Study on the Vagueness of Law
Yan WANG¹,a and Hai-jing CAO¹,b,*
¹Huazhong University of Science and Technology Law School, Wuhan, Hubei, China
a rocklawer@sohu.com, b haijingcao@126.com
*Corresponding author

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Abstract. The trend of integrating modern science with development becomes a driving factor of producing fuzzy theory. Because of reflecting the real attributes of objective things, fuzzy theory is widely used in the fields of natural sciences, humanities and social sciences. Legal rules are also fuzzy in the legal field. Main sources for the vagueness of law mainly contain the existence of legal loopholes and conflict rules, impact of uncertain factors including legislative ability, political factors, benefit factors and so on in the process of legislation and the vagueness of legal language itself. The vagueness of law has advantages and disadvantages. Chinese legislation went through a process of fuzzy legislation for historical reasons. However, the development of modern society requires legislation to enter a new era of weakening legislation and even limiting the vagueness of legislation.

Vagueness of Thing Attribute

The vagueness of things has come into the sight of human cognition for a long time. Thousands of years ago, ancient sages realized the change of development of things. This kind of change was mainly reflected in the opposition and transformation between things. The Book of Changes · The Great Appendix put it, “They ascend and descend, ever inconstant. The strong and the weak lines change places, so that an invariable and compendious rule cannot be derived from them; it must vary as their changes indicate.” Words such as ascend, descend, the strong and the weak are fuzzy to a certain degree. Thus, it can be seen that simple dialectic thought contained the preliminary understanding of vagueness of things in the early days. In terms of the overall characteristics of modern scientific development, the trend of mutual penetration between different natural sciences, different social sciences as well as natural and social sciences becomes increasingly obvious. Original distinct disciplinary boundaries are constantly blurred and a large number of edge disciplines spring up. These objects (namely fuzzy objects) without clear boundaries are widespread at the forefront of science in a variety of forms, which calls for systematic description and processing. Therefore, the development of system science and computing science turns into the driving force of producing fuzzy theory in a sense.

Finally, Professor L. A. Zadeh from Electrical Engineering Department and Electronics Laboratory Experiment of University of California transformed fuzzy system into a theory. In 1965, Professor L. A. Zadeh published a paper entitled as “fuzzy set” on the magazine Information and Control. From the perspective of Professor L. A. Zadeh, objects in the physical world usually have no precise boundaries, making it difficult to divide the category of scopes. The phenomenon of so-called unknown boundaries of objects in the objective world is also ubiquitous in humanistic social system. Regulation on the quantities of objects in humanistic social system is usually non-numerical. For instance, the regulation of quantities including scientific and technological level, poverty degree, organizational degree and democratization degree is usually obtained by means of estimation and statistics, which shows great vagueness. Some scholars demonstrate the important significance of fuzzy set theory to social science research and think “Fuzzy set theory is included in the tool kit of social science for 5 reasons”, including “The theory can systematically deal with vagueness, analyze multivariate relationship, and combine set-oriented ideas and continuous variables in a precise way and so on”. The introduction of fuzzy set theory focuses on establishing
“the relevance between fuzzy set orientation and traditional data analysis techniques”, [1] which fully displays the development prospect of fuzzy set theory in social science research. At present, fuzzy theory has been universally applied in the fields of natural sciences including mathematics, ecology, logic, control theory, system theory, information theory, medicine, biology, artificial intelligence and so on. In addition, the application of fuzzy theory in the fields of humanities and social sciences such as philosophy, management science, psychology, sociology, literature, art, law, economics, history, sports and education has also attracted the attention of researchers. The widespread use of fuzzy theory just reflects the vagueness of objective things in a scientific way and helps us to break through the limitation of recognizing the “either-or” precise form of things and accepting “both this and that” transitional form of things.

Vagueness of Legal Attribute

As an important concept in the theory of legal interpretation, vagueness refers to a variety of possibilities triggered by the application of legal texts. An applicable legal norm will be fuzzy if it produces different results in a particular situation. Therefore, we need to explain or defend for it and verify its significance to understand the law. Without doubt, we are enlightened by fuzzy theory to pay attention to and study the vagueness of law.

In essence, the vagueness of law objectively reflects the vagueness of social relations. The vagueness of law is absolute while the accuracy of law is relative. Just as Soran put it, “Accuracy does not necessarily mean extreme clearness—It may also include the use of moderate vagueness or flexibility.” [2] In fact, the vagueness of legal rules is indispensable to the application of law. In the opinion of Bernd Ruthers, “The uncertainty of concepts is predictable. By this means, large scope of application and discretion space can be established for corresponding legal rules. In this case, law has flexibility. With the aid of the openness and uncertainty of legal concept, law can be applied to both new facts and new social and political values.” [3] Indeed, the vagueness of law increases the flexibility of legal application, avails to realize the organic unity of legal stability and variability and thus expands the application scope of law. Certainly, the vagueness of law is also criticized by people because of producing different understandings in the application of law, which leads to the possibility of the same legal fact and different legal treatments and thus damages the authority and predictability of law. Therefore, research on the vagueness of law should manifest its positive functions and select appropriate legal methods to reduce its negative impact on the rule of law.

Sources of Vagueness of Law

Existence of Legal Loopholes and Norm Conflicts

According to an intuitive view, the vagueness of law originates from too scarce and insufficient legal sources. However, overabundant legal sources will also lead to the vagueness of law. The former can be called as legal loophole which mainly refers to the situation of absent legal norms. Surely, the absence of norms here does not mean the lack of applicable rules, but the absence of directly and clearly applicable rules. From the perspective of interpreters, almost all conceivable disputes have rules or principles to follow even though there is only a weak link between applicable rules and problems to be solved, which is extremely different from the absence of applicable rules. Generally, legal loophole refers to the vagueness caused by the failure of existing legal rules to fully demonstrate the conclusion of legal application. The loopholes of legal rules are inevitable, which will surely result in vagueness. Aimed at the vagueness of law resulting from the abundant legal sources of the latter, there are sufficient legal sources for legal argumentation. However, the applicable conclusions of different legal sources may be consistent or conflicting. In this case, there is a possibility that legal sources will support mutually contradictory conclusions or decisions in spite of no strict contradictory conflicts. Hence, some people advocate that these conflict norms can be sorted by their importance degree so as to determine the order and priority of their application. The question is that no common scale can be used to compare, measure, evaluate and sort
conflicting values. Norms and those values contained it cannot be compared in many important aspects. [4] This incommensurability shows it is a fact that different norms support conflicting conclusions, which thus determines the uncertainty of legal conclusions.

**Uncertain Factors in the Process of Legislation**

Needless to say, the vagueness of law cannot neglect some uncertain factors in the process of legislation. These factors brand legal products with vagueness more or less.

The first uncertain factor is the level of legal drafting. The basic requirements of legal drafting are clearness, conciseness and accuracy. As texts transmitting legal facts, law should present information straightforwardly. Guaranteeing the certainty of law, the clearness and accuracy of legal texts are requirements for legislators, law-executors, judicial personnel and law-abiding people to have a common understanding of texts. Otherwise, understanding the intention of legislators will encounter an obstacle. However, the above-mentioned three principles are conflicting. Texts usually fail to meet the standard of accuracy while satisfying the requirement of conciseness. To realize accuracy, texts will be detailed, complicated and difficult to clearly understand. Anyway, accuracy is still the most basic requirement for legal drafters, which thus requires legal drafters to possess profound professional legal knowledge and skilled legislative skills, have a clear, comprehensive and objective understanding of backgrounds of drafted laws, make the most of legislative techniques and avoid formulating non-specific, ambiguous and fuzzy rules as far as possible.

The second uncertainty involves political factors in legislation. Legislation is an important activity in national political life, whose content inevitably reflects the political views of the ruling party and the fundamental will of people. However, some political factors may also lead to the vagueness of law in particular cases. Once politicians put their political passions or ideas into legislative activities, the language style of legal rules will certainly yield to specific political goals and the expression scalability of language will easily lead to the vagueness of understanding. To meet specific political needs, legislators sometimes have to carry out legislation hastily and take legislation as a political task. Naturally, they do not have enough time to consider the clearness of statements, which will inevitably lead to vagueness. In addition, policymakers will require legislators to purposely apply fuzzy legal language with the intention of making favorable interpretations for themselves in the application of laws and regulations when they have realized the objective existence of uncertainties in legal texts.

The third uncertainty involves interest factors in legislation. Legislation embodies the appeal of different interest subjects. Philipp Heck, a representative of Interest School of Law interpreted legal norms as normalized and binding evaluation of interests made by legislation for life relationships and interest conflicts needing to be adjusted. [5] In a society with diversified interest subjects, multiple interest subjects participate in legislation by all means. The result of collision and compromise between their interests is reflected in the form of law. In this sense, the legislative process is the process of interest game. Legislators will weigh different interests and allocate legislative resources according to their stances and understandings, whose means of implementation includes the formulation of fuzzy legal rules. In the eyes of Chen Xinmin, an administrative law scholar from Taiwan, China, legislators should classify and specialize public interests and reflect the content, motivation and scope of public interests in legislation when stipulating public interests. [6] Unfortunately, the vagueness of public interests has not drawn the attention of China’s legislative branches, which means that related controversial behaviors will still be on the edge of legality and illegality.

**Vagueness of Legal Language**

The vagueness of law is not purely a linguistic problem. The vagueness of legal language is an important aspect in the source of vagueness of law because it is difficult to eliminate the vagueness of legal language. Legal language is different from and takes root in daily language. As everyone knows, language understanding and communication will be possible only in the “community” of language, which also explains why the public who know how to read cannot understand the accurate meaning of legal provisions. In general, the public are unable to form the “community” of
language due to lacking the special training of professional legal ability. To lower the threshold of public perception and prevent the alienation of law from people, legislators introduce a lot of daily language into legislation and attempt to realize the readability of legal rules in practice, which inevitably gives rise to the encounter between daily language and legal contexts. Many problems pose certain challenges to daily language, including how to understand the thoughts legislators intend to convey in specific legal contexts and how different legal contexts affect the intention, meaning or understanding of legislation. The reason is that the most obvious characteristic of daily language is vagueness rather than certainty. It is the necessary cost that daily language pays to focus on extensive application.

Take “Prohibiting Vehicles from Driving into the Park” frequently used by Hart as an example. In consideration of maintaining peace and security in the park, daily language interprets vehicles as transportation means including cars, buses, motorcycles and so on (Certainly, trains will be excluded). However, it is uncertain whether noiseless self-balancing electric vehicles are included or people have different understandings of whether large electronic toy cars are included. The former does not violate the legislative intent of rule makers while the latter faces the dilemma of exchanging the happiness of children for the peace of the park, which involves the conflict of legislative value. The above situation just reflects the vagueness of language in different legal contexts. In terms of specific language structure, the vagueness of legal language may be caused by grammatical and lexical ambiguity, punctuation, application of “or” and “and”, pronominal reference, misrepresentation and other aspects. [7] All of these are specific problems that legal linguistics focuses on studying. It is important to make clear that many other factors also play an important role in the process of legislation though language is crucial to understand law. It is just an unrealistic ideal for people to solve the vagueness of law through resolving the vagueness of language.

Vagueness of Chinese Legislation

The vagueness of law is reflected obviously in China’s legislative system. Chinese law is general and non-specific on the whole. Legislative bodies must adhere to the guiding thought of combining principle with flexibility in the case of drafting laws, which can fully meet the requirements of national legal system for unity and stability on the one hand and gives consideration to the situation of China in geographical environment, demographic situation, ethnic relationship and unbalanced development of economy and culture of various regions on the other hand. This legislative experience with Chinese characteristics attracts the attention of western researchers. In the sight of Potter, Chinese laws are vague and fuzzy, which shows the lack of predictability and transparency in the process of law enforcement and provides policymakers and officials with great flexibility in legislative interpretation and law enforcement. In the opinion of Pi Wenrui, most of Chinese laws are made based on the laws of civil law countries. The laws of these countries are general and broad. China is at the turning point of reform and needs to make broad laws to adapt to different situations. Meanwhile, factors such as the influence of Confucian tradition, paying attention to the combination of theory and practice and pragmatism of leaders are inclined to formulating provisions with general principles so that law enforcers can interpret and apply legislation according to the actual situations. [8] The overall evaluation of the above-mentioned scholars on Chinese legislation accords with the actual situation of Chinese legislation at specific stages to some extent.

Chinese legislation has been following the legislative model of “crossing the river by feeling the stones” for a long time. On December 13, 1978, Deng Xiaoping made a speech at the closing meeting of Work Conference of the CPC Central Committee and pointed it out, “Now, legislation is faced with heavy workload and insufficient manpower. Therefore, legal provisions can be broad in the beginning and improved gradually. ” [9] It should be mentioned that this legislative model has an objective historical background. Chinese legislation suffered major setbacks in 20 years from the extension of anti-rightist struggle in 1957 to the end of the Cultural Revolution in 1976. Legislative work in all fields almost stagnated. Chinese legislation did not usher in a new turning point until the
implementation of the reform and opening-up policy. To meet the demand of socialist modernization economic, political and cultural construction as soon as possible, legislation of the new era steps into the era of pursuing legislative speed and expanding scale. Legislation is quite principled and general because of paying attention to the adaptability and flexibility of law, which results in the obvious vagueness of existing legislative texts. Therefore, the vagueness of Chinese legislation is mostly reflected in the vagueness of legal language which easily causes the disputes between parties involved over rights. In the meantime, the reserved space of judicial discretion leads to judicial injustice and goes against the coordination, unity correct implementation of national laws. [10] At present, our society is in the critical period of reform and opening up. Increasingly complex social relations and diversified social interest patterns and profound social changes put forward higher requirements on legislation. The concept of “general rather than detailed” has been out of time. It is urgent to change the current situation of vagueness of legislation. As a result, newly-revised legislation emphasizes that legal norms should be clear and specific with pertinence and executability, which requires legislators to further weaken and even limit the vagueness of legal norms. Apparently, it will be a big issue. Due to limited length, this paper will no longer dwell on it.

Conclusions

Vagueness is the basic attribute of law. The following conclusions can be reached from the sources of vagueness of law: The generation of vagueness of law is not purely a linguistic problem, but the result of joint action of many subjective and objective factors. Laws of any era correspond to the dominant characteristics, tendency, habit and need of that era. In this sense, the vagueness of Chinese legislation has relatively reasonable characteristics of era. However, resulting negative impacts still need to be taken seriously. Therefore, limiting the vagueness of legislation to the maximum extent is the striving direction determined by legislators.

References