

Promoting Distributive Justice

Did you know?

The notary system is part of solving the most pressing problems of today: preventive administration of justice by notaries plays a key role in the quest to end extreme poverty, address the challenges of climate change, and establish food security. This is because of its contribution to the responsible and sustainable governance of tenure of land, forests, and fisheries.⁷² Notaries also promote gender equality, increasing the share of women holding property rights in land.⁷³

The market is an efficient way to allocate goods and services. This is why citizens can freely choose their notary.⁷⁴ However, there are two essential market failures. First, people who cannot afford paying the market price are forced out of the market.⁷⁵ Second, high quality lawyers end up where the money is: in the cities. Rural areas are left behind.⁷⁶ As regards legal advice, this is unacceptable. Restraints of budget and geographic origin must not pose restraints on access to justice.

The civil law notary system generally solves both market failures by relying on three core elements in its professional rules, which at the same time serve distributive justice.⁷⁷ First, notary fees typically depend on the value of the transaction, mimicking the diminishing marginal utility of money.⁷⁸ In that way, the rich cross-subsidize the poor.⁷⁹ Second, the number of notaries is limited.⁸⁰ In that way, the average amount of notarial fees is enough to safeguard the notarial independence even though some fees are way below the production costs of legal advice. Third, notaries have to take office in specific districts. In that way, an equal geographical distribution of high-quality legal advice is ensured.⁸¹

Key takeaways: Notaries serve distributive justice because professional rules lead to cross-subsidies in favor of the poor and rural areas. Thereby, they promote access to justice for all and counter-balance market-failure.