

The Vagueness of Law: A Necessary Evil or a Fatal Flaw?

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Abstract: The law, in its ideal form, is envisioned as a beacon of clarity and predictability, a rigid framework that guides human conduct and adjudicates disputes with impartial precision. However, this ideal is perpetually challenged by the inherent and pervasive vagueness of legal language. This paper argues that vagueness in the law is not merely a technical flaw to be eradicated, but an intrinsic and multifaceted feature of legal systems. It explores the philosophical roots of vagueness, stemming from the limitations of language and the open-textured nature of concepts. The analysis then delineates the dual nature of legal vagueness, examining its detrimental consequences for legal certainty and fairness, while also highlighting its functional necessity in allowing the law to adapt, cover unforeseen circumstances, and delegate interpretive authority. Finally, the paper investigates the mechanisms—primarily judicial interpretation and legislative refinement—through which legal systems manage this vagueness. Ultimately, it concludes that while vagueness poses a constant threat to the rule of law, its strategic presence is indispensable for the law’s resilience, flexibility, and capacity to achieve justice in a complex and ever-changing world.

Keywords: Legal vagueness; Philosophical roots; Legal systems; Rule of law

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1. Introduction

The principle of the rule of law is predicated on the notion that law must be capable of guiding the behavior of those subject to it. For citizens to obey the law, they must be able to know what it requires; for judges to apply it justly, they must do so consistently and without arbitrary discretion. This necessitates a degree of certainty and predictability, qualities often associated with precise, unambiguous legal rules. Yet, a cursory examination of any modern legal system reveals a landscape riddled with indeterminate terms. What constitutes “cruel and unusual punishment”? When does a business practice become “unconscionable”? What is the threshold of “reasonable doubt”? At what point does a series of actions amount to “due diligence”?

This phenomenon is known as the vagueness of law. It refers to the existence of borderline cases where the application of a legal term is uncertain or controversial. Vagueness is distinct from ambiguity (which involves

multiple distinct meanings) and generality (which is broad but potentially precise in scope). A vague term has blurred boundaries; there is a “penumbra” of cases where it is unclear whether the term applies, as famously articulated by legal philosopher H.L.A. Hart. This paper will contend that vagueness is an inescapable and functional component of legal ordering. It is a source of both weakness and strength, creating a dynamic tension between the demand for certainty and the need for flexibility that lies at the very heart of the legal enterprise.

2. The philosophical and linguistic foundations of vagueness

The problem of legal vagueness is, at its core, a manifestation of a deeper philosophical and linguistic problem.

2.1. The Sorites Paradox and the limits of language

The ancient Sorites Paradox, or the paradox of the heap, perfectly illustrates the logical problem of vagueness. If one has a heap of sand and removes one grain, it remains a heap. Removing a second grain still leaves a heap. If this process continues, at what precise grain does the heap cease to be a heap? There is no non-arbitrary point. This paradox applies directly to countless legal concepts. How many hairs must a man lose before he is “bald” for the purpose of a non-discrimination claim? How much delay is “reasonable” before a contract is considered breached? Language itself is inherently vague because it relies on categories that lack sharp boundaries. Legal language, being a subset of natural language, inherits this fundamental characteristic.

2.2. H.L.A. Hart’s open texture

Building on this linguistic reality, H.L.A. Hart introduced the crucial concept of “open texture” into legal theory. Hart argued that while all rules have a settled “core” of meaning where their application is clear, they are inevitably surrounded by a “penumbra” of doubt^[1]. For instance, the core meaning of a “vehicle” in a park regulation clearly includes cars and motorcycles. But what about bicycles, skateboards, or electric scooters? These are the penumbral cases.

Hart posited that this open texture is not a defect but a necessary feature of rule-making. Legislators cannot foresee all future circumstances. A world in which rules were formulated with absolute precision to cover every conceivable contingency would require omniscience. Therefore, open texture is a “means of delegating power to make law” to the courts, allowing them to handle the unforeseen and the novel. Vagueness, in this view, is a legislative choice, conscious or not, to leave room for future interpretation and adaptation.

2.3. The indeterminacy of purpose and context

Further compounding the problem is the indeterminacy of legislative purpose. When a statute uses a vague term like “public interest” or “welfare of the child”, judges are often tasked with determining what that purpose entails. Different judges may have different, equally plausible interpretations of the legislature’s intent. Moreover, the context in which a law is applied constantly evolves. A standard of “decency” in the 18th century is vastly different from one in the 21st century^[2]. The vagueness of the term allows the law to evolve with societal norms without requiring constant legislative amendment. This dynamic interpretation is a key feature of living constitutionalism, where vague phrases like “due process” and “equal protection” are adapted to modern understandings of liberty and equality.

3. The functional dangers of vagueness: Eroding the rule of law

Despite its potential utility, vagueness poses significant dangers that strike at the foundational principles of the rule of law.

3.1. The threat to legal certainty and predictability

The primary function of law is to provide a stable framework for human interaction. Citizens and corporations need to be able to plan their lives and affairs with a reasonable understanding of the legal consequences of their actions. Excessive vagueness undermines this certainty. If a business cannot know what constitutes an “anti-competitive practice”^[3]. It may be chilled from engaging in aggressive but legitimate market behavior. If a citizen cannot discern the line between protected speech and “incitement to violence”, they may self-censor, stifling public discourse. This “chilling effect” is a direct consequence of legal indeterminacy.

3.2. The expansion of arbitrary power

Vagueness is a fertile ground for the exercise of arbitrary power, both by the judiciary and the executive. When a law is vague, it effectively delegates immense discretion to the officials who enforce and interpret it. A prosecutor may use a vague public order statute to target political dissenters. A regulatory agency may use broad mandates to punish disfavored industries without clear justification. Most dangerously, vague laws can become tools of tyranny, as seen in historical and contemporary regimes where laws against “anti-state activities” or “undermining public morale” are used to suppress opposition. From a constitutional perspective, the “void-for-vagueness” doctrine in many jurisdictions, notably the United States, holds that laws that fail to provide adequate notice of what is prohibited or that encourage arbitrary enforcement violate due process.

3.3. The compromise of fairness and equality

The rule of law demands that like cases be treated alike. Vagueness threatens this principle of formal justice. In the penumbra of a vague rule, two highly similar cases may be decided differently by different judges or officials, leading to inconsistency and unfairness. This is particularly problematic in criminal law, where the stakes—individual liberty—are so high. A vague definition of “manslaughter” can lead to wildly different sentences for morally comparable acts. This erodes public confidence in the legal system’s impartiality and its capacity to deliver uniform justice.

4. The functional necessity of vagueness: The engine of legal evolution

Paradoxically, the very feature that threatens the rule of law also serves as one of its most vital mechanisms for survival and relevance.

4.1. Flexibility and adaptability

The most compelling argument for vagueness is that it provides the law with the necessary flexibility to adapt to changing social, economic, and technological conditions. The world is in constant flux, and a legal system composed entirely of rigid, precise rules would quickly become obsolete. Vague standards act as “equity-producing” devices, allowing judges to tailor the law to the unique circumstances of each case and to align it with contemporary values^[4]. The U.S. Constitution’s Eighth Amendment prohibition of “cruel and unusual punishments” is a prime example. Its vagueness has allowed the Supreme Court to gradually redefine its meaning,

leading to the abolition of public whippings, and later, the death penalty for certain crimes and classes of offenders, reflecting an “evolving standard of decency.” A precise 18th-century list of prohibited punishments would be both barbaric and irrelevant today.

4.2. Covering unforeseen circumstances

As Hart emphasized, legislatures are not prophets. They cannot anticipate every novel situation that may arise. Vague, purposive language allows the law to cover scenarios its drafters never imagined. The concept of “negligence” in tort law, for instance, is built on the vague standard of the “reasonable person.” This standard has been successfully applied to cases involving horse-drawn carriages, automobiles, and now, the complexities of cyber-security and algorithmic bias. A precise code defining every possible negligent act would be endlessly long and instantly outdated. Vagueness provides a framework for reasoning by analogy, enabling the law to grow organically.

4.3. Facilitating political compromise

In the legislative arena, vagueness is often a crucial tool for achieving political consensus. On contentious issues, legislators may disagree on specifics but can agree on a broad, vague principle. Drafting a statute with precise, divisive language might prevent its passage altogether. By employing ambiguous or open-textured terms, lawmakers can secure a majority vote, effectively “kicking the can down the road” to the courts or administrative agencies to fill in the details ^[5]. While this can be criticized as an abdication of legislative responsibility, it is a pragmatic reality of democratic lawmaking that allows for progress on otherwise intractable problems.

5. Managing vagueness: The role of judicial interpretation and legal reasoning

Legal systems are not passive victims of vagueness; they have developed sophisticated mechanisms to manage and contain it. The primary institution for this task is the judiciary ^[6].

5.1. Doctrines and canons of construction

Courts employ a range of interpretive tools to resolve vagueness. These include:

The Rule of Lenity: In criminal law, ambiguous statutes are construed strictly against the state and in favor of the defendant.

The Ejusdem Generis Rule: When a general word follows a list of specific words, the general word is interpreted to include only items of the same kind as those listed (e.g., “cars, trucks, tractors, and other vehicles” likely excludes airplanes).

Purposive Interpretation: Judges look beyond the bare text to the underlying purpose or “spirit” of the law to guide their decision in borderline cases.

Reference to Precedent (Stare Decisis): Past judicial decisions in penumbral cases create a body of precedent that gradually clarifies the boundaries of vague terms, providing greater predictability over time ^[7].

5.2. The distinction between rules and standards

Legal systems consciously balance precise “rules” (e.g., “a will must be signed by two witnesses”) with vague “standards” (e.g., “a contract must be performed in good faith”) ^[8]. Rules promote certainty and limit judicial discretion but can lead to injustice in atypical cases. Standards promote fairness and flexibility, but at the cost of

predictability. A well-designed legal system uses both, deploying clear rules for situations requiring high certainty and reserving standards for areas where context-specific judgment is paramount.

5.3. The democratic check: Legislative clarification

The judicial management of vagueness is subject to a democratic check. If the public or the legislature disagrees with how courts have interpreted a vague statute, they can respond by passing a new, more precise law. This dialogue between the courts and the legislature is a fundamental dynamic of a healthy legal system, ensuring that the ultimate resolution of significant vagueness remains accountable to the political process^[9].

6. Conclusion

The vagueness of law is a profound and inescapable jurisprudential dilemma. It is rooted in the very nature of language and the impossibility of foreseeing the future. On one hand, it undermines the rule of law's core virtues: certainty, predictability, and the constraint of arbitrary power. It can lead to unfairness, inconsistency, and the chilling of legitimate activities. On the other hand, it is the very source of the law's vitality, its capacity for growth, and its ability to achieve substantive justice in a complex and evolving world. Vagueness allows the law to breathe, to adapt to new technologies and social mores, and to serve as a framework for principled argument rather than a mechanical checklist.

The choice, therefore, is not between a perfectly precise law and a hopelessly vague one. Such a dichotomy is a fantasy. The real challenge for any legal system is to strategically manage this inherent vagueness. It must strive for clarity where possible, using precise rules to cabin discretion and guide conduct in core areas. Yet, it must also embrace the productive potential of strategic vagueness, employing standards that delegate interpretive authority to courts, trusting in the processes of legal reasoning, precedent, and democratic oversight to give them coherent and legitimate meaning over time. The vagueness of law is thus not a flaw to be lamented, but a central and enduring feature of its character—a necessary tension that makes law not a static code, but a living, reasoning, and profoundly human institution.

Disclosure statement

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