

Layers of Intentions

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Martin Matczak, [Three Kinds of Intention in Lawmaking](#), 36 *Law and Philosophy* 651 (2017).

“Legislative intention” is one of those concepts that many people use without recognizing the complexity of the underlying idea. The issue of statutory interpretation is frequently characterized as being a disagreement between “intentionalists” and “textualists,” an argument regarding what role, if any, lawmakers’ intentions should be given in determining the meaning and application of statutes. However, even if one starts from the position that legislative intentions are important, there is a further question regarding which intentions we are talking about.

This is where [Marcin Matczak](#)’s article, *Three Kinds of Intention in Lawmaking*, comes in. Matczak analyzes legislative intentions using the analytical structure [J. L. Austin](#) offered for talking about the intentions of everyday speech: locutionary intentions, illocutionary intentions, and perlocutionary intentions. The first, locutionary intentions, refers to (“semantic”) meaning—what the speaker was trying to say. The second, illocutionary intentions, refers to the type of speech act intended. Austin was well known for pointing out that utterances sometimes change things in the world—e.g., “I now pronounce you man and wife” can change the legal status of the individuals involved (he called such utterances “performative”). More generally, a set of words can be intended to be a special kind of utterance: e.g., a promise, request, order, etc. Austin’s third category, perlocutionary intentions, regard how the person making the utterance hopes to change the world through the words chosen (e.g., getting other people to do things because the speaker has made certain promises, requests, or orders).

Matczak’s article asserts that the debates about statutory interpretation have wrongly emphasized locutionary (semantic) intentions; certainly, many of the commentators described (or self-described) as “intentionalists” emphasize semantic intentions. However, as Matczak points out, legislation is usually drafted by people other than the lawmakers; the semantic intentions thus belong to the drafters, not the legislators. Beyond this, there is no reason to suppose that all the lawmakers who voted for a bill shared identical understandings of its meaning, and there is no obvious way to aggregate differing semantic intentions.

Some commentators described, or self-described, as “intentionalists” (and a few constitutional “originalists”) focus on a different kind, or different aspect, of intention: the proposed effects of a law—intentions about how a legal rule will be applied (in Austin’s and Matczak’s terminology, “perlocutionary intentions”). However, as Matczak points out, some of the same problems arise here as with semantic intentions: it is highly unlikely that all those who support a proposed legal rule have the same views about how it would or should be applied. As Matczak argues (and here, as the article notes, he is agreeing with [Joseph Raz](#)), what lawmakers who vote for a bill do share is an intention to make the rule a valid law in that jurisdiction. These are illocutionary intentions: to make a certain kind of utterance—here, passing a law.

However, if we do not obtain the meaning of legislation from the semantic intentions of the drafters (because they are not legal officials) or from the intentions of the lawmakers (because they do not agree), where do we get meaning? Matczak’s response summarizes the views of “anti-intentionalist” theorists of language like [Ruth Millikan](#): “the semantic content of the text does not depend on anyone’s intention or state of mind but rather on the history of language tools (words, sentences, etc.) used in that text” (P. 661.) What the article advocates is more of an objective, “reasonable person” approach to meaning, rather than the sort of strict intentionalism advocated by Larry Alexander and (in his most recent writings) Stanley Fish.

In general, Matczak’s work is a worthy addition to the literature on legislative intention, joining theorists like [Ronald](#)

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[Dworkin](#), [Andrei Marmor](#), and Joseph Raz, in reminding us that figuring out *which* (*what kind of*) intentions can be used in statutory interpretation is not as easy as we generally believe.

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