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BOOK REVIEW

DEATH IS THE MOTHER OF METAPHOR

THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY.

Reviewed by Steven L. Winter

[O]ne is not a lawyer one minute and a poet the next. . . . I don't have a separate mind for legal work and another for writing poetry. I do each with my whole mind . . . .

WALLACE STEVENS

I. LAW AND THE PRACTICE OF POETRY?

Should lawyers and legal scholars study the poetry of Wallace Stevens? The New York Times did not think much of the idea, and one shudders to think what the Wall Street Journal would have said. Professor Grey has written a stimulating and intellectually adventurous book examining the question. But his assessment is ambivalent. Grey admits that for him, the "urges both to sharpen and to blur (or cross) the genre-boundary between law and poetry coexist" (p. 4) and describes his inquiry as "a most far-fetched and unpredictable venture" (p. 9). It is not surprising, then, that he concludes the venture on a very diffident note: "if the poet Stevens speaks to lawyers, it is to teach us pragmatist philosophy" (p. 103).

In evaluating his project, Grey first considers and then rejects the two most common justifications for the law-and-literature endeavor. Some of the legal literati argue that lawyers should study literature

1 Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law, Stanford Law School.
2 Professor, University of Miami School of Law. Bruce Ackerman, Tom Grey, Pat Gudridge, Mark Johnson, Pierre Schlag, Steve Schnably, Peter Schuck, and Lynn Winter provided helpful comments and suggestions. I am indebted to all of them, but especially to Tom Grey for his encouragement and to Bruce Ackerman for his unflagging support.
3 Letter from Wallace Stevens to Harvey Breit (July 29, 1942), in LETTERS OF WALLACE STEVENS 413, 413-14 (Holly Stevens ed., 1972).
4 See David Margolick, At the Bar: In Search of Wallace Stevens, a Poet-Lawyer (Lawyer-Poet?) Priced for His Very Ambiguity, N.Y. TIMES, July 12, 1991, at B7.
5 Grey's colleague, Margaret Jane Radin — though, perhaps, equally self-conscious about crossing genre-lines — is more confident about the usefulness of Stevens's poetry in teaching law. See Margaret Jane Radin, "After the Final No, There Comes a Yes": A Law Teacher's Report, 2 YALE J.L. & HUMAN. 253, 266 (1990).
because it can help develop and hone a capacity for empathy — what Grey calls "the equitable virtue of fellow-feeling" (p. 8). But, Grey notes, Stevens's poems are rarely about people (p. 27). "Stevens's poetry came from his life, and throughout that life he inhabited an 'unpeopled' world of vividly experienced places and objects . . ." (p. 24). Indeed, Stevens's world was one "[w]here the wild poem is a substitute / For the woman one loves or ought to love . . ." Stevens's poetry may teach many things, but Grey concludes that empathy is not one of them.

Law-and-literature proponents also stress the discursive, rhetorical, and ideological dimensions of legal practice (pp. 37-40). It follows that "we lawyers should be able to learn something useful from poets, those ultimate specialists in language, about our own inescapably linguistic business" (p. 4). Grey feels the pull of this position, but he rejects it as a reason for lawyers to read Wallace Stevens. Here, Grey invokes an oddly originalist view. He argues that the "intellectual integration" extolled by law-and-literature advocates is inconsistent with Stevens's own practice and understanding (p. 41). Grey traces the stark separation that Stevens maintained between his poetry and his workaday world of insurance claims, surety law, and sharp, clear prose (pp. 41-51). It is as if Wallace Stevens had read Judge Posner and taken him to heart, and as if that were reason enough for us to do likewise.

Grey nevertheless concludes that lawyers can profit from the study of Stevens's poetry. Lawyers, he explains, are prone to "the habitual and institutional rigidities of binary thought" (p. 7). In court, judgment must lie for plaintiff or defendant. In interpreting a legal rule, the purpose is to determine coverage or exclusion — either the rule applies or it does not. In analyzing legal doctrine, the goal is theoretical consistency and integrity — either the principle explains all the cases or it is indeterminate. As Grey pointedly observes (and as some of us have elaborated previously), "[l]egal theory is too often char-
characterized by absolutists and disappointed absolutists shouting past each other” (p. 6). As therapy for this affliction, Grey prescribes the pragmatist lessons that he so ably draws from the poetry of Wallace Stevens (p. 7).

Grey’s book is thoughtful, engaging, even courageous. By forging philosophical links between the concerns of poetry and those of law, Grey has performed an important intellectual service for a discipline that remains surprisingly parochial despite the seeming proliferation of its “law-and-” subgenres. Moreover, Grey is correct about both the binary and absolutist tendencies of most legal theory and the potential usefulness of Stevens's poetry as an antidote. The problem, however, is that Grey is ultimately unable to deliver the promised therapy. As a pragmatist, Grey is committed to the view that every discourse is a function of conventions and understandings specific to that particular practice. This commitment leaves Grey with no way to escape the tradition and practices — his tradition and practices — that he seeks to edify with his pragmatist insights. Grey's own analysis remains afflicted by the residual binarism that he decries.

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12 For pragmatists, a “normal discourse” such as the law entails “the practice of solving problems against the background of consensus about what counts as a good explanation of the phenomena and about what it would take for a problem to be solved.” RICHARD RORTY, PHILOSOPHY AND THE MIRROR OF NATURE 320 (1979). Thus, at the close of his book, Grey reminds the reader that pragmatists must accede to “the limits imposed by the local and situated character of all theorizing” (p. 110). Grey has elsewhere explained that the pragmatists “treated thinking as contextual and situated; it came always embodied in practices — habits and patterns of perceiving and conceiving that had developed out of and served to guide activity.” Thomas C. Grey, Holmes and Legal Pragmatism, 41 STAN. L. REV. 787, 798 (1989).

13 See Pierre Schlag, The Problem of the Subject, 69 TEX. L. REV. 1627, 1708-21 (1991) (demonstrating this conflict within Grey's pragmatism). As I have argued previously, this is a common problem for pragmatists. Pragmatists recognize that categories, words and the like do not fit the world, but rather are tools of interaction with it. Nevertheless, they make the mistake of continuing to conceptualize those “tools” in the same way that their objectivist predecessors did when they thought of words and the like as actually fitting the world. See Steven L. Winter, Bull Durham and the Uses of Theory, 42 STAN. L. REV. 639, 657-64 (1990) (showing how this error undermines Stanley Fish's critique of theory and self-consciousness); Winter, supra note 10, at 1123-26 (discussing the conflict between Rorty's philosophy of language and his account of a normal discourse as a practice within which “[r]igorous argumentation issues in agreement in propositions”). As a result, the pragmatist risks a problem analogous to the concern voiced by some feminists — that it may be difficult to dismantle the master's house with the master's own tools. See AUDRE LORDE, The Master's Tools Will Never Dismantle the Master's House, in SISTER OUTSIDER 110, 110-13 (1984).

14 Much the same is true for Stevens, although some aspects of his work suggest an alternative that he never quite assimilated. See infra pp. 752-53, 760-62.
Consider Grey's initial question. To ask whether Stevens's poetry should be part of the legal canon is already to presuppose a categorical distinction between law and literature that, as a conceptual matter, we might not wish to concede. This distinction is natural enough for those steeped in the Enlightenment tradition that privileges the objective over the subjective, the literal over the metaphoric, and the rational over the imaginative. But Grey's whole claim is that Stevens's poetry should serve as pragmatic therapy for this tendency toward dichotomization. It is curious, therefore, to find the traditional antinomies reappearing throughout Grey's book. Grey admits at the start that he feels "the stylistic appeal of generic integrity; law is law, poetry is poetry" (p. 3). So too, he concludes on a surprisingly objectivist note: "Jurisprudence is not the same as poetics . . . . Law is poetry is indeed only a metaphor . . . ." (p. 110). The tipoff to Grey's residual objectivism is the word "only" — as if, by virtue of its metaphorical quality, the similarity between law and poetry were somehow less than real.

In contrast, I claim that, despite even obvious differences in their appearance, law and poetry are surprisingly comparable products of a common human cognition. For that one moment preserved in the epigraph, Stevens was right: we do not have separate minds for poetry and for law. Necessarily, we do each with the same mind — indeed, the whole mind. That mind is an embodied process that is irreducibly imaginative and metaphoric. There is no difference in kind between the rigors of "reason" and the demands of poetry.

As just one example, consider Grey's description of the pleasures of reason: "Both deduction and clear vision are naturally felt as cold, linear, satisfying in their impersonality" (p. 92). This statement strikes all the chords of the Enlightenment conception of Reason as a disembodied faculty that is rigorous, linear, cool, and unemotional. Yet on
a second look, this statement proclaims — and is an instantiation of — the metaphorical quality of reason: reason is cold; it is rigorous; it is linear; it is clear; it is felt. Indeed, in its dependence on embodied experiences like temperature and rigor, the metaphorical quality of reason is anything but detached and impersonal.

As Grey suggests, the poetry of Wallace Stevens is of special relevance because of his particular concern with metaphor. "The possibility of imaginative (metaphoric) integration remained at the heart both of [Stevens's] secular religion and his account of daily life" (p. 78). A great deal of what Stevens had to say about metaphor is relevant to philosophic questions central to our understanding of the law. Despite our lofty ambitions, it is becoming increasingly obvious that our objectivist tools are unequal to the task of mastering the uncertainty and complexity of the human experience that we seek to regulate. To manage better, we first need to rediscover human reason in all its imaginative capacity. We must learn to appreciate and use what Stevens calls the "disposition to metaphor" if we are to have "humane law within the limits of human imagination." Or, as Stevens puts it:

To say more than human things with human voice,  
That cannot be; to say human things with more  
Than human voice, that, also, cannot be;  
To speak humanly from the height or from the depth  
Of human things, that is acutest speech.

II. EITHER/OR

Much of Grey's book is organized around the set of familiar oppositions between law and literature, prose and poetry, the literal and the metaphoric, reality and imagination, even law and equity. Locke insisted upon literal prose "if we would speak of Things as they are," and he condemned metaphor and other figurative speech as "perfect cheat." In contrast, the tradition that derives from Nietzsche accepts the distinction but valorizes metaphor as prior to and more basic than

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19 As Grey reminds us, Locke thought of Reason as male (pp. 36–37). The word "rigor" comes from the Latin rigere, which means "to be stiff." The Random House Dictionary of the English Language 1657 (2d ed. unabridged 1987). Unless otherwise noted, all subsequent etymologies and definitions are from this source.


21 Winter, supra note 10, at 1113, 1233–34.

22 Wallace Stevens, Chocorua to Its Neighbors, in The Collected Poems, supra note 6, at 296, 300.

literal speech. This view understands the literal as merely “worn out metaphors which have become powerless to affect the senses.”24 "Old metaphors," Richard Rorty claims, "are constantly dying off into literalness, and then serving as a platform and foil for new metaphors."25 On this view, “[t]ruth” is the product of the “strong poet” who creates the metaphors that succeed by dying.26 "A sense of human history as the history of successive metaphors would let us see the poet, in the generic sense of the maker of new words, the shaper of new languages, as the vanguard of the species.”27 This is the Romantic's triumph over Enlightenment rationality in which, as Shelley claimed, “[p]oets are the unacknowledged legislators of the world.”28

Although Grey identifies Stevens with the Romantic side of this divide (p. 7), he highlights the conflicted nature of Stevens’s thinking about metaphor:

[T]he relation of metaphor to reality [was] a topic of abiding interest to Stevens. As well as being a suspicious critic of this “evasive” trope, he also joined in the Romantic celebration of what Shelley called poetry’s “vitaly metaphoric” power to carry its readers to a new revelation of an ever-changing reality (p. 61).

Grey underscores this conflict by starting the chapter with a double epigraph. He juxtaposes Stevens's aphorism, "Reality is a cliché from which we escape by metaphor,"29 with a stanza from Credences of Summer, in which Stevens expresses his desire to seek the center "[w]ithout evasion by a single metaphor"30 (p. 52).

Grey examines Stevens's conflict through a series of thoughtful readings of his poem The Motive for Metaphor. In its entirety, the poems reads:

You like it under the trees in autumn,
Because everything is half dead.
The wind moves like a cripple among the leaves
And repeats words without meaning.

In the same way, you were happy in spring,
With the half colors of quarter-things,
The slightly brighter sky, the melting clouds,
The single bird, the obscure moon —

25 RICHARD RORTY, CONTINGENCY, IRONY, AND SOLIDARITY 16 (1989). At times, Grey explicitly identifies Stevens with this position (pp. 39–40, 78).
26 RORTY, supra note 25, at 20.
27 Id.
29 WALLACE STEVENS, Adagia, in OPUS POSTHUMOUS, supra note 20, at 184, 204.
30 WALLACE STEVENS, Credences of Summer, in THE COLLECTED POEMS, supra note 6, at 372, 373.
The obscure moon lighting an obscure world
Of things that would never be expressed,
Where you yourself were never quite yourself
And did not want nor have to be,

Desiring the exhilarations of changes:
The motive for metaphor, shrinking from
The weight of primary noon,
The A B C of being,

The ruddy temper, the hammer
Of red and blue, the hard sound —
Steel against intimation — the sharp flash,
The vital, arrogant, fatal, dominant X.\textsuperscript{31}

Grey begins with an account of Professor Radin’s reading of the poem at the 1989 annual meeting of the Association of American Law Schools (pp. 52–53). Radin suggested:

[O]ne “motive for metaphor” is the legal humanist’s desire for “the exhilarations of changes” — the excitement of transmuting the base metal of law’s crude raw material into art. The darker, autumnal side of this motive is its “shrinking” from law’s noontime realities of prisons and money, pain and greed, into the more sheltered domain of texts, tropes and dialogue. The civilized view of law as cultured conversation unduly neglects the “hard sound” of “steel against intimation,” the sound of force against eloquence, sharp blades against the soft flesh of human bodies that, more than any words, should be the lawyer’s first concern. On this reading, “The Motive for Metaphor” cleanly separates — as Stevens did in his life, and as Judge Posner tells us we should do in our legal scholarship — the realms of poetry and law . . . (pp. 58–59).

Radin has since explained that she now uses The Motive for Metaphor “to consider when and how metaphor might be objectionable.”\textsuperscript{32} “Sometimes,” she observes, “the obscurity of metaphor provides comfort to oppression.”\textsuperscript{33} But, she concedes, “only situated judgment can tell us when.”\textsuperscript{34}

Although Grey accepts this reading, he finds the poem more nuanced and more complicated; it doubles back on itself and “partly undoes what it did” (p. 59). He notes “the poem’s turn in the final stanzas toward metaphor, the obscure, the transitory, where we were led to expect the literal, clear, and stable” (p. 60). Grey suggests that the motive for metaphor may be not escape, but expression: “Meta-

\textsuperscript{31} WALLACE STEVENS, The Motive for Metaphor, in THE COLLECTED POEMS, supra note 6, at 288.
\textsuperscript{32} Radin, supra note 5, at 262. Later in her piece, Radin appears to soften her earlier reading of the poem with its “hard” dichotomization of law and literature. \textit{Id.} at 265.
\textsuperscript{33} Id. at 262.
\textsuperscript{34} Id.
phor, then may shrink from midday sunlight toward reality as well as away from it; . . . the poem [offers] both possibilities at once” (p. 63). From this he extrapolates that the lawyer's purpose in reading the poem should be to wrestle with the poem's antitheses and then to find that after the struggle has gone as far as it practically can, there remains the sense — which should likewise always hover over the reduction of a living dispute to a case at law — that not everything has been said, that representation in every respect has been partial and incomplete.

. . . Poetry, especially Stevens's kind of poetry, reminds the reader that the bright obvious is not everything; that something, which may be the most important thing, always remains obscure; that a principle, a moral of the story, always carries its own implicit qualification (p. 66).

I admire this account and find much with which to agree. But I remain dissatisfied. It continues to rely upon the traditional dichotomization of the discursive world: there is “metaphor, the obscure, the transitory,” and then there is “the literal, clear, and stable”; metaphor may take us “toward reality as well as away from it” (pp. 60-63). True, the account presses beyond thesis and antithesis and enjoins us to read dialectically. But “[t]his dialectic doesn’t go anywhere. It is an arrested dialectic: There is no moment of synthesis.”35 Indeed, Grey tells us that “Stevens does not regard the dualism of matter and mind, reality and imagination, as some easily discarded bit of philosophical entrepreneurship” (p. 77). Rather,

Stevens sees the perspectival incompleteness of realism and idealism, but he also sees that even when these perspectives are recognized as limited, they will nevertheless survive the transcending moment of recognition. After the dialectical moment, dissolving . . . the literal and metaphoric into one another, the idealist will reassert metaphor's vital superiority to lifeless literality, whereas the realist will again urge that the clarity of the literal should prevail against metaphoric evasion and obscurity (p. 73).

In the end, Grey's “pragmatic middle way” (p. 110) leaves us precisely where we began.

Despite the admonition to wrestle with the antitheses, Grey's dichotomous presuppositions exact their inevitable cost; the logic of opposites is that of contradiction and negation and not that of qualification or reconciliation. As long as we follow the residual objectivist practice of defining concepts oppositionally — that is, in terms of the properties that are present or absent (P and not-P) — we will continue to be confronted by the stubborn inadequacy of such crude, two-

dimensional accounts. Something will always remains obscure, unsaid — partial and incomplete.

Sometimes it is right to hold in mind that the early bird catches the worm; sometimes, that all work and no play make Jack a dull boy. Hobbes's maxim that in politics clubs are trumps and Hume's that opinion rules the world stand in a similar relation, as do principles proclaiming the centrality of rules and of equitable discretion in legal judgment. To say this kind of thing (as James and Stevens so readily do) is not to embrace unreason or deny the Law of Contradiction. . . . [I]n cases where general beliefs conflict, it leaves the decision to judgment (or "perception" as Aristotle put it) rather than to computation (pp. 84–85).

For Grey, as for Radin, complexity yields to obscurity, which in turn must be deferred to the mysterious faculty of "judgment."

Yet perhaps the fault is not Grey's, but Stevens's. In his poetry, Stevens worked through his ambivalence toward the Enlightenment categories of the real and the metaphorical until he could go no further. His view of metaphor as simultaneously an "evasion" and "revelation" of "reality" yields not a mature acceptance of incompleteness, but an epoché — the suspension or cessation of thought that is the ultimate product of contradiction and negation:

The nothingness was a nakedness, a point
Beyond which thought could not progress as thought.
He had to choose. But it was not a choice
Between excluding things. It was not a choice
Between, but of.

III. A DEMISE GREATLY EXAGGERATED

Cognitive theory's claim for the importance of metaphor is not a naive oppositionalism that inverts the binary schema of the Enlightenment to exalt the poet over the scientist or legislator. Rather than the creation of particular genius, metaphor turns out to be part of the common, imaginative core of human rationality.

The empirical evidence from linguistic history (the diachronic) and contemporary language use (the synchronic) suggests not only the ubiquity, but also the continuity of metaphor. For example, consider

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36 For examinations of the conceptual and empirical inadequacies of this approach to categories and concepts, see Winter, supra note 10, at 1124–25 n.69, 1148–56; and Winter, supra note 13, at 657–64.
37 See supra p. 750.
38 WALLACE STEVENS, Notes Toward a Supreme Fiction, in THE COLLECTED POEMS, supra note 6, at 380, 403.
the word "perception." The Latin capere means "to take," as in the common law writ of capias, which authorized seizure of the defendant. Percipere, a compound derivation, means "to lay hold of." This is the source of the verb "perceive," which encompasses both sensory processes such as seeing and intellectual processes such as understanding.

Most speakers of ordinary English are not aware of this etymology. For them, "perceive" has a "literal" meaning that corresponds with understand. Today, "perceptive" more likely connotes keen insight and understanding than good vision or acute tactile sense. In apparent consistency with the Nietzschean view, the word "perceive" is premised on a "dead" metaphor that equates the cognitive operation of knowing with the physical process of holding. Or so it seems.

There are, however, many words premised on the same "dead" metaphor. A lawyer may scrutinize a document or examine a witness, but the Latin sources scrutari and ex agmen mean to "pick through trash" and to "pull out from a row," respectively. The word "metaphor" itself derives from the Greek meta pherein, which means "to carry over." As Grey points out, "metaphor is the figure of movement, of carrying across, of transport (you can ride a literal metaphora, the public bus, in Athens today)" (p. 61). A metaphor "carries over" a meaning from one context to another.

The etymologies of apparently unrelated words such as "perceive," "scrutinize," "examine," and "metaphor" share the same metaphoric infrastructure: a concept or idea is treated as an object subject to physical manipulation and transportation; words are vehicles for conveying this ideational "content"; the resulting cognitive operation is understood as an acquisition or "taking in" of that object. These conceptions can be represented by the following metaphors: Ideas Are Objects; Words Are Containers; Communication Is Sending; Understanding Is Grasping; and The Mind Is a Container. Thus, "literal" expressions such as perceive and scrutinize are not separate etymological products of individual "dead" metaphors. Rather, they are part of an entire metaphoric system — sometimes referred to as the Conduit metaphor — in which the domain of physical manipulation is the source of metaphors for operations in the intellectual domain.

At first blush, the systematicity of these metaphors does not trouble the Nietzschean view. Entire metaphoric systems can die, too. But

40 Related metaphors include Knowing Is Seeing and Intellectual Investigation Is Exploration.
once we know what to look for, investigation (from the Latin *investigare* — "to follow a trail") reveals that this metaphoric system is very much alive in contemporary English. This metaphoric system is what allows us to comprehend (from the Latin *com + prehendre* — "to grasp together") a highly conventional passage such as the following:

The professor *delivered* a superb lecture, but only the exceptional students were able to *take it all in*. The less gifted students had to *struggle* before they *grasped* the point. It *takes* more to master a concept than to *assimilate a piece* of information.

These expressions cannot be accounted for as products of a "dead" metaphoric system, because each of these words — "deliver," "take," "struggle," "grasp," and so on — retains its meaning in the domain of physical activity. We can try to save the "dead" metaphor view by explaining these expressions as cases of polysyemcy, in which the same word has developed different meanings and uses. This characterization, however, ignores the systematic connections between the polysemous meanings. Each of these cases of synchronic polysyemcy is enabled by (that is, it works because of) the Conduit metaphor — the same metaphoric system responsible for the diachronic semantic development of words such as "perceive." Linguistic history is not the history of successive metaphors, but rather of recurrent metaphor.

Words are not concepts.42 The persistence of the Conduit metaphor system is not merely a matter of consistent historical usage of particular words or phrases. The synchronic vitality of these metaphors demonstrates that they are part of our conceptual system. Thus, any word that signifies physical acquisition can come to signify intellectual understanding: I can "get" your point, "catch" your drift, "field" questions, "wrench" a point out of context, or "wrestle" with a difficult concept. Each of these cases of polysyemcy — in which words that signify physical possession can also connote knowing — depends upon the conceptual metaphor *Understanding Is Grasping*. Moreover, these underlying conceptual metaphors enable a speaker automatically to extend the system by modelling other actions in the physical domain: one can "discard" faulty assumptions, "save up" good arguments for later use, "dig up" a case on point, or "cram" for an exam (unless one is an "airhead"). So too, Stevens can employ the conventional *Ideas Are Objects* metaphor in exquisite poetic formulations. He declares that "everything we say . . . [is] a cast / Of the imagination, made in

42 *Cf.* WALLACE STEVENS, *Description Without Place*, in *THE COLLECTED POEMS*, supra note 6, at 339, 345 ("Thus the theory of description matters most. / It is the theory of the word for those / For whom the word is the making of the world . . . .").
sound” and that “[t]he poem is the cry of its occasion, / Part of the res itself and not about it.”

These examples illustrate that the same conceptual metaphors are at work regardless of whether the expression is literal, colloquial, or poetic. These metaphors are, so to speak, the unconscious rules of our language-game. The persistence of this metaphoric system through time (and, it turns out, space) and its ability to account for semantic change, polysemy, and the synchronic production of new usages (such as “airhead”) indicate both that these metaphors are alive and that they are a significant, entrenched part of the human conceptual system.

The consistency of this metaphoric system across genres that are traditionally understood as separate (such as ordinary language and poetry) suggests, moreover, that a common human rationality is at work. Rather than saying that language is metaphoric all the way down, it would be more apt to say that human rationality is metaphoric through and through. In contrast to the Nietzschean and Romantic views of metaphor as the novel creation of unbridled imagination, empirical evidence presents a picture of metaphor as a systematic and orderly part of the cognitive process.

43 Id. at 345-46.
45 See SWEETSER, supra note 39, at 9 (“[C]ertain semantic changes occur over and over again throughout the course of Indo-European and independently in different branches across an area of thousands of miles and a time depth of thousands of years.”). The striking consistency of these phenomena cannot be accounted for as a contingency of cultural continuity. “There is evidence that this metaphorical structure is not restricted to Indo-European . . . .” Id. at 22.

The reason for the consistency and the at least partially cross-cultural nature of these metaphors is that they are grounded in basic human experience: Knowing Is Seeing and Understanding Is Grasping are concepts that emerge from the species-wide experience of learning about one’s world through sight and touch. See generally Winter, supra note 10, at 1129–36, 1142–48 (discussing the nature of cognitive metaphor as grounded in experience) Anyone who has watched an infant grasp an unfamiliar object and test it with her mouth should understand why a metaphor such as Ideas Are Objects would have as a corollary the metaphor Ideas Are Food. See GEORGE LAKOFF & MARK JOHNSON, METAPHORS WE LIVE BY 46–47 (1980) (“Now there’s a theory you can really sink your teeth into. . . . That’s food for thought. He’s a voracious reader. We don’t need to spoon-feed our students.” (emphasis in original)).

46 It would be more precise, however, to include the analogical, the image-schematic, and the metonymic and say that human rationality is imaginative through and through. See GEORGE LAKOFF, WOMEN, FIRE, AND DANGEROUS THINGS: WHAT CATEGORIES REVEAL ABOUT THE MIND 153–54 (1987); MARK JOHNSON, THE BODY IN THE MIND: THE BODILY BASIS OF MEANING, IMAGINATION, AND REASON xiv–xvi (1987). Of course, the metaphors discussed in the text are only a subset of the metaphors that are part of our conceptual system. See generally LAKOFF & JOHNSON, supra note 45 (arguing that our conceptual system is based largely upon metaphor).
As a product of the same cognitive process, legal reasoning is no less metaphoric. The *Ideas Are Objects* metaphor, for example, appears in conventional legal conceptions such as "findings of fact," the "holding of a case," and the "marketplace of ideas." The metaphoric dimension of legal reasoning extends beyond these obvious examples and includes such basic legal concepts as rules, rights, procedure, and "Law" itself. For example, rules and rights are conceptualized as paths that constrain legally appropriate actions: hence such familiar phrases as "following the rules laid down" and "within the bounds of the law." No wonder, as Radin reminds us, "there can be no bright line between law and not-law." Ostensibly separate categories such as language, poetry, and law all have a common grounding in the cognitive process.

IV. RELATION APPEARS

In contrast to the standard dichotomies, which risk the *ēpochē*, a sophisticated understanding of the importance of metaphor suggests an alternative that is "not a choice / Between excluding things. . . . [N]ot a choice / Between, but of." Stevens provides a clue to that alternative:

> After all the pretty contrast of life and death
> Proves that these opposite things partake of one,
> At least that was the theory, when bishops' books
> Resolved the world. *We cannot go back to that.*
> The squirming facts exceed the squamous mind,
> If one may say so. *And yet relation appears, *
> A small relation expanding like the shade
> Of a cloud on sand, a shape on the side of a hill.

Here Stevens suggests that the mind that understands everything in dichotomous terms is a reptilian mind: too covered with squamae (epidermal scales), too far down the evolutionary scale to succeed in its task of understanding a squirming world of contingency and flux. "And yet," Stevens tells us, "relation appears."

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47 For a more complete discussion of this conventional metaphoric subsystem and its very different elaboration by Milton and Holmes, see Winter, *supra* note 10, at 1189–91.

48 *Id.* at 1206–24 (discussing the *Object* and personification metaphors that constitute our conceptions of "Law").

49 *Id.* at 1214, 1216.

50 Radin, *supra* note 5, at 265.

51 *STEVENS*, supra note 38, at 403.

Metaphor is not a process of “too easy synthesis” (p. 77), but rather of relation. It is the everyday means by which we do hold two things in mind without either excluding one or conflating both. When we conceive of understanding as grasping, for example, we gain a sense of “grasp” as a cognitive operation without losing or supplanting its physical meaning. At the same time, we do not diminish understanding to mere grasping; metaphor is not a reductive function that equates two separate domains, but a projection and expansion of one onto the other. It is, in Stevens’s words, “[a] small relation expanding like the shade/ Of a cloud on sand,” which is why Stevens can get “half colors” from “quarter-things.”

Metaphor is the imaginative capacity by which we relate one thing to another and, in so doing, “have” a world. Understanding is not grasping, but conceiving it that way enables us to use all of the entailments of the experience of grasping to structure operations in the intellectual domain. To “take” an idea and “make it one’s own” is to achieve true understanding, but if a point “continues to elude me,” then I never really “had” it to begin with; if an idea is contested, then it will be “up for grabs.” In this way, conceptual metaphors such as Ideas Are Objects and Understanding Is Grasping provide a versatile repertoire for handling our day-to-day interactions.

These metaphors, moreover, can combine with other conceptual metaphors to encompass entailments not embraced by the Object metaphor. For example, the Ideas Are Objects and Understanding Is Grasping metaphors seem to imply both that knowledge is inert and that, once acquired, it remains a static and unchanging asset. But we also use the general Mind-As-Body metaphor to conceive cognitive operations in terms of vision and movement. These metaphoric conceptions capture some of the dynamic quality of intellectual processes. By using both sets of metaphors, we are able to re-present these cognitive activities without the reductivism that might follow

53 STEVENS, supra note 31, at 288 (“[Y]ou were happy in spring, / With the half colors of quarter-things . . . .”).

54 [L]ogical structures and conversational structures are at least partly understood in terms of physical traveling and motion. An argument or a conversation follows or covers some particular path through the mental areas it traverses. Thus we say “That was off the track of the argument,” “The professor guided his students through the maze of tax law,” “They didn’t let him get very far into the subject,” or “Where were we?” SWEETSER, supra note 39, at 49. This metaphoric subsystem can be represented by the metaphors Knowing Is Seeing, Intellectual Investigation Is Exploration, and An Argument Is a Journey. See LAKOFF & JOHNSON, supra note 45, at 87–96. These metaphors are what enable words that mean “path” to come to mean “however.” Thus, we have anyway in English (as in: “Any way you construct the argument, it always comes out . . . .”) and tuttavia in Italian (literally “all road”). See SWEETSER, supra note 39, at 28, 46.
from reliance on any single metaphor. This flexibility of metaphoric thought enables us to function better in and adapt more successfully to a "squirming" world of contingency and flux; it enables behaviors and adaptations that would not be possible if we tried to pin the world down with literal speech that strives for direct correspondence.

Armed with this understanding, we can see why metaphor is nevertheless thought to be distorting. Because conceptual metaphor is cognitively entrenched and operates without reflection, reductionism comes easily; we may come to think that understanding really does have all the entailments of grasping. Thus, if for us, Understanding Is Grasping and Ideas Are Objects, we may come to see the world as composed of discrete, mind-independent bits of reality (the objectivist fallacy) or to treat abstract ideas as if they were somehow concrete and real (the fallacy of reification). Both are errors of conflation, in which we mistake one of many possible relations for an identity or equation.

We can avoid these mistakes by attending to metaphor as a cognitive function — that is, as the imaginative means by which we conceive the multiple relations of a complex world. In that event, we will no longer ask what metaphor "obscures" as if there were some determinate reality "behind" the metaphor. Rather, the renunciation of the traditional opposition between metaphor and reality allows us to recognize that metaphors are our way of having a reality and, therefore, that the important question about any metaphor is, which (partial) reality does it enable? "What is at issue is not the truth or falsity of a metaphor but the perceptions and inferences that follow from it and the actions that are sanctioned by it." It is this pragmatic attention to the relations created by our metaphors, and not some mysterious faculty like "judgment," that allows us to avoid the use of metaphor to mask oppression.

For an illustration of how this layering of metaphor can expand our understanding in the context of a jurisprudential debate, see Winter, supra note 13, at 681–84.

LAKOFF & JOHNSON, supra note 45, at 158.

See supra pp. 751, 753.

Thus, before Radin puts the blame on "objectionable metaphor," Radin, supra note 5, at 262, she is nearly right:

Some men see young women "as" provocative. Some whites see young blacks "as" menacing. This seeing is just as "really there" for the beholder as any hard fact or object. Yet, because of the struggles of the oppressed, we are coming to understand that it is a seeing that must be questioned. Id. at 261. Perhaps we could come to this understanding sooner and with less struggle if we attended to our metaphors, instead of just dismissing metaphor (or some metaphors) as "objectionable." In an excellent and insightful analysis, George Lakoff has shown how the conventional metaphors for sexuality structure this perception of women "as" provocative. See LAKOFF, supra note 46, at 409–15.
In this light, we might reconsider Stevens's aphorism from the *Adagia*: "Reality is a cliché from which we escape by metaphor."59 We could read this to say both that reality and metaphor are separate things and that the former is the state of stasis that precedes the movement of the latter. But this reading ignores the full import of "cliché," which connotes the conventional quality of reality as well as its triteness. A more plausible interpretation would equate Stevens's aphorism with the Nietzschean view that reality (like literality) is a cliché or dead metaphor. Grey appears to adopt this reading in the epigraph juxtaposing this aphorism, which celebrates metaphor as escape from cliché, with the lines from *Credences of Summer* that condemn metaphor as evasion of reality.60 Grey then expands this reading, however. He suggests that the aphorism

is, on its face, an assertion of romantic idealism; metaphor leads us from a boring lifeless reality into the vital world of the imagined. But clichés are not always dull *truths* — sometimes they are falsehoods, unexamined conventional wisdom, part of the "stubborn, man-locked set" of built-up prejudice and error that hides from the mind the world as it really is (p. 71).61

Yet even this more nuanced, dialectical interpretation — in which metaphor takes us both away from "reality" and toward it — is problematically objectivist, for it reasserts a separation between the mind's products and the world as it "really" is.

As we saw earlier, neither Stevens nor Grey progresses much beyond the traditional dualisms of matter and mind, reality and imagination, the literal and the metaphoric.62 In contrast, I want to offer a reading of the "Reality is a cliché" aphorism that draws upon our earlier discussion of cognitive metaphor to take us beyond the reality/imagination dichotomy, not by "a dialectical integration or synthesis" or by "the acceptance of an unresolved dialogic oscillation between them" (pp. 69–70), but by a deconstruction of that very dichotomy.

Elsewhere in the *Adagia*, Stevens seems to endorse the Nietzschean view: "Metaphor creates a new reality from which the original appears to be unreal."63 But then he appears to reject it: "There is no such thing as a metaphor of a metaphor. One does not progress through metaphors. Thus reality is the indispensable element of each metaphor."64 Consider how these two aphorisms modify our understanding

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59 Stevens, *supra* note 29, at 204.
60 See *supra* p. 750.
62 See *supra* pp. 747–48, 752–53.
63 Stevens, *supra* note 29, at 105.
64 Id. at 204; see also Wallace Stevens, *Responses to Partisan Review Questionnaire*
of the "Reality is a cliché" dictum. Taken together, these adages work to collapse the dichotomy. Metaphor is contingent on reality. But reality, Stevens says, is only a cliché — a "stiff and stubborn, manlocked set" of conceptions. From this vantage point, metaphor appears as the imaginative means of escape to a "new" reality. Once we are ensconced in that new perspective, however, the former reality will no longer seem merely a cliché; it will seem unreal and false. But that can be possible only if the new "reality" is already taken for granted as reality — that is, if it has already become a cliché. We have come full circle. There is no difference between "cliché" and "metaphor." Both are conventional ways of having a reality.

Read this way, Stevens's aphorisms presage Kuhn's insight that reality itself is paradigm-dependent. But this understanding means that it is useless to think of cliché as "false," for it can be no less true (and no more false) than the metaphor. To think of cliché or metaphor as "false" — or, as Grey suggests, as something "that hides from the mind the world as it really is" (p. 71) — is already to commit the objectivist fallacy, because it necessarily posits some other access to a world as it really is. By the same token, it would be a mistake to understand the "Reality is a cliché" aphorism as suggesting that "metaphor" is epistemically superior to "cliché." Metaphor, too, is a contingent relation, because "reality is the indispensable element of each metaphor." Taken together, Stevens's aphorisms say that, whether called "cliché" or "metaphor," imagination is our way of having a reality. Thus, the difference between metaphor and cliché cannot be the difference between true and false, new and old, better or worse, creative or conventional, but only a difference in our understanding of the status of our conceptions. Both metaphor and cliché are the world as it is enabled through our conceptions of and interactions with it.

(1939), in OPUS POSTHUMOUS, supra note 20, at 308, 309 ("The material of the imagination is reality and reality can be nothing else except the usable past.").

Stevens, supra note 61, at 497.

As Grey notes: "The postmodernism of writers like Clifford Geertz and Richard Rorty (which has roots in Nietzsche and William James) strikes many today with the force of revelation; its converts often treat their former realist or idealist absolutisms as false creeds to be aggressively discarded" (p. 72).

See THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS 111–18 (2d ed. 1970). This point is particularly clear when one compares the second aphorism — "Metaphor creates a new reality from which the original appears to be unreal" — with Kuhn's description of the perceptual changes that accompany a paradigm shift:

Looking at the moon, the convert to Copernicanism does not say, "I used to see a planet, but now I see a satellite." That locution would imply a sense in which the Ptolemaic system had once been correct. Instead, a convert to the new astronomy says, "I once took the moon to be (or saw the moon as) a planet, but I was mistaken."

Id. at 115.

Stevens, supra note 29, at 204.
This reading, in which both “cliché” and “metaphor” denote our imaginative way of having a reality, is especially harmonious with our earlier exploration of everyday language. The “literal” consists largely of metaphors that are not recognized as such — not because they are “dead,” but because they are conventional and, hence, clichéd. Conversely, what we take to be original poetic metaphor — such as Stevens’s observation that “everything we say . . . [is] a cast / Of the imagination, made in sound” — is just a novel instantiation of a conventional, conceptual metaphor. This is why, on a more careful reading, Grey finds metaphor even at the heart of the “real” as it is portrayed in the second half of The Motive for Metaphor. The “stiff and stubborn, man-locked set” of imaginative constructions is remarkably resilient, in part because of its grounding in everyday experience and in part because of its marvelous flexibility and generativity.

I do not claim that Stevens would have put it this way. Although he continued to question it, Stevens never quite escaped the dichotomization of mind and world, realism and idealism, truth and fiction. Even in his essay on the integration of the poetic and the philosophic, Stevens maintained that “[i]f the philosopher’s world is this present world plus thought, then the poet’s world is this present world plus imagination.” Here Stevens not only separates the “present world” from what is added by the mind, but also divides the workings of the mind into the philosopher’s “thought” and the poet’s “imagination.”

Stevens’s residual dualism is also apparent in another part of the Adagia, where he proclaims: “The final belief is to believe in a fiction, which you know to be a fiction, there being nothing else. The exquisite truth is to know that it is a fiction and that you believe in it willingly.” It is true, as Grey points out, that “[f]iction’ is a crucially multivocal term for Stevens; it connotes falsity to the realist, the heightened reality of creative invention to the idealist, and ‘madeness’ or social construction to the perspectivist” (p. 76). And in one sense, Stevens is correct: one must “believe in a fiction” because one’s world is a construction and not a mind-independent reality. Even so, Stevens’s choice of the term “fiction” represents a failure of pragmatist conviction. To recognize that everything is socially constructed is not

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69 As Grey notes: “This working of the imagination through everyday life is generally invisible to people within their own culture, for whom it forms their reality or ‘life-world’” (p. 72).

70 Stevens, supra note 42, at 345–46.

71 Stevens, supra note 61, at 497.

72 Thus, Stevens not only recognizes that “reality is the indispensable element of each metaphor,” but goes further and claims that “[a]ll of our ideas come from the natural world: trees = umbrellas.” Stevens, supra note 29, at 189, 204.

73 Stevens, supra note 20, at 278. His idea of integration consisted in cases “in which the reason and the imagination have been acting in concert.” Id. at 279.

74 Stevens, supra note 29, at 189.
to believe in a "fiction." Our constructions are no less real (and no more fictive) because they are our constructions. For the pragmatist, constructions may be useful or not; they may be harmful or not; they will enable some things and exclude others. For the pragmatist, however, they can never be "false" in any but this relative sense. Certainly they cannot be false solely due to their constructed character.

Thus, Radin is correct when she reminds us that "[a]fter the final no there comes a yes / And on that yes the future world depends." Without that "yes," there would be no constructions to provide us with the categories and ways of understanding that enable us to "have" a world. Law is one such construction; it furnishes us with concepts, procedures, and methods of argumentation that enable us consciously to adjust conflicts in social interactions. It does not follow, however, that our current set of legal concepts and categories is any good. Indeed, one of the inarticulate premises of Grey's thesis is that our current set of legal constructions is afflicted by the inevitable consequences of dichotomization. In the opposition of law and equity (pp. 87–90) or rules and standards, we experience again and again "the familiar oscillation of strict and equitable legal theories" (p. 87). Grey does not suggest that Stevens's poetry offers any remedy for these tensions and their resulting fluctuations. He suggests only that it can help reveal "the inability of law's language to encompass the world it would regulate" and the need to assert both sides of these oppositions (p. 65).

But is there any other way? Can we construct legal concepts and categories that do not rely on oppositions and dichotomies? This is not the place for an extended examination of the reconstructive potential of metaphor in law, a task I have undertaken elsewhere. In this essay, I have tried to establish one thing: we cannot proceed beyond the epochè until we abandon the traditional opposition between metaphor and reality, until we reconcile poetry with law, until we integrate imagination with rationality.

75 See Steven L. Winter, Indeterminacy and Incommensurability in Constitutional Law, 78 CAL. L. REV. 1441, 1447 (1990) ("[W]e need an epistemological understanding that allows us to recognize the constructed nature of meaning without renouncing what is valuable in those constructions.").

76 As Grey notes: "World-views take their character from what they exclude and emphasize as well as what they assert" (p. 74).

77 Radin, supra note 5, at 265 (quoting WALLACE STEVENS, The Well Dressed Man with a Beard, in THE COLLECTED POEMS, supra note 6, at 247, 247).

78 Cf. id. at 260 ("We must have some procedures, some categories, some everyday understandings of which things are close to the center of the map . . . ")


Conventional legal reasoning is relentlessly reductive: it imposes propositional rules and other necessary and sufficient criteria for decisionmaking upon a much more complex human reality. By drawing distinctions, we try to clarify the law and render it more precise. But the squirming world of contingency and flux is not so easily domesticated. The indeterminacy that has come to be such a contemporary crisis is, at least in part, the result of this conflict between human complexity and procrustean rationality. The by-product of this disparity is an excess that must always be accommodated by some murky residual category like equitable discretion, intuitive judgment, or practical wisdom — the kinds of ineffables that are all the rage in the legal academy today.

Stevens's examination of metaphor can be read to provide more help than Grey suggests. A close reading of the *Adagia* indicates that metaphor is our way of "having" a reality. It is the imaginative capacity by which we relate one thing to another without reductive equation. Moreover, the flexibility of metaphorical thought — the capacity to combine metaphors (such as *Understanding Is Grasping* and *Intellectual Investigation Is Exploration*) to capture different aspects of our experience — enables us to accommodate complexity in ways that rules and other dichotomous conceptual structures cannot.

Self-reflective awareness of our metaphors can facilitate more pragmatic attention to the realities that these metaphors enable. Conversely, the unreflective use of metaphor can lead us to take "reality" for granted — that is, as a cliché. Thus, the failure to apprehend the metaphorical nature of our reasoning can leave us vulnerable to errors of conflation, objectification, and reification that, in turn, can yield dire consequences. As I explore in the next Part, it is precisely in this way that metaphor may mask oppression.

V. Sense and Selves

Grey reads Stevens to say that when we have reduced a complex human experience to a set of legal distinctions, we are left with the *epoché* — "that something, which may be the most important thing, [which] always remains obscure" (p. 66). In contrast, I claim that Stevens should be read as rejecting the very possibility of achieving the reduction of human reality to a set of determinate criteria. This becomes clear upon reading Stevens's poem *An Ordinary Evening in New Haven*, which, as Grey explains, is "an experiment in how far poetry can pursue the reductive realist spirit" (p. 77). The physical

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81 See Winter, *supra* note 10, at 1195–98.
83 For an example within legal doctrine, see Winter, *supra* note 80, at 1491–1503.
forms of New Haven represent the reality of the object-realm. But they do not tell the whole story:

If, then, New Haven is half sun, what remains,
At evening, after dark, is the other half,
Lighted by space, big over those that sleep,
Of the single future of night, the single sleep,

As of a long, inevitable sound,
A kind of cozening and coaxing sound,
And the goodness of lying in a maternal sound,

Unfretted by day's separate, several selves,
Being part of everything come together as one.84

Stevens offers us not only the antithesis of harsh reality ("If, then, New Haven is half sun") and soft, moonlit ("Lighted by space, big over those that sleep") sentiment ("the goodness of lying in a maternal sound"), but also a promise of synthesis ("the single future of night, the single sleep / . . . Being part of everything come together as one").

Stevens, however, is not so romantic as to expect that unity. Rather, he tells us that reduction produces a ghostly excess.

The town was a residuum,

A neuter shedding shapes in an absolute.
Yet the transcripts of it when it was blue remain;
And the shapes that it took in feeling, the persons that

It became, the nameless, flitting characters —
These actors still walk in a twilight muttering lines.85

The objectivist rejection of metaphor ("A neuter shedding shapes in an absolute") will always fail to achieve the desired reduction. Instead, "the transcripts of it when it was blue remain." Here, Stevens recalls for us The Man with the Blue Guitar, in which he advised that "Nothing must stand / Between you and the shapes you take."86 The procrustean attempt at reduction notwithstanding, the metaphoric "shapes that it took in feeling . . . still walk in a twilight muttering lines." We can reduce a living dispute to a case at law, but that reduction is never completely successful, and its consequences remain to haunt us.

Because we understand abstract concepts by means of the Ideas Are Objects metaphor, the vector of reduction runs in the opposite

84 STEVENS, supra note 44, at 482.
85 Id. at 479.
86 WALLACE STEVENS, The Man with the Blue Guitar, in THE COLLECTED POEMS, supra note 6, at 165, 183.
direction from abstraction to reification: the reduction of an idea to a thing. This process of "thingification" conflates one of many possible relations into an identity or equation. When we reduce the many possible relations that are an actual person to a unitary legal thing, the consequence is not "that something, which may be the most important thing, always remains obscure" (p. 66). To the contrary, the effect of that "thingification" is a person made discrete, objectified, and thus exposed:

It is as if
Men turning into things, as comedy,
Stood, dressed in antic symbols, to display
The truth about themselves, having lost, as things,
That power to conceal they had as men . . . .

In this way, a legal distinction can reduce and reify a living person and thereby introduce precisely the definition and control that enable oppression.

Braswell v. United States is an example of just such an oppressive reduction. In Braswell, the Supreme Court applied the "collective entity" doctrine to hold that the custodian of corporate records could not invoke the Fifth Amendment privilege against self-incrimination to resist a subpoena to produce corporate documents. The Court reasoned:

[T]he custodian of corporate or entity records holds those documents in a representative rather than a personal capacity. . . . Under those circumstances, the custodian's act of production is not deemed a personal act, but rather an act of the corporation. Any claim of Fifth Amendment privilege asserted by the agent would be tantamount to a claim of privilege by the corporation — which of course possesses no such privilege.

There was a problem, however, that made the invocation of the distinction between the "custodian's" corporate and personal capacities particularly difficult and peculiarly oppressive in this case. Braswell, the corporate president and custodian of the records, was also the sole shareholder. To the extent that his act of production was incriminating, it could incriminate no one but himself.

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87 On the interactional complexity of the "self," see Winter, supra note 18, at 983–91.
88 STEVENS, supra note 44, at 470.
89 Cf. Radin, supra note 5, at 262 (arguing that "the obscurity of metaphor provides comfort to oppression").
91 See id. at 108–09, 119.
92 Id. at 109–10.
93 See id. at 101.
94 See id. at 120 (Kennedy, J., dissenting) (joined by Brennan, Marshall, and Scalia, JJ.).
Cases such as *Braswell* exemplify the clash between the complexity of human experience and the dichotomous, reductive practice of legal reasoning. An actual person cannot be segmented neatly into different "capacities" like public and private or corporate and personal. Thus "dressed in antic symbols," real people become only personae — "nameless, flitting characters" without the right to invoke the constitutional privilege afforded a natural person: "Men turning into things . . . having lost as things, / That power to conceal they had as men." "

At the same time, Braswell's reality as a person could not be ignored. As Stevens says, "the persons that / It became . . . still walk in a twilight muttering lines." Even the Court could not help but notice the peculiar situation it had produced: by splitting Braswell's selves, the Court made it possible for evidence of Braswell's production qua custodian to be used against Braswell in his personal capacity as defendant. The Court responded by drawing another distinction, this time between the permissible evidentiary uses of Braswell's act of production. It recognized a shadowy, phantom privilege prohibiting the government from introducing "into evidence before the jury the fact that the subpoena was served upon and the corporation's documents were delivered by one particular individual, the custodian." But this did not solve the problem at all; the artificiality of the Court's first distinction merely spawned another, even more absurd distinction. Limiting instructions notwithstanding, a jury would surely figure out that Braswell — as the corporate president, custodian of the records, and sole shareholder — was the only person who could have delivered the documents.

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95 One might think that the doctrine applied in *Braswell* could be explained as a necessary corollary to the fiction of the corporate form — piercing the veil neither for the corporation nor for its agents. But the Court applies the collective entity doctrine to legal partnerships and labor unions as well. See *Bells v. United States*, 417 U.S. 85, 101 (1974); *United States v. White*, 322 U.S. 694, 704 (1944). Moreover, the reasoning of *Braswell* — separating, for constitutional purposes, the role of custodian from the person who occupies it — has since been extended in a particularly pernicious way to the family law context. See *Baltimore City Dep't of Social Servs. v. Bouknight*, 493 U.S. 549, 563-64 (1990) (holding a mother in contempt for failing to produce her child or disclose his whereabouts even though the state admitted the child was probably dead and that, therefore, any disclosure would be incriminating).

96 *Stevens, supra* note 44, at 470.

97 Id. at 479.

98 Id. at 470.

99 Id. at 479.


102 Although Braswell's wife and mother were corporate officers and directors, neither had any control over the corporation. See *Braswell*, 487 U.S. at 101. Worse yet, the justification
The Court's predicament in Braswell was not a consequence of a failure to use metaphor; it could not avoid doing so. In segmenting a person into different roles, the Court employed a conventional metaphor that conceives states as locations or containers. Thus, it is conventional to speak of a person as "occupying" a role or as being "within the role's domain." Indeed, for the Court, the case turned on the "fact" that "the custodian of corporate or entity records holds those documents in a representative rather than a personal capacity." Rather, the Court's predicament was a consequence of its unreflective use of metaphor. Instead of treating Braswell "as" a custodian (and still a person protected by the privilege), it reified the metaphoric conception that Roles Are Containers and treated Braswell as acting "in a representative capacity." Only in this way could it plausibly treat the custodial role as if it were some thing entirely separate from the natural person who would be entitled to invoke the privilege. At the same time, the Court employed the metaphor reductively — treating the role as coextensive with the person while he or she "occupies" it. For the Court, "certain consequences flow from the fact that the custodian's act of production is one in his representative rather than personal capacity." This reduction allowed the Court to treat Braswell's act of production as the act of a custodian only, having nothing to do with Braswell as a person protected by the privilege against self-incrimination.

All this is the most pernicious form of legal fiction. A role is not a unitary "thing," but a pattern of conduct performed by an actual

for the Court's phantom privilege fatally undermines the rationale of the collective entity doctrine. As explained by the dissent:

the majority impinges on its own analysis by concluding that, while the Government may compel a named individual to produce records, in any later proceeding against the person it cannot divulge that he performed the act. But if that is so, it is because the Fifth Amendment protects the person without regard to his status as a corporate employee. Once this be admitted, the necessary support for the majority's case has collapsed.

Id. at 128 (Kennedy, J., dissenting) (joined by Brennan, Marshall, and Scalia, JJ.).

103 See George Lakoff, The Contemporary Theory of Metaphor, in METAPHOR AND THOUGHT (Andrew Ortony ed., 2d ed. forthcoming 1992). These metaphors motivate expressions like "she is a lawyer in full-time practice, but she's on vacation right now." The States Are Containers metaphor applies to mental states and motivates expressions like "she's deep in thought" and "he's in a foul mood."


105 Braswell, 487 U.S. at 117-18.

106 Id. at 109-10 (emphasis added). "Capacity" means both content (as in "what's your library's capacity?") and power or ability (as in "he has a tremendous capacity for hard work"). In the latter example, capacity is an instantiation of the States Are Containers metaphor. Like "perceive," the word "capacity" derives from the latin capere which means "to take [in]."

107 See Winter, supra note 18, at 983-84.

108 Braswell, 487 U.S. at 117-18 (emphasis added).
person. By failing to apprehend the metaphorical nature of its reasoning, the Court succumbed to errors of conflation, objectification, and reification. Braswell demonstrates how important it is to avoid mistaking the metaphorical quality of reason; it illustrates how inattention to metaphor in law can mask oppression.

VI. THE INTIMATION OF CHANGES

In arguing for recognition of the irreducibly imaginative and metaphoric nature of reason and its importance to law, I have been arguing as well for a particular understanding of what it means to be human. The obsession of the law is control; the reality of human life is change and adaptation. The relentless binarism of standard legal thought is a way to define things and pin them down; metaphor is the way in which we humans express relation without reduction. We have seen how metaphor is at the heart of the “real” because it is our way of world-making, our mode of engagement. This, I suggest, is the profound message of The Motive for Metaphor that appears when we read it free from “the habitual and institutional rigidities of binary thought” (p. 7).

In their readings of the poem, both Grey and Radin take the line “Steel against intimation” to state an antithesis: steel versus intimation, law versus literature, reality versus poetry, literality versus metaphor. This opposition of steel to intimation is central to every one of Grey’s readings. Yet Grey finds it difficult to explain “th[is] most opaque of the metaphors in Stevens’s poem” (p. 66). He notes that nothing in the forge images surrounding this phrase corresponds to “intimation” (pp. 66–67). This observation leads Grey to consider two law-related interpretations. First, he recounts Helen Vendler’s suggestion that “Steel against intimation” is the “executioner’s blade against the flesh” — although he points out that this reading does not conform to the forge imagery of the rest of the stanza (p. 67). Second, he inverts the referents and suggests that steel may be the object of intimation — that “the intimating and metaphorizing imagination heats and softens the steel of an impersonal rule of law” (p. 67). Thus, for Grey, “[s]teel against intimation . . . juxtaposes two aspects of law: its sharp rigidity . . . and its flexibility before the imagination” (p. 67).

There may, however, be a less binary, more profound reading. What if “steel against intimation” describes a mental state, where “steel” is a verb as in “[to] steel [oneself] against intimation”? If so, Grey must surely be committing the fallacy of reification when he

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109 At one point, Grey invokes the very obscurity of this metaphor to substantiate his dialectical interpretation in which metaphor reveals the incompleteness of law’s language (pp. 60–65).
looks for some "concrete referent" for "intimation" (p. 137 n.39). If "steel" describes a mental state, its counterbalance should be an idea or conception. The "intimation" we are to steel ourselves against, then, is "intimation" as the hint of the unspeakable, unarticulable, and the feared — the intimation of mortality. In that event, the motive for metaphor has everything to do with the "fatal, dominant X." Read this way, the poem is an internal dialogue on the subject of the poet's own mortality and, by extension, our own.

On this reading, the poet is not "shrinking [away] from / The weight of primary noon" by means of metaphor. Rather, he shrinks under "[t]he weight of primary noon," which is a heavy burden bearing down on him. Metaphor is thus the poet's response to the weight of primary noon. If primary noon is life (or real life, or the war), the "weight of primary noon" is the burdens of life and most especially the constant intimation of mortality. The motive for metaphor is the fear of death or, more precisely, the desire for life — "[d]esiring the exhilarations of changes." To paraphrase Stevens: Death is the mother of metaphor.

The exhilaration of changes, then, is the product of metaphor understood as an indispensable mode of engagement with life. ("Desiring the exhilarations of changes: / The motive for metaphor.") These exhilarations may take two forms: either the self-indulgent, ennui-driven sort or the more constructive form symbolized by the hammer of red and blue. We may infer, however, that these constructive diversions are "primary" for Stevens; in the first half of the poem, he seems to deprecate "the half colors of quarter-things" and the incompleteness that, later in the poem, calls out to be expressed in the primary colors of red and blue. Thus, the forge imagery of the final stanza represents the poet's workplace; the hammer and anvil are the tools of the wordsmith who hammers out the metaphors with which he will steel himself against the intimation of death. This interpretation completes Grey's search for a referent for "intimation" in the first part of the poem (p. 137 n.39). As Grey notes,

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110 This reading more firmly connects this poem, in Stevens's wartime volume, see WALLACE STEVENS, TRANSPORT TO SUMMER (1947), to the carnage around it. As Grey points out, Stevens was concerned that his wartime poetry was marginal to the war effort; he longed to offer inspiration or consolation to his fellow citizens (pp. 56–58).

111 See WALLACE STEVENS, Sunday Morning, in THE COLLECTED POEMS, supra note 6, at 66, 69 ("Death is the mother of beauty, mystical, / Within whose burning bosom we devise / Our earthly mothers waiting, sleeplessly."). For a careful study of the cognitive source and systematic poetic usage of such kinship metaphors for causation, see MARK TURNER, DEATH IS THE MOTHER OF BEAUTY: MIND, METAPHOR, CRITICISM (1987).

112 This reading is consistent with Cook's suggestion that Stevens is meditating on the theme of the drive for poetry itself. See ELEANOR COOK, POETRY, WORD-PLAY, AND WORD-WAR IN WALLACE STEVENS 182–84 (1988). Grey also discusses this interpretation (p. 135 n.19). In another, lengthy footnote, he catalogues a series of alternative readings, including my own (p. 137 n.39).
the metaphors of spring and autumn that Stevens invokes in the opening stanzas are "so familiar as to pass almost unnoticed" (p. 135 n.21). But they are crucial to the poem; by invoking such highly conventional metaphors, Stevens plainly fixes mortality as the antagonist of the poem. In the opening stanzas, he uses Life Is a Year, and in the final stanzas Life Is a Day. In the autumn of life, when the poet begins his reflections, he is at one with his world. In autumn, everything is half dead like the poet, and he therefore has a measure of peace with the world — a mortal world that he is of. The wind, like him, moves as a cripple among the leaves and speaks the same meaninglessness that is life viewed close-up against the background of death.

In much the same way, the poet was happy in spring when everything was still potential and yet did not need to be expressed, when it was all right not to be oneself (that is, one's possibilities): "And [you] did not want nor have to be." And yet, the ambiguous comma on which the poem pivots suggests a cross-current: perhaps what was good about the luxurious idleness of youth was that you "did not want nor have to be [d]esiring the exhilarations of changes: the motive for metaphor, . . . [t]he A B C of being, / The ruddy temper," all those things with which, as mature adults, we steel ourselves against the intimation of death and which, nevertheless, are an integral part of death's logic — that is, "[t]he A B C of being" that, in its inexorable way, leads to the "fatal, dominant X." "The vital, arrogant, fatal, dominant X" is Death, the ultimate unknown, the ultimate X. Contrary to Grey's suggestions that "life ('vital') is set against death ('fatal')" (p. 60), Stevens here invokes the conventional poetic personification of Death (as in "the Grim Reaper"). Hence, it (the "X") can be both vital and fatal, arrogant in the assurance of its triumph and, thus, always dominant.

This reading of the poem also explains the curious structure of the final stanza, which consists entirely of a series of appositives that includes the crucial phrase, "Steel against intimation," set off by dashes. If the phrase refers to the effort to stave off death, its form repeats its substance: the rush of the successive appositive clauses runs all the way from "[t]he A B C of being" to the "fatal, dominant X." The dashes that surround the phrase "Steel against intimation" are an obstruction or impediment intended to break the reader's surge

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113 These and other conventional poetic metaphors — such as the Life Is a Journey metaphor invoked by the reference to "the weight of primary noon" — are explored and developed at length in LAKOFF & TURNER, supra note 44.

114 Although Z would be neater, it would be less metaphorically coherent. X makes more sense for "Death," for X is the unknown in every equation. Moreover, X calls up the image of the skull and crossbones and suggests finality, as in "X marks the spot."

through to the inevitable end. Once the poet has obtained that pause, suddenly — as Death is always sudden — appears “the sharp flash” that breaks the train of life.

Finally, this interpretation coheres with Grey’s dialectical reading in which he notes “the poem’s turn in the final stanzas toward metaphor, the obscure, the transitory, where we were led to expect the literal, clear, and stable” (p. 60). The “real” (“primary noon”) turns out to be metaphoric (“The ruddy temper, the hammer / Of red and blue, the hard sound”), just as the poetic (“the obscure moon”) was paradoxically flat and literal (“You like it under the trees in autumn / Because everything is half dead.”).116 Metaphor is (once again) at the heart of “real” life. It is the very drive for life: to express, to make sense, to see the full colors (“the hammer / Of red and blue”), the steel against the intimation of mortality. What the poem offers is not a dichotomous formulation of reality versus metaphor, but the relentless human construction that is the center (the “primary noon”) of life. As Stevens puts it in Notes Toward a Supreme Fiction:

There was a will to change, a necessitous
And present way, a presentation, a kind
Of volatile world, too constant to be denied,

The eye of a vagabond in metaphor
That catches our own. The casual is not
Enough. The freshness of transformation is

The freshness of a world. It is our own,
It is ourselves, the freshness of ourselves,
And that necessity and that presentation

Are rubbings of a glass in which we peer.
Of these beginnings, gay and green, propose
The suitable amours. Time will write them down.117

116 As Grey explains, these opening lines of the poem “are unusually flat and literal for Stevens, and . . . the portrayal of spring in stanzas two and three is itself plain and relatively unfigurative” (pp. 59–60).
117 Stevens, supra note 38, at 397–98.