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Contract Schemas

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consumer psychology, consent, formalism, boilerplate, unenforceable clauses, exculpatory clauses

Abstract

This review draws on the notion of “contract schemas” to characterize what ordinary people think is happening when they enter into contractual arrangements. It proposes that contracts are schematically represented as written documents filled with impenetrable text containing hidden strings, which are routinely signed without comprehension. This cognitive template, activated whenever people encounter objects with these characteristic features, confers certain default assumptions, associations, and expectancies. A review of the literature suggests that contract schemas supply (a) the assumption that terms will be enforced as written, (b) the feeling that one is obligated to perform, and (c) the sense that one has forfeited rights. Contract schemas should be of interest to legal scholars, because their psychological and behavioral effects often sit at odds with contract doctrine. Laypeople expect the law to find consent in situations where they would prefer it did not, and where it in fact does not. Contract schemas should also be of interest to ordinary consumers, who may find themselves relinquishing legally valid claims, erroneously assuming away rights, and/or blaming themselves. Future research should explore the consequences that flow from the lay perception that the law is rigidly formalistic to the detriment of fairness. Do such attitudes undermine the perceived moral authority of the law?

Laymen . . . will insist on technicalities which the law would instantly reject, and in corner grocery discussions will argue that a contract signed with a lead pencil is void for informality.

— Roscoe Pound, Dean of Harvard Law School, in a 1916 address

INTRODUCTION

Contracting has changed with modern commerce. The majority of today's contracts no longer follow the model in which two parties arrive at an agreement through the process of bargaining. Instead, the typical contract is a standard-form agreement that is presented to consumers on a take-it-or-leave-it basis (Ben-Shahar 2009, Eigen 2012b, Radin 2006).

One of the most important features of today's consumer contracts is that almost no one reads them (Ayres & Schwartz 2014; Bakos et al. 2014; Ben-Shahar & Schneider 2014; Hillman & Rachlinski 2002; Marotta-Wurgler & Chen 2012; Plaut & Bartlett 2012; Posner 2010; Radin 2006, 2013; Stark & Choplin 2009). But that does not mean that people don't form impressions, expectations, and assumptions about what contracts say and what power they hold (Eigen 2012a, Snyder & Mirabito 2019). In recent years, psychologists have begun using surveys, interviews, and experimental methods to identify lay beliefs about and attitudes toward contracts.

This review draws on the notion of “contract schemas” to characterize what ordinary people think is happening when they enter into contractual agreements. Schemas are “knowledge structures that represent objects or events and provide default assumptions about their characteristics, relationships, and entailments under conditions of incomplete information” (DiMaggio 1997, p. 269). They are stereotype-like cognitive structures that allow us to, “with broad strokes, represent the characteristics” of objects and draw inferences about what they are for (Cerulo 2010, p. 117).

Schemas can be thought of as “pattern completion engines that fill in missing pieces of knowledge with culturally learned defaults” (Boutyline & Soter 2021, p. 733). To illustrate, consider the following vignette from Rumelhart (2017, p. 43): “Business has been slow since the oil crisis. Nobody seemed to want anything really elegant anymore. Suddenly, the door opened and a well-dressed man entered the showroom floor. John put on his friendliest and most sincere expression and walked toward the man.” Many readers who encounter this passage will readily infer that the scene takes place at a car dealership, even though the text mentions nothing about cars (Boutyline & Soter 2021). They will further infer that the well-dressed man is a potential buyer and that John is a salesperson. These missing pieces of information are effortlessly supplied by their preexisting cultural scripts for car purchases.

In myriad domains in life, schemas allow us to process and navigate situations that are entirely novel, with little effort. This review argues that contracting is one such domain (following Stolle & Slain 1997, Wilkinson-Ryan & Hoffman 2015) and seeks to bring together several lines of research documenting the ways in which laypeople approach and understand their contracts. Although this review cannot settle the question of where contract schemas come from—whether social learning, personal experience, cultural tropes, formal training, or some other origin—it nonetheless seeks to catalog their characteristic features.

Schematic processing involves both pattern recognition and pattern completion. Accordingly, this review first describes the array of features that prompt people to categorize an arrangement as a contract, thereby activating their contract schemas. It then catalogs the psychological and behavioral effects that are triggered by these schemas.

ACTIVATING FEATURES

When encountering a new stimulus, people implicitly compare it against their mental representation of a prototypical category member. If the match is sufficiently close, the schema is activated and the pattern-completion engine kicks in.

What are the features of the lay contract schema? In early work examining “the stuff that leads to contractiness” in the minds of average people, Stolle (1998; 2018, p. 1) convened a series of focus groups of ordinary consumers to discuss their opinions, habits, and perceptions of contracts. These conversations revealed that people think of contracts as *things*—discrete physical objects—that are filled with unreadable text (Stolle 1998, Suchman 2003). Whereas contract scholars often focus on core terms such as price and quality, Stolle’s participants associated contracts most strongly with boilerplate. They described the prototypical contract as a “rather daunting” document: It contains long, complex sentences, is written in the passive voice, and is printed in small font. “Usually when I hear the word contract, I think of legalese. Something unintelligible,” one participant explained (Stolle 1998, p. 25). Participants frequently mentioned “loopholes” and “hidden strings” as common features of legally binding contracts (p. 23). To them, the prototypical contract is one that you cannot read but that is laced with peril.

Most prominently, contracts are signed. Stolle (1998, p. 26) found that the signature is “the single most important factor in moving a document from merely being a piece of paper with words to being a legally binding agreement.” Focus group participants mentioned signing one’s name nearly twice as often as any other feature. Several studies have confirmed that signatures loom large in the lay conception of contracts (Chou 2015a,b; Furth-Matzkin & Sommers 2020; Parks & Schmedemann 1994; Schmedemann & McLean Parks 1994; Stolle 1998, 2018; Wilkinson-Ryan & Hoffman 2015). For example, one study asked respondents to evaluate a vignette describing a homeowner and a contractor who met to draw up a contract for a home renovation (Wilkinson-Ryan & Hoffman 2015). The contractor wrote up an offer and left the document with the homeowner, telling him to “call me at my office to accept.” The homeowner signed the document that night and called the contractor the next day. Legally, the moment of formation occurred when the homeowner accepted the offer by placing the call to the contractor, but most lay respondents thought the contract was formed when the homeowner signed the contract alone in his home. To them, the signature on the page, not the communication of acceptance, created the contract.

A similar phenomenon has been documented with respect to the mailbox rule. The mailbox problem arises in cases with delayed communication, where dispatch of the acceptance by the offeree is temporally separated from receipt of the acceptance by the offeror. Whereas the doctrinal debate has focused on whether formation occurs at the moment of dispatch or the moment of receipt, most laypeople believe the contract is formed at the moment the offeree *signs* the contract, before it is mailed at all (Wilkinson-Ryan & Hoffman 2015). “People view their legal obligations as heavily dependent on formal manifestations of assent via signature,” Wilkinson-Ryan & Hoffman (2015, p. 1297) conclude.

Relatedly, the same object can be perceived as more or less “contracty” depending on whether it includes a signature block. Schmedemann & McLean Parks (1994) recruited undergraduates and lawyers to read various versions of an employee handbook and assess whether the document constituted a legally binding contract. Undergraduates’ assessments of the employer’s legal obligations were heavily influenced by whether the handbook contained a signature block, whereas lawyers focused less on this formality. The researchers also found that students’ perceptions—but not lawyers’—were affected by the inclusion of legalistic language. The authors suggest that lay readers “may view jargon as the idiom of contracts and... expect drafters to write idiomatically”

(p. 672). Other work similarly finds that people regard contracts as more typical when they employ heavy use of the passive voice, and as carrying greater legal importance when they contain long, as opposed to short, sentences (Stolle 1998).

It seems, then, that people schematically represent contracts as documents filled with blocks of tiny, inscrutable, jargon-laden text, with a signature at the bottom. The rest is hazy: People rarely have more than a vague sense of what is contained within the dense text (Arbel & Toler 2020). Eigen (2008) interviewed several dozen sales associates and found that most could not describe in much detail “what it was they had agreed to” when they signed their employment agreements. They knew they had signed a contract, and remembered it well enough to recognize it “when shown the actual piece of paper,” but most could not say much about the substance of the agreement (p. 418). This observation is consistent with the schematic understanding of a contract as essentially a piece of paper that you sign (Leff 1970, Suchman 2003). Thus, when people encounter an object that has these characteristic features—long, complicated sentences; fine print; legalese; signature block; and so on—they heuristically represent it as a contract even as they fail to engage with the substance.

SCHEMATIC ENTAILMENTS

Once activated, schemas confer default assumptions, associations, and expectancies. A review of the literature reveals that for laypeople, contract schemas supply (a) the assumption that terms will be enforced as written; (b) the feeling that one is obligated—legally and morally—to perform; and (c) the sense that one has relinquished rights.

Contracts Are Enforced as Written

One expectation furnished by the lay contract schema is that terms will be enforced as written (Prescott & Starr 2020). Perhaps this seems obvious: If there are words on the page, people naturally expect those words to be legally enforceable. But contract law often defies this expectation. Scholars have documented several areas in which lay intuitions misalign with the law.

First, laypeople tend to regard contract terms as literal promises. They expect courts to require specific performance, insisting that a breaching party perform the act promised in the contract (Seligman 2018, 2019). But specific performance is not a typical remedy in contract law; rather, breach is ordinarily compensated monetarily. While some research suggests that people are satisfied when a breach is compensated with full damages payments (Shavell 2006), other research suggests that people are not appeased until the breaching party performs what is specified in the terms. Indeed, one study found that 67% of participants think courts should enforce specific performance (Wilkinson-Ryan & Baron 2009). Some commentators have conjectured that people view breach as morally offensive; thus, they view monetary compensation as insufficient to repair the moral harm of breach (Eigen 2008, Wilkinson-Ryan & Baron 2008).

Second, laypeople assume that contract terms are authoritative; they generally do not contemplate the possibility of unenforceable clauses (Berger 1974; Furth-Matzkin 2017, 2019; Kuklin 1988; Olafsen 1979; Prescott et al. 2016; Prescott & Starr 2020; Starr et al. 2020). In an early examination of this phenomenon, Mueller (1970) canvassed 100 apartment units in Ann Arbor, Michigan, asking tenants to read mock leases that contained unenforceable exculpatory clauses. Most tenants assumed the terms were enforceable, consistent with the notion that contract terms are enforced literally. Most respondents indicated they would not think to question the validity of terms in their leases, even though unenforceable clauses are quite common. Indeed, with the proliferation of standardized leases, the number of tenants whose leases contain unlawful terms has increased sharply in recent decades (Hoffman & Strezhnev 2021).

Laypeople may differ from legal professionals in their expectations about whether courts will take a literalistic approach to contract interpretation. As Pound (1908, p. 607) observed, “[l]ay hair-splitting over rules and regulations goes far beyond anything of which lawyers are capable,” so enthralled is “the average man” with “his love of technicality” and his conception of law as a mechanical, formalistic, scientific institution. In their study of employee handbooks, Schmedemann & McLean Parks (1994) found that laypeople approach contract language with greater deference and rigidity than do legal professionals. The researchers gave a random subset of respondents a handbook containing a clause stating, “THIS PROVISION IS NOT INTENDED AS AND DOES NOT CONSTITUTE A CONTRACT.” Students, but not lawyers, who received this language were inclined to believe that the employee rights laid out in the handbook were not legally enforceable. The authors suggest that whereas lawyers may be “more aware of instances where courts will not enforce disclaimers written by the party in the superior bargaining position” (Schmedemann & McLean Parks 1994, p. 685), laypeople are more inclined to take the terms at face value.

The assumption that contract terms are enforced literally has been shown to influence signatories’ behavior. In employment contracts, the presence of noncompete clauses has been found to deter employees from seeking or accepting a new job with a competitor, even in states where such clauses are unenforceable (Starr et al. 2020). A survey of more than 11,000 labor force participants demonstrated that both employees’ beliefs about enforceability and their expectations about the likelihood that their employer would sue them for taking a new job are significant predictors of whether employees decline offers from competitor firms. In fact, approximately 40% of employees with noncompete clauses in their employment contracts cite such clauses as a factor in turning down job offers from competitor firms—and this number holds true regardless of whether they live in a jurisdiction where noncompetes are legally enforceable.

The lay expectation that contracts are enforced as written is so strong that people often look to their contracts for *guidance* on their legal rights and obligations. Furth-Matzkin (2019) showed that when tenants encounter a problem with their housing, such as a broken fixture requiring repair, they seldom search the web or consult with an attorney to learn about their legal rights and duties. Instead, many look to their leases. Thus, even though hardly anyone gives much thought to their lease at the time of signing, they may read them when a problem arises. At that point, they are likely to defer to the written terms. Similarly, when it comes to noncompetes, Prescott & Starr (2020) find that people who believe that their noncompetes are enforceable—and who forgo job prospects as a result—are no more likely to negotiate over such terms before signing. Wilkinson-Ryan (2017) calls this “the paradox of boilerplate”: Why do people who take contract terms so seriously *ex post* do so little to protect themselves *ex ante*? Contract schemas can provide an answer: As represented in the lay imagination, contracts are impenetrable blocks of text that one signs without meaningful engagement; they carry hidden loopholes and strings, but they are a black box at the time of signing.

Just as contract schemas confer the expectation that the written terms will be enforced, the converse is also true: When terms are *not* contained within the four corners of the document, people generally do not expect them to have legal weight (Wilkinson-Ryan 2017). Such terms are not part of the contract schema, even if they are material to the agreement.

In a demonstration of this effect, Furth-Matzkin & Sommers (2020) presented lay respondents with several scenarios in which a seller used deception to induce a consumer to sign an agreement. One scenario described a loan program that was marketed as saving borrowers money but that came with hidden fees that outweighed any savings. The fees were disclosed in the fine print of the form borrowers signed to enroll, but the consumer failed to read or notice that the fine print contradicted the oral statements by the seller representing that no fees would be charged.

Results show that lay respondents—but not lawyers and law students—strongly expected that a court would enforce the fine print against the consumer. They also judged that the consumer had consented to the fees, despite the fraud. At the same time, all respondents, regardless of legal training, felt that requiring the consumer to pay the fees would be unfair.

Remarkably, lay participants viewed the fine print as binding regardless of whether it was signed as a result of fraud. In one version of the scenario, the seller did not lie; the consumer merely presumed that no fees would be charged. In another version, the seller deceptively assured the consumer that no fees would be charged. Participants were equally likely to believe that a court would enforce the fine-print fee in either case. Their expectations about enforceability did not track defects in consent or procedural unfairness in the contract formation process; so long as the written terms contained the fee, they expected the consumer to be required to pay. This finding is consistent with work showing that although people disapprove of deception, they think it is possible to consent when materially deceived (Sommers 2020). It also underscores that people's expectations about legal enforceability track not their sense of fairness but their schema for contracts. That schema does not encompass communications that are not contained within the four corners of the document.

Contract schemas not only confer default assumptions about enforceability; they also trigger psychological deference. Furth-Matzkin & Sommers (2020) found that participants, initially outraged at the hidden fee, were deterred by the fine print from wanting to seek compensation. A majority of participants in the control group reported wanting to take some kind of action: Most expressed an intention to pursue legal action against the seller, such as hiring a lawyer, and many said they would seek nonlegal recourse, such as complaining to a manager or posting negative reviews online. By contrast, most participants who were presented with the fine print were inclined to lump it. They expressed sentiments such as, “I would just pay,” or “I would be very upset, but I would recognize that I had signed a contract and there is nothing I can do about the situation” (p. 527).

Similarly, Stolle & Slain (1997) found that fine print has a demoralizing effect on laypeople. In one experiment, they presented students with a membership contract for a health club. They varied the presence of an exculpatory clause that would waive liability for “any . . . cause of action whatsoever for . . . death, personal injury, property damage, or loss of any kind.” Although this clause was of dubious enforceability, it diminished participants' self-reported intentions to seek compensation in the event of an injury.

It seems that rather than responding to an unfavorable term by challenging it or researching whether it is enforceable, laypeople are inclined to draw the lesson that they need to read contracts more carefully before signing. As one participant explained,

I'd just suck it up, pay the fees over the course of the loan, and learn from my mistake. She obviously was taken advantage of by the sales rep, and she shouldn't do business with this dealership in the future, but if I were her, the biggest take-away from this encounter is to always read the fine print of the contract before you sign anything. (Furth-Matzkin & Sommers 2020, p. 527)

Even though most people do not read their contracts in their entirety—and, indeed, most contract law experts believe it would be impossible to do so (Ayres & Schwartz 2014, Ben-Shahar & Schneider 2014, Posner 2010, Wilkinson-Ryan 2014)—laypeople tend to insist that consumers are to blame for failing to read before signing (Snyder & Mirabito 2019). For example, Wilkinson-Ryan (2014) found that laypeople blame a consumer for signing a contract with a hidden fee, regardless of whether the contract spanned 2 pages (a reasonable length, according to respondents) or 15 pages (an unreasonable length, in their view). One of Stolle's (1998, p. 25) focus group participants articulated this unforgiving sentiment:

[I]f I sign this contract, [and] then I don't live up to all the little things that maybe I didn't pay attention to, I'm a dead duck as far as I'm concerned. I put my name on that document, good luck. Good luck sitting in a court saying "Oh I didn't know." "But sir, it's right here in black and white. Didn't you see that?" And what do you think would happen if you said to the judge, "well I didn't read it because who reads this stuff?" If I were the judge, I would almost laugh out loud. I'm sorry.

In summary, once the contract schema is activated, it is associated with feelings of hopelessness and defeat—with being “a dead duck.” People who would ordinarily feel motivated to object or complain decide instead to take their lumps. Unlike lawyers, laypeople assume that the fine print is legally authoritative and, therefore, not worth fighting. Those who consult their contracts are “demoralized by contractual language and are likely to blame themselves for failing to read” (Furth-Matzkin & Sommers 2020, p. 510).

These psychological phenomena are likely moderated by sociodemographic factors. Eigen (2008) found that socioeconomic status is an important predictor of whether people view contract terms as authoritative. He found that MBA students at an elite university were generally skeptical that an arbitration clause in an employment agreement would be enforceable. By contrast, when he interviewed employees of a national electronics retailer, who had agreed to such a provision as a condition of their employment, he found that these less privileged individuals were more likely to believe the clause was enforceable. Importantly, these respondents generally expressed that the job was “the ‘best they [could] get’ and that alternative work was not readily available,” suggesting that job security may play an important role in how people understand employment contracts (Eigen 2008, p. 411).

Although schemas are typically socially shared (Boutyline & Soter 2021), it seems that people's schemas for contracts—including how strongly they activate feelings of self-blame and deference to the terms—are not universal. Different subgroups have different beliefs about and experiences with contracts: Lawyers' schemas are quite different from laypeople's, and people of different gender, race, age, and socioeconomic backgrounds may have different attitudes as well (Furth-Matzkin & Sommers 2020, Hoffman 2016, Hoffman & Eigen 2017, Wilkinson-Ryan 2020). These distributional patterns may leave some groups more open to exploitation by sophisticated parties, who can use laypeople's contract schemas against them (Haran 2013, Stark & Choplin 2009). That is why many commentators support civil fines and other penalties to discourage contract drafters from knowingly inserting unenforceable clauses or otherwise taking advantage of individuals who are inclined to defer to their contracts (Mueller 1970, Radin 2013, Wilkinson-Ryan 2020).

Contracts Are Irrevocable Promises

A second psychological consequence of activating the lay contract schema is increasing psychological commitment: Once a contract is perceived as formed, it triggers a sense of obligation to perform, even if material consequences of nonperformance are unchanged. Thus, people who believe they are “under contract” are less likely to breach, even when doing so would be in their self-interest (Eigen 2012b, Guiso et al. 2013, Wilkinson-Ryan & Baron 2009). An important component of the psychology of contracts is the feeling that breach is taboo.

Researchers have identified several factors that lead people to abide by their original agreements even when more lucrative opportunities come along. First, the bare fact that an agreement is portrayed as a “contract” may make people less likely to back out. A 2013 study contrasted two auto loan arrangements (Hoffman & Wilkinson-Ryan 2013). In one scenario, participants imagined they had signed a standard lease that included a three-day return clause permitting cancellation for any reason with no legal or financial consequences. According to the vignette, participants were “under contract,” but they could return the car without consequence during the first three

days. In the other scenario, participants imagined that they were permitted to take the car home on a trial basis, and the standard contract would kick in after three days if they failed to return the car. These participants were not “under contract” for the first three days, but their situation was otherwise identical. Participants were asked what they would do if a better offer became available during the first three days. Those judging the noncontract scenario expressed more willingness to return the car and walk away from the original agreement. Thus, a state of affairs portrayed as “under contract” feels more binding and less revocable than an identical state of affairs that is not yet under contract.

Second, formality seems to reduce people’s willingness to back out of an agreement (Chou 2015a,b; Mitts 2019). Accordingly, agreements reached orally or over email are regarded as less binding (Hoffman & Wilkinson-Ryan 2013). In one study, participants imagined posting a motorboat for sale on Craigslist and being contacted by a buyer willing to pay \$12,000 (Wilkinson-Ryan 2014). In one version of the scenario, the buyer and seller signed an agreement for sale; in the other version, the parties reached a verbal agreement. In both versions, participants were told that state law imposed a mandatory waiting period, during which time either party could cancel the contract without penalty. Participants were asked to imagine that during the waiting period, another interested buyer came along with a better offer. The study found that participants were more inclined to breach the contract when it was oral than when it was written: They were willing to abandon the original agreement for \$700 less, “even though the signature had no legal force or meaning” (Wilkinson-Ryan 2015b, p. 2126). Thus, like the car buyer who is not yet under contract, the boat seller who has merely bound herself orally feels relatively free to walk away.

These findings suggest that formalities—such as the affixation of a signature on a written document—activate the lay contract schema, which confers feelings of obligation and commitment. Thus, when those features are absent, people feel less psychologically bound.

Psychologists have long known that people associate signing their names with feelings of obligation. Signatures have been shown to increase follow-through on various kind of commitments: honor codes, pledges to donate to charity, promises to wear seatbelts, and even private resolutions to lose weight (Anker & Crowley 1982, Cialdini 2001, Kettle & Häubl 2011, McCabe et al. 1996, McCabe & Trevino 1997, Rogers et al. 1988). It would be unsurprising, then, if the act of signing one’s name to a piece of paper activated the conceptual architecture related to contracts, including associational concepts of irrevocability and obligation.

Tellingly, the taboo against backing out of an agreement relaxes when breach is licensed by the contractual terms themselves. Seligman (2019) asked participants to imagine they had entered a contract to sell concert tickets for \$200, only to have another buyer come along offering \$500. In one version of the scenario, participants were told that the law would award the original buyer \$100 in compensation if they breached. In another version, participants were told that the contract contained a clause stating, “If the seller of the tickets breaches this contract for any reason, he or she will compensate the ticket buyer. . . in the amount of \$100.” Seligman found that although the material consequences of breach were identical in both scenarios, people felt more willing to breach when the written terms authorized it. Wilkinson-Ryan (2010) has similarly found that people feel uncomfortable breaching an agreement unless the contractual language itself grants permission. Although there are several possible explanations for this effect, the phenomenon is consistent with the notion that people have formalistic and literalistic expectations about how contract terms are likely to be enforced.

Some might wonder whether the powerful effect of contract schemas on psychological commitment stems from signatories’ (often mistaken) beliefs about the legal status of contracts, or rather from a sense of moral duty to follow through, law aside. Whereas this topic has received significant attention from legal philosophers who study the morality of promising (e.g., Fried

2007, Shiffrin 2007), social scientists have recently begun examining the question empirically, manipulating participants' beliefs about the legal enforceability of contracts and measuring whether their commitment to perform shifts in response (Furth-Matzkin 2019, Furth-Matzkin & Sommers 2020, Prescott & Starr 2020, Wilkinson-Ryan 2017). If people intend to abide by their contracts even after they learn that the terms are not legally enforceable, it suggests they may feel bound for reasons that go beyond expectations about what courts are likely to do in the event of a breach.

In their study of noncompete clauses, Prescott & Starr (2020) informed a random subset of respondents that such provisions are unlikely to be enforceable in their states. They found that participants who learned this information were far less likely to regard their noncompetes as a reason not to take a job with a competitor firm. At the same time, a sizeable minority still felt deterred by their noncompete clauses: Even though they understood that such provisions were unenforceable and regarded the likelihood of being sued by their employer as low, they nonetheless cited the noncompete clause as a barrier to seeking new employment.

This subset of the population, it seems, complies with their contractual terms not because they fear the legal consequences of breach but for some other psychological reason. Perhaps they feel they made a promise that morally binds them. Perhaps they regard the inclusion of the clause as an indication that their employer attaches special importance to their not taking a job with a competitor. Perhaps they feel uncomfortable breaking a written commitment, whatever its legal validity. In sum, the schematic link between contracts and an increased sense of obligation to perform is likely due to a mix of psychological factors, which might include the belief that terms are legally enforceable, the expectation of being sued for breaching, the moral duty to abide by one's promises, the reputational costs of breach, and perhaps others.

Contracts Contain Hidden Dangers

As described earlier, the prototypical contract is unreadable: filled with hard-to-parse sentences written in the passive voice, printed in small font, and loaded with technical legal jargon. People sign contracts knowing that they do not understand them. But, they have a set of associations about what contracts generally do, and their schemas can fill in the details they are lacking with default assumptions.

One way of identifying the content of these assumptions is to examine the mistakes people make. Schema theorists often look to cognitive errors such as memory distortions for evidence of underlying schematic processing (e.g., Hess & Slaughter 1990; Roediger & McDermott 1995; Roediger et al. 1998, 2001). A classic false memory task presents participants with a long list of words that are either semantically related (e.g., pane, ledge, view, glass) or unrelated (e.g., stream, cigarette, feather, honey). After a delay, participants try to identify which words they heard previously. Participants who have listened to a list of semantically related words are more likely to misremember that a related novel word (e.g., curtain) was presented previously. A false-positive identification for the word "curtain" signifies that the participant has a cognitive template for "window," which they are able to use to organize incoming stimuli. That schema is deployable in memory retrieval, construal, prediction, and various other cognitive tasks (Deese 1959). Thus, errors such as false positives are an important source of evidence about people's heuristic understandings of concepts like contracts.

In Stolle & Slain's (1997) early experiments on liability waivers, a little-noticed finding is that a high percentage of control-group participants reported that they had been shown a term that relieved the drafting party of liability for its own negligence, even though their contracts had contained none. The authors observed that more than 20% of participants read in a waiver that was not there (Stolle & Slain 1997). This finding suggests that people assume signing a contract entails waiving one's rights.

Similarly, in a study of consent forms—which exhibit many of the same formalities as contracts (e.g., signatures, legal jargon)—Mann (1994) found that participants acted as if they had signed an exculpatory clause even though they had not. She presented research participants in a brain imaging study with a document laying out their rights and duties, which “explicitly stated” that subjects “were not giving up any rights to sue.” Half of the participants were asked simply to read the document, which was portrayed as an “information sheet,” and half were asked to sign their names to the bottom of the document, which was portrayed as a “consent form.” Mann later asked participants, “If something goes wrong in this experiment, and you are upset or hurt, can you sue the researchers?” Those who had provided their signatures were more likely to say they could not. Even though the text of the document clearly stated that subjects retained the right to sue, signing their names caused them to make the opposite assumption.

We can make sense of this result using schema theory. Participants who are asked to sign their names to the bottom of a document—but not those who are merely asked to read the same document portrayed as an information sheet—recognize the situation as matching their schema for contracts. The schema, once activated, furnishes default assumptions about what the document is for (loopholes, strings) and enables signatories to draw the inference that they have relinquished rights. The document’s text may state that they have not waived the right to sue, but few will read or understand the terms. Instead, they will rely on their schemas to fill the gaps in their knowledge.

The false positives observed in these studies suggest that people’s contract schemas—activated by signing at the bottom of a long block of legalese—supply the inference that they are surrendering their rights. Several commentators have pointed out how problematic it is that contracts frequently contain unenforceable clauses, because people expect that any term within the four corners of the contract will be enforced as written (Furth-Matzkin & Sommers 2020, Stolle & Slain 1997, Wilkinson-Ryan 2020). But note that it is *also* problematic that people so strongly associate contracts with waiving rights that they will sometimes mentally insert phantom exculpatory clauses on their own.

FUTURE DIRECTIONS

Taken together, this emergent literature suggests that laypeople hold an intuitive belief that contracts are created by formalities—not by the processes of negotiation, communication, and mutual understanding that led to the agreement. A “real contract” is a signed, official document—not an oral agreement. It is made up of long, complex sentences filled with unreadable legalese—not simple statements such as “I’ll buy it!” (Wilkinson-Ryan & Hoffman 2015). Finally, signing constitutes the magic moment of formation, triggering a host of psychological and behavioral effects. These include (a) an expectation that the contract’s written terms will be taken both seriously and literally, and that anything beyond the four corners—including oral misrepresentations—is legally irrelevant; (b) a feeling that breach is prohibited, because a contract is an irrevocable obligation; and (c) a sense of wariness that one has potentially been tricked into signing away one’s rights.

The research reviewed here points to an interesting phenomenon meriting further exploration: People expect the law to find consent in situations where they would prefer it did not. Furth-Matzkin & Sommers (2020) observe, for instance, that participants express a conviction that courts will enforce the fine print against a defrauded consumer and that the consumer has consented to the hidden fees, even though the consumer had been assured orally that no fee would be charged. But even as people expect the law to enforce fraudulently induced contracts, they regard such a result as unfair: “I’d be mad but I did sign something that said I agreed to it. I think the salesperson is shady for not mentioning that” (Furth-Matzkin & Sommers 2020, p. 527).

This phenomenon is not limited to cases involving fraud. Strahilevitz & Kugler (2016) asked a representative cross-section of American survey respondents to judge whether various privacy

policies would authorize their email provider to conduct automated content analysis of their email messages. As an example, participants were asked to imagine, “If emails you send and receive regularly mention the words ‘tired’ and ‘sleep’ the automated system might show you more ads from mattress sellers.” Respondents judged such a practice to be objectionable: They gave an average rating of 7.63 on a 10-point intrusiveness scale. Nonetheless, roughly two-thirds of participants believed it was licensed by the privacy policies they were shown.

Moreover, participants did not differentiate between various privacy policies, and believed that even the least explicit language would establish consent to such a practice. The least explicit language stated, “[email provider] reserves the right to prescreen, review, flag, filter, modify, refuse or remove any or all content from any service. For some services, [email provider] may provide tools to filter out explicit sexual content.” By contrast, the most explicit language stated, “[email provider’s] automated systems analyze your content (including emails) to provide you personally relevant product features, such as customized search results, tailored advertising, and spam and malware detection.” No significant difference was observed in participants’ assessments of whether automated content analysis was permitted in each policy (Strahilevitz & Kugler 2016, p. S77).

The authors conclude that consumers “regard the automated content analysis to be rather creepy, but nevertheless authorized, even when presented with language that few lawyers would regard as consenting to the practice at issue” (Strahilevitz & Kugler 2016, p. S77). It seems that people expect the law to recognize consent in situations where they wish it would not—and where it in fact does not.

Why would people be inclined to *overstate* the likelihood that courts will rule against their preferred outcomes? Generally, people are inclined to be biased in the opposite direction, overstating the likelihood that the law will side with them (Balcetis 2008, Krizan & Windschitl 2007, Kunda 1990, Roese & Olson 2007, Sovern et al. 2015; but see Ben-Shahar & Strahilevitz 2017). It is well documented, for instance, that lawyers and litigants are pervasively optimistic about trial outcomes, each camp believing they have the law on their side (Bar-Gill 2006, Birke & Fox 1999, Neale & Bazerman 1985, Thompson & Loewenstein 1992). Laypeople overestimate the legal protection afforded by at-will employment (Kim 1997, 1999) and generally overstate the degree to which the law conforms to their moral views (Rowell 2019). The fact that lay beliefs about contract enforceability show a contrary pattern is striking and warrants further research.

One avenue that might be fruitful to explore is the distinction between conduct that is *morally permissible* and conduct that is *legally authorized* (Demaree-Cotton & Sommers 2021). Perhaps people think that a consumer who is charged hidden fees or whose emails are scanned does not have a legal complaint—they waived that when they consented to the arrangement—but does have a moral complaint. Perhaps they think it is not right to rip someone off or invade their privacy, even if the person agreed to it. But they expect the law will adhere to consent, not to what is right or wrong.

This possibility would represent something of a departure from prior work in the field of psychology and contracts, which has suggested that people generally assume that legal obligations track moral norms (Eigen 2008, 2012b; Hoffman & Wilkinson-Ryan 2013; Macaulay 1963; Mittlaender & Buskens 2019; Robinson & Rousseau 1994; Rousseau 1989; Rowell 2019; Wilkinson-Ryan 2012, 2015a; Wilkinson-Ryan & Baron 2008, 2009; Wilkinson-Ryan & Hoffman 2010, 2015). Much of that work concerns promissory morality and has focused on relational contracting between individuals. Comparatively little work has examined consumers’ moral views regarding contracts of adhesion and their relationships with corporate entities, where intuitions may differ (but see Eigen 2008; Haran 2013; Haran et al. 2016; Wilkinson-Ryan 2017, 2020).

More broadly, future research should investigate the causes and consequences of the perception that contract law is rigidly formalistic, to the detriment of fairness. Do such beliefs diminish the moral authority and perceived legitimacy of the law?

SUMMARY POINTS

1. Schemas are stereotype-like knowledge structures that enable people, through pattern recognition, to represent events, relationships, and objects (such as contracts), and, through pattern completion, to make inferences about their characteristics and entailments.
2. Contract schemas, once activated, confer default assumptions, associations, and expectancies about what contracts say and what power they hold.
3. Laypeople intuit that contracts are created by formalities rather than by the processes of negotiation, communication, and mutual understanding that give rise to an agreement.
4. Features of the prototypical contract include long, complicated sentences; small font; legal jargon; tricks or loopholes buried in the fine print; and a signature block at the bottom.
5. Signing a contract triggers a host of psychological and behavioral effects, including (a) an expectation that the written terms will be enforced literally, (b) a feeling of obligation to perform, and (c) a sense of wariness that one has forfeited rights.
6. Contract doctrine defies lay expectancies in numerous ways, and sophisticated parties are well-positioned to use laypeople's contract schemas against them.
7. Although schemas are typically socially shared, people from different sociodemographic backgrounds and with varying levels of legal training likely have different beliefs and assumptions about contracts.
8. Contract schemas should be of interest to legal scholars, because their psychological and behavioral effects sit at odds with contract doctrine, as well as to ordinary people, who may find themselves relinquishing legally valid claims, erroneously assuming away rights, and blaming themselves.

FUTURE ISSUES

1. Where do contract schemas come from, and at what age do they emerge?
2. In what ways do contract schemas look different in various populations and across various cultures and legal systems, and in what respects are they universal?
3. Are there individual differences in the perception that the law tracks formalism rather than fairness?
4. Because previous research generally indicates that nonlawyers overstate the degree to which law conforms to their moral attitudes, researchers should examine why, when it comes to contracts, laypeople often expect the law to reach outcomes they regard as unfair.

5. Why do laypeople expect the law to find consent in situations where they would prefer it did not?
6. Is contract law exceptional in this regard, or are there other domains in which lay legal pessimism is observed? Within contract law, are there counterexamples, where laypeople are unduly *optimistic* about the benefits their contracts confer?
7. What are the consequences of the perception that the law is rigidly formalistic, to the detriment of fairness? For instance, do such attitudes undermine the perceived moral authority and legitimacy of the law?

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LITERATURE CITED

- Anker AL, Crowley TJ. 1982. Use of contingency contracts in specialty clinics for cocaine abuse. *NIDA Res. Monogr.* 41:452–59
- Arbel YA, Toler A. 2020. ALL-CAPS. *J. Empir. Legal Stud.* 17(4):862–96
- Ayres I, Schwartz A. 2014. The no-reading problem in consumer contract law. *Stanford Law Rev.* 66(3):545–610
- Bakos Y, Marotta-Wurgler F, Trossen DR. 2014. Does anyone read the fine print? Consumer attention to standard-form contracts. *J. Leg. Stud.* 43(1):1–35
- Balcetis E. 2008. Where the motivation resides and self-deception hides: how motivated cognition accomplishes self-deception. *Soc. Personal. Psychol. Compass* 2(1):361–81
- Bar-Gill O. 2006. The evolution and persistence of optimism in litigation. *J. Law Econ. Organ.* 22(2):490–507
- Ben-Shahar O. 2009. The myth of the “opportunity to read” in contract law. *Eur. Rev. Contract Law* 5(1):1–28
- Ben-Shahar O, Schneider CE. 2014. *More than You Wanted to Know: The Failure of Mandated Disclosure*. Princeton, NJ: Princeton Univ. Press
- Ben-Shahar O, Strahilevitz LJ. 2017. Interpreting contracts via surveys and experiments. *NYU Law Rev.* 92:1753–827
- Berger CJ. 1974. Hard leases make bad law. *Columbia Law Rev.* 74(5):791–835
- Birke R, Fox CR. 1999. Psychological principles in negotiating civil settlements. *Harvard Negot. Law Rev.* 4:1–58
- Boutyline A, Soter LK. 2021. Cultural schemas: what they are, how to find them, and what to do once you’ve caught one. *Am. Sociol. Rev.* 86(4):728–58
- Cerulo KA. 2010. Mining the intersections of cognitive sociology and neuroscience. *Poetics* 38(2):115–32
- Chou EY. 2015a. Paperless and soulless: E-signatures diminish the signer’s presence and decrease acceptance. *Soc. Psychol. Personal. Sci.* 6(3):343–51. <https://doi.org/10.1177/1948550614558841>

- Chou EY. 2015b. What's in a name? The toll e-signatures take on individual honesty. *J. Exp. Soc. Psychol.* 61:84–95. <https://doi.org/10.1016/j.jesp.2015.07.010>
- Cialdini RB. 2001. Harnessing the science of persuasion. *Harvard Bus. Rev.* 79(9):72–81
- Deese J. 1959. On the prediction of occurrence of particular verbal intrusions in immediate recall. *J. Exp. Psychol.* 58(1):17–22. <https://doi.org/10.1037/h0046671>
- Demaree-Cotton J, Sommers R. 2021. *Autonomy and the folk concept of valid consent*. Work. Pap., Yale Univ., New Haven, CT
- DiMaggio P. 1997. Culture and cognition. *Annu. Rev. Sociol.* 23:263–87
- Eigen ZJ. 2008. The devil in the details: the interrelationship among citizenship, rule of law and form-adhesive contracts. *Conn. Law Rev.* 41(2):381–430
- Eigen ZJ. 2012a. Empirical studies of contract. *Annu. Rev. Law Soc. Sci.* 8:291–306
- Eigen ZJ. 2012b. When and why individuals obey contracts: experimental evidence of consent, compliance, promise, and performance. *J. Leg. Stud.* 41(1):67–93. <https://doi.org/10.1086/664688>
- Fried C. 2007. The convergence of contract and promise. *Harvard Law Rev. Forum* 120:1–9
- Furth-Matzkin M. 2017. On the unexpected use of unenforceable contract terms: evidence from the residential rental market. *J. Leg. Anal.* 9(1):1–49. <https://doi.org/10.1093/jla/lax002>
- Furth-Matzkin M. 2019. The harmful effects of unenforceable contract terms: experimental evidence. *Ala. Law Rev.* 70:1031–71
- Furth-Matzkin M, Sommers R. 2020. Consumer psychology and the problem of fine-print fraud. *Stanford Law Rev.* 72:503–60
- Guiso L, Sapienza P, Zingales L. 2013. The determinants of attitudes toward strategic default on mortgages. *J. Financ.* 68(4):1473–515. <https://doi.org/10.1111/jofi.12044>
- Haran U. 2013. A person-organization discontinuity in contract perception: why corporations can get away with breaking contracts but individuals cannot. *Manag. Sci.* 59:2837–53. <https://doi.org/10.1287/mnsc.2013.1745>
- Haran U, Teichman D, Feldman Y. 2016. Formal and social enforcement in response to individual versus corporate transgressions. *J. Empir. Leg. Stud.* 13(4):786–808
- Hess TM, Slaughter SJ. 1990. Schematic knowledge influences on memory for scene information in young and older adults. *Dev. Psychol.* 26(5):855–65. <https://doi.org/10.1037/0012-1649.26.5.855>
- Hillman RA, Rachlinski JJ. 2002. Standard-form contracting in the electronic age. *NYU Law Rev.* 77:429–95
- Hoffman DA. 2016. From promise to form: how contracting online changes consumers. *NYU Law Rev.* 91:1595–650
- Hoffman DA, Eigen ZJ. 2017. Contract consideration and behavior. *George Wash. Law Rev.* 85:351–96
- Hoffman DA, Strezhnev A. 2021. *Leases as forms*. Res. Pap. 2259, Inst. Law Econ., Univ. Pa., Philadelphia
- Hoffman DA, Wilkinson-Ryan T. 2013. The psychology of contract precautions. *Univ. Chicago Law Rev.* 80:395–444
- Kettle KL, Häubl G. 2011. The signature effect: Signing influences consumption-related behavior by priming self-identity. *J. Consum. Res.* 38(3):474–89. <https://doi.org/10.1086/659753>
- Kim PT. 1997. Bargaining with imperfect information: a study of worker perceptions of legal protection in an at-will world. *Cornell Law Rev.* 83:105–60
- Kim PT. 1999. Norms, learning, and law: exploring the influences on workers' legal knowledge. *Univ. Ill. Law Rev.* 1999:447–515
- Krizan Z, Windschitl PD. 2007. The influence of outcome desirability on optimism. *Psychol. Bull.* 133(1):95–121
- Kuklin B. 1988. On the knowing inclusion of unenforceable contract and lease terms. *Univ. Cincinnati Law Rev.* 56:845–918
- Kunda Z. 1990. The case for motivated reasoning. *Psychol. Bull.* 108(3):480–98
- Leff AA. 1970. Contract as thing. *Am. Univ. Law Rev.* 19:131–57
- Macaulay S. 1963. Non-contractual relations in business: a preliminary study. *Am. Sociol. Rev.* 28(1):55–67. <https://doi.org/10.2307/2090458>
- Mann T. 1994. Informed consent for psychological research: Do subjects comprehend consent forms and understand their legal rights? *Psychol. Sci.* 5(3):140–43

- Marotta-Wurgler F, Chen DL. 2012. Does contract disclosure matter? *J. Inst. Theor. Econ.* 168(1):94–123
- McCabe DL, Trevino LK. 1997. Individual and contextual influences on academic dishonesty: a multicampus investigation. *Res. High. Educ.* 38(3):379–96
- McCabe DL, Trevino LK, Butterfield KD. 1996. The influence of collegiate and corporate codes of conduct on ethics-related behavior in the workplace. *Bus. Ethics Q.* 6(4):461–76
- Mittlaender S, Buskens V. 2019. Retaliation, remedies, and contracts. *Am. Law Econ. Rev.* 21(2):280–306. <https://doi.org/10.1093/aler/ahz006>
- Mitts J. 2019. I promise to pay. *J. Law Econ.* 62(1):117–49. <https://doi.org/10.1086/701194>
- Mueller W. 1970. Residential tenants and their leases: an empirical study. *Mich. Law Rev.* 69(2):247–98
- Neale MA, Bazerman MH. 1985. The effects of framing and negotiator overconfidence on bargaining behaviors and outcomes. *Acad. Manag. J.* 28(1):34–49
- Olafsen KE. 1979. Preventing the use of unenforceable provisions in residential leases. *Cornell Law Rev.* 64:522–37
- Parks JM, Schmedemann DA. 1994. When promises become contracts: implied contracts and handbook provisions on job security. *Hum. Resour. Manag.* 33(3):403–23
- Plaut VC, Bartlett RP. 2012. Blind consent? A social psychological investigation of non-readership of click-through agreements. *Law Hum. Behav.* 36(4):293–311
- Posner EA. 2010. *ProCD v. Zeidenberg* and cognitive overload in contractual bargaining. *Univ. Chicago Law Rev.* 77:1181–94
- Pound R. 1908. Mechanical jurisprudence. *Columbia Law Rev.* 8:605–23
- Prescott JJ, Bishara ND, Starr E. 2016. Understanding noncompetition agreements: the 2014 noncompete survey project. *Mich. State Law Rev.* 2016(2):369–464
- Prescott JJ, Starr E. 2020. *Subjective beliefs about contract enforceability*. Work. Pap., Univ. Mich., Ann Arbor
- Radin MJ. 2006. Boilerplate today: the rise of modularity and the waning of consent. *Mich. Law Rev.* 104(5):1223–34
- Radin MJ. 2013. *Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law*. Princeton, NJ: Princeton Univ. Press
- Robinson SL, Rousseau DM. 1994. Violating the psychological contract: not the exception but the norm. *J. Organ. Behav.* 15(3):245–59
- Roediger HL, McDermott KB. 1995. Creating false memories: remembering words not presented in lists. *J. Exp. Psychol.* 21(4):803–14
- Roediger HL, McDermott KB, Robinson KJ. 1998. The role of associative processes in creating false memories. *Theor. Mem.* II:187–245
- Roediger HL, Watson JM, McDermott KB, Gallo DA. 2001. Factors that determine false recall: a multiple regression analysis. *Psychon. Bull. Rev.* 8(3):385–407
- Roese NJ, Olson JM. 2007. Better, stronger, faster: self-serving judgment, affect regulation, and the optimal vigilance hypothesis. *Perspect. Psychol. Sci.* 2(2):124–41
- Rogers RW, Rogers JS, Bailey JS, Runkle W, Moore B. 1988. Promoting safety belt use among state employees: the effects of prompting and a stimulus-control intervention. *J. Appl. Behav. Anal.* 21(3):263–69
- Rousseau DM. 1989. Psychological and implied contracts in organizations. *Empl. Responsib. Rights J.* 2(2):121–39
- Rowell A. 2019. Legal knowledge, belief, and aspiration. *Ariz. State Law J.* 51:225–91
- Rumelhart DE. 2017. Schemata: the building blocks of cognition. In *Theoretical Issues in Reading Comprehension: Perspectives from Cognitive Psychology, Linguistics, Artificial Intelligence and Education*, ed. RJ Spiro, BC Bruce, WF Brewer, 11(1):33–58. Oxfordshire, UK: Taylor & Francis
- Schmedemann DA, McLean Parks J. 1994. Contract formation and employee handbooks: legal, psychological, and empirical analyses. *Wake Forest Law Rev.* 29(3):647–718
- Seligman MA. 2018. The error theory of contract. *Md. Law Rev.* 78:147–204
- Seligman MA. 2019. Moral diversity and efficient breach. *Mich. Law Rev.* 117:885–938
- Shavell S. 2006. Is breach of contract immoral? *Emory Law J.* 56(2):439–60
- Shiffrin SV. 2007. The divergence of contract and promise. *Harvard Law Rev.* 120:708–53
- Snyder FG, Mirabito AM. 2019. Boilerplate: what consumers actually think about it. *Indiana Law Rev.* 52:431–

- Sommers R. 2020. Commonsense consent. *Yale Law J.* 129(8):2232–324
- Sovern J, Greenberg EE, Kirgis PF, Liu Y. 2015. “Whimsy little contracts” with unexpected consequences: an empirical analysis of consumer understanding of arbitration agreements. *Md. Law Rev.* 75(1):2
- Stark DP, Choplin JM. 2009. A license to deceive: enforcing contractual myths despite consumer psychological realities. *NYU J. Law Bus.* 5:617–744
- Starr E, Prescott JJ, Bishara N. 2020. The behavioral effects of (unenforceable) contracts. *J. Law Econ. Organ.* 36(3):633–87
- Stolle DP. 1998. *A social scientific look at the effects and effectiveness of plain language contract drafting*. PhD Thesis, Univ. Nebr., Lincoln
- Stolle DP. 2018. The psychology of e-signatures: implications for jury trials and client counseling. *Natl. Law Rev.* 5(55). <https://www.natlawreview.com/article/psychology-e-signatures-implications-jury-trials-and-client-counseling>
- Stolle DP, Slain AJ. 1997. Standard form contracts and contract schemas: a preliminary investigation of the effects of exculpatory clauses on consumers’ propensity to sue. *Behav. Sci. Law* 15(1):83–94
- Strahilevitz LJ, Kugler MB. 2016. Is privacy policy language irrelevant to consumers? *J. Leg. Stud.* 45(S2):S69–S95. <https://doi.org/10.1086/689933>
- Suchman MC. 2003. The contract as social artifact. *Law Soc. Rev.* 37(1):91–142
- Thompson L, Loewenstein G. 1992. Egocentric interpretations of fairness and interpersonal conflict. *Organ. Behav. Hum. Decis. Process.* 51(2):176–97
- Wilkinson-Ryan T. 2010. Do liquidated damages encourage breach? A psychological experiment. *Mich. Law Rev.* 108:633–72
- Wilkinson-Ryan T. 2012. Legal promise and psychological contract. *Wake Forest Law Rev.* 47:843–73
- Wilkinson-Ryan T. 2014. A psychological account of consent of fine print. *Iowa Law Rev.* 99:1745–84
- Wilkinson-Ryan T. 2015a. Incentives to breach. *Am. Law Econ. Rev.* 17(1):290–311. <https://doi.org/10.1093/aler/ahu019>
- Wilkinson-Ryan T. 2015b. Intuitive formalism in contract. *Univ. Pa. Law Rev.* 163:2109–29
- Wilkinson-Ryan T. 2017. The perverse consequences of disclosing standard terms. *Cornell Law Rev.* 103:117–76
- Wilkinson-Ryan T. 2020. Justifying bad deals. *Univ. Pa. Law Rev.* 169:193–215
- Wilkinson-Ryan T, Baron J. 2008. The effect of conflicting moral and legal rules on bargaining behavior: the case of no-fault divorce. *J. Leg. Stud.* 37(1):315–38. <https://doi.org/10.1086/588265>
- Wilkinson-Ryan T, Baron J. 2009. Moral judgment and moral heuristics in breach of contract. *J. Empir. Leg. Stud.* 6(2):405–23. <https://doi.org/10.1111/j.1740-1461.2009.01148.x>
- Wilkinson-Ryan T, Hoffman DA. 2010. Breach is for suckers. *Vanderbilt Law Rev.* 63(4):1001–45
- Wilkinson-Ryan T, Hoffman DA. 2015. The common sense of contract formation. *Stanford Law Rev.* 67:1269–301



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