“The Ship Dieth at Sea”: Metaphor and Maritime Law

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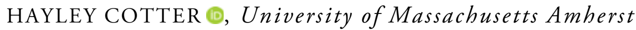

This article proposes a new methodology for engaging with early modern legal metaphor. It argues that a full account of the trope must integrate its legal-historical, cultural, literary, and philosophical dimensions. After discussing what makes early modern legal metaphor unique (and thus uniquely challenging to decipher), I consider various philosophical, legal, cognitive, and literary approaches to the rhetorical figure and demonstrate how each perspective adds additional insight to its untangling in juridical contexts. The article culminates in a reading of a single metaphor taken from lawyer John Exton's treatise “The maritime dicæologie, or, the Sea-jurisdiction of England” (1664): “The ship dieth at sea.” Ultimately, I argue that this metaphor references admiralty actions in rem, which were integral to the functioning of the sixteenth- and seventeenth-century English High Court of Admiralty, an interpretation that emerges only when accounting for the trope in both its textual and intertextual frameworks.

INTRODUCTION

THE MARITIME DICÆOLOGIE, *or, the Sea-jurisdiction of England* (1664), by English lawyer and admiralty judge John Exton (ca. 1600–68), offers one of the most charming pieces of legal prose produced in England during the early modern period. Written in the wake of Charles II's restoration to the throne in 1660, the treatise defends the jurisdiction of the English High Court of Admiralty against encroachment by the more powerful common law courts. In addition to this defense, it also provides a painstaking history of maritime law in its English and European contexts. The treatise, which was reprinted in 1746 and 1755, relies on old admiralty records and other archival material

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to construct a considered defense of the High Court of Admiralty's purview. But its interest for the twenty-first-century scholar transcends a straightforward legal-historical analysis because it sheds light on the interpretation of early modern legal metaphor, and Exton's incorporation of the trope raises fascinating issues. Previous work on legal metaphor has not focused exclusively on maritime metaphor, which, appropriately enough, constitutes a large portion of the treatise's figurative language, nor has it focused on early modern legal metaphor. Using *The maritime dicæologie* as a case study, then, this article proposes a methodology for engaging with early modern legal metaphor. It considers why this type of metaphor resists conventional interpretations and calls for a distinct interpretative schema—one that accounts for both its contextual discourse (law) and historical period (early modern). It considers the maritime metaphor as a special type of metaphor in English, just as admiralty represents a special type of law, and suggests that Exton's prose demonstrates restraint and deliberation in its employment of figurative language. It argues that these metaphors of maritime law satisfy the complementary impulses to concretize abstract ideas about jurisprudence and to produce abstraction from the tangible attributes—tempests, billows, tides, and sands—of the sea.

Early modern legal metaphor presents the modern scholar with two compounding problems: first, it is legal, and second, it is early modern. In the past seventy years, philosophers, rhetoricians, literary historians, and linguists have breathed new life into current understanding of metaphor, which represents an unwieldy concept, nearly impossible to pin down and analyze. Indeed, metaphor's ubiquity in human enterprise might seem to lead to a place of interpretative impasse. It would appear there is too much to consider, too much to account for, too much to know. This article, then, does not attempt an exhaustive review of recent work on metaphor. Instead, it borrows from scholars whose theories seem especially well-suited for the task at hand. I rely mainly on the theories of Max Black and Monroe Beardsley, who deal with metaphor generally, and Thomas Ross and Linda Berger, who specifically address legal metaphor, to construct my own methodological approach to Exton's metaphoric engagements in *The maritime dicæologie*. At the same time, these theories mainly limit themselves to the use of metaphor in a contemporary (or near-contemporary) context, and while they prove widely applicable, any satisfactory account of seventeenth-century metaphor must also take into account its early modernity. This quandary uncovers a fundamental difficulty in the interpretation of metaphor: how can one account for how Exton's readers might have interacted with his treatise? I posit that, by tracing these metaphors onto their earlier poetic incarnations, one might catch a glimpse, albeit obscured by the shadow of time, of how his audience may have deciphered the Extonic metaphor.

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The linking of the legal with the literary, then, constitutes a major component of my methodological approach. Exton appears keenly aware of the aesthetic power of metaphor, of its capacity to both persuade and delight, and it is not incidental that his general metaphorical vision seems rooted in the Elizabethan sonnet. Assuming such a literary approach to legal metaphor may seem critically profane. However, in addition to providing a useful cultural backdrop, it also unveils paradox as a major force driving early modern legal metaphor. Psychologist Raymond Gibbs notes one central mystery of metaphor: how can it be both deeply embedded in so many aspects of human cognition, but also retain special aesthetic pleasures in its poetic contexts?[1] In turn, legal scholar Thomas Ross argues that the paradox of metaphor reveals attendant paradoxes about the law in a way that literal language cannot.[2] These complementary observations on paradox undergird my reading of the use of metaphor in Exton's treatise.

In his *Treatise of Schemes and Tropes* (1550), Richard Sherry (ca. 1505–51) proclaimed that metaphor is a "worde, translated from the thynge that it properlye signifieth, unto a nother whych may agre with it by a similitude. And amonge all vertues of speeche, this is the chyefe."[3] A single article cannot hope to do justice to this paramount rhetorical virtue, even in the relatively narrow scope of early modern law, and the article at hand remains modest in its conclusions. At the same time, it aims to provide a feasible method for unraveling other legal metaphors of the early modern period.

EXTON IN CONTEXT: THE ADMIRALTY JURISDICTION DEBATES

Exton penned *The maritime dicæologie* against the backdrop of the question of English admiralty jurisdiction, a legal issue which had spanned several centuries. The earliest applications of maritime law most likely occurred at port courts (such as the Cinque Ports), which proceeded according to the customary law of the sea, or else to common law.[4] Dating the establishment of the English admiralty court proves difficult, largely because the contemporary evidence does not survive, but historians believe the court was operational by the mid-fourteenth century.[5] Edward III's reign (1327–77) witnessed diplomatically ruinous piracy within the Channel, and he found himself obliged to personally

[1] *The Cambridge Handbook of Metaphor and Thought*, 5.

[2] Ross, 1053–54.

[3] Sherry, sig. C4^{v}.

[4] Laing, 163–65; Prichard and Yale, xxix–xxx.

[5] Laing, 167–69; Lovell, 223–25.

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compensate victims.[6] Foreign merchants became dissatisfied with the procedurally slow-moving common law courts, and a court of admiralty, which proceeded according to the maritime code known as the Rolls of Oléron and the civil law of the Continent, was formed.[7] Before the end of the century, tension between common lawyers and this new admiralty court arose, and the Crown believed the admiral was overflowing his jurisdictional boundaries by meddling in matters that rightly belonged to the common law. An oft-cited statute of 1391, 15 Richard 2 c. 3 (Jurisdiction of the Admiral), for example, sought to pinch the admiral's purview. It stipulated, in part, that "of the death of a man, and of mayhem, done in great ships, being and hovering in the main stream of great rivers, only beneath the bridges of the same rivers nigh to the sea, and in none other places of the same rivers, the Admiral shall have cognizance."[8] The admiral did not take apparent heed, because a similar statute was issued in 1400 by Henry IV.[9]

While the tensions between common law and admiralty appear to have quieted during the otherwise tumultuous fifteenth century, the ascent of the Tudors witnessed an increase in naval activity and a subsequent increase in admiralty business. Henry VIII (r. 1509–47) issued a statute, 32 Hen. 8 c. 14 (1540, On the Maintenance of the Navy), which granted greater power to the Lord Admiral in civil matters.[10] Common lawyers were not pleased. The ensuing legal struggle involved a larger professional division within the early modern English legal community. During the period, English lawyers were divided into two groups: the common lawyers and the civil lawyers (or civilians). While the common lawyers dealt with a wide range of civil and criminal matters, the civilians enjoyed a more niche-based practice and focused mainly on ecclesiastical law and admiralty. During the second half of the sixteenth century, the common lawyers developed sophisticated ways to wrest maritime cases away from the High Court of Admiralty and adjudicate them instead in the common law courts, while pointing to 15 Richard 2 c. 3 to justify their meddling. The conflict came to a head in 1575, and the judges of admiralty and the common law judges signed an agreement that sharply delimited their respective jurisdictions.[11] (The validity of this agreement would later be called into question in the seventeenth century.[12]) But this armistice did little

[6] Laing, 165.

[7] Selden, 1647, sig. 3P4^{r}; Rodger, 149.

[8] *Statutes of the Realm*, 2:79.

[9] *Statutes of the Realm*, 2:124.

[10] *Statutes of the Realm*, 3:760.

[11] Yale, 88–90.

[12] Coquillette, 106.

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to end the war, and the common law courts continued to pilfer admiralty cases in the following decades using writs of prohibition. These writs had the power to stop a case in the admiralty court and transfer it to a common law court instead.[13] In 1611, Daniel Dun (1545–1617), a civilian who had served as a judge in the High Court of Admiralty since 1606, made a formal complaint to the council. He charged, among other things, that the common law courts were hearing cases involving contracts that rightfully belonged to the High Court of Admiralty and that the common law judges were not honoring the agreement of 1575.[14] Edward Coke (1552–1634), indefatigable champion of the common law, responded on behalf of the common lawyers. Ultimately, the clash of 1611 did little to turn the professional tide for the civilians. In 1633, the parties reached a more favorable agreement; in 1648, it was reaffirmed by an ordinance passed by the Long Parliament, and the High Court of Admiralty fared relatively well during the Interregnum.[15] Edward Coke's response to the complaints of Daniel Dun was printed posthumously in his *The fourth part of the Institutes of the laws of England* (1644).[16]

The admiralty action *in rem* (against the thing) offered a decided advantage to suitors who pursued their cases in the High Court of Admiralty. This action referred to the ability to arrest ships (including hulls, tackle, appurtenances, etc.) and their goods. It represented one of two actions that litigants could employ at admiralty, the other being *in personam* (against the person), the arrest of a person. Historically, *in rem* procedure involved nailing the writ to the ship's mast.[17] During the early modern period, this action proved essential to the functioning of the admiralty court in England and offered a clear advantage over the common law courts. Charles Cumming elaborates on the procedure and its benefits: "The High Court of Admiralty had the authority to issue warrants for the arrest of parties either within the City of London, where the court was located, or, unlike the local courts, any place else in the realm. In addition, ships could be arrested in virtually the same manner as a person. A merchant, fearful that a ship would sail without delivering goods or paying for necessaries, could have the ship arrested by a marshal and held as security for the debt. In fact, if the ship's master or owner could not provide adequate security for the debt, the vessel could be forced into judicial sale to satisfy it. . . .

[13] Coquillette, 106–15.

[14] Prichard and Yale, xcvi–xcix.

[15] Coquillette, 159–60; Steckley, 1978, 146–48; Prichard and Yale, xcix–cviii.

[16] Coke, sigs. T1^{v}–V4^{r}.

[17] Steckley, 1986, 72–73. For records of early modern English admiralty cases that involved the arrest of ships and goods, see Marsden, 1894, 191–92; Marsden, 1897, 37, 122; Steckley, 1978, 164.

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These were powerful tools which were not readily available at common law."[18] But despite its clear value to early modern merchants, the exact legal nature of the admiralty action *in rem*, as well as its relationship to actions *in personam*, remained poorly understood, even by the period's lawyers. This tension, fully explored later, offers a key clue in deciphering the metaphor of the dying ship.

During the Restoration, the High Court of Admiralty again faced uncertainty, and three English civilians, John Godolphin (1617–78), Richard Zouch (1590–1661), and John Exton, published treatises defending its jurisdiction against Coke's earlier attack.[19] Although written within a four-year span and on the same topic, the three treatises demonstrate considerable stylistic and substantive variety; read alongside the efforts of his contemporaries, Exton's literary triumphs emerge even more clearly. John Godolphin's *Συνηγορος Θαλασσιος:* (*A View of the Admiral Jurisdiction*, 1661) was published first. His treatise, like a vessel with a preoccupied pilot, veers left and right, sometimes surging ahead with reckless speed, other times becoming mired in some immobilizing mud, always beholden to the currents of its author's desultory mind. Daniel Coquillette calls Godolphin's effort "hardly jurisprudence, much more a charming hodgepodge of authority, uncritically selected and casually organized,"[20] and Joanne Mathiasen adds that Godolphin in his treatise "seems unaware of the grand struggle between civil and common law . . . he writes essentially like a little man, jealously, though not unpleasantly, concerned about the jurisdiction of his particular court."[21] Apparently, however, Godolphin's contemporaries did not share this modern derision: *A View of the Admiral Jurisdiction* is the only Restoration treatise to have been printed more than once during the seventeenth century (a second edition appeared in 1685). Godolphin proves a peculiar writer with a prose style that can only be described as purple, and his clumsy attempts to infuse his treatise with a literary flavor mostly fall flat. Richard Zouch's *The Jurisdiction of the Admiralty of England Asserted* (1663) was the second treatise to be published. Although written almost contemporaneously with Godolphin's *A View*, the two works sit at opposite ends of the rhetorical and stylistic spectrum: whereas Godolphin offers a farrago of maritime law and history, Zouch remains methodical, restrained, and singular in his focus. His treatise offers a straightforward response to Coke's "Of the Court of the Admiralty," and his effort generates a fully competent, and often dry, discourse: Zouch sets out to dissect, discredit, and dismiss Coke's arguments against the admiral's

[18] Cumming, 230.
[19] Coquillette, 180–82.
[20] Coquillette, 186–87.
[21] Mathiasen, 231.

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jurisdiction one by one, and he never meanders from this mission. It is in its pedantry that Zouch's treatise succeeds. Using Coke's own cited authorities against him, Zouch shows how those sources ultimately argue for the enlargement of the admiral's purview over maritime affairs.

Evocative, affecting, and exuding both legal authority and literary prowess, John Exton's *The maritime dicæologie, or, Sea-jurisdiction of England* represents a kind of apogee of the Restoration treatises.[22] It shares much of its content with the works of Godolphin and Zouch, while injecting fresh air into the debates: Exton retains Zouch's systematic program, but he also peppers his treatise with the lissome lexical and semantic associations of a seasoned poet. Exton divides *The maritime dicæologie* into three books. The first, which exposits the admiralty in England, assumes a historical tenor. The second, which sets out to establish the geographic purview of the English admiralty, synthesizes maritime codes, government records, and case reports to establish the admiral's jurisdiction over liminal waters. In the third part, Exton asserts that all marine contracts fall under the jurisdiction of the High Court of Admiralty.

The second part of Exton's treatise is also the longest. Stretching over twenty chapters, it seeks to clarify the jurisdictional status of bodies of water separated from the main sea: ports, havens, and creeks. He summons many types of authorities to his service: English statutes, readings on those statutes delivered at the Inns of Court, maritime codes, statutes of admiralty, reports of common law cases, writs and prohibitions, and commentators on the civil law. A cursory glance at this list might pique anxiety that Exton swerves too closely to Godolphian chaos. However, it is to Exton's credit that he takes the utmost care in organizing and absorbing these sources into his treatise. His ordering demonstrates his prudence: he begins with a discussion of the medieval and early modern English statutes that delimited the Admiral's jurisdiction. Next, he turns his focus to reports of cases (found mainly in Coke's *Reports*) in which the common law courts heard cases that, Exton argues, should have been adjudicated in the High Court of Admiralty: he focuses on Lacey's Case (1582), as well as the Case of the Swans (1592) and Constable's Case (1601).[23] Then he moves to the central maritime codes, dedicating a chapter

[22] Exton had possibly served as an admiralty judge as early as 1647 and certainly by 1651. He was ejected from this position in 1653 but was reappointed by James II (then Lord High Admiral) in 1661. He dedicated *The maritime dicæologie* to James.

[23] In the Case of the Swans (77 Eng. Rep. 435, KB. 1592), King's Bench ruled that swans were royal fowl, as whales and sturgeon were royal fish, and thus belonged to the monarch through the royal prerogative. In Henry Constable's Case (77 Eng. Rep. 218, 22, KB. 1601), King's Bench held that the royal prerogative extended to flotsam, jetsam, and ligan resulting from wreck of the sea. Lacey's Case dealt with the extent of admiralty jurisdiction as it related to criminal law. Prichard and Yale, clxi–clxv, 384.

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each to the Rhodian Sea Law and the Rolls of Oléron. It is only in the final third of the second book that he introduces a detailed outline of the civil law and its attitude toward liminal waters. He closes with a discussion of the records of the admiralty and the jurisdictional disputes between the High Court of Admiralty and courts of Common Pleas, King's Bench, and Chancery.

In writing his treatise, Exton apparently intended to reach both a legal and a mercantile audience. He is explicit about the latter, writing in his introduction that he dedicates *The maritime dicæologie* to his "loving friends the Merchants of *England,* Owners of Ships and Vessels, and Sea-trading men that will spare but so much time as to read over this small Treatise!"[24] However, much of the treatise would have transcended the understanding of the average mariner or ship owner: Exton includes long untranslated passages in Latin and French and arcane records from the annals of admiralty law that would have demanded a specialist audience conversant with languages other than English.[25] These disparate readers, in part, motivate the selection of metaphors in the treatise. It is entirely conceivable that a merchant or mariner, unfamiliar with and uninterested in the finer points of law, would have passed over those sections of *The maritime dicæologie* that eluded their expertise or attention. Yet Exton's calculated use of metaphor ensured that he could reach a demographically diverse readership.

The treatise's most legally meaningful metaphor occurs in the first chapter of its third book, which argues that all marine contracts should be tried in the admiralty court (rather than common law courts). Exton writes, "If Mariners be hired to serve in a Ship, for so much by the Moneth, and serve divers Moneths, and the Ship dieth at Sea, and never maketh port; here the Judgement of these two Laws [that is, admiralty and common law] will be clean contrary."[26] The metaphor of the dying ship constitutes the focus of my analysis of early modern legal metaphor—but first, I will consider metaphor more generally.

METAPHOR

No single methodological approach to metaphor sates every scholarly palate. Accounts of the trope produced by literary critics tend to focus myopically on single authors, single genres, and single works. They regularly supply individualized accounts that lack broader theoretical significance for the study of metaphor itself. Philosophical theories often view metaphor out of

[24] Exton, sig. B4v.
[25] Selden, 1652, sig. A2v.
[26] Exton, sig. Z3r.

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its textual or cultural contexts; they cite examples picked specifically to demonstrate the point at hand, in turn ignoring other factors that might account for metaphoric production and interpretation. The cognitive view, developed in part to counter the more subjective literary and philosophical approaches, attempts to account for metaphor in a more quantitative fashion. It argues that metaphor represents more than a mere rhetorical device, but rather constitutes a major aspect of how one orders their world. But in turn, the cognitive view risks stripping metaphor of its aesthetic power, of its capacity to delight, especially in certain literary contexts.

To a greater or lesser extent, nearly all subsequent theories of metaphor respond to Aristotle, whose writings set the foundation for understanding the trope.[27] Aristotle's own theory rests on three assumptions: first, that metaphor implies a transference (the Greek *μεταφορά*, from which the English word *metaphor* derives, means to transfer or convey) at the level of words; second, that metaphor involves a deviance from literal usage; and third, that metaphor is rooted in the similarities between two things. As he states in *Poetics*, "Metaphor is the transference of a name from the object to which it has a natural application; this transference can take place from genus to species or species to genus or from species to species or by analogy. I mean by from genus to species, for example, 'This ship of mine stands there.' For to lie at anchor is a species of standing."[28] In *Rhetoric*, Aristotle wrote on the relationship between simile and metaphor: "The Simile is also a metaphor; the difference is but slight."[29] Later thinkers condensed Aristotle's beliefs about metaphor into the following claim: a metaphor is an elliptical, or disguised, simile.[30] Later, the Roman rhetoricians recognized the utility of metaphor in the art of persuasion and advised readers on how best to implement it. The main sources for these discussions include Quintilian's *Institutio oratoria* and Cicero's *De oratore*. These works consider both the persuasive and aesthetic aspects of metaphor. They view the trope a useful rhetorical tool in three respects: metaphor is subtle, concise, and intellectually engaging.[31] Quintilian considered metaphor "the commonest and by far the most beautiful of tropes."[32] Metaphor was often linked to pleasure, and when used effectively, it conveyed a point as no other use of language could.[33] According to Cicero, metaphor allowed the listener or

[27] Kirby, 518.

[28] Aristotle, 1968, 37 (*Poetics* 1457b18–23).

[29] Aristotle, 1984, 173 (*Rhetoric* 1406b20–21).

[30] Theodorou.

[31] Frost, 114.

[32] Quintilian, 3:303 (*Institutio oratoria* 8.6.4).

[33] Frost, 120–21.

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reader to direct their thoughts elsewhere without losing logical integrity, a cognitive experience which yielded "very great pleasure."[34] And this pleasure consisted of no mere hedonistic indulgence; rather, it increased the likelihood that an audience would accept an argument.

On balance, little changed regarding inquiry into metaphor between classical Greece and Rome and the mid-twentieth century, a period that witnessed a burgeoning interest in the trope. In 1936, rhetorician I. A. Richards offered an alternative to the comparison theory of metaphor and introduced a new terminology to the discussion. In his account of how metaphor works, Richards argued that every metaphor contains a vehicle and a tenor. The tenor represents the main subject of the metaphor; the vehicle is the thing to which the tenor is compared.[35] Thus, in Exton's metaphor "the ship dieth at sea," the ship is the tenor and the predicate "to die" (or, perhaps, the act of dying) is the vehicle—*vehicle* because it pulls the metaphor along. Richards's ideas of tenor and vehicle were widely adopted, but later philosophers found problems with his theory. For example, Manuel Bilsky argued that Richard's theory was based on an erroneous interpretation of Aristotle,[36] and Monroe Beardsley charged that Richards was not consistent in his use of the terms *vehicle* and *tenor*.[37] Still, Richards remains important for his attempt to formulate a theory to rival Aristotle's.

Largely ignored by his immediate contemporaries, Richards's ideas were picked up by philosophers Max Black (1955) and Monroe Beardsley (1961) in subsequent decades. Black's intervention, which he coined the interaction view, argued that in a typical metaphor, some words are used figuratively while others are used literally. These two parts of the metaphor constitute the focus and the frame, respectively. In the example from Exton, "the ship" and "at sea" represent the frame, while "dieth" represents the focus. In philosophically interesting metaphors, which for Black refer to metaphors that cannot be restated in literal language without a loss of cognitive content, the interaction between the focus and the frame produces a metaphor that "selects, emphasizes, suppresses, and organizes features of the principal subject by *implying* statements about it that normally apply to the subsidiary subject."[38] Black used a metaphor of his own to explain his theory: a metaphor is like a piece of smoked glass with some lines left clear, through which one looks at

[34] Cicero, 125–27 (*De oratore* 3.39.160).

[35] Richards, 96.

[36] Bilsky, 137.

[37] Beardsley, 1972, 5:285.

[38] Black, 1955, 291–92.

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the night sky. Such a device would emphasize some stars and constellations while obscuring others.[39] Applying Black's theory to the dying ship reveals that Exton's metaphor, for example, highlights the ways that a ship can be said to live, and in turn downplays the ship's function as an instrument of commerce and navigation. The legal consequences of this metaphor will be parsed later, but for now it is sufficient to note that Black's view differs significantly from the comparison view. A metaphor, Black averred, is no elliptical simile.[40]

Monroe Beardsley found Black's interaction view useful but inadequate, because it failed to account for how one knows what part of the metaphorical statement is literal and what part is nonliteral.[41] (Richards's terms *tenor* and *vehicle* suffer from the same basic inadequacy: how does one identify them within the metaphor itself? That quandary has been partially addressed by the cognitive view, considered below.) Beardsley classified the traditional comparison view of metaphor as an object-comparison view. It begins its analysis of a metaphor at the object level, for instance, the objects of *ship* and *death*. As such, it bids the reader to consider the similarities and differences between the objects (or concepts) of death and a sinking ship, because from this juxtaposition metaphoric meaning will emerge. Conversely, Beardsley's proposed theory (the verbal-opposition theory) initiates metaphoric unraveling at the word level (the words *ship* and *die*). It considers metalanguage rather than objects and holds that metaphor represents a form of self-controverting discourse. That is, a speaker or writer makes a statement explicitly but in a way that shows she is not interested in, or does not believe, what she states. This type of discourse draws attention to something not stated outright—for example, "I'll be damned if I tell you." In the process, the utterance also enhances that denial, in a way that simply stating "I refuse to tell you" would not. In this discourse of self-controversion, then, the reader invariably seeks meaning. Beardsley notes, "In all [cases of self-controversion], the strategy is similar: the reader can see that you are not asserting the statement you make (to assert is to evince and to invite belief), but since the statement is made, and something is presumably being asserted, he looks around for a second level of meaning on which something is being said."[42] As noted, verbal-opposition theory considers the words in a metaphor rather than their corresponding objects, and, according to Beardsley, a reader can locate two levels of meaning in those words: central meaning—what a word, by definition, signifies—and marginal meanings, which are properties that the same word suggests or implies.

[39] Black, 1955, 288.

[40] Black, 1955, 283; Black, 1977, 445–56.

[41] Beardsley, 1981, 161; Kaplan, 469–73.

[42] Beardsley, 1981, 138.

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According to the verbal-opposition theory, metaphor contains a "logical conflict of central meanings."[43] Again, turning to Exton, one finds that the logical conflict inherent in the central meanings reveals the metaphor's implication that a nonliving entity can cease to live.

The interventions of Black and Beardsley were primarily philosophical in their orientation. Linguist George Lakoff further expanded twentieth-century study of metaphor with the introduction of the cognitive approach. First proposed in 1980's *Metaphors We Live By* (written with philosopher Mark Johnson), and later expanded to touch on a number of different disciplinary traditions, including literature and mathematics, Lakoff's central premise states that metaphors are not simply poetic gestures or philosophical puzzles. Instead, Lakoff posits that metaphor represents a chief strategy for the conceptual ordering of the world. "Our ordinary conceptional system," Lakoff and Johnson note, "in terms of which we both think and act, is fundamentally metaphorical in nature."[44] They identify several metaphorical concepts inherent to one's conceptual system, most of which are understood implicitly. These include MORE IS UP (enrollment keeps going up; voter turnout is up this year); SAD IS DOWN (she is down in the dumps; his heart dropped); and LIFE IS A CONTAINER (he has nothing to fill his days; they've lived a full life together).[45] The line that separates metaphor from human cognition evaporates in this system, and one realizes that producing and understanding metaphoric statements actually requires little effort.

The cognitive view also allows for more quantitative methods in the study of metaphor and seeks answers to some perennial questions, such as how people are able to understand novel metaphors. The research of Yeshayahu Shen offers one example. Through various experiments, Shen has confirmed the directionality principle, which states that similes are much easier to apprehend when using a concrete object to demonstrate an abstract concept (for example, the statement "a metaphor is like a lens"), rather than using an abstract concept to illuminate a concrete object ("a lens is like a metaphor.")[46] The first metaphoric structure is labeled *compatible*, and the second, *clashing*. Subjects in Shen's study were able to explain the meaning of similes presented in compatible structures with much greater ease and accuracy than they could describe those in clashing structures.[47] Shen and colleagues have also mapped

[43] Beardsley, 1972, 5:286.

[44] Lakoff and Johnson, 3.

[45] Lakoff and Johnson, 15–16, 51.

[46] Shen, 296–97.

[47] Shen, 298–300.

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the poetic similes of several languages, including Hebrew, Russian, and Arabic, and found that the directionality principle applies to poetic language as well.[48] Interestingly, however, Shen's findings—like the cognitive view more broadly—cannot provide a full account of poetic metaphor. As Shen writes, "On the one hand, [poetic metaphors] are novel, creative, imaginative, and aesthetically pleasing. On the other hand, taken in isolation, they are, in many cases, easily understood and comprehended, even for ordinary readers."[49] The cognitive view, thus, has revolutionized the scholarly landscape, but still leaves room for the philosopher and the literary scholar to offer more discrete, or more aesthetically informed, accounts.

Within these larger scholarly trends, the use of metaphor in legal discourse has also received renewed attention in recent years. Unsurprisingly, the legal realists of the early twentieth century did not share the classical enthusiasm for metaphor.[50] Perhaps the most scathing indictment came from Justice Benjamin Cardozo, who, in a 1926 decision, famously wrote that "metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it."[51] (Apparently, Cardozo's own metaphor was excepted.) While James Boyd White's *The Legal Imagination* (1973) opened the door to a more thoughtful dialogue between law and literature, most serious scholarship on legal metaphor appeared in the 1980s and later. The examples discussed below represent the scope of work on legal metaphor. They are in no way exhaustive, but it should be noted that much writing on the subject demonstrates a pragmatic impulse: these scholars are interested not only in metaphor itself but also in how the practicing legal professional can best use the trope in their own writing. This inclination represents a sharp departure from much other recent work on metaphor, which retains a decidedly theoretical tenor. The pragmatic bent seems fitting for analysis of a seventeenth-century text. Given Exton's commitment to effective rhetoric (reflected in the exquisite care with which he constructed his treatise), as well as the influence of classical authors on early modern rhetoric generally, pragmatism represents a key feature of early modern legal metaphor.

The methodologies of Thomas Ross and Linda Berger offer a useful, legally informed complement to the theories of Black, Beardsley, and Lakoff. Ross and Berger share a firm rejection of legal positivism in their insistence that the concept of law comprises something almost metaphysical, something "magical," as Ross puts it, something "enchanting" and "mysterious," to paraphrase

[48] Shen, 297–98.

[49] Shen, 295.

[50] Bjerre, 119–21.

[51] *Berkey v. Third Avenue Railway Co.*, 244 N.Y. 84, 155 N.E. 58 (N.Y. 1926).

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Berger.[52] Ross's basic premise holds that both law and metaphor are fundamentally paradoxical in nature. The question then becomes: how does a given legal metaphor capture its corresponding legal paradox? Ross borrows the smoked glass metaphor from Black: just as the glass enjoys the capacity to transform one's perception of the night sky, so too does the legal metaphor contain the power to reorient thinking when applied to certain jurisprudential principles. Indeed, Ross contends that legal metaphor can even create new meaning.[53] Ross also forges a link between poetic and legal metaphors: they share a resistance to paraphrase and cannot be restated in literal language without sacrificing meaning. If one attempts to translate a legal metaphor into literal language, it loses both its paradox and its ability to refashion one's reality. In his discussion of "fruit of the poisonous tree," a legal metaphor that refers to inadmissible evidence, Ross notes that it introduces ideas of "taint" and "taboo."[54] Drawing a parallel between the poisonous tree and the parable of the Garden of Eden, Ross shows how the metaphor demonstrates that not only is admitting illegally obtained evidence forbidden, but it is forbidden, in part, because it would defile a sacred space, the courts. It would potentially corrupt the entire judicial system.[55] By contrast, these marginal meanings do not exist in the straightforward expression "inadmissible evidence." Ross concludes that legal scholars and practitioners should not merely tolerate the use of metaphor in their discourse but embrace it as an inimitable instrument of legal persuasion. Because both metaphor and law are paradoxical, using the former to express the latter is reasonable and useful.

In her work, Linda Berger adopts the cognitive view of metaphor and argues that a better understanding of its tenets will aid the practicing lawyer in their application of the trope.[56] She focuses on the development of the corporate speech doctrine. Like Ross, Berger argues that legal metaphor creates meaning; additionally, she posits that certain dominant legal metaphors, such as those that underlie the corporate speech doctrine, must be adequately understood before new metaphors can be created to replace them.[57] She investigates the metaphor "a corporation is a person," which itself is nestled under the larger "marketplace of ideas" conceptual system. Indeed, the interaction of these two metaphors protects the speech of corporations: "[Without] these metaphors," Berger maintains, "statements issued by corporations would not qualify for First Amendment protection: corporations are artificial entities

[52] Ross, 1053; Berger and Sammons, 1.

[53] Ross, 1058–59.

[54] Ross, 1068.

[55] Ross, 1068.

[56] Berger, 170.

[57] Berger, 170.

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without ideas or views, without a voice to express them, without an interest in self-realization."[58] Berger traces these complementary metaphors, first in their broad applications in constitutional law and then in the specific context of *Nike, Inc. v. Kasky*, a case which challenged the First Amendment protections of corporations.[59] Her rich analysis demonstrates how the cognitive view of metaphor aids the understanding of the trope in its legal context. For example, Berger observes that unquestioning acceptance of the corporate personhood metaphor draws attention away from the ways that corporations do not enjoy personhood and do not benefit from free speech in the way a person would.[60] As Black notes, metaphor holds the power to organize one's view of a particular entity (in this case, in a way advantageous to corporations). The metaphors of law do not exist in textual vacuums but rather find themselves lodged in sophisticated cognitional systems.

Finally, it should be noted that the analyses of Berger and Ross involve what Michael Smith calls doctrinal metaphors—metaphors such as "fruit of the poisonous tree" that express general legal rules and principles, and abound in legal discourse.[61] Most current work on law and metaphor concerns itself with doctrinal metaphors. Smith contrasts this type with three others found in legal prose: stylistic metaphors, legal method metaphors, and inherent metaphors.[62] Of these, stylistic metaphors interest me most: they represent the most frequent type of metaphor used in legal writing.[63] Despite their name, Smith maintains that stylistic metaphors signify more than simple ornamentation. Rather, they can be employed as tools in the art of legal persuasion. A subtype—point-specific stylistic metaphors—convey a single, specific point within a broader legal argument.[64] In his treatise, Exton uses both doctrinal and point-specific stylistic metaphors. The former include references to the "arms of the sea" to denote creeks, rivers, and other jurisdictionally liminal spaces.[65] The latter, which include the central metaphor "the ship dieth at sea," uncover the most about legal metaphor in its larger literary and cultural contexts and are the most productive to consider in the early modern period.

Philosophical explanations for metaphor, such as Black's and Beardsley's, provide an important interpretive lens to apply to individual metaphors,

[58] Berger, 171.

[59] *Nike, Inc. v. Kasky*, 539 US 654 (2003).

[60] Berger, 187.

[61] M. Smith, 921.

[62] M. Smith, 921–43.

[63] M. Smith, 936.

[64] M. Smith, 936.

[65] Exton, sigs. G2^{v}, Q2^{r}; Edward Coke and Richard Zouch use the same metaphor: Coke, sig. U1^{r}; Zouch, sig. 2C2^{v}.

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while Lakoff's cognitive view allows for a more holistic, and often empirical, approach to the common trope. Scholars who consider legal metaphor bring to the fore the power of language to shape the law. The theses of Ross and Berger extend the classical writers' promotion of metaphor as a tool for persuasion. And yet this fortified scholarly arsenal still cannot account for the early modernness of Exton's metaphors. To forge this final instrument in metaphoric unraveling, I turn not to legal history or Renaissance theories of rhetoric but to literary theory, and specifically to Elizabethan and Jacobean poetry. Many of Exton's maritime metaphors find their pedigrees in verse, and pondering how they work in these poetic contexts represents the final piece in my methodological approach.

EXTON'S POETIC FORERUNNERS

In "Metaphors in Literature," philosopher Elisabeth Camp addresses the perennial question of what makes literary metaphors distinct.[66] She argues that both New Criticism, which values textual autonomy at the expense of authorial intent, and reader-response theory, which places the highest critical value on the reader's own interpretation of a text, have useful implications for the study of metaphor. Central to her discussion of literary metaphor is the famous example from *Romeo and Juliet* (1597): "Juliet is the sun."[67] In her inquiry, Camp makes a useful observation: she could interpret this metaphor as signifying that Juliet occupies the center of Romeo's thoughts, just as the sun occupies the center of the solar system. At the same time, she recognizes that William Shakespeare (1564–1616) did not endorse heliocentrism and did not have that specific meaning in mind when crafting the metaphor.[68] But this does not produce an interpretative stalemate: Camp also posits that Shakespeare might have agreed with her understanding, and hence her reading remains valid. These two vying possibilities—Shakespeare's narrow intention and Camp's viable but possibly anachronistic interpretation—demonstrate the dynamic nature of metaphoric apprehension, especially in texts composed considerably outside one's own historical moment.

Camp's observations also have implications for Exton's treatise. First, literary interpretation of any kind is fraught with authorial and analytic difficulties. Decoding Exton's metaphors in the twenty-first century involves the admission that a modern reader cannot fully recuperate early modern engagement with his text. This fetter, of course, does not confine itself to texts of the distant past:

[66] Camp, 334–46.

[67] Shakespeare, 2012, 185 (*Romeo and Juliet* 2.2.3).

[68] Camp, 337.

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despite advances in the cognitive approach to metaphor, all metaphoric apprehension remains essentially private and inaccessible. Second, the conditions that apply to the interpretation of poetic metaphor apply to all metaphors, poetic or not. Exton's authorial intentions, like Shakespeare's, cannot be dismissed out of hand, even though he did not write a literary text. Thus, although ferreting out the legal significance of his figurative language can prove exacting and even futile, this does not render the project itself misguided. And third, placing *The maritime dicæologie*'s metaphors within their larger cultural and literary contexts allows one to adopt a more cognitive approach to early modern legal metaphors—that is, to understand the larger conceptual systems in which they operate. With these considerations in mind, this section focuses on three specific metaphors within the treatise, all of which have clear forerunners in earlier English poetry.

The first metaphor positions Exton as the pilot of a ship who must guide the reader through a vast farrago of legal history. It appears in book 1, chapter 1, which he dedicates to the history of the English admiralty through the reign of Edward III; the metaphor casts a long shadow across the rest of his treatise. Exton writes, "I have here, so farre as my line would reach, and my small skill in records direct and guide me, followed the antiquity of these highest Sea-officers, wherein, without doubt, I have in my way mist many things that might have been pertinent to that I aime at."[69] The metaphor casts Exton both as a fisherman whose line can reel in only a finite number of sources, and as a nautical pilot whose flawed ability to read his navigational instruments constricts his passage through the admiralty records. Exton's pun—*mist* for *missed*—invites the reader to envision a physical ship crossing a beclouded marine expanse. Within the metaphor, historical obscurity transforms into literal darkness, with the treatise's ship surrounded by a haze that threatens to thwart Exton's mission. Because he subsequently quotes these records in *The maritime dicæologie*, the metaphor anticipates Exton's critics, who may argue that he only presented evidence advantageous to his position. But the metaphor also calls to mind the Petrarchan lover, and thus represents a radical modification of a familiar literary trope: lover becomes legal scholar, beloved becomes myriad historical records, and the threat of love lost becomes the peril of misrepresenting English history. In effect, Exton's metaphor captures the arcana of early modern legal research by alluding to a familiar literary theme.

The trope of the lover piloting a ship through stormy waters occupies a central place in the Renaissance sonnet tradition. In the early twentieth century, John Berdan listed the so-called galley sonnet, along with the cumulative

[69] Exton, sig. B1^{r}.

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sonnet, the negative sonnet, and the sonnet comparing the lady to gems or flowers, as a "great type" of sonnet.[70] Francesco Petrarca's famous galley sonnet, Canzoniere 189 ("Passa la nave mia colma d'oblio"),[71] translated into English by Thomas Wyatt (1503–42) in the 1530s ("My galley charged with forgetfulness"),[72] found manifold imitators in England during the 1590s. It appears that anyone with sonneteering aspirations felt obliged to emulate the trope. The galley sonnets of Edmund Spenser (ca. 1552–99) and Michael Drayton (1563–1631) represent the English tradition well. In Sonnet 34 of his *Amoretti* (1595), Spenser writes, "Lyke as a ship that through the Ocean wyde / By conduct of some star doth make her way, / Whenas a storm hath dimd her trusty guyde, / Out of the course doth wander far astray."[73] Similarly, Drayton opens the first sonnet of his *Idea* sequence (1619 edition) with "Like an adventurous Sea-farer am I, / Who hath some long and dang'rous Voyage beene, / And call'd to tell of his Discoverie / How farre he sayl'd, what Countries he had seene."[74] Both sonnets proceed to liken the pursuit of the beloved with the oceanic wanderings of a mariner, subject to the perilous whims of an inconstant sea. In Spenser's case, the speaker positions the beloved as his Ursa Minor, the steadfast star which guides his navigations. Conversely, Drayton's sonnet (the first in the sequence—like Exton's piloting metaphor, which also appears early in his treatise, it prepares the reader for a voyage through the subsequent work) compares his ensuing poems with a seafarer returning from a global voyage, eager to tell of his journeys. In each case, by linking a lover's quest to nautical expertise, the speaker emphasizes the risks intrinsic to amorous venture. The galley conceit had literary influence beyond the sonnet form as well. For example, in *The Merchant of Venice* (1600), Salarino tells Antonio, "Your mind is tossing on the ocean; / There, where your argosies with portly sail / Like signors and rich burghers on the flood."[75] And in Spenser's *The Faerie Queene*, Britomart laments, "Huge sea of sorrow, and of tempestuous griefe, / Wherein my feeble barke is tossed long, / Far from the hoped hauen of reliefe, / Why doe thy cruel billowes beat so strong."[76] In the English tradition, the unstable sea comes to represent not only precarious love but also the mercurial psyche of the speaker.

[70] Berdan, 707.

[71] Petrarca, 280 (*Canzoniere* 189).

[72] Wyatt, 81.

[73] Spenser, 1993, 630 (*Amoretti* 34.1–4).

[74] Drayton, 1:311 (*Idea* 1.1–4).

[75] Shakespeare, 2011, 170 (*The Merchant of Venice* 1.1.7–9).

[76] Spenser, 2006, 323 (*The Faerie Queene* 3.4.8).

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Given both its centrality in Renaissance English poetry and its prominent position in Exton's treatise, the seafarer metaphor supplies a useful example of how analogous metaphors function in their literary and non-literary (in this case, legal) contexts. The metaphor itself, I would argue, belongs to the larger conceptual system LIFE IS A JOURNEY. As Lakoff notes, this system is deeply embedded in everyday discourse.[77] Its roots in the Western literary tradition extend deep as well: consider the famous opening lines of Dante's *Commedia*: "Nel mezzo del cammin di nostra vita / mi ritovai per una selva oscura [In the middle of the journey of our life, I came to find myself in a dark wood]."[78] Applied to the sonnet tradition, the metaphorical system assumes a more specific meaning: the pursuit of love, one potential aspect of life, is a journey, a voyage by sea. The metaphor, within the tight confines of the sonnet structure, imposes a kind of micronarrative on the lover's quest. It underscores the ways that a voyage at sea has a prescribed sequence of events, bookended by departure and arrival, and although the reader finds themselves bound to the content of the sonnet's fourteen lines, the marginal meanings of the word *voyage* (to borrow from Beardsley) spill over into its margins. Love is a voyage not only because the heart tosses on a tempestuous sea, but because, like life itself, it involves a beginning, a middle, and an end.

The conceptual system LIFE IS A JOURNEY transforms again when Exton uses it for his purposes. Here, its localized meaning within the treatise might be stated as "research is a journey" (or even "legal research is a journey"). Like its literary predecessor, this new metaphor crystallizes two particular elements of research: its inherently perilous nature, and its capacity to be broken up into discrete stages. Exton's employment of the metaphor also highlights the relationship between voyage and discovery. Drayton's sonnet foregrounds this element of a sea voyage as well (his speaker is "call'd to tell of his Discoverie / How farre he sayl'd, what Countries he had seene.") This marginal meaning, one that links a sea journey with discovery, enjoys special resonance when considered in its early modern context. In one sense, Exton's non-poetic use of the metaphor heightens its rhetorical impact. The discoveries of love within the sonnet realm remain vague, abstract, ill-defined—quite far afield from the geographic and cultural discoveries that defined the sixteenth and seventeenth centuries. By contrast, Exton alludes to tangible discoveries: records and manuscripts and other treasures that occupied the early modern archive. The metaphor also succeeds when one considers the merchants and mariners whom Exton envisioned as his potential audience. They might not have appreciated the arcana of legal research, but a conceptual ocean voyage would conjure up their own experiences at sea.

[77] Lakoff and Turner, 9–10.
[78] Dante Alighieri, 26–27 (*Inferno* 1.1–2).

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Exton's second metaphor extends his investment in his earlier galley conceit. However, he offers a sharp and deliberate deviation from the sonnet tradition by introducing a metaphorical wreck. While the danger of shipwreck is intrinsic to the galley sonnet, its actualization is almost always avoided. So, for example, in Sonnet 59 of the *Amoretti*, Spenser writes, "But like a steddy ship doth strongly part / The raging waves, and keepes her course aright: / Ne ought for tempest doth from it depart / Ne ought for fayrer weathers false delight."[79] The Petrarchan galley tosses in perpetuity on the waves of maritime uncertainty without ever crashing into the shoals of the lover's apathy or rejection. A wreck would signify the final conceit, the final destination in the LOVE IS A JOURNEY conceptual system, and the sonnet eschews such tidy closure.

For Exton, it is different. His dreaded wreck materializes in book 1, chapter 16, a commentary on Netherlandish jurist Petrus Peckius the Elder (1529–89) and other Continental writers on the civil law. The issue at hand concerns the jurisdictional status of ports and havens, and the passage in which the metaphor appears follows:

> I must confess that by this last observation, I have made some digression from my intended purpose; Yet have I not gone much out of my way, nor farre about to discover what a Rock we of this Nation (who pretend not onely many Customs, but inforce several Patents and Grants, howsoever obtained, clean contrary to this Law) are like to fall upon, and what a wreck we are like to make of our Maritime Law, whereby we uphold all our Trade, Traffick and Commerce with other Nations, by falling upon this Errour, so strongly maintained by Sir Edward Coke, that the Ports and Havens are not within the Jurisdiction of the Admiralty Court, where as this Law is universally practised in all parts of the World.[80]

Exton remains tied to the sonnet tradition by speaking of wreck as a possibility, as a potential outcome of one course of legal thought (that is, excluding havens and ports from admiralty jurisdiction). But his metaphor inverts the previous example: whereas in his initial invocation of the galley sonnet he remains true to the metaphor's basic structure, substituting *researcher* for *forlorn lover*, in this example he substitutes *maritime law* for *galley*. It is the law itself, not a metaphysical vessel, that runs the risk of disaster. This structural transformation injects a sense of urgency. Should a metaphorical galley wreck within Exton's treatise, then an adequate remedy could be found within those same pages. But if the law runs aground, then the entire juristic foundation on which English mariners and merchants depend crumbles into the sea. The position of the

[79] Spenser, 1993, 640 (*Amoretti* 59.5–8).
[80] Exton, sig. T6r.

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metaphor in a section that deals explicitly with ports and havens also magnifies its power. After all, the treatise's readers would have been well aware of the risk of wreck that defined these marginal spaces. Not only does the metaphor work in the treatise more generally, but it also draws attention to itself through its surrounding prose.

The metaphor can also be productively juxtaposed with the later metaphor of the dying ship, which appears in book 3, chapter 1, and is discussed at length below. Exton's employment of a wreck metaphor—twice, in complementary capacities—lends it rhetorical force within the treatise. In the case of the dying ship, a concrete phenomenon—a sinking vessel—moves to the realm of the abstract and the metaphysical. In the case of "a wreck we are like to make of our Maritime Law" (or, for economy's sake, to "wreck maritime law"), an abstraction, jurisdictional overreach, becomes embodied in a sinking ship. Within the treatise, these corresponding metaphors serve to showcase Exton's appeals to both common lawyers and to mariners and merchants. The metaphor of the dying ship might have impelled a common lawyer to consider the legal complexity of the matter and perhaps even admit his lack of expertise at admiralty law. In the same way, the metaphor of wrecked maritime law would provide the merchant or mariner pause in which to consider the intricate customs that governed his livelihood on the high seas. Unraveling the finer points of metaphoric interpretation, particularly in the case of the seventeenth-century readers of Exton's treatise, may be out of scholarly reach. However, more general guesses based on textual clues, authorial intent, and projected readership seem permissible. Pondering these two metaphors together reinforces the observation that metaphor requires both a creator and a reader to be fully realized. For certain legal metaphors from the early modern period, these roles can be narrowed significantly, an asset when deciphering their meaning and function.

The treatise's third maritime metaphor appears in its introduction and suggests that not wreck, but idleness and decay, were the worst catastrophes that could befall an English ship. It constitutes Exton's subtlest metaphor, and its interpretation rests mainly on context.[81] Consider the following passage:

> And we may wel be assured, that if this benefit [maritime commerce] should cease, few or no Ships at all would be built by private men in the time of peace, and but few by the publique for the service of warre in the time of warre; and those built in the time of peace would lie by the walls and rot, their Tackle and furniture be decayed and wasted, their Captains, Commanders and Mariners unaccustomed to the seas and navigation, or else unskilfull and unexperienced

[81] For Black, Beardsley, and several other key figures in the twentieth-century revival of metaphor studies, how readers and speakers identify the trope presents a major critical concern. See Black, 1977, 437–39; Beardsley, 1981, 138–44, 159-62; Booth, 48–51.

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> in sea affairs, by which means this Nation would lye open to the violence of other Nations who envy its prosperity.[82]

I would argue that the image of the rotting ship is metaphoric in nature. Philosopher Ina Loewenberg claims that metaphors depend on their larger frameworks, and that all utterances can be supplied contexts that support either a literal or figurative interpretation.[83] She continues: "Metaphorical utterances are identifiable only if some knowledge possessed by speakers which is decidedly not knowledge of relationships among linguistic symbols can be taken into account."[84] Exton's rotting ship finds itself within several contexts. The most immediate is its insulating passage, which illustrates the potential ruin should England lose access to maritime commerce. This surrounding text grants the image literal urgency: the reader can envision once-active ships decaying from idleness as England lies "open to violence." However, because the image also exists within the larger context of Exton's treatise—a defense of admiralty jurisdiction—it assumes an additional figurative meaning. Furthermore, because the entire passage is preceded by a metaphor (Exton opens his introduction by noting that "the soil of this Kingdome of *England,* wherein we are so happily and in so plentifull a manner planted and settled, be so blessed with all sorts of Fruits, that it hath been accounted and esteemed as the very seat of the Goddess of Fruit"[85]), the reader is positioned to anticipate additional metaphoric language. While a rotting ship is not metaphoric per se, its textual placement in the treatise invites a metaphorical reading.

Like Exton's other maritime metaphors, the decaying vessel can be located within earlier literary contexts. The most striking comes from the second book of *Britannia's Pastorals* (1616) by William Browne (ca. 1590–ca. 1645), in which the poet recollects the defeat of the Spanish Armada twenty-eight years earlier. Browne reminisces:

> So by our heroes were we led of yore,
> And by our drums that thunder'd on each shore,
> Struck with amazement countries far and near;
> Whist their inhabitants, like herds of deer
> By kingly lions chas'd, fled from our arms.
> If any did oppose instructed swarms
> Of men immail'd Fate drew them on to be
> A greater fame to our got victory.[86]

[82] Exton, sigs. B4^{r}–B4^{v}.
[83] Loewenberg, 322.
[84] Loewenberg, 331.
[85] Exton, sig. B3^{v}.
[86] Browne, 314 (*Britannia's Pastorals* 2.4.73–80).

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But this earlier period of glory could not sustain itself, Browne laments:

> But now our leaders want; those vessels lie
> Rotting, like houses through ill husbandry;
> And on their masts, where oft the ship-boy stood,
> Or silver trumpets charm'd the brackish flood,
> Some wearied crow is set, and daily seen
> Their sides instead of pitch caulk'd o'er with green.[87]

Browne's verse pulsates with nostalgia for Elizabeth's reign (1558–1603). His evocative images of maritime rot and decay assume a figurative, metaphoric meaning. They come to signify disappointment with James's government, which had failed to maintain the healthy rule of Elizabeth. The abandoned ships, adorned with only a weary crow where once "the ship-boy stood," and whose sides are covered with algae instead of sea-worthy pitch, provide the reader with a bitter reminder of how much had changed since Elizabeth's death. Exton's corresponding image does not enjoy the same degree of lyric flexibility, but it still captures the essential vivacity of Browne's imagery. His vessels, too, lie and rot, their "tackle and furniture . . . decayed and wasted." Such a poignant series of images must assume some extra-literal significance, surely.

It is worth mentioning that Browne's metaphor occurs not within a sonnet but in a much longer poem: *Britannia's Pastorals* stretches across three books and totals more than ten thousand lines. The metaphors of the Elizabethan sonnet are (usually) embedded within a larger sonnet sequence. "Juliet is the sun" appears within a play. One benefit of using a literary approach to decipher legal metaphors is that it considers textual terrain in a way that some alternative theories do not. Not only do metaphors require both creator and interpreter, but the metaphor's textual placement, controlled by its author, also guides reader interpretation. The dying ship metaphor appeared in the seventeenth century in non-legal texts before Exton's treatise, in 1615: "Our woods I say, cut downe in extraordinary manner, neither do the Shippes die the ordinary death of Shippes,"[88] and in 1644: "But what reason is there, that the whole sea was not turned into blood, and that all creatures & ships died, & perished not, but onely a third part?"[89] But looking at the metaphor of the dying ship in a textual vacuum betrays its legal significance. Michael Smith's schema for categorizing legal metaphors helps here. Doctrinal metaphors—those which most interest scholars of legal metaphor—represent the most textually versatile of Smith's four types. The same metaphor—for example, the "wall of separation,"

[87] Browne, 314 (*Britannia's Pastorals* 2.4.81–86).
[88] Kayll, sig. C4^{v}.
[89] Pareus, sig. X2^{v}.

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metaphor used in American constitutional law—can appear in myriad legal texts and across centuries, which it has.[90] Although legal scholar Steven Winter rejects the idea of dead metaphors—he states, "The dead metaphor cannot survive the evidence of ordinary language use"[91]—these doctrinal metaphors usually assume a generally agreed-upon meaning. Smith's stylistic metaphors, on the other hand, often enjoy a one-to-one correspondence with a particular text. This affinity between metaphor and work invites a rich host of interpretative possibilities. Like the poetic metaphor, the early modern stylistic metaphor self-consciously invites reader decoding. And, given its appearance in a legal text, it invites a decidedly legal interpretation. This is not to say that stylistic metaphors are inherently more interesting, nor that doctrinal metaphors become static in meaning. Both Ross and Berger resist this latter notion.[92] Indeed, one might argue that doctrinal metaphors, far from being dead, represent a particularly dynamic type of legal metaphor, one whose meaning shifts, at times imperceptibly, depending on the specific legal text in which it appears. And while I am at present not prepared to make this claim for the early modern legal metaphor, it seems a question worthy of scholarly attention.

Finally, Exton's use of expressly maritime metaphors warrants discussion. It is tempting to conclude that flourishes referencing the sea and sands seem appropriate enough in a treatise on admiralty jurisdiction. Additionally, because his maritime metaphors are stylistic rather than doctrinal, they also risk dismissal on the grounds that they are not sufficiently legal to warrant discussion as such. Yet these explanations overlook their obscured legal significance, and stylistic or not, Exton's readers would have been partially conditioned to receive his entire argument by their engagement with his metaphors. Elena Semino and Gerard Steen argue that more traditional ways of analyzing literary metaphor are not incompatible with the cognitive turn: they contend that, through their use of the trope, individual authors can create their own "conceptual universes."[93] As a seventeenth-century merchant, mariner, or lawyer turned the pages of *The maritime dicæologie*, they entered Exton's conceptual world, in which ships die, maritime law wrecks, and sophisticated legal concepts like legal actions *in rem* and *in personam* are veiled in figurative language. Semino and Steen also note the difference between image metaphors and conceptual metaphors, a distinction borrowed from Lakoff and Turner.[94] Exton's maritime metaphors can be interpreted on both levels, and they each work to construct

[90] Ross, 1063–67.

[91] Winter, 47–56.

[92] Ross, 1064; Berger, 207.

[93] Semino and Steen, 241.

[94] Semino and Steen, 238–39; Lakoff and Turner, 89–96.

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the treatise's conceptual universe. Take his line, "I have here, so farre as my line would reach, and my small skill in records direct and guide me, followed the antiquity of these highest Sea-officers, wherein, without doubt, I have in my way mist many things that might have been pertinent to that I aime at."[95] At the image level, this metaphor draws the reader's attention to things both explicitly mentioned (line, mist) and things embedded within its attendant implications (sea, vessel, nautical chart, compass). On the conceptual level, the metaphor conjures ideas potentially associated with archival research: skill, expertise, patience, discovery. The metaphor proves effective because its imagistic elements align so closely with its conceptual ones: nautical piloting, too, involves patience, enterprise, and the deciphering of arcane instruments. This interaction builds its own conceptual space. As Cicero argued, metaphors generate pleasure because they allow the reader to direct their thoughts elsewhere without sacrificing logical integrity.[96]

Stylistically as well as rhetorically, Exton's maritime metaphors forge this seamless link between the law of the sea and the sea itself. Metaphors rooted in oceanic imagery have long enjoyed an esteemed place in English poetry; their evocative stylings transformed tempestuous billows and calm expanses into surrogates for the psychic upheaval of the Petrarchan lover. Exton, in turn, exploited these poetic associations to craft both aesthetically pleasing and legally meaningful tropes for his own treatise. They elevate *The maritime dicæologie* from the prosaic—in both senses of the word—to the poetic. Their scattering throughout the treatise constructs its own conceptual universe, one in which maritime law cannot be eradicated from the sea.

"THE SHIP DIETH AT SEA"

In 1536, Thomas Petyt (ca. 1494–1565) printed an English translation of Pierre Garcie's (ca. 1441–ca. 1502) French sailing manual, *Le grand routtier et pillotage et enseignement pour encrer*.[97] Petyt's *The rutter of the see* also contained a copy of the Rolls of Oléron, the most well-known codification of maritime law and custom in the Northern Atlantic during the Middle Ages.[98] Robert Copland (fl. 1505–47) in turn translated the text.[99] His translation of articles 2 and 3 warrants attention. He writes in article 2: "The mayster

[95] Exton, sig. B1^r.

[96] Cicero, 125–27 (*De oratore* 3.39.160).

[97] Waters, 31.

[98] Frankot, 152–53.

[99] Lis, 113–14.

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ought to agre to the most [concerning the suitability of sailing conditions], or els if the shyp perish he is bound to restore the value as it is praysed, yf he have wherewith," and in article 3: "If a shyp perysshe in any place the maryners ought to save the moost parte of the goodes in the shyppe."[100] "If the ship perish"—"If the ship dieth." In light of *The rutter of the see*, it might be tempting to dock Exton's dying ship alongside other doctrinal metaphors and conclude that he implemented it not from rhetorical finesse but from simple convention. However, several pieces of information frustrate this deduction. First, Copland was not a lawyer but a translator, poet, and printer.[101] His rendering of the original French into English, thus, was ostensibly motivated by stylistic concerns rather than a desire to cloak the finer points of the law under the veil of legal metaphor. Second, *The rutter of the see* was, essentially, a sailing manual and not a legal text. Its readers would not consult it to learn the intricacies of maritime law, but to satisfy a practical need. While the metaphor is approximately the same, its attendant textual environment guides one's apprehension. And finally, one of Exton's contemporaries, civilian John Godolphin, translated the Rolls of Oléron from Garcie's *Le grand routtier* (he does not specify which edition); his translation of the corresponding lines from articles 2 and 3 reads, "If he does otherwise, and the Vessel happen to miscarry thereby, he is obliged to make good the same, according to the value upon a just appraisement," and "If any Vessel through misfortune happen to be cast away, in whatsoever place it be, the mariners are bound to use their best endevour for the saving as much of the Ship and Lading as possibly they can."[102] Godolphin's vessel does not perish or die, but is miscarried or cast away.

The perishing ship of Copland's *Rutter* highlights, then, the key points that inform my approach to early modern legal metaphor: it is through usage, not content, that these metaphors become legal (a dying ship is not a fundamentally legal image); stylistic metaphors represent a more accessible type of legal metaphor than doctrinal metaphors, but this fact does not diminish their interpretative value; and finally, historical context plays a key role in deciphering these metaphors—the changes in admiralty jurisdiction and practice between the 1530s and the 1660s provide a major clue for deducing Exton's meaning. The most rigorous accounting of early modern legal metaphor, then,

[100] Garcie, 1536, D6^r. The original Middle French (as preserved in the English Black Book of the Admiralty) reads: "Le maistre soy doit accorder avec le plus des compaignons et sil faisoit autrement il est tenu a rendre la nef et les denrees se elles se perdent aux seigneurs dicelles sil a de quoy" and "Une nef se peryt en aucunes terres ou en quelque lieu que ce soit les mariners sont tenuz a saulver le plus quilz pourront de la nef": Twiss, 1:88, 1:90.

[101] Erler.

[102] Godolphin, sigs. M2^v–M3^r.

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should attend to these three distinct dimensions: legal, philosophical/cognitive, and literary/cultural.

A dying ship, in seventeenth-century law, harbored a host of attendant meanings. The act of wreck could touch several individuals—captains, pilots, sailors, passengers, merchants, salvors—and be caused by collision, grounding, piracy, or the vicissitudes of the natural world. A ship itself, dying or not, comprises "a unique subject matter of law," writes legal historian D. P. O'Connell. He continues: "It is for some purposes, such as being a negotiable asset of value, a chattel, but it is not only a chattel, because it has the capacity to carry with it the law and jurisdiction of sovereigns. In that sense a ship is said to have personality, but that is an unusual usage of the expression because, unlike persons in international law, a ship is not a legal actor independent of those who operate it, and if it is the bearer of legal rights and obligations this is only for procedural reasons. Unlike inanimate objects, a ship is the creature simultaneously of more than one system of law."[103] Even outside a metaphor, a ship sails loaded with the ballast of figurative meaning.

Essentially, the metaphor of the dying ship contains a paradox, and, as Thomas Ross notes, the paradoxical content of a legal metaphor allows one to view its subject in a novel way. The legal significance of the dying ship might be multifarious, but given the subject of Exton's treatise, as well as the larger issues surrounding the admiralty jurisdiction debates, I posit that the metaphor is meant to draw attention to the admiralty action *in rem*. As noted earlier, this action, which allowed for the arrest of a ship in the same manner as a person, offered suitors a clear incentive to pursue cases in the admiralty court: they could not readily employ the action *in rem* at common law. But despite its importance, aspects of its historical development remain poorly understood. Legal historians M. J. Prichard and D. E. C. Yale explain the challenges: "Discussion and elaboration of these characteristics [of the action *in rem*] has dominated every account of Admiralty jurisdiction since the later part of the eighteenth century, yet the task of tracing awareness of these characteristics further back in the history of the English admiralty court has proved a baffling one."[104] Further complicating matters, legal historians have been too quick to assume that the admiralty action *in rem* was the direct descendant of the Roman *actio in rem*.[105] But unlike the Roman action, the admiralty action *in rem* could be used to enforce claims which were solely personal, rather than proprietary. Prichard and Yale argue that by the sixteenth century (and possibly earlier),

[103] O'Connell, 747.

[104] Prichard and Yale, xxxviii.

[105] Prichard and Yale, xxxviii.

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the admiralty action *in rem* had developed an ambivalent character which "enabled the process to encompass claims that we today would regard as purely *in personam* and at the same time to foster the notion that the process rendered the ship . . . directly liable."[106] Tracing the legal-historical development of the two forms of action is even more fraught due to "the inscrutable character of civilian judgements in which reasons were neither recorded nor reported."[107] Even the terms *in rem* and *in personam* were not used by admiralty lawyers until the eighteenth century.[108] By then, the number of actions *in personam* had fallen off considerably, and most cases tried in the admiralty court were initiated by the arrest of a ship.

Although Exton does not specifically address the finer points of admiralty procedure in his treatise, he would have been intimately familiar with the two forms of action given his experiences as a practicing civilian and admiralty judge. If the hypothesis of Prichard and Yale is correct, and admiralty actions *in rem* had assumed an ambivalent character during the early modern period, then Exton's metaphor could be calling attention to this fact. Here, the theories of Black, Beardsley, and Ross reveal how, in light of this reading, the metaphor works, both unto itself and within the larger context of *The maritime dicæologie*. Black's interaction theory, as noted earlier, rejects the comparison view, and it may be useful to begin by noting what is lost when Exton's dying ship is restated as a simile: "A shipwreck is like a death." When considering the legal sense of the metaphor, the comparison view utterly fails to provide a novel understanding of the jurisprudential issues underneath. Of course a shipwreck is like a death, but this comparison only draws readily apparent similarities between the two: they both involve irrevocable loss of goods, including loss of life, and are both generally regarded as tragedies. In this context (as in many others), the comparison view adds nothing meaningful to metaphoric interpretation; even accounting for the metaphor's textual backdrop—a legal treatise—does not lead to an inevitable legal inference. According to Black's interaction theory, metaphors enjoy the capacity to organize one's view. The focus of Exton's phrase is "dieth" and the frame is "the ship" and "at sea." The use of the word *dieth* to describe the ship both creates the metaphor and foregrounds aspects of the ship that would otherwise remain hidden if the literal word *wreck* were used instead.

Beardsley's verbal-opposition theory, in turn, offers some clues regarding what features of the ship Exton seeks to emphasize in his metaphor. As Beardsley states, "We do not decide that a word in a poem is used

[106] Prichard and Yale, xl.

[107] Prichard and Yale, xlvi.

[108] Prichard and Yale, cxxx.

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metaphorically because we know what the poet was thinking; rather we know what he was thinking because we see that the word is used metaphorically."[109] Because metaphors, as Beardsley posits, are a type of self-controverting discourse, deciphering them involves identifying what they suggest but do not state outright. The figure of Exton's dying ship, like all self-controverting discourse, has certain unstated implications. In the expression "the ship dieth at sea," the word *dieth* offers a figurative meaning of the word *ship*. Because of the metaphor's context, a physical (or metaphysical) connotation of the word *dieth* is canceled out (to quote Beardsley), and a new legal meaning settles into its place. Beardsley's distinction between a thing-approach to metaphor (to which the comparison theory belongs) and a word-approach (like his own verbal-opposition theory) proves beneficial to the interpretation of legal metaphor. In *Law's Quandary*, Steven Smith addresses the relationship between law and language, particularly words. He notes, "One criticism castigates lawyers for using *too many* words," and elaborates: "Almost imperceptibly, these criticisms shade into a subtly different one. The complaint is that lawyerly discourse is empty. It is *just* words, or merely words, or *nothing but* words."[110] The legal-metaphorical significance in Exton's prose resides not in thinking of ships and death but in the words themselves and their connotations. Of course, law is not just words, as Smith notes, just as the meaning of Exton's metaphor resides inexplicably somewhere beyond his language—hence the quandary of Smith's title.

Distinguishing between central and marginal meanings brings to the fore the rhetorical heft of the metaphor. The central meanings—or standard dictionary definitions—of *ship* and *to die* are straightforward enough. Yet within each word there reside additional, tacit connotations. The death of a ship implies the loss of life. It also indicates loss of the ship's function. The word *die* in the metaphor foregrounds this loss. Not only is life itself surrendered, but also the mechanisms of living: breath and animation and cognition. Again, the reader is left to seek additional meanings. What approximate roles of a ship on the high seas find parallels in these functions of existence? Could it be the mariners aboard? The sailors, the circulation; the pilot, the cognition; the captain, the beating heart, keeping all beneath him in motion so that the vessel remains afloat. Or does the living ship—living because it holds the capacity to die—represent a more literal animated body? The sails as wings, extended boldly to the favorable winds, guiding and directing the ship forward. Living, in part, because it moves intentionally across the oceanic expanse. This interpretation allows for a shift to the realm of literature. Thinking of a ship

[109] Beardsley, 1962, 298.
[110] S. Smith, 5. Italics in original.

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in corporeal terms has a long semantic precedent. In Old English, for example, the word *rib* came to indicate the curved wood that formed the body of the hull of a vessel.[111] This usage was commonplace during the English Renaissance. For example, in Edmund Spenser's *The Faerie Queene* (1590/96), Guyon sees ships that have met their ruin on "sharp cliftes" where "the ribs of vessels broke" and had "beene wrecked late."[112] In a similar impulse, in Shakespeare's *The Merchant of Venice*, Salarino describes the sails of Antonio's argosies as "woven wings."[113] The anthropomorphic urge finds itself condensed in Exton's dying ship and emerges when considering the self-controverting nature of metaphor.

Ross's contention that the paradox of legal metaphors uncovers a juristic paradox hiding below allows the modern reader to plausibly decode Exton's dying ship. The marginal meaning most useful when considering the word *to die* is *once living*. To die is, quite literally, to pass from a living state to a dead one. Thus, the metaphor's focus highlights the ship's capacity to live. Here, of course, the paradox of the metaphor itself emerges: a thing that never lived cannot die, since living is a necessary condition for death. A ship can be said to be alive in many senses already enumerated, yet none of these senses discloses any paradox about the law, and so the reader's interpretive burden is not yet lifted. The convoluted relationship between admiralty actions *in rem* and *in personam* provides the legal contradiction dwelling within the metaphor. Early modern civilians, while certainly aware of the distinction in civil procedure between the Roman *actio realis* and *actio personalis*—a distinction paramount in the Continental literature—made little of it in their own writing.[114] And, as noted, even the terms *in rem* and *in personam*, curiously, did not enter their literature until the eighteenth century.[115] The dying ship metaphor, then, reflects this tendency in admiralty to use the action *in rem* for claims that were properly *in personam*. It transforms the ship from an inanimate object (*res*) to a living thing (*persona*). Both the person and the ship could be subject to arrest, which parallels the metaphor, in which a ship (like a person) is subject to death. The dying ship also reveals the apparent incongruity of admiralty law surrounding actions *in rem*, an incongruity which the civilians might have lacked language to adequately express. The legal evidence necessary to trace the full development of actions *in rem* in the English admiralty court of the sixteenth and seventeenth centuries might be lost,

[111] From *Riddle 21*: "Searoceap . . . hæfde fella ribba; muð wæs on middan." *Oxford English Dictionary*, 3rd ed. (2010), s.v. *rib*, n.1.

[112] Spenser, 2006, 271 (*The Faerie Queene* 2.12.7).

[113] Shakespeare, 2011, 171 (*The Merchant of Venice* 1.1.13).

[114] Prichard and Yale, xliii.

[115] Prichard and Yale, cxxx.

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but Exton's metaphor reveals that civilians appreciated the contradiction. An early modern lawyer reading the treatise might pause when he reached the line "the ship dieth at sea," and reflect on the ship as being subject to arrest, as a person. In turn, he may have turned his thoughts to the procedural advantages that merchants enjoyed at the High Court of Admiralty. Or perhaps he might ponder the inherent paradox of actions *in rem* being used for those purely *in personam* in nature, as a ship, not subject to physical death, can die within the metaphor.

Beardsley, along with William Wimsatt, developed the concept of the intentional fallacy to describe the role an author's objective should play in the interpretation of their own work.[116] Their theory, which argued for the clean separation of creator from creation, has implications for legal metaphor, which will close this analysis. Any viable explanation for a legal metaphor requires a reader with a sophisticated enough understanding of the underlying law to appreciate the trope's intended meaning. While Exton dedicated his treatise to English merchants and mariners, the frequently technical nature of *The maritime dicæologie* suggests he assumed a largely legally educated readership. Because he wrote for, in essence, two distinct audiences, one specialist and the other general, he likely recognized that his metaphors would serve dual purposes. For some readers, they offered legal riddles; for others, they showcased the flexibility of the English language to illustrate legal points while using the tactile accoutrements of a life at sea. But once his metaphors landed on the page, Exton's power over them ceased. And taking a cue from Elisabeth Camp's discussion of a Shakespearean metaphor, one can recognize that legal developments which Exton could not have foreseen shaped subsequent interpretations of his work. Readers of the 1746 and 1755 editions, published when actions *in personam* were becoming increasingly obsolete in the admiralty court, might have interpreted the dying ship metaphor in an entirely different way than readers in the 1660s. As Ross notes, "The culture in which we live imposes limits on the particular realities we can see through our metaphors."[117] Stylistic legal metaphors—like all metaphors—are dynamic. While their creators may imbue them with legal significance, their ultimate realization falls to the reader, who is a product of cultural and cognitive forces that cannot be entirely accounted for.

CONCLUSION

A metaphor, noted Beardsley, "is a miniature poem, and the explication of a metaphor is a model for all explication."[118] This article has offered one

[116] Wimsatt and Beardsley.
[117] Ross, 1069.
[118] Beardsley, 1981, 144.

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particular model for the explication of legal metaphors found in early modern texts. Although the focus of its analysis was singular, the analytic process has showcased the plethora of considerations surrounding the study of early modern legal metaphor, and it has revealed that literary, legal, philosophical, and cognitive approaches can be employed harmoniously to extract plausible meaning from the trope. It might be the case that a fully satisfactory account of early modern legal metaphor will continue to evade the modern scholar, and disparate methodologies may emerge that consider many elements neglected by the one at hand. Ultimately, however, the intrinsic paradox of metaphor itself assures that the task of interpreting it is never quite complete—which, to paraphrase Cicero, is a very great pleasure indeed.

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