LIBERTY TREE

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By Dick Greb

THE BREAKDOWN OF LEGISLATIVE INTENT.

Most patriots are aware of the rules of statutory construction. Perhaps not the details of the various rules, but most at least know that in the general sense, they are the rules by which the courts construe the meaning of legislation. Underlying those rules is an elemental principle: *the force of the law is in the intent of the legislators.*[1]

Ultimately, then, the purpose of the rules is to determine the intent of the legislators. And since legislators are presumed to know: (1) what they intend to accomplish, and (2) the English language, the first rule of statutory construction is that a statute should be construed in its most natural sense[2] — that is, as it would be understood by the people at the time of its enactment. In fact, the *void for vagueness doctrine* says laws must be understood by the common man to be given effect. Since the most natural sense is the meaning most likely to be understood by the common man, Congress is presumed to use words in that sense, unless clear and specific language to the contrary appears.

So, statutory construction begins with using the most natural sense of all words and phrases, and this construction is presumed to be the intent of the legislators, unless some contrary intent can be shown. A good example of this involves the use of legal definitions. If not specifically redefined by the statute, a word must be presumed to be used in its commonly understood meaning. Conversely, a specific definition of an otherwise common word indicates just such a contrary intent, and must be construed using that special definition.

While this general rule is fine for straightforward laws, it breaks down somewhat when it comes to complicated subjects — that is, where the language used by Congress can be shown to be susceptible to some other reasonable construction. In order to prevail in such a case, one must ultimately show that the desired alternative construction is the one *intended* by Congress, because it is the *intent* of Congress that must be given the force of law.

Harmful intents recorded

Fortunately, Article I, §5 of the Constitution requires Congress to keep journals of its proceedings. The Congressional Record is the present name given to these journals; an earlier version was called The Annals of Congress. The Congressional Record records the discussions held in Congress as they steadily chip away at our liberties with more and more new laws. It is a primary resource for determining the intent of Congress, because it records them talking about the purposes for such laws and the mechanisms by which they are to be effected. Other important resources are committee reports generated by the individual committees of the House and Senate who act on most bills before they come to the whole body, and the joint committees who work

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1. "[The] rules for construing statutes, which are dictated by good sense, and sanctioned by immemorial usage, [] require that the intent of the Legislature shall have effect ..." *The Mary Ann*, 21 U.S. 380, 387 (1823).
2. "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar." *United States v. Goldenberg*, 168 U.S. 95, 102 (1897).

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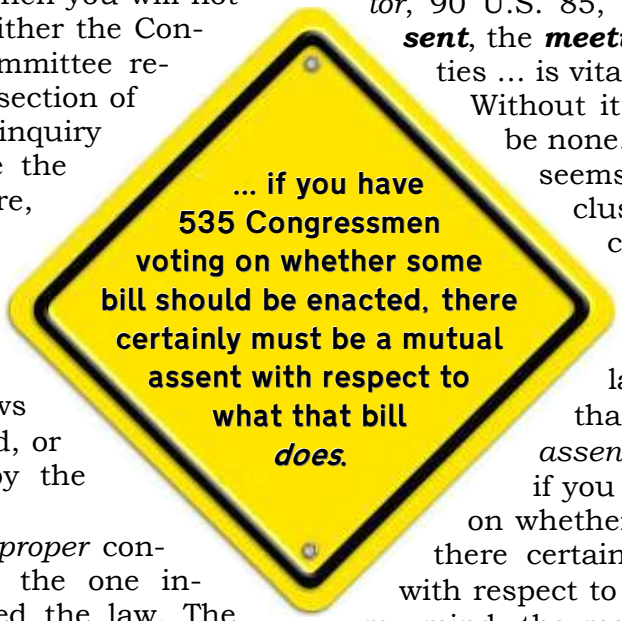
out the differences between the versions of bills passed by the separate houses of Congress.

It may *not* surprise you to hear that not all aspects of every bill (even far-reaching bills) are discussed. There are times when you will not be able to find anything in either the Congressional Record or the committee reports about some particular section of law. In such cases, further inquiry must be made to determine the intent of Congress. Therefore, the rules of statutory construction go on to provide all manner of processes for making those inquiries; e.g., the examination of similar language in other laws where an intent *was* reported, or was previously construed by the courts, etc.



In the end, however, the *proper* construction of any statute is the one intended by those who enacted the law. The reason is simple — if the law could mean *something* other than what the people who enacted it intended, then it could mean *anything* at all. The law could have no definite meaning if not restricted to what those who enacted it meant to accomplish. Indeed, what could ever be used as an objective measure to ensure that the proper construction had been determined? Think about it: if not the enactors' intent, then whose? The judges? When the meaning of every statute is subject to the sole discretion of any judge, then you have judicial legislation — a judge substituting his personal intent for that of the legislature — which of course gives us the rule of men, rather than the rule of law.

One thing to remember in all this is that intention is, by its nature, a state of mind. While that state of mind might be able to be conclusively proven with external evidence, (when it has been specifically memorialized in writing, for example), anytime the intent is not written down, statutory construction becomes even less certain. Thus, it comes back to the language used in the laws being enacted. That language is deemed to manifest the intent of the legislature in enacting the law. But this raises a second issue. The legislature is comprised of some five hundred individuals, from various geographical, educational and cultural backgrounds. As difficult as it can be to determine the state of mind of one individual, how do you determine the intent of hundreds of individuals?

Meeting of the minds

There is a principle in contract law referred to as the *meeting of the minds*. The Supreme Court said, in *Insurance Company v. Young's Administrator*, 90 U.S. 85, 107 (1874): "The ***mutual assent***, the ***meeting of the minds*** of both parties … is vital to the existence of a contract. Without it there is none, and there can be none." However, while this principle seems to be considered almost exclusively in relation to contracts, common sense should tell us that it is equally applicable to the enactment of legislation. I don't mean that legislation is itself a contract, only that the same element of *mutual assent* must apply to both. After all, if you have 535 Congressmen voting on whether some bill should be enacted, there certainly must be a mutual assent with respect to what that bill *does*. In fact, to my mind, the requirement of majority votes in each house of Congress, plus a signature by the President demands just such mutual assent. What other reason would there be for such a formality, if not to signify that more people agreed to accomplish some purpose than agreed that it shouldn't be accomplished?

This same concept underlies the amendment process for the Constitution. An amendment is proposed and then sent to the states for ratification. But the states defeat the whole purpose if they make changes to the amendment, and then vote on the altered version. They must vote to either ratify or not ratify the amendment as it was presented to *all* the states. This was one part of the situation which tainted the process for the 16th Amendment, as researched by Bill Benson and laid out in his book, *The Law That Never Was*. A number of states made changes to the amendment before voting to ratify it, and so voted to ratify an amendment that was different than the one considered by the other states. In other words, there was no mutual assent between the states with respect to the adoption of the amendment. Nevertheless, Secretary of State Philander Knox engaged in some *executive legislating*, claiming that it was the intent of such states to ratify the amendment as it was sent to them, despite the fact that the official records showed they did not. Another example of rule by men, and not rule by law.

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IRS wants to LICENSE tax return preparers

Is a day coming when just to help someone file a return is illegal?

In a new power grab, the IRS will propose that Congress give it authority to *license* all tax return preparers. IRS Commissioner Douglas Shulman testifed recently before the House Ways and Means Committee that he expects to make such recommendations to the Treasury Secretary by the end of the year.

License, of course, is permission to do an act which is otherwise illegal. So the IRS wants to make it a crime to prepare a perfectly good return for the IRS — ironically, a return required by the law.

Of course, there are already laws (such as 26 U.S.C. 6701, 7206, and 7207) that authorize fines and imprisonment for return preparers who knowingly assist in understating tax liability or in filing fraudulent returns. Since tax preparers must sign returns they prepare, the IRS can easily find and prosecute them. One would think this would be enough firepower for the IRS. But not for Shulman, reports the American Free Press (AFP). Shulman says licensing is needed because of bad tax preparers, even though out of millions of tax returns filed in the last three years, only some 350 preparers were convicted of fraud, according to the IRS' own records.

How far could this licensing scheme eventually go? As Jim Tucker, writing for AFP, imagines: "This means that Uncle Oscar couldn't help his nephew prepare his income tax return unless a Washington bureaucrat grants a license."

If the injunction suit against Save-A-Patriot Fellowship (2005-2007) is any indication, the IRS would love nothing more than to make it illegal to merely help someone prepare a return. After all, they've already made it illegal for some types of people to help others write *mere letters* to the IRS.

During that injunction suit, one IRS agent was asked by Fiduciary John Kotmair if letters that SAPF helped to write impeded the IRS in its duties. The agent answered "No." In spite of this clear testimony, Judge Nickerson ruled that these same letters caused "irreparable harm" to the IRS. Of course, it is not a crime (yet) for an individual to write to the IRS in response to one of its imperial missives. The right to petition the government is, after all, guaranteed by the 1st Amendment, isn't it?

Likewise, an individual peacefully assisting in the performance of a legal act (*e.g.*, writing a letter) cannot logically be said to have committed a crime. Yet that is the tyrannical result of the injunction order against SAPF! So it is not a stretch to say that, in the end, it will likely be the tyrannical result of the IRS' abusive licensing scheme as well.

TYRANNY HAS COME TO AMERICA

HELP someone write to the IRS and you WILL GO to PRISON!*

*** So say Judge NICKERSON of Federal District Court, the Fourth Circuit judges, and the Supreme Court.**
See www.save-a-patriot.org for details.

The above is a variation on a Save-A-Patriot poster demonstrating why Liberty Works Radio Network is vital to efforts against unlawful actions of the IRS. Will the IRS succeed in making it illegal to help someone file a return as well?

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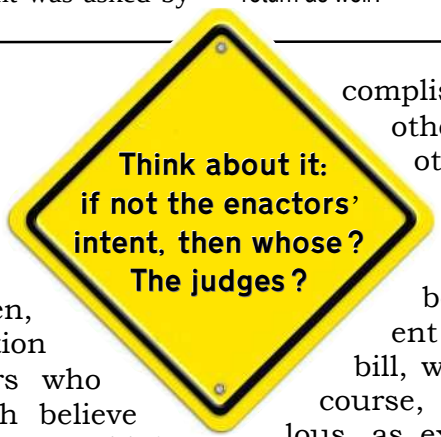
Voting for the misunderstood

Now, getting back to the lawmaking process, in order for any number of legislators to agree on whether or not some action should be taken, they must first agree on what that action actually *is*. Consider two legislators who both vote to enact a law that each believe would accomplish something different. It couldn't be truly said that they ever agreed with each other that the law should be enacted. On the contrary, one believed he was accomplishing Objective A by enacting the law, and so voted for a law to make that happen, while the other believed he was accomplishing Objective B by enacting it. In other words, they *disagreed* with each other on whether the law should be enacted. The opposite result could occur if both legislators wanted the same thing to happen, yet still believing the bill accomplished different objectives, one voted to pass the bill, while the other voted to defeat it. Of course, these little examples seem ridiculous, as extremes often are, but the point is still valid. The requirement for a majority vote on any proposed bill is an explicit acknowledgment that a mutual assent of the legislators must exist for the passage of any law. That's the purpose of



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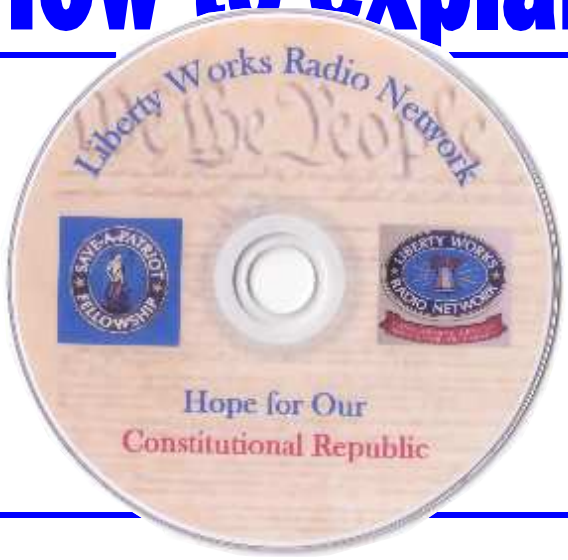
How to explain LWRN to anyone.



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debating the bills in Congress before voting on them, so they can all know what the law intends to accomplish. They must come to that mutual assent — the *meeting of the minds* vital to the enactment of legislation. Without it, voting is just a meaningless ritual.

Voting for the complete unknown

As outrageous as it is for legislators to enact laws which they don't understand, recent years have brought us to an even graver situation. Now, it is getting more and more common for Congress to vote on bills which they not only don't understand, but ones which THEY'VE NEVER EVEN READ! Often the bills are so voluminous that virtually nobody could commit the time to read them through even once, let alone understand them. And of course, it's not enough that one person understands them; everyone who votes on them must know what they do. Even more disturbing is when the final versions of proposed legislation are never made available to congressmen before they vote on it. Such was reported to be the case with the $819 billion Economic Stimulus bill passed in February of this year.[3] The final version of the bill — some 1,000 pages of text hammered out by a committee composed of members of both houses of Congress — was posted on the website of the House Appropriations Committee only a day or two before the votes were expected in the House and Senate. According to its report of this debacle: "When CNSNews.com asked members of both parties on Capitol Hill on Thursday whether they had read the full, final bill, not one member could say, 'Yes.' " So, all of those Congressmen who voted for that bill did so even though they never even knew exactly what the legislation SAID, let alone what it all meant.[4]

Seen in this light, any congressman's vote, unless it is cast with full knowledge of the assembly's mutual assent of the meaning of the bill he is voting on, is an outright fraud. A fraud perpetrated on the American people, who will be held to account for complying with what appears on its face to be a law, but is nothing more than a charade — a nullity in fact. And this principle goes a lot farther than just the general intent of the law; it must apply to *every* detail of the law, for the same reason. Every aspect of every law, in order for his vote upon its passage to be legitimate, must be mutually understood by each congressman. There must be a meeting of the minds on all of it! After all, if he doesn't know what some section of the law is to do, how can it be said that he agreed that it should be done? Are *your* congressmen upholding their fiduciary duty to represent your interests, or are they fraudulently roping you into obligations the likes of which they have no real knowledge? Shouldn't you be finding out?

3. "Sen. Frank Lautenberg (D-N.J.) predicted on Thursday that none of his Senate colleagues would 'have the chance' to read the entire final version of the $790-billion stimulus bill before the bill comes up for a final vote in Congress." See http://www.cnsnews.com/public/content/article.aspx?RsrcID=43478.
4. Downsize DC is campaigning for the introduction of their "Read The Bills Act," which would require all bills, and their amendments, to be read before a quorum in each house. This is certainly a good place to start. See http://www.downsizedc.org/page/read_the_laws.