Adhesion Contracts and the History of Non-Negotiated Agreements: Why 'Signing Under Protest' Became a Recurring Public Concern

I. The Merchant's Mark and the Imposed Bargain

In the maritime archives of the seventeenth and eighteenth centuries, there exist scattered references to agreements that were not, in the conventional sense, negotiated. A sailor boarding a vessel in Portsmouth or Boston would sometimes find himself presented with articles—terms of service, conditions of pay, disciplinary provisions—already printed, already determined. The record suggests, but does not confirm, that these documents represented an early form of what would later be recognized as the adhesion contract: an agreement offered whole, to be accepted or rejected, but never altered.

What remains unclear is whether the sailors of that era understood their signatures as consent in the modern sense, or merely as acknowledgment—a mark indicating presence, not necessarily agreement. Ship manifests and port records preserve the signatures, but the conversations surrounding them have dissolved into silence. We know that disputes arose. We know that some men refused to sign and were denied passage or employment. But the interior experience—the moment when a man realized the terms were fixed, unchangeable, and that his only power was to walk away—this psychological threshold is documented only through its effects, never through direct testimony.

The commercial world of that period operated largely through personal negotiation. Contracts were living documents, amended in parlors and countinghouses, adjusted to reflect the particular circumstances of particular parties. Yet alongside this tradition, another practice was emerging: the standardized form, the pre-printed agreement, the document that arrived complete. Documents from the period reference a practice whose origins have not been located. The shift appears gradual, almost atmospheric, like fog moving across a harbor.

II. The Industrial Standardization and Its Discontents

By the middle of the nineteenth century, something had changed in the texture of commercial life. Railroad companies, insurance firms, and telegraph services began issuing tickets, policies, and service agreements printed in advance, offered uniformly to all customers. The individual traveler purchasing a train ticket in 1870 did not negotiate the terms of carriage. The farmer buying fire insurance did not discuss the exclusions clause by clause. A new form of agreement had materialized—one that existed before the parties met, that would exist unchanged after they parted.

Researchers note the shift, but the cause remains undocumented. Was it efficiency? Volume? The simple impossibility of negotiating individually with thousands of customers? The corporate archives of the period contain the forms themselves, preserved in remarkable detail, but the internal memoranda explaining why this approach was adopted, and what objections were raised, are largely absent. We are left with the artifacts but not the reasoning.

What survives instead are complaints. Newspaper editorials from the 1880s and 1890s express a recurring unease about these "take-it-or-leave-it" arrangements. A letter to the editor of a Chicago newspaper in 1887 describes the experience of signing a warehouse receipt "under conditions I could not alter, though I found them objectionable." The writer does not explain what made the conditions objectionable, nor what he hoped to accomplish by noting his inability to alter them. The letter simply records the discomfort, the sense of something incomplete in the transaction.

Court cases from this era occasionally acknowledge the problem. Judges writing in the 1890s sometimes noted that certain contracts were offered on a "non-negotiable basis," that one party possessed all the bargaining power while the other possessed only the power to refuse entirely. But these observations appear almost as asides, atmospheric details in opinions focused on other matters. The legal system seemed to recognize something unusual in these agreements without quite naming it, without developing a comprehensive response.

III. The Doctrine That Arrived Late

The term "adhesion contract" does not appear in American legal writing until the twentieth century, though the phenomenon it describes had existed for decades prior. Some contemporaries believed the concept was borrowed from French law, while others left no explanation for its sudden emergence in judicial opinions of the 1910s and 1920s. What remains is a curious gap: a practice that had become widespread, even dominant in certain industries, but which lacked a formal name or theoretical framework for generations.

The record suggests, but does not confirm, that courts struggled with how to address these agreements. In scattered cases from the early 1900s, judges expressed concern about contracts where "one party must adhere to terms drafted entirely by the other." Yet the outcomes of these cases are inconsistent, the reasoning often incomplete. A 1919 opinion from a state appellate court acknowledges that an insurance policy was "offered without opportunity for modification" but then enforces it anyway, citing the policyholder's freedom to have declined coverage entirely. The opinion does not address what happens when declining coverage is not, practically speaking, a genuine option.

What is missing from the archival record is any sustained public discussion of this transformation. Contracts had changed—from negotiated instruments reflecting the particular will of particular parties, to standardized forms reflecting the will of the drafting party alone. Yet there appears to be no moment of collective recognition, no public debate about whether this shift required new legal principles or social accommodations. The change simply occurred, like a season turning, noticed but not examined.

Documents from the period reference earlier documents that might have explained the transition, but these earlier sources have not been located. A 1923 law review article mentions "the growing literature on standardized agreements," but most of the works it cites are no longer extant. We are left with references to a conversation whose content has been lost.

IV. The Meaning of Assent When Negotiation Disappears

In traditional contract theory, a signature represented the culmination of a process: offer, counteroffer, discussion, adjustment, agreement. The signature was the final mark of a meeting of minds, a convergence of wills. But what did a signature mean when affixed to a document that could not be altered, had never been discussed, and was identical to thousands of others signed that same day?

This question appears in legal scholarship of the 1930s and 1940s, but the answers remain tentative, exploratory. Some theorists suggested that signing an adhesion contract represented a different kind of assent—not agreement to specific terms, but acceptance of a relationship, an entry into a system. Others argued that the signature had become merely procedural, a formality required to activate a

pre-existing set of obligations. What remains unclear is whether anyone asked the signers themselves what they believed their signatures meant.

Psychological studies from the mid-twentieth century occasionally touch on this question. Researchers note that people signing standardized forms often reported feeling that they were "going through the motions," that the signature was required but somehow hollow. One study from 1952 found that a majority of respondents could not recall any specific terms from contracts they had signed within the previous month, yet all remembered the act of signing itself. The signature had become detached from the content it supposedly endorsed.

The record suggests, but does not confirm, that this detachment created a kind of cognitive dissonance. People understood that their signatures were legally binding, yet they also understood that they had not truly agreed to the terms in any meaningful sense—had not read them, could not have changed them, and in many cases could not have declined them without forfeiting something essential. This tension appears in the historical record as a kind of background hum, a persistent unease that surfaces in complaints, editorials, and occasional legal challenges, but never quite resolves.

V. The Practice of Signing Under Protest

It is in this context—this atmosphere of unresolved tension—that references to "signing under protest" begin to appear with some regularity. The practice itself is difficult to date with precision. Scattered examples exist from the late nineteenth century: a notation on a contract margin, a statement written above a signature line, a separate document filed alongside an agreement. But the origins remain obscure.

What these notations typically expressed was a desire to preserve some claim, some objection, while still completing the required transaction. A farmer might sign a railroad shipping contract but add "under protest" or "without prejudice to my rights." A tenant might sign a lease with a notation indicating disagreement with certain terms. The legal effect of these protests was, and remains, uncertain. Courts generally held that signing a contract, even with a protest notation, constituted acceptance of its terms. Yet the practice persisted.

Documents from the period reference a belief, widespread but poorly documented, that signing under protest might preserve some future claim or defense. Where this belief originated is unclear. Some researchers have suggested it emerged from admiralty law, where protests were sometimes filed to preserve claims against carriers. Others point to labor disputes, where workers might sign company agreements while simultaneously filing grievances. But the documentary trail is incomplete. We have examples of the practice without clear evidence of its source or its intended effect.

What is perhaps most striking is the persistence of the practice despite its apparent legal futility. People continued to sign under protest throughout the twentieth century, even as courts consistently held that such notations did not alter the binding nature of the agreement. This suggests that the practice served some purpose beyond legal strategy—perhaps a psychological need to register dissent, to mark the moment as coerced rather than voluntary, to preserve some sense of agency in a transaction that offered none.

VI. Signature as Mark Versus Signature as Acquiescence

In the historical record, there exists a subtle but significant distinction that appears and disappears without full explanation. Some documents from the early twentieth century distinguish between a signature as a "mark of acknowledgment" and a signature as "evidence of agreement." The distinction seems to recognize that not all signatures carry the same meaning—that context matters, that the circumstances of signing might transform what the signature represents.

This distinction appears most clearly in cases involving contracts of adhesion, though it is never fully theorized or consistently applied. A 1934 court opinion notes that when a consumer signs a pre-printed form contract for essential services, "the signature may indicate submission to necessity rather than voluntary assent." But the opinion does not develop this observation into a legal principle. It remains an atmospheric detail, a recognition of something the law could not quite accommodate.

What remains unclear is whether ordinary people, in their daily transactions, maintained this distinction in their own minds. Did the factory worker signing an employment contract understand his signature differently than the merchant signing a negotiated supply agreement? Did the homeowner signing a mortgage with standardized terms experience the act of signing as fundamentally different from signing a personally negotiated contract? The psychological research of the period does not address these questions directly, and personal accounts are scarce.

Some contemporaries believed that the proliferation of adhesion contracts was eroding the meaning of signature itself—that as people signed more and more documents they could not negotiate or even fully read, the signature was becoming a mere formality, emptied of its traditional significance. Others left no explanation for their concerns, only a documented unease about the changing nature of agreement in modern commercial life.

VII. The Psychological Transformation

By the mid-twentieth century, the adhesion contract had become the dominant form of agreement in consumer transactions. Insurance policies, rental agreements, employment contracts, service terms—all arrived pre-printed, standardized, non-negotiable. An entire generation came of age never having experienced contract negotiation as a normal part of commercial life. The psychological implications of this shift remain incompletely understood.

Researchers note that people adapted to this new reality, but the nature of that adaptation is not fully documented. Did people come to see all contracts as essentially non-negotiable? Did the experience of repeatedly signing agreements they could not alter change their understanding of what it meant to enter into a binding obligation? The archival record contains the contracts themselves, preserved in remarkable abundance, but the interior experience of the signers—their expectations, their understanding, their sense of agency or its absence—this remains largely inaccessible.

What does survive are indirect indicators. Consumer advocacy groups of the 1950s and 1960s frequently raised concerns about "fine print" and "hidden terms" in standardized contracts. But these concerns focused primarily on disclosure—on making sure people knew what they were signing—rather than on the more fundamental question of whether meaningful consent was possible when negotiation was not. The assumption seemed to be that if terms were clearly stated, signing them constituted genuine agreement, regardless of whether the signer had any practical ability to decline or modify them.

Documents from the period reference a growing disconnect between the legal theory of contract—based on voluntary agreement between parties with roughly equal bargaining power—and the lived reality of most consumer transactions. But this disconnect was rarely addressed directly. It existed as background, as atmosphere, as a tension that everyone felt but few articulated.

VIII. Contemporary Echoes and Unresolved Questions

In the present era, the adhesion contract has reached a kind of apotheosis. Software licenses, terms of service, user agreements—these are contracts that most people never read, could not negotiate if they tried, and cannot avoid if they wish to participate in modern digital life. The "I agree" button has become the signature of our age, clicked reflexively, often without even the pretense of review.

Yet the old unease persists. People still express discomfort with these arrangements, still feel that something is incomplete or unbalanced in a transaction where one party dictates all terms and the other can only accept or abstain. And occasionally, in online forums and social media discussions, the old practice resurfaces: someone will suggest clicking "I agree" while simultaneously documenting their objection, preserving their protest, marking their dissent even as they submit to the required terms.

The legal effect of such protests remains as uncertain as it was a century ago. Courts continue to hold that accepting terms, even under protest, constitutes binding agreement. Yet the practice persists, suggesting that it serves some need that transcends legal strategy—perhaps the same need that drove farmers and factory workers and railroad passengers to sign "under protest" in earlier eras: the need to mark the moment as coerced, to preserve some record of objection, to maintain some psychological distinction between voluntary agreement and forced acquiescence.

What remains unclear is whether this distinction has any meaning beyond the psychological. The law generally does not recognize it. A signature is a signature, an acceptance is an acceptance, regardless of the circumstances or the signer's internal state. Yet people continue to act as though the distinction matters, as though there is some difference between signing willingly and signing under duress, even when the legal system treats them identically.

Conclusion: The Persistence of Absence

The history of adhesion contracts is, in many ways, a history of gaps and absences. We have the contracts themselves, preserved in abundance. We have court cases acknowledging their existence and occasionally their problematic nature. We have complaints and concerns expressed in newspapers, letters, and advocacy publications. But what we lack is any clear record of how this transformation was understood by those who lived through it, how people made sense of the shift from negotiated to non-negotiated agreements, and why certain practices—like signing under protest—emerged and persisted despite their apparent futility.

The record suggests, but does not confirm, that adhesion contracts drifted into dominance through administrative habit and economic pressure rather than through any deliberate policy choice or public decision. There was no moment when society collectively decided that most contracts would become non-negotiable. It simply happened, gradually, as businesses grew larger and transactions more numerous, as efficiency and standardization became paramount values.

And in response, people developed their own practices—informal, legally uncertain, but psychologically necessary. Signing under protest. Adding notations. Filing objections. These

practices suggest an instinctive recognition that something had changed in the nature of agreement, that the signature on an adhesion contract meant something different from the signature on a negotiated instrument, even if the law did not acknowledge the distinction.

Documents survive that illuminate aspects of this shift, but critical explanations remain missing. We do not know who first used the phrase "signing under protest" in the context of adhesion contracts, or what they hoped to accomplish. We do not know how courts initially responded to such protests, because the early cases, if they existed, have not been located. We do not know what internal discussions occurred within corporations as they adopted standardized forms, because those records, if they were kept, are not accessible.

This absence may explain why "signing under protest" continues to feel necessary in contexts where negotiation rarely occurs. The practice persists not because it is legally effective, but because it addresses something the law has never fully acknowledged: the psychological need to distinguish between voluntary agreement and forced acquiescence, between a signature that represents genuine assent and a signature that represents only submission to necessity.

The fog has not lifted. The questions remain open. And in the space between what the law requires and what people feel is just, old practices continue, adapted to new contexts, serving purposes that may never be fully documented or understood.