Good Urban Law: What is it and how to draft it

By Professor Helen Xanthaki[1]

Amidst a bombardment of legislation catapulted on citizens from their national legislatures and international fora in the area of urban law, little debate is offered on what constitutes good urban legislation and how it can be achieved. The objective of this paper is to define good law, and identify innovative advances to legislative drafting as a means of inviting further debate both by legislative experts but mainly by experts in the substantive fields of urban law, where application of legislative principles is empirically available, already well researched, and ultimately useable under the legislative studies umbrella.

The paper will begin with an exploration of the definition of good urban legislation and the identification of its constituting elements. The latest innovations on plain language, as a crucial element of legislative quality, will be explored next: identifying the audience or audiences of urban law and pitching the legislative texts to their level of legal awareness. The paper will finish with 'blue sky' proposals, in other words tools for good legislation that have not yet been applied in practice by the national legislatures but have already been identified as advantageous future possibilities: the layered approach in legislative structure, the use of typography and pictures in legislative texts, the use of IT tools to enhance an understanding of the architecture of the whole statute book, and ultimately phronetic legislative drafting as a theoretical umbrella for good urban law.

1. What is good urban legislation?

Defining good legislation, let alone good urban legislation, is no easy task. And much of what the answer will be depends on the prism under which the question is asked. But from a pure legislative perspective, good legislation is legislation that manages to achieve the desired regulatory results.[2] In other words, good urban legislation is, quite simply, legislation that

---

[1] Helen Xanthaki is Professor of Law and UCL and Director of International Postgraduate Laws, University of London.
[2] See H. Xanthaki, *Drafting Legislation: Art and Technology of Rules for Regulation*, (2014, Hart Publishers, Oxford), chapter 1.

manages to achieve the urban policy goals set by urban regulators at the international level (for example UN Habitat) or at the national level.

And so urban legislation is quite closely linked to urban regulation. Their precise relationship is identified within a non-functional [3] context. Mousmouti and Voermans distinguish between legislative quality as an issue closely linked to the constitutional principles of legality, effectiveness and legal certainty, and regulatory quality as an issue related to the success of legislation in promoting economic development.[4] Since governments use legislation as a tool of successful governing[5], namely as a tool for putting into effect policies that produce the desired regulatory results[5], the qualitative measure of successful legislation coincides with the prevalent measure of policy success, which is the extent of production of the desired regulatory results.[6] Provided that the government's choice is indeed to put a policy to effect rather than only on paper.[7] Within this context, regulation is the process of putting government policies into effect to the degree and extent intended by government.[8] And legislation, as one of the many regulatory tools available to government[9], is the means by which the production of the desired regulatory results is pursued. And in application of Stefanou's scheme on the policy, legislative, and drafting processes[11], legislative quality is a partial but crucial contribution to regulatory quality.[12]

---

[3] See S. T. Trautmann, 'Empirical knowledge in legislation and regulation: a decision-making perspective' [2013] 1 *The Theory and Practice of Legislation* 533, 538-539.

[4] See M. Mousmouti, 'Operationalising quality of legislation through the effectiveness test' (2012) 6 *Legisprudence* 191, 194; also, W. Voermans, 'Concern about the Quality of EU Legislation: What Kind of Problem, by What Kind of Standards?' (2009) 2 *Erasmus Law Review* 59, 223 and 225; and R. Baldwin and M. Cave, *Understanding Regulation: Theory, Strategy and Practice* (Oxford, Oxford University Press, 1999) 85. [5] See OECD, 'Recommendation of the Council on Improving the Quality of Government Regulation', 9 March 1995, C(95)21/Final.

[5] The executive branch of government is no longer expected to confine itself to the mere making of proposals: it has to see them through. See J. Craig Peacock, *Notes on Legislative Drafting* (Washington, REC Foundation, 1961) 3.

[6] See N. Staem, 'Governance, Democracy and Evaluation' (2006) 12(7) *Evaluation* 7, 7.

[7] And the choice is the governments not the drafters: see P. Delnoy, *Le rôle des légistes dans la détermination du contenu des norms*, 2013 Report for the International Cooperation Group, Department of Justice, Canada, http://www.justice.gc.ca/fra/apd-abt/gci-icg/publications.html, 3.

[8] See National Audit Office, Department for Business, Innovations and Skills, 'Delivering regulatory reform', 10 February 2011, para 1.

[9] Tools for regulation vary from flexible forms of traditional regulation (such as performance-based and incentive approaches), to co-regulation and self-regulation schemes, incentive and market based instruments (such as tax breaks and tradable permits) and information approaches. See Better Regulation Task Force

With reference to urban law, this definition of legislative quality requires legislation that manages to produce the policy aims intended by the urban regulators, be it international organisations, national governments, Ministers, or local authorities. Urban legislation is used as one of the tools available to urban regulators to achieve the policy results intended. This presupposes an understanding of the concrete urban policy results set to be achieved. It is no good seeking for, for example, a better urban infrastructure. This is a rather aspiring super goal that has to be broken down to its concrete parts, in order to make it concrete enough for legislative treatment. And do pursuing better infrastructure is narrowed down to just one aspect of better water infrastructure, which in turn is narrowed down further to better water and wastage infrastructure. This requires a study of the elements of each of these two issues, an agreement on what policy aim is preferred by the urban regulators, and a continuous reassessment and agreement of further concrete policy dilemmas, such as where will the boundaries of the infrastructure be (do village communities fall under the scope of urban water infrastructure), what kind of infrastructure is promoted, who will build it, who will maintain it, what happens if there is a dispute, and what precise goals are to be achieved by what period of time (for example, coverage of all inner city areas in the country within 5 years, coverage of communities within 8 years and coverage of the whole urban area within 15 years). It is these answers to the regulatory dilemmas and the concrete regulatory goals that the legislation will adopt, express, and contribute to achieve.

Can urban legislation singlehandedly achieve the regulatory aims? Let's have a look at this diagram of elements of regulatory and legislative quality.[14]

(BRTF), 'Routes to Better Regulation: A Guide to Alternatives to Classic Regulation', December 2005; also see J. Miller, James, 'The FTC and Voluntary Standards: Maximizing the Net Benefits of Self-Regulation' (1985) 4 *Cato Journal* 897; and OECD Report, 'Alternatives to traditional regulation', para 0.3; and also OECD, *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance* (Paris, OECD, 2002).

[11]   See C. Stefanou, 'Legislative Drafting as a form of Communication' in L. Mader and M. Travares-Almeida (eds), *Quality of Legislation Principles and Instruments* (Baden-Baden, Nomos, 2011) 308; and also see C.

Stefanou, 'Drafters, Drafting and the Policy Process' in C. Stefanou and H. Xanthaki (eds), *Drafting Legislation: A Modern Approach* (Aldershot, Ashgate, 2008) 321.

12   In fact, there is an emergence of a public interest in good quality of rules: see M. De Benedetto, M. Martelli and N. Rangone, *La Qualità delle Regole* (Bologna, SE il Mulino, 2011), 23.

13   See R. Heaton, 'Foreword' in Cabinet Office, Office of Parliamentary Counsel *When Laws Become Too Complex*, 16 April 2013. 14 See H. Xanthaki,'On transferability of legislative solutions: the functionality test' in C. Stefanou and H.

Xanthaki (eds), Drafting *Legislation: A Modern Approach – in Memoriam of Sir William Dale*, above, n.12, 1.
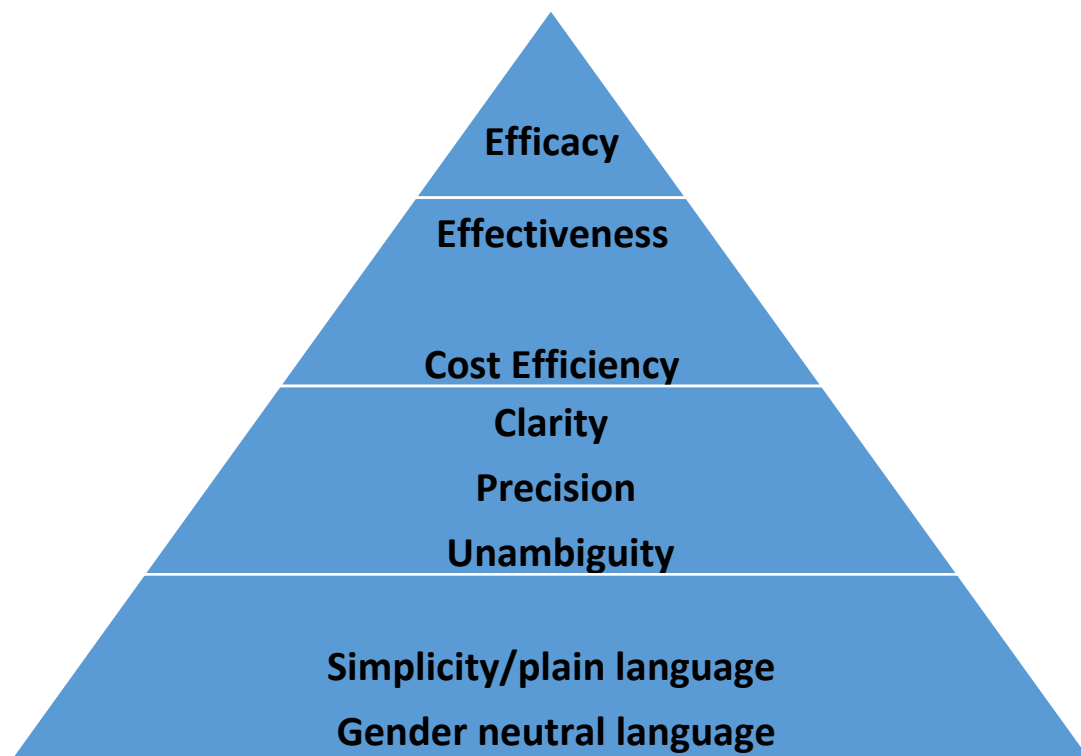
Efficacy is synonymous to regulatory quality: it is defined as the extent to which regulators achieve their goal[10], or the measure to which the performance data of the legislation match its objectives.[11] Bradnee Chambers distinguishes between rule based positivist models of efficacy that look at the level of compliance achieved; social legal models[12] that assess efficacy by reference to the compliance of rules with societal norms and values falling within the

---

[10] See *ibid*, 126; also see M. Mousmouti, above, n 5, 200.

[11] See W. Bradnee Chambers, 'Towards and improved understanding of legal effectiveness of international environmental treaties', 16 (2003-2004) *Geo Intl Envtl L Rev* 501, 531.

[12] Based on the theory that legislation is a tool for changing behaviour: see H. Kelsen, 'Law as a Specific Social Technique' (1941) 9 *University of Chicago Law Review* 75, 79–80.

'established milieu'[13] or to their legitimacy leading to compliance[20]; the economic legal model that include cost efficiency to the measure of efficacy;[14] and international relations models that call for clearer distinctions between efficacy, implementation, and compliance.

Irrespective of what model of efficacy one promotes, efficacy cannot be achieved by the legislation alone.[22] In other words, legislation on its own cannot possibly produce the desired regulatory results (unless as a chance event). And urban drafters must not undertake the burden of failure on their shoulders alone. Bad policy can never produce the desired results, even with the best legislation at hand: for example, trying to achieve social inclusion for non-urban communities by extending water facilities to them cannot produce the desired result without additional measures directed to social inclusion. Bad implementation of the legislation[23] and bad judicial application may interfere adversely[24] against efficacy: although the margin for incorrect implementation and judicial application may be minimised by the legislative text,[25] the problem may always be with the content of the pursued policy or the calculations of the regulatory impact assessment made for the allocation of resources for implementation.

Although efficacy is not purely a legislative issue, legislative effectiveness does contribute to regulatory efficacy.[26] Effective laws are good laws. Effectiveness is used widely but without an agreed definition: the EU calls for accountability, effectiveness, and proportionality as a means of achieving better law-making, but without defining the terms[27]; and the UK Office of Parliamentary Counsel repeat their aspiration to effectiveness as a contribution to or in balance with accuracy but do not define the term.[28] Mader defines effectiveness as the extent to which the observable attitudes and behaviours of the target population correspond to the attitudes and behaviours prescribed by the legislator.[29] Snyder defines effectiveness as 'the fact that law matters: it has effects on political, economic and social life outside the law – that it, apart from simply the elaboration of legal doctrine'.[30]

---

[13] See Iredell Jenkins, *Social Order and the Limits of Law: A Theoretical Essay* (New Jersey, Princeton University Press, 1980) 180. [20] See T. M. Franck, 'Legitimacy in the international system', (1988) 82 *Am.J.IntlL.*, 705.

[14] See O. K. Young and M. A. Levy, 'The effectiveness of international environmental regimes' in O. R. Young et al (eds), *The Effectiveness of International Environmental Regimes* (Massachusetts, MIT Press, 1999) 1, 4-5;

Teubner defines effectiveness as term encompassing implementation, enforcement, impact, and compliance.[31] Muller and Ulmann define effectiveness as the degree to which the

also see OECD, 'Regulatory Policies in OECD Countries; from Interventionism to Regulatory Governance', 2002, OECD, Paris; and also 'Background Note to the OECD Reference Checklist for Regulatory Decision Making' of OECD, 'Recommendation of the Council on Improving the Quality of Government Regulation', C (95) 21 final.

[22] See J. P. Chamberlain, 'Legislative drafting and law enforcement' (1931) 21 *Am.LabLegRev* 235, 243.

[23] See D. Hull, 'Drafters Devils' (2000) *Loophole*, www.opc.gov.au/calc/docs/calc-june/audience.htm.

[24] See U. Karpen, 'The norm enforcement process' in U. Karpen and P. Delnoy, (eds.), *Contributions to the Methodology of the Creation of Written Law* (Baden-Baden, Nomos, 1996), 51, 51; also L. Mader, 'Legislative procedure and the quality of legislation' in U. Karpen and P. Delnoy (eds.), *Contributions to the Methodology of the Creation of Written Law*, above , n 35, 62, 68.

[25] See G. Teubner, 'Regulatory Law: Chronicle of a Death Foretold' (1992) 1 *Social Legal Studies* 451.

[26] See C. Timmermans, 'How Can One Improve the Quality of Community Legislation?' (1997) 34 *Common Market Law Review* 1229, 1236–7.

[27] See 'European Governance: Better law-making', Communication from the Commission, COM(2002) 275 final, Brussels, 5.6.2002; also see High Level Group on the Operation of Internal Market, 'The Internal Market After 1992: Meeting the Challenge – Report to the EEC Commission by the High Level Group on the Operation of Internal Market', SEC (92) 2044.

[28] See Office of Parliamentary Counsel, 'Working with OPC', 6 December 2011; and OPC, 'Drafting Guidance', 16 December 2011.

[29] See L. Mader, 'Evaluating the effect: a contribution to the quality of legislation' (2001) 22 *Statute Law Review* 119, 126.

[30] See F. Snyder, 'The effectiveness of European Community Law: institutions, processes, tools and techniques' (1993) 56 *Mod L Rev* 19, 19; also F. Snyder, *New Directions in European Community Law* (London, Weidenfeld and Nicolson, 1990) 3.

[31] See G. Teubner, 'Regulatory law: Chronicle of a Death Foretold' in Lenoble (ed), *Einfuhrung in der Rectssoziologie* (Darmstadt, Wissenschaftliche Buchgesellschaft, 1987) 54.

legislative measure has achieved a concrete goal without suffering from side effects.[15] In Jenkins's socio-legal model effectiveness in the legislation can be defined as the extent to which the legislation influences in the desired manner the social phenomenon which it aims to

[15] See G. Muller and F. Uhlmann, *Elemente einer Rechtssetzungslehre* Zurich, Asculthess, 2013) 51-52.

address.[16] Voermans defines the principle of effectiveness as a consequence of the rule of law, which imposes a duty on the legislator to consider and respect the implementation and enforcement of legislation to be enacted.[17] Mousmouti describes effectiveness as a measure of the causal relations between the law and its effects: and so an effective law is one that is respected or implemented, provided that the observable degree of respect can be attributed to the norm.[18]

Effectiveness is the ultimate measure of quality in legislation.[19] It expresses the extent to which the legislation manages to introduce adequate mechanisms capable of producing the desired regulatory results.[20] If one subjects effectiveness of legislation to the wider semantic field of efficacy of regulation as its element, effectiveness manages to hold true even with reference to diverse legislative phenomena, such as symbol legislation, or even the role of law as a ritual. If the purpose of legislation is to serve as a symbol, then effectiveness becomes the measure of achieved inspiration of the users of the symbol legislation. If the legislation is to be used as a ritual, effectiveness takes the robe of persuasion of the users who bow down to its appropriate rituality. Effectiveness requires a legislative text that can (i) foresee the main projected outcomes and use them in the drafting and formulation process; (ii) state clearly its objectives and purpose; (iii) provide for necessary and appropriate means and enforcement measures; (iv) assess and evaluate real-life effectiveness in a consistent and timely manner.[38]

Leaving cost efficiency out of the equation, since it is an economico-political rather than purely legal choice[21], effectiveness is promoted by clarity, precision, and unambiguity.

---

[16] See I. Jenkins, *Social Order and the Limits of the Law: a Theoretical Essay* (Princeton, Princeton University Press, 1981) 180; also see R. Cranston, 'Reform through legislation: the dimension of legislative technique' (1978-1979) 73 *NwULRev* 873, 875.

[17] See W. Voermans, above, n 5, 230.

[18] See M. Mousmouti, above, n 5, 200.

[19] See H. Xanthaki, 'On Transferability of Legal Solutions' in C. Stefanou and H. Xanthaki (eds.) *Drafting Legislation, A Modern Approach*, above, n 19, 6.

[20] See Office of the Leader of the House of Commons, *Post-legislative Scrutiny – The Governments Approach*, March 2008, para 2.4. [38] This is Mousmouti's effectiveness test: M. Mousmouti, above, n 5, 202.

[21] See R. Posner, 'Cost Benefit Analysis: definition, justification, and comments on conference papers' (2000) 29 *The Journal of Legal Studies* 1153.

Clarity, or clearness,[22] is the quality of being clear and easily perceived or understood.[23] Precision is defined as exactness of expression or detail.[24] Unambiguity is certain or exact meaning:[43] semantic unambiguity requires a single meaning for each word used[25], whereas syntactic unambiguity requires clear sentence structure and correct placement of phrases or clauses.[26] Clarity, precision, and unambiguity offer predictability to the law. Predictability allows the users of the legislation, including enforcers[27], to comprehend the required content of the regulation. Predictability of effect is a necessary component of effectiveness and indeed of the rule of law.[28] Thus, compliance becomes a matter of conscious choice for the user, rather than a matter of the users' subjective interpretation of the exact content of the legislation and, ultimately, the regulation.

In turn, clarity, precision, and unambiguity are promoted by plain language and gender neutral language. Gender neutral language is a tool for accuracy: whilst calling for gender neutrality as a rule, it allows for gender specificity in drafting[29] and before the courts[30] where needed. Gender specific[31] language serves in parallel with plain language as an additional tool for the promotion of precision, clarity, and unambiguity. The UK has introduced gender neutral language in its legislation for the last decade. Plain language as a concept encapsulates a qualifier of language which is subjective to each reader or user.[32] Eagleson defines plain language as clear, straightforward expression, using only as many words as are necessary.[52]

---

[22] See Lord H. Thring, *Practical Legislation: The Composition and Language of Acts of Parliament and Business Documents* (London, John Murray, 1902) 61.

[23] *See Compact Oxford English Dictionary of Current English* (Oxford, Oxford University Press, 2005).

[24] *Ibid*.

[43] *Ibid*.

[25] J. MacKaye, A.W. Levi and W. Pepperell Montague, *The Logic of Language* (Hannover, Dartmouth College Publications, 1939) chapter 5.

[26] For the distinction between semantic and syntactic ambiguity, see R. Dickerson, *The Fundamentals of Legal Drafting* (Boston, Little-Brown, 1986) 101 and 104; for an application of rules of logic to resolve syntactic ambiguities, see L.E. Allen, 'Symbolic logic: a razor-edged tool for drafting and interpreting legal documents' (1956-1957) 66 *Yale L J* 833, 855.

[27] See A. Seidman, R. Seidman and N. Abeyesekere, *Legislative Drafting for Democratic Social Change* (The Hague, Kluwer Law International, 2001) 255.

[28] See Sir S. Laws, CALC Conference 2009, Hong Kong.

[29] See Commentary, 'Avoidance of sexist language in legislation' (1985) 11 *Commonwealth L Bull* 590, 590.

[30] See W. B. Hill Jr., 'A need for the use of nonsexist language in the courts' (1992) 49 *Wash and Lee L Rev* 275.

[31] See S. Petersson, 'Gender-neutral drafting: recent Commonwealth developments' (1999) 20 *Statute Law Review* 35, 57.

[32] See R. Sullivan, 'Some implications of plain language drafting' (2001) 22 *Statute Law Review* 145, 149.

[52] See R. D. Eagleson, *Writing in Plain English* (Commonwealth of Australia, 1990) 4.

And so good urban law is effective urban law, law that contributes to the achievement of the desired urban regulatory results. How is it achieved? By means of clarity, precision, and unambiguity. In turn, these are achieved by gender neutral language and plain language.

Plain language has been promoted as the main tool for achieving clarity and in turn effectiveness of legislation. As a result, its contribution to good legislation is crucial, and merits further exploration.

2. Plain language: existing debate and modern trends

Plain language is defined by Peter Butt as clear and effective for its audience.[33] The plain language movement offers a wide range of principles that can lead to a legislative text that can be understood by the legislative users. But the blessing of its ambitious mandate constitutes its great weakness: plain language cannot be reduced to a standardised technical list of rules that apply uniformly. Plain language itself is a concept that is extremely difficult to define: it means many different things to different people. Reflecting the vagueness of plain language as a concept, Eagleson defines it as clear, straightforward expression, using only as many words as are necessary; language that avoids obscurity, inflated vocabulary and convoluted sentence structure. For Redish plain language means writing that is straightforward, that reads as if it were spoken; clear, direct, and simple; but with clarity and grace.

Thus, in its traditional definition plain language is a general and inevitably vague pursuit for techniques that can produce a text that may be understood by the users in the first reading. This in turn enhances clarity of the text, an attribute that makes it possible for users to adhere with the legislation, if they so wish. And it consequently promotes implementation, which is necessary for effectiveness. This is the crucial link between plain language and good legislation. But, if plain language is all about facilitating implementation, does it really matter if successful communication of the legislative message takes place in the first reading? This would be a good way of encouraging the user to read further, and so it is a good tool for making

---

[33] See P. Butt and R. Castle, *Modern Legal Drafting* (2006, Cambridge University Press, New York).

the text inviting. But a text, much more so a legislative text, understood at the second or third reading is equally commendable.

Moreover, plain language is … not only about language. Words, syntax, punctuation are very important elements. But so are the structure of the legislative text, its layout on paper and screen, and the architecture of the whole statute book as a means of facilitating awareness of the interconnections between texts. And so plain language begins to kick in during the analysis of the policy and the initial translation into legislation, with the selection and prioritization of the information that readers need to receive. It continues with choices related to structure during the selection and design of the legislative solution, with simplification of the policy, simplification of the legal concepts involved in putting the policy to effect, and initial plain language choices of legislative expression (for example, a decision for direct textual amendments combined by a Keeling schedule, or a repeal and re-enactment when possible). Plain language enters very much into the agenda during composition of the legislative text. And remains in the cards during the text verification, where additional confirmation of appropriate layout and visually appeal come into play. And so plain language extends from policy to law to drafting.

And so the existing concept of plain language relates to a holistic approach to legislation as a text, as a printed or electronic image, and as part of the statute book, which conveys a regulatory message to the users. Recent UK initiatives have advanced the plain language debate further by finally providing methodologically sound empirical data that set concrete parameters for its application. Plain language is a tool promoting uninhibited communication between the text and its users or, to personify the communication, between the drafter and the user. Identifying the people whose choice to act or not makes urban policy a success or a failure[34] is crucial in establishing effective communication with them. Compliance with urban laws cannot occur without user awareness of what is being imposed; ineffectiveness of the legislative text is inevitable; and so is the failure of the underlying regulatory reform. This is confirmed by user testing experiments, such as the one undertaken by the Knight and

---

[34] See D. Berry, 'Audience Analysis in the Legislative Drafting Process' (2000) *Loophole*, www.opc.gov.au/calc/docs/calc-june/audience.htm.

Kimble team in the late 1990s[35] or the Canadian studies by Schmolka, or the recent UK's Good Law initiative.

The drafter of primary urban legislation is, at least in the UK, a trained lawyer with drafting training and experience. The drafter of delegated urban legislation is, in the UK, a government lawyer in a relevant Department or a non-lawyer urban professional drafting for local authorities or agencies. The user of the legislative text can be anything from a senior judge to an illiterate citizen of below average capacity: urban law affects citizens of all intellectual capacities, and in fact it could be argued that more often than not it affects socially and financially vulnerable citizens. The inequality in the understanding of drafter and user of common terms, professional jargon, and legal terms renders communication a rather difficult task. This is all the more evident in urban legislation where complexity is not limited to legal terminology but also to the terminology of the professional discipline that the law expresses. Moreover, the users of urban laws range dramatically from Supreme Court judges interpreting the law to illiterate slum inhabitants in South America or Africa who are affected by the law. What could simplify the task somewhat would be the identification of the possible circle of users of the precise legislative text: identifying who the probable users of the law will be allows the text to 'speak' to them in a language that best meets their level of understanding.

Until now identifying the users was a theoretical aspiration for drafters who tended to guess who the possible stakeholders of the legislation might be. Recent empirical data offered by a revolutionary survey of The National Archives in cooperation with the UK Office of Parliamentary Counsel have provided much needed answers.[36] This has shown that the drafter cannot rely on the common notion of the 'lay person', the 'average man on the street'[58], the 'user'. The survey has proven beyond doubt that there are at least three categories of people that constitute 'the audience of legislation': lay persons reading the legislation to make it work for them[37], sophisticated non-lawyers using the law in the process of their professional

---

[35] See P. Knight, *Clearly Better Drafting: A Report to Plain English Campaign on Testing Two Versions of the South Africa Human Rights Commission Act, 1995* (Stockport, U.K.: Plain English Campaign, 1996) 39.

[58] See D. Murphy, 'Plain English-Principles and Practice', Conference on Legislative Drafting, Canberra, Australia, 15 July 1992.

[36] See https://www.gov.uk/good-law.

[37] See J. J. E. Gracia, A *Theory of Textuality: The Logic and Epistemology* (Albany, State University of New York Press, 1995), 159-163, and 164-165; also see G.L. Pi and V. Schmolka, 'A Report on Results of Usability Testing Research on Plain Language Draft Sections of the Employment Insurance Act: A Report to Department of Justice Canada and Human Resources Development Canada' (unpublished, August 2000); and V.

activities, and lawyers and judges. In more detail in the UK there are three categories of users of legislation:

a.   Non-lawyers who needs to use legislation for work, such as law enforcers, human resources professionals, or local council officials; the 'Mark Green' of the survey represents about 60% of users of legislation;

b.   Lay persons who seeks answers to questions related to their personal or

familial situation; 'Heather Cole' represents about 20% of users of legislation; and

c.   Lawyers, judges, and senior law librarians; the 'Jane Booker' persona

represents about 20% of users of legislation.[38]

The significance of the survey for plain language and good legislation cannot be understated. The survey provides, for the first time in UK legislative practice, empirical evidence from a huge sample of the 2,000,000 visitors of www.legislation.gov.uk per month. The survey, whose data relate to users of electronic versions of the free government database of legislation only, destroys the myth that legislation is for legal professionals alone. In fact, legal professionals are very much in the minority of users, although their precise percentage may well be affected by their tendency to use subscription databases rather than the government database, which is not annotated and often not updated. Whatever the exact percentages of each category are, there is significant empirical evidence that in the UK legislation speaks to three distinct groups of users, whose legal awareness varies from none, to limited, to full. But is the legal awareness of the users the only parameter for plain language as a means of effective legislative communication?

Pitching the legislative text to the 'right' level requires an additional consideration. Having pinpointed the rough profiles of the audience of legislation, the next parameter for plain communication is the topic of the legislative text. In view of the breadth of topics falling

---

Schmolka, 'Consumer Fireworks Regulations: Usability Testing, TR1995-2e (Department of Justice Canada, unpublished, 1995).

[38] See A. Bertlin, 'What works best for the reader? A study on drafting and presenting legislation' [2014] *The Loophole*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326937/Loophole__2014-2__2014-05-09_-What_works_best_for_the_reader.pdf, pp.27-28.

under the urban law agenda, offering a blanket answer to this is not possible. What one could call for is for the drafter to take account of the topic of the legislation at hand, and combine this with the consideration of possible audiences. For example, the main users of telecommunications legislation are inevitably government departments dealing with the fragments of the regulatory framework, companies dealing with the handling of the infrastructure, and judges and lawyers engaging in statutory interpretation and dispute resolution. Here, the language and terminology used can be sophisticated: paraphrasing the term 'network' with a plain language equivalent would lead the primarily learned audience to the legitimate assumption that the legislation means something other than 'network' and would not easily carry the interpretative case-law of 'network' through. And so this type of urban law can be drafted in a specialist language, albeit with a caveat: a primarily sophisticated audience cannot serve as a 'carte blanche' for jargon and legalese, since non-lawyers and non-professionals may need to, and in any case must, have access to the legislation too. As audiences become more specialized and more educated in technical areas, they expect texts that are targeted to their particular needs.[39] But, since accessibility of legislation is directly linked to Bingham's rule of law[40], passing inaccessible legislation under the feeble excuse that its primary audience possesses specialist knowledge is not easily acceptable. At the other extreme, urban legislation offering incentives to slum inhabitants to move away to other accommodation is primarily intended to the local authorities administering the scheme and mainly to the slum inhabitants themselves: here, te plainer one can be, the better,

But how 'plain' must legislation be? Even within the 'Heather Cole' persona there is plenty of diversity. There is commonality in the lack of legal or specialist training, but the sophistication of Heather Coles can range from a fiercely intelligent and generally sophisticated user to a rather naïve, perhaps illiterate, and even intellectually challenged individual. Which of those Heather Coles is the legislation speaking to? Certainly not 'the average man on the street': to start with, there are also women on our streets, and they are users of urban legislation too; and then, why are the above or below averages amongst us excluded from legislative communication?[64] Since effectiveness is the goal of legislative texts, should

---

[39] See K. A. Schriver, 'Plain Language through Protocol-Aided Revision' in E. R. Steinberg (ed.), *Plain Language: Principles and Practice* (Detroit, Wayne State University Press, 1991), 148, 152.
[40] See Lord Simon of Glaisdale, 'The Renton Report-Ten Years On' (1985) *Statute Law Review* 133. [64] See J. Kimble, 'Answering the Critics of Plain Language' (1994-1995) 5 *The Scribes Journal of Legal Writing* 51, 59.

legislation not speak to each and every user who falls within the subjects of the policy solution expressed by this specific legislative text? This includes the above average, the average, and the below average people.

And so urban law drafters must come to terms with the fact that their audience is not purely specialist. In fact, it ranges from super specialist (legal or professional) to 'the below average' person on the street. Not all urban laws speak to all of the users, and so there is scope for sophisticated texts but access to urban legislation is the balancing factor here. 'In the absence of instructions to the contrary, drafters are not only entitled to write for this audience but may even have a professional obligation to do so'.[41]

3. 'Blue sky' drafting tools in aid of urban law drafters

The study of legislation is a dynamic field and debates on how to achieve effective laws are ripe. Out of all initiatives considered advantageous for urban law audiences, there are three blue sky mechanisms especially useful for better urban law. All three respond to the special challenges of urban law drafting, namely to the need for urban law to speak to three diverse user groups with a single text: the layered structure promotes a three tier structure for legislative texts each addressed to each of the three user groups; the typography inspired presentation and layout responds to the need to bring to light the main regulatory messages in legislation; and the interactive electronic statute book highlights the interconnectivity between legislative texts within the statute book as a whole.

a. The layered approach to structure

---

[41] See R. Sullivan, 'The Promise of Plain Language Drafting' (2001) 47 *McGill Law Journal* 97, 114.

Currently legislative texts are structured in application to Lord Thring's Five Rules of Drafting[42] that offers precedence to provisions declaring the law versus provisions relating to the administration of the law; to simpler versus the more complex proposition; and to principal versus subordinate provisions. Exceptional, temporary, and provisions relating to the repeal of Acts, and procedure and matters of detail should be set apart.

The application of Thring's rules have led to a traditional legislative structure of preliminary provisions [long title; preamble; enacting clause; short title; commencement; duration/expiry; application; purpose clause; definitions; interpretation]; principal provisions [substantive; administrative]; miscellaneous [offences and provisions ancillary to offences; miscellaneous and supplementary]; and final [savings and transitional; repeals; consequential amendments; schedules]. Current plain language interventions have led to a bare top text that leads the user straight to the main regulatory message: preliminary [introductory text/long title, enacting clause, start/expiry date with a hanging clause for a Schedule, hanging clause for definitions, application]; substantive and administrative [principal, subordinate] and final provisions [savings, duration/expiry where not in preliminary of Schedule, transitional, repeals, consequential amendments, purpose clause with tangible criteria for effectiveness that are applied in pre and post legislative scrutiny, short title, Schedules [definitions, other].

But there is much scope for blue sky innovation by use of the layered approach[43]. The rationale behind the modern approach lies with the logical sequence of provisions within the text, which reflects logic, and philosophical and linguistic approaches to language and thought. This basis has now been overcome by the crucial evidence on the three user groups for legislation. Heather Cole, Mark Greene, and Jane Booker are diverse users that require diverse pitches of the legislative text. Speaking to all three of them at the same time is a rather complex, for some impossible, task. Introducing three versions of the same legislative text is a possibility but it is a recipe for disaster on such a diverse range of grounds, moral, ethical, constitutional, practical: rule of law, issues of interpretation between versions, identifying which version corresponds to each user, using that version as opposed to the one selected by the user, who

---

[42] See Lord Thring, *Practical Legislation, The Composition and Language of Acts of Parliament and Business Documents* (London, 1902), 38; also see V.C.R.A.C. Crabbe, *Legislative Drafting* (Oxford, Cavendish Publishing, 1998), 148-150.

[43] The term, and to a certain extent, the concept is attributed to John Witing, Tax Director at the Tax Simplification Office. I am very grateful to John Witing for his inspiration and the generosity with which he has shared it with me.

subjects each user to their corresponding persona, ethical and moral consequences of the application of a diverse version for each user. And the parallel existence of three different texts could be counter-productive: users currently choose to use the complex but official legislative text over any of the many interpretation aids offered by government. If the plethora of attractive user friendly manuals and policy documents are shunned in favour of legislative texts, what makes it probable that users will go to the simple Heather Cole text as opposed to the legal Jane Booker one that reflects users' perception of legislation? And so remaining with a single text is really the only option. But this is exactly what has imprisoned urban law drafters in the struggle for simplicity within legislative texts.

It is now possible to see that each user group has its individual requirements for legislative information that are distinct from those of the other user groups. Identifying the needs for legislative information for each user group at a provision, rather than text, level would allow drafters to imitate oral communication, and pitch the legislative text to specific abilities and requirements. Drafters of legislative texts can now begin to think what regulatory or legal message is relevant to each group, and structure the text accordingly.

The layered approach promotes the division of legislation into three parts, corresponding to each of the three profiles of legislative users. Part 1 can speak to lay persons: the content is limited to the main regulatory messages, thus conveying the essence of law reform attempted by the legislation, focusing gravely on the information that lay persons need in order to become aware of a new regulation, to comply with new obligations, or to enjoy new rights. Part 2 can speak to non-legally trained professionals who use the legislation in the course of their employment. Here one can see scope for further detail in the regulatory messages introduced, and for language that is balanced [technical, yet approachable to the professionals in question]. Part 3 of the legislation can then deal with issues of legislative interpretation, issues of procedure, and issues of application, in a language that is complex but not quite legalese, as there is nothing to prevent all groups from reading all parts.

The layered approach is revolutionary, as it shifts the criterion for legislative structure from the content and nature of provisions to the profile of the users. It switches on a user-centred structure, thus promoting both a link between policy and its effecting legislative text but also enhancing and personalising the channel of communication between drafters and users. And it applies and reflects the modern doctrine of contextualism in language and philosophy. But it cannot be viewed as a complete departure from tradition, as it continues to

apply Lord Thring's five rules. By requiring that Part 1 includes the primary regulatory message, it promotes Lord Thring's rules that give precedence to the simpler proposition. And by structuring legislation into three parts, the layered approach complies with the other Thing rules that require division of provisions declaring the law [in Part 1 or 2] with provisions administrating the law [in Part 2 or 3 accordingly]; that principal provisions should be separated from subordinate [in Parts 1 and 2]; that exceptional, temporary, and provisions relating to the repeal of Acts should be separated from the other enactments, and placed by themselves under separate headings [in Part 3]; and that procedure and matters of detail should be set apart by themselves [either in Part 3 of the layered approach, or in a Schedule].

The layered approach seems to be one of the promising initiatives in the field of legislation. But there are three points that need to be clarified. First, the layered approach may, but will not necessarily, lead to a partial, fragmented, or incomplete legislative communication to Heather Cole. There is no doubt that an erroneous application of the approach could result to that. But the placement of the main messages in Part 1 per se must be seen as an added bonus to lay users compared with the current state of affairs: in the layered approach the now frequently elusive main regulatory message will be easily identified, will be brought forward in a pronounced place at the beginning of the legislative text, and will be expressed in a language that is accessible to lay users. Compared to the current state of affairs, where the main message is communicated somewhere within the legislative text and is expressed in the layered approach's Part 2 or 3 language, this is certainly an improvement. And of course, there is nothing preventing Heather Cole from reading the rest of the text: in fact, an inviting Part 1 can only encourage Heather Cole to keep reading, whilst offering her a clear context within which her understanding of complex and detailed messages can only be enhanced.

Second, although Part 1 carrying the main regulatory message is distinctly different from Parts 2 and 3, it may be unclear what really distinguishes between Part 2 data and Part 3 data: both Mark Green and Jane Booker are able to handle complexity and technicality of legislative data. However, they do not both require the same data, as demonstrated by their motives when using www.legislation.gov.uk: Mark Green is interested in answers that allow him to perform his professional but non-legal duties, whereas Jane Booker seeks legal information. As a result, what Mark Green needs is a clear understanding of substantive and procedural requirements imposed by the legislation, whereas Jane Booker seeks deeper statutory interpretation often coupled with a holistic view of the statute book. As a result, Part

2 of the layered approach involves answers to questions such as who must do what by when, and what happens if they don't. Part 3 will delve deeper into intricate distinctions and possible exceptions that relate to statutory interpretation and interconnections between legislative texts within the statute book. There are two caveats here. One, Mark Green must still read the text as a whole. And Part 3 cannot be viewed as a mere shell of definitions, repeals, and consequential amendments: this would deprive the readers from at least part of the benefits of the layered approach.

Third, it would be inappropriate to consider that the simplification serviced by the layered approach would result to an abolition of the need for explanatory materials for legislation. In fact, as the layered approach results in an inherent fragmentation of data, it renders the use of explanatory materials and notes reinstating the fluidity of information and the cross-fertilisation between parts an ever so crucial requirement. The new style of explanatory notes[44] introduced by Good Law and showcased in the Armed Forces (Service Complaints and Financial Assistance) Bill [HL] Explanatory Notes[45] enhance the layered approach by introducing a clear table of contents that is thematic rather than provision based, with information on the policy and legal context of the Act, and with simple narratives on the main regulatory messages for all three user groups.[46]

Ultimately, the proof of the layered approach is in its application. User testing can prove whether it works in urban law, which user group for, and how it can be amended or fine-tuned to serve users better.

b. Legislative image: presentation, layout, pictures

---

[44] See Office of Parliamentary Counsel, 'Explanatory Notes Pilot: Response to Consultation', April 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/427779/explanatory_notes_response_to_consultation_on_pilot.pdf.

[45] See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377467/new-formatexplanatory-notes.pdf.

[46] See http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0003/en/15003en.htm.

Plain language has always advocated the need to rethink the layout of legislative texts.[47] The single font, the lack of adequate contrast between paper and text, the unique format are elements of the current legislative image that prevent the user from identifying the important aspects of the regulatory message thus reducing readability of legislative texts. Legislative texts attempt to convey a 'legislative story' to the user, thus allowing them to identify and then understand the underlying policy, the legislative choices made, and the rationale behind the text. This offers them the ability to read and interpret the text in context, thus making accessibility easier and more secure. The importance of layout in accessibility of the story behind legislation cannot be underestimated: layout and font diversification can bring out the important regulatory messages. More white space and a slight change of font coupled with shorter sections and sentences; structure in parts and sections, headings, and a table of contents [also known as a table of arrangements] are all tools that promote clearer layout for the purposes of enhancing readability. This is all the more important in urban laws where the message is inevitably complex but the effect on citizens profound.

Layout alone cannot adequately respond to a complex text, to a complex regulatory message, or indeed to a complex policy. It will contribute to simplification but with the aid of additional visual tools. One of those tools that have been ignored by even the most visionary of legislative academics and practitioners is the use of image in legislation. Images have been used in legislation that introduces national flags, traffic signs, or planning regulations. But the relationship between picture and legislation has not been explored fully. The visual arts could play a significant role here: there is nothing more direct, relevant to a wide range of users, and time resistant than Cain swinging his club above the prostrate Abel in Titian's painting in Santa Maria della Salute in Venice. The visual representations of themes relating to wrongdoing are so emotionally charged and the characters shown in such magnification that, combined with beauty and other aesthetic values, picture has had tremendous impact on the viewer. Perhaps the inclusion of images in legislation can enhance the quality of communication. And urban law is very fertile as a ground for that purpose: planning diagrams and visual aids have been in use in urban laws for quite a while now. What would be interesting is to transfer into image the main regulatory message. For example, a prohibition of throwing waste in a river can easily be translated in an image, thus transferring the message over to illiterate people who may have

---

[47] See Office of Scottish Parliamentary Counsel, 'Plain language and legislation', February 2006, http://www.gov.scot/resource/doc/93488/0022476.pdf.

used this practise before. The use of typographical and visual aids in legislation can enhance readability[48] immensely. They can address textual limitations and can take the user further by banishing the barriers or written textual communication.

c. The statute book as a whole

Reforming the structure and layout of individual legislative texts may bear little fruit without changes in the statute book as a whole. Addressing the issue of legislative volume that enhances complexity[49] has been at the forefront of the agendas of the last two UK governments as the epicentre of regulatory quality. The Better Regulation Task Force's 'Principles of Good Regulation'[77] linked better regulation with less legislation, and offered a number of regulatory alternatives: do nothing; advertising campaigns and education; using the market; financial incentives; self-regulation and voluntary codes of practice; and prescriptive regulation. In 'The Coalition: our programme for government'[50] the UK government undertook to cut red tape[51] by introducing a 'one-in, one-out' rule whereby no new regulation is brought in without other regulation being cut by a greater amount;[52] and to impose sunset clauses on regulations; and to give the public the opportunity to challenge the worst regulations. In fact, subsequently the government went one step further and introduced a one-in two-out approach. It undertook to use regulation for the achievement of its policy objectives only where non-regulatory approaches cannot lead to satisfactory outcomes; cost benefits analysis demonstrates a clear margin of superiority of regulation to alternative, self-regulatory, or non-regulatory approaches; or the regulation and the enforcement framework

---

[48] See G. Jones, P. Rice, J. Sherwood, J. Whiting 'Developing a Tax Complexity Index for the UK', https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285944/OTS_Developing_a_Tax_Complexity_Index_for_the_UK.pdf.

[49] See Office of Parliamentary Counsel 'When Laws Become Too Complex: A review into the causes of complex legislation, March 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/187015/GoodLaw_report_8April_AP.pdf, 6-7. [77] See http://webarchive.nationalarchives.gov.uk/20100407162704/http:/archive.cabinetoffice.gov.uk/brc/upload/assets /www.brc.gov.uk/principlesleaflet.pdf.

[50] See 'The Coalition: our programme for government', https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf.

[51] For further information on the Red Tape Challenge, see http://www.redtapechallenge.cabinetoffice.gov.uk/home/index.

[52] http://www.bis.gov.uk/assets/biscore/better-regulation/docs/o/11-671-one-in-one-out-methodology.

can be implemented in a fashion which is demonstrably proportionate; accountable; consistent; transparent and targeted.[53]A recent OECD Review pronounced the regulatory reforms in the UK as impressive.[54] Points of excellence include the effective balance between policy breadth and the stock and the flow of regulation; and the extensive application of EU's Better Regulation initiatives in the UK[55]. So there is a lesson of good practice here, especially with reference to urban law, a field of regulation that is characterised by multi-faceted layers of complex and voluminous red tape. Clearing up the statute book by means of codification can lead to a rationalisation of the regulatory messages, a clarification of conflicting provisions, and a prioritisation of goals and policies. Expressed with plain language, the combination can lift urban laws to greater accessibility and ultimately greater implementation and ultimate success.

But of course innovations to the statute book do not end with legislative volume. Search ability of urban legislation is another point of concern: offering search tools by keyword or topic can allow users an accurate image to the legal regime as it stands today! In the UK, The National Archives' John Sheridan leads current thinking both at the theoretical level of viewing the statute book as a collection of big data, and at the application level of presenting a prototype of a radically reformed screen presenting legislation at www.legislation.gov.uk. Our Big Data in Law project[56] revolutionized the way in which the statute book is viewed and led to big data applications and capabilities to UK legislation as a coherent, interrelated, and up to date whole. The project created a search mechanism for researchers allowing them to instigate research on legislation as a body: from the census that allows counting for example the number of 'shall' in UK legislation throughout the years to the introduction of methodology tools that provide empirical data on aspects of the statute book or the whole of the statute book.[57] This entirely new and free resource for the research community offers pre-packaged analyses of the data,

---

[53] See Department for Business, Innovation and Skills, 'Better Regulation Framework Manual', July 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211981/bis-13-1038-betterregulation-framework-manual-guidance-for-officials.pdf, 4.

[54] See http://www.oecd.org/dataoecd/61/60/44912018.pdf.

[55] For a listing of such policies and their implementation in the UK, see http://www.bis.gov.uk/policies/bre/improving-eu-regulation/guiding-principles-eu-legislation.

[56] The project team was led by John Sheridan, TNA, as Principal Investigator; D. Howarth, University of Cambridge, and Helen Xanthaki were Co-Investigators; the Advisory Board was chaired by Sir Stephen Laws, KCB, QC, LLD former First Parliamentary Counsel.

[57] http://tna.bunnyfoot.com/LDRI/#p=home.

new open data from closed data, and creates the capability of identifying pattern language for legislation, which would encapsulate commonly occurring legislative solutions to commonly occurring problems thus facilitating legislative communication. The project, which has just concluded, enhances user [in this case researchers'] understanding of the interrelations and interconnections between legislative texts, within fields of law, and across fields of law.

The project feeds into the great efforts led by The National Archives to review the way in which legislation is 'served' to users by offering unprecedented capabilities of identifying relevant legislative texts, such as delegated legislation, cross referenced texts, definitions of terms used in a legislative text, and, in the long term, even case-law clarifying or applying the text to cases. There are already two prototypes of the new screen for legislation. Both have been tested in user testing undertaken by BunnyFoot and including iris trackers as a means of assessing how long a user's eye spends in each part of the text, where the eye is searching for further information and where on the screen, and where the user fails to understand the text or the cross reference completely. This work is of profound importance. What is missing for the purposes of legislative readability is context, and this is what the new screen can provide. This, along with the new format of explanatory notes, can finally offer the user an accurate picture of the labyrinth of legislative data in all their complexity and cross-wiring. Would such mechanisms facilitate the urban law user? Of course they would: they could depict an accurate image of legislative regulation on the topic searched, thus demonstrating if clear answers can be found or if it is time for the user to accept that statutory interpretation by a trained legal professional is what is really needed in that case.

4. The theoretical umbrella: phronetic legislative drafting

Legislative innovation is happening all over the world. This rampage of fresh and innovative thinking is not haphazard: it reflects, and is evidence of, academic innovation in legislative studies theory. Until recently legislative drafting was viewed as a mere skill, normally and mostly, served by government lawyers. But things have changed. Legislation became the focus of regulation replacing the common law. There are a number of possible causes for this phenomenon: the Europeanisation of law offered common law systems the opportunity to appreciate more the feared statutory law; legal globalisation led to an emphasis on international statutory law (treaties etc.) that required national implementation via national

statutory law; and finally the realisation that regulation was passed for the purposes of achieving measurable results led to the inevitable [and not always fortunate] use of statutory law as a method of regulation. Whatever the reason, it invited a detailed study of statutory law from its conceptualisation to its implementation. And paved the way for a new theory for legislative drafting[58].

The traditional view, mostly within the common law world, is that drafting is a pure form of art[59] or a quasi-craft[60]: if drafting is an art or a craft, then creativity and innovation lies at the core of the task; rules and conventions bear relative value. In the civil law world drafting is viewed as science[99] or technique[61]: it carries formal rules and conventions whose inherent *nomoteleia* manages to produce predictable results. But, if drafting is viewed as a sub-discipline of law, then there is a third option: law is not part of the arts, nor is it part of the sciences[62] in the positivist sense.[63] In science rules apply with universality and infallibility: gravity will always make an object fall down. Law is different: 'All law is universal but about some things it is not possible to make a universal statement which will be correct... the error is not in the law nor in the legislator but in the nature of the thing'.[103] But rejecting the view that drafting is a science does not necessarily confirm that drafting is an art. Art tends to lack any sense of rules. In the pursuit of aesthetic pleasure, art uses whatever tools are available. Art is anarchic. Drafting is not. Of course its rules are not rigid, but they are present. There may be exceptions to all rules of drafting, but this does not mean that there are no rules. And these rules carry with them a degree of relevant predictability, since the latter is one of the six elements of theory.[64]

---

[58] See H. Xanthaki, 'Duncan Berry: A true visionary of training in legislative drafting' [2011] *The Loophole,* pp.18-26.

[59] See B. G. Scharffs, 'Law as Craft' (2001) 45 Vanderbilt Law Review, 2339.

[60] See C. Nutting, 'Legislative Drafting: A Review' (1955) 41 American Bar Association Journal, 76. [99] See *contra* Editorial Review, 22 [1903] Can. L. Times, 437.

[61] See *contra* J.-C. Piris, 'The legal orders of the European Union and of the Member States: peculiarities and influences in drafting' [2006] EJRL, 1.

[62] For an analysis of the contra argument on law as a science, see M. Speziale, 'Langdell's Concept of Law as Science: The Beginning of Anti-Formalism in American Legal Theory' 5 [1980] *Vt. L. Rev.*1.

[63] See R. R. Formoy, 'Special Drafting' 21 [1938] *Bell Yard: J.L. Soc'y Sch. L.* 3; but see *contra* C. Langdell, 'Harvard Celebration Speeches', 3 [1887] *LAW Q. Rev.* 123-124.

[103] See Aristotle, E.N., 5.10.1137b13-24.

[64] See B. Flyvbjerg, *Making Social Science Matter: Why social inquiry fails and how it can succeed again',* (2001, Cambridge University Press, Cambridge) 39

For Aristotle[65] all human intellectuality can be classified as[66] science as episteme; art as techne; or phronesis[107] as the praxis of subjective decision making on factual circumstances or the practical wisdom of the subjective classification of factual circumstances to principals and wisdom as episteme.[67] Law and drafting seem to be classical examples of phronesis, as they are liberal disciplines with loose but prevalent rules and conventions whose correct application comes through knowledge and experience. Drafting as phronesis is 'akin to practical wisdom that comes from an intimate familiarity with contingencies and uncertainties of various forms of social practice embedded in complex social settings'.[68] The art of drafting lies with the subjective use and application of its science, with the conscious subjective Aristotelian application and implementation of its universal theoretical principles to the concrete circumstances of the problem.[69] Phronesis supports the selection of solutions made on the basis of informed yet subjective application of principles on set circumstances.[70] Phronesis is 'practical wisdom that responds to nuance and a sense of the concrete, outstripping abstract or general theories of what is right. In this way, practical wisdom relies on a kind of immediate insight, rather than more formal inferential processes'.[71] And so drafting legislation simply involves the choice of the appropriate rule or convention that delivers the desired results within the unique circumstances of the specific problem at any given time. And, under this functional prism, successful drafting is the production of a good law, namely an effective law that contributes to regulatory efficacy.[72] There is nothing technical with qualitative functionality here: what counts is the ability of the law to achieve the reforms requested by the

---

[65] See Aristotle, *Nichomachean Ethics,* bk VI, chs. 5-11 (D. Ross trans. 1980).

[66] See M. Griffiths and G. Macleod, 'Personal narratives and policy: never the twain?' [2008] 42 *JPE* 121, 126.
[107]   Aristotle, note 106.

[67] See S.-U. von Kirchmann, *Die Werlosigkeit der Jursprudenz als Wissenschaft* (1848, Verlage von Julius Springer, Berlin).

[68] See B. Caterino and S. F, Schram, 'Introduction' in S. F. Schram and B. Caterino, *Making political science matter: Debating knowledge, research, and method* (2006, New York University Press, New York) 8.

[69] See W. Eskridge Jr., 'Gadamer/Statutory interpretation' [1990] 90 *ColumLRev* 635.

[70] See E. Engle, 'Aristotle, Law and Justice: the tragic hero' [2008] 35 *NKyLRev* 4.

[71] See C. Rideout, 'Storytelling, narrative rationality, and legal persuasion' [2008] 14 *Legal Writing: J. Legal Writing Inst.* 75.

[72] See H. Xanthaki, 'Drafting manuals and quality in legislation: positive contribution towards certainty in the law or impediment to the necessity for dynamism of rules?' [2010] 4 *Legisprudence* 111. [114] See H. Xanthaki, 'Quality of legislation: an achievable universal concept or a utopian pursuit?' in Marta Travares Almeida (ed.), *Quality of Legislation* (2011, Nomos, Baden-Baden), pp.75-85.

policy officers. In view of the myriad of parameters that are unique in each dossier, there are no precise elements of quality at this level.

This qualitative definition of quality in legislation respects and embraces the subjectivity and flexibility of phronetic legislative drafting.[114] Phronetic legislative drafting does not ignore the elements of art and science identified within the discipline; it focuses on the subjectivity of prioritisation in the selection of the most appropriate virtue to be applied by the drafter in cases of clash between equal virtues. But subjectivity is not anarchic: it is qualified by means of recognising effectiveness as the sole overriding criterion for that choice. In phronetic legislative drafting one must be able to identify basic principles which, as a rule, can render a law good. The pyramid in the beginning of this paper presents such principles: when applied, at least in the majority of cases, they lead to good law. Yet the ultimate criterion of good law is its effectiveness, at least under the prism of phronetic legislative theory, a theory that has innovated legislative study and legislative practice. This must now be applied to urban law.

5. Conclusions

This paper attempted to scratch the surface of quality in the area of urban law. The study of urban legislation has been revolutionised by the availability of accurate empirical data on user profiles. We now know that at least the electronic version of UK legislation is used by the legal professions, non-legal professions, and lay persons. Legislation has now found its audience, and clearly it is not just lawyers and judges.

The application of this new knowledge to the plain language requirements of knowing your audience and pitching legislation to their level of legal awareness has had, and is expected to have, earth shaking consequences to the structure of legislative texts, to the presentation of legislative texts, and to the focus on the statute book as a whole.

There are of course further, some could call them blue sky, innovations that rise through the horizon: the layered structure of legislative texts, the use of image or picture in legislative texts, the interactive prototypes of www.legislation.gov.uk.

Whatever one's views of blue sky tools might be, there is wide realisation that urban legislation can no longer take the disproportionate burden of legislative complexity. Legislative quality requires urban legislation that is effective, in other words urban laws that can produce the desired regulatory results. In turn, this requires an understanding that urban policy must seek empirically based concrete goals. The tools for achieving urban policy goals extend to a plethora of options aside of legislation. Urban legislation is an effective tool for achieving those aims but not a panacea. Urban legislation is the effective expression of good urban regulation. Good urban laws are effective laws. They are texts that can produce the desired regulatory results, which are expressed by the drafter and are assessed via pre and post legislative scrutiny by the Parliament. Effectiveness in urban legislation can be achieved by clarity, precision, and unambiguity. Gender neutral language and plain language are tools of clear urban laws. Plain language is a tool of communication between the drafter and the urban law user. Urban law users are diverse and vary from expert professionals to illiterate citizens of below average mental capacity. The diversity of urban law users combined with the inevitably complex messages of urban laws requires a visionary approach the legislation and its drafting. Blue sky innovations, such as layered texts, the use of image in urban laws, and the viewing of urban legislation as a set of big data can and will promote accessibility further.

But at the end of the day what matters is an understanding that urban law, and indeed all law, belongs to each and every citizen, not just layers and judges. So let us open the debate on how to apply the crucial legislative innovations in the area of urban law. It is a juicy debate that can produce gratifying results.