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## The Submerged Metaphoricality of Legal Language

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## GGU Law Review Blog



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### The Submerged Metaphoricality of Legal Language

*We may have three principal objects in the study of truth: one to discover it when it is sought; another to demonstrate it when it is possessed; and a third, to discriminate it from the false when it is examined.*

*Blaise Pascal, De l'Esprit Géométrique*

### Law and Psychoanalysis



Legal Ego. Photo by Kelly Sikkema on Unsplash

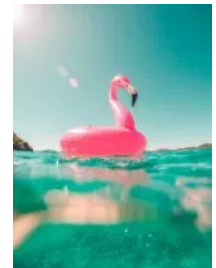
According to psychoanalysis in Freud and beyond, human beings have an ego ideal, or self-identity projected outward onto society, so why can't a discipline like the Law? Like Mathematics or Psychoanalysis, Law surely has a self-identity it continually articulates and applies. If the Law would speak for itself, how would it explain this identity? One answer would be that the Law's version of itself as logical to the point of absurdity is projected onto society as a whole, which it subjugates through the illusion of quasi-mathematical certainty. Caught up in this intoxicating mirage, its various purveyors and practitioners, like lawyers, work tirelessly to embody Law's idea of itself through the endless verbal (oral and written)

performance of briefs, arguments, opening and closing statements, depositions, client meetings, emails, and even more ephemeral forms of expression, like Tweets or Snaps.

## Poetry, Geometry, Double Infinity

In his masterful critique of geometrician **Blaise Pascal's *De l'Esprit Géométrique***, which largely concerns the infinite and the infinitesimal, philosopher and literary critic **Paul de Man** ("de Man") undertakes an impressive feat of deconstruction, dizzying even within postmodern circles. The cornerstone of his *Aesthetic Ideology*, de Man's essay "Pascal's Allegory of Persuasion" demonstrates the linguistically unthinkable: that even the cold, emotionless language of geometry, a paradigm of literal meaning, is *tropical*: that is, it turns upon figural or "tropic" language (trope-based, but also warm and humid in its own right: for example, metaphor), without which the discourse of geometry would be inexpressible. Poor Pascal: one imagines him clutching a volume of his *Pensées* and letting out a gasp.

Linguistically, the literal and the tropical change places all the time, as the one is unthinkable without the other. In other writings, such as the essays contained in *Allegories of Reading*, de Man goes even further, showing that Genevan political philosopher **Jean-Jacques Rousseau** ("Rousseau"), on whose thought so much of the French Revolution conceptually depended, oscillates between two very different views about the origin of language within what 17<sup>th</sup> and 18<sup>th</sup> century thinkers called the State of Nature. For, as de Man reveals, the Rousseau of *Essay on the Origin of Language* posits a figural starting point to language, while the Rousseau of *Discourse on the Origin of Inequality* posits a literal inception: the two viewpoints are incommensurable, and in the end cancel each other out in favor of a strange indeterminacy that destabilizes the boundary between the literal and the figural. Maybe they're not as different as we imagined.



Tristes Tropiques. Photo by Vicko Mozara on Unsplash

## Metaphor #1: Tort as Torsion

In his "**On Truth and Lie in an Extra-moral Sense**," German Existentialist philosopher Nietzsche snarkily remarked that, in general, each language is a collection of dead metaphors whose figural lives we forget. In our forgetting, we construct a false literality upon the corpse of the tropic, buttressing our delusional sense of being logical with an eye to power. For often when we think we are being logical and "direct," we are really being poetic, spinning metaphors as if we were a spider diagraming sentences with gossamer.



Judicial Torque. Photo by [Andrea Ranalletta](#) on [Unsplash](#)

One such site of cultural amnesia is the word “Tort,” a word that is almost a fetish within Law and the strange TV culture that has sprung up among class actions. While Law identifies this or that behavior as a Tort — which sounds like a moment of maximum clarity and literality — things could not be more colorful or nebulous. For the etymology of the word “tort” tells a different story, one closer to angular momentum than the “thingness” of a specific, particularized crime, as the origins of “tort” are ... well, themselves twisted.

As [Merriam-Webster](#) explains, “tort” traces back to the Latin *torque*, which means “torqued,” or twisted. Its “root meaning of twisted (as opposed to ‘straight’) came to mean ‘wrong’ (as opposed to ‘right’).” What could be more metaphorical than that? Now I’m even feeling guilty for being left-handed, as of course the torqued and the diabolical are in league against the straight, right and godly,

whether it’s basic ethics or a slip-and-fall.

## Metaphor #2: Dreams of the Hearth Fire

In his work on economy, Paul de Man’s deconstructive rival, the French-Algerian philosopher [Jacques Derrida](#), discusses at length in books like *Given Time: I Counterfeit Money* the etymology of “economy” in the Greek word *oikos* (yes, just like the yogurt). Economy has its roots in the warmth of the hearth fire and the nuclear family clustered around it and immediately connects to hospitality, the kind greeting of otherness with offers of shelter and comfort. Its opposite is chrematistics, which means something closer to commerce, an activity far removed from home, fire or family, and which is not the site of the generosity typified by the hospitable.

Enter what in Civil Procedure is called the At Home Test, after Supreme Court KABOOM case *Goodyear Dunlop Tires Operations, S.A. v. Brown*.<sup>1</sup> Written by Ginsburg, this Opinion makes it clear that there can be no jurisdiction for a corporation that is not “essentially at home in the forum state,” exploding tires or no exploding tires. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). But how could an impersonal and inanimate entity like a corporation be “at home” anywhere? Within this context, metaphors of home are a critical way of saying what could only be phrased in the language of the figural, as there would be no comparable literal way to express the fact that an *oikos* was at stake: this despite the fact that we’re far removed from home and hearth, more in the glacial, unloving world of the chrematistic, where there is no hospitality, only competition.



Love Is a Pink Bicycle. Photo by [Christopher Harris](#) on [Unsplash](#)

## Metaphor #3: Social Trigonometry

Back to geometry, though not Pascal’s. We’re closer to triangles, and Plato’s World of Forms, where ideal shapes prevail with divine rarefaction. Essential even to the discourse of [platonian solids](#) in the *Timaeus*, the triangle is an essential part of geometry, which goes to great theoretical lengths to identify relations among various classes of the polygon depending on ratios of angles and side lengths. These are either congruent or similar triangles, and their internal relations form the basis for the mathematics of triangularity we call trigonometry.



Parisian Congruence. Photo by [Richard Cohen](#) on [Unsplash](#)

Within law, congruence appears in a seminal Constitutional case, *City of Boerne v. Flores*, a tale of an aesthetically minded Archbishop who feels he is being religiously targeted when city ordinances block a proposed expansion of his church. This case overturns the Religious Freedom Restoration Act (RFRA) by developing a test founded upon two principles: congruence and proportionality. Proportionality does not make me raise an eyebrow, but congruence? That's too much a geometry word for me to remain quiet.

While “[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end,” I am struck by the implied presence of that strange combination of tilde and “equal” sign used to match up triangles that can be transformed into one another through rotation ( $\cong$ ). *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997). Here, injuries are being rotated into remedies, but as with the submerged twisting of tort, accessible only via etymology, we are once again unknowingly held prisoner by the tropical in a legal power play.

## Conclusion: Sophistic Pleasures

The metaphorical is our friend, if only because it is the gateway to the art of persuasion embodied within Socrates' worst nightmare, the rhetorical. Conservative legal scholar [Lino A. Graglia](#) clarifies this point within a juristic context in his review of *Richard Posner's Law and Literature: A Misunderstood Relation*. As Graglia explains, quoting Posner, “judicial opinions and legal briefs resemble literary texts, in ‘being highly rhetorical rather than coolly expository.’” Lina A. Graglia, Book Review: Law and Literature: A Misunderstood Relation, 6 *Constitutional Commentary* 437 (1989).

Although it would most likely horrify Graglia, I interpret his reading of Posner, father of Law and *Oikos*, to mean that, ultimately, Law is not on the side of geometry, but is, in fact, deeply sophistic, the place where metaphor and other tropical devices furtively conceal themselves so that we might hoodwink others (and ourselves) into believing the law were crystal clear, referential, and hence on the side of truth, when it is really an ally to the shenanigans of fantasy and play, which relentlessly structure power.

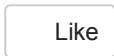
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1. KABOOM CASE comes directly from the wonderfully insouciant pedagogy of GGU law professor Paul Kibel, who classifies Goodyear among a typology of CivPro cases involving famous explosions that changed the law (another would be *Gray v. American Radiator*). ↩

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## Michael Angelo Tata

Michael Angelo Tata is an independent scholar, poet, and essayist who made his way to the law via Psychoanalysis. His *Andy Warhol: Sublime Superficiality* arrived to critical acclaim from Intertheory Press and has been translated into Turkish by Istanbul’s anarchist Sub Press. Most recently, his ongoing examination of the ramifications of Derridean thought on friendship, philosophy, and materiality appears in Italy’s *Rivista di Estetica*.



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