

Study on the Principles of Interpretation of Declaration of Intent

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Abstract

The principle of interpretation of declarations of intent has long been plagued by the theoretical dilemma of the binary opposition between "will theory" and "declaration theory." Both "will theory," which takes the standpoint of the declarant, and "declaration theory," which adopts the perspective of the recipient, unilaterally emphasize one side. The interpretation principle of declarations of intent in China's Civil Code distinguishes between declarations with or without a counterparty, adopting a dualistic model that incorporates both "will theory" and "declaration theory." However, this approach still fails to eliminate the inherent defects of the theory of declarations of intent, presenting challenges in both theory and practice. Based on this, by analyzing theories such as the "new monism" proposed by domestic scholars and the "reconstruction of the concept of declarations of intent" proposed by Professor Larenz in Germany, this paper aims to provide new pathways for the interpretation principle of declarations of intent.

Keywords

Declaration of intent; Will Theory; declaration theory

1. Theoretical Controversies over the Interpretation Principle of Declaration of Intent

1.1. The monistic principle of interpretation of declarations of intent.

In traditional concepts, a declaration of intention consists of two parts: internal intention and external expression. When the declarant and the counterpart have different understandings of the declaration of intention, should the internal intention or the external expression prevail? This gives rise to two opposing principles of interpretation, namely the principle of intention and the principle of expression. The so-called monism refers to the adoption of only one principle—either the principle of intention or the principle of expression—when interpreting a declaration of intention.

"The doctrine of intent," also known as "subjectivism," traces its origins to the ancient Roman jurist Papinian. In interpreting contracts, Papinian emphasized priori-

tizing the true intention of the declarant rather than merely scrutinizing the literal meaning of the words. Later, the German jurist Savigny became one of the key proponents of this doctrine. From the perspective of the declarant, Savigny argued that "declaration" and "intent" could be separated, and legal interpretation should focus on the declarant's genuine internal will. One of the most classic declarations of this doctrine is found in Savigny's words: "The inner will should be regarded as the only truly important and effective thing." To a large extent, the First Draft of the German Civil Code was a product of this theory. Exploring the true intent of the declarant through the "doctrine of intent" has its rationality. The principle of autonomy of will is a universally recognized legal principle in civil law across nations, serving as a guiding force for the entire civil law system. Naturally, the principle of autonomy of will should also play a decisive role in legal relationships. In practice, if the declarant's genuine internal intent does not harm the lawful rights and interests of the state, society, or others, it should be fully respected. However, it is not difficult to see that the "doctrine of intent" also has drawbacks. First, as the saying goes, "Human law cannot judge inner intentions; only divine law can judge matters of the heart." In judicial practice, reconstructing the true intent of the declarant is an extremely challenging task, and the difficulty of evidence collection largely hinders the application of this principle. Second, if there is a counterparty to the declaration, the absolute protection of the declarant's true intent will inevitably harm the counterparty's reliance interest, leading to an imbalance of interests between the declarant and the counterparty. Professor Ye Jinqiang criticized this by stating, "Blindly following the declarant's intent while disregarding the autonomy of the recipient is inherently contradictory in terms of value logic." Against this backdrop, the "doctrine of intent" gradually declined, while the "doctrine of declaration" emerged as a response. "Declarativism," also known as "objectivism," is a principle of interpretation for declarations of intent that stands in complete opposition to "will theory." It was first advocated by Roman law scholars such as Rotoma and Danzi. From the perspective of "declarativism," the reliance interest of the counterparty to a declaration of intent is the key to transactional security. Without adequate protection of this interest, it would be difficult to maintain the order of transactions. It is evident that the fundamental difference between "will theory" and "declarativism" lies in their respective standpoints. The former adopts the standpoint of the declarant, examining the declaration of intent from the declarant's perspective, thus naturally emphasizing the principle of autonomy of will and focusing more on the declarant's true inner intent. The latter, however, adopts the standpoint of the recipient. If viewed from the recipient's perspective, the focus on the declarant's free will is correspondingly weakened, shifting attention instead to the protection of the counterparty's reliance interest. One of the proponents of "declarativism," Bähr, proposed amendments to the First Draft of the German Civil Code: "An erroneous declaration of intent made in legal transactions shall be binding if the declarant has made it in a manner attribut-

able to himself, even if the declaration does not align with his true will." It can be seen that, in Bähr's view, the reliance interest of the recipient of the declaration of intent should be protected regardless of whether the recipient is acting in good or bad faith. Thus, it is not difficult to observe that declarativism interprets declarations of intent from the recipient's perspective, replacing the declarant's inner intent with the meaning understood by the recipient. While protecting the recipient's reliance interest, it also effectively realizes the recipient's autonomy of will. In this way, the unilateral sacrifice of the declarant's autonomy of will in favor of the recipient's autonomy of will raises the question: what is the rational basis for this approach?

1.2. The dualistic theory of the principle of interpretation of declarations of intent

The "objectivism" shift originated from the theory of Ehrlich Danz, who advocated replacing the parties with a reasonable person in legal relationships. When interpreting disputed declarations of intent, the focus should be on how a reasonable person would understand such declarations. However, Danz did not strictly adhere to the principle of objective interpretation. In his view, if both the declarant and the recipient of the declaration shared a mutual understanding that differed from the usual meaning, their shared subjective interpretation should prevail. Consequently, Larenz characterized Danz's doctrine as dualism.

Subsequently, numerous scholars, such as Titze and Manigk, further refined Danz's theory. Today, the revised dualism, when interpreting the meaning of a declaration of intent, takes into account both the declarant's true intent and the recipient's reliance interest. Neither factor can entirely exclude the other, striving instead for a balance between the two. The prevailing view holds that for declarations of intent requiring receipt—i.e., those involving a counterparty—the "declaration principle" applies, as seen in offers or terminations. Conversely, for declarations not requiring receipt—i.e., those without a counterparty—the "intent principle" governs, such as in wills or public offers of reward. However, even in the first scenario (declarations involving a counterparty), the "intent principle" is not without significance. The "falsa demonstratio non nocet" rule, established by the "German Imperial Court's Whale Meat Sales Case," exemplifies the relevance of subjective intent in such contexts. Thus, this theory distinguishes between the declarant's perspective and the recipient's perspective in interpreting intent. Its legal rationale asserts that the legal effects of a declaration of intent bind both parties, making reliance on either party's unilateral understanding inherently unjustifiable.

Therefore, the revised dualism essentially combines the "intent principle" and the "declaration principle." For instance, Germany adopts a dualism prioritizing the "declaration principle" while supplementing it with the "intent principle," whereas Japan emphasizes the "intent principle" while incorporating elements of the "declaration principle."

2. The principles of interpretation of declaration of intention in China's civil legislation

2.1. Legislative Status

The General Provisions of the Civil Law, adopted in March 2017, stipulates the rules for interpreting declarations of intent in Article 142, using the presence or absence of a counterparty as the distinguishing criterion to establish two clauses (I and II) aimed at achieving reasonable interpretation of declarations of intent. Compared to the General Principles of the Civil Law and the Contract Law, the interpretation rules for declarations of intent in the General Provisions of the Civil Law undoubtedly represent significant progress in terms of logic, systematicity, and scientific rigor. "For the interpretation of a declaration of intent with a counterparty, the meaning shall be determined based on the words used, in conjunction with the relevant clauses, the nature and purpose of the act, customary practices, and the principle of good faith." This clause emphasizes protecting the counterparty's reliance interest, meaning that when there is a discrepancy between intent and declaration, the external expression of the declaration prevails. Accordingly, this clause establishes the principle of "declarationism." "For the interpretation of a declaration of intent without a counterparty, the meaning shall not be strictly confined to the words used but shall instead be determined by combining the relevant clauses, the nature and purpose of the act, customary practices, and the principle of good faith to ascertain the true intent of the actor." Structurally, the purpose of interpreting a declaration of intent without a counterparty is to utilize all relevant factors to determine the true intent of the declarant. When there is a conflict in understanding between intent and declaration, the true intent of the actor prevails. Clearly, this clause is based on the principle of "intentionalism."

From this, it is evident that the dichotomy of interpretation principles adopted in China is essentially grounded in the dualism of interpretation principles. By distinguishing between declarations of intent with or without a counterparty, it achieves a balance between reliance interest and autonomy of will.

2.2. Reflections on Article 142 of the Civil Code

As mentioned earlier, China's civil legislation on the principles of interpreting declarations of intent adopts a dualistic approach. On one hand, dualism does effectively balance the autonomy of the declarant's intent with the reliance interests of the recipient. Since a declaration of intent directed at a specific party only acquires legal effect upon reaching or being understood by that party, it necessitates consideration of the recipient's reliance interests while also protecting the declarant's true inner intent. Conversely, in the absence of a specific recipient, there is no issue of protecting the recipient's reliance interests. On the other hand, this legislative approach aligns with the principles of interpreting declarations of intent as adopted by many

other countries worldwide. However, some scholars have raised doubts about the provisions of Article 142: First, using the presence or absence of a specific recipient as a criterion to apply different interpretive principles risks reinforcing a perceived opposition between the value of protecting the declarant's autonomy of intent and the value of safeguarding the recipient's reliance interests. In reality, these two are not absolutely contradictory, as from the perspective of the good faith principle advocated by law, only autonomy of intent that aligns with the protection of the recipient's reliance interests should be legally protected. Second, distinguishing based on the presence or absence of a specific recipient overlooks the fact that even when interpreting a declaration of intent without a specific recipient, the reliance interests of relevant parties must still be considered. For example, a public offer of reward is a typical declaration of intent without a specific recipient, yet its interpretation involves the interests of an unspecified majority. If such interpretations strictly adhere to the subjective intent of the declarant, it could conflict with the underlying values of the public reward system.

These critical reflections highlight practical issues in the legislative framework, contributing to the development and refinement of related institutions. At the same time, they reflect the academic community's heightened focus on the declaration of intent as a core element of civil legal acts, demonstrating scholars' in-depth engagement with the principles governing its interpretation.

3. Practical Reflection on the "Dualism" Interpretive Principle

On one hand, from the perspective of contract formation, with the evolution of time, the rights and obligations within contracts have grown increasingly complex. When entering into a contract, both parties express their intentions to each other, thereby mutually establishing rights and obligations, making each simultaneously the declarant and the recipient. In such contexts, an absolute emphasis on either "will theory" or "declaration theory" may hold diminished significance. Under these circumstances, Zweigert observed that the historical academic debate between will theory and declaration theory, once prominent, has now become obsolete. The interpretation of declarations of intent is not based on either party's subjective understanding but must fully consider how a rational declarant would express intent and how a reasonable person would comprehend the expressed terms after weighing all relevant factors, ultimately determining the normative meaning of the declaration.

On the other hand, shifting focus to judicial practice, when conflicts arise over the interpretation of a declaration of intent and the declarant and recipient resort to litigation, the interpreter of the declaration is effectively the judge. From the judge's perspective, whether the declaration involves a counterparty or not, the final ruling is grounded in balancing the claims and evidence presented by the plaintiff and defendant. The process of uncovering legal facts by synthesizing the parties' claims and their evidentiary interpretations is inherently a process of interpreting and de-

termining the meaning of the declaration. Take "testamentary interpretation" as an example: a decedent drafts a will during their lifetime, and after their death, multiple heirs dispute its interpretation. According to legal provisions, the true intent of the declarant must be ascertained, yet it is no longer possible to directly obtain the declarant's actual intent at the time of expression. Consequently, in judicial practice, the plaintiff and defendant must assert their respective interpretations of the "testator's true intent" and provide supporting evidence. The judge then examines the evidence to deduce the decedent's genuine intent when making the will. In the case of "contract interpretation," compared to interpreting declarations without a counterparty, interpreting those with a counterparty is more complex. However, the commonality lies in the fact that disputes over contractual terms arise after the contract is formed, making it impossible to retrospectively determine the declarant's true intent or the recipient's actual understanding at the time of contracting. Regardless of whether the interpretive principle aims to ascertain the declarant's original intent or the recipient's understanding, both parties must substantiate their claims with evidence. Thus, the principle of interpreting declarations of intent is evidence-based. It can be said that whether it is the declarant, the counterparty, or the judge, any interpretation of a "past declaration of intent" is an attempt to approximate the declarant's intent "at that time" as closely as possible. Consequently, no matter how the interpretive principles are framed, the ultimate conclusion rests on the judge's balancing of the plaintiff's and defendant's assertions. This understanding aligns with the essential nature of legal adjudication, which involves rendering judgments based on the evaluation, interpretation, balancing, and judgment of evidence. Simultaneously, it serves as a balancing mechanism to protect both the declarant's true intent and the recipient's reliance interests.

4. Theoretical Reconstruction of the Interpretation Principles for Declaration of Intent

As analyzed above, the limitations of the doctrine of will and the doctrine of representation lie in their one-sided emphasis on protecting the interests of either the expresser or the recipient, while neglecting the need for value reconciliation between the two. This results in safeguarding one party's interests inevitably harming the other's. Although the dualism commonly adopted by various countries later reflects to some extent the potential convergence of the doctrines of will and representation, it still fails to reconcile the expresser's autonomous decision-making with the reliance interests of the counterparty and relevant parties. If adopted as the theoretical foundation guiding contract interpretation practices, it risks creating a disconnect with practical application. Therefore, scholars in both domestic and international academic circles are attempting to explore new approaches to resolve this dilemma.

4.1. The attempt at the "new unitary model"

As early as over a decade ago, Chinese scholar Professor Ye Jinqiang had been advocating for the establishment of a "new unitary model" for the interpretation of declarations of intent to replace the current dualistic approach. Professor Ye Jinqiang argued that in the process of interpreting declarations of intent, there is no need to deliberately distinguish between the roles of the declarant and the recipient. Instead, a reasonable person standard should be constructed, whereby all declarations of intent are interpreted from the perspective of a reasonable person. At the same time, the construction of this reasonable person standard must consider factors from both the declarant and the recipient, incorporate the rational elements from the dualistic interpretation principles, and introduce principles of liability law to determine which party bears culpability, thereby assigning the adverse legal consequences. This "unitary model" possesses rationality for several reasons: First, the declarant and the recipient, the subjective and the objective, and intent and expression have traditionally been viewed as opposing poles. Adopting the reasonable person standard as the benchmark can bridge the gap between these poles and overcome these shortcomings. Second, "personified standards" in legal systems have long had precedents. Ancient Roman law featured the "bonus paterfamilias" standard, while modern law includes manifestations of "personified standards" such as the prudent manager and the general reasonable person. Third, as mentioned earlier, in today's thriving market economy, parties entering into contracts often mutually establish rights and obligations, thereby acting as both obligees and obligors. If every declaration of intent were to be interpreted by distinguishing between the roles of declarant and recipient, the process would become excessively cumbersome. The "new unitary model" for interpreting declarations of intent can circumvent this issue. However, Professor Ye Jinqiang's "new unitary model" has also faced considerable skepticism. First, unilateral legal acts inherently lack a counterparty to the declaration of intent, making it impossible to apply the same interpretation principles as bilateral legal acts. Second, in contract interpretation, it is not feasible to rely entirely on the reasonable person standard; in some cases, the subjective meaning assigned by the declarant to the expressive symbols should still prevail. Third, the constructed reasonable person standard may not necessarily remain neutral between the declarant and the recipient.

4.2. The attempt of "effectivism"

Professor Larenz provided a solution from another perspective by starting with the concept itself, attempting to reconstruct the notion of declaration of intention to eliminate the opposition between "will theory" and "declaration theory." Professor Larenz argued that a declaration of intention is an expression of legal effect, rather than a mere declaration of willingness or intent. For instance, in a gift contract, the donor's declaration of intention should not be interpreted as an announcement of the willingness to gift, but rather as establishing legal rights and obligations be-

tween the donor and the recipient once the declaration is made, thereby binding the donor legally. The former interpretation essentially states, "I want to do this," while the latter means, "This is the right thing to do." Another example is in traffic regulations: when a red light turns on, its declaration of intention is not merely an announcement of traffic rules but should be interpreted for the counterpart as "passing is prohibited now, or adverse legal consequences will follow." From this interpretive perspective, even if the declarant lacks awareness of making a declaration, they should reasonably recognize in a transaction that the recipient, based on the principle of good faith and commercial practices, could understand their expression as a declaration of intention—and could have avoided such a misunderstanding. In such cases, even without awareness, the expression is still deemed a valid declaration of intention. Professor Larenz termed this interpretation "effectivism." Unlike "will theory" and "declaration theory," which treat declarations of intention as mere announcements of intent, Professor Larenz emphasized that such declarations express a legal effect that ought to take place, thereby successfully overcoming the binary opposition between the two traditional theories.

In other words, "will theory" and "declaration theory" regard declarations of intention solely as announcements, disregarding whether they can produce legal effects. In contrast, "effectivism" treats declarations as expressions of intended legal consequences, which carry precise normative meanings in law. The intended legal consequence refers to the declarant's purpose of making the content of their expression legally effective or capable of altering legal relations. This intended legal consequence is a necessary condition for a valid declaration of intention; without it, the declaration holds no legal force. For example, raising a hand at an auction carries the specific meaning of "bidding," distinguishing it from a mere polite greeting. The former involves an intended legal consequence and constitutes a valid declaration, while the latter does not. Thus, the interpretation of a declaration of intention is unrelated to the declarant's subjective intent or the relationship between intent and expression—it depends solely on the possible meaning conveyed by the expression, termed the "effect-meaning." This is the fundamental divergence between "effectivism" and the other two theories.

Given that the goal of interpreting a declaration of intention is to determine its "effect-meaning," the question arises: from whose standpoint should this interpretation proceed? First, it depends on whether the recipient has made an objective and good-faith understanding of the declaration. Second, the declarant's own capacity for understanding must also be considered, which can be divided into two scenarios: the declarant, based on individualized circumstances, commercial customs, or the principle of good faith, should and does make a certain interpretation; the declarant should make such an interpretation but fails to do so. In the first case, if the recipient's understanding aligns with the declarant's capacity for understanding, it is naturally correct. In the second case, the declarant bears a duty of care regarding their

capacity for understanding; if they neglect this duty, they are accountable. However, if the declarant could not reasonably foresee that their action would be interpreted as a declaration of intention—because they were unaware of such a possibility—then the risk of misinterpretation does not fall on them.

In short, the true task of interpreting a declaration of intention is to ascertain the attributable meaning of the expression. Thus, the issue of interpretation shifts to determining the accountability for the conveyed meaning. The theory of accountability introduces a risk-allocation mechanism into the interpretation process, transforming it into a matter of distributing risks between parties. This view has gained support among some scholars in China, who argue that in contract interpretation, unfavorable arrangements should be made against the party deemed accountable, interpreting ambiguities to their disadvantage.

In summary, the task and objective of interpreting a declaration of intention lie in determining its "effect-meaning," while incorporating the principle of accountability to construe ambiguities against the responsible party. From an interpretive standpoint, this approach largely overcomes the binary model of interpretation, providing a new analytical framework for the theory of declaration of intention and making significant academic and theoretical contributions.

5. Conclusion

The debate between "will theory" and "declaration theory" in the interpretation of intention expression has a long history. Based on their different interpretative standpoints, the "will theory" focuses on the expresser, aiming to explore their true inner intention, while the "declaration theory" centers on the recipient, seeking to ascertain the exact meaning of the external expression. Subsequently, the "dualistic theory" emerged as an attempt to reconcile the "will theory" and "declaration theory." China's Civil Code adopts the "dualistic theory" in its principles for interpreting intention expression, with Article 142 separately regulating the "declaration theory" and "will theory" in two clauses.

However, the "dualistic theory" has become increasingly inadequate in addressing contemporary realities. First, the parties involved in civil legal acts often serve interchangeably as expressers and recipients of intention expression, making the deliberate distinction between these roles in practice largely meaningless and potentially exacerbating the perceived opposition between expressers and recipients. Second, when disputes arise between parties over the interpretation of intention expression and are brought to court, the judge, as the sole interpreter, ultimately bases their conclusion on balancing the claims of both plaintiff and defendant, regardless of whether the interpretation starts from the "will theory" or "declaration theory."

Consequently, academia continues to explore new approaches to the principles of intention expression interpretation. Scholars such as Professor Ye Jinqiang have

proposed the "new monistic theory," advocating for the construction of a "reasonable person" as the benchmark for interpretation. This approach seeks to bridge the gap between subjective and objective perspectives, as well as between intention and expression, thereby dissolving the binary opposition between the expresser's and recipient's standpoints. However, doubts remain as to whether the "reasonable person" constructed by this theory can effectively fulfill these functions. Alternatively, Professor Larenz proposed reconstructing the concept of intention expression to eliminate the opposition between intention and expression, then using the theory of imputability to allocate risks in interpretation. This provides a novel analytical framework for intention expression interpretation, offering significant academic value and theoretical contributions worthy of further exploration in both theory and practice.

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