

## THE ROLE OF PERSONIFYING METAPHORS IN ENGLISH AND ROMANIAN LEGAL TEXTS

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**Abstract:** This paper attempts to carry out an analysis of metaphors in a corpus of legal documents, within the theoretical framework of the cognitive metaphor theory as conceived by Lakoff and Johnson (1980). There is a notable use of conceptual metaphors and framings in the law we live by which, undoubtedly, have a major impact on the way millions of people in the world act and react in their attempt of decoding legal messages. Since metaphors are basically cognitive constructs, their meaning can be grasped only through a process of transfer of significance from a source domain to a target one, leading thus, to an interpretation of the legal discourse.

**Keywords:** legal discourse, cognitive metaphors.

### 1. Introduction

Legal language studies have not developed a specific interest in this domain, partly because legal language is conceived as highly normative, prescriptive, directive and imperative, and partly because of its recognized formalism and obscurity. The presence of metaphors in legal English, although unexpected, represents, though, a significant characteristic: there is no such a thing as non-metaphorical legal language, at least in the line set by Lakoff and Johnson (1980).

### 2. Main aim and objectives

The present study is part of a more extensive research and includes elements of my doctoral project. The study is comparatively applied to the English and Romanian legal discourse.

Its main purpose is to analyze conceptual metaphors across various subgenres of the legal discourse and to identify the extent to which they might influence the correct understanding of the legal content.

My endeavor is meant to contribute to the study of the vast area of legal discourse, by focusing on metaphors occurring in documents such as bylaws, agreements/contracts, indictments and wills. Fully aware of the complexity of legal discourse, I have decided to limit the study to written discourse genres considering them illustrative for three distinct branches of the English law, namely Civil, Commercial and Criminal Law.

### 3. Methodological remarks

My direct investigative objectives are:

- to design a corpus of representative sets of documents collected from online archives and private lawyers' data bases;
- to create a system of categories to be investigated;

- to analyze and compare the features established within the category system;
- to establish if correlation points exist between the major characteristic features within the data from both sets, English and Romanian.

To this end I have used qualitative methods such as content analysis and discourse analysis, despite their limitations formulated by Bryman (2012, 405-406) as subjectivity, difficulty to replicate and generalize.

### 3.1 The Corpus

The corpus I have made use of in this paper includes a collection of sample texts and authentic documents from online archives and lawyers' databases. The types of legal documents I have selected belong to the Civil, Commercial and Criminal Law

#### 3.1.1 Corpus description

The corpus analyzed in the present study is divided into two sections: the English corpus and the Romanian one. Nine of the eighteen documents included belong to the English corpus, namely one bylaw, two agreements/contracts, three indictments and three wills, and nine to the Romanian corpus. The genres selected for discussion are representative for the categories we intend to analyze in connection with the three different legal branches.

The choice of *bylaws*, *contracts/agreements*, *indictments* and *wills* is due to their frequency among legal documents.

A *bylaw* contains “the written rules for conduct of a corporation, association, partnership or any organization.” (<http://legal-dictionary.thefreedictionary.com/bylaws>)

A *contract/agreement* represents “a concord between two or more parties, with respect to the effect upon their relative rights and duties, of certain past or future facts or performances; a mutual assent to do a thing.” (<http://thelawdictionary.org/agreement/#ixzz2aubTAVrX>).

A *living will* is “a legal document that allows individuals to express their wishes regarding their property or their future medical treatment they do or do not want, in case of a terminal illness.” (<http://livingwills.uslegal.com/>).

An *indictment* is “a formal accusation that a person has committed a crime and is issued by the public prosecutor on behalf of the Crown or the State. The purpose of an indictment is to ‘inform an accused individual of the charge against him or her so that the person will be able to prepare a defense.’” (<http://legal-dictionary.thefreedictionary.com/indictment>).

The samples selected and belonging to these genres are illustrative of the occurrence of legal conceptualizations and framings.

The analyzed corpus consists of a total of 187 pages, 67 pages of which for the English corpus containing 24,825 words and 120 pages for the Romanian one containing 59,963 words.

The table below contains the length of the above mentioned documents:

**Table 1. The length of the documents in the corpus**

ENGLISH CORPUS	NO. OF WORDS	ROMANIAN CORPUS	NO OF WORDS
Item 1 By Law	2,351	Item 1.1 Act constitutiv	2,672
Item 2 Agreement	7,762	Item 2.1 Contract	1,062
Item 3 Agreement	1,018	Item 3.1 Contract	2,031
Item 4 Indictment	2,582	Item 4.1 Rechizitoriu	28,269
Item 5 Indictment	3,180	Item 5.1 Rechizitoriu	23,101
Item 6 Indictment	3,642	Item 6.1 Rechizitoriu	2,259
Item 7 Will	1,780	Item 7.1 Testament	202
Item 8 Will	1,906	Item 8.1 Testament	154
Item 9 Will	604	Item 9.1 Testament	213
Total	24,825	Total	59,963

### 3.1.2 Corpus selection

In pursuing the goal of finding out to what extent particular legal genres and subgenres contain conceptual metaphors and how they contribute to the understanding of the content, I examined samples from each legal branch: Commercial, Criminal and Civil (Family).

## 3.2 Terminological clarifications and categories to be investigated

In order to define the categories of analysis I will approach first the theoretical framework which underlies the present study, namely the Conceptual Metaphor Theory. Therefore we will use terms such as:

**„Conceptual metaphor.** When one conceptual domain is understood in terms of another conceptual domain, we have a conceptual metaphor. This understanding is achieved by seeing a set of systematic correspondences, or mappings, between the two domains. Conceptual metaphors can be given by means of the formula A IS B or A AS B, where A and B indicate different conceptual domains.

**Conceptual domain.** This is our conceptual representation, or knowledge, of any coherent segment of experience. We often call such representations concepts, such as the concepts of BUILDING or MOTION. This knowledge involves both the knowledge of basic elements that constitute a domain and knowledge that is rich in detail. This detailed rich knowledge about a domain is often made use of in metaphorical entailments. *See also* Entailments, metaphorical.

**Mappings.** Conceptual metaphors are characterized by a set of conceptual correspondences between elements of the source and target domains. These correspondences are technically called “mappings.”

**Source domain.** This is a conceptual domain that we use to understand another conceptual domain (the target domain). Source domains are typically less abstract or less complex than target domains. For example, in the conceptual metaphor LIFE IS A JOURNEY, the conceptual domain of journey is typically viewed as being less abstract or less complex than that of life.

**Target domain.** This is a conceptual domain that we try to understand with the help of another conceptual domain (the source domain). Target domains are typically more abstract and subjective than source domains. For example, in the conceptual metaphor LIFE IS A JOURNEY, the conceptual domain of life is typically viewed as being more abstract (and more complex) than that of journey.” (Kövecses 2002, 253)

The categories to which we applied the qualitative analysis of cognitive metaphors in the corpora is restricted to the following groups and subgroups:

- Personifying metaphors
  - Metaphors containing parts of the body and bodily functions;
  - Metaphors containing moral values;
  - Metaphors containing human actions.
- Reifying metaphors
  - Metaphors referring to building;
  - Metaphors referring to container.
- Process metaphors
  - The war/confrontation metaphor.

## 4. Conceptual Metaphor Framework and the legal reasoning

Unlikely as it may seem, non-obvious traces of figurative mechanisms appear quite frequently in instances of language used in legal contexts. In order to have a closer look to their functioning we start from the classical works of Lakoff and Johnson (1980) and Kovecses’ (2002) which are part of the core literature on the topic and create an ideal frame for our analysis.

George Lakoff, an American linguist, and Mark Johnson, a philosopher, with the publication of their book, *Metaphors We Live By*, introduced a completely new way of studying the interrelation of thought and speech. They write:

"The concepts that govern our thoughts are not just matters of the intellect. They also govern our everyday functioning, down to the most mundane details. Our concepts structure what we perceive, how we get around in the world, and how we relate to other people...If we are right in suggesting that our conceptual system is largely metaphorical, then the way we think, what we experience, and what we do every day is very much a matter of metaphor". (Lakoff, Johnson 1980, 3)

We use this cognitive approach to metaphor in the analysis of legal documents. Although at first they may appear to be clever inventions for the convenience of the law, the metaphors actually have their origins in conceptualizations that have long been a part of normal language and thought. *Conceptual metaphor theory* has been developed and elaborated on by various other linguists. Numerous researchers in the field have pointed out that ordinary speakers regularly use linguistic metaphors in everyday speech and those metaphors reveal underlying thought processes, that is conceptual metaphors (cf. Kövecses 2010, Steen 2009, and others). In fact, metaphor is claimed to be omnipresent, rather than peripheral or marginal, and our conceptual system is metaphorical in nature.

Research into metaphor has largely concentrated on general language, on "understanding one conceptual domain in terms of another conceptual domain" (Kövecses 2002, 4).

Although not many in number, there have been also studies in the legal metaphor. Several authors have proved that metaphor is indeed an inherent part of legal language. According to Twardzisz (2013) Hibbitts (1994) examines the contemporary shift from visually-oriented to aurally-oriented figures of speech in American legal language. We frequently use the following expressions: *we observe the law, in the eyes of the law, high courts review the decisions of inferior tribunals*, etc., as though we considered law as a matter of looking. Also, we often talk of law as if it were something to look at, for instance, a text, a body or a structure. Visual metaphors can be detected by giving law the visual quality of hue, when one makes a property claim under *colour of title*, discourages *yellow dog* contracts, adheres to *black letter* rules or makes securities trading subject to *blue sky* laws (also, see, for example, Winter 2008).

Shane (2006) acknowledges the need for a different treatment of the legal metaphor, namely as "legal fiction."

The linguistic and cultural features of the law have a managing role within the legal discourse in an institutional framework. This framework comprises the legal language by means of which concepts are uttered in a specific manner and in relation with a well defined aim and intention. Once we can identify the intention we can speak of a legal discourse. The legal text operating within the legal discourse has to obey specific constraints in order to be efficient as far as norms and jurisprudence are concerned. The use of legal metaphors is part of the process of encoding and decoding legal messages and their integration in this framework is of utmost importance. "In all societies, law is formulated, interpreted and enforced: there are codes, courts and constables. And the greater part of these legal processes is realized primarily through language. Language is medium, process and product in the various arenas of the law where legal texts, spoken or written, are generated in the service of regulating social behaviour. Particularly in literate cultures, once norms and proceedings are recorded, standardised and institutionalised, a special language develops, representing predictable process and pattern of functional specialisation." (Gibbons 1994, 11)

## 5. Findings

### 5.1 A qualitative analysis of metaphors in English legal texts

As demonstrated by the figures in the quantitative analysis conducted in another section of my research, personifying metaphors are the most frequently used in all three types of the English documents considered. Of them, the most numerous subgroup is represented by that referring to human actions.

In what follows, the qualitative analysis will focus on some examples from the personifying group of metaphors, special attention being paid to the human action subgroup of the English legal metaphors.

*Metaphors* used in reference to the body (*Personifying metaphors* - Metaphors referring to human actions) 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, it 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. Abstract concepts are largely metaphorical. One of the most common forms of economic activities, namely a company or a corporation, is frequently thought of as a person. This issue is present in many legal documents, including bylaws and contracts:

“neither the *Company* nor its *Subsidiaries* have entered or will enter into any transaction or agreement”  
(Item 2, lines 306-307)

The drafter views the company as a human being, a person supposed to know or be familiar with certain legal or economic issues, able to negotiate if the case be, or even to cause problems. Inanimate entities perform human actions as illustrated in the following examples:

❖ give authorization:

- ...large numbers of persons would march to the International Amphitheatre, Chicago, Illinois, even if *permits authorizing such marches* were denied. (Item 4, lines 69- 70)
- at no time *did N [ ] authorize defendant D [ ] to possess classified documents or information at home* ( Item 5, lines 108-109)

❖ cause damage (this may be considered a mixed personifying-war/confrontation metaphor):

- The designation “Confidential” applied to *information that*, if disclosed without proper authorization, *reasonably could be expected to cause damage to national security*. (Item 5, lines 207-208)

Personifying metaphors trigger inferences related to various human actions in the interpreters’ mind, they depend on the interpreters’ knowledge and skills, as well as their subjective judgments. Consider the example:

- “large numbers of persons would march to the International Amphitheatre, Chicago, Illinois, even if *permits authorizing such marches* were denied” (Item 4, line 69-70)

It is common knowledge that marches must be accepted and authorized by police or other competent institutions; the metaphor *permits authorizing such marches* works behind the actual lexical formulation of the content, it implies that both producers and interpreters are familiar with the strict requirements of organizing a march, the permits replace the human decision, they become human and authorize various human actions.

The security agency in *Item 5* stands for a government security agency; it represents a decisive factor in a political and social environment, it is identified with intelligence, national security and defense. The metaphorical framing identified is SECURITY IS A PERSON (which is responsible for, takes actions).

- “*The NSA was responsible for, among other things, providing Signals Intelligence to United States policy-makers and military forces*” (Item 5, lines 28-29)

There is a distinction between the source and the target domains and an intricate mapping of the relations between them as we have previously noticed. The abstract concept of security implies authorization, knowledge, information and responsibility.

Humans interact with entities like companies/corporations or national agencies. Human beings work for companies/corporations or national agencies and, similarly to people, companies/corporations and agencies operate, appoint people, furnish information and deal with legal or economic documents:

- *The Company will furnish to M[REDACTED], for use by M[REDACTED], copies of the prospectus (Item 2, line 37)*
- *at no time did NS[REDACTED] authorize defendant DRAKE to possess classified documents or information at home (Item 5, lines 108-109)*
- *this Will, which Declaration of Trust provides for the payment of such excess (Item 8, line 31)*
- *This declaration reflects my firm, informed, and settled commitment (Item 9, line 8)*

## 5.2 A qualitative analysis of metaphors in Romanian legal texts

The figures in the Romanian metaphor quantitative analysis have shown that the group of personifying metaphors is the richest source of metaphors within all three types of the Romanian legal documents from my corpus. Inanimate entities can perform actions as the following:

- ❖ setting up company branches:
  - *Societatea va putea înființa prin hotărârea AGA sucursale, filiale, agenții, reprezentanți... (Item 1.1., line 48)*
- ❖ issue and handle certificates:
  - *Societatea poate emite și înmâna asociaților certificate constatare a drepturilor asupra parților sociale. (Item 1.1., line 98)*
- ❖ take decisions:
  - *A.G.A. poate hotărî mărirea capitalului. (Item 1.1., line 80)*
  - *Marfa va intra în proprietatea comitentului din momentul semnării procesului-verbal de predare-primire, (Item 3.1, lines 78-79)*
- ❖ employ people:
  - *S.C. ... angajează pe...începând cu....pe o perioadă nedeterminată. (Item 2.1, line 14)*

Examples included in the subclasses of personifying metaphors such as moral values or body sensations are much less numerous than those linking inanimate with human actions.

- ❖ a company is a (corporate) body, in other words, a living organism similar to humans:
  - *Societatea este persoana juridica romana având forma juridica [...] si își desfășoară activitatea în conformitate cu legile române. (Item 1.1, line 27)*
- ❖ shares have the ability to grant rights to their holders (this metaphorical association is closer to the area of moral values than to that of human actions):
  - *Fiecare parte socială subscrisă și vărsată de asociații conferă acestora dreptul la un vot în AGA. (Item 1.1, line 115)*
- ❖ like a human being, a company might have rights, but it also has obligations:
  - *Societatea comercială [...] poate să dobândească drepturi de proprietate și alte drepturi. (Item 1.1, line 30)*

- *Unitatea are obligația să acorde un preaviz de 15 zile lucrătoare. (Item 2.1, line 68)*

When analyzing Romanian personifying metaphors with special attention to the human action subcategory, the common important knowledge individuals have about various legal actions helps them define and better understand more abstract concepts.

Approaching the concept of *company/corporation* both in Romanian, the first association one makes is with human beings capable of feelings and emotions, but who do not neglect the reason or the intellect.

There are several metaphorical images identified in the Romanian legal documents. One metaphorical image as reflected in the documents belonging to the first and second subgenres, the agreements/contracts and indictments, is **BOARD IS DECISION**:

- *"Adunarea generala extraordinara care a hotărât aceasta va numi o comisie de experți" (Item 1.1., lines 77-78)*
- *"A.G.A. care va vota" (Item 1.1, line 18)*
- *"Direcția Generală Anticorupție a întocmit procesul verbal de sesizare" (Item 5, 158)*

Another metaphorical image stands for **COMPANY IS DECISION**; in the first instance, *Board dis decision*, the management of the corporation acts and reacts as human beings do; the members of the board are individuals required to come with solutions and take decisions on behalf of all shareholders.

In the following examples, *the company*, which represent the inanimate entity, is endowed with human powers and is responsible for the future courses of action that might affect all discourse participants:

- *"Societatea va ține evidența părților sociale" (Item 1.1., line 107)*
- *"Societatea întocmește inventarul diverselor elemente ale activului și pasivului, existente la data respectiva" (Item 1.1., 252-253)*
- *"S.C. ..... este de acord sa ramburseze angajatului, cheltuielile pe care le face" (Item 2, line 33)*

When discussing contracts and even indictments, if the offence concerns a business issue, the agreements that have been signed or breached, are also seen performing actions that are linked to human behavior, as illustrated below:

- *"contractul individual de munca poate inceta și prin acordul partilor" (Item 2, line 72)*
- *"aceste contracte au avut rolul de a da o aparență de legalitate sumelor încasate de la părțile vătămate prin șantaj" (Item 4, 355-356)*

## **6. Conclusion**

All subclasses of the *Personifying metaphor* category are represented in both English and Romanian documents in our corpus, human actions being the richest source domain for the examples that could have been identified. Inanimate entities are performers of human-specific activities or engage into human-like behavior.

A closer look at the metaphors quoted above indicates that, although the English and Romanian legal documents analyzed are of the same type, the personifying metaphors bringing together inanimates and human actions differ in the two corpora.

Instances when inanimates are viewed as if they had a human body and could be associated with moral values have also been isolated from the documents analyzed. However, examples included in these subclasses of personifying metaphors are much less numerous than those linking inanimates with human actions.

Conventional and common knowledge is also involved in the explanation and motivation of this type of metaphors. It is generally known that humans interact socially and economically when

signing a contract or gathering at the hearing of a will.

The usefulness of personifying metaphors in the discourse of law has been pointed out repeatedly in the previous section. Cognitively, they definitely facilitate the understanding of what people know less in terms of what they are more familiar with (their own body, the actions they perform and the moral values they possess). Thus functioning, they have the potential to “soften” the pretty rigid language of law. Once this language becomes more accessible to the non-professionals, their attitude towards it might change from fear of not being able to make sense of it to perceiving it as not completely meaningless for somebody who has not attended a law school.

The preference for personifying metaphors reflected by human actions can be easily explained by the fact that, human-specific actions are very familiar to all of us, and thus, implicit comparisons with them facilitate the understanding of the obscure, less known or even unknown facts in the context of legal decisions that might affect the discourse participants.

Unlike action-related personifying metaphors, which proved to be different in the two corpora, some of those related to the human body and moral values are shared (as, for example, the metaphor referring to a company as having rights).

If the cognitive value of the metaphors discussed can hardly be denied, it is obvious that they have no stylistic contribution to the discourse. They do not fall in the category of rhetorical instruments used by creative writers to consciously adorn their works. In the documents under consideration, they are employed rather as “natural and inherent components of human language” (Smith 2006-2007, 942) in a particular specialized environment.

The analysis of the English and Romanian legal documents brings us to the conclusion that at least agreements and indictments are pretty similar as far as the tendency in the use of metaphors is concerned. Both show an obvious preference of the writers for personifying metaphors, while reifying and process metaphors rank second and third, respectively. The major dissimilarity lies between English and Romanian wills – the latter, as already pointed out, contain no metaphors at all.

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