



Vagueness in Law



Philosophical and Legal Approaches

New York, March 21-23, 2013

One of the fundamental pillars of the rule of law is legal certainty. It puts people in a position to use law as a guide by requiring judges to decide like cases alike. Vagueness, irrespective of what its sources are, poses a threat to this ideal. Since vague expressions are almost omnipresent in our language, their use in legal texts is virtually inevitable. As a result, the problem of deciding whether a general law applies to a particular case often lacks a clear answer. On the one hand, this may give judges space for discretion, which they can use to pay respect to the peculiarities of the case; but on the other hand, it seems to decrease the rule of law and to increase the rule of men. How much discretion is too much? What is the value of vagueness for law, and when does vagueness turn into a deficit?

Vagueness also gives rise to the assumption that not every proposition is either true or false. Given this, we have to question juridical bivalence, according to which, for example, actions are either legal or illegal and defendants either guilty or innocent. Given the omnipresence of vagueness, is there any rational justification for juridical bivalence apart from taking it as a mere technical device? How much does the significance of juridical bivalence depend on which theoretical approach to vagueness is correct?

Bivalence is but one example of how different philosophical and linguistic theories of vagueness may influence the ways we deal with cases involving vague expressions and problematic demarcations. As almost every socially relevant question of drawing a border eventually becomes the object of legal adjudication, it is of particular importance to discuss the practical implications of theories of vagueness for legal contexts and to develop and implement procedures of dealing reasonably with vague legal language. At the same time, and for the same reason, there is no better field to test the solutions and strategies those theories provide than the domain of law.