

Moderate versus Strong Intentionalism: Knapp and Michaels Revisited

JEFFREY GOLDSWORTHY*

TABLE OF CONTENTS

I.	INTRODUCTION	669
II.	THREE THEORIES OF MEANING	670
III.	STRONG VERSUS MODERATE INTENTIONALISM.....	672
IV.	INTENTIONLESS MEANINGS AND MEANINGLESS INTENTIONS	678
V.	MULTIPLE MEANINGS?	680
VI.	FOREIGN LANGUAGES AND PRIVATE CODES.....	681
VII.	CONCLUSION	682

I. INTRODUCTION

In a series of articles published from 1980 to 1992, literary theorists Steven Knapp and Walter Benn Michaels advocated what I will call “strong intentionalism,” the thesis that the meaning of a text is identical to the meaning that its author intended it to communicate.¹ At the recent Conference on Legal Interpretation in San Diego, they vigorously defended this thesis. I will argue that their defense of strong intentionalism fails, and that the thesis is false.

* Professor of Law, Monash University, Australia.

1. The thesis and all the arguments considered throughout this Paper apply equally to sounds and gestures, as well as marks, that might be thought to be meaningful. It is merely for the sake of convenience that I will examine the relevant issues mainly by discussing texts, authors, and readers.

Knapp and Michaels defend strong intentionalism mainly by arguing that there can be no such thing as “intentionless meaning,” in other words, that nothing can be meaningful which was not intended by some purposeful intelligence to be meaningful. That argument has been subjected to powerful criticism, but I will assume that it is sound.² My objection is that it does not establish strong intentionalism in any event. At best, the argument proves that intention is a necessary condition for meaning. It does not prove that it is a sufficient condition. I will argue that intention alone is not sufficient for a text to be meaningful—something else is needed as well—and that consequently, intention and meaning are not identical.

Against strong intentionalism I will defend “moderate intentionalism,” which holds that authorial intention is necessary but not sufficient for textual meaning. Moderate intentionalists hold that an author may intend his text to mean something, but fail to give it that, or perhaps any, meaning. For a text to mean what its author intended it to mean, it is necessary that its intended audience be capable of ascertaining its intended meaning. This requires that the audience have access to persuasive evidence of that meaning, provided partly by the conventional meaning of the text and partly by other clues of the author’s intention, such as the context in which it was written. If the audience does not have access to such evidence, then not only will the author’s attempt to communicate his intention fail, but the text will not mean what he intended it to mean. And that is to say that his intention alone is neither sufficient for, nor identical to, the meaning of the text.

II. THREE THEORIES OF MEANING

Someone attempting to interpret a text is attempting to ascertain its meaning. Philosophers and linguists distinguish between different kinds of meanings, although they disagree over how many there are and what they should be called. Which of these kinds of meaning should interpreters be attempting to reveal? To facilitate discussion, I will use the following labels:

Conventionalism, or *nonintentionalism*, is the thesis that the true meaning of a text is constituted by its *sentence meaning*. Sentence meaning is the meaning a sentence in a language has by itself, excluding all information about the context or contexts in which it is uttered.³ In other words, it is the meaning it derives solely

2. For criticism, see, for example, John R. Searle, *Literary Theory and Its Discontents*, 25 *NEW LITERARY HIST.* 637 (1994).

3. Knapp and Michaels might object that nothing can have a meaning by itself,

from the semantic and syntactic conventions of the language in question, and it is therefore independent of its author's intentions.

Strong intentionalism is the thesis that the true meaning of a text is its *speaker's meaning*. Speaker's meaning is the meaning that the utterer of a sentence intends his utterance of it to communicate, which may be quite different from its sentence meaning.

Moderate intentionalism is the thesis that the true meaning of a text is its *utterance meaning*. Utterance meaning is what the speaker's meaning appears to be, given all the evidence that is readily available to his intended audience, which may include the sentence meaning of the utterance and other clues such as its context.

What is the *practical* difference between strong and moderate intentionalism? Strong intentionalists hold that a text means what its author intended it to mean. But obviously no one except the author herself has direct, unmediated access to her intentions. Others must rely on whatever evidence of her intentions is available to them. How, then, does this differ from moderate intentionalism? The difference is that moderate intentionalists regard only a certain kind of evidence of an author's intention as relevant to the meaning of her text. The evidence must have been readily available to her intended audience.

Suppose that on the basis of all the evidence readily available to them, both textual and contextual, members of the speaker's intended audience interpret her text to mean x , but much later it is discovered by her biographer that she wrote in her private diary that she intended the text to mean y . Is the meaning of the text x or y ? Assume that there is enough other evidence to justify accepting the reliability of the diary entry. Moderate intentionalists, who take textual meaning to be utterance meaning, would say that the meaning of the text is x , notwithstanding the discovery of the diary entry, because evidence of the author's intention which is not readily available to her intended audience is irrelevant. But

considered apart from any context of utterance, derived solely from linguistic conventions. Nothing that has not actually been uttered can have any meaning, and linguistic conventions contribute to meaning only if a speaker or author intended them to do so. To avoid that objection, let me stipulate that by "sentence" I mean words uttered with the intention that they mean something. I am therefore not using the term "sentence meaning" in its usual philosophical sense.

strong intentionalists, who take textual meaning to be speaker's meaning, would say that the meaning of the text is *y*, and that readers prior to the biographer's discovery misinterpreted it.

Another example of the practical difference between strong and moderate intentionalism can be found in law, which Knapp and Michaels have often discussed. When interpreting a statute, British courts traditionally refused to consider, as evidence of its intended meaning, what was said in parliamentary debates during its passage.⁴ They regarded this information as irrelevant to the meaning of the statute, partly because it was not readily available to the general public or even to most lawyers. On the other hand, they were always willing to take into account the circumstances in which the statute was passed, and its purpose, in so far as these are, or were at that time, common knowledge.⁵ They were moderate intentionalists rather than conventionalists. Now, if they had adopted strong intentionalism, they might still have refused to consider what was said in parliamentary debates as evidence of statutory meaning, but not for the same reason. They might have rejected it on the ground that it is *unreliable* as evidence of the legislature's intended meaning, but not on the ground that it is in any event *irrelevant* to the meaning of the statute because it is not readily available to the legislature's intended audience.

III. STRONG VERSUS MODERATE INTENTIONALISM

Knapp and Michaels defend intentionalism against conventionalism. "All our arguments," they say, "have been anti-conventionalist—which is to say, intentionalist."⁶ Indeed, they think that the truth of intentionalism follows from the falsity of conventionalism: "Our insistence in 'Against Theory' that language is always intentional is no more than the positive side of the denial that preexisting forms, rules, or conventions are essential conditions of language."⁷ But although they distinguish "strong conventionalism" from "moderate conventionalism,"⁸ they overlook the

4. American courts followed this approach until the twentieth century, when they began to admit such evidence. In *Pepper v. Hart*, [1993] 1 All E.R. 42 (H.L.), British courts finally followed suit.

5. See, e.g., ELMER A. DRIEDGER, *CONSTRUCTION OF STATUTES* 149–51 (2d ed. 1983); P. ST. J. LANGAN, *MAXWELL ON THE INTERPRETATION OF STATUTES* 48 (12th ed. 1969); SIR PETER BENSON MAXWELL, *ON THE INTERPRETATION OF STATUTES* 20–21 (photo. reprint 1991) (1875).

6. Steven Knapp & Walter Benn Michaels, *Against Theory 2: Hermeneutics and Deconstruction*, 14 *CRITICAL INQUIRY* 49, 67 (1987); see also *id.* at 60.

7. Steven Knapp & Walter Benn Michaels, *A Reply to Richard Rorty: What Is Pragmatism?*, in *AGAINST THEORY: LITERARY STUDIES AND THE NEW PRAGMATISM* 139, 145 n.1 (W.J.T. Mitchell ed., 1985); see also Knapp & Michaels, *supra* note 6, at 67.

8. Knapp & Michaels, *supra* note 6, at 67.

existence of rival versions of intentionalism, and erroneously assume that strong intentionalism is the only alternative to conventionalism.⁹

One indication of this assumption is that Knapp and Michaels treat speaker's meaning and utterance meaning as identical, which is a common failing in the philosophical literature as well.¹⁰ For example, after discussing an example of a speaker unintentionally misleading his audience, they deny that it is an instance of "a speaker failing to mean what the speaker intends."¹¹ And of course it is not: what a speaker means simply is, as they claim, what the speaker intends. But the question is whether or not a speaker's *utterance* can fail to mean what the speaker intends.

Knapp and Michaels concede that what is essential to meaning is "giving clues to your intention," or "signaling what you intend."¹² But what if a speaker fails to give accurate clues, or signals, of his intention? Is the meaning of his utterance still the meaning he intended it to have, or the meaning it appears to his intended audience to have, given the clues and signals he has provided? Knapp and Michaels insist that it is the former. But that seems to be due to their assumption that the only alternative to strong intentionalism is conventionalism—that if meaning is not determined by the speaker's intention, it must be determined by linguistic conventions.

Consider the following passage:

Conventions are indeed important, but only because they often provide convenient ways of signaling what you intend. They don't add to, subtract from, or alter your meaning; they simply help you express the meaning you intend. And if the conventions don't help you express the meaning you intend—if, for example, you use the wrong conventions—they don't replace your meaning with some other meaning. Your meaning doesn't become a different meaning when you fail to express the meaning you intended. If it did, if speech acts were indeed conventional acts and not just acts that sometimes employed conventions, then Derrida would be right: intention would be inadequate to determine meaning. But Derrida is wrong. Speech acts are not conventional acts, and if they mean anything at all they mean only what their authors intend.¹³

9. "The only alternative to the intentionalism of 'Against Theory' is a formalism that imagines the possibility not of two different kinds of intended meaning but of meaning that is not intended at all." Knapp & Michaels, *supra* note 7, at 142.

10. For honorable exceptions, see Jerrold Levinson, *Intention and Interpretation: A Last Look*, in INTENTION AND INTERPRETATION 221, 222–23 (Gary Iseminger ed., 1992); William E. Tolhurst, *On What a Text Is and How It Means*, 19 BRIT. J. AESTHETICS 3 (1979).

11. Knapp & Michaels, *supra* note 6, at 64.

12. *Id.* at 66.

13. *Id.* at 66–67.

This passage clearly displays the assumption I am challenging. First, it conflates utterance meaning—what “speech acts” mean—and speaker’s meaning. The important question concerns the relationship between the conventions you use and the meaning of your speech act, and not the relationship between those conventions and “your meaning,” that is, the meaning you are attempting to express. The question is whether, if you “use the wrong conventions” to express your intentions, the meaning of your speech act is different from the meaning you intended to express. It is of course true that *your* meaning is not different from the meaning you intended to express: your meaning just *is* the meaning you intended to express, whether or not you succeeded in doing so. But what about the meaning of your utterance? Surely if you fail to express the meaning you intended to express, then the meaning you do express *must* be different from the meaning you intended. And surely the meaning of your utterance—the meaning of your speech act—is the meaning you do express.¹⁴ (At one point in *Against Theory*, Knapp and Michaels write that “[m]eaning is just another name for expressed intention.”¹⁵ But an author’s expressed intention is not necessarily the intention he intended to express.) Therefore, surely the meaning of your utterance can differ from the meaning you intended to express. But if so, then strong intentionalism is false.

A second feature of the lengthy passage quoted which displays the assumption I am challenging can be found in the reason Knapp and Michaels give for insisting that “your meaning doesn’t become a different meaning when you fail to express the meaning you intended.” That reason is given in the following sentence: “If it did, if speech acts were indeed conventional acts and not just acts that sometimes employ conventions, then Derrida would be right: intention would be inadequate to determine meaning.” Now, this equates the view that Knapp and Michaels reject—the view that the meaning you express can differ from the meaning you intended to express—with conventionalism. That equation is mistaken because it overlooks moderate intentionalism. One can believe that use of the wrong conventions can give a speech act a meaning different from the speaker’s intended meaning, without being committed to the belief that the meaning of the speech act is determined entirely by conventions. This is because of what Knapp and Michaels

14. I am using “express” here, as I take Knapp and Michaels to be using it, to include “imply.” The distinction between express and implied meaning is irrelevant here.

15. Steven Knapp & Walter Benn Michaels, *Against Theory*, in *AGAINST THEORY: LITERARY STUDIES AND THE NEW PRAGMATISM* 11, 30 (W.J.T. Mitchell ed., 1985); see also *id.* at 21 (“[L]inguistic meaning is always identical to expressed intention.”); Knapp & Michaels, *supra* note 7, at 141 (“[O]ur position [regards] a text as the expression of *its* author’s intention . . .”).

themselves concede, that what is essential to meaning are “clues” or “signals” of the speaker’s intentions, *whether those clues consist of his apparent use of conventions or of something else*. If those clues do not help him express the meaning he intends—if he provides the wrong clues—then the meaning of his utterance differs from the meaning he intends. This allows the moderate intentionalist to answer Knapp and Michaels’s rhetorical question, “if the interest of verbal meaning reduces to an interest in clues to what an author intends, what sense is there in appealing to the notion of verbal meaning as a way of going beyond authorial intention?”¹⁶ There is sense in such an appeal because what verbal meaning and other clues suggest an author intended may not be the same as what the author really intended, and utterance meaning is determined by the former rather than the latter.

Knapp and Michaels consistently elide this distinction, as in the following passage:

What Simon calls “contextual justification,” then, is nothing more than evidence of the author’s intention, and when we invoke context (as, I have argued, we always do) we are, by the same token, always invoking the author’s intention.¹⁷

Within a single sentence Michaels slides from “evidence of the author’s intention” to “the author’s intention,” without noticing the difference.

Knapp and Michaels at one point acknowledge that speakers can fail to produce the speech act they intended to produce. They write that, “You can intend to say something but fail to produce any sound at all, or . . . fail to produce the right sound.”¹⁸ But nothing comes of this because, as usual, they are thinking of their opponents as conventionalists, and the acknowledgement does not advance the cause of conventionalism. They say that “neither of these failures has anything to do with convention; you have simply failed to do what you intended. . . . The risk of such failures is essential not to conventional acts but to acts in general.”¹⁹ That, of course, is true, but it does not vindicate strong intentionalism. If by failing to produce the “right sound” someone can fail to utter sounds

16. Knapp & Michaels, *supra* note 6, at 57; *see also* Steven Knapp & Walter Benn Michaels, *Intention, Identity, and the Constitution: A Response to David Hoy*, in *LEGAL HERMENEUTICS: HISTORY, THEORY, AND PRACTICE* 187, 190, 192 (Gregory Leyh ed., 1992).

17. Walter Benn Michaels, *Response to Perry and Simon*, 58 *S. CAL. L. REV.* 673, 676 (1985).

18. Knapp & Michaels, *supra* note 6, at 65.

19. *Id.*

which mean what he intended them to mean, then the meaning of the sounds he utters—which is to say, the meaning of his utterance—is not what he intends it to be.

In *Against Theory 2*, Knapp and Michaels discuss an example that Jonathan Culler took to demonstrate that the meaning of an utterance can differ from the meaning intended by the speaker. Imagine that after apparently getting married, the groom claims that he was joking when he said “I do.” Even if that really was his intention, Culler argued, it would not change the meaning of what he said in uttering those words: he made the requisite promise even if he did not intend to.²⁰ Moderate intentionalists should agree with Culler on this point: because the meaning of the groom’s utterance is determined by evidence of his intended meaning that is readily available to his audience, then if when he said “I do” there was no evidence available to those present of his intention to make a joke, his utterance of those words did not constitute the making of a joke (not even a bad one). At best, it constituted an attempt to make a joke.

Knapp and Michaels deny that this is an example of the meaning of a speech act not being determined by the speaker’s intention. But they agree that the groom should be held to have gotten married. According to them, he is quite properly treated *as if* he made the requisite promise, even though he did not *really* do so. People can justifiably be bound by promises they appear to make because otherwise contracts would be unenforceable: parties could always claim later that they did not really intend to enter into them, and it would be impossible to prove that they did. In other words, Knapp and Michaels conclude, the reason for treating the groom as having gotten married is social, not linguistic: it has “nothing to do with the relation between meaning and intention.”²¹

This argument is not persuasive. It may at least partly be motivated by their assumption that the only alternative to strong intentionalism is conventionalism. They begin their discussion of the example by denying that the intentions of participants in marriage ceremonies are “in principle irrelevant,” because “[t]he whole point of a marriage ceremony is to provide a framework for declaring and carrying out certain intentions”²² But that would not be disputed by a moderate intentionalist who accepts Culler’s conclusion. Of course the intentions of the participants are not irrelevant. The point is that they are relevant only insofar as evidence of them is readily available to the participants’ intended audience, and in particular to those required by law to conduct and witness the marriage ceremony.

20. *Id.* at 63.

21. *Id.* at 64.

22. *Id.* at 63.

Knapp and Michaels's distinction between social and linguistic reasons for holding the groom to be bound by his words is dubious. The supposed social reason applies not only to contractual promises, but to the vast majority of utterances that people make. It is generally, and not exceptionally, true that people are held responsible for what they appear to have said, regardless of what they may have intended to say. (Moderate intentionalists, of course, hold that what someone *appears* to have said, in the light of all the evidence readily available to his intended audience, is what he *did* say.) That is ultimately due to the general social utility of clear communication, but it does not follow that it is due solely to "social reasons" rather than "linguistic" ones.²³ Considerations of social utility have helped to shape our conception of what utterances mean. We conceive of the meaning of utterances as something essentially public, and not, like desires, pains or other mental states, as something essentially private of which we can have only indirect evidence. We do so partly because it is important for many practical purposes that utterances have meanings that are essentially public.

In matters such as these, the ultimate court of appeal must be our linguistic judgments. Because our language is a social artifact, constituted by our shared practices, there is nothing beyond them that can settle disagreement. "[A]ll we have to go on is our use of language and such knowledge as we may possess about the conventions on which we rely"²⁴ The question, then, is whether most people would agree with my judgment, which is that the groom not only *appeared* to make the promise, but *did* make it, even though he did not intend to. I think they would. It seems to me a commonplace that the meaning people intend to express or imply can differ from the meaning they in fact express or imply. People can intend to say or imply something but fail to do so, and conversely, they can say or imply something they did not intend. If we are told that we have misunderstood someone's utterance, we often defend ourselves by replying "I now realize what she meant to say, but it's not what she did say," or "He may not have intended to say that, but he did." Knapp and Michaels would presumably deny that such replies can be strictly correct: if the meaning of someone's words is

23. Knapp concedes this in Steven Knapp, *Practice, Purpose, and Interpretive Controversy*, in PRAGMATISM IN LAW AND SOCIETY 323, 334 (Michael Brint & William Weaver eds., 1991).

24. Ralph C.S. Walker, *Conversational Implicatures*, in MEANING, REFERENCE AND NECESSITY: NEW STUDIES IN SEMANTICS 133, 177 (Simon Blackburn ed., 1975).

identical to the meaning she intends them to have, then she can only *appear* to, but cannot *really*, say things which do not mean what she intends them to mean. This strikes me, and I am confident would strike most people, as counterintuitive.

IV. INTENTIONLESS MEANINGS AND MEANINGLESS INTENTIONS

Knapp and Michaels's main argument against conventionalism is that marks do not mean anything if they were not made with the intention that they mean something, even if they resemble an utterance in every other respect. Thus, suppose we find some marks that look like a word (say, "HELP" on a sandy beach), and the only evidence available to us suggests that they are in fact words, inscribed intentionally by someone in order to communicate something (for example, there are footprints leading to and from them). In reality, however, the marks were not inscribed by anyone, but were produced by an unthinking, natural process (the presence of footprints is coincidental). Knapp and Michaels would argue that the marks are really meaningless, even if the only evidence available to us suggests that they are not. We are justified in believing that they are meaningful, but our belief is mistaken none the less. For the sake of argument, I will assume that this argument is sound.

But now consider the converse hypothetical. We find some marks which bear some resemblance to a word, but the only evidence available to us suggests that they are meaningless, the product of an unthinking, natural process. In reality, they were inscribed by someone intending to write the word that they resemble, in order to convey a message to us, not someone else whose language we are unable to recognize. Do the marks really form that word, and have its meaning, or are they meaningless because, given the only evidence available to us, we are unable to regard them as meaningful?

It might be argued that this hypothetical should be answered in the same way as the previous one. Knapp and Michaels's argument, which I am assuming is sound, is that meaninglessness is something objective, independent of the evidence we may have for ascertaining it. If marks were not produced by a purposeful intelligence intending them to mean something, then they are meaningless whatever we may justifiably believe given the evidence available to us. If we are prepared to believe this, it might be argued, we should also believe that whether marks are meaningful is also an objective fact independent of the evidence we, as their intended audience, may have for ascertaining it. In other words, it might be argued that Knapp and Michaels's principal argument against conventionalism does indeed support strong intentionalism, the thesis that the meaning of a text is its speaker's meaning regardless of what

evidence of that meaning is available to his intended audience.

But it seems to me that meaninglessness and meaningfulness differ in this respect, even if Knapp and Michaels are right about the former. As for meaningfulness, someone who fails to produce something that his intended audience can recognize as meaningful, given the evidence readily available to it, fails to produce anything meaningful, notwithstanding his intention to do so.

But how can there be a difference in this respect between meaninglessness and meaningfulness, which might seem to be opposite sides of the same coin? The answer is that even if Knapp and Michaels's principal argument is right, two necessary conditions must be satisfied for marks to be meaningful. First, the marks must have been made by someone with the intention that they be meaningful,²⁵ and secondly, her intended audience must be capable of recognizing that fact. The failure of *either* of these two conditions makes marks meaningless. Knapp and Michaels insist against conventionalists that the first condition is necessary, but it does not follow that it is also sufficient, for marks to be meaningful. Marks made with the intention that they be meaningful are not meaningful unless the second condition is also satisfied. But if the existence of an author who intends her text to have a meaning is only one of two necessary conditions for the text to have a meaning, then intended meaning and textual meaning are not identical, and strong intentionalism is false.

Knapp and Michaels argue that there cannot be textual meaning without an intention to create it, but they do not seem to consider whether there can be an intention to create it that does not succeed.²⁶ I have argued that even if there cannot be intentionless meanings, there can be meaningless intentions. And if something intended to be meaningful can be meaningless, then for the same reasons, something intended to mean one thing can mean something else.

25. Or they must be suitably related to marks made by someone with the intention that they be meaningful. For example, the marks you are reading were produced by a printing press, but they are suitably related to marks I made with the intention that they be meaningful. See George M. Wilson, *Again, Theory: On Speaker's Meaning, Linguistic Meaning, and the Meaning of a Text*, 19 *CRITICAL INQUIRY* 164, 168 n.4 (1992).

26. In arguing against theory, they say, "the only important question about intention is whether there can in fact be intentionless meanings." Knapp & Michaels, *supra* note 15, at 15.

V. MULTIPLE MEANINGS?

Moderate intentionalism is the thesis that the meaning of an utterance is the meaning which evidence readily available to its intended audience suggests it was intended to mean. An arguably counterintuitive consequence of this thesis is that an utterance may have more than one meaning, because different evidence of the speaker's intended meaning may be available to different members of his intended audience.

For example, if I intend a remark made during a conversation with Bob and Joe to be a joke, Bob might understand this but Joe might not. Joe might take it to be an insult, not through any fault of his, but because I failed to appreciate that he does not know me as well as Bob, and therefore needs more clues of my jocular intention. According to the moderate intentionalist, my remark has two meanings: it means one thing in the case of Bob, and another in the case of Joe, because they do not have ready access to the same evidence of my intention.²⁷

It may seem odd to think that the remark has two different meanings. Do we not intuitively feel that it really was a joke, which Bob was able to understand but Joe was not? But if so, its meaning must be independent of the evidence available to its intended audience. If the remark was a joke, regardless of Joe's inability to recognize it as such, then presumably it would also have been a joke even if I had been conversing only with him: why should Bob's presence make any difference? But that would seem to vindicate strong intentionalism: the meaning of my utterance would be whatever I intended, regardless of the ability of my intended audience to ascertain that intention.

On the other hand, is it so odd that an utterance might have more than one meaning? That would surely be possible even if strong intentionalism were true, because I might have *intended* my remark as an insult to Joe and also, unknown to him, a joke for Bob's amusement.²⁸ Strong intentionalists hold that an utterance means what its speaker intends it to mean, and so if I intend an utterance simultaneously to convey different meanings to different people, they must hold that it has different meanings.²⁹

27. Moreover, if an utterance can have two different meanings at the time it is uttered, then it can have different meanings at different times. A text might be correctly interpreted to mean one thing shortly after it is written, but something else a hundred years later when readers no longer know facts relevant to its interpretation. In the case of a novel or a constitution, later readers are as much members of the text's intended audience as earlier ones. So moderate intentionalism might support Gadamer against Knapp and Michaels, insofar as it endorses the notion that the meaning of a text can change over time.

28. This need not be a case of an express meaning being accompanied by an implication: both the joke and the insult might be implications.

29. Knapp and Michaels therefore seem to be mistaken to assert that "a text has only one meaning." Knapp & Michaels, *supra* note 6, at 68.

Seen in this light, the consequence that an utterance might have more than one meaning is less damaging to the plausibility of moderate intentionalism. Admittedly, moderate intentionalists would be committed to the coexistence of different meanings more often than strong intentionalists, because differences in the evidence readily available to members of intended audiences are more common than deliberate multiple meanings. But that seems far from decisive in the contest between moderate and strong intentionalism. It is just one consideration to be weighed against others, many of which, I have argued, favor moderate intentionalism.

VI. FOREIGN LANGUAGES AND PRIVATE CODES

When I raised the possibility of moderate intentionalism at the Conference on Legal Interpretation, Michaels replied that if someone spoke in French to people who did not understand that language, the meaning of her utterance would be its meaning in French, even though evidence of that meaning would not be readily available to her intended audience. It might seem to follow that if someone spoke in an idiolect to people who did not understand it, the meaning of his utterance would be its meaning in that idiolect, even though evidence of that meaning would not be readily available to his intended audience. It might then seem to follow that, contrary to the argument I have put forward here, the meaning of an utterance is independent of whether or not it is readily accessible by its intended audience, and therefore that strong intentionalism is vindicated.

But if someone speaks to us in a language we do not understand, it is obvious to us that we do not understand it. We reasonably suppose that it has a meaning, even though we do not immediately know what it is. (It is possible, of course, that we are the victims of a hoax, and that the utterance is really nonsense.) Moreover, we can attempt to identify the language used, and if we succeed in doing so, to consult a dictionary or translator to ascertain the meaning of the utterance. We are like people who must decipher a coded message, with the assistance of a manual that explains it. Even the intended recipients of a coded message, and not just enemies who have intercepted it, may have to do so. This is consistent with the definition of utterance meaning stipulated in Part II. Utterance meaning is “what the speaker’s meaning appears to be, given all the evidence that is readily available to his intended audience, which may include the sentence meaning of the utterance and other clues such as its context.” In the case of a coded message, the evidence of its

intended meaning—the manual—is readily available to its intended recipients.

If a person speaks in a language that his intended audience does not understand, the audience will have to consult a dictionary or translator to decipher its meaning. It might in some cases seem implausible to describe such assistance in ascertaining its meaning as “readily” available to the audience, but this is no different in principle from the use of a code. Perhaps the criterion of “ready availability” needs to be relaxed in such cases. But the need to seek such assistance would be obvious. Members of the audience would know that the utterance had a meaning that was, temporarily, inaccessible or obscure to them.

Cases of this kind stand in sharp contrast with the hypothetical case in which a person appears to speak to us in our own language, but later claims to have used a private code, and to have meant something entirely different from the meaning we reasonably attributed to his utterance. Assume that at the time we interpret his utterance, there is no evidence whatsoever to alert us to his use of a private code. When he later explains what, in his private code, he meant, we are entitled to reply that although this may have been what he meant, it was not the meaning of what he said. The same is true, on a smaller scale, of an utterance that is in our language, but fails accurately to communicate the speaker’s meaning because (unbeknownst to us) he has misused the language, or for some other reason has failed to provide us with adequate evidence of his meaning. In such cases it is also reasonable for us to say, “We now know what you meant, but that is not (the meaning of) what you said.”

VII. CONCLUSION

Knapp and Michaels are at best half right. I have assumed that they are right to argue against conventionalists that a necessary condition for marks to have a meaning is that the marks be made by someone intending them to have it. But they are nevertheless wrong to infer from this that the meaning of marks is identical to whatever meaning they were intended to have. This is because the existence of an intended meaning, even if necessary, is not a sufficient condition for marks to have a meaning. It follows that it is not a sufficient condition for the marks to have that particular meaning.

In *Alice in Wonderland*, Humpty Dumpty says that his words mean whatever he intends them to mean. Knapp and Michaels agree.³⁰ Humpty

30. “The antiformalist point of ‘Against Theory’ is to insist that anything can be used to mean anything or, as Crewe rightly puts it, ‘quite radically to deny that the forms

and Knapp and Michaels are right, but only up to a point. We can use words to mean whatever we intend them to mean, but only if our intended audience has sufficient nonverbal evidence of our intention to do so. The problem is that the totality of the evidence available to our audience, verbal and nonverbal, cannot convey whatever we intend it to convey. Because our audience must have evidence that it can understand, our attempt to convey our intentions is subject to constraints that must be respected if we are to succeed. Those constraints determine the meaning of our utterances whatever our intentions might be.

Moderate intentionalism lies somewhere between strong intentionalism and conventionalism. It is able to explain why courts of law do not regard themselves as bound either by the literal (“sentence”) meanings of a statute, or by subjective intentions that legislators (even if they constitute a majority) failed to communicate to their intended audience. The courts seek to give effect to the objective meaning of a statute, which is informed both by the linguistic conventions that determine literal meanings, and by other evidence of the legislature’s intentions, provided that it is readily available to the statute’s intended audience. That other evidence can include common sense understandings of the legislature’s probable purposes and intentions, the historical circumstances in which the statute was enacted, and (to a limited extent) legislative history.³¹

of language possess any defining power.” Steven Knapp & Walter Benn Michaels, *A Reply to Our Critics*, in *AGAINST THEORY: LITERARY STUDIES AND THE NEW PRAGMATISM*, 95, 104 n.6 (W.J.T. Mitchell ed., 1985); see also Knapp, *supra* note 23, at 323.

31. See also Jeffrey Goldsworthy, *Legislative Intentions, Legislative Supremacy, and Legal Positivism*, 42 *SAN DIEGO L. REV.* 493 (2005).

