

The Normative Status of Legislative Initiatives

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This article discusses a quite new phenomenon: the Israeli Supreme Court, sitting as the High Court of Justice, grants normative standing to legislative initiatives. The mere existence of a bill, even in the preliminary stages before becoming a bill, may lead to delaying, dismissing or waiving petitions by the court. Normative analysis of this 'standing' acknowledges that it has a few eminent flaws, such as the uncertainty of the legislative initiative, the damage to basic values such as the rule of law and legal certainty, infringement of the petitioners' rights in the legal proceeding, and giving (too much) power to the state in HCJ proceedings. Simultaneously, the author argues that this standing has a dialogic nature. This dialogic nature (alongside other qualities such as efficiency and professionalism of the legislative process) makes this standing a valuable mechanism, in general. This article seeks to establish a theoretical foundation for a comprehensive analysis of this normative standing; and in light of that theoretical review, to offer criteria for a conscious, rational and uniform decision whether and how to take into account the influence of the legislative initiative.

Wheel of Fortune: Distributing Class Action Funds

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How should we distribute class action funds? This is a fundamental challenge in class actions, as the individual awards are too small to justify compensation to each and every member of the class. Courts have been struggling with this dilemma, prompting the Israeli legislature to amend the Israeli Class Actions Act in 2016. This article examines the current approaches and proposes an alternative solution. Its goals are threefold.

First, it offers a theoretical framework for evaluating class action dilemmas. The Israeli Class Actions Act specifies diverse purposes—access to court, deterrence, compensation, and efficient management. The article analyzes these objectives and shows that they are reflected, to varying degrees, in two perspectives on class actions—public and procedural. While both perspectives are manifested in the current practice, the Article shows that the Act mainly sought to advance the public approach and, as a corollary, the deterrence objective.

Second, the article provides a comprehensive survey of the current approaches to distributing class action funds. One popular solution implicates donations to charity through courts (*cy pres*). Embracing this approach, Israeli courts have channeled an immense amount of money to various organizations. The article shows that this and other solutions are deficient—some are administratively inefficient; others invite abuse of discretion; yet others entail suboptimal deterrence. The Article discusses the 2016 legislative amendments as part of the existing approaches, pointing to theoretical difficulties and showing that they are not fully complied with.

Third, the Article advances a new approach—holding a lottery to randomly distribute class action funds among the members of the class. By awarding more money to fewer, randomly-selected individuals, one can cut administrative expenses. The proposed solution rectifies other flaws that the existing solutions suffer from. It compensates the class and achieves deterrence. The use of random allocation shields against abuse of discretion and ensures that all class members are treated equally. Although the law, by and large, shies away from conducting lotteries, the Article reveals that random allocation of class action funds coheres with existing judicial practices. The Article suggests guidelines to implementing the proposed solution and outlines the types of cases most-suited to it. In light of the purposes of the Israeli Class Actions Act, the Article maintains that, as a departure point, courts should turn to the lottery solution in any class action that poses a fund-distribution challenge. Other approaches, in particular the common *cy pres* solution, are inappropriate.