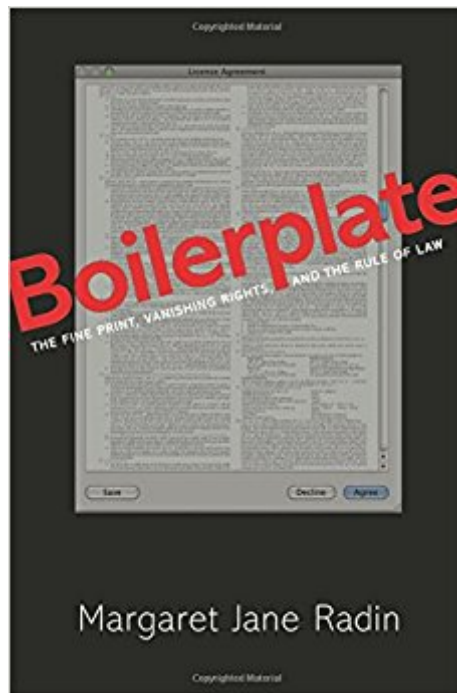




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Boilerplate: The Fine Print, Vanishing Rights, And The Rule Of Law



Synopsis

Boilerplate--the fine-print terms and conditions that we become subject to when we click "I agree" online, rent an apartment, enter an employment contract, sign up for a cellphone carrier, or buy travel tickets--pervades all aspects of our modern lives. On a daily basis, most of us accept boilerplate provisions without realizing that should a dispute arise about a purchased good or service, the nonnegotiable boilerplate terms can deprive us of our right to jury trial and relieve providers of responsibility for harm. Boilerplate is the first comprehensive treatment of the problems posed by the increasing use of these terms, demonstrating how their use has degraded traditional notions of consent, agreement, and contract, and sacrificed core rights whose loss threatens the democratic order. Margaret Jane Radin examines attempts to justify the use of boilerplate provisions by claiming either that recipients freely consent to them or that economic efficiency demands them, and she finds these justifications wanting. She argues, moreover, that our courts, legislatures, and regulatory agencies have fallen short in their evaluation and oversight of the use of boilerplate clauses. To improve legal evaluation of boilerplate, Radin offers a new analytical framework, one that takes into account the nature of the rights affected, the quality of the recipient's consent, and the extent of the use of these terms. Radin goes on to offer possibilities for new methods of boilerplate evaluation and control, among them the bold suggestion that tort law rather than contract law provides a preferable analysis for some boilerplate schemes. She concludes by discussing positive steps that NGOs, legislators, regulators, courts, and scholars could take to bring about better practices.

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Radin's book begins with several vignettes about how people lost legal rights otherwise guaranteed, through legal forms used by businesses that cannot be changed, called 'boilerplate.' These forms commonly cancel one's right to a jury trial, often substituting arbitration instead; arbitrators are widely believed to be more favorable to businesses, no record is made of their decisions and class actions are not permissible. These practices are widespread in the U.S. (eg. waiving employee rights, purchaser rights regarding product liability and warranty), rarely read (sometimes the terms arrive after signing - eg. insurance contracts, phone orders), and often don't even require signing (eg. parking lot tickets, airline tickets, shrink-wrapped software products); they are less prevalent in other nations. Why don't we read boilerplate? Radin suggests its because we wouldn't understand the terms anyway, we have no access to suppliers that do not impose such clauses, we trust the company, or we think anything harmful would be unenforceable. Why do businesses use boilerplate? The usual rationale is 'to contain costs' - 'that is what recipients prefer if given a choice.' The 'good news' is that a court may invalidate boilerplate if it finds a party lacked meaningful choice and the terms unreasonably favor the other, or if it violates an important public policy. Radin, however, contends that this does not happen often enough. In fact, she believes that because boilerplate terms aren't bargained over or consented to in any normal fashion, they aren't even contracts. Radin also offers several remedies - that judges evaluate boilerplate according to tort law, or giving regulatory power to oversight groups. 'Boilerplate' is not easy reading, but it provides strong evidence that using such endangers our basic values.

This book covers an interesting topic. Unfortunately, it doesn't do so in a consistent way, and feels like an attempt to lengthen a great article into a book. After the first couple of chapters it feels repetitive.

Professor Radin sees to the heart of the problem of Contracts Law in 2014. It is a transformative analysis that is also readable. Not sure I buy the last bit, but I am making my students read the first half.

This book very clearly states how contracts are being used to erode our rights to get what we expect and pay for. It shows how businesses use boilerplate clauses to escape any responsibility no matter how unethical, reprehensible, or just plain dangerous their actions are. Boilerplate contracts are a gold mine for business. In many cases it is a license to get away with anything and everything

at can cost the unsuspecting consumer pennies to an unlimited amount per transaction, or over a lifetime. The basic thing is this, consumers need to find a way to stop businesses from creating their own "legal system" that protects business and only serves to defraud the consumer. I have walked away from contracts due to some of the clauses they included. I even went specifically with a company because their "fine print" was a picture of the American Flag. No tricks, no hidden clauses. They did an excellent job, and did not need "fine print" to shield themselves from lawsuits. This book is a must read for every consumer in America. When I talk to friends from other countries about the rip offs that go unpunished here, they are astounded. Many wonder why the American Consumer is not rioting in the streets over such unfair treatment and clauses. What I suggest is that everyone read this book, and then contact your Congressmen to let them know we need solutions. Let them know what you would like to see implemented to put a stop to the erosion of consumer rights and protections. Maybe then we can get some fairness towards the consumer. After all, consumerism does drive 2/3 of our economy. If consumers lose faith and cut back on spending this could spell big trouble for our economy.

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