Book Reviews


In one room of my life I work as a teacher of writing, a rhetorician. When I am in this room, I read as a rhetorician and I scan the sub-textual classified section, seeking opportunities for younger colleagues. Now and then I catch a notice of a rich domain, largely unexplored, where young scholars can make their mark, and I get excited. I run from the room with the paper in my hand, searching for someone else who will become as excited as I am. I want to spread the news.

Haig Bosmajian’s book Metaphor and Reason in Judicial Opinions offers this kind of promise. When Bosmajian quotes Judge Richard Posner, that “the subject of judicial rhetoric is both rich and comparatively unexplored” (7), and when he notes “the dearth until the 1980s of scholarship in figurative language and the law” (9), I rub my hands together and think of dusty graduate students prospecting for topics for term papers and dissertations.

I am intrigued by the paradox Bosmajian discloses, that (a) several judges have expressed misgivings about the use of tropes in judicial decisions and (b) the courts have relied heavily on tropes to justify their decisions. The study of tropes and schemes is a trifle outmoded in the markets where I shop for rhetoric, these days. But this aspect of rhetoric has an important and useful history, and the current neglect will no doubt pass. As we revive the eighteenth- and nineteenth-century rhetoricians, we will almost certainly return to analyzing figurative language (tropes) and decorative sentence structures (schemes). It can’t hurt to get ready.

Bosmajian’s study of the rhetorical elements of judicial opinions is confined consciously to tropes and the First Amendment. In a chapter on “Style and Tropes” Bosmajian argues that “tropes, especially the metaphor, are not simply rhetorical flourishes and ornaments used to embellish discourse” (37). Finding support for his claims among modern rhetoricians from I. A. Richards to Kenneth Burke, philosophers such as Max Black and Richard Rorty, such linguists as Louis Halle, George Lakoff, and Mark Johnson, and influential essayists, including George Orwell and Susan Sontag, Bosmajian makes the convincing case that metaphorical language allows us to think in ways not available without the tropes. He argues further that metaphors can define an age and determine the problems and solutions available to a culture. The tropes to which Bosmajian confines his attention are from judicial opinions dealing with First Amendment issues because the author can claim expert status in this branch of legal scholarship. Bosmajian’s previous publications include
The Language of Oppression, a 1974 examination of why language used to define others into submission deserves First Amendment protection. Further, he limits his inquiry to tropes, consciously excluding schemes, because he believes such figures as antithesis, asyndeton, anaphora, and antimetabole do not control meaning or conceptualization in the way tropes do (xii).

Bosmajian's account of the history of published court decisions is brief but adequate. The practice of writing and publishing court opinions is fairly recent, a product of print technology. Although English court decisions and legal precedents have been available in annual Yearbooks since the fourteenth and fifteenth centuries, such books were at first only a record of the settlements. Once printing was established, the published accounts of law cases became more detailed and included arguments as well as judgments. In America, the practice of publishing judicial opinion explaining court decisions dates from 1789. In this century, legal opinions have become elaborate essays outlining the history of each case as well as justifying the evidence considered.

The argument for studying the language of court decisions will cheer the heart of anyone invested in writing across the curriculum. Even in the twentieth century some legal scholars have questioned why decisions should be explained at all. It is the decision, not the explanation, that matters. Bosmajian finds ample support to assert the contrary. Part of the reason for outlining the precedents and tracing the thought behind a court's judgment is that the judge must clarify the thinking both to the principals in a case and to other jurists studying the law. But the reason goes beyond mere justification. Bosmajian quotes several judges to establish that writing the decision is an integral part of making the judgment. Simply talking a case through and seeking the support of precedent or logic won't quite do. According to Judge Frank Coffin of the U. S. Court of Appeals for the First Circuit (quoted p. 29), "Somehow a decision mulled over in one's head or talked about in conference looks different when dressed up in written words and sent out into the sunlight." Others agree that preparing a formal opinion ensures a manner of thought and a level of research that safeguard against hasty or careless decisions.

To illustrate his main claim, that the tropes employed in writing about the law control our thinking about the law, Bosmajian traces the history of five crucial metaphors: (1) the marketplace of ideas, (2) the wall of separation between church and state, (3) the chilling effect of restraints on free expression, (4) the captive audience, and (5) shedding First Amendment rights at the schoolhouse gates. Bosmajian is thorough in his accounts of when these metaphors first entered the writing of judicial opinion and how the thinking of subsequent jurists has been shaped by these influential tropes.
A reader primarily interested in rhetoric and less committed than Bosmajian to civil liberties may find the treatment of these metaphors somewhat heavy-handed, even polemical. For example, Bosmajian finds "the marketplace of ideas" an outmoded metaphor, a relic of unrestrained free trade and inappropriate to contemporary realities. Bosmajian challenges the metaphor of "captive audience," finding it imprecise and inconsistently applied, and he is distracted from considering the trope's influence on judicial opinion. Bosmajian approves of the metaphor, "wall of separation" between church and state, and concludes that we should resurrect and repair the wall when jurists seek to replace it with less sturdy metaphors. A particularly strident section of the book comes near the end. Bosmajian examines the metaphors involving spark, fire, and conflagration to trace what he regards as a distortion of justice in the suppression of revolutionary opinion during the period between World War I and World War II.

In part because he strays into a personal evaluation of the metaphors, Bosmajian veers from the rhetorical analysis at the heart of his book. The reader may shake her head, wondering who the audience might be for a critique of judicial metaphors. Jurists are unlikely to be influenced; students of rhetoric hardly need the lesson.

As a student of rhetoric and a teacher of rhetoricians, I caution my students against chasing rabbits into the underbrush. I could use Bosmajian's book to illustrate rhetorical analysis gone awry, lured away from its first pursuit. Arguing the law, I would say, is essential rhetoric, relying on all the available means of persuasion. Legal arguments demonstrate rhetorical strategies in their purest form; commercial and academic rhetoricians have said so since the beginning. From the time the Sophists sold their skills outside the courts of Athens, through the written illustrations of Hermagoras and Cicero, who took their examples from the law, the practice of rhetoric has been linked to legal pleading. Rhetorical analysis of legal strategy is theoretically pure: the central question to ask of legal argument is necessarily, "what works?" Aesthetic questions, about beauty and symmetry, about structural elegance, are always subordinated to a single pragmatic concern: did the argument succeed?

Therefore, I am disappointed in Metaphor and Reason in Judicial Opinions. I want the book to be more strictly analytical than it is. I wish it would focus more clearly on the rhetorical principles it sets out to examine. Also, I would prefer a more rigorous academic style. I am frustrated, for example, because the book includes no bibliography. To locate the sources of Bosmajian's illustrations and supporting arguments, the reader must track a string of textual notes, skipping from ibid. to ibid., locating each source in both text and notes.

In two respects, however, I find the book refreshing and useful. First, the book provides a clear and practical look at how tropes shape our
thinking. Bosmajian makes the case, supported soundly and illustrated pertinently, that how we conceive of laws and justice is determined by the metaphors that have shaped our discourse. The lesson is important to our understanding of both the history of our society and the cognitive processes that figurative language entails.

I also find the book valuable because it opens a rich vein for other scholars of rhetoric to mine. Despite my misgivings about the author's political agenda, which I find inappropriate even though I agree with it, I will carry the book to my colleagues and students. Here is a clear example of how the principles of rhetoric can be applied in the analysis of practical discourse. It is a useful example. We should pay attention.

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Before I began reading this book, I was concerned about its place among other anthologies on the subject. I worried whether Re-imagining Computers and Composition would offer the reader something significant beyond other collections such as Evolving Perspectives on Computers and Composition Studies (Hawisher and Selfe 1991), Critical Perspectives on Computers and Composition Instruction (Hawisher and Selke, 1989), or Writing at Centuries End: Essays on Computer-Assisted Composition (Gerrard 1987). In general, I find that the book does offer a unique look into the future. Readers who have substantial experience with computer conferencing, hypermedia, or Hawisher and Selfe's previous work will find this book interesting but not ground-breaking. For example, concepts such as the relation of social construction to computer conferencing, the need for teacher training, the politics of computer instruction, and the intertextuality of hypermedia will not be new to some readers, but are, nevertheless, fundamental to any vision of the future of computer-assisted composition. Readers who seek a contemporary introduction to the use of computers in composition are likely to gain the most from Re-imagining. The essays are accessible even to readers who have a basic knowledge of computers and computer networks, and the editors have thoughtfully included a glossary of 55 terms with extended definitions.