THEORY OF EFFICIENCY IN LEGISLATIVE STRATEGY: BRIEF LEGAL RATIONALE ANALYSIS*

Abstract
The objective of this article is to use legal theories to elucidate the character and the elements of efficiency in legislation, specifically when it pertains to selecting legislative strategy, that is, the legislative paradigm used to address a certain matter through legislation. Section II is geared towards unveiling the key purport of the notion of efficiency, that is, as an operational linkage assisting legislative draftsmen to circulate among three components (situation, ideals, and results) instead of as an absolute value that draftsmen must seek in their operation. Section III proceeds by examining the challenges that such mix up has generated within legislative practice and discourse, especially by centering upon two types of efficiency as internal and external to the legislative operations. Ultimately, the last section advocates for how this notion of efficiency as an operational component of legislative duties (and the resultant distinction between an external and an internal version) can (and should) impact the work of legislative draftsman. This notion becomes specifically pertinent in connection to the optimal location of the non-legal specialist in the legislative operations as a medium of enhancing the efficiency of legislative strategy.

Keywords: Theory of Efficiency, Legislative Strategy, Legal Rationale, Analysis

1. Introduction

Writing or discussing with an audience of legislative studies practitioners and scholars about efficacy of legislation is similar to talking about 'playing active soccer' to soccer fans: each one concurs that this is what the game of soccer is all about, that it is an existence that is by its very nature good and that it requires no additional explanation.[1] Nevertheless, immediately one recedes from these overall statements and efforts to substantiate the notion, it is easy to perceive that, just as soccer fans, practitioners and legal scholars end up in pretty diverse views as to what the assertion 'effectual' really implies, that is to say what the concept of effectiveness means in the actuality of the legislative operations and its outcomes. [2] For instance, Italian soccer likens 'playing active soccer' with winning (normally through a well played defensive match), though for English fans that expression naturally implies to play an aggressive game (irrespective of the outcome). Likewise, while examining legislative studies opinion and the literature of its practitioners, one will simple notice that some practitioners and scholars, after having departed the safe haven of identifying effectiveness as the ability of legislative activities to generate 'real outcomes", think of a piece of legislation as effective soon as it is able to reorient the legislative prospect in the coveted course.[3] While for others stakeholders, emphasis should be placed on achieving the yearned shift in society.[4] Nevertheless others view a legislative activities to be effective as far as it obtains its political aims, that is to say, the particular aspiration of the political stakeholders (for example, by increased assistance from the electorate), indifferent of whether the novel law has any impact on social realities or the legal regime.[5]

The object of this brief article is unquestionably not to resolve all the crucial and indeed intricate matters associated with the idea of efficiency in legislative policy. The aim is a much modest one: to utilize legal principles to elucidate the character and the elements of efficiency in legislation, in specific when it has to do with choosing legislative policy, that is to say the legislative paradigm used to combat a specific matter through legislation. The focusing on this facet of the legislative operation is enhanced by the observation that in the choice of legislative strategy, more than in other dialects of lawmaking, the complex status of the legal actors (particularly the legislative drafters) as broker and guardian of equalizer amongst diverse worlds (law, law, and society) comes to the exterior.[6] As noted out by Stephen Laws, 'the approach of transforming policy from its political framework into legal premise having the appropriate policy-driven impact on

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[1]John S., 'Legislative Strategy: An appraisal', *European Journal of Risk Regulation*, Vol. 9, Issue 3: Symposium on effective law and regulation, P. 1.

[2] Xanthaki H., *Drafting Legislation: Art and Technology of Rules for Regulation* (Hart Publishing 2014) 6–7.

[3] Jacobson H.K., 'Conceptual, methodological and substantive issues entwined in studying compliance' (1998) 19 *Michigan Journal of International Law* 569, 573, wherein the author, while discussing effective legislation, is most observant about its significance on the legal regime.

[4] Iredell J., *Social Order and the Limits of the Law: a Theoretical Essay* (Princeton University Press 1981) 180.

[5] McCubbins M.D., Noll R.G. and Weingast B.R, 'Legislative Intent: The Use of Positive Political Theory in Statutory Interpretation' (1994) 57 *Law and Contemporary Problems* 3, 14, 26.

[6] Willcox S. A., Seidman R.B., and Abeyesekere N., *Legislative Drafting for Democratic Social Change: A Manual for Drafters* (Kluwer Law International 2001) 21.

everyday operation in the real world is a fundamental part of making legislation efficient'.[7] Therefore, the primary point of view adopted in this undertaking of articulating the issue of efficiency in legislative strategy is that of legislative draftsman. This opinion has been elected not simply because draftsmen are the central (and frequently obscured) stakeholders in the legislative approach, but also because they typify the comprehensive predication shared by legal stakeholder in contemporary society when it relates to lawmaking. Similarly, numerous other legal stakeholders participating in generating regulation, legislative draftsmen tilt to be challenged in their day to day work by the steady clash of diverse aims, different measures, and various models of logic. These practitioners undertake not merely the specific task of transforming political desires into legislation, but the more stimulating task of turning ideals (political frameworks) into regulations (legal structure) for the purpose of changing the reality (economic, social and cultural discourses).[8]

To accomplish this aim elucidating the import of efficiency in legislative strategy from the legislative draftsmen point of view, a legal conjectural approach is adopted. By legal conjecture, it is implied that whether a perspective to the law and (as in specific in this situation) its making overall sought 'to provide an interpretation and elucidative narrative of law as an intricate of social and political establishments' with a rule regulated (and in that sense 'prescriptive') view.[9] Bearing this point of view in mind, section II is directed at unveiling the true import of the idea of efficiency, that is to say, as an operational link helping legislative draftsmen to move amongst three components (situation, idea, results) instead of as an unmitigated value that draftsman should further in their endeavor. Section III pursues the examining of the challenges that such relative disorder has generated within legislative communication and practice, in specific by centering on two categories of efficiency as internal and external to the legislative approach. Lastly, section IV submits on how this idea of efficiency as an operational component of legislative pursuit (and the resultant difference between an internal and an external version) can (and ought to) impact the endeavor of legislative draftsman, specifically in connection to the optimum location of the non-legal specialist in the legislative operations as a medium of increasing the efficiency of legislative strategy.

2. Efficiency of Legislative Strategy from the Operational Value Perspective and Allied Matters

As aforementioned above, the various standpoints held with regard to the import of efficiency of legislation take a highly diverse landscape, obscured under a thin layer of consensus. This segmentation in defining 'efficiency in practice' is generated by two affirmative and interlinked considerations: the prevalent notion of efficiency as a value in itself is to be achieved by legislators; and the diverse opinions as to where this value should be situated (either inside or outside the legislative operations).[10] Let us commerce by considering the initial component fostering such disconnected landscape. The disorder herein can be tracked to an essential misconception as to the character of efficiency within legislative operations and theories. For traditional and institutional considerations (which due to their intricacy and not exactly the scope of this article cannot be treated herein), efficiency has turned into a value in itself of legislation. Similarly, the ideas of democracy or fundamental rights, efficiency in legislation has turned into a 'rationale for favouring specific ways of acting and states of play to others not imperatively backed by additional or obscured motives'.[11] In a nutshell, efficiency is frequently utilized as the leverage in determining whether to select one or the other legislative strategy, without exactly pursuing additional motives why this strategy should seek to be 'efficient' and not, for example, 'democratic'.[12] Howbeit, efficiency is not an outright value in itself (that is to say to be complete regardless) and it should be considered rather as a propositional model (that is to say, as a pathway that can be selected so as to achieve other values).[13] For example, efficiency must always be deemed as a preferential (but not definite) approach to better achieve the value (or notion) of democracy, given that it assists the government to achieve the tangible outcomes for which they were voted by a specific community.

[7] Laws S, 'Legislation and Politics' in Feldman D., *Law in Politics, Politics in Law* (Hart Publishing 2013) 90.
[8] MacCormick N., *Legal Reasoning and Legal Theory* (Clarendon Press 1997) 235–237.
[9] Hart H.LA., 'Postscript' in HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 239.
[10] Mousmouti M., 'Operationalising Quality of Legislation through the Effectiveness Test' (2013) 6 *Legisprudence* 191, 197–200.
[11] Luhmann N., *Law as a Social System* (Oxford University Press 2004) 79–88.
[12] Timmermans C.W.A., 'How to improve the Quality of Community Legislation: the Viewpoint of the European Commission' in Kellermann A.E., Azzi G.C., Jacobs S.H. and Deigthon-Smith r. (eds), *Improving the Quality of Legislation in Europe* (Kluwer Law International 1997) 45–46
[13] See Voermans W., 'Concern about the quality of EU legislation: what kind of problem, by what kind of standards?' (2009) 2 *Erasmus Law Review* 59, 66–68.

Contrary, both legal and political actors tend these days to apply efficiency as a predominant value in itself of the legislation. This application supposes efficiency as a paragon which each every legislative gauge must achieve, irrespective of whether its outcome conflicts with other similarly legitimate (and for this situation 'tangible') values and pursuant to which the 'excellence' or lack there from, in a piece of legislation is accessed (frequently at the detriment of other 'tangible' values, like social justice, democracy or fundamental rights).[14] Such use of the notion of efficiency as an eventual value for legislative acts is specifically strange when one examines the basic import of this approach, following which majority of the practitioners and literatures degree. In view of the idea of efficiency in legislation, viewpoints may differ substantially as to its scope, its basic element and its function in the legislative operations and its succeeding outcomes. Howbeit, there is a basic notion on which numerous legislative practitioners and scholars occur: efficiency in legislative strategy is the degrees of the ability of selected legislative model to achieve desired outputs that are as near as feasible to actualising the notion demonstrated by the political stakeholders, bearing in mind the framework of operation.[15]

On the basis this streamlined description, it is feasible to observe directly how efficiency, notwithstanding its application in contemporary legislative discuss, cannot be viewed as a notion, or a value, that is independent by itself. In comparison with values such as democracy, gender equality or fundamental rights, efficiency is not as clear an objective (or notional model of actuality) that legislation needs to pursue. Efficiency is rather the route that legislation has to pursue to achieve the values that the political or community representatives regard to be the bases upon which society is (or ought to be) shaped. Whilst the achievement of values, for example, gender quality is the aim of contemporary Western societies, that is to say, values that is independent on their own as an objective without additional justification (as they are deemed 'good' in themselves), efficiency deals with the 'assessment' of something; it is a relative notion that gets significance (and it could be measures as having been achieved or not) only within a specific context and in connection to external components.[16]

In essence, efficiency is not a value in and of itself; it gains substance within and is operative with respect to a specific framework. This assertion promptly poses the question 'efficiency in connection to what?' Efficiency comes into substance not as the specific end point of the lawmaking process but as a route between diverse standpoints, connecting in particular two landmarks of the legislative procedure. These two separate elements, the two standards within (and solely within) which the notion of efficiency gets concrete relevancy as a leading light for legislative draftsmen in the legislative procedures, are as follows: the basic idea to be legislated upon (what one needs to accomplish through the legislative approach); and the outcomes of legislation (what the legislative method has actually accomplished). To these one it is necessary to add the requirements of the path linking ideas and outcomes, that is to say, the real situation in which to legislate (the atmosphere in which the legislative approach operates).[17]

Therefore, the first of these two landmarks of efficiency of a legislative strategy is the primary concept to be legislated upon. This criteria is the beginning point of the legislative procedure and comprises of the concept that one desires to execute in the society; it can be implanted for instance in the preliminary works, the parliamentary deliberation, or the forewords of the statutes. It is the political communication of any legislation, specifically the model painting of a particular society (or part of it) that the political stakeholders (typically meeting in the assembly representatives) desire to bring about (that is to say, the realization of their concept).[18] For example, the original ideal to be executed in a community could be the advancement of small businesses as principal actors in a proper functioning and progressive capitalistic economic system.

The second landmark for accessing the efficiency of a legislative strategy is the outcome of legislation. These outcomes are the adjustments that legislative policies have generated in the intended reality, irrespective of whether they conform to the concepts: they are both the anticipated and the inadvertent outcomes generated

[14]Xanthaki H., 'Duncan Berry: A Visionary of Training Legislative Drafting' (2011) 1 The Loophole, *Journal of the Commonwealth Association of Legislative Counsel* 18.
[15] Moons N. and Hubeau B., 'Conceptual and Practical Concerns for the Effectiveness of the Right to Housing' (2016) 6 *Oñati Socio-legal Series* 656, 661–662, <opo.iisj.net/index.php/osls/article/viewFile/
461/904> accessed 10 May 2018
[16] Reed Dickerson F., *Materials on Legal Drafting* (West Publishing Co 1981) 191.
[17] Axtelle G.E., 'Effectiveness as a Value Concept' (1956) 29 *The Journal of Educational Sociology* 240, 241.
[18] Zamboni M., *The Policy of Law: A Legal Theoretical Framework (Hart Publishing 2007)* 135–137.

by novel legislation in a specific community.[19] For instance, the outcomes of a novel legislative provision compelling banks to dedicate a proportion of their financial investments to small businesses could be that more small businesses can approach the financial market. The contrary effect can be that the banking system, after a risk assessment, resolves to restrict lending to the economic system in general (even for the bigger industries), therefore reducing the overall amount of their financial investments upon which the proportion dedicated to the small business is computed.

Lastly, the third fundamental element in which legislative efficiency operates is the real situation (or atmosphere) in which the legislation is functioning. This atmospheric element is the economic, social, legal, cultural and political reality situation in which the original concept is going to function and which the political stakeholders aim at implementing through legislation (and by which the legislative procedure in turn is impacted). In a nutshell, the legislation impacts the external circumstance, however, simultaneously; the external circumstance aims to impact the legislation.[20] For example, economic systems normal of traditional capitalist societies promote economies of scale (for example, due to the need for huge initial investments); thus, because of the huge costs of entry in economic generation, these economic systems support large corporations and mass producing. These three elements (situation, ideal, and outcomes) indicate the field in which efficiency functions, since legislative activities are set up to operate within all three: political stakeholders affect reality, by means of statutory provisions, with the aim of changing the current circumstance so that it reflects their model painting of society.[21] For instance, political stakeholders, in order to foster a stronger role for small enterprises in the current adverse economic system, utilizes statutes to enhance reduced taxation of profits for businesses employing less than 20 people. Whilst looking at the efficiency in legislative strategy, the emphasis here is not on whether it has been accomplished 'in itself'; it is not an objective of the legislative operation (as it can be in the enforcement of democracy or human right). Efficiency in legislation is rather a yardstick to assess the capability of the selected legislative model to function in all three components (environment, ideal and results) to achieve the outcomes that are as near as possible to the original principles, bearing in mind the context of operation.

3. Analysis of Internal and External Efficiency of Legislative Strategy

The second element promoting segmentation into diverse (and sometimes contrasting) concepts as to what legislative efficiency is 'in definiteness' is linked to the first case. As it is not an unconditional (and determined) value, but instead a measure, efficiency in legislation relies very largely upon the stationing of the three components, simply put, efficiency in legislation, being a relative measure, tends to be utilized and shaped around the particular philosophy of its users.[22] Political stakeholder (that is, political stakeholders sitting in the national legislatures) tend to perceive efficiency in connection to the achieving of results through legislative regulations (or occasionally only of strictly political outcomes, for instance, messaging to feasible electorate).[23] Rather, for the legal stakeholders, the development of an efficient legislation tends to recognize the generation of regulations that are able to have significance on the legal system, and thus are able to create affirmative change in the current regulatory landscape.[24]

As it impliedly deducible from these diverse point of view on efficiency, the source of possible and effective difference on the character of efficient legislation usually centres on the notion of outcomes. Specifically, for the legislative draftsmen (who have the important duty of producing efficient legislation), the designed 'outcome' of the legislative regulations are of huge importance.[25] For example, if it comes to legislation governing the financial industry, everyone would concur that the law has to offer outcomes, that is to say, it needs to be efficient. Howbeit, 'outcomes' can be construed here in at least three different ways. For politicians, for example, 'outcomes' implies that they have demonstrated to the population that they act to

[19] Flores I.B., 'The Quest for Legisprudence: Constitutionalism v. Legalism' in Wintgens L.J. (ed.), *The Theory and Practice of Legislation: Essays in Legisprudence* (Ashgate 2005) 29.

[20] Luhmann N., 'The Coding of the Legal System' (1992) 1991–1992 *European Yearbook in the Sociology of Law* 145, 145–146.

[21] Uhlmann F., Elemente einer Rechtssetzungslehre (3rd edn, Schulthess 2013) 51–52. (where efficiency is the assessment of the extent of the legislation's accomplishment of its intended aims without suffering from undesired side effects). It is worth observing how Müller and Uhlmann's definition of efficiency appear to be more of normative nature than descriptive, given that in reality legislation nearly always serves to have (to a larger or narrower extent) undesired results.

[22] Young O. and Levy M.A., 'The effectiveness of international environmental regimes' in O Young (ed.), *The Effectiveness of International Environmental Regimes: Causal Connections and Behaviour Mechanisms* (The MIT Press 1999) 3–5.

[23] Bähr H, *The Politics of Means and Ends: Policy Instruments in the European Union* (Ashgate 2010) 115.

[24] MacCormick N., *Institutions of Law: An Essay in Legal Theory* (Oxford University Press 2007) 179.

[25] Birungi Kamugundu O., 'Prioritising legislation in the policy process' in H Xanthaki (ed.), *Enhancing Legislative Drafting in the Commonwealth: A Wealth of Innovation* (Routledge 2015) 90–92.

manage the uncertainty of the financial market (example, as regards of indicative politics), but for the stakeholders active in the financial market, legislation is efficient if it has a significance on their day to day work.[26] Legal stakeholders will assess the efficiency of the legislation on the financial markets in from the view of importance (or lack therewith) upon the present regulation, that is to say, in view of really modifying the present regulation (irrespective of, or simply in yearnings of, a significance upon the financial market).[27] In other words, as it serves as an operational link instead of a definite value, efficiency in legislation makes the task of legislators (and particularly legislative draftsmen) exceedingly intricate. The essential components (environment, starting ideal, concrete outcomes) for which these stakeholders must construct a path (that is legislation) tend to be a shifting objective, established viewpoint upon which these components are examined (or, on more intricate conditions, based on the perception of the diverse construing communities). Especially, when talking about efficiency of legislative strategy from a legislative draftsman point of view, one should evidently point out that when looking at the landmark of 'outcome', there are two fundamental types of efficiencies: an internal and an external efficiency of legislative strategy. Internal efficiency of legislative strategy assesses legal policy results, that is to say, the significance the new regulation has on the real legal regime or how much the law has evolved. External efficiency centers rather upon the legal policy result of the legislative operation, that is, the changes the altered legal system has brought to bear upon the economic, social and political realities.[28] This differentiation of outputs from outcomes is really acclimatization in the lawmaking operation of the outcomes achieved through a long number of studies generated in political science.[29] Redeployed into the context of the legislative operation of legal strategy, results are therefore the significance of the legislative operations inside the legal scene in which the operation itself has taken place (that is, modifications in the legal system regarding regulation of banking loans). The results of the legislative operations, on contrary, mark the impact (planned or unplanned) such significance have on the surrounding atmosphere (that is, modifications in the specific conducts of banks).[30] For instance, the difference between legal strategy results and legal policy outcomes is significant in comprehending that sometimes, a novel piece of legislation (legal policy products) could be internally but not externally efficiency, that is it has more or less the same practical impacts on a community (same legal policy result) as those of the prior legislation.[31] In legal notional terms, the difference between legal strategy results and legal policy outcomes can be significant in indicating the distinction between a effective new law (new results) and an in-force new law (new outcomes).[32] For instance, a legislature makes a statutory stipulation of penal law criminalizing abortion, retroactively and proactively. Prior to the resolution being applied by any court or executing agency to any particular case, the legislature then resolves to modify its interpretation because of huge disapproval from the legal community. Within this brief period, the legal classification of criminalising abortion has been legitimate, that is, the law has been internally efficient in the sense that it generated certain legal outputs. The criminalization has tentatively modified the framework of criminal law (that is by overlooking the legal precept of *nullum crimen sine lege*). On the contrary, the novel legal classification of disciplining abortion practitioners and patients retrospectively has never been in subsistence, and thus it has been externally inefficient, since it has not and never will generate any real results (outcomes) as to the conducts of the members of the national community.[33]

4. Liberate the Draftsmen by Confining Non-Legal Specialist: A Pragmatic Outcome

This difference between external efficiency of legislative strategy (that is, assessment of results) and internal effectiveness (that is, the determination of legal outputs) is not a mere terminological difference. As sometimes happens with theoretical categorization, it carries with it an implied normative message to legislative draftsmen, that is, it is a carrier of specific impact as to draftsman's' very function in the legislative operation, in particular, in connection to the non-legal 'specialist'. Legislative draftsmen are strictly legal

[26] Lombardi D., and Moschella D., 'The symbolic politics of delegation: macroprudential policy and independent regulatory authorities' (2017) 22 *New Political Economy* 92, 97–101.

[27] The World Bank and International Monetary Fund, Financial Sector Assessment: A Handbook (World Bank Publications 2005) ch 9 (as to the legal stakeholders view point as to having an efficient governing legislation of the financial markets).

[28] Mader L., 'Evaluation of Legislation: A Contribution to the Quality of Legislation', in *Evaluation of Legislation: Proceedings of the Council of Europe's Legal Co-operation and Assistance Activities* (2000–2001) (Council of Europe Publishing 2001) 24.

[29] Castles F.G., *Comparative Public Policy. Patterns of Post-war Transformation* (Edward Elgar 1998) 248–292.

[30] Delnoy P., 'The Role of Legislative Drafters in Determining the Content of Norms', (*The Internal Cooperation Group – Department of Justice of Canada* 2005) 3.

[31]Banakar R., *Merging Law and Sociology: Beyond the Dichotomies in Socio-Legal Research* (Galda + Wilch Verlag 2003) 277–285.

[32] Bulygin E., 'Valid Law and Law in Force' in Bulygin E., *Essays in Legal Philosophy* (Oxford University Press 2015) 284–292

[33] Lang, A *Concept of the Validity of Law* (1996–1997) XXIX-XXX Archivum Iuridicum Cracoviense 87, 88.

stakeholders, that is, they are typically trained in the artisanship (or in the expertise) of preparing new statutory rules in accordance to the customary principles succeeding the legal discourse.[34] In essence, they are trained, hired and, in the end, justified to generate legislation according for example to policies such as consequentiality or coherence that is 'doctrines or traditional of legal rationale which establish what are adequate [from the lawyers' point of view] justifications' of lawmaking operations.[35] As a result, legislative draftsmen undertaking in writing the law often lack the knowledge required to assess the external efficiency of the law, that is, its significance on the environ surrounding the law (and whether the law provides the yearned outcomes).[36] On the other hand, these draftsmen possess the proficiency and legitimacy to be the apparent monopolistic interpreters of the internal efficiency of legislative strategy, that is, to evaluate and measure how a novel legislature may affect the legal regime.[37] For example, legislative draftsmen have the proficiency and legitimacy to assess whether their legislation allowing banks to invest a proportion of their loans into small businesses will efficiently function in a legal atmosphere otherwise governed by the legal precepts of freedom of contract. Howbeit, legal stakeholders as legislative draftsmen lack both the expertise and knowledge to assess the significance of such legislation on the economic and financial strategies the banks will infuse to counteract the legislated law (as this is more the domain of financial experts and economist). In this regard, non-legal specialist brought in the legislative operations play a crucial role in ensuring that internal efficiency, that is, a concrete change of the law, becomes external efficiency, that is, a real change of reality, in the direction expected by the political stakeholders who developed the original idea.[38] Howbeit, a significant question follows here from thus: when must these specialists engage in the lawmaking operation, to guarantee that the process is not only based on a correct assessment of the actual situation, but also that its outputs (that is, the statutory provisions) may be externally effective (that is, having a real sigificance on such a situation)? The proper position in this respect is that the responsibility of non-legal specialist has come to play in recent times in the legislative operation has increased controversy as to the issue of generating 'efficient legislation'. Non-legal specialist are usually called upon, directly or indirectly, throughout the length lawmaking operations, from when political stakeholder determines the original idea to be legislated, to evaluating the real situation in which the legislation is going to function, and concluding with the assessing of the outcomes.[39] This disposition may be positive, by raising the amount of knowledge gained during the legislative operations as to vital landmarks of the efficiency of legislation. Nevertheless, it comes at a cost: for instance, as parliamentary proceedings and preparatory works can illustrate, when non-legal specialist are involved in the formulation of legislative provisions, their involvement in the process raises the chances that the legislative provisions will be less efficient. As precisely noted by Neil MacCormick, 'Legal specialist (draftsmen) employed by the executive or the legislature may be employed to guarantee that the actual words legislated will be likely to bring about the impacts their draftsmen contemplate. Having these specialists is crucial, as the legislature's product is input from the perspective of courts and lawyers. Only somebody who comprehends the practice of statutory construction is in a stance to ensure that statutes are drafted in such a way that the interpretation employed by the law administerer is likely to match rationally closely what was purposed by the advocates of the legislative recommendation'.[40]

As stated earlier, in order to produce a specific result (that is, impacts on society), legislation will first generate an output (that is, significance on the law). Howbeit, by including non-legal specialist in legislative drafting, that is, stakeholder who are not generally acquainted with the core construction and functioning mechanism of the legal regime, novel legislative regulations are often designed so that they function poorly in terms of internal (and therefore external) efficient. By being continuously forced to encounter (and occasionally accept the incorporation of) non-legal contentions and discourses while drafting the law, legal draftsmen must not only avoid roles for which they are unequipped (that is, as unskilled economists or economist in order to produce an external efficient law). They also must introduce notion and ideas in the legal theme that are unsuitable for really affecting society, because of the legal stakeholders' unawareness of the articulated economic, social and/or cultural reality in which their legislative output is going to

[34] Scharffs B.G., 'Law as Craft' (2001) 45 *Vanderbilt Law Review* 2245, 2339.
[35] Symonds A., *The Mechanics of Law-Making* (Edward Churton 1835) iv.
[36] Markman S.C., 'Training of Legislative Counsel: learning to draft without Nellie' in A Zammit Borda (ed.), *Legislative Drafting* (Routledge 2011) 17–19.
[37] Höfler ., Nussbaumer M. and Xanthaki H., 'Legislative Drafting' in Karpen U. and Xanthaki H. (eds), *Legislation in Europe: A Comprehensive Guide for Scholars and Practitioners* (Hart Publishing 2017) 153–156.
[38] Trubek L.G., Nance M and Hervey T.K., 'The Construction of Healthier Europe: Lessons from the Fight against Cancer' (2008) 26 *Wisconsin International Law Journal* 804, 814.
[39] Zeegers N., 'Distinguishing True from other Hybrids. A Case Study of the Merits and Pitfalls of Devolved Regulation in the UK' (2009) 3 *Legisprudence* 299
[40] Hage J., 'Legislation and Expertise on Goals' (2009) 3 *Legisprudence* 351, 352.

function.[41] Utilizing the earlier example, an excessively deep engagement of financial experts in legislative preparation of suppositional legislation governing the banking industry designed to promote small businesses may generate a text which, by mandating a certain proportion of financial investment to be allocated for this type of business, will definitely achieve some paradigm of financial reasoning. Howbeit, there is significant danger that such a text will never become actuality (that is, not even generating a change in the law), due to the violation of basic principles of the legal system (that is, freedom of contract).

In view of these considerations, the appropriate procedure for developing a legislative text that can provide more internal efficiency (that is, ability to really modify the law) and external efficiency (that is, ability to really turnaround society) would be to obviously confine the function of the non-legal specialist, but also in legislative practice. The use of non-legal specialist should be confined at the start and finish of the legislative operation, that is, to the stages of the development of proposals to be accomplished by the legislation and the assessment of the law's significance upon society.[42] In both these stages, non-legal specialists' proficiency as to the 'external' impact of the legislation can be crucial (that is, through their knowledge of the responsibility of banks in the financial markets' failing to help small businesses). When it comes to the very drafting operations, on the contrary, it is feasible that the presence of non-legal specialist, with their use of non-legal principles and paradigms, could endanger the function of the legislative draftsman as professional transformers of social, political and economic standards into legally efficient classifications (that is, with a tangible significance on the legal regime).[43] For instance, specialist in economics and finance will be better suited to determining whether small businesses are actually vulnerable in contemporary capitalist economy, while they may play an essential role in its advanced form. Howbeit, once this pointer is sent (via the political stakeholders sitting in the legislature) to the legislative draftsmen, the issue of selecting (or designing) the best legal procedure (that is, legislative strategy) to help such businesses should be left to the draftsman, considering the actual legal atmosphere. For example, legislative draftsmen, instead of opting for a solution of setting a proportion of bank loans as mandatory funding predestined for small companies (a route which will most likely be legally inefficient), may opt for a legally efficient (and therefore potentially externally efficient) solution such as reducing taxation for banking earnings from loans to this type of businesses. This restriction (by law and/or parliamentary practice) of the function of non-legal specialist, as a means to increasing the opportunities of legislative strategy effectiveness, needs a simultaneous increase in role of the political stakeholders sitting in the legislature. As regards law, a tendency noticed in recent years is a (involuntary or voluntary) withdrawal of political stakeholders from many facets of the legal discourse, especially the legislative.[44]

For several reasons (for instance, reluctance to expose themselves by taking a stance on highly contentious matters, or sheer unfamiliarity of the legal and 'specialty' world), a key trend is that political representatives tackle a political concept (for instance, 'we require a novel law to assist small enterprises') in a laissez faire style. They let the legislative operation continue on its own, with an often unbridled (and difficult) partnership between draftsman and non-legal specialist, in the hope that the legislative provisions produced will somehow offer the expected output.[45]

Howbeit, due to the disparity between external and internal efficiency (and the various principles and discourse regulating them, legal and non-legal severally) and the resultant separation of duties between legislative draftsmen and non-legal specialist, political stakeholders should be made to reorientate themselves at the centre of the legislative operations. They should restore to the core role of being in charge for organising and deliberating on non-legal specialists' assessment against the outputs of legal reasoning, specifically the legislative draft.[46] For instance, at the end of the legislative operations, political stakeholders (by using categories usual of the political deliberations, such as 'economic justice') should consider the output of the legislative draftsman (specifically the draft reducing the amount of taxation for certain profits made by banks) and the assessments by non-legal stakeholders as to the external effectiveness (or lack

[41] Otto M., *Conflicts between citizen and state in Indonesia: the development of administrative jurisdiction. Working Paper no 1*.

[42]Xanthaki H., *Thornton's Legislative Drafting* (5th edn, Bloomsbury Professional 2013) 145,

[43]Friedman L.M., 'Law and Its Language' (1964) 33 *George Washington Law Review* 563, 566–567.

[44] Summers R., 'Law as a Type of 'Machine' Technology' in Summers R., *Essays in Legal Theory* (Kluwer Academic Publishers 2000) 49.

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

[46] Tröger T., 'How Special Are They? Targeting Systemic Risk by Regulating Shadow Banks' in Lomfeld B., Somma A. and Zumbansen P., (eds), *Reshaping Markets. Economic Governance and Liberal Utopia* (Cambridge University Press 2016) 185–207.

thereof) of such (internally efficiency) legal steps aimed to pressure banks towards a more favourable posture when it comes to funding small businesses.

In a nutshell, increasing the internal efficiency of the legislative operations (and therefore the modifications resulting in enhanced external efficiency), demand not only the limitation of the functions of non-legal stakeholder (and in particular specialists) to the start and end of the legislative operation (that is, at the development of the goals and the assessment of whether such aims can be attained with the novel legislation). It is also crucial to guarantee that politics is not merely limited to commencing legislative operations; politics must also take back duty of being a 'true' law-maker. Among the responsibilities of the political stakeholders sitting in the legislative bodies, certainly one is the task of assessing and weighing the factors of internal efficiency (that is, whether the novel statute will evolve the legal landscape) and external efficiency (that is whether such legal modification will actually have an impact, in the desired fashion, in the 'real' society). This duty of raising the global efficiency of legislative operation (that is, internally and externally) should not be so farfetched from the everyday work of political stakeholders. Ultimately, the crux of the art of democratic politics is to achieve compromise among diverse world vision with regards to the same challenges, and try to find the most workable solution.[47]

5. Conclusion

In conclusion, section I it has demonstrated how efficiency, when it comes to legislation, is not a 'value' in itself, to be attained at all cost. It is instead an effective link, that is, a quality of legislation emerging to manifestation when applied within a particular framework and supporting legislative draftsmen in their voyage amidst three components (situation, ideals, and outcomes). Based on said depiction of efficiency as a relativist component in the legislative operations, section II has highlighted how in the legislative conversations there is often an uncertainty among two kinds of efficiencies: efficiency external to the legislative operation (centering on the effect of the regulatory initiatives on the economic and social reality), and an efficiency internal to the legal regime (wherein consideration is rather paid to the factual modifications of the regulatory system generated by the legislation). Lastly, section III recommends how this idea of efficiency as a operational component of legislative duty, and the resultant contrast between internal and an external version, can (and should) impact the duty of legislative draftsman. Specifically, it can impact as to the optimum location of the non-legal specialist in the legislative operations as a way of raising the efficiency of legislative strategy.

In conclude whereat this article began, that is, with the football associated analogy, everyone concurs that a team is playing an 'efficient' soccer when they generate some results. Howbeit, once past this general account, spectators can observe how views may contrast as to the connotation of 'outcome': for the English soccer is an entertaining game, but for an Italian soccer is merely winning the sport, somehow. Likewise, the definition of efficiency in legislation is not so hugely complicated; howbeit, when it comes to the applying the definition to actuality, a significant body of literature shows that the determination of whether legislation is efficient is mostly subject to one's definition of 'outcome'. As a result of the particular character of legislation, that is, its functions as a prescriptive tool (with particular principles) placed in the control of politicians (also with their own particular principles) to change actuality (also with its own particular principles), this intricacy makes the duty of legislators (and legislative draftsman in particular) remarkably problematic (if not slightly schizoid). Draftsman must build an operational road linking ideals and actuality, pursuant to 'engineering' models (that is, legal discourse), while also achieving the yearnings and paradigms of an 'artistic' nature (that is, political ideals), and with acquiesce to 'environmental issues' (that is, social reality). In this regard, legal jurisprudence may be able to assist, not by solving this schizoid circumstance, but at least making it a little easier for the legal stakeholders by elucidating the limits between diverse types of efficiency (external/non-legal versus internal/legal) and by allotting each group of stakeholder a more explicit (and thus more focused) responsibility.

[47] Waldron J., *The Dignity of Legislation* (Cambridge University Press 1999) 156.