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PRECISION AND VAGUENESS IN LEGAL LINGUISTICS

*Review of **Vagueness in Normative Texts** edited by Vijay K. Bhatia, Jan Engberg, Maurizio Gotti, Dorothee Heller.*

reviewed by **Karolina KACZMAREK**, PhD
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Vagueness in Normative Texts. Linguistic Insights. Studies in Language and Communication.

Vijay K. Bhatia, Jan Engberg, Maurizio Gotti, Dorothee Heller (eds), Peter Lang AG: Bern 2005.

As the editors of the book notice, the problem of vagueness in law has always been crucial from the point of view of law making specialists. But nowadays, when societies are more and more multilingual and multicultural, there is a pressing need for research into the vagueness of the language of law, both in its theoretical and practical aspects, because interpretation of vague text may be problematic not only for law interpreters but also for LSP translators. The authors of “Vagueness...” discuss some issues from legal acts and juridical decisions, which can be beneficial for writing and interpreting other legal texts. The authors also discuss some language features connected with communicative indeterminacy on the lexical, syntactical or textual level.

In the opinion of many law makers and researchers, the law should simultaneously meet two requirements. On the one hand, it should be maximally determinate and precise, because people should be aware exactly what they can and can't do. For example, the interpretation of this problem by the Supreme Court of the United States is that “laws which prohibit the doing of things, and provide a punishment for their violation, should have no double meaning [...]. Every man should be able to know with certainty when he is committing a crime” (compare: Solan 2005, 82). On the other hand, the law should be formulated in a general way because it must be applicable in many relevant situations. These two concepts of drawing legal texts are discussed by the authors of the articles published in “Vagueness...”

The articles of the book are divided into four thematic sections. In the first part, the authors discuss some legal aspects of vagueness in normative texts and the consequences of this linguistic phenomena for the interpretation and application of the law. In the second part, researchers analyse specific linguistic features of legal texts which lead to their determinacy or indeterminacy. The third part contains articles about specific legal contexts which are applicable in many countries and cultures.

The fourth part discusses the problem of vagueness from a multilingual and comparative perspective.

The authors of the articles explain and interpret some important terms connected with the problem of vagueness in normative texts. For example, they discuss the terms not only of vagueness but also ambiguity. Lawrence M. Solan claims that vagueness is the phenomena which occurs in borderline situations when it is difficult to tell whether a concept is a member of a particular category. By contrast, the term 'ambiguity' is applicable when an expression has two or more clear meanings. Also Davide Simone states that ambiguity:

“usually involving homonymy, polysemy, metaphor, ellipsis, syntax or unclear referents – consists of a word or phrase endowed with alternative meanings: its semantic value can only be inferred from the utterance’s textual and communicative context [...] Vagueness, on the other hand, arises with words or phrases possessing an indeterminate, semantically blurred meaning.” (Giannoni 2005, 438).

The authors discuss many crucial problems both for the legal and linguistic interpretation of texts. In particular, they examine whether there are some kind of laws “which should be applicable to any sort of legal relationship (whether contractual or not), referring to all types of disputes (both all and certain), and covering the whole temporal gamut (which have arisen or which may arise)”(Gotti 2005, 229), for example Human Rights, Rights of the Child, Model Law, etc. Analyzing legal acts, the researchers discuss some particular, vague and precise expressions, and particular grammatical issues, which may help to specify the meaning of words. They also show how cultural, political and sociological discourse can influence an internationally applied legal terminology. As Vijay K. Bhatia (2005, 337) states “the use of text-internal resources is largely determined by text-external factors and constraints, which play a decisive role in the construction and interpretation of legislative provisions”.

A further important issue discussed is the meaning of the term '*reasonableness*'. The interpretation of vague texts in a reasonable way seems to be the most important rule of law interpretation. Giannoni points out one solution to the question of vagueness in law chosen by the Supreme Court of Canada:

“Vagueness must not be considered in abstracto, but instead must be assessed within a larger interpretive context developed through an analysis of considerations such as the purpose, subject matter and nature of the impugned provision, societal values, related legislative provisions, and prior judicial interpretations of the provision” (compare Giannoni 439).

As noticed before, the main theme of discussion in the book is the phenomena of vagueness. Most of the authors admit that vagueness in legal texts is actually sometimes necessary. As Celina Frade (2005, 136) states “vagueness is a kind of convention used in situations where flexibility and generalization are needed or else where precision and determinacy are neither needed nor wanted”. Timothy Endicott considers vagueness as essential for the functioning of every legal system as it prevents

arbitrary government and anarchy in regulating human conduct. He discusses the problem of the interpretation of some terms. For example, the statute defines the term 'child or young person' precisely, as referring to a person under the age of sixteen years, but the term 'neglected child' is defined as "in a manner likely to cause him unnecessary suffering or injury", and interpretations of such definitions can be extremely different. So, one of the conclusions is that vagueness may allow incompatible views, depending on the standards acceptable in the society in which the law is to be applicable. On the other hand, there is no doubt that some minimal rules of precision in legal texts should be maintained.

As previously noted the authors also discuss some language features connected with communicative indeterminacy. An interesting approach is made for example by Peter Tiersma and Celina Frade. These authors show some possible ways of interpretation of some categorical lists, sequences of grammatically and semantically related words used for listing particulars or exemplars. For instance, they discuss the problem of using hyperonymy and hyponymy, as a choice between generality, and flexibility or precision. The authors quote some legal rules, which have been given to make the interpretation of the legal texts easier. For example, 'the canon of contra proferentem' states that "in private legal documents like contracts, ambiguities in the first place must be resolved against the drafting party" (compare Tiersma 2005, 120). The authors also discuss some textual maxims like for example *noscitur a sociis*, *ejusdem generis*, or *expressio unius est exclusio alterius* which all may be applied by law interpreters and are strongly connected with the language features of texts. Choosing one of these maxims may decide about excluding or including some meanings. So, it is possible to narrow the meaning or the potential application of a list, which can be helpful especially in criminal law.

Another important issue discussed by the authors in the aspect of vagueness in legal language is the role of adjectives. As Ruth Vatvedt Field (2005, 157) states "most nouns are indefinite and need specification, either according to the situation, or according to linguistic specification. The main function of adjectives is normally to specify or identify vague or indefinite nouns". That's why researching of this question can be very useful, both for legal drafters and for interpreters. The authors analyse some kind of adjectives, which helps to precise nouns, like for example evaluative adjectives, dimensional adjectives, general quality adjectives, modal adjectives, relational adjective, ethic adjectives, consequence adjectives, evidence adjectives, frequency adjectives, etc.

The last, but not least issue, discussed in the book is the question connected with the translation of legal texts. Specialized texts which, as it was explained before, are vague in their nature, to be understood properly in other languages must be firstly properly interpreted by the translator. For example, Martha Chroma states that the main problems of translation arise not from legal, but from semantic indeterminacy. This issue seems to be complicated and there is no doubt that further research is needed in this field.

To sum up, the book offers a wide exposition of questions connected with the problem of vagueness and indeterminacy in legal texts. The authors discuss both general and particular issues, from the philosophical and practical points of view.

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