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2012

[Link to publication](#)

Citation for published version (APA):

Larsson, S. (2012). *Law, metaphors and underlying conceptions*. Abstract from 2nd International Conference on Law, Language and Professional Practice.

Total number of authors:

1

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2nd International Conference
Law, Language and Professional Practice
University of Naples, 10-12 May, 2012.

Cover sheet

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Law, metaphors and underlying conceptions

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Abstract

This article relates to the relationship between law and language by focusing findings in cognitive linguistics on the commonness and utter importance of metaphors for most abstract thinking. Inspired by cognitive theorists as Lakoff and Johnson (1980, 1999) and legal scholars as Steven L. Winter (2001; 2007), I argue that our language is fundamentally metaphoric in nature and that the framing aspects as well as how categories are created in the view of our perhaps surprisingly metaphoric language is of great relevance to not only lingual and philosophical analysis but also legal. And this is in general not acknowledged in the legal domain.

The analysis of metaphoric patterns is a way to outline what the underlying and ruling *conceptions* are, and to clarify how other norms operate as well, for instance unlocking false dichotomies; revealing how legal language often is embodied, in the sense that it lends its conceptualisations from a spatial and physical context, a fact at the same time not acknowledged. For instance, Mark Johnson argues that legal reasoning and legal concepts are based on a sort of self-image of objectivity. Johnson's main point for entering cognitive science in the study of law is that this legal "objectivist view", he claims, is based on an incorrect understanding of how thinking and language work (Johnson, 2007, p. 847) – a point that is sophisticatedly elaborated in Stephen L. Winter's *A Clearing in the Forest* from 2001.

In short, this article will in general and from a theoretical perspective analyse and discuss the implications of conceptual metaphor theory and other findings in cognitive linguistics for law and legal analysis, including the embodiment of metaphors. For example, there is a general implication of fundamental importance relating to the often-expressed "objectivist" view in law that is challenged in this perspective. There is a second but still important and empirical observation relating to how law deals with regulating an increasingly *digitalised* society – when digitalisation alone means a strong and inevitable need of metaphors and embodied labels of the "bodiless" digital artefacts, to be thought and talked about. This point is in the article exemplified with the case of copyright in a digital society, for instance relating to file sharing as well as by the Swedish case against the BitTorrent tracker The Pirate Bay.

Keywords: Metaphors, law, conceptions, embodiment, categorisation, digital society, copyright.

The paper likely falls under analytical area 12.

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