

1-1991

# A Thousand Points of Ambiguity

Bruce Berner

*Valparaiso University School of Law*

Follow this and additional works at: [http://scholar.valpo.edu/law\\_fac\\_pubs](http://scholar.valpo.edu/law_fac_pubs)



Part of the [Law Commons](#), and the [Philosophy Commons](#)

---

## Recommended Citation

Bruce Berner, *A Thousand Points of Ambiguity*, *The Cresset*, Jan. 1991, at 27.

This Article is brought to you for free and open access by the Law Faculty Presentations and Publications at ValpoScholar. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at [scholar@valpo.edu](mailto:scholar@valpo.edu).



## A Thousand Points of Ambiguity

Bruce Berner

From the very first, human life has been confronted by ambiguity. Eating an apple could mean *either* (a) disobeying God *or* (b) knowing as much as God. The very first multiple-choice test and we got it wrong. "But the question wasn't fair! It was badly structured. Why weren't we allowed to select '(c) both' or '(d) neither'? It was . . . ambiguous!"

Modernity, ready for almost anything with its vast capacities for transportation, communication, and information dissemination, quickens the tempo of human interaction, providing both more matters of ambiguity and more occasions for having to deal with it. In our pluralistic, liberal culture, there are wide differences of opinion on almost every important question (and on a lot of trivial ones, too) and a credo that affirms everyone's right to hold any of those opinions. Yet, even with all of this, the problem seems of late to be getting worse. Perhaps this is just our age, but members of my generation are continually surprised and angry that matters once considered simple, settled, noncon-

---

Bruce Berner, *teaches at the VU School of Law. He is passionate about many things, among them music and smoking, which shows us that passions are to be indulged with caution.*

troversial, even axiomatic, turn out to have ambiguous aspects beyond previous imagination.

Consider some American bedrock—the Constitution, the flag, holidays. Of course, the words of the Constitution have always been the subject of varying interpretation. When, however, has its laconic text been cited in support of (and, on the same question, in attack on) nearly every important social position?

In the fifties, for example, could we have guessed that a Father-Son Sports Banquet was material for fierce social and constitutional debate, that these innocent occasions were violating women's equal-protection rights?

As to the flag, we achieve consensus only on what it looks like; once we try to unpack its meaning, we discover confusion. Some practically worship the flag. Viewing the flag as a graven image, Jehovah's Witnesses refuse to salute it. Political radicals want to burn it. Both the Constitution and the flag are important symbols to rally around—just don't ask us to identify exactly what they mean or the rally is over.

Holidays? When I was a kid, this seemed pretty simple. Everyone knew when they were and what they were. Now holidays are in turmoil. Congress moves them to Monday to create three-day weekends as if the primary function of observance is to

squeeze out one more day for the camper or Holidome. Congress combines old ones into new amalgamations with vapid sounding names. (President's Day? I want it clear that during *no part* of that day will I celebrate Warren Harding.) New holidays? Worse turmoil. And not only turmoil on the issue of *whether* to observe it, but on the issue of *who decides*. We now have national holidays; state holidays; county holidays; city holidays; postal, but not bank, (and *vice versa*) holidays; University holidays (except for staff). The turmoil over Martin Luther King's birthday is, at least, finally being addressed by the one group in society which speaks most clearly for all Americans—The National Football League—which threatens to play no Super Bowl (apparently regular-season games are exempt) in states which do not observe Dr. King's birthday on a weekday.

None of this is to suggest that these debates are simple, that one side or the other is just wrong. Many of the arguments on all sides of these issues have integrity and force. They deserve our serious consideration. That is our problem! Life is simply too complex. Ah, that it were in some complex way more simple. We try to retreat to little corners of clarity only to find that they, too, have been rendered problematic. Consider the following three recent items.

*A Rape in Oshkosh?* Mark Peterson, a 29-year-old married gro-

cery clerk, was convicted by a Wisconsin jury of the second-degree sexual assault (forcible rape) of Jenny, a 27-year-old single woman. When Peterson proposed sexual intercourse, she indicated her consent. "She," however, has a severe mental illness—multiple personality—and is really 45 people! The 44 others did not consent; indeed, one (Franny) was outraged enough to complain to the police. Did Mark commit rape?

As to this particular case, there appears to have been much evidence that the defendant was well aware of the illness and exploited the situation, that he simply waited for the most compliant personality to assume control of this unfortunate woman. If such is true, it is difficult to generate any sympathy for him. (After the verdict, Mark is reported to have said: "I've been the victim here. It's been turmoil. I'm still married, but my marriage has gone on the rocks because of all the publicity." Hey, Mark, speaking of publicity, I've got news for you—more than the media troubleth your marriage.)

But what if the jury had found that Mark did not know of the illness but simply assumed that "yes" meant yes? From his perspective (whatever you think of the moral issues, remember that the charge is rape, not adultery), the woman consented. Now consider the question from her perspective. But which one? Seven of her personalities were sworn in and testified! Their viewpoints were not uniform. So-called "date rape" cases typically have an element of ambiguity over the element of "consent." The male testifies that he interpreted the woman's words and actions to signify consent; the woman testifies that they meant the opposite. These cases are difficult enough when the woman is of "one mind" on the matter. The Oshkosh case adds a new

layer of ambiguity.

Multiple personality is a useful window into much of our own mental process which is not at all pathological. We often, in a posture of quiet evening reflection, regret our words and actions from the maelstrom of the day. In short, we have moods. Often an issue strikes us one way today and just the opposite way tomorrow depending on our own changing orientation to the question. This phenomenon is different from ambivalence, from being at once "of two minds" on an issue. Many of us, however, don't like it any more than we like our ambivalence. We believe that we should be "consistent," but, ironically, we don't *always* believe even that. Yet we all are, in some degree, a multiple personality. What prevents us from being a true pathological multiple personality is that we recognize our mood swings and remain (more or less) in executive control of them. This cannot, however, save us from ambiguity.

*Cigarettes for Soldiers?* Recently, I read a news story which struck me as a powerful example of ambiguity in an area I once considered pleasantly straightforward. When I grew up back east, I watched a lot of baseball games on TV. Whenever a Brooklyn Dodger hit a home run, Lucky Strike sent 10,000 cigarettes to the veterans in one of the VA Hospitals. If a New York Giant homered, Chesterfield did the same thing. This amounted to some additional advertising for those team sponsors and to some cigarettes for the veterans. Pretty simple. Mired in a particularly bad batting slump, Dodger Duke Snider once commented playfully that he was "pressing," terrified that he was personally responsible for the nicotine withdrawal of thousands of vets in East Orange, New Jersey.

Several weeks ago, R.J. Reynolds Tobacco Company pro-

posed to donate 10,000 cartons of cigarettes to the troops stationed in Saudi Arabia, partly, I suppose, for the publicity, but partly as a gesture of support and thanks. (10,000 cartons is the equivalent of about 5 cigarettes per soldier or of 200 homeruns.) The company would pay the cost of shipping but obviously must rely on the government to handle distribution. The Government has now rejected the offer at the urging of the American Cancer Society, which asserts that the government must not place its imprimatur on this unhealthy habit.

Let me first come clean. I smoke cigarettes. I do this, however, not because I am stupid but because I am weak. I recognize the danger and I see clearly the point that the Cancer Society is making. I acknowledge it as both practically and symbolically important. Yet, I am at another level deeply (probably too deeply) outraged by the *Government's* decision in this case. Has it, to be consistent, clearly stamped every weapon: "Invading Kuwait May Be Dangerous to Your Health?" Does the United States really want precision tactical aerial bombardment carried out by navigators in acute Marlboro withdrawal? One news account stated that the Government was not concerned about supplying current smokers but about encouraging nonsmokers to start. With all respect, requiring these young people to undergo the tedium and terror characteristic of battle readiness is encouragement enough. Besides, at five cigarettes per soldier, does Uncle Sam really think that the hardcore addicts are going to let some cigarettes get away for casual experimentation by nonsmokers? Give me a break. Give them a smoke.

Having said that (and I feel better now), I must concede that the other side of this question makes good sense. Whatever individual



choice might dictate, smoking does carry serious health risk and the Government should not have complicity in augmenting it, especially after it has shown its willingness to regulate tobacco advertising and after ex-Surgeon General Koop's marvelous anti-smoking campaign. (The Government's position becomes more suspect, however, when we consider its large subsidies to tobacco growers.) Moreover, the fact that war exposes soldiers to some risks does not prove they should be exposed to others. Maybe my position is not really in the soldiers' best interests.

*Speed Bumps on Campus?* Last year, a University Committee, the University Senate, and the University administration engaged in a nearly year-long colloquium on the proposed installation of speed bumps on campus. At first blush, this may seem a straightforward problem: people are speeding; speeding creates risk; speed bumps will force people to reduce speed and, thus, lower risk. Yet, the number of person-hours consumed resolving (maybe) this issue was remarkable.

The question, at least when examined in a university community, has the following complications: the *aesthetic* aspect ("How will this look? What color will they be?"); the *autonomy* aspect ("Why not let me obey the speed limit by my own free choice? You can't forward my moral development by artificially forcing me to comply"); the *technological* aspect ("Did you know that some speed bumps may give you quite a jolt at 30 m.p.h. but have no effect at 60?"); I, for one, would have been quite happy to remain ignorant on this point); the *practical* aspect ("Will they break university snowplows? Our cars?"); the *symbolic* aspect ("What do speed bumps 'say' about us to campus visitors?") Or did you blithely assume they

"say" "Slow Down!"; the *empirical* aspect ("Do speed bumps really reduce speed or, instead, result in evasive behavior even more dangerous?") There is some evidence for this); the *annoyance* aspect ("I already go slowly but now I'll spill my coffee"); the *futility* aspect ("People will just steal them." And they have!!)

Again, it is not my point that this debate was silly (some of it was) but that even a seemingly simple problem often carries within it issues both multifaceted and perplexing. Intelligent, good people spent their most valuable commodity—time—not because of a need for self-entertainment, but because the speed-bump issue really does embrace all these aspects.

Well, what are we supposed to do about this ambiguous world we live in? I promise no searing insights, just a few reflections. First, it is futile to hope ambiguity will go away. It will not in any event, and, if it did, how can we be assured it would not carry our deeply held interests with it? We cannot ordinarily gain clarity without sacrifice. Second, yearning to return to the simpler days of the golden past is unproductive.

We cannot. See Thomas Wolfe. They weren't as golden as we remember them anyway. And why *should* we yearn to see through a glass more darkly still?

I'm afraid we just have to continue to cope. Compromise, accommodation, understanding, compassion, communication—all of these work. A little humor never hurts. A lot of love will always help. We need constantly to ask ourselves if ambiguity is the problem or if mere disagreement and dissent is what bothers us. Wishing that everyone saw it our way is a very dangerous wish. Moreover, we need to be mindful of the many benefits of ambiguity and

controversy, of the richness and texture they bring to this life.

At the root of our discomfort about ambiguity, perhaps, is a felt need for coherence, for a system of meaning that admits of no loose ends, no rough edges. Yet even the scientific *Weltanschauung*, perhaps the most elaborate and elegant the human mind has constructed, is littered with "force at a distance" problems and with subatomic particles that just do not behave quite properly. We should notice that these ambiguities do not prevent science from functioning splendidly. Science goes forward in the face of this quandary principally because it has no other sensible choice. The problem is bracketed; someday we may solve it. We can learn a lesson from science. Nor has the Constitution's ambiguous text prevented it from remaining an authentic American marvel.

For those of us whose system of meaning consists in living out a relationship with our God, we should not expect even there to break free of ambiguity. At the very center of faith and hope lie paradoxes so profound, mysteries so deep, that our very approach leaves us serene yet breathless, satisfied yet yearning, comforted yet terrified. Consider this portion of a Richard Crashaw poem:

Welcome all wonders  
In one sight.  
Eternity  
Shut in a span.  
Summer in winter.  
Day in Night.  
Heaven in earth.  
And God in man.

Can ambiguity be just true? □