

## **Accommodation Mandates 2.0? The Distributive Impact of Personalizing Default Rules**

A response to Lior Strahilevitz and Ariel Porat's Article

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Will the personalization of default rules and disclosure in the law, through the use of big data, promote efficiency and distributive justice? I argue in this response that there are good reasons to think the answer is no. The idea of personalization of default rules in the age of big data carries with it some progressive promise, as it creates a better fit between individual preferences and needs and contract clauses. This could, theoretically, improve upon the current market reality in which some contractual clauses are determined by powerful corporations or by a remote regulator. However, I argue in this article, insights from law and economics literature about the distributive impact of accommodation mandates, and from political economy literature about the value of universal (rather than selective) regulation, should warn us that while some individuals may benefit, others, especially those belonging to socially and economically disadvantaged groups, will be harmed by it. Accordingly, the use of big data to personalize default and disclosure rules must take into account its potential to strengthen corporations and better-off individuals that contract with them and weaken the power of groups with weaker bargaining power such as consumers, employees, renters, and others that are protected currently by unpersonalized, universal protective legislation. The article concludes by pointing to some potential ways to do so.