# *MARRY ME A LITTLE. HOW MUCH PRECISION IS ENOUGH IN LAW?*

**J.J. Moreso**
**(Pompeu Fabra University, Barcelona)**

Marry me a little,
Love me just enough.
Warm and sweet and easy,
Just the simple stuff.
Keep a tender distance
So we'll both be free.
That's the way it ought to be.
Stephen Sondheim, *Marry me a little*
(Off-Off Broadway, 1980).

## 1. The ideal of precision

When I studied law in Spain, the Criminal Code (art. 10. 12) included as aggravating circumstance the fact that the crime was committed at night. Obviously, this was a favourite example of vagueness for our Criminal Law Professors. In Spain, at noon it is not at night, and at midnight is at night, but it is impossible to ascertain the instant in the twilight where the night starts. 'At night' expresses a vague concept, a concept which has borderline cases. By the contrary, it seems that other concepts, like 'being married', are not vague. All people is either married or not married, *tertium non* datur. There are no borderline cases of being married. However, I also remember, in the lectures of Roman law, the case -called *the Spanish abandoned wife*- narrated by Cicero (1967: I.40.183), which may cast some doubt on this presumed bivalence of marriage:[1]

> And what of a case that really happened, within our fathers' recollection, of the head of a family coming from Spain to Rome, and leaving in the province his wife with child: at Rome he married another wife, without having sent notice of divorce to the first, and afterwards died intestate, when each woman had borne a son; was it but an ordinary dispute that thereupon arose, involving as it did the civil rights of two citizens, the boy born of the second consort, and his mother? She, if it were held that the first wife could

[1] This is the Cicero's latin text: 'Quod usu memoria patrum venit, ut paterfamilias, qui ex Hispania Romam venisset, cum uxorem praegnantem in provincia reliquisset, Romae alteram duxisset neque nuntium priori remisisset, mortuusque esset intestato et ex utraque filius natus esset, mediocrisne res in contentionem adducta est, cum uaereretur de duobus civium capitibus et de puero, qui ex posteriore natus erat, et de eius matre, quae, si iudicaretur certis quibusdam verbis, non novis nuptiis fieri cum superiore divortium, in concubinae locum duceretur?

be divorced only by using some specific formula, and not by marrying again, would be regarded as being in the position of a concubine?

There are concepts whose reference comes by degrees. People are, for instance, rich or adult to the extent that they have certain quantity of money or they are certain years old. Amancio Ortega is, without doubt, rich and adult. These concepts have borderline cases and give, as it is well known, rise to the *sorites* arguments. Sorites arguments have the following structure:

(1) Amancio Ortega is rich
(2) If s, who has n $ is rich; s', who has n-1 $, is also rich.
Therefore, John Doe, who has only 1 $, is rich.

The reiterated application of premise (2) for a number of times equal Ortega's dollars leads us, step of modus ponens by step of modus ponens, to the conclusion. The intuitive idea behind the premise (2) is that the small changes in gradable adjectives as 'rich' do not change the truth-value of the propositions which contain them. Something called, in the literature on vagueness, the *tolerance* of this kind of predicates.[2] We can substitute in (2), 's' for 'Amancio Ortega' and we obtain:

(2') If Amancio Ortega, with 69.2 billion dollars, is rich; then Jane Roe, with 69.2 billion – 1 $, is rich.

Given that the antecedent of (2') is true, then it is true the consequent; and the consequent can be the antecedent of other conditionals like (2') until we achieve the line of John Doe. Nonetheless, all of us know that someone with only 1 dollar is not rich, in fact she is extremely poor.

There are other concepts with borderline cases, but our uncertainty on the application of the concept to certain objects is not, or not only, a consequence of this scalar or linear structure. The concept of cruelty and the concept of marriage display other kind of vagueness, different to vagueness by degrees. Combinatory or multidimensional vagueness as it has been called.[3] In this case of vagueness, we are not certain on which properties, and in which degree, are jointly necessary and sufficient to the application of the concept. These concepts are multidimensional. Torturing babies for fun is cruel, sure. However, it is not so clear whether death penalty is cruel or not.[4] Marriage does not seem a vague concept, but -Cicero's case apart- in the last years we are involved in several jurisdictions on whether same-sex couples can be considered marriage or not.[5]

[2] The idea of tolerance of this kind of predicates was introduced in the contemporary debate by Wright (1975, 1976).
[3] The distinction between degree vagueness and combinatory vagueness in Alston 1967: 219. See also Hyde 2008: 16-19 and the application to legal concepts in Poscher 2012: ch. 9.
[4] See the decisions of the US Supreme Court in the seventies: Furman v. Georgia 408 U.S. 238 (1972), Gregg v. Georgia, 428 U.S. 153 (1976).
[5] Recently same-sex marriage has been accepted as a constitutional right in *Obergefell v. Hodges*, 576 U.S. ___ (2015). In Spain a statute including this right has been approved in the Parliament (Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio), and the Spanish Constitutional Court ratified its constitutionality (STC 198/2012, de 6 de noviembre de 2012).

The law takes into account rich and adult people, cruel punishments, marriage and so on. But law does not deal with theses predicates in the same way and the relevance of the precision is very different depending on which predicates are pick up by law. The precision in law is often considered part of our ideal of *rule of law*, for instance John Rawls in *A Theory of Justice* (1971, 239 and 1999, 210) put the question in the following terms:

> Now the connection of the rule of law with liberty is clear enough […] But if the precept of no crime without a law is violated, say by statutes, being vague and imprecise, what we are at liberty to do is likewise vague and imprecise. The boundaries of our liberty are uncertain. And to the extent that this is so, liberty is restricted by a reasonable fear of its exercise. The same sort of consequences fellow if similar cases are not treated similarly, if the judicial process lacks its essential integrity, if the law does not recognize impossibility of performance as a defense, and so on.

At least three sub-ideals are included in this Rawlsian presentation of the ideal of rule of law:

(1) *Precision*: The language of law should be precise.
(2) *Formal justice*: The law should treat like cases alike.[6]
(3) *Defeasibility*: The law should make room to justified exceptions of general rules.

It is a main aim of my contribution to argue that these sub-ideals are in tension and that it is not possible to achieve the three without some sacrifices. In (2) I shall present the introduction of classificatory concepts with sharp boundaries in law as a way to procure precision and I shall argue that in this way we should accept certain sacrifice to formal justice. In (3) I shall refer to the introduction of metrical or quantitative concepts in law assigning numbers to certain properties, here the law achieves precision and formal justice; however this way is not applicable to every concept that we need to regulate human behaviour. In (4) I shall argue that in some cases of combinatory vagueness, mainly in which we use evaluative concepts, neither sharp boundaries nor metrical concepts are useful and here the vagueness has value, at least if we intend to take exceptions seriously. In (5) I present an objection to the recent argument of Asgeirsson (2015) that in these cases of the use of evaluative properties the value arises not from vagueness, but from *incommensurate multidimensionality*. And in (6) I conclude.

## 2. Sharp Boundaries

The predicate 'adult' expresses in natural languages a vague concept. A child two years old is not adult, a woman thirty years old is adult. But there are borderline cases, which lead to sorites argument. For instance:

(1) Julia, who is 2 years old, is not adult

[6] As Hart remembers us (Hart 1961: 155) 'thought we need to add to the latter 'and treat different cases differently''.

(2) If s who is n years old is not adult, then neither is adult s', who is n years +1 day old.

Nonetheless, the reiterated application of the premise (2) leads to the conclusion that Lidia, who is fifty-three years old is not adult: an obvious false conclusion.

In this kind of cases, law uses sharp boundaries. In Spain, for instance, the legal age comes at 18 years.[7] Given that it is important in law having certainty on people who can vote in political elections, who can be prosecuted in the criminal jurisdiction, who can make contracts and wills, who can drive cars, who can buy alcoholic beverages or cigarettes and so on, then law constructs the concept of legal age, a concept of sharp boundaries.[8] In this sense the concept of legal age is neither tolerant nor admits sorites argument. Being 18 years less one day is being minor in accordance to the law and being exactly 18 years is being legally adult. The legal age does not come gradually, it comes suddenly.[9]

We can say that in these cases, even if the boundary is arbitrary, it is very important to have a boundary.[10] This is the general situation with the legal conditions. In order to live in a proper working legal order it is necessary to ascertain who are legally of age, citizens, married, legal heirs, judges, property owners, criminal convicted and so on. Because law correlates to these conditions an array of legal rights and duties it is convenient to know with certainty who has a certain legal condition. Not in all the cases of application is such clear as in the concept of legal age. Legal concepts often have negative conditions of application which allow nullify a will or a marriage and it is possible that the application of these negative conditions has borderline cases: for instance, a marriage is voidable if a part has entered into it under duress, and it is not difficult to imagine borderline cases for duress. However, the vocation of the concepts of legal conditions is to avoid borderline cases, they are in the search of sharp boundaries.[11]

---

[7] Spanish Constitution, sect. 12: 'Spaniards come legally of age at eighteen years'.

[8] It is obvious, like happens in other legal systems, that we can distinguish several ages for different legal activities (16 for driving, 21 for buying alcoholic beverages, etc.); but in Spain there is this almost complete unification (but the legal capacity to contract marriage is at 16).

[9] Actually we can wonder about people born exactly at midnight and, on the other hand, the birth does not happen in a precise instant. Law solves this problem taking into account the registered hour in the official document.

[10] This idea leads Williams (1995) to distinguish between two types of slippery-slope argument (intertwined with sorites argument, see Moreso 2015): the second is precisely the *arbitrary result* argument in which drawing the line is acceptable, even if arbitrary.

[11] Perhaps we can say than these legal conditions display properties with the logical behaviour of the properties which Ross (1956-1957), in a very well-known paper, called *Tû-Tû words*. Words that connect certain conditioning facts with legal consequences, in the example of Ross referred to the tribe of Noît-cif (on the Noilsulli Islands in the South Pacific): if someone encounters his mother-in-law, or if a totem animal is killed, or if someone has eaten of the food prepared for the chief, then she is tû-tû, and then she should be subjected to a special ceremony of purification. Ross considered that these words are devoid of meaning, but it is not necessary to adopt this extreme semantic consequence in order to grasp the importance of these terms as nodes of connection in law. It is enough to acknowledge that in the legal system there are laws which are not norms, but they have *internal relations* to norms in the sense of they affect the existence or application of legal norms (see Raz 1970, 169) as it is the case with the definition of 'tû-tû' or 'legally of age'.

Nonetheless, this aim of precision goes against formal justice. Now, it happens that one person who today is her 18 birthday is legally of age and another person, only a day younger, is not legally of age. And law will treat different these alike cases. In the case that the second has committed a crime today, then she cannot be prosecuted in a criminal trial and she is subjected to the jurisdiction of juvenile justice, according to the Spanish law, but only the first of both can legally today buy a bottle of wine in the supermarket and so on.

## 3. Law by numbers

Sometimes, we can, however, make compatible precision with formal justice, treating like cases alike. Tax law is the paradigmatic example.[12] In the income tax law, for instance, it is avoided the use of concepts with blurred boundaries like very rich, rich, poor[13] and so on and it is also avoided the use of concepts with sharp boundaries like people with an annual gross income between 500.000 and 1.000.000 euros, people with an annual gross income between 300.000 and 500.000 euros and so on. Given that money is measurable, here we can introduce metric concepts and correlating quantities of money which should be paid as income tax to a quantities of money which are income derived of any source.

It is often sustained that the substitution in science of classificatory concepts by metric concepts is due to the fact that the world objects have not display the sharp boundaries suggested by our classifications. But, as Hempel (1952, 56) remembered: 'this way to of stating the matter is, at least, misleading. In principle every one of the distinctions just mentioned [Hempel mentioned 'long and short, hot and cold, liquid and solid, living and dead, male and female'] can be dealt with in terms of classificatory schemata, simply by stipulating certain precise boundary lines'.

Some of the reasons adduced by Hempel in favour of the introduction of quantitative concepts in our scientific theories are also valid in favour of their use in some branches of law, like tax law: a) By means of metrical concepts is possible to differentiate among cases which are put together in our classifications, 'in this sense a system of quantitative terms provides a greater flexibility and subtlety' (Hempel 1952, 56), b) in the case of classificatory concepts we should limit to a number of categories, in the case of metrical concepts we have infinite possibilities and, moreover, we do not need the introduction of new terms (Hempel 1952, 57), c) 'a characterization of several items by means of a quantitative concept shows their relative position in the order represented by the concept' (Hempel 1952, 57) and it allows us to compare them, d) 'Greater descriptive flexibility also makes for greater flexibility in the formulation of general laws' (Hempel 1952, 57), I benefit myself here of the ambiguity of 'general laws' because it is obvious that this sentence is applicable not only to *scientific* general laws, but also to *normative* general laws.

It is hardly surprising that the measurement theory has been used as inspiration in the so-called degree theories of vagueness which assign degrees to

[12] The tax law example also in Endicott 2011a.

[13] Maybe useful in the other contexts: for instance at my University, Pompeu Fabra University, recently there was an evaluation of the research in each Department and Faculty members were classified among Excellent, Very Good, Good, and Poor.

several truth-values of propositions (Goguen 1969, Machina 1976, and a critical presentation in Keefe 2000, ch. 5).

However, it is possible that in tax law remains room for inexact concepts: for instance, is part of the gross income, as payments in kind, tickets for meals in the restaurant of the company of someone is employed? I mean that not all the concepts included in tax law are reducible through measurement.

Be that as it may, income tax law is an approach to the use of concepts which allows us to earn together precision and formal justice. We have all the precision of the infinite series of natural numbers and we have tolerance, given that a small increment in income corresponds to a small change in the legal consequence, the quantity of money to be paid, treating in this way like cases alike and unlike cases unalike. Nonetheless, this account is only possible if we are dealing with one-dimensional predicates, the income measured in quantities of euros. When we have multidimensional predicates (like 'cruel', 'reasonable' and so on) the operation is more difficult. And if these concepts display incommensurate multidimensionality it is impossible. In the next section I shall deal with multidimensional predicates.

It would be not a good idea to convert the concept of legally of age in a metrical concept, even if it is obviously possible. Whereas it is very convenient making dependent on the quantity of money obtained in one year to correlate the income tax duties, it is not plausible making dependent on the age the legal consequence which provides the right to vote, for example with the plural vote, given different weight to each vote in attention to the age of citizens or allowing to buy certain quantity of bottles of wine in attention to the age. I mean that not always is convenient to convert a classificatory concept, with sharp boundaries, in a metrical concept. In the cases where the stability is necessary, we cannot afford the excessive elasticity of metrical concepts.

## 4. *Unbestimmte Rechtsbegriffe*

The concept of rich is vague but not multidimensional, because its application, in normal contexts, only depends on the quantity of money which a person has. The concept of elegant is vague because it is multidimensional, predicated of a person it refers to a fine and proper way of dressing, speaking, walking, eating, drinking and so on. Someone is elegant or not depending on the presence and the combination of all these features. If we intend to precise better the concept of elegant, for instance specifying certain kind of dress, probably we exclude other kind of dress also elegant and we over-include some cases.[14] In these cases it is not possible to generate a metrical concept, we have several dimensions and we have the combination of these dimensions: the way of walking can ruin a splendid dress and the way of speaking can salve a non-convenient combination of clothes. In this sense, these are cases of (Endicott 2011b) *extravagant* vagueness, because two people who know the relevant facts and the language can strongly

[14] See the relevant considerations on under- and over-inclusiveness of rules in virtue of the use of general terms in Schauer 1991: 31-34.

disagree about the correct application of the concept of elegant.[15] For instance, for our tastes, the several actors who interpreted the character of James Bond in the cinema are elegant, but they are elegant in a very different way, the elegance of Sean Connery is very dissimilar to the elegance of Daniel Craig.

In law we have a lot of multidimensional concepts, like the concept of reasonable, neglect, excessive, cruel, proportional, due care and so on. Usually these concepts figure as negative conditions of other main concepts, as *defeaters.*

Paradigmatic cases are justifying and excusing conditions in criminal law and invalidating conditions in private law.[16] We can consider the regulation of freedom of speech in the *European Convention of Human Rights* (ECHR) in the article 10:

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In the first paragraph the freedom of expression is established. In the second paragraph certain negative conditions are introduced often through open and multidimensional concepts, 'necessary in a democratic society', 'in the interests of national security', 'public safety', 'protection of health or morals' and so on. The application of theses concepts is controversial and a huge part of the ECtHR in Strasbourg consists in ascertaining if the legislation and activity of the States members have respected the freedom of expression. Usually States argue that the second clause of the article 10 gives discretion to apply the limitations in the so-called *margin of appreciation*. But, is the application of these multidimensional concepts discretional?

I want to start presenting the Spanish doctrine in Public Law, following the German Public Law, on the so-called *indeterminate legal concepts* (*Unbestimmte Rechtsbegriffe*). This doctrine intends to justify the judicial control of the regulations and activities of the administrative bodies in application of concepts like reasonable, proportional, excessive and so on. The government departments and administrative agencies always argue that, to the extent that these concepts are indeterminate they refer to the administrative discretion and, therefore, their decisions are not judicially reviewable. This doctrine starts distinguishing in these concepts a *core of certainty*, in which the application of the concept is clear and a *penumbra of doubt* of borderline cases. This is, as it is well-known, the way how Hart (1961: 119-120) introduced his doctrine of the *open texture* of law. More

[15] And Marmor (2014: 88) characterizes this kind of concepts as follows: 'The main feature of extravagantly vague terms consists in the fact that they designate a multidimensional evaluation with (at least some) incommensurable constitutive elements'.

[16] The analogy between excusing conditions in criminal law and invalidating conditions in private law comes from Hart (1968, 28-53).

surprisingly it is to realize that this is also the way in which Philip Heck (1914: 107), more than one hundred years ago, introduces his distinction between *Begriffskern* (the core of the concept) and *Begriffshorn* (the halo of the concept): 'A nucleus of certain meaning is surrounded by a gradually fading halo of meaning'. The Hart's conclusion in these cases of regulation by administrative bodies is as follows (Hart 1961, 128): 'In these cases it is clear that the rule-making authority must exercise a discretion, and there is no possibility of treating the question raised by the various cases as if there were one uniquely correct answer to be found, as distinct from an answer which is a reasonable compromise between many conflicting interests'.

However, this is not the doctrine of the indeterminate legal concepts. For instance, in a decision of the Spanish Court of Cassation (*Tribunal Supremo*) about the legal validity of the imposition of a fine to a real state company it is argued:[17] 'All the activity of the Administration in the field of penalties results thus regulated even if it is dealing with the quantification of fines – it is not imaginable that two different fines can be equally fair to the same infraction-, given that even if indeterminate legal concepts should be taken into account, with the margin of appreciation called by their halo of difficulty, the application of such concepts is a bounded behaviour'. This doctrine starts in German Public Law doctrine in the 50's of the past century[18] and now is widely accepted in the majority of countries in Continental Law. In the most and deservedly famous textbook on Administrative Law in Spain, García de Enterría and Fernández (2013: 502) put it in the following terms:[19]

> This is the essential of the indeterminate legal concept: the indeterminacy of the sentence is not translated in a indeterminacy of the applications of it; these applications only allows us a 'unity of right solution' in each case, grasped through an activity of cognition, thus able to be objective, and not through an activity of mere volition.

Indeterminate legal concepts have *incommensurate multidimensionality* (Asgeirsson 2015), they display extravagant vagueness. But there are at least two accounts on their application:

(1) The *discretion account*: These concepts have a big halo of penumbra and, in this zone, their application is discretional.

(2) The *one-right answer account*: Theses general concepts despite their indeterminacy, in the cases of application to concrete cases, select one and only one right solution.

Let us consider the Eight Amendment of the American Constitution excluding the cruel and unusual punishments, or the article 5 of the Universal Declaration of Human Rights in accordance with 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Is the punishment established in the *Lex Pompeia* of old Roman Law, the *poena cullei,* a

[17] STS 382/1992, 23 January 1992.

[18] For instance Bachof 1955, Ehmke 1960,

[19] García de Enterría, Fernández (2013: 502). See also, for instance, Sáinz Moreno 1976, Fernández, 1991. Some objections to the sharp separation between discretion and use of indeterminate legal concepts in Sánchez Morón 1994.

cruel, inhuman or degrading punishment? The poena cullei, the punishment for the crime of parricide, consisted in drowning the culprit in a leather sack together with a cock, a dog, a serpent, and a monkey. I guess that all of us consider the poena cullei a cruel punishment.

However, we can wonder whether other punishment, the *punitive coma*, is also a cruel punishment or not. The punitive coma appears first as a fiction punishment in a Philip Kerr's crime novel (1992) and, ten years after, becomes a serious and intriguing proposal in Oleson (2002: 861):

> Let us suppose that it were possible to punish offenders by giving them an injection that would instantly induce a state of coma. Let us further suppose that it were possible, perhaps by administering additional injections on a regular schedule, to maintain them in such an unconscious state for a period of months, years, or even decades. This presents interesting possibilities. If prisoners could be placed into comas, they could be packed tightly into a very limited space, with none of the deleterious side effects that are currently associated with prison overcrowding. For where there is no consciousness, there can be neither inmate stress nor disciplinary infractions. Drugs and gangs and rape and assault, indeed, most or all of the ongoing problems that plague the staff of warehouse prisons, would immediately disappear. It might even be possible to warehouse unconscious prisoners in coma bays more cheaply than containing them in warehouse and supermax prisons. Even if the drugs used to induce and maintain the comas were not cheap, these coma-bay prisons could be operated with a reduced staff of medical and security personnel. Indeed, if such an injection were available, it would be a humane and rational solution to the nightmarish social problem of an uncontrollable prison population.

This is a controversial case. Despite the argumentation of Oleson, I consider that the punitive coma is actually a cruel, inhuman and degrading treatment. Depriving human beings of communicating and interacting with other human beings is, in my view, cruel. Be that as it may, with this example we can realize the difficulty of application of this type of concepts. If you adopt the *discretion account*, you can argue that in this case the law cannot settle this hard question. This is the Hart's account (1961: ch.7). In a paper recovered and published recently (Hart 2013), a lost essay written by Hart for a lecture during his stay as Visiting Professor at Harvard Law School in November 1956, Hart seems to prefer an account to vagueness in law as multidimensional vagueness (2013: 653):

> This position, namely that we are able to distinguish the leading features of a clear case and then borderline cases where some but not all of the features are present, is characteristic, it seems to me, of definition in this field. I prefer this way of putting the semantic situation to just saying that we have a continuum which stretches over a wide area and that we distinguish something which fades gradually into other notions because this metaphor of a continuum does not bring out the fact that we do, as well as recognize the vagueness at the boundary of such notions as discretion, also recognize clear or simple cases, and if we could not do this we should not be able to use the term in communication with each other.

Vagueness' accounts in the philosophy of language seem to support the discretion account. On the one hand, we have the *semantic* theory of vagueness which defends that the vagueness is one feature of our conceptual scheme, 'vague predicates are both partially defined and context sensitive' (Soames 2012: 96) and for this reason these predicates have borderline cases. In such cases speakers have the discretion to include them or not in the reference of the predicate. On the other hand, we have the *epistemic* theory of vagueness according to which there is always a precise point that draws the line between the right application of a vague predicate and its complement, even though we are not able, in a irremediable way, to draw that line. Our predicates are not tolerant predicates, even though we are not able to assign truth-values in the penumbra of the predicate.[20]

It seems that neither the semantic theory nor the epistemic theory are apt to endorse the one-right answer account. And this account is not only the account accepted by our doctrine of indeterminate legal concepts, it is also the Dworkinian account. For Dworkin, concepts as reasonable or cruel are not vague, they are concepts which admit of different conceptions (Dworkin 1977: 103, 135-136, 1986: 17) because they are *essentially contested* (Gallie 1955-6) or *interpretive* concepts (Dworkin: 2006: 9-12). However, these conceptions are comparable among them and it is possible to ascertain which of them put the notion at best light. But, can the philosophy of language provide some support for the one-right answer account? I shall intend to show how this account can be understood in two different approaches to vagueness: contextual approach and supervaluationist approach. Here, the similarities between these approaches are more relevant than the differences and, for this reason, they will be presented as a unique view.

For the contextual approach, a sentence as 'Punishment P is cruel' expresses a *proposition* whose truth-values vary in accordance with their *circumstances of evaluation*. The circumstances of evaluation include a *parameter* able to point out the (admissible) sharpening of the vague predicate, a function capable to make precise a vague predicate through reasonable standards of precisification.[21] There are some doubts whether contextual account does collapse into supervaluationism (Keefe 2000: 144).[22] For this approach,[23] a vague predicate fails to divide things precisely into two sets, its positive and its negative extensions. When this predicate is applied to a borderline case, we will obtain propositions which are neither true nor false. This gap reveals a deficiency in the meaning of a vague predicate. We can remove this deficiency and replace vagueness by precision by stipulating a certain arbitrary boundary between the positive and negative extensions, a boundary within the penumbra of the concept. Thus, we get a sharpening or completion of this predicate. However, there are not only one, but many possible sharpenings or completions.

---

[20] This theory in Cargile (1969, 1993), Sorensen (1988, 2001) and Williamson (1994). Schiffer (2001) has defended that differents accounts of vagueness, semantic and epistemic, in philosophy of language makes no difference in the issue as applied to law. Soames (2012) challenges this idea and it is objected by Asgeirsson (forthcoming). This issue will not analyzed here.

[21] This account develops the semantic and pragmatic ideas of Kaplan 1975, Lewis 1983 applied to the issue of vagueness, see Burns 1991. Recently a very powerful defence (different of both contextualism and supervaluationism) Kölbel 2010.

[22] But, see Shapiro (2006) dfending a conextual approach without the supervaluationist slogan (Keefe 2000: 202): ''Truth is supertruth'.

[23] For instance, Fine 1975, Dummett 1975, Keefe 2000.

In accordance with supervaluationism, we should take all of them into account. For supervaluationism, a proposition p -containing a vague concept- is true if and only if it is true for all its completions; it is false if and only if it is false for all its completions; otherwise it has no truth-value -it is indeterminate. A completion is a way of converting a vague concept into a precise one. So now we should distinguish two senses of 'true': 'true' according to a particular completion, and 'true' according to all completions, or supertrue. If a number x of grains of sand is in the penumbra of the concept of a heap, then it will be true for some completions and false for others that x is a heap and, therefore, it will neither be supertrue nor superfalse.

Completions should meet some constraints. In particular, propositions that are unproblematically true (false) before completion should be true (false) after completion is performed. In this way, supervaluationism retains a great part of classical logic. Thus, for instance, all tautologies of classical logic are valid in a theory of supervaluations, 'x is a heap or x is not a heap' -a token of the law of excluded middle- is valid, because it is true in all completions independently of the truth-value of its disjuncts. Another idea suggested by Fine (1975) and useful here is the notion of *penumbral connections*. For instance, the Spanish Constitutional Court decided that the prison punishment of solitary confinement for 15 days is neither an inhuman nor a degrading treatment.[24] Even if someone considers that this is a borderline case of application of inhuman or degrading term, she should accept that 'If 15 days of solitary confinement is not a degrading treatment, then 10 days either'. A sharpening establishing that 15 days of solitary confinement is not a degrading treatment, but 10 days is degrading, is an inadmissible sharpening. The last sentence expresses a penumbral connection of the concept inhuman or degrading treatment. Penumbral connections constrain our completions or sharpenings of extravagant vague concepts.

When the language of law uses *extravagant* predicates, with multidimensional incommensurability, not all the ways of precising the predicate are equally admissible. Only are admissible those completions which meet previous assignment of meaning, respect penumbral connections, fit relevant legislation and precedent, endorse canons of interpretation in force in a certain community and so on. In this sense, the range of admissibility becomes more and more reduced. In fact, it is not necessary to admit the thesis of a unique admissible sharpening in each context in order to accept that these elements are sufficient to adopt, for the judicial application of law, the one-right answer account. For instance, even though an instruction included in a transport regulation as:[25]

(ins) Move suspicious packages away from crowds,

is very generic and has borderline cases, placed in a determined context can become very clear. An abandoned backpack in a train station is suspicious and should be moved. A school bag next to the school bus is, normally, not suspicious and should not be moved.

Schiffer (2015) put in the following terms the situation of judicial application of law:

[24] In STC 2/1987, de 21 de enero.

[25] The example in Cappelen 2008 with relevant considerations on legal interpretation.

> When someone says something we judge not to have a determinate truth-value, it's no big deal: we judge that what the guy said has no determinate truth-value and move on. *Judicial Necessity* is the fact that that is a luxury judges don't have. More exactly, Judicial Necessity applies to federal judges who must decide cases involving the interpretation of legal texts; it's the fact that a judge hearing such a case never has the option of not deciding the case because it's indeterminate whether the law in question applies to it. Even if a judge knows that the relevant law has no determinate application to the case she is hearing, she must still officially "decide" either that the law does apply to the case or that it doesn't apply to it.

In this sense the very well-known prohibition of *non liquet* integrates also the context of the judicial decisions are taken. This is clearly not sufficient to endorse the one-right answer account. It would be necessary to deal with intricate issues on the nature of law and the place of legal reasoning inside the practical reasoning. Here I conform myself with remembering, with Dworkin (1996: 336), that judicial discretion account cannot be considered the winner by default:

> It is a popular thesis that in very hard cases at law, when the legal profession is split about the right answer, there actually is none, because the law is indeterminate on the issue. This "no right answer" thesis cannot be true by default in law any more than in ethics or aesthetics or morals. It does not follow from the fact that no knock-down argument demonstrates that the case for the plaintiff is, all things considered, better or worse than the case for the defendant that the plaintiff's case is not, in fact, actually better or worse. Since the no-right-answer claim about law is a legal claim-it insists that no legal reason makes the case for one side stronger than the case for the other-it must rest on some theory or conception of law.

I would like to add that the use of evaluative concepts in law that exhibits multidimensional vagueness, often as *defeaters* which allows us to introduce justified exceptions in the application of generic rules, honours and respect the rule of law. Here again debilitating a bit the precision increases our capacity to take justified decisions treating like cases alike.

## 5. Instrumental Values

It is natural to consider that law should not be vague, vagueness is seen as a defect of our language and, therefore, of our legal language too.[26] Maybe it is inevitable, but we would be better without it. This seems the intuition of Hart when remembering us that 'we are men, not gods' argues (Hart 1961: 125):

> If the world in which we live were characterized only by a finite number of features, and these together with all the modes in which they could combine were known to us, then provision could be made in advance for every possibility. We could make rules, the application of which to particular

[26] Sorensen (2001) denies to vagueness any function in law.

> cases never called for a further choice. Everything could be known, and for everything, since it could be known, something could be done and specified in advance by rule. This would be a world fit for 'mechanical' jurisprudence. Plainly this world is not our world; human legislators can have no such knowledge of all the possible combinations of circumstances which the future may bring.

It seems that Hart assumed the imagined possible world as a better world than our world. And in our world the use of vagueness has a *remedial* value, allows us a more flexible application of rules. This function is made through the use of generic and abstract expressions, which are able to be applied to particular cases with flexibility and accurateness.

Remedial or not, some authors (Endicott 2000, 2011a, Waldron 2011) have defended that vagueness is valuable in law, because sometimes is a means to obtain some good aims. Recently Asgeirsson (2015) argues that this instrumental value is actually played by a feature different to vagueness and, even if this feature -incommensurate multidimensionality- entails vagueness and given that not all entailed for something instrumentally valuable receives and participate of this value, then we cannot conclude that vagueness has value.

Sometimes it has been argued that is not vagueness which is playing this instrumental and valuable role, but it is some phenomenon close but distinct to vagueness, like generality (Sorensen 2001b, 2012, Soames 2011, Poscher 2012).[27] But the more compelling argument is due to Asgeirsson. The skeleton of the argument in favour of the value of vagueness in law can be characterized as follows (Asgeirsson 2015: 428, 440):

> P1. Applying the law in a flexible, fine-grained and sensitive to the particularities of the case is good.
> P2. Vagueness in the law is a necessary means to applying the law in a flexible, fine-grained and sensitive to the particularities of the case.
> P3. Value transmits (in a *pro tanto* way) from ends to means.
> Conclusion. Vagueness in the law is (sometimes) instrumentally good.

Asgeirsson accepts premises P1 and P3, but he rejects the conclusion because he believes that there are no good reasons to endorse the premise P2. And there are no good reasons to accept P2 because P2 presupposes the very controversial *necessitation* in the logic of value: closure under necessary consequence (Asgeirsson 2015: 446). Something like:

> Value p, $p \rightarrow q \vdash$ Value q.

One proxy in deontic logic is responsible for the well-known deontic paradoxes (as the paradox of derived obligation and the paradox of good Samaritan, Prior 1954, Prior 1958). One possible formulation of the paradox of derived obligation: 'It is forbidden to steal this bicycle' (that amounts to 'It is

[27] Poscher (2012) sustains that, in the cases of multidimensional concepts, the source of discretion is not vagueness, but generality, even if he concludes that vagueness adds some value to the use of generality.

obligatory not to steal this bicycle'), 'if you steal this bicycle, you ought to go to the café de la Pompeu', and one possible example of the paradox of good Samaritan: 'If you ought to help this abandoned child, then it is obligatory to abandon the child'.

There are a lot of reasons of rejecting *necessitation* in the practical domain. However, one of the most important is that they impede the possibility to understand the remedial dimension of morality and law.[28] Remedial virtues as *courage* always presuppose that the realization of a valuable action entails (because presuppose) a previous bad situation. Courage is only triggered in circumstances of serious danger or important risk, but the value of the virtue of courage is not transmitted to the circumstance of danger, that obviously lacks of value. The action of a fireperson rescuing an old lady of the flames is a valuable virtuous action, but the fact of the flames in a building is a fact without value, moreover it is better one world without fires in buildings than our world with excessive fires.

My suggestion is that the Asgeirsson's argument presupposes this kind of remedial scenario. Vagueness is bad. It is a necessary bad because our world is not the Hartian imagined world: a world with a finite number of properties and our knowledge of the combinations among them was complete would be a better world than our world. Now, incommensurate multidimensionality has this remedial function: in our non-ideal world it makes possible taking practical decisions in a way closer to the mode of adjudicatory decisions taken in the ideal world. Vagueness is entailed by incommensurate multidimensionality, but vagueness is not valuable, it is only the enabling circumstance which calls for the remedial solution.

However, it is possible to challenge this approach.[29] Waldron (2011:72) has argued that evaluative predicates in law (as 'reasonable' or 'proper' or 'appropriate', and also 'inattentive' or 'aggressive') 'are action-guiding, though guide in the first instance the element of practical deliberation involved in the exercise of agency… They too guide practical reasoning (and action based on that reasoning), but they provide additional structure and channeling for the practical deliberation that they elicit'. Here we have an additional argument. The use of evaluative arguments is not only good for more elastic legal adjudication, it is also good because invokes (Asgeirsson 2015:440) 'people's capacity for practical deliberation in a way that realizes the dignity of human agent'. This feature does not seem remedial. If practical deliberation is part of our constituency of moral agents, and practical deliberation is triggered by the use of multidimensional evaluative concepts, then the function of these concepts in law is not remedial. It is the expression of our nature of moral actors. And the Hartian legal world with a finite number of features and combinations among them is not better than our world. In fact it is worse. It is worse because that world is not apt to the exercise of practical deliberation, it is a world in which rules are mechanically applied.

If the flexibility and adaptability of law have remedial nature, then one world, as the Hartian imagined world, without adaptability and flexibility but with a finite number of features and combinations among them is better than our world. Nonetheless, if the flexibility and adaptability of law have no remedial nature, then

[28] I am very indebted to Hugo Seleme who showed me the connection between remedial instruments and instrumental vagueness.

[29] In fact, in spite of Foot 1978, Korsgaard 1986, there is a discussion whether the nature of virtues is inherently remedial or not. See, for instance, Gottlieb 2001.

the argument against the value of vagueness is more questionable, because our world with evaluative vague concepts is better than one world without them.

Perhaps there is some way to retrieve some kind of principle distinct of *necessitation*, able to ground the value of vagueness. We need a way to order the possible worlds and a relationship of being more or equally valuable referred to worlds.[30] If the Hartian imagined world is better than our world then the value of the presence of evaluative concepts in law is only remedial and, therefore, vagueness has no value. If, on the contrary, our world is better than the Hartian imagined world, then the value of the inclusion of evaluative concepts is not remedial, it is a necessary way to trigger our deliberative capacity as rational agents, and then, maybe, the situation of deliberative capacity as rational agents can transmit value to vagueness.

My consideration cannot be seen as a way to defeat the argument of Asgeirsson (2015). After all Asgeirsson only cast doubt on the value of vagueness, entailed for a, in his reasoning, valuable feature: incommensurate multidimensionality. However, I intend to show that behind this entailment there is the question of whether incommensurate multidimensionality has a remedial value or not. The answer of this question determines the answer on the value of vagueness.

## 6. Conclusion: Rule of Law in Lesbian moulding

I have argued that the ideal of rule of law contains sub-ideals in tension. Not always we can achieve all together precision, formal justice and defeasibility.

Sometimes our main objective is precision, because we (judges, administrative bodies, police and, in general, all of us) need to identify in a stable way the legal conditions of people in order to act in accordance to the law. In these cases, law uses concepts with sharp boundaries, non-epistemically vague predicates applicable to the objects, as it were.[31] In this way precision is privileged. In other cases, a minority of cases, it is possible to introduce metrical concepts, maintaining precision and warranting formal justice.

Nonetheless, in a lot of cases, we need together the general rule a set of defeaters, formulated in general and evaluative terms,[32] and here precision is in some sense sacrificed. In this way formal justice and defeasibility are honoured and respected. If this sacrifice necessarily remits to the discretion of the adjudication organs of general rules is more controversial and I presented certain arguments in order to show how it is compatible to take decisions according to rules including evaluative defeaters and to guide the conduct of the decision-makers.

At the end, I tried to show that behind the criticism of Asgeirsson (2015) to the idea of the value of vagueness, it lies the assumption that the presence in law of evaluative defeaters has only a remedial value and, then, it is more acceptable that vagueness could have no value. However, if the value of the presence in law of

[30] In Hansson 2000, (Hansson 2006 for a presentation the intuitive ideas behind the theory) there are a very technical and complete structure for values and norms, weakening the necessitation principle and providing a general framework able to ground my suggestion.

[31] The distinction between epistemically vague predicates and non-epistemically vague predicates in Enoch 2007.

[32] In Moreso 2012, I developed an argument in favour of the use of this kind of defeaters in law.

evaluative defeaters is apt to trigger our deliberative capacity as moral agents, then the value of these predicates is not remedial and, maybe, the value of vagueness can be restored.

A well-known passage of Aristotle (2009: 1137b, p. 97, see also Waldron 2011: 82 calling our attention to this text) can be interpreted both as an acknowledgment of our imperfect abilities and the necessity of remedial flexibility and as an acceptance of the superiority of the flexibility over rigidity, like actually it is my preference:

> When the law speaks universally, then, and a case arises on it which is not covered by the universal statement, then it is right, where the legislator fails us and has erred by oversimplicity, to correct the omission-to say what the legislator himself would have said had he been present, and would have put into his law if he had known. Hence the equitable is just, and better than one kind of justice-not better than absolute justice but better than the error that arises from the absoluteness of the statement. And this is the nature of the equitable, a correction of law where it is defective owing to its universality. In fact this is the reason why all things are not determined by law, that about some things it is impossible to lay down a law, so that a decree is needed. For when the thing is indefinite the rule also is indefinite, like the leaden rule used in making the Lesbian moulding; the rule adapts itself to the shape of the stone and is not rigid, and so too the decree is adapted to the facts.

## REFERENCES


Alston, William P. 1967. Vagueness. In *The Encyclopaedia of Philosophy*. 8. Ed. Paul Edwards, 218-221. New York: Macmillan.

Aristotle. 2009. *The Nichomachean Ethics*. D. Ross transl., L. Brown rev. Oxford: Oxford University Press.

Asgeirsson, Hrafn. 2015. On the Instrumental Value of Vagueness in the Law. *Ethics.* 125: 425–448.

---. Forthcoming. Can Legal Practice Adjudicate Between Theories of Vagueness. In *Vagueness and the Law. Philosophical and Legal Perspectives*. Eds. G. Keil and R. Psocher. Oxford: Oxford University Press.

Bachof O. 1955. Beurteilungsspielraum, Ermessen und unbestimmter Rechtsbegriff im Verwaltungsrecht. *JuristenZeitung*, 97-102.

Burns, Linda. 1991. *Vagueness. An Investigation into Natural Languages and the Sorites Paradox.* Dordrecht: Kluwer.

Cappelen, Herman. 2008. The Creative Interpreter: Content Relativism and Assertion. *Philosophical Perspectives*, 22, *Philosophy of Language*. 23-46.

Cargile, James. 1969. The sorites paradox. *British Journal for the Philosophy of Science.* 20:193–202.
---. 1993. Vagueness. An Investigation into Natural Languages and the Sorites Paradox. *Philosophical Books* 34: 22–24.

Cicero. 1967. *De oratore*. E.W. Sutton ed. and trans. The Loeb Classical Libarary. Cambridge, Mass.: Harvard University Press.

Dummett, Michael. 1975. Wang's Paradox. *Synthese* 30: 301–324.

Dworkin, Ronald. 1977. *Taking Rights* Seriously. London: Duckworth.
---.1986. *Law's Empire*. Cambridge: Harvard University Press.
---.1996. Objectivity and Truth. You'd Better Believe It. *Philosophy and Public Affairs.* 25: 87-139.
--- .2006. *Justice in Robes*. Cambridge: Harvard University Press.

Ehmke, H. 1960. *'Ermessen' und 'unbestimmte Rechtsbegriffe' im Verwaltungsrecht.* Tübingen: Mohr.

Endicott, Timothy. 2000. *Vagueness in Law.* Oxford: Oxford University Press.
---.2011a. The Value of Vagueness. In *Language and Law.* A. Marmor and S. Soames. Oxford: Oxford University Press. 14-30.
---. 2011b. Vagueness and Law. *Vagueness: A Reader.* Ed. Giuseppina Ronzitti. Dordrecht: Springer. Ch. 7.
---. 2014. Law and Language.*The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2014/entries/law-language/>.

Enoch, David. 2007. Epistemicism and Nihilism about Vagueness: What's the Difference? *Philosophical Studies*. 133: 285-311.

Fernández, Tomás-Ramón. 1991. *Arbitrariedad y discrecionalidad.* Madrid: Civitas.

Fine, Kit. 1975. Vagueness, Truth and Logic. *Synthese* 30: 265–300.

Foot. Philippa. 1978. Virtues and Vices. In *Virtues and Vices and Other Essays in Moral Philosophy.* (Berkeley: University of California Press), 1-18.

Gallie, W.B. 1955-6. Essentially Contested Concepts. *Proceedings of Aristotelian Society* 56: 167-198.

García de Enterría, Eduardo; Fernández, Tomás-Ramón. 2013. *Curso de Derecho Administrativo. I.*, 13 ed. Madrid: Civitas-Thomson Reuters.

Goguen, J.A. 1969. The Logic of Inexact Concepts. *Synthese*, 19: 325-373.

Gottlieb, Paula. 2001. Are the Virtues Remedial). *The Journal of Value Inquiry* 35: 343-354.

Heck , Philip. 1914. *Gesetzesauslegung und Interessenjurisprudenz*. Tübingen: J.C.B. Mohr.

Kamp, Hans. 1975. Two Theories about Adjectives. In *Formal Semantics and Natural Language*, ed. E. Keenan, 123–155. Cambridge: Cambridge University Press.

Keefe, Rosanna. 2000. *Theories of Vagueness*. Cambridge: Cambridge University Press.

Kerr, Philip. 1992. *A Philosophical Investigation*. London: Chatto & Windus.

Kölbel, Max. 2010. Vagueness as Semantic. In *Cuts and Clouds: Vagueness, its Nature and its Logic*, Eds. R. Dietz and S. Moruzzi. 304-325. Oxford: Oxford University Press.

Korsgaard. Christine. 1986. Aristotle and Kant on the Source of Value. *Ethics* 96: 486-505.

Hansson, Sven Ove. 2000. *The Structure of Values and Norms*. Cambridge: Cambridge University Press.
---. 2006. Ideal Worlds –Wishful Thinking in Deontic Logic. *Studia Logica* 82: 329-336.

Hart, H.L.A. 1961. *The Concept of Law.* Oxford: Oxford University Press.
---. 1968. Legal Responsibility and Excuses. In H.L.A. Hart, *Punishment and Responsibility.* Oxford: Oxford University Press.
---.2013. Discretion. *Harvard Law Review.* 127: 652-665.

Hyde, Dominic. 2008. *Vagueness, Logic, and Ontology*. Aldershot: Ashgate.

Lewis, David. 1983. General Semantics. In *Philosophical Papers*, vol. III, ed. D. Lewis, 189–232. Oxford: Oxford University Press.

Machina, Kenton F. 1976. Truth, Belief and Vagueness. *Journal of Philosophical Logic*, 5: 47–78.

Marmor. Andrei. 2014. *The Language of Law*. Oxford: Oxford University Press.

Moreso, J.J. 2012. Legal Defeasibility and the Connection between Law and Morality. In *The Logic of Legal Requirements. Essays on Defeasibility*. Eds. J. Ferrer Beltran, G.B. Ratti. Oxford: Oxford University Press. 225 – 237.
---. 2015. The Uses of Slippery Slope Argument. In *Argument Types and Fallacies in Legal Argumentation.* Eds. T. Bustamante, C. Dahlman. Dordrecht: Springer. Ch. 4.

Oleson. J.C. 2002. The Punitive Coma. *California Law Review.* 90: 829-901.

Poscher, Rolf. 2012. Ambiguity and Vagueness in Legal Interpretation. In *The Oxford Handbook of Language and Law.* Eds. Lawrence M. Solan and Peter M. Tiersma. Ch. 9. Oxford: Oxford University Press.

Prior. A.N. 1954. The Paradox of Derived Obligation. *Mind*. 63: 64-65.
---. 1958. Escapism. The Logical Basis of Ethics. In *Essays in Moral Philosophy*. Ed. A.I. Melden. Seattle: University of Washington Press. 135-146.

Rawls, John. 1971. *A Theory of Justice*. Cambridge, Mass.: Harvard University Press.
---. 1999. *A Theory of Justice*. Second edition. Cambridge, Mass.: Harvard University Press.

Raz, Joseph. 1970. *The Concept of a Legal System*. Oxford: Oxford University Press.

Ross, Alf. 1956-1957. Tû-Tû. *Harvard Law Review,* 70:812-825.

Sáinz Moreno, Fernando. 1976. *Conceptos jurídicos indetemrinados, interpretación y discreción judicial*. Madrid: Civitas.

Sánchez Morón, Miguel. 1994. *Discrecionalidad administrative y control judicial*. Madrid: Tecnos.

Schauer, Frederick. 1991. *Playing by the Rules.* Oxford: Oxford University Press.

Schiffer, Stephen. 2001. A Little Help from Your Friends. *Legal Theory*. 7: 42-432.---
---. 2015. Philosophical and Jurisprudential Issues on Vagueness. In *Vagueness and the Law. Philosophical and Legal Perspectives*. Eds. G. Keil and R. Psocher. Oxford: Oxford University Press.

Shapiro. Stewart. 2006. *Vagueness in Context.* Oxford: Oxford University Press.
Sorensen, Roy. 1988. Blindspots. Oxford: Oxford University Press.
---. 2001a. *Vagueness and Contradiction*. Oxford: Oxford University Press.
---. 2001b. Vagueness Has no Function in Law. *Legal Theory* 7: 387-417.
---. 2012. Vagueness. *The Stanford Encyclopedia of Philosophy* (Spring 2016 Edition), Edward N. Zalta (ed.), forthcoming URL = <http://plato.stanford.edu/archives/spr2016/entries/vagueness/>.

Soames, Scott. 2011. What Vagueness and Inconsistency Tell Us about Interpretation. In *Language and Law.* A. Marmor and S. Soames. Oxford: Oxford University Press. 31-57.
---. 2012. Vagueness and the Law. In *The Routledge Companion to Philosophy of Law.* Ed. Andrei Marmor. London. Routledge. 95-108.

Waldron. Jeremy. 2011. Vagueness and the Guidance of Action. In *Language and Law.* A. Marmor and S. Soames. Oxford: Oxford University Press. 58-82.

Williamson, Timothy. 1994. Vagueness. London: Routledge.

Williams, Bernard. 1995. Which Slopes are Slippery? In *Making Sense of Humanity and Other Philosophical papers*. Cambridge: Cambridge University Press, ch. 18.

Wright, Crispin. 1975. On the Coherence of Vague Predicates. *Synthese*, 30: 325–65.
---.1976. Language-Mastery and the Sorites Paradox. In *Truth and Meaning*, eds. G. Evans and J. McDowell, 223-247. Oxford: Oxford University Press, 1976.