

Deliberate structural injustice through law

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Kati Rantala's recent article on silent stakeholders addresses the dilemmas in normative inclusive lawmaking that often overlook harsh realities behind the rhetoric.⁽¹⁾ Here, she explores structural injustice in law and its impact on silent stakeholders in subordinate positions, citing examples from Finland

In a much-cited passage, Iris Young states that structural injustice involves social processes that, within the boundaries of accepted rules and norms, place large groups 'under systematic threat of domination or deprivation of the means to develop and exercise their capacities,' while benefiting others in better positions (p. 52). ⁽²⁾ Building on this, Maeve McKeown introduces the concept of deliberate structural injustice, where powerful agents acknowledge groups disadvantaged by social structures and intentionally perpetuate the injustice for their own benefit. ⁽³⁾ Although these powerful agents have the capacity to change the situation, they choose to maintain it.

Next, I examine the role of law in contributing to the creation and persistence of structural injustice. Identifying the makers of law is complex, however. Civil servants typically design the concrete formulations, yet they operate under directives from the government, which is composed of politically chosen representatives. In addition, relatively stable administrative rules require consultation with all affected stakeholders and a careful assessment of impacts. However, since these are ideals rather than guaranteed realities, they allow room for power struggles. In the following, I introduce several mechanisms and consequences that this mixture of approaches can generate to the detriment of silent stakeholders.

Open political interests of the government

Political interests drive the legislative agenda when parties in power prioritize the creation of laws that align with their ideological goals and electoral promises. This focus can lead to the marginalization of silent stakeholders if their needs and circumstances do not align with the prevailing political narrative. Such prioritizations may even be openly expressed due to political reasons, and in these scenarios, silent subordinates and their spokesperson may find their circumstances overlooked.

Alcohol consumption in Finland has been a longstanding public health concern, characterized by patterns of binge drinking and high rates of alcohol-related harm. In a recent reform of Finnish Alcohol Law, the government justified the further liberalization of alcohol sales as a deliberate measure to support market actors while openly

acknowledging, referring to research, numerous harms the reform is likely to cause to heavy alcohol users, including serious illnesses, death, and violence toward others, as well as neglect of children.

Epistemic struggles favoring the most powerful stakeholders

Even though consultation [processes in lawmaking](#) typically favor those with significant resources and political and economic influence, this dynamic may create fierce epistemic struggles if those speaking on behalf of silent subordinates have visibility and voice in society. At times, this can lead to a seemingly favorable reform for the silent, particularly if the reform also sparks significant public debate. Nevertheless, the actual improvements may remain marginal and fail to fulfill the promises of lofty rhetoric about increased protection and welfare.

An example of this is the recent reform of the Animal Welfare Act in Finland, embedded with an intense debate between the meat industry and animal rights activists. ⁽⁴⁾ Animals, of course, are particularly silent stakeholders in lawmaking, but they have active spokespersons backed by large segments of civil society who are concerned about their welfare. Interestingly, by placing pressure on the legislators to respond to animals' circumstances, they appeared to be more politically influential than those concerned about heavy drinkers.

Good intentions with strong missions

Thus, civil society organizations may hold considerable power, particularly if the target groups they advocate for are politically regarded as vulnerable and in need of protection, and when no strong opposition exists, such as influential lobbyists with economic power. These organizations often aim to fight against injustice through legal frameworks. However, when the rights of certain disadvantaged stakeholders are prioritized over those of other disadvantaged groups, the situation may result in a skewed knowledge base, which, in turn, can lead to outcomes with no clear winners.

For example, a reform of domestic exclusion orders, designed to protect women from domestic violence, led to suicides among the evicted (typically men) and serious security risks for those being protected (typically women), among other harmful effects. ⁽⁵⁾ In the bill for the law, no risks to any affected groups were identified in the ex-ante impact assessment. Apparently, after many years, the topic remains sensitive, as the law has not been amended despite a thorough evaluation highlighting many adverse impacts.

Ineffective remedies to tackle discrimination

While specific laws exist to combat discrimination, exploitation, and inappropriate treatment by public officials, they often fall short in practice. These remedies require individuals to navigate complex legal systems to seek justice, which can be burdensome and inaccessible for many. ⁽⁶⁾ Victims of structural injustice face numerous barriers,

including a lack of legal knowledge, financial constraints, and fear of retaliation. Consequently, laws intended to protect vulnerable groups may instead exacerbate their subordinate positions, as access to justice is often beyond their reach.

The enduring fragility amid political dynamics

Even when laws are well-crafted to protect the wellbeing and rights of marginalized groups, their effectiveness is contingent upon societal stability and political commitment. Legal protections can be easily undermined by shifts in power, as new administrations may repeal or weaken existing laws to serve different agendas. This fragility underscores the precarious nature of legal safeguards, where privileges gained by silent stakeholders can be swiftly taken away, reinforcing their subordinate positions.

In conclusion, the interplay between lawmaking and structural injustice is complex. Political interests, consultation biases, knowledge gaps, ineffective remedies, and the fragility of legal protection all contribute to the continued marginalization of silent stakeholders. Addressing these issues to dismantle structural injustice demands a concerted effort to reform lawmaking processes, prioritizing inclusivity, transparency, and genuine consideration of all affected parties – though this may be more a matter of aspiration than a realistic expectation.

References

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