Introduction

It is a well-known fact that law professors tend to have their own philosophy, psychology, sociology, and what not, more or less reasonable but certainly not professionally sophisticated (Peczenik, 1997, p. 142).

This book and my interest in metaphors are not accidental. They are a direct consequence of my earlier work. My research on the incommensurability of values, which I did several years ago (Wojtczak, 2010), left me with a feeling of marvel about the phenomenon of the human ability to take decisions, which has been a constant source of amazement for me ever since. There are several different theories and methods put forward by different authors with the aim to demonstrate how it is possible for a human being to come to a decision when the given options and their respective values are often incommensurable. None of the available models has proved to be entirely convincing for me. Another facet of the same – in my opinion – problem is that human beings are able to communicate with each other despite the inescapable vagueness of language, despite the fact that language is always underdetermined. The combination, and at the same time the culmination, of the two facets is the amazing fact that lawyers are able to interpret and apply the law with a significant degree of predictability in spite of its inevitable indeterminacy. It is a dilemma similar to Jørgensen's dilemma, which has bothered legal theorists so much and which shows that in theory we should not be able to do the thing that in reality we do successfully:

> So we have the following puzzle: According to a generally accepted definition of logical inference only sentences which are capable of being true or false can function as premises or conclusions in an inference; nevertheless it seems evident that a conclusion in the imperative mood may be drawn from two premises one of which or both of which are in the imperative mood. How is this puzzle to be dealt with? (Jørgensen, 1937, p. 290)

Having taken all these phenomena and questions together I started to suspect that this amazing set of plain human beings' and lawyers' abilities should not be a collective product of many specialized instruments or procedures (for example one aimed at linguistic problems, another aimed at logical problems, and still another devoted to the problem of values), but rather a set being part of a greater, more general, and to some extent unified cognitive mechanism.

This conviction was accompanied by the growing feeling that lawyers, especially legal scholars, should do something to adopt for their legal purposes the achievements of contemporary science, especially of cognitive science. Being an active academic teacher I am quite stalked by the prevision that some day after my lecture about pure linguistic interpretation being the boundary for systemic or functional interpretation, or a lecture about unbiased judicial cognition, some student (students are nowadays multidisciplinary and I teach students of law whose first academic degree was gained in a different discipline, e.g. in psychology) will openly tell me that everything I talked about was a lie or a medieval superstition. I naïvely imagine that in the same way judges should have nightmares of similar reaction on the part of the participants of a trial; if only judges knew to what degree their justifications can sometimes be contrary to the state-of-the-art knowledge that contemporary cognitive science has already gained. I am afraid that some of the traditional, widely accepted, and persistently maintained legal theories concerning legal interpretation, legal reasoning, or legal cognition of facts are nowadays in the position that could be identified with constant persistence that the Earth is flat.

At this point many legal scholars could say that my concern is useless and unjustified because cognitive science with its research field is relevant for the context of discovery related to decision taking, while legal sciences and legal practice are interested in the context of justification. After all I have actually heard criticism of that kind on more than one occasion up till now[1].

[1] About the reasons of lawyers' aversion to cognitive theory of conceptual metaphor see (Wojtczak, Witczak-Plisiecka, & Augustyn, 2017, pp. 11–18). Cf. A. Kaufmann about the taboos and silence on the subject of analogy (Kaufmann, 1966, p. 365).

In general scientific methodology and in the philosophy of science a differentiation between the context of discovery and the context of justification is frequently made. The distinction originates from Hans Reichenbach (although it is also sometimes attributed to Karl Popper) and from the beginning, that is at least since 1938, when his book *Experience and Prediction* was published, it has been widely discussed and reformulated in many ways. For legal sciences – differently than in natural sciences for example – the concept has double application: a classic one – for strictly scientific activity, and the other one – *per analogiam* – for legal (mainly judicial) decisions being later subjected to scientific research. This means that, at least potentially, both the context of discovery and the context of justification can be identified as subjects of legal sciences; it should be noted that it does not concern a scientific thesis, but only a legal decision – both the final one and every fractional decision leading to the final one (for example a decision of interpretation). However, many legal scholars, especially those of a more traditional stance, copying some positions taken within the philosophy of science, insist that for legal sciences (excluding young and still undervalued legal sociology or legal psychology) the context of discovery of a legal decision is of no significance. They deny that the context of discovery should have any importance because – according to them – the actual process of decision-making is inaccessible for truly scientific research (or for rational reconstruction), and legal decisions are products of intuition, which emerge on the basis of a sense of law, from legal pre-understanding, etc. (the source to be chosen depending on the assumed specific legal philosophical or theoretical concept)[2]. Such demurs are, in my opinion, founded on at least three important misconceptions. The first problem is both a mistaken understanding of the conception of the contexts, especially in its Reichenbachian version (which in its original frame fits the aims of legal sciences surprisingly well), and mixing it with the descriptive/normative dichotomy. The second mistake is the assumption that there is no necessary connection between the context of discovery and the context of justification. Finally, the third mistake

[2] There are of course legal scholars whose position is quite different, but their voices are neither very strong, nor influential. For more details see for example (Anderson, 1996).

is the conviction that the actual process of decision-making is entirely inaccessible for truly scientific research, or for rational reconstruction.

Let us start by elucidating the first and the second mistake. According to the reliable reconstruction of Reichenbach's conception presented by M. Aufrecht, for Reichenbach, the difference between external epistemic relations, which include the position and history of a given scientist in the world, and internal relations concerning the content of knowledge and the process of thinking (Reichenbach, 1961, pp. 3–4), was very important:

> Reichenbach distinguishes the sociologist, on one hand, from the psychologist and the philosopher, on the other. The sociologist studies external relations of knowledge, while the psychologist and the philosopher both study the *internal* relations of knowledge. For Reichenbach, philosophers and sociologists differ in *what* they study, while philosophers and psychologists study the same thing but differ in *how* they study it. Philosophers and psychologists emphasize different parts of thought processes (Aufrecht, 2010, p. 34).

Reichenbach establishes three tasks for philosophers of science: descriptive, critical, and advisory. And it is mainly the descriptive task where the differentiation between the context of discovery and the context of justification matters. This differentiation is in fact to be a tool for Reichenbach to explain his concept of rational reconstruction:

> If a more convenient determination of this concept of rational reconstruction is wanted, we might say that it corresponds to the form in which thinking processes are communicated to other persons instead of the form in which they are subjectively performed. The way, for instance, in which a mathematician publishes a new demonstration, or a physicist his logical reasoning in the foundation of a new theory, would almost correspond to our concept of rational reconstruction; and the well-known difference between the thinker's way of finding this theorem and his way of presenting it before a public may illustrate the difference in question. I shall introduce the terms *context of discovery and context of justification* to mark the distinction. Then we have to say that epistemology is only occupied in constructing the context of justification. But even the way of presenting scientific theories is only approximation to what we mean by the context of justification. Even in the written form scientific expositions do not always correspond to the exigencies of

> logic or suppress the traces of subjective motivation from which they started (Reichenbach, 1961, pp. 6–7).

Simultaneously, it should be remembered that for Reichenbach rational reconstruction cannot be independent of the actual process of thinking and the context of justification cannot be entirely different from the context of discovery:

> Epistemology does not regard the process of thinking in their actual occurrence […] Epistemology thus considers a logical substitute rather than real process. […] In spite of its being performed on a fictive construction, we must retain the notion of the descriptive task of epistemology. The construction to be given is not arbitrary; it is bound to actual thinking by the postulate of correspondence. […] But the tendency to remain in correspondence with actual thinking must be separated from tendency to obtain valid thinking […] It may even happen that the description of knowledge leads to the result that certain chains of thoughts, or operations, cannot be justified; in other words that even rational reconstruction contains unjustifiable chains, or that it is not possible to intercalate a justifiable chain between the starting-point and the issue of actual thinking. [...] [A]lthough description, as it is here meant, is not a copy of actual thinking but the construction of an equivalent, it is bound by the postulate of correspondence and may expose knowledge to criticism (Reichenbach, 1961, pp. 5–8).

Thus, if legal scholars use the concept of the two contexts for the purposes of determining the epistemological conditions of researching legal (judicial) decisions and they want to avoid the first and the second of the above mentioned mistakes, they should remember that:

1) written opinion on a legal decision cannot be directly identified with the context of justification;
2) the context of justification consists of reasons for a legal decision as they are and not as they should be.

Legal scholars should also remember that they use the concepts of the context of discovery or justification only *per analogiam*. Scientific statements are different from legal decisions not only because of their different logical status, but also because of the aim they are to serve.

That is why the criteria of rationality and the points essential for rational reconstruction of the supportive reasoning are different for either of them. Logical consistency is for legal decisions less important than being fair, while fairness is for science of no importance. If a legal decision is uncontroversially considered fair, no one would worry about its logical correctness, but even if a legal decision is logically correct it is often questioned on grounds of justice.

Let me now explain the mechanism of the third mistake. It is not true nowadays that the actual process of decision-making is entirely inaccessible for truly scientific research and rational reconstruction. The achievements of cognitive science, especially neuroscience, in researching the processing of the human mind and thinking are really impressive. Even if we cannot formulate reliable positive statements about the concrete course of thinking (that is by a concrete individual concerning concrete matter in a concrete moment), even if we cannot discover the actual way of thinking of a given judge while giving a concrete sentence, we can at least falsify certain statements about such thinking process in a way entirely fulfilling criteria accepted for natural sciences. For example, now we know for sure that for a human being it is impossible to exclude emotions from the process of decision-making and that it is impossible to be completely unbiased, and that we cannot exclude from the process of thinking the influence of our cultural identity, etc. (Damasio, 1994, 2000, 2003, 2010). Up till now the hypotheses of this kind were widely discussed in philosophy or in science, but because there was no hard evidence for them we (scientists, lawyers and others) could hope that they were false and that hope was nourished by us for a long time. We could expect or imagine that having fulfilled some severe conditions we, or at least some of us, God-like men – judges (or scientists), would reach the ideal of entire rationality and emotional neutrality; or that at least some of us could try and get close to these regulatory ideas. And now we have to face the dramatic dilemma: if we say that a judge should decide in an unbiased or unemotional manner, are we infringing the *impossibillium nulla est obligatio* principle? I do not believe any lawyer would agree. Something then should be changed. Even if we say that while speaking of neutrality; or objectivity of legal reasoning we, as a matter of fact, were talking about different things, we meant different propositions than those disqualified by cognitive science

(that we meant a different level of description for example), it does not let us leave the things untouched. If we are not to abandon our up-to-now-cherished views about the nature of legal (judicial) decision-making, we at least must change the language we speak. We must at least admit: "Yes, the Earth is a sphere from the cosmic perspective but from the perspective of a single human being it is flat" ("Yes, judges are not able to be completely unbiased and culturally neutral, but from the perspective of a great number of simple cases a certain kind of bias or a certain kind of emotion has no significant influence on the fairness of their decisions."). And then we must also admit that even from the perspective of a single human being the sphericity of the Earth may sometimes be important ("Yes, there are legal cases which are especially hard, or in which the decisions may not be completely fair due to the difficulty arising from irremovable cultural and cognitive limitations or emotional reactions of judges."). That means that legal scholars have no option but to conduct research into the context of discovery of legal decisions, even just in order to avoid false theses or to adjust their language to the language of contemporary science. They cannot maintain the present language justifying this convention by the features or the internal assumptions of the practice or the domain they are working in. For this practice or domain is not separate and autonomous in relation to other social practices and domains and it is not – in spite of the claims of some philosophers – the kingdom or empire or ownership, whose kings, princes or owners are judges or other lawyers.

Finally, I shall present the last and a completely different argument to support the claim of there being the necessity of researching the context of discovery of legal (judicial) decisions. R. Alexy, analysing general practical discourse of which a legal discourse is, according to him, a special case, states:

> (1.2 [Every speaker may only assert what he or she actually believes]) is constitutive of every linguistic communication. Without (1.2) it would not even be possible to lie, for in absence of the presupposition of a rule requiring sincerity, deception is inconceivable. (1.2) does not thereby exclude the utterance of conjectures; it only demands that they be marked out as such (Alexy, 1989, pp. 189–190).

And he treats such sincerity as something more than an assumption about (the nature of) communication, as it is usually treated by linguists. He treats it as a demand, rule or requirement which must be fulfilled if the discourse in question is to be rational. Thus, if we accept Alexian rules of rational practical discourse, we must consequently admit, that every legal decision-maker is required to believe the justification she gives. She must be convinced that the reasons of the decisions she states were really the reasons she actually took into consideration in the course of the decision-making. It means that there is a requirement to firmly connect the context of justification and the context of discovery. Thus, if one assumes that legal discourse should be rational and that legal discourse in our legal culture is rational, one cannot place this rationality within only one context – the context of justification. One must admit that the rationality of the context of justification must be derivative with respect to the context of discovery. The other, and quite different issue is the question of what kind of rationality is involved in such situations. Maybe the rationality present within the context of discovery is not exactly the same as the rationality we ascribed to our thinking process within the context of justification. Should the difference between the two kinds of rationality identified in both contexts appear too big, it could be a sign that our reconstruction of rationality made within the context of justification (though – or maybe because – it was performed earlier in the course of the history of ideas) was not very successful (cf. also (MacCormick, 2005, p. 208)).

Thus I wanted to research the actual thought process which reveals itself on the surface of justifications of legal decisions. Furthermore, I wanted to resolve at least partially the mysterious puzzle of our human ability to make acceptable decisions in situations where they are allegedly impossible: a puzzle of constant and statistically successful legal decision-making while law is indeterminate, the language of the law is vague, or values are incommensurable. However, at the same time, I do not believe that gaining some general all-in-one-explaining theory would be possible today. I believe in Thomas Nagel's position, expressed in the field of ethics but, in my opinion, being true in all areas of practical thought. This philosopher insists that:

> To look for a single general theory how to decide the right things to do is like looking for a single theory of how to decide what to

> believe. Such a progress as we made in the systematic justification and criticism of beliefs has not come mostly from general principles of reasoning but from the understanding of particular areas, marked out by the different sciences, by history, by mathematics […] [O]ne need not make progress at the most fundamental level to make progress at all. […] The lack of a general theory leads too easily to a false dichotomy: either fall back entirely on the unsystematic intuitive judgement of whoever has to make a decision, or else cook up a unified but artificial system […] What is needed instead is a mixed strategy, combining systematic results where these are applicable with less systematic judgments to fill in the gaps (Nagel, 1979, pp. 135–139).

That is why I did not have an imperial ambition to invent a general theory, which explains all the niggling questions troubling my and other legal scholars' minds in connection with the above-mentioned human ability. I looked for a concept, which – even if partial – could give the right direction to the quest. Some hope was given to me by cognitive linguistics, which – being focused on language – seemed to me the nearest to the problems legal scholars are concerned with. In this way a problem of cognitive conceptual metaphor has drawn my special attention, because of the close connection between metaphor and analogy. I consider analogy as a capital of a legal reasoning empire, whereas L. Berger considers both metaphor and analogy the sun and the moon of legal persuasion, pointing out that "providing comparison, categorization and perspective, they are our primary sources of generated and reflected light" (Berger, 2013).

I want to emphasise in advance very strongly that granting so significant a role in legal reasoning to analogy, I do not understand analogy in a very strict way as being an inferential operation where one norm is inferred from another, such as *analogia legis* or *analogia iuris*. My concept of legal reasoning is also wider and I do not believe that it only concerns performing inferential rules. I am of the opinion that analogy is present in almost every part of legal decision-making, even in the very act of choosing between settled options (general or partial), since we are predisposed to make choices similar to those that we have successfully made before. And I believe that the borderline between legal reasoning and legal interpretation is very faint. I would even dare to say that there is no border between legal reasoning and legal interpretation when they are made *in concreto*, that

is, for resolving a concrete case. Hermeneutics drew our attention to this phenomenon a long time ago. Arthur Kaufmann particularly insisted that the process of discovering the law is neither purely deductive nor purely inductive, but it is of mixed deductive-inductive character, and it is exactly this kind of reasoning that was called "analogy" by Aristotle. Kaufmann believed that law is not any substance, but a relation of correspondence between "ought" and "is" (Pomarici, 2003). It can be seen in Chapter V, but also in other chapters of this volume, that his position has strong support from the cognitive theory of metaphor.

Cognitive linguistics proved that figurative thinking, especially metaphor, is central for human cognition. The indispensable and wide role of conceptual metaphor in human cognition, being an instrument of conceptualization and reasoning, could not be less frequent in the legal sphere than in other spheres, not only because conceptualization is so important for legal reasoning, but also because the legal sphere is a sphere of abstract concepts and the language of law is an instrument of communicating solely the things that are abstract. The categories used by law and by the language of the law are not the same categories that are being used in everyday discourse and reasoning, even though they look similar. These categories are always legal categories. Even if it seems that a law refers to a very concrete, physical reality – real-world phenomena, things or actions – even if we use dictionary meanings or concepts while interpreting the law, these phenomena, entities, actions, meanings and concepts only look like ordinary ones; in fact they have been reconceptualized by the law. They are legal categories. They are abstract[3] in a special sense. And how is it possible to communicate the abstract? Cognitive linguistics insists that the only possible way to do that is by using metaphor or other figures of speech. The reason is that we do not have any direct access to any abstract reality. We do not have any additional sense to detect and experience the abstract. A simple way to realize this fact is a thought experiment consisting in closing one's eyes and trying to imagine some legal institution – for example a legal person, marriage, adoption,

[3] The argumentation for the thesis that legal concepts are abstract concepts, different from everyday concepts even if they look like them, shall be developed in Chapter V.

limitation of actions, etc. We can imagine only surface symptoms of the institution, but it is not possible to imagine the institution as such. General (or common, ordinary) language is full of metaphors – this is the basic thesis of cognitive linguistics. Certainly some of these general (common and ordinary) language metaphors are used to construct social institutions. But in general (or common, ordinary) language there are also expressions that have literal meanings which are absent from legal language or the texts of the law. Why? Because in this language one sometimes (or maybe quite often – it does not matter) speaks of physical phenomena, of things and actions; one can communicate experiential knowledge and can refer to a concrete domain. And this is something that does not ever happen in law. As a result law must use metaphors instead of literally understood utterances.

Cognitive linguistics draws our attention to an important aspect of human cognition, which can be seen both in the metaphoricity of our cognition and language, and in the legal domain. Due to the fact that human beings, as indicated above, do not possess any special sense to detect the abstract, they construct and construe abstract concepts by means of figurative thinking and language, mainly using metaphorical mapping as an indispensable and convenient tool, while utilizing at the same time their bodily experience as the fabric of the system. There is no other way to construct and construe abstract concepts but to build them on the basis of the widely understood knowledge[4] gained in the course of interactions between the human body and its external and internal milieu. According to the main thesis of cognitive science – the thesis of embodiment – our mind, cognition, culture, and, consequently, also law, are dependent on the fact that we are living creatures, mammals; on the fact that we have erect bodies, with the front and the back, standing on two legs, with two operational hands, with a movable head, with two eyes situated in front of our head and two ears on the sides, etc. One should observe that the shape of the body is quite a contingent fact and – just look

[4] "Widely understood knowledge" – this means both the knowledge that has been consciously gained and used and the knowledge that has been unconscious or automatically gained and used; the meaning of the phrase exceeds what can be propositionally accounted for and embraces elements such as skills, reflexes, etc.

like the cognitive concept of embodiment and Hart's minimum content of natural law coincide with each other (which cannot be accidental) – "things might have been, and might one day be, otherwise"[5] (Hart, 1994, p. 194). If we were bats our bodily experience would have been completely different and even if, *arguendo*, we had used exactly the same cognitive mechanisms, our conceptual world would have been completely different (Nagel, 1991). And, exactly in the same way, our legal world would have to change if we were, for example, turtles or other

> species of animals whose physical structure (including exoskeletons or a carapace) renders them virtually immune from attack by other members of their species and animals who have no organs enabling them to attack. If men were to lose their vulnerability to each other there would vanish one obvious reason for the most characteristic provision of law and morals: *Thou shalt not kill* (Hart, 1994, p. 194).

The next reason for which the cognitive theory of metaphor presents itself as suitable in the context of pursuing the goal that I set myself is the characteristic parallelism between metaphor and law. According to traditional view, metaphors are the tools of poetic or rhetoric speech, not suited for everyday use. They are products of imagination whereas imagination is absolutely free and, if used by a person gifted enough, is not necessarily determined by any external or internal limitations. In particular within the traditional view, imagination does not have to follow any externally or internally dependent routes. It cannot be crammed into any schemata. Imagination by its nature acts randomly. And – still describing the traditional position – metaphor has the same characteristics: its content, its form and its consequences are contingent, if not entirely random. If created by a person gifted enough there is no recognizable pattern in it (but – again a paradox of the same kind – these random products of imagination and these random metaphors are usually quite comprehensible and perceivable for others). Cognitive linguistics and its theory of metaphor, having its *grande entrée* in intellectual and scientific

[5] The technological development and posthumanistic trends make extreme bodily changes much more probable than they would be in Hart's time. We must be prepared for cognitive, cultural and legal changes appearing as inescapable consequences of such bodily modifications.

discourse with Lakoff and Johnson's *Metaphors We Live By*, have entirely undermined such assumptions. Lakoff and Johnson showed with a great degree of certainty that, firstly, metaphor is a tool used in all fields of human cognition and life, and that it is not an exclusive domain of poetry and rhetoric. Secondly, it was shown that imagination, though flexible and creative, is always limited by different factors, both of external and internal character, and that it does not act randomly but follows some regular and observable routes and schemata. Thirdly, metaphors, though not stable and universal, simultaneously are not random either. From inside metaphors are governed by attributes of the human body (the proper body and the brain together; both flesh and mind), from outside – by the culture and the social milieu of the authors of metaphors, and finally from the interface of the inside and the outside they are governed by the way the human body interacts with its external, natural and social milieu. Metaphors follow some quite well recognizable patterns, usually identifiable for a given culture, part of culture or a domain in a cross-cultural perspective. That is why there are metaphors common for one national culture or different linguistic areas or common for different, sometimes quite big, linguistic areas but only within certain domains, such as, for example law, or even shared within given domains independently from the language to which they belong. They change in the course of time in quite coherent or even predictable way.

And finally – still sketching the parallelism – as it has been mentioned before, legal sciences have always been bothered a lot by the amazing fact – the phenomenon that law is at the same time both determined and underdetermined. It is exactly this alleged paradox of simultaneous determinacy and indeterminacy of the law that makes many legal practitioners and legal scientists embarrassed and makes them look for outmost explanations of legal decisions – for example strictly formalistic ones (as in different applications of formal logic to law) or almost anarchical (as in some versions of American realism). If we, on the contrary, were to acknowledge the role and significance of imagination and metaphor in legal reasoning, the puzzle would be solved. The explanation can be the fact that they are cognitive tools which on the one hand let one refer to an unlimited range of contexts (current and future, concrete and abstract), and on the other hand that they are structured and do not act randomly.

The fact that imagination is very flexible but at the same time does not act randomly explains how it is possible that the results of its operations are both flexible (and heavily underdetermined) and intersubjective (thus, somehow determined). And such an explanation is valid also for the legal domain.

For the sake of clarity it should be mentioned that the present discussion is based on the achievements of cognitive linguistics and the theory of metaphor in Lakoff and Johnson's approach with some improvements added by their commentators and critics. However, such improvements will also be used in a limited way with the main concept being that metaphor is a cognitive tool founded on a relationship between two domains, the source and the target domain, created in the process of metaphorical mapping. I do not deny the explanatory power to such concepts as, for example, the idealized cognitive model, the semantic frame, blending theory, cognitive grammar, and so on, but firstly, I had to make some methodological choices and commitments. Secondly, making such choices I had to take into consideration that legal scholars and practitioners are strangers in the field of cognitive linguistics, that there had only been few trials of using this perspective in legal studies[6]. That is why I decided that at the beginning of the task the most reasonable strategy would be to use methods that are the simplest and the easiest to understand. Comparing my task with teaching and applying physics I would say that it is easier to teach and practically apply physics starting from classical mechanics than from quantum field theory. Thirdly, I made the choice being driven by the operational capability of the theory – I am convinced that for now the two-domain concept of the conceptual metaphor is the most efficient tool for analysing the texts of law and for showing practical consequences of such an analysis. This concept, thanks to its simplicity, lets us analyse a great number of texts and cases and to draw some general conclusions from such a research programme. Some of the linguistic material (coming from the Polish language of the law and legal language) and the results of such analysis performed within

[6] Here we should mention the works of Steven Winter, Stefan Larsson, Linda L. Berger, Haig Bosmajian, Milner S. Ball. There are more single papers about law and metaphor, but most of them would use the traditional concept of metaphor or would treat the law as a source of inspiration for literature or arts, or present the law as a source domain for some other non-legal target domains, such as ethics.

the project financed by the National Science Centre (Poland) granted pursuant to the decision no. DEC-2013/09/B/HS5/02529, are presented in Polish in a book by Sylwia Wojtczak, Iwona Witczak-Plisiecka and Rafał Augustyn, prepared and published concurrently and entitled *Metafory jako narzędzia rozumowania i poznania prawniczego w świetle ich manifestacji/ realizacji w polskim języku prawnym i prawniczym/ Metaphors as tools of legal reasoning and cognition in light of their manifestations/realizations in Polish language of the law and legal language*.

It is very important to emphasise just from the very beginning of the book that the idea of metaphor as used here is entirely different from the traditional one promoted in literature studies or rhetoric where metaphor is usually defined as a linguistic or a stylistic trope. It is also different from positions presented in certain branches of the philosophy of language, for example it is different from the stance taken by John Searle, who situates metaphor on the level of pragmatics and not semantics, treats metaphor as an aberrance from regular usage of language and, consequently, makes it difficult to differentiate between metaphor and indirect speech acts (Searle, 1993). It is noteworthy that there are many experimental proofs that the cognitive view of metaphors promoted here presents the actual mechanism of human cognition, while the Searlian view does not (Ortony, 1987).

It should also be emphasized here, in order to avoid confusion, that in none of the hypotheses put forward in the present discussion it is suggested or assumed that the law is approached here as a source of inspiration for literature or arts, or that attention is paid to the fact that the law can provide means for artistic imagery (e.g. as when in a painting God can be represented as a severe judge). Neither is it of interest to us here that the law can be a source domain for some other non-legal target domains, such as ethics (see comments on the "legal" metaphors such as "God's commandments are the law" or "Christ is both a judge and an advocate" – Krzeszowski, 1999, p. 80).

The structure of the book is as follows. Chapter I is devoted to the explanation of all the concepts and methods used in further analysis. By necessity it shall be in part an introduction to cognitive linguistics – a lecture on some basic concepts, well-known to linguists, but usually not known among lawyers and legal scholars. I will also explain in the first chapter some of my conceptual and methodological choices within the

legal sciences and relevant methodology wherever they seem not to be widely accepted or where they may even appear controversial. I assume that the future readers of the book will mainly be legal scholars and legal practitioners, and only to some limited extent – linguists. I believe that problems and questions considered in the book are relevant, interesting and understandable mainly for lawyers.

Chapter II, entitled *Metaphors in the texts of the law, in practice, and in jurisprudence*, is to show examples of metaphors in the texts of the binding law, in the opinions supporting court decisions, in legal monographs, etc. These examples will be shown with the analysis of their content and their linguistic manifestations originating from the actual texts. They are to prove to all lawyers who are often doubting Thomases that the language of the law and legal language are entirely metaphorical in nature. They also serve as an illustrative material to show how varied the role of a metaphor present in a linguistic image can be in such texts. The subject of the analysis is mainly the Polish binding law and current Polish legal dogmatics and jurisprudence, the language of the doctrine and of the judges.

Chapter III, entitled *Metaphors – their role in legal interpratation and legal reasoning*, is a kind of preface to the following two chapters. It comprises some explanation refering to the comprehensive role of metaphors in legal thinking.

Chapter IV, entitled *Metaphors and legal interpretation – meaning construction and reconstruction by means of metaphors*, provides the answer to the question of what kind of consequences for the concept and tools of interpretation *sensu stricto* can be inferred from the assumption of metaphoricity of legal language and of the language of the texts of the law. Among other issues there is an attempt to explain and situate within jurisprudential conceptual network the phenomenon of the change of meaning over time.

Chapter V, entitled *Metaphors and legal reasoning – the place of analogy in legal cognition*, deals with the problem of the mechanisms which involve metaphors in the process of legal reasoning. The main, but not the only, field of interest will be the widely understood process of reasoning by analogy. The main thesis of this chapter, and in fact of the book, is the thesis of the uniform character of legal reasoning.

Chapter VI, entitled '*Ought Is Is' metaphor as a source of the naturalistic fallacy*, is to present a special theory of normativity. According to this theory, constructing and construing the notion of normativity and other derivative concepts is possible only thanks to a special metaphor projecting metaphorically from the source domain of IS to the target domain of OUGHT. Having made such an assumption the mechanism of the naturalistic fallacy can be explained. This fallacy is a result of taking the relation of metaphorical projection for a relation of identity.

The aim of this book is not to give a thorough ready-made theory. Even if it was the case that such an ambitious project appeared *prima facie* completed, the apparently thorough theory founded on cognitive linguistics would always be inherently uncertain and underdetermined because cognitive linguistics is itself a very young branch of science, still developing and changing. It is constantly looking for experimental corroboration, which is why the hypotheses presented here should be treated as defeasible, but significant at the same time. They are significant because of their heuristic and explanatory power, especially within the range of problems that have seriously bothered lawyers for a long time, but to which until now they have not been able to provide satisfactory solutions.