Laws Like Poems[1]

Yair Eldan

People tend to forget, for various reasons—some of them justified—that a law is also a poem: the best words expressing consciousness and emotion, in the best order.

Regarding the halakhic rule found in Tractate Shabbat (Chapter 16, Mishnah 1), "All sacred writings may be rescued from a fire [on the Sabbath]," our national poet Bialik wrote in his famous essay "Halakhah and Aggadah":

> A small detail of halakhah, a trivial dispute—is that not so? Yet who would fail to recognize at once that this small and dry rule contains, in extreme compression yet with all possible fullness, a complete and vivid picture of the historical and psychological relationship of different factions within the nation toward two of its principal possessions: its literature and its language.[2]

As Bialik suggested, the poetics of law may reveal itself in several ways. First, by disclosing the consciousness of the legislator. Section 2 of the Equal Employment Opportunities Law provides:

> An employer shall not discriminate
> between employees or
> between job applicants on grounds of
> their sex,
> their sexual orientation,
> their personal status,
>
> pregnancy, fertility treatments,
> in vitro fertilization treatments,
> their being parents,
>
> their age,
> their race,
> their religion,
> their nationality,
> their country of origin,

their place of residence,
their views,
their party affiliation, or
their military reserve service,
that of their spouses,
or that of the other parent of their child.[3]

Here, all the grounds of unlawful discrimination arrange themselves before us, and the sound of their recitation reverberates: “their sex, their sexual orientation, their personal status”—one stanza; “pregnancy, fertility treatments, in vitro fertilization treatments, their being parents”—a second stanza; “their age, their race, their religion, their nationality, their country of origin”—a third stanza; “their place of residence, their views, their party affiliation, or their military reserve service”—a fourth stanza.

Each of these stanzas, “in extreme compression,” and in a corresponding order and cadence, depicts scenes from life in the State of Israel. The grounds of discrimination are arranged in a particular order, and the reader of the law-poem will interpret the meaning of that order. The reader will then consider what this list, arranged in this way, teaches us about history itself.

The reader would certainly raise the possibility that, in the world of twenty-first-century Israel, fertility treatments and parenthood are central concerns, given their central position in the law-poem, while at the same time constituting grounds that may produce inequality among employees or job applicants.

These answers are not, of course, unequivocal. They depend upon interpretation. It is entirely possible that fertility treatments were not at all widespread when the law was enacted, but that the legislator wished to elevate and celebrate them.

The poetics of law is elusive. It does not concern the interpretation of the individual words in a law, but rather an overall perception of the legislator’s consciousness as it emerges from the law. On rare occasions, this may assist in interpreting a particular word in the statute. Its essence, however, is poetic: it stands on its own, revealing an emotion and an image in a single stroke, with sharpness and precision.

Bialik himself did not take his observation one step further. He did not write about the disadvantage and the advantage contained in the poetics of the Mishnah in Shabbat, which compares a Torah scroll to a living soul and applies to it the rules governing the saving of life.

Indeed, the law of the nation, which breathes life into books and equates the rescue of a Torah scroll with the rescue of a human life, establishes Torah study—and learning in general—as an important and meaningful value. At the same time, however, it also diminishes the value of life. It equates those who actually breathe, and for whom an impending danger is genuinely life-threatening, with an inanimate and soulless object.

The poetic character of law calls for such an inquiry. It demands that we analyze the emotion, image, and consciousness underlying the law. Section 2 of the Land Law calls for a similar inquiry:

> Ownership of real estate is
> the right to possess real estate,
> to use it
> and to do with it anything
> and any transaction,
> subject to restrictions
> under law or agreement.

Here, the repetition of the term "real estate" in the second line of this law-poem, together with the combination of the verbs "to use" and "to do," depicts ownership of land or a house as the crowning glory of rights.

The law paints a picture that exalts ownership, a picture in which a person's greatest aspiration is to own land—a home. In a state regarded as a "national home," this represents a liberal and individualistic consciousness that challenges contentment with collective ownership.

Yet the poetic character of the section also makes present an emotion and a consciousness concerning the right of ownership itself, independently of real estate. According to this poem, ownership is a supreme right. It may be restricted, but in its original form it subordinates everything to itself.

Anyone wishing to take this poetics one step further might connect this conception of ownership with the common use of the Hebrew word *ba'al*—literally, "owner"—to refer to a husband, and might see this law-poem as a metaphor for an intimate relationship within a conservative, anti-feminist space.

Another way in which the poetics of law may reveal itself is through Freudian slips in word choice. Consider, for example, Section 6B(c) of the Cooperative Societies Ordinance, which provides:

If the admissions committee refused
to admit a candidate
to the community settlement,
it shall furnish him with
a reasoned decision
concerning its refusal.

The refusal, appearing at both the beginning and the end, dwarfs the reasoned decision. Rejection is rejection is rejection.

And here, in the unusual use of the Hebrew verb *tamtzi*—"shall furnish," but also "shall invent"—which signifies not merely delivery but also the creation out of nothing of a reason that does not exist, the ambivalent attitude toward admissions committees in cooperative settlements is revealed, along with the pain involved in the difficulty of gaining admission to groups that do not wish to accept a particular person.

Another example: the Law of Return provides that every Jew wishing to settle in Israel shall receive an immigrant's visa unless the Minister of the Interior is satisfied that the person is:

acting against
the Jewish people
or is likely to endanger
public health or the security of the State
or has a criminal
record likely
to endanger public safety.

Under the law, a Jew may receive an immigrant's certificate even if the decision to settle in Israel was made after arriving in the country. The law provides that the exceptions governing the granting of an immigrant's certificate are identical to those governing the granting of an immigrant's visa, with one exception:

However,
a person shall not be regarded
as endangering public health
on the occasion of
an illness
contracted
after arriving in Israel.

The Hebrew word *leregel* is also used to mark festive occasions. Its unusual use—"on the occasion of"—to describe illness and a negative event, instead of a word meaning "as a result of" or "because of," betrays a consciousness that regards illnesses contracted specifically in Israel as something to be celebrated.

The fact that an immigrant's certificate may be obtained even after an extended stay in Israel teaches us that the poetics of the Law of Return is a poetics of *aliyah*, Jewish immigration to Israel. It is not connected to the act of arriving in the country, but to the very desire of a person to settle there.

At times, the poetics of law is quasi-onomatopoeic. The sound and arrangement of the words express the content of the statute. Section 152 of the Penal Law, entitled "Riot," provides:

An unlawful assembly,
in which they have begun to carry out
its purpose
by a breach of the peace
capable of striking
terror into the public,
is a riot,
and a participant in a riot
is liable to two years' imprisonment.

The words themselves seem to riot. Their language is unclear; they do not submit to ordinary syntax and generate a sense of ambiguity, of an absence of boundaries and order—perhaps in order to express the terror inherent in a riot as an event that disrupts order and control.

Just as there is an intimate connection between the community of poets, poetry, and the community of critics, the poetic character of law is shaped not only by its words and their arrangement, but also by the complex relationship between the legal system and its interpretive community.

Within these complex relations—between law and society and between legislators and the courts—an extensive interpretive community is created, one that mediates between the law-poems and society.

For this community, the foundational documents through which society is constituted, such as the Declaration of Independence and the Basic Laws, acquire authority. Members of the community believe that interpreting them is a worthwhile and rewarding pursuit.

Within this framework, the interpretive community is also occupied with the interpretation of younger laws. The interpretations offered by members of the community are constrained by what the words of the text are capable of containing, as well as by the interpreter's degree of commitment to tradition and to interpretations of the past.

The different interpretations that have been and continue to be given to the foundational documents of the State of Israel, and to legislation in general, express the interpretive breadth made possible by law-poems that serve a society populated by people holding different moral, political, and ideological outlooks.

Yet this diversity of interpretation also expresses another fundamental point: the interpretive community finds their interpretation interesting.

When a legislator-poet writes law-poems, formulating value-based, philosophical, and emotional positions through her choice of words and the arrangement of those words in a particular order, she knows that the critics of poetry will attend to the ideas being expressed and to the manner in which they are rendered concrete.

When the community of critics finds no interest in a particular poet or poem, the poem falls into the depths of oblivion and the poet's name is forgotten.

A flood of poems in a particular period occupies the interpretive community with greater intensity—but only up to a certain point. Beyond that point, the torrent of poems expresses the writers' superficial and crude attitude toward the words themselves and reduces the motivation of the interpretive community to engage with them and to determine the meaning of the poems as complete works.

It is difficult to predict precisely when this decline of interest occurs and when an interpretive community will lose interest in the object of its interpretation.

The richer the texts being written, the more ordered they are—according to some form of order—and the more carefully fashioned they are, whether in an elevated or a colloquial register, the greater the interpretive community's interest in them will be.

There is a considerable degree of irony in this situation. On the one hand, a large crop of law-poems expresses an intensive engagement with words and an understanding that such engagement is important. On the other hand, the crudity with which the legislator-writers treat their own words drives the interpretive community away from them.

The relationship between the interpretive community and the legislator-poets may be undermined when the words and their arrangement express neither consciousness, value, nor emotion, but serve merely as instruments for achieving some other purpose.

Consider, for example, Government Decision No. 2614 concerning a "Study Grant and the Encouragement of the Integration of Kollel Students into Employment" (kollel students are yeshiva students engaged in advanced Torah study), adopted on December 19, 2010. This is a normative decision possessing practical significance comparable to that of a statute, and it too has poetic characteristics. The decision stated:

The Government of Israel regards
as a central objective
the integration of the ultra-Orthodox sector
into employment,
as a means
of breaking the cycle of poverty
and dependence on allowances,
whose incidence is particularly high
among this population;
as an instrument for promoting equality
in the distribution of the economic burden
within the Israeli economy;
and as a factor assisting
the integration of the ultra-Orthodox sector
into Israel's social fabric.
This, alongside recognition
of the unique characteristics
of the ultra-Orthodox population and support
for the continued existence of a world of
Torah study,
and alongside support
for additional student populations
in institutions of higher education.

The opening reads as a fully fledged manifesto. The poetics of the manifesto aims to transform an existing state of affairs from its foundations, and it employs direct, penetrating, and simple expressions such as "objective," "means," "breaking," and "instrument."

The conclusion is a kind of footnote to the manifesto. In this case, however, the poetic character is merely camouflage. It does not reflect a true consciousness, but a false one.

Writing about this decision in HCJ 616/11, *Israel Student Union v. Government of Israel*, Justice Rubinstein observed that its contents did not advance its stated purpose. On the contrary, they left the kollel students outside the labor market.

Rubinstein himself wondered whether the purpose formulated by the government was "nothing more than lip service intended to enable it to circumvent what had been decided" by the High Court of Justice.

The government invested considerable effort in the poetic formulation intended to circumvent the Court's decision on this matter. Following the High Court of Justice's ruling in the *Yekutieli* case, which invalidated a provision in the Budget Law granting minimum-income support to kollel students, a committee was established under the chairmanship of Eyal Gabai, then Director-General of the Prime Minister's Office. The controversial Government Decision No. 2614 was adopted on the basis of that committee's work.

Rubinstein calls upon the government to formulate the true policy underlying the provision of subsistence grants to kollel students. As a senior member of the community of interpreters of law-poems, Rubinstein seeks words that express an underlying truth of emotion, values, or consciousness.

Laws, like poems, live when their words express a genuine consciousness and when the interpretive community regards them as worthy objects of study.

Notes

[1] See *Odot: A Journal of Essays and Literary Criticism*, no. 9 (2018) [Hebrew].

[2] See Hayim Nahman Bialik, "Halakhah and Aggadah," the Ben-Yehuda Project, benyehuda.org/read/8585 [Hebrew].

[3] All line divisions in the law-poems in this essay are mine.