

Theory of Legislative Placebo

Studies on the law-making process form a broad and diverse stream. Surprisingly, there is a lack of interdisciplinary research on certain practices that are supposedly dysfunctional and undermine the desired form of the law-making process. Studies have already focused on the bounded rationality of legislators, the political instrumentalization of the law, the influence of interest groups on law-making, and the organizational factors of drafting the laws. It is striking that there is an almost complete lack of studies which, from the perspective of the law-makers, emphasize the existence of rational reasons that drive them to deliberately enact imperfect or even ineffective legal acts. In the hope of following such a path, the presented project aims to direct the epistemic camera towards the very particular case of the law-makers' activities - the situation in which they enact legal acts which, to the best of their knowledge, would not archive the values that form the axiological basis of a given act.

In examining this particular phenomenon, we should take into account the political embeddedness of law. In a liberal democracy, those who have won the election work as political representatives of society and at the same time as law-makers. Moreover, they are professionals who focus on gaining political power, which influences their strategic decisions (as representatives and legislators). Consequently, politicians tend to engage in motivated reasoning and base their decisions on political considerations rather than on independent scientific evidence. Next, a number of other factors can also be seen as responsible for enacting various types of "lame" laws. In this line, the planned research aims to propose the theory of legislative placebo (LP), which addresses a specific kind of law-making activity, that is deliberately enacting ineffective laws. Thus, the overall project focuses on developing a comprehensive theoretical approach to the phenomena under study.

There are some important reason to study the deliberately enacting ineffective law in a more theory-focused way. The theory of LP would substantially invigorate the study of law-making processes. It would redirects the researchers' attention to those processes, structures, and triggers that are responsible for enacting legal acts that appear irrational, flawed and pointless, but which, viewed from the other side, could be interpreted as a rational way of dealing with the pressures and limitations faced by law-makers. Moreover, the presented approach directs the „epistemic camera” towards the social and psycho-social process (integrated by the perspective that focuses on the transformation of values in the political process) which explains the complex nature of legislative placebos. Next, the intended theory of LP would help to control law-makers and monitor law-making processes. The mere possibility of tracking legislative placebos would substantially upgrade the public discussions on the law-making process. The theory which enables us to identify the driving forces behind the implementation of legislative placebos could also influence the reforms of the political process in liberal democracies.