Contractual Estoppel: Divergence or Incoherence?

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Recent English cases have brought forth into the limelight a new species of estoppel. This novel "contractual estoppel" typically arises by virtue of a "non-reliance" clause in formal written contracts. Its effect is to preclude a claimant from alleging that he was induced to enter into a contract by the defendant's misrepresentation. This preclusive effect is achieved by estopping the claimant from asserting that he had relied on the defendant's pre-contractual misrepresentation. This species of estoppel is novel because it is based entirely on a contractual "non-reliance" clause. Its purely contractual basis means that a defendant can raise the estoppel without proving that the defendant had relied on the non-reliance clause such that it would be unconscionable for the claimant to deny the clause effect. This is a clear divergence from the traditional English understanding of estoppel by representation. This paper examines the nature of this novel estoppel: Is this divergent development an illegitimate product of legal incoherence? This paper will also steal a glance at some other jurisdictions within the Commonwealth to see if any unity of approach can be discerned in their treatment of "non-reliance" clauses.