

Intent of Lawmaker and Meaning of Article

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This presentation focuses on a longstanding question of how judges should interpret ambiguous legal texts. I will examine a theory as a topic. The theory claims that interpretations of a constitution are bound by the intent of framers. My principal discussion is about the theory of law interpretation by Scott Soames, an expert in the philosophy.

Soames equates the enactment of a law with an order and says that the content of a law is bound by the intent of lawmakers, just as the content of order is bound by the intent of the person who issued it. There are two claims in the theory of Soames: (1) Enactments of law are speech acts that convey the intentions of lawmakers, and (2) an interpreter should consider both the illocutionary intentions of lawmakers and their perlocutionary intentions when determining the meaning of a legal sentence.

If there is only one enactor, such claims may be relatively acceptable. However, lawmaking or establishing a constitution in modern nations is performed through legislatures, that is, groups. Hence, a problem arises when we consider (1) whether legislation can be regarded as a communication of intent of legislators (or framers) and (2) whether the intention of legislators as a group exists. Andrei Marmor tried to explain these two points and respond to the criticism against Soames.

However, my presentation concludes that as a theory of constitutional interpretation, Soames's theory has problems in both theory and practice. Regarding practice, I intend to address issues concerning the interpretation of the Constitution of Japan considering the special circumstances of its establishment, including the involvement of the occupation forces in the process of establishing the Constitution.