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Plural Agents, Private Intentions, and Legal Interpretation
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The chief problem posed in "*Multimember Legislative Bodies and Intended Meaning*" is one in which lawmakers pass a tax bill supported by two equal groups with conflicting interpretations of the bill's content. One believes it taxes imported tomatoes, among other things; the other believes it exempts tomatoes. They disagree because they received supposedly authoritative, but in fact conflicting, information about the *meaning* of 'fruit' in the bill's text. One group was told it is used with its biological sense, which includes tomatoes as edible seed-bearing reproductive parts of a plant. The other group was told that 'fruit' is used with its "culinary" sense, in which fruits are contrasted with vegetables, including tomatoes. The bill is understood as taxing imported fruits but not vegetables. Our problem is to decide how the tax applies to a shipment of tomatoes and kiwis. My answer will follow from the answer to the question *What did the lawmakers assert or stipulate in passing the bill*? -- which can be illuminated by answering an analogous question about what action two employers instruct an employee to take

Problem 1: Contents of Multi-Person Speech Acts

Imagine that Mary receives written instructions, signed by her employers, Smith and Jones, each instructing her "to ship textiles to a buyer in Athens on the Peerless, and only the Peerless". Preparing to do so, she learns that two ships by that name are bound for Athens, one from Plymouth and one from Southampton. Having no way of contacting her employers, she has no way of knowing whether both were referring to the Plymouth ship, both were referring to the Southampton ship, or whether one was referring to the former and the other was referring to the latter. In fact, they were referring to different ships.

Because it is understood that all instructions must be jointly issued to be acted upon, it would seem that *Mary wasn't instructed to send the shipment by either ship*. Was she, nevertheless instructed *to ship it to Athens?* Yes, her employers did each instructed her to do that. If *doing B* (shipping goods to Athens) is an obvious consequence of *doing A* (shipping them to Athens on a specific vessel), and one has been instructed to do A, then one is also instructed to do B. So, Smith and Jones each instructed her to send a shipment to Athens. Even so, Mary has no basis for acting. The fact that one has been instructed to do B – ship goods to Athens – doesn't entail that one has been instructed *to do B any way one can*. Since Mary was not so instructed, so she has no authority to act.

This would be the end of the story if the content of her instructions was determined only by the factors so far mentioned. Now we add a new factor -- namely, that Smith and Jones are aware of office procedure specifying that Mary is to ship orders to other countries only in vessels listed in the current published volume of ships licensed to engage in trade with them. Although Smith and Jones each believe that his is the only listed 'Peerless', only Jones is right. Having been misled about how long his 'Peerless' has operated, Smith didn't realize that it entered service after publication of this year's volume. Might this play a role in determining what Mary was jointly instructed to do? Yes, it might, if, by common convention, it is understood that an employee of the company is to perform the action best supported by all available evidence, which, in this case, is to ship the goods by the Southampton 'Peerless'. Although Smith did intend shipment on another vessel, he also intended the goods to be shipped on the only 'Peerless' listed in the authoritative volume, as did Jones. Because Smith and Jones shared that intention (despite their differing intentions of which ship it determined) Mary had the authority to act.

But we still haven't gone far enough. Her employers need not know the details of how their employees work. It's enough that they realize that Mary knows how to interpret their memos in accord

with longstanding rules. In this final version of our scenario we imagine that Smith is new to the company and simply knows his instructions go with those of Jones to Mary, who puts them into effect. Except for this twist everything is as before. As before, her joint instructions, augmented by the shipping manual, authorizes her to send the shipment on the Southampton Peerless, even though Smith lacked that intention. What her employers did jointly intend was for their attentive, reasonable, and informed employee, following company procedures, to do what their written instructions gave her most reason to think she was directed to do. Since she had reason to think that they intended her to follow long established policies, she did, in fact, do what she was jointly instructed to do..

Next we look at general communicative principles that underlie this result, starting with those generating the illocutionary forces of ordinary uses of language by individuals. Some uses of language occur in private thought -- to prove propositions, imagine scenarios and plan actions. Other uses are social. If you *promise* Y to do *X,* you give Y a claim on you. Ditto for *assertion.* To assert P is, roughly, to give one's guarantee that P is true. These speech acts are governed by social rules because their function is to provide others with reasons for thinking, feeling, and acting. Because their thoughts, feelings, and actions may be consequential, the contents hearers *justifiably* assign to one's remarks are those for which one is responsible. They are propositions asserted, guaranteed to be true, or promised to be made true.

When you use a (declarative) sentence S you typically have two intentions. One is to assert your privately cognized proposition P, vouching for its truth. The other is to assert the proposition Q that is justifiably derivable from your use of S, thereby vouching for it. To ensure communication, you choose S so that P and Q will coincide. Often they do, but sometimes they don't. *When they don't, it is, as you well know, Q, not P, that you will be held responsible for asserting*. The same is true with

ordering or instructing, which, for simplicity, we may take to be instructions or orders to make an intended proposition true.

Now consider a plural use of a jointly signed memo from Smith and Jones to Mary using the sentence S: "We jointly instruct you to ship the textiles to a buyer in Athens by the Peerless and only the Peerless." Smith's private intention is P_s: *We instruct you to make it true that the textiles are shipped to Athens on the Peerless$_s$ and only on it.* Jones's private intention is P_j: *We instruct you to make it true that the textiles are shipped to Athens on the Peerless$_j$ and only on it.* Each endorses the sentence because each takes his P proposition to be the one that Mary will justifiably derive from their joint use of the sentence, following customary office procedures. So, although they have different actions in mind, they share the communicative intention that Mary is to perform the action determined by their verbal instruction, interpreted using customary office procedures. Knowing that this is how they will be interpreted, they understand that what, if anything, they have jointly instructed is the performance of that action.

Problem 2: Inverted Nix v. Hedden on Steroids

Problem 2 turns on whether tomatoes count as vegetables and so are exempt from a tariff on imported fruits. The law stipulates that a tax is to be applied to imported fruits but not vegetables. It further stipulates "*There shall be no discrimination among types of fruit in levying this tax."* The question is how, if at all, tomatoes and kiwis are to be taxed.

The problem arises from the multiple meanings of 'fruit' and the relations they bear to the meaning of 'vegetable'. The relevant linguistic facts are these.

F1. 'Fruit' has a biological meaning in which it applies (more or less) to "seed-bearing reproductive parts of plants " – including tomatoes, peas, beans, eggplants, cucumbers, squash, and peppers, as well as cherries, kiwis, grapes, oranges, and so on .

F2. 'Vegetable' is a culinary, not a biological, term that contrasts with the second, culinary, meaning of 'fruit'. It applies to tomatoes potatoes, parsnips, cucumbers, beans, eggplants, squash, turnips, beets, cauliflower, cabbage, celery, etc.

F3. The culinary meaning of ‘fruit’ applies to some, but not all, items to which its biological meaning applies. Those include grapes, apples oranges, pears, kiwis, peaches, watermelons, strawberries, and the like, while excluding all vegetables.

To resolve the case, we must decide which meaning 'fruit' univocally bears in the bill's text. If it is the biological meaning, then, by F1, tomatoes are fruits, while, by F2, they are also vegetables. Since the law explicitly states that vegetables are not taxed, it would follow that at least one kind of fruit is not to be taxed. But then by the *no discrimination among kinds of fruit* provision, it follows that no fruits are taxed, whether vegetables or not. On this interpretation the law is vacuous, or incoherent, or both. Since no one reading the text would be in a position to presume that, it can't be right.

So, we must take 'fruit' to bear its second, more restricted, meaning in the statute. If so, the kiwis will be taxed, but not the tomatoes. But how can this be so, when only 1/3 of the lawmakers both understood it this way and supported it, while 2/3 of them would have voted against it, had they shared that understanding? The answer is that *legal content* isn't an aggregate of specific private intentions of the lawmakers. The content of an adopted legal text is what is asserted or stipulated by its supporters. For a content to be asserted or stipulated, it isn't necessary that it conform with the specific private intentions of half the lawmakers. The illocutionary content of collective speech, is not, in general, an aggregate of the specific private illocutionary intentions of collective speakers.

What lawmakers assert in adopting a text is determined by what a reasonable, informed audience that understands the text's linguistic meaning (including special legal meanings if any), the relevant publicly available facts and aspects of the lawmaking history, and the area of existing law into which the new law is expected to fit *would rationally take the lawmakers to intend to assert or stipulate*. Often legislative acts have multiple audiences, including law enforcement officials, judges, lawyers, and businessmen, as well as the general public. Thus, the content of a law will sometimes include matters of detail to which only some specialized audiences are sensitive, along with other broader matters. It isn't necessary that the various institutional addressees, or the populace, possess detailed

knowledge of the contents of all laws relevant to them, though it is necessary that they have recourse to legal experts who can advise them. It is also not required that all, or sometimes any, members of a legislative body have complete knowledge of all aspects of the assertive content of the sometimes complicated bills they have adopted on the basis of their individually partial, but collectively overlapping, understanding. It is required that the assertive content be rationally derivable.

In our tax case this isn't difficult. The derivation requires knowledge of the meaning of 'vegetable' and the two meanings of 'fruit' -- one, broader and more capable of being precisely stated, the other, narrower but more familiar. Asked to explain either one, we can hardly do better than list paradigmatic instances, as in F2 and F3. This, plus the presumption that the statute isn't an obvious nullity is all we need. The justification of this presumption is on par with presumptions governing ordinary uses of language by agents to guide the behavior of others. When a putatively rational agent uses language to direct an audience to do something, it is presumed that the audience has been supplied with the information needed to identify the action. When the situation admits of only one interpretation satisfying that presumption, the agent is counted as having directed that the action be performed . Usually, an *individual* agent has a private, specific intention involving the action that satisfies the presumption. But sometimes, when one misspeaks or is confused, this intention fails to do so, leaving only the agent's general intention to direct the act be taken for which one has provided sufficient evidence. These are cases in which the actual illocutionary content of one's use of a text differs from one's private, most specific, intended illocutionary content.

The plural agent in our inverted *Nix v. Hedden* case is in a similar situation. To say that a plural agent asserts, stipulates, or promises something is to treat the plurality as a rational agent using language to communicate with others. Imagine a total of 9 lawmakers voting on the text of a bill with which each privately associates an interpretive proposition P. When the text gets 5 or more votes, it is

associated with 5 or more intentions to guarantee the truth of whatever proposition Q is justifiably derivable from public facts about the meaning of the text, the context of the text's adoption, the legislative history, and the body of law into which the bill is expected to fit. Q thereby becomes law, even if it differs from some or all of the private Ps associated with the text by its 5 or more supporters -- some or all of whom were either ignorant of, or indifferent to, the distinction between the public Q and their private P's. This is what it means for collective assertive intentions not to be aggregates of private assertive intentions.

Although our inverted Nix v Hedden fits this picture, it is unusual because 6 of the 9 private P's would, if collectively recognized, have defeated the bill. In this way the final result was an unfortunate instance of collective misspeaking. But that doesn't undermine the method. The needed interpretive assignment of content to statutory and constitutional texts must be generally applicable in a way that divining private legislative intentions isn't. If you don't recognize this, but instead limit your interpretations to those extractable from public linguistic meanings plus public records of private intentions, you are bound to miss, and frequently underestimate, the substantive *original assertive content* of complex, contentious law -- often to the detriment of a proper understanding of legal milestones, like the Fourteenth Amendment to the Constitution.