Legal Speech and Implicit Content in the Law

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Abstract. Interpreting the content of the law is not limited to what a relevant lawmaker utters. This paper examines the extent to which implied and implicit content is part of the law, specifically whether the Gricean concept of conversational implicature is relevant in determining the content of law. Recent work has focused on how this question relates to acts of legislation. This paper extends the analysis to case law and departs from the literature on several key issues. The paper's argument is based upon two points: (1) Precedent-setting judicial opinions may consist of multiple conversations, of which some entail opposing implicata, and (2) if a particular precedent-setting judicial opinion consists of multiple conversations, of which some entail opposing implicata, then no meaningful conversational implicatum is part of the content of that particular precedent-setting opinion. Nevertheless, the paper's conclusion leaves open the prospect of gleaning something in between conversational implicature and what is literally said, namely, conversational *impliciture*.

Does a law prohibiting vehicles in a public park apply to a military truck mounted on a pedestal, intended to serve as a war memorial? H.L.A. Hart's well-known hypothetical demonstrates a telling point about what Hart called the "penumbra" of a law's meaning: Interpreting the content of the law is not limited to what a relevant lawmaker utters (1958, 606-15).[1] The literal meaning of utterances made by legislative, administrative, judicial, and other appropriate bodies is an uncontroversial feature of the rules of a particular language. From this perspective, interpreting the content of the law requires only an understanding of the appropriate syntactical structure and semantic content that produce a meaningful sentence, traditionally referred to as an act of speech or a *locutionary act*. Much more problematic is interpreting the content of a law when the law is

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[1] See Schauer 2008, 1109-34, for a thorough analysis of Hart's hypothetical and the responses to the hypothetical, including Lon Fuller's vehicle-on-a-pedestal counterexample. By "penumbra," Hart meant the vague area around a law's edge. So while we might be certain that the law's core meaning is that standard automobiles are clearly vehicles and a man jogging in the park is clearly not a vehicle, it is less clear how the law's penumbra relates to things like toy vehicles, bicycles, and so on.

viewed as a speech act or an *illocutionary act* (Austin 1962).[2] From this perspective, the content

of the law includes the actual performance of an act, such as commanding one not to harm

another, granting one the right to vote, and so on.   The illocutionary force within the content of

the law may be clear in many cases, but the content of statutes and precedent-setting opinions

(case law) are not always obvious.[3] When a lawmaking body is unclear, we often hear asked

what the relevant legislative or judicial body intended in a particular statute or opinion. I will

examine a slightly different issue in this paper, namely, the extent to which implicated and

implicit content is part of the law itself.[4]

I will focus specifically on whether Paul Grice's notion of conversational implicature is

relevant in determining the content of law. Andrei Marmor has conducted a recent examination

of this question as it relates to acts of legislation (Marmor 2011). In what follows I will build

upon Marmor's analysis of the role (or lack thereof) of conversational implicature in determining

the content of law, but I will part ways with his analysis on two fronts: First, I suggest that the

content of law may include something in between conversational implicature and what is literally

said, namely, conversational *impliciture* (Bach 1994) and, second, the primary focus of my

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[2] The literature is not consistent in the use of this terminology, and I use Austin's terms—locutionary and illocutionary acts—simply to note a general distinction. This distinction and terminology are not of primary concern, and they will not be discussed further—aside from the following example for clarification: When one says "I bet" in the appropriate context, one is doing more than describing an act of betting or uttering a string of noises with a particular meaning (locutionary act). By uttering these words, one is also *doing* the thing, namely, one *is betting* (illocutionary act).

[3] I use the term *case law* in the standard way: the compilation of reported cases that forms the body of law in a particular jurisdiction.

[4] See Soames 2011, for a general theory of legal interpretation. However, this paper is not about theories of judicial interpretation—strict constructionism verses judicial activism, for instance—and my argument will not address the various philosophies to which courts adhere when interpreting the law. The issue in which I am interested is whether case law contains content that may be derived from conversational implicature. My use of the word *content* may be misleading because implicature does not typically refer to literal content, but rather to something that is implied.   However, for purposes of this paper, asking whether implicature is part of the content of case law seems appropriate because I am interested in whether case law contains—as a matter of fact, so to speak—certain *implied content* that may be derived from the discourse that constitutes the case law.

investigation of the content of law will be in the context of case law.[5] As with acts of legislation, precedent-setting opinions by the U.S. Supreme Court, for instance, account for far-reaching proscriptions of conduct.[6] After discussing various differences between these two sources of law, I will address what I take to be a paradigmatic case of proscriptive legal speech, *Miranda v. Arizona*, in which the U.S. Supreme Court asserted that law enforcement officers must advise persons of various rights before engaging in custodial interrogation.[7] Recent commentators have argued that conversational implicature may be used to violate the intent—but not the literal content—of cases like *Miranda* (Davis and Leo 2012).   I will argue the opposing view: We are not justified in asserting that proscriptive content may be derived from conversational implicature in case law. I will support my argument by focusing on two points: (1) Precedent-setting judicial opinions may consist of multiple conversations in which speakers generate opposing implicata, and (2) if a particular precedent-setting judicial opinion consists of multiple conversations, in which speakers generate opposing implicata, then no meaningful conversational implicatum is part of the content of that particular precedent-setting opinion. My conclusion will nevertheless leave open the prospect of gleaning conversational *impliciture* from the content of case law.

1. Legal Speech and the Gricean Framework

Here is my plan for this section. I will discuss Grice's conception of conversational implicature as it relates to normal discourse. My analysis will focus specifically on Grice's

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[5] I will address impliciture more fully in parts 1.3 and 2.2, and, henceforward, I will italicize *impliciture* so that it is distinguished more clearly from implicature. It should be noted that the theoretical framework of *impliciture* has several points in common with what Robyn Carston and others have called "explicature" (see Bach 2006).
[6] I will confine my analysis to the U.S. judiciary, though my argument would be relevant to any similar judicial system.
[7] See *Miranda v. Arizona*, 384 U.S. 436 (1966).

account of how conversational implicature is consistent with the communicative goal of achieving a cooperative exchange of information. I then examine the extent to which legal speech may not share this goal. Before narrowing the issue to case law in Part 2, I will sketch briefly Marmor's work regarding the relationship between conversational implicature and legislation. I conclude this section by reorienting the discussion with an analysis of how conversational *impliciture* is a meaningful middle ground between the literal and the implied in the law.

1.1. Conversational Implicature

    (1) Timmy: "I heard there's an army truck in the park. Can we go check it out?"

    (2) Timmy's father: "It looks like rain."

Timmy understands clearly that his father means, "No, we cannot go to the park," when his father utters sentence (2). Grice's account of conversational implicature explains how this is so, despite the fact that sentence (2) is semantically unrelated to the sentence, "No, we cannot go to the park." The crux of Grice's account of conversational implicature is that it is consistent with the goals of normal discourse. Normal discourse may be characterized as involving a cooperative purpose among participants, which Grice fittingly labeled the Cooperative Principle: "Make your conversational contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged" (1989, 26).[8] The conditions under which the cooperative principle holds in normal discourse include Grice's well known conversational categories and maxims: (1) *quantity* (providing the appropriate amount of

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[8] While the Cooperative Principle may seem vacuous in isolation, it is bolstered by the accompanying conversational categories and maxims. Moreover, it accounts for a variety of conversational styles and aims. What I am referring to as *normal* discourse may involve multiple communicative aims, purposes, and cross-purposes. In section 2.3, I will discuss how this sort of diversity is common in normal discourse and does not preclude a cooperative exchange from taking place that involves conversational implicature

information required by the conversation), (2) *quality* (providing information one believes to be true and based on adequate evidence), (3) *relation* (providing relevant information), and (3) *manner* (providing information in a way that is clear and unambiguous). These categories are not necessarily exhaustive, and Grice himself acknowledges that they are not relevant to all the various purposes that a particular form of discourse may serve. But while the four categories serve the limited goal of maximizing a successful interchange of information, it would seem to be an uncontroversial, observable phenomenon that our discourse is conducted generally in a way that is consistent with the cooperative principle and conversational categories. These are habitual modes of operating from which it would require herculean efforts to deviate. As Grice puts it, "It is much easier, for example, to tell the truth than to invent lies" (1989, 29).[9]

Of course, we do tell lies, engage in discourse intending to circumvent the cooperative principle, and so on. These are cases in which a conversational maxim is broken because the purpose of the discourse is something other than an efficient interchange of information. Maxims may be likewise violated in the case of conversational implicature—such as in the case of Timmy and his father—yet the discourse between the speaker who violates the maxim (Timmy's father) and the hearer who understands the violation (Timmy) results in a successful exchange of information that is consistent with the cooperative principle.[10] How is this so? The speaker must meet certain conditions in order to conversationally implicate information: The speaker who violates the maxim is presumed to be observing the cooperative principle; the speaker is aware that the violation implicates information (which is necessary to maintain the

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[9] There are obviously situations in which it is easier to tell a lie than to tell the truth, but this does not mean that the vast majority of discourse is not based on habitual modes of operating that are consistent with the cooperative principle.

[10] Conversational implicature may exist without the technical violation of a maxim, as Grice suggests in his "Group A" examples, and I therefore use the term *violation* loosely. However, it is often unclear whether a violation occurs in such cases, and, in any event, my focus will be on cases in which violations occur blatantly (Grice 1989, 32).

cooperative principle); and the speaker believes that the hearer will understand that the violation

implicates information. When the speaker has met these conditions for conversational

implicature, the hearer will use any relevant data to grasp the embedded information, including

the conventional meaning of the words used, references, the cooperative principle, the context of

the utterance, and other items of background knowledge (Grice 1989, 30-31).

Consider conversational implicature involving *ambiguity* and *obscurity*. In the case of

ambiguity, the speaker deliberately violates a maxim under Grice's *manner* category by failing to

express certain information clearly. However, based on the conditions listed above, the speaker

is aware that necessary information will be implicated in order to maintain the goal of the

cooperative principle, and the speaker believes that the hearer will understand this supposition.

Grice uses the example of a poem that may be interpreted in one of two ways ("I sought to tell

my love, love that never told can be" may refer to multiple senses of "love"), either of which

involves no difference in the poem's meaning (1989, 35). If the relevant data described above is

available to the hearer in such cases (e.g., context of the poem, background regarding the poem

and poet, etc.), then it may be clear that the poet intended the ambiguous interpretations,

including that the poem expresses the first interpretation instead of the second, and vice versa,

"though no doubt the poet is not explicitly saying any one of these things but only conveying or

suggesting them" (1989, 36). Conversational implicature involving *obscurity* similarly falls

under the *manner* category by failing to express certain information clearly. Suppose a mother

and father are having dinner with their six-year old son and wish to discuss the impending

divorce of the parents of one of their son's classmates: "That business with Mr. and Mrs. M. is

moving forward." In this example, the mother might be deliberately obscure so that her son does

not learn of the impending divorce, though her husband understands precisely. It would seem

perfectly clear that in such cases the mother implicates that the content of her discourse should

not be provided to her son. One might think that implicature involving ambiguity and obscurity

is relevant in legal speech, and I will thus return to this issue in Part 2.

1.2. Legal Speech[11] and Implicature

Party *A* Legislator: "Clearly, law *X* should permit *P*."

Party *B* Legislator: "Clearly, law *X* should prohibit *P*."

Compromise: Law *X* is left silent on the matter of *P*, but prohibits *Q*.

Agency *C*:   "Law *X* implicates that *P* is permissible [or not]."

What are we to make of the content of Law *X* and whether it actually implicates *P* or not-

P? Let me first summarize the groundwork that has been laid. It seems uncontroversial to say

that an efficient, cooperative exchange of information is a common goal of discourse. The

Gricean framework likewise shows how conversational maxims may be violated during

discourse, yet the discourse between the speaker who violates the maxim and the hearer who

understands the violation results in a successful exchange of information because the information

is conversationally implicated in accordance with the cooperative principle. However, when we

turn to legal speech, we see that the goal of a lawmaking body is not necessarily a cooperative

exchange of information. As Marmor describes it, legal speech is often a *strategic behavior*—as

in the example of Law X above (2008, 435).[12] Marmor focuses on legislation, which he

convincingly describes as involving multiple conversations. For instance, there is first an

internal conversation during which a particular law is enacted. This first conversation may in

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[11] For the sake of consistency, I follow Marmor's use of "speech," namely, "any occasion of verbal communication, whether it is oral communication or a written text" (2008, 424).

[12] As I will discuss in section 2.3, normal, everyday discourse between individuals might be considered *strategic* in a sense. There are a multitude of aims that a conversation might have, and the diversity of those aims does not necessarily preclude a cooperative exchange that involves conversational implicature.

fact involve multiple sub-conversations with government agencies, committees, private interest groups, and so on, in addition to the actual legislators. And the varying parties involved in this multitude of conversations may have competing interests. The result is often that the enacted law is the product of extensive compromise, which Marmor argues involves "*tacitly acknowledged incomplete decisions*—that is, decisions that deliberately leave certain issues undecided" (2008, 436). Different entities involved in the legislative conversation may intend for a particular law to implicate opposing things, resulting in compromise that leaves the implication of the law vague at best and undecided at worst. While one group of legislators may hope the law is interpreted liberally, an opposing group may hope that the law is interpreted quite conservatively. And while each group of legislators might be recognized rightly as a participant in the internal conversation consisting of debate and compromise in the enactment phase, it is difficult to see how one or the other groups might be deemed the conversational participant for purposes of determining the implied content in the enacted law—as each group has competing interpretations of the enacted law. The first problem, then, is one of indeterminacy because there is no principled means of determining which of the various legislative entities should be recognized as a participant of the conversation for purposes of the Gricean framework (Marmor 2008, 437).

The second general problem regarding the comprehension of conversational implicature in legal speech is that legal speech may involve indeterminate *external* conversations. Remaining with the example of legislation, Marmor rightly suggests that legislative enactments are often intended to convey opposing implications to external bodies such as the public, government agencies, and courts. A legislature may enact a law with great fanfare, implicating (perhaps to the general public) that the thrust of the law is to address some problem in a dramatic

way. At the same time, the law may be vague—perhaps due to a compromise reached during an

internal conversation—in vitally important areas that easily allow for competing interpretations

(perhaps by the courts) that will maintain the status quo as it relates to the problem in question.

Members of the legislative branch may indicate to government agencies that the enacted law

should be enforced in a way that is at odds with what was implied to the public. The motivation

of the legislative bodies may be based on practical considerations, such as the lack of financial or

human resources to enforce the law as diligently as the public might expect. These sorts of

conversations may lead to the law being interpreted conservatively, such that it is rarely

enforced—or at least enforced only within the parameters of certain constraints on resources.

Together, then, the indeterminacy of internal and external conversations may result in a

confluence of problems when attempting to derive the content of legislation based on

conversational implicature.

Consider the enactment of so-called "Good Samaritan" laws, which make it a crime to

fail to aid others in emergency situations when providing aid would be easy.[13] A handful of U.S.

states have such laws, which typically receive more attention following visible public failings.

For example, the aftermath of Hurricane Sandy in 2012 revealed that a young woman was

refused aid from neighbors after rising water separated her from her two young children; her

children were later found dead nearby.   This event might prompt a legislator to suggest that it

would be sensible to enact the following law: "Any person who knows that another is in

imminent danger, or has sustained serious physical harm, and who fails to render reasonable

assistance, shall be fined up to $5,000.00, imprisoned up to three months, or both."[14] Suppose

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[13] See, e.g., Feinberg 1984, chapter 4, for an analysis of the legal duty to rescue.
[14] This is a hypothetical law suggested by Jay Sterling Silver in his 7 November 2012 *New York Times* op-ed, "Can the Law Make Us Be Decent?"

this law was actually enacted after a contentious debate between legislators who believe that

such laws are vital to maintain the safety of people in emergency situations, and legislators who

believe that good character and morality should not be legislated with such laws. Perhaps a

compromise would be reached such that the law is much stronger than those in the latter group

would have preferred and much weaker than those in the former group would have preferred. A

compromise might be reached by leaving the law somewhat vague, with the hope that each side's

preferred interpretation of words like "imminent," "serious," and "reasonable" would prevail.

Moreover, in response to public reaction regarding the Hurricane Sandy deaths, there might be

conflicting conversations with different external entities regarding the extent to which the law

should address the underlying problem. To be sure, it might be the court's job to interpret the

law from case to case, but to suggest that conversational implicature is embedded in the content

of the law is problematic. The application of a Good Samaritan Law might be relatively clear in

the Hurricane Sandy example, but consider the following hypothetical: A woman sees a man get

hit by a car late at night and the car speeds away. The woman walks to the man and recognizes

him as an accused child molester who is out on bail pending a criminal trial. The man's legs are

broken and he is bleeding profusely from the head, but the woman fails to provide aid or call 911

because she was a victim of child abuse and the sight of the man induces a psychological

response that makes it less easy—though not impossible—for her to aid the man than the average

person. The man dies some hours later and his criminal case is accordingly dropped. In this

case, the Good Samaritan law may implicate opposing content depending on which

"conversation" between the various legislative and external bodies is deemed authoritative.

Again, a court must of course interpret the law in order to determine the culpability of the

woman in this case, but problems arise when we attempt to address the issue based on

conversational implicature that might be included in the content of the law itself. The multitude

of internal and external participants in legislative speech simply makes it difficult to apply the

Gricean maxims in a principled manner.

This is the general line of reasoning Marmor takes, and I agree with this reasoning as it

relates to conversational implicature. In other words, conversational implicature may convey

indirectly something entirely separate from what is said, and, for the above reasons, it is

problematic to assign such implicature to legislative law. So it is unclear the extent to which the

Good Samaritan law implicates that subjective psychological experience mitigates one's

culpability. There might exist multiple conversations in this instance of legislation; a speaker

may implicate that subjective psychological experience is a mitigating factor in some of these

conversations and a speaker may implicate the opposite in other conversations. It is thus

problematic to say that the content of this instance of legislation includes a collective implicatum

based on its multiple conversations.

1.3. Legal Speech and Impliciture

        (3) Timmy (hysterically):   "I cut my finger."

        (4) Timmy's father: "You're not going to die."[15]

I part ways with Marmor's analysis to the extent it suggests that the content of the law

cannot include something in between conversational implicature and what is said literally. By

this I mean something different from conversational implicature, yet something that explains

why Timmy understands that his father cannot plausibly mean that Timmy is immortal when his

father utters sentence (4). Kent Bach calls this middle ground conversational *impliciture*: "a

distinct category, the implicit, between the explicit and the implicated" (Bach 1994, 141). Both

implicature and *impliciture* go beyond what is literally said (and may be considered part of the

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[15] See Bach 1994, 134, for this and other examples.

same Gricean framework, to some degree), but implicature and *impliciture* differ in the extent to which they are connected to the semantic content of the literal utterance (Bach 2006, 4). Bach draws out this difference with the example, "Mary has a boyfriend." Depending on the context of this utterance, potential implicature might include "that the hearer shouldn't ask Mary out, that Mary is not a lesbian, that Mary is getting a divorce, or that Mary will be sued for divorce" (Bach 1994, 140). These sorts of propositions are conceptually autonomous in that they bear little or no relation to the semantic content of the utterance, "Mary has a boyfriend." On the other hand, it seems *implicit* in the proposition, "Mary has a boyfriend," that "Mary has exactly one boyfriend." So while such *impliciture* goes beyond the literal utterance, it is built into the conceptual framework of the utterance in way that is very different from the various examples of implicata above. *Impliciture* can be an example of *sentence nonliterality*. Bach explains that sentence nonliterality is unlike metaphor and other figurative uses of phrases, yet it allows us to mean something related closely to what is actually said without having to use additional phrases:

> Rather than insert extra words into our utterances in order to make fully explicit what we mean, we allow our listeners to read things into what we say. Even though we may not intuitively think of this phenomenon as nonliterality because no specific words are being used figuratively, it is a way of not being literal, because what the speaker says is one thing and the expanded version of it to be identified by the hearer is another. (Bach 1994, 136)

Bach adds that in such cases of nonliterality, like sentence (4), the hearer must understand that the speaker cannot plausibly intend to be taken to mean what he is saying: "what is meant is closely related to what is said, since the former proposition is derived from the latter by the insertion of conceptual material, but is not identical to it" (Bach 1994, 136). This is the sort of implicit content I think is contained within the law.

Now, Marmor does not overlook the sorts of examples that Bach calls *impliciture*, but he does not distinguish them clearly from examples of implicature.[16] He cites several examples of *impliciture*, but then moves quickly to different examples—examples that are related more closely to implicature. Regardless of whether he conflates implicature and *impliciture* or simply does not see them as being different in a relevant way, for the following reasons I find the distinction important for purposes of deriving the content of law. For instance, after noting examples of what might be considered *impliciture* (A doctor who tells a patent, "You're not going to die," is not asserting that the patient is immortal, but rather than the patient will not die of her particular ailment), Marmor discusses the very different example of *Holy Trinity Church v. U.S.*, in which the question presented was whether the relevant Congressional act (designed to reduce the influx of immigrants and cheap manual labor into the U.S. market), applied to high-ranking clergy from England. Although the relevant part of the act forbade the importation of "labor or service of any kind," the court held that the word "labor" in the Congressional act applied only to manual labor, not clergy from England.[17] Marmor rightly questions the court's holding in *Holy Trinity*: "In saying that it is forbidden to facilitate the importation of 'labor…of any kind,' it is anything but obvious that Congress does not quite prescribe what it says" (2008, 428). To be sure, the congressional act in no way implicates that it does not apply to clergy from England. Such an implicature would be unrelated to the sematic content of the law, and this is simply not a viable prospect based on the nature of legal speech discussed above.

However, we should not confuse *Holy Trinity* as a case that illustrates why *impliciture* cannot form part of the content of the law. *Impliciture* may expand directly upon the conceptual

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[16] See Marmor 2008, 426, in which he cites Bach and lists examples of what Bach calls *impliciture*. Marmor does not refer to these examples as *impliciture*, but rather notes that "there is a great variety of cases in which the content asserted by a speaker differs from what the speaker said."
[17] *Rector, Holy Trinity Church v. U.S.*, 143 U.S. 457 (1892); see Marmor 2008, 427-29, for a discussion of the case.

meaning contained in the semantic content of what is said, which in *Holy Trinity* has nothing to

do with high-ranking clergy from England.[18]   But this does not mean that conversational

impliciture fails to form part of the content of legal speech. Marmor says that "cases in which it

is quite obvious that the content the legislature prescribes is not exactly what it says…would be

very rare." Again, this conclusion seems to be based upon a conflation of implicature and

impliciture and indeed precedes a lengthy discussion of how we may not derive the content of

legislation from conversational implicature because legislative legal speech is unlike ordinary

conversation (Marmor 2008, 429). But this conclusion perhaps overlooks the many instances in

which there might exist *implicit* content in the law that is neither part of the law's literal content

nor part of an indirect implication. For example, it may be problematic to suggest that the

content of the proposed Good Samaritan law includes a conversational implicatum implicating

that psychological experience mitigates one's culpability under the law; on the other hand, it may

very well be *implicit* that the law applies only to those who encounter another person in

imminent danger and not to those who are merely aware that people are in imminent danger

generally. The proposed law literally asserts that it applies to "any person who knows that

another is in imminent danger, or has sustained serious physical harm, and who fails to render

reasonable assistance," but it is *implicit* that the law does not require one to drive 100 miles

through one's state after one sees a news segment about a band of homeless people suffering

from disease and malnutrition as sub-zero winter months approach. This is similar to the doctor

who tells her patient, "You are not going to die," but does not mean that the patient is immortal.

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[18] To be clear, by "expands" Bach means sentences in which "the proposition being communicated is a conceptually enriched or elaborated version of the one explicitly expressed by the utterance itself" (1994, 133). And by "completes" Bach means that "something must be added for the sentence to express a complete and determine proposition" (1994, 127). While Bach sees expansion and completion as fairly distinct cases of *impliciture*—and while I perhaps focus upon what he calls expansion—it is not clear that the division is quite so strict. In any event, my primary concern is the extent to which *impliciture* constitutes inexplicit speech generally— and the extent to which such inexplicit speech is different from implicature.

The Good Samaritan law contains *impliciture* that expands or completes the literal content to mean that the law cannot plausibly apply to every person one knows is in imminent danger around the state for whom a relatively minor inconvenience would constitute reasonable assistance. Of course, it goes without saying that this is not an exact science and that the Good Samaritan example may be less than ideal, but the point is that it would be rash to suggest that there is no middle ground between the literal content of law on the one hand and conversational implicature that is far-removed from the conceptual meaning of the semantic content of the law on the other hand.

Let me take stock of the ground I've covered so far. I have discussed Grice's conception of conversational implicature, focusing specifically on how it is consistent with the communicative goal of achieving a cooperative exchange of information. I then examined the extent to which legal speech does not share the goals of the cooperative principle because it is strategic in nature, particularly in the context of legislation that Marmor has masterfully described. Despite this incompatibility with conversational implicature, I suggested that conversational *impliciture* may very well form part of the content of the law. In Part 2, I will try to draw out these points more clearly in the context of case law.

2. Implicit Content in Case Law

Here is what I want to do in this section. First I will discuss the nature of case law, particularly the way that precedent-setting judicial opinions may consist of multiple conversations. I will then examine the notion that conversational implicature may be used to violate the implied content—but not the literal content—of cases like *Miranda.* After arguing that this view is unwarranted because it fails to account for the Gricean maxims of

conversational implicature required for pragmatic implication, I will suggest that conversational

impliciture may nevertheless form part of the content of case law. I will then address potential

objections to my position that the law does not include implied content, namely, the objection

that a conversation may be consistent with the cooperative principle—and thus yield

conversational implicature—even though the conversation has adversarial aims.   I will conclude

by discussing the extent to which case law does not fit this description.

2.1. The Many Conversations of Case Law

In section 1.2, I tried to highlight how the indeterminacy of internal and external

conversations may result in a confluence of problems when attempting to derive the content of

legislation based on conversational implicature. Before arguing that conversational *impliciture*

may form part of the content of case law, I will first try to show how problems arise when

attempting to derive the content of case law based upon conversational implicature. Consider the

recent case of *Citizens United v. Federal Election Commission*, in which the U.S. Supreme Court

held that the First Amendment prevents the government from restricting political expenditures by

corporations in candidate elections. I will discuss three potential conversations of which the

Supreme Court was a part in this example of legal speech: (1) *Court-to-court*: The conversation

with the court from which the case was appealed (in this case, the U.S. District Court for the

District of Columbia (USDC)); (2) *Court-internal*: the conversation among the nine U.S.

Supreme Court justices themselves; and (3) *Court-to-public*: the conversation with the public.

One of the more obvious conversations in *Citizens United* is between the Supreme Court and the

USDC (*court-to-court*), the judicial body to which the Supreme Court directed its opinion.

Generally speaking, this sort of conversation may be thought of as an account of the extent to

which a lower court decided a particular case correctly.   In this sense, the opinion involves a

conversation in a very narrow context, namely, between one particular judicial body and another.

The Supreme Court may advise the lower court how its opinion failed in logic, utility,

established standards of right conduct, or failed simply to comply with the principle of *stare*

decisis. This conversation may be based upon a subtle—perhaps esoteric—difference of judicial

philosophy that is not relevant to other participants (say, the public) involved in the conversation.

For example, a lower court may adhere to a strict judicial philosophy that is unbending when it

comes to interpreting open spaces in the law, while the Supreme Court may take the position that

the lower court failed to account for a gap in the law that needs interpretation. Conversely, a

lower court may exceed "the bounds set to judicial innovation by precedent and custom,"

prompting the Supreme Court to rein in the rogue court from which a case is being appealed

(Cardozo 1921, 129).[19] In the case of *Citizens United*, the conversation between the Supreme

Court and the USDC resulted in three actions: The Supreme Court reversed the judgment of the

USDC with respect to the constitutionality of certain restrictions on corporate expenditures,

affirmed the judgment of the USDC with respect to certain disclosure requirements relating to

those corporate expenditures, and remanded the case to the USDC for further proceedings

consistent with its opinion.[20] One of the conversations that may be found in the legal speech of

case law, then, is the narrow dialogue between two judicial bodies.

The second sort of conversation (*court-internal*) involved in the legal speech of case

law—conversations among judges that make up a single judicial body— may be illustrated in

situations in which a lower court must address an apparent gap in the case law that is not covered

by precedent. For example, if the USDC were faced with an issue that is broadly similar to

Citizens United—though novel in the important details—then how might the USDC deal with

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[19] My account of the nature of conversations between courts is based on Cardozo's Lecture III.
[20] *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

the open space in the law? Tactics and judicial philosophy will vary from court to court, but

perhaps the USDC would look to *dicta*—a particular idea in the majority that is not binding—in

order to determine which way the Supreme Court may lean on the novel issue.[21] Or perhaps the

lower court would look to the actual conversation between the Supreme Court justices

themselves, namely, the various concurring and dissenting opinions. These opinions often

reflect sharp divides within the court, and, while not binding precedent, concurring and

dissenting opinions might be useful in showing the extent of the division within a court and how

that division may become manifest in other cases. However, there is no guarantee that a lower

court will be able to read the tea leaves in this way. It is unlikely that a lower court—an outside

observer of the internal conversation among the justices of the Supreme Court—will be able to

consistently derive implied content from within the Supreme Court's internal conversation.

Outside observers (including lower courts) are not privy to every aspect of the Supreme Court's

internal conversation that has been placed within the common ground. The extent to which a

majority opinion may be held together delicately by a swing vote may or may not be apparent,

for instance, because the lower court is not aware of the background dynamics involved in the

Supreme Court's internal conversation that yielded the opinion. Without being a participant in

that internal conversation, it is difficult to say what dissenting and concurring opinions could

consistently implicate about the specific details of future questions. This is perhaps

unremarkable on the surface, but it is an important point inasmuch as it helps illustrate an

additional conversation in case law.

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[21] See Cardozo 1921, 29, for a discussion of dicta.

The third conversation (*court-to-public*) involved in case law is between the court and the public.[22] The notion that the Supreme Court engages in a conversation with the general public through its judicial opinions may not be altogether nonsensical, yet it is a vague notion if based simply on the fact that judicial opinions are public documents. The concept of *public reason* helps to illustrate how the public is a participant in a conversation with courts through judicial opinions.   While the concept of public reason is not apt in every sense, a key idea of public reason is that the citizenry is involved in public "political discussions of fundamental questions… [in the] public political forum" (Rawls 1999, 133). Rawls did much to develop the idea of public reason, and, importantly, tried to show how one of the central public political forums is "the discourse of judges in their decisions, and especially of the judges of a supreme court" (1999, 133). To put it simply, the central ideal of public reason is that the judiciary explains to the citizenry—through its speech and conduct, and in terms a pluralist society could accept— its rationale for deciding fundamental questions of political justice (Rawls 1999, 135). The idea of public reason is plausible—at least in this rough formulation—because it is an empirical phenomenon in liberal societies like our own: Courts—particularly the U.S. Supreme Court—articulate case law by engaging in a dialogue with the public through its judicial opinions. Moreover, by tying Rawls's notion of public reason to Robert Stalnaker's notion of *common ground*, we can perhaps clarify some of the shared presuppositions between the public and the judiciary (see Stalnaker 2002). Common ground may be thought of as the context—or background information—that is taken for granted in a conversation. One of the more important aspects of common ground is that it involves a *public propositional attitude*: A speaker in a conversation presupposes that certain information is common ground only if the speaker

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[22] While I call this conversation *court-to-public*, it should be noted that the conversation may flow both ways such that the public speaks collectively to the court to some extent. Various avenues for such discourse might include journalistic and academic writing, letters to editors, *amicus curiae* briefs, and so on.

presupposes that other participants in the conversation presuppose that the information is common ground too. Stalnaker describes common ground as "the mutually recognized shared information in a situation in which an act of trying to communicate takes place" (2002, 701-04). By highlighting this aspect of a conversation, we are in a better position to see the framework of court-to-public conversations—particularly regarding presuppositions shared by both the public and the judiciary. For example, something—say, the principle that a particular opinion has the force of law—is common ground in court-to-public conversations to the extent that such a principle is based upon belief and acceptance of the principle by both the judiciary and public.[23] Of course, many items will not be in the common ground with respect to court-to-public conversations, though they will be in the other conversations I have discussed. The point is that by expanding Stalnaker's account of common ground to conversations that occur in public forums, we get a glimpse of how court-to-public conversations may very well be complex enterprises that involve important presuppositions just like other types of conversations.

Based on the three conversations discussed, then, we can see how case law involves multiple, competing conversations. A cursory look at *Citizens United* is illustrative. On the one hand, the implication in the public forum might be that the court's ruling protects free speech and thus furthers free, fair elections. However, in the context of another conversation—say, a more narrow conversation with the USDC or among the Supreme Court justices themselves—perhaps the implied content of *Citizens United* is that the relative political value of free speech cannot be quantified and, therefore, the purchase of political influence by large conglomerates is consistent with principles of justice so long as an explicit *quid pro quo* is not involved, for instance. While these varying implications may not be rigidly assignable to any one of the three conversations in

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[23] Stalnaker's account of common ground is of course much more complex than I have described, but it is not necessary to get into the particulars of that account here. I am invoking a general notion of common ground only. See Stalnaker 2002, 716, for a more complete account.

particular, the point is that there may exist multiple conversations with multiple, varying

implications that depend upon the context and common ground of the relevant conversation.

And while these and other competing messages may not be stated explicitly in any of the above

three conversations discussed, they do seem implied in the *Citizens United* opinion depending

upon the conversation in which one is a participant.   I will now examine what I take to be a

paradigmatic example, *Miranda v. Arizona*, of the problems involved with the idea that

conversational implicature is part of the content of case law.

2.2. Miranda v. Arizona: Tactically-Used Implicature vs. Implicature-in-Law

(5) Murder suspect:	"Am I in some kind of trouble?"
(6) Law enforcement:	"We just need your help with a few simple things, but you'll have to sign this paperwork before we talk to you."

Suppose the paperwork in (6) was a form affirming that the suspect had been read his

"*Miranda* rights," and suppose the law enforcement officer does in fact read those rights quickly

before the suspect signs the form. Sentence (6) seems clearly to implicate that the suspect is not

in trouble and that the paperwork in question is a mere bureaucratic formality. Here is what we

might call *tactically-used implicature*. However, assuming such tactics do not violate the literal

content of *Miranda*, we should distinguish such implicature from the issue of whether the

Miranda case law itself contains implicature proscribing such tactics (*implicaure-in-law*).

Miranda is particularly helpful in illustrating this issue because the general thrust of the Supreme

Court's ruling has by now become ingrained in our collective understanding of criminal law.

And for present purposes, the general understanding of the ruling is sufficient, namely, that

subjects who are suspected of criminal acts must be advised of certain rights (the person has a

right to remain silent; any statement may be used as evidence against the person; the person has a

right to the presence of an attorney, retained or appointed) before being questioned about those acts by law enforcement while in custody.[24] While law enforcement agencies have adopted tactics that comply with the explicit constraints of *Miranda*, some have argued that those tactics nevertheless circumvent the law.   For example, *Miranda* was the subject of a recent chapter in *The Oxford Handbook of Language and Law*, in which Deborah Davis and Richard Leo argued that law enforcement officers use pragmatic implication to "violate the intent of the law while adhering to its literal content" (2012, 355). In other words, the charge is that the tactics used by law enforcement violate some aspect of *Miranda* that is not part of the literal content of the case law. Davis and Leo take issue with the fact that courts have generally been hesitant to recognize that the tactics used by law enforcement violate *Miranda* by implication (2012, 365). The issue, then, is whether the tactics used by law enforcement officers comply with the literal content of law, while simultaneously violating the content of the law that may be derived via conversational implicature.

Davis's and Leo's approach is to examine a litany of law enforcement tactics that "convey…[anti-*Miranda*] messages *implicitly*, through *pragmatic implication*, without violating the letter of the law" (2012, 355).[25] From the outset, I want to be clear that the law enforcement tactics in question do seem to convey messages via conversational implicature. Although the conversations in which these tactics are used are adversarial (the conversation participants have competing interests), they are nonetheless examples in which Grice's cooperative principle and related maxims are in play. For example, Davis and Leo suggest that before a custodial interrogation begins, law enforcement officers create an "illusion of voluntariness" that lessens both the importance of the situation as well as *Miranda* warnings; the prelude to the interrogation

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[24] See *Miranda v. Arizona*, 384 U.S. 436 (1966).
[25] Davis and Leo do not seem to be referring to Bach's notion of *impliciture* here.

might run as follows: "We need to talk to you to get 'this thing' 'straightened out,' but before we can do that we need to get this form out of the way" (2012, 356-58). The idea, then, is that the law enforcement officers have used conversational implicature to make as if to say something like the following: "Your situation is not too bad; everything will be okay after we complete this formality and talk to you—and we *are* going to talk to you." After the interrogation proper begins, Davis and Leo suggest that law enforcement tactics are "an extended 'Anti-Miranda' warning to the effect that failure to talk to police will work against the suspect's best interests, whereas talking to the police, and particularly a full confession, can and will work to his benefit" (2012, 358). Davis and Leo first cite the "set-up question," which asks the suspect whether she thinks leniency should be shown to the person who committed the crime in question. The set-up question may be used as a diagnostic tool (i.e., guilty suspects will suggest leniency; innocent suspects will not), but Davis and Leo focus on the notion that the suspect will assume that the law enforcement officer is complying with Grice's conversational category *relation*, which would mean that the set-up question is relevant. Thus, the suspect will potentially infer that the consequences of the crime in question are not set in stone and leniency is an option. From here, the officers might state clearly that the suspect's guilt has been established and then implicate that the whole point of the interrogation is to "determine what will happen to the suspect as a *result of his guilt*, rather than an investigation as to *whether* he is guilty" (2012, 359-61). Finally, officers may indicate that they can aid the suspect's legal predicament if she will acknowledge her guilt. Davis and Leo provide many colorful examples of law enforcement dialogue containing implied messages that "are more than clear to the hearer," but dissecting those examples is unnecessary because I readily agree that they involve conversational implicature.[26]

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[26] See Davis and Leo 2012, 362-65, which includes the following example: *"Listen Jack, you're at a crossroads here.*

These tactics seem to involve cases in which law enforcement officers have violated a Gricean conversational maxim, yet, because of conversational implicature, the discourse between the officer who violates the maxim and the suspect who understands the violation results in a successful exchange of information that is consistent with the cooperative principle. But I am interested in a different question, namely, whether the *content of the case law—Miranda*, here— prohibits the above tactics via conversational implicature. As Davis and Leo noted, courts generally have not prohibited such tactics. Regardless of the reasons for this hesitancy by the courts, there are good reasons in support of the position that the content of the law in *Miranda* does not include a prohibition of these tactics that may be derived from conversational implicature. I will now discuss a few of those reasons. As noted in section 1.1, *ambiguity* and *obscurity* are two Gricean categories of conversational implicature in which the speaker flouts the *manner* maxim of expressing information clearly. In a typical, single conversation that adheres to the cooperative principle, these two categories of conversational implicature entitle the hearer to assume implicated material in spite of a flouted maxim by the speaker. In other words, the relevant data is part of the common ground of the two speakers such that—in the examples mentioned earlier—the reader understands the poet's intention in the ambiguous poem, and the husband understands (in the presence of his young child) his wife's obscure message about the impending divorce of the parents of their child's classmate. On the other hand, the situation is different in the context of case law, such as *Miranda*. There is no principled way to derive conversational implicature *X* from *Miranda* because *Miranda*, like most all case law, involves multiple conversations with opposing implicata. Because the hearer may not be a participant in each of these particular conversations, the hearer does not have access to the

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One way is life and the other can mean death. The choices you make today are gonna put you on one of these paths. You need to work for you future here Jack. You need to explain this thing."

requisite background data that is necessary to grasp the embedded implicatum in each of the conversations (see Grice 1989, 30-31). And because the various conversations involved in *Miranda* may be strategic in nature—in other words, the various conversations may serve different and competing goals—a particular hearer cannot assume that the conversation of which she *is* a part is the only conversation in which conversational implicature is embedded. Each conversation may convey implicature that is consistent with the cooperative principle for purposes of that particular internal conversation, but the various conversations need not share the same implicatum collectively, nor share the same cooperative goal collectively.

I should note that this position does not suggest that courts should not interpret *Miranda* to prohibit the above law enforcement tactics (or other tactics) as they deem appropriate. This is an entirely different issue from the issue of whether conversational implicature *is part of the content* of *Miranda's* case law. The former situation involves the judiciary applying the law to the facts of specific cases that come before it, while the latter involves the position that *Miranda* contains—*as a matter of fact*, so to speak—preexisting prohibitions that may be derived from conversational implicature. The former is simply a matter of the judiciary fulfilling its duty of interpreting the law and applying it to particular facts, which may vary from court to court depending on a court's judicial philosophy. But as I have argued, there is no principled way to achieve the latter because the multiple, competing conversations involved in case law do not adhere collectively to the cooperative principle such that we can say that conversational implicature is *a part of the content of case law*.

On the other hand, if we shift to conversational *impliciture*, we see how case law may include content beyond what is said literally. While it may be problematic to say that *Miranda* implicates something conceptually different from what it says literally (say, proscribing the use

of specific law enforcement tactics that are conceptually different from the semantic content of

the actual case law), it is different altogether to say that that *Miranda* includes implicit content

that is connected closely and conceptually to the semantic content of what it says literally. The

tactics that Davis and Leo describe have an indirect relationship to what *Miranda* says literally.

Questioning a suspect in a particular tone or manner, setting a particular mood during or before

the interrogation, asking a particular script of questions intended to accomplish a particular law

enforcement objective, and so on, are not proscribed in *Miranda* via conversational implicature.

Again, the reason for this is based upon the unique nature of legal speech, including the many

conversations that make up case law. However, there is nothing unique about legal speech (case

law, in this instance) that precludes conversational *impliciture* from forming part of its content.

This is because conversational *impliciture* includes only implicit content that completes or

expands upon what is said literally. For example, when *Miranda* commands government

officials to inform a person that the person has a right to remain silent and any statement the

person makes may be used as evidence against the person, it is implicit that the government

official need not exhaust and clarify every context in which the person may have a right to

silence. It is implicit in *Miranda* that the right to silence relates to speaking with a government

official, not to other situations in which a person might have a non-legal right to remain silent

(say, one's right to refrain from informing one's spouse that one is having an affair, or one's

right to refrain from informing one's barber that one really did commit the murder). It is

likewise implicit that *Miranda* does not compel government officials to explain that any

statement made *to the government* may be used as evidence against the person—this is content

that is implicit in *Miranda*. It may be true that one's statements to one's best friend or coworker

can be used against one in a court of law, but it is implicit that *Miranda* does not command government officials to warn one of these risks.

In other words, these points about *Miranda* might be considered examples of *impliciture*. As discussed in Part 1.3, *impliciture* allows the speaker to mean something related closely to what the speaker actually says without having to use additional phrases to make it explicit. And, again, in such cases of *impliciture* the hearer must understand that the speaker cannot plausibly intend otherwise because what the speaker means and what the speaker says are so closely tied: The speaker's meaning is derived from conceptual material in what the speaker says, though what the speaker means is not identical to what the speaker says. Now you can see what I mean about the examples involving the proposed Good Samaritan law and *Miranda*. Regardless of the unique nature of legal speech, in the case of the former the hearer understands that the law cannot plausibly be communicating that one must aid all people around the state in imminent danger of death, and in the case of the latter the hearer understands that the law cannot plausibly be communicating that government officials must warn suspects of each and every situation in which the suspect may remain silent and each and every situation in which a statement may be used against the suspect in a court of law. The expanded, implicit content of the law—which involve limitations in scope in these two examples—consists of conceptual material that is very close to what the law says literally, though not identical to it. We can also see how this is different from conversational implicature, or cases in which it is suggested that the law contains content this is conceptually different from what is said literally. A law stating, "no vehicles in the park," does not implicate anything whatsoever about the permissibility of toy vehicles or vehicles mounted on pedestals in the park, nor is there necessarily any relevant implicit content that expands the content of the law. Likewise, a law that forbids the importation of labor of any

kind does not implicate anything about an exception for clergy from England. Although the relevant judicial body must interpret such laws as it sees fit, the strategic, multi-conversational nature of legal speech precludes implied content from forming part of the law in these instances. But, again, these examples are different from the sort of *implicit* content in the law I have described, which merely complete or expand upon the conceptual material contained in what the law says literally.

2.3. Objections and Conclusions

Although I have suggested that the content of case law may include *implicit* content that is connected closely and conceptually to what the case law says literally, I have argued that the nature of case law precludes conversational implicature from forming a part of its content. This is in part because of the many, competing conversations that may consist within case law—its strategic nature, in other words. A central objection to my view is that case law may not be wholly strategic, but rather part of a larger cooperative conversational goal. To put it another way, one might argue that Grice's quantity maxim does not require one to make the strongest claims that one can, but rather the requirements of a conversation depend on the nature of the conversation.[27] We should thus think of our discourse in the context of David Lewis's notion of *conversational score*: "The conversational score interacts with the Gricean maxims to determine what is required of and what is permitted to interlocutors at a given state of that conversation" (Green 1995, 86). So, for example, if I ask my friend to name three or four novels that I should read while on vacation, then my friend has satisfied her role in the conversation when she names three novels—regardless of whether she had four novels in mind—because naming three novels

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[27] See, e.g., Green 1995, in which he discusses three kinds of discourse, each of which may entail different conversational aims: *exchanges* (paradigm cases of information exchanges), *inquiries* ("dialogue aimed at answering questions"), and *debates* ("conversations aimed at convincing one of the participants of some thesis") (1995, 104-05).

is consistent with the objective of the exchange.[28] These sorts of examples illustrate how

speakers may comply with Grice's Cooperative Principle regardless of whether they are

providing the most possible information.

With this backdrop we can begin to see the potential objection to my position, namely,

that strategic or adversarial conversations may still be intended to achieve a larger conversational

goal, including a cooperative exchange (see Green 1995, 98-99). One might think of a witness

for the prosecution being questioned by a defense attorney, or, apropos here, a law enforcement

officer questioning a suspect.   In each case, it is unlikely that the subjects involved—witness-

lawyer and officer-suspect—will be as generous with their information as possible. But this in

no way precludes a cooperative exchange of information in which conversational implicature

may be present. In each case, the subjects may be motivated to cooperate in order to reach a

desired end, even though those ends may compete with each other. The witness and the suspect

may say no more than is minimally required in order to provide truthful answers without

becoming criminally liable (perjury in the case of a witness, and lying to a federal law

enforcement officer in the case of the suspect, for instance), and the defense attorney and law

enforcement officer may be motivated to provide—through the questions they ask— just enough

information to allow them to obtain the answers they need. Of course, it is possible that the

subjects will tell lies in order to hide guilt, but in such cases the goal of the conversation is to

circumvent the cooperative principle; in other words, this would be a case in which a maxim is

broken because the purpose of the discourse is something other than an exchange of information.

But in the adversarial examples mentioned above, a cooperative exchange of information is a

potential aim, and so conversational implicature might very well form part of the content of the

conversation.

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[28] See Green 1995, 88, for a similar example.

So the objection to my view might be that conversational implicature may arise (but not necessarily) in a variety of conversations with differing aims; moreover, whether implicature does arise will depend on the particular context of the conversation and the particular conversational score, not whether the speakers are providing as much information as possible. But I do not disagree with this move. To be sure, there are a multitude of conversational types with varying conversational aims that may nevertheless be consistent with an overall cooperative goal. However, when we turn to case law, it would seem problematic to say that there exists a single conversation with a single cooperative goal from which implicature may be derived. If an instance of case law involves multiple conversations that serve competing goals, a particular hearer cannot assume that the implicature that exists in the conversation of which she is a part forms part of the content of that case law. Again, while each conversation may convey implicature that is consistent with the cooperative principle for purposes of that particular internal conversation, the various conversations may not share a single implicatum collectively from which implied content may be gleaned.

In short, my argument may be distilled to an empirical assumption and a single logical premise:

(1) Empirical assumption: Precedent-setting judicial opinions may consist of multiple conversations, in which a speaker generates implicatum *p* in some conversations and implicatum *not p* in others.

(2) Logical premise: If precedent-setting judicial opinion *A* consists of multiple conversations in which a speaker generates implicatum *p* in some conversations and a speaker generates implicatum *not p* in others, then no meaningful conversational implicature is part of the content of precedent-setting judicial opinion *A*.

(3) Conclusion: No meaningful conversational implicatum is part of the content of

precedent-setting judicial opinion *A*.

In summarizing my argument in this way, I do not mean to suggest that I have established an

axiom from which we may derive an infallible disproof of the view that the content of case law

includes conversational implicature. It goes without saying that case law varies from case to

case, but I have tried to show that my conclusion follows *prima facie* because conversational

implicature may be generated in contradictory ways in the different conversations that occur in

particular instances of case law. As discussed in 2.1, the empirical assumption in my argument

is justified inasmuch as case law often entails conversations between two different courts, among

the judges of a single court, and between the court and the public. I also tried to show how the

differing contexts of those conversations may involve speakers who generate opposing implicata.

To the extent that these two points are granted, it follows that there is no single, meaningful

conversational implicatum that forms a part of the content of case law. On the other hand, it

seems likely that implicit content exists within the law in the form of *impliciture*, which is

connected closely and conceptually to what the law says literally. So while implicature and

impliciture are both products of the same theoretical framework, they differ in degree. If we

view implicature and *impliciture* on the same spectrum, then *impliciture* is far closer to the

terminus of the spectrum regarding what is said literally because it expands directly upon the

conceptual meaning contained in the semantic content of what is said literally. This conceptual

connectedness to what is said literally means that that the indeterminate and strategic nature of

legal speech does not necessarily prevent *impliciture* from forming part of the content of law.

While there may be no formula for determining precisely when *impliciture* ends and implicature

begins on a general, Gricean spectrum, the distinction will perhaps leave the jurist with greater

clarity into the nature and content of the law.

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