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THREE KINDS OF INTENTION IN LAWMAKING

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ABSTRACT. The nature of legislative intent remains a subject of vigorous debate. Its many participants perceive the intent in different ways. In this paper, I identify the reason for such diverse perceptions: three intentions are involved in lawmaking, not one. The three intentions correspond to the three aspects of a speech act: locutionary, illocutionary and perlocutionary. The dominant approach in legal theory holds that legislative intent is a semantic (locutionary) one. A closer examination shows that it is, in fact, an illocutionary one. In the paper, I draw the consequences for legal interpretation of this more theorized model of legislative intent.

I. INTRODUCTION

Legal philosophers have argued about the nature of legislative intent since time immemorial. What is striking is that they understand intent in different ways: as a particular way in which legal text should be understood, as a will to enact a text as law or as a set of expectations regarding the law's future consequences. This diversity causes a number of misunderstandings and conflations.

In this article, I explain why legal philosophy perceives the legislative intent in such a diversified way: In the course of lawmaking three kinds of intention occur, not one. The distinction of three kinds of intention derives from J.L. Austin's construction of a speech act,[1] which he broke into three constituent parts: a locutionary act, an illocutionary act, and a perlocutionary act. Like the three aspects of a speech act, the three kinds of intentions I discuss (locutionary, illo-

[1] John L. Austin, *How to do Things with Words* (Oxford: Oxford University Press, 1975).

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cutionary and perlocutionary) differ in nature and function. Failure to acknowledge the distinctiveness of these intentions has caused considerable practical and theoretical problems in the ongoing debate on legislative intent.

The first section of this article demonstrates that, to date, discussions on legislative intent generally have not considered the variety of intentions involved in the lawmaking process; this has led to confusing an intention to say something with an intention to enact a law or to bring about specific effects in reality.[2] The second part of this article presents the idea of three intentions and demonstrates that their differentiation is particularly important in written communication, especially where (as in lawmaking) one person drafts a text, and another person uses this text to perform a speech act. The last section of the article presents the argument that distinguishing between three kinds of legislative intentions and attributing these to different legislating actors could resolve a number of important theoretical issues. These issues include that of the existence of a collective intention and the question about the need to take the lawmaker's communicative intention into account in the interpretation of law.

II. TRADITIONAL PERSPECTIVE: A VARIETY OF INTENTIONS

Three approaches to legislative intent prevail in legal theory. The first and most popular approach regards legislative intent as a semantic intention.[3] In this perspective, legislative intent is an intention to say something, to communicate a specific semantic content to addressees. Legislative intent in this approach is the intention of a lawmaker as a speaker. The lawmaker uses language

[2] The distinction of locutionary, illocutionary and perlocutionary intentions exists in legal philosophical literature (see Heidi Hurd, 'Sovereignty in Silence', in *99 Yale Law Journal* [1990], p. 945, and Michael S. Moore, 'A Natural Law Theory of Interpretation', 58 Southern California Law Review 277, 1985). However, those authors have not drawn far-reaching conclusions concerning legislative intent from that distinction.

[3] Richard Ekins, The Nature of Legislative Intent (Oxford: Oxford University Press, 2013); Lawrence M. Solan, 'Private language, public laws. The Central Role of Legislative Intent in Statutory Interpretation', 93 The Georgetown Law Journal (2005), p. 427. To avoid confusion, I will refer to semantic intention rather than communicative intention as the latter has been used in the literature to refer to both locutionary and illocutionary intentions.

to express rules, and this intention is a factor that gives meaning to those rules.[4]

The second approach understands legislative intent as the intention of the lawmaker to pass into law a text which is presented for approval, as illustrated by Raz's 'minimum intention'[5] or the 'intention to make law'.[6] A similar approach to legislative intent can be found in Waldron,[7] who perceives legislative intent as a formal intention to enact a text as law. The public choice theory[8] also approaches legislative intent in this way – as a will to accept a particular legislative proposal as law. In this approach, the way the legislative actors understand legal text is of secondary importance. What is crucial is the decision to treat a particular text as binding. This decision is expressed by way of a majority decision to vote for the text and convert it into law. As the first type of intention gives the words their meanings, the second gives them force.

In the third approach, legislative intent is equated with specific expectations as to the results that the law will bring about in reality.[9] This kind of intention exceeds the moment of lawmaking and reaches into the future: it is about the changes in the real world that will be caused as an effect of enacted rules. This third approach assumes that law is an effective tool for influencing human behavior and that the changed behavior will impact reality: crime will decline, justice will prevail, some stakeholders will benefit, others will lose out. Here, the legislative intent is not about what the lawmaker says or enacts but rather about the results he or she will achieve as a result of saying or enacting.

In this paper, I treat lawmaking as a speech act. The three ways of perceiving legislative intent outlined above correspond to the three kinds of intention involved in a speech act: locutionary, illocutionary and perlocutionary. I elaborate on this triad in the next section.

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[4] Stanley Fish, 'Intention Is All There Is: A Critical Analysis of Aharon Barak's Purposive Interpretation in Law', 29 Cardozo Law Review (2008).

[5] Joseph Raz, Between Authority and Interpretation: On the Theory of Law and Practical Reason: On the Authority and Interpretation of Constitutions: Some Preliminaries, (Oxford, Oxford University Press, 2009b), p. 284.

[6] Joseph Raz, Between Authority and Interpretation: On the Theory of Law and Practical Reason: Intention in Interpretation (Oxford, Oxford University Press, 2009a), p. 329.

[7] Jeremy Waldron, Law and Disagreement, (Oxford, Clarendon Press Oxford, 1999).

[8] Kenneth A. Shepsle, Congress is a 'They', not an 'It': Legislative intent as oxymoron, in International Review of Law and Economics 12(2) (1992), pp. 239–256.

[9] Ronald Dworkin, Law's Empire (Cambridge: Harvard University Press, 1986, p. 321).

III. THREE ASPECTS OF A SPEECH ACT AND THE RELATED INTENTIONS

The Speech Act Theory is a popular theoretical tool used by philosophers of law to analyze the language of law and all related issues, in particular lawmaking and interpreting. Many philosophers of law directly express their conviction about the utility of this theory[10]; even more of them use elements of the Speech Act Theory in their works.[11]

The key element of Speech Act Theory used in the philosophy of law is the concept of a speech act proposed by J.L. Austin,[12] and subsequently developed by other philosophers of language (Searle,[13] Bach and Harnish,[14] M. Sbisà,[15] etc.). In the original Austinian version,[16] a speech act was presented as consisting of three sub-acts (aspects): a locutionary act, an illocutionary act, and a perlocutionary act. According to Austin, a locutionary act consists of uttering something with a sense and reference (e.g. 'open the window'). An illocutionary act means performing an act in saying something: the act takes place when there is a 'conventional procedure' which fixes the behavior and circumstances that must obtain for the speaker to bring about the conventional effect associated with the procedure, namely the performance of a specific act (e.g. issuing a request or an order to open the window). A perlocutionary act consists of a change in the extra-linguistic reality (e.g. a window being opened).

The three aspects of a speech act differentiated by Austin correspond to three kinds of intention of the person performing such an act. The first type is a 'locutionary (semantic) intention': an intention to utter the words with 'a certain more of less definite 'sense' and a

[10] Paul Amselek, 'Philosophy of Law and the Theory of Speech Acts', in Ratio Juris 1(3) (1988), pp. 187–223.

[11] See Andrei Marmor, The Language of Law, Oxford, Oxford University Press, 2014; Richard Ekins, The Nature of Legislative Intent (Oxford: Oxford University Press, 2013); Lawrence B. Solum, 'Semantic Originalism', Illinois Public Law and Legal Theory Research Papers Series, No. 07-24, 2008.

[12] Austin 1975, passim.

[13] John Searle, Speech Acts: An Essay in the Philosophy of Language (Cambridge, 1969).

[14] Kent Bach, Robert M. Harnish, Linguistic Communication and Speech Acts (MIT Press, 1979).

[15] Marina Sbisà, Speech acts in context, Language & Communication 22 (2002), pp. 421–436.

[16] A recent reconstruction of it can be found in Sbisà 2013 (Locution, Illocution, Perlocution, in Sbisà and Turner eds., Pragmatics of Speech Actions, Mouton de Gruyter).

more of less definite 'reference' (which together are equivalent of meaning)'.[17]

The second type is an 'illocutionary intention', i.e. the intention to perform a specific illocutionary act by uttering words (e.g. an intention to issue an order) or, as Forguson puts it a 'force-intention'.[18] In some kinds of illocutionary acts the illocutionary intention is 'an intent to enact a rule'.[19]

The third type is a 'perlocutionary intention', which is the intention to make certain changes in the extra-linguistic reality by performing the illocutionary act.[20] The perlocutionary intention is understood as 'the intention that the utterance produce a certain response r in the audience (e.g., a belief, if the utterance belongs to the assertive type, and action, or an intention to act, if the utterance belongs to the directive type)'.[21]

In the majority of situations of performing speech acts, all three kinds of intentions co-occur. Let us take as an example situation that of two people about to exchange marriage vows. If they sincerely take the marriage vows they perform the speech act with the intention to utter the words of the vow (the locutionary intention), the intention to get married (the illocutionary intention), and the intention to live the rest of their lives together according to a prescribed code of behavior (the perlocutionary intention). Indeed, in this case the co-occurrence and coherence of the three intentions is the condition for a valid and non-defective performance of the illocutionary act.

However, there are situations the coincidence and coherence of all three intentions does not occur in speech acts. For example, when on stage two actors play a marriage scene, their intentions

[17] Austin (1975, p. 93). As the locutionary act can be divided into three subacts (phonetic, phatic and rhetic acts), so the locutionary intention can have three aspects. One can distinguish within it a phonetic intention, 'an intention to make sounds, marks or gesture' (Joshua Rust, John Searle [London-New York: Continuum, 2009, p. 112]), a phatic intention, called by Forguson (Lynd. W. Forguson, 'Locutionary and Illocutionary Acts', in Berlin I., Pears D.F., Searle J.R., Forguson L.W., Pitcher G., Strawson P.F. & Warnock G.J. [1973], Essays on J.L. Austin (Clarendon, 1973) an 'L-intention' and a rhetic intention, called by Forguson an 'SR-intention', when SR stand for sense and reference.

[18] Forguson (1973, p. 168).

[19] See Mary Kate McGowan, 'On Pragmatics, Exercitive Speech Acts and Pornography', in Lodz Papers in Pragmatics, 5.1 Special Issue on Speech Action (2009), pp. 133–155.

[20] The distinction of illocutionary and locutionary intentions appears in Quentin Skinner, 'Motives, intentions, and the interpretation of texts', New Literary History 3(2) (1972), pp. 393–408. The perlocutionary intention is distinguished in Francois Recanati, Meaning and Force: The Pragmatics of Performative Utterances (Cambridge, Cambridge University Press, 1987), p. 179.

[21] Recanati (1987, p. 179).

undoubtedly include the locutionary intention to say the words 'I take you as my husband/wife'. But the actors do not act with the illocutionary intention to get married, nor do they have perlocutionary intentions related to the reality of being married. Another example of the absence of the perlocutionary intention arises in the context of marriage as regulated by the Code of Canon Law.[22] According to that code, a valid marriage must consist of several important properties or elements: unity, indissolubility, procreation and education of offspring. If either or both of the prospective spouses preclude any of those elements, the act of marriage can be annulled. In this situation, despite the presence of the illocutionary intention to get married, the absence of the perlocutionary intention to bring about the effects related to the illocutionary act (e.g. to have children) leads, according to Canon Law, to a flaw in the act of marriage.[23]

The differentiation between the three intentions may be used more broadly than in the discussion on the validity of legal acts: It can also be used to describe more precisely the lawmaking process, which is often understood as a complex speech act.[24] Let us see how the three intentions operate within this process.

IV. THE WRITTEN CHARACTER OF LAW; DISSONANCE BETWEEN THE THREE INTENTIONS

In the case of illocutionary acts performed in law, the three kinds of intention are often in perfect alignment. A police officer who says 'Stop!' acts with the intention to say it (the locutionary intention), which means that he does not say it inadvertently or in error. He is also acting with the illocutionary intention to give an order to stop to the person he is addressing, and he wants that person to stop (the

[22] See Canon 1101: 1.The internal consent of the mind is presumed to conform to the words and signs used in celebrating the marriage. 2. If, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential element of marriage, or some essential property of marriage, the party contracts invalidly.

[23] Examples of considering perlocutionary intention as relevant for the assessment of the validity of a legal speech act can also be found beyond the narrow scope of Canon Law. See, for instance, the Palmer v. Thompson case [403 U.S. 217 (1971)], in which judges considered the issue of the illicit legislative motive (which de facto is a form of illicit perlocutionary intention) of a city authority to act in defiance of a court order relating to racial integration.

[24] See Marmor (2014) and Dick W. Ruiter, 'Institutional Legal Facts: Legal Powers and Their Effects' (Springer Science + Business Media Dordrecht, 1993).

perlocutionary intention). The nature of the alignment changes, however, when we move from spoken to written communication.

Written communication is the main vehicle of more complex illocutionary acts, such as passing a new law. As I indicated in another paper (Matczak 2015), the performance of speech acts in writing makes it possible to differentiate points in time in which the locutionary intention is formulated, and times when the two other kinds of intentions are formulated. This situation was described by Bianchi[25] in an example where a person writes a 'Don't leave me!' note in his office, and subsequently uses it with respect to three different people – his wife, his son and his butler. In each case of using the previously written note, this person formulates a different illocutionary intention (to request, to order, to encourage). The separation of the moment of writing the text and that of using it makes it possible to allocate different kinds of intention to each moment: a locutionary intention to the moment of writing the text, and different illocutionary intentions to the moments of using the previously written text.

The communication process in the case of lawmaking is even more complex than in Bianchi's example. Both in Bianchi's example and in lawmaking, a number of separate moments are involved, but the number of actors is greater in lawmaking, numbering at least two: one person drafts the text and another makes it into a binding legal act. This division of duties was pointed out by Maley, who identified the role of the DRAFTSMAN and the SOURCE in lawmaking.[26] Maley regards the legislature, which has sovereign power to make law for a community, as the SOURCE; meanwhile, the DRAFTSMAN is a specific member of the legislature, or a representative of the administration, tasked with the preparation of a draft statute.[27] Goffman makes a similar distinction and differentiates the role of the AUTHOR ('[the one] who selects and encodes the message') and the PRINCIPAL

[25] Claudia Bianchi, 'How to do things with (recorded) words', in Philosophical Studies 167(2) (2013), pp. 485–495.

[26] Yon Maley, 'The Language of Legislation', Language in Society 16(1) (1987), pp. 25–48. Despite making this distinction between the SOURCE and the DRAFTSMAN, Maley (1987, pp. 31–32) draws different conclusions from mine. For example, while I attribute the illocutionary intention to the source, he attributes the communicative intention to it: 'The SOURCE of the statute is the legislature itself, whose *communicative intention* [my emphasis] the words of the statute are deemed to express', and in another place: 'The legislature instructs the DRAFTSMAN as to the substance of the Bill (as it is at this stage), that is, its intended meaning'.

[27] 'The very concept of a draft is almost entirely restricted to written language'. Michael Stubbs, 'Can I Have That in Writing? Some Neglected Topics in Speech Act Theory', Journal of Pragmatics 7 (1983), p. 485.

('[the one] who is committed to the propositions and acts expressed').[28] A similar distinction is made by Dworkin.[29]

V. LEGISLATIVE INTENTION AS AN ILLOCUTIONARY INTENTION

The main conclusion to be drawn from the division of duties outlined above is that written communication may entail separation of the locutionary act (writing) from the illocutionary one (using a previously written text). Locutionary and illocutionary intentions follow the same pattern of separation. Drafting a statute (the locutionary act) involves locutionary intention, i.e. the intention to communicate certain words. The DRAFTSMAN (e.g. a ministry employee) formulates this intention but is not regarded by the legislative procedure as a person competent to perform the illocutionary act of lawmaking. Consequently, their illocutionary intention is irrelevant or non-existent. The illocutionary intention is formulated by the PRINCIPAL, who acts with the intention of conferring binding legal effect on a draft legal text. In addition, lawmaking involves perlocutionary intentions, i.e. intentions to make changes in the extra-linguistic reality.[30] These intentions may be formulated both by people acting in the capacity of the DRAFTSMAN and the PRINCIPAL.

In the framework outlined above, the illocutionary intention (the force-intention, as opposed to the locutionary meaning-intention) is essential for giving an appropriate normative significance to the act of enacting the law, which is impossible to achieve by the mere writing of the text. The illocutionary intention manifests itself only in those who are appropriately empowered in the procedure of performing an illocutionary act. The illocutionary intention of the legislature within

[28] Stubbs after Erving Goffman, Forms of Talk (Oxford: Blackwell, 1981), p. 492.

[29] Dworkin (1986, p. 322) uses an example of a group letter and distinguishes between 'the author of that letter who drafts it to attract the most signatures possible' and 'someone who signs a group letter he cannot rewrite for the group'.

[30] The concept of perlocution applied in this paper is an extended version of the traditional Austinian one, which referred to the immediate consequences a speech act causes in the audience's attitudes and behaviour (as in the example of opening a window, referred to on p. 88). This traditional, narrow understanding of perlocutionary effects resulted from a traditional, narrow understanding of a communication situation as a face-to-face one. If it is to be applied to the written communication by law, which is addressed to a wide audience and extends far and long beyond the speaker's immediate context, the traditional approach to perlocutionary effect must be extended. The perlocutionary effects of a legal text can be understood as its impact on social groups and society as a whole; moreover, the consequences in social reality should be understood broadly, not merely in terms of the immediate communication environment. I am grateful to an anonymous reviewer for drawing my attention to this issue.

the above-described framework corresponds to Joseph Raz's idea of minimal, formal legislative intention ('intention to make law')[31]:

> A person is legislating (voting for a Bill, etc.) by expressing an intention that the text of the Bill on which he is voting will—when understood as such texts, when promulgated in the circumstances in which this one is promulgated, are understood in the legal culture of this country—be law.[32]

The legislature within this model is not a DRAFTSMAN but a PRINCIPAL. It does not write the draft; it uses it for its own purposes. The following example may help to understand how the illocutionary intention works. One can go to a hairdresser and give him verbal instructions as to how he should cut one's hair. This situation corresponds to verbal face-to-face communication, where words are uttered with simultaneous locutionary and illocutionary intentions (as shown, in verbal communication both intentions co-exist in the act of speech). However, one can also go to a hairdresser with a picture of one's favorite celebrity and "give the instruction": 'I want to look like this!' In this case, the person giving the instruction to the hairdresser uses an artifact (a picture) created most often by somebody else, and utters a directive the content of which is specified by the content of the picture. This directive is uttered with the illocutionary intention to give an order, but the content of the order is defined by somebody else (the author of the picture) or something else (the artifact in the form of a picture).

In this paper, I argue that lawmaking is carried out along this second pattern. To the same extent that the photograph provides content for a command directed to the hairdresser, a legal text provides the content for the command of a lawmaker. The illocutionary intention of the legislature is to make this legal text law,[33]

[31] Raz (2009b, p. 329).

[32] Raz (2009a, p. 284) (footnotes omitted).

[33] Similarly to the modified, extended concept of perlocution discussed in footnote 30, the concepts of illocutionary act and intention used in this paper differ slightly from the traditional Austinian ones. The difference derives from the structural difference between face-to-face communication (addressed by Austin) and the complex, multi-personal communications by law. In the traditional approach, the illocutionary intention is closely intertwined with the locutionary one, as it involves only one person on the production side: the speaker. The distinction between the AUTHOR (DRAFTSMAN) and the PRINCIPAL, a characteristic of communications by law, justifies the separation of locutionary and illocutionary intentions. This is not to say that the illocutionary intention in communication by law is completely isolated from the understanding of the legal text. As I will point out in the section on motives, that understanding very often generates the illocutionary intention and is often a basis for the perlocutionary expectation of the MPs; however, that understanding cannot be equated with the traditional, meaning-shaping locutionary intention.

but the semantic content of this text is not established by the legislature.[34] Thus, a form of delegation must take place.

Drawing on MacCallum's model of legislative intent,[35] one can argue that a delegation of such intent takes place in lawmaking. What is delegated is the task of forming the locutionary intent (choosing words to express thoughts), not that of forming the illocutionary or perlocutionary ones. Delegating this task makes the text a black box: The legislative decision to enact this text as law is only the choice of the box and not the choice of the content. The illocutionary intention resembles the 'basic intention', as defined by Lepore and Stone (2015). The authors highlight the indexical nature of this intention, i.e. the fact that the role of this intention is to indicate a particular sentence or a set of sentences as those the speaker wants to commit themselves to.[36]

The legislative decision to enact a text as law is similar to the decision of the legislator to appoint a person to a position (a judge, ombudsman or president). In both cases, the legislator's expectations do not determine how the subject of their decision will operate, because that subject (a person performing a given function or a legal text) is autonomous. The choice of the person, as the choice of the text, is rational: It is based on the assessment of their suitability to serve a particular purpose. In the case of the text, this suitability is defined by the text's potential to depict a pattern of behavior the members of the legislature find useful in combating a wrongdoing they want to combat.[37] Whether this assessment is right or wrong

[34] Forguson makes an interesting distinction between two kinds of ambiguity which may arise in the interpretation of speech acts: a force ambiguity and a locutionary ambiguity. The former is an uncertainty regarding what illocutionary force a locutionary act has, the latter is an uncertainty regarding what semantic content a clear illocutionary act conveys. In legal interpretation, the force ambiguity is very rare and locutionary ambiguity is very common: lawyers rarely wonder whether a legislative act is an illocutionary act of imposing directives, but very often struggle to identify the real semantic content of this act. The proposed three-type distinction of legislative intentions helps explain this phenomenon of legal interpretation. The illocutionary intention of the PRINCIPAL is relatively clear, the locutionary intention of the DRAFTSMAN is notoriously ambiguous. Forguson (1973, p. 170).

[35] Gerald C. MacCallum, Legislative Intent and Other Essays on Law, Politics and Morality (Madison: University of Wisconsin Press, 1993).

[36] Ernie Lepore, Matthew Stone, Imagination and Convention (Oxford: Oxford University Press, 2015), pp. 209, 219.

[37] Some authors (e.g. Ekins 2013, p. 112) suggest that to follow Waldron's or Raz's ideas of 'minimal' legislative intent is to treat members of the legislature as irrational in their choices, i.e. as persons who do not respond to reasons but who blindly accept whatever text is submitted to them. My position is that the decision to choose a particular text as law is a fully rational one, based on both the assessment of the purpose of the lawmaking process and the features of the draft bill. All those assessments, however, are non-aggregable motives the individual members of the legislature act upon, not intentions that can be shared. Therefore, they do not constitute the legislative intent and should not bear any significance for the interpretation of legal texts.

does not matter: the suitability of this text is independent of what legislators think about the text.

If the legislator sets the form, who sets the content? Philosophers of language have worked out a position whereby 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.[38] Those philosophers, representatives of so-called semantic externalism, advocate the idea that meaning is shaped in the process of repeatable co-occurrence of words (sentences) and states of affairs: a name co-occurs with a person, a noun co-occurs with a thing, a predicate co-occurs with a given attribute. The co-occurrence can be physical (words and things or qualities are present at the same time and place), or of a historical-causal nature (as in Kripke-Putnam semantics, in which our current reference extends back to the first use of the word).

As a result of this co-occurrence, historical chains of usages come into existence – Millikan calls them 'lineages'.[39] A lineage starts the moment a word is used in a particular way for the first time. This moment is called '*the original baptism*'[40] or '*the naming ceremony*'.[41] At this moment, the speaker for the first time points to a particular element of reality (a state of affairs, a quality) and uses the word to refer to this element of reality. Subsequent usages of this word are anchored in this first moment. The users of language borrow the reference from the previous uses of the language. By doing so, the users take part in the chain of usages and thereby in the tradition of this word's use.

[38] For instance, Millikan observes that the words and sentences we use have a relatively stable public meaning, arising from the historically conditioned and social nature of language (Ruth Garrett Millikan, Language, Thought and Other Biological Categories [Cambridge: MIT Press, 1984]). This meaning is autonomous of the intentions and states of mind of the individual language user (Ruth Garrett Millikan, Varieties of Meaning: The 2002 Jean Nicod Lectures [Cambridge: MIT Press, 2004], p. 127) and can evolve (Ruth Garrett Millikan, Language. A Biological Model [Oxford: Clarendon Press Oxford, 2005], p. 61. A similar position on autonomous linguistic meaning is presented by Waldron (Jeremy Waldron, Law and Disagreement, [Oxford, Clarendon Press Oxford, 1999], pp. 128–129) and Schauer (1993), albeit with no reference to a particular philosophy of language. According to Schauer, meaning is independent from states of mind of language users and consists in 'the ability of symbols – words, phrases, sentences – to carry meaning independent of the communicative goals on particular occasions of the users of those symbols' (Frederick Schauer, Playing by the Rules. A Philosophical Examination of Rule-Based Decision-Making in Law and in Life [Oxford, Oxford University Press, 1993], p. 55).

[39] Millikan: 'The phenomenon of public language emerges, I believe, not as a set of abstract objects, but as a real sort of stuff in the real world, neither abstract nor arbitrarily constructed by the theorist. It consists of actual utterances and scripts, forming crisscrossing lineages' see Millikan (2005, p. 38).

[40] Kripke (1980).

[41] Devitt (1980).

The chain of co-occurrences (which constitute what we call a linguistic practice) leads a so-called 'stabilizing function' of signs to emerge.[42] The stabilizing function means that irrespective of a particular user's intention, a word refers to a state of affairs to which it systematically referred in the past. What defines the reference is the link between the word and the state of affairs typical of it; the link has been constituted by a critical mass of cases in which users referred by this word to that state of affairs. In this way, a public language emerges, consisting of the history of usages and a relatively stable semantic link between the words and reality that constitutes meaning. Individual intentions are far from central to this process.[43]

A similar, anti-intentionalist position has been recently embraced by Lepore and Stone (2015) who questioned the traditional, Gricean view of intentions as key factors in determining meaning. The authors promote a 'direct intentionalism' within which the only function of the interlocutors' intentions is to indicate the traditionally developed linguistic convention they want to use, not to constitute meaning.[44] In their approach, as in Millikan's, language is a public tool in which historically established conventions rather than particular users' intentions define what words and sentences refer to. In some sense, the lawmaker's decision to make 'this' text a law is an instance of 'direct intentionalism': It is an indication of the convention the lawmaker wants to use in the particular instance of communication. Lepore and Stone explicitly indicate that the intentions within the framework of direct intentionalism may indicate a whole discourse (e.g. a text) as the utterance a speaker wants to commit themselves to.[45] Similarly, the illocutionary intention of a lawmaker discussed in this paper indicates legal text as a set of utterances to which that lawmaker wants to commit him- or herself.

The combination of an illocutionary account of legislative intention and an account of a conventional public language constitute a promising theoretical project. Within this project, the legis-

[42] Millikan (1984).

[43] A more detailed discussion of the significance of semantic externalism's anti-intentional stance for legal theory in general, and the theory of legal interpretation in particular, can be found in Marcin Matczak, 'A Theory that Beats the Theory? Lineages, the Growth of Signs, and Dynamic Legal Interpretation', (forthcoming) Maciej Witek and Iwona Witczak-Plisiecka (Eds.), Dynamics and Varieties of Speech Actions, a theme issue of Poznan Studies in the Philosophy of the Sciences and the Humanities, Brill.

[44] Lepore and Stone (2015).

[45] Lepore and Stone (2015, p. 209).

lature's role is to confer a binding force upon a legal text understood as a set of linguistic expressions with a historically developed conventional public meaning. The binding force is conferred by the illocutionary intention of the lawmaker, which intention has a blanket nature, i.e. the conventional (historically developed) meaning of expressions used in a legal text provides the semantic content. As a consequence, words and sentences included in a particular text may, but do not have to, correlate with the locutionary intention of the author of that text. In the case of a legal text, its public, conventional meaning does not have to correlate with the private semantic understanding of legislator (PRINCIPAL) who approves a text and gives it the illocutionary force of law. The authority of the legislator consists in the right to accept certain words and configurations of those words, make them law, and thereby establish them as the object of future legal interpretation. By accepting those words and configurations, the legislator accepts their historically developed conventional meanings.

Contrary to Ekins,[46] I argue the interpreters should treat text as a freestanding object. Ekins argues otherwise because he believes the authority of an artifact (like a watch or a gauge) must be derived from the authority of its creator. He does not acknowledge, however, that an artifact has been designed for a particular purpose exactly because it is better than its author in achieving this purpose (a watch is better in measuring the time than the watchmaker). By the same token, a text is used in lawmaking because there are many roles and functions lawmakers cannot fulfill, but texts can. One such function is an ability to govern people's behavior in places where the lawmakers are not present and at times that extend beyond the lives of the lawmakers.

The argument that legislative intent is illocutionary in nature can also be derived from the tradition of legal interpretation. According to its canonical principles, the interpreter may disregard both the locutionary intention with which the legal text was developed and the perlocutionary intention of the lawmaker. Disregarding the locutionary intention takes place when one of the principles of the conflict of law is applied (e.g. 'lex specialis derogat legi generali'). In this case, it is necessary to question whether the author of the text

[46] Ekins (2013, p. 96).

wished to say what he said. Improving the quality or coherence of a legal text by the interpreter, permitted under the principles of interpretation, demonstrates that the locutionary intention is not absolutely binding.

The perlocutionary intention is not absolutely binding on the interpreter either. The interpreter is not obliged to take into consideration the expectations of individual members of the legislature as to the anticipated effects of implementing the law. In this case, too, it is possible to disregard the perlocutionary intentions of the legislature.

The only intention which the interpreter cannot disregard is the illocutionary intention. The interpreter cannot simply assume that a legal text made legally binding is not law, and she cannot freely choose another text as a subject of her interpretation. This very fact makes the illocutionary intention essential for the interpretation process and underlines its primacy over the locutionary and perlocutionary ones.

In conclusion, the legislative intent is illocutionary in nature. This insight constitutes a departure from previous approaches that have focused on the semantic (locutionary) intention. The reader accustomed to those previous approaches may wonder whether the locutionary intentions of the PRINCIPAL are of any relevance to lawmaking. This is the topic to which I will turn in the next section.

VI. INTENTIONS VS. MOTIVES

Members of the legislature obviously have some convictions as to the meaning of the legal text they are voting on. The question is what role those convictions play in the complex speech act of lawmaking. In particular, we need to decide if those convictions should be equated with the locutionary intention of the members of legislature acting as a PRINCIPAL — as it has been to date — or if it plays another role.

To answer this question, we need to distinguish between intentions and motives in speech acts. As each speech act is an action, there are usually some states of affairs which encourage or discourage performing it. These may vary. Because I need money, I ask someone for a loan, and I promise to return the money loaned (I perform a speech act of promising). Because I find it a bit chilly, I

order a person standing by the window to close it (I perform a speech act of ordering). Both the lack of money and the need to have it, and the sensation of feeling chilly, certainly contribute to my performing appropriate speech acts. However, none of these reasons is a constitutive element of the speech act itself, nor do they in any way affect the acts' success or failure. Intentions work differently. The existence and nature of each of the three intentions are relevant to the structure of a speech act and its validity (as shown in the previous examples of exchanging wedding vows). Thus, there is an important difference in kind between the reasons for performing a speech act and the three intentions formulated in the speech act.[47] If we regard lawmaking as a speech act, then what is essential for its structure are the three intentions corresponding to the three aspects of that act – not the reasons for performing it (henceforth motives), which are external with respect to that act.

In the process of legislating there are many motives leading a member of the legislature to make a decision to vote in favor of a legal text. Such motives include loyalty towards members of his party and pressure applied by lobbyists.[48] These motives, however, are irrelevant for the speech act structure because, unlike the three kinds of intentions, they are not essential for the occurrence of a speech act, or they are formulated by persons who cannot perform this speech act (as pointed out by Ekins[49]).

In light of the above distinction, a crucial question is to decide whether the understanding of the draft by the PRINCIPAL constitutes an intention or a motive within the legislative speech act. Those who take part in parliamentary work know very well that many members of the legislature vote on a bill without being familiar with it. These parliamentarians' manner of voting follows that of their party leaders and is based on their guidance and trust in their authority. The fact that their illocutionary act (consisting of acknowledging a text as law) is nevertheless valid means that familiarity with a legal text or the manner in which it is understood by the members of the legislature is not essential for legislating.

[47] This is acknowledged by Ekins (2013, pp. 26–27), who claims that 'Neither the hope, nor the expectation takes the place of my intention in explaining my action. My hopes and expectations are states of mind that I may hold about my action; they are not the state that explains how and for what I act, which is my intention'.

[48] Dworkin (1986, p. 318).

[49] Ekins (2013, p. 21).

Because the validity of the act does not rely on the PRINCIPAL's understanding of the text, we can conclude that their understanding is not an intention, but a motive. Hence, the focus of previous authors on locutionary or semantic intentions was misguided: The PRINCIPAL's understanding of the draft is not a crucial factor influencing the act of lawmaking.[50]

The relatively inferior role the PRINCIPAL's understanding of the draft plays in lawmaking can be illustrated by way of a thought experiment. Let us imagine that a parliament enacts as law the Ten Commandments, which, according to the Book of Exodus, were authored by God. Would the parliamentarians express the locutionary intention to say the words of the Ten Commandments by voting on them? Or would they rather regard their content as worth supporting, based on their own (possibly imperfect) understanding of them? Next, would their interpretation be different from the historical, theological interpretation only because the Ten Commandments have been enacted as law in a positivistic sense? Should the interpreter understand the Ten Commandments the way parliamentarians understood them at the time of their enactment? It seems that the interpretation of the Ten Commandments as law should be based on a historical understanding, i.e. independently from their possible individual readings by the parliamentarians. The way the parliamentarians understood the Ten Commandments may encourage them to vote in favor of their becoming law, but this understanding is only one of many possible motives on which they can act. In other words, enacting the Ten Commandments as law does not change their semantic content, and the locutionary intention of the parliamentarians does not play any constitutive role in that enactment.

If one perceives the parliamentarians' understanding of legal texts as motives for action, not as intentions, one can see that the role of

[50] Ekins' proposal (2013) to understand legislative intent in terms of reasons is, in my view, an attempt to define legislative intent in terms of motives (in Bentham's meaning see footnote 52). Understood at an individual level, reasons to legislate may consist of an individual legislator's understanding of a wrongdoing the proposed legislation is to combat and an understanding of a cause-effect chain that will lead to combating that wrongdoing. At some point, Ekins (2013, pp. 135–139) seems to understand reasons at a more general, non-individual level, namely as a set of unified, objective causes that led the legislature to legislate. Such general reasons are odd phenomena: if they are not aggregated individual reasons of the members of the legislature, they must be some kind of universalia, Platonic entities or the interpreter's conjectures as to what made the legislature enact a particular text as law. Contrary to Ekins, I believe that reasons, as motives, are by definition individual: They must be allocable to particular legislators who were stimulated to action by them.

the legislature does not differ much from the role of the addressee of a legal text.[51] Both the legislature and the addressee understand in some way a legal text written by someone else. The difference is that the legislature has the power to make this text a source of law and it may, to that end, demand its modification (by submitting an amendment). By contrast, the addressee of the legal text cannot change or replace it.

The role motives play as incentives for action was discussed by Bentham, who distinguished external (real) and internal (mental) motives as well as motives 'in esse' and motives 'in prospect'.[52] According to Bentham's classification, the understanding of the draft text by the parliamentarians seems to be an internal motive 'in esse' or an internal motive 'in prospect', i.e. a state of mind concerning the draft bill or a state of mind concerning the future understanding and application of the draft bill after it becomes law, both of which lead the parliamentarians to vote.[53]

VII. REASONS FOR CONFLATION IN DISCUSSIONS ON LEGISLATIVE INTENT TO DATE

As has been shown in the preceding sections, the lawmaking process consists of the separation of the roles between different subjects. This process rather resembles that of building a house – you need an architect to design the house, an investor who wants to implement the design, and the contractor who builds the house. These roles are not performed by one person because they entail a very complex

[51] According to Dworkin (1986, p. 322), an ordinary legislator 'occupies a position intermediate between speaker and hearer. He must decide what thought the words on the paper before him are likely to be taken to express'.

[52] See Jeremy Bentham, An Introduction to the Principles of Morals and Legislations (Oxford: Clarendon Press Oxford, 1879), pp. 99–100, especially his fire example: 'A fire breaks out in your neighbour's house: you are under apprehension of its extending to your own: you are apprehensive, that if you stay in it, you will be burnt: you accordingly run out of it. This then is the act: the others are all motives to it. The event of the fire's breaking out in your neighbour's house is an external motive, and that in esse: the idea or belief of the probability of the fire's extending to your own house, that of your being burnt if you continue, and the pain you feel at the thought of such a catastrophe, are all so many internal events, but still in esse: the event of the fire's actually extending to your own house, and that of your being actually burnt by it, external motives in prospect: the pain you would feel at seeing your house a burning, and the pain you would feel while you yourself were burning, internal motives in prospect: which events, according as the matter turns out, may come to be in esse: but then of course they will cease to act as motives' (Bentham 1879, p. 100).

[53] As Waldron points out: 'A legislator who votes for (or against) a provision like 'No vehicle shall be permitted to enter any municipal park' does so on the assumption that – to put it crudely – what the words mean to him is identical to what they will mean to those to whom they are addressed (in the event that the provision is passed)' (Waldron 1999, p. 129).

structure of behaviours, interactions, checks and balances, all requiring different competences and skills. The construction of a house is based on the key document – the architect's blueprint. This blueprint constitutes a tangible element which enables the externalization of thought, the co-ordination of actions and the focusing of the deliberations. If doubts or ambiguities arise during any of these processes, the blueprint can always be referred to. In law-making, a similar function is performed by the draft of a legal text. According to Waldron,[54] the positing of a formulated draft as 'the resolution under discussion' provides a focus for ordering the participants' deliberations at every stage of the legislative procedure.

The traditional understanding of the legislative process fails to take account of its multi-person complexity. For example, Ekins[55] believes we should perceive legislation as structurally similar to an action by a single person – a 'prince-legislator'. This simplified approach is prevalent in contemporary legal philosophy, and its consequence is a simplified perception of legislative intention. Authors who adopt this approach by default regard legislative intention as the communicative intention of a single speaker, i.e. in principle as a locutionary intention.[56]

Paul Grice bears some responsibility for such a homogeneous perception of legislative intentions as locutionary in nature. His seminal works on the philosophy of language[57] provide a point of reference for many philosophers of law in their analyses of legislative intention. Grice can be both credited and blamed for lawyers' concentrating on the speaker's meaning and for viewing the legislator's intention as a communicative intention. The only modification that philosophers of law introduced into Grice's deliberations was a departure from the individual intention in favor of a collective intention[58]; however, the structure of the legislative intention (as a simple communicative intention) remained unchanged. The almost universal trust in Grice's ideas finds its reflection in the numerous

[54] Waldron (1999, p. 82).

[55] Ekins (2013, pp. 127–128).

[56] John F. Manning, 'Textualism and Legislative Intent', Virginia Law Review 91(419) (2005), p. 423: 'In important respects, intentionalists believe that a legislative command can and should be treated as one would treat the speech of an individual human actor'.

[57] Paul Grice, Studies in the Way of Words (Cambridge: Harvard University Press, 1991).

[58] See Dworkin (1986), p. 64.

works by authors dealing with legislative intentions and their impact on legal interpretation.[59]

The Gricean way of thinking manifests itself in the works of legal philosophers through the following assumptions:

(a) the legislator is a speaker and the addressee of laws is a listener,
(b) identifying the legislator's semantic intention plays a crucial role in legal interpretation

The basic limitation of the Gricean approach to communicative intention is that it is only adequate for the analysis of face-to-face communication, i.e. synchronic (occurring in one place and time) and involving only one speaker. For lawmaking, which is stretched out over time (diachronic) and involves many participants, Grice's perspective is too limited. In addition, Grice's analyses pertained to spoken language,[60] while the processes and outcomes of contemporary lawmaking are predominantly written. As demonstrated above, the written character of this process reveals the complexity of legislative intentions.

Drawing on Grice, current deliberations on legislative intention focus on its locutionary (semantic) aspect. This usually leads to conflation of the locutionary, illocutionary and perlocutionary aspects of legislative intent. Examples of the conflation can be found in Ekins ('intentions to convey a certain meaning',[61] 'intention to legislate',[62] 'the ends it [an institution] intended to pursue'[63]), Gardner ('intentions concerning its [legislation's] meaning, application, use and effect'[64]), Manning ('the legislature's intended meaning',[65] Raz's minimal intention,[66] 'policy intentions'[67]).

Some authors nonetheless manage to discern the illocutionary and perlocutionary aspects of such intention despite the restricted Gricean framework. For example, Marmor perceives the legislative

[59] See, for instance, Marmor (2014), Solum (2008) and Ekins (2013).

[60] Grice (1991) uses some examples of written language in his works (e.g. the sign 'Keep off the grass') but draws no conclusions as to the need for a different approach to spoken and written language in his analysis.

[61] Ekins (2013, p. 14).

[62] Ekins (2013, p. 8).

[63] Ekins (2013, p. 1).

[64] John Gardner, Law as a Leap of Faith (Oxford: Oxford University Press, 2012), p. 60.

[65] Manning (2005, p. 423).

[66] Raz (2009a, p. 287).

[67] Raz (2009b, p. 424).

intention as a communicative one ('A hearer who wants to grasp what the speaker says aims to grasp what the speaker intended to communicate; legal speech cannot be a kind of striking exception').[68] Subsequently, however, he acknowledges another aspect of the legislative intention: 'If you vote in favor of a proposed decision yet fail to realize that you communicate the intention to have the decision approved institutionally, you simply do not know what you are doing'.[69] The expression 'intention to have the decision approved institutionally' indicates that Marmor is acknowledging the illocutionary aspect of the legislative intention (a wish to give legal effect to a text).

Other authors perceive legislative intention as exclusively illocutionary in nature. Raz's concept of the 'minimal intention' and Waldron's idea of legislative intent[70] exemplify this approach. Similarly, Shepsle's approach to legislative intention seems illocutionary ('she [legislator] is asserting that she 'prefers' the state of the world that obtains if the motion passes to the one obtaining if it fails').[71]

The discussion on the legislative intention would be more orderly if the deliberations considered its triple nature. Apart from adding precision to the debate, the consideration of the triple nature of the legislative intention permits a new outlook on some important issues, for instance, the issue of so-called 'collective intention'. I devote the last part of my paper to this problem.

VIII. THREE KINDS OF INTENTION AND THE SO-CALLED COLLECTIVE INTENTION

Much discussion on the legislative intention revolves around the question of whether the legislature, as a collective subject, can formulate an intention. The question has been answered in both the affirmative[72] and the negative.[73] However, it can be answered to the

[68] Marmor (2014. p. 116).

[69] Marmor (2014, p. 18).

[70] It is somehow surprising that Waldron (1999) in his considerations on legislative intent draws on Grice as well. Ekins (2013) indicates that Waldron's numerous references to Grice are inconsistent with his final conclusion regarding the significance of sentence meaning to legal interpretation. The Gricean framework is exactly the one Waldron should avoid in building a theory of intentionless legislation, as Waldron's approach is more in line with anti-Griceans like Millikan (1984) or Lepore and Stone (2015).

[71] Shepsle (1992, p. 248).

[72] See Solan (2005), Ekins (2013).

[73] See Dworkin (1986), Waldron (1999), Shepsle (1992).

satisfaction of all participants by recognizing the three types of intention described in the previous sections of this paper. To specify, the locutionary and perlocutionary intentions of individual members of the legislature are indeed varied and cannot be unified to be considered shared intentions. However, each individual member of the legislature who votes in favor of a bill acts with the same illocutionary intention. Consequently, the legislature, as a collective subject, can be regarded as acting with a shared intention, i.e. the intention to make a text law.[74] Let us take a closer look at how different kinds of intentions involved in lawmaking can or cannot be aggregated.

Aggregating the locutionary intentions of individuals involved in the preparation of a legal act is extremely difficult as those intentions vary widely: Both the draftsmen and the members of the legislature may understand the text of the draft in many different ways. Even if this obstacle is overcome, the locutionary intentions of the draftsmen are irrelevant to the validity of the act of lawmaking. As we have seen, the author or authors of the text of a bill are not people who can validly perform the lawmaking act. Because their intention is irrelevant to the validity of the lawmaking act, the aggregation of their intentions is also irrelevant. An analogous argument can be used against the thesis that the different ways individual members of the legislature (PRINCIPAL) understand the draft text can be aggregated. Even if they could, being a motive, not an intention, understanding is irrelevant to the validity of the lawmaking act, and so is their aggregation.

Similarly, the perlocutionary intentions are very diverse and difficult to identify, as the individuals involved in lawmaking differ as to their expectations regarding the effects of the operation of a given law on reality; moreover, some of those expectations are hidden, for instance those resulting from a lobbyist's pressure. Therefore, the perlocutionary intention cannot constitute a collective intention, and by extension it is immaterial to the process of the application of a given law in the future.

[74] In this section, my discussion of the shared intention is based on the assumption that one cannot aggregate the intentions of dissenters with those of assenters. The reason is that the aggregation of intentions is only possible with regard to the same intentions. Nevertheless, one can still claim that the legislature as a collective agent acts with a shared intention, which is the intention shared by the majority of its members. After all, the only accepted mechanism to allocate intention to the collective agent is the majoritarian one, within which the minority intention is dismissed.

The only uniform intention involved in the legislative process is the illocutionary intention. This intention is homogeneous in the sense that it is the same for each person voting in favor of making the text legally binding. This is a formal, minimal intention. On account of its uniformity, the illocutionary intention is subject to aggregation. Therefore, we can state that the legislature as a collective subject operates with a uniform and common illocutionary intention, i.e. the intention to enact a law.

The conviction that the intention of individual members of the legislature can be aggregated is a cornerstone of the majority model of legislative intent.[75] Many authors have argued against this model.[76] Their criticism consists generally of two claims: firstly, that it is unclear whose intentions to take into consideration in the aggregation and, secondly, that one cannot tally intentions that diverge widely or may even be contradictory.

The first claim may be correct with regard to locutionary and perlocutionary intentions but does not apply to illocutionary intention. Although many actors in the legislative process have locutionary and perlocutionary intentions, the (illocutionary) intention to enact a rule can be attributed only to the members of the legislature (PRINCIPAL) and only to those of them who vote in favour of the bill. This is in line with what Dworkin,[77] Marmor,[78] and MacCallum[79] proposed. Thus, the case of illocutionary intention negates the critics' claim that it is unclear whose intentions to aggregate.

The second claim – that one cannot tally intentions that diverge widely – also applies exclusively to locutionary and perlocutionary intentions. Authors like Moore[80] claimed it is impossible to aggregate the various semantic intentions legislative actors can have regarding the application of a word used in a bill. Within the framework of the three intentions model, Moore's claim effectively

[75] See Marmor (1992).

[76] As Hurd (1990, p. 971) mentions: 'Theorists engaged in the construction and defense of this model make ontological commitments only to intentions possessed by individual legislators, but they seek to analyze the legislature's intent as a summation of the intentions shared by a majority of its members. According to this account of legislative intent, one need not postulate the existence of a group mind; one need only add up the individual intentions which motivated legislators to vote as they did in order to discover the legislative intent behind a statute'.

[77] Dworkin (1986, p. 320).

[78] Marmor (1992, p. 163).

[79] MacCallum (1993, pp. 17–18).

[80] See Moore (1985).

states that it is impossible to aggregate the locutionary intentions of legislative actors. Other authors, like Hurd,[81] claim it is impossible to aggregate the expectations regarding the consequences of enacting a bill. Here we are dealing with perlocutionary intentions. Both critical approaches are correct when applied to locutionary and perlocutionary intentions respectively, because of the potential divergences within each. However, neither criticism applies to illocutionary intention, which, as we have seen, is unified and therefore can be aggregated.

IX. CONCLUSION

The recurring theme of this paper has been that lawmaking is a complex illocutionary process involving a combination of three intentions. The main conclusion to be drawn is that the leading role in this combination should be assigned to the illocutionary intention, not to the locutionary (semantic) one, as has been assumed to date. To begin with, we have seen that the locutionary intention of the DRAFTSMAN (the official who wrote the bill) does not determine the manner of understanding the content of a legal act, because this intention has no binding force. Secondly, the PRINCIPAL (the legislature), whose locutionary intention was thought to bind the recipient of the law, actually acts with an illocutionary intention. Thirdly, the way individual parliamentarians acting as the PRINCIPAL understand the text is a motive, not an intention: as such it is non-constitutive of the act of lawmaking. Ultimately, the significance of the illocutionary intention results from its being the only intention subject to aggregation, because it is the same in the case of all the parliamentarians voting in favor of a legal act. The locutionary (semantic) and perlocutionary intentions cannot be aggregated because they are too diversified.

The acknowledgement of the leading role of illocutionary intention in lawmaking can also have some positive effects for jurisprudence from an interdisciplinary perspective. The latest works on legislative intent within legal philosophy[82] do not acknowledge the illocutionary character of legislative intent; they also criticize Raz's, Waldron's and Shepsle's approaches. The result is a widening dis-

[81] Hurd (1990, p. 945).

[82] e.g. Ekins (2013).

crepancy between the public choice theory approach (represented e.g. by Shepsle) and legal philosophers' approach to legislative intent. Shifting the focus of legal philosophy from semantic intentions to illocutionary ones would align it with the political science approach to lawmaking and thereby have an integrating effect on the two disciplines.

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