

# Metaphor and Reason in Judicial Opinions

Bosmajian, Haig A.

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# Metaphor And Reason In Judicial Opinions

**Brian L. Porto**



## **Metaphor And Reason In Judicial Opinions:**

*Metaphor and Reason in Judicial Opinions* Haig A. Bosmajian, 1992 While much has been written on the use of metaphor in literature and religion science and philosophy few articles and no books have discussed its function in legal opinions To the public judges handing down judicial decisions present arguments derived through rational discourse and literal language Yet as Judge Richard Posner has pointed out rhetorical power counts for a lot in law Science not to mention everyday thought is influenced by metaphors Why shouldn't law be Haig Bosmajian examines the crucial role of the trope metaphors personifications metonymies in argumentation and reveals the surprisingly important place that figurative nonliteral language holds in judicial decision making Focusing on the specific genre of the legal opinion Professor Bosmajian discusses the question of why we have judicial opinions at all and the importance of style in them He then looks at specific well known figures of speech such as the wall of separation between church and state justice personified as a female or the Constitution as color blind explaining why they are not straight forward statements of legal fact but examples of the ways tropes are used in legal language Thomas Jefferson and the Wall of Separation Between Church and State Daniel Dreisbach, 2003-10 No phrase in American letters than Thomas Jefferson's phrase wall of separation between church and state has had a more profound influence on church state law policy and discourse and few metaphors have provoked more passionate debate Introduced in an 1802 letter to the Danbury Connecticut Baptist Association Jefferson's wall is accepted by many Americans as a concise description of the U S Constitution's church state arrangement and conceived as a virtual rule of constitutional law Dreisbach offers an in depth examination of the origins controversial uses and competing interpretations of this powerful metaphor in law and public policy from publisher information **International Law's Invisible Frames** Andrea Bianchi, Moshe Hirsch, 2021 This innovative edited collection uncovers the invisible frames which form our understanding of international law Taking an interdisciplinary approach it investigates how social cognition and knowledge production processes affect decision making and inform unquestioned beliefs about what international law is and how it works In the Opinion of the Court William Domnarski, 1996 In the Opinion of the Court the first close examination of judicial opinions as a literary genre looks at opinions handed down by the U S Supreme Court the U S Court of Appeals and district courts tracing their history function and place in legal literature William Domnarski explores the connection between judges and their audience on the one hand and judicial opinions and their functions on the other He also reveals the key roles played by the reporting and publication of judicial opinions in advancing distinctly American values the dominance exercised by the best opinion writers and the rise of the law clerk as an individual increasingly called on to write opinions Domnarski pays special attention to Learned Hand and Oliver Wendell Holmes traditionally seen as the best practitioners of the genre and devotes a chapter to Richard Posner Chief Judge of the Seventh Circuit of the U S Court of Appeals in Chicago seen as carrying on the Hand Holmes tradition *Narrative and Metaphor in the Law* Michael Hanne, Robert Weisberg, 2018-02-08 Scholars from

many disciplines discuss the crucial roles played by narrative and metaphor in the theory and practice of law      **Metaphor in Legal Discourse** Inesa Šeškauskienė, 2022-02-22 This book explores different aspects of metaphoricity in legal discourse from court proceedings and written institutionalised texts to judges' argumentation and in spoken records among others. It brings together linguists and law professionals from six different countries to investigate metaphor as a conceptual phenomenon accessible through language and more specifically through actual linguistic contexts of use      **The Fundamental Holmes** Oliver Wendell Holmes (Jr.), 2010-07-19 This is the first anthology of Oliver Wendell Holmes's writings, speeches and opinions concerning freedom of expression. Prepared by a noted free speech scholar, the book contains eight original essays designed to situate Holmes's works in historical and biographical context. The volume is enriched by extensive commentaries concerning its many entries, which consist of letters, speeches, book excerpts, articles, state court opinions and U.S. Supreme Court opinions      Handbook of Visual Communication Kenneth L. Smith, Sandra Moriarty, Keith Kenney, Gretchen Barbatsis, 2004-12-13 This Handbook of Visual Communication explores the key theoretical areas in visual communication and presents the research methods utilized in exploring how people see and how visual communication occurs. With chapters contributed by many of the best known and respected scholars in visual communication, this volume brings together significant and influential work in the visual communication discipline. The theory chapters included here define the twelve major theories in visual communication scholarship: aesthetics, perception, representation, visual rhetoric, cognition, semiotics, reception theory, narrative, media, aesthetics, ethics, visual literacy and cultural studies. Each of these theory chapters is followed by exemplar studies in the area demonstrating the various methods used in visual communication research, as well as the research approaches applicable for specific media types. The Handbook serves as an invaluable reference for visual communication theory as well as a useful resource book of research methods in the discipline. It defines the current state of theory and research in visual communication and serves as a foundation for future scholarship and study. As such, it is required reading for scholars, researchers and advanced students in visual communication and it will be influential in other disciplines in which the visual component is key, including advertising, persuasion and media studies. The volume will also be useful to practitioners seeking to understand the visual aspects of their media and the visual processes used by their audiences      *Dimensions of Private Law* S. M. Waddams, 2003-07-10 This book considers the inherent complexities of private law relevant to property, tort, contract, legal method and legal theory      Metaphor and Philosophy Mark Johnson, 2014-06-23 During the last 15 years, cognitive scientists have discovered things about the nature and importance of metaphor that are startling because of their radical implications for metaphor research and because they require us to rethink some of our most fundamental received notions of meaning, concepts and reason. Many of the theoretical assumptions that guided earlier generations who worked on metaphor have been undermined by this new research, which has profound implications for philosophy. More specifically, the level of methodological sophistication of empirical studies of

metaphor has increased markedly making possible rigorous detailed analyses of how metaphors actually structure conceptualization and reasoning In addition professionals have learned that metaphor is not merely a linguistic phenomenon but more fundamentally a conceptual and experiential process that structures the world The articles in this special issue make significant contributions to these advances

Boycott in America Gary Minda,1999 Gary Minda s critical study of boycotts in American law and culture focuses on how the word boycott has developed as a metaphoric rather than as a rational or logical form of reasoning Minda first discusses the history interpretation and understanding of boycotts He then turns to the role of metaphor in the interpretation of boycotts and of boycott law Drawing on cognitive psychology and linguistic theory Minda argues that the metaphors judges choose in describing boycotts determine how they view boycotts One of Minda s major contributions is to show how cognitive theory and the analysis of conceptual metaphors can help to explain the development of the law of boycott Equally important Minda provides a unique history of the boycotts in three separate legal fields labor antitrust and constitutional law

Legal Language and the Search for Clarity Anne Wagner,Sophie Cacciaguidi-Fahy,2006 This interdisciplinary collection with contributions in English and French explores how the various disciplines of law and linguistics appreciate and work towards improving the nature of clarity and obscurity in legal language For the first time it brings together legal academics and practitioners jurilinguists and linguists from the common law and civil law with the specific aim to understand the complex nature practice and tools of clarity and obscurity in legal drafting Topics addressed include how the Clarity framework has been put into practice through the use of plainer language better comprehensibility readability and access to legal or administrative texts In an attempt to reflect the more recent development of the Clarity Obscurity debate the editors have also focused on the use of specific instruments to respond to the problems raised by obscurity to improve clarity Cette collection interdisciplinaire offrant des contributions en anglais et en fran ais explore comment les diverses disciplines du droit et de la linguistique appr hendent et visent perfectionner la nature de la clart et de l opacit du discours juridique Cet ouvrage rassemblant pour la premi re fois des universitaires et professionnels du droit des jurilinguistes et linguistes de la common law and et du droit civil propose de d couvrir la nature complexe les pratiques et outils de la clart et de l opacit utilis s en r daction juridique Les questions abord es examinent la mise en pratique de la clart juridique au travers de l utilisation de la langue courante une meilleure lisibilit compr hensibilit et acc s aux textes juridiques et administratifs Dans le but de refl ter l actualit du d bat Clart Opacit du discours juridique les ditrices se sont galemment concentr es sur l utilisation des outils et m thodes les plus r cents et utilis s pour r soudre les difficult s soulev es par l opacit des langues du droit et ainsi am liorer la transparence du discours juridique

*Overtured* Clarke Rountree,2024-12-17 A timely and lively summary and analysis of the Supreme Court s justifications for overruling nearly 300 prior rulings in its history An audacious US Supreme Court is overturning a number of long standing precedents and *Overtured* offers a lively account of the court s history of overturning prior cases and examples

and analyses of 300 cases overruled in its history The immense controversy surrounding the case of Dobbs v Jackson Women's Health Organization in 2022 which overruled Roe v Wade and erased the constitutional right to abortion in the United States has focused public attention on how and why the Supreme Court knocks down long established precedents In his vivid and accessible style scholar Clarke Rountree recounts the rhetorical pirouettes and linguistic acrobatics the court has deployed to explain its reversal of Dobbs and numerous other landmark decisions He reviews strategies the court uses to undermine a previous court's standing without undermining its own He analyzes overrulings across time by type constitutional cases versus statutory and common law cases by the ages of the overturned precedents with changes in the court's membership and through other variables Rountree gives engrossing accounts of pivotal overrulings in the past such as when Lincoln's Treasury Secretary Salmon Chase used the Legal Tender Act in 1862 to raise money for the Civil War then ruled the same law unconstitutional in 1870 when he served as chief justice Rountree retells Thomas Edison's attempt to monopolize the burgeoning film industry which was stopped only when the Supreme Court overturned an earlier patent rights case in 1917 Finally Rountree applies his myriad insights to the politically fraught Dobbs case Overruled makes a valuable contribution to law rhetoric politics and history and readers interested in the role and function of America's highest court will find Rountree's account fast paced lively and engaging

Judicial Protection of Fundamental Rights on the Internet Oreste Pollicino, 2021-04-22 This book explores how the Internet impacts on the protection of fundamental rights particularly with regard to freedom of speech and privacy In doing so it seeks to bridge the gap between Internet Law and European and Constitutional Law The book aims to emancipate the debate on internet law and jurisprudence from the dominant position with specific reference to European legal regimes This approach aims to inject a European and constitutional soul into the topic Moreover the book addresses the relationship between new technologies and the protection of fundamental rights within the theoretical debate surrounding the process of European integration with particular emphasis on judicial dialogue This innovative book provides a thorough analysis of the forms models and styles of judicial protection of fundamental rights in the digital era and compares the European vision to that of the United States The book offers the first comparative analysis in which the notion of judicial frame borrowed from linguistic and cognitive studies is systematically applied to the theories of interpretation and argumentation With a Foreword by Robert Spano President of the European Court of Human Rights

**Introduction to Classical Legal Rhetoric** Michael H. Frost, 2017-03-02 Lawyers law students and their teachers all too frequently overlook the most comprehensive adaptable and practical analysis of legal discourse ever devised the classical art of rhetoric Classical analysis of legal reasoning methods and strategy is the foundation and source for most modern theories on the topic Beginning with Aristotle's Rhetoric and culminating with Cicero's De Oratore and Quintilian's Institutio Oratoria Greek and Roman rhetoricians created a clear experience based theoretical framework for analyzing legal discourse This book is the first to systematically examine the connections between classical

rhetoric and modern legal discourse It traces the history of legal rhetoric from the classical period to the present day and shows how modern theorists have unknowingly benefited from the classical works It also applies classical rhetorical principles to modern appellate briefs and judicial opinions to demonstrate how a greater familiarity with the classical sources can deepen our understanding of legal reasoning      *Metaphors and Action Schemes* Robert L. Schwarz, 1997 All our abstract ideas are based on metaphors and action schemes Jean Piaget did voluminous research on how thought develops in children through assimilation of action schemes George Lakoff and Mark Johnson have done pioneering work on metaphors and action schemes in everyday thinking This book builds on those foundations looking at the role played by metaphors and action schemes in the history of ideas The author begins his argument by taking a critical look at the philosophy of metaphor from Aristotle to the present While he sees metaphor as simply conceiving one thing in terms of another he points out that this is an inexhaustible process because the context in which the process takes place is always changing Change opens up new possibilities of similarity Thus the metaphor is an open door into a space of infinite possibilities      **Readings in**

**Propaganda and Persuasion** Garth S. Jowett, Victoria O'Donnell, 2006 This collection of readings in propaganda and persuasion is designed to serve as either a companion to Jowett and O'Donnell's text *Propaganda and Persuasion* or as a single class resource The contents range from seminal essays by Jacques Ellul, Kenneth Burke and Paul M. A. Linebarger to articles by well-known writers on propaganda such as Philip Taylor and David Culbert to new essays about responses to 9/11 the treatment of Afghan women, persuasion in the built environment and public diplomacy as propaganda Also included are analyses of the relationship between rhetoric and propaganda essays about the definition of propaganda propaganda in the Boston Massacre of the American Revolution the Bolshevik Revolution and American, British and German propaganda during World War II and brainwashing in the Korean War Publisher      **A Contrite Heart: Prosecution and Redemption in the**

**Carolingian Empire** Abigail Firey, 2009-09-21 Between the middle of the eighth century and the late ninth century in western Europe the course of legal history was shaped by interaction with religious ideas especially with regard to the meaning of confession, suffering and the balance of protections for an accused individual and the welfare of the community This book traces those themes through a selection of Carolingian texts such as archbishop Hincmar's legal analysis of a royal divorce the decrees of church councils the biography of a Saxon holy woman anti-Judaic treatises and Hrotswitha's dramatisation of the legend of Theodis in order to make audible the lively debates over the boundaries of clerical and lay authority the nature and extent of permissible intervention in the spiritual condition of the empire's inhabitants and distinctions between the private and public domains This work thus reveals the profound relation between law and penitential ideologies promoted by the Carolingian imperial court      **Issues in Cognitive Linguistics** Leon G. De

Stadler, Christoph Eyrich, 1999 No detailed description available for *Issues in Cognitive Linguistics*      **Rhetoric, Persuasion, and Modern Legal Writing** Brian L. Porto, 2020-02-11 Classical rhetorical techniques can enhance the

persuasiveness of Supreme Court opinions by making their language clear lively and memorable This book focuses on three techniques invention creation of arguments arrangement organization and style word choice in the work of Oliver Wendell Holmes Jr Robert Jackson Hugo Black William Brennan and Antonin Scalia respectively The justices featured here contributed to the Court s rhetorical legacy in different ways but all five rejected the magisterial opinion style of the eighteenth and nineteenth centuries in favor of a more personal and conversational format As a result their opinions have endured and even modern readers who cannot recall the justices names understand and embrace the ideas expressed in their legal writings and apply those ideas to current debates Practicing lawyers professors and students can use this book to study legal writing techniques and make their own writing more persuasive



## Decoding **Metaphor And Reason In Judicial Opinions**: Revealing the Captivating Potential of Verbal Expression

In an era characterized by interconnectedness and an insatiable thirst for knowledge, the captivating potential of verbal expression has emerged as a formidable force. Its capability to evoke sentiments, stimulate introspection, and incite profound transformations is genuinely awe-inspiring. Within the pages of "**Metaphor And Reason In Judicial Opinions**," a mesmerizing literary creation penned by way of a celebrated wordsmith, readers embark on an enlightening odyssey, unraveling the intricate significance of language and its enduring affect our lives. In this appraisal, we shall explore the book is central themes, evaluate its distinctive writing style, and gauge its pervasive influence on the hearts and minds of its readership.

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