# Political, Judicial, and Artistic Time

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## A.

Scholars tend to regard law and literature as distinct fields that have certain points of contact. Thus, a substantial part of the scholarship in this field concerns the use of literary tools to analyze legal texts—the analysis of judicial opinions and constitutional texts by breaking them down into literary components and applying theories of reading in order to reveal the ways in which courts or legislators persuade their audiences while simultaneously shaping the consciousness of the recipients of legal texts.

This was the view of James Boyd White, the founder of the field of law and literature. White regarded legal texts as a particular kind of literature, which he called "social literature": a literature that describes the individual and society at crucial junctures. He attached importance to analyzing the manner in which law depicts human beings at such junctures. Others have focused, as noted, on analyzing judicial opinions by means of literary theories: identifying the protagonist and antagonist; examining the amount of narrative time devoted to different descriptions within the opinion; considering the words judges choose to describe the events and figures appearing in it; and so forth.

Others, by contrast, believe that law and literature are two separate fields that complement one another, and that literature should not be treated as a means of attaining a better understanding of legal texts. This is how Shulamit Almog understands the relationship between the two fields: law constitutes the foundation of social certainty and security, while literature points to the difficulties that arise in applying the legal rules of the game and provides a space and a set of tools with which to examine the social price exacted by the legal processes upon which cooperation among citizens is built.[1]

Richard Rorty and Martha Nussbaum drew attention to the empathy generated by literature and to the human imagination it develops. Literature is thus an essential component that complements the normative world.[2] A. B. Yehoshua argued that:

> There is a great difference between legal rhetoric […] and the aesthetics of a work of art […]. The principal purpose of a work of art is to create identification, whereas the methods of law are directed toward understanding and persuasion, not identification.[3]

In other words, the principal path taken by scholars of law and literature has been precisely to delineate the boundaries between law and literature and the differences separating them, while recognizing the points at which they meet and the possibility of employing literary methods to analyze legal texts. The distinction rests on the perception of legal sources as directing conduct and containing mechanisms of punishment and deterrence, whereas the focus of literary texts lies in their aesthetic character. The late Justice Mishael Cheshin formulated this distinction particularly well:

> Here is the world of law. Its ends and fundamental principles are justice, truth, morality, fairness, kindness, and the proper ordering of government and society. In striving toward these ends—toward each in its proper place and to the appropriate degree—law makes use of a variety of tools that it has fashioned for itself: the concept of rights, including fundamental rights; logic and reasonableness; proportionality; and other such instruments designed to uphold and advance the purposes of law.
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> Art is unlike law. The purposes and fundamental principles of art differ entirely from those of law. As a general rule, it may be said that the purpose of art is art itself. The essence of art lies in the experience of art, each artistic medium within its own field and according to its own manner. Beauty, emotion, aesthetics, talent, refinement—all these are among the principal branches of art. The writer tells stories, the poet writes poetry, the painter paints —each in a particular manner and style—because this is how they describe and portray the world, their inner world and the world surrounding them. The purpose of the story is the story; the purpose of the poem is the poem; the purpose of the painting is the painting.[4]

In this short essay, I wish to challenge this position. I shall argue that legal and literary texts belong to the very same literary-legal category, and that these genres are identical and different precisely in respects that are concealed from view. In doing so, I continue along the path of our national poet, Hayim Nahman Bialik, who saw an "aggadah"—a narrative dimension—within every legal rule. Bialik argued that law is not "dry," but expresses a rich and vibrant culture, reality, and consciousness, all of which are distilled into what appears to be a dry normative directive.[5]

I myself have shown how laws tell stories that reveal themselves to us once we treat a statute as a literary work—once we pay attention to the way its sections are arranged and listen to its language

and its words.[6] Here, I wish to take this approach one step further and argue that the two fields should not be treated as distinct from one another.

The immediate objection will be: what do statutes and judicial opinions have to do with novels and poems? Statutes are legal rules that establish enforceable norms. Judicial opinions make normative determinations concerning the actions of individuals, companies, or institutions, fitting facts to legal rules while interpreting those rules. Literary genres, by contrast, appear to be entirely different. They seemingly possess no normative dimension, and both their form and their content are foreign to the legal style.

Novels create a world out of words, a world that the imagination enables us to enter. Judicial opinions admittedly tell stories too, but what do they have in common with works devoted entirely to tracing whole lives in all their subtleties and describing the intricate relationships among their protagonists? And finally, there is poetry: the conjuring-up of the individual's most concealed emotions, of the individual's unique image of the world, in the aspiration to say something of value to all human beings. Poetry would seem to be more remote than any other genre I have mentioned, both in form and in content.

Yet political works—statutes and regulations—judicial works—judicial opinions—and artistic works—novels and poems—have much in common. All three fields concern men and women, their characters, their inclinations, and the ways in which they cooperate with others. Moreover, all three fields, and the different genres written within them, possess a normative dimension intended to direct human conduct and shape human consciousness.

The coercive power of statutes and judicial opinions distinguishes them from novels and poems, yet all of them remain fields within the human sciences. More than that, the transitions between these fields are easier and shorter than they appear, while the difficulty of recognizing their resemblance is, as I shall attempt to demonstrate, one of the signs of our time.

As noted, contrary to appearances, the political, the judicial, and the artistic are all closely connected to the normative: all three are directed toward social change. The political is the crudest of the three. It produces change by directing conduct through legislation enforced by the institutions of the rule of law. This change operates "from the top down," violently bringing its club down upon many people at once, like the experience of time from which it is written—a time that responds to the calls sounding all around it.

The judicial sphere refines this crudity. It delineates its boundaries, places it in a somewhat broader context, sets concrete actions against the values of the age, and balances the interests of the parties before it with the long-term needs of the common good. It rules upon the parties appearing before it, but also establishes a precedent for society as a whole.

The artistic sphere, by contrast, acts upon relatively few people and does so slowly. Its power accumulates from the inside outward, which is also why many politicians regard it as dangerous. The threat arises from the fact that art deals in changes of consciousness that take hold at the very foundation of our perception of reality and have the potential to transform it completely.

The political, which acts upon many people, generally—though not always—gives formal expression to what is already taken for granted: it casts a widely accepted norm into a formal mold. The artistic operates in the opposite manner. Immediate reality is only a springboard for an engagement with the universal. A work of art is not created to please someone or to answer the command of the hour.

The skeptical character of art—its total devotion to the idea of refusing every form of total devotion—severs it from the need to satisfy the immediate demands of capital or government. This idea is both romantic and tautological, but it produces a long-term perspective and renders art supratemporal. On the one hand, art fixes its gaze upon human reality through its permanent characteristics. On the other, it describes reality through its singular and unrepeatable manifestations.

The three fields and the works created within them therefore operate in the normative sphere. It is true that each employs different interpretive methods suited to its particular genre. Interpreting a work that may lead to the deprivation of someone's liberty is not the same as interpreting an artistic work. Nevertheless, the supposedly great distance between the fields proves smaller than it initially appears, and the boundaries between them less sharp.

It is no coincidence that Ronald Dworkin compared judges to novelists writing an additional chapter in the story of the legal system, shaping its character in accordance with its past and advancing it toward a better and more moral future—the character in this story being the state and its legal system, and its attributes being its values.[7]

Dworkin imagined a judge who was a powerful and courageous mythological hero—Hercules—capable of identifying the principles and values cultivated by the system over many years, striving toward harmony among all the parts of the legal system, and choosing the interpretation that presents the law in its morally best light.[8]

This interpretive approach depicts judges as responsible for developing the legal system in accordance with the contemporary values of the community in which they operate, while preserving the principles that have been accepted by those subject to that system throughout its existence. It rejects the understanding of a constitution as fixing a particular set of values in place and instead sees the constitution as formulating principles whose content must be renewed in accordance with the values of each period.

Dworkin is not the only thinker to see how the literary and the legal can permeate one another. As noted, White pointed to the literary character of constitutions and statutes and to the importance of analyzing them as literary texts that describe the individual and the individual's needs, as well as the community, in the face of the personal and social life cycle and its unpredictable fortunes.[9]

It seems self-evident to me that texts created within the legal system, whether authored by a legislator or by a judge, may be called works possessing literary quality.[10] The reverse is also true: poems can "disguise themselves" as statutes, and novels as judicial opinions.

The space in which these works are created admittedly encompasses different specific purposes. Yet much connects them, and a certain degree of fusion exists among them. At the foundation of all of them lies a desire to change reality, human consciousness, and human conduct.

The degree of resemblance and fusion among these different genres depends, in my view, on their authors' experience of time: the experience of legislators, writers, poets, and judges. A legislator's experience of time is not the same as that of a judge writing a judicial opinion, and neither resembles the experience of a novelist writing a novel. Nevertheless, within a liberal democracy, no vast gulf separates these experiences of time, and each produces texts possessing a comparable aesthetic quality.

**B.**

The defining feature of political time is its urgency. The political responds to the demands of the present and to the particular conflicts arising from it. The laws of the Knesset—the texts created out of the experience of political time—are written under the pressure of this urgency.

To a considerable extent, they are compromises, sometimes rational and sometimes not, that take immediate political needs into account. As such, they embody a tension between the permanent and the changing, between long-term considerations and immediate political requirements.

This character of the political is also manifested in the genre and the works it produces: generality on the one hand, temporariness on the other. Ordinarily, in normal times, the weight given to values and to the permanent in the drafting of a statute is greater than the weight given to the temporary and immediate and to the political and economic pressures of the hour.

These pressures are by no means insignificant. The feverish character of the political also serves as a measure by which we judge the policy decisions of politicians. It arouses our suspicion. That suspicion becomes even more pronounced in times of emergency—during wars such as the one taking place as I write these words, or, for example, during the response to the COVID-19 pandemic at the beginning of this decade: the timing of the lifting of the lockdown or the reopening of the airport, schools, or synagogues, as well as every other matter.

We attempt to identify the grand—or petty—design behind these decisions and ask how each action will serve the immediate interests of one politician or another. Politicians themselves use the urgency of political time to pressure their opponents, waiting until the last possible moment in order to deliver "a small blow that will break the opponent."

The urgency of political time is, as noted, a consequence of its perpetual dependence upon the immediate context. Anyone who has visited the legislature has sensed the feverish atmosphere of the building: a kind of powerful, constant, invisible current that rests upon the members of Knesset and their parliamentary aides, carrying them toward the formation of alliances, the enactment of statutes, or the drafting of press releases.

Nevertheless, when norms are created, we expect less weight to be given to the immediate context than to permanent and long-term values. Here is a small but meaningful example of a change in that balance and of priority being given to the urgent and immediate over the permanent and value-based.

In order to enable the Blue and White party to enter Netanyahu's government, and later to facilitate the formation of the Bennett-Lapid unity government, Basic Law: The Government was amended. What emerged was no longer a tension between the long term and the present, but a text written through the complete subordination of long-term considerations to the management of a specific political crisis.

Section 5(a) of Basic Law: The Government was amended to read:

> The Government is composed of the Prime Minister and other Ministers, and, in a rotation government, also of an Alternate Prime Minister.

The crude addition in the final clause—"and, in a rotation government, also of an Alternate Prime Minister"—replaces the simplicity founded upon the understanding that responsibility cannot be divided with a complex structure that also expresses a complex understanding of responsibility.

These matters of principle receive explicit aesthetic expression. The addition reads like an unnecessary appendage, ill suited to the elevated, sharp, and concise language of Basic Law: The Government. The power and aesthetic beauty of the section are damaged by its concluding phrase: the change in balance in favor of the urgent and immediate is also reflected in its aesthetic quality.

**C.**

The experience of judicial time is less urgent, and this is evident in the work it produces. Like statutes, judicial opinions are also immersed in an intermediate form of time, situated between the immediate and the enduring. Judicial time, however, appears to have a greater capacity to disregard the pressing context.

Aharon Barak, the former President of the Supreme Court, believed that judges were the natural interpreters of the Basic Laws and of legislation in general, among other reasons because they were capable of taking long-term considerations into account and thus of identifying the permanent values of the state from the very dawn of its existence.[11]

This capacity is related to the abilities of the judges appointed to the bench and to the considerable independence granted to them: they hold office until retirement age and receive a respectable salary. This independence, Barak maintained, enables judges to identify the values of the State of Israel as described in the Declaration of Independence.

Judicial time in Barak's conception is free of immediate considerations and views reality in segments extending over decades or more. He seems indifferent to journalistic investigations of the judicial system and of judicial appointments, which suggest that his assumption is problematic and that judges find it very difficult to rise above the immediate context. On the contrary, they are conscious of that context and are active participants within it.

Justice Barak also disregards the simple fact that, in addition to the tension between the present and the long term and the subordination of politicians to the needs of the hour, a culture war is taking place as I write this essay between different groups within Israeli society, groups struggling to redefine the values of the state.

Identifying the “true” values of the Jewish and democratic state will be of no help here. Neither closing one’s eyes nor beautifying reality will be of any use. What is required is entry into the cultural battle itself.

Nevertheless, anyone who has visited a court knows that there is a measure of truth in former President Barak’s assumption. The experience of time within and out of which judicial opinions are written is not detached from the immediate context, but it remains more remote from that context than political time.

The dispute considered by a court possesses an immediate context, but time in the courtroom is stickier, more doughlike. The bureaucracy, the forms, the rules of procedure, the files, and the transcripts detach time from its immediate context and provide judges with a somewhat broader perspective.

On the other hand, behind every dispute lie additional and broader circles of conflict: class-based, identity-based, economic, and religious. Judges generally do not concern themselves with these circles, but focus on the particular dispute before them.

Justice Mishael Cheshin’s well-known determination concerning the individual—as opposed to collective—character of the rights set forth in the Declaration of Independence is instructive. The Declaration states that the country:

> will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture.[12]

Justice Cheshin shakes off engagement with structural problems and sees his role as the extinguishing of particular fires. Compared to legislators, judges are indeed limited in their ability to undertake structural reform of the system and thereby remedy the injustices arising from it.

The democratic structure—which assigns judges a role in settling unregulated disputes and interpreting legislation, rather than determining policy in one case or another—halts them at the gates of the distant past and the distant future.

A familiar claim often repeated in recent years is that judges are not experts in morality and must focus on their actual field of expertise: preserving the democratic rules of the game.[13] Nevertheless, judges’ experience of time also provides them with an advantage in moral analysis, which requires

detachment from the immediate context and from circumstances that sometimes blind moral judgment.

The experience of time from which a judge writes also imposes constraints upon the work itself. A judicial opinion possesses artistic qualities in the sense that it tells a story containing a plot and characters. It clothes the facts underlying the dispute in narrative garb. It tells them in a particular way, but its story is never complete and never seeks the ultimate cause underlying the present conflict.

No less important, every judicial opinion also contains a parallel story: the story of the statutes or rights that the court is required to interpret and apply.[14]

A literary approach to a judicial opinion has its rewards. It allows us to see not only who the protagonist of the story is, or how much literary time the judge devotes to the description of a particular matter. It also reveals the judges' fundamental attitude toward the statute in question, or toward the right or freedom seeking realization.

Treating a judicial opinion as a literary work and regarding it as art are not merely aids to attaining a better understanding of judges' consciousness. They also direct our attention toward those places in which judges fail to act as artists and neglect their role in pointing to permanent values and to the character of Israeli society.

Here is a noteworthy example. In the petitions submitted against Benjamin Netanyahu's candidacy for prime minister while he was under criminal indictment, Basic Law: The Government and the coalition agreement were described as actual literary protagonists.

Justice Yitzhak Amit begins his discussion of the coalition agreement with the words: "The question of the nature, power, and prowess of the political agreement." He concludes his discussion of Basic Law: The Government as follows:

> Here, at this point, at the end of a journey culminating beside the blazing furnace of that constitutive-political decision of the majority of the members of Knesset, lies our determination of the first question.[15]

The answer, which all eleven judges unanimously gave, was that the law did not prohibit a prime minister facing serious criminal charges from holding office and that, while the coalition agreement raised difficulties, the court should not intervene in it at that stage.

The story of Basic Law: The Government told by these judicial opinions is, in fact, tragic. The law confronts the natural order, but emerges defeated. The court's decision also reveals the tragedy

of the court itself. A unanimous judgment expresses the systemic, but also the internal, fetters constraining the judges and their helplessness in the face of the political order.

This reading reveals the importance of the literary criticism of judicial opinions and the nature of opinions themselves as literary works. Yet it also exposes the court's disavowal of the artistic aspects of its own creation: its presentation of a single, united human front; its capitulation before the political power striking against it; its surrender to that power; and its abandonment of its obligation to articulate the long-term principles upon which social consensus in Israel is based.

**D.**

In comparison with the experience of political time and the experience of judicial time, the experience of artistic time is more prolonged, more extensive, and more detached from the here and now. It resembles political time, but is its inverse.

Like a statute, painting, photography, writing, and all the other arts generally begin with the concrete. Yet this concrete element is universal, and in this sense it is attached to the very navel of life.

Art is indeed concerned with life. Its point of departure, like that of political works, is concrete life, and through the concrete description it seeks to say something universal. Cain and Abel are described in Genesis as particular brothers within the first family, yet they are also every pair of brothers.

Erich Auerbach already observed in "Odysseus' Scar" that biblical narrative depicts family conflicts in a domestic setting, with much left in the background. Emotions are scarcely described, making this a text that can be read repeatedly from different points of view and in different times.[16]

The Bible articulates artistic time that is concrete yet simultaneously universal. In complete contrast to a statute written out of the experience of political time, a work of art is created independently of the need to please someone or to achieve a concrete goal. The unique reality described in the work is wholly subordinated to the universal need.

Jack Kerouac may have written the scroll of *On the Road* feverishly and without interruption, but the experience of time from which he wrote was supratemporal. There is urgency within it; it describes particular events and is immersed in the smallest details of the author's journey. Yet the inner space from which he wrote is detached from his immediate needs and from any particular desire to respond to an external pressure.

This place contains neither political urgency nor bureaucratic suspension. Its detachment from contemporary pressures allows all those small details describing the protagonists' daily lives to gather into a journey into the self and to carry with them a universal message.

In politics, by contrast, the immediate context and the need to satisfy political requirements infiltrate the work itself and its contents, subordinating it to their needs. In the novel, the immediate context instead serves the panoramic and universal perspective.

Art is admittedly dependent upon funding, and in our own parts of the world we have already heard the expression "freedom of funding" (the state's claimed discretion over which artistic works receive public funding) used in an attempt to divert artistic creation into the provinces of political time. Such crudity, however, alters the nature of art and transforms it into something else.

In this sense, the artistic experience of time is one of the indications of the artistic character of a work. The artistic is that which we experience as detached from short-term considerations, that which avoids "covert advertising" and is not shaped to serve an overly specific agenda.

The decision by the education minister at the time, Yoav Gallant, to remove sketches from *The Jews Are Coming* from the school curriculum represents a retreat from this universality and a failure to understand the difference between the political and the artistic.

Like the aggadic midrashim that preceded them, the sketches are another point of view upon the biblical text, revealing within it another insight relevant to our understanding of the human condition.

The experience of time of artists who are hungry for bread and influenced by the winds blowing from the Prime Minister's Office and the Ministry of Culture—upon which their livelihoods are often dependent—may become distorted. It possesses the potential to lead them to create works whose essence is the service of some particular contemporary agenda.

**E.**

Are judges writers? Are legislators poets? As I have attempted to argue, to some degree they are.

There is an overlap among the works created within the political, judicial, and literary spheres. The answer depends to a considerable extent upon the profound relationship of each creator, legislator, and judge to time and to the immediate context in which the works are written.

Recent years have taught us that the breadth of politicians' perspective has narrowed. When formulating normative rules, they look shortsightedly toward the coming day, week, or perhaps month.

Such a perspective diminishes the aesthetic value of statutes and regulations—the works of the legislator. A statute or regulation may be the best words in the best order, like a poem, and may express a certain human poetics. The more it is subordinated to the present and the immediate, however, the more its aesthetic value declines; as a consequence, its moral authority is also undermined.

We all remember the proliferation of regulations during the COVID-19 period and the fact that some even contradicted the provisions of the Coronavirus Law itself. This flood of regulations demonstrates that they did not express the internal morality of the legal system, in Lon Fuller's formulation,[17] or the manner in which human beings ought to cooperate with one another.

Instead, they expressed a preference for the urgent and political while abandoning a long-term view of the character and values of the state.

The non-artistic and non-aesthetic formulation of a statute thus expresses an unbalanced relationship on the part of legislators toward time: a preference for the here and now over the permanent and enduring.

It is the dissolution of the tension at the foundation of the legislative profession, through submission to immediate political pressures, that results in the creation of statutes of inferior aesthetic value.

Consider, for example, the wording of the law abolishing the reasonableness doctrine, which the High Court of Justice ultimately struck down.[18] Section 15 of Basic Law: The Judiciary was amended to read:

> Notwithstanding anything stated in this Basic Law, any person vested by law with judicial authority, including the Supreme Court sitting as the High Court of Justice, shall not consider the reasonableness of a decision of the Government, the Prime Minister, or another Minister, or of another elected official as shall be prescribed by law, and shall not issue an order against any of them in such a matter.

It is immediately apparent that the language of the amendment is crude and aesthetically defective, particularly within its context.

Section 15, which the statute sought to amend, is written in elevated language and provides, among other things:

> The seat of the Supreme Court is Jerusalem.

It also provides:

> The Supreme Court shall also sit as the High Court of Justice; when so sitting, it shall hear matters in which it deems it necessary to grant relief for the sake of justice and which are not within the jurisdiction of another court or tribunal.

In complete contrast to its surroundings, the statute abolishing the reasonableness doctrine concerns not only the authority of the Supreme Court, as do the other subsections into which it was inserted, but addresses every person vested with judicial authority.

It employs negative language, again in complete contrast to the other subsections, which employ affirmative terms: “shall sit,” “issue orders,” “is competent.”

The language of the proposal is convoluted. The title of the bill placed before the Knesset also failed to reflect its contents: “Basic Law: The Judiciary (Amendment No. 5) (The Reasonableness Doctrine),” rather than “Abolition of the Reasonableness Doctrine.”

The aesthetic defects testify to democratic defects. They reveal urgency and a preference for the temporary over the permanent.

Within the judicial sphere, judges in recent years have increasingly been forced to take the considerations of the hour into account in order to preserve public confidence in the courts. Taking such considerations into account may lead to the writing of judicial opinions in which the law itself becomes a tragic protagonist.

At the time these words are being written, the courts—and the Supreme Court in particular—are subjected to severe criticism that depicts them as detached from the values held by the majority of citizens and portrays the Supreme Court as an imperialist institution imposing values foreign to most of the state’s citizens.

The public has also absorbed the insight that the identity of judges largely determines the outcome of a judicial decision. As a result, the judicial appointment process has begun to attract considerable attention, based on the understanding that influencing the identity of judges will also make it possible to alter the normative readings emerging from the courts.

The composition of the Supreme Court—and of other courts—is more diverse today. Consequently, fundamental disagreements concerning the role of the court in a democratic society naturally infiltrate judicial opinions, particularly those of the Supreme Court.

As noted, the rejection of the temporary and the political is one of the defining characteristics of the artistic. In this sense, we are likely to encounter more and more judicial opinions in which the balance between the permanent and the temporary differs from what it was in the past, because the culture war is reflected within them.

Judges will openly confront one another regarding the role of the court in a democratic society, the proper relationship among the branches of government, the substantive content of democracy itself, and the permanent values of the state.

The artistic, judicial, and political circles therefore overlap insofar as all three possess a normative dimension. Law and literature are not distinct fields: both possess literary and normative aspects.

As I have attempted to demonstrate, when the immediate, non-artistic context directs the core of works created in the political, judicial, and artistic fields, their aesthetic value declines.

Aesthetic quality is a litmus test of the condition of democracy. The more the works created within the legal system and the legislature—statutes and judicial opinions—distance themselves aesthetically from artistic works, the more this distance expresses the weakness of democracy and its institutions.

**Notes**

[1] Shulamit Almog, *Law and Literature* (Nevo, 2000), p. 23 [Hebrew].

[2] Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge University Press, 1989); Martha C. Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (University of Haifa, 2003 [Hebrew edition]).

[3] Shulamit Almog and Ariel Bendor, moderators, "Judge and Writer: A Conversation with Yitzhak Englard and A. B. Yehoshua," *Mehkarei Mishpat*, vol. 18 (2002), pp. 17–18 [Hebrew].

[4] Mishael Cheshin, "Reflections on Law and Art," in Hanna Amit, Aviad Hacohen, and Haim Be'er, eds., *A Tribute to Menahem: Essays in Honor of Rabbi Menahem Hacohen* (Hakibbutz Hameuchad, 2007), pp. 453–454 [Hebrew].

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

[6] Yair Eldan, "Introduction—Laws Tell Stories," in *Messianism? Idolatry! The Internal Logic of the Tractate in the Mishnah* (Carmel, 2011), pp. 9–26 [Hebrew].

[7] Ronald Dworkin, *Law's Empire* (Harvard University Press, Cambridge, Massachusetts, 1986), pp. 228–239.

[8] Ronald Dworkin, *Taking Rights Seriously* (Duckworth, 1978), pp. 105–123.

[9] James Boyd White, *The Legal Imagination* (University of Chicago Press, 1985).

[10] I myself have drawn attention to the poetic quality of statutes: the best words in the best order, expressing the complex consciousness of the legislator and/or a particular historical condition. See my essay "Laws Like Poems" in the book of the same title.

[11] See Aharon Barak, "Why Purposive Interpretation of Legislation?" in *Interpretation in Law: Statutory Interpretation* (Nevo, 1993), pp. 157–166 [Hebrew].

[12] HCJ 4112/99, *Adalah—The Legal Center for Arab Minority Rights in Israel v. Municipality of Tel Aviv-Jaffa*.

[13] John Hart Ely, *Democracy and Distrust* (Harvard University Press, 1981). For a local analysis of Ely's approach, see Itai Bar-Siman-Tov, "John Hart Grunis? The Jurisprudence of President Grunis in Light of Ely's Constitutional Theory," *Din U'Devarim*, vol. 9 (2016), p. 67 [Hebrew].

[14] This parallel story—and not only the facts of the case narrated by the court—can be analyzed by means of Northrop Frye's familiar distinction among tragedy, comedy, romance, and satire. Here is a small example.

Giora Senesh petitioned against the Israel Broadcasting Authority in an attempt to prevent the broadcast of *The Kastner Trial*, a play by Motti Lerner, because it contained a scene in which the parachutist Hannah Senesh breaks under interrogation by the Hungarian police.

Justice Barak constructed his opinion as a comedy: the petition attempts to separate Lerner from his play, but freedom of expression succeeds in reuniting them and takes us from a society of repression to a society of freedom and creativity.

Justice Cheshin, by contrast, wrote a romance in which Hannah Senesh's right to a good name—and the myth as a healthy feature of the nation-state—rescues her at the last moment from being sacrificed to the Moloch of freedom of expression and to the slaughterers of sacred cows. HCJ 6126/94, *Giora Senesh v. Israel Broadcasting Authority*.

[15] HCJ 2592/20, *Movement for Quality Government in Israel v. Attorney General*.

[16] Erich Auerbach, "Odysseus' Scar," in *Mimesis: The Representation of Reality in Western Literature* (Bialik Institute, 1958 [Hebrew edition]), p. 3.

[17] Lon L. Fuller, *The Morality of Law* (Yale University Press, 1969).

[18] HCJ 5658/23, *Movement for Quality Government in Israel v. The Knesset* (January 1, 2024).