

TYPES OF METAPHORS IN THE ENGLISH LEGAL DISCOURSE

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Abstract: *The main purpose of my paper is that of analyzing English legal discourse and legal texts belonging to different genres within the same subject field, in this case legal English, from the point of view of the variety of metaphors it consists of. Metaphor represents one among many other elements of legal discourse.*

Keywords: *legal discourse, conceptual metaphor, texts*

1. Introduction

Metaphor is, among many others, a significant element of *legal discourse*.

The hypothesis I started from in the writing of this paper, is that, in spite of the prejudice that specialist vocabularies are largely free of figurative elements, comprehensible figurative expressions have long been part of legal diction.

I intend to summarize some basic theoretical perspectives on *metaphor* and law, and provide a sustained account on how these perspectives can impact the work of legal professionals.

My research interest in legal metaphors draws on the conviction that:

- *legal discourse* is rather determinative in the life of the individual and society;
- *metaphors* have been both understudied and underestimated in this field;
- *metaphor* pervades these types of texts that have long been thought to be devoid of any emotive (if metaphors in cognitive linguistics evoke emotions) features.

Thus, throughout the paper, a distinction is made between *linguistic metaphor* which is seen as matter of language, i.e. the use of particular words which have semantic values and overtones, and *conceptual metaphor* (as a cognitive device, a way of making sense of reality). *Buried metaphors* abound in the language of the law throughout all its branches.

My main concern in the present paper is to demonstrate how *cognitive metaphor theory* works and what its specific application to *legal analysis* and *communication* might be. In the law we *live by* there are important *metaphors* that have a direct impact on millions of people in the world.

2. Terminological clarifications

The *genres* under discussion in the present paper are very common in this subject field; on the one hand both professionals and ordinary people can come across texts belonging to them; on the other hand some of them are most representative from the perspective of the Latin influence. In what follows I will enumerate and describe the genres I shall refer to.

Laws and statutes are written in general terms that apply to everyone; there are certain 'techniques' to be made use of when dealing with the inapplicability of a statute, namely another statute or legal principle from a prior case can be applied. Moreover, "laws may be a specific interpretation and definition of a statute" (Walston-Dunham, 2009:32).

Agreements and contracts are an essential part of the *legal profession and discourse*. Contract law is based on the principle expressed in the Latin phrase: "*pacta sunt servanda*" (*agreements to be kept*). Its roots are in the *lex mercatoria*. Any agreement that is enforceable in court is a contract.

Indictments are formal accusations of crime and are drawn up by a prosecutor attorney.

Judgment is the word used in relation to a legal trial, to refer to a final finding, statement or ruling, based on a considered weighing of evidence, called *adjudication*. The word comes from the Latin *adiudico*, -are, -vi, -tum which means *to win, to award, to give*.

The corpus I have made use of in this paper includes a collection of sample texts and authentic documents from online archives and different books on law, representing the following English legal genres:

- laws and statutes
- agreements and contracts
- indictments
- judgements (<http://www.legaldocs.com/>)

The samples selected and belonging to these genres are illustrative of the choice of linguistic means and structuring as well as of the occurrence of metaphors or Latin affixes, in our case.

In the present paper I will make use of several *terms* that need to be explained so that the reading and understanding of the paper becomes linear and easy to follow. Terms that need clarification at this point are: *metaphor and conceptual metaphor*.

According to the Thesaurus (www.thesaurus.com) *metaphor* is nothing else but:

a figure of speech in which an expression is used to refer to something that it does not literally denote in order to suggest a similarity (www.thesaurus.com)

In the Concise Oxford Dictionary of Literary Terms, *metaphor* is:

the application of a name or descriptive term or phrase to an object or action to which it is imaginatively but not literally applicable (2008:308)

Conceptual metaphor refers to the understanding of one idea in terms of another. Conceptual metaphors are met in the everyday speech and they are often used to understand theories and models. Concrete concepts, coming from people's experiences are used to structure more abstract ones.

3. Conceptual Metaphor Theory

Due to their widely recognized importance in the study of *metaphor and conceptual metaphor*, I will briefly summarize two works by Lakoff and Johnson (1980) and Kovecses (2002) respectively.

Conceptual Metaphor Theory, sometimes called *Cognitive Metaphor Theory*, was developed by researchers within the field of cognitive linguistics. It became widely known with the publication of *Metaphors We Live By*, by Lakoff and Johnson, in 1980. *Metaphors we live by* (Lakoff and Johnson 1980) is the first work to give an account of the existence and functioning of *conceptual metaphors*. In their views, *metaphor* is not a matter of language or words but a matter of thought, and our conceptual system is metaphorical in nature. "The essence of *metaphor* is understanding and experiencing one kind of thing in terms of another" (Lakoff and Johnson, 1980: 5)

In their opinion, *metaphors* are divided into:

- structural (based on structural systematic mapping)
- orientational (spatially related concepts)
- ontological (having objects, substances and containers as domains)

As Lakoff and Johnson state:

the metaphor is not just a matter of language, but of thought and reason. If metaphors were merely linguistic expressions, we would expect different linguistic expressions to be different metaphors. (1980: 5)

According to the same authors:

metaphor is pervasive in everyday life, not just in language but in thought and action and 'our ordinary conceptual system, in terms of which we both think and act, is fundamentally metaphorical in nature' (Lakoff and Johnson, 1980: 4)

Metaphors are very powerful instruments in the eyes of Lakoff and Johnson.

As Lakoff explains it:

metaphor is a neural mechanism that enables networks used in sensorimotor activity also to be used for abstract reasons. Conceptual metaphor is an entity pertaining to and emerging in the field of cognitive linguistics. (1999: 7)

Conceptual metaphor theory has since been developed and elaborated. Thus, *metaphor* operates at the level of thinking. Kövecses is of the opinion that “metaphor is defined as understanding one conceptual domain in terms of another conceptual domain” (Kövecses, 2002:4).

A conceptual *metaphor* consists of two conceptual domains, in which one domain is understood in terms of another: “A conceptual domain is any coherent organization of experience” (Kövecses, 2002:4). There are two key words that need explaining when talking about conceptual *metaphors*, and those are the *source domain* and the *target domain*. *Metaphors* link these two conceptual domains.

Lan and MacGregor state: “The source domain, the domain we draw metaphorical expressions from, to understand another conceptual domain, consists of a set of literal entities, attributes, processes and relationships, linked semantically and apparently stored together in the mind. These are expressed in language through related words and expressions, which can be seen as organized in groups resembling those, sometimes described as *lexical sets* or *lexical fields* by linguists.” (2009: 16)

Similarly, they define: “the *target* domain, the conceptual domain understood this way, tends to be abstract, and takes its structure from the source domain, through the metaphorical link, or *conceptual metaphor*. Target domains are therefore believed to have relationships between entities, attributes and processes which mirror those found in the source domain. At the level of language, entities, attributes and processes in the target domain are lexicalized using words and expressions from the source domain.” (Lan, L. and MacGregor, L. 2009: 16)

Kövecses (2002:128-129) suggests that abstract complex systems are part of the Great Chain and that machines (as complex systems), buildings (as complex objects), plants and humans are also part of it. He considers that *abstract complex systems* should be integrated within the Extended Great Chain (Lakoff and Turner 1989) framework at the level above humans, which includes society as one of its categories (Kövecses 2002:128-129).

The cognitive view on what a *metaphor* is builds on considering it a way of qualifying and describing certain concepts by means of others, or, in Lakoff and Johnson’s words, “the essence of metaphor is understanding and experiencing one kind of thing in terms of another” (1980: 5), the former being less familiar to the language user than the latter. Besides shaping our understanding of reality, metaphors convey emotional connotations, evoke and carry feelings and attitudes against the thing, phenomenon or person metaphorically referred to: “Far from being merely a matter of words, metaphor is a matter of thought, all kinds of thought” (Lakoff and Turner 1980: 227).

If we refer to the legal *discourse*, examples of the categories presented above include those instances when we talk and think about law in terms of building, war, confrontation, etc.

The investigation of *metaphors* in legal texts is supposed to be useful in determining the role of *metaphors* as a language necessity and at the same time a cognitive tool. The *metaphors* I will focus on, could be said to be world-explaining or describing.

4. Findings. Legal metaphors

Metaphor is absolutely central to human understanding and communication. The *cognitive or conceptual metaphor theory* has had profound influence in many fields of human intellectual endeavor over the past twenty-five years or so, as we have seen so far.

A common technique in the analysis of conceptual metaphors is to identify the linguistic *metaphors* used to talk about a topic, and from these postulate underlying conceptual *metaphors* which are presumed to motivate them. The researcher can then consider which aspects of the target domain are highlighted and hidden by the *metaphor*. In many cases, linguistic *metaphors* represent subconscious choices on the part of the speaker or writer, whose choice of language is partly constrained by the conceptual structures shared by members of his or her community. *Metaphors* can also help people talk about difficult, emotionally intense or uncommon experiences, and thus, according to conceptual metaphor theory, to think about them.

Cognitive metaphor theory can – and does – have a profound impact on our conception of law and legal practice.

Legal professionals use *metaphors* applying to different sources, grammatical form or domains, so as to make their either discourse or speech even their writing more interesting, but using *metaphors* enables us to think more carefully about our subjects.

Legal discourse applies to *visuality*. There seems to be a tendency towards a visually oriented *legal language*.

The *visuality* of the legal discourse has much to do with our own preference towards everything that can be seen or visualized.

“Our *visuality* shapes our sense of social identity and difference. As a society puts more of its essential information in written form, its members become more focused on the visual sense which enables them to retrieve that information by reading”. (http://faculty.law.pitt.edu/hibbitts/meta_p2.htm).

Law does not have so much to do with speaking (except the court, and even there everything that happens is transcribed), but with seeing or looking, something to see and be seen. Thus, the law has become more recognizable and accessible. Law expressed in visual terms is more understandable, becomes more easily readable.

Visual *metaphors* occur more often than the aural or tactile ones. They are the most frequently used in legal discourse or its various genres like judgments, indictments or agreements, thus illustrating the importance of understanding and analyzing the text.

4.1. Latin legal metaphors

Among the various types of legal metaphors, I will stress the importance of the *Latin legal metaphors*. There is a number of legal terms that are either in their Latin form, have a Latin root or have suffered certain modifications along the time; they may also be borrowed from other languages.

After a very detailed and close analysis of the corpus I have selected, I could find various legal metaphors having Latin as main source:

- ‘articles 7, 8, 38 and 41 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended, *provides...*’ (*provideo, -ere, -vidi, -visum – to foresee, to take measures*)
- ‘registration was sought for goods and services in Classes 1 and 40 of the Nice Agreement *concerning*’ (*concerno, -ere – to distinguish, to see*)
- ‘*In support of*’ (*supporto, -are – to bring*)
- ‘which was *served*’ (*servo, -are, -vi, -tum – to watch*)
- ‘*dismiss the action*’ (*mitto, -ere – to send*)
- ‘Appeal did not *err*’ (*erro, -are – to be mistaken*)
- ‘The only evidence *adduced*’ (*duco, -ere – to bring, to take*)
- ‘the Opposition Division and may not therefore be *submitted*’ (*mitto, -ere – to send*)
- ‘it is *apparent*’ (*apparo, -are – to prepare*)
- ‘*the degree of similarity* between the marks in question *is not sufficiently* high for a finding that there is a likelihood of *confusion*’ (*similes, -e, - similar*)(*sufficio, -ere – to color, to offer*) (*confusion, -onis – mixture*)
- ‘that provision *confers* greater protection’ (*confero, ferre, tuli, latum – to bring, to gather*)
- ‘the word mark TUFFTRIDE has been *registered* as a national mark in several countries’ (*rego, -ere, rexi – to lead*)
- ‘*interim* financial statements’ (*meanwhile, sometimes*)
- ‘Any *pro forma* financial statements’
- ‘the principle of *pro rata temporis* shall apply’

4.2. Personifying metaphors

Metaphors used in reference to the body represent a collective human experience of the body, or better stated, body *metaphors* illustrate the body-mind connection. The metaphor of the human body has been broadly exploited in different types of discourse. The human body represents knowledge, plurality, is easy understandable at a first glance. Thus, legal discourse applies to the use of *body metaphors* so as to be more connected to reality, to be more *human*. The law itself, legal entities and legal documents are frequently portrayed as either possessing parts similar to those of the human body, its corresponding vital functions, or experiencing human feelings and having human attitudes:

4.2.1. Metaphors containing parts of the body

- ‘the crime may be laid at the *feet of the law*’
- ‘the petition was dismissed, the two parties being equal in the eyes of the law’
- ‘they shall receive the same treatment *at the hands of the law*’
- ‘this issue is *at the heart of the judgment* of the Court of Appeal’

4.2.2. Metaphors containing bodily functions

- ‘the accused must have felt *the breath of the law* on her neck’
- ‘similar cases have been *digested by the law* and lawyers’
- ‘his law *cries out for* reform
- ‘Article 7 *suffered two* amendments’

4.2.3. Metaphors containing moral values

- ‘the Penal Code *punishes* the violation of intimacy’
- ‘the legality of the contested decision must be *appraised*’
- ‘*make access* to particular conditions of employment’

4.2.4. Metaphors containing human actions

- ‘The Board of Appeal was wrong *to dissect* them’
- ‘It follows from the *wording* of Article 42(1)’
- ‘regulation do *not fall to be examined* as part of the opposition procedure’
- ‘the core element of a potential series of marks is sufficient *to give rise to a likelihood* of association’
- ‘This conclusion *cannot be called*’
- ‘That provision *confers greater protection*’
- ‘The BORROWER *will allow the OWNER access* to the HORSE’
- ‘*enjoy* the Property during the term’
- ‘The *transferred* capital at the date of the incorporation is of’
- ‘to the full extent *permitted* by law’
- ‘*to give his best efforts* and loyalty to the Club’
- ‘*engage* in activities related to football otherwise than for Club or *engage* in any activity other than football’
- ‘The Company *will furnish*’
- ‘have all corporate power and authority necessary *to own or hold* their respective properties and *to conduct* their respective businesses’
- ‘The Company *has full legal right*, power and authority *to enter into* this Agreement and perform the *transactions contemplated* hereby’
- ‘*carrying out* such responsibilities as are normally related’

4.3. Reifying metaphors

Elements belonging to the legal system are sometimes metaphorically talked about as if they were objects. The two most frequently encountered such implied comparisons rely on the source domains *building* and *container*

4.3.1. Metaphors referring to Building

- ‘*the foundation* of this provision is the concept of ‘scienter’
- ‘Law 248 of 2001 is *the foundation* on which *the defence* is built’
- ‘while 20th Century Fox sued Rogers for breach of contract, *the accusation collapsed*’
- ‘the jury *constructed* a verdict in favour of Rizzonelli but against the District’
- ‘a carefully *constructed legal edifice* crumbled at the touch of the jury’s common sense’
- ‘It is, however, common *ground* that the applicant does not use’

4.3.2. Metaphors referring to Container

- ‘the allegations *contained in the first petition*’/ ‘the absolute grounds for refusal *contained* in Article 7
- ‘the mark registered *within the Nice Agreement*’
- ‘*the Penal Code* is full of vaguely worded provisions’
- ‘*the law* to which the judge refers *encapsulates* the theory’
- ‘likelihood *constitutes* a specific case of the likelihood of confusion ‘

- 'the *grounds* on which an opposition'
- 'the 'Property' *includes* any part or parts of the Property'
- '(*inclusive*) (which relate to breach of any obligation by a Tenant) *contained* in the Housing Act 1988 Schedule 2 apply'

4.4. Process metaphors

4.4.1. The war / confrontation metaphor

It may be illustrated with the following examples from my corpus:

- 'Action *brought against* the decision of the First Board...'
- '-*This legal battle* has dragged on for several years'
- 'a point not really *contested* by the applicant in reply to a question from the Court at the hearing'
- 'the intervener has pursued a marketing *strategy* aimed at ...'
- 'Regulation No 40/94 is not a ground of *opposition* within the meaning of Article 42(1) of that regulation'
- 'It follows from all the foregoing that the action must be *dismissed*'
- 'It is, moreover, *undisputed* and was confirmed by the statements of the parties'
- 'The intervener *submits* that the goods designated by each of the two marks in question here are significantly different'
- 'it deliberately *misleads* the public as to the commercial origin of the goods and services in question'
- 'the applicant *submitted* to OHIM such observations'
- 'an action may be *brought before*'

4.5. Sensory (modal) metaphors

4.5.1. Visual Metaphors

Metaphors can reflect the circumstances and attitudes of the society that generates them. In light of this point, it seems reasonable to suggest that the traditional popularity of visual metaphors in English *legal* language has much to do with the bias towards visual expression and experience that has traditionally characterized English culture and, inevitably, English law. People usually give aesthetic priority to visual effect. Our *visuality* shapes the sense of social identity and difference.

- 'he acted in good faith, with *a view* to the best interests of the corporation'/ 'in view of the subsequent reconciliation'
- 'OHIM takes *the view* that...'
- '... the court shall, unless it *sees* good reason to the contrary, strike out the cause'
- '*see* paragraph...; *see* Law...; *see* Seaboard Offshore vs. Secretary of State...; *see* clause...'
- 'in the *light* of police reports...'
- 'in the *light* of those considerations'
- 'OHIM *points out* that this finding would not be affected'
- '*It is in light* of the foregoing considerations'
- '*With regard to* the first respective elements of the trade marks in question'
- '*Regarding* the applicant's request...'
- '*as regards* the commercial links...'
- 'With regard to the first respective elements...'
- 'In the present case, it is *apparent* from the contested decision that...'
- 'The Court finds, as rightly *pointed out* by OHIM... that...'
- 'It should be recalled, as a preliminary *point*... that...'
- '... be aware of the cessation of those links, *a point* not really contested...'
- '-*as regards* the argument'
- 'could be *perceived* as being two marks'
- 'it is not *apparent* from the case'
- 'to enter and *view* the Property for any proper purpose'

4.5.2 Aural metaphors

- 'the Board *shall call* an annual meeting ... and *may ... call* a special meeting of shareholders'
- 'this finding / this conclusion *cannot be called* in question'
- 'evidence *was called* before the jury / *was called* on behalf of the Crown'
- 'other questions have incidentally been raised ... which *call for* brief consideration'
- 'the petitioner should have appealed ... in the *first hearing*'/ 'at the *hearing* on 2 July 2002'

- 'the minutes of *the hearing*'
- 'second, when *aural* similarity is compared, the two elements in question are not phonetically similar either'
- 'in the hypothesis that the relevant public *pronounces* those two syllables'

4.5.3 Tactile metaphors

- 'the jury left the difficulty *untouched*'
- 'the judge *touched* on the ruling / on erroneous findings of fact'
- 'the intervener maintains that this is *unsubstantiated*'
- 'the Tenant will keep the interior in a good, clean and *tenantable state* and condition and not *damage or injure* the Property'

4.5.4 Orientational metaphors

- '... such *course* of conduct was in the best interest of the Joint Venture and such *course* of conduct did not constitute negligence'
- '... the proper *course* for the learned trial judge'
- '... intended *the course* of justice to be obstructed'
- '... perverting *the course* of justice'
- 'the proceedings took a different *course*'
- '... such a measure *must not go beyond* what is necessary'
- '... the parties had reconciled and *had gone back* to live together'
- '... to propel the law *in the direction* which Mr. Lewis seeks'
- 'any notice, cheque or other document *directed to* such persons'
- 'this contract *covers* one football season ... unless *extended*'
- 'goods and services *covered* by the trade marks'
- '*under* Article 7, a trademark is ineligible for registration...'

5. Conclusions

Browsing through a number of legal documents and examining both their legal context and linguistic features, I came to the conclusion that the role of metaphor is very important in understanding and making a legal text accessible to everyone.

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