

Another Ride on Vehicles in the Park

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Date : April 12, 2010

Frederick Schauer, [*A Critical Guide to Vehicles in the Park*](#), 83 **N.Y.U. L. Rev.** 1109 (2008).

“No vehicles in the park”—this deceptively simple rule has commanded the attention of legal theorists ever since the mid-twentieth century tussle between jurisprudential heavyweights Lon Fuller and H.L.A. Hart. “It is the most famous hypothetical in the common law world,” leads Frederick Schauer, in his terrific analysis of the debate. Schauer lays out the position of each protagonist, he explains how their respective positions are linked to (and detachable from) their broader theories of law, he indicates what each got right and each got wrong, and he identifies the relevance of the debate to central issues in legal theory and judging today.

“A Critical Guide” is admirably clear, it delivers a passel of insights, it is leavened with dashes of humor, and it comes in at an efficient 35 pages. Schauer draws out links to legal realism and the legal process school, to Hart’s later engagement with Ronald Dworkin, to debates over *Riggs v. Palmer* and *Church of the Holy Trinity v. United States*, as well as touches on other familiar veins in U.S. legal theory. Along the way, he treats the reader to edifying discussions of contextual meaning and shared acontextual understanding; of the difference between vagueness and “open texture;” of the theoretical and the empirical aspects of the “no vehicles” debate; of the distinction and interaction between linguistic certainty and legal certainty, and much more.

In the end, he diplomatically declines to say who “won” the debate. Schauer clearly sides with Hart on the fundamental point that legal rules often have a core of plain meaning that can be understood and applied without consideration of purposes or consequences. Schauer credits Fuller, on the other hand, for capturing the sense within the American legal tradition that judges may depart from the plain meaning of laws under rare circumstances (not universally accepted as a theoretical matter, but manifest in judicial practice). Thus, he concludes, both theorists got something essential right.

Schauer’s “A Critical Guide” is illuminating for jurisprudential novices and veterans alike—a pure pleasure to read. The analytical clarity and depth of his essay, furthermore, lay the basis for a new take on this old debate. I began reading “Critical Guide” firm in the conviction that Hart was correct—as most legal theorists appear to hold—but I ended the essay thinking, to my surprise, that Fuller got it right after all.

The basic outlines of the debate are well established. Automobiles are obviously prohibited by the literal meaning of “No vehicles in the park,” Hart observed, without consulting purpose or anything beyond the language of the rule. Fuller insisted, to the contrary, that purpose is always relevant to the interpretation of legal rules (although not always consciously). He countered Hart by posing the question: Is a military truck set up as a war memorial prohibited by “No vehicles in the park”? Although a truck is a vehicle, Fuller thought it does not violate the rule because the rule was not aimed at prohibiting vehicles used as memorials.

The standard retort against Fuller is that a fully functional military truck is a “vehicle” and, consequently, is prohibited by the rule (a non-functional truck might not qualify as a “vehicle”). Fuller’s example, according to this response, does not refute Hart’s point. Rather, it illustrates that rules

sometimes have unanticipated or undesirable consequences.

That is where the debate has stood for fifty years. Fuller has defenders, but many legal theorists, including Schauer, think Hart was obviously correct in insisting that legal rules typically have a core meaning conveyed by the literal terms of the rule without resort to purpose.

In the course of his analysis, Schauer elucidates the relationship between linguistic certainty (the truck is a “vehicle”) and legal uncertainty (excluding the truck as a memorial makes no sense). As Schauer puts it, “the language is clear, and the application is linguistically clear, but following the clear language will lead to what appears to be a wrong or unjust or unwise or inequitable” result. Legal uncertainty arises in these situations owing to the unpalatable consequence produced by linguistic certainty. This is a familiar problem in law.

Schauer’s explication of the underlying sources of uncertainty—linguistic? result-generated? interaction between the two?—helpfully exposes the basic elements at play. His analysis enabled me to see, for the first time, that Fuller had a much stronger case than he put forth. The key is to think about situations that deviate from the pattern articulated by Schauer.

For example, Hart suggested that it is uncertain as a *linguistic* matter whether bicycles are excluded by “No vehicles in the park.” But why? A standard definition of vehicle (quoted by Schauer) is “a means of conveyance” used “for transporting people, goods, etc.” More people use bicycles (numbering one billion worldwide) than automobiles as their primary mode of transportation. Bicycles easily fall within the linguistic meaning of “vehicle”—no doubt about it. Why, then, did Hart think it linguistically uncertain?

A plausible explanation is that he knew that certain parks are for quiet walks (bicycles not allowed) while other parks are more active (bicycles allowed). This uncertainty (what kind of park is it?), perhaps, implicitly lead Hart to hesitate about whether a bicycle qualifies a “vehicle,” creating linguistic uncertainty to his mind when none existed. If this explanation is correct, remarkably, Hart was considering purpose (subconsciously) in connection with this very rule even as he denied that purpose bears on core meaning.

The example of a baby stroller provides additional support to Fuller. No member of the community (no police officer, no judge) would even conceive that baby strollers are prohibited by “No vehicles in the park.” Although they easily meet the definition of “vehicle,” baby strollers are normal in parks. That is why it would not occur to anyone that they are prohibited by the rule—no doubt about it (the same analysis holds for wheelchairs).

What’s especially telling about this example is that, in Schauer’s terms, it is linguistically clear (baby stroller is a vehicle) and legally clear (baby strollers are allowed)—even though these two elements point in opposite directions. Or to put it another way, *legal uncertainty should exist* owing to the bad results mandated by the clear linguistic meaning of the rule (baby stroller excluded!), but no legal uncertainty arises because purpose resolves the problem without anyone noticing.

We thus see two clear examples of purpose, in different ways, implicitly coloring the core meaning of the “No vehicles in the park rule.” That was Fuller’s position. The analytical clarifications provided in “A Critical Guide” reveals their significance to the debate.

It may seem paradoxical, or a backhanded compliment, to credit an essay for helping produce a serious critique of the position it purports to defend. But outstanding theoretical work often provokes new thoughts in opposition, parasitically riffing on the advances brought by the work. Schauer’s gem of an

essay may well begin a renewed round of jurisprudential debates on an issue long considered settled.

Cite as: Brian Tamanaha, *Another Ride on Vehicles in the Park*, JOTWELL (April 12, 2010) (reviewing Frederick Schauer, *A Critical Guide to Vehicles in the Park*, 83 **N.Y.U. L. Rev.** 1109 (2008)), <https://juris.jotwell.com/another-ride-on-vehicles-in-the-park/>.