

Foreword

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In his book *Law and the Limits of Government: Temporary versus Permanent Legislation*, Frank Fagan addresses several important questions concerning the timing of legal intervention and duration of laws. These are questions that are central to any modern economic theory of lawmaking. These questions had been considered in the previous legal and economic literature. Fagan's book adds a novel voice in this area of law and economics, addressing these questions from a novel perspective with an intriguing mix of theoretical and empirical analysis. The theoretical analysis isolates three fundamental strategic relationships: (i) between legislators and citizens, (ii) between legislators and special interest groups, and (iii) between current legislators and future legislators. Each of these three dimensions of the legislative process hinges upon the timing and duration of legal intervention.

Unlike permanent legislation, temporary legislation governs for a limited time and has a default time of expiration. Fagan builds on the existing literature on norms and self-compliance to show that the effects of temporary legislation can outlive the legal effectiveness of temporary legislation. After its expiration, temporary legislation can continue to produce effects. Fagan further considers explanations for the fact that a large portion of legislation is permanent, notwithstanding the transactions-cost advantages of temporary legislation in the face of uncertainty. One such explanation comes from the legislator vs. special interest group relationship. According to Fagan, legislators lack full information to make laws. Industries and special interest groups often privately hold information. Interest groups may lack incentives to reveal such information, because revelation could run against their legislative interests. Legislators therefore use a threat of permanent legislation as a strategy to induce interest groups to reveal information that they would not otherwise reveal.

Temporary enactments may fail to signal a strong enough commitment from legislators, however, and might not induce disclosure of private information by interest groups.

Fagan's analysis of tax laws provides an explanation for a different pattern of legal intervention, that is, one based on the relationship between present and future lawmakers. According to Fagan, on issues dealing with fiscal and financial policy we are likely to observe a more frequent use of temporary legislation. The reason is that by passing a temporary fiscal law today, current legislatures force future lawmakers to incur political costs by voting on an extension at a later date. By adopting temporary legislation, current lawmakers externalize political costs onto future lawmakers.

In this book, Fagan develops a multi-faceted theory showing under which conditions lawmakers might employ one or the other lawmaking strategy. The theory is tested with interesting empirical evidence. Using data taken from the 110th American Congress, Fagan shows that temporary legislation is more likely to become law than permanent legislation. Yet the magnitude of that likelihood varies across legislative committees. The variance, according to Fagan, demonstrates that the choice of temporary or permanent legislation is optimized around the pattern of legal intervention and its relevant strategic relationship.

The data is further employed to show that in some policy domains, older legislative sponsors prefer permanent legislation to temporary legislation, even in the face of higher transactions-cost. Fagan suggests that the evidence reflects the desire of older legislators to leave statutory legacies. Conversely, the data shows that younger legislative sponsors prefer temporary legislation to permanent legislation. Because temporary legislation is more likely to become law, that preference may reflect the desire of younger legislators to sponsor a greater number of passed laws generally, so that they might develop their careers and project competence to interest groups in future elections.

Despite its catchy title, *Law and the Limits of Government: Temporary versus Permanent Legislation* is not a good pick for casual or bedtime reading. Notwithstanding the general relevance of the topic, it is a dense and purely academic book. Its findings, however, illuminate the reality of political rulemaking and will hopefully stimulate a different popular understanding of the peculiar patterns of lawmaking observed in modern legislatures.