

ESSAY

NEW WINE IN OLD WINESKINS: METAPHOR AND LEGAL RESEARCH

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*And no one puts new wine into old wineskins; otherwise, the wine will burst the skins, and the wine is lost, and so are the skins; but one puts new wine into fresh wineskins.*¹

INTRODUCTION

Language gives and language takes away. Words can facilitate our thoughts, but so too can they calcify our thinking. Recall the 1980s critique of using male-only pronouns to refer to people generically. (“When a judge decides, *he* exercises power”; “When a politician wins, *he* is happy”). Feminists argued that this linguistic practice systematically excluded women and reinforced suspect patriarchal norms. Though debates raged for years, the critique rightly won the day and transformed our discourse.² Today insisting on male-only pronouns seems sexist and as socially regressive as referring to African-Americans as “coloreds.”

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1 *Mark* 2:22 (New Revised Standard Version); *see also Matthew* 9:17.

2 *See, e.g., ANNE PAUWELS, WOMEN CHANGING LANGUAGE* 225 (1998); Judith D. Fischer, *Framing Gender: Federal Appellate Judges’ Choices About Gender-Neutral Language*, 43 U.S.F. L. REV. 473 (2009).

The perils of language become especially acute in the realm of metaphor. Metaphors are inescapable at certain levels of abstraction.³ As philosophers have long recognized, we construct our conceptual world using metaphors, and we cannot intellectually function without them.⁴ Yet sometimes our concepts are flawed and our metaphors do damage. Consider, for example, the War on Drugs. The policy is a recognized disaster—millions have gone to prison, communities have suffered, and still our very real drug problems remain unsolved.⁵ Partial blame for the disaster lies with the war metaphor.⁶ It encouraged a military solution to a problem that may need a civilian public health response.⁷

This Essay examines a different set of metaphors currently doing damage in law. Though not as life-and-death dramatic as the War on Drugs or the struggle against patriarchy, these metaphors affect every law student and practicing lawyer. What's more, our examination implicates broader philosophical issues that resonate well beyond specifically legal discourse. The metaphors we examine pertain to legal research—how we conceptualize the task of “finding law” to make arguments and solve legal problems. The broader philosophical issues concern changes wrought by technology. When technology radically alters our material world, sometimes our conceptual world fails to adjust. To successfully evolve, we must interrogate and change our deepest metaphors. This Essay undertakes this foundational task in the brave new world of legal research.

Our interest is both practical and theoretical. One of us is a research scholar.⁸ While working on a new edition of a research textbook, this author unexpectedly struggled to integrate technologies like Google Scholar and the latest versions of Westlaw and Lexis into the textbook's framework. Upon reflection, this author grasped that the framework itself was outdated; she needed a different metaphor to explain legal research. This left her slack-jawed. Never before had she realized that metaphors framed her very understanding of the research process she otherwise knew so intimately.

3 See *infra* Part I (explaining the inherent necessary relationship between conceptual analysis and metaphor).

4 See *infra* Part I (surveying philosophical and scientific literature on metaphor).

5 See Susan Stuart, *War as Metaphor and the Rule of Law in Crisis: The Lessons We Should Have Learned from the War on Drugs*, 36 S. ILL. U. L.J. 1, 13–14 (2011).

6 See *id.* at 35–41.

7 Instead of directing the police to bring *overwhelming force* into *enemy territory*, we should figure out the causes of the disease of drug addiction and treat them accordingly. See Douglas B. Marlowe, *Effective Strategies for Intervening with Drug Abusing Offenders*, 47 VILL. L. REV. 989, 1024 (2002).

8 AMY E. SLOAN, *BASIC LEGAL RESEARCH: TOOLS AND STRATEGIES* (6th ed. 2015) [hereinafter SLOAN, *BASIC LEGAL RESEARCH*]; see also AMY E. SLOAN, *RESEARCHING THE LAW: FINDING WHAT YOU NEED WHEN YOU NEED IT* (2014) [hereinafter SLOAN, *RESEARCHING THE LAW*].

The theoretical stakes of this legal-research-metaphor quest are also apparent. One of us is a jurisprudence scholar.⁹ After learning about the research-metaphor quest, this author was struck by how it flipped an old jurisprudential debate. At the beginning of the twentieth century, the law was often characterized as “a seamless web.”¹⁰ Then the Realists successfully attacked this conception, dooming the law-as-seamless-web metaphor.¹¹ Did changes to research mean resurrection of this dead metaphor was imminent? After all, technology has created a new home for law *on a web*. This web is hyperlinked rather than seamless, but it gives the law a radically open and infinitely accessible new form. The theoretical question is whether this new form will also change the law’s fundamental nature.

This Essay argues that conceptualizing emerging legal technologies using inherited research metaphors is like pouring new wine in old wineskins—it simply doesn’t work. When a primary challenge of research was physically gathering hidden and expensive information, metaphors based on journey, acquisition, and excavation helped make sense of the research process. But new, technologically-driven search methods have burst those conceptual wineskins. The Internet and Big Data make information cheap and easily accessible. The old metaphors fail.

At the same time, technology has not made legal research a self-executing or self-evident task. Real and serious challenges remain for novice and expert legal researchers alike. Indeed, now that legal information is cheap and abundant, the pressing problem is “information overload.”¹² We practically drown in search results, and the challenge is holding back the floodwaters or just staying afloat. Choose your metaphor. Actually, that is precisely what we do in this Essay. After examining the practical and theoretical dimensions of the problem, we propose to replace outdated research metaphors with updated metaphors that can provide the fresh wineskin to conceptualize current research challenges.

9 See, e.g., Colin Starger, *Constitutional Law and Rhetoric*, 18 U. PA. J. CONST. L. (forthcoming 2016); Colin Starger, *The DNA of an Argument: A Case Study in Legal Logos*, 99 J. CRIM. L. & CRIMINOLOGY 1045 (2009). Professor Starger’s work on “doctrinal mapping” also lies at the intersection of technology and legal research. See *The Supreme Court Mapping Project*, UNIV. OF BALT. SCH. OF LAW, law.ubalt.edu/faculty/scotus-mapping/index.cfm (last visited Sept. 6, 2016).

10 Ethan Katsh, *Law in a Digital World: Computer Networks and Cyberspace*, 38 VILL. L. REV. 403, 403–05 (1993). This metaphor expressed confidence that all areas of the law fit together smoothly in a coherent logical system that evolved according to a rational plan. This epitomized what Grant Gilmore famously called “The Age of Faith.” GRANT GILMORE, *THE AGES OF AMERICAN LAW* 41 (1977).

11 See Katsh, *supra* note 10, at 404.

12 See Troy A. Paredes, *Blinded by the Light: Information Overload and Its Consequences for Securities Regulation*, 81 WASH. U. L.Q. 417, 442 n.111 (2003) (collecting sources on information overload theory).

The remainder of this Essay proceeds as follows. Part I introduces the basic tenets and constructs of conceptual metaphor theory. In Part II, we apply this theoretical lens to identify dominant metaphors structuring our concepts of legal research. Part III explains how today's dominant conceptual metaphors have become outdated given technological advances. Part IV reimagines one of the traditional metaphors, and then Part V proposes new metaphors for legal research. Finally, we conclude by reflecting on how our inquiry into legal research metaphors affects our understanding of law itself.

I. CONCEPTUAL METAPHOR THEORY

Most of us learned about metaphor in elementary or middle school. Our teachers introduced metaphor as a figure of speech—a simile without the “like.” No longer does this simple understanding suffice. Metaphor is now appreciated as a complex theoretical phenomenon.¹³ It commands serious attention by psychologists, linguists, anthropologists, cognitive scientists, philosophers, and even legal theorists.¹⁴ The field is vast, and metaphor theory comes in many different flavors. This Essay, however, focuses on the variation known as Conceptual Metaphor Theory (CMT).

CMT burst onto the scene in 1980 when George Lakoff and Mark Johnson published *Metaphors We Live By*.¹⁵ In this slim yet profound book, Lakoff and Johnson radically reimagined the role metaphor plays in language, experience, and understanding. Where prior theorists had regarded metaphor “as characteristic of language alone, a matter of words,” Lakoff and Johnson found that “metaphor is pervasive in everyday life, not just in language but in thought and action.”¹⁶ Metaphor was no longer conceived as a mere figurative tool to *express* concepts in language. Rather, Lakoff and Johnson showed how metaphor actually *constitutes* concepts and shapes the development of ideas.¹⁷ Analysis of metaphor thus

13 See L. DAVID RITCHIE, METAPHOR (2013) (surveying contemporary metaphor theory); see also METAPHOR AND THOUGHT (Andrew Ortony ed., 2d ed. 1979) (presenting an interesting survey of pre-contemporary metaphor theory).

14 See, e.g., KEN BAAKE, METAPHOR AND KNOWLEDGE: THE CHALLENGES OF WRITING SCIENCE 68–71 (2003) (discussing metaphor in science); RITCHIE, *supra* note 13 (surveying metaphor theory in linguistics and psychology). For explorations of metaphor in the legal context, see STEVEN L. WINTER, A CLEARING IN THE FOREST: LAW, LIFE, AND MIND 43–68 (2001) (discussing metaphor drawing from interdisciplinary fields); David T. Ritchie, *The Centrality of Metaphor in Legal Analysis and Communication: An Introduction*, 58 MERCER L. REV. 839, 840 (2007) (introducing entire symposium issue on “Using Metaphor in Legal Analysis and Communication”).

15 GEORGE LAKOFF & MARK JOHNSON, METAPHORS WE LIVE BY (1980).

16 *Id.* at 3.

17 See generally *id.*

became a tool to understand the deep structure of complex conceptual systems.

Law is obviously a complex conceptual system. So too is legal research. CMT therefore suggests that metaphor helps us structure, comprehend, and navigate these systems.¹⁸ More than this, CMT predicts that our understanding of legal research will directly affect how we conceptualize law. This is because we actually *experience what law is*, at least in part, through the legal research process. At least, so goes the theory. To grasp how this sheds light on our practice, we must briefly survey the theory's foundations.

First, let us define some terms. Every metaphor involves two elements—"topic" and "vehicle." The topic is what the metaphor describes, and the vehicle is how the metaphor describes the topic.¹⁹ Recall, for example, Forrest Gump's famous aphorism "life is a box of chocolates."²⁰ "Life" is the topic of Forrest's metaphor and "box of chocolates" is his vehicle. Box of chocolates explains a way of understanding life.

Next, let us distinguish between "linguistic metaphors" and "conceptual metaphors." Linguistic metaphors are written or spoken in language. "Life is a box of chocolates" is a linguistic metaphor that appeared in the film *Forrest Gump*. Conceptual metaphors, by contrast, operate at a deep level of consciousness. Conceptual metaphors help "structure what we perceive, how we get around in the world, and how we relate to other people."²¹ They do not necessarily appear fully formed in everyday language, but metaphorical language can provide surface evidence of underlying conceptual metaphors.²²

A critical difference between linguistic and conceptual metaphors relates to topic and vehicle. In a linguistic metaphor, the topic is described

18 See Mark L. Johnson, *Mind, Metaphor, Law*, 58 MERCER L. REV. 845, 845 (2007) ("[C]ognitive science ought to give us insight into the nature of legal concepts and legal reasoning.").

19 See RITCHIE, *supra* note 13, at 10–11. Other common terms for the "topic" of a metaphor include "tenor" or "target." A common alternative term for "vehicle" is "basis." *Id.* Though not widely accepted, even more evocative terms can be used to refer to topic and vehicle: "theme" and "phoros." See CHAIM PERELMAN, *THE REALM OF RHETORIC* 114–15 (William Kluback trans., 1982).

20 The precise quote is "Life is *like* a box of chocolates." *Forrest Gump Summary*, AM. FILM INST. (emphasis added), <http://www.afi.com/members/catalog/AbbrView.aspx?s=&Movie=55201> (last visited Feb. 18, 2016). We have taken poetic license to simplify the illustration. Similes are really a species of metaphor with the same topic/vehicle structure.

21 LAKOFF & JOHNSON, *supra* note 15, at 3.

22 See *id.*

or explained by the vehicle. In a conceptual metaphor, the “topic is *experienced* as the vehicle.”²³

If this seems abstract, consider a concrete example. Lakoff and Johnson catalog various conceptual metaphors rooted in spatial orientation including HAPPY IS UP and SAD IS DOWN.²⁴ The CMT claim is that our very concepts of “happy” and “sad” are partially shaped by our experiences of “up” and “down.”²⁵ We see evidence for this claim in common expressions such as “I’m feeling *up*” and “[m]y spirits *rose*,” as well as “I’m feeling *down*” and “[m]y spirits *sank*.”²⁶

Note how the italicized words in the previous sentence don’t form complete linguistic metaphors. Rather they express underlying metaphorical concepts. Sometimes conceptual metaphors operate so deeply that even perceiving surface language as metaphorical presents challenges. Though it seems fair enough to assert that one does not literally *fall* in a depression, one could be forgiven for resisting the notion that “cheer *up*” is metaphorical at all. Isn’t the phrase just an expression? “No,” answers CMT. It is not coincidence or convention that our language has so many phrases that resonate with HAPPY IS UP and SAD IS DOWN. Rather, our language reflects a system of concepts shaped by our experiences.²⁷

The CMT account follows from research in psychology, cognitive science, and related disciplines and is fundamentally developmental in nature. Lakoff and Johnson regard conceptual metaphors as “embodied,” meaning they originate when an abstract topic (say *affection*) is repeatedly experienced through the vehicle of a physical sensation (say *warmth*).²⁸ Even before the acquisition of language, certain concepts like AFFECTION IS WARMTH become encoded in our basic understanding of the world. Later this concept finds expression in language like “we have a *warm* relationship” or “why are you being so *cold* to me?”

CMT does not ground all conceptual metaphors in direct physical experience. However, the most basic embodied concepts—“primary”

23 RITCHIE, *supra* note 13, at 68.

24 LAKOFF & JOHNSON, *supra* note 15, at 15. By convention, conceptual metaphors are written in large and small capital letters. We follow that convention in this Essay.

25 *Id.*

26 *Id.*

27 See WINTER, *supra* note 14, at 47 (“[L]anguage is neither entirely arbitrary nor merely socially contingent, but grounded in our embodiment and motivated by our interactions with the physical and social world.”).

28 See RITCHIE, *supra* note 13, at 69; see also GEORGE LAKOFF & MARK JOHNSON, PHILOSOPHY IN THE FLESH: THE EMBODIED MIND AND ITS CHALLENGE TO WESTERN THOUGHT 77 (1999).

metaphors—do form this way in early infancy.²⁹ Vehicles for primary metaphors are experiences like “*heat and cold, absence and presence*” of a caregiver, “*hunger and thirst, pain and pleasure, eating and drinking, light and sound, physical orientation (up/down, front/back), and manipulating objects.*”³⁰

These sensory experiences provide the basis for conceptual metaphors that express more abstract concepts like *love, caring, and need or desire* in terms of fundamental physiological experiences. . . . In addition to LOVE IS PHYSICAL PROXIMITY (and WARMTH), there is also NEED or DESIRE IS HUNGER, as in “*starved for attention.*”³¹

Primary metaphors embody simple concepts like AWAKE IS UP (“*Get up!*” “*Rise and shine!*”) or ASLEEP IS DOWN (“*You fell asleep*”, “*The baby is down.*”).

As language and social interaction enter the picture, children develop conceptual systems in more and more complicated ways. Yet metaphor continues to structure how these concepts build upon each other.³² Prior topics of conceptual metaphors become the vehicles grounding new metaphors. Critically, children (and later adults) still *experience* these vehicles as the basis for new conceptual topics—but the experience is more cognitive than sensorial.³³ As children grow, their physical-cognitive experiences allow them to conceptualize more and more complex thoughts—from MORE IS UP to IDEAS ARE OBJECTS to LIFE IS A JOURNEY. According to CMT, this concept-building-through-metaphor process never ends even though we mature. It is a fundamental characteristic of how we learn and think.

For purposes of this Essay, this 10,000-foot view of CMT suffices. Our modest goal is to identify conceptual metaphors that structure our understanding and instincts around legal research and law. Thus, we don’t need detailed explorations of conceptual mapping or cognitive mechanics.³⁴

29 See Johnson, *supra* note 18, at 859 (citing Joseph E. Grady et al., *Blending and Metaphor*, in METAPHOR IN COGNITIVE LINGUISTICS 101, 101–24 (Gerard J. Steen & Raymond W. Gibbs, Jr. eds., 1999); Christopher Johnson, *Metaphor vs. Conflation in the Acquisition of Polysemy: The Case of See*, in 152 CULTURAL, PSYCHOLOGICAL AND TYPOLOGICAL ISSUES IN COGNITIVE LINGUISTICS: CURRENT ISSUES IN LINGUISTIC THEORY 155, 155–69 (Masako K. Hiraga et al. eds., 1997)) (discussing theory of primary metaphors drawn on study of metaphor acquisition in young children).

30 RITCHIE, *supra* note 13, at 70.

31 *Id.*

32 See Johnson, *supra* note 18, at 864 (“Once we have primary metaphors, we are off and running, so to speak. Through various types of blending and composition, we develop vast coherent systems of metaphorically defined concepts.”).

33 See *id.* at 846.

34 See *supra* notes 28–29.

Before moving on, however, we do need to emphasize a final and vital theoretical point. In Lakoff and Johnson's words:

The very systematicity that allows us to comprehend one aspect of a concept in terms of another . . . will necessarily hide other aspects of the concept. In allowing us to focus on one aspect of a concept . . . a metaphorical concept can keep us from focusing on other aspects of the concept that are inconsistent with that metaphor.³⁵

Lakoff and Johnson call this phenomenon “[h]iding.”³⁶

Hiding is not necessarily bad. As we conceptualize and reason, hiding can help by reducing distraction and focusing our attention. However, when our conceptual metaphors become outmoded, hiding can inhibit and constrain our thinking without our ever realizing it. In situations where conceptual change is needed to catch up with events on the ground, hidden metaphors potentially calcify thinking and stifle innovation.³⁷

II. OLD WINESKINS: CURRENT RESEARCH METAPHORS

Although the concept of “legal research” necessarily implicates a concept of “law,”³⁸ this Essay confines its primary interrogation of conceptual metaphors to those animating our understanding of “legal research.” This limitation on scope is justified because the process of research—locating documents that are classified as legal information used to accomplish lawyering tasks such as advising clients, litigating cases, and engaging in scholarly analysis—is theoretically distinct from the nature of law.³⁹ We therefore ask: What are our current primary conceptual

35 LAKOFF & JOHNSON, *supra* note 15, at 10.

36 *Id.*

37 For a familiar example of hiding, consider how male-only pronouns stealthily reinforce concepts like POLITICIANS ARE MALE.

38 It seems self-evident to us that law is a conceptual metaphor. Even though law exists in the empirical world, “law” cannot be tasted, touched, seen, heard, or smelled. Similarly, though we understand law through experience, our experience of law is not directly visceral like hunger or directly primal like fear. Instead, we experience law as a concept (more accurately, a family of concepts) built upon other concepts/experiences. Given this, CMT teaches that primary metaphors for law will inevitably structure and enable more complex secondary metaphors.

39 To be precise, legal research depends only on a narrow and circular concept of law as “that which can be discovered by legal research.” In other words, as far as legal research is concerned, the only law that matters is the law found through legal research. While this can be said to implicate a rather positivist understanding of law as inherently written-down and therefore discoverable, the point is that understanding metaphors for legal research does not require a complete understanding of the full metaphorical nature of law in our society. For more on how our concepts of research might actually affect our concepts of law (instead of the other way around), see *infra* Conclusion.

metaphors for legal research? How are these metaphors expressed (or hidden) in legal research literature?

The most ubiquitous metaphors in legal research are RESEARCH IS A JOURNEY, RESEARCH IS EXCAVATION, and RESEARCH IS ACQUISITION. These metaphors originally arose from literal descriptions of the physical process of research. Seeking information, researchers journeyed to a library, excavated mountains of text in books, and acquired reams of paper. Our current understanding of research remains framed by the conceptual metaphors born of this physical experience. A brief survey of representative legal research literature demonstrates how deeply embedded these metaphors are.

Perhaps the most common conceptual metaphor for research is RESEARCH IS A JOURNEY. This concept mainly finds linguistic expression through navigation metaphors: following a map; being lost; finding one's way. The journey metaphor conceptualizes the experience of research as a voyage through the unknown fraught with dangers and detours for the unwary traveler. Consider this wonderful example:

Early seafarers were justifiably frightened of terra incognita. Maps covered known areas; unknown areas were marked "Here there be dragons." Perhaps some legal researchers feel similarly. One of us remembers with pain the securities assignment she had as a summer associate—she might as well have been *sailing without chart or compass* for all she knew about securities terminology and sources. But, happily, researchers seldom need to *venture into territory that is totally unexplored*. Others have *explored* most areas of legal research and have left behind *signposts and maps to guide* those who follow.⁴⁰

While this passage makes clear that the authors are consciously deploying a linguistic metaphor to conceptualize research, many other descriptions of research are less explicit, potentially hiding the journey metaphor. Thus, writers refer to researching "the appropriate *universe* of relevant cases" or in "*familiar territory*."⁴¹

General advice about research calls on the journey metaphor both in describing challenges and proposing solutions to those challenges. Research challenges arise when researchers cannot find sources "*pointing in the right direction*."⁴² A researcher who feels as if she has "reached a

40 Peggy Roebuck Jarrett & Mary Whisner, "Here There Be Dragons": How to Do Research in an Area You Know Nothing About, 6 PERSP.: TEACHING LEGAL RES. & WRITING 74, 74 (1998) (emphasis added). *Perspectives: Teaching Legal Research and Writing* is a publication focused on teaching ideas for legal research and writing.

41 Jo Anne Durako, *Building Confidence and Competence in Legal Research Skills: Step by Step*, 5 PERSP.: TEACHING LEGAL RES. & WRITING 87, 91 (1997) (emphasis added).

42 Marsha L. Baum, *Ten Tips for Moving Beyond the Brick Wall in the Legal Research Process*, 10 PERSP.: TEACHING LEGAL RES. & WRITING 20, 20 (2001) (emphasis added).

dead end and cannot determine the *next step* to take” may have “reached the *end of the research trail*” and have no need to pursue a “*secondary route*.”⁴³ A common research frustration is feeling as though one has “*hit a ‘brick wall’ . . . and see[s] no other avenue to take*.”⁴⁴ Novice researchers are cautioned not to “*get sidetracked*”⁴⁵ so that they “*avoid getting lost* in the vast array of information.”⁴⁶

Advice about specific research practices similarly incorporates the idea that RESEARCH IS A JOURNEY. For instance, an online table of contents may be harder “*to navigate*” than a print version. A researcher may have to follow multiple steps “*to arrive at the desired destination*,” increasing the chance that he “*will lose track of where [he is] along the way*.”⁴⁷ Conducting case research with a state digest “*almost always gets us in the right neighborhood*.”⁴⁸ These are just a few examples illustrating the ubiquity of the metaphor.

RESEARCH IS EXCAVATION is a second common conceptual metaphor used to describe and understand legal research. This metaphor finds linguistic expression through images of digging: mining for gold or precious gems; or “*unearth[ing] those fossils* of prior disputes that are legal opinions.”⁴⁹ This metaphor captures the notion of searching deeply for treasure and conveys a sense of the excitement of discovery:

The process of legal research is often compared to a *treasure hunt*—the search for *that special gem that will bring the researcher wealth and happiness if found*. Of course, no *treasure hunt* will be successful unless the students know what they are seeking. . . . Once they appreciate the precedential *value* of primary authorities, then and only then can they enjoy *the excitement of the hunt and the thrill of the find*.⁵⁰

Most references to excavation are not as direct as the example above. Though incorporating the same concept, the actual expression often hides

43 *Id.* at 21 (emphasis added).

44 *Id.* at 20 (emphasis added); *see also* Durako, *supra* note 41, at 88 (describing “dead ends” in research).

45 Baum, *supra* note 42 (emphasis added).

46 *Id.* (emphasis added).

47 Patrick Meyer, *Think Before You Type: Observations of an Online Researcher*, 13 PERSP.: TEACHING LEGAL RES. & WRITING 19, 21 (2004) (emphasis added).

48 Judy Meadows & Kay Todd, *Our Question—Your Answers*, 9 PERSP.: TEACHING LEGAL RES. & WRITING 16, 16 (2000) (emphasis added).

49 Olivia Farrar & A.G. Harmon, *Lawyering Outside Lawsuits: Incorporating Negotiations, Settlements, and Mediations into the Legal Writing Curriculum*, 19 PERSP.: TEACHING LEGAL RES. & WRITING 42 (2010) (emphasis added).

50 Donald J. Dunn, *Why We Should Teach Primary Material First*, 8 PERSP.: TEACHING LEGAL RES. & WRITING 10, 11 (1999) (emphasis added); *see also* Mary Dunnewold, *How Many Cases Do I Need?*, 10 PERSP.: TEACHING LEGAL RES. & WRITING 10, 10 (2001) (discussing precedent “*unearthed*” in research (emphasis added)).

its metaphorical quality. For example, we “*drill down* from broader to more specific topics.”⁵¹ We describe specific sources as “*gold mines of information*.”⁵² Additionally, images of research results as gems abound. An inquiry “*nets research gems*”⁵³ or “*gems of information*.”⁵⁴ Publishers “*include little gems of information*.”⁵⁵

The third and final dominant metaphor used today to conceptualize legal research is RESEARCH IS ACQUISITION. The acquisition concept concerns collecting materials and reaping the rewards of labor. This concept often surfaces through two sub-metaphors—*harvest* (gathering the fruits of one’s work in the fields) and *shopping* (buying things from a store). Both sub-metaphors express different aspects of the general concept of RESEARCH IS ACQUISITION.

The harvest motif finds typical expression in an article entitled *Harvesting Relevant Cases on Lexis and Westlaw: Comparing Results*.⁵⁶ “*Yield*”⁵⁷ is a virtually universal term used to describe research results: “Don’t assume that following a headnote from one case in one system will *yield* all the relevant cases. Use many *seed* cases.”⁵⁸ Gathering is another consistent image, illustrated by references to “*collecting a wide array of*

51 Joanne Dugan, *Choosing the Right Tool for Internet Searching: Search Engines vs. Directories*, 14 PERSP.: TEACHING LEGAL RES. & WRITING 111, 113 (2006) (emphasis added).

52 Jarrett & Whisner, *supra* note 40 (emphasis added).

53 Susan King & Ruth Anne Robbins, *Creating New Learning Experiences Through Collaborations Between Law Librarians and Legal Writing Faculty*, 11 PERSP.: TEACHING LEGAL RES. & WRITING 110, 112 (2003) (emphasis added).

54 Dugan, *supra* note 51 (emphasis added).

55 Ellen M. Callinan, *Legal Research and the Summer Job . . . Advice from the Law Firm*, 7 PERSP.: TEACHING LEGAL RES. & WRITING 110, 114 (1999) (emphasis added).

56 Mary Whisner, *Harvesting Relevant Cases on Lexis and Westlaw: Comparing Results*, 20 PERSP.: TEACHING LEGAL RES. & WRITING 31 (2011).

57 Susan Hanley Kosse & David T. ButleRitchie, *Putting One Foot in Front of the Other: The Importance of Teaching Text-Based Research Before Exposing Students to Computer-Assisted Legal Research*, 9 PERSP.: TEACHING LEGAL RES. & WRITING 69, 69 (2001) (noting that print and online research *yield* different information); Ellie Margolis & Kristen Murray, *Teaching Research Using an Information Literacy Paradigm*, 22 PERSP.: TEACHING LEGAL RES. & WRITING 101, 105 (2014) (noting that, with new search engines, “even a poorly constructed search will *yield* something” (emphasis added)); Steven R. Miller, *Teaching Advanced Electronic Legal Research for the Modern Practice of Law*, 9 PERSP.: TEACHING LEGAL RES. & WRITING 120, 122 (2001) (describing an assignment with the goal of forcing “students to think of what resources would *yield* the text of local ordinances” (emphasis added)); Ronald E. Wheeler, *Teaching WestlawNext: Next Steps for Teachers of Legal Research*, 21 PERSP.: TEACHING LEGAL RES. & WRITING 127, 129 (2013) (comparing a search that “*yields* over 5,000 results from 12 different sources” with one that “*yields* only 51 results” (emphasis added)).

58 Whisner, *supra* note 56, at 31 (emphasis added).

resources.”⁵⁹ Fruit, fruitfulness, and fruitlessness are common themes as well. Lawyers communicate “*the fruits of their research.*”⁶⁰ Use of a legal dictionary can prevent a “few hours of *fruitless* research.”⁶¹

By contrast, images of shopping suggest a more urban-focused take on the RESEARCH IS ACQUISITION concept. Harvest contemplates starting from something small (a seed) that grows into something larger (fruit). Shopping represents choosing from among a selection of pre-stocked items. Still, both metaphors reflect the notion of adding through acquisition. Loose-leaf services are described as offering “*one-stop shopping.*”⁶² Other sources may also be described as providing “*one-stop-shopping,*”⁶³ and the idea of research as a consumer shopping experience has been explored elsewhere.⁶⁴

At their core, excavation and acquisition metaphors both conceptualize research as starting with nothing and then expending effort—in mines, on farms, or in stores—to locate something unique and valuable. We note that these metaphors can successfully join with the navigation metaphor. Consider the following description of a student research assignment:

I had resisted the temptation to conduct preliminary research so that I knew what students would find and could direct them more easily to *fruitful paths*. I wanted students to experience the sense of *disorientation* and possibility that comes when a legal professional receives an open-ended, collaborative assignment and must, working with a group, choose and prioritize *research paths*.⁶⁵

This particular mixing of linguistic metaphors manifests the underlying concept of research as journey of acquisition. It thus helps clarify that research is not merely a touristic kind of sightseeing journey. Neither is research an exercise in window-shopping. It is an activity

59 Debora Person, *Using Rule 11 Sanctions to Persuade First-Year Students to Focus on Legal Research*, 18 PERSP.: TEACHING LEGAL RES. & WRITING 143, 144 (2010) (emphasis added); see also Callinan, *supra* note 55, at 113 (discussing research strategy built “around the information you collect” (emphasis added)).

60 Charles Calleros, *Traditional Office Memoranda and E-mail Memos, in Practice and in the First Semester*, 21 PERSP.: TEACHING LEGAL RES. & WRITING 105, 106 (2013) (emphasis added); see also *id.* at 105 (defining an e-mail memo as a streamlined “presentation of legal analysis—or at least *the fruits of legal research*” (emphasis added)).

61 Teresa C. Stanton, *Finding Foreign Law: It’s Not Just for the Experts*, 16 PERSP.: TEACHING LEGAL RES. & WRITING 37, 37 (2007) (emphasis added).

62 Meadows & Todd, *supra* note 48, at 17 (emphasis added).

63 Stanton, *supra* note 61, at 39 (emphasis added) (describing the World Legal Information Institute (WorldLII) as “practically a *one-stop-shopping* site”).

64 See Amy E. Sloan, *Step Right Up: Using Consumer Decision Making Theory to Teach Research Process in the Electronic Age*, 60 S.C. L. REV. 123 (2008).

65 Tom Cobb, *Public Interest Research, Collaboration, and the Promise of Wikis*, 16 PERSP.: TEACHING LEGAL RES. & WRITING 1, 4–5 (2007) (emphasis added).

undertaken to achieve tangible results necessary to complete lawyering tasks.

III. WINESKINS BURST: WHY CURRENT METAPHORS FAIL

Do our current metaphors for legal research still conceptualize the process accurately? The short answer to this question is “yes and no.” To understand why, recall that the conceptual metaphors identified above—RESEARCH IS A JOURNEY, RESEARCH IS EXCAVATION, RESEARCH IS ACQUISITION—all have direct origins in physical experience. To the extent that those experiences still have meaning, the traditional metaphors aid our understanding. But to the extent that technology has fundamentally changed what research is, the traditional metaphors must give way.

The journey metaphor once reflected the visceral experience of research as physical, linear movement. Though now a distant memory for some, the practice up until the dawn of the twenty-first century required researchers literally to journey through labyrinthine stacks to locate information. Even non-print research required physical movement through spatially separated destinations. In the early days, users needed to walk to special terminals in the library to conduct online searches.⁶⁶ Success in this environment required mapping out sources that were likely to have useful information, plotting a path through the sources in a particular order, and trying to avoid detours into irrelevant or out-of-date sources.

The excavation and acquisition metaphors similarly emerged from empirical experience. A researcher faced with a legal problem began with no information—an empty folder in her hands. She would then gather sources (in print and/or online) and “dig” by reading the content. She could “shop” for information with a loose-leaf service bringing together multiple authorities in a specific area of the law. Or she could go to the “store” (the library or online) and select from among a range of documents. Importantly, such digging and acquiring was expensive both in terms of time and money. Lifting books off library shelves took precious time. Making copies of such treasures required money.

Times have changed.

Technology has fundamentally altered how we do research. Trips to the library are no longer required for most research tasks. Spatially, information is at our fingertips—accessible through a desktop, a laptop, a tablet, or a phone. We don’t even have to get out of our chairs. Linear movement is no longer required.

⁶⁶ For more on the transition from print to online legal research, see generally Carol M. Bast & Ransford C. Pyle, *Legal Research in the Computer Age: A Paradigm Shift?*, 93 LAW LIBR. J. 285 (2001); Thomas Keefe, *Teaching Legal Research from the Inside Out*, 97 LAW LIBR. J. 117 (2005); Theodore A. Potter, *A New Twist on an Old Plot: Legal Research Is a Strategy, Not a Format*, 92 LAW LIBR. J. 287 (2000).

Moreover, the foundational knowledge needed for a person to acquire legal information has changed. Research used to require some understanding of the hierarchy and structure of the law to select a proper *source* to search.⁶⁷ Now powerful search engines can search *everything* at once. These days, almost no physical effort or time is required to identify pages and pages of legal content. Further, text is now hypertext. We can connect documents in myriad individualized ways, not only through pre-established linear steps. This has substantially undermined the literal bases for the (traditionally understood) journey metaphor.

Technology has likewise undermined the literal bases for the excavation and acquisition metaphors. The reality of today's online ecosystems means that information is no longer hidden, scarce, or expensive to collect. Information is accessible and plentiful. Hypertext allows us to connect and navigate complex networks of documents with ease. And practically limitless cloud-based storage makes all of this information virtually free to save and keep.

The overriding challenge today is limiting this vast universe of cheap results.

We can use fee-based specialized services like Lexis and Westlaw, stripped-down, less expensive services like FastCase, or even completely free services like Google that offer large volumes of legal information to anyone.⁶⁸ Yet although potential researchers need not know anything about the law or have money to spend before they can acquire legal information, research in today's environment is not necessarily easier or more reliable. Content without context is useless. Information overwhelms us, and we struggle to sort what is useful from what is not.

It is thus apparent that technology has undermined traditional research metaphors. Because key aspects of these metaphors no longer resonate, we must both repurpose the traditional metaphors (where possible) and identify new metaphors to better facilitate conceptual understanding of the research process, as it actually exists today.

⁶⁷ This baseline "knowledge of source" applied equally to print sources and early online databases. Though Westlaw and Lexis now use a Google-like search bar, prior versions limited searches to particular sources of law.

⁶⁸ The following are just a few examples of websites that provide free access to legal information: *Legal Information Institute*, CORNELL UNIV. LAW SCH., <https://www.law.cornell.edu/> (last visited Sept. 15, 2016); *Caselaw Access Project*, THE HARVARD LAW SCH. LIBRARY, <http://lil.law.harvard.edu/projects/caselaw-access-project> (last visited Sept. 23, 2016); FREE LAW PROJECT, <https://free.law/> (last visited Sept. 15, 2016); COURT LISTENER, <https://www.courtlistener.com/> (last visited Sept. 15, 2016); CASETEXT, <https://casetext.com/> (last visited Sept. 15, 2016); FINDLAW, <http://www.findlaw.com/> (last visited Sept. 15, 2016); WIKIPEDIA, <https://www.wikipedia.org/> (last visited Sept. 15, 2016).

IV. REIMAGINING THE RESEARCH JOURNEY

Does any conceptual vitality remain in the current metaphors for legal research? Or has technology completely rendered old concepts obsolete? In our view, only one traditional metaphor—RESEARCH IS A JOURNEY—retains appeal, and then only if it is reimagined. On the other hand, RESEARCH IS EXCAVATION and ACQUISITION have been irretrievably undermined by technology. These metaphors now mask more than they reveal about the process of research and should be set aside.

RESEARCH IS A JOURNEY resonates still because research remains a voyage of discovery. Yet the particular type of journey imagined by the traditional metaphor no longer represents the actual experience of the modern researcher. In the traditional metaphor, the unplanned journey was likened to wandering in the wilderness, sailing without a compass, heading out on a trail into open space.⁶⁹ To overcome these obstacles, the savvy researcher knew the importance of picking a very specific path toward her destination. More often than not, this path was linear. Researchers risked getting lost by wandering off trail and venturing into uncharted and potentially uninhabited territory.

Today's research journey unfolds differently, and so the metaphor needs reimagining. We now look for information in extremely crowded landscapes rather than in wild, open spaces. We don't traipse on foot through unexplored territory so much as inch through congested traffic in our cars—or perhaps speed along information superhighways, bypassing large swaths of territory instantaneously. Since hyperlinks have opened up countless new routes to our destination, we no longer need to follow a single, linear path to get where we want to go. Nevertheless, we can still get lost. Forget the wilderness; we should now fear the confusion that results from wrong turns in frenetic cities with their dense and tangled alleyways.

We thus propose to reimagine our research journey as one through a crowded city rather than an open landscape. This creates new resonance for the original metaphor. Exploring this new city-journey metaphor in turn helps us re-conceptualize the challenges of the modern research journey.

Consider first the promise and pitfall of modern legal search engines that do not require users to choose a specific source to search. In one sense, typing a legal search without specifying a source resembles plugging an address into Google Maps without knowing which city we're navigating. Google Maps will inevitably pull up something, but we could end up far from the place we want to be.⁷⁰ Similarly, the information

⁶⁹ See *supra* notes 40–48 and accompanying text.

⁷⁰ This basic scenario recently occurred in Iceland after an American tourist mistyped a single letter in his Global Positioning System (GPS); he ended up travelling six hours over

retrieved by legal search engines can lead us astray if we don't properly understand its context. Users may be able to conduct searches without foundational knowledge of the legal system's structures and hierarchies, but uninformed users risk getting lost in their results.

Parallels also exist between our understanding of legal-research technology and our understanding of physical-navigation devices. Today's search engines "drive" our research, but those of us who lack advanced degrees in computer science cannot fully understand how these search algorithms work.⁷¹ This may unnerve lawyers who want total control over their research, but it is really no different from the way we interact with Global Positioning System (GPS) devices. We enter addresses and follow without any clue as to how our *smart* phones choose the routes they suggest. Our modes of research and navigation both leverage technology whose intricacies are beyond our ken.

Associating RESEARCH IS A JOURNEY with a different kind of trip thus infuses the old metaphor with new relevance. The trip-through-a-crowded-city reimagining both better reflects our contemporary experience of research and improves the metaphor's potential as a teaching tool. It is therefore worthwhile to bring this metacognition to the metaphor.

Alas, the RESEARCH IS EXCAVATION and ACQUISITION metaphors are not so effectively reimagined. The fundamental nothing-to-something orientation of these metaphors makes them inadequate for conceptualizing research in an age of overwhelming information. In our view, the excavation and acquisition metaphors are tightly tethered to the physical experience and time and money expenses that old-time research entailed.⁷² Instead, we need new metaphors to effectively represent the process of narrowing vast quantities of information.⁷³

icy roads to a remote part of the island and became a minor celebrity in the process. *See* Dan Bilefsky, *GPS Mix-Up Brings Wrong Turn, and Celebrity, to an American in Iceland*, N.Y. TIMES (Feb. 4, 2016), <http://www.nytimes.com/2016/02/05/world/europe/iceland-american-tourist-gps.html>.

⁷¹ *See* Bob Berring, *Legal Research Training's End*, SLAW (Oct. 31, 2011), <http://www.slaw.ca/2011/10/31/legal-research-training%e2%80%99s-end/> (comparing the expectation that researchers will understand how today's legal search engines work to expecting drivers to understand how a car's engine works); *see also* SLOAN, BASIC LEGAL RESEARCH, *supra* note 8, at 268–79 (discussing variations in search results based on search algorithms).

⁷² Though it is theoretically possible to reorient the excavation and harvest metaphors to account for the quantities of information that researchers encounter today—imagine panning for gold to separate the valuable nuggets from dross; separating the wheat from the chaff—these attempts ultimately fall short. Unlike re-envisioning the journey that research represents, repurposing the excavation and acquisition metaphors requires us to focus on small subsets of what these literal activities entail and to ignore much of what these metaphors represent. Instead, new metaphors can better capture the idea of filtering suggested by “panning for gold” or “separating wheat from chaff.”

⁷³ *See infra* notes 74–81 and accompanying text.

V. INTRODUCING NEW METAPHORS

New metaphors for legal research must conceptualize the non-linear ways we access and manage overwhelming quantities of information. At the same time, new metaphors should retain those aspects of the traditional metaphors that continue to resonate. We suggest three possible new conceptual metaphors that meet these criteria: RESEARCH IS FILTERING, RESEARCH IS CONVERSATION, and RESEARCH IS DANCING.

RESEARCH IS FILTERING avoids the linear and spatial difficulties of the traditional journey metaphor without rejecting the concept of learning something new. This metaphor also reverses outmoded notions underlying excavation and acquisition because filtering focuses on eliminating irrelevant information rather than collecting something from nothing.

RESEARCH IS FILTERING effectively frames the contemporary process of narrowing volumes of legal information down to the subset necessary to answer a legal question. Filtering can take different forms. Pre-search filtering occurs when a researcher selects a jurisdiction before executing a search to limit the scope of information retrieved.⁷⁴ Alternatively (or additionally), filtering can occur post-search. After obtaining information, the savvy researcher filters out irrelevant materials to focus on the most factually relevant, most authoritative sources.⁷⁵

Framing the process this way makes clear that the more effective the pre-filtering, the less post-search filtering the researcher will have to do. Conversely, less effective pre-filtering (perhaps rooted in the researcher's own lack of prior knowledge about the law at issue) will require additional labor through post-search filtering.⁷⁶ Importantly, the filtering metaphor does not suggest that research requires following a rigid series of steps. Instead, the metaphor implies a range of choices (some perhaps better than others) from which the researcher can choose to filter (either pre- or post-search) to reduce the quantity of information available to the relevant subset.⁷⁷

RESEARCH IS CONVERSATION provides a different metaphor that also avoids linear imagery while capturing the notions of an abundance of information and of learning something new. In this conception, doing research is like going into a room (or entering a chat) with many ongoing

74 See CYNTHIA F. ADCKOCK ET AL., BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 118 (Deborah Maranville et al. eds., 2015); SLOAN, BASIC LEGAL RESEARCH, *supra* note 8, at 37; SLOAN, RESEARCHING THE LAW, *supra* note 8, at 27–33.

75 See ADCKOCK ET AL., *supra* note 74, at 118; SLOAN, BASIC LEGAL RESEARCH, *supra* note 8, at 264–65; SLOAN, RESEARCHING THE LAW, *supra* note 8, at 46–48.

76 See ADCKOCK ET AL., *supra* note 74; SLOAN, BASIC LEGAL RESEARCH, *supra* note 8, at 38–41; SLOAN, RESEARCHING THE LAW, *supra* note 8, at 28, 46–47.

77 See ADCKOCK ET AL., *supra* note 74, at 117–19; SLOAN, BASIC LEGAL RESEARCH, *supra* note 8, at 33–41; SLOAN, RESEARCHING THE LAW, *supra* note 8, at 28–29.

conversations. The researcher must listen carefully to distinguish background noise from substantive discussion. The researcher can do this by listening to the most authoritative speakers or those whose conversation most closely addresses the subject of the research.

One particularly appealing aspect of the conversation metaphor is how it suggests that researchers will hear many *voices*. Expert researchers today recognize the potentially immense value of searching beyond primary authority and traditional secondary sources. Technology makes new sources available—briefs and other court documents; blogs; information posted by law firms, organizations, or individuals; Wikipedia; and crowd-sourced content such as that provided by CaseText, to name just a few. With so many voices offering views on the law, a researcher must listen carefully to determine how much attention to give to any given speaker.

Assessing the credibility and authoritative value of source material has long been a foundational skill in legal research, but it is an especially important task given the ubiquity of information today.⁷⁸ By reflecting that aspect of research process, the conversation metaphor provides fodder for research instruction and an apt frame for further thinking about contemporary research challenges and opportunities. Just as conversation invites a participant to listen and speak, today's environment allows researchers to find information and make their findings available to others by posting on blogs or participating in crowd-sourced cite-checking ventures.⁷⁹ The conversation metaphor recognizes the interactive and social aspects of research process today.

RESEARCH IS DANCING is a third possible new conceptual metaphor. It avoids the linear nature of the navigation metaphor and rightly emphasizes research as an iterative process. Like dancing, research is not a regimented march to a predetermined endpoint. Rather, research involves a series of overlapping steps that create a pattern. Certain basic moves are critical, repetition is necessary, but imagination is also important.⁸⁰ The dancing metaphor also frames the way today's researchers must follow links and move from item to item online to identify relevant information—by incorporating the notion of orderly, yet flexible, movement. Whereas the idea of “jumping” from source to source can seem random or disorganized, a dance, while fluid, still has a discernable structure.

78 See ADCOCK ET AL., *supra* note 74, at 119 (citing Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 131 (2012) (criticizing students' ability to effectively evaluate the weight of authority)).

79 See *WeCite*, CASETEXT, <https://casetext.com/about/wecite> (last visited Sept. 7, 2016) (WeCite is a community-sourced citator tool that helps explain relationships between various cases.).

80 See SLOAN, *RESEARCHING THE LAW*, *supra* note 8, at 6–7.

The dancing metaphor boasts special resonance in the context of teaching research. If students experience research instruction as dictating a rigid series of steps that do not fit with every research situation, they may reject their instruction as unrealistic or unhelpful. Students can also experience research as chaotic, feeling as though they found useful information by accident rather than design.⁸¹ Reframing the process through RESEARCH IS DANCING has the potential to inspire greater confidence. By reflecting a flexible yet orderly motion, the dance metaphor captures both the skill and the artistry of effective research. It also suggests that with practice and repetition, students can get the swing of it.

Of course, RESEARCH IS FILTERING, RESEARCH IS CONVERSATION, and RESEARCH IS DANCING are not the only metaphors that might help us conceptualize research. And neither is any one of these metaphors beyond critique. However, we see these metaphors as fundamentally useful ways to reconceive the research landscape in light of changes wrought by technology. Though not perfect, the filtering, conversation, and dancing metaphors work in tandem to create a well-rounded understanding of research process. Together, they form new wineskins better suited to hold the wine of today's research process.

CONCLUSION

What can our inquiry into legal research metaphors teach us about the concept of law? This Essay has surfaced unwarranted assumptions embedded in legal research metaphors; we now suggest that a key overlapping metaphor for law is similarly outmoded. As we have shown, the dominant metaphors RESEARCH IS A JOURNEY, RESEARCH IS EXCAVATION, and RESEARCH IS ACQUISITION incorrectly conceive of research as a linear process where legal information is hidden and scarce. This Conclusion argues that the same obsolete assumptions plague an overlapping metaphor for law—LAW IS TEXT.

To unpack this conclusion and its implications, consider first how LAW IS TEXT overlaps with metaphors for legal research. Our explanation starts with the observation that legal research typically has “law” as its object. In other words, researchers typically seek “the law” or perhaps “the best law for my client.” This can be expressed as the conceptual metaphor LAW IS WHAT LEGAL RESEARCH REVEALS. Anybody who has ever conducted real-world legal research has literally experienced this concept.

Similarly, anyone who has ever conducted real-world legal research has literally experienced the conceptual metaphor LAW IS TEXT because “what legal research reveals” is *text*. Of course, researchers may call this

⁸¹ Everyone appreciates a lucky break while doing research, but we should never teach students that RESEARCH IS A GAMBLE.

text a statute, treaty, constitution, opinion, or some other authority. Yet, whether saved online or inscribed in stone, all these *sources* of law and commentary are committed to text. LAW IS TEXT is thus an essentially positivist conceptual metaphor. It expresses the primary idea that *positive law* is “the Word.” Given that legal research inherently seeks positive law, LAW IS TEXT overlaps conceptually with LAW IS WHAT RESEARCH REVEALS.

This metaphorical overlap has jurisprudential implications for our concept of law. We can draw out these implications in two steps. First, we apply this Essay’s findings regarding outmoded assumptions embedded in research metaphors—linearity, obscurity, and scarcity—to the object of legal research. This suggests three metaphors:

TEXT IS LINEAR

TEXT IS HIDDEN

TEXT IS SCARCE

Then, the second step applies a simple transitive logic. Because LAW IS TEXT,

∴ LAW IS LINEAR

∴ LAW IS HIDDEN

∴ LAW IS SCARCE

Note that we do not claim that these metaphors for law are either “true” or “false.” Instead, our logic suggests that these assumptions get “baked into” our understanding of law at the conceptual level. Given that many lawyers (and law students, professors, judges, and so forth) experience *what law is* through research, the hidden assumptions about research get baked into our concept of positive law.

Now, LAW IS LINEAR, LAW IS HIDDEN, and LAW IS SCARCE do make sense when viewed from a historical perspective. Early law had an unquestionably hierarchical nature—it flowed *in a line* from ruler to ruled. Likewise, law clearly evolved as an elite discourse for those *privileged few* who could read and write and access the rarefied world of law books. The literal Word was *hidden* from most.⁸² Even today, the law retains the elite and mysterious nature suggested by these metaphors. As a quick example, imagine an average person (or lawyer!) reading an impenetrable cell phone contract. This person certainly experiences that LAW IS HIDDEN.

What about technology? If technology challenges assumptions in our metaphors for research, does technology also challenge our metaphors for law? Now that research is non-linear and information is cheap and easy to access, does our concept of law itself need to change?

Alas, the situation here is complicated. Our concept of law is not univocal—we actually have different concepts of law. Put another way,

⁸² See Amy E. Sloan, *The 95 Theses: Legal Research in the Internet Age*, 20 J. LEGAL WRITING INST. 45 (2015).

LAW IS TEXT is hardly the only conceptual metaphor for law in legal discourse. Complications arise because technology has not affected all conceptual metaphors equally or at all. Consider just two alternative metaphors (we can imagine more): LAW IS AUTHORITY and LAW IS A GAME. While technology may have affected the nature of law's authority and/or the rules of law's game, it is far beyond the scope of this Essay to scrutinize those effects. We therefore cannot make categorical statements about how technology challenges our concept(s) of law. It is clear, on the other hand, that the nature of LAW IS TEXT has changed. At the very least, our concept of *positive law* should account for this change.

It is tempting to imagine the change wrought by technology as making positive law less rigidly hierarchical, elite, and mysterious. Now that modern research permits non-linear movement through instantly accessible legal sources, the text of law itself may "feel" more open. With legal information now freely available, the positive law may seem more democratic. However appealing, these intuitions about technology's impact on our concept of positive law do not accord with experience.

Recall our hypothetical person struggling to understand a dense cell phone contract. Just because law's text is now easier to access doesn't mean that it is now easier to understand. Technology may have opened up law's text to the multitude, but technology alone cannot explain what the text says or how it is interpreted by those initiated into the lawyering class. As we have shown with research, technology has created problems too. To reiterate an earlier point, content without context is useless. Abundant, cheap information now overwhelms us, and even accomplished lawyers struggle to sort what is useful from what is not. The elite and mysterious nature of law persists.

Nevertheless, we should not be discouraged. Law may not yet be as democratic and open as we would like it to be, but still we can reflect upon law to reimagine basic concepts. Just as we have reoriented metaphors to advance our understanding of research, so too can we reimagine law to better serve freedom and equality. Conceptual metaphor theory reminds us that we can consciously change our traditions and our ideas. We can make both new wine and new wineskins.