who served as discussants at the conference or who attended and participated in the debate.¹⁷ The conference itself was hosted by the Wisconsin Law School, through the auspices of its Institute for Legal Studies.¹⁸ We are grateful for institutional support provided by the Institute and the Law School. We are especially indebted to the Institute's Associate Director, Pamela Hollenhorst. Her skill and experience in running conferences are extraordinary. Without Pam's able efforts and wise guidance, the conference would never have happened.

This book would not have come to fruition without the able assistance of Natalie Hoepfer, JD, 2012, University of Wisconsin Law School. Natalie served both as a copyeditor and as overall administrative assistant in the task of converting conference papers into book chapters. Natalie's dedication to her job, her promptness in completing her tasks, and her knowledge of the Hart Style manual are all of the highest order. Natalie also helped out with the conference. We have every confidence that Natalie is headed to a highly successful legal career.

¹⁵ The first edition was initially published, in 1993, by the Institute for Legal Studies at Wisconsin Law School. This edition was commercially published in 1995 by Michie Company. Marc Galanter joined Macaulay, Kidwell and Whitford as a co-editor of the first edition.

¹⁶ The Michie Company was acquired by LexisNexis, the publisher of the second and third editions. The second edition appeared in 2003.

¹⁷ The website for the conference is: www.law.wisc.edu/ils/2011contractsconf/homepage.html. The following persons served as discussants for the panels held at the conference: Professors Lisa Alexander (Wisconsin), Jean Braucher (Arizona), Alan Hyde (Rutgers-Newark), Jonathan Lipson (Wisconsin), Keith Rowley (Nevada-Las Vegas), Daniel Schwarcz (Minnesota), William Whitford (Wisconsin) and Jason Yackee (Wisconsin).

¹⁸ The conference was funded by the Contracts Enrichment Fund at Wisconsin Law School. This Fund receives the royalties from contracts casebook described above.

John Kidwell, one of our co-editors, passed away in February 2012. Before his untimely death, John fully participated in the planning for the conference, and he performed the substantive edits on some of the chapters in this volume. We miss John more than we can describe, and we are deeply indebted to him for all his contributions over many years to the Wisconsin contracts team. We know that Stewart shares these sentiments.

Jean Braucher
William Whitford
May, 2012

List of Contributors

Brian H Bix, Frederick W Thomas Professor for the Interdisciplinary Study of Law and Language at the University of Minnesota Law School.

Jean Braucher, Roger C Henderson Professor of Law at the University of Arizona's James E Rogers College of Law.

David Campbell, Professor of International Business Law at School of Law, University of Leeds.

Jay M Feinman, Distinguished Professor of Law at Rutgers School of Law, Camden.

Robert W Gordon, Professor of Law at Stanford Law School and Chancellor Kent Professor of Law and Legal History Emeritus at Yale Law School.

Claire A Hill, Professor of Law and James L Krusemark Chair in Law and Director, Institute for Law and Rationality at the University of Minnesota Law School.

John Kidwell, Professor of Law Emeritus at the University of Wisconsin Law School (died 10 March 2012).

Charles L Knapp, Joseph W Cotchett Distinguished Professor of Law at the University of California's Hastings College of Law.

Ethan J Leib, Professor of Law at Fordham University School of Law.

Li-Wen Lin, PhD student in sociology at Columbia University.

Stewart Macaulay, Malcolm Pitman Sharp Professor and Theodore W Brazeau Professor of Law at the University of Wisconsin Law School.

Deborah Waire Post, Professor of Law at Touro College, Jacob D Fuchsberg Law Center.

Edward Rubin, University Professor of Law and Political Science at Vanderbilt University.

Carol Sanger, Barbara Aronstein Black Professor of Law at Columbia Law School.

Robert E Scott, Alfred McCormack Professor of Law and the Director of the Center for Contract and Economic Organization at Columbia Law School.

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D Gordon Smith, Associate Dean and Glen L Farr Professor of Law,
J Reuben Clark Law School, Brigham Young University.

Josh Whitford, Associate Professor of Sociology at Columbia University.

William Whitford, Professor of Law Emeritus at the University of
Wisconsin Law School.

John Wightman, Dean of the Faculty of Social Sciences at Kent University
and a Senior Lecturer at the United Kingdom's Kent Law School.

William J Woodward, Jr, Senior Fellow, Santa Clara University, and
Professor of Law Emeritus at Temple University.

Bibliography of Publications by Stewart Macaulay

- Macaulay, S and Manne, H, 'A Low-Cost Legal Writing Program – The Wisconsin Experience' (1958–59) 11 *Journal of Legal Education* 387.
- Macaulay, S, 'Restitution in Context' (1959) 107 *University of Pennsylvania Law Review* 1133.
- Macaulay, S, 'Justice Traynor and the Law of Contracts' (1961) 13 *Stanford Law Review* 812.
- Macaulay, S, 'Non-Contractual Relations in Business: A Preliminary Study' (1963) 28 *American Sociological Review* 55.
- Macaulay, S, 'The Use and Non-Use of Contracts in the Manufacturing Industry' (1963) 9 *Practical Lawyer* 13.
- Macaulay, S, 'Changing a Continuing Relationship Between a Large Corporation and Those Who Deal With It: Automobile Manufacturers, Their Dealers, and the Legal System' (1965) 1965 *Wisconsin Law Review* 483.
- Finman, T and Macaulay, S, 'Freedom to Dissent: The Vietnam Protests and the Words of Public Officials' (1966) 1966 *Wisconsin Law Review* 632.
- Macaulay, S, *Law and the Balance of Power – The Automobile Manufacturers and Their Dealers* (New York, Russell Sage Foundation, 1966).
- Macaulay, S, 'Private Legislation and the Duty to Read – Business Run by IBM Machine, the Law of Contracts and Credit Cards' (1966) 19 *Vanderbilt Law Review* 1051.
- Friedman, L and Macaulay, S, 'Contract Law and Contract Teaching: Past, Present, and Future' (1967) 1967 *Wisconsin Law Review* 805.
- Macaulay, S, 'Law Schools and the World Outside Their Doors: Notes on the Margins of 'Professional Training in the Public Interest' (1968) 54 *Virginia Law Review* 617.
- Friedman, L and Macaulay, S, *Law and the Behavioral Sciences* (Indianapolis, Bobbs-Merrill, 1969).
- Macaulay, S and Walster, E, 'Legal Structures and Restoring Equity' (1971) 27 *Journal of Social Issues* 173 (1971) (translated as 'Las Estructuras Legales y El Restablecimiento de la Equidad' (1972) 15 *Boletin del Onstituto de Docencia e Investigacion Juridicas* 89–107).
- Macaulay, S, 'El Derecho y Las Ciencias Conductuales: Algunas Reflexiones (Some Reflections on Law and the Social Sciences)' (1972) 134 *Boletin del Onstituto de Docencia e Investigacion Juridica* 19–34.
- Macaulay, S, 'The Standardized Contracts of United States Automobile Manufacturers' in vol 7 *International Encyclopedia of Comparative Law* (Leiden, Koninklijke Brill NV, 1973) ch 3.
- Macaulay, S, *Access to the Legal Systems of the Americas: Informal Processes* (Madison, Center for Law and Behavioral Science, 1976).