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# THE IDEOLOGICAL METAPHORIZATION OF PRECEDENTS IN SEDITION LAW IN MALAYSIA

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## Abstract

The present study is concerned with examining the role of judges when discharging their duty in the process of statutory interpretation of the Sedition Act 1948 of Malaysia. For this purpose, this paper aims to analyse the usage of conceptual metaphors employed by judges to shed light into the kinds of statutory interpretation they are predisposed to. The judicial precedents from two Malaysian High Court cases form the corpus of this study which required the interpretation of section 3(1) of the Sedition Act. The analysis focuses on the following two hypotheses: firstly, that metaphors are salient in displaying the attitude of judges in deciding whether cases amount to sedition; and secondly, that the structuring function of metaphors is crucial in constructing various frames to be associated with this sedition law. The research is grounded on the findings of cognitive linguistic theory of conceptual metaphor that discourse is framed by a conceptual system that is metaphorically structured and defined. This study will conclude by showing that the embodiment of legal principles, where judicial argumentations are phrased in metaphors, is significant to define and create political reality in tandem with the aims of executive (government's) political actions.

## 1. Introduction

The Sedition Act (1948) of Malaysia, a British legacy, was originally intended as a means to counter opposition to British colonial rule, more specifically communist insurgency (Davidson, Friesen & Jackson 2001). In view of Britain's political aspirations to establish their colonial rule in Malaya (as it was then called), the act was never invoked during this era of colonization against any communist sympathizers or leaders. Paradoxically, the post-independence period presents the reverse (Anthony 2009: 19). Although Malaysia achieved independence in 1957 the act is still very much in force. In fact, it has been amended to give the government greater powers as seen in 1970 where the new paragraph (f) was added to section 3(1). This section criminalizes acts manifesting "seditious tendency" as is broadly defined as:

- (1) a "seditious tendency" is a tendency –
  - (a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;
  - (b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed

- by the government, the alteration, otherwise than by lawful means, of any matter as by law established;
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;
- (d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any state or amongst the inhabitants of Malaysia or of any State;
- (e) to promote feelings of ill-will and hostility between different races or classes of the population of Malays; or
- (f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions, of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution.

All these provisions in section 3(1) are antithetical to the principles of democracy and would be contrary to the Federal Constitution of 1957. Article 10 of the Federal Constitution guarantees freedom of speech and expression, but the Federal Constitution that gave birth to Article 149 was amended in 1960. This article validates prosecutions made under the Sedition Act even though the latter is said to contravene the freedom granted by Article 10. Thus, the potential threat of a criminal legal charge causes a chilling effect to stifle any legitimate form of social change to government policies and actions.

At the core of the judicial function is the act of interpretation that judges employ to provide rational explanation for their judicial opinion. Since the Sedition Act has been criticized for its vagueness, it is crucial to consider how the *lacuna* in this law is treated.

## 2. Conceptual metaphor

### 2.1. *Metaphor and law*

The role of metaphor has long attracted discussion as to its relevance in legal prose. This discussion recognizes the separability between principles and tropes – what is built on tropes is not built on principles. On the importance of this distinction, Bosmajian (1992) underscores that it is tropes that influence those significant principles that govern the domains of politics, religion and law. He continues that at all judicial levels the presence of tropes ranging from metaphors, metonymies and personifications is pervasive and has “become institutionalized and relied upon as principles, standards, doctrines, and premises in arriving at judicial judgements” (1992: 1). For instance, the personification “the law knows no heresy” became the legal principle in *Abington School District v. Schempp (1963)* which affirmed that acts of religion in public schools contravened the First Amendment. The metaphor that was so aggressively contested in the American courts of law was none other than the metaphoric “wall of separation between Church and State” which saw how it was opposed and defended in *McCullum v. Board of Education (1948)*, *Board of Education v. Allen (1968)*, and *Wolman v. Walter (1976)*. Proponents who abhor such metaphorical tropes in judicial decisions include M.I. Sastri who said “Another charge that is often levelled against legal prose is that it lacks embellishments, such as metaphor. The

charge is without merit because symbolism, by definition, has no place in technical writing” (cited in Bosmajian 1992: 37). The call for the avoidance of this master trope recognizes its ability to alter perception. Others have argued that instead of allowing arguments to direct our thinking, metaphors can hold one captive. Milner Ball calls this approach “colonization of the mind” and continues to warn against the impending crisis that metaphor can create since “without access to alternative metaphors, we act and think on the basis of limited comprehension masquerading as the whole truth” (cited in Bosmajian 1992: 39-40).

Thus, central to this denigration of metaphoric thinking is the kind of degradation carried out on the otherwise accurate and true construction of meaning. In this manner, metaphorization becomes a potent tool in the process of mystifying reality. This is especially useful for the purpose of ideologizing certain ideals which are usually made tacitly. Such opaqueness runs the risk of evading the need for justification and substantiation which are indispensable for any claims to stand the test of legitimacy and validity, especially with the punitive measure from the Sedition Act.

## *2.2. Ideological function of conceptual metaphors*

The core of this study is premised on the dialectical relationship between discourse and society treating language and its discursive elements as social interaction. In this study it is assumed that metaphors are not merely rhetorical devices to effect persuasion. Conversely, a cognitive approach to understanding metaphors realigns our understanding on how conceptual metaphors operate. Lakoff & Johnson (1980) claim that the discursive dimension of metaphor, which is so pervasive in our lives, needs to be analysed at a deeper level that treats metaphor as the underlying system behind the human act of cognition. This deeper treatment echoes the concern of Lakoff & Johnson that metaphor is at the core of our conceptual system which is metaphorical in nature and realized in the way we think and act.

The discovery of linguistic expressions indexing the type of metaphoricity is even more significant in uncovering the ideology undergirding the attitude of judges in respect of issues on sedition. Given that attitudes are perceived as being essentially unconscious assessments whereas ideology is seen as a set of more constructed assessments, it is relevant first to uncover the ideological slant that judges take since this will impact on the judges’ values, beliefs, and attitudes in upholding sedition. Ideology, which is conceptualized by van Dijk (1998: 8) as comprising “the basis of the social representations shared by members of a group”, is loaded in language use. Goatly (2007: 25) argues that the use of language provides us with “ready-made categories” that are deemed commonsense, and such use then brings with it the ontology or ideology which are unconsciously assimilated.

Pejoratively, ideology from the Marxist tradition centres on the power struggle that polarizes the dominant and the subordinated groups where the former’s use of false consciousness functions to misguide the beliefs of the group by legitimizing the self-serving needs of the dominant (van Dijk 1998). Evolving from the Marxist theory of ideology, the struggle between class relations can even be located and given a contemporary application in different kinds of relationships. For instance, Fairclough (2000) who investigates language in the new Labour government says that metaphors

are one of the strategic linguistic tools adopted to mask power relations. Lakoff & Johnson (1980: 236) further reiterate that:

political and economic ideologies are framed in metaphorical terms. Like all other metaphors, political and economic metaphors can hide aspects of reality [...] A metaphor in a political or economic system, by virtue of what it hides, can lead to human degradation.

The use of language (specifically metaphorical language) as a social practice can be constitutive of ideology in actual judicial discourse. The ideological nexus to metaphor is significant because “[n]ew metaphors, like conventional metaphors, can have the power to define reality” (*ibid.*: 157). This creation in reality is crucial because within the doctrine of *stare decisis*, precedents are binding and the situation becomes more critical when judges are confronted with a *lacuna*. When judicial activism yields a decision that is a metaphorically driven precedent, it is vital to consider the political function and effects that emanate. Since institutionalized entities such as the court system in Western Europe have a reputation for advocating hegemonic practices of the dominant, precedents that are metaphorically driven deserve the inquiry if Gramsci’s theory of hegemony posits that state control is very much influenced by ideological domination and is capitalized to elicit the consent of the governed (Hawkes 2003).

### 3. Data and methodology

The corpus of the present study is derived from two Malaysian High Court cases. The first case, *Public Prosecutor v. Param Kumaraswamy (No. 2) (1986)*, centres on the judge’s enactment of the concept of “disaffection” under a charge based on s. 3(1)(d) that refers to raising “discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State.” The second case, *Public Prosecutor v. Fan Yew Teng (1975)*, is a criminal charge under s. 3(1)(f) that outlaws the right “to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution.” This case provides an opportunity to understand how metaphors ideologize the socio-legal reality of politics. The schema of the political landscape at the time of this case, i.e. in the 1970s, is crucial for a study of sedition because of the historical turmoil that occurred on 13 May 1969. This incident saw racial riots at their worst in the entire history of Malaysia where Sino-Malay sectarian violence was so serious that it left about 200 dead (Kua 2007) and has ever since remained a political taboo in this nation.

This study analyses the usage of conceptual metaphors employed by the judges to shed light on the kinds of statutory interpretation the court is predisposed to. For this purpose the analysis will focus on the following two aspects:

- a) that metaphors are salient in displaying the attitude of the judges towards their readiness in deciding whether cases amount to sedition; and

b) the structuring function of metaphors is crucial in constructing various frames of images to be associated with this sedition law.

#### 4. SUBVERSION IS DISAFFECTION metaphor

In the first case, *Public Prosecutor v. Param Cumaraswamy (No. 2) (1986)*, the accused was charged for making statements against the Pardons Board when he urged the latter to exercise its powers fairly and uniformly. *Cumaraswamy's* statement was alleged to contain a seditious tendency in a s. 3(1)(d) charge that it raised discontent or disaffection among the people. Since the element of “disaffection” is integral in this particular subsection, the contention centres upon the ambiguous intent of Parliament in its failure to delineate the necessary parameters to define it. Thus this case is significant because the criminality of a charge such as this is based on parameters set by the bench and which may not be the intent of the legislature. I argue that the *ratio* in *Cumaraswamy*, which seeks to remedy the legislative lacuna, has serious ramifications that enable power relations and respective legal obligations to be validated through this precedent. The presiding judge, Chan J., affirmed that “Disaffection in the context of sedition, does not mean the absence of affection and regard, it means disloyalty, enmity and hostility” (p. 524). In addition to this formulation, he relied on the dictum of Latham C.J. from *Burns v. Ransley* where this form of intertextuality amplified the notion of “disaffection” as follows:

Disaffection is a traditional expression but it is not very precise. It means estrangement upon the part of the subject in his allegiance which has not necessarily gone as far as an overt act of a treasonable nature or an overt breach of duty. It supposes that the loyalty and attachment to Authority, upon which obedience may be considered to depend, is replaced by an antagonism, enmity and disloyalty tending to make the government insecure (p. 524).

The significance of these elements constituting the embodiment of “disaffection” lies in how they, as a whole, ground this precedent with the conceptual metaphor SUBVERSION IS DISAFFECTION. The following analysis communicates a particular political argument of the relationship between the State and its Subjects.

##### 4.1. State-Subject binary

By endorsing the notion of disaffection from *Burns v. Ransley*, Chan J. is defining the categories of political entities of the governor and the governed. The lexicalized referent ‘subject’ is evidence of classical notions of the contemporary equivalent ‘citizens’. The employment of this lexis would appeal to the frames of colonial political discourse. With these cognitive cultural models, which Martín defines as “an intersubjectively-shared simplified schematic version of experience in the world” (in Sandikcioglu 2000: 304), the cultural models formed will demarcate the political boundaries of the State-Subject. The endorsement of this specific lexical choice ‘subject’ is an effective categorizing means that strategically provides a prototypical view of appreciating the legal ramifications of the subject. This lexeme invokes the

cultural frames that equate it to the context of the colonial political arrangement in the lands governed by His Majesty where subjects were subservient to the authorities; decrees of the land would demand unequivocal forms of submission. Thus the dichotomous construction of this classic State-Subject binary manifests an asymmetrical relationship. By transposing this political landscape and giving it a contemporary application to the Malaysian scene it will invariably precipitate a deferential and passive submission of the citizens to the government of the day.

#### 4.2. *Conceptual representations of the SUBVERSION IS DISAFFECTION metaphor*

From the analysis of the State-Subject binary, the various strands derived from this dichotomy become the basis for how the metaphor SUBVERSION IS DISAFFECTION is derived. The State-Subject binary then becomes the conduit for the constitution of the concept of SUBVERSION, which now provides the source domain that elucidates the notion of DISAFFECTION. In this manner, the conceptual mapping provided by SUBVERSION allows for further delineation of various political properties such as political actions, affiliations, decision, and goal, which are illustrative through the linguistic expressions in Table 1.

The foundation of all political actions of the subjects rests on their allegiance to the

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Source Domain: Subversion	Target Domain: Disaffection
Cannot lead to estrangement Allegiance that does not breach duty or commit treason	Political actions
Obedience	Political affiliation
Loyalty and attachment to Authority	Political decision
To make government secure	Political goal

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**Table 1.** Conceptual representations and mappings

Authority. The allusion to the notion of allegiance is a powerful one. Firstly it suggests an element of irrevocability; this allegiance effectively encompasses any future capitulation by the subjects even if the latter's concern is a legitimate one. Secondly, time is of no essence; there can never be an irreversibility of this allegiance unless met with punitive measures from criminal prosecution.

Political activities must be executed in alignment with legal duty to the Authority, which cannot be broken by treason. The subjects are affiliated with the Authority by way of their moral obedience and their decision that manifest loyalty and attachment. The political actions, affiliations and decisions all cumulatively give rise to the ultimate political goal, i.e. to structure the security of the government.

The entire schema of mapping this abstract concept of SUBVERSION IS DISAFFECTION underscores the unidirectionality of obligatory commitment emanating from the subjects. The effect of unidirectionality, which is not reciprocated accordingly by the Authority, is but a stark manifestation of an authoritarian political set-up that tolerates no form of legitimate confrontation. Fair open discussions on the

affairs of the land can be legally censured.

#### 4.3. *Implications*

From SUBVERSION IS DISAFFECTION, the underlying metaphorical expression of the State-Subject binary performs the strategic function to establish and stabilize social cohesion with respect to the legal duties and obligations emanating from the subject. This cohesion is therefore significant because its successful implementation is a strong predictor of the hegemonic aspirations of the State. This oppressive conventionalized social hierarchy facilitates the State practice in the subtle yet powerful process of manufacturing the consent of the subjects where the latter's acquiescence then becomes a naturalized outcome.

The categorization of this binary also performs the function of creating a distancing effect between State and Subjects. The judicious choice of this binary capitalizes on the dynamic nature of categories that transposes the strict, non-negotiated form of relationship from the colonial political arrangement to the present administration of Malaysia. This strict distance is antithetical to the principles of democracy that underscores a relationship of solidarity enabling forms of negotiation and open discussion of leading to the provision of fundamental liberties. Conversely, the distance emanating from this metaphorical expression seems to endorse the practice whereby seemingly "entrenched" civil rights and liberties can always be abrogated, as is the case with the aggressive provision of Article 149, a powerful clause in the Constitution that grants Parliament the right to enact laws that are inconsistent with fundamental rights and civil liberties.

### 5. The FIRE metaphor

In *Public Prosecutor v. Fan Yew Teng (1975)* the case involves the prosecution of the defendant who was the publisher of an in-house publication *The Rocket* of the opposition party, the Democratic Action Party. The main contention was the publication of a particular article which contained the full text of the original speech delivered by Ooi Kee Saik. This speech was earlier presented at a political gathering which celebrated the release of a key political figure from the opposition party. The court here was asked to arbitrate whether the speech in that article with the caption "Alliance Policy of Segregation 'Evidence Galore' listed by Ooi" amounted to sedition under the Sedition Act (1948). The court held that the words bore elements of seditious tendency as specified under section 3(1)(f) which provides that it is seditious tendency to question the rights of the Malays and *Bumiputeras* (indigenous people) where these rights are absolutely protected under Article 153 in the Federal Constitution.

Since the Sedition Act does not require actual violence to have taken place and neither does the law require proof that the element of intention [i.e. that the accused's state of mind to intend for his words or deeds to be seditious as provided under section 3(3)] be mandatory, the judge's adjudication was entirely based on the act of interpretation of the words in contention.

In this case the judgment of Abdul Hamid J., where his lordship provided the basis



for the application of the Sedition Act, will be analysed. In Table 2, the part forming his judgment is reproduced here.

The tragic incident (sentence 3) the judge was referring to was the May 13 incident which marked the worst racial riot in the nation's history. The metaphor used here yields a vivid imagery drawing strongly on the metaphorical concept of FIRE. The metaphor is reinforced by its related themes with "spark", "flame", "fire" and "conflagration". The issues related to these themes, as discussed below, display how legal language is exploited to incline to a certain ideology.

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<b>Sentence 1</b>	with her ( <b>Malaysia's</b> ) multiracial society, and in view of the composition of her people, there is a need for a legislation, in the interests of security, to adequately and effectively deal with those words which are expressive of a tendency not to promote peace but to excite illwill and hostility.
<b>Sentence 2</b>	There must be adequate provision to effectively extinguish a spark without waiting for it to enkindle a flame.
<b>Sentence 3</b>	We have witnessed a tragic incident and I have no doubt it is the earnest hope of every peace-loving citizen that he may not live to witness yet another incident or even a spark that may enkindle a fire that would burst into a sweeping and destructive conflagration.

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**Table 2.** Extract of the Judgment by Abdul Hamid J. (p. 179-180) (emphasis mine)

### 5.1. *The spark*

The conceptual metaphor of FIRE will be subjected to a linguistic investigation here to accentuate how the metaphor is being exploited to create an emotional effect. Simultaneously, a pragmatic inquiry is also undertaken into sentences 2 and 3 to reveal the effective use of *ethos* and *pathos* in this judicial reasoning.

In sentence 2 the word "spark" here is not given the referent anywhere intrasententially. Nevertheless the reading of "spark" together with the subsequent verb phrase "without waiting for it" suggests that one of its important properties, i.e. this "spark", is already in existence. This interpretation will also provide the association that it is a residue from the previous flame. The trace of its latent residuality is from its ability to "enkindle". The morpheme *en-* in "enkindle" is an important clue into investigating the source of the residue and this prefix accentuates the status of this "spark" which suggests it is in standby mode ready to trigger into a "flame".

The meaning of sentence 2 cannot be complete without interpreting sentence 3. Sentence 3 provides the extension of the "spark" that was mentioned in sentence 2. The extension here is significant to locate the context of the "spark" where previous limited knowledge of the "spark" is only constrained to its residual form. It will be shown that sentence 3 presupposes the assertions provided in sentence 2. The innuendo from "to witness yet another incident" points clearly to the historical context of the May 13 incident. The conjunction "or" facilitates the understanding of the "spark". The juxtaposition of "yet another incident" (here another racial riot) with "even a spark" will suggest two qualities about this "spark" that a) it is smaller in



terms of its magnitude when compared to a fully-fledged racial riot, and b) this “spark” must contain element(s) that are directly and intimately associated with a racial riot.

Therefore, cumulatively the combined effect from sentences 2 and 3 yields a contextual referent for the “spark” to mean that the judge believes that the Sedition Act is “justified” in being used here to remove traces that are *left and carried over* from the 1969 riot. This is an important interpretive finding, and the use of this FIRE metaphor with the metaphorical entailment of “spark” cannot be undermined; its significance lies in its basis to legitimize the use of the Sedition Act to censure the deeds of the accused. This very premise thus warrants the promulgation that words published by the accused have their roots in the 1969 incident. Because the metaphorical theme of “spark” is the cornerstone of the case, there must exist some clear legal principles that act to guide the process of interpretation.

Thus it begets two fundamental questions:

i) What should this residue embody?

(And if this residue premise is accepted, it must attempt to answer the following question);

ii) To what extent must these current seditious words be reflective of the past racial riot?

Interestingly, these questions were not addressed; nowhere was it encapsulated on the connectedness of the present to the required link of the May 1969 incident. The groundedness of the judgment seems to come only from the imperative recognition that racial unity is of utmost importance. In fact, the judge used the process of inference to reach the conclusion that the words fall under the mischief of section 3(1)(f) when his lordship remarked that those words were capable of conveying to the readers the following:

The impression or feeling that all the government was concerned with was to cater, not for the benefits of all poor Malaysians, but only for the Malays [...] The sole object was to show that what the Government was interested in was only to provide “comfortable places” for the Malays and “hot uncomfortable places” for the others. The author has, in my view, and indeed it is my finding touched on the question of the special rights of the Malays, a sensitive issue which the Act has clearly and absolutely prohibited that it be raised (p. 235).

### 5.2. *The epistemic-logos and deontic-pathos distinction blurred*

This choice of metaphor in this judgment is also instrumental in evoking emotional justification to ground the decision. Where epistemic reason gives way to the domain of emotions, one needs to be cautious of this move lest it be a strategy to legitimize the logical reasonableness of one’s argument (Chilton 2004). The strategic use of metaphor can be vital to heighten the emotional impact of the context it wishes to effect (Musolf & Zinken 2009). In this case, this metaphor used by the judge allows him to capitalize on the emotional dimension alongside the soundness derived from the “logic” of his legal argumentation.

In Table 3, from this part of the judgment alone, it is capable of evoking certain emotive effects which bear negative evaluations. By focusing on the “residue” of the

Deontic Strategy (In Parentheses)	Emotive Effect
<p><i>With her [Malaysia's] multiracial society and in view of the composition of her people, there is a need for a legislation, in the interests of security, to adequately and effectively deal with those words which are expressive of a tendency not to promote peace but to excite ill will and hostility.</i> (MY LEGAL DUTY TO USE THE LAW)</p>	Fear of insecurity, chaos, disharmony
<p><i>There must be adequate provision to effectively extinguish a spark without waiting for it to rekindle a flame.</i> (THEREFORE I WILL RESORT TO THE LAW)</p>	Fear of destruction
<p><i>We have witnessed a tragic incident</i> (I TOO UNDERSTAND)</p>	Fearful memory of May 1969 incident
<p><i>I have no doubt it is the earnest hope of every peace-loving citizen</i> (I AM CERTAIN OF WHAT CITIZENS WANT)</p>	Evoking protective feelings
<p><i>that he may not live to witness yet another incident</i></p>	Fear of potential threat to life
<p><i>or even a spark that may enkindle a fire that would burst into a sweeping and destructive conflagration.</i> (URGENT NEED FOR IMMEDIATE ACTION)</p>	Fear of destruction

**Table 3.** The (de)legitimizing strategy

1969 riot, this invokes a possibility of a threat to one's freedom to life and security. The emotion of fear is made real and intensified when the judge continues with the spark turning into a flame and then to a fire. Readers with the socio-political schema will remember the horrifying effects of the 1969 sectarian tensions. The emotive language achieved through these metaphorical entailments will evoke frames of fear and danger, and it is capable of warranting the remedial solution, i.e. the use of the Sedition Act. The danger resulting from these evocative emotional frames being activated might very well be the prescription of moral rightness and it seems to overlap with the factual representation of the actual reasons for the sedition law being justified in this case. This device of attempting to lodge moral authority to validate the claims amounts to the deontic function of the legitimizing strategy. Thus, grounding the legal argument in feelings or intuitive senses is effective in invoking the epistemic right to prescribe the logical legal solution to the present problem, as created by the "spark". On the other hand, this appeal of the pathos dimension used alongside the seemingly epistemic reasoning can obliterate the distinction between the epistemic and deontic. Musolff & Zinken (2009) pointed out that, as seen in the Aristotelian view on rhetoric, the notions of *ethos*, *logos* and *pathos* are intertwined, and that while he acknowledged the importance of two dimensions, i.e. *ethos* (morally worthy) and *logos* (sound argumentations), he insisted that successful rhetoric had to be capable of activating *pathos* (emotions). This would result in *pathos* enhancing *logos*.

Thus, this use of *pathos* in the deontic sense gets its leverage to justify the role of

the judge in legally pronouncing the decision to use the Sedition Act to curb any potential threat of the “fire” of racial discord. As set out in Table 3, the five strategies display the judge’s moral authority (albeit he is legally bound) to use the law. In the deontic sense, the judge will be perceived as being morally righteous and possessing the right intentions. The entailments of the fire metaphor affect the work of legitimizing the *ratio* of the judge who communicates a particular ideology in his judicial argument. Framing the legal argument in this way (i.e. metaphorical entailments) provides the subtle activation of highly emotive mental models to assess the abstract grounds of the judicial ideology.

### 5.3. Implications

The discourse function that this conceptual metaphor plays is ideological. The diachronic space between the 1969 riot up to the time of the trial of this case is merely six years. With this incident deeply lodged in people’s minds, this metaphor is strategically employed to contain the mental representation we already have. Malaysians would vividly recollect the two major race clashes, the manner of attacks, and the number of fatalities. This schema may be perceived as natural and commonsensical and thus loaded with the “ontology or ideology of which we may not be aware” (Goatly 2007: 25). The significance lies in the reality with commonsense ontology working through a culture, where ideology can effect a certain kind of behaviour. Jackendoff (1983: 29) highlights the reality of this projected world that ideas are made real and exist by virtue of their unconscious organization in the mind where “we can talk about things only insofar as they have achieved mental representation through these processes of organisation”. It is interpreted that this use of metaphoric construction attempts to erect the kind of mental representation (or common sense ontology) to the extent that actual analysis into the effects of the language of the article at hand (whether in actual fact it is seditious or not) will have to be left in abeyance; instead this entire exercise has to bow to the seemingly more pressing and supreme factor of “preventing another fire”.

The argument that metaphors create mental representations that brings a reality to form rather than actually describing a pre-existing reality is seen with the metaphorical themes of “spark” that is used twice here. In sentence 2 (Table 1), the context of “spark” indexes that it is a prerequisite for the existence of a flame. Similarly in sentence 3 (Table 1), the “spark” precedes a fire. When juxtaposed against “flame” and “fire”, “spark” is physically much smaller, yet it possesses the latent ability to transform itself into a highly significant form and thereby takes on more critical functions.

In the judgment it was expressly stated that the crucial factor considered was the plurality of Malaysian society given its diversities. As such, unity was paramount to achieve peace and order. Against this backdrop, the judge held that the words in contention were capable of disrupting this harmony, and the use of the fire metaphor is said to achieve the ideological effect that racial harmony in a pluralistic society is common sense. This choice of the FIRE metaphor thus forms an important conceptual structure to systematically ideologize the claim for the application of the Sedition Act, in this case bearing in mind that the case hinges solely on the interpretive act of the

judge since actual violence and the element of intention are irrelevant. In this vein, the justification process capitalizes on the cognitive operations by projecting the experiential domain of the physical and physiological derived from the specific cultural knowledge of the 1969 incident. The metaphor used here is instrumental in warranting the *ratio*: – the “legal logic” that is structured by this conceptual metaphor downplays the logical argumentation which was supposedly derived from the interpretive act of the words. However, the metaphor instead does the work of foregrounding the deontic-*pathos* dimension.

## 6. Conclusion

“Spark”, “flame”, “fire” and SUBVERSION IS DISAFFECTION – these conceptual metaphors with their metaphorical entailments that form the judicial vocabulary in this study have been ingeniously integrated into the legal reasoning process, thus forming the *ratio* of the case. The legal reasoning in *Fan Yew Teng* masks an important point: how can metaphor be justified as being (part of) the *ratio* when these cognitive abstractions fail to be concretized in explicating the necessary legal concepts needed to be proven. More specifically, the stark omission on the judge’s part of visibly showing how his choice of metaphor can justify the use of the Sedition Act can only lead to the acquiescence of Burr Henley’s audacious observation that “[m]etaphors are not just illustrations offering graphic images or concrete versions of legal concepts. They are models – shorthand versions of reality that emphasize or exclude in order to make a point” (cited in Bosmajian 1992: 199). On the other hand, when disaffection is transposed into subversion, there is a danger of creating new realities. This remodelled categorization then becomes a powerful cognitive tool that shapes certain constructs facilitating the dominant ideologies of the Executive to be funnelled and then to be treated as naturalized discourse.

Conceptual metaphors that underpin legal reasoning, as opposed to clear literal language, then become a site for ideological struggle. The metaphors that ideologize, as in the present study, are laden with metaphorical entailments that form the basis for the textualization of political realities in line with the dominant ideologies of the Executive’s aspirations. When fundamental liberties “entrenched” in the Federal Constitution are shackled by the ideological metaphorization of precedents, Althusser’s appellation of the court system as being “ideological state apparatuses” – structures that perform and uphold hegemonic functions – is a stark truth (cited in Phillips 1998: 9). Thus, the constitutive language of judicial reasoning, especially with the use of metaphors, must not be connotative of the partisanship bias that endangers its reputation of impartiality.

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