THE ROUGH CONTRACT: DEFAULT RULES AND PARETO - EFFICIENT EQUILIBRIA IN THE MARKET OF INPUTS.

LUIGI RUSSI

“Luigi Bocconi” Commercial University (Milan)

Recently, a relevant contribution to the fervent debate on which contractual genotype has the biggest chances to make it, in the “survival-of-the-fittest” scenario engendered by globalization as to different legal models, distinguished between two alternatives: a “rough” and a “dewy” contract. Aim of this paper is to further develop the “rough” approach, inspired by sheer autonomy, by delving into its implications as to optimal tailoring of default rules and its effects on the achievement of Pareto-efficient equilibria in the market of inputs.

1. Introduction

Recently, a brief, but nonetheless sharp, contribution\(^1\) to the fervent debate on which contractual genotype has the biggest chances to make it, in the “survival-of-the-fittest” scenario engendered by globalization as to different legal models, distinguished between two alternatives: a “rough” and a “dewy” contract.

In a nutshell, the former, expression of sheer autonomy, rests on the observation that Business to Business (hereinafter “B2B”) transactions rely on legal default rules less and less. Such transactions should therefore rest, as to their substantial discipline, only on the parties’ explicit agreements. On the contrary, the dewy genotype is based upon the belief that a general duty of good faith should fill any possible gap in the contractual agreement, providing a series of related duties. To our purpose, the dewy model should be considered as an attempt to entirely “default-ize” contractual relationships, with the consequence of adding further duties to those the parties have explicitly agreed upon.

Aim of this paper is to further develop the “rough” approach, by delving into its implications as to optimal tailoring of default rules. It is, in fact, our opinion that, given certain conditions, which we assume typical of

B2B transactions, contractual freedom may lead to separating equilibria, i.e. situations in which “different types of contracting parties […] separate themselves into distinct contractual relationships (Trebilcock,1993)”. With reference to the market of inputs, such equilibria could in turn provide businesses active in different productive areas with the possibility to enter contracts as tailored to their specific needs as possible, therefore increasing the chance that Pareto-efficient allocations will be reached. A central result of our analysis is that, depending on the definition of contractual freedom which a legal system adopts, the country’s ability to produce wealth will in turn be affected.

Delving further into the afore mentioned subjects, Part II of this Article deals with the definition of “rough” contract, introducing it in its essential features and with particular attention to the optimal tailoring of default rules. Part III is, instead, devoted to the clarification of the relationship between default rules in B2B contracts and Pareto-efficient equilibria in the market of inputs.

2. Rough contracts.

2.1. Introduction

Coherently with the rough approach, a contract should be defined as a “tregua provvisoria fra le parti, nel contesto di un gioco conflittuale fra i loro interessi (Monateri,2003) “[temporary truce between the parties, in the context of a clash between their respective interests]. Founding this idea is the conception of market competition as an underlying condition of commercial relationships: any agreement the parties succeed in binding themselves to is essentially partial, since the conflict between their respective interests continues on different grounds. In consideration of the afore mentioned, then, gaps, rather than as a failure, should be perceived as natural outcomes of such conflictual contracting process. Consequently, a temporary truce should not be filled by exogenous rules, since these could break the provisory equilibrium the parties have reached, on several points, in balancing their opposite interests: “[…] per le parti che fra loro attuano una tregua provvisoria, ogni dichiarazione che rilasciano alla controparte è qualcosa che potrà essere utilizzata contro di loro. […] il suo contenuto deve essere quello, e quello soltanto, cui una parte ha consentito di vincolarsi (Monateri,2003)”[for parties entering a temporary truce, every statement they make might be used against them. […] its content must be the one, and that alone, by which the parties consented to be bound.].

Therefore, from the definition of contract which has been introduced above, a rough corollary follows: if one of the parties requires performance of a duty, which was not explicitly included in the contractual agreement, her
claim should be denied, since, if the claimant really wanted to receive the required performance, she should have devoted the necessary resources, essentially time and money, in order to induce the adverse party to agree to the inclusion of the contested duty within the contract. If the claimant has not done so, it would be unfair to the counterpart to force upon her a duty, which she hasn’t been explicitly asked for at the moment the agreement was reached.

The conception founding the rough model and justifying its corollary seems to us a good approximation of what goes on in reality. In fact, B2B transactions are often characterized by a so-to-say *multiformity*: the equilibrium of the parties’ interests cannot be described by a single contract, but rather assumed from the combined effects of a plurality of agreements (not all of which are, at any given time, concluded). Thus, while the single contract one focuses his attention on has, by definition, been put down to writing, there might be several parallel negotiations going on, each of which depending on the temporary truce the parties have already reached on some points. Introducing default rules in such a context could negatively affect the chances the parties will come to further agreements on the points still left open.

### 2.2. Defining B2B

The statement that a bridge can be laid down between the model of rough contract and B2B transactions calls for a sharper definition of B2B. In particular, the assumptions should be made explicit, which will lead our speculation from now on. Our task is, however, made easier by the possibility to resort to the distinction already drawn in a thorough work on contract law\(^2\) between two types of contract:

1. *economic* (or instrumental) and
2. *immediately satisfactory* contracts.

The former embody pure economic negotiations, driven by the goal of wealth maximization alone; whereas the latter embody negotiations with final consumers, who essentially buy a certain good for the role it plays in satisfying needs intimately connected to the development of human personality.

The implications of such theoretical distinction are significant. First of all, the two types of contract differ as regards their content, i.e., the types of goods negotiated. Economic contracts involve inputs\(^3\), whereas

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\(^3\)
immediately satisfactory contracts find themselves at the “end of the chain”, since the exchanges they engender are not instrumental to further exchanges or, in other words, the goods traded are not expected to form part of future transactions.

A second difference can be sought in the goal the parties pursue by entering a certain transaction, which, in turn, reflects a certain type of behaviour. In instrumental contracts, the goal is mainly that of earning a certain profit, e.g. as a result of the transformation of a plurality of inputs into a certain output (which could, in turn, represent just another input to the buyer, if it will be instrumental to the conclusion of further exchanges on the market). Being the goal that of obtaining an economic profit, agents entering such transactions generally adhere to the paradigm of rationality, which represents a founding assumption of economic theory, and their actions may be seen as the results of cost-benefit analyses. On the other hand, parties in immediately satisfactory contracts are led by the will to satisfy a certain human need, rather than a general business goal as it happens as to the former type. However, the scale of preferences, when it comes to ordering human needs, cannot always be rationally determined. For instance, sets of preferences may sometimes display “circularity” or prove incomplete. Therefore, immediately satisfactory contracts, being more likely to be concluded after irrational choices, could result in inefficient outcomes. The risk, in such cases, is that “[...] soggettive ragioni di efficienza” [subjective inefficiency reasons] could bring the final consumer closer to the contract “[...] senza farlo avvicinare al mercato (Sacco, De Nova, 2004).” [without bringing her closer to the market].

Pushing the afore mentioned behaviour-based distinction between economic and immediately satisfactory contracts even further, it could be inferred that the former are contracts between businesses, or Business to Business (which we have called B2B), whereas the latter necessarily involve individual people acting as consumers. 

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3 Inputs are, in this context, all goods which have not yet reached the stage of consumption and which are therefore traded in sight of the profit, which can be derived from their subsequent sale.

4 If A is worth more than B and B more than C, C might nevertheless be valued more than A. A typical example is that of a person which likes cookies more than chocolate and chocolate more than marshmallows, but, faced with the choice among the three types of sweets, picks marshmallows instead of cookies.

5 In assuming that businesses are led, in their decisions, by mere economic calculations, we are conscious that different doctrines, typical of business administration, exist, according to which businesses do not have merely economic goals, but also so-called institutional goals due to their particular role in society, which could lead to choices not fully justified on pure economic grounds. Nevertheless, we assume that the incidence of such institutional goals to be negligible for the purpose of distinguishing economic operations from immediately satisfactory transactions. To delve deeper into the theme of institutional goals, good introductory textbooks (unfortunately, both available only in Italian) are: Masini, C. (1979).
In consideration of the afore mentioned, the attitude of legal systems should be neutral as for economic contracts and non-neutral as for immediately satisfactory contracts. In fact, from a neutral point of view, i.e. without wanting to favour the interests of one or the other party, filling gaps in contracts where parties presumably have enough economic strength (and rationality) to pursue their interests is not justifiable. Nevertheless, it becomes appropriate when the legal system should not be neutral, i.e. in situations calling for an external intervention such as, for instance, B2C transactions, for the reasons already discussed above.

2.3. *Temporary truce and default rules*

Having distinguished which contracts should and which others should not be driven by the conception of “temporary truce”, it now seems time to extract a general principle for optimal tailoring of contract default rules.

Enforcing only the duties the parties have explicitly agreed upon is equivalent to introducing one single default rule: *given a certain judicial claim, if the duty the claim insists upon has not been expressly included in the contractual agreement, then the plaintiff’s request should not be implemented.*

Pushing such principle further, we believe it could be possible for the judge to *fill the gap with the rule opposite of the one the plaintiff asks for.*

Enforcing the rule opposite of the one the plaintiff wishes is different from the course of action proposed by Monateri (2003), i.e. non enforcement. Nevertheless, to our purpose, we presume, for now, that the gap is non-endogenous, i.e. not purposely left open by the parties as a *mechanism of self-enforcement* being duties on both sides non verifiable (and, therefore, non enforceable) by a third party. Therefore, being the gap not functional to mechanisms of self enforcement, then the results should be the same with either rule: if the claim will not be enforced by a judge, we may presume that, free from fear of “retaliation” on other aspects of the relationship, the defendant will not, on its turn, give in to the counterpart’s request, so that the

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6 Irrationality of choices.

7 “[…]if some aspects of performance are noncontractible, then it may be optimal to leave other verifiable aspects of performance unspecified. In other words, if contract must be somewhat incomplete […], then it is often optimal for parties to write contracts that are even more incomplete (Bernheim, Whinston, 1998)”.
rule ultimately applied by the parties will be the one opposite of the one the claimant had asked performance for.8

Moving back to our hypothesis, i.e. that the judge should enforce the rule opposite of the one the plaintiff wishes, such an attitude would then result in the introduction of an ever adaptive penalty default rule, i.e. a penalty default automatically tailoring itself to the request9 of the plaintiff.

Such a default rule would oblige the contracting parties to explicitly negotiate over a certain controversial point. This way, a party would bargain for the inclusion of a certain contractual clause only were the costs of contracting lower than the costs of non-contracting, i.e. of not being able to eventually require performance of a certain duty.

Introducing a positive default rule (e.g. limited or unlimited liability of the promisor) would, instead, entitle some parties to a certain right. Such default could then spare transaction costs to those contractors for whom the default rule were ab initio efficient10 and conversely cause inefficiencies to those other parties who would benefit from the opposite entitlement and who, being the negotiation costs for the opposite entitlement set at an average, can:

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8 We have decided to lead our analysis as though a judge were to implement the rule opposite of the one the plaintiff wishes, so as to be able to resort to the traditional instruments of default-rule analysis, in order to figure out the advantages of non implementing duties not explicitly included in contracts.

9 Introducing an ever adaptive penalty default would require the judge to approach the controversy as a “fatto economico (Monateri, 2003) “[merely economic fact], thus enforcing the rule contrary to the economic interest of the plaintiff and not simply contrary to what the plaintiff formally asked. The need to turn the judge into an economic mediator comes from the necessity to prevent the plaintiff from requiring satisfaction of an interest opposite of that, which she would economically benefit from pursuing, in order to obtain performance of the duty she really wishes were part of the defendant’s obligations. In fact, if the judge had to base his decision just on what formally asked by the plaintiff, rather than on what the plaintiff had an economic interest in claiming, there would be little effectiveness connected to an ever adaptive default, which would easily lend itself to abuse.

Furthermore, we wish to stress that turning the judge into an economic mediator, having to determine the economic convenience a party would derive, were the duty she asks performance of implemented, is compatible with the need of self-restraint by the legal system in dealing with economic contracts. In fact, the judge would not be deciding the content of the contract, whereas the justifiability of the plaintiff’s claim (which lies outside the contract).

In addition to that, the judge would simply have to determine whether the plaintiff’s claim, from the plaintiff’s perspective, is economically justified: such a duty, in our opinion, appears right more feasible than that of maximizing the surplus obtainable from cooperation and providing a reasonable division of the said surplus, which has more often been required from the judge from traditional Law and Economics. In fact, the judge should only have to collect information on the plaintiff’s economic profits, rather than on the profits both parties would obtain from the contract.

10 For instance, in the event of default entitlement to unlimited damages, promisees with high consequential damages would be spared transaction costs, since they could already rely on the rule which were, for them, more efficient.
would eventually opt for bearing some inefficiencies, not being “hurt enough individually (Ayres, Gertner, 1989)” to have an incentive to negotiate. On the contrary, the advantage of an ever adaptive default rule, is that it could foster separating equilibria, “which reduce the inefficiencies of strategic pooling (Ayres, Gertner, 1989)”. Such equilibria, in fact, would separate parties on the basis of the relative convenience, for them, of negotiating or of non negotiating for a certain entitlement. Therefore, the “price” of a particular clause could be determined competitively, since, on a rough approximation, parties opting for a similar clause will be led to that decision by similar cost-benefit analyses. Therefore, the negative externality induced from parties contracting at a subsidized price on parties bearing mild inefficiencies because of an original entitlement of a certain right could be eliminated through the adoption of an ever adaptive penalty default rule.

Ultimately, the achievement of separating equilibria would simply lead to the creation of separate markets for separate goods (since different entitlements could be regarded as such). From this standpoint, it seems utterly logical to allow businesses to freely bargain for contractual entitlements, just as it seems appropriate to let them bargain for the colour of a shipment of chairs.

2.4. Sharpening further the ambit of application of an ever adaptive penalty default rule.

Having outlined the advantage obtainable from the introduction of an ever adaptive penalty default rule, the types of contract to which such an approach could successfully be applied have to be further specified. In fact, inducing parties to bargain for any given clause could bring about a dramatic increase in transaction costs. It may therefore be objected that, although an ever adaptive penalty default rule would make transactions for single entitlements more efficient and eliminate some externalities, it could conversely diminish the number of contracts being concluded, with a consequential loss of efficiency by the economic system in general. In other words, although utter contractual freedom could prove efficient in some cases,
doubts may arise as to whether it would ultimately be the best solution, i.e. whether the negotiations not being concluded because of a high level of transaction costs and the consequential loss of efficiency wouldn’t balance out the benefits obtained by the parties that have instead managed to effectively reach an agreement.

In consideration of the above, such an observation calls for a further specification of the assumptions we have made as regards the type of contractual relationships to which an ever adaptive penalty default rule could and should be applied. Previously\textsuperscript{13}, B2B contracts have been defined as contracts concluded by parties acting as economic operators. The universe of economic operators does however include subjects with greatly divergent characteristics; in particular, economic operators may differ as regards their relative market power. Therefore, it seems appropriate to draw a further distinction in what we have previously defined B2B transactions between those binding parties with equal market power, which we will name “strictly B2B” contracts, and those between parties, one of whom may benefit from a relevant disequilibrium of contractual power (which often comes together with little market power\textsuperscript{14}), which we will name B2b (big business to small business) contracts.

Being this said, it is our opinion that parties in “strictly B2B” contracts should face a low enough level of negotiation costs, which could be approximated to zero.

Such an assumption can substantially be motivated by what we have called multiformity\textsuperscript{15} of business relationships. The fact that multiple interests bind the parties can, in our opinion, engender a lock-in phenomenon: parties could be forced to avoid opportunist behaviour (which dramatically increases negotiation costs), being the pool of interests that bind the parties describable as a series of “investments” they exchange, the failure of one of which may consistently reduce the value of all others. Such a lock-in effect could then spur parties to confront themselves on purely economic matters, minimizing the losses due to strategic concerns, aimed at “transferring” possible gains from one side to the other.

\textsuperscript{13} See supra §2.2

\textsuperscript{14} The definition of disequilibrium of market power should, to our purpose, include only those situations in which, before entering negotiations, one of the parties starts out with a heavily limited bargaining power. This could be the case of a business dealing with a monopolist supplier. Conversely, all those situations in which the disequilibrium of contractual power arises only after the parties have entered the contract, depending on the nature of such contract or of the performance, should not be included in the definition of unbalanced market power. Typically, we are talking of contractual disequilibria due to specific investments, with which we will later deal.

\textsuperscript{15} See supra §2.1
2.5. **Specific investments**

A crucial point which deserves attention is that of “incomplete contracts”\(^\text{16}\), i.e. of contracts “[…] i cui termini siano osservabili dalle parti contrattuali, ma non verificabili ed eseguibili […] con certezza ed in via forzosa, da terze parti (un giudice ed un arbitro) nel caso in cui sorgano controversie tra i contraenti (Nicita, Scoppa, 2005)” [whose terms may be observed from the contracting parties, but which are non verifiable and enforceable with certainty and imperatively, from third parties (such as a judge or an arbiter) in the event disputes arise between the parties].

The presence of non enforceable aspects of the contract becomes crucial to our discourse in the event of unilateral specific investments. In fact, in situations in which one party alone undertakes specific investments, engaging on contractual terms which may not entirely be enforceable, exposes herself to a hold-up threat by the counter party. “Il soggetto che effettua investimenti specifici in presenza di contratti incompleti si espone, in conseguenza di ciò, al rischio di rinegoziazione o di interruzione della relazione contrattuale (Nicita, Scoppa, 2005)” [the party making specific investments in the presence of incomplete contracts exposes herself, as a consequence, to the risk of renegotiation or interruption of the contractual relationship.]

Such problem may in fact deter the specific investing party from performing, since the return from such an investment may not yield the benefit the party wants to obtain from the transaction.

The situation is only slightly different when *both* parties perform specific investments, in which situation, room for opportunist behaviour still exists from the party performing as last

Having thus introduced the problem, it is now time to leave our simplifying assumption\(^\text{17}\) that incompleteness be only engendered by the parties’ disagreement on certain points\(^\text{18}\), leaving room for the possibility that incompleteness may as well be an endogenous remedy *willingly* set up by the parties in order to enforce non verifiable aspects of the contractual relationship, by adopting flexible responses (Bernheim, Whinston, 1998).

Were a judge to enforce gaps with an ever adaptive penalty default in such circumstances, then could the implicit equilibria of the contract, silently

\(^{16}\)This definition of incomplete contracts differs from the one adopted by majoritarian literature, as well as from the one which has been adopted insofar, since we assumed that incompleteness were not resorted to as a method of self enforcement, given the non verifiability of certain aspects of the contractual relationship.

\(^{17}\) See *supra* §2.3

\(^{18}\) And thus, should be considered a natural outcome of the competitive contracting process
wanted by both parties and just not put down to writing in order to allow for efficient adaptability, be put at risk.

The best solution, in such cases, would still be, anyway, the general course of action proposed by Monateri (2003): non enforceability. Having limited the ambit of application of our theories to “strictly B2B” contracts, it is then presumable that, given equality of contractual power, the parties would manage to *ex ante* devise a series of remedies, aimed at limiting renegotiation possibilities without exposing the contractual relationship to external intervention, which could potentially yield the effect of breaking the temporary truce.

Such a solution could then leave the parties free to choose when to restrict their *ex post* contractual freedom, when the risks of renegotiation and opportunism are large enough (Nicita, Scoppa, 2005), and when to leave room for flexible responses to each other’s behaviour (Bernheim, Whinston, 1998). In other words, given similar contractual power at the moment of the agreement, virtually all future disequilibria due to the nature of performance may be *ex ante* effectively corrected.

3. Default rules and Pareto-efficient allocations.

Insofar have we discussed under which conditions sheer contractual freedom may still be recognised full room for play. In this section, instead, we will be discussing the advantages, in terms of possibilities of wealth production, of adopting the autonomy-oriented approach described above.

We have restricted the scope of our theory to “strictly B2B” contracts. By nature, such negotiations, above defined instrumental transactions, are often aimed at the exchange of productive inputs *instrumental* to the increase of society’s wealth. The result of giving free play to market forces would, in such a context, as already proposed, induce separating equilibria based on the relative efficiency of contracting choices. In other words, a contracting party will disclose certain information in order to have a particular clause included in the contractual agreement, only if the disadvantages deriving from the disclosure of such information, in terms of (i) increased contractual price and (ii) increased possibilities of opportunism from the counterpart (which would require further contracting), do not exceed the (iii) costs of not including a

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19 An extensive treatise of such remedies can be found in Nicita and Scoppa (2005). In case of specific investments, the length and frequency of contractual relationships in so-called relational contracts, exclusive sales agreements, penalty clauses, exchange of hostages (i.e. assets) or liquidated damages clauses are the main solutions.

20 See *supra* note 8.
certain clause, in terms of expected damage in case a certain unfavourable event came to existence. Coherently with our assumption of low transaction costs in “strictly B2B” contracts, however, the two elements parties would essentially balance out are only expected damages \(^{21}\) and increased contractual price \(^{22}\) (thus assuming costs linked to opportunism and negotiation of endogenous enforcement mechanisms to be negligible\(^ {23}\)). Overall, then, parties would negotiate for a certain clause only if it were for them convenient, on the basis of economic profits alone (again, assuming negligible transaction costs).

The consequence of this approach would be to render the “market” for contractual entitlements more competitive, letting the price of each entitlement be established from negotiations conducted by the subjects, and those alone, who effectively benefit from a certain entitlement\(^ {24}\).

By making contracts the sole rule between the parties (in “strictly B2B” transactions), then, contractors would be separated by their relative convenience to bargain for a certain rule, without being affected by either transaction costs (potentially distorsive of cost-benefit analyses) or strategic issues an original entitlement made by a default rule could bring about. Consequently, parties not wanting, after a rational cost-benefit analysis, a certain rule will be able to not have it included in their contractual agreement, whereas parties for which it represents an advantage to include a certain clause, will manage to do so: all in all, the resulting equilibrium will then separate parties on the basis of the choices which, for them, are better, and,

\[^{21}\text{Indicated above by (iii)}\]
\[^{22}\text{Indicated above by (i)}\]
\[^{23}\text{Indicated above by (ii)}\]
\[^{24}\text{It may seem apparently in contrast with the statement that prices for entitlements will be competitively set (which implies the concept of price-taking behaviour) the fact that, by implementing a competitive contracting process, parties would be given the largest possible freedom in determining “prices” for separate contractual clauses. Such prices will, in our opinion, as in reality, differ, even greatly, from situation to situation, being that of price taking behaviour in perfect competition an approximation based on the average of prices adopted on the market, but not a quantity which can be once and for all indicated. In consideration of the afore mentioned, then, price taking behaviour, although providing a good synthesis of the average equilibrium that comes to existence with respect to a certain good (since contractual clauses may just as well be looked as such), partially differs from reality, where “non sempre può esistere un prezzo di mercato, perché non esiste un mercato dove si negozino beni unici ed irripetibili; perché, accanto al mercato dotato di più ampia generalità esistono mercati sussidiari, cui accede un numero limitato di contraenti, e qui è naturale che i valori si alterino dato che si altera il rapporto fra domanda ed offerta;[…] (Sacco, De Nova, 2004).}^\]
since we assume that professional contracting parties base their decisions on rational cost-benefit analyses, businesses will receive appropriate contractual regulations depending solely on how efficient they are for them.

By allowing each party to do what is, for her, more efficient, such a competitive contracting process would enable each party to obtain what, on efficiency grounds, she needs, and leaving out what is not necessary: negotiations would be successful only when it is so optimal.

Therefore, assuming “strictly B2B” exchanges to be driven by private efficiency concerns alone, given the conditions necessary for the first theorem of welfare economics, which we have implied in limiting the scope of our theory of contractual autonomy (no externalities, no monopolies, no public goods and plurality of market operators), competitive contracting should bring negotiations on the market of inputs closer to Pareto efficient equilibria.

Given this theoretic point, States could, when possible, change the distribution of inputs on the market, in order to lead national economies to socially optimal sets of Pareto efficient equilibria. In other words, given freedom from contractual default rules in particular contexts, States could decide what sectors of their economies to develop the most, in response to an increasing logic of differentiation which globalisation and the growth of the “new rich” (China, India, Brazil) is making a pressing need in developed countries more and more.

To summarize, then, the advantages of sheer contractual autonomy in “strictly B2B” contracts should lay essentially in that:

a. without originally entitling a certain duty, parties will be forced, depending on their relative convenience alone, to negotiate for it.

b. despite the increase (which we assume negligible in “strictly B2B” contracts) in transaction costs, the effects of the contracting process would fall on the contracting parties alone, eliminating the negative externality brought about resorting to a positive default rule, which would instead allow certain parties to benefit from contractual rules at a price subsidized by the relative inefficiencies parties with different needs would have to bear.

c. the elimination of such externality implements a further condition necessary for contractual outcomes to lead to Pareto-efficient equilibria, opening new possibilities for public policy makers.

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25 In our opinion, when talking about “strictly B2B” contracts the number of transactions included in the spectrum of such category is still relatively ample.

26 An example of which may be found in the recent development of Italian textile or automobile industries.

27 A further advantage could also be that of eliminating strategic issues to do the “increased-wealth effect” (assuming slight risk aversion) which would modify the contracting parties’ starting values in the bargaining process. However, the in-depth discussion of game theoretic issues is beyond the scope of this paper.
4. Conclusions

This paper was born from a series of conversations between myself and Professor Monateri. Deepening the insights emerged from those conversations, there seems to exist a further field of analysis binding the theory of default rules with welfare economics.

What we have wanted to achieve with this article should be perceived, in our intention, as a schedule for future work, opening a new field of confrontation for law, economics and public policy theorists, in order to deepen the relationships, which we have here plotted amongst default rule configuration, equilibria in input markets and different countries’ differentiation possibilities.

Some questions, however, still remain open, the main of which is whether appropriate non-distorsive instruments could be devised in order to allow States to lead the process of differentiation of national economies, thereby providing efficient answers to the needs globally changing economic equilibria bring about.

Food for thought.
BIBLIOGRAPHY


*Other sources, which have not been cited in the article, provide, nonetheless, a more extensive coverage of several topics we have dealt with.*


