

Designing Effective Legislation BY MARIA MOUSMOUTI [United Kingdom: Edward Elgar Publishing, 2019. xvi + 224 pp. Hardcover: £75.00: the eBook version is priced from £22/\$31 from Google Play, ebooks.com and other eBook vendors, while in print the book can be ordered from the Edward Elgar Publishing website]

The overarching question that Maria Mousmouti tackles in *Designing Effective Legislation*—how should legislation be evaluated—is not a new one. However, the author’s thesis is novel and refreshing. She argues that legislation should be evaluated based on its effectiveness, and proceeds to painstakingly show how effective legislation can be produced. In particular, she hypothesises that effective legislation “is the result of complex ‘mechanics’ in the conceptualisation, design and drafting of legislation and the result of conscious decisions around four elements inherent in every law: purpose, content, context and results”, and offers a framework, undergirded in theory and legislative practice, on how lawmakers can produce legislation with the specific aim to be effective.

In the Introduction chapter, the author suggests that legislation should be evaluated based on its effectiveness, rather than its legality, legitimacy, legal certainty or proportionality because effectiveness is relatively “humble” in terms of origin and aspiration. It also has a managerial descent, as a concept is “neutral”, relative and

fluid, “empty” in terms of substantive content and highly contextual. Further, it can reflect distinct macro and micro angles, can be formal or substantive and can raise varying questions depending on the standpoint. It adds rationality to law making by ensuring the connection between objectives and results. According to the author, effectiveness is the value that best captures the capacity of legislation to function as a system, its mechanics as the controllable factor that can influence the achievement of results, and the items that fall within the mandate and the decision-making powers of the lawmaker.

The author goes on to show in Chapter 1 that for a lawmaker to transform ideals, ideas and assumptions into effective provisions using concepts, the law, language, structure and form, effectiveness has to comprise four fundamental elements present in every law: purpose, the “solution” as expressed in the content of the law, context (overarching structure or superstructure) and results. In the same chapter, she also attempts to distinguish effectiveness as an evaluative criteria from similar concepts like efficacy and efficiency, before explaining why effectiveness is the most suitable criteria out of the three.

The author then dedicates the next four chapters to elaborating on each of the four elements. In Chapter 2, she points out how purpose sets the benchmark for what legislation seeks to achieve, and addresses important issues such as how lawmakers can use purpose to design legislation which is clearer on its aims, as well as how they can come up with clear and meaningful expressions of purpose that set a clear and substantive benchmark for the law’s aims. In Chapter 3, she argues that effective formulation of legislation content demands, among other things, a clear process of legislative design and learning from experience and legislative practice rather than simply replicating existing legislative patterns. In Chapter 4, she focuses on the fact that every new piece of legislation becomes part of a wider legal system, and answers critical questions such as how a lawmaker can ensure that the new message is identifiable, measurable, accessible and coherent with existing messages. In Chapter 5, she examines issues such as how and by whom the results of new legislation can be monitored, reviewed and evaluated.

These chapters alone would have made the book worth its price. But the author does not stop there. She includes three other very interesting chapters. In Chapter 6, the author hones in on two specific lawmaking tools: Impact Assessments and consultation. She considers the extent to which these tools are useful to the practical aspects of lawmaking and whether they address or reflect the thinking process and questions emerging when designing and drafting legislation. She concludes that both tools are useful in these respects but lack the detail that would make them “proper” lawmaking tools. She thus proposes an effectiveness test and raises three case studies from different countries to assess the extent to which the test can provide meaningful information. In Chapter 7, the author highlights three different possible forms of legislative failure: failure in legislative design, failure in drafting and communication, and failure in implementation, and discusses how lawmakers might best respond to such failures. She ends with the final chapter, in which she enriches her thesis by considering the differences between a “top-down” and “bottom-up” approach to lawmaking, the characteristics of different types of lawmakers, and key cognitive biases that may inflict lawmakers when designing legislation.

There are three noteworthy strengths of the author's endeavour in the book. First, in proving her hypothesis and proposing a framework on designing effective legislation, the author consciously kept in mind the realities and challenges of lawmaking. These challenges include the fact that lawmaking is prospective in nature, takes place in a dynamic and context-specific environment involving politics and law, and is complex in terms of content, management, organisation, coordination and implementation. Second, she draws on examples from a myriad of jurisdictions including United Kingdom, France, Germany, Sweden and Canada. Third, her approach is broadly multidisciplinary, as she appropriately integrates perspectives from not just law but also political science, behavioural economics etc. If I had to offer one critique, it would be that slightly more attention could have been paid to potential key counter arguments. For instance, in Chapter 2 (the chapter on purpose), the author highlights the vague language of legislative objectives as a challenge to achieving the communicative function of law. However, could there be cases where such vagueness is intended by lawmakers, perhaps to leave sufficient room for judicial development and interpretation especially in relatively novel areas of law, and if so, can such an intention not be justified?

That said, there is no doubt that *Designing Effective Legislation* is an excellent resource for not only law and policy makers, legislative drafters and legal practitioners, but also for academics and researchers involving in areas like legislative studies, theory of law, regulation and the sociology of law. I suspect that it is also particularly relevant to Singapore for two reasons. For one, legislation appears to be the increasingly preferred approach to regulating many aspects of society (fake news, wild animals and birds, emerging crime trends, just to name a few recent examples). For another, the recent decision of the Singapore Court of Appeal in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 has made it such that moving forward it will become all the more important to draft plain words of legislation clearly and effectively.

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