toning down of approval for action to reign in royal power which can be seen in his *Symbol of Normandy* (c. 1419: *Ypodigma Neustriae*) and the return to greater emphasis on limiting such power in the *Historia Anglicana* (c. 1422). Fear of heresy and economic interest both seem to have been relevant, and the author's "fearful self-censorship" should be borne in mind by those using this source as evidence of satisfaction with Henry V's rule. The idea of a common voice and theories of "voicing" and sound are the subjects of Andrew Galloway"s piece ("The common voice in theory and practice in late fourteenth century England"). This chapter, with its emphasis on literary scholarship, is challenging for those from a mainstream legal-historical background, but repays the effort, raising as it does new ideas and questions about the role of different "voices", official and unofficial, in late-medieval English literature and political life.

In addition, the assumption that popular involvement in politics necessarily meant dissent and disorder and the assumption that a clear line was seen between ordinary and extraordinary political action are reconsidered by Anthony Pollard ("The people, politics and the constitution in the fifteenth century"), who argues for early roots of popular engagement in politics (even if this engagement was still confined to comparatively small numbers of individuals). And the fascinating idea of topographical understanding of British or English identity is explored by Lynn Staley, ("Landscape and the identity of the realm. topography and identity") which, ranging from Gildas to the beginnings of the enclosure movement, expands upon the medieval and early modern fear of a return to the wasteland, and its role in defining "the commonweal". Finally, G.W. Bernard summarises, from the perspective of a Tudor specialist, the papers heard at the conference, and several generations of scholarship of the early modern period. Both this chapter and the first chapter might usefully have been edited to omit unenlightening references to papers given at the conference but not actually included (nor summarised) in the volume, and one might conclude, in relation to this last contribution, that anecdotes about the author's acquaintances and his student days at Oxford were better suited to the oral context of a conference than they are to a written collection.

Such quibbles aside, there is a great deal to praise in this weighty book. There are, as advertised, several "new views" on medieval law and the medieval constitution, and the collection should find a place on the shelves (real or virtual) of all history libraries, and in the consideration of constitutional lawyers and legal historians. There is much here to stimulate debate and to provoke future research.

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The Nature of Legislative Intent. By Richard Ekins. [Oxford: Oxford University Press, 2012. 303 pp. Hardback. £34.99. ISBN: 978-0-19-964699-9.]

Elements of Legislation. By Neil Duxbury. [Cambridge: Cambridge University Press, 2013. 249 pp. Paperback. £29.99. ISBN: 978-1-107-60608-1.]

On the happy occasion of the publication of Richard Ekins' book, *The Nature of Legislative Intent* (2012), the editors of the series in which the book appears

confidently assert that "This book will raise the standard of debate about the making and interpretation of legislation" (p. vi). They could not be more correct. Indeed, this is the case not only for Ekins' book, but also for Neil Duxbury's *Elements of Legislation* (2012). The two books deal with the same themes – especially the relevance of legislative intent for the authority of statutes and statutory interpretation – though there are notable differences between them, especially regarding their method for approaching these issues. I will be noting some of these overlaps and fertile tensions, in addition to making some critical observations, but it cannot be emphasised enough that these two books are very impressive contributions to a much neglected field, namely the philosophical and (in Duxbury's case) historical study of the making and interpreting of legislation.

At the heart of both books are the following questions: 1) does legislative intention exist; and 2) does that question, and the answer to it, matter, and if so how? The second question can itself be split into two: what is the effect on any answer to the first question on 2a) the authority of statutes; and 2b) the practice of statutory interpretation? The focus below is on the first question, with some brief comments on 2b. In focusing the discussion in this way, I will be unavoidably neglecting other important aspects of these two books – for example, Duxbury's discussion of the differences between legislating and judging, and his argument (both descriptive and normative) against strong judicial review in the UK; and, in the case of Ekins, his critiques of the sceptics and minimalists about legislative intention (including the late Ronald Dworkin, Jeremy Waldron, public choice theorists and Joseph Raz). The focus here, given the overlap between the two books, is on the authors' own views on legislative intention and the implications they themselves ascribe to those views.

Before diving in, let me put my critical cards on the table: the strength of Ekins' book is his account of the rationality of the legislature, and in particular, the institutional features he argues enable and exhibit the exercise of this rationality. Where the book is less strong is in the discussion of statutory interpretation: this discussion is too quick (it is treated in one chapter out of nine), it is not as original as the other chapters (it relies heavily on the work of Jim Evans, whose influence Ekins acknowledges), and it neglects historical and institutional differences in the practice of statutory interpretation. Duxbury, in turn, is strong where Ekins leaves something to be desired: Duxbury's historically and institutionally sensitive account of the practice of statutory interpretation is exemplary. Indeed, Duxbury comes close to a pragmatist position: the idea of legislative intent is useful – because belief in it disciplines the judicial interpretation of statutes (this sense of discipline-by-belief is the crux of Duxbury's argument) – and that is why we ought to believe it exists. I say Duxbury comes close to a pragmatist position, rather than espouses it, because there are too many times in the book where he relies on and puts a great deal of emphasis on the *reality* or *existence* of legislative intention. In short, for this reviewer's money, both authors are afflicted by a metaphysical bug: their scholarship would be more telling if they focused, in Ekins' case, on providing a realistically ideal account of the institutional features that are the hallmarks of rational (or more broadly, virtuous) legislature that serves the common good, and in Duxbury's, on his historically and institutionally rich description and evaluation of the (disciplined) practice of statutory interpretation.

The two books, then, complement each other, though one could combine them in different ways. First, one could combine them to argue for 1) the reality of legislative intention; and 2) given that reality, make a descriptive and normative argument that legislative intention is what has disciplined, and ought to discipline, the practice of statutory interpretation. Or, they could be combined in a second way, namely to the effect that: 1) there are certain processes, such as majority voting and deliberation on a specifically worded text (Duxbury p. 112), and legislative offices and political parties, including agenda setting (see Ekins p. 167 et passim), which, when implemented, render the practice of legislating a rational (or virtuous) one, or at least a *more* rational one (thereby making a virtue out of the presence of diversity and disagreement in a large assembly); and 2) the practice of statutory interpretation has, and ought to, treat statutes as intentional acts of a reasonable legislature, thereby being more disciplined and more constrained than they would otherwise be.

Let us return, now, to the issue of the existence or reality of legislative intent. As noted above, Ekins and Duxbury both defend it, and they do so in very similar terms (as he generously acknowledges, Duxbury had access – though late in his project – to Ekins' doctorate, out of which Ekins' book arises).

For Duxbury, the intention of the legislature is a matter of the individual members' intentions interlocking such that they are "in fact co-operating in carrying out a plan" (Duxbury, p. 106). Importantly, these are not just "general (law changing) intentions but also specific…intentions in the form of distinct proposals and plans" (Duxbury, p. 101). What enables the movement here from the interlocking intentions of individual members to the view that the statutes emerging from the legislature are the product of legislative intent? Duxbury's answer is: "distinct decision procedures", e.g. those relating to the "presentation, scrutiny and amendment of bills" (Duxbury, p. xiii). It is thanks to these decision procedures "that specific-law-making proposals can become acts of the legislature itself" (Duxbury, p. xiii). So far so good, though one might wonder why the unquestionable importance of distinct decision procedures is being framed by a discussion concerning the existence of legislative intent. Where the account becomes somewhat mysterious is the moment Duxbury asks himself how, in practice, such a "specific intent" might be found. In answering this question, he introduces a series of qualifications – e.g. that those specific intentions are not "always readily identifiable" (Duxbury, p. 101) – culminating in the claim that at least some of these specific intentions are "hidden", both "from [their] framers as well as from everyone else", until a judicial decision reveals them, and thereby shows that that intention "was present all along" (Duxbury, p. 110). This "discovery", as Duxbury refers to it (Duxbury, p. 117), is not a matter of going beyond the text – on the contrary, it is a matter of noticing a "previously unearthed dimension to the actual statutory language" (Duxbury, p. 110). Perhaps the clearest example that Duxbury offers is of a statute that concerned the selection of jurors, which was passed at a time when citizens that could vote did not include women, with the question now being whether the statute permitted women jurors. Duxbury reasons as follows:

> The legislature's actual intention regarding women as jurors may be elusive, and a court might suspect the truth about that intention to be inconvenient. But this is a problem to do with the discovery of, rather than a question about the existence of,

> legislative intent: it points to the fact not that bygone legislatures never had intentions, but that courts will sometimes be susceptible to ascribing to those legislatures intentions which cannot necessarily be upheld as corresponding with the intentions they had when they legislated. (Duxbury, p. 117)

To talk of judges discovering hidden intentions – invisible to everyone, *including* the framers – is surely to concede that the search for the existence or reality of legislative intention might be unhelpful. It is certainly mysterious, at least to this reader. But then how to explain such an interpretation? One feels sympathetic with Duxbury's unwillingness to explain this interpretation on the basis of some 'updating' theory – or any other sister theory that loosens the belt of judicial discipline too much. Could one say, instead, for instance, that what the judges are doing here is reconstructing the *reasonable* legislature's intention, namely, that given the change in the meaning of the concept of 'citizen', so it is reasonable, now, to match the change in the meaning of the concept of 'juror'? One can still refer – and there might indeed be, as Duxbury insists, psychological benefits to referring – to the idea of legislative intent, but in a transparently constructivist manner: we understand that what we are doing is reconstructing what we now take to be a reasonable intention – we do not pretend to be discovering hidden intentions that were present all along, but invisible to everyone except us. Surely, to hold a theory that prefers the latter explanation is to be effectively committed to a kind of determinism, as if it was always going to be the case that the concept of 'citizen' would change its meaning in this way. And surely reaching such a deterministic result is the sign of an explanation gone awry.

As noted above, Ekins' view on the existence of legislative intent is worked out in a more fine-grained way. In broad outline, though, the account is the same as Duxbury's: legislative intent "arises out of the interlocking intentions of the members of' the legislature, not reducing to the intentions of any one or more individual members" (Ekins, p. 10). It is vital for Ekins that the relevant intention is not characterised as the aggregate of individual members' intentions. According to Ekins, it is the institution itself, as a whole, that forms and acts on intentions. His central objection to such aggregative or summative accounts is that they "fail to distinguish coincident intention from jointly held intention" (Ekins, p. 49). These jointly held intentions, then, come in the form of plans. In the result, "group action", such as the action of the legislature, "is the coordinated pursuit of a common purpose by means of a jointly accepted plan of action", though it should be added that "in complex groups, groups adopt authority procedures that determine who may set the plan and so direct joint action" (Ekins, pp. 52–3). I will return to these, and other, procedures in a moment, but it is important to make one observation here: notice how much philosophical work the phrase "arises from" has to do in Ekins' account. The intention of the legislature exists over and above any individual intentions, and yet, clearly, it cannot be divorced from them. Further, it must also not simply issue from or be the product of – as if in some mechanical way – those individual intentions, for to hold such a view is to get dangerously close to Waldron's image, where we conceive of statutory texts as "the output of a process, like a machine, rather than the choice of an agent" (Ekins, p. 35). Instead, for Ekins, the group's intention must "arise from" those intentions. But what does "arise from" here mean? Is this not a metaphor that demands from us, as readers, a leap of faith? One cannot help but think that the

problem here is not so much Ekins' explanation, but the very search for an explanation. It feels very much like the search for a solution to the problem of rule-following: trying to pin down the way in which, on an individual level, a person may be said to be intentionally follow a rule. As we know from the later Wittgenstein, any such search produces an infinite regression: we end up replacing one metaphor with another, never getting closer to the "reality" of that link. It is better, surely, to ask the pragmatic question, namely: what role does the idea of intention play in a particular context – and in this case, the idea of legislative intent, especially in the context of statutory interpretation by judges? Does it play a beneficial role – again, in this context, in circumscribing judicial power? Does it help constrain judges, leaving certain matters – if one believes that those matters can and ought to be left – to the legislature? As mentioned above, Duxbury gets close to focusing on this question – for Ekins, this question does not surface, so entranced is he by the search for metaphysical gold dust.

One does not, however, have to be persuaded to make the metaphysical leap with Ekins, in order to learn a great deal from him. One standout contribution is his identification of, and ascription of importance to, various procedures adopted by legislatures that allow these institutions to do their job (or, as Ekins would say, to act rationally). Ekins argues forcefully that legislative reason "requires accurate knowledge of facts, sound moral judgement, technical skill, and coherent practical choice" (Ekins, p. 143). Further, there is good practical reason for having such a rational legislature in any community, for such a legislature is "less likely than a prince to be a tyrant, open to popular participation, and more likely to legislate well than a prince" (Ekins, p. 143). It is here, away from the blinding light of metaphysics, and in the rough ground of a historically-informed pragmatism, that we come to identify what communities have learnt, over time, i.e. the kinds of decision-making bodies that serve them better than others, and, furthermore, the kind of practical structures – procedures – that help those decision-making bodies to achieve their aims. Arguably, for example, we have learnt it is generally better for legislatures to focus on a particular text, exercising discipline (and thus also some consistency over time) about their choice of words. Again arguably, we have learnt it is better to stage a series of debates (or "readings") on a proposed text, rather than just one, and to do so in more chambers (amongst different groups of people) than just one. Identifying such institutional features, and examining – in part historically – whether their adoption has helped make better decisions overall for the community in question promises to be a useful project. And it is a project that would be greatly enabled by Ekins' analysis.

In this respect, particularly noteworthy is Ekins' discussion, and indeed defence, of certain institutional features of legislatures that others have either explicitly criticised or cringed at. Thus, for example, Ekins defends the presence of parties in the legislature, arguing that "parties help restrain self-serving legislative behaviour" making it "less likely than the prince to abuse its authority because it is open to parties" (Ekins, p. 156). He also defends the division of labour in legislatures – e.g. in the form of specialist committees, as well as of course the role of certain agenda-setting offices, such as ministries – on the basis, for instance, that they permit "the assembly to reflect in more detail and on many more proposals than would be possible for a sole legislator" (Ekins, p. 160). Ekins is not naïve – he does recognise (see Ekins, p. 167) that where a legislature is dominated by "party leadership", it may be open to abuse – though it is a pity he does not say much about this pressing problem of

executive power (especially in Westminster) and how, in practical terms, it might be tamed. It is also a pity that he does not discuss another important feature of contemporary legislatures: the presence (often very heavily felt by individual members) of lobbyists. To put the question in terms used by Ekins: does the presence of lobbyists help safeguard "the legislature's openness in principle to all that is relevant, and its freedom to act deliberately and comprehensively" (Ekins, p. 11)? On the whole, however, the careful attention Ekins bestows on features otherwise neglected or besmirched by scholars of legislative action is impressive and important – and certainly something that deserves to be built on, perhaps in the form of a historically-sensitive and institutionally-thick study of the virtues of legislative action. But – and this is the point – this kind of project is not in any way dependent on a defence of the reality or existence of legislative intent.

The above discussion has already dipped into the relationship between legislative intent and the practice of statutory interpretation. We have seen that Duxbury's attempt to describe how legislative intent is located in practice ends up in the rather mysterious postulation of something hidden, invisible to everyone but the judges who notice it. What needs to be emphasised is that this glitch should not cloud what Duxbury achieves in the second half of the book, namely, an institutionally- and historically-rich account of statutory interpretation "understood as a disciplined activity" (Duxbury, p. xiv). It is also important to see that Duxbury's point is not simply to paint a portrait of constrained judicial interpretation – it is to show how recourse to the idea of legislative intent has done the constraining. Thus, Duxbury shows, in a patient historical analysis, how the adoption of certain conventions at various times can, in large part, be explained by recourse to the judges wanting to reduce, rather than broaden, the gap between a statutory meaning and what they reasonably take to be the legislative intent. The conventions in question are, principally, the familiar plain meaning, golden and mischief rules, and Duxbury's claim is that "when judges find the meaning of statutory language to be plain but absurd, or not plain at all, they often adopt interpretive conventions which take account of enacting intentions that are either identifiable or reasonably presumed" (Duxbury, p. xiv). This detailed analysis, together with other historical insights – such as his pointing to the relationships between 1) the practice of statutory interpretation; 2) the practice of drafting as a skilled, professional activity; and 3) the institutional roles of judges (e.g. being able to sit as legislators in the 14th century) – as well as his portrayal (at first blush counter-intuitive) that purposive interpretation is also a form of interpretation constrained, in large part, by the idea of legislative intent – all these are very important and valuable contributions. However, none of these insights are dependent on the existence or reality of legislative intent: all one needs to prop up this account is a pragmatic commitment on behalf of the judges, namely that they are likely to make better judgements (more constrained, more consistent, more disciplined judgements) by having recourse to the idea of legislative intent. Duxbury hints at this, for instance when he asserts that judges are not guided by legislative intent, but instead presuppose it (e.g. see Duxbury, p. 103).

In this respect, Ekins is much blunter: "Much turns", he says confidently, "on whether legislative intent exists. The question plainly bears on the way in which judges and others interpret statutes" (Ekins, p. 4). When it comes to the details, however, Ekins' examples are all ones that can be read as interpretations of texts presumed to be reasonable, and thus presumed to be issued

by rational legislatures. For instance, a judge reads texts as parts of a corpus of other such texts, presuming it would be reasonable to intend to use the same terms with consistent meanings across those texts (see Ekins, p. 248). Or, one argues for a certain interpretation of a text on the basis that "no rational language user would utter the text…intending to imply" such-and-such a result, and so on (see Ekins, p. 253). But none of this requires the existence or reality of legislative intent: all it requires is a presupposition or supposition of a legislature acting reasonably to produce a reasonably coherent text.

Duxbury and Ekins can both be right that the practice of statutory interpretation has been and is more disciplined, and we, as a community, are as a result better off, when the idea of legislative intent plays this constraining role. Further, adopting their approach might help us to be appropriately circumspect, if not freshly sceptical, about the rise and rise of purposive interpretation (at least of the "unmoored" variety, as Ekins calls it: see Ekins, p. 250). But all this wise pragmatism is available without a metaphysical price: we do not need it to be buttressed by the reality or existence of legislative intent.

Neat as this conclusion may be, I need to end on a note of caution: at one point (see Ekins, pp. 265–268) Ekins pushes what he sees as the implications of his defence of legislative intent so far as to criticise a decision of a New Zealand court, which had held that a certain provision in a statute was contrary to certain international obligations (in that case, the UN Convention on the Law of the Sea). Ekins says: "It might be unwise for the legislature to authorise action that risks placing New Zealand in breach of its international obligations and it might repent of the legislative choice were that to come to pass. However, the court's task is to infer, from what was said in context, the choice that was made" (Ekins, p. 267). This, surely, is going too far. It is one thing for it to be on the whole beneficial for a court to be disciplined and constrained in its interpretation of statutes passed by a democratically elected legislature. It is another thing for it to shirk away from its judicial responsibility to hold in check legislative (and, in contemporary times more likely, executive) power. Taking seriously, and being disciplined by, the idea of legislative intent might very well be a judicial virtue, but like any virtue, if taken too far, it becomes a vice.

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Directors' Duties and Shareholder Litigation in the Wake of the Financial Crisis. By Joan Loughrey (ed). [Cheltenham: Edward Elgar Publishing, 2013. 272 pp. Hardback £70. ISBN 978-0-85793-965-4.]

The global financial and economic crisis has, since it first arose in 2007, led to numerous and searching reappraisals of corporate governance in financial firms – particularly in the United States and the United Kingdom, the two countries at the very heart of the crisis. In the aftermath of this catastrophe, US and UK academics and practitioners alike have sought to diagnose what went wrong and to devise solutions to prevent it from happening again. Amidst the profusion of regulatory analyses and reform proposals, this fascinating and important book undertakes a related, though distinct, inquiry: Why have