



Modern English Legal Terminology : linguistic and cognitive aspects

Liliya Kucheruk

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DOCTORAL THESIS

English Linguistics

**Modern English Legal Terminology:
linguistic and cognitive aspects**

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ABSTRACT

The present doctoral dissertation entitled “Modern English Legal Terminology: linguistic and cognitive aspects” investigates the contemporary legal idiom, from a cognitive linguistics perspective. The aim of this study is to map out the peculiarities of English legal terminology and develop principles of systematization, within the framework of conceptual metaphor theory. This means 1) determining the basic concepts used metaphorically in English legal language, and 2) establishing the main cross-domain mappings and correlations between separate items within concrete domains.

The Corpus of Legal English (COLE) was set up and a quantitative analysis performed, in which metaphorical expressions related to legal terminology were searched for and classified on the basis of meanings, conceptual domains and mappings. Thus, the conceptual metaphors of WAR, MEDICINE, SPORT and CONSTRUCTION were found to be the most numerous and valuable in Legal English. The main cross-domain mappings between these source domains and the target domain of LAW were established.

In order to carry out this data-driven study, 156 legal texts were selected and compiled into the Corpus of Legal English (COLE). The source-texts represent various thematic categories. The COLE was systematically used to interpret frequency counts from the point of view of conceptual metaphor theory.

Keywords: metaphor, cross-domain mappings, source domain, target domain, conceptualization

RESUME

La présente étude intitulée «Terminologie juridique moderne de la langue anglaise: aspects linguistiques et cognitifs» aborde le langage juridique contemporain dans le cadre de la linguistique cognitive. Les objectifs de l'étude sont d'étudier les particularités de la terminologie juridique et de proposer des principes de systématisation, en se référant à la théorie cognitive de la métaphore. Il s'agit principalement : 1) de déterminer les concepts de base utilisés métaphoriquement dans la langue juridique ; 2) d'établir les correspondances principales entre domaines et les corrélations entre des éléments particuliers dans des domaines spécifiques.

Pour répondre à cette question, un corpus d'anglais juridique a été constitué et soumis à une étude quantitative. Les expressions métaphoriques liées à la terminologie juridique ont été retirés et classés selon leur sens métaphorique. Il est ainsi apparu que les métaphores conceptuelles de la GUERRE, de la MEDECINE, du SPORT et de la CONSTRUCTION étaient les plus nombreuses et prégnantes en anglais juridique. Les projections et correspondances entre ces domaines sources et le domaine cible de la LOI ont été établies.

Cette étude empirique repose sur 156 textes juridiques qui ont été rassemblés au sein d'un même corpus (COLE – Corpus of Legal English). Les sources renvoient à différentes catégories thématiques. Le corpus a été utilisé pour établir la réalité de certains phénomènes et interpréter les résultats quantitatifs dans le cadre de la théorie de la métaphore conceptuelle.

Mots-clés: métaphore, projections inter-domaines, domaine source, domaine cible, conceptualisation

РЕЗЮМЕ

Дисертаційне дослідження на тему «Сучасна англійська юридична термінологія: лінгвокогнітивний аспект» досліджує сучасну мову права з точки зору когнітивної лінгвістики. Головною метою дослідження було дослідження особливостей англійської юридичної термінології та принципів її систематизації з точки зору когнітивної теорії і власне теорії концептуальної метафори. В ході написання роботи були поставлені наступні цілі: 1) визначити головні концепти які використовуються у якості метафор в англійській мові права; 2) встановити головні концептуальні зв'язки між окремими елементами доменів.

З метою вирішення цих питань і задач був проведений кількісний аналіз корпусу юридичної англійської мови. В ході цього аналізу були виділені та класифіковані метафоричні вирази які пов'язані з юридичною термінологією згідно їх метафоричного значення. В результаті аналізу було виявлено що концептуальні метафори WAR, MEDICINE, SPORT та CONSTRUCTION займають домінуюче положення в мові права. Також були встановлені основні концептуальні зв'язки між сферою-джерелом та сферою-ціллю.

В даному дослідженні було використано спеціально створений корпус, який включає в себе 156 правових текстів різноманітної сюжетної направленості, для проведення кількісного аналізу з точки зору концептуальної метафори.

Ключові слова: метафора, концептуальні відповідності, сфера-джерело, сфера-ціль, концептуалізація

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On several occasions, I applied for student jobs at the University of Bordeaux. Opportunities are few and I was lucky to be accepted. I was thus able to support myself and extend my stay in France, living frugally but happily, well after my ERASMUS MUNDUS contract ended.

Finally, my thoughts go to my family and friends, whose loving trust and support I shall never forget.

TABLE OF CONTENTS

INTRODUCTION	12
CHAPTER 1	20
METAPHOR AND COGNITIVE SCIENCE.....	20
1.1. METAPHOR IN ARISTOTLE’S <i>POETICS</i> AND <i>RHETORIC</i>	22
1.2. I.A. RICHARDS’ CONCEPT OF TENOR-VEHICLE INTERACTION	27
1.3. MAX BACK’S INTERACTION THEORY OF METAPHOR.....	31
1.3.1. <i>The substitution view</i>	31
1.3.2. <i>The comparison view</i>	32
1.3.3. <i>The interactive view</i>	33
1.4. EARL R. MACCORMAC’S COGNITIVE THEORY OF METAPHOR.....	37
1.5. METAPHOR IN COGNITIVE SEMANTICS. CLASSIC COGNITIVE METAPHOR THEORY	39
1.6. RECENT APPROACHES TO METAPHOR: THE BLENDING (OR CONCEPTUAL INTEGRATION) THEORY	61
1.6.1. <i>Blend and / or metaphor</i>	62
1.6.2. <i>Mental spaces, structure of a blend, and mapping</i>	64
1.6.3. <i>Particular characteristics of metaphoric blends</i>	72
1.6.4. <i>Optimal principles of blending process</i>	75
1.7. THE CONCEPTUAL METAPHOR THEORY APPROACH TO METAPHOR IN LEGAL LANGUAGE.....	84

CHAPTER 2	88
THE CORPUS OF LEGAL ENGLISH (COLE): COMPILATION & PROCESSING.....	88
2.1. THE NOTION OF CORPUS AND ITS MAIN CHARACTERISTICS	91
2.1.1. <i>Historical development of corpus linguistics</i>	91
2.1.2. <i>Definition of a corpus</i>	96
2.1.3. <i>Essential characteristics of a corpus, and main stages of corpus compilation.....</i>	97
2.1.4. <i>Types of corpora</i>	107
2.2. MAIN STAGES OF CORPUS COMPILATION	111
2.3. COMPILING THE CORPUS OF LEGAL ENGLISH (COLE)	115
2.4. BASIC STATISTICAL INFORMATION AND FREQUENCY LISTS	131
CHAPTER 3	142
METHODOLOGY FOR THE CONCEPTUAL ANALYSIS OF METAPHOR IN LEGAL LANGUAGE	142
3.1. MANUAL SEARCH.....	147
3.2. EXTRACTION FROM A CORPUS ANNOTATED FOR SEMANTIC FIELDS	155
3.3. EXTRACTION FROM A CORPUS ANNOTATED FOR CONCEPTUAL MAPPING	156
3.4. SEARCHING FOR METAPHORS BASED ON “MARKERS OF METAPHORS”	158

3.5. SEARCHING FOR VOCABULARY BELONGING TO THE SOURCE DOMAIN	160
3.6. SEARCHING FOR VOCABULARY BELONGING TO THE TARGET DOMAIN	162
3.7. SEARCHING FOR SENTENCES CONTAINING ITEMS FROM BOTH THE SOURCE AND TARGET DOMAINS	164
CHAPTER 4	182
QUANTITATIVE AND QUALITATIVE ANALYSIS OF SOME BASIC CONCEPTUAL METAPHORS REPRESENTED IN THE CORPUS OF LEGAL ENGLISH (COLE)	182
4.1. QUANTITATIVE ANALYSIS	184
4.1.1 <i>General description of semantic fields “war”, “sport”, “medicine” and “construction”</i>	184
4.1.2. <i>Quantitative results of the corpus-based analysis of the semantic fields “war”, “sport”, “medicine”, and “construction”</i>	205
4.2. QUALITATIVE ANALYSIS OF THE WAR METAPHOR IN LAW	218
4.3. QUALITATIVE ANALYSIS OF THE SPORT METAPHOR IN LAW	233
4.4. QUALITATIVE ANALYSIS OF THE MEDICINE METAPHOR IN LAW	243
4.5. QUALITATIVE ANALYSIS OF THE CONSTRUCTION METAPHOR IN LAW	251
CONCLUDING REMARKS	256

REFERENCES.....	266
APPENDIX 1: CITATIONS EXTRACTED FROM SEPARATE ARTICLES	274
APPENDIX 2: CORPUS DATA CLASSIFIED ACCORDING TO SEMANTIC FIELDS	280
SEMANTIC FIELD “WAR”	280
SEMANTIC FIELD “SPORT”	325
SEMANTIC FIELD “MEDICINE”	351
SEMANTIC FIELD “CONSTRUCTION”	368

FIGURES AND TABLES

Figure 1	Conceptual integration network.....	66
Table 1	Most widely known linguistic corpora.....	94-95
Table 2	Number of publications used in the COLE	123
Figure 2	Topics discussed in the COLE	129
Table 3	Basic statistical information.....	133
Table 4	The most frequent 200 words in the COLE.....	134-136
Table 5	Coverage of the most frequent words.....	137
Table 6	Lexical density of the COLE.....	138
Table 7	The most frequent 50 content words.....	139-140
Table 8	List of the 100 most frequent legal terms extracted from the COLE Corpus of Modern English.....	148-149
Figure 3	AntConc results.....	152
Table 9	Metaphorical markers after Goatly.....	158-159
Figure 4	The semantic field “war”.....	186
Table 10	Metaphorical expressions associated with the semantic field “war”, classified by word class	187-188
Table 11	Metaphorical expressions associated with the semantic field of “sport”, classified by word class.....	191-192
Figure 5	The semantic field “sport”	195
Figure 6	The semantic field “medicine”	197
Table 12	Metaphorical expressions associated with the semantic field of “medicine”, classified by word class	198-199
Figure 7	The semantic field “construction”.....	202

Table 13 Metaphorical expressions associated with the semantic field of “construction”, classified by word class.....	203-204
Table 14 Word-class distribution of metaphorical expressions within the semantic fields “war”, “sport”, and “medicine”.....	212
Table 15 Ontological correspondences between WAR and LEGAL PROCEDURE.....	227
Table 16 Ontological correspondences between WAR and LEGISLATION.....	230

INTRODUCTION

The present doctoral dissertation entitled “Modern English Legal Terminology: linguistic and cognitive aspects” investigates the contemporary legal idiom, from a cognitive linguistics perspective.

Modern legal terminology clearly includes terms that were historically established as law developed through time. It also includes terminology that eventually worked its way into Legal English as new socio-political and socio-economic relationships developed between individuals in English-speaking countries. This means that legal knowledge and expression are cumulative in character, as is so clearly reflected in modern usage.

The cognitive approach to language study has opened new perspectives for such areas of research as metonymy and metaphor. A widely held view of metaphor is that it is a mere figure of speech that is used mainly to achieve some artistic or rhetorical effect. The cognitive approach goes beyond verbal manifestations and stylistic considerations to include a mental component. Not only does it incorporate cognitive processing as a relevant dimension but it broadens the very scope of metaphor to less poetic and more mundane expressions such as *falling in love* or *taking an examination*. Since the publication of Lakoff and Johnson’s influential work, *Metaphors We Live By* (1980a), the new and seminal *cognitive theory of metaphor* has provided linguists and social

scientists with powerful research tools, allowing them to reach a deeper level of analysis.

The present study sets out to examine the conceptual metaphors of WAR, MEDICINE, SPORT and CONSTRUCTION through their linguistic realizations in Legal English. The investigation is based on the cognitive theory of metaphor: it uses theoretical principles to process linguistic evidence and interpret frequency counts.

The main **goal** of the present study is to investigate the peculiarities of English legal terminology and the principles of its systematization from the point of view of cognitive linguistics, within the framework of conceptual metaphor theory. To achieve this, the following tasks have been successively undertaken:

1. Determining the basic concepts used metaphorically in English legal language;
2. Selecting, extracting, classifying and preparing lexical material for further complex analysis and description;
3. Defining the prevalent *source* and *target* domains used in the development of conceptual metaphors;

4. Establishing the main *cross-domain mappings* and conceptual correlations between separate items within concrete domains.

Empirical data and material. The present investigation is based on the Corpus of Legal English (COLE) that was purpose-built for the study. It comprises 1,694,856 words taken from a body of academic and professional writing. The data is extracted from a broad range of discourse types (articles, notes, essays, comments, interviews, lectures etc.) and covers some 32 subject areas. While selecting the texts, an attempt was made to objectify the process by the random choice of articles, the only restriction being the topic, which had a necessary connection to political issues. All articles considered for analysis were published between 2005 and 2008 in the *Duke Law Journal*, edited and printed in the US by Duke University School of Law. This is a prestigious, frequently cited academic journal, with 8 yearly issues.

Methodology. The investigation process consisted of several stages: first, the COLE was created to offer reliable empirical data and allow all claims made in this dissertation to be based on authentic linguistic evidence. Once the COLE was compiled, four concepts that were commonly open to metaphoric expressions in Legal English were identified. Frequency counts were carried out and the metaphors were

later classified into subtypes, with special attention paid to mappings between source and target domains. Overall, the methodology of research included quantitative and qualitative parameters as well as the general procedure conceptual analysis.

Structure. The present dissertation contains an introduction, four chapters, concluding remarks, a reference section and appendices. The latter include citations from the COLE that involve metaphorical expressions used to conceptualize a particular conceptual metaphor.

The first chapter, “Metaphor and cognitive science”, presents the theoretical framework used in this dissertation, namely cognitive semantics and conceptual metaphor theory, and the main theories preceding the cognitive theory of metaphor. The most respected theories are Aristotle’s conception of metaphor as a *trope*, set out in his “Poetics” and “Rhetoric”; Richards’ comparison theory, and finally Black’s interactive theory. The last part of the chapter discusses more recent approaches to metaphor, namely blending theory and conceptual metaphor theory.

The second chapter, entitled “Corpus of Legal English (COLE): Compilation and processing” introduces the basic theoretical guidelines for the design and compilation of a specialized corpus, in keeping with recognized standards in Corpus Linguistics. It presents with some detail

the stages followed as the COLE was compiled, and reports the immediate results obtained: raw statistical information and basic frequency lists.

The third chapter: “Methodology for the Conceptual Analysis of Metaphors in Legal Language” focuses on the methods used as a corpus-based investigation of metaphor and metonymy is carried out. It analyses the process of extracting and identifying data from the corpus and looks at the practical application of these methods.

In the closing chapter entitled “Quantitative and Qualitative Analyses of the Basic Conceptual Metaphors Represented in the COLE Corpus of the English Language”, an analysis of metaphorical expressions is conducted with the aim of revealing the metaphorical forms and concepts that prevail in the COLE. The main systems of conceptual transfer underlying basic metaphorical concepts are identified. In the course of the quantitative analysis, the main lexemes used metaphorically in the COLE are determined, the absolute frequencies of the metaphorical expressions found in the COLE Corpus are given, and the general metaphorical density of the extracted metaphorical expressions is determined.

The main results of the investigation are summarized in the Conclusion.

CHAPTER 1

METAPHOR AND COGNITIVE SCIENCE

In this chapter, the theoretical guidelines for the present research will be given, namely cognitive semantics and conceptual metaphor theory, and the main theories of metaphor preceding the appearance of the cognitive metaphor theory. The most notable theories that precede the introduction of cognitive semantic theory are Aristotle's point of view on metaphor as a trope, elaborated in his work "Poetics" and "Rhetoric", Richards' comparison theory, and Black's interactive theory.

1.1. Metaphor in Aristotle's *Poetics* and *Rhetoric*

Classical metaphor theory originates in Aristotle's fundamental works, "Poetics" and "Rhetoric". Aristotle defines metaphor as "the application of an alien name by transference either from genus to species, or from species to genus, or by analogy, that is proportion" (Aristotle 2000: 28). This transfer can be carried out both from general to specific and from specific to general, as well as from one particular specific concept to another.

According to the definition given by Aristotle, metaphor possesses the following characteristic features that reflect three important metaphor theories, which descend from Aristotle's theory:

- 1) metaphor functions within the level of a single word;

2) this word is transferred into metaphor, which means that the word has a literal meaning when it is used directly and a transferred meaning, when it is used metaphorically;

3) the two elements of the metaphor are connected via similarity.

Aristotle's identification of metaphor as a linguistic unit that is based on a single word led to its conception as a trope or a figure of speech. According to Soskice, "Aristotle tends to speak of metaphor as a phenomenon of the individual word rather than of any wider locus of meaning such as a sentence, and this, as we shall see, is an important theoretical limitation" (Soskice 1985: 5). It is interesting to note that Aristotle's point of view that metaphor is constructed by a single word was not as widely criticized as the statement that metaphors can develop within phrases or even part of text.

According to Aristotle, metaphor is essential for philosophy as a means of persuasion, in order to gain influence in the political sphere. For Aristotle, metaphor also played a key role in theatrical art and tragic poetry, where it is widely used to express and describe human emotions and actions. Thus, metaphor is useful for philosophy as it makes one's speech clearer and brings into it elegance and style. At the same time, Aristotle stressed that even though metaphor is important for poetic language, as it is used to "raise [the style of an epic or poetic work] above the commonplace and mean"(Aristotle 2000: 30), the overuse of

metaphor may lead to the saturation of speech. Thus: “the greatest thing by far is to have a command of metaphor. This alone cannot be imparted by another; it is the mark of genius, for to make good metaphors implies an eye for resemblances” (Aristotle 2000: 32).

This statement was greatly criticized by later students of metaphor. For example, Richards criticized Aristotle’s point of view, according to which only an elite group of people with “an eye for resemblance” can distinguish and use metaphor, while ordinary people do not have the necessary skills and cannot be taught to observe metaphor in discourse. Richards opposes this statement, claiming that “we all live, and speak only through our eye of resemblance” (Richards 1936: 59), stressing that all speakers of a language learn how to use metaphor in the process of learning that language.

The next characteristic of metaphor given by Aristotle is important for the division of discourse into literal and figurative. When speaking about metaphor as involving the transfer of a word, Aristotle had in mind an etymological explanation of the word metaphor, and showed a clear distinction between ordinary and literal speech. I.A. Richards notes that an understanding of metaphor as being “something special and exceptional in the use of language, a deviation from its normal mode of working, instead of the omnipresent principle of

all its free action” has influenced our ability to recognize its importance (Richards: 1936, 45).

Another important characteristic of metaphor that Aristotle paid great attention to was the notion of similarity as the main bases for the creation of metaphor.

... in using metaphors to give names to nameless things, we must draw them not from remote but from kindred and similar things, so that the kinship is clearly perceived as soon as the words are said. (Aristotle 2010: 155)

This assumption made by Aristotle later led to the understanding of metaphor as a phenomenon that is not able to carry any new information, and it became treated as just a substitute used to describe a non-metaphoric word in a poetic way. All these factors led to the fact that metaphor was, after Aristotle, generally regarded as just some literary ornament.

At the same time, it is necessary to note that regardless of this ornamental theory of metaphor, Aristotle still paid some attention to the cognitive characteristics of metaphor. In his Rhetoric he points out that:

in the language of prose, metaphorical terms can only be used with advantage. This we gather from the fact that these two classes of terms, the proper or regular and the metaphorical are used by everybody in conversation. (Aristotle 2010: 154)

This assumption about the ubiquity of metaphor seems to approach the cognitive semantics claim that metaphor is present in our everyday life, but is unlike cognitive metaphor theory, which stresses that:

“the locus of metaphor is not in language at all, but in the way in which we conceptualize one mental domain in terms of another metaphor is not just a matter of language, but of thought and reason. The language is secondary” (Lakoff 1993: 203)

Aristotle restricts such ubiquity of metaphor to language. Thus, even though Aristotle did not regard metaphor as a cognitive phenomenon, he supported the fact that it is present in our everyday life.

Another of Aristotle’s important statements, from the point of view of cognitive linguistics, is that: “two different words will represent a thing in two different lights”. This statement is closely connected to Lakoff and Johnson’s claim that conceptual metaphor highlights some aspects of a concept and hides others.

We have seen that Aristotle's theories of metaphor were of great importance to metaphor research. At the same time, his works and assumptions about metaphor were later criticized by metaphor researchers. In the following parts of this chapter, we will briefly describe the main theories preceding cognitive metaphor theory, and the influence Aristotle's works had on them.

1.2. I.A. Richards' concept of tenor-vehicle interaction

The idea that a new notion may originate within the limits of metaphorical construction, as a result of the combination and interaction of two separate notions or ideas about the objects of non-linguistic reality, was introduced by I.A. Richards. According to Richards, metaphor is "an omnipresent principle of language and not a dispensable ornament of persuasion" (Richards 1936: 45), as it is almost impossible to find a sentence without metaphors. Even in the sphere of exact sciences we cannot do without them. Metaphors are present in politics, psychology, theories of language, ethics, sociology, aesthetics, etc.; and the main difficulties lie in the process of usage of metaphors and in defining how

stable-at-first-glance words change their meanings. He points out that a word is a substitute (or a means of transfer). It is not a separate impression received in the past, but a combination of general characteristics. Thus,

In the simplest formulation, when we use a metaphor we have two thoughts of different things active together and supported by a single word, or phrase, whose meaning is a resultant of their interaction. (Richards 1936: 46)

This basic statement of Richards' theory represents a conceptual basis for understanding metaphor.

In his 1936 essay "Metaphor", Richards criticizes the traditional theory of metaphor which, he claims, is too narrowly focused on metaphor formation, and treats metaphor as a mere result of word change or context shifts. In contrast to this traditional theory, he emphasizes that metaphor

(...) fundamentally (...) is a borrowing between and intercourse of *thoughts*, a transaction between contexts. *Thought* is metaphoric, and proceeds by comparison, and the metaphors of language derive therefrom. (Richards 1936: 47).

Along with this basic statement, Richards (1936: 48-50) offers two technical terms for each half of the double unit called metaphor: "tenor" and "vehicle". The tenor is "the underlying idea or principal

subject” and the vehicle is the figurative part, which provides a description of the tenor. Together, the tenor and vehicle have a meaning; there is no transfer of meaning at the word level from a “proper” sphere to an “improper” one. Metaphor, in this case, is the result of the simultaneous existence of “tenor” and “vehicle”, and cannot originate without their interaction. Thus, “vehicle”, as a rule, is not a mere unchangeable ornament of “tenor”; “tenor” and “vehicle” produce, in the course of their interchange, a much deeper meaning than each of these components taken separately.

He also points out that the metaphorical processes in language and the interchange between the meanings of the words that we observe while studying explicit metaphors, influence the word we perceive, which itself is the result of earlier or random metaphor.

The processes of metaphor in language [...] are superimposed upon a perceived world that is itself a product of earlier or unwitting metaphor. (Richards 1936: 56)

This assumption is not far removed from the standard cognitive theory of grounding which links conceptual metaphors to our experience and culture. Thus Lakoff and Johnson claim that “the structure of our spatial concepts emerges from our constant interaction with the physical environment” and “every experience

takes place within a vast background of cultural presuppositions”

(Lakoff, Johnson 1980a: 56-57).

Many of Richards’ conceptions are implicitly or explicitly referred to in the works of George Lakoff and Mark Johnson. According to Richards (1936: 46), metaphor is an important instrument of a language. Metaphor both activates and strains intellectual activity. This is to be compared to the following claim made by Lakoff and Johnson (1980a: 4): “Metaphor runs through our everyday life, and not only our language, but also our thoughts and activity. Our everyday system of notions within which we think and act in its essence is metaphorical” (Lakoff, Johnson 1980a: 4). Richards was the first scholar to cast doubt on the traditional conception of metaphor as a process simply based on similarity and comparison. He challenged the simplified understanding of the relationship between “tenor” and “vehicle”, as these conceptions do not take into account all other types of connections between the elements of the structure.

1.3. Max Black's Interaction Theory of Metaphor

In 1955, Max Black published a landmark essay, which presented three different views on how metaphors operate. The first two approaches, the substitution approach and the comparison approach, provide a somewhat traditional account of metaphor as a stylistic device. The third view, the interactive view, is radically different: it underlines the way in which metaphor conveys cognitive content through contact and association.

1.3.1. The substitution view

According to this view, a metaphor (or even a more complex metaphorical expression), which Black notes 'M', is used in place of a literal statement, 'L', which, being used instead of metaphor, would have an equivalent meaning. In other words, the meaning of the metaphoric expression M coincides with the literal meaning of the expression L. According to this view, the metaphoric use of an expression is its usage in a sense different from its usual or direct meanings, and in a context that favors the revelation of such indirect and non-typical meanings. For example, the metaphor, "Richard is a lion" means "Richard is brave." The

essence of the metaphor is the association between the words “lion” and “brave.” The aim of the interpretation of metaphor, according to this view, is the recovery of the meaning of the statement expressed by a synonymous literal equivalent. Black explains:

“(…) once the reader has detected the ground of the intended analogy or simile (with the help of the frame, or clues drawn from the wider context) he can retrace the author’s path and so reach the original literal meaning.”
(Black 1962: 160)

Black distinguishes two reasons for the creation of metaphors. The first is connected with the absence of any direct equivalent to convey a metaphorical meaning (e.g. cherry-lips). In this case the speaker has to create a metaphor as the only possible means of expressing his or her thought. The second reason is connected with the semantic uniqueness of metaphor and its strong stylistic potential.

1.3.2. The comparison view

According to Black, this conception of metaphor is a special case of the substitution view. He says that “a metaphor consists in the *presentation* of the underlying analogy or similarity” (Black 1962: 161), and thus says something about each part of the metaphor. The literal

equivalent of the metaphor, “Richard is a lion” would be “Richard is *like* a lion (in being brave).”

When metaphors are interpreted according to the substitution and comparison theories, the result is a literal paraphrase. In the case of simple metaphors, these approaches may be acceptable. But to use these theories to explain more substantial metaphors leads to “a vagueness that borders on vacuity” (Black 1962: 63).

As the substitution and comparison views focus attention on the terms of the metaphor, they are (and remain) valid at the lexical level of interpretation. But they cannot account for the production of meaning at the semantic level of interpreting a whole metaphorical statement. For this, a more sophisticated theory is required.

1.3.3. The interactive view

Max Black, developing the ideas of I.A. Richards, points out the existence of a particular meaning in the metaphorical structures, and explains it as a result of interaction not between thoughts, but between separate objects, each of which corresponds to “a system of associated common places” (Black 1962: 164). According to Black, “a system of associated commonplaces” is the totality of statements and knowledge of

a common person (not a specialist in the sphere in question) about some particular notion or object, which is usually the same for all the representatives of a single culture, and which, although it may include some mistaken information, is very important for the process of metaphorisation, as it may be quickly activated in the mind. Thus, in the process of metaphorisation, an interaction occurs between two conceptual systems, those of main and subsidiary objects. In the course of this interaction, a system of “associated implications” (Black 1962: 167), connected with the subsidiary object, is added to the main object. As a result of this, a new meaning, different from the sum of the components of metaphor, is created; and within the limits of this newly formed metaphor the meaning of both objects used in the process of metaphorisation is also changed. In this theory metaphor is represented as a kind of “converter”: by projecting the main object onto the sphere of subsidiary object, and with the help of implication, the system creates a new perspective on the object.

In the case of the metaphor “Man is a wolf,” the subsidiary subject (“wolf”) calls to mind a “system of associated commonplaces” (Black 1962: 165), which are generally accepted characteristics of wolves (whether those characteristics are actually true or not). From this system, certain features are applied to the principal subject (“man”), depending on

the context of the statement. “The wolf metaphor suppresses some details, emphasizes others—in short, *organizes* our view of man” (Black 1962: 165). The interactive view of metaphor outlined by Black has an obvious cognitive dimension. Conceptual metaphors take part in the formation of thoughts. So do basic metaphors, which form a basis for the formation of cognitive models.

At the end of his essay, Black summarizes the essence of the interaction view by making the seven following claims:

1) A metaphorical statement has two distinct subjects—a “principal” subject and a “subsidiary” one.

2) These subjects are often best regarded as “systems of things” rather than “things.”

3) The metaphor works by applying to the principal subject a system of “associated implications”, or characteristic of the subsidiary subject.

4) These implications usually consist of “commonplaces” about the subsidiary subject, but may, in suitable cases, consist of deviant implications established *ad hoc* by the writer.

5) The metaphor selects, emphasizes, suppresses, and organizes features of the principal subject by implying statements about it that normally apply to the subsidiary subject.

6) This involves shifts in meaning of words belonging to the same family or system as the metaphorical expression; and some of these shifts, though not necessarily all, may be metaphorical transfers (The subordinate metaphors are, however, to be read less “emphatically”).

7) There is, in general, no simple “ground” for the necessary shifts of meaning—no blanket reason why some metaphors work and others fail (Black 1962: 167-168).

Black’s conception of metaphor is clearly a forerunner of the “cognitive theory of metaphor” that was later to be developed by Lakoff and Johson (1980a). One of Black’s claims is that domains of a metaphor should be seen as systems rather than isolated things and ideas (Black 1962: 161). This assumption can be regarded as contrary to the idea proposed earlier by Richards, who defined a metaphoric process as including “two thoughts of different things active together” (Richards 1936: 57). In later developments, Blake eventually comes to the conclusion that “every metaphor is the tip of a submerged model” (Black 1977: 30). This point of view coincides with Lakoff’s theory about Idealized Cognitive Models (ICM) (Lakoff 1987: 68-76). Moreover, Black’s statement that “every metaphor may be said to mediate an analogy or structural correspondence” (Black 1977: 30) has common points with Lakoff’s assumption that “metaphors are mappings, that is, sets of conceptual correspondences” (Lakoff 1993: 207).

Thus, one could say that although Black’s theory was strongly criticized for being controversial and inconsistent, it had a great influence

on future investigations of metaphor, and it anticipated the classical cognitive theory of metaphor to a great extent.

1.4. Earl R. MacCormac's Cognitive Theory of Metaphor

The idea of a connection between a metaphorical construction and the process of cognition had already been expressed in the philosophy of romanticism, but in the scientific works of the 20th century this theory gained quite different characteristics. Scientists started to regard metaphor as an authentic coherent cognitive structure.

One of the variants of a cognitive model of metaphor is the theory developed by Earl R. MacCormac (1985). MacCormac describes his theory as “a formal version of the interaction theory of metaphor usually identified with the work of M. Black” (MacCormac 1985: 363). MacCormac points out that the reason for the creation of metaphors is a particular cognitive process, the results of which are represented in the language, as language is the highest level of the cogitative process. The principle statement in this theory stresses the existence of a metaphorical language, which does not depend on the cognitive process of

metaphorisation, but creates the general objective background which permits to make conclusions about the meanings and partial truths of metaphors. MacCormac considers a computational metaphor to be an adequate model for the description of the metaphorical process, as, according to him, metaphor can be best explained if we regard the human mind as a computer mechanism. In order to explain the essential aspect of cognitive processes, the scientist uses terminology of computer linguistics.

Metaphor is regarded by MacCormac as a process, which runs on three interconnected levels: 1) cultural; 2) linguistic (semantic and syntactic), and 3) cognitive. MacCormac distinguishes between “conveying” metaphors, which convey the semantic shifts in conceptualization; and ‘basic’ metaphors, which are the fundamental assumptions, or essential conjectures, which provide a particular means of world vision. This idea of MacCormac’s is associated with S. Pepper’s theory of ‘root’ metaphors (Pepper, S. C. (1942). *World hypotheses: A study in evidence*). According to MacCormac, the basic metaphor plays the function of the initial hypothesis, which, in the process of investigation, is made more concrete by a partial hypothesis, by means of conveying metaphors. S. Pepper (1982) regards “root” metaphors as the foundation of metaphysical constructions. While investigating the process

of metaphorisation as a cognitive process, MacCormac comes to the conclusion that we enlarge our knowledge by means of the creation of new basic metaphors, which form the conceptual apparatus of a scientific discipline, and define the methodological principles and means of investigation.

1.5. Metaphor in Cognitive semantics. Classic Cognitive Metaphor Theory

Cognitive metaphor theory was first introduced by Lakoff and Johnson (1980a) and subsequently further developed by a number of theorists (e.g. Johnson 1987, Lakoff 1993). But more recently, it has been challenged by alternative cognitive theories, in particular, by the conceptual blending approach (Fauconnier and Turner 2002; Turner and Fauconnier 1995).

The founding principles of the cognitive theory of metaphor were established by George Lakoff and Mark Johnson in *Metaphors We Live By* (1980a). In this book, the authors argue that metaphor is “not just in language”, but also “in thought and action”:

(...) metaphor is pervasive in everyday life, not just in language, but in thought and action. Our ordinary conceptual system, in terms of which we both think and act, is fundamentally metaphorical in nature. (Lakoff, Johnson 1980a: 3)

Metaphor is a means of categorization of the world as a whole. It allows us to interpret abstract notions via concrete terms.

George Lakoff and Mark Johnson point out that the linguistic expression of metaphor is possible due to the fact that the notional system of human beings is metaphorical in its essence. According to them: “metaphors as linguistic expressions are possible precisely because there are metaphors in a person’s conceptual system” (Lakoff, Johnson (1) 1980a: 6). According to the authors, metaphorical models are a kind of schema, according to which people think and act. Thus, observations of the functioning of metaphors are a source of data about the functioning of the human mind.

“Since metaphorical expressions in our language are tied to metaphorical concepts in a systematic way, we can use metaphorical linguistic expressions to study the nature of metaphorical concepts and to gain an understanding of the metaphorical nature of our activities” (Lakoff, Johnson 1980a: 7).

It is necessary to stress several points in the theory of conceptual metaphor.

1) Conceptual metaphors refer to concepts, and not to individual lexical items, as: "...metaphor is not just a matter of language, that is, of mere words." (Lakoff, Johnson 1980a: 6).

To understand this statement, it is necessary to define the notion of a concept and its main characteristics, as it seems to be the central component of cognitive linguistics. The notion of a concept has different definitions in scientific literature. Concepts are regarded as the ideal, abstract units which are used by people in the process of thinking. These concepts reflect the content of the received knowledge, experience, and the results of the whole of a person's activity and of his/her interaction with the world in the form of separate units, or quanta of knowledge. A concept is a mental and psychological complex unit of consciousness, organized in a particular way. It includes different pieces of verbal and non-verbal information about an object, which correlate with a person's images and feeling. As "Concepts can be encoded in a language-specific format known as the lexical concept" (Evans 2007: 31), they are verbally expressed in words and word-combinations.

Another point of view on concepts presupposes that they are closely connected to the cultural and social environment, which greatly influences the outlook of a person. Thus, a concept is considered as a cluster of cultural elements in a person's consciousness, or as a group of

notions, ideas, associations, knowledge, and emotional experience, which accompany a word. And, thus, from this point of view, concepts can vary from culture to culture, as different peoples can have different ideas and experiences of one and the same thing or phenomenon, as “while concepts are relatively stable cognitive entities they are modified by ongoing episodic and recurrent experiences” (Evans 2007: 31).

Most metaphorical concepts, however, are clearly dependent on culturally relative activities and experiences. One would not expect to encounter the same metaphors for ideas or the mind across widely divergent cultures, nor would the same metaphor (say, IDEAS ARE FASHIONS) have the same meaning across cultures (since FASHIONS might be differently understood). (Lakoff & Johnson, 1980b: 201).

But at the same time, some concepts may be the same throughout different cultures, and this confirms the main principle of cognitive linguistics concerning the universality of human knowledge. This approach to a concept relates to the second essential point in the theory of conceptual metaphor, suggested by Lakoff and Johnson.

2) The second essential claim in the theory of conceptual metaphor is that conceptual metaphors may be specific to one or to several particular cultures, as “...there are values deeply embedded in our culture” (Lakoff, Johnson 1980a: 22) but, at the same time, they stress the fact that there are a lot of conceptual metaphors that seem to be universal

(like, for example, ARGUMENT IS WAR). This fact speaks in favour of George Lakoff and Mark Johnson's claim of a common human conceptual system. By "conceptual system" we understand a structured and organized repository that includes concepts available to a person, which facilitates conceptualization and categorization. Thus, we can say that a concept may also be regarded as a mental representation, which determines how things or events are connected, and how they are categorized. The main role that concepts play in the process of thinking consists of categorization, which permits the classification of objects with particular characteristics and similarities into corresponding groups. The categorization of human experience is one of the fundamental principles of cognitive linguistics.

It should be noted that it is rather difficult to describe the structure of a concept by linguistic means; or to analyze all the means of speech, or verbal representations of a concept; as:

1. A concept is characterized by high semantic density, as it may be expressed by a large number of synonyms with rich lexical compatibility. A concept is a complex structural phenomenon with prominent characteristics that play the supreme role in one case and become secondary in another case.

2. A concept is the result of individual subjective cognition, generalization, and categorization, and any attempt to typify and to define general concepts for a group of people, or for a whole nation, will simplify them to a great extent. Thus, the main objective of a conceptual analysis is not simply an isolated meaning, as a secondary functional property of a sign, but knowledge, experience, and information about an object, or any kinds of ideas (unsophisticated, scientific, experimental, or even erroneous); i.e. everything that is captured in the memory of a person and that constitutes a particular set of information united into a well-structured system.

Thus, the problems of categorization and conceptualization are the central concerns for cognitive linguistics. Categorization is one of the basic operations in the process of a person's cognitive activity. The process of categorization consists of associating events, objects, and processes with a particular sphere of experience or category. By "categorization" we mean the process of formation of categories, of division of the inner and outer worlds of a person according to particular characteristics. "Categorization" is a structured representation of different phenomena. "Category", in its turn, is defined as a set of general and fundamental notions that reflect the most essential and regular

connections and relationships in reality and cognition. Being the means of organizing principles of the cognitive process, categories reproduce particularities of cognition in the most concentrated form.

In cognitive linguistics, the central place in the theory of categorization belongs to the notion of prototype and to the notion of basic level object. From this point of view, a category may unite objects with different characteristics, which do not completely coincide. One of these objects is considered to be the most representative of its group or class, i.e. it fully reflects the essence of the group, and acts as the prototype, on the basis of which all other members of the category are classified.

A theory of human categorization was proposed by Eleanor Rosch (Rosch 1978) in order to account for experimental findings that she and her colleagues discovered during the 1970s. According to this theory there are two basic principles that influence the formation of categories in the human mind:

- 1) the principle of cognitive economy; and
- 2) the principle of perceived world structure.

These principles, together, give rise to the human categorization system. The first principle, the principle of cognitive economy, states that

human beings usually try to receive as much information as possible about its environment, while trying to minimize cognitive effort and resources. In other words, humans prefer to group similar experiences into categories, rather than store separate pieces of information about individual experience. This maintains economy in cognitive representation and leads to the fact that humans prefer categories formed at a particular level of informational complexity. This level of categorization is known as the basic level of categorization.

The second principle, the principle of perceived world structure, suggests that the world around us has a correlation structure. For example, it is accepted in the world that wings most frequently co-occur with feathers and the ability to fly (as in birds), rather than with fur or the ability to breathe under water. This principle states that humans rely upon correlation structure in order to form and organize categories. This correlation structure gives rise to a prototype, i.e. an "ideal exemplar", which contains the most representative features inside the category. Objects that do not share all the characteristics of the prototype are still members of the category but not prototypical ones. Rosch argued that prototypes represent a "basic level of categorization" (e.g. "chair"), as opposed to a "superordinate" (e.g. "furniture") or a "subordinate" level (e.g. "kitchen chair").

The process of categorization is closely connected to the process of conceptualization of the world. Conceptualization (or notional classification) consists of a person understanding information, which they receive and which leads to the formation of concepts, conceptual structures, and whole conceptual systems in their mind. Both conceptualization and categorization represent the classification activity of a person. They differ according to the final result and/or goal of the process in question. The process of conceptualization is directed at finding the minimal units of human experience, while categorization is aimed at the unification of identical units, or those units having similarities, into bigger groups. Conceptualization is also regarded as the process of creating new meanings; and, in this case, it is connected with the question of the formation of new concepts. Concepts of different types (images, ideas, notions) or units (gestalts, schemes, diagrams, frames) are formed in the process of world perception; they are created in the course of cognition; and, they reflect and generalize human experience and the surrounding reality. Language is used to reveal and represent the way the world is seen and understood by the human mind. Every linguistic unit, and, especially, every linguistic category may be regarded as the demonstration of cognitive processes and their particular results. Conceptualization is the process of concept formation in the

human mind, or, in other words, of understanding new information, which leads to the formation of new concepts.

One of the most interesting forms of conceptualization is cognitive metaphor – the cognitive process that conveys and forms new notions, and, without which, it is impossible to receive new knowledge. It accounts for a person's ability to see, and create similarities between different individual objects. Metaphor and metonymy are basic elements of human cognitive activity.

3) This leads us to the third important point of the theory of conceptual metaphor, which stresses that conceptual metaphors embrace almost every sphere of human life: conversation in general, knowledge, education, truth etc. Thus, metaphor seems to be a normal part of the conceptualization process, as "...our ordinary conceptual system is metaphorical in nature". (Lakoff, Johnson 1980a: 4) "That is, it contains metaphorical as well as nonmetaphorical concepts, and the metaphorical structure is extremely rich and complex"(Lakoff, Johnson 1980a: 195).

While speaking about conceptual metaphor, it is necessary to distinguish it from a linguistic metaphor. A linguistic metaphor is a figure of speech in which a term or phrase is applied to something to which it is not literally applicable in order to suggest a resemblance, belonging exclusively to the language of poetry and imagination.

Therefore, while making a distinction between conceptual metaphors and their realizations in linguistic expressions, cognitive linguists stress that cross-domain mapping is primary, as it entails the usage of source domain language and some elements of its structure within the target domain concepts. Thus, in scientific literature, the term metaphor is used to denote a series of cross-domain mappings between conceptual domains, and the term “metaphorical expression” is used to denote separate linguistic expressions evoked by the conceptualization of such mappings.

Metaphors are generally conceptual structures, and cannot be regarded as “merely linguistic in nature” (Croft, Cruse 2004: 196), notwithstanding the fact that they are represented by linguistic expressions. The cross-domain correspondences are represented in the conceptual system, and become conventionalized. At the same time, any linguistic metaphorical expressions can enter the conceptual structure in both conventional and unconventional ways, and will be understood immediately. Thus, a conceptual metaphor cannot be limited by a set of particular linguistic expressions.

At the same time, a conceptual metaphor is defined in cognitive linguistics as understanding one conceptual domain in terms of another conceptual domain. As Lakoff and Johnson remark: “the essence of

metaphor is understanding and experiencing one kind of thing in terms of another” (Lakoff, Johnson 1980a: 5). A conceptual metaphor consists of two conceptual domains, known as a source domain (the concept area from which the metaphor is drawn) and a target domain (the concept area to which the metaphor is applied). Metaphorisation, in this case, is the process of mapping characteristics from a source domain (e.g. WAR) onto a target domain (e.g. POLITICS). This process of mapping is held on the conceptual level, and is then verbalized at the level of language. A conceptual domain is any coherent organization of experiences. Conceptual metaphor not only permits us to structure our experience across two different domains, but it also represents a source of the vocabulary we use to talk about our experience. Therefore, the term “metaphor” is applied both to thought and to language, and linguistic metaphors are used to reveal a particular conceptual metaphor. Lakoff and Johnson use the following formula – TARGET DOMAIN IS SOURCE DOMAIN – to describe the metaphorical correspondences between domains. Thus, we can say that, for example, such a conceptual metaphor as POLITICS IS WAR is represented by the following linguistic expressions (metaphors), i.e. linguistic realizations of a conceptual underlying metaphor.

(1) *This amounts to killing the endowment tax in order to save it, since the best way of implementing this vision of*

an endowment tax would be with a traditional income tax (COLE: Duke Law Journal\April 2006, Vol.55\Taxing Endowment).

(2) Both were also leaders of the antifederalist movement that backed Jefferson in his bitter and successful fight for the presidency in 1800 (COLE: Duke Law Journal\April 2006, Vol.55\It's not about the Fox: the untold history of Pierson v Post).

(3) In 1998, as the Agency was developing policies on reassessing the first third of tolerances, a political firefight erupted over application of the 10-X factor (COLE: Duke Law Journal\April 2007, Vol. 56\The road also taken: lessons from organic agriculture for market and risk-based regulation).

(4) Care is necessary, because efforts to reform corporate governance can easily backfire, even the kind of reform decreed by the Sarbanes-Oxley Act to prevent outright fraud (CODE: Duke Law Journal\March 2009, Vol.59\Are American CEOs overpaid, and, if so, what if anything should be done about it).

(5) In Johnson v. De Grandy the Court held that Rooker-Feldman did not bar a Voting Rights Act suit by the United States, despite a prior decision by a state supreme court, because the United States was not a party to the state suit and did not directly attack the state court judgment in the federal action (COLE: Duke Law Journal\November 2006, Vol. 56\The Rooker-Feldman doctrine: what does it mean to be inextricably intertwined).

A conceptual metaphor is therefore a conceptual mapping between two domains, and it is necessary to point out that this mapping is asymmetrical; that is, the metaphorical expression represents the conceptual structure in the target domain and not in the source domain.

Conceptual metaphors can be classified according to the cognitive functions they perform. On this basis, Lakoff and Johnson distinguish three types of metaphor: structural metaphors, orientation metaphors, and ontological metaphors.

1. Structural metaphors. According to George Lakoff and Mark Johnson, these occur whenever “one concept is metaphorically structured in terms of another” (Lakoff, Johnson 1980a:14). In structural metaphors, the source domains provide frameworks for target domains, which in their turn determine the ways we think and talk about the things that refer to target domains, and even our behavior and activities. The term “source domain” is used for the concept area from which the metaphor is drawn, and the target domain refers to the concept area to which the metaphor is applied. In case of the conceptual metaphor ARGUMENT IS WAR, the source domain is WAR and the target domain is ARGUMENT.

2. Orientation metaphors “organize the whole system of concepts with respect to one another” (Lakoff, Johnson 1980a: 14). Most of these metaphors are connected with orientation in space, such as UP-DOWN, IN-OUT, ON-OFF, etc. The authors stress that such orientations

have an obvious socio-physical basis and tend to differ from culture to culture. As an example of the orientation metaphor, they give the HAPPY IS UP/ SAD IS DOWN metaphor, as illustrated in the following sentences: *I'm feeling up. My spirits rose. I'm feeling down. My spirits sank.* To show how concrete physical experience might serve as a basis for such orientation metaphors, they claim that the drooping posture that typically characterizes states of depression provides an observable bodily basis for DOWN, while the more erect posture that often marks confidence or elation provides a physical motivation for UP.

3. Ontological metaphors have different purposes, and represent mainly the experience from interactions with material objects: “our experience with physical objects provide the basis for an extraordinary wide variety of ontological metaphors, that is ways of viewing events, activities, emotions, ideas, etc. as entities and substances (Lakoff, Johnson 1980a: 25)”. Ontological metaphors also include personification as its type. In personification, human qualities are imposed on inanimate objects. For example: *Inflation has eaten all our profits. Life has cheated me*, etc. Personification allows an understanding of our experiences, using nonhuman entities “in terms of human motivations, characteristics and activities” (Lakoff, Johnson 1980a: 33).

Further on, Lakoff and Johnson point out that, since conceptual metaphors “are defined in terms of nonmetaphorical concepts, they show entailment relations parallel to those for the corresponding nonmetaphorical concepts” (Lakoff, Johnson 1980b: 197). According to Lakoff and Johnson (Lakoff, Johnson 1980a: 9), it is not only surface-level metaphorical expressions that are systematically related by being realizations of one and the same underlying conceptual metaphor; different sub-metaphors may be part of a broader conceptual system as well, and “jointly provide a coherent understanding of the concept as a whole” (Lakoff, Johnson 1980a: 89).

Thus, for example, the conceptual metaphor ‘TIME IS MONEY’ correlates with metaphors ‘TIME IS A LIMITED RESOURCE’ and ‘TIME IS A VALUABLE COMMODITY’.

It should be noted that there is extra-metaphorical as well as inter-metaphorical coherence. Single sub-metaphors have a coherent structure within their own limits, but also show coherence with other sub-metaphors on the same level, thus forming a structured concept. Such systematic and coherent structuring also helps "highlighting different aspects of the concept" (Lakoff, Johnson 1980a: 96). For example, a conceptual metaphor such as POLITICS IS WAR emphasizes the aspects of both combat and strategy, but does not take into consideration the non-

aggressive aspects of the target domain, such as persuasion by means of the law. At the same time, conceptual metaphors such as POLITICS IS A GAME conveys the idea of playfulness, and MARKETING IS A SPORT conveys the idea of competition.

To clarify the notion of aspects of a concept, Lakoff and Johnson introduce the notion of experiential gestalts (Lakoff, Johnson 1980a: 77-82). According to Lakoff,

(...) a wide variety of experiential factors – perception, reasoning, the nature of the body, the emotions, memory, social structure, sensorimotor and cognitive development – determine in a large measure, if not totally, universals, structural characteristics of language (Lakoff 1977: 237).

Lakoff says: “What I would ultimately like to show is that thought, perception, emotions, cognitive processing, motor activity and language are all organized in terms of the same kinds of structures, which I am calling gestalts (Lakoff 1977: 246)”.

On the basis of gestalt theory, Alan Cienki derives the following characteristics of gestalts:

- 1) Gestalts are structures that are used in cognitive processing.
- 2) Gestalts are wholes whose parts take an additional significance by virtue of being within those wholes;

- 3) Gestalts have internal relationships among parts, which may be of different types;
- 4) Gestalts may have external relations to other gestalts;
- 5) There may be partial mappings of one gestalt onto another, or embedding of one thing within another;
- 6) A gestalt analysis needs not necessarily make claims about the ultimate parts into which something can be decomposed, since such analyses would be guided by cognitive purposes and viewpoints, and thus different analyses may be possible;
- 7) Gestalts must distinguish prototypical from nonprototypical properties;
- 8) Gestalts are often cross-modal (Cienki 2007: 175).

From the point of view of gestalts, a domain is considered to have a multidimensional structure. This means that in the process of metaphoric mapping, the structure of the source domain is imposed upon that of the target domain. The process is also referred to as “systematic mapping”. The target domain is both structured as a gestalt in its own right, and “further by means of correspondences with selected elements of the gestalt [of the source domain]” (Lakoff, Johnson 1980a: 81). Such superimposition helps make experience coherent by structuring mental spaces (Lakoff 1987: 68).

The notion of experiential gestalts preceded Lakoff’s more elaborated notion of “Idealized Cognitive Models”. Idealized Cognitive

Models - or ICMs – refer to the ways in which we organize knowledge, not as a direct reflection of a state of things in the world, but according to certain cognitive structuring principles. Idealized Cognitive Models are defined as having a set of elements and a structure; that is, properties of, and relations between, the elements in this structure.

A special case of an ICM is the “scenario” (or “script”). Scenarios, in turn, determine concepts.

Idealized Cognitive Models are directly connected with metaphor, as "the structure of the Idealized Cognitive Models in the source domain [is mapped] onto a corresponding structure in the target domain" (Lakoff 1987: 288). The correspondences between source and target domain can be either ontological in nature, meaning that "entities [...], actions or states in the source domain are mapped onto their counterparts in the target domain" (Barcelona 2000: 3), or epistemic, meaning that knowledge about the source domain is mapped onto knowledge about the target domain, to facilitate reasoning about the latter. This idea of correspondences may be illustrated by ANGER IS HEAT OF A FLUID, introduced by Lakoff (Lakoff 1987: 387). In this conceptual metaphor, the correspondences between elements of one domain and elements of the other domain (i.e. ontological

correspondences) are represented by the following conceptual cross-domain mappings:

Source: HEAT	Target: ANGER
Container	Body
Heat of fluid	Anger
Heat scale	Anger scale
Pressure in container	Experienced pressure
Agitation of boiling fluid	Experienced agitation
Limit of container's resistance	Limit of person's ability to suppress anger
Explosion	Loss of control

(Croft & Cruse 2004: 197).

While the epistemic correspondences, i.e. correspondences between relations between corresponding elements within the domains, are represented by the following cross-domain mappings:

When fluid in a container is heated beyond a certain limit, pressure increases to point at which container explodes.	Controlled release of pressure may occur, which reduces danger of explosion.
An explosion is damaging to container and dangerous to bystanders.	When anger increases beyond a certain limit, "pressure" increases to point at which person loses control.
Explosion can be prevented by applying sufficient force and counter pressure.	Loss of control is damaging to person and dangerous to others.

Anger can be suppressed by force or will.

Anger can be released in a controlled way, or vented harmlessly, thus reducing level.

(Croft, Cruse 2004: 197).

Having summarized the basic principles of conceptual cross-domain mapping, Lakoff proposes the following governing principle: the invariance hypothesis, which is aimed at keeping within limits the process of conceptual metaphor creation. According to this principle: “metaphorical mappings preserve the cognitive topology (that is, image-schematic structure) of the source domain” (Lakoff 1993: 215). As image-schemas play an important role in structuring experience, they also influence the process of reasoning in the target domain, via the source domain of a conceptual metaphor. At the same time, Turner stresses that the schematic structure of the target domain also has to be preserved in the process of conceptual metaphor creation: “in metaphor we are constrained not to violate the image-schematic structure of the target; this entails that we are constrained not to violate whatever image-schematic structure may be possessed by non-image components of the target” (Turner 1990: 252). Lakoff refers to this phenomenon as to “target domain overrides” (Lakoff 1993: 216), claiming that the target domain structure limits the possibilities for automatic mappings. Thus, if we refer to the metaphoric expression “to give someone a kick”, and if we

consider that in this case the actions are conceptualized as objects transferred from one person to another, we can explain by the target domain overrides in the invariance principle why one actually doesn't possess a kick after the action, as the principle presupposes that the inherent target domain prevents some elements of the source-domain structure from being mapped onto the target domain.

To sum up, W. Croft and A. Cruse make the following claims which must be regarded as central to the theory of conceptual metaphor:

1. the conceptual theory of metaphor is a theory of recurrently conventionalized expressions in everyday language in which literal and metaphorical elements are intimately combined grammatically;
2. the conventional metaphorical expressions are not a purely linguistic phenomenon, but the manifestation of a conceptual mapping between two semantic domains; hence the mapping is general and productive (and assumed to be characteristic of the human mind);
3. the metaphorical mapping is asymmetrical: the expression is about a situation in one domain (the target domain) using concepts mapped over from another domain (the source domain);
4. the metaphorical mapping can be used for metaphorical reasoning about concepts on the target domain (Croft, Cruse 2004: 199).

1.6. Recent approaches to metaphor: the Blending (or Conceptual Integration) theory

Among recent trends in Cognitive Linguistics is the “blending theory”, which originated in the middle of the 90^s. On the basis of earlier foundational work on mental spaces (Fauconnier1985), Fauconnier and Turner (2002) elaborated a more comprehensive theory, which is capable of describing different cognitive processes, “a conception for investigation the process of information integration by human being” (Coulson, Oakley 2000: 176).

Taking into account the fundamental idea of cognitive science, that mapping and metaphorical projection play an important role in the construction of meaning, Fauconnier and Turner stress that the process of blending is central and uniform, as it operates “at different levels of abstraction and under superficially divergent contextual circumstances” (Fauconnier, Turner 1998: 304).

Being a basic cognitive operation, a complex blending process is aimed not only at metaphor investigation, but also at the investigation of such complicated phenomena as metonymy, assignment, analogy, irony,

framing, and even grammar. This “blending theory can be [also] used to address both the form and the content of the representation” (Fauconnier, Turner 2000:183), also taking into consideration such visual phenomena as, for example, motion perception. While some scholars (Coulson, Oakley 2000: 192) claim that “it seems rather questionable that the exact same blending processes are at work in the perception of motion as in the comprehension, say, metaphoric blends” it still seems necessary to mention that, like metaphoric or metonymic mappings, the blending process occurs almost everywhere. It should be noted that it may sometimes be regarded as something more than the mere process of “conceptual mapping”, as it isn’t restricted to metaphors but also describes “fundamental aspects of all human experience”. (Coulson, Oakley 2000: 182).

1.6.1. Blend and / or metaphor

Fauconnier and Turner (1998: 364) argue that the early cognitive theory of metaphor was predominantly interested in cases where “projection is one-way (from a “source” to a “target”)”. The importance given to source-to-target mappings overshadowed more complex phenomena, such as the creation of blends. Despite the fact that the

blending process, which occurs between two input spaces, gradually becomes vague, with the establishment of a metaphor, it is still an important characteristic of a novel metaphor, “whether it is totally fresh, or is a revitalization of a conceptual metaphor by using original linguistic means” (Croft, Cruse 2004: 207).

The classic cognitive metaphor theorists paid attention mostly to the widespread character of metaphorical thinking by analyzing “entrenched conceptual relationships” and “recurring patterns in figurative language” (Grady, Oakley, Coulson 1999: 424). Unlike the classical conceptual theory of metaphor, blending theory, rather, takes into consideration and analyses “the blending process that takes place online” (Grady, Oakley, Coulson 1999: 424), which is usually applied to individual, and often novel, metaphoric expressions.

While conceptual metaphor theory regards domains as permanent structures, the mental spaces are regarded as temporary structures, which occur, and are constructed, in the process of utterance, and, thus, they are closely related to the context. Concerning this fact, Fauconnier and Turner argue that “input spaces and blends under construction recruit structure from more stable, elaborate and conventional conceptual structures” (Fauconnier, Turner 1996: 115). At the same time, they claim that the multi-space model “introduces a higher degree of variability and

a loss of parsimony, but with a corresponding increase in sensitivity and generality” (Turner, Fauconnier 1995: 184). Nevertheless, these two approaches can be regarded as complementary, as “conventional metaphors feed the blending process by establishing links between elements in distant spaces” (Grady, Oakley, Coulson 1999: 41).

1.6.2. Mental spaces, structure of a blend, and mapping

Besides its focus and explanatory scope, blending theory differs from the main principles of mapping in the classical theory of cognitive metaphor in that it implies four spaces, instead of two domains (the source and target domains). The use of four spaces provides a better explanation for a wider range of phenomena that would otherwise go unperceived or unexplained. The four-space model – as opposed to the simple crossdomain model – reveals hidden or subtle aspects of the most basic and familiar metaphors. A four-space model of conceptual projection / integration “introduces a higher degree of variability and a loss of parsimony, but with a corresponding increase in sensitivity and generality” (Fauconnier, Turner 1995: 183).

It may accordingly be said that “the two domain model is part of a larger and more general model of conceptual projection” (Turner,

Fauconnier 1995: 183). It should be also noted that spaces are not as global and universal as conceptual domains, representing “small conceptual packets constructed for purposes of local understanding and action” (Fauconnier, Turner 2002: 102).

The blending process usually includes two input spaces (though, “a blended space can have multiple input spaces” (Fauconnier, Turner 1998: 313), one generic space, and one blended space.

There exists a cross-space mapping between the input spaces, which is partial, and which connects similar components in the input spaces. Such connections between counterparts of input spaces may be of any types: “connections between frames and roles in frames; connections of identity or transformation or representation; metaphoric connections, etc” (Fauconnier, Turner 1998: 313).

A generic space includes basic characteristics that are common to both input spaces, and that may be imposed onto each of the input spaces. It also defines the cross-space mapping between the input spaces and a specific element of the generic space that can be mapped simultaneously onto the same elements in input spaces. A blending space represents the structure resulting from the process of blending. In the process of blending the elements from input spaces are projected onto another space, that is, a blend, and it should be noted that this projection is selective, and

not all counterparts are included in the final emergent structure. Generic and blended spaces are connected, as structure from the generic space is included into the blend, but, at the same time, blends contain a specific structure that is impossible to imagine within input spaces.

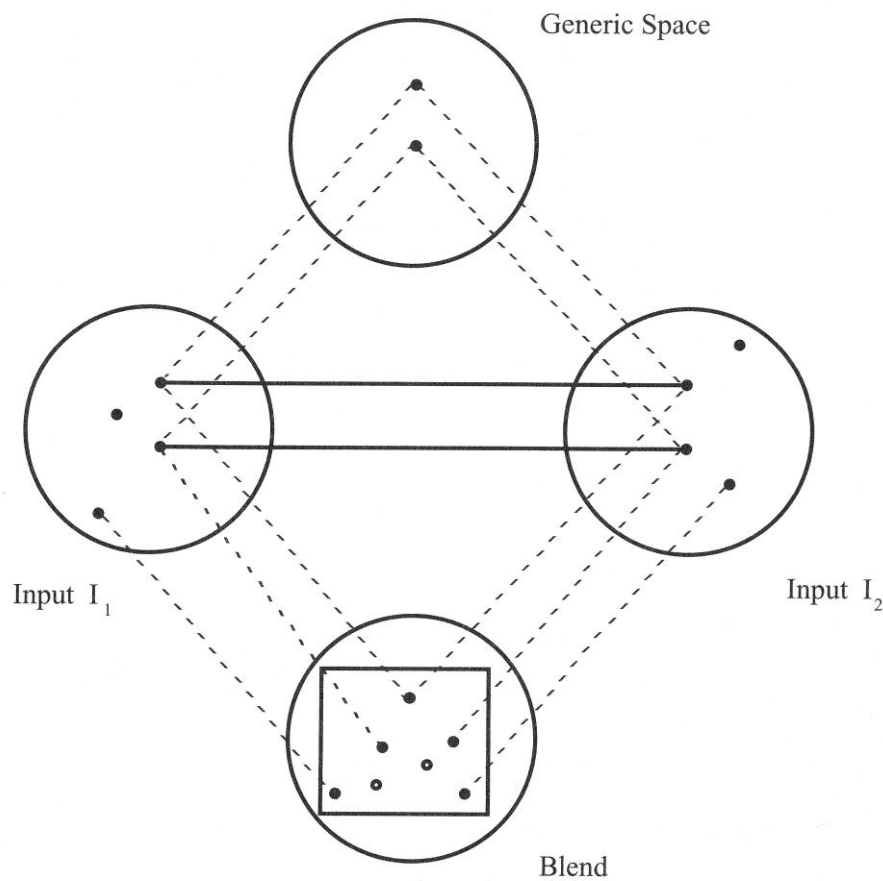


Figure 1 – The conceptual integration network
(Fauconnier, Turner 2000: 46)

In the above diagram, the mental spaces are represented by circles, elements by points within these circles, and connections between elements in different spaces by lines.

The most frequent example, which is routinely evoked in the literature, is the sentence: “This surgeon is a butcher” (Grady, Oakley, Coulson 1999: 422). This blend includes some structure, and some particular elements, from both input spaces. Thus, it includes elements such as the identity of a surgeon and that of a patient, and the details of the operating room, from the target input space; and, from the source input space, it acquires such elements of the structure as the role of a butcher, and some elements associated with the profession of a butcher. The given blend not only inherits the elements and structure from the input spaces of SURGERY and BUTCHERY, but it also produces a new “emergent structure” of its own: the unskilled, incompetent and possibly brutal surgeon.

It should be noted, though, that the transfer of elements from one space to another space is only partial, and that the additional structures are available through default and pragmatic procedures (Fauconnier, Turner 1995: 184). The default options may be provided by cultural frames with rich structure, by generic roles that run across many frames, or by the local situation at the moment of speaking. As already mentioned

above, a blend is not merely the sum of two input spaces, as its structure, in the process of the creation of a conceptual metaphor, is enriched by information stored in our long-term memory. According to Fauconnier, “mental spaces operate in working memory but are built up partly by activating structures available from long-term memory” (Fauconnier 2007: 351).

In the final stage, a blend can be further elaborated by means of the mental or physical stimulation of an event conceptualized by this blend. In the process of blending, there are three additional mental operations that play an important role in the creation of a blend. These are: composition, completion, and elaboration. During the composition process the elements from the input spaces allow the creation of new relationships between the elements, which do not exist in the inputs. Elements from the input spaces can be incorporated into the blend both as separate elements and as fused elements; thus, fusion represents a particular type of composition. Completion incorporates additional structure to the blend, which can be recruited from an additional background frame that is familiar, and that is connected to the blend. “A minimal composition in the blend can be extensively completed by a larger conventional pattern” (Fauconnier, Turner 1998: 315). The last mental operation used in the process of creation of a blend helps to

elaborate a blend through “imaginative mental stimulations” (Fauconnier, Turner 1998: 314), according to the structure of the blend created, due to the previous process of completion. Thus, due to the procedures mentioned before, blended spaces can be extremely elaborated.

In the light of such an integrated approach, blending represents “both less and more than two input spaces” (Fauconnier, Turner 1995: 186). Less because, in the process of blending, only particular parts of an input space are used; and more because a blend may be further elaborated, and thus it may be used to describe life more distinctly and clearly. Thus, a blend “recruits conventional metaphors but does new work with them” (Fauconnier, Turner 1995: 187).

The multidirectional connections between spaces have more complex structure. Despite the fact that both the classical conceptual theory of cognitive metaphor and blending theory “treat metaphor as a conceptual rather than a purely linguistic phenomenon” (Grady, Oakley, Coulson 1999: 420), blending theory, in contrast to conceptual theory, doesn’t pay great attention to the assumption about invariants, which claims that “metaphorical mappings preserve the cognitive topology (that is, the image-schema structure) of the source domain, in a way consistent with the inherent structure of the target domain” (Lakoff 1993: 215). Instead it has a rather indifferent position regarding the importance of

source and target input spaces. To illustrate this point, we can refer to the sentence:

(6) *Nevertheless, from a purely historical perspective, it appears that the greatest economic harm done to U.S. issuers, shareholders, and investors actually resulted from the government's surrender of portions of its regulatory power in the days since the New Deal* (COLE: Duke Law Journal\February 2008, Vol. 57\Regulating corporations the American way: why exhaustive rules and just deserts are the mainstay of U.S. Corporate Governance).

In this metaphoric expression, the conceptual source domain of WAR provided the structure for the metaphoric blend. This demonstrates the fact that in metaphorical blends “input spaces do not have equal status as topics” (Grady, Oakley, Coulson 1999: 434). In the process of the construction of a blend, the source domain plays greater role:

A basic metaphor always has a cross-domain conceptual mapping and a potential blend but provides many formal expressions whose vocabulary comes entirely from the source input space. (Turner, Fauconnier 1995: 198)

Thus, the source input space of the POLITICS IS WAR metaphor provides the following expressions:

(7) *Indeed, Thomas believes that he has been unfairly vilified by African Americans because he is unwilling to surrender the fight for true racial equality* (COLE: Duke Law Journal\October 2008, Vol. 58\The next “Great

Dissenter”: how Clarence Thomas is using the words and principles of John Marshall Harlan to craft a new era of civil rights).

(8) *At an extreme, the rise of the OFPA, the revival of First Amendment scrutiny in the commercial sphere, and the subtle but very palpable shift from the Progressive Era’s bureaucratic model of consumer protection to a more consumer- and market-oriented model may bring the misbranding provisions of the FD&CA under constitutional attack* (COLE: Duke Law Journal\April 2007, Vol. 56\Beyond food and evil).

(9) *The Partial Successes of Persuasion In recent years Europe, other states, and independent actors have bombarded the United States with attempts to persuade it to abolish, or at least narrow, its use of the death penalty* (COLE: Duke Law Journal\April 2006, Vo.55\Acculturation and the development of death penalty doctrine in the United States).

So, we can say that one of the main characteristics of a metaphoric blend is the so-called “asymmetric topicality” (Grady, Oakley, Coulson 1999: 434), meaning that, in a blend, one of the input spaces is topical, while another is used to reframe the first to match some specific conceptual or communicative purpose. In this case, the input spaces of a blend can be called the target input space and the source input space respectively. Therefore, in the conceptual metaphoric blend POLITICS IS WAR, the conceptual domain of politics represents the target space, thus giving the topicality to the blend, and the conceptual domain of war provides the frame to organize the blend.

In a way similar to the classical cognitive theory of metaphor, blending theory points out that only some characteristics of the input space are recruited to construct a blend. This thesis is true not only for linguistic but for conceptual blends, as well, as “the target material yields to the source material, which is explicitly represented in the blend” (Grady, Oakley, Coulson 1999: 432)

But it should be noted that such an “asymmetric topicality” is reversed in the process of transfer from a blend to the target input space, as “the inputs can be [also] modified by reverse mapping from the blend” (Turner 2007: 381). The claim that “we export the integrity in the blend to induce an integrity of events in the target” (Turner, Fauconnier 2000: 134), in reality, supports the dominant role of a target domain, and protects the new understanding of a target as the ultimate reason for the blending process. Thus, it becomes clear that the multidirectional process of blending does not mean a return to the two directions (i.e. the connections only between source and target domains).

1.6.3. Particular characteristics of metaphoric blends

Classical conceptual metaphor theory is concerned with well-established metaphoric associations between metaphoric concepts, while

blending theory is especially interested in the ability to combine different elements from familiar conceptual domains. Blending theory has a definite edge over the classic conceptual metaphor theory in that it is capable of explaining a vast range of different phenomena, including grammar, counterfactuals, and conceptual change. But what are the characteristic features of metaphoric blends in particular?

As we can see from the examples mentioned above, metaphoric blends depend, to a great extent, on the relations between the elements of the input spaces, which are evoked by familiar metaphoric associations (such as between politics and military actions). There also exist some other characteristics of metaphoric blends that make them appear metaphoric to the listener. These characteristics may include their structure, content, or the environment in which they are used. J.E.Grady, T.Oakley, and S.Coulson, in their article, “Blending and metaphor”, give the following main characteristics of a metaphoric blend: fusion with accommodation, directionality, and asymmetric topicality; and the role of linguistic context (Grady, Oakley, Coulson 1999: 435 – 436).

One of the characteristics, which is considered to be important for a blend to be regarded as a metaphoric one, is the fusion of its elements. In a metaphoric blend, important elements from the input spaces are projected onto the blended space, where they are then fused into one

entity. This entity used in the blended space corresponds to a separate element in each of the input spaces. Thus, for example, in a conceptual metaphor like IMMIGRATION IS AN INVASION the fused element, “invasion”, in a blend, is linked to the elements of “invasion” in the source input space, and “immigration” in the target input space. At the same time, it is necessary to mention that not all types of fusion presuppose the metaphoric nature of a blend. In metaphorical blends, in the process of fusion, the most prominent features of the structure of an input space are prevented from entering a blend, whereas some prominent aspects of the structure of a blended space are prohibited from returning to input spaces. This means that some information from one of the inputs (namely the target input space) is not used in the blend. Thus, in the sentence:

(10) *The inclusion of this “likelihood standard” allows trial participants to gamble, risking punishment if the judge considers their speech more prejudicial than it was intended* (COLE: Duke Law Journal\February 2008, Vol. 57\Court-ordered restrictions on trial participants’ speech).

the elements of the general trial procedure are not taken into consideration during the process of conceptual construction of the blend, thus permitting the blend to inherit the elements of the source target space – that of GAMES. One of the important features of a metaphoric blend is the kind of fusion it allows, as the partial projection of counterparts takes

place, within the blended space. Such partial projection or “asymmetric projection” is referred to by Grady as fusion with “accommodation” (Grady, Oakley, Coulson 1999: 432). In this process, the structure of the element of one input space is blocked.

The second main characteristic that is important for distinguishing a blend as being metaphoric is the so-called “asymmetric topicality” (Grady, Oakley, Coulson 1999: 432). As already mentioned, the input spaces of a blend do not all play the same roles in the construction of a blend, as one space, which is referred to as “the target input space”, is topical, and the other, which is referred to as “the source input space”, represents the structure for reframing the first.

The last important feature that should be taken into consideration is the linguistic context of a blend, namely the level of difference between the counterparts of the input spaces, which are fused in the blended space, as: “the perceived difference between two entities is an important determinant of how metaphorical an association between them may seem” (Grady, Oakley, Coulson 1999: 435).

1.6.4. Optimal principles of blending process

Considering all the information mentioned above, it can be estimated that blending theory possesses enormous possibilities for describing different linguistic phenomena, including metaphor. Nevertheless, blending theory was vastly criticized as the theory “accounting for everything, and hence explaining nothing” (Coulson, Oakley 2000: 186). In order to confront this criticism, Fauconnier and Turner elaborated the so-called optimal principles, which are aimed at leading and limiting the blending process (Grady, Oakley, Coulson 1999, Fauconnier, Turner 2002). These principles include the integration principle, the web principle, the unpacking principle, the typology principle, and the principle of metonymic tightening.

The first principle, the integration principle, presupposes that “the blend must constitute a tightly integrated scene that can be manipulated as a unit. More generally, every space in the blend structure should have integration” (Fauconnier, Turner 1998: 340). As an example of the integration principle, we can refer to the previously mentioned conceptual metaphor, *POLITICS IS A GAME*, where the game is revealed as an integrated event, and each space of a blend can be manipulated as a unit. The next principle, the web principle, maintains that “manipulating the blend as a unit must maintain the web of appropriate connections to the input spaces easily and without additional

surveillance or computation” (Fauconnier, Turner 1998: 340). In other words, the web principle requires the existence of connections between a blend and input spaces, so that any manipulations in one of the spaces would lead to inevitable changes in all other spaces. The following principle, the unpacking principle, states that “the blend alone must enable the understander to unpack the blend to reconstruct the inputs, the cross-space mappings, the generic space, and the network of connections between all these spaces” (Fauconnier, Turner 1998: 340). Thus, we can say that the expression, *to remedy civil rights*, evokes both the source input space of medicine and the target input space of law, and we can easily construct relations between their structures and between their counterparts. Continuing further, the principle of topology suggests that “for any input space and any element in that space projected into the blend, it is optimal for the relations of the element in the blend to match the relations of its counterparts” (Fauconnier, Turner 1998: 340). Thus, for example, a large quantity of water during the flood is represented in the blend by large number of people coming to the country due to the immigration process. And the last principle, the relevance principle, claims that “all things being equal, if an element appears in the blend, there will be pressure to find significance for this element. Significance will include relevant links to other spaces and relevant functions in running the blend” (Fauconnier, Turner 1998: 340). In other words, the

elements in a blend have to be significant, i.e. they must show the important relationships with other spaces and important functions when elaborated.

Finally, metonymic blending requires that metonymically related elements from the input spaces become as close as possible within a blend. The last principle brings attention to such an important characteristic of the blending process as “a compression tool par excellence” (Fauconnier, Turner 2002: 312). Due to the compression, such important relationships as “change, identity, time, space, cause-effect, part-whole, representation, role, analogy, disanalogy, property, similarity, category, intentionality, uniqueness” (Turner 2007: 381) can be joined together.

To illustrate the main principles of the blending process, let us consider the following sentence, taken from an article, which appeared in the Duke Law Journal.

(11) *And yet, despite the rhetoric, federal judges regularly inject new legal issues into ongoing cases* (COLE: Duke Law Journal\December 2009, Vol. 59\The limits of advocacy).

Here, the metaphor *to inject new legal issues* represents the common conceptualization of political or judicial reforms as medical

procedures, thus representing the conceptual mapping POLITICS IS A MEDICINE. Before starting the analysis of this particular blend, it is necessary to establish the conceptual mappings it is built from, as “the network of connections which ultimately constitutes a blend depends first on the establishment of links between the input spaces” (Fauconnier, Turner 1998: 308). The conceptual metaphor, POLITICS IS A MEDICINE, may include the following conceptual cross-domain correspondences.

Politics	Medicine
Medical staff	Politicians
Governmental policies/actions/reforms	Medical procedures
Success of the reforms/actions	Recovery of a patient
Political problems/failures	Illness/death of a patient

So, the metaphoric blend to inject new legal issues, mentioned in the previous example, inherits some structure from each of the input spaces. The first input space, representing the source domain, includes the following elements:

Role 1: *Doctor/nurse*
 Role 2: *Patient*
 Means: *medical instruments*
 Situation: *unspecified*
 Scene of action: *hospital/ treatment room*
 Goal: *healing, recovery*

The second input space, the target space, includes the following elements:

Role 1: *Judge*

Role 2: *Legal cases*

Means: *law application*

Situation: *litigation*

Scene of action: *courtroom*

Goal: *bringing in a verdict*

Although the environment in which doctors and judges operate are quite different, and despite differences in the procedures, there still exist some common points which allow counterfactual relations to be established between the source and target input spaces. These general points in the process of blending are represented in the generic space, which includes:

- the same goal that presupposes the improvement of the situation;
- the analogous means of doing this by “introducing” something new;
- the similar influence on human destiny;

So, as the result of the blending process, a new structure emerges, which is then established in the blend. The new metaphoric blend includes the following elements, inherited from both input spaces:

Role 1: *Judge*

Role 2: *Legal cases*

Means: *introduction of new elements into the case, which were unknown before;*

Situation: *litigation*

Scene of action: *courtroom*

Goal: *bringing in a GROUNDED verdict*

We can see that the newly created blend inherits the topic and some elements of the target input space (that of medicine), and the structure of the source input space (that of law), while at the same time establishing a new structure and new meaning that stresses the well-grounded and justified decision, based on the variety of newly established facts, included later in the case hearing.

So, conceptual integration theory allows the revelation of the mechanisms that precede the creation of a blend, and the elaboration of its structure, as confirmed by this other example:

- (12) *The Reconstruction amendments injected into the Constitution the innate right to equality that the founders promised in the Declaration of Independence* (COLE: Duke Law Journal\October 2008, Vol. 58\ The next “Great Dissenter”: how Clarence Thomas is using

the words and principles of John Marshall Harlan to craft a new era of civil rights).

The metaphorical correspondences present in this example reflect the mappings proposed in the previous one, with politicians improving existing laws by adding some new notions and regulations to them, as a doctor helping patients to recover by giving them some additional medicine.

The following points can be made to sum up the most striking differences between the established cognitive theory of conceptual metaphor and the more recent blending theory. The classic conceptual theory of metaphor focuses on cross-domain mappings, and tends to restrict its scope to the study of metaphors and metonymies, as was the case in Lakoff and Johnson's first work (1980a). Blending theory is a multi-space model that not only connects conceptual domains but integrates or "blends" them. Cross-domain transfers and projections keep their relevance, but greater attention is paid to the cognitive mechanisms that allow the human mind to build new "mental spaces" and create new meanings out of older ones. As its name suggests, blending theory shows how hybrid spaces, with their own "emergent" structure and logic, are created. And it has a much wider scope since it can be applied also to various aspects of language, beyond metaphor and metonymy, such as

grammar, irony, counterfactuals, language change, etc. Thus, “the many-space model explains a range of phenomena invisible or untreatable under the two-domain model, and reveals previously unrecognized aspects of even the most familiar basic metaphors” (Fauconnier, Turner 1995: 183). The classic cognitive metaphor theory has been regularly used to investigate conventional conceptual metaphors, while blending theory has been used to investigate the novel conceptualizations that often take place as an on-line process. While the standard (or classic) conceptual metaphor theory typically distinguishes two mental spaces (or “conceptual domains”), linked by “cross domain mappings”, operating from source to target in unidirectional fashion, blending theory exhibits a multi-space and multi-directional model that allows for more than two input spaces.

However, it should be noted that both processes share essential features. Both are based on projections across conceptual domains. Blending is a more open, complex and integrative model. An in-depth cognitive analysis of metaphor should take into consideration both theories. Simple cross-domain mappings reveal connections and projections across spaces. Blending is useful to highlight the creativity and “emergent” logic metaphor.

1.7. The conceptual metaphor theory approach to metaphor in legal language

To determine the role of metaphor in legal language and thought, it is necessary to recall that cognitive linguistics studies the relationship between the conventional semiotic structure of language and basic construal operations, which are themselves tied to socio-physical experience. A cognitive approach to language is of particular interest to the study of the terminology and phraseology of a particular field, as every term may generally be characterized by a clear and precise structure of knowledge.

Human law is a many-splendored creation of the human mind, that is, of human understanding and reasoning. The primary business of the cognitive sciences is to study empirically how the mind works. Therefore, cognitive science ought to give us insight into the nature of legal concepts and legal reasoning. (Johnson 2007: 845)

It should be noted that legal language, which is central to this piece of research, is officially characterized by precision and accuracy- at least officially. Legal language has to prevail over ambiguity in understanding different juridical rules and notions. At the same time, it should be noted that legal language, and legal thought in general, cannot

be characterized as a stable and fixed system. The legal paradigm goes back to ancient times. The subject of its investigation, that of human being and the limitation of behavior, has remained the same for many centuries. Yet, at the same time, society, human relationships and language itself have evolved. It is thus necessary to stress the changing, cumulative character of legal knowledge, as juridical sciences do not discard previously received knowledge and formulated rules, but join, transform, and extend the knowledge inherited from the previous stages of its development. The assumptions mentioned above evoke the constant development and replenishment of the legal vocabulary, namely, by new terminology, the appearance of which is based on rational thinking, and on the processes of categorization and classification.

As change is a basic feature of human experience, it is evident that law, as the most central organizing principle of social life, must also undergo change. There is a constant need of new norms regulating the social life of human beings. As the abstract concepts we use in our everyday life (including those belonging to the sphere of law) are greatly influenced by, and are grounded in, our daily experience, we can say that they undergo the general rules of extension identified by cognitive linguistics, and that they are influenced by the conditions for extension suggested by conceptual metaphor, which allow us to extend already

existing concepts, and to apply our concepts to new related cases. In this case, conceptual metaphor is a powerful means of meaning extension “which allow for cognitive flexibility in the face of changing situations, even as they provide cognitive motivation and constraint for how we think creatively” (Johnson 2006: 852).

One of the studies based on the analysis of metaphor in the domain of law was proposed by Steven Winter (1988), who offered an alternative point of view on the role of metaphor in legal language, contradicting the previously accepted account of metaphor as being merely a figure of speech, adding some figurative meaning to the otherwise precise and strict language of decision-making and rule-governing. According to Winter, legal reasoning is grounded in human interactions, which become institutionalized first in social practices, and later in cultural and legal norms (Winter 1988). Just as human reasoning is metaphoric, so is the law. Because we think metaphorically, because our cognitive systems are rooted in our embodied experience of the physical, social, and cultural environments, law is not beyond the laws of human cognition. The law’s metaphoric grounding gives the possibility of change, as new social norms and rules are introduced. As Winter states, “Actual examination of legal metaphors—how they work, how they come to be, how they come to be meaningful and persuasive to us as embodied, socially-situated

human beings—shows that . . . metaphor is both the product and embodiment of constraint” (Johnson 2006: 847). According to this view, there is no law without metaphor. Metaphors do not devalue the meaning and power of law. Metaphor is the essential part of legal language and thought, because human reasoning is essentially metaphoric. At its core, then, the conceptual theory of metaphor “humanizes” the law by situating it within social institutions and ordinary thought processes (Johnson 2002: 951).

CHAPTER 2

THE CORPUS OF LEGAL ENGLISH (COLE): COMPILATION & PROCESSING

The aim of this chapter is to present the basic theoretical guidelines for the design and compilation of a specialized corpus, in compliance with general Corpus Linguistics standards. The detailed characteristics of the stages followed in the compilation of COLE are set out, and the first results obtained from the basic analysis of the corpus are presented: raw statistical information and a simple frequency list. A more refined analysis is provided in Chapters 3 and 4.

The development of modern linguistics, and science in general, is characterized by a systematic approach. This kind of approach regards the subject of investigation in its specific integrity. It requires, from the empirical and experimental point of view, dealing not only with random sampling but with the full database of the subject under investigation. Only the continuous and systematic analysis of empirical data allows one to process meaningful information about the subject under study. Samples from a common set of data concerning the subject being investigated have to meet the criteria of adequacy, reliability, and qualitative representativeness of the subject, in time and space.

Any national language that is constantly developing, and which is represented by a great variety of usage in the form of texts constructed for different purposes and under different conditions, can be regarded as a subject widely spread in time and space.

Thus, linguistic corpora are created in order to organize text material for systematic analyses, in order to give an objective representation of the given language.

2.1. The notion of corpus and its main characteristics

2.1.1. Historical development of corpus linguistics

Linguists have always needed sources of evidence for theories about the nature, elements, structure, and functions of language, and as a basis for stating what is possible in a language. At various times, such evidence has come from intuition or introspection, from experimentation or elicitation, and from descriptions based on observations of occurrences in spoken or written texts. In the case of corpus-based research, the evidence is derived directly from texts.

Twenty or thirty years ago, the constitution of an electronic corpus was a difficult task, but with the rapid development of informational technologies, with the introduction of networks and the growth of computer memory, the situation has considerably changed.

Nowadays, official documents and academic journals are available in electronic form, and it makes no difficulty to include them into a corpus.

Constructing, as well as exploiting, different types of corpora is among those computer applications available to researchers in various scientific fields, including linguistic studies. Recently, large monolingual, comparable, and parallel corpora have played an important role in solving various problems of linguistics, such as language learning and teaching (Aston 2000; Leech 1997; Nesselhauf 2004), translation studies (Mosavi Miangah 2006), information retrieval (Schauble, Braschler 2000), statistical machine translation (Brown et al., 1990), and the like.

Corpus Linguistics started to develop, as a separate science, not so long ago, in the 1960s. Corpus linguistics made it possible to obtain more accurate information, and to specify the results received on the basis of earlier investigations, and allowed language scholars to conduct new, and more general, systematic research on linguistic material. The main purpose of Cognitive linguistics is the linguistic description of a language system. Although corpus linguistics is concerned mainly with the description and explanation of the nature, structure, and use of language and languages, and with particular matters such as language learning, variation, and change, it may lead to the discovery of unexpected facts about language. Thus, it is possible to say that a corpus of texts, on the

one hand, is the initial linguistic material for investigations of corpus linguistics and other linguistic disciplines, and, on the other hand, is the result of the functioning of corpus linguistics itself.

The first modern, electronically readable text corpora appeared in 1963 at Brown University, in the United States. W.Francis and H.Kucera created a large corpus of texts, in a machine-readable form, now known as the Brown Corpus. It consisted of 1 million words, in the form of short texts of 2000 characters each. The texts belong to the 15 most important genres of English-language published prose in the USA, in the year, 1961.

Between 1970 and 1978, a corpus of written British English was compiled at the University of Lancaster and at the University of Oslo. It was meant to be the exact British counterpart of the American Brown Corpus. The Lancaster-Oslo-Bergen Corpus (LOB) contains 500 texts of about 2000 words each, published in 1961 and includes approximately 1 million words.

At present linguistic corpora exist in almost all modern languages. The following table indicates the examples of the most widely known linguistic corpora, which are available through the Internet, and which can be used for linguistic investigations of different kinds.

Name of the corpus and its internet address	Short description
English	
British National Corpus http://www.natcorp.ox.ac.uk/	The volume of the corpus is more than 100 million words of contemporary spoken (10%) and written (90%) British English. The BNC was designed to be well-balanced, with a wide range of genres.
The Bank of English http://www.collins.co.uk/Corpus/CorpusSearch.aspx	The corpus includes different types of written texts and oral speech. It consists of several subcorpora, namely British books, newspapers, journals etc. (36 million words); American books, newspapers etc. (10 million words); British oral speech (10 million words). The volume of corpus is 56 million words.
American National Corpus (ANC) http://americannationalcorpus.org/	It is planned to compile a corpus, which will include 100 million words. At present the volume of the existing fragment of the corpus is 10 million words.
Michigan Corpus of Academic Spoken English: MiCASE http://quod.lib.umich.edu/m/micase/	The volume of the internet-version of the corpus is 1 848 364 words taken from 152 samples
German	
DWDS-Corpus http://www.dwds.de/pages/pages_textba/dwds_textba.htm	Used as the basis for the creation of the digital dictionary of the German language of the 20 th century.

Online German vocabulary (Projekt Deutscher Wortschatz) http://wortschatz.uni-leipzig.de/	Consists of 35 million of sentences including 500 million words.
Corpora of the German language institute (LIMAS-Korpus) http://www.korpora.org/Limas/	The largest collection in the world of German text corpora.
Corpus of the German language (IDS-Korpora) http://www.ids-mannheim.de/kt/corpora.html	General corpus of the German language (1970), which includes samples of 500 texts and text fragments, the total volume is 1 million words.
French	
General corpus of oral French language (Corpus de Référence du Français parlé) http://sites.univprovence.fr/delic/corpus/index.html	This corpus consists of 440 000 words, 134 photos, and more than 36 samples of speech acts.
Corpus of spontaneous interviews (Un corpus d'entretiens spontanés) http://www.llas.ac.uk/resources/mb/80	The corpus includes 95 conversations.

Table 1 – Most widely known linguistic corpora

A lot of new corpora have been created, and they have been used in a large variety of investigations. Consequently, a large number of new publications, which describe not only the results of these investigations, but also the properties of the text corpora, and the problems of their compilation and design, have appeared. A new science known as “corpus linguistics” has gradually emerged, and a lot of new types of corpora have been established.

However, notwithstanding the diversity of new types of corpora and the areas of their application, it is still difficult to give a clear definition of the notion of a corpus.

2.1.2. Definition of a corpus

In principle, any collection of more than one text can be called a corpus, (corpus being Latin for “body”, hence a corpus is any body of text). But the term “corpus”, when used in the context of modern linguistics, tends most frequently to have more specific connotations than this simple definition.

Although, technically, the term “corpus” is used to refer to any collection of texts, it is sometimes used to refer to collections of citations of various kinds, such as dictionaries, or a pre-selected collection of utterances, containing a linguistic feature of particular research interest.

According to one of the five definitions provided by the Oxford English Dictionary, a corpus is “the body of written or spoken material upon which a linguistic analysis is based”. This presupposes that in order to be used for linguistic analyses a corpus must be not only a simple collection of texts but also must be representative of a given language, or must describe a dialect or some other subset of a language.

Nelson (2000) has pointed out that there are several reasons that speak in favor of using corpora in linguistics analysis: objectivity vs. intuition, verifiability of results, broadness of language able to be represented, access, broad scope of analysis, pedagogic – face validity, authenticity, motivation, possibility of cumulative results, accountability, reliability, and the analysis of a language as a whole. A more general definition of a corpus was given by Charles F. Meyer: a corpus is a relatively large collection of naturally occurring texts, which have been stored in machine-readable form (Meyer 2002).

2.1.3. Essential characteristics of a corpus, and main stages of corpus compilation

The definition that is most generally accepted, and that tends to most fully represent the notion of a corpus, provides the corpus with the following distinctive characteristics: machine-readable form, balance, representativeness, finite size, and sampling.

Machine-readable is the simplest of all the required characteristics of a corpus. Corpora that are machine-readable possess several advantages over the original written texts or speeches. They may be searched and manipulated in a way in which no other formats may be. With the help of modern software, it takes only several minutes to look

through a huge number of different texts, to find, for example, the most frequent usage of a word or expression. Besides, the machine-readable form permits the storage of enormous quantities of texts on a small medium, and to receive direct access to the information whenever it is necessary.

The next essential characteristic of a well-designed corpus is its **representativeness**. As has already been mentioned, a corpus is not a mere collection of texts. The main purpose of a corpus is to represent a language or a part of a language. Leech (1991) has suggested that “a corpus is ‘representative’ in the sense that findings based on an analysis of it can be generalized to the language as a whole or a specified part of it” (as cited by Kennedy 1998: 62). Therefore, the representativeness of a corpus greatly depends on the purposes for which this or that corpus was compiled. The representativeness of the corpus, in its turn, predetermines the kinds of tasks that the researcher is about to fulfill, and the results of the research. For example, a corpus composed primarily of news reportage would not give any results concerning variation in English. And research based on a corpus containing a single type of conversation - such as a conversation between teenagers – cannot give full information about conversation in general. Thus, it is necessary to realize that representing a language or even a part of a language is a difficult task. According to

John Sinclair, in order to achieve as representative a corpus as possible, the corpus compiler should follow such important steps as:

1. decide on the structural criteria that will be used to build the corpus, and apply them to create a framework for the main corpus components;
2. for each component, draw up a comprehensive inventory of text types that are found there, using external criteria only;
3. put the text types in a priority order, taking into account all the factors that might increase or decrease the importance of a text type — the kind of factors discussed above;
4. estimate a target size for each text type, relating together (i) the overall target size for the component, (ii) the number of text types, (iii) the importance of each, and (iv) the practicality of gathering quantities of it;
5. as the corpus takes shape, maintain a comparison between the actual dimensions of the material and the original plan;
6. (most important of all) document these steps so that users can have a reference point if they get unexpected results, and so that improvements can be made on the basis of experience (J.Sinclair 2004: 12).

Another important characteristic of a corpus is the balance between its different sections. Most modern reference corpora are badly balanced because they do not have enough spoken language in them. The optimal proportions of spoken language range from 50% — the neutral

option — to 90%, following the view that most people are exposed to much more speech than writing. Another factor that affects balance is the degree of specialization of the text, because a specialized text in a general corpus can give the impression of imbalance.

For example, even in the largest of the existing second-generation corpora, the British National Corpus, only 10% of the 100 million words are from spoken sources. The balance between spoken and written texts in the smaller ICE (International Corpus of English) is 60% spoken texts and 40% written texts. So this is one of the few corpora in which spoken texts occupy the predominant position. Even while compiling a written corpus, special attention should be paid to the question of what genres to include in it.

The problem of balance arises also in corpora that are designed to represent not the language as a whole, but one specific domain, genre, topic, or subject field. This problem can be totally avoided only when we speak about corpora that consist of all texts published during an historical period, the complete works of an author, or any other total population of text. Thus, balance in a specialized corpus can be achieved not only by having equal amounts of text from different sources, spoken or written English, but also by including in it the totality of published texts.

A lot of the most important issues in achieving representativeness in a corpus have been discussed by Summers (1991), who noted that even a written corpus of 30 million words is small when compared with the population of written texts from which it is sampled. Thanks to her experience in corpus compilation, she noticed that the difference in the content and language of journalistic texts, in comparison with imaginative and academic texts, was enormous; and, thus, she came to the conclusion that, for lexical studies in particular, the original purpose or topic of a text had a great influence on the reliability of the lexical analysis. On the basis of this experience, Summers supported the initial sampling approach “using the notion of a broad range of objectively defined document or text types as its main organizing principle” (Summers 1991:5). This balance of text types can then be modified on the basis of an internal analysis of the corpus. Summers mentions a number of possible approaches to the selection of written texts, including: an “elitist” approach, based on literary or academic value, or “influentialness”; random selection; “currency” (or the extent to which text is read, thus giving preference to journalistic texts and current best-sellers); subjective judgment of “typicalness”; availability of texts in archives; demographic sampling of reading habits; or empirical adjustment of text selection to meet linguistic specifications. A pragmatic approach is, of course, to use a combination of these approaches, and to select from a broad range of

sources and text types, taking into account their currency and “influentialness”.

The particular year or years from which texts are selected is significant, too. Classic texts from earlier periods may or may not continue to be widely read or have influence.

The next important characteristic of a corpus to be discussed is its **size**. Despite the fact, that the exact amount of words necessary to create a representative corpus has not been clearly defined, there exist some points of view about this in the scientific literature.

Although questions of size and representativeness affect the reliability of the corpus, it should be stressed that no corpus, however big, can ever be more than a small sample of all the speech or writing produced or received by all of the users of a language during even a single day.

When speaking about size, it is necessary to take into account not only the total number of words (tokens) and different words (types) in a corpus, but also to decide on how many categories the corpus should contain, how many samples the corpus should consist of in each category, and how many words there should be in each sample.

Sinclair (1991: 8) suggests that 10-20 million words might constitute “a useful small general corpus”, but “will not be adequate for a reliable description of the language as a whole”. It was noted that corpora of finite size were, by their nature, insufficient because any corpus is such a small “sample of a language in use that there can be little finality in the statistics” (Sinclair 1991: 9).

In general, the lengthier the corpus is, the better. However, it is possible to count the required size of a corpus more precisely by using statistical formulas that take into account the frequency with which linguistic constructions are likely to occur in text samples, and calculate how large the corpus will have to be to study the distribution of the constructions. Biber (1993: 248-252) carried out such a study on 481 text samples that occurred in twenty-three different genres of speech and writing. He found that reliable information could be obtained on frequently occurring linguistic items such as nouns in as few as 59.8 text samples. On the other hand, infrequently occurring grammatical constructions, such as conditional clauses, required a much larger number of text samples (1,190) for valid information to be obtained. Biber concludes that the “most conservative approach” (Biber 1993: 12) would be to base the ultimate size of a corpus on "the most widely varying feature" (Biber 1993: 12): those linguistic constructions that require the

largest sample size for reliable studies to be carried out. A corpus of 1,190 samples would therefore be 2,380,000 words in length (if text samples were 2,000 words in length, the standard length in many corpora).

However, it should be noted that a vast collection of texts is not necessarily a corpus from which one can receive some general results. A huge corpus does not necessarily represent a language, or a variation of a language, better than a smaller corpus. Rather than focusing so strongly on the quantity of data in a corpus, corpus compilers need also to bear in mind that the quality of the data they work with is also extremely important.

As for the specialized corpus, Person (1998: 56) argues that 1 million words will be enough to carry out a research project in a specialized domain.

Related to the general question about overall corpus size, is the question about the size of the individual samples extracted from texts that make up the corpus. In the first-generation electronic corpora, such as Brown and LOB, 2,000-word, automatically selected samples were used. Some of these texts were whole documents, but most were only parts of documents. The Lampeter Corpus of Early Modern English Tracts consists of complete, rather than composite, texts. In the Helsinki Corpus,

text samples range from 2,000-10,000 words in length. Samples within the BNC are almost equal, but are as long as 40,000 words. The ICE Corpus follows the tradition of Brown and LOB and contains 2,000-word samples.

As most corpora contain relatively short segments of text, they tend to contain text fragments rather than complete texts. Very often, such parts of the text as introduction, conclusion, and the like tend to be omitted by the corpus compilers, regardless of the fact that they may contain some important data for the qualitative analyses of linguistic features. Ideally, it would be desirable to include complete texts in corpora. Since grammatical constructions are routinely studied, it is most natural to study these constructions within the context of a complete text, rather than only part of that text. Also the examination of whole texts might be necessary for the studying of different discourse characteristics, widely represented in introductory and concluding sections, as it is possible that the removal of these parts of documents could distort the overall picture of the language represented in the corpora.

However, there are numerous obstacles that make the inclusion of complete texts in corpora very difficult. For instance, many texts, such as books, are quite long, and to include a complete text in a corpus would not only fill up a sizeable portion of the corpus, but require the corpus

compiler to obtain permission to use not just a text fragment, but an entire text.

Of course, just because text samples are included in a corpus does not mean that fragments of texts ought to be randomly selected for inclusion in a corpus without any reason. J. Sinclair distinguishes the following general criteria to include the samples into a corpus:

1. the mode of the text; whether the language originates in speech or writing, or perhaps, nowadays, in electronic mode;
2. the type of text; for example, if written, whether a book, a journal, a notice, or a letter;
3. the domain of the text; for example, whether academic or popular;
4. the language or languages or language varieties of the corpus;
5. the location of the texts; for example, the UK or Australia;
6. the date of the texts (Sinclair 2004: 8).

The corpus designer should choose criteria that are easy to establish, to avoid a lot of labor at the selection stage, and they should be of a fairly simple kind, so that the margin of error is likely to be small: “if they are difficult to establish, complex or overlapping they should be rejected, because errors in classification can invalidate even large research projects and important findings” (Sinclair 2004: 9).

While compiling a corpus, it is also necessary to draw a clear distinction between a corpus of texts and a text database, or a text

archive. The main difference between these two notions is that while a corpus designed for linguistic analyses is normally a systematic, planned, and structured compilation of texts, a text database is usually huge and randomly collected, and normally not structured. Databases, which constitute an entire population of data, may consist of a single book or of a number of sizeable works.

2.1.4. Types of corpora

Corpora have been created for many different purposes. Some corpora have been designed for general descriptive purposes, and they are widely used by researchers to answer various linguistic questions concerning grammar, lexis, discourse patterns, and the pragmatics of a language. Other corpora have been created for specialized purposes, such as discovering which words and word meanings should be included in a learners' dictionary, which words are most frequently used in economics, or what differences there are between uses of words in different social or geographical contexts.

The corpora can differ in a number of ways according to the purpose for which they were compiled, their representativeness,

organization, and format. In the scientific literature, several types of corpora are distinguished:

1. According to the form of storage:

- in an audio record
- written corpora
- mixed corpora

2. According to the language of texts:

- monolingual
- multilingual

3. According to genres of texts included:

- literary
- dialect
- informal
- journalistic
- mixed

4. According to accessibility:

- open-access
- commercial
- closed

5. According to destination:

- exploratory
- illustrative

6. According to dynamics:

- dynamic (monitor)

- static

7. According to additional information provided:

- annotated
- not annotated

As the purpose of this research is to create a specialized corpus of Legal English, it is important to distinguish between two types of corpora: general (or reference) corpora and specialized corpora.

A corpus can be created for different purposes. The corpus, used as a **reference** for contrastive analysis, or to provide a description for language in general, is called a general corpus. This corpus usually includes a wide variety of texts of different genres and topic areas, and is intended to reflect the typical usage of general language.

A corpus may also be created with the aim of presenting specific information or specialized data: for example, for the creation of a dictionary for studying child language, for analyzing the language used in a particular subject or domain, etc. This type of corpus includes samples of a particular register of the language, and is known as a **specialized** corpus. The specialization has no definite boundaries, but some criteria that specify the type of texts in question should be considered. Such

corpora may contain texts specialized in terms of a particular time (texts from 1822 to 1876), a particular subject (art, politics, medicine), or some other factors.

Other corpora, widely used for a wide range of investigations include **parallel corpora**, i.e. collections of computer-readable texts from different languages which have been sampled in the same way. Usually, a parallel corpus consists of the same document written in different languages, typically a set of texts and their translations. The sphere of application of parallel corpora include comparison of the lexis or grammar of different languages, looking at the linguistic features of translated texts and work on machine translation.

Spoken corpora consist entirely of transcribed speech. This could be from a range of sources: spontaneous informal conversations, phone calls, meetings, debates, situations, etc.

Written corpora only contain texts that have been produced or published in written format. This could include traditional books, novels, textbooks, newspapers, magazines, or unpublished letters and diaries. It could also include written texts that were produced electronically; for example, emails and websites.

Pedagogic corpora are used for language teaching, which consists of all of the language to which a learner has been exposed in the classroom; for example, the texts and exercises that the teacher has used. The advantage of using a pedagogic corpus is that when a language item is met in one text, the teacher can refer back to examples from previous texts to show students how to draw conclusions from the additional evidence.

Learner corpora consist of language output produced by the learners of a language themselves. Most learner corpora consist of written essays produced in language-teaching classrooms. Learner corpora are useful in studies of second language acquisition, as they help to analyze the errors that occur most often, during language learning.

2.2. Main stages of corpus compilation

In order to conduct full and precise linguistic search, it is sometimes necessary for texts to include different kinds of additional linguistic information. Annotation is usually the last of the five stages of Corpus compilation, and is sometimes called encoding, tagging, or markup. Annotation is a way of representing elements in texts, such as

paragraphs, utterance boundaries, etc, in a standardized way across a corpus, so that they can be more easily recognized by computer software and by users of a corpus.

Annotation consists of assigning the text (words) some special tags or marks, such as:

- 1) information about the author and information about the text, which include the name of the author, the name of the text, year and place of publication, genre, or subject area. This type of encoding is called extra-linguistic or meta-linguistic markup;
- 2) structural encoding includes the markup of chapters, paragraphs, sentences, and words;
- 3) linguistic annotation includes the description of lexical, grammatical, and other characteristics of textual elements.

In its turn, lexical annotation can be divided into several separate types: morphological, syntactical, semantic, anaphoric, prosodic, and others.

To mark the text, a special language is used, which is called Extensible Markup Language (XML). In the XML documents, a special set of elements is used. These are pair tags (opening and closing), which

are written between triangular brackets “ \triangleleft ”. Everything, between these brackets, makes up the content of the given element.

Morphological markup (part-of-speech tagging), consists of representing in the corpus information about the morphological value of words (part of speech, case, gender). It can be used, for example, to distinguish words that have the same spelling, but different meanings or pronunciation.

Morphological markup is the basis for further syntactical and semantic annotation.

Syntactical annotation is the representation, in the corpus, of the information about syntactical constructions and relationships between lexical units. In order to fulfill this type of annotation, it is necessary to first divide the texts into sentences.

Semantic annotation presupposes attribution to the text of semantic information; namely, semantic categories to which this or that word or word combination belongs.

The realization of anaphoric and prosodic annotation has not been automated yet; thus, they are still performed manually.

Anaphoric annotation consists of adding information about anaphoric links in a text; for example, connecting the pronoun and its antecedent.

Prosodic annotation consists of assigning to words information about accents, intonation, pauses, repetitions, etc.

Corpus annotation is preformed in most cases by means of specialized software that help linguists compile extensive **annotated corpora**. Standardized text encoding schemes include the Text Encoding Initiative (TEI), which makes use of the Standard Generalized Markup Language (SGML), and was used for encoding the British National Corpus (BNC). The Child Language Data Exchange System (CHILDES) database of child language was created using an encoding scheme called Codes for the Human Analysis of Transcripts (CHAT) that is used for encoding the difficult elements of spoken data.

Having analyzed all the basic characteristics of a corpus, we can now provide a more satisfactory definition of a corpus, which will apply to the present dissertation. A corpus is not just a collection of texts selected by a particular method and represented in electronic form, but the collection of texts that is categorized both by the integral characteristics of each text, such as genre, and by the specific characteristics of different units of its organization (tokens, word forms,

morphemes, etc.). Such a characterization allows a detailed analysis of different kinds of relationships in texts. These analyses can contribute to the making of dictionaries, word lists, descriptive grammars, diachronic and synchronic comparative studies of speech varieties, and to stylistic, pedagogical, and other applications. With appropriate software, it is easy to study the distribution of phonemes, letters, punctuation marks, inflectional and derivational morphemes, words, collocations, instances of particular word classes, syntactic patterns, or discourse structures. In addition, such a collection of texts as corpus should be organized in the form of a database. This facilitates its practical use and scientific analysis.

2.3. Compiling the Corpus of Legal English (COLE)

A corpus-based analysis starts with the selection of the operating corpus. If there is no suitable corpus available for the research objectives, or if the area of research is a narrow technical domain, it is necessary to compile a specialized corpus, which will include the samples of the language required for reliable and illustrative results.

Regarding the purposes of this investigation, which is focused on juridical terminology, it was decided to compile a specialized corpus of

legal texts, with a higher concentration of vocabulary than in a broad-ranging corpus. This specialized corpus, which henceforward will be referred to as the COLE (Corpus of Legal English), has been carefully designed to serve the research objectives, and to represent the written usage of the legal language.

“Legal language” refers not only to the language in which legal prescriptions or legal norms are couched, but also to:

(...) the interrogation of plaintiffs and defendants, the testimony of witnesses, the pleadings by attorneys, or the instructions from a judge to a jury ... the interactions between police and suspects, conversations between lawyers and their clients, law enforcement’s use of surreptitious recordings, and such unlawful speech acts as offering a bribe, or issuing a threat, or making a defamatory statement. (Schane 2006: 3)

Thus, legal language is the language used in every sphere of life connected with the use of law.

In *Legal Language* (1999) professor of law Peter Tiersma, thoroughly explains why legal language is so often difficult for non-lawyers to understand. He defines both the syntactical and lexical features of legal language. He points out that sentences in legal language tend to be longer than in other styles, and also have more insertions, which make them more complex. Sometimes, whole statutes are stated in only one

sentence, as in a California law against insuring lotteries, which can easily be broken into some smaller parts, easier to comprehend, without any loss in content. Lawyers also often use wordy and redundant phraseology and ponderous phrases (such as *at slow speed* or *subsequent to*) where a single word would suffice (*slowly*; *after*). Yet, legal language may also achieve a remarkable degree of compactness. Conjoining words like *by*, *and*, *or* are also very common in legal language. One reason for such lists of words is to be as comprehensive as possible. They can also add emphasis. According to Peter Tiersma, lawyers also tend to use a lot of negations, unusual sentence structures (as in, for example, *a proposal to effect with the Society an assurance*), and impersonal constructions (avoidance of first and second person expression).

Among the lexical characteristics of legal language, he points out legal archaisms (e.g.. the words like *herewith*, *thereunder*, and *whereto*, which are supposed to be more precise than ordinary language), formal or ritualistic words and phrases used to emphasize that a proceeding is separate from ordinary life, and some specialized terms, characteristic of the legal language (Tiersma 1999).

Thus, legal language is characterized by such peculiarities as, on the one hand, unusual sentence structure, and, on the other hand, specialized vocabulary. These two fundamental elements, lexicon and

grammar, are the essential parts of every human language. So, in order to have a good command of legal English, it is necessary not only to be aware of particular grammar structures, used in this specific domain, but also to have a profound knowledge of vocabulary items, namely juridical terms.

When talking about terminology, and juridical terminology in particular, it should be noted that a corpus can be used not only to extract the specific terms from the texts belonging to a particular area, or to account for the frequency usage of a term, but also, according to Oliver Streiter and Leonard Voltmer (2002), it can be used to obtain the following information:

- (a) Corpora represent the most important means by which a thematic subject fields can be accessed and understood by the terminologists as well as by the potential user of a term-bank.
- (b) Corpora contain links to real-world events and states(,) which may be equally important to the term-bank user.
- (c) Corpora further illustrate how terms are used, i.e. their selectional restrictions and collocates, much better and more exhaustively than dictionaries or term-banks can do.
- (d) Corpora may show how the meaning of a term shifts in different contexts,
- (e) from which text-types or thematic subject fields a term has been borrowed, or
- (f) illustrate contexts which allow for term-variants.

(g) The different profiles of term-bank users (German speaking jurist, Italian speaking linguist) may require different representations of the same terminological data, which, among others rely heavily on the appropriate selection of illustrative and relevant text material.

(Streiter, Voltmer 2002)

According to John Sinclair, “a corpus is a remarkable thing, not so much because it is a collection of language text, but because of the properties that it acquires if it is well-designed and carefully-constructed” (Sinclair 2004: 5). Thus, before the texts to be included in the corpus are collected, annotated, and analyzed, it is important to plan the construction of the corpus carefully: what size it will be, what types of texts will be included in it, and what samples will be chosen to comprise the corpus. The decisions concerning the composition of the corpus are generally determined by the planned uses of the corpus. For example, if the corpus is to be used basically for grammatical analysis, it can consist simply of text extracts rather than complete texts. On the other hand, if the corpus is intended to study discourse features, then it should contain whole texts.

At the same time, in the scientific literature concerning corpus compilation, there is a point of view that corpora should be constructed not by the corpus analysts, who will in the future use them for their investigations, and who are initially aware of the linguistic features they will be looking for, but that corpora should be designed and built by “an

expert in the communicative patterns of the communities who use the language that the corpus will mirror” (Sinclair 2004: 5). In this case, the documents for the corpus will be selected without regard for what is inside the documents and speech events, and the language they contain, but “according to their communicative function in the community in which they arise” (Sinclair 2004: 5).

For the present research, which investigates juridical terminology, it was felt necessary to compile a specialized corpus. This corpus should contain documents of juridical orientation that would facilitate the collection of precise quantitative and qualitative data.

However difficult to achieve, **representativeness** and **balance** (Sinclair 2004) should never be lost sight of, and should guide the design of the corpus and the choice of criteria for the text samples. Additionally, corpora should differ from one another in relation to time, text availability, financing, domain, etc.

Any selection must be made on the grounds of some form of criteria, and the first major step in corpus building is the determination of the criteria on which the texts that form the corpus will be selected. It is necessary also to make a distinction between the texts that can be used to describe general language, and the texts that represent the specialized language. The samples of texts containing general language cannot be

used to compile a specialized corpus, because the words used in such texts do not usually have the same meaning with which they are used in specialized communication. Thus, such sources are not specific enough to represent a particular scientific domain, and include very general lexical units.

L'Homme (2004: 126) presents the following guidelines for choosing the texts of a specialized domain:

- domain specificity: the text should correspond to the domain of interest;
- language: text can be selected from all languages, as one important task in terminology is to define equivalences;
- originality: texts should not be translations;
- specialization level: the difficulty of the text whether it's written for experts or general audience;
- type: the style of the literature (scientific, pedagogical, business);
- date: recent or deprecated subjects;
- data evaluation: authors or publisher's reputation.

The samples of language collected for the compilation of COLE represent original communication acts, and have been chosen according to the following selective criteria: time, medium, mode, origin, topic variety, and size.

Time: the time criterion refers to the date of publication of texts, used to compile a corpus, i.e. to a period of time that a corpus covers. In terms of time, there exist synchronic and diachronic corpora. A synchronic corpus is a corpus for which all of the texts have been collected from roughly the same time period, allowing a representation of language use at a particular point in time. A diachronic corpus is a corpus that has been built in order to be representative of a language or language variety over a particular period of time, which may cover different periods of time, and which is aimed to study language changes and development.

According to Pearson (Pearson, 1998: 57), a specialized corpus compiled for the analyses of terminology of a particular subject area should include samples of texts from the last 10 years. The texts for the COLE corpus were thus taken from an American law journal (*Duke Law Journal*), spanning the years 2005 to 2009. As this corpus is a synchronic corpus, it was agreed that it should contain texts from roughly the same period.

Medium: the medium of a text indicates the kind of publication in which it occurs. The classification used is quite broad. The COLE corpus includes articles, essays, lectures, interviews, notes, book reviews, comments about the articles, and case studies. The following table

represents the distribution of the publications used in the compilation of the COLE corpus.

Publications	Number of publications
Articles	67
Notes	65
Essays	7
Responses	10
Lectures	3
Comments	2
Interviews	1
Book reviews	1
Total	156

Table 2 – Number of publications used in the COLE.

Mode: the corpus is focused on the written mode of the language.

The texts are authentic samples of written language, which have been produced as real communication acts among people. In the COLE corpus, whole texts were included, for this allows the presentation of highly representative parts of the texts, like introductions, conclusions, abstracts, which hold particular linguistic features. Some researchers rightly believe that rarer linguistic features are unevenly distributed in texts and are likely to be lost, unless larger text samples are included in the corpus. Graphs, tables, pictures, figures, diagrams, and reference sections were of course deleted from the texts to prepare them for the

corpus. Moreover, the texts were converted to an XML format to be suitable for use by the program TextStat.

Origin: as far as geographic origin is concerned, the Legal English Corpus includes samples from American English, as American publications and web pages are broadly distributed, and dominant in this field. The texts may thus be viewed as representative of the kind of Legal English used in common law.

The text samples for the COLE Corpus were taken from the Duke Law Journal, which is published by Duke University School of Law monthly eight times a year, and which is a frequently cited law review. The Journal publishes general-interest articles, essays, and notes in every branch of law.

Topic variety. In order to select the texts of a specific domain to compile a specialized corpus, a compiler must be able to understand the important concepts and semantic relations of that domain, to further structure the received information in a compact way. Texts on any domain are today easily available on the Web. The problem is not availability, but the quality and usefulness of the information for the purpose of receiving precise and clear results. Thus, during the planning of the corpus, an in-depth study was made in order to identify relevant components of the US legal system.

The US belong to the group of countries following the tradition of common law, with the distinction that it combines English common law concepts with a tendency for legislation.

Common law is a system of principles and laws based on the rules of law set forth in the judgments of courts. The common law of England was adopted in the US, and in many other former British colonies, where it is continually expanding because, by its nature, it is developed by judges on a case-by-case basis. Common law concepts developed in case law may eventually become statutory law when the legislature chooses to act. Depending on the jurisdiction, a particular right may be enforced by common law, or it may be subject to statutory determination. The US has retained a strong common law tradition, with state statutory law evolving majority and minority trends, as well as model codes, or even sharp divergences. Common law is distinguished from civil law. Civil law is the law governing the relations between and among private individuals. The Anglo-American lawyer would think of this generally as all law other than criminal law and constitutional law, comprising mainly of the tort law and the contract law, as well as other areas such as trusts, agency, partnership, descendants' estates (inheritance), matrimonial (family law), and property law (Rossini 1998: 6-7).

All human rights, social norms, and customs are regulated and represented by the so-called sources of law. Among American sources of law, scientists distinguish the US Constitution, constitutional amendments, statutes, executive orders, ordinances and administrative rules and regulations, precedent, equity, and treaties (Servidio-Delabre 2004: 188).

The Constitution of the United States is the supreme law over the country, both over all federal and state law. No law can come into force unless it conforms to the Constitution. It organizes the federal government, its responsibilities and duties, distributes the powers between the federal government and the states. It also includes the essential human rights and democratic liberties. All Amendments of the Constitution are integral parts, and are therefore also regarded as part of the superior law.

Statutes are the written laws issued by legislative organs, namely the Congress, for the federal statutes, and for each state's own legislative body, which can enact all laws within that state's jurisdiction.

Heads of government, federal (the President), states (governors), and even local (mayors, village presidents etc.) have the authority to issue rules of law. These are generally called "executive orders" and can be

overturned by a legislative organ, should they exceed the given powers of an executive.

Ordinances are the written laws of the legislative bodies of municipalities, which treat local matters not regulated by federal or state law.

Administrative rules and regulations are the laws issued by both the state and federal governmental departments and administrative agencies. They make up a great part of American law, and cover such public areas as health, education, housing, and transportation.

Precedents are the different opinions of the courts, either concerning the interpretations of the existing statutes, or the law the courts make themselves in the course of the examination of a particular case.

International treaties are one of the principle sources of American law, and they are considered to be part of “the supreme law of land”, but at the same time they have less value than the US Constitution, and, thus, cannot contradict the norms and rights fixed in it.

Having analyzed the US legal system, and the main sources of American law, we can distinguish the following basic topics in American law: alternative dispute resolution, antitrust and unfair trade, banking,

finance and credit, bankruptcy, business law, business regulation, civil legal system, constitutional rights, consumer protection, court information and rules, criminal justice system, criminal law and procedure, drugs and alcohol, employment and labor, environmental protection, family, marriage, kids, historic court decisions, historic legal documents, immigration, intellectual property, international law, international business and finance, investments and securities, the judicial system, laws and statutes, litigation, medicine and the law, real estate, landlord and tenant, sex and the law, and taxation. Thus, as we can see, the COLE includes publications that cover all the relevant topics, including information and, in particular, the particular lexical items present in every branch of American law.

Figure 2 illustrates the proportions of the corpus, according to subject areas. From the received results, we can see that the subject areas of constitutional rights, the judicial system, and administrative law occupy the most essential part of all the publications. This can be explained by the fact that the Constitution of the US, and the rights proclaimed in it, form the basis of the American legal system. Administrative rules and regulations, issued both by federal and state governmental departments and administrative agencies, make up a great part of American law. The judicial branch plays a crucial role in deciding

if an action or a law is in conformity with the Constitution. Thus, these three subject areas altogether occupy approximately 40% of all the publications selected for inclusion in the corpus. Other subject areas are evenly distributed, and occupy from 0,5% to 6% of the corpus. This argues in favor of the balance and representativeness of the COLE corpus.

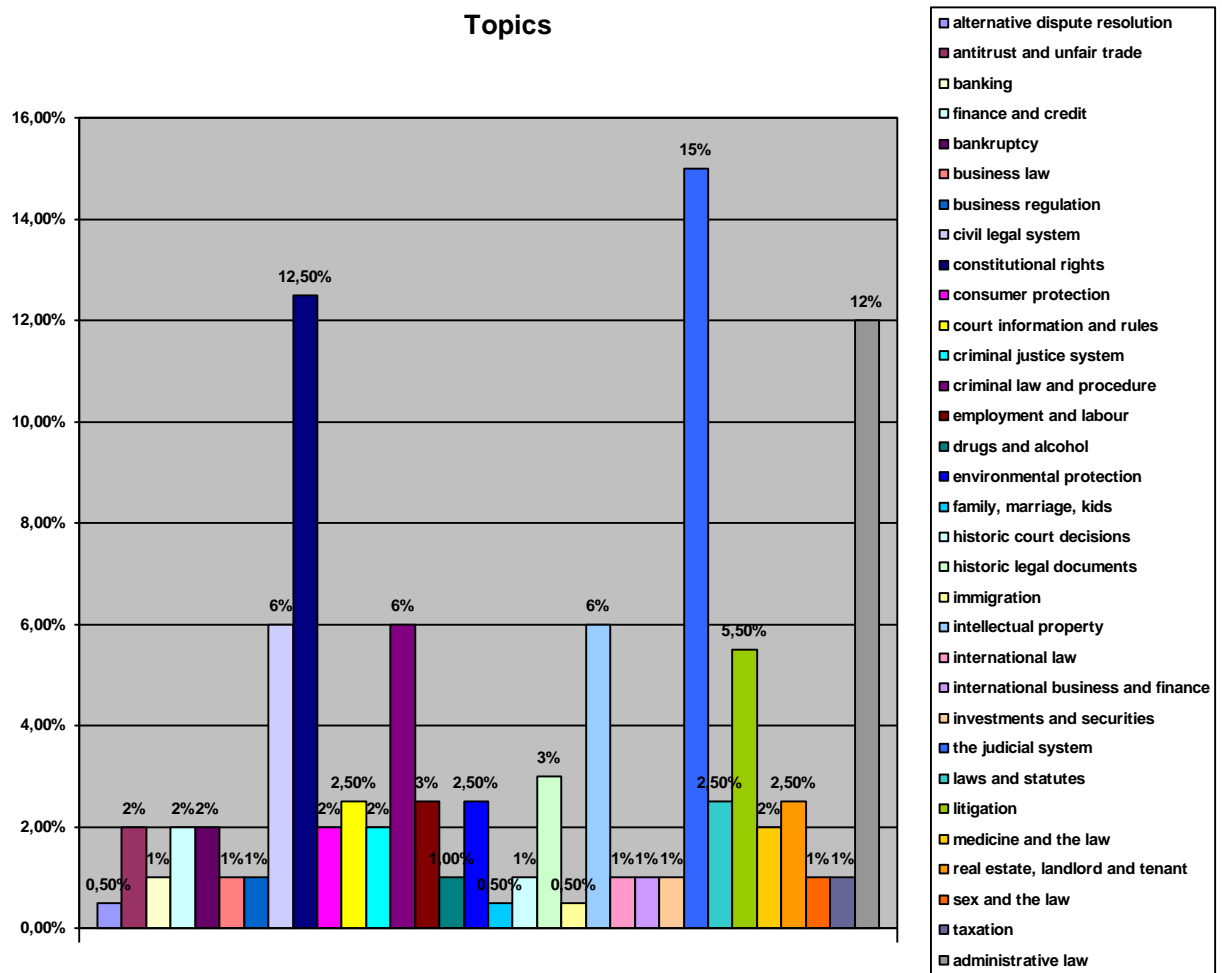


Figure 2 – Topics discussed in the COLE

Size: the Corpus of Legal English contains 1,694,856 words. Although the design of the corpus was intended to include a balanced treatment of topics, the final size and internal thematic composition were conditioned by different factors. It was difficult to get balanced figures because of the heterogeneous nature of the domain of law itself, and the multiplicity of its constituent branches.

The COLE may seem small when compared to massive general corpora such as the BNC and COCA. Both stand respectively at 100+ and 450+ million words. Yet, the COLE is almost twice the size of the Brown and LOB corpora. It complies with the benchmark set for specialized corpora at 1 million words (Kennedy 1998: 66). But even more relevant than size is sampling: diversity and consistency must be present in the data collected.

To sum up, the Corpus of Legal English presents a sample of 1,694,856 words of academic and professional written English, extracted from a wide range of published sources (articles, notes, essays, comments, interviews, lectures etc.), originating in native parts of the world and covering 32 subject areas. It may accordingly be viewed as a reliable source of empirical data for current purposes.

2.4. Basic statistical information and frequency lists

After the COLE corpus was compiled, it was searched using TextSTAT and WordSmith. The immediate data obtained represent the basic statistical information (Table 3), and the frequency word list (Table 4).

The availability of a computerized corpus of Legal English permits statistically based descriptions of the lexicon, including rapid and comprehensive analyses of huge amounts of data with complete accountability, and makes it also possible to discover significant and interesting facts about the lexicon of legal language.

Basic statistical information. 1,694,856 tokens (words) were numbered. These may be defined as sequences of characters divided by blank spaces or punctuation marks. Many tokens are repetitions of the same words, so the number of word forms indicates the number of different words in the corpus, including each form derived from a main lemma or headword. The total number of types makes up the vocabulary of the text. In the following line of four tokens: *abuse*, *abused*, *abuser*, *abusive*, *abusing*, there are three different forms from only one lemma:

abuse. The concept of lemma corresponds to the lexical entry in a dictionary, that is, a lemma is the citation, or canonical, form of a totality of forms. The relationship that exists between the total number of types and tokens is given by type/token ratio. Those ratios provide information about the corpus lexical variety.

Type/token ratio may be obtained by dividing the whole number of different forms (types) by the number of occurrences (tokens) and later multiplied by 100, thus, concerting the results into percentages. The higher the result is, the greater the lexical diversity of the sample. On the contrary, a lower ratio means a lower lexical diversity of the text because of the repetition of the same forms. It is very likely to find a lower number of new forms with the growth of the texts. However, a specialized corpus is expected to have more forms than a general corpus, because of the specific nature of specialized discourse, where speakers need technical terms to convey specific concepts accurately.

The program computes the standardized type/token ratio for every n words, n being assigned here as 1,000. The ratio is calculated for the first 1,000 running words, then computed for the next 1,000, and continues to do so until the end of the corpus. Thus, a running average is computed, which means that we get an average type/token ratio based on

consecutive 1,000-word parts of text. In the COLE, there is an average of 38.26 different forms per each text sequence of 1,000 tokens.

The basic statistical information includes the number of running words in the corpus (tokens), the number of different words (types), the number of sentences; the average length of words, sentences and paragraphs; etc. Nevertheless, it does not give information about the *hapax legomena* phenomenon, that is, the words occurring only once in the corpus. But this can be easily identified in the frequency list. It is interesting to show the corresponding figure because this is also an indicator of lexical variety.

The Corpus of Legal English	
Tokens	1,694,856
Types	39,799
Type/Token Ratio	2,34
Standardized Type/Token	41,54
Sentences	69,192
Average sentence length in words	66,54
Average word length in characters	5,35

Table 3 – Basic statistical information

Frequency list. Table 4 depicts the frequency list, which illustrates the first most frequent 200 words in the corpus of the English Language

Corpus of Legal English				
1. the	111071	101. It		1643
2. of	62708	102. example		1634
3. to	51365	103. into		1602
4. and	36105	104. must		1587
5. a	33899	105. them		1574
6. in	30822	106. power		1558
7. that	29354	107. process		1552
8. is	17864	108. over		1550
9. for	14374	109. As		1544
10. as	11862	110. two		1541
11. on	10952	111. states		1519
12. not	10903	112. interest		1511
13. The	10516	113. time		1510
14. be	10246	114. But		1507
15. or	9644	115. against		1497
16. by	9473	116. system		1490
17. it	8915	117. right		1483
18. are	8759	118. likely		1477
19. with	8417	119. he		1446
20. an	7541	120. evidence		1423
21. have	7471	121. then		1393
22. this	6341	122. decision		1376
23. from	6265	123. policy		1369
24. their	6182	124. many		1345
25. would	5898	125. did		1343
26. was	5257	126. For		1330
27. Court	5217	127. through		1323
28. which	5187	128. rules		1319
29. law	4941	129. new		1300
30. In	4923	130. first		1292
31. has	4693	131. make		1275
32. more	4653	132. approach		1245
33. they	4619	133. out		1222
34. at	4381	134. same		1213
35. its	4346	135. States		1211
36. may	4185	136. rule		1209
37. state	4152	137. particular		1205
38. but	3819	138. individual		1204
39. than	3785	139. review		1202
40. courts	3752	140. Although		1198

41. other	3662	141. rather	1198
42. one	3591	142. claims	1190
43. can	3432	143. less	1179
44. such	3428	144. If	1171
45. public	3293	145. First	1157
46. these	3288	146. United	1154
47. cases	3222	147. Justice	1147
48. will	3189	148. action	1140
49. court	3115	149. Part	1140
50. because	3022	150. issue	1138
51. should	2872	151. without	1117
52. if	2855	152. different	1112
53. when	2836	153. interests	1097
54. also	2737	154. way	1095
55. only	2732	155. research	1089
56. This	2721	156. question	1086
57. federal	2672	157. well	1075
58. all	2651	158. much	1066
59. who	2648	159. important	1061
60. were	2589	160. children	1033
61. about	2581	161. speech	1031
62. rights	2510	162. within	1025
63. could	2466	163. often	1020
64. some	2459	164. authority	1018
65. any	2439	165. criminal	1012
66. government	2438	166. own	1010
67. judges	2433	167. analysis	1005
68. case	2431	168. agencies	1002
69. no	2415	169. risk	988
70. those	2354	170. administrative	985
71. had	2318	171. costs	982
72. legal	2229	172. general	981
73. even	2195	173. protection	967
74. do	2190	174. each	962
75. whether	2151	175. our	962
76. under	2126	176. fact	961
77. information	2109	177. tax	955
78. judicial	2107	178. stansard	951
79. between	2068	179. regulatory	939
80. been	2065	180. provide	938
81. A	2057	181. effects	937
82. so	1980	182. after	931
83. might	1943	183. legislative	925
84. Congress	1931	184. result	921
85. most	1928	185. like	914
86. his	1875	186. Justices	912
87. constitutional	1845	187. Amendment	910
88. there	1835	188. least	908
89. I	1834	189. firms	896
90. Supreme	1789	190. work	893

91. agency	1776	191. judge	892
92. use	1770	192. before	890
93. however	1768	193. parties	890
94. does	1752	194. thus	889
95. political	1740	195. majority	886
96. both	1703	196. market	885
97. what	1698	197. theory	884
98. we	1663	198. number	876
99. decisions	1651	199. effect	867
100. how	1648	200. social	860

Table 4 – The most frequent 200 words in the COLE

One of the key findings discovered from the examination of frequency lists reveals that the most frequent words cover a high percentage of occurrences in a language (Schmitt 2000: 72).

As we can see from the Table 4, *the* is the most frequent word in the corpus and stands for 6.46% of the total tokens. In general language, the 3 most frequent words commonly reach 11% of the whole, the 10 most frequent ones 22%, the 50 most frequent ones 37%, the 100 most frequent ones 44% and the 2,000 most frequent words cover around 80% (Schmitt 2000: 76). Those figures correspond to the results obtained from the COLE, with only some small differences:

Most frequent words	Coverage in general language	Coverage in the COLE
3	11%	13%

10	22%	22%
50	37%	36%
100	44%	43%

Table 5 – Coverage of the most frequent words

From the sample of 1,694,856 words, only 39,799 words are different forms, and 15,907 of them occur only once in the corpus, which corresponds to just 0.90% of the whole sample. More than 24,938 forms occur from 1 to 3 times, and there are around 30 words whose frequency is 100, while around 750 words are used more than 1,000 times in the COLE. From this we can conclude that over half the texts are markedly repetitive (in style).

Unsurprisingly, the most recurrent words are function words. Although, such grammar words as auxiliary and modal verbs, pronouns, articles, prepositions, and conjunctions help construct the grammatical structure of the language, they do not convey lexical meaning, and they do not change. On the other hand, content words communicate the major part of lexical content. Unlike function words, content words depend on the language diversity captured in the corpus.

The distinction between content and function words gives the possibility of measuring the **lexical diversity** of a text by the **lexical density index**, that is, the percentage of notional words in text samples. The figure is obtained by dividing the number of content words by the number of tokens, and then by multiplying the result by 100. The lexical density index is higher in those texts that contain a greater proportion of notional words. According to Ure (1971, quoted in Stubbs 2001), lexical density in written texts tends to be 40%, ranging from 36% to 57%. Table 5 shows that a high level of lexical density characterizes the Corpus of Legal English.

The Corpus of Legal English	
Content words	964,106
Tokens	1,694,856
Lexical density	57%

Table 6 – Lexical density of the COLE

It is also necessary to note that most frequent words are likely to have a steady distribution, so that any sudden change in ranking must be regarded as significant. In a general corpus, the first 100 words are typically functional. The more specialized a corpus is, the more content words tend to occur at high frequency levels, while in general corpora,

notional words start predominating from the level of the most frequent 150 words (Kennedy 1998: 101). In table 3, we can see that *court*, the first content word in the COLE, ranks in 27th position. From this level, functional and notional words alternate, down to *government*, which stands in 66th position. From then on, the number of function words starts to decline and content words become more frequent. The greater number of notion words found in the high frequency levels might also indicate the lexical density of the COLE Corpus. The fact that many of the most frequent 50 notional words are specialized in character (Table 7) might lead one to expect a high percentage of juridical terms in this corpus.

Corpus of Legal English	
1. Court	26.two
2. law	27.interest
3. state	28.time
4. courts	29.states
5. cases	30.right
6. public	31.system
7. court	32.evidence
8. federal	33.decision
9. rights	34.policy
10.case	35.rules
11.government	36.new
12.judges	37.States
13.legal	38.rule
14.information	39.approach
15.judicial	40.same
16.Congress	41.review
17.constitutional	42.claims
18.Supreme	43.individual

19.use	44.particular
20.agency	45.rather
21.political	46.United
22.decisions	47.action
23.example	48.Justice
24.power	49.Part
25.process	50.issue

Table 7 – The most frequent 50 content words

Now, it turns out to be necessary to determine the main approaches and the principle practical method of analysis of a legal conceptual metaphor.

CHAPTER 3

METHODOLOGY FOR THE CONCEPTUAL ANALYSIS OF METAPHOR IN LEGAL LANGUAGE

From the start of the present study, the choice was made to develop a strong empirical basis for all the claims that would be made about the use of metaphor in Legal English. The cognitive perspective adopted on metaphor would rest on an analysis of a specialized corpus. As already mentioned in the previous chapters, the Corpus of Legal English (COLE) was specially designed and compiled for this purpose. It is now time to submit our corpus to quantitative analysis. A more focused qualitative analysis will also be performed, on particular texts extracted from the COLE. A two-fold or two-tiered approach of this kind makes it possible “to provide real-life examples of particular phenomena” (MacEnery 2001: 76) while receiving more exact and precise data. These two types of analyses will be regarded as complementary: the facts and figures of the quantitative analysis are open to generalization, while the more limited but finer-grained results of the qualitative analyses are not easily extendable. Both types of information are needed. It is essential to know about the frequency and variety of a particular phenomenon. It is equally essential to determine the situated function and impact of conceptual metaphors in the legal domain, as “Qualitative analysis can provide greater richness and precision, whereas quantitative analysis can provide greater statistically reliable and generalized results” (MacEnery 2001: 77).

In the last 20 years, corpus-based approaches to language have achieved great significance in linguistics, and are now regarded as an indispensable component of language study (irrespective of theoretical affiliation). Corpus driven studies are required in research fields that consider different levels of linguistic structure, and focus on language use. But studies in cognitive semantics, especially those connected with conceptual mapping, are still in dire need of more corpus research, as many such studies are still being carried on some randomly selected data and on collections of individual citations, which are not connected with context and natural use. Such an approach to the investigation of conceptual mappings, namely to the investigation of conceptual metaphors, may eventually create problems, especially when the aim of the research is a systematic characterization of a particular conceptual mapping, or of source/target domains. In this case, the results of the investigation will not be exhaustive, and neither will it be possible to provide the quantitative results that determine the importance of this or that metaphor in a particular language, or a type of discourse. Thus, it turns out to be necessary to ground the research on some representative empirical data, which is authentic and can be accessed via relevant corpora. Only empirical data will “enable the linguist to make statements which are objective and based on language as it really is”. Such statements are to be contrasted with more “subjective” statements “based

upon the individual's own internalized cognitive perception of the language" (MacEnery 2001: 103).

The first problem that should be solved in the process of using a corpus-based approach to the investigation of metaphors is that of extracting and identifying the data from the corpus. Extracting relevant material from a corpus is a relatively easy task when the study is focused on some particular lexical items, fixed expressions, or even, in some cases, on grammatical forms. But it becomes extremely difficult when applied to metaphors, as the way in which the process of conceptual mapping takes place is not tied to some particular linguistic forms, while "image-schemas are, by definition, not amenable to algorithmic processes" (Lakoff, Johnson 1999: 249). "Computer programs can organize language data swiftly and accurately on orthographic principles, but identifying and describing features such as grammatical patterns, meaning, and pragmatic use can only be done by a human analyst" (Clear 1987, cited in Deignan 2005: 92). So a researcher who is investigating particular linguistic units or patterns has to look through a considerable amount of linguistic material, searching for some definite manifestations of the patterns in question. Scholars generally agree on how the process for extracting and identifying relevant data in a corpus should be carried out. This can be done by:

1. manual searching;
2. searching for the vocabulary of a source domain;
3. searching for the vocabulary of target domain;
4. searching for sentences containing items from both the source and target domains;
5. extraction from a corpus annotated for semantic fields;
6. extraction form a corpus annotated for conceptual mappings;
7. searching for metaphors based on “markers of metaphors”;

3.1. Manual search

This method consists of starting from a small corpus, or from a small part of an already existing corpus, and searching it manually, marking out all the metaphors one comes across. Then, one proceeds with a larger corpus, searching for the marked metaphors in it. This is a rather efficient method, as it offers the possibility of reading a small corpus, or a part of a corpus, entirely and thoroughly, to identify all the existing metaphors in it, and by searching for them in a large corpus to receive more generalized linguistic results. On the other hand, this method of retrieving relevant material limits the potential size of a corpus to a great extent.

In the present study, a list of legal terms was created after searching the corpus manually. A frequency list was drawn up, with the help of the software TextStat, which listed each and every word in the

COLE. The frequency list includes 39,799 types, out of which we extracted 534 most frequently used legal terms, i.e. terms that have no less than 100 tokens in the COLE. These are listed in the following table.

1. Court (5329)	51.economic (827)
2. law (5055)	52.Act (824)
3. state (4216)	53.civil (822)
4. cases (3325)	54.control (810)
5. public (3318)	55.terms (807)
6. federal (2700)	56.litigation (743)
7. rights (2546)	57.doctrine (717)
8. case (2512)	58.laws (705)
9. government (2461)	59.federalism (703)
10.judges (2447)	60.defendant (683)
11.legal (2250)	61.benefits (673)
12.judicial (2128)	62.trial (667)
13.congress (1973)	63.legislation (660)
14.constitutional (1884)	64.argument (632)
15.supreme (1820)	65.racial (630)
16.agency (1778)	66.judgment (628)
17.political (1750)	67.security (623)
18.decisions (1669)	68.practice (615)
19.power (1596)	69.party (609)
20.process (1572)	70.executive (607)
21.interest (1539)	71.liability (591)
22.states (1531)	72.enforcement (590)
23.right (1522)	73.statutes (587)
24.evidence (1498)	74.labor (578)
25.policy (1381)	75.defendants (575)
26.rules (1341)	76.jury (558)
27.claims (1224)	77.penalty (550)
28.Justice (1175)	78.provisions (549)
29.issue (1154)	79.duty (548)
30.interests (1113)	80.plaintiffs (538)
31.research (1094)	81.plaintiff (536)
32.authority (1027)	82.community (523)
33.criminal (1021)	83.institutions (523)
34.administrative (987)	84.act (520)

35.tax (961)	85.norms (515)
36.Amendment (944)	86.requirement (506)
37.regulatory (940)	87.officials (498)
38.legislative (938)	88.statutory (497)
39.parties (919)	89.requirements (496)
40.Justices (913)	90.international (494)
41.statute (910)	91.concern (493)
42.market (909)	92.justice (481)
43.judge (907)	93.arguments (480)
44.majority (899)	94.lawyers (476)
45.constitution (879)	95.response (473)
46.property (866)	96.debt (471)
47.regulation (858)	97.regulations (434)
48.decision-making (842)	98.discrimination (431)
49.article (836)	99.investment (425)
50.jurisdiction (828)	100. rulemaking (424)

Table 8 – List of the 100 most frequent legal terms extracted from the
COLE

The above table requires some clarifications. It represents the first 100 legal terms, which were extracted manually from the frequency list of the corpus proposed by the concordancing program TextStat. By “term” we mean a word or expression that has a precise meaning in some uses, or is peculiar to a science, art, profession, or subject. In the present case, these are words that are used in the sphere of legal regulations and politics. Not only the “pure” legal terms were extracted as being representative of the legal terminology of the Corpus of Legal English (words that are connected exclusively with the sphere of jurisprudence and rule making), but also some economic terms, which are somehow

related to the sphere of law, as they are widely used for indicating the economic terms in the branches of contract law, administrative law, trade and economics laws (especially for signing agreements between parties and in dispute settlements). Also included were words that have acquired some legal connotation under certain circumstances or in some peculiar expressions (mainly these are verbs).

To the first group belong, for example, such terms as *plaintiff* (a person who sues another person or accuses another person of a crime in a court of law), *litigant* (a person who is involved in a lawsuit, someone who is suing another person or is being sued by another person), *mandatory* (required by a law or rule), *appellate* (having the power to review and change the decisions of a lower court), *litigation* (an issue to be decided and settled in a court of law), *liability* (the state of being legally responsible for something), etc.

To the second group belong such terms as *consignment* (the act or process of sending goods to a person or place, to be sold), *consumer* (a person who buys goods and services), *bankruptcy* (the condition of being bankrupt: a condition of financial failure caused by not having the money that you need to pay your debts), *corporation* (a large business or organization that, under the law, has the rights and duties of an

individual, and follows a specific purpose), *trading* (the act or practice of buying and selling something, such as stocks or bonds), etc.

The third group includes such words as *cartel* (a group of businesses that agree to fix prices so they all will make more money), *decision* (a legal or official judgment), to *claim* (to say that you have a legal right to something), to *justify* (to provide, or to be, a good reason for something, to prove or show something to be just, right, or reasonable), and to *proceed* (to go or move in a particular direction).

After extracting legal terms from the corpus, an analysis was undertaken to find out whether they were used in a metaphorical sense or in a literal sense. This is when difficulties started to arise. The number of legal terms extracted from the COLE was considerable since the texts used for the compilation of the corpus were characterized by lexical density. This is easily explained by the fact that the texts are intended for specialists of law, who master a rich set of specialized vocabulary. I nonetheless proceeded with my investigation.

For the analyses, terms from each category were selected, and then investigated with the help of the programs AntConc and TextStat, in order to find out whether they were used mainly with their specific legal meaning, or whether they had acquired some metaphoric sense. The first word to be analyzed was the verb *to proceed*, which possesses both the

general meaning of “continuing to do something” and the more specific legal meaning of “carrying out procedural actions”. The table below represents the window of the program, showing the first 16 occurrences of the word *proceed* in the COLE, out of the full concordance list of 85 tokens found in the COLE. As the program allows a contextualized examination of citations through the “key word in context” (KWIC) command, the results displayed by the program were then analyzed manually.

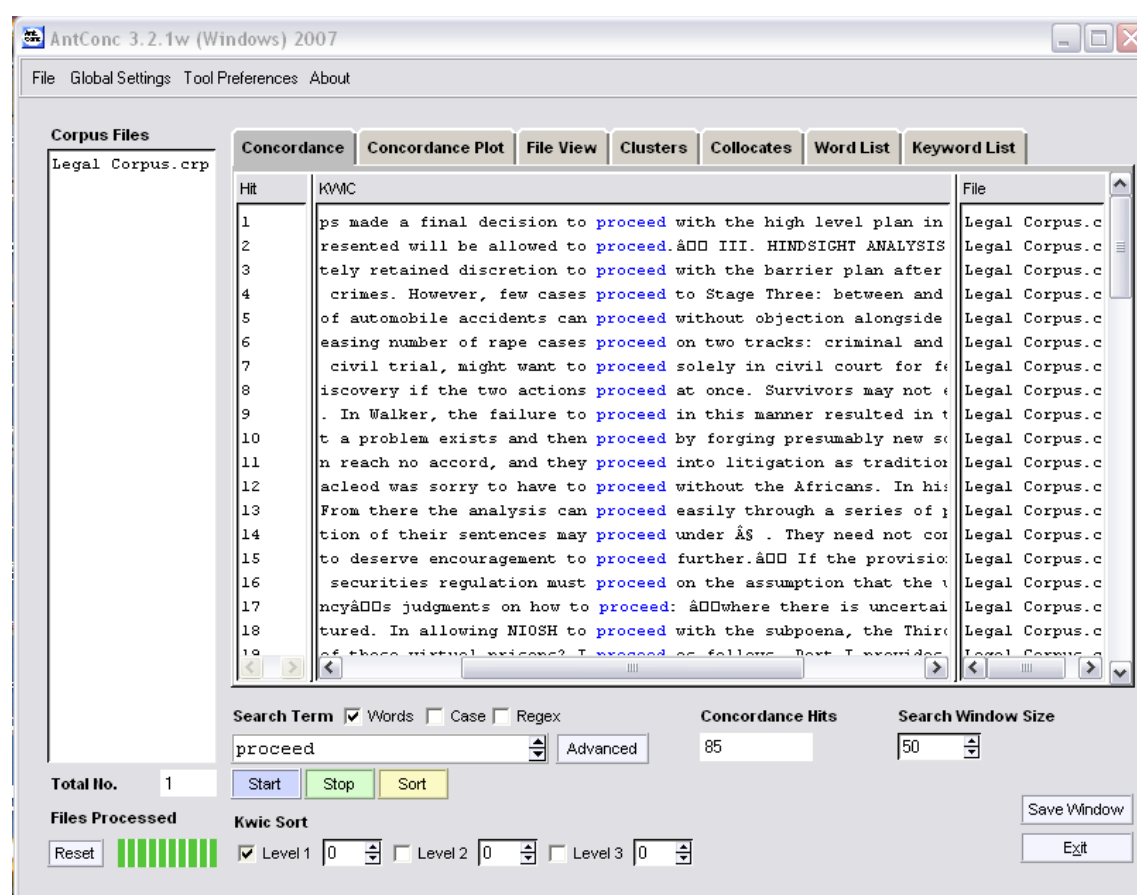


Figure 3 – AntConc results

As results were processed, it was noted that, out of 85 tokens of the word *proceed*, only seven cases were observed using the special legal meaning of this word, “to carry out procedural actions”. For example:

- (13) *A court has to order corrections to make present the immigration-detained defendant to proceed in a criminal trial, even if the defendant is fictionally “free” in that criminal case* (COLE: Duke Law Journal\April 2008, Vol. 57\Paradigms of restraint).
- (14) *After Katrina, thousands languished in state prisons for months, awaiting a chance to meet with an attorney and a decision of whether the prosecutor would proceed (required under state law within sixty days)* (COLE: Duke Law Journal\October 2006, Vol.56\Criminal justice collapse the constitution after hurricane Katrina).
- (15) *While lawsuits by victims of automobile accidents can proceed without objection alongside criminal prosecutions for the same conduct, rape suits bespeak corrupt motives that undermine criminal prosecutions* (COLE: Duke Law Journal\April 2008, Vol. 57\Is it wrong to sue for rape).

The second word examined in this group is the noun *consignment*, meaning an arrangement resulting from a contract, in which one person, the *consignor*, either ships or entrusts goods to another, the *consignee*, for sale. This term, which is very specific and belongs to the field of economy, is also connected to the sphere of law, as any economic relationship is regulated by economic law. Every occurrence of

the term *consignment*, out of 108 tokens, displays the direct legal sense of the word.

The noun *litigant* (a person who is involved in a lawsuit, someone who is suing another person or is being sued by another person) is a term belonging to the third group, which includes those terms used mainly in the legal domain. It accounts for 99 hits in the corpus, but in spite of its frequency in the corpus, not a single metaphorical sense could be traced.

Thus, the manual search for relevant data in the COLE does not seem to be very efficient in the case of conceptual metaphors. This is partly explained by the fact that legal language has to be as precise and technical as possible so as to avoid ambiguity in the course of interpreting law and making decisions. So other methods had to be used to determine the loci of metaphors in this large collection of texts. The decision was to base our investigation not on high frequency tokens but on the lexical realizations of source and target domains.

At first sight, the three conventional methods for extracting relevant data from a corpus seemed suitable for the goals of the present study. But on closer inspection, they turned out to be more problematic than helpful. These methods are: extraction from a **corpus annotated for semantic fields**, extraction from a **corpus annotated for conceptual mappings**, and a detection of “**markers of metaphors**”. The first two

approaches were not workable in the absence of a previously annotated Corpus of Legal English. Although feasible, the third option was discarded, as there is a consensus among specialists that it does not provide reliable results (see 3.4).

3.2. Extraction from a corpus annotated for semantic fields

This procedure implies searching for particular linguistic items in the source and target domains that have previously been tagged in the corpus. Using this method, a researcher can specify a particular source domain, and analyze all the lexical items related to it, instead of manually searching for lists of lexical expressions—a somewhat tedious and often frustrating process that usually yields incomplete lists. The analysis of target domains, and the search for sentences containing both the potential source and target domains can be carried out as well. As already mentioned, the main drawback of this strategy is the rare availability of annotated corpora. Other disadvantages include the fact that a researcher must then rely almost exclusively, in his investigations, on previously

existing annotations. Also, semantically annotated corpora might not include the relevant semantic fields for a particular piece of research.

3.3. Extraction from a corpus annotated for conceptual mapping

Another method consists of using corpora annotated for conceptual mappings. Unfortunately, there is no such corpus, as its creation is fraught with difficulties and complications. The conceptual annotation of a corpus poses raises the following issues:

1. definition of a reliable procedure for discovering instances of the phenomenon in question;
2. definition of the attributes that are considered relevant for each instance and the set of values that each of these attributes can take as well as guidelines as to how these values are to be assigned;
3. definition of an annotation format (Stephanowisch 2006: 10).

In the present circumstances, the first two requirements are hard to fulfill because there is no general approach for the identification of metaphors in a text. Therefore a researcher must rely, to a great extent, on intuition, knowledge, and general experience. The identification of

metaphors might be an easy task in some exceptionally clear cases. Even then, it would still be a challenge to provide complete and accurate lists of metaphoric expressions. Whether the identification is simple or complex, the annotator must prove the theoretical grounds the criteria applied during the annotation process. In general, the annotation is tied to a specific research project, which means that there is still a long way to go before multi-purpose annotated corpora are designed in the field of metaphor research. The problem of choosing the relevant attributes for a specific linguistic phenomenon also arises during the process of conceptual annotation. For example, in the case of metaphor and metonymy, there exist some general attributes for annotation, such as source and target domains. But, in the literature (Stephanowisch 2006), some other attributes are also described. These are metaphoricity, metonymicity, degree of conventionality, the reason for using metaphor, etc.

The two previous methods are rather special, and problematic, as they require the use of semantically annotated corpora, which are not currently widely available, or else should involve close collaboration with lexicographers, who, in the process of working on a corpus of general vocabulary, would be willing to mark every occurrence of metaphoric usage, as they go along tagging items.

3.4. Searching for metaphors based on “markers of metaphors”

Another method for extracting metaphoric material from a corpus was advocated by Andrew Goatly (1997). Some linguistic markers, he claimed, pointed to the existence of metaphors in discourse. Goatly (1997) thus defined “markers of metaphors” as the words and phrases occurring in the environment of a metaphor’s vehicle term, or a unit of discourse that unconventionally refers to, or colligates with, the topic of a metaphor, on the basis of similarity, matching, or analogy. The following table represents the 20 markers developed by Goatly, according to different criteria. Explicit markers, intensifiers, hedges and downtoners, or symbolisms are determined on a functional basis; semantic metalanguage, mimetic terms, perceptual processes, misperception terms, or cognitive processes are connected with semantics; and modals, conditionals, or copular similes represent grammatical categories.

Marker category	Metaphorical markers
Explicit markers	<i>metaphor/-ically, figurative/-ly, trope</i>
Intensifiers	<i>literally, really, actually, in fact, simply, fairly, just, absolutely, fully, completely, quite, thoroughly, utterly, veritable, regular</i>
Hedges and downtoners	<i>in a/one way, a bit of, half-...,</i>

	<i>practically, almost, not exactly, not so much ... as..., ... if not</i>
Semantic metalanguage	<i>in both/more than one sense/s, mean(-ing), import</i>
Mimetic terms	<i>image, likeness, picture, parody, caricature, model, plan, effigy, imitation, artificial, mock</i>
Symbolism terms	<i>symbol(-ic /-ically), sign, type, token, instance, example</i>
Superordinate terms	<i>(some) (curious, strange, odd, peculiar, special) sort of, kind of</i>
Copular similes	<i>like, as</i>
Precision similes and other comparisons	<i>material verb + like x, the y of a x, y's x; noun-adj., the x equivalent of</i>
Clausal similes	<i>as if, as though</i>
Perceptual processes	<i>seemed, sounded, looked, felt, tasted, + like/as</i>
Misperception terms	<i>delusion, illusion, hallucination, mirage, phantom, fantasy, unreal</i>
Cognitive processes	<i>believe, think, regard, unbelievable, incredible</i>
Verbal processes	<i>say, call, refer to, swear</i>
<i>So to speak</i>	
Orthography " " . ! white space	
Modals + Verbal Processes	<i>could say, might say</i>
Modals	<i>must, certainly, surely, would, probable/-ly, may, might, could, possible/-ly, perhaps, impossible/-bility</i>
Conditionals	<i>if ... could, would, might, imagine, suppose</i>
<i>As it were</i>	

Table 9 – Metaphorical markers, based on Goatly (1997)

Needless to say, extracting metaphors from a corpus by using a simple list of markers would be fast and convenient. But can this really

work? Stephanowisch (2006) expresses serious reservations. Initial evaluations of the method by Wallington, Barndeb, Ferguson, and Glasbey have clearly established that Goatly's list of metaphorical markers is not a sure indicator of the presence of metaphorical expressions in a text (Stephanowisch 2006: 5). So other strategies have to be adopted, based on searching a corpus for items belonging to the source or target domains present in conceptual metaphors.

3.5. Searching for vocabulary belonging to the source domain

Metaphoric expressions always contain items from their source domain, so it would seem reasonable to start with a definition of the potential source domain, i.e. the conceptual domain from which metaphorical expressions are drawn.

The first step for this type of investigation involves finding the existing linguistic items (metaphors), or whole sets of such items, which represent a particular conceptual metaphor. A list is made, then a search is carried out with a concordance program to see if the items are present in the corpus, as "the computer cannot work from a list of conceptual

metaphors to identify their linguistic realizations” (Deignan 2005: 93). The selection of these linguistic items can be based on hypothetical decisions, on already existing lists of such items, or on a preceding analysis of the keywords of the texts connected with the target-domain topics.

For example, for the investigation of the conceptual metaphor HAPPY IS UP, Alice Deignan (2005: 36) suggests searching for lexical items of upward direction in the source domain, to find out which of them are regularly used in the target domain of happiness. Then a researcher should decide if these linguistic items are used in a figurative sense, in a context shown by a concordance program, and if they should be considered as metaphorical manifestations of these lexical items. Unfortunately, no computer program currently exists for determining this, so the process must be performed manually. The result of the investigation, in this case, depends on the experience of the researcher, and his personal conception of metaphor. Once metaphors have been retrieved from a corpus, they can be further classified into sub-groups and sub-types. Deignan also stresses that, in scientific discussions on metaphor, one might be able to find some generated lists of linguistic expressions, which can greatly facilitate the research process at the starting point.

3.6. Searching for vocabulary belonging to the target domain

It is to be regretted that the method presented in the previous section – searching for vocabulary associated with the source domain- is often impractical and hard to apply for the investigation of conceptual metaphors. It is not only time-consuming but yields uncertain or incomplete results. Also, some knowledge of the source domains involved in understanding a particular target domain is required. So researchers may choose to turn their attention to the target domain and use it as their starting, rather than finishing point.

Different scholars have suggested different ways of working with target domains for retrieving relevant data. In his method, which is based on searching keywords in the target domain, Partington (2006) suggests creating lists of terms characteristic of particular genres of discourse, analyzing them, then running a concordance for items that appear in more than one key list, or which seem to belong to the same semantic set. According to Partington, such an analysis would help reveal some systematic metaphors for experimentation, and to distinguish the

particular cases of their use. This method has its strong and weak points. Its main weakness lies in the fact that, for such an analysis, one needs a huge amount of homogeneous monothematic texts, connected to the target domain. Thus, this method seems to be reasonable for such target domains as ECONOMY, POLITICS, SPORTS, MEDICINE etc., but would give much less representative results when dealing with EMOTIONS, PERCEPTIONS or FEELINGS. Another weak point is that, in order to become a keyword expression, a word should be widely represented in the target domain, and, thus, this type of analysis will reveal only those source domains that are widely represented by the keywords in the target domain. Thus, the method will not provide utterly reliable results.

In view of these difficulties, some alternatives have been suggested in the literature. Among possible options are the identification and selection of items that refer to concepts in the target domain. The metaphorical uses of these items are identified, together with the metaphorical mappings occurring in the target domain. The main disadvantage of this method is that it will identify only the metaphorical expressions that contain the vocabulary that might be found in a target domain. Yet, this method is considered by some scholars (Stefanowitch

2006: 3) to be highly representative, and useful in identifying all the primary and secondary cases of conceptual mappings.

3.7. Searching for sentences containing items from both the source and target domains

Closely related to the previous two strategies – searching for vocabulary from the source or target domains – is the method that involves searching for sentences containing the items from both the source and target domains. Using this method, a researcher should look for sentences including the vocabulary from both source and target domains. This method requires exhaustive lists of source and target domain expressions. But to eliminate errors caused by the literal use of linguistic items, both in the source and target domains, a fair amount of manual processing and editing is required, which can be burdensome. Also, it is rarely possible to find complete lists of target and source domain expressions, so some units are likely to be missing and the results of the investigation cannot be foolproof. Furthermore, this method can only be used to reveal conceptual mappings, and is thus restricted to the metaphorical expressions known beforehand. The main advantage of this

method is that it can be used for the analysis of large numbers of texts, and that, as it is based on an annotated corpus, it can be processed automatically.

All the strategies used to extract relevant material from a corpus while investigating conceptual mappings have their advantages and drawbacks. None can give complete and reliable results, since all depend on the quality of the software used and on the experience or intuition of the researcher. In view of the subject area of our research project, which is the investigation of English legal terminology from the point of view of cognitive linguistics, the nature of the corpus, and the applicability and the availability of these strategies, it was decided to use a combination of these methods. For the purpose of present investigation, the choice was made to use manual methods to search for the vocabulary of the source and target domains, to look for sentences containing items from both the source and target domains, and finally to use key lists of words.

At this point, it seems necessary to outline the main stages of our analysis of conceptual metaphors in legal language. From a cognitive linguistics perspective, metaphoric expressions are manifestations of metaphoric mappings, which are cognitive processes. Mappings are central in that they “sanction the use of source domain language and inference patterns for target domain concepts” (Lakoff 1993: 273).

Conceptual metaphors are realized in a diversity of linguistic expressions. The cognitive theory of metaphor thus makes a clear distinction between metaphorical expressions and metaphorical mappings. The latter involve cross-domain projections, which are seen as the very essence of metaphor. The mappings are treated as primary in the emergence of metaphoric expressions. An important consequence of this, is that the linguistic manifestations of cross-domain mappings, are windows into the human mind. This has led some scholars to argue that “if metaphor in discourse can be explained by means of an underlying cross-domain mapping in conceptual structure, then it should be possible to move from the linguistic forms in the text to the conceptual structures that capture their meaning...” (Steen 2009: 199). So, the first stage in our investigation requires the extraction of metaphorical expressions from the Corpus of Legal English, and the identification of the concepts that structure the conceptual domains involved in cross-domain mappings.

In order to extract metaphorical expressions from the corpus, the main semantic fields involved in conceptual transfers were defined. In order to do this, separate articles, of different legal orientation, including information about major branches of law, were manually analyzed. These articles include texts describing Administrative law, Constitutional law, Civil law, and the judicial system of the United States. In the result of this

investigation, the following sentences containing metaphorical expressions were extracted:

- (16) *The courts that have extended the scope of homicide statutes to reach the killing of a fetus have had to address and overcome this common law hurdle* (COLE: Duke Law Journal\March 2009, Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).
- (17) *Moreover, exploring the issues that arise within the context of existing feticide laws demonstrates that criminalizing feticide is not an all-or-nothing proposition; rather, judges and legislators can tailor the crime to best fit the political and moral views of the state's citizens* (COLE: Duke Law Journal\March 2009, Vol.59\ Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).
- (18) *Proponents of the slippery slope argument have not described how fetal homicide laws affect abortion rights, but instead point to the potential for these laws to color the abortion debate* (COLE: Duke Law Journal\March 2009, Vol.59\ Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

Under metaphorical expressions we understand the linguistic realizations of the conceptual metaphors. The full list of the citations that were extracted from the separate articles from the COLE can be consulted in the Appendix 1 (Examples 69-105).

The metaphorical expressions extracted during the manual search can be roughly divided into groups according to the semantic fields to which they refer. Semantic fields are linguistic expressions of conceptual

domains (indicated in capitals). The main semantic fields / conceptual domains, within the limits of which it is possible to trace metaphorical correspondences, include those of WAR (*volley of due process challenges, to invade autonomy*) and COMBAT (*an uphill struggle*); MUSIC (*to fine-tune a fetal homicide punishment*), ART (*tailor the crime*) and FASHION (*to fashion their own rules*); SPORT (*wrestling with the special relationship*); CONSTRUCTION (*was broken and badly in need of repair; erode the no-duty rule*), MEDICINE (*to fine-tune a fetal homicide punishment*), etc.

Once linguistic expressions of metaphor have been identified in the corpus, they still need to be related to the corresponding conceptual structure. In order to do this, and to define the underlying linguistic conceptual structures, it is necessary to identify metaphor-related words, i.e. those words that indicate the focus (after Black), the vehicle (after Richards), or the source domain of a metaphor. A special feature of those words is that they are somehow indirect or incongruous in the context. In the present case, the words are: *a stamp, a foil, to head, to narrow, to erode, to invade, erosion, wrestle, to fashion, to break, to repair, to bombard, to bind, to fine-tune, to color, to undermine, a hurdle, to reach, to tailor*, etc. Thus in the following sentence:

- (19) *Moreover, exploring the issues that arise within the context of existing feticide laws demonstrates that criminalizing feticide is not an all-or-nothing proposition; rather, judges and legislators can tailor the crime to best fit the political and moral views of the state's citizens* COLE: Duke Law Journal\March 2009, Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

the lexical expression, *tailor the crime*, is the linguistic expression of the cross-domain mapping, or metaphor, while the only word being used metaphorically, and representing the focus or vehicle of the metaphor, is the word *tailor*.

At this stage of the investigation, taking into account the depicted lexical items, that help to construct the metaphorical cross-domain mappings, it is possible to define the main semantic fields, which are widely used in Legal English.

For our investigation, it was decided to choose four major semantic fields, used in connection with metaphorical expressions found in the corpus. Thus, building from the previous experience and knowledge of the legal sphere of knowledge, and the previous analysis of the selected juridical articles, the following four domains were chosen for further investigation: WAR, SPORT, MEDICINE, and CONSTRUCTION. The next step of the analysis was to determine the lexical items used to

construct the semantic field, and to represent our knowledge about it and the experience that we gained in course of our interaction with it.

A number of lemmas were distinguished, representing each semantic field / conceptual domain. It was decided to have the same number of lemmas for each of the first three fields, as the fourth field, that of CONSTRUCTION, is characterized by some particular and extremely specialized character of its terminology. 76 lemmas were chosen in all. Yet, it was hard to achieve perfect equality since the conceptual domains differed in terms of their relevance to juridical texts: some were more closely related to the legal area (WAR, SPORT) while others (MEDICINE, CONSTRUCTION) seemed to have a more specific terminology of their own. The following lemmas were thus chosen for analysis:

WAR

1. Attack, to attack, attacker, counterattack, attaching
2. Arm, Armed, to arm, armour
3. Arsenal;
4. Backfire
5. Battle, to battle, battlefield, battleground, embattled
6. Bombing, bombshell, bombard, bomb
7. Campaign, to campaign
8. Combat, to combat, combative
9. Defeat, to defeat, defeated
10. Enemy, arch-enemy, inimical
11. Fight, to fight, fighting
12. To invade, invaded, invader, invasion
13. To launch, launch, launching

14. To mobilize, to demobilize, mobilization
15. Onslaught
16. Surrender, to surrender
17. Victory, victorious
18. Volley
19. War, to war, warfare, warrior
20. Weapon

SPORT

1. Ball;
2. Champion
3. To coach, coacher
4. To compete, competition
5. Gamble, to gamble
6. Game
7. Hurdle, to hurdle
8. Jump, to jump, jumper
9. Kick, to kick
10. Prize
11. Race, to race
12. Referee, to referee
13. Run, to run, running, runner
14. Score, to score
15. To skate, skating
16. Speed, to speed, speeding
17. Sport
18. Team, to team
19. To throw
20. Win, to win, winner;

MEDICINE

1. Blind, to blind, color-blind, blindness;
2. Cure, to cure, cured;
3. Disease, diseased;
4. To erode;
5. Fever, to fever, fevered;
6. Fracture, to fracture, fractured
7. Headache;
8. Health, healthy, unhealthy, healthiness;
9. Ill, illness;

10. Immunize, immunization;
11. To infect, infectious, infected, infection;
12. Inflammation, inflamed, inflammation;
13. To inject, injected, injection;
14. To injure, injured, injury;
15. Pain, painful, to pain painless;
16. Panacea;
17. Pathology, pathological;
18. Recipe;
19. Symptom, symptomatic, symptomless;
20. Wound, to wound, wounded;

CONSTRUCTION

1. Architecture, architectural;
2. Building;
3. Construct, to construct, construction, constructed;
4. To decorate, decoration, decorated;
5. Door, doorstep;
6. To engineer, engineered;
7. To erect, erection;
8. Foundation;
9. Fence, to fence;
10. Hammer, to hammer;
11. Paint, to paint, painted;
12. Repair, to repair, repaired;
13. Ruin, to ruin, ruinous;
14. Wall, to wall;
15. Window;
16. To underpin, underpinning

The next step involved the analysis of these lexical items in their verbal surroundings, in order to determine whether they were used metaphorically or not. The last stage required the definition of the main cross-domain mappings, and the description of the conceptual metaphors, based on their lexical realizations, as found in the COLE.

The process of selection was not automatic. Having manually analyzed several articles from the COLE, and having extracted all the lemmas referring to a particular conceptual domain, I turned to thesauri and glossaries to choose additional lemmas, which were then grouped according to antonymic and synonymic relationships. For CONSTRUCTION and MEDICINE, it proved difficult to find relevant words, so thesauri and glossaries were of great help in providing some additional lemmas.

Once the lemmas were aligned with the conceptual domains, I checked for word class distribution. It became obvious that it would be impossible to achieve a perfect balance, as groups of lemmas had different numbers of related nouns, adjectives, or verbs, with the last prevailing within every conceptual domain. This can be explained by the fact that, for some lemmas particular parts of speech are not used in a metaphorical sense, as, according to Low, sometimes:

(...) where two words exist which are semantically related but of a different grammatical class, one may have a metaphorical use which is not extended to the other (Low 1988: 131).

For example, in Legal English, we noticed that the verb *to immunize*, which is normally used in a medical context with the meaning of “giving (someone) a vaccine to prevent infection by a disease”, is

widely used in the COLE in a metaphorical sense. The metaphoric meaning was one of preventing someone from bad legal consequences, as in the following example:

- (20) *The reasonableness doctrine is decidedly underdeveloped, and warrants often immunize federal officials from liability* (COLE: Duke Law Journal\March 2006, Vol.55\ Searches and seizures of Americans abroad: re-examining the fourth).

At the same time, the noun *immunity*, which is also widely used in the COLE, and which is semantically related to the verb “to immunize”, was not taken into the consideration during the analysis of conceptual mappings, as it is used in the corpus as a legal term meaning “special protection from what is required for most people by law”. That second meaning, we believe, should not be treated as metaphoric, as in

- (21) *Such considerations provide a powerful argument against calls to reevaluate absolute immunity for prosecutors and illustrate why civil liability provides only a limited check on prosecutorial power and misconduct* (COLE: Duke Law Journal\October 2007, Vol.57\ Reining in the minister of justice: prosecutorial oversight and the superseder power).

It should be noted that, although adjectives represent a smaller part of the material being investigated, they are essential for the analysis, as they play an important role in the process of metaphor construction. To finish with word classes, a word must be said on prepositions that were

removed from the list of lemmas, although they play an important role in the process of construction of spatial metaphors. It was decided not to include them in the list of words, since “their noun/verb colligates are too general to yield any imagery or to make manifest any specific schemata” (Goatly 1997: 91).

Another problem, which arose in the process of extracting metaphorical expressions from the COLE, was the problem of so-called dead metaphors – i.e. metaphorical expressions that are no longer perceived as metaphoric by language users. A good example is provided by *campaign*, which is diachronically related to the Latin *campus* but seems to have lost any clear connection with its former meaning. If we look at the definitions given to the term *campaign* by the *Collins Cobuild Dictionary*, the *Concise Oxford Dictionary* and the *Longman Dictionary of Contemporary English*, we find the following descriptions:

1 A campaign is a planned set of activities that people carry out over a period of time in order to achieve something such as social or political change.

2 In a war, a campaign is a series of planned movements carried out by armed forces.

1 an organized course of action for a particular purpose, esp. to arouse public interest (e.g. before a political election)

2 a series of military operations in a definite area or to achieve a particular objective.

1 a series of actions intended to achieve a particular result, especially in politics or business

2 a series of battles, attacks etc. intended to achieve a particular result in war.

Thus, we can see that the first definition given by dictionaries is not that referring to the sphere of military actions, and, accordingly, we can make the conclusion that the connection between the two senses of the word is rather distant, and may not be easily recognized by speakers. So, in order to distinguish a dead metaphor, one should pay attention if it is still possible to trace the blending process that led to the creation of metaphor, and if the participants of a discourse can still trace the difference between metaphoric and literal senses of a word. (Gibbs, Steen 2002).

After conceptual domains had been elaborated, the COLE was examined for the presence of 100 lemmas, taking into account spelling differences (e.g. colorblind vs colour-blind). During the investigation, we took into consideration not only lemmas, but also their different realizations in lexemes, because, according to Deignan (1999: 189), if we investigate only some forms of a word, some occurrences of metaphoric

expressions might be omitted. Despite the fact that the investigation was carried out with the help of the computer programs AntConc and Textstat, it was still necessary to work the data manually, in order to remove cases of non-metaphoric usage of a word, and metaphors that are not related to the legal sphere. The need for further manual research of the data was provoked by the fact that there is neither a general strategy for annotating metaphorical expressions in a corpus, nor a computer program which could make this process automatic, as “rule-governed computational models cannot account for the social dimensions of metaphor” (Eubanks 2000: 132).

So, following the procedure described, quantitative results received in the process of the present research include:

1. the absolute frequency of metaphorical expressions in the corpus and the density of metaphor usage per every 1000 words;
2. the relative frequency of metaphor within each domain;
3. the relevant frequency of metaphor in parts of speech;

In their simplest form “counting techniques can offer a means to survey the whole corpus of data and to gain a sense of the flavor of the data” (Silverman 1999: 163).

The results not only show how many lemmas are used, but also how often they are used. It should be noted that the results vary to a great extent. Thus, for example, the verb *to remedy* is used in the corpus 165 times, while the word *symptom* is used only twice, to give but two examples belonging to the semantic field “medicine”.

Such an analysis of numbers of lemmas, selected from whole fields, and of specific types, goes some way to indicate how active the underlying mental models (cross-domain mappings), or parts of them, actually are. In addition, quantitative results play an important role, as they may be used as a starting point to discuss how relevant these mappings are for a particular type of language. As Schmied (1993) observed, a stage of qualitative research is often a precursor for quantitative analysis, since, before linguistic phenomena are classified and counted, the categories for classification must be identified. Further, the quantitative results of the research help to describe, and to establish, active conceptual models and their parts, and also to establish which of the conceptual metaphors might be dominant in a particular conceptual domain. This dominant metaphor is then hypothesized to be cognitively supported by other metaphors in the conceptual domain. In addition, the quantitative evidence also includes the investigation of the distribution of word classes, which allows seeing whether a particular metaphoric type

may be based on a distinguished nominal-static, verbal-dynamic, or adjectival-descriptive model.

Outside the above mentioned positive results gained by quantitative analysis, investigating semantic issues by means of quantitative corpus analysis remains a rather difficult task. As metaphor generation programs are not readily available to researchers, investigation of metaphor in a particular corpus necessarily has to begin with attested linguistic expressions.

While this corpus-based approach is aimed at the analysis of corresponding cross-domain mappings, concordance programs only show the more or less decontextualized part of the analyzed text. In the present case, one token was shown out of 20 types, for each semantic field I defined, with five words to the right and to the left of the keyword.

Although the fields are vast, they are obviously not exhaustive, and the potential metaphorical meaning of some expressions may be omitted, and can only be depicted by looking at longer parts of texts, so it turned out to be necessary, in some cases, to define the metaphoric use of a particular lexical item, to treat the article the lexeme was found in. Moreover, identifying cases of metaphoric usage, as well as deciding on the underlying conceptual cross-domain correspondences, can be influenced by the subjective view of the researcher. It should however be

mentioned that some metaphorical expressions can be identified quite easily in a corpus, when they occur in fixed phrases (e.g. *launch a campaign, target audience*, Deignan 1999: 197) or when they occur in a context which necessarily imposes a metaphorical reading (c.f. the non-medical use of *immunize* in the COLE). Yet, it is impossible to spell out strict rules for spotting and processing metaphoric expressions and the scholarly analysis of metaphor will always depend on “informed intuition” (Deignan 1999: 180). This subjectivity may be supported by the researcher's sensitivity to metaphors in general, and his/her familiarity with certain subject areas in particular (Low 1999: 50-51).

Although metaphor research has much to gain from extensive corpus studies, it is obvious that extensive manual work is still required. Corpus studies provide precious assistance in showing how metaphorical expressions run across word classes. Too often, cognitive linguistic theory focuses on cognitive processes without due consideration for linguistic form as such. But form matters: some word categories, some structures are frequent carriers of metaphoric concepts. As we processed our data, we found that verbs occupied a pivotal position in legal texts, whenever metaphors were expressed. Since word categories are related to cognitive models, verbal, nominal or adjectival modes of representation

matter. This is one good reason, among many, to engage in a corpus-driven investigation of metaphor (Steen 1999: 81).

By analyzing texts from various sources which have been compiled into a whole, corpus linguistics can be useful in deciding which metaphors are likely to be characteristic of a particular subject area, and which are just randomly used by a particular author. Even if a metaphoric expression is used in one article only, its qualitative analysis might provide some essential conceptual information about cross-domain mappings, which can later be used to generalize over results and assumptions about cross-domain correspondences. Besides, corpus analysis makes it possible to analyze large amounts of data, and allows linguists to check their hypotheses by looking at a much broader range of phenomena. Corpus linguistics also challenges Lakoff and Johnson's view that research into metaphor "relies on idealized cases, disconnected from the context of actual use in natural discourse" (Goatly 1997: 5), since it allows the analysis of metaphoric expressions in their contextual environment.

CHAPTER 4

**QUANTITATIVE AND QUALITATIVE
ANALYSIS OF SOME BASIC
CONCEPTUAL METAPHORS
REPRESENTED IN THE CORPUS OF
LEGAL ENGLISH (COLE)**

4.1. Quantitative analysis

4.1.1 General description of semantic fields “war”, “sport”, “medicine” and “construction”

In the following chapter, an analysis of metaphorical expressions found in the COLE will be conducted to reveal the metaphorical expressions that prevail, and to establish the conceptual transfers underlying them. The semantic fields “war”, “sport”, “medicine” and “construction” were determined beforehand, after a preliminary manual analysis of sample texts was performed. As mentioned before, the analysis of language data will begin with a quantitative investigation aimed at determining the percentage of metaphor use in each semantic field, and will facilitate the qualitative analysis.

The microanalysis of several articles extracted from the Corpus of Legal English shows that metaphors of WAR occupy a dominant position in Legal English. In order to make qualitative results clearer and more accurate, 20 lemmas (i.e. headwords) from the semantic field “war” were selected for analysis. (An equal number of lemmas were chosen for “sport” and “medicine” so as to provide justified and equivalent results in

every field). The lemmas correspond to different lexemes that belong to different word classes, namely verbs, nouns, and adjectives. Thus *bomb* (*n*) correlates with such lexemes as *to bombard* (*v*), *bombshell* (*n*), and *bombing* (*n*).

It should be noted that the semantic field “war” is twofold and instantiated by two types of lemmas: those belonging to the sphere of physical and active fight, and those describing the strategy of military operations. To the first group belong such lemmas as *fight*(*n*) /*to fight* (*v*), *combat*(*n*) /*to combat* (*v*), *arm*(*n*) / *to arm*(*v*), while to the second group belong such lemmas as *to mobilize*(*v*), *to demobilize*(*v*), *to launch*(*v*), *to backfire*(*v*), *campaign*(*n*) / *to campaign*(*v*), etc.

A detailed schema of the semantic field “war” is represented in Figure 1. The main lexemes are represented according to the relations of synonymy, antonymy, and semantic relations. Although lemmas include lexemes of different word classes (nouns, adjectives, adverbs), they are represented within a single block. In the following diagrammatic representation of the semantic field “war” (as well as in all the subsequent figures, representing the semantic fields “sport”, “medicine” and “construction), antonymy is represented by means of reverse arrows, synonymous lemmas are represented within the same block, and semantic relations between lemmas are indicated vertically, representing the most

semantically significant lemma on the top of the scheme. Thus, for example, in Figure 4, describing the field “war”, we find such lemmas as *fight*, *battle*, and *combat* being included within a single block and thus representing synonymic relations.

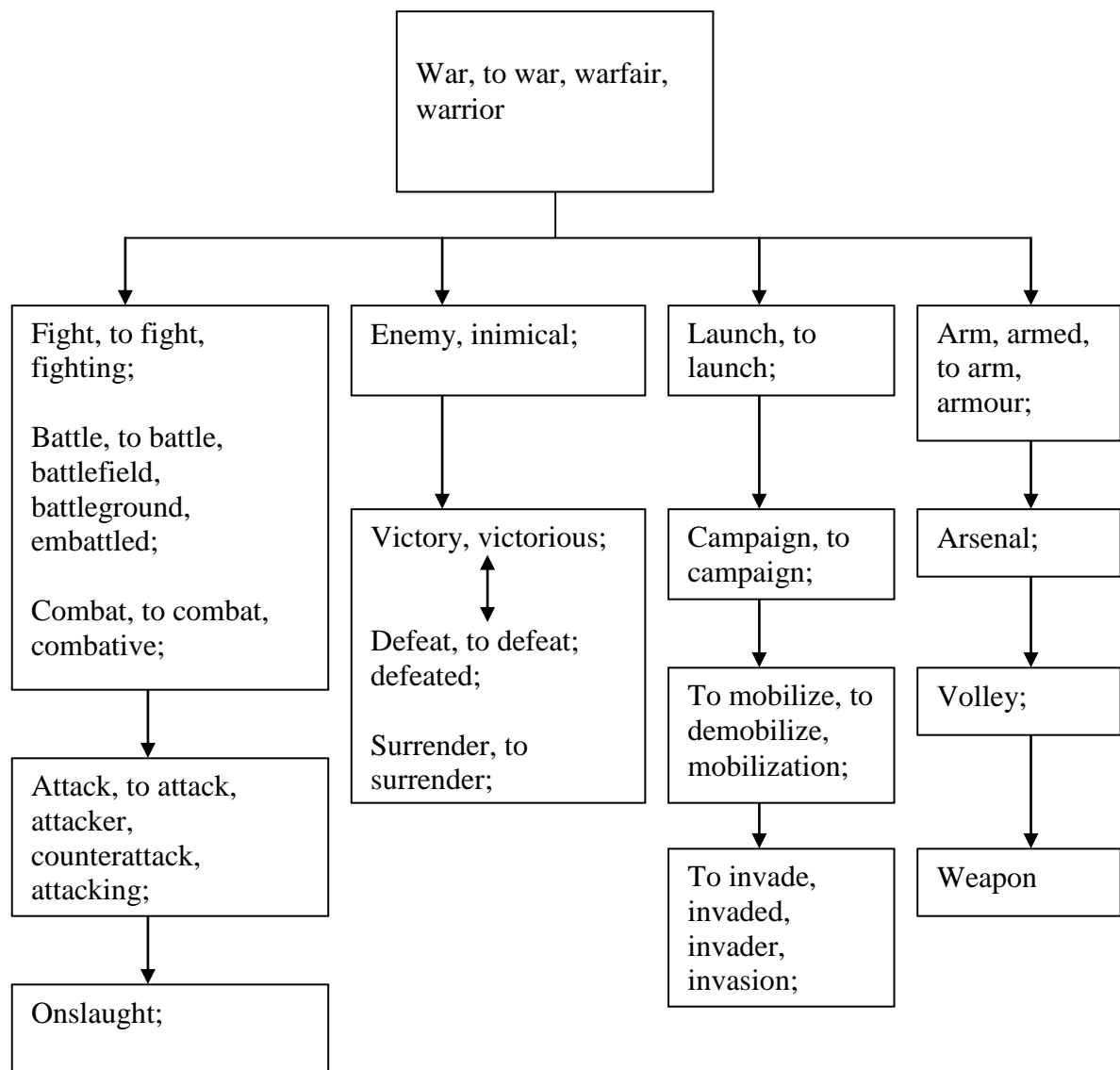


Figure 4 – The semantic field “war”.

The semantic field “war” includes 20 lemmas, or, in other words, 20 headwords, which in their turn are split into different numbers of lexemes, divided into different parts of speech. Thus, the lemma *attack* includes the lexemes *attack*, *to attack*, *attacker*, *counterattack*, and *attacking*. The field “war” comprises 48 lexemes in all, including 28 nouns, 13 verbs, and 7 adjectives. Nouns make up 58.3% of all analyzed lexemes, verbs 27% and adjectives 14.7% respectively. The quantitative data is presented in the following table:

LEMMA (HEADWORD)	LEXEME	TOTAL QUANTITY OF METAPHORICAL EXPRESSIONS	WORD CLASS – NOUN	WORD CLASS – VERB	WORD CLASS ADJ/ADV
ATTACK (255)	Attack, to attack, attacker, counterattack, attaching;	69	21 N.Sing 12 N. Plur.	8 V. ing-form 28 V.	---
ARM (201)	Arm, Armed, to arm, armour;	11	1 N.Sing.	1 V.	9 Adj.
ARSENAL (5)	Arsenal;	4	4 N.Sing.	---	---
BACKFIRE (2)	Backfire;	2	---	2 V.	---
BATTLE (87)	Battle, to battle, battlefield, battleground, embattled;	46	25 N.Sing. 14 N.Plur.	4 V. 1 V. ing-form	2 Adj
BOMB (18)	Bombing, bombshell, bombard, bomb;	3	1 N.Sing. 1 N.Plur.	1 V.	---
CAMPAIGN (208)	Campaign, to campaign;	76	44 N.Sing. 25 N.Plur.	3 V.	4 Adj.

COMBAT (78)	Combat, to combat, combative;	34	0	12 V. ing-form 22 V.	---
DEFEAT (72)	Defeat, to defeat, defeated;	21	9 N.Sing. 2 N.Plur.	9 V	1 Adj.
ENEMY (23)	Enemy, arch-enemy, inimical	2	1 N.Sing	---	1 Adj
FIGHT (96)	Fight, to fight, fighting;	38	14 N.Sing.	10 V. ing-form 14 V.	---
INVADE (14)	To invade, invaded, invader, invasion;	8	0	7 V. 1V. ing-form	---
LAUNCH (50)	To launch, launch, launching;	20	1 N.Sing.	12 V. 6 V.ing-form	1 Adj.
MOBILIZE	To mobilize, to demobilize, mobilization;	15	6 N.Sing.	9 V.	---
ONSLAUGHT (2)	Onslaught;	2	2 N.Sing	---	---
SURRENDER (19)	Surrender, to surrender;	11	2 N.Sing.	9 V.	---
VICTORY (50)	Victory, victorious;	31	17 N.Sing. 12 N.Plur.	---	2 Adj.
VOLLEY (2)	Volley;	2	2 N.Sing	---	---
WAR (332)	War, to war, warfare, warrior;	17	14 N.Sing.	0	3 Adj
WEAPON (9)	Weapon	7	6 N.Sing. 1 N.Plur.	---	---
Total		419	237 54,4%	159 40,1%	23 5,5%

Table 10 - Metaphorical expressions associated with the semantic field
“war”, classified by word class

In Table 10, the number in brackets represents the total number of occurrences of a particular lemma in the COLE. Zero (0) indicates that no

matching items were found in a search. Dashes (---) signal that a particular lexeme wasn't searched for in the corpus.

As can be seen in this table, the number of nouns, verbs and adjectives that were identified is not balanced. This may be attributed to the fact that most lemmas do not possess lexemes in the word class of adjectives or these lexemes do not have a specific lexical meaning belonging to the field of war. Thus, it should be noted that in this case (as for all the semantic fields included in the analysis) the qualitative results are mostly relative, but this fact doesn't reduce their demonstrative significance.

It is important to note that the investigation of WAR metaphor in scientific or legal discourse is by no means new. The use of martial vocabulary and concepts is a conspicuous feature of political speeches and reports has been widely discussed by scholars. It is hard not to use WAR metaphor while describing political events. In everyday communication, speakers routinely and unconsciously use metaphorical expressions like *battleground states*, *electoral campaign* or *legal victory*. According to Lakoff (1991: 25) "there is an extensive, and mostly unconscious, system of metaphor that we use automatically and unreflectively to understand complexities and abstractions". By such "complexities" we can undoubtedly refer to political and legal systems of

any country, and to politics itself. Indeed “abstractions and enormously complex situations are routinely understood via metaphor” (Lakoff 1991: 25), as confirmed by the COLE, which is extremely rich in metaphorical expressions, particularly WAR metaphor. And, although “metaphors cannot be seen or touched (...) they create massive effects (...)” (Lakoff 2006) and, thus, are likely to act as an invisible hand manipulating public opinion. Incidentally, WAR metaphor has a structuring role not only in the domain of politics, but also in those of SPORT and MEDICINE, which themselves can act as source domains in law and politics.

The next semantic field that was selected for inclusion in the present study was that of “sport”, as indicated in Figure 2. The semantic field “sport” comprises 20 lemmas, which, in their turn, include 38 lexemes. Within this semantic field, we count 24 nouns, which make up 63% of the total number of lexemes being analyzed, and 14 verbs, or 37% (Table 2). It should be stressed that this field does not include any adjectives, as no valid items representing this category could be found in the COLE. This is partly explained by the fact that there are few adjectives referring to the semantic field “sport” and that most tend to be derived from verbs. For example, although such adjectives as *scored* or *won* can be found in the COLE, they are used in their literal sense. In contrast, other adjectives like *speedy*, though widely used in the COLE,

are used in set legal expressions such as *speedy trial*, and, thus, do not represent any metaphorical connections between the two fields. The lexemes and general quantitative results for the metaphorical expressions found in the COLE are represented in the table below.

LEMMA (HEADWORD)	LEXEME	TOTAL QUANTITY OF METAPHORICAL EXPRESSIONS	WORD CLASS – NOUN	WORD CLASS – VERB	WORD CLASS ADJ/ADV
BALL (29)	Ball;	6	6 N.Sing	---	---
CHAMPION (23)	Champion;	12	10 N. Sing 2 N. Plur	---	---
COACH (37)	To coach, coach;	0	0	0	---
COMPETE (250)	To compete, competition;	20	18 N. Sing	2 V.	---
GAMBLE(28)	Gamble, to gamble;	3	1 N.Sing.	2 V.	---
GAME (154)	Game;	10	10 N.Sing.	---	---
HURDLE (31)	Hurdle, to hurdle;	17	5 N.Sing. 12 N.Plur	0	---
JUMP (21)	Jump, to jump, jumper;	6	1 N.Sing.	5 V.	---
KICK (10)	Kick, to kick;	1	0	1 V.	---
PRIZE (52)	Prize	1	1 N.Sing.	---	---
RACE (578)	Race, to race;	9	6 N. Sing. 3 N. Plur.	0	---
REFEREE (4)	Referee, to referee;	2	0	2 V.	---
RUN (263)	Run, to run, running, runner;	18	3 N. Sing.	11 V. 4 V. ing-form	---
SCORE (160)	Score, to score;	41	17 N. Sing. 15 N. Plur.	9 V.	---
SKATE (2)	To skate, skating;	1	1 N.Sing.	0	---

SPEED (54)	Spped, to speed, speeding;	17	11 N.Sing.	6 V.	---
SPORT(369)	Sport;	0	0	0	---
TEAM (107)	Team, to team;	10	8 N. Sing. 2 N. Plur.	0	---
THROW (24)	To throw;	4	---	4 V.	---
WIN (209)	Win, to win, winner;	92	22 N. Sing 7 N.Plur	53 V. 10 V. ing-form	---
Total 2405		270	161 60%	109 40%	---

Table 11 - Metaphorical expressions associated with the semantic field of “sport”, classified by word class

The numbers in brackets represent the total number of occurrences of a particular lemma in the corpus. Zero (0) indicates that, as the corpus was searched for a particular word, no matching items were found. Dashes (---) indicate that a particular lexeme wasn’t searched for in the corpus. The lemmas *sport* and *coach* are not represented metaphorically in the COLE.

From this table, we see that the head lemma of the semantic field “sport” does not possess any matching items in the corpus (i.e. it was not found in the COLE). The other items that were included in the analysis comprise the words used to describe such popular kinds of sports as football and racing. They, in turn, include such lexemes as *team*, *coach*,

referee, kick, score, ball, run etc. (cf. Figure 2). It is necessary to point out that both the semantic field “war” and the semantic field “sport” are interconnected. Indeed, WAR metaphor is widely used not only in domain of politics, but also in domain of sport, and especially in describing such kinds of contact sport as football or soccer. “Soccer, like war, is a competitive sport where there is normally a clear winner and loser, strategic thinking, team work, preparedness, spectator behavior, glory of winning and shame of defeat. The sport is a physical contest making it almost inevitable for allusions to war, metaphors of battle and strategy by professional commentators” (Chapanga 2004: 62). Thus it would seem that WAR metaphors conceptualize most kinds of sport. As for the conceptual links between the two semantic fields of “war” and “sport”, they lie in the fact that sports, especially contact types of sport, such as football or boxing, can possess characteristics of war, and demonstrate rather strong conceptual links between the two fields. This can be explained by the frequent polysemy of numerous items from the two fields. For example, a lemma such as *field* can be used both to describe a battle field and a football field, a lemma like *attack* also can be used both to describe military events and to represent the course of the football match. A lemma such as *champion* is also linked not only to the sport domain but also to the war semantic field as, etymologically, it is related to the “open fields” where battles typically took place. In Roman

times, the *champion* was “the last gladiator to persist in the arena field” (Malszecki 1995: 82). In his paper on “Metaphor and war: the metaphor system used to justify war in the Gulf” (1991), Lakoff stresses that the conceptual links between the two domains of WAR and SPORTS can even lead to the creation of a concrete conceptual notion. Thus, he identifies conceptual metaphors like WAR IS A COMPETITIVE GAME, pointing out that: “it is a metaphor in which there is a clear winner and loser, and a clear end to the game. The metaphor highlights strategic thinking, team work, preparedness, the spectators in the world arena, the glory of winning and the shame of defeat” (Lakoff 1991: 28); and, just as in sports, soldiers in the army are trained to win wars.

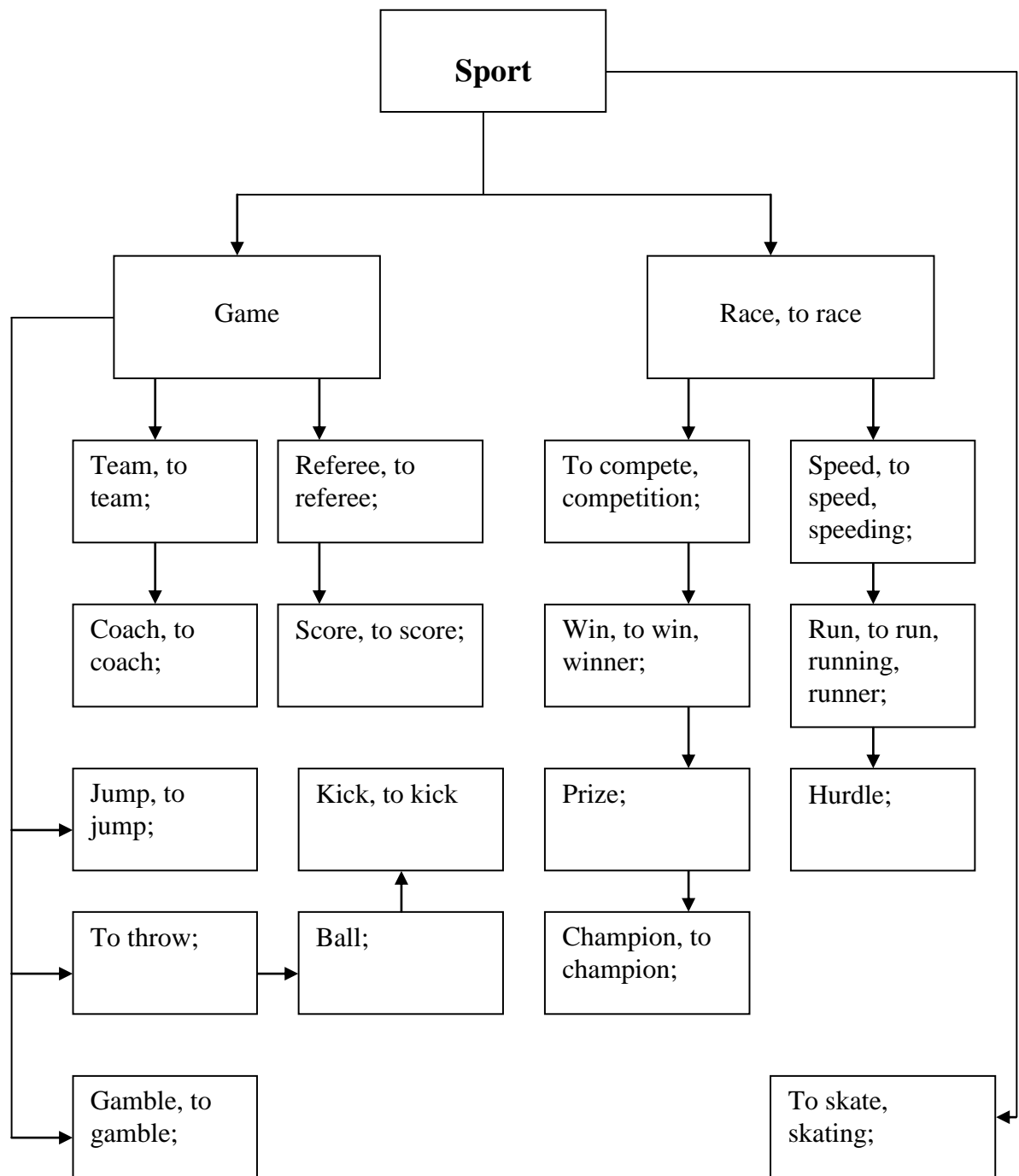


Figure 5 – The semantic field “sport”

As shown above, the terms connected with popular kinds of sport are supplemented by lexemes taken from the semantic field “games”.

Quite remarkably, *game* can refer both to the field “sports” and to the field “games”, as they both are closely connected. This fact justifies the decision not to divide these two lemmas into two separate semantic fields.

It should also be noted that the semantic field of sport (including lemmas like *game*) is very closely connected to the semantic field of war, as, according to Eubanks (2000), game metaphors are more easily used to describe peaceful leisure activities and, when intensified, to describe more active and challenging events that are closer to war. According to Eubanks, games like poker can sometimes possess characteristics of military actions and strategy (Eubanks 2000: 128), and games like chess represent a war metaphor by itself (Eubanks 2000: 48). It should also be noted that games of this type also exhibit conceptual links, not only between metaphors WAR and SPORT, but also between SPORT and GAMES, since games like chess are officially recognized as professional sports disciplines. Thus, the decision to unify the two semantic fields of “sport” and “game” seems to be justified.

The links between these two fields, and the understanding itself of the conceptual structure of the domains connected to these fields, can be enlarged by the next semantic field, that of “medicine” (Figure 6).

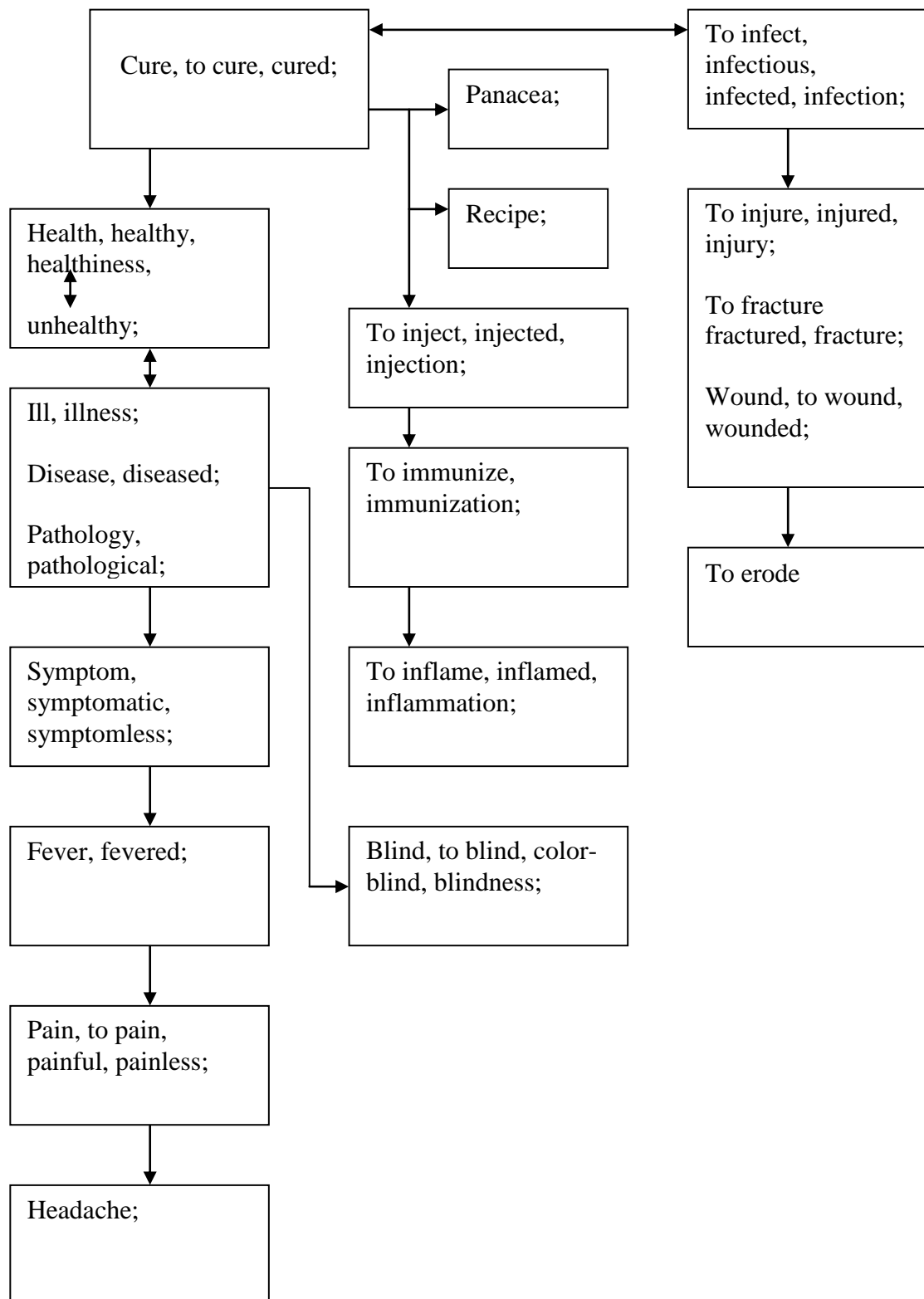


Figure 6 – The semantic field “medicine”

The semantic field of “medicine” is instantiated by 20 lemmas, and 52 lexemes. It should be stressed that this field is unusually well balanced, as it comprises an almost equal number of nouns, adjectives, and verbs. The semantic field of medicine consists of 21 nouns, representing 40.4% of the totality of lemmas used for the analysis, and 12 verbs, representing 23%. The characteristic feature of the field “medicine” is that it includes a higher number of adjectives in comparison with verbs. The domain comprises 19 adjectives, representing 36.6 % of the totality of lemmas, as shown in Table 12.

LEMMA (HEADWORD)	LEXEME	TOTAL QUANTITY OF METAPHORICAL EXPRESSIONS	WORD CLASS NOUN	WORD CLASS VERB	WORD CLASS ADJ/ADV
BLIND (137)	Blind, to blind, color-blind, blindness;	25	0	2 V	23 Adj
CURE (38)	Cure, to cure, cured;	11	2 N. Sing	9 V	0
DISEASE (67)	Disease, diseased;	0	0	---	---
ERODE (25)	To erode;	10	---	10V	---
FEVER (2)	Fever, to fever, fevered;	2	1 N. Sing	0	1 Adj
FRACTURE (12)	Fracture, to fracture, fractured	6	1 N. Plur	1 V	4 Adj
HEADACHE (5)	Headache;	2	1 N. Sing	---	---
HEALTH (753)	Health, healthy, unhealthy, healthiness;	10	1 N.Plur 4 N. Sing	---	6 Adj
ILL (94)	Ill, illness;	0	0	---	0

IMMUNIZE (13)	Immunize, immunization;	11	1 N. Sing	10 V	---
INFECT (22)	To infect, infectious, infected, infection;	4	0	1 V. ing-form 3 V	0
INFLAME (8)	Inflame, inflamed, inflammation;	4	0	4 V	0
INJECT (21)	To inject, injected, injection;	14	1 N. Sing	1 V. ing-form 11 V	1 Adj.
INJURY (274)	To injure, injured, injury;	14	5 N. Sing 2 N. Plur	7 V	0
PAIN (72)	Pain, painful, to pain painless;	1	0	0	1 Adj
PANACEA (10)	Panacea;	4	4 N. Sing	---	---
PATHOLOGY (53)	Pathology, pathological;	14	2 N. Sing 12 N. Plur	---	0
RECIPE (4)	Recipe;	1	1 N. Sing	---	---
SYMPTOM (13)	Symptom, symptomatic, symptomless;	3	2 N. Sing	---	1 Adj
WOUND (13)	Wound, to wound, wounded;	3	2 N. Plur	1 V. ing-form	0
Total 1636		139	42 31%	60 42 %	37 27%

Table 12 - Metaphorical expressions associated with the semantic field “medicine”, classified by word class

In the table, the number in brackets represents the total number of occurrences of a particular lemma in the corpus. Zero (0) indicates that, as the corpus was searched for a particular word, no matching items were found. Dashes (---) indicate that a particular lexeme wasn't searched for in the corpus.

The lemmas *disease* and *ill* are not used metaphorically in the COLE. While the previously mentioned field “sport” displayed similar characteristics, and some particular relationships with “war”, the semantic field “medicine” is, in its turn, related to both “sport” and “war”. From the previous table, we can see that some lexemes can be related to the present semantic field of “medicine”, as well as to the previously mentioned semantic fields of “sport” and “war”. Among these lexemes are such words as *(to) wound wound/wounded, injury/injured, pain, fracture/fractured*. These words can be both related to the field of medicine and to the field of sport and war. But, as, from a lexical point of view, they seem to be more important, and predominantly used, in the language of medicine, it was decided to use them for the analysis of the present semantic field.

The two fields of “war” and “medicine” are frequently connected in medical discourse. A person’s body or physical integrity can be construed as a state, in conformity with the established STATE AS PERSON metaphor (Lakoff 1991: 30). “A person, particularly his or her body, is conceptualized as a state, which can be at war. The body is conceived as having borders, which can be crossed, that is the body can be ‘invaded by enemies’. It also has an ‘army’ and a ‘defense system’,

and it can ‘win’ or ‘lose’” (Hillmer: 2007). Thus an “army” of “antibodies” can be raised by a person’s defensive “immune system”.

To sum up, the semantic of fields “war”, “medicine”, and “sport” are tightly connected. Not only are they united by a variety of conceptual links but also the concept of WAR permeates the other two domains, as war “can embrace and subsume other topics with little reciprocal effect” (Desmond, 1997: 341).

The next field to be selected for inclusion in the corpus analysis is that of “construction”. It includes 16 lemmas but these are mostly used literally.

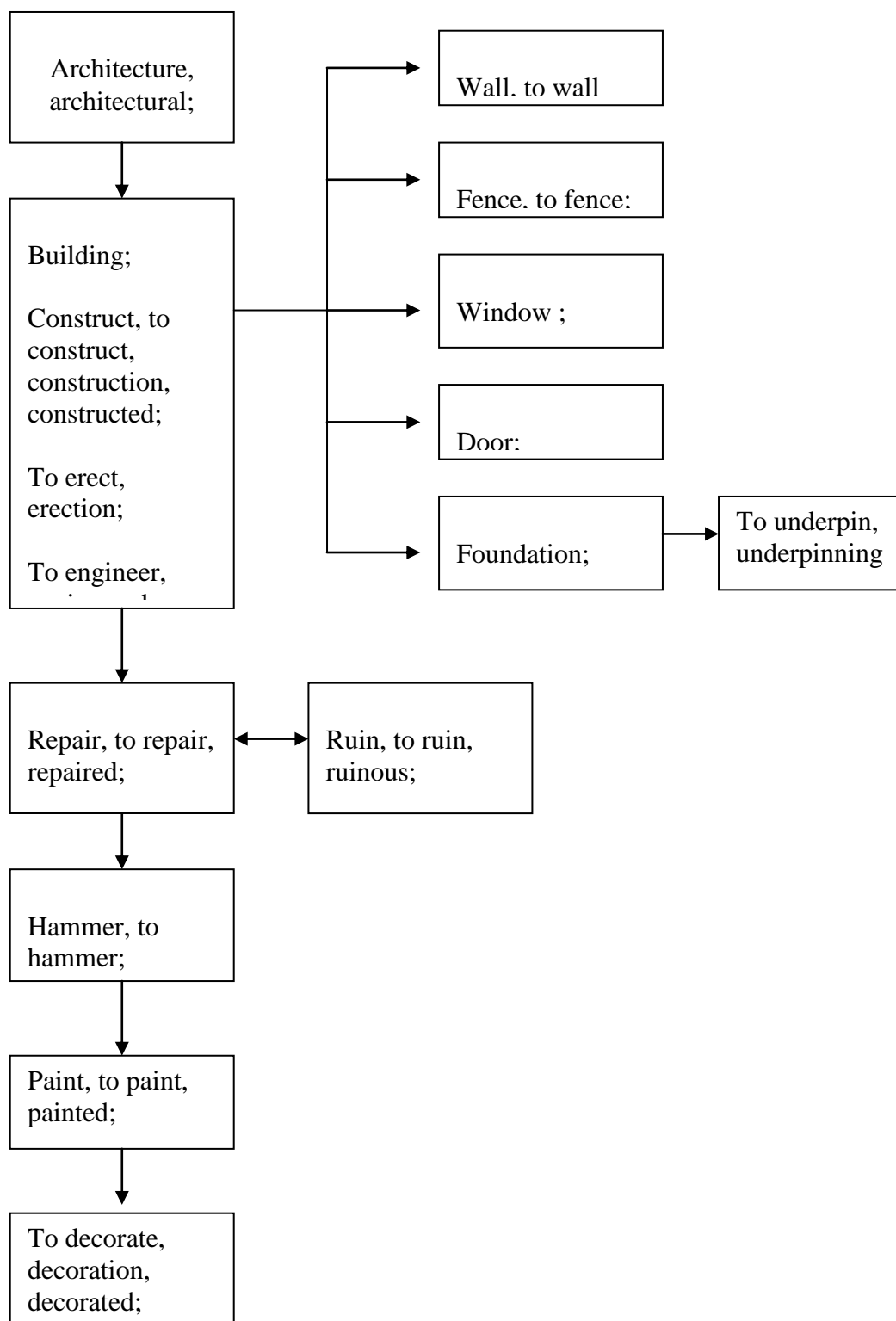


Figure 7 – The semantic field “construction”.

It is important to note that the semantic field “construction” includes two types of lemmas: those coding the dynamic construction process (*construct/to construct, to engineer, to decorate, to erect, to hammer, to underpin, to ruin* etc) and those denoting the resulting state or outcome of the process (*building, door, wall, window, foundation* etc.). The interesting peculiarity of this field is that the lemmas of the first type include, for the most part, verbs, while the second type of lemmas mainly comprise of nouns.

LEMMA (HEADWORD)	LEXEME	TOTAL QUANTITY OF METAPHORICAL EXPRESSIONS	WORD CLASS – NOUN	WORD CLASS – VERB	WORD CLASS – ADJ/ADV
ARCHITECTURE (4)	Architecture, architectural;	3	2 N. Sing;	---	1 Adj.
BUILDING (197)	Building;	12	12 N. Sing.	---	---
CONSTRUCT (281)	Construct, to construct, construction, constructed;	60	42 N. Sing 6 N. Plur.	8 V. 3 V. ing-form	1 Adj.
DECORATE (1)	To decorate, decoration, decorated;	1	1 N. Sing.	0	0
DOOR (61)	Door, doorstep;	16	12 N. Sing. 4 N. Plur.	---	---
ENGINEER (25)	To engineer, engineered;	3	---	3 V.	0
ERECT (15)	To erect, erection;	9	0	7 V. 2 V. ing-form	---
FOUNDATION (117)	Foundation;	23	20 N.Sing. 3 N. Plur.	---	---
FENCE (20)	Fence, to fence;	2	1 N.Sing. 1 N. Plur.	0	---
HAMMER (5)	Hammer, to hammer;	3	1 N. Sing.	2 V.	---

PAINT (16)	Paint, to paint, painted;	3	0	3 V.	0
REPAIR (135)	Repair, to repair, repaired;	4	2 N. Sing.	2 V.	0
RUIN (3)	Ruin, to ruin, ruinous;	1	0	0	1 Adj.
WALL (30)	Wall, to wall;	2	1 N. Sing	1 V.	---
WINDOW (21)	Window;	2	2 N. Sing.	---	---
UNDERPIN (15)	To underpin, underpinning;	6	4 N.Plur.	1 V. 1 V. ing-form	---
Total 946		150	114 76%	33 22%	3 2%

Table 13 - Metaphorical expressions associated with the semantic field of “construction”, classified by word class

In the table, the number in brackets represents the total number of occurrences of a particular lemma in the corpus. Zero (0) indicates that though the corpus was searched for a particular word, no matching items were found. Dashes (---) indicate that a particular lexeme wasn’t looked for in the COLE.

The semantic field “construction” is represented by 16 lemmas, and is realized by 35 lexemes. The present field consists of 116 nouns, representing 75.8% of the totality of lemmas used for the analysis, 34 verbs, representing 22.2%; and 3 adjectives, representing 2% of the totality of lemmas. The characteristic feature of the semantic field

“construction” is that it includes a higher number of nouns in comparison with verbs and adjectives (see Table 13).

4.1.2. Quantitative results of the corpus-based analysis of the semantic fields “war”, “sport”, “medicine”, and “construction”

Having identified the foundations for the corpus study, it is now necessary to evaluate the quantitative results of the analysis of the outlined semantic fields “war”, “sport”, “medicine”, and “construction”.

As already mentioned, the aim of the quantitative analysis of the COLE is to determine which of the chosen lexemes are used in metaphorical expressions in the COLE, to point out how often they occur and in which forms, to give absolute frequencies of the metaphorical expressions found in the COLE, and to determine its general metaphorical density. Additionally, the quantitative analysis will allow us to determine the diffusion of metaphorical expressions, according to word class. These results should enable us to make preliminary suppositions about the conceptual structure of conceptual metaphor and its underlying conceptual links.

From the previous tables describing the quantitative spread of metaphorical expressions across semantic fields of “war”, “sport”, and “medicine”, across word classes, we see that 979 metaphorical expressions belonging to the semantic fields under investigation have been found in the COLE. The general metaphoric density numbers at 1 metaphorical expression for 2000 words. Among the first assumptions that can be made is that the semantic field “war” is the most highly represented, in terms of the metaphorical realizations of lemmas in the COLE. As can be seen from table 10, of 20 lemmas, every single one was realized as a metaphorical expression derived from WAR metaphor, thus representing 100% of lemmas realized, in the COLE Corpus, as metaphors.

The semantic fields “sport” and “medicine” share the second and third positions respectively, each representing 18 lemmas out of 20 (or 90%) metaphorically realized in the COLE. This order of semantic fields is also reflected by the number of metaphorical expressions found in each specific domain in the corpus. Thus, the domain of WAR is represented by 419 attested metaphorical expressions (or 43 % of all metaphorical expressions found in the corpus), the domain of SPORT accounts for 270 (or 27%) metaphorical expressions, while the domain of MEDICINE exhibits 139 (or 15%) expressions being realized metaphorically.

Additionally, for the quantitative analysis, it might be useful to establish the relationship between all the realizations of lemmas of the particular semantic field in the corpus, and between their metaphorical realizations. Thus, the metaphorical realizations of the lemmas chosen for the analysis of the WAR metaphor in the COLE represent 27.8 % of the total items found in the corpus (419 metaphorical-items, out of 1561 lexemes found in the corpus), metaphorical expressions found in the semantic field “sport” account for 11.2% of all the lexemes under investigation, and metaphorical expressions within the semantic field “medicine” represent 8.8%. Therefore, the quantitative results show that the more lexemes chosen for the analysis of a particular semantic field, the greater the variety of the metaphorical expressions, and the diversity of conceptual links within a particular conceptual metaphor.

While characterizing the semantic field “war” in greater detail, we observe that the expressions based on the WAR metaphor are rather varied, although some are already conventionalized. Table10 shows that the lemmas *campaign*, *attack*, and *battle* occupy the first three positions as a source of metaphorical expressions in the COLE. Together, they represent 191 metaphorical expressions, i.e. almost half of all the expressions found in the semantic field “war”. It was expected that the lexemes *campaign* and *launch* would be used together, as they are

frequent collocates, yet they are not found even once in the COLE. This fact explains the difference between the frequencies of the metaphorical uses of these two items in the corpus. The lexeme *campaign* is most frequently used in the *political campaign* and *election/electoral campaign* collocations.

(22) *A more regulatory approach to envisioning employer participation in election campaigns would be amenable to reshaping by data* (COLE: Duke Law Journal\May 2009. Vol. 58\The NLRB in administrative law exile problems with its structure and function and suggestions for reform).

(23) *The preceding account reveals that The Federalist embodies a strategic argument designed to win an intense political campaign* (COLE: Duke Law Journal\November 2006, Vol. 56\A rhetoric for ratification: the argument of The Federalist and its impact on constitutional interpretation).

The other two lexemes, *battle* and *attack*, which are close synonyms, are abundantly used metaphorically in the COLE. They are mostly used for describing the juridical process, where the process itself is represented as a battle, and the courtroom is seen as a battlefield where defendants and prosecutors attack each other.

(24) *While the American fascination with wrongdoing and punishment continues unabated, the established news media remain willing, if not eager, to wax knowledgeable about the acts and lives of those engaged in courtroom battles* (COLE: Duke Law

Journal\February 2008, Vol. 57\Court-ordered restrictions on trial participant speech).

- (25) *These statutes have been repeatedly attacked in state courts as a violation of due process, the right to counsel, separation of powers, and most often equal protection* (COLE: Duke Law Journal\November 2006, Vol. 56\An empirical examination of the equal protection challenge to contingency fee restrictions in medical malpractice reform statutes).

So, as WAR metaphor is widely used to conceptualize our everyday experience, especially the experience gained in the political sphere, the metaphorical expressions related to the WAR metaphor are mostly conceptualized. They are “both conceptual in nature and deep, in the sense that they are used largely without being noticed, that they have enormous social consequences, and that they shape or vary understanding of our everyday world” (Lakoff 1995: 214). Although the semantic field of war is characterized by a number of conventionalized metaphorical expressions, it also shows some relatively new and non-conventionalized expressions. For example:

- (26) *Care is necessary, because efforts to reform corporate governance can easily backfire, even the kind of reform decreed by the Sarbanes-Oxley Act to prevent outright fraud* (COLE: Duke Law Journal\March 2009, Vol.59\Are American CEOs overpaid, and, if so, what if anything should be done about it).

or

(27) *The reforms, in combination with the earlier reforms, prompted a volley of due process challenges in eleven U.S. circuit courts of appeals* (COLE: Duke Law Journal\May 2009. Vol. 58\A more perfect system: the 2002 reforms of the board of immigration appeals).

Such “superficial metaphors” (Lakoff 1995: 214), which are not conventionalized, are used “consciously and evoke a vivid image that organizes much deeper metaphorical concepts” (Lakoff 1995: 214). The very existence of unconventional metaphors in a particular domain shows the productivity of a particular conceptual metaphor.

As for the other two fields, it should be noted that they are less productive, representing 27% of all attested metaphorical expressions in the corpus for the semantic field “sport”, and 14% for the semantic field “medicine”.

As for the field “sport”, the most representative lemmas are *to win/win* (91 metaphorical expressions found in the corpus), *to score/score* (40 metaphorical expressions), and *to compete* (19 metaphorical expressions). Special attention should be paid to the lemma *to win/win*. The high frequency of metaphorical use can be explained by the fact that this lemma can refer both to the semantic field of war and to the semantic field of sport. Another characteristic feature of the semantic field “sport” is the absence of adjectives, which were not taken into consideration in the process of corpus investigation, due to their lexical stability, which is

revealed by their use in the text in their straight (non metaphorical) meaning.

In the semantic field “medicine”, the first three lemmas, which dominate with respect to their metaphorical usage, are *blind* (24 hits), *injury* (13 hits), and *pathology* (14 hits). The semantic field of medicine possesses several peculiarities. The first salient feature is the scant use of medical language in metaphorical expressions. Considering the overall number of analyzed lexemes in the corpus (1636 items), the number of medical terms used metaphorically appears to be quite limited (139 items only). At first glance, this can be explained by the fact that the COLE includes a substantial number of articles describing problems of health and medical issues. At the same time, the corpus includes a number of articles concerning the legal regulation of the domain of sport as well. Thus, this fact indicates the low productivity of the MEDICINE metaphor in the corpus. Another peculiarity of the semantic field of medicine is the presence of a large number of adjectives, which constitute almost one third of all metaphorical expressions of MEDICINE metaphors found in the corpus.

At this point in our corpus analysis, we need to investigate the word class distribution of metaphorical expressions, as this will allow us

to clarify the basic structure of the main conceptual models used in the COLE.

As can be seen from the tables showing the quantitative characteristics of semantic fields chosen for the present analysis, the word class of nouns prevails over the word class of verbs and adjectives in every semantic field. The following table represents the quantitative distribution of metaphorical expressions among the semantic fields “war”, “sport”, and “medicine”, according to word class.

Semantic field	Metaphorical expressions with nouns	Metaphorical expressions with verbs	Metaphorical expressions with adjectives	Total number of metaphorical expressions found in the COLE
WAR	236	174	24	419
SPORT	161	109	---	270
MEDICINE	44	60	40	139

Table 14 – Word-class distribution of metaphorical expressions within the semantic fields “war”, “sport”, and “medicine”

An initial survey of this table reveals that nouns and verbs are predominant in every semantic field in which they are used in

metaphorical expressions. Adjectives tend to be underrepresented, with one noticeable exception, the semantic field “medicine”. Here, the lemma *to blind/ blind* is realized as an adjective in 24 metaphorical expressions.

The semantic field “war” is characterized by a large number of nouns, which represent almost half of all the metaphorical expressions found in this field. The nominal mode adopted by speakers suggests that “war” is construed as a state or a “thing” rather than a “process” (Langacker 2001). The large number of nouns found in the field is due to the very frequent and highly conventionalized use of the lemma *campaign*. Another word that shows a higher quantity of nouns, in contrast with other parts of speech, is *battle*. This can be explained by the fact that the lemma *battle*, in its turn, includes a variety of noun lexemes, such as *battle*, *battlefield*, and *battleground*. A more precise look at the metaphorical expressions containing the word *battle* shows that it mostly functions as the second part of a modified noun.

- (28) *A remarkable political battle between the governor of Louisiana and President Bush delayed by a week the arrival of federal military troops for rescue operations and to establish order* (COLE: Duke Law Journal\October 2006, Vol.56\Criminal justice collapse: the constitution after hurricane Katrina).

These characteristics of the two most frequently used lemmas suggest a rather static nature of the concept WAR.

The MEDICINE metaphor alters the static character of the expressions revealed in the course of our corpus analysis, as it includes more verbs and adjectives, as opposed to nouns. Its 27% of adjectives represent a higher percentage than average for the three semantic fields. This rather strong adjectival character is evident in the forms of the lemma *blind*, which include such lexemes as *blind/color-blind*, and account for 24 metaphorical occurrences, which is more than half of all the adjectival metaphorical expressions found in this particular semantic field. It should be noted that the field of medicine is also characterized by the underrepresentation of nouns, in contrast with the other semantic fields, which are characterized by a high level of nouns. The only noun that is widely used in this semantic field is *pathology*, and the high nominal quantity of which can be explained by the fact that lemma does not contain a verbal form. Other lemmas were mainly split into noun and verb forms: *cure/to cure*, *fracture/to fracture*, *immunization/to immunize*, *infection/ to infect*, *inflammation/ to inflame*, *injection/ to inject*, *pain/ to pain*, *wound/to wound*. Out of these lemmas, only *fever* and *to injure/injury* represent a prevailing quantity of nouns. The rest of the lexemes are used mainly in metaphorical expressions containing verbs, thus characterizing the concept MEDICINE as rather dynamic. This gives us the possibility to conclude that, despite the fact that two semantic fields of “war” and “medicine” are interrelated and connected by strong

conceptual links, they are quite different by their structure when they are used metaphorically.

The third semantic field “sport” also has a greater proportion of nominal metaphorical expressions. This may seem rather strange, since one would expect the semantic field “sport” to be intrinsically dynamic. Nouns related to sport represent over half the attested metaphorical expressions. The high level of nominal metaphorical expressions is caused by such lemmas as *champion*, *competition*, *game*, and *hurdle*.

As for the quantitative analysis of the last semantic field, “construction”, which is quite different from other fields under investigation, it should be noted that, in the process of corpus analysis, fewer lexical units were investigated. In comparison with, for example, the field “medicine”, which accounts for 1636 of the analyzed lexical items, the field “construction” accounts for only 946 of the lexical items being analyzed. At the same time, this domain shows a rather high metaphorical density, as, out of 946 tokens being analyzed, 150 represent metaphorical expressions. This indicates a rather high productivity with the CONSTRUCTION metaphor. It is important to note that the lemmas *window*, *door*, *construct* and *foundation* are very frequently used in the corpus in a metaphorical sense. This shows the extent to which the CONSTRUCTION metaphor is conventionalized.

- (29) *Ultimately, this rich and unusual story gives us a window not only into the constitutional thought of someone who would soon write American constitutional law, but also gives us a window into constitutional politics* (COLE: Duke Law Journal\December 2006, Vol.56\Working toward democracy).
- (30) *Stories like this shake the very foundation of the criminal justice system and can cause the public to lose faith in the system of laws* (COLE: Duke Law Journal\March 2007, Vol. 56\All eyes on us: a comparative critique of the North Carolina innocence inquiry commission).

Regarding the lemma *foundation*, it should be explained that, despite the fact that it possesses the proper legal meaning of political organization, it was included in the corpus analysis in the meaning of ‘basis for something’. Furthermore, from Table 13, we can see that the semantic field “construction” is rather productive from the point of view of novel metaphorical expressions, as well. Among the new metaphorical expressions, we find: *to engineer a process, a vote, or a compromise*; or, *to hammer a treaty, an argument*, etc.

As for the word class distribution of the semantic field “construction”, this, in its turn, also shows the overrepresentation of the verbal and nominal expressions in contrast to adjectival ones. While nominal and verbal metaphorical expressions account for 76% and 22%

respectively, adjectival metaphorical expressions account only for 2% of all metaphorical expressions depicted within this semantic field.

In conclusion, the WAR metaphor is the most frequent and most conventionalized one in the COLE. Lexemes that belong to the WAR domain are more often realized metaphorically than others. Among the semantic fields studied, “war” ranks first, and is followed by “sport” and “medicine”. The latter are closely connected with the dominant field by strong and diverse conceptual links and lemmas, which can be used in both fields, and which are interconnected. At the same time, despite the close connections between concepts WAR, SPORT and MEDICINE, each domain possesses different metaphorical structures and word class distribution. Although nominal metaphorical expressions are clearly dominant in the corpus, the distribution among the three word classes varies according to the semantic field. The WAR metaphor is more static in its nature, presenting the highest number of nominal metaphors, and the MEDICINE metaphor may be characterized by a more dynamic structure, as it possesses a higher number of verbal metaphors. Despite the fact that verbal metaphors “may be more common than nominal metaphors” (Cameron 1999: 15), the corpus analysis shows otherwise, as noun metaphors prevail in all semantic fields (with the exception of the semantic field “medicine”, where verbal metaphors prevail). This fact

supports Goatly's claim that metaphorical expressions with nouns "are either more recognizable as metaphorical expressions or yield richer interpretations than metaphorical expressions from other word classes" (Goatly 1997, 83). As for the additional semantic field "construction", it should be stressed that, despite our expectations of its being rather unproductive (as it was quite difficult to determine lemmas for the corpus analysis within this field), it shows high productivity, being, at the same time, conventionalized, and yet possessing some novel metaphorical expressions.

4.2. Qualitative analysis of the WAR metaphor in law.

As metaphors constitute a part of our everyday experience and communication, we tend to often use them subconsciously and automatically. "A large proportion of our most commonplace thoughts make use of an extensive, but unconscious, system of metaphorical concepts, that is, concepts from a typically concrete realm of thought that are used to comprehend another, completely different domain" (Lakoff 1995: 177). This statement leads us to the assumption that metaphors are

not just simple figures of speech, but that the human conceptual system is metaphorical in nature and is structured metaphorically. Based on the statement that our conceptual system occupies a central position in defining our everyday realities, and according to the assumption that “[c]ommunication is based on the same conceptual system we use in thinking and acting and language provides the evidence for what that kind of system is”, cognitive linguists propose to find out how the human conceptual system is structured by analyzing metaphors in everyday language.

As “language matters, because it can determine how we think and act” (Lakoff 2006), we started our investigation by extracting expressions from the COLE, so that they could later be analyzed to reveal the structure of basic conceptual metaphors used in Legal English. Since, according to Lakoff & Johnson (1980a), we use metaphors subconsciously, and we are not aware of our conceptual system and the way it structures our everyday life; but, at the same time, we widely use metaphors automatically “along certain lines” (Lakoff, Johnson 1980a: 3). It might be helpful to determine such “lines”, or, in other words, to establish conceptual links between different concepts underlying our conceptual system. According to Lakoff and Johnson, one of the ways to understand the human conceptual system, and to establishing these

“lines”, is to study our everyday language, as it is based on the same conceptual basis as our everyday experience and thinking.

We will start our investigation of the basic concepts, which predominate in the sphere of law and politics, by analyzing the domain of WAR. According to the results of the quantitative analysis, this particular semantic field is the most representative, as it accounts for half of all the metaphorical expressions found in the COLE. Being a complex matter, the sphere of politics and law is rich in metaphorical expressions. Furthermore, as, “so much of our social and political reasoning makes use of this system of metaphorical concepts, any adequate appreciation of even the most mundane social and political thought requires an understanding of this system” (Lakoff 1995: 177).

As has been said already, a lot of war or military metaphors are used in everyday speech and writing. “Lakoff and Johnson note that these metaphors have become part of language over a hundred years, since people tend to draw upon experiences in one area of life in order to fire fresh insight and understanding into experiences in another. Examples are given of sailors who have brought language from the sea to the land, and farmers have also adapted language from the land. Soldiers have also had such vivid, sometimes traumatic, experiences during military duty, that they have then applied that language, and relevant expressions, to non-

military situations. The use of militaristic language helps to make communication more colorful and precise” (Chapanga 2004: 67).

Another explanation for the wide usage of WAR metaphor in the political sphere is that most of the terms used to describe different notions in the legal sphere derive from our physical experience. In his article on fundamental legal conceptions, Hohfeld claims that “much of the difficulty, as regards legal terminology, arises from the fact that many of our words were originally applicable only to physical things; so that their use in connection with legal relations is, strictly speaking, figurative or fictional” (Hohfeld 1913: 6).

So, the previously mentioned theoretical assumptions, and the results of the quantitative analysis, make the conceptual domain WAR very relevant for the present investigation.

Before starting to compare *law* to *war*, it is useful to give the definition of *war*. Webster’s Revised Unabridged Dictionary and Encyclopedia Britannica define ‘war’ as follows:

Webster’s Revised Unabridged Dictionary:

A contest between nations or states, carried on by force, whether for defense, for obtaining and establishing superiority and dominion of one over the other, or for any

other purpose; armed conflict of sovereign powers; declared and open hostilities. As war is a contest of nations or states, it always implies that such a contest is authorized by the sovereign power of a nation. A war begun by attacking another nation, is called an offensive war, and such attack is aggressive. War undertaken to repel invasion, or attacks of an enemy, is called defensive.

Encyclopedia Britannica:

War is a state of usually open and declared armed hostile conflict between political units, such as states or nations or between rival political factions of the same state or nation. War is characterized by intentional violence on the part of large bodies of individuals who are expressly organized and trained to participate in such violence.

In other words, ‘war’ can be described literally as an armed conflict between states or nations, characterized by violence and hostility, and concluded by signing a peace treaty. Taking this as a basic definition for war, we can now start analyzing the metaphorical expressions extracted from the COLE. In the course of the corpus analysis, 434 metaphorical expressions belonging to the conceptual domain WAR were extracted. As the articles included in the corpus concern mainly the problems of

decision-making, or of the adoption of statutes, or new rules and bills, and describe, for the most part, judiciary proceedings, some particular cases examined in court, and the procedure of court examination of such cases, all the metaphorical expressions extracted from the corpus can be roughly divided into two groups: 1) those used metaphorically to describe judiciary procedures, and 2) those used to describe the legislative process, that is, a process of the adoption of new legislative acts.

The COLE is rich with WAR metaphors. In Legal English, the courtroom is usually described as a *battlefield*, where the *war/combat*, *battle* or *fight* takes place between defendants and prosecutors, who are considered to be ‘enemies’, and the one who is best ‘armed’ with evidence becomes a ‘winner’ in this judicial ‘war’. This statement can be proved by the following examples:

- (31) *The Court’s decision was the culmination of a battle between the former president and Congress over the ownership of million pages of documents and tape recordings from Nixon’s time in office (COLE: Duke Law Journal\November 2006, Vol. 56\Taking the sting out of reporting requirements: reproductive health clinics and the constitutional right to information privacy).*
- (32) *Prosecutors have, and the public encourages them to use, increased powers to fight the “war” on corporate crime (COLE: DOCUMENTS\Duke Law Journal\February 2009, Vol.58\A question of costs considering pressure on white-collar criminal defendants)*
- (33) *The plaintiff — now armed with funds and evidence — poses a more credible threat to the remaining defendants*

of going to trial and winning (COLE: Duke Law Journal\February 2009, Vol.58\Judgement-sharing agreement).

The same structure holds true for the legislative process, where parliament may be regarded as a ‘battleground’, where ‘the combat’/ ‘battle’ or ‘fight’ between two parties takes place for ratification and acceptance of a particular bill or statute. Regardless the role of the governing agent, one can introduce the bill, ‘defend’ or ‘attack’ it, receive a ‘victory’ (see e.g. 34) by promulgating it or be ‘defeated’ if the law is not accepted.

(34) *...its glory might stem especially in light of its argumentative purpose from its association with the great victory achieved in securing ratification of the Constitution* (COLE: Duke Law Journal\November 2006, Vol. 56\A Rhetoric for ratification the argument of the federalist and its impact on constitutional interpretation).

(35) *In 2003, Senators John McCain and Joseph Lieberman introduced this bill, which was defeated by a relatively narrow vote of 55 to 43* (COLE: Duke Law Journal\April 2007, Vol. 56\ Credit where credit is due: the legal treatment of early greenhouse gas emissions reductions).

In order to determine which conceptual links between the two social spheres of war and politics are highlighted by the WAR metaphor, we will turn to the conceptual metaphor, STATE AS PERSON, which

was described by Lakoff in his article “Metaphor and War: The Metaphor System Used to Justify War in the Gulf”. There he points out that: “(a) state is conceptualized as a person, engaging in social relations within a world community. Its landmass is its home. It lives in a neighborhood, and has neighbors, friends and enemies. States are seen as having inherent dispositions: they can be peaceful or aggressive, responsible or irresponsible, industrious or lazy” (Lakoff 1991:27).

As war is a conflict between states and nations, an equivalent correspondence for the political system is required to suit the conceptual metaphor, STATE AS PERSON. From previous examples, we see that the most suitable equivalent in this case is a government or court, which correspond to the state and nations in the WAR metaphor. The general conceptual metaphor, STATE AS PERSON, allows us to map the concept of war onto the concept of legal or legislative procedure by seeing a government or court as a state. This means that a government or court is conceptualized as a state that is at war with another state. The government is taken to be made up of enemy factions in the person of different political parties and organizations, which win or lose, or fight for some particular rights or freedoms. The courtroom is estimated to be the battlefield for the war between defendants and prosecutors who, according to the decision taken by the court, will receive either a victory

or defeat in the battle. The whole process of military action (the legal process) takes place within the boundaries of the state (the courtroom). The defendants and the prosecutors can be armed with different evidence can have allies in the person of witnesses, can bombard and attack their enemies with irrefutable arguments, thus leading their military campaign, i.e. hearing, in the court to victory, that is, in this case, a favorable decision taken by the court.

The source domain of war was chosen for several reasons. The first is that, historically, war is the most important type of event, which has greatly influenced all the nations during their history. War is a concrete event, and its actions or results can be perceived by almost all of our senses. Therefore almost everyone is familiar with the notion and structure of war. The second reason consists of the fact that the consequences of war and the legal process are rather similar. Both of them, in cases of defeat, will cause great damage to the participants; and, in cases of victory, will bring different benefits. Participation in military action causes great losses in human and economic resources; participation in the legal process can also be rather expensive, and can lead to disproportionate psychological costs, and even to psychological injuries if the case is rather serious, and the process of court examination is long.

Thus, from the previous description of the conceptual metaphor POLITICAL ACTIONS IS WAR, we can see that it can be divided into two subordinate conceptual metaphors: LEGAL PROCEDURE IS WAR and LEGISLATION IS WAR.

According to Lakoff (1993: 202), metaphor is a “cross-domain mapping in the conceptual system”. In order to describe the functioning of a particular conceptual domain in language, it is necessary to determine the system of cross-domain correspondences across a particular conceptual domain, namely the conceptual domain of WAR.

The set of ontological correspondences between the two conceptual domains of WAR and LEGAL PROCEDURE can be summarized in the following table:

WAR	LEGAL PROCEDURE
State	Court
Enemies	Opposing parties
Arms	Evidences
Battlefield	Courtroom
Military actions	Court examination
Victory	Favorable court decision
Defeat	Negative court decision

Table 15 – Ontological correspondences between WAR and LEGAL PROCEDURE

Consider the following example:

- (36) *Most litigators agree that “discovery . . . is the battleground where civil suits are won and lost* (COLE: Duke Law Journal\March 2009, Vol.59\Litigation discovery cannot be optimal but could be better: the economics of improving discovery timing in a digital age).

The metaphorical correspondences underlying the previous example reflect the conventional mapping described above, with “battleground” representing the courtroom where decisions are taken, and with the outcome of the battle being pronounced in the form of a verdict.

The next example demonstrates further correspondences between the two conceptual domains of WAR and LAW.

- (37) *The plaintiff — now armed with funds and evidence — poses a more credible threat to the remaining defendants of going to trial and winning* (COLE: Duke Law Journal\February 2009, Vol.58\Judgement-sharing agreements).

Here we can see the image of a plaintiff and defendants, standing for the enemies in the battle taking place in the courtroom, itself representing a battlefield, and victory, in this case, a favorable decision from the court, as a potential result. Thus, the second example displays a richer conceptual model, based on more elaborate cross domain correspondences.

The WAR metaphor of battle and combat during a legal process appears frequently within the following collocations: *regulatory battle*, *state battle*, *political battle*, *legal battle*, *policy battle*, etc. *Battle* in legal procedures highlights the fighting process between the opposing participants of the legal process, which supports the observation that “many of the things we do in arguing are partially structured by the concept of war” (Lakoff, Johnson 1980a: 4). Thus, here, elements and semantic features of one conceptual domain – the source domain, in our case BATTLE, are mapped onto another concept domain – the target domain, which is LEGAL PROCEDURE. Therefore metaphor is not only a matter of language, but also a matter of thought and reason.

The battles, which take place in the courtroom, can be characterized by a particular structure, or framework, and tend to include some specific components, mentioned below.

The first components of the conceptual metaphor structure are participants. The main participants in the legal process are the defendant and the prosecutor, who, in the context of battle, which takes place in the courtroom, are represented as enemies, armed with judicial orders and information, seeking victory, and doing everything possible to achieve it. The courtroom, in its turn, represents another component of the conceptual structure – the place where the action is performed, which is

lexically expressed by the lexemes of *battlefield* and *battleground*. Another element is represented by the number of events and actions that take place during the legal process, and that are performed by the opposing parties of the trial. The participants of the legal process perform a variety of actions to achieve the best results possible: they fight/combat for their rights through *courtroom battles*, and *attack* their opponents and *bombard* them with weapons in the form of evidence. They “mobilize law to protect the rights” (COLE: Duke Law Journal\February 2008, Vol. 57\The internationalization of public interest law), and use an “arsenal of tools” (COLE: Duke Law Journal\October 2007, Vol.57\Reining in the minister of justice prosecutorial oversight and the superseder power) to receive a victory in the court battle.

The second conceptual metaphor, LEGISLATION IS WAR, is represented by the following ontological correspondences:

WAR	LEGISLATION
State	Government
Enemies	Opposing parties of the parliament
Battlefield	Parliament
Military actions	Promulgation of law
Victory	Adoption of a statute
Defeat	Rejection of a bill

Table 16 – Ontological correspondences between WAR and LEGISLATION

The main participants of a WAR in political life, may be represented by members of the government itself, by its separate members, senators, representatives, judges and separate political parties. Lexically, they are represented by such lexemes as *enemy*, *warrior*, *combatant*, etc., as in the example below:

- (38) *Clarence Thomas is known as a warrior for either the civil rights movement or the African-American community* (COLE: Duke Law Journal\October 2008, Vol. 58\The next “Great dissenter”: how Clarence Thomas is using the words and principles of John Marshall Harlan to craft a new era of civil rights)

The actions undertaken to achieve respective goals in politics is regarded as political battle. The COLE gives us the possibility to notice how frequently lexical items are used in particular phraseological structures. The unified way of conceptualizing political actions metaphorically through military actions is realized in many different lexical expressions, which are found in the following examples:

- (39) *...the Court refused to allow discretionary stops aimed at combating illegal immigration in United States* (Duke Law Journal\April 2007, Vol. 56\Per se reasonable suspicion police authority to stop those who flee from road checkpoints).
- (40) *In recent years Europe, other states, and independent actors have bombarded the United States with attempts to persuade it to abolish, or at least narrow, its use of the death penalty* (CODE: Duke Law Journal\October 2008, Vol. 58\ The next “Great dissenter”: how Clarence Thomas is using the words and principles of John Marshall Harlan to craft a new era of civil rights).

- (41) *When a State enters the Union, it surrenders certain sovereign prerogatives* (CODE: Duke Law Journal\May 2008, Vol. 57\Administrative law as the new federalism).

Thus, from the previous examples, we observe that the conceptual metaphor, LEGISLATION IS WAR, is realized by a number of conceptual cross-domain correspondences, and is widely used in the COLE.

There is also a group of words frequently used in relation to the results of legislative procedures, which also constitutes an element of the conceptual structure of the metaphor, LEGISLATION IS WAR. These are the lexical expressions of defeat and victory that underlie the results of the legislative procedures leading to, or to the adoption of, the proposed law, statue, project, bill, or amendment, or to its rejection. The last component of the conceptual construction can be observed in the following examples extracted from the COLE:

- (42) *...its glory might stem especially in light of its argumentative purpose from its association with the great victory achieved in securing ratification of the Constitution* (COLE: Duke Law Journal\November 2006, Vol. 56\A rhetoric for ratification: the argument of the federalist and its impact on constitutional interpretation).
- (42) *In 2003, Senators John McCain and Joseph Lieberman introduced this bill, which was defeated by a relatively narrow vote of 55 to 43* (COLE: Duke Law Journal\April 2007, Vol. 56\Credit where credit is due: the legal treatment of early greenhouse gas emission reductions).

From the analysis, we see that the language of politics and law has a clear allusion to war. While speaking about some political events and actions, the speakers tend to use war metaphor to show the competitive spirit of the participants in the legal procedures, which leads to one side winning over another. The participants of the legal processes, their actions and goals, and the ways of achieving them, the glory of winning and regret for defeat are transformed into a war scenario; in other words, simple political activity is transformed into a battle by means of language, and taking into account the underlying conceptual correspondences between the two domains of LAW and WAR.

4.3. Qualitative analysis of the SPORT metaphor in law

The next conceptual domain to be analyzed is the domain of SPORT. As already mentioned, the two conceptual domains of SPORT and WAR are closely connected, as the war metaphor is generally used in sports commentaries, articles, and reports, due to the competitive character of both conceptual fields. But the SPORT metaphor is also widely used in political texts, as politics is often associated with

competition or sports games. At first sight, sport seems to be a rather safe and apolitical activity, providing politicians and the media with basic yet powerful concepts of human existence, namely opposition, competition, victory, and defeat.

Just as there are different teams of participants in sport, political parties, or opposing parties in court, compete with each other to secure victory. The collocates of the lemma *compete*, which are well represented in the COLE, are the following: *political competition*, *competition among plaintiffs*, *competition between parties*, *competition of political powers*, *electoral competition*, etc.

The most frequent lemma in the COLE is *win*, including the lexemes *to win*, *winning* and *winner*. This can be explained by the fact that any civil or criminal case, triggers off some form of competition between plaintiff and defendant, as in the course of every trial there are rival parties present – the defense and the prosecution, who try to secure victory at the end of the judicial procedure. Collocates of *win* in the COLE are: *to win the case*, *to win at trial*, *to win a lawsuit*, *to win a sentence*, *to win tort judgment*, *to win a claim*, *to win a right*, etc. Each are used metaphorically to show the favorable result of the judicial process, and to stress the competitiveness between the rival parties in

court, one of which will eventually become a winner, and the other a loser. Consider the following examples:

- (43) *If two parties with a stake in the matter disagree over the interpretation of a statute, regulation, or constitutional provision, courts resolve that conflict by publicly stating not only who wins the case but also what the law means* (COLE: Duke Law Journal\December 2009, Vol 59\The limits of advocacy).
- (44) *Civil litigation can reach defendants who might be invulnerable to criminal prosecution. For example, victims can bring suit against defendants who won acquittal in criminal proceedings* (COLE: Duke Law Journal\April 2008, Vol. 57\Is it wrong to sue for rape).
- (45) *The process of resolving family law disputes thus valorizes the clean lines that determining winners and losers yields, assigning parental rights and child custody to one parent over another, dividing marital assets between the parties, and otherwise bringing legal relationships to what the legal system perceives to be closure* (COLE: Duke Law Journal\March 2008, Vol. 57\Repairing family law).

Another use of the lemma *win* relates to political activity and political disputes taking place between the government and some other party. The most frequently used collocate in this sense is *government's win rate* that indicates the percentage of successful outcomes in political disputes where the government was involved.

- (46) *During the 1930s, however, we find that the government fared better in the Court — the government's win rate actually increased as the economy continued to tank* (COLE: Economic trends and judicial outcomes: a macro theory of the court).

The lexeme, *to win*, is also used metaphorically to indicate the outcome of the elections that took place between two separate candidates or parties. For example:

(47) *The increasing cost of judicial campaigns has made it extremely difficult for candidates to win elections without substantial funding* (COLE: Duke Law Journal\April 2009. Vol. 58\Are appointed judges strategic too).

(48) *If an attorney could win that race (that is, file the first lawsuit), the chances of being appointed lead counsel and controlling the litigation were substantial* (COLE: Duke Law Journal\December 2008. Vol. 58\ Milberg's monopoly: restoring honesty and competition to the plaintiffs' bar).

The last example includes another lexeme used metaphorically in the collocation with the lexeme, *to win*. It indicates not only the result of the action, but also stresses the hasty and urgent character of the action, introducing as a collocate the lexeme *race*. Another lemma, closely connected to the previous one, is *to speed*. It is used metaphorically in Legal English to stress the impetuous character of the action, and its forward motion.

(48) *It was designed to ensure that federal courts grant relief only to those state prisoners who speed their way to federal court after exhausting state judicial remedies* (COLE: Duke Law Journal\October 2008, Vol. 58\ Habeas Corpus and state sentencing reform: a story of unintended consequences).

The next lemma, representing the majority of all metaphorical expressions found in the corpus, is that of *game*. It was decided not to separate the lemma of game from the SPORT domain, nor to create a separate conceptual field of GAMES, as the domains of SPORT and GAMES are strongly interconnected, and they share most of the lemmas included in the SPORT domain. The lexeme *game* is used metaphorically in the COLE, due to the similarity between the two entities denoted by two lexical expressions, and, thus, between the meanings of these two expressions. Everyday political activity is similar to gaming, as both these activities have some special rules to be followed, some particular participants, and the outcome of the activity. Consider the example:

- (49) *Federal agencies have promulgated myriad regulations asserting preemptive authority, the U.S. Supreme Court has decided a rash of products liability preemption cases, and Congress has gotten in on the game, holding hearings to consider legislation designed to undo the Court's handiwork in the realm of medical devices and food products* (COLE: Duke Law Journal\May 2009. Vol. 58\Federalism accountability: "agency-forcing" measures).

In this example the Congress is represented as the participant of some game, which takes place between the U.S. Supreme Court and the federal agencies.

In the course of a political game, the participants may be divided into two opposing groups, forming the *teams* in the political game, in order to achieve some mutual result:

(50) *But when the Justices believe that the economic crisis is the result of factors largely beyond the control of the government, they will often not sanction federal policymakers but instead seek to work as a team with the other branches of government to remedy the national crisis, much as voters and judges tend to rally around the president in times of foreign threats and nationwide emergencies* (COLE: Duke Law Journal\April 2009. Vol.58\Economic trends and judicial outcomes: a macro theory of the court).

And, if the game takes place in the court, between the participants of the juridical process, than the judge, who is to make the final decision, is viewed as a *referee*, who, through his favorable decision, will thus give to some of the parties a *prize* won in the course of this game:

(51) *A shrewd antitrust plaintiff can play two or more defendants against each other, essentially having the defendants bid for the prize of settling first and avoiding both trial and the end of the whipsaw* (COLE: Duke Law Journal\February 2009, Vol.58\Judgment-sharing agreements).

Another lexeme, closely connected to gaming is that of *gambling*, indicating the risky character of the actions undertaken by the political authorities:

- (52) *I conclude that unless Congress is prepared to gamble with the minority franchise by allowing preclearance to expire, Section 5 (in its mandatory form) should be extended for a period of time necessary to allow Congress to evaluate the potential virtues and limitations of the opt-in approach (COLE: The case for reauthorizing section five of the voting rights act).*

Another example that was found in the COLE is related to a particular kind of sport, namely football; and, although not a lot of instances of this metaphorical expression were depicted, and the metaphor was predominantly used by one single author, it is still interesting to be mentioned, as it represents a non conventional metaphorical expression. Note the following example:

- (53) *Writing for a Seventh Circuit panel that refused to raise an overlooked (and winning) issue for a party whose lawyer dropped the ball, Judge Posner argued that “we cannot have a rule that in a sympathetic case an appellant can serve us up a muddle in the hope that we or our law clerks will find somewhere in it a reversible error (COLE: Duke Law Journal\December 2009, Vol 59\The limits of advocacy).*

Here, the metaphorical expression, *to drop a ball*, is used to denote failure to present the argument, which eventually can lead to the loss of the case.

There is also a set of words, frequently used to describe types of actions performed during sport activities that are also used in political

texts. This is another indication of the similarity between the two conceptual domains of SPORT and POLITICS. Actions are:

1. (a) jump, indicating a rapid growth:

(54) *Considering that contingency fees have been the primary payment method for plaintiffs' lawyers in most tort litigation for decades, it would not be expected that such fee arrangements would have produced a jump in the number of suits filed* (COLE: An empirical examination of the equal protection challenge to contingency fee restrictions in medical malpractice reform statutes).

2. to throw, stressing the immediate and harsh presentation of evidence and facts:

(55) *Because litigants need to choose carefully the arguments they make before the Court — due to opportunity costs created by time constraints and judicial impatience with litigants who throw every possible argument into a brief — effective signaling will often require new litigation, and will not be amenable to fact or issue manipulation* (COLE: Duke Law Journal\November 2009. Vol.59\How the dissent becomes the majority using federalism to transform coalitions in the U.S. Supreme Court).

3. to skate, representing the level of the risks taken

(56) *Instead, Posner wrote, because “these considerations were rejected by Branzburg even in the context of a confidential source, these courts may be skating on thin ice”* (COLE: Duke Law Journal\October 2007, Vol.57\Black and white and read all over press protection after BRANZBURG).

Having analyzed the separate lemmas extracted from the Corpus and the metaphorical expressions incorporating these lexemes, we can now distinguish both the source and target domains for the conceptual metaphor, POLITICS IS SPORT, and the set of mappings between these two domains.

The set of ontological correspondences between the two conceptual domains of SPORT and POLITICS are the following:

1. Participants of a game or performers of the sport activity correspond to the politicians, political parties, opposing parties in the court, judges;
2. Types of activities in sport correspond to different actions undertaken by politicians, and sport metaphors are used predominantly to stress some rapid, unexpected, or risky action, and even, in some cases, aggressiveness;
3. The positive results of any political activity or judiciary procedure can be represented as a prize received by the winning party;
4. The party which received positive results can be represented as a winner or a champion;

5. The participants involved in political activities or juridical procedures, as in sports, can form teams to achieve their goals;
6. Judges, in the course of a trial, can be represented as a referee, giving the scores to both parties, and deciding the result of the competition;

In conclusion, we can say that sport was always used as a source of metaphor as it channels the tensions, exacerbated in particularly with the development of the industrialized world, giving them a symbolic, almost ritual form, by framing them by rules and regulations.

The political texts are characterized by intertextuality. The specific metaphor belongs to the author, but it is a metaphorical model that the public knows well, and that is based on a familiar concept: "The understanding concerns the whole areas of experience and not some isolated concepts" (Lakoff, Johnson 1999: 127). The metaphor is something by which we can learn something new, by means of something familiar. The language of sports, here, presents a powerful basis for metaphorization, as any other sphere of practical activity, and the concepts of opposition, team play, and competition are traditionally present in the political domain. Without claiming that the use of the sports metaphor is a standard for the political texts, we can still stress the regularity of its presence in the juridical texts.

4.4. Qualitative analysis of the MEDICINE metaphor in law

The conceptual metaphor of MEDICINE, in law, is a metaphor whose source domain is the functioning of the human body and the means of its treatment, and the target domain is a society's political activity and the results of this activity. It is interesting to note that different political issues seem to be conceptualized preferably in terms of sickness and weaknesses of the human body rather than in terms of health and good shape.

In the literature, medical metaphors have only been discussed in relation to higher order metaphors, such as THE STATE/ NATION IS A PERSON (Lakoff 1991), THE ECONOMY IS A PERSON (Chung et al 2003), and a few others. In contrast to other types of cognitive metaphor, research into the metaphor related to medicine was not that abundant, and was related mainly to the analysis of the conceptual metaphor, THE STATE/ NATION IS A PERSON.

The metaphors of MEDICINE are analyzed in this section according to the main principles of conceptual metaphor theory, stating

that metaphors are a matter of mind, which is why they are often referred to as conceptual, rather than linguistic. According to the cognitive linguistic approach to metaphor, conceptual metaphor is based on a set of correspondences between source and target domains thus representing a cross-domain mapping. In other words, one mental domain is conceptualized in terms of another.

As already mentioned, one of the basic correspondences within the LAW IS MEDICINE metaphor, or, in particular, its lower-level metaphor, TREATING ILLNES IS RESOLVING POLITICAL PROBLEMS, is the correspondence between the human body and rival political parties or states.

It should be pointed out that metaphors are considered to have hierarchical structure, thus being structured in the conceptual system from higher level to lower level. Thus, for example, THE STATE IS A PERSON is a higher-level metaphor, and TREATING ILLNES IS RESOLVING POLITICAL PROBLEMS is a lower-level metaphor. It is necessary also to stress that there are no established rules for the classification or categorization of metaphors, and the hierarchical structure is formed in the process of analyzing a particular conceptual domain.

The most suitable correspondence within the conceptual domain MEDICINE seems to be The-Body-is-a-State-System that is also supported by the broadly distributed metaphor, THE STATE IS A PERSON. This, in turn, permits us to map the concept of illness, as we understand it in general, onto the concept of law, by seeing the person as a state or political party. This means that a political party or organization, facing some kind of political problem, or deciding a particular legal issue, is conceptualized as a person who undergoes some particular treatment.

In the COLE, MEDICINE metaphors fall into the following subcategories:

1. A PROBLEM IS AN ILLNESS OR CONDITION

*Ex.: to infect the entire decision making process;
infecting his entire trial with errors;
to infect the analysis;
Bush administration pathologies;
predictable decision pathologies;
decision making pathologies;
an appellate court is fractured
the wounds of civic life (extracted from COLE);*

2. A MEANS OF IMPROVEMENT IS A MEDICAL TREATMENT

*Ex.: temporary reauthorization is not a panacea;
a panacea for good judgment;
federal judges regularly inject new legal issues;
the parties inject a new issue;
an injection of federalism into administrative law;
a cure for judicial overreaching;*

to cure perceived deficiencies in customary international law
(extracted from COLE);

3. PROBLEM IS PAIN

Ex.: to inflame the jury's prejudice against accusers;
painful disruption to national economies
(extracted from COLE);

4. GOOD CONDITION IS GOOD HEALTH

Ex.: a healthy decision making process;
a healthy democratic forum;
the health of a liberal democracy
(extracted from COLE);

5. BAD CONDITION IS ILLNESS

Ex.: constitutional injury;
injuries caused by state-court judgments;
to injure the democratic process;
to injure public rights;
longstanding fractures in one local criminal justice system;
fractured Supreme Court;
the Court often reached a fever pitch;
Congress licked its wounds from the Supreme Court's rebuke;
the Court should not blind itself to the fact
(extracted from COLE);

5. RECURRENT/ LASTING TROUBLE IS CHRONIC CONDITION

Ex.: a chronic condition in lay decision making
(extracted from COLE);

6. EVALUATION IS DIAGNOSIS

Ex.: a symptom of an overworked or overburdened court;
symptomatic of a Court
(extracted from COLE);

As can be seen from the above list, the first two types of MEDICINE metaphors conceptualize economic and political problems in terms of illnesses. Solutions to problems, or improvements to unfavorable situations, are seen as medical treatments.

Thus, economic and political problems can be thought of as pain (type 3), a good condition or political situation is seen as good health (type 4), a poor condition or political situation is seen as illness (type 5), a political situation or problem that lasts too long is thought of as chronic (type 6), and evaluating a situation, usually bad or generally unfavorable, or any political issue causing tension, is regarded in terms of medical diagnoses (type 7).

So, to be able to understand the metaphorical mechanism, it is necessary to look at each type of MEDICINE metaphor in more details.

As noted by several researchers (Kövecses 2002; Boers 1999), there is a clear tendency to metaphorize events and phenomena that cause problems, complications, or are generally thought of as experiencing difficulties. Therefore, it is quite natural that the majority of political problems and issues are conceptualized through MEDICINE metaphors referring to illnesses of the human body. The PROBLEM IS ILLNESS metaphor offers the greatest diversity of metaphorical expressions in the COLE. So, the process of problems occurring in economics, industry, or

politics in general are positioned as a disease, sickness, or weakness; and, any improvement is conceptualized as recovery. In a several cases, however, the details of the poor condition are given, or the illness is specified. For example:

(57) *This description suggests several different perceptual pathologies that infect the entire decision making process* (COLE: Duke Law Journal\November 2006, Vol. 56\Regulation as delegation: private firms, decision-making, and accountability in the administrative state).

The diseases chosen for the source domain, through which political and economic problems are described, can be very serious, like

(58) *Phyllis Mann attributes the court system's early paralysis to "Katrina coma," which rendered capable, hardworking, talented people incapable of decision and action* (COLE: Duke Law Journal\October 2006, Vol.56\Criminal justice collapse: the Constitution after hurricane Katrina).

or they can be just referred to by a more general term as *weakness* or *illness*. The choice of the term obviously depends on the situation, which might be considered as being very bad, or just having some temporary difficulties. The choice might also depend on the language and the topic of the articles. Sometimes it is merely the author's preference. For example, if we consider the lexeme *color-blind*, which has 18 occurrences in the corpus, we notice that it is used by only one author, predominately in the collocation "*color-blind Constitution*", stressing the

democratic features of the Constitution. The COLE includes quite varied instances where problems are conceptualized either as illnesses of general character or as specific diseases.

The second most frequent metaphor was A MEANS OF IMPROVEMENT IS A MEDICAL TREATMENT. It is closely related to the previous metaphor — when a political organization, a party, or a state is seen as sick, it means that some specific measures must be taken to improve the situation. One of the features of this metaphor is that financial support, or the creation of new bills and new decisions are very often considered as *injections*, and the organizations providing this help are seen as *donors*. For example:

(59) *When judges inject new issues into litigation, they are often accused of acting as legislators — that is, of overstepping boundaries on judicial power to implement their personal ideological agenda* (COLE: Duke Law Journal\December 2009, Vol 59\The limits of advocacy).

It is interesting to note that, in many cases, improving a difficult situation is represented as curing it, or as prescribing medicine or a particular treatment. Therefore, the most numerous lexical items employed in the metaphors are: *cure*, *inject*, *immunize*, and *remedy*. The first two types of metaphors are quite coherent in their mappings, as politicians or judges, when they experience a problem, are generally conceptualized as doctors, who, later, when the diagnosis has been

established, choose the proper treatment by prescribing medicine or giving injections.

Apart from a specific disease or general illness, problems in politics can be represented as pain, being conceptualized in the third type of metaphor, PROBLEM IS PAIN. The linguistic realization clearly shows preference given to the lexeme *pain* in general.

- (60) *First, reductions must take place soon if the world is to meet the goal of the UNFCCC and thereby avoid dangerous, human-induced changes in the earth's climate without painful disruption to national economies* (COLE: Duke Law Journal\April 2007, Vol. 56\Credit where credit is due: the legal treatment of early greenhouse gas emissions reductions).

The second broadly distributed lexeme in the COLE that is a linguistic realization of the type 3 metaphor is that of *headache*, for example:

- (61) *Parallel actions create more headaches for judges than a single action would* (COLE: Duke Law Journal\April 2008, Vol. 57\Is it wrong to sue for rape).

The other three metaphors, GOOD CONDITION IS GOOD HEALTH, BAD CONDITION IS BAD HEALTH, LASTING TOO LONG IS CHRONIC, and EVALUATION IS DIAGNOSIS, are represented by such lexemes as *healthy*, *ill*, *wounded*, *chronic*, and *symptom* respectively.

The present analysis of MEDICINE metaphors in the COLE has resulted in confirming the general statement that many political issues are described through human diseases, wounds, and illness. This thus leads to the conclusion that MEDICINE metaphors are deeply entrenched in the cognition and conceptual system.

When conceptualizing political economic issues in terms of health problems, linguistic realizations both of specific diseases and disorders of more general character are used. We came across numerous instances referring to the recovery of politics. When politics requires improvement, these improvements are conceptualized in terms of treatment by means of donors and injections, or general therapy. When problems are thought of in terms of pains and aches, they are conceptualized as headaches.

4.5. Qualitative analysis of the CONSTRUCTION metaphor in law

The last conceptual domain to be analyzed is that of CONSTRUCTION. As has been mentioned, it includes only 16 lemmas, being a very specific semantic field. Despite the fact that Kövecses (2002: 17) distinguishes this source domain among the most common domains

used for the creation of conceptual metaphors, it comprises terms of very specialized meaning, and is rather rarely used metaphorically.

The semantic field “construction” includes two types of lemmas: these belonging to the process of construction (*to construct, to engineer, to decorate, to erect, to hammer, to underpin, to ruin, etc.*); and those which represent the result of the construction (*building, door, wall, window, foundation, etc.*).

The main correspondences between the source domain of CONSTRUCTION and the target domain of LAW are based on the fact that legislative processes, in human experience, can be cognitively represented as processes of building and construction. Thus, the most basic correspondence between the source and target domains is the Legislative-Action-is-a-Building-Process. The ontological correspondence between the process of construction of the building and the process of legislation is realized at the lexical level by the following lexemes: *build, construct, ruin, repair, paint, hammer, decorate, etc.*

For example,

- (62) *When that war ended, the belligerent powers met in Paris to hammer out a peace treaty* (COLE: Duke Law Journal\March 2007, Vol. 56\The dilemma of odious debts).

- (63) *Reparative laws, reparative procedures, and reparative practice standards would not only help repair the most important relationships people enter into, they would also help repair family law itself* (COLE: Duke Law Journal\March 2008, Vol. 57\Repairing family law).
- (64) *Judges in inquisitorial systems initiate proceedings, collect evidence, and determine how to construct and resolve the legal and factual issues in the case* (COLE: Duke Law Journal\November 2008, Vol 58\Victims' rights in an adversary system).

Thus, legislators, and judges during a trial, are conceptualized as builders or engineers of the legal and juridical system, as, by their actions that lie in the analysis and development of the new bills, and in making decisions during the hearing of a case, they are building structure for the future legislative system. As “Human beings build houses and other structures for shelter, work, storage, and so on”, and “(b)oth the static object of a house and its parts and the act of building it serve as common metaphorical source domains” (Kovecses, 2003: 17), the structure is conceptualized in the COLE by the following lexemes:

1. Architecture;

- (65) *To understand why, one must take a step back to gain a better grasp of the purpose and architecture of the Constitution* (COLE: Duke Law Journal\December 2009, Vol 59\Not peace, but a sword: Navy v. Egan and the case against judicial abdication in foreign affairs).

In the example (65) the structure of the Constitution is conceptualized via lexeme *architecture*, thus creating a metaphorical

correspondence between the domain of CONSTRUCTION and that of LAW.

2. Foundation;

In the following example the lexeme *foundation* is used to stress the solid and reliable character of the Supreme Court decisions as the basis for the rights and to create a metaphorical correspondence between the two domains mentioned earlier.

- (66) *Section A presents the Supreme Court decisions that form the legal foundation for parental rights (COLE: Duke Law Journal\October 2009. Vol. 59\When insiders become outsiders: parental objections to public school sex education programs).*

3. Door;

- (67) *The application notes should indicate that certain prosecutorial tactics open the door to the admission of evidence concerning an accuser's parallel civil litigation (COLE: Duke Law Journal\April 2008, Vol. 57\Is it wrong to sue for rape).*

The metaphorical expression containing the lexeme *door* in this example is used as correspondence to the possibilities that arise after certain prosecutorial tactics.

4. Fence;

- (68) *Professors Zimmerman and Birnhack aspire to construct a constitutional fence around their public domains that*

Congress and courts cannot breach (COLE: \Duke Law Journal\February 2006, Vol.55\Enriching discourse on public domains).

Here the lexeme *fence* corresponds to an obstacle for the legal actions of the court.

So, despite the fact that the conceptual domain of CONSTRUCTION is not so widely represented as the other three domains, it shows strong conceptual correlations with the domain of law in the COLE, and thus represents one of the basic source domains for conceptual metaphors in Legal English.

CONCLUDING REMARKS

The present dissertation investigates the cognitive interpretation of conceptual metaphors in Legal English. The research is set within the framework of Conceptual Metaphor Theory (CMT), which views metaphor as *linguistic expression* and *thought process*. Thus, the present study was designed to determine the main concepts that are used metaphorically in Legal English and to reveal the conceptual mappings involved in the creation of common conceptual metaphors in law.

The theoretical framework was established and the main theories of metaphor described, namely the Conceptual Metaphor Theory. Special attention was paid to the application of the main tenets of CMT to Legal English.

In order to achieve the main goals of the investigation and to conduct a thorough and detailed analysis, a corpus of Legal English was especially designed. The main stages of corpus compilation were analyzed and the main principles of corpus creation such as finite size, representativeness and balance were explained, since they were taken into consideration when designing the *Corpus of Legal English* (COLE). 156 texts, representing 1,694,856 words and displaying great topic variety were selected.

All the frequency counts and semantic analyses presented in this dissertation were based on the empirical data extracted from the COLE.

Basic statistical information was first presented, showing the most frequent words in the COLE and confirming the prevalence of functional items. The relative frequency of specialized legal terms was also established in the process.

Special attention was paid to the examination and description of existing tools for corpus analysis. As a result, three basic methods of corpus processing were chosen to conduct the research. These include the following methods: manual search; searching for the vocabulary attached to a given source domain; searching for the vocabulary associated with a target domain; searching for sentences containing the items from both the source and the target domains.

The manual search showed that in this corpus, metaphorical expressions belonging to the semantic fields “war”, “medicine”, “sport” and “construction” prevail. So, the quantitative analysis of all the lexical realizations within each semantic field was made and in the process it was found that the lexical realization of the WAR metaphor occupies a dominant position in Legal English, accounting for 419 attested metaphorical expressions (43 % of all metaphorical expressions found in the corpus), while the domain of SPORT accounts for 270 metaphorical expressions (27%), and the domain of MEDICINE exhibits 139 expressions being realized metaphorically (15%). The semantic field of CONSTRUCTION is less representative from the point of view of

metaphorical expressions being analyzed. At the same time, it is necessary to mention that this field shows a rather high metaphorical density, as, out of 946 tokens being analyzed, 150 represent metaphorical expressions.

In the course of the quantitative analysis of the domains of WAR, SPORT, MEDICINE and CONSTRUCTION, basic cross-domain correspondences and metaphorical mappings between the source and target domains were established. From this analysis, we see that the language of LAW makes a clear allusion to WAR. While speaking about some political events and actions, the speakers tend to use WAR metaphors to show the competitive spirit of the participants in the legal procedures, which leads to one side winning over the other.

The next semantic field to be analyzed was that of “sport”. The language of sports presents a powerful basis for metaphORIZATION and lexical realizations of the SPORT metaphor were found to be widely used to conceptualize political difficulties.

As for the lexical domain of MEDICINE, it was noticed that different political issues seem to be conceptualized preferably in terms of sickness and weaknesses of the human body rather than in terms of health and good shape. The semantic fields mentioned above are predominately characterized by the conventional character of the conceptual metaphors

used in political sphere, while the lexical domain of CONSTRUCTION tends to demonstrate the presence of novel conceptual metaphors. Though underrepresented, the lexical domain of CONSTRUCTION shows strong conceptual correlations with the domain of law, and thus represents one of the basic source domains for conceptual metaphors in Legal English.

In the course of the present dissertation, some of the conceptual metaphors that permeate the sphere of law gradually became apparent as quantitative and qualitative analyses of their linguistic realizations in Legal English were carried out. Thus, the cognitive theory of metaphor was related to precise frequency counts.

This corpus study provides empirical confirmation of the central tenets of Conceptual Metaphor Theory. Firstly, the results clearly demonstrate that metaphor is pervasive not only in everyday language but in specialized discourse, like Legal English. Such is the prevalence of metaphor that some lexical expressions display fewer literal realizations. For example, nearly 60 % of the uses of the lexeme *battle* in the COLE are metaphorical.

Secondly, the analysis of the data retrieved from the corpus showed that many metaphorical expressions are systematically connected with one another. The study established linguistic evidence for a large number of semantically related metaphorical expressions. For example, the target domain WAR is semantically interconnected with the target domain

SPORT via such lemmas as *win* and *victory*. And the target domain SPORT in its turn includes a system of linguistic metaphors from the source domain MEDICINE.

The studies also provided support for the claim that cross-domain mappings take place at the level of thought, as in course of the analysis of our data it was found that groups of lexical items and not separate items were mapped from the source domain onto the target domain. For instance, the synonym of the lemma *game*, *gamble* seems to be used in the same target domain, possessing at the close metaphorical meaning in the target domain LAW.

Further, corpus study confirms previous claims of the CMT and contributes additional evidence that suggests that in the course of communication, novel metaphors can be created by mapping new items from a source onto a target domain according to the already existing patterns of metaphorical mapping. For instance, *volley* seems to be rather novel metaphor in the domain of LAW and is used by one particular author. Such novel metaphors can be further conventionalized.

The theoretical value of the research lies in the fact that the studies carried out in the dissertation were based on the application of corpus data in contrast to the use of small parts of texts or separate examples. The use of corpus data has facilitated the analysis of a large number of

naturally occurring citations of lexemes, thus enabling us to receive clear results and examples of typical language use.

The practical value of the present research consists of the main corpus processing methods for the analysis of conceptual metaphors that were described and practically used to show the way in which the corpus data may be processed and analyzed. Methods used for the analysis of conceptual metaphors in legal language in the present dissertation can be applied for further investigations.

A number of limitations need to be noted, regarding the present study. First of all, it is necessary to point out that in the study of any given language it is difficult to choose examples that will be representative the language as a whole. In the present study the lemmas for analysis were chosen on several grounds. Some because they have already been discussed in the literature on metaphor, and some because they emerged from the previous analysis of legal articles. All of them proved to be rather numerous and were cited several times in the COLE. At the same time, another set of examples might have been found and in this case the study might have revealed different patterns of meaning and use. The examples in the present study, though based on reliable empirical data, represent only very small sections of the lexicon. It is thus possible that there are patterns of metaphorical expressions that are not represented in the present dissertation.

Further studies might be carried out in the near future, using the same experimental set up. The analysis of more peripheral forms of conceptual metaphor in legal language might be worthy of investigation. The present study focused mainly on four generalized conceptual metaphors. It might be interesting to search the Corpus of Legal English for less central (but meaningful) metaphors. Among relevant source domains proposed for further investigation are those of the THEATRE and the ARTS.

Another interesting point to consider is the use of metaphorical expressions in the press, when LAW is discussed. The present research was based on the juridical discourse of academia, with a high concentration of specialized legal terminology. It would certainly be illuminating to look at the metaphorical expressions found in the media or in everyday language, whenever legal matters are discussed or touched upon. Special attention should be paid to the influence that metaphorical expressions have on the hearer, to the feelings and emotions that these expressions may induce or encode, and to ways in which professional writers or orators may gain conscious, strategic control over their readers and listeners, by using calculated metaphorical devices.

The present study was focused mainly on the use of metaphorical expressions in Legal English, regardless of stylistic peculiarities. Still, it was noted that some authors tend to use more metaphorical expressions

than others, or that some authors tend to use one particular type of conceptual metaphor in contrast to others. It would be interesting to conduct a corpus-based examination of idiosyncratic variations, in order to establish whether some authors are inclined to use a higher number of metaphorical expressions, regardless of the topic discussed, or whether the topic discussed remains the upmost determining factor. Finally, a look at variation across English-speaking communities might reveal the culture-specific peculiarities of conceptual metaphors.

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APPENDIX 1: CITATIONS EXTRACTED

FROM SEPARATE ARTICLES

Those findings serve as a reminder that, despite their training and experience, judges are not immune from the imperfections in reasoning that are widespread in the general population (COLE: Duke Law Journal\April 2009.Vol.58\Probing the effects of judicial specialization).

Even if judges make their actual decisions under conditions that reduce those imperfections, it is implausible that the imperfections disappear altogether when judges are on the bench (COLE: Duke Law Journal\April 2009.Vol.58\Probing the effects of judicial specialization).

Different as those two meanings are, they share the premise that expertise improves judges' capacities to reach decisions that are consistent with what they are trying to accomplish (COLE: Duke Law Journal\April 2009.Vol.58\Probing the effects of judicial specialization).

Although the surveillance court constitutes part-time duty for the federal judges who sit on it, each of those judges typically hears several dozen requests a year for warrants to conduct electronic surveillance (COLE: Duke Law Journal\April 2009.Vol.58\Probing the effects of judicial specialization).

In the twentieth century, though, medical technology advanced significantly, and this consensus began to erode (COLE: Duke Law Journal\March 2009,Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

The courts that have extended the scope of homicide statutes to reach the killing of a fetus have had to address and overcome this common law hurdle (COLE: Duke Law Journal\March 2009,Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

In the sixteenth and seventeenth centuries, when the born-alive standard became entrenched in the criminal law, medicine was

still in its infancy (COLE: Duke Law Journal\March 2009,Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

Moreover, exploring the issues that arise within the context of existing feticide laws demonstrates that criminalizing feticide is not an all-or-nothing proposition; rather, judges and legislators can tailor the crime to best fit the political and moral views of the state's citizens (COLE: Duke Law Journal\March 2009,Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

Opponents worry that recognizing fetuses as potential homicide victims is a step toward imbuing fetuses with full legal personhood, which would necessarily curtail a woman's reproductive liberties (COLE: Duke Law Journal\March 2009,Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

Many who oppose feticide legislation do so out of the concern that recognizing unborn children as human beings in the homicide context will undermine a woman's constitutional right to an abortion (COLE: Duke Law Journal\March 2009,Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

Proponents of the slippery slope argument have not described *how* fetal homicide laws affect abortion rights, but instead point to the potential for these laws to color the abortion debate.

Minnesota's approach benefits from treating feticide comprehensively, as it includes provisions that specifically immunize the mother from liability and that make the statutes inapplicable in the abortion context (COLE: Duke Law Journal\March 2009,Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

It would also include provisions that immunize mothers from liability and make the statute inapplicable to legal, controlled abortions (COLE: Duke Law Journal\March 2009,Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

Finally, legislatures can also use sentencing provisions to fine-tune a fetal homicide punishment depending on the factors that they deem relevant (COLE: Duke Law Journal\March 2009,Vol.59\Abandonment and reconciliation addressing political and common law objections to fetal homicide laws).

The ICCPR built on the UDHR by both adding detail and providing binding norms (COLE: Duke Law Journal\April 2006,Vol.55\Acculturation and the development of death penalty doctrine in the United States).

The abolitionists were beginning to make headway, although their progress soon slowed and became plagued by setbacks, such as Iowa's reinstatement of the death penalty in 1878, Maine's temporary reinstatement of the death penalty from 1883 through 1887, and Colorado's reinstatement of the death penalty in 1901 (COLE: Duke Law Journal\April 2006,Vol.55\Acculturation and the development of death penalty doctrine in the United States).

In recent years Europe, other states, and independent actors have bombarded the United States with attempts to persuade it to abolish, or at least narrow, its use of the death penalty (COLE: Duke Law Journal\April 2006,Vol.55\Acculturation and the development of death penalty doctrine in the United States).

This strong onslaught of persuasion has had some effect in the United States (COLE: Duke Law Journal\April 2006,Vol.55\Acculturation and the development of death penalty doctrine in the United States).

This light pat on the United States' back indicated that the European Union would be even more enthusiastic toward the United States if it eventually decides to completely abolish the death penalty (COLE: Duke Law Journal\April 2006,Vol.55\Acculturation and the development of death penalty doctrine in the United States).

The path the United States has embarked upon in continuing to restrict the application of the death penalty is oddly similar to that of Europe, which only finally abolished the death penalty after many years of slow reform (COLE: Duke Law Journal\April 2006,Vol.55\Acculturation and the development of death penalty doctrine in the United States).

In February 2002, the Board of Immigration Appeals (BIA), which adjudicates appeals from the immigration courts of the United States, was broken and badly in need of repair (COLE: Duke Law Journal\May 2009. Vol. 58\A more perfect system the 2002 reforms of the board of immigration appeals).

Even though they knew their clients could not win, such lawyers could exploit the bottleneck in the system to guarantee their clients additional years within the United States (COLE: Duke Law Journal\May 2009. Vol. 58\A more perfect system the 2002 reforms of the board of immigration appeals).

On February 6, 2002, the Department of Justice announced a package of sweeping reforms of the BIA (COLE: Duke Law Journal\May 2009. Vol. 58\A more perfect system the 2002 reforms of the board of immigration appeals).

The 2002 reforms, in combination with the earlier reforms of 1999, prompted a volley of due process challenges in eleven U.S. circuit courts of appeals, all of which were decided in 2003 and 2004 (COLE: Duke Law Journal\May 2009. Vol. 58\A more perfect system the 2002 reforms of the board of immigration appeals).

Against this backdrop, any due process challenge to the BIA streamlining reforms of 1999 and 2002 was destined to be an uphill struggle (COLE: Duke Law Journal\May 2009. Vol. 58\A more perfect system the 2002 reforms of the board of immigration appeals).

The Ninth Circuit concluded by reiterating the Supreme Court's statement that "administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties (COLE: Duke Law Journal\May 2009. Vol. 58\A more perfect system the 2002 reforms of the board of immigration appeals).

But the classic dialogue between an autonomist's protection of the rescuer and the humanitarian protection of the rescuee has thus far neglected a thorough treatment of a figure viscerally affected by the slow erosion of the historical no-duty rule: the hero (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the

hero: the ramification of expanding the duty to rescue on society and the law).

The discussion that continues is broad—each side takes its own stance on the realistic likelihood of successfully defining legal causation, respecting individual liberty, overcoming the practical difficulties of enforcement, and wrestling with the special relationship and affirmative act exceptions to the duty to rescue should it expand (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

Amidst the debate between autonomists and utilitarians, this Note argues that the significance of heroes is another, separate factor that ought to be considered by those who would shift the line of the law to gradually erode the no-duty rule, and in so doing, narrow the realm of potential heroic acts (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

Part II examines the slow erosion of the common law no-duty rule, including the evolution of the Restatement and Good Samaritan laws, and discusses the theoretical and philosophical views motivating the movement (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

First, a legal requirement to rescue would invade autonomy, which is closely related to two other propositions: the consent-of-the-governed rationale and the harm principle (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

In addition to the forces of social identity and legal structure that supported an autonomist perspective, the no-duty rule paralleled the psychological underpinnings of early common law, which recognized that the desire to rescue—because of its risks—ran counter to the “natural law” principle of self-preservation (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

In so doing, the court rejected the plaintiff's theory that the special relationship limitation had been eroded to the point that it was "out of step with contemporary societal morals (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

But Wisconsin narrows the duty by requiring these actions only when one "knows that a *crime* is being committed" (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

The stamp of law, however, forces the two into an odd dichotomy (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

It does not necessarily follow, however, that even small expansions of the duty do not threaten the stability of the hero as a social figure or a foil for the law (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

Proponents of expanding the duty who insist so early in the jurisprudence that the law will never head in the extreme direction of requiring unreasonable rescue forget that reason's counterpart—emotion—has largely dictated the jurisprudence so far (COLE: Duke Law Journal\October 2009.Vol. 59\Rescuing the hero: the ramification of expanding the duty to rescue on society and the law).

APPENDIX 2: CORPUS DATA

CLASSIFIED ACCORDING TO

SEMANTIC FIELDS

SEMANTIC FIELD “WAR”

1. Attack, to attack, attacker, counterattack, attaching;
2. Arm, armour, to arm, armed,
3. Arsenal;
4. Backfire;
5. Battle, battlefield, battleground, to battle, embattled;
6. Bombing, bombshell, bombard, bomb;
7. Campaign, to campaign;
8. Combat, to combat, combative;
9. Defeat, to defeat, defeated;
10. Enemy, arch-enemy, inimical
11. Fight, to fight, fighting;
12. To invade, invaded, invader, invasion;
13. To launch, launch, launching;
14. To mobilize, to demobilize, mobilization;
15. Onslaught;
16. Surrender, to surrender;
17. Victory, victorious;
18. Volley;
19. War, to war, warfare, warrior;
20. Weapon

Attack\ to attack\ attacker\ counterattack\ attaching

The fragility of international advocacy should not be read, however, as an indictment of the broader effort. Rather, it underscores a consistent historical lesson of the public interest law movement: legal victories are not etched in stone and must be monitored and protected from counterattack to be sustained.

Another example of the growing scholarship on implicit racial bias is Antony Page's critique of the *Batson v. Kentucky* three-step procedure for attacking peremptory challenges.

To make my point, I first examine three sets of "evolving standards" death penalty decisions in which the Court implicitly or explicitly reversed itself, attacking the legal justification for the Court's change of position and offering an extralegal explanation for why those cases came out the way they did.

Rule 616 provides: "For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against a party to the case is admissible."

Justice Scalia commences his series of attacks on the use of foreign law in decisions interpreting the U.S. Constitution in his dissent in *Thompson v. Oklahoma*, in which he finds the plurality's reliance on the persuasive precedent of foreign practice to be "totally inappropriate.

In the 2002 Supreme Court case of *Thompson v. Western States Medical Center*, and the 1999 D.C. Circuit case of *Pearson v. Shalala*, speech-related provisions of the FD&CA came under withering constitutional attack.

At an extreme, the rise of the OFPA, the revival of First Amendment scrutiny in the commercial sphere, and the subtle but very palpable shift from the Progressive Era's bureaucratic model of consumer protection to a more consumer- and market-oriented model may bring the misbranding provisions of the FD&CA under constitutional attack.

The congressional directives, however, are intended to ensure that the USDA broadens the scope of the FMNV definition and employs a strong science-based approach while attempting to stave off industry attacks on the methodology as arbitrary and capricious.

Otherwise the later attack takes on artificial meaning because it suggests not only that the witness is biased but that the proponent tried to hide it.

Legal challenges to such ordinances and statutes are still percolating in the courts, but have thus far generally been upheld against various constitutional attacks.

In cases of regulatory physical incapacitation, then, the degree of process appears mainly to either bolster the regime against substantive due process attack, or else serve as a basis for wholesale invalidating it.

Upheld apportionment-based attacks on LDP electoral victories, during the years when the LDP relied on a rural base;

Scholars, politicians, and the public at large will, of course, always be free to criticize the Court's decisions and members as they see fit, but an all-too-common attack on certain Justices — Souter, Kennedy, and O'Connor in particular — is that their nominations were “mistakes” by the appointing president, and that they are somehow “traitors.”

This was viewed as the most practical and efficient way of challenging discrimination, for it allowed a “broad, rather than . . . piecemeal, attack upon discriminatory employment practices.”

Citing *Wards Cove*, the court held that plaintiffs could not avail themselves of the disparate impact theory because they “merely launched a wide-ranging attack on the cumulative effects” of the defendant's policies rather than “isolating and identifying the specific employment practices” that created specific inequities.

First, the right to education is uniquely vulnerable to majoritarian attack because very few of the right holders are members of the electorate.

Thus, the argument that such conduct is immune from attack by principles-based enforcement actions falls flat.

Taft-Hartley emerged partly in response to increasing attacks that this powerful arrangement, known as the “closed shop,” discriminatorily barred free employment and threatened individual liberty.

I can't believe people put up with it, I really can't[.]” said Rick Johnson, who mounted a successful multi-prong attack on the NCAA's no-agent rule in the Andy Oliver case, winning an injunction as well as a \$, settlement after an initial ruling on the merits.

In focusing their attack on the gap between what the Commission has urged and the government has done, opposition figures have managed to ridicule the government for “playing politics” with the integrity of the electoral system, while insulating themselves against the symmetric countercharge.

It is problematic because politically insulated counterparts may have incentives to scandal monger — and, more particularly, to go on the attack against top government officials.

At the same time, his attention was drawn away from enforcement efforts as the NAACP and the LDF lawyers found themselves under attack in the South.

The irrelevance-of-motive maxim — the longstanding principle that a defendant's motives are irrelevant to criminal liability — has come under attack.

Yet despite judicial reliance on this maxim, and despite Professor Hall's characterization of it as an unquestioned principle of law, the irrelevance-of-motive maxim has come under attack from normative, empirical, and logical criticisms.

One strain of advocacy aimed at protecting immigrant access to public resources, which prominently came under attack with the passage of California's Proposition as a statewide ballot initiative.

In Kuhlmann, the Court stated that the “[u]nlimited availability of federal collateral attack burdens our criminal justice system as successive petitions divert the time of judges, prosecutors, and lawyers from the important task of trying criminal cases.”

Legal challenges to such ordinances and statutes are still percolating in the courts, but have thus far generally been upheld against various constitutional attacks.

Indeed, the strength of this last point often fuels the attack on subconstitutionalism as an abuse of judicial authority: courts can play fast and loose with constitutional review because they do not have to resolve constitutional challenges decisively or face the full consequences of their constitutional rulings.

To be sure, such invalidations can create significant obstacles for agencies, and attacks on judicial review for ossifying agency rulemaking are a well-worn component of the administrative law oeuvre.

The attitudinal model has been a consistent target for attack, and for good reasons: it does not adequately account for the role of law and precedent in judicial decisionmaking, it indulges fanciful assumptions about the nature of judicial preferences, it fails to account for judicial deliberations, and it has an impoverished account of ideology and law.

Prominent antifederalists such as Melancton Smith trumpeted objections to the charter; Lansing and Yates soon joined the chorus; and the local essayist “Brutus” (believed by many to have been Yates himself) leveled trenchant attacks against the Constitution.

Responding to attacks on the congressional power to maintain a standing army, Hamilton noted that the framers' proposed treatment of this subject corresponded "to the general sense of America, as expressed in most of the existing constitutions."

The attacks have had mixed results, with the majority of states upholding the statutes as constitutional and two states invalidating their laws as unconstitutional.

This approach interprets the rationale behind the Rooker- Feldman doctrine primarily to be the prevention of collateral attacks on state court judgments.

In holding that the district court had jurisdiction over the general attacks, the Court expressly did not reach "the question of whether the doctrine of res judicata foreclosed litigation" of those claims, an explicit indication that the Court differentiated between res judicata and "inextricably intertwined."

"What this case seems to amount to, for me, is an all out attack on the grand jury system."

Indeed St. George Tucker, in his introduction to the 1803 edition of Blackstone, attacked the applicability of English law to the states and used the inapplicability of English property law as a particular example.

Plus the Chamber of Commerce is hardly a neutral organization; it is a lobbying group that even becomes involved in individual elections, spending large sums attacking and supporting different candidates.

Congress has rendered this judgment. And in its briefs attacking the plans before the Court, even the United States labels the interest in avoiding minority student isolation "unquestioned" and "undoubtedly legitimate and important."

One might also anticipate that broad jurisdiction would, over time, help the counterpart to achieve a higher public profile, such that attacks on its independence are more likely to register with the citizenry.

Thus, political philosopher Jeremy Waldron attacks countermajoritarian constraints as disenfranchising citizens and privileging the value preferences of judges who are subject only to limited political constraints.

The libertarian jurisprudence that Hale attacked arose from the constitutional right of contract and common-law free labor position discussed in Part I.

It is no minor fact that under the laissez-faire law that Hale attacked, recruitment could not turn on overt coercion.

The efforts of Mexican-American groups to attack systemic segregation reflected the emerging model of public interest law reform that would come to be identified with the civil rights period.

The Center for Constitutional Rights (CCR) has played a key role in designing and executing test-case litigation to embed human rights within American law, gaining wide notoriety for resuscitating the ATS as a tool to attack human rights abuse.

Individually, the Justices have attacked the Court's modern jurisprudence for abandoning the amendment's historical and textual antecedents.

Exclusion of evidence as a remedy to a Fourth Amendment violation has been attacked on historical and practical grounds, including the fact that it was unheard of in early America, that it does not enhance judicial integrity and fairness, and that an illegal search is rarely a but-for cause of the introduction of evidence.

The affidavits attacked earlier trial testimony regarding petitioner's drug activities.

The court instead chose to use the void-for-vagueness doctrine and notions of due process to attack the Norwood Code that authorized the takings of deteriorating areas.

From the perspective of the present, the equality law of old was a tragedy of formalism: the law proclaimed its faithfulness to equality openly and often but did nothing to attack massive and real inequalities of race and sex.

Holden, however, did not defeat the efforts of big business to use equality doctrine to attack regulation.

The entire point of the Galle and Seidenfeld article is to attack doctrines requiring federal intrusions on state regulatory authority to come from Congress, rather from federal administrative agencies, the most prominent of which is the presumption against preemption.

These statutes have been repeatedly attacked in state courts as a violation of due process, the right to counsel, separation of powers, and most often equal protection.

In *Johnson v. De Grandy* the Court held that *Rooker-Feldman* did not bar a Voting Rights Act suit by the United States, despite a prior decision by a state supreme court, because the United States was not a party to the state suit and did not directly attack the state court judgment in the federal action.

Of particular importance to this Note, the “code is law” theory has been attacked for its misrepresentation of important privacy considerations.

In each set of cases, I attack the doctrinal explanation for the Court’s change of position, offering broader historical context as an alternative, nondoctrinal explanation for why the cases came out the way they did.

Even the NAACP Legal Defense Fund (LDF), which launched the litigation campaign that culminated in *Furman*, did not begin to systematically attack the death penalty’s constitutionality until Second, sociopolitical context influenced how the Court’s newly derived Eighth Amendment protections took shape.

Contemporary magazine and newspaper articles complained about racial and economic discrimination in the imposition of death, the ACLU and LDF attacked the death penalty’s constitutionality because of it, and the amicus briefs in *Furman* attested to it.

In *Gregg*, the Court formally adopted the “evolving standards” doctrine introduced in *Furman*, using the same theory to affirm the death penalty’s constitutionality as had been used **to attack** it four years earlier.

If the Eleventh Circuit wanted **to attack the PROTECT Act** for First Amendment unconstitutionality ab initio, it could have at least chosen a more sympathetic defendant — one not in possession of actual child pornography.

Consumer advocates have attacked this result as unfair.

Moreover, when it becomes apparent that the representative is inadequate after certification, some courts allow class members to collaterally attack the district court’s adequacy finding.

They instead attack administrative actions by state prison officials or parole boards, actions taken long after the petitioner’s conviction and sentencing.

Since the 70s, developments in the law governing the scope of federal habeas review for state prisoners have proceeded on the assumption that a state prisoner seeking habeas relief is attacking the legality of his confinement by alleging a constitutional error in the decision that led to his incarceration.

These sentence-administration claims are neither fish nor fowl: unlike most habeas petitions, they do not challenge state court convictions or sentences; unlike most other prisoner litigation against corrections officials, they do not attack conditions of confinement.

Nevertheless, the Court held that they had to file their claims under the habeas statute because they were “attacking the validity of the fact or length of their confinement.”

The Preiser Court explicitly limited its holding to suits seeking accelerated release: If a state prisoner is seeking damages, he is attacking something other than the fact or length of his confinement, and he is seeking something other than immediate or more speedy release — the traditional purpose of habeas corpus.

But throughout the remainder of their custody, violators could continue to attack the constitutionality of each and every decision made by state prison and parole authorities affecting the timing of their release.

As a result, an increase in the proportion of prisoners returned after release logically would increase the percentage of habeas petitions that attack sentence-administration decisions rather than criminal judgments.

Arm\ armour\ to arm\ armed

The increased decisionmaking capacity afforded by our proposal would arm the Court with a more credible threat of review.

But they will cumulatively have the effect of making it much harder to prove a case and, therefore, make it more difficult for the regional attorneys, who are the enforcement arm of the Board, to bring cases.

This policy impasse has left regulators at all governmental levels to face contemporary nutrition issues armed with decades-old regulations based on outdated science.

Otherwise creditors who are fully aware of a consignee’s consignment practices might be armed with a tool to undermine the consignors’ claims to their goods.

The plaintiff — now armed with funds and evidence — poses a more credible threat to the remaining defendants of going to trial and winning.

Two years later, Reynolds v. Sims armed the Court with a simple standard that forever changed the course of judicial involvement in politics.

County sheriffs arrived at storage sheds armed with the judicial order and attempted to seize the equipment.

Armed with information about a proposed change to a voting practice or procedure, civil rights groups would be able to make decisions about which investigations to initiate on the basis of the “local motives and electoral consequences that DOJ officials cannot possibly hope to possess.”

Armed with these new insights, Congress passed the Food Quality Protection Act of 1996 (Food Protection Act) designed to establish administrative mechanisms that reevaluated the safety of pesticides specifically in light of the National Academy’s report.

Armed with Harlan’s colorblind Constitution, Thomas has fought vigorously for the racial equality that he believes the founders promised in the Declaration of Independence.

Armed with his own construction of Harlan’s colorblind Constitution, Thomas has taken aim at the one case most often associated with racial equality.

Arsenal

In this way, a reauthorized Section 5 would become one of the most powerful strategic weapons in the Democratic Party’s arsenal.

Censorship becomes a weapon in a government’s arsenal, deployed arbitrarily rather than enforced consistently.

In theory, trial courts serve an important prosecutorial oversight function, boasting an arsenal of tools through which to curb prosecutorial misbehavior, such as the power to suppress evidence and quash charges.

The result is a vicious cycle: thickets of rights that are expensive (or nearly impossible) to clear, requiring an ever-larger arsenal of defensive protection.

Backfire

Care is necessary, because efforts to reform corporate governance can easily backfire, even the kind of reform decreed by the Sarbanes-Oxley Act to prevent outright fraud.

Yet implementing a mandatory diversity course, for example, could backfire if jurors became angry about being required to participate (an emotion that could be common considering that people are often unaware of their implicit biases).

Battle\ battlefield\ battleground\ to battle\ embattled

In summary, although there is much activity in state legislatures, it can take a long time — often years — to get a significant bill and any related regulations passed, in part because this issue remains such a political battlefield.

Corporate access to cheap Mexican labor has been the driving force — and major battlefield — of regional market integration.

The advent of the Information Age has presented new battlefields for government regulation and individual rights to confront each other.

The underlying conflict between the Piersons and the Posts was part of this ongoing battle over shared rather than individual property.

Over a century later, this theme would repeat in Pierson v. Post, when a battle over community control was waged through the medium of a lawsuit ostensibly about a fox.

From our vantage point two hundred years later it appears that the Piersons may have won the battle [to win a case] but the Posts have won the war.

Professor Issacharoff points out that the Ashcroft Court was more than willing to “consider that black electoral prospects in Georgia could not be divorced from . . . partisan battles for legislative hegemony.”

As such, granting law enforcement officials per se reasonable suspicion to stop those who flee checkpoints would give officials a useful tool in the battle against terrorism, drunk driving, and other crimes.

The usual battles over local control ensued.

Given the practical obstacles to this proposal, it is likely that various local and state battles will continue.

Domestically, 1990 marked the conclusion of a regulatory battle over the pesticide daminozide (known by its trade name, Alar) in which the Environmental Protection Agency (EPA), the Uniroyal Corporation (Alar's chief manufacturer), and environmental groups each contested the safety of Alar through opposing risk-based conclusions involving competing exposure models and dose-response relationships.

To appreciate the battles over risk assessments that followed the Food Protection Act, it is helpful to understand the basic mechanisms by which EPA, prior to the Act, would determine the safety of pesticide residues on food.

Had he not had the resources and the determination, he would not have succeeded in this legal battle; however, he eventually did prevail.

First, it might encourage voters to reelect incumbents, creating greater numbers of career politicians, because there would be an even greater incentive to fight long policy battles to protect prior investments in certain policy choices.

Providing an example of a possible course of relief from the exhausting battles for consignors under the UCC, states have responded with legislation offering unique protection for artistconsignors that insulates their work from being attached in a consignee's bankruptcy.

Then, in the 1980s, battles over tort law in Texas produced "unprecedentedly costly, heated races" for its supreme court.

This history is supplemented by a much longer list of antitrust battles, in which physicians organized under professional umbrellas to avoid price competition, prevent advertising and quality competition, punish innovators or nonconformists, and deny patients the opportunity to seek alternatives to traditional delivery mechanisms of care.

With that kind of imbalance, it is not surprising that at-risk children face an uphill battle in the legislature for adequate funding for their schools.

Milberg Weiss fancied itself the voice of the little guy, the defrauded investor, in a battle against large corporate interests.

In that battle, it claims to have won more than 12 \$ billion in settlements and judgments for its clients.

As one legal scholar observed, our adversary system is premised upon the idea that the most accurate and acceptable outcomes are produced by a real battle between equally-armed contestants;

While the American fascination with wrongdoing and punishment continues unabated, the established news media remain willing, if not eager, to wax knowledgeable about the acts and lives of those engaged in courtroom battles.

While the growth of the asylum bar constituted a twilight political battle of the fading Cold War era, the explosion of immigrant workers' rights advocacy reflected the legal paradox at the heart of the ascendant period of market integration.

Border enforcement has become a central front in the battle over illegal immigration, with heightened barriers to entry measured by an increase in migrant deaths and smuggling.

Despite the increased attention that they have received, however, these efforts on the whole have been loosely coordinated and inadequately resourced, making them outmatched in their battles against corporate adversaries and government policymakers.

Given that "scholars who seek to constrain the private exercise of authority through the extension of constitutional limits to nonstate actors face an uphill battle," a finding of state action will be hard to justify doctrinally when the government will presumably avoid the appearance that it is considering attorneys' fees at all.

Although the battle over language in law is not unique to any one field and may not always rise above a mere semantic debate, it is particularly acute in the realm of eminent domain.

While the Act may not legally affect the right to abortion, its rhetoric will likely color the abortion debate and the legal battles of the next century.

Behind the focus on class legislation lay the great battles of labor and capital of the day;

Frances Perkins, the influential Secretary of Labor during the Roosevelt administration, thought it would be a big mistake to create the NLRB as an independent agency outside the Labor Department, but she lost that battle in the Senate and, eventually, in the statute as enacted.

Building on this historical reality, analysts have properly asked why courts should view a series of editorials, churned out to help win a heated political battle, as a key modern-day source of constitutional interpretation.

The Federalist in resolving hard-fought battles over what the Constitution means for disputants in the context of federal litigation.

That influence was so great that some believed the governor alone would determine in the end the outcome of the ratification battle.

The Court's decision was the culmination of a battle between the former president and Congress over the ownership of million pages of documents and tape recordings from Nixon's time in office.

This research should aim to reveal the nature of memory biases themselves and the ameliorating efforts that will aid the battle against biases in legal decisionmaking.

A remarkable political battle between the governor of Louisiana and President Bush delayed by a week the arrival of federal military troops for rescue operations and to establish order.

There may be substantial practical difficulties in this approach, however, in addition to the uphill battle involved in distinguishing a recent, unanimous

and contrary Supreme Court precedent: A challenge will necessarily require a taxpayer from a disfavored geographical area to bring the attack.

But President Bush used the opportunity to score rhetorical points in this ongoing wealthtransfer tax battle: when he signed VTTRA into law, the presidential release described the law as providing “Lower Death Tax Rates for Victims,” choosing the name adopted by opponents of the estate tax to describe it.

Indeed, viewing states as places in which experiments in government intervention are conducted, it might make special sense to adopt PBR in one or a few large states at the outset, leaving other states to experiment with competing regulatory mechanisms to battle childhood obesity.

These requirements create possibilities for crossed signals during emergencies, as after Katrina when battles over federalism and whether the governor had consented delayed crucial military assistance for rescue missions.

Although the marketplace metaphor remains the reigning (if somewhat embattled) justification for free speech, it has yet to fully incorporate an understanding of institutions.

The gist of the Commission’s opinion was that India’s liberal traditions, her obligations under international covenants, and the security of her people, would all be better served if terrorism were battled through institutional reforms to the police, public prosecutors, and the courts, and by passing new laws targeting terrorist finances, rather than by doing what the bill proposed to do — to wit, creating presumptions of guilt, allowing confessions before police officers to be admissible in evidence, and extending the period for which terrorist suspects could be held uncharged and without bail.

Consignors not protected by the Arts and Cultural Affairs Law would likely have to battle other creditors for priority.

Hamilton’s legendary self-assurance was in full flower, as was his unmatched zeal in battling political adversaries of every sort.

Most litigators agree that “discovery . . . is the battleground where civil suits are won and lost.”

The extent of parties' duties to preserve evidence is a key e-discovery battleground but not a new issue; preservation has been a high.

Bomb\ bombing\ bombshell\ to bombard

Furman is the bombshell that invalidated the death penalty as it was then administered.

At least defendants have taken their seat in a courtroom and listened to the deafening sounds of injustice: the underlying reverberations of poverty, the vigorous drum of coercion and deceit, the exploding bombshells of misidentification and faulty evidence, and the babbling echo of bad lawyering.

In recent years Europe, other states, and independent actors have bombarded the United States with attempts to persuade it to abolish, or at least narrow, its use of the death penalty.

Campaign\ to campaign

As part of a broader campaign to centralize political power over the area, Nicolls demanded that the Long Island settlements purchase new patents for their land from the Duke.

Two years after Pierson v. Post was decided, he was elected governor after running a campaign as a "humble farm boy," in which he declared, "[t]here's not a drop of aristocratical or oligarchial blood in my veins."

In Gruber's plan, it appears that penalty moneys might well go toward funding government campaigns to discourage youth smoking. But if so, then the government will, in effect, be doing some of the tobacco industry's job for it.

Coca-Cola even led a letterwriting campaign against the bill.

This might prove effective because "there is considerable evidence that people's preferences and perspectives change in response to inputs of additional information — particularly during political campaigns."

Considerations of future interests would not merely be a legislative issue; they would become a (electoral)campaign issue.

When one considers that elections require candidates to conduct campaigns and to raise funds in a system designed to allow for competition among interest groups and political parties, the persisting question is whether that process is consistent with the perception and the reality of judicial independence and judicial excellence.

Trends in judicial elections, including increases in competitiveness and the importance of campaign funds, further threatened judicial independence.

Following the substantial increase in the competitiveness of judicial elections, campaign spending on these elections has increased dramatically.

Between 1990 and 2004, average campaign spending in nonpartisan elections increased by 100 percent, from approximately \$300,000 to \$600,000.

The increasing cost of judicial campaigns has made it extremely difficult for candidates to win elections without substantial funding.

Moreover, with the costs of winning judicial elections increasing dramatically, judges are compelled to rule in ways that help them to obtain campaign funds.

In their concurrence, Justices Kennedy and Breyer noted, When one considers that elections require candidates to conduct campaigns and to raise funds in a system designed to allow for competition among interest groups and political parties,

Other recent empirical studies have examined the influence of campaign contributions on judges' case decisions.

The idea of a litigation campaign forming the community of interest for the group is of a distinctively more recent vintage.

Resistance to Brown would take many forms, and one of those forms was a campaign to harass civil rights lawyers.

The central issue over which the McConnell and WRTL cases disagreed was whether the federal Bipartisan Campaign Reform Act of (BCRA) could constitutionally prohibit a kind of paid political advertising known as issue advocacy.

The United States Supreme Court held that the federal Bipartisan Campaign Reform Act violated the First Amendment right to free speech because the statute restricted a form of political speech known as issue advocacy.

In addition, the petition sought to reframe the issue of welfare reform in human rights terms as part of a coordinated effort to promote grassroots education about human rights among the welfare population and raise awareness about the antipoverty organizing efforts of the Philadelphia-based Kensington Welfare Rights Union and the Poor People's Economic Human Rights Campaign that it led.

The major welfare reform effort was spearheaded by a coalition of groups that included CCR, CUNY's International Women's Human Rights Clinic, and the Center for Economic and Social Rights, which came together in support of the grassroots Poor People's Economic Human Rights Campaign to file a petition in the Inter-American Commission challenging the termination of benefits under welfare reform.

Even the NAACP Legal Defense Fund (LDF), which launched the litigation campaign that culminated in Furman, did not begin to systematically attack the death penalty's constitutionality.

The campaign was a historic first and the message was clear: state court judges who stood in the death penalty's way did so at their own peril.

Deukmajian opposed the retention of Bird and her colleagues, and all three were successfully targeted for defeat in campaign commercials urging voters to "cast three votes for the death penalty."

Reporting on the phenomenon, Time Magazine wrote that year: "the new look in campaign commercials is to feature the candidate doing everything short of throwing a giant electrical switch."

President Nixon supported the death penalty, but he had not made it a part of his "law and order" campaign, nor did his administration file an amicus brief in Furman.

According to some media sources, the White House waged an organized campaign to direct focus on state and local responsibilities.

Not long after the damage to New Orleans became apparent, a retired Corps of Engineers official, conservative pundits, and politicians began a campaign to blame the damage on a lawsuit brought against the Corps of Engineers in by local fishermen and a local environmental group called Save Our Wetlands.

Notwithstanding his central role in the original movement in favor of original intent, Judge Bork quickly joined that campaign.

As Justice Scalia, who led the “campaign to change the label from the Doctrine of Original Intent to the Doctrine of Original Meaning,” explained, originalists began to seek “the original meaning of the text, not what the original draftsmen intended.”

For example, in *United States v. Tobin*, the New Hampshire Democratic Party (NHDP) claimed that it was a victim of the defendant’s efforts to jam phone lines set up to facilitate NHDP’s “get out the vote” campaign.

To get the number of popular votes necessary for election to the House, candidates would almost certainly have to campaign or have their friends campaign on their behalf.

Adherence to a publicly censured constitutional interpretation will thus hold little sway, particularly over newly elected state court judges who campaigned on a different interpretation of the constitutional text.

How can it be, especially from an originalist perspective, that a self-serving set of campaign tracts should factor into the process of constitutional interpretation?

The preceding account reveals that *The Federalist* embodies a strategic argument designed to win an intense political campaign.

At bottom, however, the tracts were campaign literature.

At the same time, the Article rejects the view that the campaign-literature purpose of *The Federalist* disqualifies it from serving as an important touchstone of constitutional interpretation.

The dissent would have adopted a policy of protecting new bargaining relationships and found that decertification election campaigns pose unacceptable risks of undermining bargaining and of employer coercion in the decertification election campaign.

The dissent would have adopted a policy of protecting new bargaining relationships and found that decertification election campaigns pose unacceptable risks of undermining bargaining and of employer coercion in the decertification election campaign.

It also reflects a view that the election campaign following the filing of the decertification petition is good because it will enable the employer to make its case against unionization.

At the same time, the Board could have abandoned the controversial rule adopted by the Reagan Board, which removed the Board from involvement in policing misleading statements during election campaigns.

Another example of a regulatory approach the Board could take concerns the possibility of coercion stemming from both authorization card campaigns and employer election campaigns.

The conservative wing of the Bush II Board took the position that, after Taft-Hartley, the NLRB is supposed to be neutral toward collective bargaining and especially protective of the right of employees to resist unionization and the right of employers to speak their minds during union election campaigns — rights placed in the statute by Taft-Hartley in response to perceived NLRB pro-union bias.

That legislators would pursue such a campaign against the backdrop of the public celebration of U.S. Attorney autonomy might sound odd.

It was not long, however, before the department's political leadership embarked on a sustained campaign to more actively manage prosecutorial decisionmaking across all districts in all cases.

After a hard-fought political campaign, much less a hard-fought insurrection, politicians are already predisposed to view the ancien régime as a gang of deeply dyed villains.

In a decision, the Court reasoned that electioneering communications, including “issue advertisements,” were the functional equivalent of express campaign advocacy.

As seen in the labor context, the development of sophisticated and cohesive transnational activist networks around maquiladora and sweatshop issues offers a counterweight to lawyer power in the design and execution of reform campaigns.

Alliances also coalesce around campaigns to reform policy, in which lawyers gain grassroots credibility from community-based partners — a dynamic evident in the collaboration between the ACLU and Legal Momentum with organizing groups, such as New York's Urban Justice Center, to pass CEDAW legislation in New York.

Yet while these transnational alliances permit dispersed groups to coordinate advocacy campaigns, they also generate their own internal power dynamics that can reinforce pre-existing cleavages.

These efforts suggest that, although systemic human rights reform may be far off, the strategic use of international levers, when combined with sophisticated political campaigns, can produce concrete benefits.

In the environmental context, in particular, the transnational scope of environmental harm causes lawyers to approach problems from the perspective of an advocacy campaign rather than a legal case.

Moving into the domain of economic and social rights, lawyers have — more tentatively — used human rights strategies to promote the extension of U.S. law well beyond historical baselines, advocating for the establishment of a human right to housing and a healthy environment at the UN, while using human rights norms to support right-to-housing and environmental justice campaigns at the local level.

The rise of the immigrant workers' rights movement signals the growing importance of this domestic regulatory agenda, which combines traditional litigation with worker center-led grassroots organizing and the strategic use of international mechanisms, such as NAFTA's side labor process, to advance systematic labor rights enforcement campaigns.

As these campaigns (labor rights enforcement campaigns) reach for international authority to achieve domestic results, they highlight the gap that separates the contemporary domestic human rights movement from public interest law in its initial phase.

The hearing was also used to advance a prominent grassroots labor campaign by the Coalition of Immokalee Workers in Florida, which had launched a boycott of Taco Bell for its practice of negotiating bulk discounts from suppliers, which the Coalition charged caused the suppliers to commit labor abuses against immigrant workers.

In response to a broad-based campaign on immigrant labor rights after Hoffman Plastics, the Inter-American Commission held a general interest hearing to examine the United States's ongoing noncompliance with human rights laws.

In the United States, the legal campaign culminated in *Roper v. Simmons*, in which the Supreme Court struck down the juvenile death penalty, referencing an amicus brief condemning the practice on international law grounds filed by Human Rights Advocates.

Beginning in the s, advocates mounted a campaign to challenge the juvenile death penalty that combined human rights advocacy, organizing, and traditional litigation.

The barriers to federal court litigation and the relative weakness of international institutions have prompted some advocates to focus on promoting grassroots human rights organizing strategies and legislative campaigns targeted at local governmental decisionmakers.

In , Ford provided support to the Human Rights USA campaign to assess attitudes toward human rights in the United States and funded the International Human Rights Law Group and the Lawyers Committee for Human Rights to train domestic legal groups to use human rights more effectively.

Second, as groups became increasingly disappointed with the World Bank's track record on environmental review and indigenous resettlement, pressure began to mount for a campaign to reform the Bank's decisionmaking structure to provide for meaningful public participation.

This strategy, which involved U.S. lawyers crossing the border to generate political support from Mexican officials and turning it back to advance domestic rights campaigns, had its roots in efforts that predated Fox's victory: in , the ACLU went to the Mexican NAO with a submission charging the United States with violating its labor laws by requiring the Department of Labor to investigate the immigration status of those reporting labor violations — and thus deterring the reporting of violations by undocumented immigrants.

In response, the Mexican government launched an outreach campaign on antidiscrimination laws and a number of U.S. companies discontinued the screening practice.

The D.C.-based International Labor Rights Fund (ILRF), started to monitor labor standards under international trade agreements, emerged as a key organization in these campaigns, providing legal support for petitions challenging Mexican labor practices.

Though the agreement lacked hard enforcement mechanisms, its unique structure did create the potential for political pressure to complement organizing campaigns: successful petitions could be used to provoke high-level “ministerial consultations” about labor violations, outside expert reviews, and — in limited cases — arbitration of disputes.

It may also help challengers make a campaign issue out of the incumbent's stance on counterpart recommendations, particularly if, as in Iowa, the legislative vote takes place under a closed rule.

And if the incumbent's vote does become a campaign issue, the counterpart will have prevailed in its battle for public attention.

During the heat of the election campaign, the Labour government finally said that, if returned to power, it would introduce a voter registration bill in line with the Commission's recommendations.

Although the timing of the Labour city councilors' vote-fraud conviction surely had much to do with making the Electoral Commission's ballot-security recommendations an issue in the general election campaign, this was not the first time the government has come under pressure to act on Commission-proposed reforms..

The CEO successfully prevailed upon the government to enact caps on independent expenditures in electoral campaigns, among other reforms.

Before launching an all-out campaign for the enactment of reforms, counterparts can test the waters with public opinion studies, float tentative ideas, and monitor reactions to their investigations.

In the United Kingdom, governmental foot-dragging on the Electoral Commission's ballot security recommendations became an issue in the general election campaign, thanks in part to the fortuitously timed conviction of six Labour Party city councilors on charges of vote fraud.

They can be exacerbated or assuaged through political campaigns and public programs, and whether the dominant politicians happen to be flamethrowers or reconcilers is not just a matter of chance, but of the interplay between electoral and social structures." balloting.

Consider the cross-cutting issues at stake in what might be termed the "transparency regime" — the set of rules, administrative protocols, and enforcement mechanisms that provide citizens with information about what their government is up to, about who has contributed what to the campaigns of elected leaders, and about the financial entanglements of government officials.

The only remedy available to such a consumer would be to lobby for a more effective regulation or to support the campaigns of economically astute legislators in the next election.

The AFL-CIO centers its congressional lobbying efforts around the EFCA, to which the AFLCIO website devotes significant attention and is the subject of aggressive petition, email, and organizational endorsement campaigns.

Combat\ to combat\ combative

As the issue of the death penalty has become more and more important to Europe, as evidenced by the time and effort spent by the European Union in combating the use of the death penalty internally and worldwide, it becomes a more important factor to the group as a whole.

To combat the attempts of these jurisdictions to nullify a right explicitly granted in the Constitution, Congress decided to pass a statute that would prevent abuses before they occurred.

Section 5 is not a relic, a tool that was once useful in combating voting rights abuses but which should be relegated to the dustbin of history.

In this Article we lay out in detail a scheme of performance-based regulation as a way of combating America's childhood obesity problem.

In 1975, for example, the Court refused to allow discretionary stops aimed at combating illegal immigration in United States.

In evaluating effectiveness, the Court clarified that elected officials, as opposed to courts, should determine which police techniques should be used to combat a public threat.

In that case, the Appellate Body upheld the arbitration panel's decision that laws enacted by the United States to combat internet gambling were intended and designed to protect the public morals and maintain public order by targeting certain undesirable social side effects of online gambling, including underage gambling.

By freeing ourselves of restrictive disparate impact doctrine (particularly the "particular employment practice" requirement), these types of cases can be even more successful in combating deeper exclusionary workplace norms.

Significantly, when the composition of the federal judiciary and the ambient political climate changed in the 70s and "courts began to reshape the presumption against racial classification into a constitutional constraint on voluntary efforts to combat segregation," this reshaping was directed not at

race-conscious student assignment plans, but at the significantly more divisive issue of affirmative action in higher education.

Many states have constitutional provisions limiting the actions of the legislature such as bans on special legislation, which were enacted to combat legislative abuses and corruption.

This three-part solution addresses the constitutional deficiencies in NSL nondisclosure provisions while also ensuring that the government has the necessary tools available to combat terrorism.

Ultimately, the AAA established a quota system to combat the lack of “orderly marketing” of tobacco, which had resulted in the production of “abnormally excessive supplies” of tobacco that were “dumped indiscriminately on the Nation-wide market.”

For instance, American’s International Human Rights Clinic has provided trainings for the NAACP LDF and other groups on the application of human rights to the death penalty, while American clinic director Richard Wilson has worked with the NAACP LDF to expand its human rights advocacy in the criminal context, drafting a report on the use of human rights to combat racial profiling and counteract jury discrimination.

Whereas early public interest law sought to enlist the federal government as a liberal ally in combating discriminatory state practice and regulating private business, domestic human rights has emerged as a vehicle for contesting the now conservative centers of federal power by turning to human rights institutions as a potentially progressive alternative.

“Because campaign finance reform legislation, in its attempt to effectively combat circumvention, invariably touches upon so many types of conduct the Court has been forced to apply First Amendment principles to a complex array of regulatory provisions.”

The Supreme Court has viewed habeas corpus as a tool for combating wrongful imprisonments and “convictions that violate ‘fundamental fairness.’”

The Act also attempted to combat claimed defects in habeas review, including the ability of federal habeas courts to “reweigh evidence or entertain claims that have not been decided by state courts.”

Legislative change would be more effective because the pressure to combat terrorism falls most directly on the executive branch.

Such a reform would combat the dangerous incentive of highly compensated CEOs to maximize shortterm corporate profits and take undue risks with the corporation's assets.

The power of “embedded constitutionalism,” a proposal that combats abusive representation by forcing the active consideration and deliberation of constitutional values in more powerful institutions—in this case, legislatures.

Importantly, to pass the rational basis test, contingency fee limitations need not be the most effective means of combating rising medical malpractice insurance premiums, but only a possible means.

This balancing is not only equitable, but it also combats the availability heuristic. The availability heuristic states that a judgment can be “influenced by the ease with which something is brought to mind.” For example, in the wake of a major airplane crash, people are more anxious about flying even though statistically it is the safest time to fly.

Juries must already combat prejudicial pitfalls that present themselves in the criminal justice system, and adding yet another temptation unrelated to the facts of the case is unwarranted.

The idea that litigation can effect social change for group interests remains popular in American legal culture; for example, the gay community has combated social discrimination by litigating against the military's “don't-ask-don'ttell” policy and for judicial recognition of gay marriage.

Finally, the CVRA places defendants in the difficult position of combating a nonparty whose interests are generally opposed to their own.

Policymakers have responded with a variety of approaches to combat such risk.

Armour argues that the best bias combating strategies are not ex post constitutional law inquiries (as called for by the intent doctrine), but a practical and scientifically grounded bias-reduction strategy targeting legal decisionmakers.

An American majority, recognizing the harms visited on children through this form of pornography, expressed itself through its legislators and enacted several rounds of legislation designed to condemn child pornography and to combat the problem.

Thus, each legislative attempt to combat child pornography has met with First Amendment-based setbacks in the courts.

Indeed, in theory, a comprehensive set of ethical guidelines, coupled with effective professional discipline, could combat the distrust generated by the hidden nature of the prosecutorial process, providing prosecutors with explicit boundaries of conduct and reassuring the public that attorneys who crossed these bounds would be checked.

Ironically, North Carolina's Special Prosecution Division was formed not to combat prosecutorial conflicts of interest or misconduct, but rather to "expedite Justice and provide speedy trials"; to help with the "tremendous caseloads" encountered in local prosecuting offices; and to provide time and resources to cases that "involve complex legal questions, extensive research and expert trial assistance."

Thus, resting such power on the shoulders of the judiciary would be an ineffective means of combating prosecutorial misconduct, both because such authority violates the separation of powers doctrine and because courts routinely fail to exercise their existing powers to rein in errant prosecutors.

Finally, the appointment of special prosecutors as a means of checking prosecutorial power and combating misconduct may prove only to be a Band-Aid remedy for a broken institution that, as some commentators have noted, begs for a drastic overhaul.

To combat these problems, corporate attorneys in the s urged their clients to include within their arbitration agreements provisions preventing consumers from asserting class claims.

Defeat\ to defeat\ defeated

In 2003, Senators John McCain and Joseph Lieberman introduced this bill, which was defeated by a relatively narrow vote of 55 to 43.

It was reintroduced as the “Climate Stewardship and Innovation Act” in 2005 and was again defeated, but by a somewhat wider margin, 60 to 38.

In nonpartisan elections, only 4.3 percent of incumbents were defeated in 1980, but 8 percent of incumbents were defeated in 2000.

In partisan elections, 26.3 percent of incumbents were defeated in 1980, whereas the loss rate for incumbents in 2000 was a stunning 45.5 percent.

These judges are subject to only a yes-or-no vote for retention, and they are rarely defeated.

The majority stated that “nothing could serve more fully to defeat the congressional goals underlying the Act than to subject, without limitation, the relationships it seeks to create to the concurrent jurisdiction of state and federal courts free to apply the general local law.”

The absence of a transparent viewpoint that government seeks to protect may not always defeat the government’s ability to establish an expressive threat.

This rate of defeat is much higher than the rate at which incumbents lose in the U.S House or Senate or in state legislatures.

By keeping the courts mutually independent, they reduce the political cost of electoral defeat.

And although marital assets are generally divided “equitably,” parties often experience a sense of victory or defeat in this context as well.

And both *Gonzales v. Raich* and *Watters v. Wachovia Bank, N.A.* were big defeats for state regulatory autonomy.

The administrative process (it can take years from the filing of a complaint by an aggrieved employee to the issuance of an enforceable order) creates a huge incentive for employers to deliberately violate the statute knowing that they will reap the benefit of illegal conduct for a long time, if not permanently in the case of a successful defeat of an organizing campaign.

The amendment's backers described these initial defeats as just opening skirmishes in a long war.

Some commentators believe that Branzburg and other press defeats before the high Court "would not have survived the scrutiny of former Justices Hugo Black and William O. Douglas together."

The Branzburg decision, rightly, was initially seen as a sound rebuke to the press. But through wily lawyering, the press partially managed to snatch a narrow victory from the jaws of defeat for a while.

Deukmajian opposed the retention of Bird and her colleagues, and all three were successfully targeted for defeat in campaign commercials urging voters to "cast three votes for the death penalty."

This all changed in Los Angeles in 1978, however, when a group of deputy district attorneys offered to support any candidate who would run against an unopposed incumbent trial judge, producing a record number of contests and defeated judges.

It was the arbitrariness of the governing body's (the supervisors') decisionmaking (depriving people of work because they were Chinese subjects) that defeated the law under the class-legislation principle. Holden v. Hardy completes the triad. – in th sense of o cancel, reject

In the House of Representatives, members are representatives of "the people of the states," and in the Senate, only one half of the states are needed to constitute a majority and "one-third plus one" of the states banding together can defeat a treaty.

If, however, a decisive majority of experts favors a certain view, then the administrator's contrary view is simply another vote for the dissenting side, and as such is defeated.

The treaty came into play only because state law enabled a defendant in an ejectment action to defeat the action by setting up the title of a third person in bar of the action.

Enemy\ inimical

Hamilton was an archenemy of Governor Clinton, an experienced political essayist, and a lawyer steeped in the skills of advocacy.

Unlike Section 2 of the VRA, Section 5 is an administrative mechanism that places the burden upon covered jurisdictions to prove, before it is implemented, that a particular change is not inimical to minority voting interests.

Fight\ to fight\ fighting

Even after this resolution, the town and proprietors continued to fight over their rights in the resources.

For the Piersons, it would have been a fight for the hard-earned right for privileges in the common lands, while for the Posts, it would have been a fight for equal status within the community.

Both were also leaders of the antifederalist movement that backed Jefferson in his bitter and successful fight for the presidency in 1800.

That, in turn, can increase the possibility that legislatures will intervene in an active way to fight childhood obesity.

Indeed, to fight PBR [PERFORMANCE-BASED REGULATION OF THE FOOD INDUSTRY], food companies will probably have to argue that they do not know how to solve the problem, an unattractive position to hold if the public can first be convinced that those very firms are centrally the cause of a problem for which they are now seeking to duck responsibility.

The modern debate over the constitutionality of road checkpoints began as a result of the fight against illegal immigration.

A question remains about whether the effort expended in the fight to regulate competitive foods could be displacing other possibly more effective efforts.

First, it might encourage voters to reelect incumbents, creating greater numbers of career politicians, because there would be an even greater incentive to fight long policy battles to protect prior investments in certain policy choices.

She must fight her claim in an area of the law where “total confusion can reign.”

As the Doe III court observed, most NSL recipients lack incentives to expend either the time or money necessary to fight a gag order.

Scholars such as Alexander Bickel, John Hart Ely, and Jeremy Waldron have come to a similar solution: turning from the fight over normative choices to building consensus about the process used to resolve that contest.

The mandate of Ghana’s Commission on Human Rights and Administrative Justice conjoins the protection of “fundamental rights and freedoms” with the fight against corruption.

During World War II, the ACLU gained notoriety for its effort to challenge Japanese-American internment; and after the war, the organization became heavily involved in the McCarthy-era fight against Communism, filing a number of lawsuits challenging governmental efforts to investigate political dissidents.

In this sense, “globalization” becomes a way of both understanding abuse and motivating efforts to fight it: workers’ rights advocates thus describe the need to fight globally linked garment sweatshops with global activism, while environmentalists emphasize the global struggle to combat transborder pollution.

Lawyers in civil rights groups like the NAACP LDF, in contrast, have entered the international domain more slowly out of concern for renegeing on the fight for domestic legal justice.

Prosecutors have, and the public encourages them to use, increased powers to fight the “war” on corporate crime.

In the aftermath of Nielsen’s death, Kevin Blaine, Nielsen’s father, used this public clamor to lead a fight to reform the North Carolina homicide statute.

To be sure, Cotting used equality as a shield against apparent legislative confiscation of property, not as a sword to fight social oppression.

This could explain why judges circulate drafts of dissents — but by the time of publication, dissenting judges have lost the fight.

Under this theory, it is necessary to publish even when the fight has been lost; otherwise, future threats to dissent will not be credible.

Courts and legislatures must consider the realities of the litigation process and give parents the necessary tools with which to fight for their children's education.

With public support for the death penalty at record highs, unprecedented political pressure to back it, and a war on drugs (and juvenile murderers) to fight, the Court's rulings in Penry and Stanford were just as one might expect.

Although some congressional leaders, shortly after the Booker decision, braced for a fight over how much discretion should be provided to federal judges, others advocated restraint from hasty legislative maneuvers that might further complicate an already opaque system.

Thomas believes that the United States must first tread backward nearly fifty-five years to the Court's landmark decision in Brown, where Thomas believes that the fight for racial equality went tragically astray.

Moreover, as Part III demonstrates, it has offered Thomas a way to glorify his fight for his own racial philosophy.

Whereas the natural law principles, Thomas borrowed from Harlan and other nineteenth-century scholars, have allowed Thomas to legitimate his racial philosophy, Harlan's dissent in Plessy has provided Thomas the ammunition to fight for it.

Although Thomas has mostly employed Harlan's words to fight for his own equal protection philosophy, he has also reached for Harlan's words to shield himself from the counterassaults of his ideological opponents.

Indeed, Thomas believes that he has been unfairly vilified by African Americans because he is unwilling to surrender the fight for true racial equality.

There are a host of questions, many of which absorb much of the energy of the lawyers involved in obtaining and fighting patents.

This bias arises because there is an asymmetry between the granting of a patent and fighting a patent.

The result, of course, is that there will be an underinvestment in fighting bad patents, and an overinvestment in trying to get bad patents.

Moreover, proving the exception should be sufficient for the consignors to keep their artwork out of bankruptcy proceedings; they should not be forced to continue fighting for their paintings under section 2-326 and common law bailment principles.

A debate in which neither side is relegated to fighting against a constitutionally entrenched policy, and which admits of compromise, seems more likely to foster open-mindedness on the part of the participants and their audience.

In addition, Global Rights has a new project on racial discrimination in the United States focused in part on “fighting racism in the [U.S.] criminal justice system,” which has provided human rights trainings and sponsored conferences on antiracism advocacy

“The Bush administration’s response to the September attacks has been characterized by a paradigm shift in fighting terrorism: from a defensive to offensive strategy, from reliance on deterrence to a new emphasis on preemption, from backward to forward-looking measures, and from prosecution to prevention.”

Focusing on these interests, it is not so clear, as either a positive or normative matter, that states are better off fighting on Congress’s turf, as opposed to that of agencies.

The NLRA was under consideration in Congress when the case came down, and opposition dried up as certainty rose that the statute would be held unconstitutional and was therefore not worth fighting.

Thomas sees himself as a courageous soldier of racial equality, selflessly fighting for the natural rights avowed by the founders of the United States, the abolitionists of the Civil War era, and the civil rights giants of the twentieth century.

Invader\ invasion\ to invade\ invaded

Although the judge should not invade the province of the jury, the judge may identify general considerations for the jury to ponder in evaluating credibility.

In *United States v. Butler*, the Court struck down a key New Deal law, the Agricultural Adjustment Act (AAA), holding that the act was beyond Congress's taxing-and-spending power because it invaded the reserved powers of the states in the Tenth Amendment.

The third component permits gag orders that protect investigations but requires the government to tailor those orders to only minimally invade the constitutional rights of its citizens.

The trial judge refused to grant a continuance, and the media circus invaded the courtroom, where the judge created space for news reporters within the bar.

"Classifications which might invade or restrain voting rights must be closely scrutinized".

First, a legal requirement to rescue would invade autonomy, which is closely related to two other propositions: the consent-of-the-governed rationale and the harm principle.

Although the Federalists and Republicans bickered about the role of the jury, in most cases a compromise was reached that reasserted the strength of the jury: the Massachusetts legislature preserved the jury's right to decide issues of law, Judge Addison of Pennsylvania was impeached for interfering with the jury, and Justice Samuel Chase was prosecuted (but eventually acquitted) for "invading the province of the jury" by removing certain issues from its consideration.

Similarly, “that the plaintiff’s harm can be characterized in terms of an invaded right is a necessary condition of liability.”

Launch\ to launch\ launching

Before launching an all-out campaign for the enactment of reforms, counterparts can test the waters with public opinion studies, float tentative ideas, and monitor reactions to their investigations.

Recall the hope of the lawmakers who launched the U.S. Commission on Civil Rights: that a steady stream of Commission inquiries would reveal to the American people the true horrors of the Jim Crow South, generating public support for aggressive federal civil rights legislation.

The case launched the Glorious Revolution, established the jury as a “bulwark of liberty” against monarchical abuse, and prompted a slew of popular treatises lauding the jury.

With the Ford Foundation providing seed money, the ACLU launched its Immigrants’ Rights Project, which asserted challenges to the detention of Haitian refugees in Guantánamo Bay and the unfavorable treatment of Guatemalan and Salvadoran asylum seekers.

The Southern Poverty Law Center, known for its litigation against hate crimes, launched the Immigrant Justice Project in focused on enforcing the labor rights of undocumented immigrant migrant workers throughout the Southeastern United States.

For instance, in Los Angeles, Bet Tzedek Legal Services, one of the main non-LSC legal services providers in the city, launched an employment project focused on immigrant workers in the San Fernando Valley.

Following a similar trajectory, the Legal Aid Society’s Employment Law Center, a non-LSC group in San Francisco, became active in the area of immigrant workers’ rights, launching a formal National Origin, Immigration, and Language Rights Program to litigate impact cases, and expanding its Workers’ Rights Clinic to represent immigrant workers on wage-and-hour claims.

The Skadden Fellowship program, which provides two-year post-law school fellowships, has been a key supporter of public interest groups moving into immigrant worker advocacy, launching immigrant workers' rights projects at APALC, NELP, the ACLU, and the Employment Law Center — and producing many leaders in the immigrant workers' rights field.

In conjunction with the Immigrant Legal Resource Center, the National Lawyers Guild, and the National Legal Aid and Defender Association, the New York State Defenders Association also launched the Defending Immigrants Partnership to “ensure that indigent noncitizen defendants are provided effective criminal defense counsel to avoid or minimize the immigration consequences of their criminal dispositions.”

In response, CLINIC has launched a project to assist detained juvenile immigrants to secure release into the custody of family members or file asylum, trafficking, or Special Immigrant Juvenile Status claims.

In response, the Mexican government launched an outreach campaign on antidiscrimination laws and a number of U.S. companies discontinued the screening practice.

MALDEF launched a Hometown Association Leadership Program to provide training to HTA officials on how to form nonprofit groups, facilitate decisionmaking, and build HTA political coalitions, while also offering workshops relevant to HTA members on topics such as business development and domestic violence.

The use of the ATS to contest the human rights violations of corporate actors has built upon its successful deployment as a vehicle to challenge human rights abuses by foreign governmental officials — launched by the landmark *Filartiga v. Pena-Irala* case.

The new interest in human rights among public interest lawyers has been seen in the increasing number and range of groups launching domestic human rights projects, incorporating human rights arguments into domestic litigation, and taking domestic causes to international human rights bodies.

Long a major supporter of human rights litigation abroad, Global Rights launched a U.S. project, with funding from the Ford and MacArthur foundations, in response to pressure from international partner organizations that

chafed at the United States's role in exporting human rights abroad while failing to abide by their mandates at home.

Human Rights First has also moved to apply human rights domestically, launching its post- / domestic U.S. Law and Security Program focused on War on Terror detention and intelligence gathering practices, while Human Rights Watch has started a U.S. project on workers' rights.

Commenting on the launch of Regulations, the director of the Office of Management and Budget (OMB) said, "[E-rulemaking] will democratize an often closed process and enable every interested citizen to participate in shaping the rules which affect us all."

Considering the political launching pad that a U.S. Attorney position can be, the publicity — good or bad — is priceless.

The Illinois moratorium not only sent shock waves across the country, but also ignited a national debate about the death penalty, launching a moratorium movement.

Even the NAACP Legal Defense Fund (LDF), which launched the litigation campaign that culminated in Furman, did not begin to systematically attack the death penalty's constitutionality until.

Mobilize\ mobilization\ to demobilize

Thus, the literature on public interest practice has drawn attention to lawyers who mobilize law to protect the workplace rights of undocumented immigrants, challenge U.S. actions in front of human rights and free trade bodies, sue transnational corporations in U.S. courts for abuses committed in developing countries, and promote human rights as a strategy to advance domestic social justice.

Lawyering within the international arena is thus notable for its tactical pluralism, embracing a broad range of nontraditional techniques such as lobbying, reporting, and organizing; its polycentrism, evident in the movement by lawyers into advocacy venues outside of the U.S.; and its connection to transnational alliances that operate to mobilize law across borders.

Through these strategies, colonia lawyers, like those assisting HTAs, mobilize self-help responses by poor communities struggling under the system of regional market integration.

The ACLU's role in reaching out to public interest lawyers and transmitting human rights strategies is part of the broader development of a domestic human rights network, which has emerged over the last decade as an ensemble of groups seeking to mobilize resources within the human rights system to influence U.S. policy.

Public interest lawyers have increasingly ventured outside the U.S. legal system to raise human rights claims in international venues, reflecting both the strains of litigating human rights in domestic courts, as well as the desire to connect with foreign allies and mobilize the authority of international bodies.

Unlike U.S. litigation that attempts to achieve a judicial determination binding on the parties, the process of petitioning international bodies is designed to achieve distinct objectives: publicizing U.S. wrongdoing, generating international pressure on U.S. actors, influencing the administration of U.S. justice, and galvanizing domestic constituencies to mobilize for reform.

In contrast, public interest lawyers have been more successful in using the moral authority of human rights to mobilize international opposition to U.S. antiterrorism policies.

Particularly because domestic worker cases typically use the ATS to invoke human rights violations as an addendum to state and federal wage-and-hour claims, the goal is not necessarily to win on the merits, but to frame the problem of domestic work in terms that will generate public attention and mobilize political action.

Along these lines, ATS advocates suggest that even when litigation does not create binding human rights precedent or produce clear monetary wins, it is still useful as a means to educate the public, mobilize grassroots campaigns, and forge human rights activist networks.

Immigrant rights advocacy — defined by its response to undocumented work — also took shape in reaction to this anti-immigrant mobilization.

Though this account of public interest lawyering has always been a partial one, it has nonetheless shaped debates about the appropriate objectives of legal advocacy in a democratic society, the desirability of litigation strategies versus political mobilization, and the role of legal professionals as social change actors.

Globalization alters the terrain of these fundamental debates by enlarging the scale of advocacy in ways that present a mixed picture for public interest lawyers: exposing the geographic scope of social injustice but also the potential for transnational social change, revealing the limits of the domestic legal system but also the possibilities for transnational legal mobilization, and highlighting the risks of professional engagement in global social struggle but also suggesting its transformative power.

As the domestic human rights and immigrant rights movements highlight, lawyers are both sensitive to the potential political risks of rights strategies and skillful in deploying rights in flexible and pragmatic ways to leverage short-term policy gains and stimulate long-term political mobilization.

Instead, they saw them as an opportunity to place in the record arguments and data that they could invoke in the inevitable judicial challenge to the FCC's actions, as well as an opportunity to engage in political mobilization that might influence Congress to reverse the media ownership rules after the FCC had issued them.

Such participation may correlate to political mobilization, so an agency might bend to the participants' wishes even if it did not believe that they represented the median American, as long as the agency believed that they represented a politically potent force.

Onslaught

This strong onslaught of persuasion has had some effect in the United States.

Policy groups and academics interested in protecting state regulatory interests from an onslaught of national expansion should engage in the discussion of how agency policymaking can be structured to be more responsive to federalism concerns.

Surrender\ to surrender

Jefferson, later writing from Monticello, would sarcastically query, “[c]an it be believed that under the jealousies prevailing against the General Government at the adoption of the Constitution, the States meant to surrender the authority of preserving order, of enforcing moral duties, and restraining vice, within their own territory?”

The same broad prosecutorial discretion that pressures individual defendants to plead guilty can create even greater pressure on corporations because indictment sometimes threatens a firm's very existence, giving employers strong incentives to surrender to any perceived government pressure to cut off advancement of employees' defense costs.

Moreover, because each person in society surrenders much of one's natural liberty to a properly created government, and because the first duty of the government is the "preservation of the Society," the government would seem to have the power to require rescue to further the public good.

However, Locke also suggests that each person has only surrendered the power to punish interference with individual rights, in order that the government can justly make laws and punish offenses.

When a State enters the Union, it surrenders certain sovereign prerogatives.

Alternatively, under *Skidmore v. Swift & Co.*, and its progeny, the agency can opt for procedurally simpler enactment but surrenders interpretive primacy to courts.

Your responsibility in your several districts for law enforcement and for its methods cannot be wholly surrendered to Washington, and ought not to be assumed by a centralized department of justice.

But that does not mean that we should surrender our commitment to constitutions as articulations of fundamental rather than positive law.

Legislators who want to leave office before the end of their term ought to be forced to tell their colleagues — and the nation — why they wish to surrender the public trust and seek their colleagues' permission to do so.

Nevertheless, from a purely historical perspective, it appears that the greatest economic harm done to U.S. issuers, shareholders, and investors actually resulted from the government's surrender of portions of its regulatory power in the days since the New Deal, not from its continued imposition of onerous rules-based regulations on corporations.

Gregg's Extralegal Context. Commentators have described Gregg as a "judicial surrender" to political pressure, and the decision's particularly hostile sociopolitical context makes it easy to see why.

Victory\ victorious

The prosecutor's victory may actually limit recovery in the civil case, because an incarcerated defendant cannot earn money to pay damages, and the civil jury may be more sympathetic to a sentenced defendant who has already paid a price in the criminal justice system.

Indeed, some scholars have argued that support by political party leaders is essential to a judge's victory in many partisan elections.

Although this was only half the mandated amount, it constituted a significant victory for the plaintiffs, coming a mere four years after the first high court decision declaring the schools inadequate.

Unless she mounts an expensive advertising campaign to defeat the counterpart's recommendation — in which case, the counterpart has already scored a victory in the battle for public attention

There is a second basis for objecting to court-counterpart collaboration: the prospect of victory through the courts could dilute the counterpart's incentive to develop effective practices for engaging popular opinion.

Yet while the Bush election marked the decline of the side labor agreement as a site for contesting Mexican labor practices, the victory of Vicente Fox in México (victory in the courtroom) that same year — on a platform that included a commitment to migrant rights — signaled new opportunities for public interest lawyers to contest U.S. labor practices vis-à-vis immigrant workers.

This strategy, which involved U.S. lawyers crossing the border to generate political support from Mexican officials and turning it back to advance domestic rights campaigns, had its roots in efforts that predated Fox's victory: (victory in the courtroom) in , the ACLU went to the Mexican NAO with a submission charging the United States with violating its labor laws by requiring the Department of Labor to investigate the immigration status of those reporting

labor violations — and thus deterring the reporting of violations by undocumented immigrants.

This human rights victory prompted one Earthjustice attorney involved in the Cancer Alley campaign to spin off a new organization, Advocates for Environmental Human Rights, which filed a Inter-American Commission petition on behalf of an African-American community in New Orleans challenging the approval of nearby toxic industrial operations on human rights grounds.

At the regional level, public interest organizations won a notable victory in the creation of quasi-legal review processes under NAFTA; after a decade of using the side agreements to promote labor and environmental rights on both sides of the U.S.-México border, however, advocates have discounted the system as a means to advance systemic reform.

As a result, a decision that was an apparent victory for employees also announced limitations that have made it difficult for a plaintiff to prevail on a disparate impact claim under the ADEA.

After just one year and with the quagmire of eminent domain language that the U.S. Supreme Court has done little to resolve, Kelo revealed itself as a Pyrrhic victory for urban redevelopment advocates.

Although Norwood was ostensibly a victory for individual property owners, the state Kelo decision may hold better protections of their rights because of the guidance it offers state courts.

And although marital assets are generally divided “equitably,” parties often experience a sense of victory or defeat in this context as well.

This unreasoned approach, which amounts to nothing more than a ‘mechanical nose count of witnesses,’ would promote a quantity-over-quality approach to expert retention, requiring parties to engage in a race to hire experts to ensure victory.

Or its glory might stem especially in light of its argumentative purpose from its association with the great victory achieved in securing ratification of the Constitution.

The first major victory under the EQA came in in Carroll v. Talman Federal Savings and Loan, which relied on three flight attendant cases to articulate a new approach.

Although the Sixth Circuit's opinion would suggest that the school's victory was relatively straightforward, the claim was in fact much more complex.

In its practical significance, a setback like Butler may outweigh five or ten government victories in ordinary tax cases.

Regardless of how many other cases the government won in this period, it seems unlikely the Court thought that these government victories would overcome the Court's hostile decisions in terms of qualitative importance.

Upheld apportionment-based attacks on LDP electoral victories, during the years when the LDP relied on a rural base;

As the persistence of dramatic inequities demonstrates, not all courtroom victories have become classroom successes; indeed, in some states, very little has changed.

Several advisory counterparts have scored legislative victories following investigations that revealed high-level abuse of office.

Successive legal victories and the passage of the civil rights laws bolstered the domestic trend, which — though never exclusive — became the defining mode of legal engagement during the public interest period.

Immigrant rights lawyers won important court victories in impact cases that sought to align domestic refugee law with international human rights standards.

At the most basic level, alliances provide more resources to undertake advocacy and implement victories.

Rather, it underscores a consistent historical lesson of the public interest law movement: legal victories are not etched in stone and must be monitored and protected from counterattack to be sustained.

Congress's blanket antipreemption provisions in the context of health and safety regulations might, in the end, prove to be Pyrrhic victories for state regulatory interests.

Although the lower percentage of plaintiff victories could be explained by a multitude of factors — for example, complexity of cases, reluctance of juries to hold doctors accountable, or difficulty in obtaining expert witnesses to testify against defendant doctors — it does not change the fact that plaintiffs' attorneys bring unsuccessful medical malpractice cases at a higher rate than other tort cases.

Then, by estimating the change in the ideological placement between the initial set of cases in the policy area of the signal and the later cases in that policy area, we show that these dissenting signals actually transform past losses into subsequent majority victories.

Ordinary administrative law thus surfaces regularly in these decisions and generally operates to protect state interests, whether or not states prove victorious on their claims.

It seems to us that an employer whose evidence met the “good-faith reasonable doubt” standard might nonetheless want to withdraw recognition only if he had conclusive evidence that the union in fact lacked majority support, lest he go through the time and expense of an (ultimately victorious) unfair-labor-practice suit for a benefit that will only last until the next election.

Volley

But given the inertia involved in Congress's law making process, it is unlikely that Congress will return the volley.

The reforms, in combination with the earlier reforms, prompted a volley of due process challenges in eleven U.S. circuit courts of appeals, all of which were decided in and .

War\ warfare\ warrior\ to war

In Kenya, for a short period of time, constitutional politics provided a structured and nonviolent forum for political warfare.

Clarence Thomas is hardly known as a warrior for either the civil rights movement or the African-American community.

When Professor Richard Revesz used the party of the appointing president to predict voting patterns on the D.C. Circuit, Judge Harry Edwards declared War: it was time to “refute the heedless observations of academic scholars who misconstrue and misunderstand the work of . . . judges.”

From our vantage point two hundred years later it appears that the Piersons may have won the battle but the Posts have won the War.

This interpretation would likely violate the spirit of the GATS, however, by allowing member nations to disregard their WTO commitments as long as they are at War with someone or something on some front.

For example, the United States could halt all motor vehicle part imports from Mexico on the grounds that the United States is at War with drugs, and cars coming from Mexico have been used to transport drugs.

It provides no support for any restriction of speech that can plausibly be interpreted as commenting on any political or social issue, including speech on issues such as “the wisdom of the War on drugs or of legalizing marijuana for medicinal use.”

Prosecutors have, and the public encourages them to use, increased powers to fight the War on corporate crime.

Absent financing, many plaintiffs cannot survive the War of attrition that is antitrust litigation.

The amendment’s backers described these initial defeats as just opening skirmishes in a long War.

After the Bakke, Grutter, and Gratz decisions, however, it is not entirely clear that a compelling governmental interest need be an imminent war-time emergency such as that in Korematsu; it may be as simple as the interest of public universities in achieving diversity.

One may speak loosely of a War on crime, a war on poverty, or a war on avian flu; but that usage is metaphorical.

The country imposed a to sentencing differential to punish crack and powder cocaine in the federal guidelines, reinstated the federal death penalty for drug kingpins in , and declared War on drugs in .

With public support for the death penalty at record highs, unprecedented political pressure to back it, and a War on drugs (and juvenile murderers) to fight, the Court's rulings in Penry and Stanford were just as one might expect.

“There can be no doubt,” Thomas insisted, “that the paternalism that appears to lie at the heart of this racial set-aside program is at War with the principle of inherent equality that underlies and infuses our Constitution.”

As discussed above, settlement costs for holdout firms generally rise as their codefendants settle because the earlier settlers have provided both a litigation War chest and (often) damning evidence.

The eloquence of Harlan's dissent in Plessy, along with Harlan's prediction that history would judge Plessy's holding unfavorably, rendered the dissent something of a War cry for the pre-Brown civil rights movement.

Weapon

In this way, a reauthorized Section 5 would become one of the most powerful strategic weapons in the Democratic Party's arsenal.

The strike suit was his weapon.

Censorship becomes a weapon in a government's arsenal, deployed arbitrarily rather than enforced consistently.

As law fell out of favor among liberals as a vehicle for promoting economic development in poor nations, it gained traction as a weapon for contesting the use of development policy for conservative ends.

As a result, JSAs can weaken the government's most effective weapon for exposing, punishing, and deterring price-fixing conspiracies.

For a variety of reasons, including its increasing use as a litigation weapon, Rule was ultimately reamended in to be more discretionary, with many commentators praising the change.

Studies show that stricter statutory rape laws and reporting requirements are not an effective weapon against increased teen pregnancy rates.

SEMANTIC FIELD “SPORT”

1. Ball;
2. Champion;
3. To coach, coacher;
4. To compete, competition;
5. Gamble, to gamble;
6. Game;
7. Hurdle, to hurdle;
8. Jump, to jump, jumper;
9. Kick, to kick;
10. Prize
11. Race, to race;
12. Referee, to referee;
13. Run, to run, running, runner;
14. Score, to score;
15. To skate, skating;
16. Speed, to speed, speeding;
17. Sport;
18. Team, to team;
19. To throw;
20. Win, to win, winner;

Ball

Writing for a Seventh Circuit panel that refused to raise an overlooked (and winning) issue for a party whose lawyer dropped the ball, Judge Posner argued that “we cannot have a rule that in a sympathetic case an appellant can serve us up a muddle in the hope that we or our law clerks will find somewhere in it a reversible error.”

Their insights also advance the ball considerably for research on relative judicial aptitude.

If courts would not allow the agency to preempt without a clear statement, then the ball is in Congress’s court to amend the statute.

The NLRB is much maligned for hiding the ball: for hiding its policymaking in adjudicatory fact-finding.

Justice Breyer even conceded, “Ours, of course, is not the last word: The ball now lies in Congress’ court.”

Alternatively, Arlington left the door open for Congress to mitigate the burdens placed on parents by these decisions, saying, “the ball . . . is properly left in Congress’ court to provide, if it so elects, for consultant fees and testing expenses beyond those IDEA and its implementing regulations already authorize.”

Champion

The story may seem paradoxical, for Marshall, a champion of the rights of African Americans in his role as chief NAACP Legal Defense Fund (LDF) litigator, would support a Bill of Rights that protected the rights of white landholders in Kenya.

It may seem a puzzling irony that for this champion of African American rights, a focus in Kenya was protection of the rights of privileged white people.

There was nothing they could do to reassure the United Party, but it helped their position with white moderates, the British Government, and the international press that one of their advisors was a well-known champion of minority rights.

He is . . . an awkward champion of the Fourth Amendment.

Although Harlan’s contemporaries failed to appreciate the wisdom behind his lonesome dissents, Harlan has since been hailed as a “great dissenter” and a prophetic champion of civil rights.

In an effort to remedy Brown’s “great flaw,” Thomas has borrowed the words and principles of John Marshall Harlan, Thomas’s own judicial hero and the Court’s only civil rights champion at the turn of the twentieth century.

Part IV demonstrates that despite the condemnation he has received from the African-American community, Thomas believes that he is a prophetic champion of civil rights, and suggests that Thomas has sacrificed his contemporary significance on the Court so that he, like Harlan, can have his lonely civil rights opinions vindicated by history.

If Thurgood Marshall bequeathed to Thomas his role as a great champion of civil rights, Thomas has been a very ungracious heir.

Not until Brown “sent scholars scrambling to study him” was Harlan, “the lone champion of black civil rights on the turn-of-the century Court,” finally “hailed as a prophet.”

The implementation of foreign aid programs has placed U.S. public interest lawyers in conflicting relationships with development agencies — at times opponents and champions of aid-driven reform in the developing world.

Establishing legal defenses on a loan-by-loan basis will achieve some, but certainly not all, of the objectives that modern champions of a doctrine of odious debt are seeking to promote.

Competition \ to compete

In these cases, simply showing that the defendant competed with a former employer fails to support an injunction enforcing a noncompete agreement; actual proof of damage resulting from the proprietary information is required.

To be sure, it could be that civil rights organizations would compete with one another for the privilege of representing minority groups. But this would be a welcome development, if indeed it emerged.

The fourth and final precondition concerns the specific character of political competition in the covered jurisdictions when the VRA was originally enacted.

Though not alone in recognizing the substantial impact of voting rights law on partisan politics, Professor Issacharoff observes that Section 5 produces more readily justifiable outcomes when there is a dearth of healthy political competition in covered jurisdictions: “In paradoxical fashion, the more Southern politics continued to be organized around the retrograde isolation and suppression of black political interests, the more enlightened and noble would be the intervention from Washington.”

The conditions that affect and condition competition between political parties — the parties’ relative sensitivity to constituents’ needs, appeal to a wide voting base, and willingness to represent a diversity of interests — are to a large extent within the control of the parties themselves. Failing to win the support of a particular constituency is just that — a failure of a particular political party.

If a compromise cannot be reached that balances the intergenerational competition of political power, the model becomes untenable.

Part II analyzes the competition between the state's interest in protecting minors and minors' interests in sexual privacy.

In their concurrence, Justices Kennedy and Breyer noted, When one considers that elections require candidates to conduct campaigns and to raise funds in a system designed to allow for competition among interest groups and political parties, the persisting question is whether that process is consistent with the perception and the reality of judicial independence and judicial excellence.

More information disclosure should also mean greater competition among plaintiffs' firms for lead-counsel status in class action suits.

Second, although in theory states compete for the role of providing efficient corporate governance, in practice the only real competition faced by the leading incorporation state, Delaware, is from the federal government.

Thus, corporate governance issues that the federal government believes are not adequately handled by the states will likely find their way into securities regulation. This competition illustrates an important tie between securities regulation and corporate law.

From this perspective, the competition from the federal government can be seen as aiming to preserve the information traders market.

But to the extent that the incentive is an artifact of the ways in which public institutions channel and inform political competition, and if actors external to the elected branches are positioned to revise the problematic structures of representation or otherwise to effect liberal reforms, there may be some basis for hope.

That elected officials must face the voters every so often gives those officials an interest in adjusting the rules of political competition in ways that disfavor challengers.

But politicians whose careers are on the line will typically have much more information than do voters about how political competition is likely to be affected by, for example, particular reforms to information-disclosure regimes, campaign-finance laws, ballot-access rules, or electoral district boundaries.

Self-interested incumbents may take advantage of asymmetric information to erode political competition.

Consequently, electoral competition can generate sharp expansions or curtailments of political equality.

The conflicts of interest that arise when elected officials legislate on matters concerning the ground-rules of political competition or legislative ethics do not generally contaminate human rights or privacy policy.

The reasonableness inquiry, meanwhile, allows courts to decline enforcing agreements that use proprietary information as a guise for restraining legitimate competition.

And fourth, proxy fights should perhaps be easier to wage. With competing slates of directors, directors might, as in democratic political competition, become more faithful agents of the shareholders, their electorate.

Gamble \ to gamble,

I conclude that unless Congress is prepared to gamble with the minority franchise by allowing preclearance to expire, Section 5 (in its mandatory form) should be extended for a period of time necessary to allow Congress to evaluate the potential virtues and limitations of the opt-in approach.

The inclusion of this “likelihood standard” allows trial participants to gamble, risking punishment if the judge considers their speech more prejudicial than it was intended.

And finally, lenders being lenders, one may confidently predict that the pricing of the loan will reflect (upward) this all-or-nothing political gamble on the part of the creditors.

Game\ to game

As long as civil suits are fair game for impeachment, some authority suggests that the government may put evidence of accusers’ civil settlements in the record during the prosecution’s case-in-chief, because a party may generally lead off with impeachment of its own witness to blunt the impact of this evidence.

Such third-party litigation might be prejudicial against the prosecution because it might create the mistaken impression that the accused has less culpability, as if liability were a zero-sum game.

To put it simply, the criminal trial is not the only game in town.

Rape survivors will not play that game unless the rules are fair to the accuser as well as the accused.

It would be naive to think of the Court as altogether apolitical, but the notion that Justices are appointed primarily to advance a political agenda, and that if they do not then they are failures, contributes to the zero-sum game mentality of the appointment process.

It bears noting that our uncertainty about the benefits of e-rulemaking stems in significant part from the fact that rulemaking has long been an insiders' game.

Federal agencies have promulgated myriad regulations asserting preemptive authority, the U.S. Supreme Court has decided a rash of products liability preemption cases, and Congress has gotten in on the game, holding hearings to consider legislation designed to undo the Court's handiwork in the realm of medical devices and food products.

Many appellate judges would laugh at the suggestion that they are participants in such a long-term strategic game, in part because judges often cannot remember many of the cases that they decided in years past and so could not possibly implement "strategies" to gain payback in future cases.

First, negative horizontal political externalities are a zero-sum game to political competitors.

Another criticism arises from the possibility that the rating system might be manipulated or gamed by circuit court judges maneuvering for a promotion.

Professor Solum raises this criticism and discusses how each of the measures might be gamed.

Under the status quo system, judges can game promotion by rendering decisions amenable to the potential appointing president.

Hurdle \ to hurdle

These controls are entirely appropriate given the Constitution's high hurdle for reversing a Supreme Court holding of unconstitutionality.

This need not be the only consideration under reasonableness, but rather a first hurdle for government officials.

The courts that have extended the scope of homicide statutes to reach the killing of a fetus have had to address and overcome this common law hurdle.

The Federal Arbitration Act presents a significant hurdle to state legislation attempting to ban such clauses.

The First Legislative Hurdle: The Antiterrorism and Effective Death Penalty Act of (AEDPA).

Although it may seem that such a proposal faces insurmountable political hurdles, ultimately it is unlikely that any alternative policy will achieve meaningful, long-lasting change.

To the extent that jails were once treated as a physical space accessible only after the government surmounted high hurdles of criminal process, the Court's rulings on regulatory incapacitation have devitalized that ideal.

Although the legal authority for the attorney-client privilege is statutory, there may be federal constitutional hurdles, namely, due process or the right to counsel, that limit exceptions to the rule in order to allow proof of causation in a nocebo suit.

Even citizens bold enough to challenge restrictions — such as a dog owner who filed a lawsuit over the removal of his post criticizing Beijing's animal size limits — face legal hurdles (the court rejected his case) and informal pressures such as harassment from government agents.

Although the Court's standing jurisprudence, when taken at face value, suggests that the homeowners in Kelo may not have had standing to sue, the Court never considered that possibility because of an assumption that claims based upon private property interests are more suitable for judicial resolution than less traditional claims that often must overcome significant justiciability hurdles before being addressed on the merits.

The costs, though, are significant: international bodies are subject to immense political pressure by the United States, impose their own jurisdictional hurdles, and are handicapped by their lack of enforcement powers.

The Supreme Court has increased the height and number of hurdles that plaintiffs' counsel must clear in order to survive dismissal and summary judgment.

To the extent that jails were once treated as a physical space accessible only after the government surmounted high hurdles of criminal process, the Court's rulings on regulatory incapacitation have devitalized that ideal.

The Constitution vests the legislative power in Congress and creates difficult hurdles for legislative action.

The success of congressional mandates for agency-state cooperation in the REAL ID experience, as well as in the realm of environmental law, provides some modicum of hope that, assuming the political hurdles could be overcome, codification of the Executive Order would pave the way toward more fruitful agency-state cooperation and interaction in setting regulatory policy.

Additionally, an adequate test exists for evaluating adult pornography — the obscenity test from Miller — that overcomes the hurdles of the First Amendment.

Thus, despite the fact that these sentence-administration claims implicate physical liberty, it makes sense to impose on them the same disincentives, screening devices, and procedural hurdles applied to other challenges to administrative actions by corrections officials.

Jump\ jumper\ to jump

In the prolonged absence of federal action, many state legislatures have jumped into the fray to try and fix the problem.

When the agency's decision is conservative, the Republican validation rate jumps to 70 percent.

When the agency's decision is conservative, the validation rate jumps to 72percent.

We have seen that the Republican invalidation rate jumps when the agency decision is liberal, and the Democratic invalidation rate jumps when the agency decision is conservative.

An independent question is whether the best reading of the evidence emphasizes politicized invalidations. We have seen that the Republican invalidation rate jumps when the agency decision is liberal, and the Democratic invalidation rate jumps when the agency decision is conservative.

Considering that contingency fees have been the primary payment method for plaintiffs' lawyers in most tort litigation for decades, it would not be expected that such fee arrangements would have produced a jump in the number of suits filed.

To kick \ to kick

Or does the Court simply kick a government that it perceives to be incompetent (because of economic performance) at the time of decision, regardless of whether it was the same government or same conditions when the statute was originally enacted?

Prize

A shrewd antitrust plaintiff can play two or more defendants against each other, essentially having the defendants bid for the prize of settling first and avoiding both trial and the end of the whipsaw.

Race\ to race\ racing

...when Congress passed the Private Securities Litigation Reform Act, securities class actions were a race to the courthouse for both the industrious and the unscrupulous plaintiffs' attorney.

If an attorney could win that race (that is, file the first lawsuit), the chances of being appointed lead counsel and controlling the litigation were substantial.

In an ultracompetitive environment in which courts were unwilling to dirty their hands working out which firm would best represent a class, judges chose lead counsel using the clearest available signal: which attorney won the race to the courthouse by filing first.

Even though the PSLRA limited the first-to-file advantages, many attorneys still prefer to win the race to the courthouse because it allows them to post notice of the class action before their competitors, increasing the likelihood their firm will attract the client with the largest loss.

When reformers tackled the race to the courthouse and professional plaintiffs in the early s, their solutions were market based — using the PSLRA to substitute richer and presumably more sophisticated institutional clients for poorer ones to increase client monitoring of attorneys.

Arkansas welcomed seventy thousand refugees by opening National Guard armories and churches. Wisconsin and Minnesota offered housing to thousand of refugees. The federal government also participated in the race to provide relief.

Then, in the 1980s, battles over tort law in Texas produced “unprecedentedly costly, heated races for its supreme court.”

In 1997–1998, the top campaign fundraiser prevailed in approximately 75 percent of contested state supreme court races, and in 2001–02, the top fundraiser won in 80 percent of the elections.

This link between economics and politics is an empirical reality that scholars have documented in a wide range of contexts: the strongest connection emerges in presidential elections, but the link also surfaces at notable and significant levels in House, Senate, and gubernatorial races.

Referee / to referee

Such a framework should attempt to referee the tension between the overlapping but distinct frameworks of rules and principles.

It is not our objective here to referee these competing claims by originalists about the validity of Brown.

Running\ runner\ to run

But this choice is dependant on the quality of candidates running to be F-representatives.

It is an appropriate function of the Court to keep the machinery of democratic government running as it should, to make sure the channels of political participation and communication are kept open.

Going forward, unions argue that the Employee Free Choice Act, which would amend the NLRA to facilitate recognition based on a showing of authorization cards is necessary to counteract the one-sided nature of the two-month-long campaigns running up to NLRB-supervised elections.

There may be few doctrinaire legal formalists running about, but, as Howard Gillman has aptly recognized, “The entire structure of legal education and the nature of the judicial process in the United States is premised on the assumption that, one way or the other, law matters.”

If the obesity problem were addressed through existing tort law, a judgment would run against a particular firm, including a finding of fault on the part of that firm.

This all changed in Los Angeles in 1978, however, when a group of deputy district attorneys offered to support any candidate who would run against an unopposed incumbent trial judge, producing a record number of contests and defeated judges.

The point is that in a description of how all judges think, it leaves a huge hole to ignore the effect of lawyers and their clients, and the need to run a fair courtroom, on judicial thinking.

More importantly, cases in the Supreme Court are highly unrepresentative of the run of litigation.

Although most state judges operate in some type of political market, few if any are in the same type of market as legislators: judicial retention elections are rarely contested, judges usually do not run as members of political parties, some judges face political review by the legislature or the governor rather than the voters, and even those state high court judges who face electoral review do so on a statewide rather than a districted basis.

Given the manner in which the reapportionment decisions are viewed in retrospect — as courageous and necessary steps taken by the Court to correct a grave breakdown in the democratic process — it seems likely that should a future Court decide to reach the merits of partisan gerrymandering claims, such action would similarly bolster the legitimacy of the Court in the long run.

The department began to run into a legislative headwind, however.

How long should a person have citizenship before qualifying to run for the Senate?

The circuit court, concerned that allowing the plaintiffs to seek recompense from the class attorney would force the district court to “run directly into the state court finding . . . that the fees were reasonable,” concluded that the suit was inextricably intertwined with the state court judgment.

To escape investigation by a parliamentary committee, members struck “corrupt compromises,” under which they agreed to apply for the Chiltern Hundreds and not run in the resulting byelections; in return, the challengers, who would then stand for the seats unopposed, would withdraw their petitions.

And former Chief Justice Rehnquist argued that nonoriginalism — which he called living constitutionalism — is simply “a formula for an end run around popular government.”

As Professor Kathleen Sullivan has explained, “[t]o hold that conditions coerce recipients because they make them worse off with respect to a benefit than they ought to be runs against the ground rules of the negative Constitution on which the unconstitutional conditions problem rests.”

But the notion that the federal government has an affirmative obligation to give financial assistance to the states, no less than the baselines proposed by earlier scholars, “runs against the ground rules of the negative Constitution.”

Writs of error ran from one court to another.

Score\ to score

First, I include a measure of the ideological preferences of each judge. For this proxy, I use each judge’s party-adjusted surrogate judge ideology measure, or PAJID SCORE.

This SCORE is the most common measure of judges’ ideology that political science studies use, and it is based on the assumption that judges’ ideologies can be best proxied by both their partisan affiliations and the ideologies of their states at the time of their initial entry in office.

Including the PAJID SCORES allows me to separate the influence of the judges’ own ideologies from the influence of retention methods.

The judges with the highest quality SCORE for outside circuit citations (the measure pioneered by Choi and Gulati) did not tend to have greater success when the Supreme Court reviewed their decisions.

Other judges, however, had higher independence SCORES.

Nevertheless, when the SCORES (of judges) were weighted to account for different criteria, Posner and Easterbrook became quite dominant.

For example, if Republican judges predominate in the circuit courts, Democratic judges will systematically have lower independence SCORES, simply because they have relatively less opportunity to demonstrate independence from other Democratic appointees on the same panel.

Consequently, a purely ideological judge would produce a very high independence SCORE given that most of the decisions rendered by other appointees of the same party are far less ideological.

Table 2 reports the number of Supreme Court reversals for the top SCORERS on this quality scale.

The next table takes the Choi and Gulati top SCORERS and considers the number of their opinions that were affirmed by the Supreme Court.

Because the Supreme Court tends to reverse more decisions than it affirms, the average SCORE was a negative one.

Table 6 reports the top five SCORES of circuit court judges on this metric.

On the Supreme Court review measure, Judge Selya does poorly, with a SCORE that is well below the median.

Because the use of Supreme Court review has been criticized for potential ideological biasing of quality, we tested the data for the possibility of ideological skewing of the review SCORE ratings.

On this scale, higher SCORES are associated with higher measures of a judge's conservatism.

Instead, we offer these Supreme Court-based SCORES as one additional dimension of quality to be considered in the evaluation.

The relative SCORES of the judges are surely explained by the different approaches to judging discussed in Part III.

Our measure gives a judge a high SCORE if he is more likely to vote with opposite-party judges and a low SCORE if he is more likely to vote with same-party judges.

In a few states, all the high court judges belong to the same party in our data set, and so we cannot assign those judges an independence SCORE.

A more negative independence SCORE corresponds to a judge who writes opposing opinions against opposite-party judges more frequently than the background pool of majority opinions authored by opposite-party judges.

Conversely, a more positive independence SCORE corresponds to an authoring judge who writes opposing opinions less frequently against opposite-party judges compared with the background pool of opinions (and thus more frequently against copartisans).

We treat a more positive independence SCORE as indicative of a more independent judge.

The court with the highest mean independence SCORE among judges for the 1998 to 2000 period was Rhode Island's, with a mean independence SCORE of 0.19; the least independent court was that of Mississippi, which had a mean independence SCORE of -0.31.

Several courts receive no SCORE because of insufficient data.

Another state that also SCORES high, but that has not traditionally done well in citation studies, is Oregon.

Comparing our results to the Chamber of Commerce's 2002 survey of judicial impartiality, we see no statistically significant correlation between our underlying independence SCORES and the judge impartiality SCORES reported in the 2002 survey (correlation coefficient = -0.1810; not significant).

If so, those lawyers would give high grades to courts dominated by Republican judges who vote together, whereas those same courts would receive low independence SCORES because of partisan voting.

On the other hand, where a judge consistently SCORES at the bottom of objective rankings, those reviewing the judge's performance (whether for promotion to a higher judgeship or for reelection in a state with judicial elections) may wish to probe further to see if the judge's poor ranking correlates with general poor judicial performance.

For example, judges striving to improve their productivity SCORE by writing more opinions might shirk on other productive responsibilities such as court administration, careful consideration of the merits of each case, or a close reading of the trial record.

Judicial rankings do not merely reflect past performance of a judge or a court system — they might also create incentives for a judge or court to take actions to improve their SCORE.

And even if there are no tangible benefits to higher rankings, judges may seek to SCORE better in a ranking system simply because they believe it will help improve their reputation and stature.

As noted, they argue that their rankings, although not definitively capturing judicial quality, at least create a presumption that courts that do well on their **SCORES** are superior to those that do not.

We are not convinced. If productivity, influence, and independence represent only a narrow range on the list of attributes that constitute a good judge or court, then creating a presumption that a court that **SCORES well** on these factors is a high quality court may be a classic example of the tail wagging the dog.

But if that court also **SCORES well** with organized labor, environmental organizations, and trial attorneys, the rankings take on a different light.

A court that **SCORES well** with only one type of interest group while earning failing marks from others is subject to the immediate criticism that the court is only a shill for the interest group that has evaluated it favorably.

In this way, the fact that a court **SCORES well** with a particular interest group can effectively be turned into a political liability rather than an advantage.

A liberal group may very well believe certain conservative jurists are excellent judges, for example, but nevertheless give them low **SCORES to weaken those judges' candidacy** for judicial promotion.

The judges obtained an average **SCORE** of 1.23, slightly higher than the average score of students at the University of Michigan (1.18) and slightly lower than the average score of students at Harvard (1.43).

Collectively, the ALJs obtained an average score of 1.33, which is roughly comparable to the **SCORE obtained by** the Florida state trial judges. Overall, 30.2 percent provided incorrect answers on all three items; 27.8 percent answered one item correctly; 20.6 percent answered two items correctly; and 21.4 percent got all answered all three items correctly.

In most contexts, judges who **scored well** on the CRT were just as likely to rely on misleading heuristics as those who did not.

Figure plots the average of the mean of the majority coalition **SCORES** for all First Amendment cases from the Term through the Term.

Skate \ skating

Instead, Posner wrote, because “these considerations were rejected by Branzburg even in the context of a confidential source, these courts may be **skating on thin ice**.”

Speed\ speeding \ to speed

The process sped up after the Tulane Law School Criminal Defense Clinic moved to hold the deputy warden in contempt.

If a majority of the Supreme Court wanted to impose some limits on the conditional spending power, it could easily speed past the normative and analytic problems I have identified.

The plaintiff may show leniency or grant a complete pass to one or more of the price-fixing firms — for example, because the plaintiff buys directly from them and wants to maintain good relations, because the plaintiff is related to them, because the plaintiff is trying to simplify and speed up the litigation by suing the smallest conspirator capable of paying the total damages, or for no reason at all.

In any event, many commentators have concluded that the benefits of negotiated rulemaking do not outweigh the costs (given that negotiated rulemaking does not speed up rulemakings or reduce the likelihood of litigation).

This expansion of the board, however, did not speed up the completion of decisions.

It was designed to ensure that federal courts grant relief only to those state prisoners who speed their way to federal court after exhausting state judicial remedies.

But Court B's speed of case disposition is much faster.

Perhaps the greatest difference, even between states that have had similar outcomes, is the speed with which and degree to which the legislative and executive branches have complied with the courts' orders.

In contrast to nearly every other state where plaintiffs have prevailed in a school adequacy case, the Kentucky General Assembly reacted with “astonishing” speed.

He asserted that requiring judicial approval in advance would decrease the speed of executive response to foreign intelligence threats, as well as increase the likelihood of security breaches, because the executive would have to take the judiciary into its confidence.

Judge Sand detailed some of these dangers in formulating the foreign intelligence exception in Bin Laden: requiring law enforcement and intelligence agents located overseas to communicate with judicial authorities back in the United States or foreign judicial authorities would decrease the speed of the executive response, increase the risk of security breaches, and could undermine cooperative relationships with other nations.

The speed with which the debate shifted necessarily begs the question whether Norwood is an appropriate model for other state courts addressing similar problems.

Following the precedent set by the Clinton Administration, though with somewhat less speed, the Administration asked for the resignations of nearly all the U.S. Attorneys.

Without a benchmark (other than speed of case processing), how does one know how the NLRB is doing?

This litigation may be proceeding with less speed than the victim would prefer, given its own discrete interests, but it is worthwhile to reflect on the old adage that the wheels of justice grind slowly, but they grind exceedingly fine.

First, any relief comes slowly, for the federal legislative process is not built for speed.

Plans were laid out and money appropriated to begin the process of computerizing rulemaking to reduce paper in the bureaucracy, increasing citizen participation and deliberation in the rulemaking process, and speeding and enhancing the subsequent creation of administrative rules across the entire administrative apparatus.

Team

But when the Justices believe that the economic crisis is the result of factors largely beyond the control of the government, they will often not sanction federal policymakers but instead seek to work as a team with the other branches of government to remedy the national crisis, much as voters and judges tend to rally around the president in times of foreign threats and nationwide emergencies.

In this context, our theory suggests that the Justices would seek not to punish elected officials for economic conditions but to work as a team to stimulate national recovery.

At least in the area of taxation, it is quite possible that the Roberts Court will join forces with the Obama administration to operate as a team to enable economic recovery.

Representatives of interest groups, even those with diffuse interests, do have access to the staff members in each of the offices represented on a rulemaking team.

Thus, agency economists may communicate with economists outside the agency regarding economic issues that a possible rulemaking raises; the same is true for engineers, environmentalists, health scientists, and virtually every profession from which a member of the rulemaking team comes.

In contrast, as a career bureaucrat, an agency staff member on a rulemaking team generally focuses on one particular aspect of a rulemaking, has already established a network of professional relationships, and does not have to spend time protecting a boss who is constantly seeking reelection.

The Clinton administration also sent a team to participate in the drafting of the Rome Statute, which established the International Criminal Court.

Along with fellow luminaries Benjamin Franklin and John Adams, Jay had served on the negotiating team that produced the peace treaty that ended the Revolutionary War and, as of the time of the writing of Federalist, he held the Confederation's most important office as Secretary of Foreign Affairs.

Similarly, the Environmental Law Alliance Worldwide (E-LAW) is a listserv that permits members in over sixty countries to request legal and scientific information, access model environmental policies, and connect with teams of international lawyers in support of environmental campaigns.

It is entitled to full disclosure from the trial-level defense and prosecution teams and has the authority to compel the attendance of witnesses and the production of evidence.

to throw

Of course, the Justices, unlike voters, do not have the power to throw out (or retain) incumbents, but they can reject (or support) the government's policies through their judicial decisionmaking process.

Because litigants need to choose carefully the arguments they make before the Court — due to opportunity costs created by time constraints and judicial

impatience with litigants who throw every possible argument into a brief — effective signaling will often require new litigation, and will not be amenable to fact or issue manipulation.

A study by the Chicago Tribune yielded sobering results as well, discovering at least cases since the Supreme Court's decision in *Brady v. Maryland* in which courts threw out homicide convictions because prosecutors concealed exculpatory evidence or presented evidence they knew to be false.

The party's rivals regrouped around Ozawa and another renegade LDP, politician Morihiro Hosokawa, and threw it out of power.

To win\ winner

No state emerges as a clear winner, but a strong case can be made that California has the best high court.

To give effect to rulings desegregating the public schools, effectively deciding the winner of a presidential election, or prohibiting capital punishment in the states, the Court might need to stand together as a whole, even if the Justices are not fully in agreement with one another.

The litigants' control of case presentation is thought to promote dignitary and participation values by "affirming human individuality" and showing "respect for the opinions of each party," producing an outcome more satisfying to winners and losers alike.

The process of resolving family law disputes thus valorizes the clean lines that determining winners and losers yields, assigning parental rights and child custody to one parent over another, dividing marital assets between the parties, and otherwise bringing legal relationships to what the legal system perceives to be closure.

In short, the Love-Hate Model of family law takes the norms that prevail in the most arms-length, impersonal disputes — finality, clear rules, settling on a single factual narrative, determining winners and losers — to freeze relationships at the moment of greatest conflict.

As a result, courts must ignore parties' merits arguments and adjudicate discovery disputes as if all cases of a similar type in the pool (that is, cases arising under the same statute that are neither facially frivolous nor obvious winners) warrant similar discovery.

With limited potential for effectively communicating merit, the court's decision must base on the average merit of all cases in the pool, such as the pool of all cases arising under the same statute that are neither facially frivolous nor obvious winners.

Courts could make more accurate discovery decisions if they could better tell case merit, allowing more discovery in close-call cases that, being neither clear winners nor clear losers, warrant more extensive evidence gathering.

Moreover, with the costs of winning judicial elections increasing dramatically, judges are compelled to rule in ways that help them to obtain campaign funds. Indeed, several judges have admitted that reelection concerns may influence their judicial rulings.

In addition, other factors may alter the nature of the tax cases being heard over time. Because a change in the nature of the cases could affect the probability of the government winning, in follow-up analyses we intend to study further whether the nature of the cases actually changes, as well as to control for any such changes.

Writing for a Seventh Circuit panel that refused to raise an overlooked (and winning) issue for a party whose lawyer dropped the ball, Judge Posner argued that “we cannot have a rule that in a sympathetic case an appellant can serve us up a muddle in the hope that we or our law clerks will find somewhere in it a reversible error.”

If the lawyers have failed to perform their function effectively, and the wise and experienced judge is aware of important legal arguments overlooked by one or the other, there is no reason for the judge to turn a blind eye to the winning arguments he identified.

I can't believe people put up with it, I really can't[.]” said Rick Johnson, who mounted a successful multi-prong attack on the NCAA's no-agent rule in the Andy Oliver case, winning an injunction as well as a 1000\$, settlement after an initial ruling on the merits.

The Yale clinic has emphasized human rights litigation in U.S. courts, bringing the high-profile challenge to the U.S. government's detention of Haitian refugees in Guantánamo Bay, and winning the first federal court ruling applying the ATS to human rights violations committed by non-state actors.

The plaintiff — now armed with funds and evidence — poses a more credible threat to the remaining defendants of going to trial and winning.

There is little recognition in the legal system that winning may create or further weaken a fragile relationship with an ex-spouse, who now is a co-parent and with whom the litigant must work out myriad issues.

Whereas triage in an emergency room prioritizes the worst cases, litigation triage prioritizes the cases that are most likely to lend themselves to legal arguments that will balance the preference for legal change with a preference for winning.

In the end, the issue did not keep Bush from winning the election (despite losing the popular vote), but it did add to the negative publicity that the death penalty was receiving elsewhere, fueling momentum for reform.

Along these lines, ATS advocates suggest that even when litigation does not create binding human rights precedent or produce clear monetary wins, it is still useful as a means to educate the public, mobilize grassroots campaigns, and forge human rights activist networks.

In the years before 1930, our data indicate the Justices were willing to punish the federal government for economic declines as evidenced by a corresponding decrease in the government's Win rate.

During the 1930s, however, we find that the government fared better in the Court — the government's Win rate actually increased as the economy continued to tank.

Assuming, as we do, that both the voters and the Justices rationally prefer economic prosperity to economic loss, the electoral success of the incumbent government along with its Win rate in Court should trend with national economic conditions.

Put another way, the government's Win rate should positively correlate with various economic indicators, such as employment rates, industrial production levels, GDP, and so forth.

To be sure, a systematic decrease in the government Win rate in the face of a deteriorating economy is not the preferred outcome of any administration, but we do not argue that this penalty is equal to that threatened by the general voting public.

First, our theory implies that the U.S. government's Win rate in the Supreme Court will correlate with economic conditions;

Suffice it to note that the difference in the government's Win rate — however measured — between the two eras of interest is not statistically significantly different.

Statistical Models and Predictions For purposes of identifying the possible influence of national economic conditions on the U.S. Supreme Court, we examined the effects of macroeconomic variables on the probability of a Win for the federal government.

If our theory holds, both indicators should be positively correlated with the government's Win rate during the first period (pre-1930) and negatively correlated during the second period (the Depression years). For the dependent variable, Outcome, we used a logit model to determine the effect of the economy on the case outcome.

This type of model expresses the probability of a government Win in terms of the inverse logit function.

The models for our two different economic independent variables are
$$Y_{it} = \alpha + \beta_1 \text{Economic_Cycle}_i + \beta_2 \text{Industrial_Production}_i + \epsilon_{it}$$

$$\Pr(Y_{it} = 1) = \frac{\exp(\alpha + \beta_1 \text{Economic_Cycle}_i + \beta_2 \text{Industrial_Production}_i)}{1 + \exp(\alpha + \beta_1 \text{Economic_Cycle}_i + \beta_2 \text{Industrial_Production}_i)}$$
 in which Y_{it} is the value of the Outcome variable in case i in month t . In each model, the coefficient β_1 represents the influence of the economy on the probability of a government Win.

If the “Justices as voters” model aptly characterizes the Court’s decisions, then economic downturns should cause a decrease in government Win rate.

If the government's Win rate in the treated cases diverges from that observed for the control group, then we have evidence that the economy affects judicial decisionmaking.

Specifically, when the economic cycle is on the uptick (or industrial production is relatively high), the government's Win rate increases, as indicated by the positive coefficients on the economic variables

This figure depicts the predicted probability of a Win for the federal government during downturns in the economy for the crisis and noncrisis periods in our dataset (with all other variables at their modes or means).

But for the 1930s depression era, we predicted a Win for the government in seven out of ten cases.

The shifting nature of deference impacts the government's Win rate before the Supreme Court.

The regression results are consistent with the theory. In the first set of cases, the government's Win rate positively correlates with the business cycle.

Selection Effects In normal times the data reveal a positive correlation between economic conditions and government Win rates

“It is in discovery that the facts are developed,” sometimes leading to a dismissal of the case on summary judgment but other times to “vital evidence” that yields a trial Win or a “favorable settlement.”

If two parties with a stake in the matter disagree over the interpretation of a statute, regulation, or constitutional provision, courts resolve that conflict by publicly stating not only who wins the case but also what the law means.

Defendants frequently Win reversal of their convictions when they demonstrate that they lacked the opportunity for thorough crossexamination concerning accusers’ civil suits.

As one court indicated, the prospect that an accuser might Win a civil recovery is “always a proper subject for crossexamination.”

As elections have become more contested, incumbents have found it harder to win.

The increasing cost of judicial campaigns has made it extremely difficult for candidates to win elections without substantial funding.

This result suggests that partisan elected judges may sometimes vote to win the support of the governor in their next reelection.

In the initial period, the government tended to win more of its tax cases during upswings and lose more during downturns.

In a normal boom, the government is more likely to win.

If an attorney could Win that race, the chances of being appointed lead counsel and controlling the litigation were substantial.

Even though the PSLRA limited the first-to-file advantages, many attorneys still prefer to win the race to the courthouse because it allows them to post notice of the class action before their competitors, increasing the likelihood their firm will attract the client with the largest loss.

The wealthier, sophisticated, repeat-player litigants will usually Win; the poorer, outgunned, one-shot litigants will lose, regardless of the merit of their cases.

More worrisome is the possibility that judges will end up raising arguments to favor the party that they would prefer to win the case.

And, as noted above, the counterpart is unlikely to expend its legislative process right on issues as to which there's little hope of forging a compromise that could win majority support in a vote of the legislature or of the citizenry.

Keith Whittington suggests that in political systems with multiple veto points (characteristic of federal and separated-powers regimes), constitutional courts can win political support over time by "interposing a friendly hand," helping national coalitions to overcome regional obstructionism and entrenched interests, as well as fractiousness within the coalition.

An innocent defendant is more likely to win at trial, in which case the antitrust plaintiff receives nothing except the early cheap settlements.

So in the United States, it does not matter whether the Democrats or the Republicans win a presidential election: the massive national debt comes strapped to the keys to the White House.

The lender accepts this pilfering to win the mandate, or perhaps because the government is prepared to pay a higher interest rate on the loan than would have been true in the absence of this special feature of the transaction.

A Defense of the Prospective Standards In declining to consider the partisan gerrymandering claim in *Vieth*, the Court found it dispositive that no standard existed that was as "solid," as "judicially manageable," and as likely as one person, one vote "to win public acceptance for the courts' intrusion into a process that is the very foundation of democratic decisionmaking."

These changes are a first step toward decreasing the win/lose mentality dominating family law litigation.

In economic terms, the court's proportionality determination bases on the following three variables: • L , the size of the case, typically the amount in controversy but also possibly the value of nonmonetary relief; • p , the probability that the plaintiff will win if the case goes to trial; and • Δp , the probative value of the evidence (the difference the disputed evidence makes to p).

This difficulty estimating L is not the main topic of this Article's analysis, but the partial solution, assuming the same average value for all cases in the same pool, returns in this Section as a similar imperfect solution to the problem of estimating p , the probability that the plaintiff would win at trial.

The most important consideration in a discovery dispute is the probative value of the evidence— Δp , the difference (Δ) the evidence makes to the probability (p) the plaintiff will win at trial.

As this Section moves on to discuss, it is just as hard for courts to analyze p , the variable capturing the merit of the case (the probability that the plaintiff would win at trial), and, disturbingly, most courts do not even see merit as relevant to discovery decisions.

But for discovery in particular, it remains received wisdom that proportionality rulings do not depend on the case merits (p , the odds the plaintiff would win at trial); rather, the factors entering into proportionality rulings include case size (L , amount in controversy and importance of issues) and issue complexity (Δp , probative value).

Thus, the optimal amount of discovery depends on the odds that a claim will win: the closer the case is to having fifty-fifty odds, the more the jury needs additional evidence to help it decide the case, so more discovery should be allowed.

In sum, the optimal discovery amount (Q^*) depends on the odds a claim will win (p).

Though agencies do generally win these lawsuits, the prospect of more litigation may discourage an agency from meaningfully considering the value of divergent state policy alternatives.

Even though they knew their clients could not win, such lawyers could exploit the bottleneck in the system to guarantee their clients additional years within the United States.

These points suggest that agencies are probably losing many cases that they ought to win.

The preceding account reveals that The Federalist embodies a strategic argument designed to win an intense political campaign.

Third, the theory of judicial signaling to litigants must implicitly assume that litigants want to win and will use whatever arguments they believe will help them win, and that their lawyers use information from Justices' written opinions to gauge which case facts and legal arguments will appeal to which Justices.

We find that dissenting opinions that mention a case's implications for federal-state powers implicitly suggest to like-minded litigants possible ways to frame cases to win over a majority of Justices.

Recognizing the importance of this conflict between communities for rights in property does not settle the question of who should have won the case.

Civil litigation can reach defendants who might be invulnerable to criminal prosecution. For example, victims can bring suit against defendants who WON acquittal in criminal proceedings.

Jury verdicts in civil cases may be higher if the criminal prosecution has not already WON a significant sentence.

In 2007, Michael Flatley, the Irish dancer who founded Riverdance, WON a multimillion dollar tort judgment against a woman who had sued him for rape.

First, I notice from my forays into the district court as a volunteer trial judge that the lawyers who do not make any (or at least make very, very few) objections often WON.

The court found that the debtor was generally known by creditors to sell the goods of others, and, having proven the generally known exception, the consignor WON his claim to the property.

In 1997–1998, the top campaign fundraiser prevailed in approximately 75 percent of contested state supreme court races, and in 2001–02, the top fundraiser WON in 80 percent of the elections.

During the Depression, the government WON considerably more tax cases than it lost.

Regardless of how many other cases the government WON in this period, it seems unlikely the Court thought that these government victories would overcome the Court's hostile decisions in terms of qualitative importance.

On one hand, Professors Brennan, Epstein, and Staudt have shown that the government WON a good many (tax) cases during this period.

We first coded the Court's Outcome as a binary variable: whether the government WON (=1) or lost (=0) and, for robustness checks, we also coded the government's share of votes, which is the fraction of Justices participating in the case and voting in the government's favor.

To this end, as we just noted, we specified two dependent variables: Outcome, which is simply whether the government WON (=1) or lost (=0); and Vote Share, which is the percentage of Justices on the Court who voted with the government.

The Supreme Court undercut his hard-WON victory by requiring only “all deliberate speed” in Brown’s implementation.

The courts historically have rewarded the first filed case with control of the case as lead counsel.” In an ultracompetitive environment in which courts were unwilling to dirty their hands working out which firm would best represent a class, judges chose lead counsel using the clearest available signal: which attorney WON the race to the courthouse by filing first.

Edward Bushell, considered the jury’s leading voice, WON his habeas corpus action in light of the court’s jury abuse, and ultimately the jury’s decision was affirmed and enforced.

Similarly, though a campaign at the WTO WON the right to file public interest amicus briefs before dispute resolutions panels, panel discretion to consider the briefs has emptied the right of meaningful political content.

Immigrant rights lawyers WON important court victories in impact cases that sought to align domestic refugee law with international human rights standards.

Cases are WON and lost in discovery, yet discovery draws little academic attention.

Most litigators agree that “discovery . . . is the battleground where civil suits are WON and lost.”

More academic focus is critical; if cases are WON and lost in discovery, then they are really won and lost in discovery decisions.

Such judicial decisionmaking draws little academic attention, probably because almost all discovery decisions are unappealable district court decisions and because only experienced litigators recognize that if cases are WON and lost in discovery, they really are won and lost in litigating discovery motions, dueling motions to compel discovery and for protective orders.

SEMANTIC FIELD “MEDICINE”

1. Blind, blindness, to blind, color-blind;
2. Cure, to cure, cured;
3. Disease, diseased;
4. To erode;
5. Fever, to fever, fevered;
6. Fracture, to fracture, fractured
7. Headache;
8. Health, healthiness, healthy, unhealthy;
9. Ill, illness;
10. Immunize, immunization;
11. Infection, To infect, infectious, infected;
12. Inflammation, to inflame, inflamed;
13. Injection, to inject, injected;
14. Injury, to injure, injured;
15. Pain, to pain, painful, painless;
16. Panacea;
17. Pathology, pathological;
18. Recipe;
19. Symptom, symptomatic, symptomless;
20. Wound, to wound, wounded;

Blind\ blindness \ to blind\ color-blind

If the lawyers have failed to perform their function effectively, and the wise and experienced judge is aware of important legal arguments overlooked by one or the other, there is no reason for the judge to turn a **blind** eye to the winning arguments he identified.

Perhaps the most significant criticism of the Institutional First Amendment is that it is “**blind** to whether the preferred institution is actually serving important free speech interests in a given case.”

Those courts and others have not been **blind** to the fact that this situation requires the heavy involvement of legislative bodies, and they have struggled with the issue of how much deference to give when an individual right as precious as property is involved.

When confronted with a wave of egregious partisan gerrymanders engineered by political party operatives, the Court should not **blind** itself to the fact that political parties control the very core of the electoral process in a way that farmers and urban dwellers do not.

Most of the dissent's criticisms of today's result can be traced to its rejection of the color-blind Constitution.

"Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."

"Harlan's declaration that '[o]ur Constitution is color-blind' does not clearly state a categorical principle against classification by race"

The alternative, in their view, is a kind of "formalism" that is blind to institutional realities.

Drawing from the literature on judgment and decisionmaking in organizations used increasingly by corporate law scholars, it suggests that the efficient structure of profit-making firms will, in a subset of cases, systemically blind decisionmakers to the types of risk and change in which regulation is interested, and lead to unaccountable regulatory decisions.

Following the advice of Judge Easterbrook, the new regulators of these virtual worlds will not be good legal trailblazers if they begin their pursuit blind to the objectives of this new frontier.

In a series of cases known as the Civil Rights Cases, federal statutes forbidding racial discrimination by commercial enterprises "were held to be excessive, as acts of an unwarranted color-blind zeal."

Taking what he deemed to be a "reasonable construction" of the amendments, Justice Harlan advocated the anticlassification view that the Constitution is "color-blind", and neither knows nor tolerates classes among citizens."

The "great flaw" of Brown, according to Thomas, is that the Court did not rely on the lonely dissent of John Marshall Harlan in Plessy v. Ferguson, which affirmed the importance of the "Founders' constitutional principles," and rightly declared the Constitution "color-blind".

Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.

The sentence follows logically from Harlan's discussion of a "superior, dominant, ruling class," and even designates "classes among citizens" as the evil that Harlan's color-blind Constitution "neither knows nor tolerates."

Regardless of what Harlan originally meant when he declared the Constitution color-blind, however, Harlan's language has become the rallying cry for those who argue that all classifications on the basis of race, whether malicious or benign, are equally offensive to the Constitution.

When Brown was decided, however, the short, unanimous decision did not fully vindicate Harlan's color-blind Constitution.

Brown's "great flaw," Thomas argued, "is that it did not rely on Harlan's dissent in Plessy," which correctly called for a color-blind Constitution.

Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.

Most of the dissent's criticisms of today's result can be traced to its rejection of the color-blind Constitution.

The dissent attempts to marginalize the notion of a color-blind Constitution by consigning it to me and Members of today's plurality.

This quote illustrates how Thomas has entirely equated his own equal protection philosophy with the sentiment Harlan expressed when he declared the Constitution color-blind.

Thomas concluded his concurrence with a final invocation of Harlan's colorblind Constitution: "The plans before us base school assignment decisions on students' race.

Because 'our Constitution is color-blind, and neither knows nor tolerates classes among citizens,' such race-based decisionmaking is unconstitutional."

The Court raised none of these points. By abstaining, it not only blinded itself to any harm it may have been doing (acceptable or not), but it also signaled to future courts that considering such values is not required.

Cure \ to cure\ cured

If a future Court is to change course and attempt to cure the breakdown in the democratic process brought on by partisan gerrymandering, it must be willing to face the short-term criticism that such a decision would invite.

But a significant body of work — mainly concerning the proper scope of the Fourth Amendment — disputes whether the current state of criminal justice can be blamed on, or cured by, close judicial oversight.

On appeal, the Supreme Court emphatically rejected that suggestion: We have never suggested that an agency can cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute.

The idea that an agency can cure an unconstitutionally standardless delegation of power by declining to exercise some of that power seems to us internally contradictory.

Supporters of the amendment have pitched it as a cure for judicial overreaching.

ICSID is in many respects a solution to cure perceived deficiencies in customary international law as private investors become more prevalent in the international arena.

Finally, six months after Katrina, some Louisiana state funding was allocated for local indigent defense, but Judge Hunter stated in his court order that “instead of the state providing a cure, it has only prescribed a Band-Aid and the bleeding continues”.

In Furman’s wake, thirty-five states passed death penalty statutes purporting to cure the arbitrariness in capital sentencing that the Justices had found constitutionally offensive.

Furman had held that the arbitrary imposition of death was unconstitutional, and McGautha had held that guided discretion statutes would not — indeed, could not — cure arbitrariness in the imposition of death

The diverging approaches observed in national innovation laws may not solely depend on differing perceptions of how to cure the same set of problems.

Many obstacles that minority voters face — from coping with felon disenfranchisement to unfair election practices to intimidation tactics at the polls — will not be cured by reauthorizing Section 5.

To erode

And, as noted above, the expansion of the Supreme Court will erode the power of each individual Justice.

Stringent judicial interpretation subsequently eroded both legal frameworks and it has become increasingly difficult to assert collective employment actions, even against discriminatory practices affecting an entire group.

Both of those legal frameworks, however, have subsequently been eroded by stringent judicial interpretation:

Self-interested incumbents may take advantage of asymmetric information to erode political competition.

This is largely the result of two independent obstacles: (judicial) adherence to the born-alive rule and (legislative) concern that fetal homicide laws could erode constitutionally protected reproductive rights.

Two distinct obstacles, thus, work in concert to frustrate the institution of fetal homicide laws: the first is the political concern that treating feticide as homicide would erode constitutionally protected reproductive freedoms; the second is judicial reluctance to abandon the born-alive standard.

This Part describes two events that have eroded the Eisen rule.

Equally concerning, devising special federalism-inspired rules could erode the normalizing aspect of the administrative law approach, transforming it into something more exceptional like constitutional or subconstitutional federalism doctrines.

Although some courts such as the Fourth Circuit consciously address due process at sentencing, other courts, including the Third, Seventh, and Eleventh Circuits, “take advantage of the Fifth Amendment void left by Booker to erode the few procedural protections defendants enjoy at sentencing.”

Amidst the debate between autonomists and utilitarians, this Note argues that the significance of heroes is another, separate factor that ought to be considered by those who would shift the line of the law to gradually erode the no-duty rule, and in so doing, narrow the realm of potential heroic acts.

Fever\fevered

Consternation over the decisions of the Court often reached a fever pitch following the issuance of important opinions bolstering states’ rights.

Infighting among originalists has reached a fevered pitch, and it is not limited to disagreements about how the theory is properly applied to particular legal questions;

Fracture\ to fracture\ fractured

The judiciary, led by a fractured Supreme Court, has refused to intervene, holding claims of unconstitutional partisan gerrymandering nonjusticiable for want of a workable judicial standard.

However, they are not in the majority. Unless an appellate court is fractured due to an absence of collegiality, appellate judges routinely deliberate in reaching their decisions.

Longstanding fractures in one local criminal justice system made that impossible after Hurricane Katrina.

In a series of fractured opinions, the Court concluded that completely denying minors access to contraception was unconstitutional.

But if, by virtue of anonymity, opinions became shorter, more accessible, less fractured, and less susceptible to the perception that the Justices are no less divided than Congress and the country in general, then a de-emphasis on its individual parts might enhance the credibility and stature of the Court as a whole.

On review, the Supreme Court issued a fractured set of opinions. Justice Kennedy's opinion disposed of the case, striking down Nevada's publicity rule as void for vagueness and accordingly setting aside the state bar's disciplinary measures.

Headache

One headache is that prosecutors must constantly be mindful of their ethical duty not to use (or allow accusers to use) criminal proceedings to achieve tactical advantages in parallel civil proceedings.

Parallel actions create more headaches for judges than a single action would.

Health\ healthiness\ healthy\ unhealthy

Professor Issacharoff observes that Section 5 produces more readily justifiable outcomes when there is a dearth of healthy political competition in covered jurisdictions: "In paradoxical fashion, the more Southern politics continued to be organized around the retrograde isolation and suppression of black political interests, the more enlightened and noble would be the intervention from Washington."

In her view, one should even expect "political parties to try to capture existing community groups and to fake the appearance of a healthy decisionmaking process."

He responds that (1) environmentalists disagree on population growth and that their disagreement would play out in a healthy democratic forum, and (2) future generations “will at least be in favour of policies that guarantee them the environmental conditions within which to exercise their political autonomy.”

We ask in that Part if the judicial behavior described in any or all of these models constitutes good judging, a healthy jurisprudence.

A discussed, free speech exists in large part to promote healthy political discourse in a democracy.

Some commentators, for example, have argued that the Court’s decision in WRTL was a blow to the health of American democracy.

Over time, however, public opinion and judges of all political stripes have come to universally hail these decisions as courageous steps taken by the Court to restore the health and functioning of a democratic electoral system that suffered from serious structural flaws.

That would not be collegiality, but homogeneity or conformity, which would make for a decidedly unhealthy judiciary.

Parental care is indispensable to the health of a liberal democracy.

Because parental involvement is vital to the health of a liberal republic, and because children’s flourishing is inextricably related to parental involvement, public schools cannot unilaterally usurp the parental role.

Immunization\ immunize

Does it justify judicial outcomes, or does it immunize judges from appropriate scrutiny and accountability?

In such a case, one might make an argument similar to the rationale for the implied immunity doctrine, which immunizes actors from antitrust liability

when there is a clear repugnancy between the securities laws and antitrust principles.

Such a situation likely raises the same concerns addressed by the implied immunity doctrine, which immunizes conduct when there is a “clear repugnancy” between the regulatory system and liability standard, and applying the principle would lead to “duplicative and inconsistent standards.”

Even after the cartel is operating, each participating firm possesses the power to prevent itself from being “unfairly” saddled with the bulk of the liability — it can confess its participation in the cartel to the DOJ’s Antitrust Division in exchange for amnesty, which would immunize the firm from all criminal liability and limit any damages in private litigation to single damages.

The reasonableness doctrine is decidedly underdeveloped, and warrants often immunize federal officials from liability.

It benefits from treating feticide comprehensively, as it includes provisions that specifically immunize the mother from liability and that make the statutes inapplicable in the abortion context.

It would also include provisions that immunize mothers from liability and make the statute inapplicable to legal, controlled abortions.

The fact that Goodridge invoked a state constitutional ground and thus immunized itself from Supreme Court review;

Thus, acts like GOZA, which favor taxpayers in certain geographic areas but do not by their own terms specifically disfavor taxpayers elsewhere, are effectively immunized from judicial scrutiny by well-established standing principles.

In addition, governors may improperly use the power “to immunize political friends and even to prevent scrutiny of corruption in a governor’s own administration.”

The Security Clearance Process: Immunization from Judicial Review and the Fortification of Executive Agencies’ Institutional Incompetence.

Infection \ to infect \ infected\ infectious

Citation decisions may be infected by judicial friendship (or animus), and they may be influenced by the choices of judicial clerks as much as the citing judges themselves.

The petitioner “must shoulder the burden of showing, not merely that the errors at his trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with errors of constitutional dimensions.”

This description suggests several different perceptual pathologies that infect the entire decisionmaking process.

Finally, the president must find a free moment in the Rose Garden for the signing ceremony, at which point the congressional work is finished, except perhaps for the technical corrections bill that will follow to fix the errors that seem unavoidably to infect the process, especially when done in haste.

Inflammation \ to inflame\ inflamed

Evidence of parallel civil litigation inflames jurors’ instinctive prejudice in much the same way that evidence of prior sexual history inflames prejudice against accusers.

Civil litigation exposes accusers to extensive cross-examination and may inflame juries’ instinctive prejudice against “greedy” complainants.

To begin with, evidence of a parallel rape suit inflames jurors’ prejudice against the accuser.

Second, this evidence is highly likely to inflame the jury’s prejudice against accusers.

Injection\ to inject\ injected

And yet, despite the rhetoric, federal judges regularly inject new legal issues into ongoing cases.

When judges inject new issues into litigation, they are often accused of acting as legislators — that is, of overstepping boundaries on judicial power to implement their personal ideological agenda.

At the pretrial stage, the parties can explore factual questions essential to the new legal issue, and there is far less disruption to settled expectations than when an issue is injected by a court further down the line.

Finally, if the parties have argued the case for months or years before a district court on one set of issues, they will likely feel ambushed by an appellate court that injects a brand new set of legal questions into the case.

Furthermore, most cases before the Supreme Court have been litigated for years before several tribunals, and thus it is particularly unfair to the parties to inject a new issue into litigation that has been framed and argued consistently on different grounds.

Recognizing the jury's political role is a partial, albeit insufficient, solution to the ongoing scholarly debates over how to inject democratic values into the constitutional adjudicative process and how to instill constitutional virtues into the citizenry.

As current constitutional doctrine across a number of fields suggests, the jury's clearest political responsibility is to inject community morality into the application of the law.

This is the most overt expression of the Court's reliance on the jury to inject morality into constitutional law.

In an effort to inject social standards into the trade regime, U.S. lawyers have pursued multi-tiered advocacy focused on the interplay between the domestic implementation and global governance of free trade.

Most prominently this has taken the form of an injection of federalism into administrative law challenges of federal agency action.

In Massachusetts, the Court injected federalism into what had previously been thought a purely administrative law case and underscored the legitimacy of undefined state sovereignty interests.

Unless the Supreme Court is explicit about administrative law's role as a federalism vehicle, the traditional view of these doctrines as analytically separate may make lower courts resistant to injecting federalism concerns into administrative law analysis.

At least in the gun and immigration areas — in which cases, at least by the time they get to federal prosecutors, are commodities fitting standard fact patterns — the combined effect of the PROTECT Act, the Ashcroft Memorandum, and case counting from Washington was thus to inject a new degree of uniformity into the federal system.

Accordingly, Thomas believes that the Reconstruction amendments injected into the Constitution the innate right to equality that the founders promised in the Declaration of Independence.

Injury\ to injure\ injured,

In Connecticut Department of Public Safety, the Court declared that “mere injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest.”

Because “any harm or injury to that interest [in reputation] . . . does not result in a deprivation of any ‘liberty’ or ‘property’ recognized by state or federal law,” it needs no procedural safeguarding.

Egan's progeny flouts the longstanding principle that an individual who suffers a constitutional injury is entitled to an appropriate remedy.

To draw on the Constitution as a shield is to stop the government from inflicting injury, utilizing equitable or injunctive relief to block impermissible government behavior

Professor Walter Dellinger provided a useful distinction between using the Constitution as a “shield” and as a “sword” to fashion remedies for constitutional

violations. To use it as a shield is to block the government from causing injury, using equitable or injunctive relief to neutralize impermissible government behavior.

The foregoing Parts have stressed the importance of preserving judicial review of security clearance determinations to vindicate constitutional injuries and provide the government with a diverse workforce capable of winning the war on terror.

The Court significantly narrowed the general understanding of the Rooker-Feldman doctrine: The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Gasoline companies such as Chevron would be identically injured by such a regulation but could not prevail on a takings claim.

Although the same allegedly unconstitutional act — the school’s daily recital of the Pledge — injured both Newdow’s parental right to “inculcate his child with his views on religion” and his daughter’s First Amendment rights (had she wished to vindicate them), the Court viewed Newdow’s injury — and thus his standing — as deriving entirely from his relationship with his daughter.

Defending a candidate’s right to appear on the ballot, the Supreme Court provided yet another democracy-oriented rationale by pointing out that infringing on that right injures “the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters . . . to cast their votes effectively,” two of “our most precious freedoms.”

These impacts aside, the WRTL majority’s decision has set the precedent that free speech may be considered in a vacuum; if future cases follow it, their decisions too could injure the democratic process.

But there are limits beyond which American law will not respect the legal fiction if doing so would injure innocent parties.

In contrast, criminal offenses injure public rights, and so the king, as the sovereign, bears responsibility for prosecuting public offenses.

Under U.S.C. any state official who subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Pain\ painful\ to pain\ painless

First, reductions must take place soon if the world is to meet the goal of the UNFCCC and thereby avoid dangerous, human-induced changes in the earth's climate without painful disruption to national economies.

Panacea

To be sure, temporary reauthorization is not a panacea.

In this way, one can trust that a truly great technology will indeed catch on among firms, while the government will not force a faddish panacea upon firms and the public in a rush of premature enthusiasm.

But our data do not suggest that simply hiring high-CRT judges would be a panacea for good judgment.

Yet reasonable notice is not the panacea that courts might purport it to be, as no clear notion of what constitutes “reasonable notice” has yet been determined.

Pathology\ pathological

This may devolve into the pathology of trying to export costs of a regulatory scheme from one region to another.

Thus, so long as we have good reason to believe that the quality of judicial deliberations matters, we have good reason to believe that an empirical model that

leaves out this variable will falsely suggest that ideology's influence is immutable and endemic to judicial decisionmaking rather than the source of a correctable pathology that is likely concentrated in relatively discrete segments of the federal circuit courts at any given time.

The Court's refusal to correct the breakdown in the democratic process brought on by the advent of egregious partisan gerrymanders has invited the continued use of districting processes with deeply troubling pathologies.

The Court's refusal to tackle the issue of partisan gerrymandering invites the continued use of districting processes "with pathologies every bit as troubling as the one the Warren Court dismantled."

Rather, I worry that the ease with which some of the Bush administration pathologies can be identified — the attorney general who had barely a clue of what was going on in his department or of the difference between his job and that of White House counsel;

Specifically, efficient methods of coordinating individuals to achieve firm goals can cause predictable decision pathologies that mask the very type of risks and dangers targeted by regulation.

Thus, these pathologies are especially pronounced when regulatory norms cause a drag on efficiency.

Second, it explores ways in which relations with third-party monitors might better be utilized to overcome cognitive decisionmaking pathologies.

In sum, this Part offers a blueprint for thinking about how best to enlist the judgment of private firms — those with the most on the ground information about risk in a variety of contexts — to achieve public ends while avoiding pathologies that distort that judgment.

Indeed, the same processes that coordinate individual decisions efficiently in many circumstances can also create predictable decisionmaking pathologies in others.

Indeed, in the context of regulatory decisionmaking, these pathologies can produce decisions that are both irrational and contrary to the public norm.

Moreover, because these pathologies result from decision processes buried deep within firms, they are virtually unreviewable.

These efficient arrangements themselves create predictable decisionmaking pathologies.

This description suggests several different perceptual pathologies that infect the entire decisionmaking process.

Recipe

Technology-based policy analysis uses technological criteria as part of the recipe for governmental choice.

Symptom\ symptomatic\ symptomless

Some have cited a high rate of per curiam opinions as a symptom of an overworked or overburdened court, arguing that the unnamed opinion is a shortcut through which a court can dispense with cases without giving them its full attention.

This Note argues that the causes were more complex than the moral shortcomings of a few attorneys; rather, the kickbacks were but one symptom of a deeply flawed system for selecting lead counsel in securities class action lawsuits.

Predicting a case's outcome based on who might be authoring the opinion is symptomatic of a Court whose members are too easily placed in neat ideological categories.

Wound\ to wound\ wounded

Congress licked its wounds from the Supreme Court's rebuke in *Ashcroft v. Free Speech Coalition* and immediately set to work drafting new legislation that would address the Supreme Court's First Amendment objections to the CPPA.

When we politicize our basic documents of governance, we deepen exponentially the wounds of civic life.

Such restrictions are always wounding, but they are particularly so when they occur at the constitutional level.

SEMANTIC FIELD “CONSTRUCTION”

1. Architecture, architectural;
2. Building;
3. Construction, to construct, constructed;
4. Decoration, to decorate, decorated;
5. Door, doorstep;
6. To engineer, engineered;
7. Erection, to erect;
8. Foundation;
9. Fence, to fence;
10. Hammer, to hammer;
11. Paint, to paint, painted;
12. Repair, to repair, repaired;
13. Ruin, to ruin, ruinous;
14. Wall, to wall;
15. Window;
16. To underpin, underpinning

Architecture

To understand why, one must take a step back to gain a better grasp of the purpose and architecture of the Constitution.

In this sense, class legislation is the oddly architected precursor to the political process theories of the late-twentieth century, whether theories of public choice or representation reinforcement.

The former set forth the architecture of government and certain basic rights that individual citizens enjoy against state infringement.

Building

But judges who think that they know what is sensible or beneficial merely by dint of education or intellect are just as formalist as the “legalists” to the degree that they rely upon a fixed set of theories of human nature, economics, history, or political economy out in the ether to deduce rules of law, rather than building such rules from the ground up by responding to the particular facts of a particular situation and dispute.

Was this, perhaps, an earlier manifestation of a contemporary phenomenon that, for David Kennedy, is one of “the dark sides of virtue,” as building a rule of law is turned to as a development strategy in itself, “which obscures the need for distributional choices or for clarity about how distributing things one way rather than another will, in fact, lead to development”?

Since then, however, the Court has retreated by building expansively on two exceptions to constitutional liability articulated in dicta in *Bivens*.

The refugee crisis of the early 60s galvanized a new wave of institution building focused on the unique legal status of noncitizens.

Programmatically, this convergence has meant a new funding emphasis on building public interest law systems within emerging democratic societies as a way to strengthen judicial independence and legal enforcement.

For instance, Ford funded the creation of the Public Interest Law Initiative at Columbia University to focus on building public interest law systems in Central and Eastern Europe.

So long as domestic strategies had proven successful, Ford saw no need to promote human rights on the domestic front, viewing human rights as a potential distraction from the project of building progressive domestic legal precedent.

In the civil arena, the objective is to enlist international support in building a case that generates meaningful political pressure on U.S. actors, usually over a longer time period.

The reluctance to engage human rights is a matter of strategy as well as principle, with some advocates for identity-based groups fearful that the move toward human rights signals retreat from the cause of building strong domestic laws.

Afghanistan required the United States to pivot quickly from defeating the Taliban and al Qaeda units to rebuilding a national government in cooperation with the Northern Alliance victors — a task still unfinished.

Instead of building a new fiduciary duty from scratch, the Court should continue to use the Gartenberg factors with two important modifications.

Building on these precedents, we might be tempted to suggest that federal courts of appeals do better if they have mixed compositions — and that in certain cases, at least, mixed compositions might be mandated.

To construct\ construction\ constructed

Regulators must construct a compelling case of misconduct that violated fundamental public values, or rulemaking will be the appropriate response.

For instance, Professors Zimmerman and Birnhack aspire to construct a constitutional fence around their public domains that Congress and courts cannot breach.

In the Ruritanian Corrupt Loan example, the corrupt government that stole the proceeds of the loan would be awkwardly placed to construct a legal defense based on its own misconduct or the misconduct of the lender that bribed it.

Furthermore, in interpreting evidence, jurors tend to “construct a story that confirms their prior beliefs.

Judges in inquisitorial systems initiate proceedings, collect evidence, and determine how to construct and resolve the legal and factual issues in the case.

As David Sklansky recently observed, inquisitorialism is an epithet among American judges, practitioners, and scholars, and consequently the American legal system has been constructed to avoid even the whiff of its judge-dominated procedures.

The courts have constructed rules that allow parties to introduce some evidence but still limit the Falcon tendency toward considering large amounts of evidence and remain somewhat close to Eisen.

We have constructed a national security constitution, for instance, that to a significant degree reflects the responsibilities and vulnerabilities of a superpower in an age of supersonic transport and weapons of mass destruction.

A third feature of the administrative paradigm is the use of cost-benefit analysis in constructing rules.

By skillfully constructing precedential narratives, judges not only make their particular holdings seem inevitable but do so in a way that suggests that reasonable citizens could have predicted properly how the law would respond to their acts.

According to Pennington and Hastie, the first step for jurors in information processing is constructing an “explanatory model” (or story) of case facts.

These works often critique a substantive legal rule or construct (such as the intent doctrine) in light of psychological evidence that indicates that such rule or construct fails to truly understand the implicit nature of racism.

These works often critique a substantive legal rule or construct (such as the intent doctrine) in light of psychological evidence that indicates that such rule or construct fails to truly understand the implicit nature of racism.

As a decisionmaking construct, neither seems to be doing much intellectual work.

The final Part urges a richer understanding of the interests that technological regulations place in jeopardy and proposes the development of new legal constructs to regulate their use.

These constructs may be very general, like notions of personal responsibility, or they may be specific to constitutional adjudication, like notions of originalism, states’ rights, or judicial restraint.

There are many such constructs, and they, too, will stand in tension in many cases.

In other words, although the term “malice” invokes a defendant’s motives, the criminal law operationally defines “malice” through other legal constructs that do not involve motive.

The final Part urges a richer understanding of the interests that technological regulations place in jeopardy and proposes the development of new legal constructs to regulate their use.

The Supreme Court of Virginia, however, rejected McDonald’s statutory construction.

These cases may involve difficult questions of statutory construction or the application of law to fact, but not outright challenges to the legitimacy of government power.

Debates about statutory interpretation — and especially about the role of the canons of construction and legislative history — are generally framed in one-size-fits-all terms.

Professors Brudney and Ditslear compare how the Supreme Court has relied on legislative history and the canons of construction when construing tax statutes and workplace statutes from 1969 to 2008.

In this Article, we examine how the Supreme Court’s uses of legislative history and the canons of construction vary based on the subject matter of laws enacted by Congress.

Beginning in the 1980s, considerable tension has arisen between supporters of the canons of construction, a judicially created interpretive asset, and defenders of legislative history, an interpretive resource generated by Congress.

The canons of construction are background presumptions that judges have invoked for centuries as interpretive aids.

We then discuss more briefly the Court’s differential approaches to the canons of construction: although less dramatic than the legislative history story, we suggest that these too reflect an understanding of certain distinctive elements in tax law.

In *Hirschey v. FERC*, Judge Scalia, in a concurring opinion, complained that deference to committee reports was “converting a system of judicial construction into a system of committee-staff prescription.”

Most Justices who served during the Burger or Rehnquist/Roberts periods seem to have participated in this relatively nuanced approach to statutory construction.

The court reasoned that although the legislature had complete control over the budget process, “constitutional construction is purely a province of the judiciary.”

The court then proceeded to follow standard rules of statutory construction, relying on the premise that specific provisions should control over general ones.

Freedman held that in the film-censoring context “the exhibitor must be assured, by statute or authoritative judicial construction, that the censor will, within a specified brief period, either issue a license or go to court to restrain showing the film.”

If a litigant prefers the constitutionally suspect interpretation, then that party has no incentive to argue for the alternative, constitutionally sound construction.

The Court explained: “When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law.”

Justice Scalia did agree that a disparate impact theory of liability was available under the ADEA, but believed that recognizing such claims was appropriate because the EEOC’s construction of the statute deserved judicial deference.

Criminalizing Feticide through Legislation In several states, legislatures have addressed the criminal treatment of feticide rather than relying on courts to resolve the issue through the construction of general homicide statutes.

Moreover, the Eleventh Circuit’s application of strict scrutiny analysis contradicts settled canons of statutory construction and discredits Congress’s implicit judgment that there is no permissible reason for treating religious assemblies and institutions on less than equal terms than secular assemblies and institutions.

As a longstanding canon of statutory construction, courts may give a statute a narrowing interpretation to preserve its constitutionality.

Often dubbed “process federalism,” these doctrines represent a subconstitutional form of federalism in that they seek to protect states from federal incursions not by means of direct constitutional limits on congressional authority, but rather through federalism-inspired canons of statutory construction.

It may be a stretch to say that the issue of administrative federalism will ever be “hot,” but for a complicated issue of intergovernmental relations involving intricate matters of statutory construction and administrative law, the topic has attracted a surprising amount of interest lately.

We have never suggested that an agency can cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute.

One might decide, for example, simply to use ordinary methods of statutory construction to determine whether Congress intended to preempt or to give an agency the power of preemption.

The other of us remains skeptical of canons of construction and would prefer to ascertain the intent of Congress through more traditional modes of statutory construction.

The other one (the Jacobin) would not require any sort of clear statement and would instead resort to ordinary tools of statutory construction.

In almost all of the relevant cases, the decision of the court of appeals is effectively final, because the Supreme Court hears only an exceedingly small percentage of them, and most turn on complex issues of fact or policy or on relatively technical issues of statutory construction.

Paterson's plan additionally would have given the supreme tribunal limited appellate jurisdiction in other categories of cases implicating national interests, including "all cases touching the rights of Ambassadors, in all cases of captures from an enemy, in all cases of piracies & felonies on the high seas, in all cases in which foreigners may be interested, and in the construction of any treaty or treaties"

Some described "arising under" jurisdiction to encompass cases involving the construction of a federal law.

He described Article III as vesting the federal judiciary "with a power to resolve all questions that may arise on any case on the construction of the constitution, either in law or in equity."

Later, he observed that "the supreme court has the power, in the last resort, to determine all questions that may arise in the course of legal discussion, on the meaning and construction of the constitution."

Luther Martin similarly argued that the supreme and inferior courts in which Article III vested "the judicial power of the United States" would have an exclusive "right to decide upon the laws of the United States, and all questions arising upon their construction."

Other participants in ratification debates described "arising under" jurisdiction as extending not only to cases calling for the construction of a federal law, but more broadly to cases in which federal law was determinative of a right or title asserted.

Rather, he explained, “A case in law or equity consists of the right of the one party, as well as of the other, and may truly be said to arise under the constitution or a law of the United States, whenever its correct decision depends on the construction of either.”

In light of this background, Marshall explained that whether a case arises under federal law depends upon the requirements that a plaintiff must satisfy to have a cause of action under a particular form of proceeding: a case arises under federal law if “the title or right set up by the party, may be defeated by one construction of the constitution or law of the United States, and sustained by the opposite construction.”

Taking what he deemed to be a “reasonable construction” of the amendments, Justice Harlan advocated the anticlassification view that the Constitution is “color-blind, and neither knows nor tolerates classes among citizens.”

Armed with his own construction of Harlan’s colorblind Constitution, Thomas has taken aim at the one case most often associated with racial equality: *Brown v. Board of Education*.

In its hybrid rights analysis, the court required that the free exercise claim be conjoined with an independently viable constitutional claim — an approach reflecting the most stringent construction of hybrid rights.

The Supreme Court’s decision in *Troxel*, discussed in Part I.A, undermines this narrow construction of parental rights.

The Court, which is seen by many to play a major role in American political life, controls the evolution of federal constitutional law, fixes constructions of disputed federal statutes and regulations, gives content to federal common law, and has great discretion in choosing which cases to hear and resolve.

Marshall deemed “arising under” jurisdiction essential to counter “attempts which may be made, by a part, against the legitimate powers of the whole,” and to ensure “that the constitution, laws, and treaties may not receive as many constructions as there are States.”

Also, by developing regulatory norms through enforcement, regulators sidestep the extensive administrative scheme comprised of rules constructed through expert input and deliberation.

Decoration\ to decorate\ decorated

In sovereign lending, the argument goes, the citizens of Ruritania — by their willingness to endure a corrupt regime — have in effect earned the decoration of “innocence, second class.”

Door\ doorstep

It is also likely that some of these inquiries — particularly the final inquiry concerning the proper purpose and scope of Section 5 — could open the door to a number of legislative possibilities that may or may not arise in connection with the debate that is already afoot about reauthorizing the existing version of Section 5.

Courts allow this evidence because the impeachment concerning the civil litigation opened the door.

The application notes should indicate that certain prosecutorial tactics open the door to the admission of evidence concerning an accuser’s parallel civil litigation.

Third, the use of anonymous opinions would encourage greater internal accountability by placing responsibility for an opinion’s content on the collective doorstep of the Court instead of the Justice who happened to write for the majority.

Resituating Fairness In many ways, this Note enters the current debate about the jury’s role in assigning punitive damages through the back door.

Meanwhile, the United Kingdom has no corporate governance legislation whatsoever and therefore no comparable lever to pry open the courthouse doors.

“Thus, the courts best affirm their integrity and fairness not by closing their eyes to truthful evidence, but by opening their doors to any civil suit brought against wayward government officials, even one brought by a convict.”

In *Kuhlmann v. Wilson*, the Court held the door open to freestanding factual innocence claims, stating “even where . . . the many judges who have reviewed the prisoner’s claims . . . have determined that his trial was free from constitutional error, a prisoner retains a powerful and legitimate interest in obtaining his release from custody if he is innocent of the charge for which he was incarcerated.”

As explained by the Supreme Court, “This maxim . . . is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.”

Justice Kennedy provided the critical fifth vote necessary to strike down the Vieth petitioners’ partisan gerrymandering claim, but he wrote a concurring opinion to rebuff the plurality’s hard stance that would have closed the door on the federal courts’ ability to hear partisan gerrymandering claims in the future.

In his controlling Vieth opinion, Justice Kennedy refused to slam the door on future claims of unconstitutional partisan gerrymandering.

Justice Kennedy’s controlling opinions in both Vieth and LULAC refused to explicitly overrule Bandemer and left the door wide open for a future Court to consider claims of partisan gerrymandering under the Equal Protection Clause.

The Fourth Circuit reaffirmed its position placing the burden on the moving party with its decision in Schaffer, which highlighted the schism and opened the door for the Supreme Court to issue a conclusive answer.

The court system shut its doors, the police department fell into disarray, few prosecutors remained, and a handful of public defenders could not meet with, much less represent, the thousands detained.

Horizontal political externalities open the door to opposing politicians, outsiders, and antipolitical sentiments.

At least one of these special provisions, relating to the estate tax, may have served as a pilot for controversial changes sought by some members, arguably a somewhat back door approach to tax reform.

To engineer\ engineered

Because the government “indisputably has a compelling interest in preserving the integrity of its election process,” recognizing democracy as a right would prompt the Court to engineer a “compromise”; the Court would weigh the two competing considerations against each other without giving speech the benefit of the doubt.

The legislators who engineer modern partisan gerrymanders have purposefully kept pace with the rapid changes in technology that make it easier to manipulate voter information and thereby effectuate increasingly egregious gerrymanders when drawing district boundaries.

Onetime LDP prime-ministerial candidate Ichiro Ozawa engineered a noconfidence vote, quit the party, and organized a new organization around his old-time protégés.

Erection\ to erect

To begin with, raising federalism concerns through the administrative law rubric does not erect a permanent barrier to federal administrative action; instead, at most it triggers a requirement of additional congressional enactment.

Yet according state interests trumping priority may unduly underweigh the national side of the constitutional equation by erecting too great a burden for the federal government to overcome in seeking to exercise its constitutional powers.

It is important that Linden Lab's response appear rational — level of punishment corresponds to the necessary protection required to deter societal harms — because a real-world court would be more inclined to enforce the rules erected by Linden Lab if the court determines the rules were instituted for rational reasons.

The level of government regulation, like an attempt to refine automated code controls or erect a more sophisticated set of internal regulations, should be guided by the users' social norms.

"The First Amendment erects a virtually insurmountable barrier between government and the print media," White wrote.

In these and other cases, the Supreme Court rejected evidence of racial discrimination in the imposition of death, weakened the right to counsel, sanctioned the death penalty for accomplices who neither killed nor intended to kill, restored death qualification of jurors, and, perhaps most importantly, erected seemingly impenetrable barriers to habeas corpus review, disempowering federal courts from overturning even the most dubious of death sentences.

President Bill Clinton signed the Gramm- Leach-Bliley Act, which removed the regulatory barriers erected after the market crash of that had segregated banking and stock brokering.

The American doctrine of plenary power, which grants the U.S. government broad authority to exclude and deport immigrants, has erected high barriers to domestic legal challenges to U.S. immigration policy.

Rather, this Article essentially asks, if the government can replicate the surveillance conditions of incarceration without ever erecting a single wall, what procedures ought to govern the operation of these virtual prisons?

Foundation

Soon after provisions abolishing the death penalty were put in place, they were reversed, and the French Code Civil, which served as the foundation for codes in Belgium, the Netherlands, and Luxembourg, called for the death penalty as the punishment for a number of crimes.

This, in turn, laid the foundation for congressional inquiries and demands for administrative reforms.

In a case that served as the foundation of much of the jurisprudence concerning the nature of minors' rights in comparison to the rights of adults, the Court held that adolescent defendants have the same basic constitutional protections as adult defendants during criminal trials.

They concluded, The rule of law, which is a foundation of freedom, presupposes a functioning judiciary respected for its independence, its professional attainments, and the absolute probity of its judges.

In contrast, the ADA does not contain as firm a statutory foundation for upholding disparate impact law.

In most jurisdictions, however, such a contract is not simply a factor in establishing information as proprietary, but it is the legal foundation for actions to enforce its protection.

Proof of actual use of the information by the departed employee is sometimes required, but in the case of pricing data, simply consistently underpricing the employee's former firm has been a sufficient foundation for an injunction.

Stories like this shake the very foundation of the criminal justice system and can cause the public to lose faith in the system of laws.

The Note concludes by describing how the innocence inquiry commission in North Carolina may provide the foundation for reform of the postconviction relief available in the federal and state criminal justice systems.

This, they contend, would have two benefits: it would avoid the morally repugnant consequence of forcing an innocent population to repay debts incurred in their name but not for their benefit, and it would simultaneously force prospective lenders to an odious regime to rethink the wisdom of advancing funds on so fragile a legal foundation.

In declining to consider the partisan gerrymandering claim in *Vieth*, the Court found it dispositive that no standard existed that was as “solid,” as “judicially manageable,” and as likely as one person, one vote “to win public acceptance for the courts’ intrusion into a process that is the very foundation of democratic decisionmaking.”

Goldsmith’s second argument proceeded on the foundation created by his analysis of “deportations” and “transfers.”

When construing the state’s homicide statute, the California Supreme Court relied on this common law foundation to support its assertion that feticide was beyond the scope of the statute because the common law definition of human being did not include fetuses.

In 1873, *The Slaughterhouse Cases* declared that no one can fail to be impressed with the one pervading purpose found in [the Reconstruction amendments], lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him.

Hamilton’s purple prose supported a conclusion also captured in metaphorical terms: Americans must abandon the localized model of democratic self-rule to build “the broad and solid foundation” on which “permanent monuments” to republican liberty could rise up.

Unfortunately, this gesture of respect for those experiencing the loss of a loved one may endanger the constitutional principles that shape the foundation of the criminal justice system.

Section A presents the Supreme Court decisions that form the legal foundation for parental rights.

He appears to share Harlan's belief that there is a divine foundation for the law.

Harlan's assumption that "God had established a moral foundation for law" allowed Harlan to confidently declare that his lonely dissents were not only correct, but also inevitable.

The cases-and-controversies principle lays the foundation for the limited, adversary nature of the federal justice system.

The international foundations of immigration law have shaped advocacy around refugee issues, framed by the Refugee Act, which was drafted to align U.S. law with the UN Convention on the Status of Refugees.

The dominant account of public interest law in the United States has depicted lawyers for the disenfranchised as part of an elite vanguard who use domestic courts to redefine the legal foundations of American democracy to promote a liberal conception of individual rights and equality.

Justice Scalia himself answered this question in a well-known commentary on the foundations of law: I will consult the writings of some men who happened to be delegates to the Constitutional Convention — Hamilton's and Madison's writings in The Federalist, for example.

Fence\ to fence

For instance, Professors Zimmerman and Birnhack aspire to construct a constitutional fence around their public domains that Congress and courts cannot breach.

When Douglas wrote "that the fences of the law and the tradition that has protected the press are broken down," Blackmun wrote, "They were never up to this point."

Hammer\ to hammer

In making their arguments, too often the lawyers try to hammer us by citing opinions — X v. Y, A v. B, and so on.

When that war ended, the belligerent powers met in Paris to hammer out a peace treaty.

The second prong is theoretically supported by the twin pillars of the no-agent and no-draft rules. But the no-agent rule, a seldom enforced but formidable hammer, is crumbling in practice.

Paint\ to paint\ painted

Naturally they would still be bound by stare decisis, but they would no longer be forced in the name of political ties or the need to advance an always-consistent interpretive method to feel painted into ideological corners.

The law has broadly painted the rough boundaries of amateurism; the NCAA, on the other hand, has confined athletes to a narrowly defined zone well within the bounds of law.

By drawing attention to these speech-governing institutional norms, the New Institutional First Amendment paints a broader and more accurate picture of what “free speech” actually means.

Repair\ to repair\ repaired

But for the remainder of cases, some repair may be both possible and desirable.

Reparative laws, reparative procedures, and reparative practice standards would not only help repair the most important relationships people enter into, they would also help repair family law itself.

In February , the Board of Immigration Appeals (BIA), which adjudicates appeals from the immigration courts of the United States, was broken and badly in need of repair.

As such, an independent check on local prosecutors in these cases will help repair public confidence in the legal system.

Ruin\ to ruin\ ruinous

He also noted that requiring notification to certain governments that might be hostile to the United States could be ruinous.

Wall

Rather, this Article essentially asks, if the government can replicate the surveillance conditions of incarceration without ever erecting a single wall, what procedures ought to govern the operation of these virtual prisons? I proceed as follows.

The rule does not wall off all inquiry about the accuser's sexual history, however. The defendant still may inquire about the accuser's sexual history (1) for proof of prior consensual acts involving the accused and the accuser, (2) for proof that another person was the source of the biological material or the cause of the bodily injury at issue in the prosecution, or (3) for any other purpose as required by the Constitution.

Window

Ultimately, this rich and unusual story gives us a window not only into the constitutional thought of someone who would soon write American constitutional law, but also gives us a window into constitutional politics.

Furthermore, entering a JSA before the commencement of litigation magnifies the agreement's evidence-concealing effects because there is no window between the filing of the price-fixing suit and the signing of the JSA during which one conspirator could sell out the cartel by trading evidence for a low settlement.

To underpin\ underpinning

In any discussion about the Court, involving anything from questions at oral argument to written opinions, reference to the name of a particular Justice is convenient shorthand for professors and other commentators for setting out the political underpinnings of a given decision.

This discrepancy reflects deep tensions in the reasoning underpinning the two cases.

Professors Brad Sherman and Leanne Wiseman, who have studied Australian aboriginal traditional knowledge policy, observe: Given the differences that exist between the Indigenous aesthetic and that which underpins Western intellectual property law, and the ways in which public domain ideals have been used as tools of exploitation and colonisation, it is not surprising that Indigenous groups have been critical of the public domain and the application of intellectual property to Indigenous creations.

Section A of this Part addresses the constitutional underpinnings and precedent regarding warrants before Part B turns to the practical consequences of administering them overseas.

This objection can be faulted for failing to appreciate the constitutional underpinnings for preserving a state regulatory role, and for its dim view of the value of state regulation.

In addition to the forces of social identity and legal structure that supported an autonomist perspective, the no-duty rule paralleled the psychological underpinnings of early common law, which recognized that the desire to rescue — because of its risks — ran counter to the “natural law” principle of self-preservation.