



Pragmatist and Contextualist Approaches to Vagueness

A conference aimed at exploring contextualist and pragmatist approaches to vagueness both in legal theory and in philosophy.



Freiburg, July 2011

1. Sorites: the threat from vagueness

By inducing the Sorites paradox, vague predicates like “bald”, “heap” or “red” seem to indicate nothing less than an incoherence at the heart of everyday discourse.

Classical treatments of vagueness have attempted to show, in various ways, that in spite of appearances, everyday discourse is not incoherent. Most of them have done so by rejecting the tolerance principle which states (in the case of “bald”) that if a man with n hairs is bald, then a man with $n+1$ hairs is also bald. However, rejecting this principle comes at a cost. Either, one takes the epistemicist position and admits that there are, after all, sharp boundaries between the predicate's positive and negative extensions, or one allows a revision of classical logic - usually a rejection of the principle of bivalence - in order to block this unwanted result and rescue the phenomenology of vagueness.

2. The contextualist take on vagueness

Recently, philosophers have begun to explore the potential of contextualism to dissolve or alleviate the worries associated with vagueness.

The central idea of contextualists is that we are led to accept the (false) tolerance principle because we mistake it for a slightly different (true) principle which says that when we consider a pair of men whose hair-situations are very (extremely, saliently, indistinguishably) similar, we must not judge one of them bald and the other one not bald. This principle allows that how one man is to be judged depends on the other men who are considered at the same time. It also allows that at different points in a Sorites series, one and the same predicate may express quite different concepts and hence denote quite different properties.

However, there are at least two open questions regarding the contextualist programme.

3. Contextualism and sharp boundaries

Firstly, it is not fully clear whether contextualism can count as a distinctive solution to the paradox at all. For even if contextualists argue that at different points in a Sorites series, the predicate “bald” expresses different concepts (denotes different properties), each particular such concept (property) forces the hard question on us again: are there, or are there not, sharp boundaries associated with it? If there are, then we seem to slide back into epistemicism. If there are not, we seem to be forced to revise classical logic or to disallow reasoning with such concepts. Interestingly, the debate about this question has only begun.

4. Contextualism and legal theory

Secondly, a theory of vagueness may fairly be expected to tell us something illuminating about the one area where vagueness is not just an academic curiosity, but an actual problem: the law. And it is not clear what contextualism has to contribute to our understanding of legal indeterminacy. While there are promising leads - for instance, the legal relevance of judicial precedents - the contextualist take on vagueness has not yet been developed into a treatment of legal indeterminacy.

5. Pragmatism as a source of inspiration for contextualists

Arguably, the development of contextualism can benefit from a turn to the tradition of pragmatism. After all, the contextualist variant of the tolerance principle - being concerned with what speakers should *do* when faced with problems of application of vague predicates, rather than what things are like - seems to be in the spirit of pragmatism.

Pragmatists see natural language as a set of tools which have their origins in different kinds of (partly non-linguistic) practices. Not only was natural language never planned or designed - let alone planned or designed to serve one singular goal - it is also in constant development. For that reason, pragmatists are hardly surprised by the emergence of paradoxes. According to them, it is an ongoing challenge for language users to remove such friction by re-calibrating their diverse linguistic tools. Arguably, pragmatists distinguish themselves in this regard as being untroubled by “ad-hoc” solutions.

6. Contextualism and pragmatism in law and philosophy

This idea may motivate a set of answers to the questions posed above. For one thing, it may prompt contextualists to accept a form of epistemicism. As is well known, pragmatists are disposed to reinterpret ontological questions as interpretive questions: for them, the central issue is not whether or not a particular object has a particular property, but rather, just what property is denoted by a predicate as uttered by some particular speaker in some particular situation. On this view, a property's sharp boundaries can be an unmysterious affair: they are determined simply by when the relevant interlocutor happens to stop applying the relevant predicate in the case at hand.

The pragmatist idea may also underwrite a treatment of legal indeterminacy. Such a treatment can be based on the idea that the language of law has its foundations in certain linguistic and/or non-linguistic practices which do not only have rules but also a specific point or purpose (what Wittgenstein called the “Witz” of a language game). Spelling out what is a good reason in law involves reference to this point or purpose. Unlike philosophers of language and linguists, participants in legal language games are not primarily concerned with endless semantic precisification, but with settling cases. Pragmatist theories of adjudication draw on this insight, but the relation between pragmatist legal theories and pragmatist philosophical approaches to vagueness has not yet been fully explored. From a philosophical perspective, the legal discussions on legal methods and argumentation can provide a rich reservoir of reflexions on a specific practice of precisification, which could contribute to a pragmatist understanding of vagueness in general.

7. Some questions for the conference

Questions to be pursued in the conference may include the following:

- Is contextualism, or can it be made into, a distinct approach to the Sorites paradox?
- How should adherents of pragmatism and contextualism think about the classical treatments of vagueness? Are there interesting compatibilities and incompatibilities?
- What is the relationship between contextualism and pragmatism?
- Can contextualist or pragmatist ideas be fruitfully applied in jurisprudence, more specifically: in the debate on *legal* indeterminacy? Does a pragmatist or contextualist have anything interesting to say about how to deal with borderline cases where a valid decision must be a *justified* yes/no decision?
- How can contextualist and pragmatist approaches to the law account for legal disagreement and institutions like judicial review, if there is no fact of the matter but just an ever changing set of contexts and practices?
- Can contextualists or pragmatists tell us under what conditions everyday reasoning is logically valid? And how we can tell when it is and when it isn't?
- Are there any implications in contextualist or pragmatist views of vagueness for the notion (or phenomenon) of *de re* vagueness?
- Do contextualists or pragmatists have anything interesting to say about the relationship between the problem of subsumption and the problem of individuation?
- Do contextualism and pragmatism have theoretical cousins in linguistics?