

*Articoli/2*

## ***Reenvisioning Justice***

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As Ricœur's own discussions reflected, contemporary political theory has typically assumed dichotomous positions between political liberals, who assume that individuals are in a position of otherness to one another, and communitarians, who assume that individuals are at bottom the same. Rather than develop Ricœur's own response to this dichotomy, this paper draws on Ricœur's work in the philosophy of language – in particular, his work on metaphor – to argue that this dichotomy can be mediated. Beyond the dichotomy between the other as other or as the same, metaphor offers the possibility of the relation between self and other as one of “resemblance,” of similarity across difference. Metaphor also offers the prospect of creating resemblance, of finding similarity despite an initial situation of distance. Metaphor resists relativism or simple pluralism, as metaphor has a vertical dimension, a tie to basic ontological understandings that at the same time, in their metaphoricity, require humility in interpretation. The paper here seeks to develop Ricœur's cryptic remarks on the basic “metaphoric” that may be “at the root of all classification.” The paper will argue for a reformulation of the just and illustrate its thesis on the basis of contemporary political examples drawn particularly from the United States.

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The following folk story is likely a familiar one. Several blind individuals examine an elephant. One of them grasps the elephant's leg and reports that an elephant is like a tree, another finds the elephant's ear and says the elephant is like a fan, another latches on to the elephant's tail and claims the elephant is like a rope, and so on. The lesson is plain. Behind the legitimate diversity of views, there is one elephant common to us all. The lesson owes its plainness to the fact that there is, indeed, an elephant behind the diversity. In this article, I want to think about justice as the elephant. The question I pose is what can we make of justice as elephant if there is no elephant to be seen, and all we have are the experience of the tree, fan, and rope<sup>1</sup>

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<sup>1</sup> This article expands on a paper presented at the conference *Through Crisis and Conflict: Thinking Differently with Paul Ricœur*, Lecce, Italy, September 24, 2012. I presented an early draft of the article at the Law and Social Theory Workshop, Law Department, London School of Economics. I thank the participants at both sessions for their comments.

<sup>1</sup> owe the metaphor of no elephant to P. Schlag, *Hiding the Ball*, in “New York University Law Review”, LXXI, 1996, pp. 1693-97. Schlag invokes the metaphor for the quite different purpose of analyzing the meaning of the United States Constitution.

<sup>For</sup> the original tale, see J. Saxe, *The Blind Men and the Elephant*, in “The Poems of John Godfrey Saxe”, Boston 1873, pp. 135-36.

The situation that there is no one elephant seen – no unifying approach to the just – is, I shall argue, our current predicament. I shall contend that the work of Paul Ricœur helps us respond to this predicament by «thinking differently».

Some might look at the elephant story and contend that deep down there is one elephant – one ultimate form of justice – that remains. I shall not develop and respond to this claim but instead concentrate my attention in response on the other extreme: that all we have are tree, fan, and rope, simply diverse and individual understandings of justice. Before turning to Ricœur's assistance in addressing this challenge, let me engage in brief elaboration of the challenge itself.

Prominent books appear today with titles such as the *Age of Fracture*<sup>2</sup>. As we are all aware, in Europe the continuing viability of the European Union is under significant threat. In the United States political polarization permeates the news. The quest for racial justice, both in the U.S. and Europe, features increasingly diverse claims by groups who insist that their injuries are distinctive and deserve individualized treatment. In the United States, for example, the dominant attention to the racial injustice suffered by African Americans is now pulled by the distinguishable assertions of those of Asian or Latino background. Fears are expressed of the «balkanization» of racial justice issues<sup>3</sup>. Analogizing to the splintering of the Balkan states, the concern is that the increased differentiation between groups' assertions of equality is leading to a loss of social cohesion. Categorization can become infinitely divisible, and each person becomes a law unto him or herself<sup>4</sup>. 'Pluralism anxiety' expresses the fear that different groups no longer talk with one another, due to the fractures and divisions between them<sup>5</sup>. In Europe, German Chancellor Merkel, British Prime Minister Cameron, and former French President Sarkozy have all declared an end to multiculturalism, because it has led to internal division and segregation<sup>6</sup>.

Declaration of the end of multiculturalism is of course different from its achievement. In my view, cultural diversity – both internal to a society and across societies – is not only our current fact but also something generally healthy and positive. We must continually reinvigorate our norms rather than allow them to become stale, stagnant, and unquestioned, and diversity recognizes that minority views have in the past been suppressed under the guise of maintenance of norms of justice that are not evenhanded but protect the few and privileged.

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<sup>2</sup> D. Rodgers, *Age of Fracture*, Cambridge Massachusetts 2011.

<sup>3</sup> R. Siegel, *From Colorblindness to Antibalkanization: An Emerging Ground of Decision in Race Equality Cases*, in "Yale Law Journal", CXX, 2011, pp. 1278-1366 (describing the phenomenon); K. Yoshino, *The New Equal Protection*, in "Harvard Law Review", CXXIV, 2011, pp. 747-803, at p. 748.

<sup>4</sup> R. Delgado, *Rodrigo's Reconsideration: Intersectionality and the Future of Critical Race Theory*, in "Iowa Law Review", XCVI, 2011, pp. 1247-88, pp. 1263-64.

<sup>5</sup> K. Yoshino, *The New Equal Protection*, cit., p. 747.

<sup>6</sup> N. Kulish, *Norway Attacks Put Spotlight on Rise of Right-Wing Sentiment in Europe*, in "New York Times", July 24, 2011, p. A9.

I do not want to defend simple pluralism, however. Instead, I want to argue that Ricœur's work offers a third path between two extremes. Justice is not one – the elephant – nor simply plurality – tree, fan, and rope. As well known, Ricœur has intervened in contemporary disputes about the nature of justice in his books *The Just*<sup>7</sup> and *The Just 2*<sup>8</sup>. There he has mediated between the positions of figures such as Rawls, Walzer, and Charles Taylor. I will return to these volumes, but the source of my conception of justice comes from elsewhere in Ricœur's work, his work on metaphor. In part, then, I take an approach common in both continental and Anglo-American philosophy and consider the philosophy of language insightful into domains such as justice. I argue that justice takes the form of metaphoric resemblance: qualities of sameness sought across, not in despite of, difference. We can establish resemblance across tree, fan, and rope without presuming the existence of one elephant. Metaphor's *horizontal* character is depicted in this activity across difference. I will also argue that Ricœur's theory of metaphor establishes justice's *vertical* character as well. The experience of tree, fan, and rope may offer some truths – if partial truths – about justice. Metaphor acts at the origin of categorization. We are not left with the potential relativism of horizontal resemblance, where we have no criteria for differentiating whether all candidates for resemblance must be considered. Some candidates do not speak of truths, or speak of very limited truths, and metaphor's vertical capacity offers us perspectives from which to distinguish the true from the false. Ricœur's assertion that categorization begins in metaphor reinforces that we begin with no one elephant, no one uniform notion of justice, and also renders more overt the relationship between Ricœur's theory of metaphor and a theory of justice. Ricœur's discussion of the «'metaphoric' at work at the origin of logical thought»<sup>9</sup> is brief and cryptic and to my knowledge has not received much scholarly discussion.

To situate the merits of Ricœur's argument, I apply the model of justice as metaphor in two ways. First, at a more theoretical level, I show the fruitfulness of the model when considered in relation to Ricœur's interchanges with Rawls, Walzer, Charles Taylor, and Boltanski and Thévenot. Second, at a more practical level, I exemplify the merits of the model as applied to one contemporary context, that of race. Characterization of race as metaphor has both descriptive and normative power, and I will show the more general illustrative implications of the example. I conclude by providing brief illustration of the value of justice as metaphor in the legal arena. Stereotypically, the law is understood to require evenhandedness, the treatment of everyone as the same, equal; justice is one. I will show instead that the law can allow for justice as metaphor, for similarity across difference.

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<sup>7</sup> P. Ricœur, *The Just*, translated by D. Pellauer, Chicago 2000.

<sup>8</sup> P. Ricœur, *Reflections on the Just*, translated by D. Pellauer, Chicago 2007.

<sup>9</sup> P. Ricœur, *The Rule of Metaphor*, translated by R. Czerny, Toronto 1977, p. 22.

Along the way, although I take up this task more directly elsewhere<sup>10</sup>, I will describe the tension between my development, building on Ricœur, of justice as metaphor and Ricœur's own treatment of justice as a subject.

To introduce the significance of Ricœur's theory of metaphor, let me begin with a brief description of Rawls' position, with which we may then compare Ricœur. The stance of Rawls I emphasize is that of his later work, represented in his book, *Political Liberalism*<sup>11</sup>. In this later writing, Rawls abandons the idea of a veil of ignorance behind which determinations of the just stance might be developed. Instead, political pluralism is highlighted. Political liberalism, Rawls writes, «assumes that, for political purposes, a plurality of reasonable yet *incompatible* comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime»<sup>12</sup>. Humans are not detached in some sort of abstract rationality from «comprehensive doctrines» such as religious beliefs, and these comprehensive doctrines are «incompatible». They cannot be bridged and remain unto themselves. There is the possibility of «overlapping consensus»<sup>13</sup>, but the consensus is basically procedural, not substantive<sup>14</sup>. Participants in liberal societies, Rawls argues, agree on ways to mediate disputes, but the comprehensive doctrines remain divided or overlap simply as a matter of a shared space that is the consequence of each doctrine's independent logic.

In contrast, Ricœur's theory of metaphor shows us how difference can – potentially – be mediated. Metaphor, Ricœur argues, may arise at a point where there is literal contradiction. Consider the often-invoked metaphor, employed by Ricœur too, that «man is a wolf»<sup>15</sup>. (The example is all the more vivid as the term 'man' was originally understood to mean human and now more frequently connotes 'male') There is a literal contradiction between man and wolf, in the sense that they are different species. The ground for metaphoric predication arises when there is a «semantic clash,» a «semantic impertinence»<sup>16</sup>. But the clash – the opposition – leads to a new semantic pertinence. «[T]he metaphor is what forms a *meaningful* self-contradictory statement from a self-destructive self-contradictory statement». We do not deny the distance between the two terms, but despite their distance apart, a new semantic proximity is established<sup>17</sup>. When we say that «man is a wolf,» we now see that despite the literal distance, traits of the wolf are visible in man, from aggressiveness to a leering quality. Importantly for Ricœur, the new semantic meaning generated from the original semantic clash does not

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<sup>10</sup> G. Taylor, *Ricœur versus Ricœur? Between the Universal and the Contextual*, in *From Ricœur to Action*, edited by T. Mei and D. Lewin, London 2012, pp. 136-54.

<sup>11</sup> J. Rawls, *Political Liberalism*, New York 1993.

<sup>12</sup> *Ivi*, p. xvi (emphasis added).

<sup>13</sup> *Ivi*, p. xviii.

<sup>14</sup> For an argument that Rawls' attention to procedure implicates substantive underpinnings, see M. Mann, *Ricœur, Rawls, and Capability Justice*, London 2011.

<sup>15</sup> P. Ricœur, *Rule of Metaphor*, cit., pp. 87-88.

<sup>16</sup> *Ivi*, p. 194.

<sup>17</sup> *Ivi*, p. 194.

resolve the tension between old and new meanings. A man is not literally a wolf. Metaphoric meaning has instead the character of *resemblance*. Ricoeur writes:

[M]etaphor reveals the logical structure of 'the similar' because, in the metaphorical statement, 'the similar' is perceived *despite* difference, *in spite* of contradiction. [In] [r]esemblance (...) 'approximation' (bringing close) meets the resistance of 'being distant'. In other words, metaphor displays the work of resemblance because the literal contradiction preserves difference within the metaphorical statement: 'same' and 'different' are not just mixed together, they also remain opposed. (...) In metaphor, 'the same' operates *in spite of* 'the different'<sup>18</sup>.

As we shall consider at greater length later, the political implications of this theory of metaphor entail that the «comprehensive doctrines» found in Rawls may, in fact, not be incompatible, but differences that can be bridged and mediated through creative acts that establish resemblance. The substantive, not just procedural, character of justice may bear the quality of resemblance. Difference and distance are not negated, but the similar can be ascertained *despite* difference. We may think also of Ricoeur's work on narrative, where concordance is sought across and in spite of the discordant<sup>19</sup>. Metaphor's *horizontal* character allows it potentially to bridge the distance between pluralistic stances.

Metaphor's *vertical* character allows us to understand why we may remain caught in metaphoric resemblance at the horizontal level and not achieve some notion of justice as oneness. Ricoeur's development of this topic is extremely brief and elusive and amounts basically to three separate passages in *The Rule of Metaphor* and a similar passage in a slightly earlier essay, *Creativity in Language*<sup>20</sup>. Ricoeur's hypothesis<sup>21</sup> is that the same character of metaphor that allows it to break existing categorization – that shows the metaphoric resemblance of 'man' and 'wolf' – may also be the quality that generates categorization to begin with. «[T]he 'metaphoric' that transgresses the categorical order also begets it»<sup>22</sup>. The process that «disturbs and displaces» order is the same as the one from which classification originates. Order is born in the same way it changes. There may be «a 'metaphoric' at work at the origin of logical thought, at the root of all classification»<sup>23</sup>. Metaphor's ability to create deviations – new

<sup>18</sup> *Ivi*, p. 196 (emphases in original).

<sup>19</sup> P. Ricoeur, *Time and Narrative I*, translated by K. McLaughlin and D. Pellauer, Chicago, 1984, pp. 4, 21, 31, 42, 43, *passim*.

<sup>20</sup> P. Ricoeur, *Creativity in Language*, in *The Philosophy of Paul Ricoeur*, edited by C. Reagan and D. Stewart, Boston, 1978, pp. 120-33. This essay is a slightly edited version of an essay published under the same title in "Philosophy Today," LXVII, 1973 97-111. This essay was originally published in English and has not been translated into French.

<sup>21</sup> The assertion must remain a hypothesis, Ricoeur says, because we have no "direct access" to the origin of categories. P. Ricoeur, *Rule of Metaphor*, *cit.*, p. 197.

<sup>22</sup> P. Ricoeur, *Rule of Metaphor*, *cit.*, p. 24.

<sup>23</sup> *Ivi*, p. 22. Ricoeur's insertion of quotation marks around 'metaphoric' explicitly refers to this notion in Gadamer. See H.-G. Gadamer, *Truth and Method*, translated by J. Weinsheimer and D. Marshall, New York 1992, p. 429. Gadamer, however, does not develop

creative insights – in existing usage bespeaks to a larger – metaphoric – field that allows for this creativity to occur and so gives rise to semantic fields<sup>24</sup>. Ricœur's argument here partakes of *The Rule of Metaphor's* signal contribution to show that we are not bound – as structuralism would maintain – within the confines of the structures of our existing language. Metaphor breaks these bounds and allows for the manifestation of something new within language. For present purposes, the fundamental metaphoric Ricœur discusses suggests that this *vertical* opening begins in metaphor and in the tensional relationship – the *resemblance* – between similarity and difference that metaphor provides. The origin of classification itself lies not in oneness – one notion of justice – but in multiplicity. We are not restricted to the horizontal dimension; we have access to more fundamental truths. But these truths, and our understanding of them, may be partial. We see through a glass, but darkly. In my view, Ricœur's cryptic remarks on the fundamental metaphoric offer some significant sparks of insight that need to be cultivated and fed so that they may shed the broader light that their dramatic import suggests<sup>25</sup>.

I turn now to explore some of these implications of Ricœur's horizontal and vertical characterization of metaphor in reference to several of his interlocutors on the topic of justice such as Rawls, Walzer, Charles Taylor, and Boltanski and Thévenot. To reiterate, Ricœur does not himself overtly extend his vocabulary of metaphor into these political domains. I begin with the vertical dimensions of metaphor. It is of interest, for example, that Rawls grants in *Political Liberalism* the role played by «comprehensive doctrines» that include these vertical dimensions. Of similar interest is Ricœur's continued positive reference to Charles Taylor's notion of 'strong evaluation', which aims, Ricœur relates, «to resist the erosion of every cultural heritage,

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the implications of this basic 'metaphoric' either in this passage or in other references in this volume to metaphor, which are quite brief. See pp. 75, 431. Joel Weinsheimer explores the significance of metaphor in Gadamer's theory of understanding, but does not much pursue evaluation of the larger philosophical consequences of language's metaphoricity. See J. Weinsheimer, *Philosophical Hermeneutics and Literary Theory*, New Haven 1991, 64-86 (chapter on *Metaphor as a Metaphor for Understanding*).

<sup>24</sup> *Ivi*, pp. 197-98. Later in this passage Ricœur returns to the vocabulary that «metaphor reveals the dynamic at work in the constitution of semantic fields, the dynamic Gadamer calls the fundamental 'metaphoric'». See also P. Ricœur, *Creativity in Language*, p. 131: «[T]he dynamics of thought which breaks through previous categorization is the same as the one which generated all classifications. In other words, the figure of speech which we classify as metaphor would be at the origin of all semantic fields (...).».

<sup>25</sup> To my knowledge Carla Canullo is one of the only Ricœur scholars to attend – and in very illuminating fashion – these deep dimensions of Ricœur's work on metaphor. One of the great pleasures of the Ricœur conference in Lecce was to hear her present her paper, *La traduction 'politique' comme héritage et pari. La réflexion de Paul Ricœur sur l'éthos européen*. That paper offers considerable reflections on the interrelations between Ricœur's work on translation and on metaphor. I thank her for sending me an electronic copy. See also Carla Canullo, *La metafora della traduzione: un percorso dell'opera di Paul Ricœur*, "Il Protagonista", XXXIX, 2012, pp. 119-32. Elsewhere I too have tried to draw parallels between Ricœur's work on metaphor and translation. See G. Taylor, *Understanding as Metaphoric, Not a Fusion of Horizons, in Gadamer and Ricœur: Critical Horizons for Contemporary Hermeneutics*, edited by F. Mootz III and G. Taylor, London 2011, pp. 104-18.

whether ancient or modern»<sup>26</sup>. In contrast to those political philosophers, such as the early Rawls, who argued that contemporary culture is marked by a loss of the transcendent and a need consequently to determine the just on the basis of contract and procedure<sup>27</sup>, vertical dimensions may still be available to us.

At the same time, Ricœur acknowledges with Walzer and Boltanski and Thévenot that there is no «overarching position», no external location, from which one can evaluate the competing strong evaluations<sup>28</sup>. The potential availability of the vertical or transcendent is not equivalent to the confidence of a transcendent guarantee<sup>29</sup>. The content of the vertical remains metaphoric, a matter of resemblance, rather than certainty. We have not necessarily lost foundations but must speak of their plurality or multiplicity<sup>30</sup>. This plurality foreshadows the metaphoric task at the horizontal level of seeking resemblance across difference, a point to which I shall shortly return. For purposes of the metaphoric vertical dimension, Ricœur argues that «conflict is a constitutional part (...) of the fundamental and can itself be taken as inescapable»<sup>31</sup>. Strong evaluations are contestable<sup>32</sup>. There is a fragility of the symbolic order<sup>33</sup>. At the same time that a vertical, metaphoric dimension can be called upon, Ricœur considers it a «Sisphyeon task» – one always condemned to failure – to attempt to recreate «a permanent symbolic structure»<sup>34</sup>. Recognition of the basic metaphoric allows for appreciation of the continued viability of the foundational and transcendent, but this recognition also entails appreciation that the meaning of the foundational and transcendent remains fleeting and the subject of ongoing challenge and debate.

The basic metaphoric – the claim that categorization and understanding begin in multiplicity – appears to support a hermeneutic contention that interpretation goes all the way down. We do not find ourselves with some solid, foundational Archimedean point of resolution. We must continue to wrestle with what justice means and entails. It is against this backdrop that I find myself less in agreement with other aspects of Ricœur's views on justice. As I have remarked in another context<sup>35</sup>, there seem to be some tensions in Ricœur's work that it is useful briefly to explore. For instance, in his chapter in *The Just on The Plurality of Instances of Justice*, a chapter on Walzer and Boltanski and Thévenot, Ricœur asks what might be the «new possibilities for regrouping the political community and its justice» that are

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<sup>26</sup> P. Ricœur, *Reflections on the Just*, cit., p. 170. For further citations to 'strong evaluation' in this volume, see pp. 11, 64, 67, 86, 152, 169, 172, 173, 180, 183, 233.

<sup>27</sup> *Ivi*, p. 85.

<sup>28</sup> *Ivi*, p. 90.

<sup>29</sup> *Ivi*, p. 85.

<sup>30</sup> *Ivi*, pp. 85, 105.

<sup>31</sup> *Ivi*, p. 183.

<sup>32</sup> *Ibidem*.

<sup>33</sup> *Ivi*, p. 85.

<sup>34</sup> *Ivi*, p. 163.

<sup>35</sup> G. Taylor, *Ricœur versus Ricœur?*

left open by these thinkers' «juridical pluralism»<sup>36</sup>. After working with these authors «through multiplicity and the diversity of sources of right», Ricœur wants to consider what still might be said «about justice or justification as *singular terms*»<sup>37</sup>. Similarly, in *The Just 2*, Ricœur asks whether we would speak of «spheres of justice» (the title of Walzer's book) «if we did not have an *idea of justice* that could preside over the claims of each juridical sphere to overlap the domains of other spheres»<sup>38</sup>? I realize that Ricœur's concerns here touch upon justice as a regulative idea<sup>39</sup>, a discussion of which would require us to take a different path into the depths of Kant. I, by contrast, want to cultivate Ricœur's concept of the basic metaphoric. Categorization and understanding begin in metaphor, a plurality of perspectives across which we seek to establish resemblance. We do not begin with something held in common – the elephant – but with tree, rope, and fan.

I find a provocative comparison to the basic metaphoric in recent work of physicist Stephen Hawking, and brief depiction of Hawking's model may lend further support to the basic metaphoric theory. Hawking, writing with fellow physicist Leonard Mlodinow, argues for «model-dependent realism», an approach that seems very sympathetic to hermeneutics. Our knowledge of the world is not obtained through unmediated direct observation but by means of models of the world through which we interpret our observations. Further, different theories are applicable only within limited ranges. Analogizing to map-making, Hawking argues that just as we need multiple, limited two-dimensional maps to avoid distortion and map adequately the three dimensional earth, so we need multiple theories of the physical world, each of which can address only a limited range of physical circumstances<sup>40</sup>. Commenting on Hawking, eminent physicist Steven Weinberg notes that Hawking's work raises the «striking and disturbing» possibility that no one underlying theory exists. Acutely, Weinberg goes further and observes that Hawking's analogy to maps ultimately breaks down, because with maps there is an earth that is being modeled. In Hawking's model, there is no earth, only different maps<sup>41</sup>. There is no elephant.

We have instead the basic metaphoric of tree, rope, and fan. Importantly, as I have suggested, the basic metaphoric does not leave us with simple plurality. Rather, it offers us the tension between, on the one hand, the irreducibility of plurality that it entails and, on the other hand, the

<sup>36</sup> P. Ricœur, *The Just*, cit., p. 77.

<sup>37</sup> *Ibidem* (emphasis added).

<sup>38</sup> *Ivi*, p. 247 (emphasis added).

<sup>39</sup> See *Ivi*, p. 62: «Even if we break things into 'spheres of justice,' to use Walzer's terminology, the idea of justice remains the highest regulative idea (...).»

<sup>40</sup> S. Hawking and L. Mlodinow, *The Grand Design*, New York, 2010, pp. 7-8. Part of the provocativeness of the book lies in its challenge to philosophy as well as physics. On its opening page, the book asserts that «philosophy is dead», because it has not kept up with contemporary scientific developments. «Scientists have become the bearers of the torch of discovery in our quest for knowledge», p. 5.

<sup>41</sup> S. Weinberg, *The Universes We Still Don't Know*, "New York Review of Books", LVIII, Feb. 10, 2011, available at:

[www.nybooks.com/articles/archives/2011/feb/10/universes-we-still-dont-know/](http://www.nybooks.com/articles/archives/2011/feb/10/universes-we-still-dont-know/).



possibility of establishing resemblance across difference that it also allows. Part of the beauty, it seems to me, of thinking of justice as a basic metaphoric is that we are not left with the plurality of justice and justice as one as the only alternatives. Social cohesiveness is not defeated if we are faced with the plurality of justice<sup>42</sup>, because that plurality can potentially be mediated without becoming 'one'. There may be no elephant – justice as one – but we are not necessarily left with justice as simply plural – tree, rope, and fan. We can seek to establish resemblances across the differences between tree, rope, and fan and so create a tensive notion of justice.

The possibility of creating this tensive, metaphoric sense of resemblance may become clearer if we turn from focus on the vertical dimension of metaphoric to its horizontal dimension. Initially here we need to appreciate the persistence of the vertical within the horizontal arena of the political sphere. This is in contrast to Rawls, who in both his earlier and later work wants to detach political liberalism from metaphysics. For Rawls, only a procedural justice allows rival comprehensive doctrines to flourish within the same society. In the West, he thinks, no one individuated vision of substantive justice will cement the social bond<sup>43</sup>. Ricœur contends differently. He wants to attempt «to reconstruct a more positive bond between the rule of justice» – a horizontal dimension – «and the depths of beliefs» – a vertical dimension – «effectively professed in our modern societies»<sup>44</sup>. It is puzzling, then, that Ricœur adverts to Rawls' notion of an «overlapping consensus» to indicate this potential alliance between horizontal and vertical dimensions<sup>45</sup>. As Ricœur's reading of Rawls would otherwise seem to reflect, the overlapping consensus is a product of procedure, not substantive justice. Any overlap at the substantive level arises not from joint deliberation but from the intersection of views held independently. Rawls does not contemplate the possibility of the creation of metaphoric resemblance across distance. Other Rawlsian phrases that Ricœur cites, such as «'tolerance in a pluralistic society'» and «'reasonable disagreements'», better denote procedural attempts to maintain societal functioning in the face of distance that is not bridged<sup>46</sup>. As I shall develop, a horizontal metaphoric argues for the possibility – only a theoretical one at this point – of finding some sense of commonality or resemblance across difference. This horizontal metaphoric resemblance also responds to the claims of Walzer and Boltanski and Thévenot that our present societies are the products of heterogeneity, plurality, and incommensurability<sup>47</sup>. While, as evident, I agree with these authors that justice is not one, not uniform,

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<sup>42</sup> In *Critique and Conviction*, Ricœur expresses fears of a communitarian nihilism, where no sort of social tie is recognized. In this discussion he distinguishes between a constitutive universal and a regulative universal. P. Ricœur, *Critique and Conviction*, translated by K. Blamey, New York 1998, p. 67.

<sup>43</sup> P. Ricœur, *The Just*, cit., p. 70.

<sup>44</sup> *Ivi*, p. 72.

<sup>45</sup> *Ibidem*; *Ivi*, p. 164.

<sup>46</sup> *Ivi*, pp. 163-64.

<sup>47</sup> *Ivi*, pp. 78-79, 82.

my claim is that metaphoric resemblance can still be possibly established across the seemingly diverse.

As I turn toward more concrete exemplifications of my thesis about the possibility of horizontal metaphoric resemblance, I want to take one last step in theory that will help frame my later examples. This frame starts to move us beyond Ricœur's own discussions. As we witness in Rawls, a dominant trend in Western political thought emphasizes the individualism of political liberalism. As many have argued, another, if less dominant, Western trend is one of civic republicanism, which stresses less the individual than the civic good<sup>48</sup>. On one of the only occasions I have seen Ricœur refer to republicanism, he rightly cites to one side of republicanism: its conception of the «oneness of the source of juridicity»<sup>49</sup>. Typically this form of republicanism is very hierarchical: the oneness is imposed from on high by the (supposedly virtuous) political leaders. As evident, Ricœur rejects this form of republicanism, and so do I. Yet there is another form of republicanism that is less hierarchical and more egalitarian and participatory. Under this perspective the common good is not unitary but the product of ongoing deliberation whose quality is better protected by ensuring democratic participation. The political process here seeks not to effectuate compromise on the basis of pre-existing stances determined outside the political arena but to achieve resolutions as a result of deliberation and the changing of minds<sup>50</sup>. In the vocabulary I have been using, metaphoric moments can occur when resemblance is created across difference. Egalitarian republicanism holds few illusions about the difficulties of achieving resemblance, particularly in our fractionated and partisan political world. But it holds that more is available politically than intransigence and exertion of power. If we do not contemplate the metaphoric moments of egalitarian republicanism as available horizons, then we will not be open to or seek for these occasions.

The example of horizontal metaphoric resemblance that I want to develop stems from the current lives of black Americans. I could complicate the case by contrasting the possibilities of resemblance across difference between white and black Americans or, say, between the ways ascriptions of race affect differently or similarly African-Americans and Americans of Latino or Asian heritage<sup>51</sup>. It might be thought that the experience of black Americans is quite homogeneous: a product of the same experience within U.S. culture. But the evidence suggests otherwise, and I typically drawn

<sup>48</sup> For the classic treatment, see J. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, Princeton 1975.

<sup>49</sup> P. Ricœur, *The Just*, cit., p. 77.

<sup>50</sup> See, for example, C. Sunstein, *Beyond the Republican Revival*, in "Yale Law Journal", XCVII, 1988, pp. 1539-90.

<sup>51</sup> See, e.g., L. Espinoza and A. Harris, *Embracing the Tar-Baby: Lat Crit Theory and the Sticky Mess of Race*, in "California Law Review", LXXXV, 1997, pp. 1585-1645, at pp. 1592-93:

«Racism is not only historical slavery, Jim Crow laws and gerrymandered voting districts in the South. It is also immigration laws and internment camps; it is stolen land grants and silenced languages; it is standardized tests based on standardized culture; it is invisibility and lost identity».

upon the commentary of African-American scholars themselves. I use the example of African-American life as illustrative of phenomena that, I hope, those outside the American experience can identify with themselves or their larger culture.

Similar to the general fracturing of culture I described at the outset, African-American authors witness the fracturing of their own culture. The title of Eugene Robinson's recent book is: *Disintegration: The Splintering of Black America*<sup>52</sup>. Robinson argues that there are now four black Americas, not just one: one that is middle-class, with an ownership stake in U.S. society; a second that has been abandoned to poverty and dysfunction; a third composed of members of the elite; and a fourth comprised of individuals of mixed-race backgrounds and recent black immigrants<sup>53</sup>. These divisions have created the following kinds of debates in the U.S. African-American community. Should legal efforts to provide redress for educational discrimination against blacks target especially African-American students whose parents are not of the professional class or whose forebears have come out of the slave experience<sup>54</sup> as, for example, President Obama's did not? Another example, some socially conservative black ministers urged their congregations to consider not voting for President Obama because of his endorsement of same-sex marriage<sup>55</sup>. Robinson supports the claim that «a single black narrative no longer applies – if it ever did – and that heterogeneity of class and culture are as much a feature of black America as they are of the rest of America»<sup>56</sup>.

How does my appeal to the notion of metaphoric resemblance help us understand and address these divergences internal to the African-American community? In my reading, the insights of African-American scholars on the tensions involved in being black in America resonate well with the approach of metaphor. My reference will be primarily to African-American legal scholars within the field known as critical race theory. While my focus at this stage is on the horizontal dimension of metaphor, I would be remiss not to note also the resonance of this scholarship with the vertical dimension of metaphor as well. Rejecting much of the liberal scholarly view that 'rights' are simply social constructions that society can bestow or retract, scholars such as Angela Harris emphasize the tenacity with which African-Americans

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<sup>52</sup> E. Robinson, *Disintegration: The Splintering of Black America*, New York 2010.

<sup>53</sup> *Ivi*, p. 5.

<sup>54</sup> L. Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, "Harvard Law Review", CXVII, 2003, pp. 113-224, pp. 155-56.

<sup>55</sup> *African-American Christians Weigh Religious Concerns in Looming Vote*, in "Review Times", September 17, 2012, available at 2012 WLNR 19751544: «When President Obama made the public statement on gay marriage, I think it put a question in our minds as to what direction he's taking the nation», said the Rev. A. R. Bernard, founder of the predominantly African-American Christian Cultural Center in New York. Bernard, whose endorsement is much sought-after in New York and beyond, voted for Obama in 2008. He said he's unsure how he'll vote this year.

<sup>56</sup> E. Robinson, *Disintegration*, cit., p. 24.

have held on to rights as something inalienable and indispensable<sup>57</sup>. Rights speak to a «truth,» a «‘really-out-there’ object» «a ‘real’ reality out there»<sup>58</sup>. Rights have vertical dimensions, even if the source of this inalienability is left more ambiguous.

At the horizontal level of the interplay between similarity and difference in metaphoric resemblance, Kimberle Crenshaw has keenly observed the «intersectionality» that distinguishes the stance of the African-American woman from that of her male black peers. African-American women face oppression on the basis of both gender and race, and a legal response to one may not redress the other<sup>59</sup>. Intersectionality, Crenshaw asserts, may offer a vehicle for mediating the tension between multiple identity and the needs of group politics<sup>60</sup>. Arguing for the anti-essentialism of the categories of being black or a woman, Angela Harris ascribes voice to a «multiple consciousness». «[W]e are not born with a ‘self’, but rather are composed of a welter of partial, sometimes contradictory, or even antithetical ‘selves’»<sup>61</sup>. Harris does not deny the need for categorization but contends that our categories should remain «explicitly tentative, relational, and unstable»<sup>62</sup>. Regina Austin supports a politics of racial identification that works through difference, that seeks solidarity without suppressing the heterogeneity of interests<sup>63</sup>. Scholars outside the African-American scholarly community, such as the Latino critical race scholar Francisco Valdes, argue similarly: «The challenge (...) is to animate inter-connectivities based on commonalities of experience without ignoring or denying real and relevant difference. Difference, per se, is not necessarily incompatible with inter-connectivity»<sup>64</sup>.

These themes seem striking examples of metaphoric construction: in Ricœur’s vocabulary, «‘the similar’ is perceived despite difference, in spite of contradiction»<sup>65</sup>. In scholars such as Harris, the reference to metaphor and its tensional character is overt. Harris maintains that it is wrong to think of race as something literal rather than metaphoric. Each African-American does not share other black’s political and cultural commitments<sup>66</sup>. Readers

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<sup>57</sup> A. Harris, *Foreword: The Jurisprudence of Reconstruction*, in “California Law Review”, LXXXII, 1994, pp. 741-785, p. 75.

<sup>58</sup> A. Harris, *Jurisprudence of Reconstruction*, p. 753.

<sup>59</sup> K. Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in “Stanford Law Review”, XLIII, 1993, pp. 1241-1299, p. 1283.

<sup>60</sup> K. Crenshaw, *Mapping the Margins*, cit., p. 1296.

<sup>61</sup> A. Harris, *Race and Essentialism in Feminist Legal Theory*, in “Stanford Law Review”, XLII, 1990, pp. 581-616, p. 584.

<sup>62</sup> A. Harris, *Race and Essentialism*, cit., p. 586.

<sup>63</sup> R. Austin, *The Black Community. Its Lawbreakers, and a Politics of Identification*, in “Southern California Law Review”, LXV, 1992, pp. 1769-1817, p. 1775.

<sup>64</sup> F. Valdes, *Sex and Race in Queer Legal Culture*, in “Southern California Review of Law and Women’s Studies”, V, 1995, pp. 25-71, p. 60. As perhaps apparent from his title, Valdes adds to the mix of differences that of sexual orientation.

<sup>65</sup> P. Ricœur, *Rule of Metaphor*, cit., p. 196.

<sup>66</sup> A. Harris, *Foreword: The Unbearable Lightness of Identity*, in “Berkeley Women’s Law Journal”, XI, 2006, pp. 207-21, p. 217. Other critical race scholars cite the nature of metaphor as misattribution. See D. Jones, *Darkness Made Visible: Law, Metaphor, and the Racial Self*, in “Georgetown Law Journal”, LXXXII, 1993, pp. 437-510, pp. 447 & n.38

of Ricœur will find in these themes echoes not only of Ricœur's work on metaphor but also his writings on narrative and narrative identity – the self seeking concordance across discordance<sup>67</sup> – and on the self – the self as another<sup>68</sup>.

It may seem at first glance that the discussions by critical race theorists pertain more to issues of racial identity than those of justice. Yet I would argue that conclusion is too quick. On its own terms the question of racial identity is, of course, not simply personal but cultural, and in part in question is one of a republican common good. What, normatively, does it mean to be African-American? What is the contestation internal to the community about what being African-American entails? What is the contestation more broadly about what it means to be African-American within the larger American community? What does the American community itself stand for and uphold?

Further, discussion of the pushes and pulls of racial identity occur within the larger context of consideration by critical race scholars and others of what protections the law should allow to the varieties of racial identities. As critical race scholar Gerald Torres acutely recognizes, to the extent that U.S. law protects (or should protect) a diversity of identities within American culture and not just one American identity, then we must consider whether it protects (or should protect) a plurality of forms of justice as well<sup>69</sup>. How do we speak of equal treatment under the law if the goal is for people, because of racial diversity, not to be treated the same? How can we protect difference without creating separation and division and so allow difference to be constituted within a larger domain of what is the same? Torres argues for an alternative conception of justice to be sought that is not dependent on «a universalizing norm or vision of the good». Conceptions of democracy must justify themselves without suppressing support for group difference and «complex equalities»<sup>70</sup>. Torres is pessimistic whether justice can be conceived in the plural, because American law has tended to treat equality as something that requires suppression of difference<sup>71</sup>, but it is this plural conception that he seeks. As apparent by now, my claim is that we do not need to choose as stark alternatives between justice as plural or as one. A metaphoric conception of justice recognizes vertically that justice begins in a basic metaphoric in which the borderline between identity and difference is more opaque, and this conception recognizes horizontally that justice

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(quoting Ricœur); H. Gates, Jr., *Editor's Introduction: Writing 'Race' and the Difference It Makes*, in "Critical Inquiry", XII, 1985, pp. 1-20, pp. 4-5 (discussing 'race' as a dangerous trope of metaphor).

<sup>67</sup> P. Ricœur, *Time and Narrative III*, translated by K. Blamey and D. Pellauer, Chicago, 1988, pp. 244-49.

<sup>68</sup> P. Ricœur, *Oneself as Another*, translated by K. Blamey, Chicago, 1992.

<sup>69</sup> G. Torres, *Critical Race Theory: The Decline of the Universalist Ideal*, "Minnesota Law Review", LXXV, 1991, pp. 993-1007, p. 994.

<sup>70</sup> G. Torres, *Critical Race Theory*, cit., p. 1006.

<sup>71</sup> *Ivi*, p. 1007.

may seek resemblance, a finding of similarity, across difference. We have no elephant available to us, but we may seek the 'elephant' across the tree, the rope, and the fan. As I hope the example of critical race theory elicits, I would argue that this metaphoric conception of justice has considerable descriptive power, both vertically and horizontally.

I recognize that the metaphoric conception of justice remains a theoretical project, despite the references to the illustrations within critical race theory. In closing, let me offer some more concrete examples, largely drawn from U.S. law, of potential responses to this metaphoric conception. Some are supportive, and some are not. A first response would acknowledge the limits of the conception. At some points – though these points may remain in dispute – we will not find resemblance across difference but simply difference. Here a model like Rawls' can come back into play. We recognize our differences at the same time we seek to preserve our places within a common legal system. The emphasis turns from substance to procedures by which we can compromise our differences or otherwise proceed within a society with our differences intact. Paul Schiff Berman, for example, has written recently that we should not assume that difference could be overcome by an assumption of commonality; we must accept the inevitability of otherness as a part of human culture. He asserts that we should seek «a state of unassimilated otherness in an integrated community». There communication is sought across difference<sup>72</sup>. I agree that there are limits to the metaphoric model of justice – as to any model – and that we must consider procedures for when difference is not bridged. I do, however, remain more optimistic about the possibilities of bridging difference – and of considering the possibilities of mediation by metaphoric resemblance between the poles of identity and difference – than Rawls' model or Berman's would allow.

A second response to the metaphoric conception would be simply negative. Under this view, justice requires formal equality, that is, equal treatment for all without consideration of difference. For example, in cases where public schools or universities argue that they should be allowed to admit students on the basis of diversity, the judgment is no. A case presenting the question of diversity in admissions at the University of Texas was a recent subject of contention in the United States Supreme Court<sup>73</sup>, and commentators wondered whether conservative members of the Court would use the occasion to hold that only criteria of formal equality may be applied.

A third response allows for what I type a metaphoric conception of justice where such a holding would facilitate social cohesion. In cases presenting issues of diversity in admission to public educational institutions, diversity is permitted so to ensure that underrepresented groups have the

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<sup>72</sup> P. Berman, *Towards a Jurisprudence of Hybridity*, in "Utah Law Review", MMX, 2010, pp. 11-29, p. 13.

<sup>73</sup> *Fisher v. University of Texas*, in "Federal Reporter", DCXXXI, 2011, pp. 213, certiorari granted, "Supreme Court Reporter", CXXXII, 2012, p. 1536.

opportunity to participate in these societal benefits. The balkanization of racial groups – their separation – is reduced, and this promotes the social welfare of the national body as a whole. Difference is tolerated in pursuit of the long-term goal of commonality<sup>74</sup>.

A fourth approach allows for difference under the larger rubric of a rule that applies to all. In cases presenting questions of difference – such as protection for the rights of sexual orientation – the courts rule on the basis of rights that apply to everyone. A question about the rights of gays and lesbians becomes a question about the right of all consenting adults to engage in sexual intimacy in private quarters. Different practices are allowed but under the norm of universal liberty<sup>75</sup>. This approach addresses «pluralism anxiety»<sup>76</sup>. One of this model's practical benefits is that historically, legal challenges presenting issues of difference have been more successful when they are framed as seeking benefits for everyone, for example, a right to vote rather than a protection against voting discrimination on the basis of race<sup>77</sup>.

A fifth and final approach more closely aligns with the metaphoric conception of justice I have been advocating. An example is the United States Family and Medical Leave Act<sup>78</sup>, and I am aware that many Western countries have much more supportive laws here than the still very individualistic United States provides. Part of the significance of this United States law for our purposes lies in its history. Antecedents to the law originated in some state laws that granted women the right to leaves from their jobs during pregnancy and after birth and guaranteed the availability of their job on their return. These laws created debate, because some commentators held they did not provide for 'equal' treatment, as they benefitted pregnant women only. The laws treated these women 'differently'. In contrast, the Family and Medical Leave Act transforms 'difference' into resemblance, because fathers of newborns can now take leaves as can workers assisting sick children or other close relatives. The government is not neutral, because it provides advantages to certain individuals and not others, and yet the benefits – or anticipated benefits – are viewed to apply broadly across difference<sup>79</sup>. Everyone does not become the same, but the similar is perceived across difference.

A metaphoric conception of justice moves us to what Ricœur calls «complex equality»<sup>80</sup>. His work on metaphor, as applied to political thought, indeed helps us to think differently. We have no univocal

<sup>74</sup> R. Siegel, *From Colorblindness to Antibalkanization*, cit., p. 1299 (describing this approach).

<sup>75</sup> K. Yoshino, *The New Equal Protection*, cit., p. 778 (describing and advocating this approach).

<sup>76</sup> *Ivi*, p. 793.

<sup>77</sup> *Ivi*, pp. 794-95.

<sup>78</sup> *United States Code*, XXIX, § 2601.

<sup>79</sup> J. Williams and S. Bornstein, *The Evolution of 'FRd': Family Responsibilities Discrimination and Developments in the Law of Stereotyping and Implicit Bias*, in "Hastings Law Journal", LIX, 2008, pp. 1311-58.

<sup>80</sup> P. Ricœur, *The Just*, cit., p. 78.

conception of justice – no elephant – but we can take the tree, fan, and rope  
that we do have and seek to create resemblances across our differences.