Goals and Measures of Legislation: Evaluation

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This article assesses a process for evaluating the connection between legislation and its goals (or intended effects) in a certain community. In particular, the purpose of the chapter is to clarify both the terms of and modalities through which the connection between ideals (goals) and evaluation of the final product (measures) of a piece of legislation is created. Three main aspects of legislative goals can be relevant to the evaluative process: the structure of the legislative goals, their function and their location. The structure of the legislative goals comprises three ideal-typical categorisations: where the legislative goal is intended to be realised (positioning), when the legislative goal is intended to be realised (perspective) and how the legislative goal can be traced (visibility). The functions of the goals of legislation can be divided based on a chronological criterion (and can be subdivided between preliminary expectations and final expectations) or by assessing where the intended impact is located in time (the micro-, meso- and macro-functions of the legislation). The third and final perspective in evaluating the goals of legislation involves their location, ie considering the list of documents that can be relevant (as either an exhaustive or an open list) and examining this material using either traditional or non-traditional analytical instruments.

I. Introduction

Legislation is not an object with a value in and of itself; it is not something that can be evaluated regardless of the premises or consequences, as can be the case, for instance, for the welfare of a society. The essence of legislation lies primarily in its function as a tool which various actors (primarily political actors, but also public agencies, judges and so on) use to implement certain

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ideas, or ideal visions, in a certain community of people. This designation of legislation as a tool means that it cannot be evaluated as being 'good' as such; it must be evaluated in respect of the results the legislative process is intended to achieve (ie the original intentions of the legislators) and those that it actually has achieved (ie whether or not the results correspond to the original intentions). In other words, the essential component of evaluating the quality of legislation is its relational nature: putting the ideas of a legislator, for instance, in relation to its concrete results (ie in terms of concrete changes in the society).

In this respect, the overall aim of this paper is not so much to discuss the criteria used to assess what is traditionally defined as the 'internal' quality of legislation – namely, all the technical or drafting qualities of the legislative acts per se (eg clarity, consistency, their efficient and timely production, or their consistency with basic legal principles). Instead, the focus here is on evaluation of the 'external' connection between legislation and its goals (or intended effects) in a certain community. Moreover, the goal of this paper is not primarily to improve this connection between goals and measures of legislation. The task is much humbler, but to some extent more fundamental – namely, to clarify both the terms of and modalities through which the connection between ideals (goals) and evaluation of the final product (measures) of a piece of legislation is created. This analytical approach to the issue can be considered fundamental because, by clarifying the terms of the discussion (eg what a legislative goal is) and the way these terms relate to each other, it is possible to establish the operative platform and methodological tools needed to investigate and evaluate legislation in different countries within a common conceptual framework.

For this reason, this paper focuses on three main aspects of legislative goals which can be relevant for evaluation: the structure of the legislative goals, their function and their location.[1] At the same time, while distinguishing these aspects of the goals, each of the three sections of the paper will also clarify how such features affect (and sometimes determine) the kind of eval-

[1] These three features are ideal-typical points of observation of the legislative process; in reality, they tend to overlap and interrelate. As to potential interrelation and overlapping, one should consider (as is presented below) such aspects as the natural correlation between the visibility of legislative goals (section II) and the paths to be taken to find these very goals (section IV). However, for all the ideal-typical constructs, the elucidation of these features can be helpful when dissecting and tackling the extremely complicated issue of identifying and measuring goals of legislation.

uative criteria one should use to measure the final product of the legislative processes.

II. What a Legislative Goal is Not

Before beginning a proper investigation of the various aspects of legislative goals, it is necessary to define the fundamental difference between 'goals' and 'effects' of a piece of legislation. In both public debate and scientific discussion, these two terms are often erroneously used as synonyms to indicate the impact that legislative measures have, or could have, upon a certain community and/or legal system. However, this practice is incorrect because the two terms refer to two different phenomena associated with the legislative process.

This distinction between legislative goals and legislative effects is based on a distinction made in the socio-legal literature (and the sociological literature in general) between 'function as purposes (or goals)' and 'functions as effects'. To summarise this roughly, a distinction has been drawn between functions of law as the *effects* or actual consequences of the law (or a specific branch of law) on a community ('what law does') and the functions of law as the purposes or *goals* the law is intended to have in a community ('what law is thought to do').[2] For example, the function-effect of labour law can be the maintenance of existing economic forces in the labour market (eg employer associations and trade unions), whereas the function-purposes are the promotion and defence of all individual employee rights.

By shifting this distinction into the world of legislative studies, one notices an interesting feature: while legislative goals somehow indicate the modifications that legislators aspire to produce, the effects of legislation in general denote the modifications that legislative acts bring about or are capable of bringing about in a community or a legal system – regardless of (and sometimes in contrast to) the original aspirations of the legislative bodies. In other words, while the goal of legislation points only to the intended effects of the law making ('what law is intended to do'), effects can (and often

[2] For an example of the terminological confusion between 'functions as purposes' and 'functions as effects,' see, eg, H Hansmann and U Mattei, 'The Functions of Trust Law: A Comparative Legal And Economic Analysis' (1998) 73 *New York University Law Review* 472.

do) also include the unintended consequences ('what law does', which often takes place instead of or regardless of the legislator's original goals).[3]

For example, in social-democratic Sweden, the goals of legislating on the matter of equality in labour relations have always involved the promotion and defence of all individual employees' right of not being discriminated against because of gender or race. However, the effects – in particular, through the 'narrow' application by the labour courts – have been the preservation, as much as possible, of the right of the individual employer to determine the structure of his or her working organisation, while leaving the equality goal to be reached through mass media (eg through boycott) or political pressures (eg by denying to private companies the possibility of entering into contracts with public agencies).[4]

III. Structuring the Legislative Goal

Once the distinction between legislative goals and legislative effects has been clarified, the first essential task is to provide a definition of a 'goal' of legislation, in the sense of the intended effects of the legislative law-making process. There are three potential ideal-typical categorisations that can form the structural framework of such a definition: where the legislative goal is intended to be realised (positioning), when the legislative goal is intended to be realised (perspective) and how the legislative goal is traceable (visibility).

The first categorisation deals with the positioning of the goals of legislation either outside or within the legal system, a distinction that to a certain extent tends to overlap with the distinction between goals and instruments of legislation. In this respect, a necessary analytical step would be the distinction between the goal of legislation as intended outputs and the legislative goal as intended outcomes.[5] In this context, outputs are the intended impacts of the legislative measures in the legal arena where the process itself has taken place

[3] See R Cotterrell, *The Sociology of Law: An Introduction*, 2nd edn (London, Butterworths, 1992) 72–73.

[4] This 'gap', at least from the labour-union perspective, between purposes and effects in labour law has been particularly pointed out by critical legal theory. See, eg, KE Klare, 'Critical Theory and Labor Relations Law' in D Kairys (ed), *The Politics of Law: A Progressive Critique*, 2nd edn (New York, Basic Books, 1990) 64–69, 80–81.

[5] This separation of outputs from outcomes is actually an adaptation of the results reached through a long series of studies developed in political science. See, eg, FG Castles, *Comparative Public Policy: Patterns of Post-war Transformation* (Cheltenham, Edward Elgar Publishing, 1998) 248–92.

(eg changes of the legal system concerning hiring procedures). The outcomes of the legislation mark the intended effects that such impacts have on the surrounding environments (eg changes expected in the concrete behaviours of employers). It is important to distinguish between goal as intended outputs and goal as intended outcomes in order to understand that, sometimes, a single intended legislative output is created in order to produce multiple and diverse legislative outcomes. For example, the change of a single regulation within the financial market (a single goal-output) is produced with the intention of stabilising the internal financial market, increasing the trust that the public places on the financial system as a whole, and gaining legitimacy in the international arena (several goal-outcomes).

On the contrary, legislators sometimes produce several coordinated changes in the regulatory landscape, ie several legislative outputs, in order to generate a single outcome in the community. For example, legislative bodies can enact several legislative measures to affect the taxation law (by granting certain taxation benefits), administrative law (by limiting public procurement) and corporate law of a country (by having a legislative say in corporate governance) – all done to promote a more gender-equal structure in the board of directors.

As to the second categorisation, this type of structuring of legislative goals springs from the perspective adopted while investigating and evaluating these goals. The second evaluation platform looks at the outputs and outcomes in relation to time. In this respect, one can distinguish between a diachronic dimension of legislative goals (when observing them from their placement in a specific period in a certain context) and a chronological dimension (when looking at the goals from a more in-time perspective).

The diachronic dimension indicates that the evaluation of a certain legislative goal is focused on a specific, narrow period of time, both within and outside a certain legal field. Using a military metaphor, this can be defined as the tactical goal of the legislation; an example would be the goal of lawmakers to put the financial reporting of larger corporations under public scrutiny by having the companies' annual reports controlled and approved by a state agency. All that is needed to evaluate the goal from a diachronic perspective, eg during an evaluation of the impact assessment, is to connect the intended outputs (or outcomes) behind a certain act (eg the goals expressed in the parliamentary discussion or in the preparatory works of this specific act) to the actual outputs (or outcomes) that the act has produced. The advantage of using the diachronic dimension in evaluating a certain legislative act is the

relative facility in performing it, due to the relative facility in tracing both the intended goal and the actual effects. However, this kind of evaluation can be used only when evaluating the goals of 'focused legislative reforms' – changes in the regulatory regime that tend to be limited in time (ie where their actual results can be evaluated within a very narrow period of time) or in scope (ie the reform does not significantly affect surrounding regulatory regimes).

There is also a second possible perspective from which to evaluate the legislative measures, a point of observation that can be defined as 'chronological' because it tends to observe the measurement of legislative goals with respect to a timeline. From this chronological standpoint, the goals of legislative work in a certain area should encompass the broader intent of a group of legislative measures, over time and upon a certain area. In this respect, the chronological dimension of these legislative measures tends to overlap with the investigation of the legislative policy that presides over the regulatory field under observation. Using the previous metaphor, the chronological dimension then tends to force the observer to move to higher ground and look instead at the strategic goal of the legislation in a regulatory area. For example, this long-range vantage point can lead to investigation and evaluation of the goal behind multiple, coordinated legislative measures which result in increasing direct intervention of state agencies in matters of financial-market regulation.

It thus appears quite natural that investigating the overarching goal of a certain reform is advantageous in that it offers a more comprehensive image of what the legislative body is aiming to achieve; the process connects all the dots (ie specific legislative measures in specific legal areas) on the law-making map. However, defined as such, the chronological aspect of legislative goals is naturally associated with problems stemming from their being overarching and problems that arise over time. The overarching aspect means that the chronological structuring of legislative measures tends to assume that there is always a 'grand goal' behind each legislative measure. In this way, it tends to bypass legislative measures that are intended to have only a limited impact, ie all new regulatory provisions directed at offering ad hoc solutions. One example would be finding the goals of specific legislation designed to deal with specific natural disasters (eg legislative measures directed to postpone the collection of income taxes in an area afflicted by an earthquake) or unexpected financial crises (eg a legislative act directed to nationalise a bank in financial trouble).

Secondly, if looking to their chronological structure, the evaluation of legislative goals can present a problem connected to their 'over time' character. This broader approach always entails the risk that, in evaluating a legislative reform, the analyst will reconstruct a unique goal ex post by artificially connecting various legislative measures, which in reality are expressions of different (and often conflicting) goals intended by the different legislators. For instance, evaluating the goal and measures behind legislative reform in higher education can be an impossible task. For several complex historical and cultural reasons (at least in Western countries), attempts at legislative reform of higher education often comprise an inconsistent puzzle of partial reforms (eg some reforms through parliamentary acts and others through governmental decrees), made by different actors (eg different parliamentary majorities during a period) with different (and conflicting) goals (eg increasing student participation v strengthening ties between education and markets).

The third categorisation needed to structure a common investigative and evaluative platform for defining the goal of legislation involves evaluative tools around the visibility of legislative goals. Visibility refers to the capacity of an external observer to determine the position of the goal of a new or existing statutory regulation, in particular with respect to what are traditionally considered the legally relevant documents. Based on this idea of goals' visibility, one can trace two major ideal types of goals. The first one is the patent goal: these are the goals of legislation that have been formally endorsed by the legislative agencies and therefore are clearly traceable in the very legal (or quasi-legal) documents that are connected to the process leading to the enactment (or rejection) of certain legislative provisions. For instance, patent goals can be evaluated by looking at the legal texts, including the preambles, or by tracing them back to the preparatory works and all the official documents recording the parliamentary debate behind a certain legislative process.[6]

The second ideal-type of goal, based on goal visibility, is the hidden goal: this is the goal embraced by the legislative players, but not in a formal way; hidden goals are not present in directly relevant legal or quasi-legal documents. Instead, this type of legislative goal tends to be traceable only by

[6] It is worth mentioning that among the documents where the patent goals are traceable, one should consider both the legal documents connected to the legislation (eg travaux preparatoires, explanatory memoranda) and those instances where the legislation itself actually sets out the goals (eg the preamble to legislation).

exploring non-legal documents and material. For instance, the goals of a legislative regulation can be hidden in the text of debates in general assemblies (often in a minister's oral presentation of a bill); they can also be reconstructed and/or discovered through qualitative interviews with law-making officials or by consulting the press releases published by the political parties in connection with the promulgation of a certain act.

In this respect, it should be pointed out that coexistence and even tension are qualities that can characterise the relationships between goals with different visibility. Contradictions and even conflict between patent goals and hidden goals endorsed in the same legislative process can be quite common – a situation created by poor legislative drafting, for instance, or by extensive politicisation of the legislative issues at stake, or simply by contradictory political goals (where a compromise around a legislative act is reached, but the different legislative actors aim at conflicting goals based on the same text). For example, a political party's press release can reveal the 'true' (or hidden) goal (limiting the immigration quotas for people coming from certain countries) of a legislative reform (increasing the fees for obtaining a visa) with a different patent goal (raising revenues to cover public agencies' increasing costs due to the mounting immigration). At the same time, tension may exist among patent goals of the same promulgated act; legislative regulation of penal procedure may be carried out with the goal of having 'swift and efficient' trials, while also having the explicit task of offering comprehensive and in-depth legal protection for the accused.[7]

To sum up, the first step in evaluating legislative goals is to look at their structure. This can be determined by positioning the goals (as outputs in the legal system or outcomes in the areas surrounding the legal world); determining their time framework (as the product of a diachronic process or in the tracing of a longer chronological path of several changes in regulatory regimes); or defining the visibility of the legislative goals (whether they are explicitly stated in legal or quasi-legal sources or are somehow hidden in legally irrelevant documents).

[7] It is worth noting that the internal conflict among different patent goals may be resolved by the 'practical application' of the enacted legislative regulation, ie by having the judicial bodies and/or the public agencies (through various legal interpretative tools) favour one goal over the other. In other words, conflicting legislative (and constitutional) goals are the typical parameters for a balancing test.

IV. The Function(s) of the Legislation and Its Goals

The second aspect through which it is possible to evaluate the policy and goals of legislative processes concerns the function of the legislation. In tackling this complex question, two fundamental (even philosophical) issues must be confronted by all legislative studies. First, one should question whether legislation, or even law in general, needs a goal.[8] For many legal scholars, such as those applying all the various critical approaches, the law – and consequently its creation – has a function (eg the legitimisation of the elite's power), but lacks a goal (eg it is simply a show for the masses). In other words, for many scholars (and for some of the people working within the legislative process, such as the representatives of certain political parties), the presence of a function of law-making does not necessarily require the law-making to have certain goals.

With regard to the second philosophical question, even if one argues that the law and its legislative making must have a goal, this standpoint leaves the door open to another (and ideologically deeper) issue: what are the reasons, or, more accurately, the arguments, that support the idea that each piece of legislation must have a goal to pursue? The answers to such a fundamental question tend to fall across a broad spectrum.

At one end of the range are those claiming that legislative processes are 'naturally' goal-oriented. This is the 'structural' argument. For these persons, every law-making cycle is a process requiring a direction, whether explicit (eg in the preparatory works) or implicit (eg in the hidden agenda of a political party). At the other end, others maintain that goals belong to the legislative process because this process is part of a broader environment. This is the 'institutional' argument. For instance, the legislation is necessarily part of a broader context of beliefs (in particular, in the political arena) and the primary objective of these other environments (eg the political party) is the very implementation of these ideas upon a certain community through legislative measures.

Irrespective of the position one takes in these philosophical questions, if one shifts one's attention to the investigation and evaluation of the function

[8] For instance, as pointed out by Max Weber, and more recently by Niklas Luhmann, the very goal of legal systems is to somehow 'stabilise' the element of uncertainty that is typical of non-legally regulated relations among actors. See, eg, N Luhmann, *Law as a Social System* (Oxford, Oxford University Press, 1994) 148, 152–53; M Weber, *Economy and Society: An Outline of Interpretative Sociology*, ed G Roth and C Wittich (Berkeley, University of California Press, 1978) 34.

of legislation, it is possible to distinguish at least two major ideal typologies according to which one can consider the functions of legislative work in relation to its goals. In other words, one can evaluate the goal of a legislative process according to two basic functional parameters: time and intended impact.

The first typology focuses upon the time of consideration when evaluating the function of legislation. On the one hand, there are the evaluations of the function of law in relation to its preliminary expectations: these are assessments of the role expected to be played by new legislative regulation (in a certain legal system and/or in a certain community) as soon as it becomes valid law, ie as soon as it acquires the formal validity of statutory provision. In particular, such preliminary expectations of the function of legislation can be increasing (or establishing) the addressees' political legitimacy, or the legal legitimacy of law-making agencies and/or of parties sitting in national assemblies. For example, the preliminary expectation of a legislative measure allowing state intervention in the banking system could be that the legislation will guarantee the solidity of the national financial market towards the stock market's operators (regardless of whether or not the state will actually intervene in the near future). A preliminary expectation may also be seen in the general effects of (good) legislation, such as legal certainty or legal predictability, as well as adequate statutory interpretation. For example, the immediate expectation of a legislative provision clarifying certain terms of a previous act could be that the provision sends a clear signal to the public and other legal actors that the political arena intends to clearly limit the discretionary power of judicial bodies (regardless of whether judges will then adhere to this or instead persist, for instance, in their activist approach).

On the other hand, each legislative law-making process is imbued with final expectations, ie the function that the legislation will have when it becomes law. In other words, the law will concretely affect the behaviour of the addressees. In this respect, the observer's attention will then be drawn to evaluating the kind of function the legislative act will have when it has (or is going to have) a concrete impact upon the behaviour of the community and/or the legal actors. The issues of statutory interpretation or those of Regulatory Impact Assessment can be considered as the traditional instruments for investigating and evaluating the final expectations of a legislative measure. Using the previous examples, the final expectation of a legislative measure allowing state intervention in the banking system could be that the measure will legislate an area previously left to other kinds of regulation, such as self-regulation or transnational law. As to the other example, the final

expectation of a legislative provision clarifying a previous act can be that the provision will fulfil the 'true intentions' of the legislator, that is, achieving the results intended by the drafters of the act 'under attack' by judicial activism.

The second typology that can be used to investigate and evaluate the goals of legislation is based on the areas of intended impact of the legislative product, namely the extension of the field that the legislation is intended to affect. In this respect, and looking at it from a legal actor's perspective, one can observe how the goal of legislation can be intended to have a micro-function, a meso-function and a macro-function.

The micro-functional goals of legislation refer to the goals of certain legislative measures that are intended to influence a specific legal area; in other words, in the evaluation process of the legislative goals, attention is focused upon how, and the extent to which the legislative measures are intended, to change a certain part of a regulatory regime. For example, looking at the regulation of corporate law, a micro-functional goal of a country's new statutory provision cold be the introduction of a requirement on corporations: in order to be registered as incorporated and to have headquarters there, these companies must ensure that at least 30% of the directors on the board are women.

Meso-functional goals are legislative aims intended to affect an entire legal area; these goals tend to identify the changes that are directed at modifying an entire regulatory regime (or at least a substantial part of it). Examples include legislative measures which affect the entire structure of corporate law by allowing public agencies to have a say in all areas (eg the internal configuration of corporate governance) which traditionally have been considered by the legal world as being the exclusive domain of the private parties concerned.

Finally, the macro-functional aspects of legislative goals point out the intended effects that lawmakers plan for society at large; in this respect, measuring this type of goal implies the evaluation of not only the outputs of the legislative process (ie how the process is intended to affect the legal landscape), but also its outcomes (ie how the legal changes are intended to affect the world surrounding the legal field). This can be the case, for example, of a new corporate law: imposing a quota on female membership in the board of directors and thereby changing the corporate governance regulatory regime also aims in general at encouraging gender equality on the higher levels of the corporate world.

Before concluding this section, it is necessary to observe that not all legislative measures present goals that are intended to cover all three (micro-, meso- and macro-) dimensions of the legislative function. Not all legislative processes are set into motion with the intention of changing a certain legal area, the entire regulatory regime and the world surrounding the law. By evaluating legislative measures, it is sometimes possible to observe how goals in legislation are constructed with the intention of changing only one functional dimension. For instance, legislation on technical issues of civil procedure often have an intended impact only at the micro-level, for example to make the procedure smoother for the parties in the process or in terms of offering a better opportunity for one of the parties to expose his or her claims. It is also common for legislative processes to aim at changing only two functional dimensions. For example, so-called framework legislation is often intended by its very nature to have only meso- and macro-functions, while giving other actors (mostly public agencies) the task of setting the micro-goals via other regulations than statutory provisions.

V. Locating the Legislative Goals

The third and final aspect of evaluating the goals of legislation has to do with determining their location, ie where these goals can be found. Although it might seem trivial, there are some fundamental normative questions that must be answered before investigating and evaluating the goals of a piece of legislation: which documents or material should the legal actor or legal scholar consult to find the goal of the legislation? In other words, a preliminary step in the evaluative enterprise involves creating a list of document types that can be considered fundamental for grasping the goals of a legislative regulation. For example, can the preparatory works be considered as a reliable source, or should one also consider the records of the parliamentary debates?

In this respect, it is very difficult to establish a definitive list of documents, because this depends very much on the legal system under consideration and the legal culture dominating it. For instance, certain legal systems (like the Nordic ones) give the preparatory works equal status with the legislative acts, whereas for others (eg Italy) the preparatory works play a more limited (if not insignificant) role when it comes to the enterprise of identifying the goals of the legislation. However, despite these differences, it is possible to at least set

some operational parameters, ie some criteria for organising the very process of where to look for the legislative goals.

The first operational parameter has to do with the very nature of the list of documents and material that could be relevant in the search for legislative goals. One must consider whether it is possible to present an exhaustive list of documents and materials that the legal actors should use. For example, an exhaustive list would be the one offered by a legislative act which, in its preamble, explicitly and specifically indicates the goals or documents in which the legislative goals of this very text can be found. Another example is the use of decisions by supreme courts in which the judges specifically 'reveal' the legislative goals of a certain act.

The alternative to this operational parameter is to consider a group of documents and materials as an open list of sources in which the goals of legislation are traceable. The data indicated in the list would then tend to have the value of a guideline rather than a normative (or quasi-binding) status towards addressees and public agencies. The open list of documents would suggest possible sources where the goals of the legislation could be found and the starting point for goal evaluation. For example, when lacking a clear normative indication (from either the legislators or the court's judges), it is common to rely on legal scholarship, which very frequently includes the goals of a certain piece of legislation in its analysis. Similarly, decisions taken by lower courts can be used to sketch an open list of legislative goals.

Somehow overlapping this typology of how to find legislative goals is the second possible classification of documents and materials used to define these very objectives. In this case, the criterion for building up a platform from which to start evaluation of legislative goals is the perspective (or, rather, the analytical tools) applied by the evaluator for the task.

In particular, more traditional analytical instruments may be used by legal actors or legal scholars, ie instruments included in the history of Western legal thinking as primary tools for discovering the will of legislative bodies. Such is the case, for instance, in the investigation and evaluation of legislative goals based on the 'discovery' of the pursposes in the 'goal norm' (in German, *Zweckartikel*) in the preamble of the statute or, in certain legal traditions, in the preparatory works. In addition, it should not be forgotten that legal texts themselves present a primary source for identifying goals. A penal law may not explicitly state the goal of protecting human life when stipulating sentences for murder; nevertheless, this goal can easily be brought to the surface by a legal investigation of the various legislative acts prohibiting criminal

behaviours. This type of traditional analytical inquiry will tend to use all the investigatory apparatus of paradigms and methodological principles that are typical of disciplines legitimised as being 'legal' by their nature. For example, the traditional legal black-letter approach (in German, *Rechtsdogmatik*), legal theory and legal philosophy can be counted among the primary perspectives used to discover the goal of legislation in traditional, legally relevant documents.

However, in evaluating legislative goals, a broader perspective is also available to both legal scholars and legal practitioners: namely, a perspective that allows legal actors to make use of non-traditional analytical instruments. These include investigation and evaluation of legislative goals by analysing the various political actors' debate in the media preceding the promulgation of a certain act. Directly connected to this broader choice of material and documents is the possibility of using methodological tools and paradigms provided by non-legal disciplines, such as political science and sociology. For instance, a possible non-traditional instrument for discovering and/or establishing the goal of a statutory measure can be qualitative interviews with the members of the drafting committee.

It is clear that opting for this second, non-traditional, route will raise the question of the extent to which the findings can have a normative value – and choosing traditional legal instruments will present a larger bone of contention in this regard. For instance, many might point out how the best (and only) source of information about the intention of a legislative body is what this body actually enacted; therefore, many may question whether the results of an investigation based on qualitative interviews can be used as direct supporting argumentation by judges when interpreting statutory provisions that are consistent with the goals 'discovered' through these interviews. This questioning of 'unorthodox' (at least from a strictly legal perspective) instruments used to discover legislative goals is more than legitimate (in particular, from a legal perspective). However, the non-traditional analytical instruments can be useful, if not vital, in cases of opacity in traditional legal documents (owing, for instance, to attempts at finding a compromise in the bill that satisfies highly polarised parties in the drafting committee) or in cases of ambiguity in the legislative product (resulting, for instance, from a radical change of the text promulgated from the one originally drafted).

VI. Conclusion

To conclude, it is worth remembering that the purpose of this paper has not been to clarify how one should evaluate legislative goals. The task has been much humbler, and has consisted of offering to the reader some analytical clarifications on the starting point for an evaluative enterprise. In other words, the main purpose has been not so much to answer the question 'How does an evaluation of the legislative goals work?' as to clarify the issues to be considered before tackling such an enquiry. In order to do so, several ideal-typical clarifications have been offered, ie typologies sketched merely as suggestions for solving the problem, regardless of the paths chosen, and central preliminary steps to be taken by the analyst before delving into the investigation and evaluation of the goals in legislation. In particular, typologies have been offered to answer the questions 'What is a legislative goal?', 'What is a function of the legislative measures?' (and how is the function related to their goals?) and finally 'Where are the legislative goals located?' (and how can they be discovered and/or reconstructed?).

These three fundamental aspects to be considered before evaluating legislative goals are not exhaustive. In addition to these main features, further studies of goals in legislation can and must consider issues which are unique to a certain piece of legislation and its goals – such as the differences and similarities between the goals when formulated in constitutional documents (and their judicial interpretation in the highest courts) and those which are instead traceable in the secondary legislation. Another example of a specific legislative issue is the indication of, and in some cases the reasoning and argumentation supporting, the existence of inherent goals of every legislation, such as transparency, equality, legal certainty or the enhancement of fundamental rights.

However, regardless of the specific path taken by each enterprise aimed at the evaluation of legislative goals, it is still necessary find a common analytical platform upon (and from) which each evaluator must start – namely, a common definition of a legislative goal, the functions it has in the legislative process and where one can find it. This chapter does not directly answer these questions, but it is hoped that it indicates where the answers can be found.

Further Reading

Editorial, 'Regulatory Creep' (2005) 26(1) *Statute Law Review* iii.

Gunningham, N, 'Two Cheers for Prescription? Lessons for the Red Tape Reduction Agenda' (2015) 38(3) *University of New South Wales Law Journal* 936.

Maley, Y, 'The Language of Legislation' (1987) 16(1) *Language in Society* 25.

Mousmouti, M and Crispi, G, '"Good" Legislation as a Means of Ensuring Voice, Accountability, and the Delivery of Results in Urban Development' (2015) 6 *The World Bank Legal Review* 257.

Mousmouti, M, 'Operationalising Quality of Legislation through the Effectiveness Test' (2012) 6(2) *Legisprudence* 191.

Mousmouti, M, 'Effectiveness as an Aspect of Quality of EU Legislation: Is it Feasible?' (2014) 2(3) *The Theory and Practice of Legislation* 309.

Reid, E, '*Montgomery v Lanarkshire Health Board* and the Rights of the Reasonable Patient' (2015) 19(3) *Edinburgh Law Review* 360.

Westerman, P, 'Arguing about Goals: The Diminishing Scope of Legal Reasoning' (2010) 24 *Argumentation* 211.

Westerman, P, 'Governing by Goals: Governance as a Legal Style' (2007) 1(1) *Legisprudence* 51.

Westerman, P, 'Legal or Non-legal Reasoning: The Problems of Arguing about Goals' in ET Feteris, H Kloosterhuis and HJ Plug (eds), *Argumentation and the Application of Legal Rules* (Amsterdam, Rozenberg Publishers, 2009) 85–103.

Westerman, P, 'Breaking the Circle: Goal-Legislation and the Need for Empirical Research' (2013) 1(3) *The Theory and Practice of Legislation* 395.

Xanthaki, H, 'European Union Legislative Quality after the Lisbon Treaty: The Challenges of Smart Regulation' (2013) 35(1) *Statute Law Review* 66.