

Personalizing Default Rules

Did you know?

Many famous operas feature notaries. For instance, in Wagner's *Rienzi*, *The Last of the Tribunes*, Rienzi had gained the trust of the people as papal notary and, as a consequence, was able to proclaim a new Roman Republic and become its tribune.¹⁸

Most provisions of contract law are non-binding default rules.¹⁹ If parties do not like their content, they can contract around them. These default rules are intended to mimic what parties would have wanted.²⁰ Indeed, parties will either opt-out of the default provision they do not like and thereby produce transaction costs; or, they will stick to the default rule and thereby suffer the consequence of a smaller joint surplus. However, due to the limited knowledge of lawmakers as to the specificities of the individual case, parliament can only enact general statutes.²¹ They apply to a variety of different people over a long period of time. Therefore, they are necessarily sometimes too broad (over-inclusive) or too narrow (under-inclusive).²²

Notaries solve this problem. Just like the legislature, they intervene *ex ante*, but like judges, they have in-depth knowledge of the individual case.²³ Based on their professional experience, they can tailor default provisions parties might not have even considered. This is included in the costs for notarial service and does not lead to any additional fees so that otherwise typical costs of opting out²⁴ are avoided.

Key takeaway: Notaries tailor default rules to the individual preferences of the parties. Thereby, they reduce transaction costs and increase the joint surplus.