Towards a Hermeneutical Approach to Legal Metaphor

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This paper examines the importance of metaphor in legal discourse. It discusses the reasons for the lack of specific studies of the relevance and structure of metaphors in the law in general, and in Italian constitutional law in particular. Three claims are put forward: 1) legal discourse is constituted by a mobile army of metaphors; 2) there is no such thing as a non-metaphorical legal language; and 3) strong ideological prejudices work against a recognition of the basically metaphorical nature of legal concepts. The paper examines the rhetorical conception of metaphor and then summarizes the three dominant theories of metaphor: semantic, structuralist and hermeneutic, and argues that only a hermeneutical approach can grasp and fuse the cultural horizons of inherited, metaphorical, interpretive traditions. It concludes that comparative law, with its work of translation, is an excellent standpoint for examining the values underlying legal metaphors.

I. Law and metaphor

“Normative language is metaphorical”¹. With these words, Italian scholar Alessandro Giuliani called upon legal scholars to venture into the field of metaphor studies, in order to deepen their awareness of legal terms and doctrines. Legal practitioners and scholars work with words to resolve disputes and pursue justice, but also to obscure, mislead and promote unspoken interests. The inevitable, sometimes insidious use of metaphor reflects the ambiguous nature of law and of language; metaphors can be used to further communication and clarification, but also to produce disinformation and confusion:

the entire history of legal thought could be studied from the standpoint of language as a sequence of metaphors: it would be enough to examine any ordinary controversy in legal scholarship to see that the different arguments are conditioned upon the accepted metaphors, analogies and the use of examples. We can see the demonstration of Blumenberg’s theory of the existence of key terms as absolute metaphors, which cannot be further broken down into logical terms: the impossibility of agreeing on the meaning of the term “law” is an example of this fact. The task of legal analysis is the correction of metaphors and the clarification of language².

Giuliani thus suggests that legal experts ought to study rhetoric. The purpose of this is not to sharpen our oratorical skills or our ability to employ seductive metaphors; the purpose in studying rhetoric derives from the fact that legal language is intrinsically metaphorical, for better or for worse. The ethical task of legal thought thus consists in uncovering the ideological projects hiding behind – or even within – legal metaphors.

The classic objection to the discussion of metaphors, raised by the traditional, professional, legal academic is that they are the concern of literature, maybe even philosophy, but have nothing to do with the life and practice of the law.³ Underlying this belief is the assumption that legal language

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1 A. Giuliani, La «nuova retorica» e la logica del linguaggio normativo, RIFD, 1970, p.379. See also Logica (teoria dell’argomentazione), Enc. Dir.
2 A. Giuliani, La «nuova retorica» e la logica del linguaggio normativo, RIFD, 1970, p.379.
3 The provocative aspect of metaphor studies has been well-described by Severo Sarduy, “Metafora al quadrato su Góngora”, in G. Conte (ed.), Metafora, Milan, 1981, p.187: “Metaphor is the point at which language’s plot thickens, the point at which it takes on such importance as to render the rest of the sentence flat and innocent. Like a yeast bubbling at language’s continuous surface, metaphor confers a certain degree of denotative purity on all that comes near it. Purity. Let us underscore the moral implications of this word: metaphor as extraneous to the “nature” of language, like an illness; it impugns every rhetorical figure, dragging it into the forbidden zone, so much that Saint Thomas boasted of having no use for metaphors at all.”
may be cleansed of the sentimental imperfections of poetry and literature, of the base materialism of economics and of the senseless mental gymnastics of theory and philosophy. But this assumption is not only epistemologically naïve; it also serves ideologically to justify the legal profession’s project of manipulating the sentiments and interests of others for economic gain, political power and social privilege.

The legal thinker that instead accepts Giuliani’s suggestion to travel down the uneven path of clarifying, reframing and correcting legal metaphors will have to critically examine the values underlying legal terms and expressions, as well as the power relationships implicit in legal doctrines’ choices of words. For example, if we ask “why do we say ‘sources of law’? Why do we use this hydraulic metaphor?”, we will begin to analyze the presumed nature of the “product” of a legal norm: the norm originates somewhere underground, and then gushes out of a kind of mountain spring (a pristine place presumably, this site of political power condensation), ready to be bottled and delivered to judges, government lawyers and other faithful servants passively carrying out orders received from on high, without asking too many questions about their content or value. Notice how the hydraulic metaphor of the source gives rise to the imperative and anthropomorphic metaphor of the “law-maker”, which leads to the bureaucratic and military metaphor of the civil servant. Similar considerations follow when expressions like “head” of state, constitutional “organ”, electoral “body” (to mention a few of the most obvious organic metaphors in constitutional law) are viewed through the lens of metaphor studies.

Another classic objection against the study of metaphors appeals to the correctness of the literal meaning as opposed to the vague arbitrariness of metaphor. A precise, professional judge might argue that when it comes to interpreting the meaning of a legal provision, we must focus on the original meaning of the text as intended by the legislator. This anti-hermeneutical presumption, which denies the relevance of interpretation in service to an idea of objective meaning and thus denies the interpreter’s own subjectivity, can be found in every legal culture, in every area of the law, at every level of legal sophistication and at every ideological extreme.

The myth or prejudice of literal interpretation is perhaps one of the most ideologically resistant of metaphors: its simple suggestion of an uncontaminated source of meaning in a distant act carried out by someone else, and its call to neutralize the subjectivity of decision-making, serve every jurist’s latent desire to escape from freedom. Now, from the hermeneutic perspective, it is clear that there is literally no such thing as a literal interpretation. The sequence of l-e-t-t-e-r-s does not produce nor does it evoke meaning. Literal interpretation suggests that normative language is like a mosaic, while a hermeneutical approach sees it more like an organism. To willfully not see the forest for the trees, as the literal approach does, means to effectively deny that a qualitative, ideological or strategic choice is being made. As anyone who has crossed the shadowy valley of translation knows, translating a phrase from one language to another is nothing like taking apart a mosaic and putting the pieces back together somewhere else; translating a legal concept from one cultural context to another is more like transplanting a whole tree in a different soil. Still, the belief persists that behind words there are things, that behind logic there is being, that behind abstract norms there are concrete interests, that behind appearance there is substance, that behind form there is content and that behind the metaphor there is the concept. These beliefs are so archetypal, and thus so deeply-rooted (and as such, they are advantageous, reassuring and forgiving) as to force a hermeneutical approach to justify itself again and again, to set forth its particular assumptions and announce its particular critical project: normative language is metaphorical language; metaphorical language is ordinary language; and metaphor is not just a rhetorical form but the very structure of language. Moreover: the supposed opposition between a literal interpretation and a metaphorical one is itself a metaphor, the metaphor of language as a series of letters.

While metaphor studies have flourished in semiotics, semantics, comparative literature, rhetoric and political theory⁴, Italian legal scholarship has not developed a specific interest in this subject. Beyond the comments of Giuliani, there have not been searching examinations of the use of metaphor in Italian constitutional discourse. The reasons for this prolonged silence can be located in: 1) the

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prevalence of positivism, which conceives of legal language as normative and imperative; 2) the prevalence of formalism, which seeks to purify forms of their content; and 3) the decline of rhetoric as an allied field of legal education. According to Giuliani:

the devaluation of metaphorical and figurative language has become a tacitly accepted dogma in modern legal thought: and it is the intersection of profoundly contrasting positions, which depart from realistic or nominalist assumptions. This devaluation is connected to the corruption of the authentic dialectical tradition. At its root is a nervous suspicion of opinion and of any analysis that is not based on compelling, demonstrative evidence. This has produced the reduction of prescriptive language to imperatives, because only these forms of prescription seem to belong to the domain of the rational. The other forms remain irredeemably consigned to the domain of persuasion, rhetoric and the irrational”5.

According to Giuliani, the decline of metaphorical language in the law is the consequence of our expulsion from the dialectical paradise of antiquity. Apart from his dubious conceptualization of an “authentic” dialectical tradition (a curiously undialectical image of dialectic, so insulated from discussion, purified of contamination and restored to its ancient and original splendor), one can ask whether Giuliani’s Aristotelian conception of metaphor is satisfying, or whether instead the reduction of metaphor to a mere trope is not partially responsible for its consequent marginalization.

From the perspective of Italian constitutional scholarship, the first instinct of one who sets out to discuss metaphors and law is to put forward the canonical (as well as metaphorical) excusatio propter infirmitatem: the field is too vast to try to cover it in the scope of this examination, a complete study of the role of metaphors in law has yet to be written, the literature is endless. Richards, after having evoked the intuitions of Shelley and Bentham, and having “glanced for a moment at these deep waters into which a serious study of metaphor may plunge us”, located in the “fear of them […] one cause why the study has so often not been enterprising and why Rhetoric traditionally has limited its inquiry to relatively superficial problems” 6. Moreover:

The neglect of the study of the modes of metaphor in the later 19th Century was due, I think, to a general feeling that those methods of inquiry were unprofitable, and the time was not ripe for a new attack. I am not sure that it is yet ripe in spite of all that Coleridge and Bentham did towards ripening it. Very likely a new attempt must again lead into artificialities and arbitrarinesses. If so, their detection may again be a step on the road. In this subject it is better to make a mistake that can be exposed than to do nothing, better to have any account of how metaphor works (or thought goes on) than to have none7.

I would like to put forward a few considerations in favor of a hermeneutical conception of metaphor in legal discourse. The assumptions from which I proceed are that: law is language, legal language is metaphorical, metaphorical language is ordinary language, legal language is as specialized as it is common, the meaning of legal discourse can be grasped only through a process of interpretation, metaphors work by essentially transacting between contexts, and comparative law – whose basic and difficult task is translation – is in a privileged position to study their function. Metaphor studies and translation studies intersect in the zone of critical hermeneutics: in contrast to the other approaches to metaphor, only hermeneutics is concerned with the historical embodiment of the subject which is interpreting a text. It takes two ideas to make a metaphor, and so there are no metaphors in the dictionary, but only in discourse. The function of a critical study of metaphor is to suggest a technique for liberating ourselves from the defects of the interpretative traditions that we have received but not interrogated.

This paper will proceed in four steps: first, I will summarize the origins of the reduction of metaphor to a rhetorical trope, then I will discuss three main currents in modern metaphor studies: the semantic paradigm, the structuralist paradigm and the hermeneutical paradigm8.

5 A. Giuliani, La nuova retorica e la logica del linguaggio normativo, RIFD, 1970, p.382.
7 Ibid., p.115.
8 Like all classifications, this one is ultimately arbitrary and subject to criticism. As Barthes reminds us, “The passion for classifying always seems Byzantine to one who does not share it […] and yet it is usually
I intend to argue that (1) language in general, and thus legal language in particular, is constituted by a mobile army of metaphors, by metaphors that point to other metaphors; (2) a non-metaphorical language does not exist; and (3) there are a series of prejudices, laden with ideology and false conscience, that resist this hermeneutical vision, such as the illusions: of an objective substance underlying subjective appearances, of an ontological reality underpinning linguistic formulations, of an economic structure giving rise to a legal superstructure and of a scientific rigor that is superior to a poetic indeterminacy.

II. The origins of a rhetorical conception of metaphor

“Men in fact are affected in the same way by style as by foreigners and compatriots. So the discourse must be made to sound exotic; for men are admirers of what is distant, and what is admired is pleasant”9. In his work on rhetoric Aristotle casts an image of distance as a vehicle of eloquence. Of all the brilliant figures that can be expressed in speech, metaphor stands out for its iconic ability to “make visible”. Aristotle believes that metaphor translates speech into images, making it more beautiful and thus more persuasive. This is the basis of an ornamental conception of metaphor: metaphors can bring inanimate things to life. Finding beautiful metaphors means knowing how to see and how to grasp the similarity between different things. Metaphors have a manipulative character, which leads Aristotle to advise drawing them “from related but not obvious things...Most witticisms are also produced through metaphor and an additional illusion; for what the hearer hears becomes clearer to him through its being the opposite to what he thought, and the mind seems to say, ‘How true, and I was wrong’”10. Metaphor’s persuasive effect comes from manipulation, and Aristotle sets forth a taxonomy to organize this: “metaphor is the imposition of a name on another thing: either the name of the genus applied to the species, or the name of the species applied to the genus, or the name of one species applied to another, or an analogy” 11.

Metaphor emerges from this analytical reduction as a figure of speech, supported by a prejudice in favor of image, and potentially dangerous for its deceptive potential. According to Ricoeur, Aristotle sealed the destiny of metaphor “for centuries to come: henceforth it is connected to poetry and rhetoric, not at the level of discourse, but at the level of a segment of discourse, the name or noun”12. Metaphor’s environment is defined as language, itself already ordered into genus and species and playing by already-determined rules. The rhetorical work of metaphor consists thus in the violation of this order and the rules of this game: to call the genus by the species’ name, and vice versa, means simultaneously recognizing and undermining the logical structure of language.

Cicero also viewed metaphor (translatio) as “a small similarity reduced into a single word”13, whose function is essentially ornamental:

there is a vast application for the use of metaphor: while arising out of necessity, from the poverty and limits of vocabulary, metaphor then acquired popularity for its pleasant character. Like clothes, which were invented to protect us from the cold but then began to be used to decorate the body, so also metaphor, created to compensate for the lack of words, came to be commonly used for pleasure14.

While classical rhetoric is interested in the displacement of meaning from the real to the figurative triggered by metaphor, the new rhetoric situates metaphor within a theory of argumentation. Reducing metaphor to a trope, Perelman defines it as “a condensed analogy, resulting from the fusion

normal. The taxonomic option implies an ideological one: there is always a placed in the place of things: tell me how you classify and I will tell you who you are”, R. Barthes, La retorica antica, Milan, 2006, p. 53.
10 Ibid., 1412a.
11 Poetics, III, 2, 1457b.
13 Cicero, De oratore, III, p.39: “Similitudinis est ad verbum unum contracta brevitas”.
14 Ibid., III, p.38.
of an element of the *fora* with an element of the theme”\(^{15}\). Like Aristotle, Perelman considers metaphor to be a concentration of the analogical process: “any analogy – except those which present themselves in a rigid form, like allegory and parable – spontaneously becomes metaphor”\(^{16}\). Even in the new rhetoric metaphor remains an argumentative device\(^ {17}\).

### III. The semantic paradigm of metaphor

The rhetorical point of view gives way to the semantic one when “metaphor is transferred into the framework of the *sentence* and is treated not as a case of *deviant denomination*, but as a case of *impertinent predication*”\(^ {18}\). An exclusively rhetorical conception of metaphor, whether classical or modern, depends upon the attribution of a privileged position to the word, to the name. A semantic analysis, by contrast, treats the phrase as the primary unit of meaning. Whereas rhetoric treats metaphor as a trope or a device which changes the meaning of a word through an analogy with another word, semantics regards metaphor as an unusual attribution at the level of the phrase or the discourse. A seminal work articulating the semantic conception of metaphor is Richards’ *Philosophy of Rhetoric*. Richards conceives of rhetoric as a study of verbal understanding and misunderstandings. He thus begins his examination with a look at the dark side of communication, confusion, and then focuses on manipulation and language disturbances. For Richards, rhetoric becomes a study of verbal equivocations and their relative corrections. He declines to set forth a taxonomy, precisely because he aims to reassert the primacy of discourse over the word. For Richards, language is not just a system of signalling. And words are not tools for copying life, but for ordering it. Words are the places where experiences, which could never encounter each other at the level of feeling or intuition, somehow come together. They are the opportunity and the means for the mind’s relentless attempt to order itself. Metaphor is not just another figure of speech, but an omnipresent principle of language. It is through metaphor that words, passing from one context to another, change meaning. But there is no fixed, original, inherent meaning. The meaning of a word always depends upon the use that one makes of it and the purpose for which it is used. An exclusively rhetorical conception is insufficient, because metaphor must be situated within a process of interpretation. Richards thus puts forward a hermeneutical proposal:

> the theory of language may have something to learn, not much but a little, from the way in which the physicist envisages stabilities. But much closer analogies are possible with some of the patterns of Biology. The theory of interpretation is obviously a branch of biology – a branch that has not grown very far or very healthily yet. To remember this may help us to avoid some traditional mistakes – among them the use of bad analogies which tie us up if we take them too seriously. Some of these are notorious; for example, the opposition between form and content, and the almost equivalent opposition between matter and form. These are wretchedly inconvenient metaphors. So is that other which makes language a dress which thought puts on. We shall do better to think of a meaning as though it were a plant that has grown – not a can that has been filled or a lump of clay that has been moulded.\(^ {19}\)

While a theory of rhetoric is impossible, we can study the development of certain metaphors in order to understand the values that they further. A theory of metaphor is also impossible because every metaphor implies a comparison.


\(^{16}\) Ibid., p.425.

\(^{17}\) Cf. J. Derrida, *La mitologia bianca. La metafora nel testo filosofico*, in G. Conte (ed.), *Metafora*, Milan, 1981, p.247 : “Every time that rhetoric defines metaphor, this implies not only a philosophy but a conceptual web within which ‘the’ philosophy is constituted. Moreover, every thread in this web forms a *turn of speech*, one could say a metaphor if this notion were not too derivative in this context. The defined is thus implied in the defining of the definition”.

\(^{18}\) P. Ricoeur, *The Rule of Metaphor*, p.4.

\(^{19}\) I.A. Richards, *The Philosophy of Rhetoric*, p.12.
What is a comparison? It may be several different things: it may be just a putting together of two things to let them work together; it may be a study of them both to see how they are like and how unlike one another; or it may be a process of calling attention to their likenesses or a method of drawing attention to certain aspects of the one through the co-presence of the other. As we mean by comparison these different things we get different conceptions of metaphor.

Thus Richards, in criticizing the sterility of a rhetorical and taxonomic approach, offers us a comparative vision of language and metaphor. Our way of perceiving and describing the function of a particular comparison/metaphor depends upon its purpose. While rhetoric views metaphor as a simple displacement of words, semantics views it instead as an exchange of thoughts, a transaction between contexts. As constitutive principles of language, the metaphors that we avoid shape our thought just as much as those we accept. The creation of metaphor is so marvelous and enigmatic that human attempts to describe and comprehend it are necessarily incomplete. But by observing the function of metaphor from the assumption of incomprehension, we can correct for the abuse of metaphor, by which it is used in order to conceal unspoken interests.

Our skill with metaphor, with thought, is one thing – prodigious and inexplicable; our reflective awareness of that skill is quite another thing – very incomplete, distorted, fallacious, over-simplifying. Its business is not to replace practice, or to tell us how to do what we cannot do already; but to protect our natural skill from the interferences of unnecessarily crude views about it; and, above all, to assist the imparting of that skill – that command of metaphor – from mind to mind. And progress here, in translating our skill into observation and theory, comes chiefly from profiting by our mistakes.

Richards’ insights were later taken up by Max Black. In his classic work, Models and Metaphors, Black articulates three conceptions of metaphor. First of all, there is the substitutive theory: in metaphor, one word substitutes another by virtue of its analogous meaning. According to the substitutive vision, metaphor is used to communicate a meaning that could have been expressed literally. If the writer substitutes L with M, the reader’s job is to invert this substitution, using the literal meaning of L as a clue to understanding the literal meaning of M. Comprehending a metaphor is like deciphering a code or solving a puzzle. Next, there is the comparative theory of metaphor, which is really a kind of substitution. This is an update of the Aristotelean vision of the metaphor as a condensed analogy (recall Quintilian, for whom “a simile is when I say that a man has behaved ‘like a lion’, a metaphor is when I say that a man ‘is a lion’”). While the substitutive vision says that “Achilles is courageous”, the comparative vision says that “Achilles is like a lion”. One vision mentions courage, the other assumes it without saying so. Lastly, there is an interactive theory of metaphor: the reader or listener of a metaphorical expression is required to connect two ideas. Every metaphor contains two different ideas that act against each other, and meaning is the product of this interaction. If I say that the lion is the king of the jungle, I say both that the lion is on the highest level of a hierarchy, and also that monarchy is a necessary institution, even for animals (implying that animals are not capable of establishing a republic). The interactive theory imagines metaphor as a filter: the main subject is “seen through” the metaphorical expression; the image of Achilles is filtered through the icon of the lion. To call a man a lion means framing him in a special light, and also makes the lion seem more human!

Studying the metaphors, models and archetypes that structure scientific theories or legal doctrines does help us to appreciate the value of the imagination. But even if the rhetorical and semantic paradigms succeed in illuminating metaphor’s function, they fail to say anything about the subject who is interpreting them. Neither rhetoric nor semantics widen the scope of the metaphorical field so far as to comprehend the fusion of horizons sought by the hermeneutical vision.

IV. The structuralist paradigm of metaphor

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20 Ibid., p.120.
21 Ibid., p.116.
23 Quintiliano, Istituzione oratoria, VIII, p.6, p.9.
But before examining the hermeneutical paradigm, we must consider the structuralist critique of metaphor. The structuralist attack is pointed: making metaphor the constitutive principle of language is both intellectually lazy, because it seeks to avoid the work of analyzing the differences between its tropes, as well as aphasic, because it ignores the parallel work of metonymy. Taking up Richards’ suggestion to study the pathological side of communication, Jakobson concentrated his attention on language disturbances. As the observation of children enables us to understand how language is acquired, so does the observation of aphasics enable us to understand how language is lost. Linguistics is interested in language in all of its aspects: language in practice, language in development, language being born, language in dissolution. Following Saussure, Jakobson observes how every linguistic sign implies two faculties: combination and selection. In combination, constitutive signs combine with each other and then with other signs; combination and contextualization are two aspects of the same process. In selection, alternative signs are chosen which can then substitute each other; selection and substitution are two aspects of the same process. While speaker has no freedom in the combination phase, because language is a predefined, indispensable, culturally-given code, there is more freedom in the selection phase, where it is possible to choose between multiple expressions. Observing aphasic disturbances, Jakobson notices that there can be two types of regression, which correspond to these two phases of language: a loss in the capacity of combination and a loss in the capacity of selection. Someone who loses the ability to contextualize mobilises only substitutive resources, and thus works only with similes, identifying things in a metaphorical way. Someone who loses the ability to select mobilises only contextualizing resources, and thus identifies things only in a metonymic way (for example, calling a telescope a microscope or a lantern fire).

The varieties of aphasia are numerous and diverse, but all of them lie between the two polar types just described. Every form of aphasic disturbance consists in some impairment, more or less severe, either of the faculty for selection and substitution or for combination and contexture. The former affliction involves a deterioration of metalinguistic operations, while the latter damages the capacity for maintaining the hierarchy of linguistic units. The relation of similarity is suppressed in the former, the relation of contiguity in the latter type of aphasia. Metaphor is alien to the similarity disorder, and metonymy to the contiguity disorder24.

Speech regression, like its development, unfolds along two different semantic axes, the metaphoric and metonymic. In the same way, we see that different historical epochs or cultural movements show a preference for metaphor or metonymy. In painting, it is clear how Cubism was inspired by a metonymic orientation, while surrealism preferred a metaphorical language. In film, Griffith favored a metonymic montage, varying the angle, the perspective and the center of the frame, while Chaplin preferred a metaphorical montage, introducing gradual dissolves. In literature, Romanticism favors metaphoric expressions, which Realism prefers metonymic ones.

Similarity in meaning connects the symbols of a metalanguage with the symbols of the language referred to. Similarity connects a metaphorical term with the term for which it is substituted. Consequently, when constructing a metalanguage to interpret tropes, the researcher possesses more homogeneous means to handle metaphor, whereas metonymy, based on a different principle, easily defies interpretation. Therefore nothing comparable to the rich literature on metaphor can be cited for the theory of metonymy…Not only the tool of the observer but also the object of observation is responsible for the preponderance of metaphor over metonymy in scholarship. Since poetry is focused upon the sign, and pragmatical prose primarily upon the referent, tropes and figures were studied mainly as poetic devices…Thus, for poetry, metaphor, and for prose, metonymy is the line of least resistance and, consequently, the study of poetical tropes is directed chiefly toward metaphor. The actual bipolarity has been artificially replaced in these studies by an amputated, unipolar scheme which, strikingly enough, coincides with one of the two aphaic patterns, namely with the contiguity disorder25.

25 Ibid., pp.95-96.
Gérard Genette shares Jakobson’s idea that the preponderance of metaphor studies is due to a scientific afasia. He argues that privileging metaphor over metonymy implies a restriction of rhetoric. From the structuralist point of view, metaphor is only one form among many others, and its promotion to the status of analogy par excellence results from a kind of violence. Arguing against those who affirm that metaphor is the central figure of any rhetoric, Genette asserts that “thus, by virtue of an apparently universal and irrepressible centricism, the heart of rhetoric – or what is left of it – is no longer defined by the polar opposition between metaphor and metonymy, in which some air could still enter and some fragment of a great game could still circulate, but rather by the unadorned metaphor, frozen in its useless regality”\(^{26}\). The structuralist critique of the semantic approach to metaphor thus reduces metaphor to one trope among many. In this way, metaphor gets reabsorbed back into rhetoric.

An attempt to widen the horizons and functions of metaphor is put forward in the cognitivism of George Lakoff\(^{27}\). For Lakoff, metaphor permeates daily life, not only in language but also in thought and action. Examining ordinary language, we can locate some recurring metaphors. For example, expressions like “attack” a view, “defend” a thesis, argumentative “strategy”, “gain” or “lose territory”, suggest a common metaphorical reference to argumentation understood as war. Expressions such as “wasting” time playing, “gaining” time with a gadget, “investing” time in a study, “having” time at hand, suggest a common metaphorical reference to time understood as money. In the classic, *Metaphors We Live By*, Lakoff and Johnson present a metaphorical taxonomy, classifying the valences of metaphorical expressions. Arguing against objectivist conceptions, which presuppose a real meaning of words, Lakoff advances a constitutive vision of metaphor, which holds the meaning of words is produced.

Lakoff concentrates above all on the role of metaphor in political communication\(^{28}\). The art of framing, which means choosing the right slogan for introducing certain themes into the public debate, strongly conditions the substantive value of the matter in discussion. To speak about “abortion” is different from speaking about the “voluntary interruption of pregnancy”, tilting us more in favor of the fetus’s right to life than the mother’s right to self-determination. Another example can be seen in the choice between “euthanasia” and “the right to death with dignity” (or “the right not to be subjected to aggressive therapy”): euthanasia accents the egoistic and hedonistic pleasure of the relativist who seeks escape from the inevitable suffering of life, while rights give value to the dignity of the autonomous decision to avoid useless, tragic suffering in the terminal phase of one’s own existence.

Legal language provides cases of metaphorical transformations that reflect shifts in underlying political perceptions. An example from Italian law is the widespread practice of calling parliamentary laws by the name of their sponsors, which has the effect of reinforcing the personification of the political power and depriving the parliament as a whole of responsibility for its product. If the immigration law becomes the “Bossi-Fini”, the immigration policies of the Italian state become the target of sympathies and antipathies towards two individual politicians, who in turn become the Italian state (a case of selective aphasia with a regression along the metonymic axis). Another example is the practice of calling some laws “arbitration”, thus marking a public legislative act by a private law term; the law thus loses that civilizing veil of hypocrisy which portrayed it as an abstract provision aimed at protecting the general interest, to instead take on the brutal appearance of a private agreement aimed at protecting the very particular interests of individuals. In calling a law an “arbitration”, the politician who has rendered service to his boss gets linguistically promoted to the status of peacemaker who has successfully ended a conflict (a case of combinative aphasia, with a regression along the metaphorical axis).

Both the structuralist critique of metaphor and the cognitive revaluation of it shake up taxonomies in order to put metaphor in its proper place. While the structuralists reduce metaphor to a rhetorical figure, the cognitivists confine it at the center of language. While structuralism divides language into *langue* and *parole*, hermeneutics sees every speech act as an event. The truth of

metaphors cannot emerge from the mechanical analogizing of the structuralist taxonomies, which reduce meaning to the identification and the reassignment of labels. Language is not just a code or a system, but a place in which human beings concentrate the meaning of their own experience.

V. The hermeneutic approach to metaphor

Only with a hermeneutic approach can we hope to understand ourselves as standing before a world that reflects us, our prejudices and our convictions. The hermeneutics of metaphor requires not only an interpretation of the metaphor in light of the text, but also an interpretation of the text in light of the metaphor. Only in this way can the metaphorical word acquire meaning and value in a metaphorical discourse. Metaphor generates a fusion of horizons and an opening of the world, which tears the subject out of the self-referentiality of his own assumptions and traditional prejudices, requiring instead (and making possible) the imagination “no longer understood as the faculty of deriving ‘images’ from sensory experiences, but as the capacity to let new worlds construct our self-understanding. This power will not be given by new images, but by new meanings in our language. The imagination will then be regarded as a dimension of language. And a new relationship between imagination and metaphor will appear”29. Only a hermeneutic conception of metaphor places metaphor within the hermeneutic circle, which is not limited to figures of speech or structures of language, but embraces the horizons of received cultural traditions and the existential practices of a subject who interrogates a text by attributing meaning and value to it.

The pioneer of contemporary metaphor studies, Hans Blumenberg, synthesized both the semantic and structural conceptions of metaphor while, in a Hegelian fashion, he superceded them. While semantic views employed “paradigms” to focus on the mechanisms for displacing meaning, structural approaches studied the classifications of metaphor’s persuasive and coercive effects. For Blumenberg, by contrast, only a hermeneutic conception could do justice to the value of metaphor: a metaphor is not just an enunciation that can be reduced into concepts, nor a disciplinary strategy making use of manipulative rhetorics to subordinate individuals, but rather a point of condensation for historically-conditioned cultures and traditions. So, for example, European metaphors are more organic, while American metaphors are more mechanistic. The rhetorical origin of metaphor corresponds to its original ambiguity: “metaphor undoubtedly has its roots in the ambivalence of ancient rhetoric: the orator can let the truth ‘appear’ in its legitimate splendor, but can also make the false assume the same appearance as the truth”30.

The “literal meaning” is in fact the flood lands formed by the disaggregation and commingling of the old metaphorical rocks. According to Blumenberg, there are thus some archetypal metaphors, continually invoked in order to designate phenomena for which there is no specific figure and that cannot therefore be reduced to conceptual terms (such as law, the force of law, constitution, state, sovereignty). From the hermeneutical standpoint, metaphor’s value is not objective and intrinsic, but rather depends on the context in which it is inserted and on the tradition from which it emanates.

In his masterpiece, The Rule of Metaphor, Ricoeur argues for a hermeneutical conception: “metaphor presents itself as a strategy of discourse that, while preserving and developing the creative power of language, preserves and develops the heuristic power wielded by fiction”.31 “Through metaphor, subjectivity opens up to the tension of the truth, required by the fictitious aspect of the category or the concept. This is obviously a metaphorical, comparative truth, which interrogates the meaning of translation”.32

In the great majority of studies dedicated to metaphor, be they rhetorical or semantic, we do not see a due respect paid to the insuperable contribution of Nietzsche’s early essay on truth and lying. A master of metaphor, Nietzsche reflects on the birth and development of language in the phase of his own life in which he left philology to pursue the fusion of poetry and philosophy that would mark his

30 H. Blumenberg, Paradigmi per una metaforologia, Bologna, 1969, p.114.
32 Ibid., p.152.
unmistakable style. Nietzsche imagines a scene very much like the beginning of *2001: A Space Odyssey*: “in some remote corner of the universe, poured out and glittering in innumerable solar systems, there once was a star on which clever animals invented knowledge” 33. This fable imagines that the invention of language corresponds to the original sin of the claim to truth: the word is the result of three metaphorical leaps of translation: a nerve stimulus is translated into an image, an image into a sound, a sound into a word. Words cannot correspond to things, because they are the product of these leaps in the sensory realm. Even when comparing words in different languages that are supposed to mean the same thing, we come up against the ultimate impossibility of translation, and must disabuse ourselves of the false pretense of actually grasping the noumenous, ontological essence of things:

The different languages, set side by side, show that what matters with words is never the truth, never an adequate expression; else there would not be so many languages. The “thing in itself” (for that is what pure truth, without consequences, would be) is quite incomprehensible to the creators of language and is not at all worth aiming for. One designates only the relations of things to man, and to express them one calls on the boldest metaphors. A nerve stimulus, first transposed into an image – first metaphor. The image, in turn, imitated by a sound – second metaphor. And each time there is a complete overlapping of one sphere, right into the middle of an entirely new and different one 34.

Nietzsche is not simply making the nihilistic argument that there is no truth. In emphasizing the importance of translation in the transformation of sounds into images and then into words, Nietzsche advances the paradoxical idea that the very “nature” of truth claims is metaphorical, that there is only metaphorical truth:

What, then, is truth? A mobile army of metaphors, metonyms, and anthropomorphisms – in short, a sum of human relations, which have been enhanced, transposed, and embellished poetically and rhetorically, and which after long use seem firm, canonical, and obligatory to a people: truths are illusions about which one has forgotten that this is what they are; metaphors which are worn out and without sensuous power; coins which have lost their pictures and now matter only as metal, no longer as coins 35.

While metaphorical creativity is the pulse of life, the conceptual order is created and imposed by subjects incapable of abandoning themselves to artistic, mythical or onirical ecstasy. The metaphorical style is a sign of the fullness of life, just as the “demonstrative” style suggests its impoverishment. Nietzsche lavishes particular scorn upon those who (like myself) make a profession out of scientific research, for having fled from metaphorical heights to seek refuge in dead concepts:

We have seen how it is originally *language* which works on the construction of concepts, a labor taken over in later ages by *science*. Just as the bee simultaneously constructs cells and fills them with honey, so science works unceasingly on this great columbarium of concepts, the graveyard of perceptions. It is always building new, higher stories and shoring up, cleaning, and renovating the old cells; above all, it takes pains to fill up this monstrously towering framework and to arrange therein the entire empirical world, which is to say, the anthropomorphic world. Whereas the man of action binds his life to reason and its concepts so that he will not be swept away and lost, the scientific investigator builds his hut right next to the tower of science so that he will be able to work on it and to find shelter for himself beneath those bulwarks which presently exist. And he requires shelter, for there are frightful powers which continuously break in upon him, powers which oppose scientific truth with completely different kinds of “truths” which bear on their shields the most varied sorts of emblems. 36.

For Nietzsche, therefore, every metaphor is intuitive and singular and incommensurable, thus eluding any classification. Notwithstanding this, because the genial creator of metaphors does not

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34 Ibid.
35 Ibid.
36 Ibid.
learn from his own experience, reason seeks incessantly to reify metaphorical life in conceptual abstractions. Doing this, the rational mind imagines an ontological substance lying behind a nominalistic appearance and seeks refuge in a conceptual order, presented as objective, neutral or natural, but which is really arbitrary, value-laden and partial. A theory of metaphor is impossible because it reduces metaphor to theory when its very nature is metaphorical.

What then is the point of speaking around, through or by means of metaphors? According to Nietzsche, "the new philosopher does not use metaphors in the rhetorical sense, but rather subordinates them to a correct language or a strategic aim: he uses non-stereotypical metaphors in order to reveal the deeper metaphors that constitute every concept"37. It is in this way that the hermeneutics approach to metaphor has a meaning for the law: the goal of legal analysis is to become aware of the metaphorical nature of normative language, to show the values contained and furthered by legal metaphors and to call attention to the abuse of metaphor committed by apparently neutral and impartial concepts.

While rhetoric, semantics and structuralism do not consider the historical embodiment of the interpreting subject, hermeneutics regards the individual’s being in time and his critical evocation of his own traditions as necessarily creative of meaning. For a hermeneutical approach, the classification of legal metaphors can serve as a first step in a serious study of them. But the ultimate goal is to narrate the genealogies of legal metaphors and critically analyze the values that they serve. The genealogical reconstruction of a metaphor is not itself sufficient because “hardening and congealing of a metaphor guarantees absolutely nothing concerning its necessity and exclusive justification.”38 So, in the face of historically embedded metaphors, we come back to considerations of the uses and disadvantages of metaphor for life.39 If the legal scholar is active and ambitious, he will tend to construct a monumental historicity; if he seeks to preserve and revere, he will tend to construct an antiquated historicity; if he suffers and seeks liberation, he will tend to construct a critical historicity. A critical hermeneutic of metaphor examines the history of legal doctrines, without instrumentalizing them to serve a contemporary debate nor venerating them for a glorious future. It renounces the aspiration of explaining how law is created and how it functions, in order to focus on metaphorical expressions’ potential for distortion and abuse.

I would like to conclude with the important admonition of Richards:

It is an old dream that in time psychology might be able to tell us so much about our minds that we would at last become able to discover with some certainty what we mean by our words and how we mean it. An opposite or complementary dream is that with enough improvement in Rhetoric we may in time learn so much about words that they will tell us how our minds work. It seems modest and reasonable to combine these dreams and hope that a patient persistence with the problems of Rhetoric may, while exposing the causes and modes of the misinterpretation of words, also throw light upon and suggest a remedial discipline for deeper and more grievous disorders.40.