

# METAPHOR AND LAW

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Milner S. Ball. *Lying Down Together: Law, Metaphor, and Theology*. (Madison: University of Wisconsin Press, 1985). xiv + 198 pp. Notes, index. \$24.00.

Toward the end of his 1981 book, *The Promise of American Law*, Milner Ball suggests that law may be viewed as a metaphor for life or death that is seen as a protective force by most of us most of the time, but as an oppressive force by some of us some of the time. This crucial role of metaphor in shaping our current view of law and in providing a basis for a possible reshaping of that view and its potential is at the core of the unconventional but creative work Ball presents in *Lying Down Together*.

Ball adopts a distinctively rhetorical perspective in the tradition of rhetoricians Kenneth Burke (1966) and Richard Weaver (1965) and political scientist Murray Edelman (1964, 1971) in his analysis of metaphoric thought, which he defines as "imaginatively identifying one object with another" (p. 21). To Ball, metaphoric choices are the central means by which events of the world take on meaning. Whether conscious or not, a dominant metaphor inevitably reveals some aspects of reality while masking others. And unconscious metaphors, by their very nature, preclude certain ideas from consideration. Since meaning is a human creation resulting from success in the struggle to define reality through the application of selected metaphors, Ball argues that people cannot avoid responsibility for their choices of metaphors and their consequences. Thus, lawyers and judges have an obligation to identify the current dominant conceptual law metaphor, accept responsibility for its consequences, and undertake to change it if they are not satisfied. What they cannot do, in Ball's view, is ignore the problem and carry on the business of law untainted by the consequences of their metaphoric choices and resulting behavior. If one shares Ball's premise that our understanding and thinking about law are the direct consequences of the application of a dominant metaphor to the phenomenon of law, this book becomes a fascinating exercise in paradigm transformation.

Ball's book is an effort to persuade the reader that the virtually unquestioned and dominant conceptual metaphor by which we view law as the "bulwark of freedom" (p. 23), should be replaced

by an alternative metaphor of the law as “medium” (p. 33). Under the dominant bulwark metaphor, without law “we would be engulfed in a sea of increasing entropy, overwhelmed by a Hobbesian state of nature and the war of all against all . . .” (p. 21). Law thus becomes a necessary evil that arises to save us from social disorder. By viewing law as a bulwark and deeply fearing a world without law, our domestic and foreign policy tend to emphasize order, rigidity, and conflict before justice, fluidity, and cooperation. Under Ball’s proposed alternative law becomes a medium, a means of enhancing life, increasing the flow of justice, and connecting rather than dividing mankind.

While such theoretical musings about law metaphors are intrinsically worthwhile, Ball endeavors to make a concrete comparison of the application of the two competing metaphors to the historical development of international, national, and state laws regulating the use of the world’s waterways. His analysis constitutes persuasive and creative evidence in support of his argument: The central function of metaphors is to reveal and conceal aspects of meaning, a thesis similar to that made by Burke in his discussion of “directing and deflecting attention” (pp. 44–46) and “terministic screens” in his earlier excellent work, *Language as Symbolic Action* (1966: 44–62).

The battle for metaphors as applied to the law of the sea is illustrated by Ball through a comparison of the 1609 pamphlet by Hugo Grotius, *Mare Liberum*, with the 1623 response, *Mare Clausum*, by John Selden. Ball comments that Grotius argued for free trade because “legally free seas prove and serve fulfillment of human life in community” (p. 39). This view represents the metaphor of law as medium—the law of the sea should provide maximum opportunities for interaction and contact. Selden’s response typifies the now-dominant view of law as bulwark—the sea is ‘capable of private dominion or property as well as land’ (p. 40). Ball comments that to Grotius, the law of the sea should assure that the sea be “an aid to the intercourse of nations” (p. 41); to Selden, the law of the sea should protect “exhaustible resources . . . increase the efficiency of exploitation and slow the loss of profit” (p. 41).

In his closing chapter Ball expands his metaphorical analysis by suggesting that metaphors live in families of related metaphors. For example, law as bulwark coexists with “life as struggle, society as contract, politics as battlefield or marketplace, and nature as resource” (pp. 120–121). This collection of metaphors he calls “Fortress America” (p. 121), a world view that requires that we build walls, prepare for battle, and protect what is ours. The proposed alternative law metaphor, law as medium, also exists within a family of other metaphors: “nature is a gift and occasion for the gift cycle, a sharing of advantages of time and earth. Politics is the action of forming, exchanging, and distilling opinion . . . and law is

then a medium of solidarity" (p. 123). This collection of metaphors he calls the "Peaceable Kingdom" (ibid.).

Ball's work is marked by a combination of creativity and scholarship. It challenges the very premises on which most who write about the law agree without thinking. It demonstrates the insights to be derived from the rhetorical approach that sees meaning as a result of the responsible action of human creation rather than the "realist's" view that sees meaning as a result of the passive notion of the discovery of reality. The latter confers no moral responsibility on the discoverer, who is seen as merely reflecting, not creating, reality.

Ball sets out to demonstrate that metaphors dominate thought, that each metaphor masks as much as it reveals, that the current metaphor for law distorts and hides the true power of law as a force for good, and that an alternative metaphor should be considered. On these intellectual points he is a dramatic success. As to the likelihood of a paradigm shift, Ball is not terribly optimistic, and probably should not be.

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## REFERENCES

- BALL, Milner S. (1981) *The Promise of American Law: A Theological, Humanistic View of the Legal Process*. Athens: University of Georgia Press.
- BURKE, Kenneth (1966) *Language as Symbolic Action*. Berkeley: University of California Press.
- EDELMAN, Murray (1964) *The Symbolic Uses of Politics*. Urbana: University of Illinois Press.
- EDELMAN, Murray (1971) *Politics as Symbolic Action*. Chicago: Markham.
- WEAVER, Richard M. (1965) *The Ethics of Rhetoric*. Chicago: H. Regnery.