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# Flesh of the Law: Material Legal Metaphors

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“*Ex-voto*, ‘for a favor granted’:  
for a life saved, an image.  
It’s the contract of the *ex-voto*, exemplary painting.”<sup>1</sup>

*Existing legal metaphors, even the predominantly spatial and corporeal ones, paradoxically perpetuate a dematerialised impression of the law. This is because they depict the law as universal, adversarial and court-based, thus ignoring alternative legalities. Instead, there is a need to employ more radically material metaphors, in line with the material turn in law and other disciplines, in order to allow for law’s materiality to come forth. I explore the connection between language and matter (the ‘flesh’ of the law) through legal, linguistic and art theory, and conclude by suggesting four characteristics of material legal metaphors.*

## LEGAL METAPHORS: WHY AGAIN, WHY NOW?

Legal metaphors are no longer an original topic, neither in legal research specifically, nor linguistics in general. The research credentials hark back to Thomas Hobbes, Jeremy Bentham, and Lon Fuller,<sup>2</sup> complemented more recently by a surge of mainly North American literature either specifically on the topic of legal metaphors,<sup>3</sup> or the broader cognitive science of law field, in which metaphors feature heavily.<sup>4</sup> Equally, legal metaphors have been endorsed with gusto by linguists as case studies for linguistic theories;<sup>5</sup> and by philosophers in order to explore the laws of metaphor,<sup>6</sup> to confine metaphors to their literal statements,<sup>7</sup> to think of the normative appeal of disease metaphors,<sup>8</sup> to explore the speculative laws of object oriented

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<sup>1</sup> P. Falguières, *Danh Vo: mothertongue* (2015) exhibition flyer, The Norwegian Pavilion, Venice Biennale.

<sup>2</sup> T. Hobbes, *Leviathan* (1660); J. Bentham, *Theory of Legislation* (1871); L. Fuller, ‘Legal Fictions’ (1930-31) 25 *Illinois Law Rev.* 363.

<sup>3</sup> See J. C. Rideout, ‘Penumbra Thinking Revisited: Metaphor in Legal Argumentation’ (2010) 7 *J. Of The Association Of Legal Writing Directors* 155.

<sup>4</sup> See (2002) 67 *Brooklyn Law Rev.* dedicated to Steven Winter’s, *Clearing in the Forest: Law, Life, and Mind* (2001), and in particular M. Johnson, ‘Law Incarnate’ 949.

<sup>5</sup> M. Johnson, ‘Mind, Metaphor, Law’ (2007) 58 *Mercer Law Rev.* 845.

<sup>6</sup> See for example P. Ricoeur, *The Rule of Metaphor* (2003).

<sup>7</sup> R. Rorty, *Contingency, Irony, And Solidarity* (1989).

<sup>8</sup> S. Sontag, *Illness as Metaphor* (1978).

ontology,<sup>9</sup> and to analyse the normative connection between language and biology.<sup>10</sup> There have been critiques of metaphors,<sup>11</sup> endorsements of metaphors,<sup>12</sup> and even exhortations to carry on metaphorically speaking because in this way the law can develop in more imaginative ways.<sup>13</sup> Lakoff and Johnson's conceptual metaphor theory<sup>14</sup> — a most influential analysis with a sizeable following in law — changed our understanding of metaphors from pure *language* construction to *thought*. So, while there are always new things to be said, the debate is so well established that it risks becoming part of the legal norm, adding nothing new to the frontiers of legal theoretical thinking. Why is it then that another text or indeed series of texts on legal metaphors is needed? What will it add and where will it take the discourse?

New research on legal metaphors is needed because the legal theoretical context is changing, or more precisely, *turning*. The law (and I am using this generic term deliberately for reasons I show below) is turning in a spatial, corporeal and generally material way.<sup>15</sup> In the same way, I suggest, legal metaphors must also change. Standard spatial and corporeal metaphors on which the law traditionally relies, are useful (section 2), but at the same time paradoxically perpetuate law's *dematerialisation* and abstraction (section 3). Instead, I suggest something novel and more ambitious, quite unlike the standard endorsements or critiques of legal metaphors: what I call *material* legal metaphors, namely metaphors that are more than mere figures of speech, but are rather *embodied in the very body of their emergence, the law itself*.<sup>16</sup> Understanding metaphors as *the transfer of meaning from one regime of signs to another*,<sup>17</sup> I suggest (in sections 4 and 5) that material legal metaphors are the bridge between the semiotic and the material, opening thus the way for a new conceptualisation of justice. This is not an abstract, textual or even future justice, but an immanent, embodied, spatially embedded justice. This is how I understand the term 'flesh' of the title: as the crux between semiosis and materiality.

The term appears explicitly only towards the end of the article but pulsates throughout the text and especially the interlaced passages in italics. These passages refer to Titian's last ever painting, the *Pietà*, with the materiality of which I performatively engage here in order to shed

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<sup>9</sup> I. Bogost, *Alien Phenomenology, or What It's Like to Be a Thing* (2012).

<sup>10</sup> D. Haraway, *How Like A Leaf: An Interview with Thyrza Nichols Goodeve* (2000).

<sup>11</sup> Rosi Braidotti's call against metaphors in 'Animals, Anomalies, and Inorganic Others' (2009) 124 *Theories and Methodologies* 526.

<sup>12</sup> E.g., L. Morra, 'New Models for Language Understanding and the Cognitive Approach to Legal Metaphor' (2010) 23 *International J. of Semiotics of Law* 387.

<sup>13</sup> Johnson, op. cit., n. 5.

<sup>14</sup> G. Lakoff and M. Johnson, *Metaphors We Live By* (2003).

<sup>15</sup> Admittedly later than most social sciences and humanities. See B. Warf and S. Arias (eds.), *The Spatial Turn: Interdisciplinary Perspectives* (2009), which typically does not have a chapter on law. On law and matter see A. Pottage, 'The Materiality of What?' (2012) 39 *J. of Law And Society* 167-83; A. Grear, 'Human rights, property and the search for world's other' (2012) 3 *J. of Human Rights and the Environment* 173; A. Philippopoulos-Mihalopoulos, 'A Sociolegal Metatheory' in *Exploring the Legal in Sociolegal Studies*, eds. D. Cowan and D. Wincott (2015); A. Philippopoulos-Mihalopoulos, 'Critical Autopoiesis and the Materiality of Law' (2014) 27 *International J. of Semiotics of Law* 165.

<sup>16</sup> For this reason, I do not engage with distinctions referring to metaphors of, in, or about the law (see F. Makela, 'Metaphors and Models in Legal Theory' (2011) 52 *Les Cahiers de Droit* 397, for a comprehensive but potentially sterile classification), since I find them permeable: however internal ('in' law) metaphors might be, they end up annulling the distinction between law's operations and law's perception by the rest of society.

<sup>17</sup> Lakoff and Johnson, op. cit., n. 14, offer the transfer definition. The regimes of signs I draw from G. Deleuze and F. Guattari, *A Thousand Plateaus* (1992).

some light onto legal metaphors. I undertake a close reading of both representation and materiality of the painting and I begin with the contract for the painting; this contract sets the scene for the first metaphor of my analysis, namely the fact that meaning is transferred from the legal (contract) to the object (painting). The commissioning church in Venice was justly perhaps expecting the standard representation of *Pietà*. Additionally, people would know how they were expected to *feel* when looking at a *Pietà*. In other words, the metaphor determined the object itself, involving affective predetermination and excluding alternative conceptualisations. This, I argue, is what happens with the existing corporeal and spatial legal metaphors: via their pre-conscious effect, they determine what the law is supposed to be while marginalising alternative forms. Titian's *Pietà*, however, did not adhere to the accepted metaphor. It carved a new path, in exactly the way I suggest material legal metaphors operate. The painting was not well received since the contractual recipients were operating within a close system of metaphors that precluded alternative explorations of meaning. What they missed, however, was a key to the *Pietà* that Titian masterfully included in the canvas. Purely for reasons of suspense, I shall not yet reveal what this 'key' to the painting was. But my argument is that through this, the whole painting becomes a material metaphor for a contract with a party that could not easily be pinned down: death. In the conclusion, I refer to two material legal metaphors whose function is parallel to that of *Pietà*: an attempt to capture the very thing that the law is.

## LAW, LANGUAGE AND METAPHORS

Metaphorical thinking is creative thinking.<sup>18</sup> Its creativity lies in the transfer (Greek μεταφορά, *metaphorà*, meaning "transfer") of meaning from one regime of signs to other regimes. I draw the term 'regime of signs' from Deleuze and Guattari. Regimes of signs are the various modes (machines) in which society represents itself.<sup>19</sup> These modes are not just linguistic but also material, and provide a context from meaning. Nathan Moore puts it clearly when he refers to regimes of signs as including "elements, such as bodies and things (including tones, exclamations, gasps, stutterings, etc.), excluded from language (la langue)."<sup>20</sup> A metaphor, therefore, is the transfer of meaning from and to signs that are neither exclusively linguistic nor exclusively material. The law is a good example of the above, in the sense that it is both linguistic and material, as I show below.

Ever since the influential *Metaphors We Live By* by linguist George Lakoff and philosopher Mark Johnson, we know that "our ordinary conceptual system, in terms of which we both think and act, is fundamentally metaphorical in nature."<sup>21</sup> This means that metaphors are not mere figures of speech but determine how *thought* is structured and evolving.<sup>22</sup> Of course, law's textuality can hardly be disputed. In the traditional, exclusively linguistic understanding, the law is solely understood through language: "law as (fundamentally a system of) meaning is

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<sup>18</sup> Winter, op. cit., n. 4, p. 5.

<sup>19</sup> Deleuze and Guattari, op. cit., n. 17, p. 182.

<sup>20</sup> N. Moore, 'Icons Of Control: Deleuze, Signs, Law' (2007) 20 *International J. for Semiotics of Law* 33, at 41. See also J. Murray, 'Deleuze & Guattari's Intensive & Pragmatic Semiotic of Emergent Law' (2007) 20 *International J. for Semiotics of Law* 7.

<sup>21</sup> Lakoff and Johnson, op. cit., n. 14, p. 3.

<sup>22</sup> See also G. Lakoff, 'The Contemporary Theory of Metaphor', in *Metaphor and Thought*, ed. A. Ortony (1993) 202.

only accessible through (linguistic) signs and thus dependent on the process of interpreting the signs.”<sup>23</sup> Even this approach, however, has been diluted, and sign interpretation has moved towards a more emplaced, material understanding. So, rather than seeing law (and language) as *langue*, namely the Saussurian term for the abstract structure of language for which the cognitive mediation of participants is of marginal effect, we are moving towards a semiotic understanding of law (and language) as an outcome of concrete situations, devoid of a priori or unchanged structures. In a most informative passage, Engberg and Wølch Rasmussen put the two approaches clearly: “if language and meaning is mainly a superindividual concept, then the process of establishing the legal meaning of, e.g., statutory texts in concrete interactions is one of looking into the superindividual in order to find a meaning. ... If, on the other hand, language is seen mainly as an entity applied by individuals in their communicative and meaning creating (= semiotic) activities, then the process of establishing legal meaning is one of negotiating with other individuals the *meaning relevant in concrete situations*, a process which leaves much more relevance to the opinions and the ideological stance of the people involved.”<sup>24</sup>

The first approach has been steadily losing ground to the second, especially after the latter’s further cognitivist development, confluent with the affective turn in social sciences and humanities.<sup>25</sup> Affects are neither immaterial nor necessarily communicable notions, but the embodied and spatialised circulation of information that takes place in *concrete situations*. For this reason, spatial and corporeal metaphors are the most frequent ways of meaning transfer (in our case, from space and body to law), largely to do with the simple fact that we have bodies that move in space.<sup>26</sup> We talk about finding the *sources* of law, which denote a physical movement ‘back’ to the originary fountain. We talk about legal *grounds* in argumentation, giving the impression of something stable and unmoving; there is a *system* of law to contain with, with its disciplinary *boundaries*, its *jurisdictional* application, and its court *hierarchies* such as *high* and *low* courts; a judge *balances* and *weighs* interests, putting one party’s interests on the one side, and the other’s on the other; and there are legal *lacunas* and *gaps* in the law through which one can slide. In the same manner, there is legal *standing*, namely to find one’s footing in the space of the law and defend oneself.<sup>27</sup> Standing implies an erect and even respectful posture of one’s body before the court, despite the fact that one might be burdened by the *carrying* of a right or an obligation. Even the law itself is a body, the *body of law*, the legal *corpus*, with its *long arm*, its equity *conscience*, its *blind* justice, even its fully developed, organismic *constitution*. Obviously, law is a brittle thing, for why else could one *break* the law? Still, law is larger than us: one can easily be *within* the law. But rest assured, there is *nowhere to hide from the law*.

One could go on. But what reads as an entertaining ‘a-ha’ moment for the ones of us who have not thought of legal metaphors before, reveals this: that we operate with metaphors on a preconscious level, namely a level where language is accepted unquestioningly. We are so conditioned by the ruling metaphors of law that a. we do not question them and b. we allow them to carry on determining the way we stand in relation to the law, since we cannot even imagine a different way. This preconscious conditioning of reality via metaphors begs the

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<sup>23</sup> J. Engberg and K. Wølch Rasmussen, ‘Cognition, Meaning Making, and Legal Communication’ (2010) 23 *International J. for Semiotics of Law* 367, at 367.

<sup>24</sup> *id.*, p. 368, added emphasis.

<sup>25</sup> See M. Gregg and G. J. Seigworth (eds.) *The Affect Theory Reader* (2010).

<sup>26</sup> Winter, *op. cit.*, n. 4; Lakoff and Johnson, *op. cit.*, n. 14.

<sup>27</sup> See S. Winter, ‘The Metaphor of Standing and the Problem of Self-Governance’ (1987-88) 40 *Stanford Law Rev.* 1371.

question: how far have legal metaphors penetrated society's skin? Can we still maintain that legal metaphors are just language?

In an influential article on metaphor and law, Johnson expands on the fact that concepts are “learned automatically through our bodily interactions with aspects of our environment.”<sup>28</sup> Johnson has found that concepts are conceived as physical objects through our bodies. The meaning transfer from idea to object is what Steven Winter calls “an acquisition or ‘taking in’ of that object.”<sup>29</sup> This is crucial for our purposes because it confirms that the law is understood through metaphors – as Johnson writes in the conclusion of his study on metaphors of property, land access, and law, “you cannot practice property law without metaphor!”<sup>30</sup> It also shows that legal metaphors are not merely figures of speech (language) but embedded in thought, in its turn embodied in the movement of bodies in space who perceive of ideas as physical objects. In sum, we can no longer talk of law and legal metaphors as mere symbolic entities, but as a shared surface between the semiotic and the material.

Importantly, metaphors rely on “highly determinate “spatial” or “bodily” logics that support and constrain inferences.”<sup>31</sup> An example is offered by Norman Spaulding: “doctrinally, the dominant, indeed controlling, metaphor for the constitutional guarantee of procedural due process is a courtroom trial.”<sup>32</sup> The courtroom trial is the dominant legal metaphor, in its turn determining further inferences. Spaulding classifies this as a *dead* metaphor, namely an ossified, fixed metaphor that perpetuates law's *closure*, in exactly the same way as the courtroom *enclosure* is thought of as sealed off and independent, even when televised or thoroughly reported upon: “Enclosure not only symbolized the independence of law from political, commercial, and social space; it served to restrict access, limit vandalism, minimize the disruption of trial, and, perhaps above all, encourage deference to the administration of justice in a democratic society perpetually anxious about the authority of law and lawyers.”<sup>33</sup> In other words, understood through the metaphor of bodies enclosed in a physical space, the trial is the outcome of law's (self-perceived) need of self-defence against society's doubts. To put it more radically, enclosure is the metaphor that defends law's legitimation by excluding the rest of the world. Think of what Ebbesson points out: “few professional groups that define the rest of the world through a negation, i.e. as “non-lawyers”. Ever heard of “non-plumbers”, “non-taxi-drivers”, “non-nurses” or “non-teachers”?”<sup>34</sup>

### ***Pietà I: from contract to object***

*Venice, late 1500s. A contract is signed between the most renowned painter of the Venetian Renaissance, Titian Vecellio, and the Franciscans Brothers of the Church of Santa Maria Gloriosa dei Frari. Burial ground for Titian will be reserved in the*

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<sup>28</sup> What he calls ‘image schemas’: Johnson, op. cit., n. 5., p. 856; See also G. Lakoff and M. Johnson, *Philosophy In The Flesh: The Embodied Mind And Its Challenge To Western Thought* (1999) 3-5.

<sup>29</sup> Winter, op. cit., n. 4, p. 53.

<sup>30</sup> Johnson, op. cit., n. 5., p. 867.

<sup>31</sup> id., p. 856.

<sup>32</sup> N. W. Spaulding, ‘The Enclosure of Justice: Courthouse Architecture, Due Process, and the Dead Metaphor of Trial’ (2012) 24 *Yale J. of Law & Humanities* 311, at 315.

<sup>33</sup> id., p. 316.

<sup>34</sup> J. Ebbesson, ‘Law, Power And Language: Beware Of Metaphors’ (2008) 53 *Scandinavian Studies In Law* 259, at 261.

church, in return for a specially commissioned painting. The contract stipulates the dimensions of the canvas, the material, and its exact location, the Altar of the Cross.<sup>35</sup> It is agreed that this painting will be the altarpiece above Titian's tomb.

Above all, the contract stipulates the topic of the painting. Titian is to paint an "imago pietatis pietà",<sup>36</sup> or what we have come to know as Pietà. Pietà ("pity", "piety", "mercy") is the accepted term for the depiction of the Virgin Mary holding the dead body of Jesus in her arms after his deposition from the cross. The term originates in the Byzantine iconography of the Man of Sorrows (Imago Pietatis), namely the dead Christ with his arms crossed over his chest.<sup>37</sup> The signified developed to the presently known form after Florentine Renaissance and in particular Michelangelo popularised it with his Pietà statue (1498-99).<sup>38</sup>

The term Pietà is a metaphor. The original transfer of meaning from the Byzantine theme to that of the Virgin Mary and Jesus, was a fitting dominant metaphor for the counter-reformation signification system of artistic demands, and eminently useful for the church of the Frari. A Pietà encouraged emotional identification and response from the viewer, combined with chaste meditation.<sup>39</sup> "The Pietà... represents an eternal moment, a theological epitome in which fundamental truths are manifested in an affective but ideal image. The beauty of the visual concept resides precisely in its synthesis of human pathos and liturgical symbolism."<sup>40</sup> In other words, the metaphor was successful because the contemporary viewer would know, not only what the term meant pictorially, but also what she was expected to feel upon seeing a Pietà. A complex affect consisting of empathy with the pious stories of the Virgin and Christ, and a deeper understanding of Christian mercy, is transferred as part of the politics and religious art of the time.

There is a second metaphor at play. Every contract transfers meaning from the contractual regime of signs to that of the contractual object, whether this is an actual object, an action, a movement and so on.<sup>41</sup> In Titian's case, meaning is transferred from the contractual object (a Pietà) to the material object (the Pietà). According to this metaphor, the contractual object was expected to be a Pietà in the manner of Michelangelo. But this metaphor, which was what the Frari understood as Pietà, was already dead for Titian. His Pietà is a different metaphor that breaks the enclosure of the contractual Pietà and hurls meaning into a new regime of signification.

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<sup>35</sup> C. Ridolfi, *Le Maraviglie dell'Arte* (1648, reprint 1914-24).

<sup>36</sup> L. Puppi, *Su Tiziano* (2004) 63.

<sup>37</sup> S. Ringbom, *Icon to Narrative: The Rise of the Dramatic Close-up in Fifteenth-Century Devotional Painting* (1965).

<sup>38</sup> A. Nagel, *Michelangelo and the Reform of Art* (2000) 50.

<sup>39</sup> J. M. Saslow, 'Pietà' in *Eye of the Beholder*, ed. A. Chong et al. (2003); S. Ringbom, *Icon to Narrative* (1965).

<sup>40</sup> D. Rosand, 'Titian in the Frari' (1971) 53 *The Art Bulletin* 196, at 211.

<sup>41</sup> Indeed, every contract is a metaphor: J. M. Lipshaw, 'Metaphors, Models, and Meaning in Contract Law' (2012) 116 *Penn State Law Rev.* 987; also R. Posner, *Law and Literature: A Misunderstood Relation* (1988) 101, for whom Dr Faustus's contract with the devil is a "metaphor for commitment".

## THE ENCLOSURES OF LEGAL METAPHORS

Successful legal metaphors have three main characteristics.<sup>42</sup> First, they have to be part of a consistent metaphorical system – precisely like the contractual *Pietà* – that determines meaning expectations. A metaphor will only work and *catch on* if consistent with the existing metaphorical edifice. We have seen that for law, the dominant metaphor that determines the metaphorical system is the trial enclosure with its control over who moves, who stands, who sits higher, who sits in a box. The effect of such a metaphor cannot be underestimated. Victoria Brooks has produced a thorough reading of the affective edifice of the law as materialised in the courtroom. She finds that “the courtroom contains and twists bodies into its tiny caverns and grand panelled auditoria, with walls built to ensure the painful silencing of already terrorized bodies.”<sup>43</sup> These hierarchical spaces legitimise themselves with the help of borrowed references from history and divinity (and each judicial space has different ways of asserting itself<sup>44</sup>), both in terms of architecture and insignia,<sup>45</sup> such as the meaningless *dieu et mon droit* (“god and my right”). But here is the power of the metaphor: in the metaphorical system of hierarchies, enclosures, walls, and corridors of direction, a sentence written in unintelligent French serves its purpose. This does not mean that there are no other forms, practices and typologies of law that do not fall within the metaphorical enclosure. Quite the contrary, these abound. But the dominant metaphor of the law remains an enclosure. The meaning transfer in this case is this: the world is excluded, the law is reinstated.

Second, a successful metaphor needs to be repeated. Once is not enough, since it still hits the conscious level, as Christopher Rideout shows in his influential text on the legal penumbra and the intense controversy this metaphor has caused to the US legal world.<sup>46</sup> When adequately repeated, however, it becomes part of the norm. Ann Cammett has recently argued that the repetition of such metaphors as ‘Welfare Queen’ in the North American context has led to the unquestioned understanding that specific people, namely black women of poor background, constitute an unwanted social burden: “Racism plays a central role in Americans’ collective historical and cultural heritage. Metaphors in this context also act as ‘carriers of cultural elements,’ shaping how we make sense of the world and what we value and privilege.”<sup>47</sup>

Third, a successful metaphor must trigger a preconscious, affective response that engages physical, symbolic and emotional elements – as we have seen in the emotional identification that occurred with the more traditionally defined *Pietà*.<sup>48</sup> A metaphor evokes in its target audience a sense of responsibility. The audience must understand the metaphor, must feel that they belong to the consistent system of the metaphor, and must elaborate the metaphor in the same way as the body (the brain and/or the body itself) of the utterer. Johnson writes: “there is

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<sup>42</sup> I focus on those of particular relevance to law. For a complete list, see Lakoff and Johnson, op. cit., n. 14.

<sup>43</sup> V. Brooks, ‘Interrupting the Courtroom Organism: Screaming Bodies, Material Affects and the Theatre of Cruelty’ (2014) *Law, Culture and the Humanities* DOI: 10.1177/1743872114543767

<sup>44</sup> L. Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law* (2010).

<sup>45</sup> *id.*

<sup>46</sup> C. Rideout, ‘Penumbra Thinking Revisited: Metaphor in Legal Argumentation’ (2010) 7 *J. of The Association Of Legal Writing Directors* 155.

<sup>47</sup> A. Cammett, ‘Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law’ (2014) 34 *Boston College J. of Law & Social Justice* 233-265, quoting C. Lawrence, ‘The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism’ (1987) 39 *Stanford Law Rev.* 317, at 322.

<sup>48</sup> On the emotional response of metaphors see J. Charteris-Black, *Corpus Approaches To Critical Metaphor Analysis* (2004) 19; also W. Patry, *Moral Panics and the Copyright Wars* (2009).



no human conceptualization or reasoning without a functioning human brain, which operates a living human body that is continually engaging environments that are at once physical, social, cultural, economic, moral, legal, gendered, and racialized.”<sup>49</sup> It is only through a commonality (actual or aspirational) of such environments that the transfer of meaning is successful. Law’s metaphors posit precisely this responsibility. Uttered by lawyers, judges, members of parliament, politicians, or even TV shows and other media, legal metaphors are expected to be understood and embodied, since they come from *above*, where the good stuff is. This is not only a national jurisdictional issue. The metaphorical distinction between above and below is so embedded that lies in the core of colonial and postcolonial oppression of North versus South,<sup>50</sup> capturing happiness (“I’m feeling *up*. That *boosted* my spirits. My spirits *rose*. You’re in *high* spirits.”), abundance and health (“The numbers keep going *up*.” “He’s at the *peak* of health. He’s in *top* shape.”) and even future (“All *up* coming events are listed in the paper. What’s coming *up* this week?”), while sadness, illness, poverty and past lie down below, in the South.<sup>51</sup>

According to the above criteria, existing spatial and corporeal legal metaphors are successful. They are consistent with each other and the grander legal metaphorical system; they are repeated in judgements, media coverage, everyday vernacular; and they are used unaware of their metaphorical nature, thus triggering an affective response in whoever wants to be *within* the law and yet avoid its *long arm*. Existing spatial and legal metaphors are part of what conceptual metaphor theory describes as *container metaphor*, themselves a form of enclosure. Lakoff and Johnson employ the example of a running race which poses as a distinct unit “having in it participants (which are objects), events like the start and finish (which are metaphorical objects), and the activity of running (which is a metaphorical substance).”<sup>52</sup> The courtroom trial, the lawyers/non-lawyers distinction, indeed the law as a whole, obeys the logic of container metaphor, with its distinct beginning and end, its participants, its spatiality, and its specific activity: all neat metaphors that allow us to construct the law as a discreet activity, taking place in designated areas, affecting only the ones that are part of a trial or some adversarial legal procedure, and crowned by the final administration of justice. Container metaphors are at the core of a human need for separation, enclosure, and boundary setting. It is what Teresa Brennan calls ‘the foundational fantasy’, namely the necessity of constructing a difference between self and environment.<sup>53</sup> Through its metaphors, law feeds this fantasy.

The larger container metaphor of the law as courtroom trial promotes an understanding of law as legitimate, adversarial and enclosed, which, in its turn feeds the law’s metaphorical system. This is the ultimate enclosure as described by Niklas Luhmann: the autopoietic, namely self-preserving, legal system only accepts notions that are consistent with its existing structure.<sup>54</sup> A consistent metaphorical system, therefore, provides two things: a way of filtering which metaphor is relevant; and a given direction in which bodies (metaphorical and otherwise) are expected to move. This happens in a circular way, as Winter shows when he discusses how rules necessarily depend on the cultural practices they are meant to regulate.<sup>55</sup> Legal metaphors aim at establishing, maintaining and imposing certain structures, and in the way they can end up marginalising and excluding, not just parts of society but also different modes of law. Metaphors reify ‘the’ law as something stable, solid, measurable and scientific — thus

<sup>49</sup> Johnson, op. cit., n. 5., p. 846.

<sup>50</sup> N. Wey Gomez, *The Tropics of Empire: Why Columbus sailed South to the Indies* (2008).

<sup>51</sup> All examples from Lakoff and Johnson, op. cit., n. 14, pp. 15-17.

<sup>52</sup> Lakoff and Johnson, op. cit., n. 14, pp. 30-31.

<sup>53</sup> T. Brennan, *The Transmission of Affect* (2004).

<sup>54</sup> N. Luhmann, *Law as a Social System* (2004).

<sup>55</sup> S. Winter, *A Clearing in the Forest: Law, Life and Mind* (2001).

pacifying social expectations on law's reliability. Carel Smith writes that existing legal metaphors "add to the view that the law is something that exists 'out there'...The use of spatial metaphors to describe law, in short, might explain that lawyers are still attracted to the dubious idea that legal adjudication could be performed neutrally, as detached as a scientist who measures the distance between the Milky Way and the Andromeda Galaxy."<sup>56</sup>

Metaphors are characterised by a duality: "in allowing us to focus on one aspect of a concept... a metaphorical concept can keep us from focusing on other aspects of the concept that are inconsistent with that metaphor."<sup>57</sup> Legal metaphors describe one kind of law and one kind of relation to the law, all in the service of maintaining the law's facade of objectivity and impartiality, as well as the legal compulsion for adversarial resolution. They highlight precision, scientific balancing, and equity in terms of confrontation, and they obscure both the input of hand of the judge and its weight, and other modes of dispute resolution such as contextual decision-making, adjudication, consensus-based resolution, mutualism and so on.<sup>58</sup> The fact that legal metaphors are used by advocates in potentially contradictory ways to illustrate their arguments and thus affect the court decision does not alter the fact that adversarialism remains the main legal container metaphor. Most often, legal metaphors highlight law's connection to order, balance and justice, emphasising thus a legal monopoly on it, while revolt, civil disobedience, or different kinds of balance lie on the other side of the law. Susan Sontag writes: "political events started commonly to be defined as being unprecedented, radical; and eventually both civil disturbances and wars come to be understood as, really, revolutions."<sup>59</sup> On the other hand, current legal metaphors obscure the fact that law is self-legitimising,<sup>60</sup> while highlighting the law's social expectations aspects, and thus feeding into the need for more policing, more security, more laws. Legal personification has comparably unequal effects, as Ebbesson finds: "the metaphor of person contributes to legitimising why some categories (such as legal persons) are bestowed with human rights without being humans, while other categories are excluded, even though the legislation may be intended to protect them (e.g. environmental law and animal welfare law)."<sup>61</sup>

There is another, to my mind deeper issue with the standard spatial and corporeal legal metaphors. Rather than actually bringing forth the materiality of the law, these metaphors offer a sliver of controlled spatiality and corporeality which advance the purposes of legal abstraction. This is often the irony of the metaphor, or what Sontag has called its contradictory application:<sup>62</sup> spatial and corporeal legal metaphors turn the law *away* from capturing its legal spatial and embodied meaning. Henri Lefebvre has written on how legal metaphors deny the body to which they refer by discursively breaking it down into pieces.<sup>63</sup> Heeding these metaphors, one would think that the law is still something that resides exclusively in the courtroom, that is hierarchical and adversarial by nature, that has an actual origin that is still able to provide the law with its much needed legitimacy, that it is different from politics,

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<sup>56</sup> C. Smith, 'The Vicissitudes Of The Hermeneutic Paradigm In The Study Of Law' (2011) 4 *Erasmus Law Rev.* 21, at 37.

<sup>57</sup> Lakoff and Johnson, op. cit., n. 14, p. 10.

<sup>58</sup> G. Barak, 'A Reciprocal Approach to Peacemaking Criminology: Between Adversarialism and Mutualism' (2005) 9 *Theoretical Criminology* 131.

<sup>59</sup> Sontag, op. cit., n. 8, p. 80.

<sup>60</sup> Luhmann, op. cit., n.54

<sup>61</sup> Ebbesson, op. cit., n. 34, pp. 263-64.

<sup>62</sup> Sontag, op. cit., n. 8.

<sup>63</sup> H. Lefebvre, *The Production of Space* (1991).

economics, culture, religion and so on. But we now know that the law is everywhere,<sup>64</sup> that its courtroom-based form is losing ground to other forms of adjudication,<sup>65</sup> that its disciplinary boundaries are arbitrary constructions that serve disciplinarian means according to various interests,<sup>66</sup> that jurisdiction is not actual geographical space but what the law makes of geographical space,<sup>67</sup> that, finally, the law is not abstract but embodied in all the bodies of its emergence whether human or nonhuman.

From innocuous figures of speech to reality-determining distinctions,<sup>68</sup> illuminating while obscuring, and appeasing the need for particular application of the law while upholding law's abstraction, current spatial and corporeal legal metaphors are in the service of what Deleuze has called *control society*. Legal metaphors have become *control signs*. Moore puts it thus: "the control sign functions to make reality and representation indistinguishable. On this basis, it becomes possible for control to not only manipulate reality as if it were a sign (the two obvious examples being marketing and religion), but also to insist upon any regime of signs as an inevitable and inescapable 'reality' or fact (e.g. the 'war on terror')." <sup>69</sup>

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<sup>64</sup> A. Sarat, ' "...The Law is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor' (1990) 2 *Yale J. of Law and Humanities* 343.

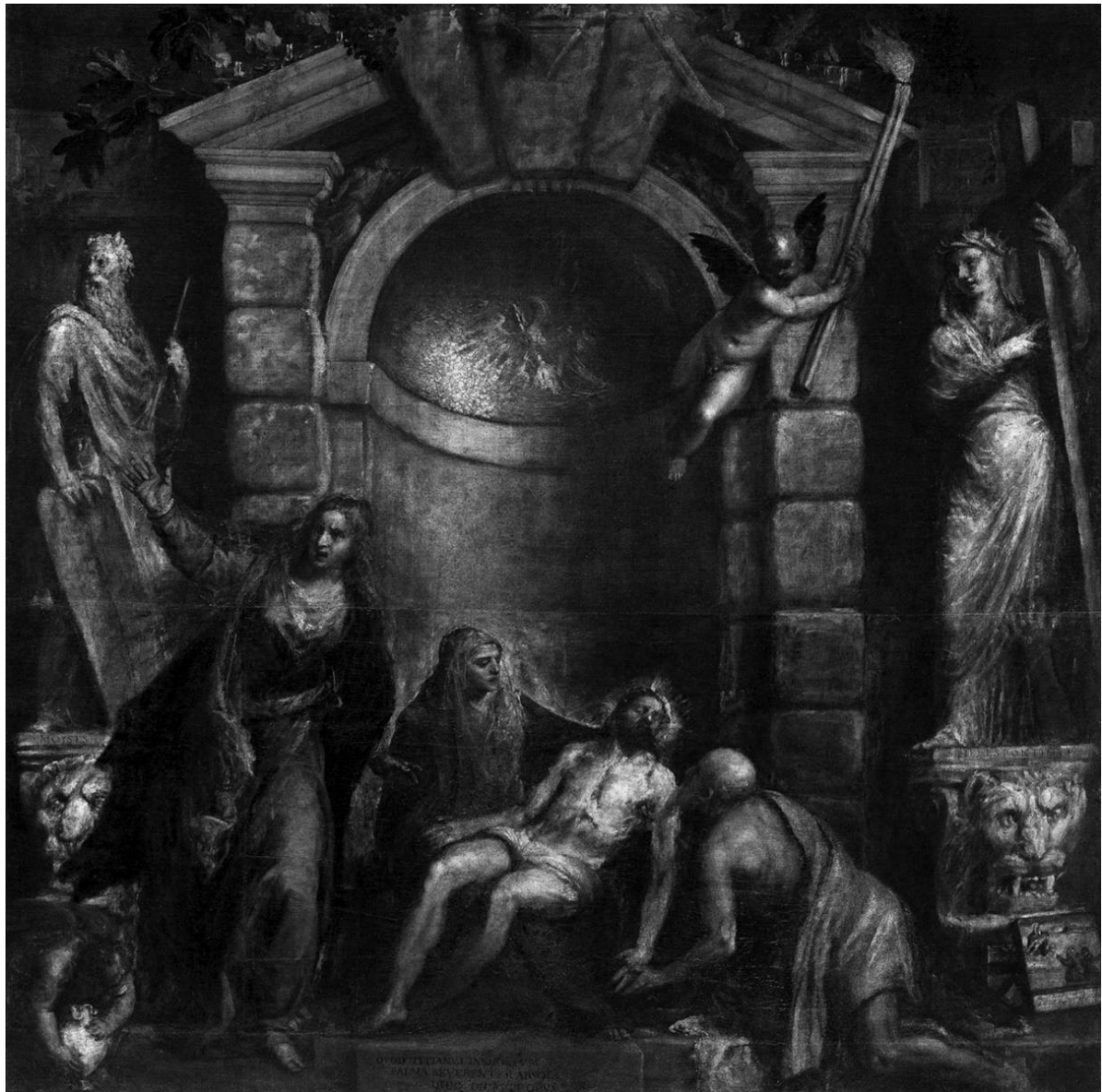
<sup>65</sup> O. Fiss, 'Against Settlement' (1984) 93 *Yale Law J.* 1073; L. Webley, 'When is Mediation Mediatory and When is it Really Adjudicatory?', *Mediation and Religious Arbitration*, eds. S. Bano and J. Pierce (due 2016).

<sup>66</sup> M. Foucault, *Society must be Defended* (2003).

<sup>67</sup> A. Philippopoulos-Mihalopoulos, *Spatial Justice* (2015).

<sup>68</sup> "The textual apparatus is transformed into a libidinal apparatus, a machinery for ideological investment." F. Jameson, *The Political Unconscious* (1981) 15.

<sup>69</sup> Moore, op. cit., n. 20, p. 52.



*Titian, Pietà, 1576, Gallerie dell'Accademia, Venice*

## ***Pietà II: the container***

*Venice is being ravaged by the plague. Titian, of already advanced age, paints his Pietà as a plea for mercy ("pietà"), a standard practice of the time. But mercy is not granted. Titian dies from the plague, the Pietà left in a seemingly unfinished state.*

*The painting was never hung in the Frari Church. We can only hypothesise, but this seems to be the main reason: what Titian produced was not a Pietà. Thematically, it contained no divine redemption or promise of eternal life. It had little to do with the salvation of the Altar of the Cross.<sup>70</sup> There is no Michelangelo elegance here – the container Pietà metaphor. Titian's Pietà is dark, haunting, sparse. The vanishing point is neither Christ nor Virgin, but another metaphor: Titian employs his teacher's Giovanni Bellini's serene, golden apses, but turns them into a dark, tomb-like, haunted, empty awning. Bellini's sacred conversation becomes Titian's howl. The apse transfers the meaning of eternity, from Bellini's limpid, luminous faith in a crystal-clear future, to a space filled with the dread of death. Stylistically, the painting could be rejected as unfinished.<sup>71</sup> Yet this is also part of Titian's metaphor: in his later paintings, Titian developed a technique that did not accord with the accepted standards of Venetian – or any other, for that matter – painting. He used his fingers rather than the brush;<sup>72</sup> he applied thick impasto to accentuate a drama too coarse for conservative Venice; he courted violence and darkness that could only be justified by describing the paintings as unfinished.*

*In rejecting the painting, the Frari were operating within the consistent system of metaphors that had determined what a Pietà was, what an appropriate altarpiece should look like, what constitutes a finished piece of art, and what constitutes an adequate metaphorical object of contract. Titian's Pietà would not fit any of the above.<sup>73</sup>*

## **FLESH OF THE LAW**

In an interview on the body of her work, Donna Haraway says: "I find words and language more closely related to flesh than to ideas...Since I experience language as an intensely physical process, I cannot *not* think through metaphor...I experience myself inside these constantly swerving, intensely physical processes of semiosis."<sup>74</sup> Haraway's embodied metaphor goes somewhat further than the conceptual metaphor approach. This is no longer about how metaphors are produced, in the conceptual metaphor sense of the brain and body's

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<sup>70</sup> Ridolfi, op. cit., n. 35.

<sup>71</sup> Rosand, op. cit., n. 40, p. 210. However, E. Tietze-Conrat, 'Titian's Workshop in His Late Years' (1946) 28 *The Art Bulletin* 76, at 80, finds that the composition "is established in every detail." See also R. S. Winter, 'Of Realizations, Completions, Restorations and Reconstructions' (1991) 116 *J. of the Royal Musical Association* 96, at 97. See F. Pedrocchi, *Titian* (2000) on Palma il Giovane's contribution.

<sup>72</sup> T. Nichols, *Titian and the end of Venetian Renaissance* (2013).

<sup>73</sup> id. The Frari were always slow to appreciate Titian, as evinced in their reluctance to hang Titian's first altarpiece, the *Assunta*.

<sup>74</sup> Haraway, op. cit., n. 10, pp. 85-6.

participation. For Haraway, feminist philosopher with a biology background, the linguistic body is as physical as any material body. “Understanding the world is about living inside stories. There's no place to be in the world outside of stories. And these stories are literalized in these objects. Or better, objects are frozen stories. *Our own bodies are a metaphor in the most literal sense*. This is the oxymoronic quality of physicality that is the result of the permanent coexistence of stories embedded in physical semiotic fleshy bloody existence. None of this is an abstraction.”<sup>75</sup> Haraway's metaphors are always material, co-extensive with the body of their emergence. Not only do we conceive (“taking in”) of concepts as physical objects, as Winter, and Lakoff and Johnson have argued above; rather, concepts have their own physicality. We do not merely construct them as objects. They *are* objects.

As we have seen, standard legal spatial and corporeal metaphors discount law's materiality. But what is law's matter? And how do we reconcile it with the fact that law is *also* and at least at first instance, textual? I have written on law's materiality elsewhere,<sup>76</sup> so here I will limit myself to the following. First, it is important to consider law's materiality broadly, and not as something limited to legal files, court spaces, etc.<sup>77</sup> Law is not confined to what is semiotically understood as legal, but permeates life in terms of bodies, objects and spaces. From the simple example of the evolution of the legal profession that accepts that an increasing amount of previously reserved activities can now be performed by non-lawyers,<sup>78</sup> to the more complex issue of legal agency attributed to corporations, rivers and networks,<sup>79</sup> the law is unfolding its material nature in increasingly more evident ways. Critical sociolegal research is overwhelmingly showing that embodiment (in the broadest sense of bodies as human and nonhuman) is the only way in which the law can exist.<sup>80</sup>

The second point I would like to make is that the law has an interest in concealing its materiality. Law's greatest trick is to make us believe in its supposed abstract, universal, immaterial, merely semiotic nature. How else could this other favourite legal metaphor, that of blind justice, operate? Indeed, how else could law operate materially *and* control without making its presence asphyxiating. Take a walk and observe the law enabling, channelling, impeding, accelerating your movement; see the illegality of hoods in shopping malls, veiled women in Paris, unveiled women in Afghanistan, walking in the nude in London. And then try to touch these bodies - the law will stop you; sniff out how the law allows bread smell to circulate through a supermarket's air shafts, while prohibiting smells from a restaurant percolating at the upstairs flat. And so on, without even talking about planning regulations, zoning and privatisation of public spaces. Life is thick with law, so thick that the law becomes invisibilised. So invisibilised that it is as if it *is not* matter, that indeed it *does not* matter. Law presents itself (without ever itself falling for this trick) as abstract, distant, and closed. Existing legal metaphors perpetuate the separation of matter and law by pacifying the quest for legal matter, and thus reinstating the exclusively semiotic nature of law. The challenge we are facing now is to understand law as both semiotic and material. In order to do this, we need to embrace

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<sup>75</sup> *id.*, p. 107.

<sup>76</sup> Philippopoulos-Mihalopoulos, *op. cit.* n. 15 and n. 67.

<sup>77</sup> B. Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (2004); Pottage, *op. cit.*, n. 15.

<sup>78</sup> A. Perlman, 'Towards the Law of Legal Services' (2015) 37 *Cardozo Law Rev.* 2284; L. Webley, 'Legal Professional De(re)regulation, Equality, and Inclusion' (2015) 83 *Fordham Law Rev.* 2349.

<sup>79</sup> A. Grear, *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity* (2010); B. Jessup and A. Jones, 'In one ear and out the other' in *Research Handbook on Human Rights and the Environment*, eds. A. Grear and L. Kotzé (2015); G. Teubner, *Networks as Connected Contracts* (2011).

<sup>80</sup> Cowan and Wincott, *op. cit.*, n. 15.

what I call material metaphors, namely metaphors that bring together the material and semiotic regime of signs.

Before focusing on these metaphors, let me briefly suggest a way in which meaning is transferred between the material and the semiotic through Spinozan ethics, and particularly his concept of *parallelism*.<sup>81</sup> Moira Gatens and Genevieve Lloyd explain: “nothing that happens in the order of thought depends causally on anything that happens in the order of material things, or vice versa. But the ‘order of thought’ and the ‘order of things’... are mapped onto one another in a relation of correspondence.”<sup>82</sup> This is Spinoza’s parallelism, which cultivates togetherness but also distance. In that sense, law is both matter and language, but these two withdraw from each other, offering only easy metaphors in their stead. At the same time, legal matter and legal language evolve together, although not causally dependent on each other. Parallelism is Spinoza’s way of populating the vast oneness (god or nature) that for him determined everything, while allowing for difference between matter and mind. I would like to think of Spinoza’s parallelism as the *law’s flesh*: *neither just a thing nor just a concept, flesh is the parallel co-existence of both legal matter and legal language, brimming with legal texts, statutes, decisions, opinions, symbols, but also bodies and spaces that would seemingly be outside the usual symbolic expanse of the law, yet in reality they are in the core of what it means to be legal.*

This is what Haraway means when she refers to “the materialized semiosis of flesh.”<sup>83</sup> Legal matter and legal language are inextricable. Our responsibility as scholars given to the burden and delight of interdisciplinary research, is to try and take in matter and mind together, without succumbing to easy separations.

### ***Pietà III: the last metaphor***

*On the bottom right-hand corner “a painting inside the painting recalls the rules and the contract.”<sup>84</sup> Titian has included an ex-voto, a votive image depicting two men, one aged and one younger, praying to a floating Pietà. The two men have been identified as Titian and his son Orazio, whom Titian expected to take over the workshop after his death.<sup>85</sup>*

*The ex-voto is the material metaphor of the painting, reaching out from within.<sup>86</sup> By including it in the canvas, Titian tells us many things: first, this might not be a traditional Pietà but through the votive image as the interpretative key, the painting becomes a Pietà. Second, this new metaphor changes the whole reference system.*

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<sup>81</sup> B. Spinoza, *Ethics* (2000) Book III, E2p7.

<sup>82</sup> M. Gatens and G. Lloyd, *Collective Imaginings: Spinoza, past and present* (1999) 3.

<sup>83</sup> Haraway, op. cit., n. 10, p. 86; see M. Merleau-Ponty’s *flesh* in *The Visible and the Invisible* (1968); also G. Deleuze, *Francis Bacon: The Logic of Sensation* (2003).

<sup>84</sup> Falguières, op. cit., n. 1.

<sup>85</sup> E. Panofsky, *Meaning in the Visual Arts* (1982).

<sup>86</sup> “Metaphors can be constructed in modes other than language, e.g. in visual images. Accompanying verbal text, however, plays a crucial part in focusing and shaping the visual metaphor.” H. Stöckl, ‘Metaphor Revisited: Cognitive-conceptual versus Traditional Linguistic Perspectives’ (2010) 35 AAA – *Arbeiten aus Anglistik und Amerikanistik* 189-207, at 202. The ex-voto operated as the accompanying text, since the viewers would know exactly that it meant to denote.

*The ex-voto renders the whole altarpiece a votive offering.<sup>87</sup> Titian makes sure that this, “the most poignant conceit in the composition” as David Rosand put it,<sup>88</sup> does not escape the attention of the viewer. He allows only one source of light in the painting, and that is the bottom right corner of the painting, where the ex-voto lies. The painting is structured along this luminous diagonal: bodies, glances and hands are aligned to this one perspective. Even a part of the apse is highlighted by the metaphor, thus insinuating a sliver of hope. It is Titian’s way of asking the plague to pity him and his son.*

*Orazio however also dies in the plague, more or less at the same time as Titian. Titian’s final contract was honoured by neither party, whether the Frari or death.*

### LAW’S MATERIAL METAPHORS

How can we perceive of the flesh of the law? My answer is, through *material legal metaphors*. I define material legal metaphors as fleshy, pulsating metaphors that emerge from within the body of law, determined by and in their turn determining how the law, in its fleshy, namely material and textual dimension, is to be understood. These are novel rather than fixed (‘dead’) metaphors and generally operate as conceptual metaphors do, with some fundamental differences in relation to the traits discussed above in section 3:

*first*, material metaphors make explicit their material provenance, not only in their name (so not only in terms of figures of speech) but fundamentally in the way they attempt to grapple with both matter and law.

*second*, material metaphors do not operate as a container in a consistent system whose boundaries are closed and determined; rather, even when in the form of enclosures, they remain contingent and undetermined.

*third*, although they rely on repetition and affective response, they are at least at first, *counter-intuitive*. They are often neologisms or even forced combinations of terms that cause questioning rather than preconscious acceptance.

*fourth*, they do not control the perception of legal reality as singular, nor do they guide perceptions in a certain direction, but allow a fleshy malleability of perception that can take different paths – exactly as the law is.

Law as a whole is a material metaphor.<sup>89</sup> No doubt to talk about law generically and without specification, risks essentialisation, shedding light on one side of it (whatever the author wants to emphasise) and obscuring other sides of law. This is a real risk but also, I think, a risk worth taking, if only to avoid another risk: to perpetuate the impression that the law can be compartmentalised into public law, private law, property law, EU law and so on. The classic understanding of *areas* of law (another metaphor) imparts the false idea of legal difference according to subject matter. But we know that these are epistemological conventions. In reality the law spills over, knows no internal boundaries, needs the rest of the law in order to stand. The same applies to the law in relation to other disciplines. Law is not politics, economics,

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<sup>87</sup> “the votive pictorial conventions...effectively transform the large painting into a votive image.” M. Holmes, ‘Ex votos: Materiality, Memory and Cult’ in *The Idol in the Age of Art*, eds. M. Cole and R. Zorach (2009) 180.

<sup>88</sup> Rosand, op. cit., n. 40.

<sup>89</sup> Strictly speaking, this is a synecdoche, but the metaphorical operation of meaning transfer occurs here too.



geography, chemistry, medicine, psychology, and so on. But is that really the case? All these disciplinary distinctions collapse at a single trial or a single statutory instrument. In practice, the law has always been a cross-disciplinary excursus, where lawyers and judges and even legal academics need to have a passable level of knowledge of some other discipline. For these reasons, I do not object to the use of the generic term ‘law’. If anything, the metaphor is palpable, and through it one can perceive law’s embodiment and spatialisation not as an exception, but as everyday occurrence. We need to carry on using the metaphor of *the law* because the law needs to be further banalised. What initially would not seem like the law (a pavement or a caress or a tsunami) becomes the law.<sup>90</sup> Talking about the ‘law’ is a fundamental material metaphor, emerging from the core of the law yet allowing it to form contractual synapses with other disciplines as well as with bodies and spaces. The material metaphor of the law breaks the habitual metaphor system that determines what the law is, and resemiologises objects as the law.<sup>91</sup>

In the concluding part of this text, I would like to focus on what I consider the most fundamental material metaphor for the law, “the most poignant conceit in the composition”:<sup>92</sup> justice. At first instance, the metaphor of justice as Justitia, namely the blind, scale-balancing, sword-cradling woman, seems perfectly fleshy, namely both material and discursive. This woman, however, is a puppet. As feminist critique has convincingly shown,<sup>93</sup> Justitia’s fetishized blindness and its pathetic sword threat reek of masculine construction. It is a product of the father law, an Athena jumping out of Zeus’s head, or an Eve carved out of Adam’s rib. Justitia is devoid of flesh, artificially propped up on top of courthouses, her strings pulled by a paternalistic law that hides behind a female appeal and offers itself to the male gaze.<sup>94</sup> She is so excessively surrounded by the symbols of her borrowed power that she collapses under the weight of her own imposed gravitas.<sup>95</sup> As a metaphor, Justitia highlights a certain understanding of female power, while at the same time obscuring its status as derivative,

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<sup>90</sup> This is what I have called, op. cit., n. 67, *the lawscape*, a material metaphor that moves beyond the standard corporeal and spatial legal metaphors and contains the semiotic and the material in one epistemological and ontological tautology.

<sup>91</sup> Examples of other material metaphors in law can be found in Grear op. cit., n 79, a particularly good example of fleshy resemiologisation of current corporate metaphors. In *Absent Environments* (2007), I suggested the material metaphor of waste as both a physical and a legal concept. Another material metaphor has been the Derridean “deconstruction is justice” in J. Derrida, ‘Force of Law’ (1990) 11 *Cardozo Law Rev.* 920 - see A. Moser, ‘Justice Of Metaphor – Metaphor Of Justice’ in eds. O. Neumaier et al. 2005, *Philosophische Perspektiven*, 199.

<sup>92</sup> Rosand, op. cit., n. 40.

<sup>93</sup> J. Resnik, ‘Reconstructing Equality: Of Justice, Justitia, and the Gender of Jurisdiction’ (2002) 14 *Yale J. of Law and Feminism* 393; J. Resnik and D. Curtis, *Representing Justice: Invention, Controversy, And Rights In City-States And Democratic Courtrooms* (2011); R. Lee, ‘Justice for All?’ (2012) 217 *Vanderbilt Law Rev.* 217; on gender blindness and supposed impartiality, see M. Minow, *Justice Engendered* (1987-1988) 10 *Harvard Law Rev.* 10.

<sup>94</sup> Resnik and Curtis, id. I. Bennett Capers, ‘On Justitia, Race, Gender, and Blindness’ (2006) 12 *Michigan. J. of Race & Law* 203.

<sup>95</sup> See L. Mulcahy, ‘Imagining Alternative Visions of Justice’ (2011) 9 *Law, Culture and the Humanities* 311, at 322; see also Resnik and Curtis, id., commenting on the Venetian Justitia, surrounded by male figures and their symbols.

paternalistic and patronising. Its materiality is subsumed by its desperate symbolism. Blind justice is a “conceit”, but not a material metaphor.<sup>96</sup>

What is left then? What is the material metaphor of the law that guides the law from within while at the same time expanding its horizon? What is the immanent metaphor of law’s *ex-voto* that will capture the end of law, in the same way that Titian’s *ex-voto* tried to capture death? In this quest it is important to maintain justice as the absolute immanence of the law, its horizon and ultimate goal. It must remain the interpretative ‘key’ to the whole legal system, guiding the law from within legal operations. But it must also remain a contingency, as Luhmann puts it, namely what *might* happen when the law applies - but there is no guarantee.<sup>97</sup> At the same time, justice must be embodied and spatialised, fully materialised, away from paternalistic depictions; its contingency must not be blind— it must look into the particulars of each body and the differences across the spatial continuum; finally, it must not be anthropomorphised, obeying token rules of attribution and enabling facile identification.

I have called this material metaphor *spatial justice*: a posthuman take on existing discourses of spatial justice,<sup>98</sup> which challenges identification by keep on repeating the question ‘why am I positioned in this way?’ This is not a metaphysical but a physical quest, beginning with the violence inherent in the fact that every body necessarily occupies a certain space in exclusion of other bodies. Spatial justice as a question emerges when a body (individual or collective) moves into the space of another body (individual or collective). This movement is a constant occurrence. Spatial justice questions the rightfulness of such a movement, and the way the various geopolitical, ecological, but also quotidian conflicts are supposedly resolved, namely on arbitrary historical, ethnic, economic and other grounds.

Spatial justice operates as law’s material metaphor because, first, it brings together materiality and law; second, it is not a container metaphor that determines a process arbitrarily separated by a paper-thin skin from its horizon, but a constellation of potentialities that open up in the violence of space without given direction. In that sense, it does not follow a fetishized description of the liberal body as separate, self-contained and given to teleology (habitually fed by current container legal metaphors) but sees the body for what it is, namely in a neuronomic material continuum with space and other bodies; third, it causes questioning (why only spatial? why not temporal? what has space to do with justice? and so on) initiating rather than closing off the debate; and, fourth, it does not attempt to prescribe a singular solution but allows a negotiation of fleshy bodies to determine its outcome.

Material metaphors are not easy things. They are counter-intuitive and do not easily catch-on; they frequently test new ground for which no vocabulary exists; they escape the given system of metaphors yet they are also inscribed in it; finally, they refuse to separate matter from language. But perhaps more importantly, they aim for something that remains difficult to capture and even harder to negotiate with. Space, body, law: their materiality is vast, all-informing, omnipresent. Any term would by definition leave out a great deal of their

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<sup>96</sup> P. Goodrich, ‘The Foolosophy of Justice and the Enigma of Law’ (2013) *Yale J. of Law & the Humanities* 141, at 143, makes a valid point of Iustitia’s metaphorical value and more generally of the “visible structures and plastic forms that constitute the immediate and recognized presence of law”, ultimately, however, subsumed to “the imaginary of justice that lawyers sometimes remember to address.”

<sup>97</sup> Luhmann, op. cit., n. 54.

<sup>98</sup> I define spatial justice, op. cit., n. 67, in contrast to the current understanding of the notion which, I argue, is fundamentally aspatial and with no connection to the law.

complexity. The problem with all these issues with which material metaphors are grappling is not that they are transcendental. Rather, very much like death in Titian's *Pietà*, they are constantly around us, with us, in us.