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Boilerplate Shock

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Dear Editors:

The accompanying Article, *Boilerplate Shock*, is the first to address an urgent question at the intersection of U.S. law and global macroeconomics: what would happen if a country left the common European currency—the euro—and tried to repay its sovereign debt in its new currency? I argue that the result would be the opposite of what scholars and the market currently expect, and could be catastrophic for the global economy.

This Article drives new analytical avenues in three areas: financial regulation, commercial law, and conflicts of law. Using the Eurozone sovereign debt crisis as a case study, the Article identifies and contributes a novel framework for analyzing the potential for lawyers to inadvertently create systemic economic risks through the contracts they draft. The Article introduces the phrase “boilerplate shock” to describe this danger, which it argues is growing, and proposes a new rule of contract interpretation to manage it in the Eurozone context.

Boilerplate Shock is my second Article in a three-part project on conflicts jurisprudence and global finance. (The first was *Ending Judgment Arbitrage: Jurisdictional Competition and the Enforcement of Foreign Money Judgments in the United States*, 54 HARV. INT’L L.J. 459 (2013).) I have been fortunate to receive detailed comments on it from Professors Jack Goldsmith, Lisa Bernstein, Alec Stone Sweet, and Mark Weidemaier (of Harvard, the University of Chicago, Yale, and the University of North Carolina law schools, respectively), as well as lawyers who draft sovereign debt contracts and financial-industry professionals who trade sovereign debt.

Finally, while the Article explores the danger of boilerplate shock in a market—Eurozone sovereign bonds—that observers agree poses the biggest threat to the global economy today, its insights are not merely topical. The notion that through contract design lawyers might be increasing the chance of a systemic failure is entirely new. In the next and final installment of my research project, I will explore several other securities markets where I see the potential for boilerplate shock, with a focus on derivatives.

Additional summary information appears in an abstract beginning on the Article’s first page. The Article itself contains 28,163 words, including footnotes. I hope you will accept it for publication.

Sincerely,

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