Political Concepts
Committee on Concepts and Methods
Working Paper Series

43

November 2010

The Content of Law

Concepts and Measures in Legislative Studies

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Introduction

Decades ago, Giovanni Sartori commented that “concepts are not only elements of a theoretical system, but equally tools for fact-gathering, data containers” (Sartori, 1970: 64). And recently, Adcock and Collier have ascertained how the formation of empirical concepts in fact cuts across the classic counterposing between qualitative and quantitative studies, constituting “an important component of political science methodology” (Adcock and Collier, 2001: 532). This enquiry — which could have other examples — raises the question of the relationship between theoretical concepts and empirical concepts. However, it is emblematic to note that while the definitions of some concepts — such as democracy, ideology, civil war — have been the object of blistering debate in political science, the same cannot be said of others. The latter have been relegated to a secondary plane through a lack of recognition of the importance of their definitions. This article aims to understand the formation of an empirical concept that has not been systematically approached by the literature, despite its presence in many pieces of writing. One is referring to the concept of *content of law* (CL). This is the first critical review in which there is an attempt to elucidate how scholars have approached the problem of the establishment of an empirical concept of law.[1] However, the purpose is not only descriptive: the intention is also to show how it is possible to arrive at common strategies of classification or, at least, at strategies that are quite close to one another, in spite of the absence of a unified discussion on this topic.

I propose that the CL be defined with reference to legislation originating in executive branches or parliaments, eventually extending it to amendment too. In contemporary political science, the focus on legislative production has become a promising research agenda. Hence, the CL variable is systematically adopted to formulate hypotheses or test theories about the nature of the legislative process,

understanding relations between decision-making procedures – like time constraint and authority to determine the plenary agenda of parliament – and type of laws, identify changes in actors' political behavior as a function of the complexity of the bill and, ultimately, to make more general inferences about the quality of legislative production of representative institutions. For example, for authors exploring the impact of electoral incentives on legislators, it is often argued that electoral systems promoting individualistic behaviors or to cultivate the personal vote can result in high levels of legislative particularism (Cain et ali, 1987; Carey e Shugart, 1995, Cox e McCubbins, 1993). Clearly, for scholars of the personal vote, measuring the CL is a central point in the debate because an association between electoral laws that incentive for personal vote and legislative outputs characterized by high level of particularism would imply that exist a strength correlation between electoral incentives and policy behavior.

Given the above remarks, in this article I intend, firstly, to discuss the advances made by political scientists in the measurement of the CL concept. I identify two dominant approaches that I term *disaggregation approach* and *importance approach*. The next two sections are devoted to presenting the different proposals for the operationalization of the CL, as well as the nuances that characterize it. My remarks will not be restricted to mere descriptive commentary. I will also seek to provide some critical considerations that go beyond differences found in a review of the literature and allow for clarification of the empirical treatment of the CL. This will be the object of discussion in the article's concluding section.[2]

The disaggregation approach

The common starting point among scholars that espouse this approach is the clarification of the CL by identifying the effects forecast or actually produced

on society. The frequent use of certain adjectives to define the law — such as a "national", "pork barrel", "sectoral" or "individual" law — mirrors precisely the fact that the researcher operationalizes the CL as a function of the reach obtained by the norm.[3] In this sense, there is agreement among scholars in terms of recognizing that the law can be "disaggregated": it may be of interest to a certain number of people and affect more or less territory. Disagreement among scholars clearly emerges when they turn to measuring the level of disaggregation of the norm. Below, I present how the formats of the different proposals are instituted.

The best known analysis of the disaggregation approach is certainly that formulated in the 1960s by Theodore Lowi. In an article published in 1964, the author identified three types of policy — distributive, regulatory and redistributive — with the pretension of suggesting generalizations "sufficiently close to the data to be relevant and sufficiently abstract to be subject to more broadly theoretical treatment" (Lowi, 1964: 688). In order to differentiate between these three types of policy — which, for the author, correspond to veritable arenas of power[4] — Lowi used the criterion of the impact (or expected impact) of the norm on society, which was operationalized in two ways: as a function of the disaggregation of the public policy in question (relatively to the number of subjects affected by the law); and as a function of the criterion of costs and benefits (relatively to the consequences that the policy determines).[5] Hence, a *distributive policy* is characterized by the distribution of differential benefits among multiple interests that are independent from one another. These are policies that can be highly disaggregated, reaching highly individualized decisions, so that those who benefit and those who are penalized never confront one another directly. *Regulatory* policies are policies prone to maximum disaggregation, up to sectoral level, and are characterized by implying a direct

choice involving those favored and those penalized. Lastly, we have *redistributive* policies, conceived of as those that question the distribution of power in society (thus generating class conflicts) or in the political system, generally alluding to a strongly ideological zero-sum game.

Lowi's proposal was enormously successful in practice,[6] whilst widely questioned in academia. Going over the extensive literature that debated the weaknesses in Lowi's formulation is not the case here. Suffice it to say that with regard to the theme under discussion here, that of the CL, the main criticism we should consider is the one that points to the lack of explanatory clarity as to the criteria used to define the three types of policy, so that the analytic scheme proposed "does not delimit its empirical boundaries" (Kjellberg, 1977: 557) and, in the words of Hayes (1978: 138), "his idea of a definition consists of little more than a cataloguing of attributes that appear to cluster together". In other words, as suggested by Spitzer (1987), the nature of the public policy is, in most cases, by itself ambiguous, since it can display, at the moment of its formulation, typical aspects of different policy categories, so that attributing a single category becomes questionable.

Obviously, several attempts at improving Lowi's proposal followed the criticism (Anderson, 1997; Heckathor and Maser, 1990; Miller, 1990). In one of the most successful formulations, James Wilson (1973, 1980), stressing the study of regulatory policies, proposes an analysis centered on the cost/benefit criterion and, particularly, on whether "costs and benefits are widely distributed or narrowly concentrated from the point of view of those who bear the costs or enjoy the benefits" (Wilson, 1973: 332).[7]

Beyond these considerations, however, I believe the key issue is starting off from a recognition that in Lowi's analysis there are two central dimensions used to disaggregate the norm: the impact on society in terms of subjects

affected and the costs/benefits present in the law. On this point, I argue that this attempt at classification proposed by the author should not be read as an effort limited to US academic production.

Next, I will analyze a different formulation of the problem, still with a focus on the disaggregation of the CL. This proposal originated in the discussion on the quality of Italian democracy — in particular, about the low quality of the Italian parliament's legislative production — and for a long time remained limited to that context. It seems to me that Lowi's proposal and the Italian version display broad similarities and convergences that we should take into account in order to gain a clear understanding of the disaggregation approach.

In Italy, in order to overcome the stalemate underlying the "*leggi-leggine*" dichotomy, which was in fact a more political than scientific classification and did not reach all the possible nuances of a law (Cantelli, Mortara and Movia, 1974), several alternative proposals appeared in the 1960s and 1970s. In this debate, which involved jurists and political scientists, two criteria were prioritized to classify the CL. One concerned the number of subjects affected by the law; the other referred to the territoriality of the norm, i.e., to the impact on the territory in terms of its size. It is apparent that the idea of the norm's disaggregation is maintained, as well as how to operationalize the concept, with changes only in the criteria used to measure the chosen indicators. Let us examine this point further.

The criterion of the number of subjects was conceived of as a continuum, with the national law on one side and the "leggina" on the other; in between, the intermediate cases of sectional and micro-sectional laws (Cantelli, Mortara and Movia, 1974; Di Palma, 1977). A *national law* affects all the citizens of the country's legal order, and also considers laws that regulate an organizational unit that, in turn, acts at the level of the national community (like the banking

system, the civil and criminal legislation, the education system). For example, a law increasing the minimum age for work admission or for driver's license is a national law. A *law of sectional interest*, on the other hand, is characterized by being aimed at the citizens of a clearly identifiable social category, with the condition that it should be large, sufficiently diversified and active in an area considered relevant by society. This is the case of legislation that regulates organizational units that serve these social categories. The condition of the size of the social category for its inclusion in sectional projects responds to the demand of excluding segments that tend to satisfy specific interest groups and that fall within the *micro-sectional* category. This law is characterized by satisfying specific interests, i.e., well identifiable social categories that are more homogenous in comparison with the previous ones and whose activity has a more limited and specialized perspective (Cantelli, Mortara and Movia, 1974). For example, an agricultural proposal establishing new rules for planting flexibility is codified as sectoral but if the proposal is direct just to one programme (as rice, wheat or cotton), it should be considered as micro-sectional. Lastly, some authors talk about *individual laws* (the so-called "photograph" or "photocopy" laws), characterized by aiming to obtain benefits in favor of one person, or a change in the *status* of a certain good. A project conferring an individual pension for very special merits to a person is an example of it.

The second criterion for understanding the content of the law and overcoming the stalemate created by the "*leggi/leggine*" dichotomy refers to the impact of the norm over the national territory. As in the previous case, one is dealing with a variable that measures the impact of the law. However, whilst the former refers to the impact on individuals or their environment, this one deals with the physical amplitude of the impact, so to speak.

The importance of the approach for the Italian case is visible in the number of works that use it. Since the 1960s, albeit without continuity, scholars have questioned the content of Italian legislation of parliamentary or Executive origin according to this way of understanding the CL (Predieri, 1963, 1975; Cantelli, Mortara and Movia, 1974; and Cazzola and Morisi, 1981; and Gerelli e Cassese, 1985, among others). The fact that in the latest works published on the theme (De Micheli, 2001; Capano and Giuliani, 2001) the quality of the legislation has been evaluated and examined on the basis of the distinction between national, sectional, micro-sectional and individual norms demonstrates how much this *modus operandi* for approaching the CL problem has taken root in the Italian academic world.

Now, the point that must be stressed is that although the Italian approach and Lowi's proposal were born and developed in different contexts and apparently without any point of contact, one may extract from them three common attributes in order to classify the CL. They are: (1) level of aggregation (or generality); (2) territorial dimension; (3) distribution of certain benefits (or costs). The first resides in the capacity to reveal not only the kind of impact of the law on the population, but also in its relevance as a function of the size of the affected group or — in cases when the law is directed at things — of organizational units and institutions specific to the national or local interest. The law's generality can be associated, with due caution, with Lowi's criteria of disaggregation of public policies and of impact on society. When the CL is expressed by means of notions of *generality*, *impact* and *disaggregation*, the relations that exist between the three terms becomes evident. One in fact observes that the grounding of the notion of generality resides in the principle that the norms have a greater or lesser impact depending on the situation. Moreover, when it is declared that this impact occurs, for example, on a certain

number of individuals, one is affirming an important connection between the impact and the disaggregation of the public policy. Evidence can equally be found in the approach by Wilson, who reinterprets Lowi's proposal for regulatory policies. In this case, one notices that when speaking of concentration/dispersion of a law's effects, one is measuring the impact in relation to the number of interested subjects, i.e., one is speaking of the law's generality. What, then, would be the contribution of this first dimension to be taken into account? In my view, the possibility of expressing, by means of a continuum — that classifies the law as national, sectional, micro-sectional and individual —, a convergence into one analytic criteria: the level of disaggregation (or aggregation) of law.

As for the second criterion — that classifies a law as a function of its territorial impact —, it is contained in Lowi's theory, which states that a law can be territorially circumscribed, something that in the Italian proposal was made explicit as an isolated criterion. Lastly, the third criterion, which involves the question of the effects — in terms of costs and benefits — on subjects (or things): in spite of the fact that Wilson formulated the idea for regulatory laws, it may be thought that each category of norm possesses two alternatives, inasmuch as there is a prevalence of costs over benefits or vice-versa.

Taken together, the analyses by Lowi and Wilson, in conjunction with the "Italian proposal", seem to point to an alternative line of investigation that takes into account the three attributes of the CL described above. The first concrete examples of its application are by Di Palma (1976; 1977), about Italy. It must be highlighted that there currently exist similar studies, but most privilege the generality and territorial criteria, whilst disregarding the criterion of costs and benefits. Examples include attempts to examine the cases of Portugal (Opello, 1986), of various Latin American parliaments, such as Honduras (Taylor-Robinson and Diaz, 1999), Colombia (Crisp and Ingall, 2002; Cárdenas et al.,

2006), Paraguay (Molina et al., 2004), Brazil (Amorim Neto and Santos, 2003) and Ecuador (Acosta et al., 2006), or for several countries of Central America and South America jointly (Stein and Tommasi, 2007).[8]

However, the potential contribution of the analysis by disaggregation finds an obstacle in the high analytic costs of the proposal itself. Suffice it to think about the problem of how to differentiate the law as a function of generality or of its effects in terms of costs and benefits. Actually, in many cases, the law is not clear about its generality, i.e., it precludes a sharp differentiation between the subjects benefited. The disadvantages are even greater if we consider the effects forecast. How to assess that the law brings certain costs to some and benefits to others? In order to minimize possible arbitrary choices in the identification of distinct CL categories, scholars who have adopted this approach have resorted to area specialists, above all to judges. This is the strategy adopted by Di Palma when examining the Italian case. More recently, Crisp and Ingall (2002) stated that they examined the proposals with three other colleagues. This can certainly contribute to achieving agreement on the more doubtful and controversial proposals, but even so, does not eliminate two crucial problems: for one, the choice of the experts. Whilst Di Palma clearly states he appealed to eleven experts in the field, Crisp and Ingall refer only to "colleagues", not mentioning who they are or how they were chosen. In other words, the idea of reducing the level of arbitrariness in the classification of the content of the norms by resorting to a group of specialists tends to become another problem: the selection of the specialists. On the other hand, there remains the problem that often, given the difficulty in accessing sources, the researcher codifies the CL considering solely the title of the law rather than its full text. Whilst this clearly has the advantage of simplifying the analysis, it also has the effect of increasing the risks of classifying a law by means of inadequate

categories of content, since the classification generally is “based on the limited information contained in the title of the bill, so care should be exercised when interpreting the results” (Cárdenas et al., 2006: 35).

The importance approach

Other researchers examine the CL starting off from a perspective that emphasizes the perception that there is a variation in the level of importance of norms. The frequent use of certain adjectives to define laws — such as “secondary”, “relevant”, “salient”, “significant”, as well as “important” — mirrors precisely the fact that the researcher associates the CL to a conceptual formulation in which the operationalization of the content becomes an analytic exercise to measure the level of importance that the norm possesses. It is worth asking ourselves: what criteria are to be used to define importance?

An accurate method for determining objectively the importance of legislation is not a easy task. There are different analytic strategies here. The simplest one is to stipulate *a priori* that some norms are more relevant than others. For example, in a recent study on Executive-Legislative relations in the Dominican Republic, Marsteintredet (2008) counted important laws simply as the sum of all laws not defined as relevant. And the latter are those that intervene on matters relating to private pensions and insignificant and symbolic laws, such as the naming of highways. The main criticism that this strategy elicits is the high level of subjectivity in identifying the “irrelevant” norm. One can clearly understand that a law instituted to name a road is “less relevant” than a law that tackles pension system reform, for instance. However, a classificatory exercise of this kind is questionable if the legislative production as a whole of a given parliament or government is rather complex and articulated. With the existence of multiple benefits directed at different levels of the population (organized

groups, associations, sectors of society), or even geographically delimited, the criterion that defines a norm as more relevant than another is strictly personal, sometimes linked to the researcher's own research interest. Therefore, I believe a strategy of this kind to be valid in cases where legislative outputs are restricted to a minimum number of types of laws, which are easily identifiable and can be grouped into a small number of categories. This seems to be the case of the Dominican Congress, as mentioned previously. According to Marsteintredet, 1,758 laws were passed between 1978 and 2005, of which 1,230 were symbolic, or concerning private persons, or street names.

In the same line of research, others scholars stipulate *a priori* level of importance by counting the number of articles or words in a law, i.e., by considering its size and length (Van Mechelen and Rose, 1986) . This approach certainly is not new. Already in the late 1960s, Blondel (1970) examined the legislative production of five European countries (United Kingdom, Ireland, Sweden, Italy and France) plus India. The conclusion was that the importance of a law was owed, among other criteria, to its length. A limited number of articles would signal a norm of little relevance. Di Palma (1977) took up Blondel's analysis and incorporated the Italian case. According to the author, the chief characteristic of legislative production in Italy was the smaller number of articles per bill than in other countries. This corroborated his interpretation that norms are of little importance in Italy, most of the time affecting marginal issues.

This path has a major limitation. As recently pointed out by Huber and Shipan (2002), the variation in the CL about the same matters between different countries can be explained in terms of the differences in the levels of conflict between the political forces; in terms of a wish to limit the discretionary character of other actors (especially the bureaucracy and the Judiciary) at the implementation phase; or, lastly, in terms of politicians' own tendency to write

ambiguous and confused statutes. In spite of growing efforts to solve the latter problem by means of the adoption of clear drafting rules (Muylle, 2003) — which would resolve questions of form with respect to homogeneity, simplicity and clarity in the formulation of a norm according to a set of well laid out stylistic and graphic rules —, even then, the other political conditioning factors are not eliminated. Anyway, a large number or articles might reproduce a norm's problematic development in the initial stages of the legislative process or during the final composition of the text itself, and not necessarily be an indicator of importance. As well noted by Tsebelis (2001: 166), the length of legislation should not be used as a proxy for importance "because a law can be written to enumerate areas of applicability (in which case length is correlated to significance) or areas of exception (in which case length is negatively correlated to significance). In general, this approach to the CL suffers from an excessive approximation to the problem in question: the risk is that it does not measure the CL, just the dynamic of the legislative process that conditioned the final format of the law.

A more sophisticated way of measuring the importance of legislation is one that resorts to a set of secondary sources, such as texts, articles, magazines, official reports and the like, to define whether a law is in fact important. The criteria used to classify a norm as important becomes its mention in the sources. Proceeding in this way, the codification of a law is independent of one's own personal evaluation or the very crude indicator of the number of articles/words. Two works of contemporary political science added momentum to this perspective. One is by David Mayhew (1991), who has investigated in the United States the effects of divided government on postwar legislative production. The other is by Döring (1995), who has studied various aspects

inherent to the legislative process in European countries based on a set of previously selected relevant laws.

The proposal adopted by David Mayhew (1991) led to ample debate in the United States. In order to come up with a list of important laws, the author used journalistic sources, in the first instance: two lists of laws published annually by the *New York Times* and by the *Washington Post*. Moreover, he resorted to other sources published by specialists who evaluate the importance of laws in long-term perspective, with retrospective judgment, therefore. In this case, the author would be capturing the effects of laws during their application by means of specialists' perception, and not just as a function of an immediate judgment upon approval and publication. Various recent works (Binder, 1999; Coleman, 1999; Epstein and O'Halloran, 1999; Maltzman and Shipan, 2008) have used Mayhew's list of important laws. Others, starting off from the original proposal, have made an ulterior effort at improvement by solving two problems. On the one hand, they have concerned themselves with expanding the identification of important laws to the period prior to the Second World War (Peterson, 2001; Clinton and Lapinski, 2006) so as to validate the different theses about legislative production over a longer period. At the same time, whilst some resorted to other sources of information beyond Mayhew's, such as the *Congressional Quarterly Almanac* (Jones and Baumgartner, 2004), others (Cameron, 2000; Howell et al., 2000) combined such information with that found in the two newspapers Mayhew used and, in an even more thorough effort, as is the case of Clinton and Lapinski (2006), added other texts, so as to present a more encompassing view of US legislative production.

As well as the improvement of the list of important laws based on a reevaluation of the sources, what also occurred was a refinement of the methodological proposal. Among scholars, it became patently clear that the

greatest challenge is interpreting discordant mentions, i.e., norms cited as important in one text and absent from others. But, after all, when should a law be counted as important? As a function of the number of mentions, for example? Howell et al. (2000) have proposed an alternative measure by creating a list of laws mentioned in all three sources they used (*New York Times*, *Washington Post* and the *Congressional Quarterly Almanac*) and that took up eight or more pages in the *Congressional Quarterly Almanac*. In a process of even greater sophistication, Clinton and Lapinski (2006) utilized an item response model that provides a means of leveraging all available information, facilitating over-time comparisons to arrive at list of important laws[9]. I do not have the intention of summarizing these research advances. Neither is it the case of discussing the merit of each of the proposals and attempts at improvement undertaken after Mayhew's seminal work. Suffice it to say that considering this literature as a whole, one of the results obtained is that the analytic emphasis on the aspect of the norm's importance has become central to the debate in the United States, as demonstrated by the ever more frequent presence of specific studies in specialized journals.

Döring's proposal (1995) is restricted to norms relating to the policy field of regulation and deregulation of labor policy and the labor market. It is important to stress an advantage of this proposal, though. It is an encompassing proposal, since it covers the legislative production of eighteen European countries. The main consequence is that it may be used to compare the quality of laws from different countries, separating possible causes of a politico-institutional character. The contribution by Döring and colleagues in the definition of a set of important laws for European countries was based on an examination of the NATLEX database of the International Labour Office (International Labour Organization), which contains several countries' legislative production in the

labor field. In order to select a group of important laws on the basis of this list, it was necessary "to find independent sources in order to validate their representability and to identify the most important legislative instruments among materials reported" (Scholz and Trantas, 1995: 638). And, to this end, they resorted to the *Encyclopedia for Labor Law*, a publication that contains information on the legislation of every European country (bar Iceland and Norway) plus the USA, Canada, Australia and New Zealand. All the laws mentioned in the *Encyclopedia* were treated as relevant. Hence, the authors arrived at a list of important laws by crossing the information present in NATLEX with the laws cited in the *Encyclopedia*.

The two studies presented here (Mayhew's and Döring's) have found much resonance in academia, but similar efforts for other democracies remain limited. Inspired by Mayhew (1991), Fukumoto (2008) used a secondary source that reports major laws produced to study the volume of legislative production in Japan between 1949 and 1990. Conley and Bekafigo (2006) follow the same strategy to study the legislative production of France and Ireland, as well as of the United States. The set of laws selected by Döring (1995) and his collaborators served as a reference for comparative works on the paths followed by bills and their success rate (Becker and Saalfeld, 2004), the role of committees (Mattson and Strom, 2004; Damgaard and Mattson, 2004), the adoption of restrictive rules during the approval process (Döring, 2004) and the volume of legislative production (Tsebelis, 2001; Fukumoto, 2008).

Discussion

The CL is a concept that in spite of having stimulated reflection among researchers, has not resulted in a unified debate about the best conceptual treatment. This has produced a certain amount of inattention with regard to the

recognition of one or more classificatory trends. A clear demonstration of the absence of dialogue between authors with respect to possible proposals for tackling the CL can be found in recent studies on Latin American cases. In them, most of the authors state that they approach the CL problem based on the proposal originally presented by Taylor-Robinson and Diaz (1999) about the Honduran case. However, these authors take up again Giuseppe Di Palma's questioning of the Italian case, which, in turn, incorporates the US debate and, above all, the Italian debate on the quality of laws, as we have seen. The review undertaken in this article has shown that it is possible to frame the different analyses into at least two distinct approaches. As I see it, the issue is not about now privileging one of the approaches among those presented here. In essence, I believe the best way of facing up to the CL problem is not proposing the validity of one strategy over another, but thinking of the different proposals as concurrent or mixed, so that one might state that one is preferable or that a certain combination is more advantageous as a function of the costs/benefits it brings.

Firstly, one must recognize that in both approaches the CL acquires clear and well-defined features of an easily observable empirical concept, seen as it is restricted to norms produced by a certain political organization. In this sense, the methodological difficulties habitually found in the formulation of empirical concepts — such as the separation between theoretical and empirical concepts or the differentiation between empirical and ideal notions — are in this case restricted to the operational definition, i.e., to the identification of the set of attributes that characterize the CL.

The *disaggregation* approach takes up the classic discussion present in the social sciences on the question of the operationalization of concepts. As summarized in the text, this approach — onto which the debate on policy

introduced by Lowi-Wilson and the debate contextualized in Italian academia converge — is resolved by studying laws based on three criteria: generality, territorial impact and costs/benefits present. It has been said that scholars tend to the first and the second, which are easier to operationalize. In general, the strategy is promising for the treatment of the CL both when the focus is on the legislative production of one country (one chamber, for example) or in comparative perspective. The main problem perhaps is the fact that not every law is attributable to a specific category of generality of norm. In other words, many affect different categories or subjects at the same time, making the identification of the content as a function of a single category problematic and even incorrect. This gets worse if the researcher has only the title of the law to hand in order to classify it.

The *importance approach* has significant advantages in relation to the *disaggregation approach*. This is evident when the researcher limits him/herself to examining the norms of one country. Having access to several sources with different contents, such as newspapers, encyclopedias and official texts can help in establishing a sufficiently exhaustive list of important laws. The discussion following the publication Mayhew's text for the US case points in this direction. However, pursuing a strategy of this kind in comparative terms is more problematic. Suffice it to consider Döring's study on European countries. Despite the importance of the author's classificatory effort, one must recognize a strong limitation in his work: it deals only with bills in the labor field.[10] Not taking this into account means not only disregarding the need to obtain a fuller and more careful listing of each country's important laws, but also running the risk of biasing the value of the conclusions reached, inasmuch as any test will always be restricted to part of the important legislation, and not its totality. Clearly, comparison

demands a much greater effort, perhaps by several researchers and research groups — a highly costly strategy.

One viable solution for this problem would be to dichotomize. The article by Marsteintredet (2008) on the Republic Dominican is an example of this strategy. The same may be said for those who seek to observe the volume of parochialist norms for a given country. The dichotomy between parochial and non-parochial laws solves the problem of classifying the content of a country's legislative production, as well as opening the way to possible comparisons. Hence, for example, Crisp et al. (2004) compare the legislative production of six Latin American countries, classifying the norms as a function of the distribution of "local public good or a private good" since this type "has a greater propensity to fulfill pork barrel or particularistic purposes" (Crisp et al., 2004: 835). The problem relating to the arbitrariness of classification gets reduced, or is completely eliminated. This is owed to the fact that simply reading the title of the law clarifies perfectly well whether it is territorially limited. Furthermore, if we "buy" the argument espoused by many that the parochialist norm is a "secondary norm", then the analysis can in fact have an objective grounding that draws attention to the level of "important" laws produced by a country's legislators. It must be said that here the importance of the law is assumed, i.e., it is stipulated only on the basis of a simple comparison with the volume of non-significant laws, of a local character. It is clear that the separation between the disaggregation approach and the importance approach tends, in the case in question, to disappear. In this case, whilst the advantage for the researcher is to simplify the study of the CL of law, at the same time, he/she may be criticized for pre-defining and not measured the importance of law.

Lastly, a more general remark: most researchers and scholars are interested in estimating the weight of the politico-institutional determinants

present in a country — like electoral rules and agenda control in parliament — that can have substantive effects on the content of legislative proposals. This means that the choice of adequate criteria for defining the CL becomes a vital element for these enquiries to be successful. It is then legitimate to argue that whilst it is urgent that future enquiries expand the reflection on the best strategy for measuring the CL, understanding the trends that are currently dominant in academia is also fundamental. The discussion undertaken here had the intention of providing greater clarity about this phenomenon, as well as making the operationalization of the CL a key question for political science, with two different approaches as points of departure. Future research needs to take into account the distinction between them, with their convergences and divergences, before more sophisticated contributions can be made.

End Notes

[1] There are several terms that could be used instead of “law”, such as “statute”, “norm”, “bill”, “decree”, “legislation” and “proposal”, among others. I prefer “law” because the term directly elicits the image of a norm as the product of a formulation that occurred in a representative ambit. Whenever I use other terms in this article, it is as synonyms of “law”.

[2] It is important to stress that I do not deal with the CL on the terms of the classic differentiation between policy areas (distinguishing between labor laws, health-related laws, environmental laws etc). The reason for this is that such distinction is positioned at a macro level of the analysis, which transcends the conceptual treatment of the CL. It is thus unable to furnish a clear picture of the specific components of laws, whether to indicate the importance of a country’s legal production, or to measure its quality.

[3] Historically speaking, already in the 19th century, European legal literature signaled the existence of a particular kind of legislation, not general in character,

concerned with regulating sectoral or singular interests, according to which “parliaments, overburdened each year with so much work [...] display a particular inability to codify and discuss and vote on the major organic laws” (Palma, 1883: CLXXX).

[4] The originality of Lowi’s work — a factor that doubtless contributed to its success — lies in the argument that to each public policy there corresponds a distinct type of political behavior, whose orientations mark veritable “arenas do power” that, in turn, tend to develop typical political structures, their own political process, dialogue among the elites and types of relationship between groups. I stress that my analysis will not go into this question, since it is limited to the aspect of measuring the qualitative event.

[5] Following the literature, I refer to Lowi’s first typological formulation. In a study published in 1972, Lowi trails a different path, one that alludes directly to the legal assumptions of each law, abandoning the criterion of the impact on society that characterized his initial studies. This approach, kept up in his more recent writings, must be read with the filter of the influence of jurist Hart, according to whom a norm does not always directly prescribe coercive effects and obvious sanctions upon its subjects, coercion being more or less remote. Equally, it so happens that, as in the case of the transfer of power or the delegation of power, the norms act indirectly over society, since they do not compel citizens, but structure the organizational environment as a whole (Hart, 1961). Following this legal perspective of the law, Lowi highlights, on the one hand, the presence of norms whose coercion is immediate or remote; and, on the other, he evinces the idea that policies are not always directed at disciplining or organizing the action of individuals, but may affect certain organizations and/or environments. Paradoxically, the justification for the pursuit of criteria that facilitate the analysis fails in the recognition of coercion as the only explanatory dimension. The coercive criterion is not able to qualify the content of the law by itself, since it is more analytic and relates to the normative question of public policy, thus making the empirical reconstruction of each case problematic.

[6] Some recent works have applied it to case studies for parliament’s legislative production. See, for example, Molina et al. (2004) for the Paraguay; Acosta et al. (2006) for Ecuador; Capano and Giuliani (2001) for Italy and Beyme (1998) for Germany. Area studies (i.e., those that go deeper into a specific type of policy)

are certainly more common. For a general discussion of the applications of Lowi's typology, see Spitzer (1987).

[7] The concentrated or diffuse character of the costs and of the benefits relates to the number of people affected by them, i.e., they are concentrated when groups are clearly and explicitly benefited or have costs imposed upon them; they are diffuse when the tendency is for such costs to be applied to a large number of people, which makes it difficult to locate specific groups.

[8] The proposal of the latter authors combines six indicators to arrive at an index of public policy quality. What relates directly to the discussion conducted here is what the authors term public relevance, which seeks to measure a policy's degree of promotion of the general well-being by observing to what extent it tends "to funnel private benefits to certain individuals, factions, or regions in the form of projects with concentrated benefits, subsidies, or tax loopholes" (Stein and Tommasi, 2007: 203).

[9] For a different and more sophisticate tempt to produce an indicator capable to estimate legislative production of major policy changes see Grant and Kelly, 2008.

[10] More specifically, it tackles proposals relating to deregulation of working time and working contracts and social security benefits.

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