



# "One Young and The Other Old" — Halakhah and Aggadah as Law and Story

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## Introduction

Law is the wisdom of the old,  
The impotent grandfathers feebly scold;  
The grandchildren put out a treble tongue,  
Law is the senses of the young.  
(W.H. Auden, *Law Like Love*)

During a lecture delivered in 1970, Emmanuel Levinas discussed Talmudic intricacy. He commenced with an elucidation of the contemporary pertinence of the ancient text:

Of course, everything in the text is said in religious terms; but, in opposition to widespread prejudices about the particularism of Jewish religious thought, this language retains a quite rational and universal meaning, even for those who are sure—even absolutely sure—of their irreligion.<sup>1</sup>

As noted by Daniel Epstein, Levinas' Talmudic readings appeared in their French original in a series which also published the works by post-modern thinkers such as Derrida and Lyotard. Levinas' thinking links the conceptual world of Jewish sages with philosophical discourse of the late twentieth century.<sup>2</sup> What is the basis on which Levinas is able to put together the Mishna and Gemara passages in the Nazir tractate<sup>3</sup> and the youth revolt of post-modernist society? What sustains the encounter between contemporary predicaments, the strivings of modern warfare, the upheavals of the new economy, and the Halakhah (Jewish Law) and Aggadah (Jewish legend) that were produced thousands of years ago?

It seems that part of the allure of Halakhah and Aggadah is derived from the affirmation it gives to the interrelationship between law and narrative.

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<sup>1</sup> I. Levinas, *Nine Talmudic Readings*, trans. A. Aronowicz (Bloomington: Indiana University Press, 1990) at 121.

<sup>2</sup> I. Levinas, *Nine Talmudic Readings*, trans. D. Epstein (Jerusalem & Tel Aviv: Schocken, 2001) at 255 [Hebrew]. The Talmudic Readings were published originally in French: I. Levinas, *Quatre Lectures Talmudiques*, Paris, Éditions de Minuit, 1968; I. Levinas, *Du Sacre Au Saint: Cinq Nouvelles Lectures Talmudiques*, Paris, Éditions de Minuit, 1977).

<sup>3</sup> *Babylonian Talmud*, Tractate Nazir 66a-66b.

One of the academic disciplines that are concerned with the examination of such interrelationship is law and literature. The contention I will pursue in this essay is that the paradigm presented by Halakhah and Aggadah evokes potent insights relevant to most disciplines that investigate law as a cultural discourse, especially in the law and literature field.

The first section will put forward the paradigm of literature alongside law. Following this two-phase paradigm, some of the limitations, shortcomings and failures of law will be considered, afterwhich an attempt will be made to deal effectively with those problems by striving towards applicable solutions. The next section will elaborate how the combination of Halakhah and Aggadah is linked to the literature alongside law paradigm, and the last section will introduce a seminal Aggadah, that brings out the dependencies between law and narrative and thus demonstrates how the paradigm of literature alongside law works.

### *Law and Literature Discourse*

Law and literature deals with an integrated investigation of literature and law, that is applied with various methodologies, in order to reach insights that could not be attained by investigating each of the disciplines separately.

The academic discourse affiliated to law and literature is abundant and varied.<sup>4</sup> Nevertheless, significant parts of it share a similar inclination, which is basically the pursuit of ways in which literature—including both literary creation and research—serves the law. This inclination suggests an implied assumption that goes as follows: the greater the similarity between literature and law, the more literature can contribute to law, whether by means of the interpretive approaches which can be derived from or influenced by it, or by means of its examinations of various legal problems and conflicts. A similar inclination is probably embedded in the common practice of subdividing the

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<sup>4</sup> For a detailed bibliography of the main publications until the mid-1990's, see I. Ward, *Law and Literature – Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995) at 246-60. Listed below are a number of publications in the law and literature field which have appeared in recent years: M. Aristodemou, *Law & Literature: Journeys from here to Eternity* (Oxford: Oxford University Press, 2000); M.S. Ball, *Called By Stories* (Durham: Duke University Press, 2000); S. Berns, *To Speak as A Judge: Difference, Voice and Power* (Aldershot: Dartmouth, 1999); P. Brooks & P. Gerwitz, eds., *Law's Stories – Narrative and Rhetoric in the Law* (New Haven: Yale University Press, 1996); P. Brooks, *Troubling Confessions: Speaking Guilt in Law and Literature* (Chicago: The University of Chicago Press, 2000); J. Bruner, *Making Stories: Law, Literature, Life* (New York: Farrar, Strauss & Giroux, 2002); Gregg D. Crane, *Race, Citizenship, and Law in American Literature* (Cambridge: Cambridge University Press, 2002); M. Freeman & A.D.E. Lewis, *Law and Literature* (Oxford: Oxford University Press, 1999); P.J. Hutching, *Criminal Spectre in Law, Literature and Aesthetics: Incriminating Subjects* (London & New York: Routledge, 2001); J. Morison & C. Bell, eds., *Tall Stories? Reading Law and Literature* (Aldershot: Dartmouth, 1996); D. Polloczek, *Literature and Legal Discourse: Equity and Ethics from Sterne to Conrad* (Cambridge: Cambridge University Press, 1999); R. Posner, *Law and Literature—A Misunderstood Relation* (Cambridge: Harvard University Press, 1998); B. Rockwood, ed., *Law and Literature Perspectives* (New York: Peter Lang Publishing, 1998); R. West, *Caring for Justice* (New York: New York University Press, 1997); M. Williams, *Empty Justice: One Hundred Years of Law, Literature and Philosophy* (London: Cavendish Publishing, 2002); T. Ziolkowski, *The Mirror of Justice – Literary Reflections of Legal Crisis* (Princeton: Princeton University Press, 1997).

field of law and literature into two general categories: 'law as literature' and 'law in literature'.<sup>5</sup> The field of law as literature seeks to adapt the methods and terminology used in literary criticism to the internal needs of law such as the analysis of legal texts or the evaluation of legal rhetoric. The main concern of the law in literature field is to examine the contribution made by literary works in understanding law and criticizing it. It would appear that both sub-categories support the proposition regarding the use of literature in the service of law, in order to somehow improve the law.

However, an integrated investigation of law and literature does not require such a proposition. The importance of this field is its capacity to draw a map that reveals the setting and functions of both law and literature in relation to other social structures, as well as the part played by both within a wider cultural network. This map is not meant to define explicit and impermeable borderlines, but to acknowledge the existence of overlapping domains. It indicates distinctive cultural systems, yet it also points to the impossibility of creating permanent boundaries or hermetic enclaves. Such a map reveals that narratives and legal rules are always in a state of active interaction. Robert Cover referred to a similar interaction while describing the *nomos*, the normative universe we inhabit:

No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each Decalogue a scripture. (...) History and literature cannot escape their location in a normative universe, nor can prescription, even when embodied in a legal text, escape its origin and its end in experience, in narratives that are the trajectories plotted upon material reality by our imaginations.<sup>6</sup>

According to such perception, aesthetics and poetics are an inextricable part of law, just as legal and ethical structures are always an essential part of aesthetic expression.<sup>7</sup> Narrative, as a basic component of human experience,

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<sup>5</sup> For details regarding this classification, see G. Minda, *Postmodern Legal Movements: Law and Jurisprudence at Century's End* (New York: New York University Press, 1995) at 150-53; R. Weisberg, "The Law-Literature Enterprise" (1988) 1 Yale J.L. & Human. 1; I. Ward, *supra* note 4 at 22-27.

<sup>6</sup> R. Cover, "Nomos and Narrative" in M. Minow, M. Ryan & A. Sarat, eds., *Narrative, Violence and the Law: The Essays of Robert Cover* (Ann Arbor: University of Michigan Press, 1992) 95 at 95-96 [hereinafter, *The Essays of Robert Cover*]. Leaning on some examples used by Cover in order to illustrate the nature of the normative universe, and on his self-description as "graced with a deep and abiding religious background" (R. Cover, "Obligation: A Jewish Jurisprudence of the Social Order" (1988) 5 J. of L. & Religion 65) it seems that the *nomos* Cover envisaged was highly influenced by his life-long interest in Jewish texts, including Halakhah and Aggadah. For a description of Cover's engagement with Jewish sources see: S. Wizner, "Repairing the World Through Law: A Reflection On Robert Cover's Social Activism" (1996) 8 Cardozo Studies in Law & Literature 1 at 5-7.

<sup>7</sup> According to Culler, extra-literary functions of narrative structures can be of help to literature because they indicate the ways in which literature relates to other forms of representation: "The study of basic narrative structures is one example of the way in which models and categories that are initially drawn from the study of literary works turn out to have wider implications and make possible productive investigations of the relationships between literature and other modes of ordering and representing experience." J. Culler, *The Pursuit of Signs: Semiotics, Literature, Deconstructions* (Ithaca: Cornell University Press, 1981) at 215.

continuously provides the formative as well as the change-inducing force of cultural activity, including that of legal activity.<sup>8</sup>

Law and literature examines those issues from a scholarly perspective. But even beyond this, whenever we consciously or unconsciously link in our minds a legal principle or claim with a literary or cultural "analogy" which exists in our private-collective reservoir, or when we clarify for ourselves some legal matter through an internal image or story, we are dealing with law and literature. The formal discourse of law and literature as an established academic discipline is merely a part of that wider activity which exists incessantly and inevitably in practice.

### The Literature alongside Law Paradigm

The literature alongside law paradigm<sup>9</sup> embodies two phases. The first phase takes a position that asserts a post-modernist orientation. The use of the term "post-modernism" in a legal sense often indicates a rejection of the position that may be termed the global law paradigm.<sup>10</sup> According to this paradigm law appears as a unified and orderly super-network, which encompasses human experience and provides some sort of normative response to every aspect of it.<sup>11</sup> The first phase of the literature alongside law paradigm

<sup>8</sup> A significant contribution to the study of the links between law and narrative was constituted by the discipline of law and literature. See e.g. D.R. Papke, *Narrative and the Legal Discourse* (Liverpool: Deborah Charles Publications, 1991); B.S. Jackson, *Law, Fact and Narrative Coherence* (Merseyside: Deborah Charles Publications, 1991); M.C. Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Boston: Beacon Press, 1995); R. West, *Narrative, Authority and the Law* (Ann Arbor: University of Michigan Press, 1993); T. Ross, *Just Stories* (Boston: Beacon Press, 1996); L.H. Larue, *Constitutional Law as Fiction: Narrative in the Rhetoric of Authority* (Pennsylvania: Pennsylvania State University Press, 1995); B.R. Schaller, *A Vision of American Law: Judging Law, Literature and the Stories We Tell* (Westport & London: Praeger, 1997); M. Thompson, *Reproducing Narrative: Gender, Reproduction and the Law* (Brookfield: Ashgate, 1998); S. Almog, "From Sterne and Borges to Lost Storytellers: Cyberspace, Narrative and Law" (2003) 13 *Fordham Intellectual Property, Entertainment and Media L.J.* 1; Minda, *supra* note 5 at 149-66; Ward, *supra* note 4 at 4-15; Binder and Weisberg offer a comprehensive survey of the law and literature related narrative discourse in chapter three of their recent work. See G. Binder & R. Weisberg, *Literary Criticisms of Law* (Princeton: Princeton University Press, 2000) at 201-87.

<sup>9</sup> For elaboration of this paradigm, see S. Almog, "Literature Alongside Law as a Contemporary Paradigm" (2001) 13 *Cultural Dynamics* 53.

<sup>10</sup> As Minda describes it: "Modern legal theories believe that they can discover the 'right answers' or 'correct interpretation' by applying distinctive legal methods (...) Legal modernism symbolizes the progressive union of scientific objectivity and instrumental rationality in pursuit of the intellectual project of twentieth-century Enlightenment—the century-old quest for universal truth (...)" Minda, *supra* note 5 at 5. See also Goodrich & Carlson: "The postmodern legal recourse to other disciplines (...) represents much more than a simple proliferation of academic concerns or a mere invention of precedence and establishment. At an institutional level it represents the symbolic collapse of the concept and practice of any singular or sovereign jurisprudence. The postmodern legal mind introduces a series of 'minor jurisprudences' or partial forms of legal knowledge that both compete with and subvert the lingering and far from exhausted modernist conception of a unitary system or notionally complete totality of legal rules"; P. Goodrich & D.G. Carlson, eds., *Law and the Postmodern Mind* (Ann Arbor: University of Michigan Press, 1988) at 2.

<sup>11</sup> A description of law according to the global law paradigm was recently offered by Aharon Barak: "There is no 'legal vacuum'. According to my outlook, law fills the whole world. There is no sphere containing no law and no legal criteria. Every human act is

counteracts this stance by emphasizing the limited nature of law. Literature makes us acknowledge that law is incomplete when it stands alone. It acquires adequate meaning only when considering its setting within a broader context.

The global law paradigm tends to overlook the partial nature of law, and thus promotes the 'over-legalization' of society. When the legal network is perceived as the ultimate network, law is required to deal with matters which are not within its scope; that often leads to a dead end, or to dim and unsatisfactory solutions. In addition, we neglect the effort to arrive at mutually agreed upon balances, and do not look beyond harsh and coercive, sometimes violent, legal strictures.<sup>12</sup>

Literature calls for the examination of the actions of law from an extra-legal vantage point, which frequently emphasizes the fragmentary and impoverished nature of the legal point of view. Furthermore it has the power to charge the imagination with new insights. Dimock refers to this aspect in her portrayal of literature as a refusal to confirm the existence of an order of things which is structured and rational, thereby creating an increasingly broad range of inquiry.<sup>13</sup> Literature also brings out emotional dimensions, where senses reside as an essential component of moral knowledge and decision-making.<sup>14</sup>

Through literature, law appears not as an ultimate network, but rather as one optional model of reference to segments of reality. By means of this legal model it is possible to refer, to a certain limited extent, dependent on spatial and temporal contexts, to parts of reality. Sometimes, the legal model leads to satisfactory results, or at least, to results which appear to be satisfactory, and on other occasions, the legal model fails to deliver adequate solutions.

The second phase of the literature alongside law paradigm offers us additional elements that are generally hard to locate within postmodernist discourse. After considering the limits, shortcomings and sometimes failures pertinent to law, the next step is the attempt to provide some acceptable judgments which we can justify, accept, and, to a degree, emulate,—all things considered.

Literature does indeed emphasize the faults and partial nature of the law, but it does not negate the law altogether. What literature actually presents, is an ambition similar to the one presented by law: achieving fuller

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encompassed in the world of law (...) Everything can be resolved by a court, in the sense that law can take a view as to its legality." See A. Barak, "Forward: A Judge on Judging: the Role of a Supreme Court in a Democracy" (2002) 116(1) Harv. L. Rev. 19 at 98.

<sup>12</sup> For a description of the violent side of law see: R. Cover, "Violence and the Word" in *The Essays of Robert Cover*, *supra* note 6, 203.

<sup>13</sup> W.C. Dimock, *Residues of Justice: Literature, Law and Philosophy* (Berkeley: University of California Press, 1996) at 10. Compare to Iser, who describes literature as penetrating 'unavailable territories' by means of its consistent consideration of the banished, the unknown, and the inconceivable, which the law tends to ignore: W. Iser, *Prospecting* (Baltimore: Johns Hopkins University Press, 1989 at 211-12.

<sup>14</sup> For a discussion of the role emotions play in ethical decision-making, see Nussbaum, *supra* note 8.

understanding of our existence, in spite of the difficulties inherent to the human condition.

The reason for seeing literature as reflecting this kind of ambition lies, above all, in the nature of literary practice. Literary writing in itself means engaging in an act that echoes our inclination to translate fragments of chaotic existence into graspable structures. In other words, the very act of narrating reality, implies that the difference between things as they are to things as they ought to be is quantifiable, describable and reducible.

Literature enables us to perform a quantum leap from a dead end caused by the inability to reach absolute truths by using theoretical models, towards a new realm of possibilities, facilitated by imagination. This option is highly relevant to law. It makes us realize that law is a cultural practice, that can be narrated, scrutinized and transformed: "When (...) [law is] conceived of as practices it may become possible for us to imagine engaging in them and transforming them and criticizing them in new ways."<sup>15</sup>

Richard Rorty illustrates this course by describing the tension between the individual and the community. Initially, he shows the futility of the effort to establish a theory which unites the private and the public, because, in his view, the private interest and the public interest are by their nature, conceptually incapable of being quantified and compared.<sup>16</sup> Yet, the gap between individual and public may be bridged by means of the imagination, by the development of sensitivity for the suffering of the other and identification with him or her. By this process, the other is transformed into one of us, and our acknowledgment of his or her pain is achieved. The creation of this process, which leads towards human solidarity, is primarily the function of literature.<sup>17</sup>

To summarize, within the paradigm of literature alongside law, the identification of the vulnerable points of law and the exposure of some mostly hidden processes that shape it, do not imply rejecting law. By means of literature and narrative the weakness of law is exposed, and at the same time law is re-established as part of an essential cultural practice. The paradigm of literature alongside law epitomizes law not as the greatest story, but as one of the central stories in our experience; as a vital effort, characterized by mistakes, failures, disappointments, but also by vision and achievements.

### Halakhah and Aggadah

Halakhah and Aggadah are two genres of writing that constitute most compilations of post-biblical rabbinical literature,<sup>18</sup> produced over the first

<sup>15</sup> J.B. White, *Acts of Hope* (Chicago: University of Chicago Press, 1994) at 306.

<sup>16</sup> R. Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989) at XV.

<sup>17</sup> *Ibid.* at XVI.

<sup>18</sup> This literature contains the following compilations: Midrash, collections of rules with homiletic interpretations and of legends on various passages in the Scriptures; Mishna, collection of laws compiled by Rabbi Judah Hanasi (Judah the President) about 200 A.D.; Tosefta, a supplement to the Mishna, and Talmud, the commentaries on the Mishna; the

six centuries A.D.<sup>19</sup> Halakhah is a set of obligatory rules. It specifies the norms of conduct that relate to all dealings between human beings, and human beings and God (the practice of faith).<sup>20</sup> It is much more challenging to characterize Aggadah, because of its highly diversified nature. Frequently the Aggadah is defined by using the negative, as being that part of rabbinical literature that is not Halakhah.<sup>21</sup>

Aggadah contains all kinds of narratives, referring to biblical commentaries, sages and their disciples, proverbs and ethical expositions, philosophical discourse, prayers, folk tales and jokes, hyperboles, and scientific speculations. It is a sort of hypertext with links that spread to diversified, sometimes unanticipated corners. Mostly, this variety is presented in the Aggadah by using the form of narrative. The Aggadah is, therefore, a huge assortment of stories.

Jewish sages linked Halakhah and Aggadah to create, especially in Talmudic literature,<sup>22</sup> an idiosyncratic combination.<sup>23</sup> According to one

Babylonian Talmud compiled about 500 A.D.; and the Jerusalem Talmud, compiled about 375 A.D.).

<sup>19</sup> J. Neusner, *The Aggadic Role in Halakhic Discourse*, vol. 1 (Lanham: University Press of America, 2001) at ix. For a description of the cultural complexity of the Halakhah and Aggadah combination, see Z. Kagan, *Halakha and Aggada as a Code for Literature* (Jerusalem: Bialik Institute, 1988) [Hebrew].

<sup>20</sup> See M. Alon, *Jewish Law: History, Sources, Principles*, trans. by B. Auerbach & M.J. Sykes vol. 1, (Philadelphia & Jerusalem: The Jewish Publication Society, 1994). According to Neusner, Halakhah is: 'Law, norms of behavior, expressed in legal formulations of rules of correct conduct. The halakha derives from the Scripture, the Mishnah, the Tosefta, the two Talmuds (Babylonian and Yerushalmi or Jerusalem), and some exegetical studies of the legal passages of Exodus, Leviticus, Numbers, and Deuteronomy called Tannaite Midrashim.'; see also J. Neusner, *Recovering Judaism: The Universal Dimension of Judaism* (Minneapolis: Fortress Press, 2000) at 192.

<sup>21</sup> For example, Saperstein writes: "'Aggadah' is best defined negatively as the nonlegal component of rabbinic discourse. Among its characteristics are the frequent use of hyperbole and other forms of figurative languages, the variety of levels ranging from the profoundly intellectual to the unabashedly popular, the spectrums of tones including both high seriousness and good-natured banter, and the juxtaposition of two or more mutually incompatible opinions with no attempt to reach a definitive and binding conclusion." in M. Saperstein, *Decoding the Rabbis: A Thirteenth-Century Commentary of the Aggadah* (Cambridge, Harvard University Press, 1980). Compare to Neusner, who defines Aggadah as "lore, norms of belief, expressed in narrative, including midrash, the rereading and retelling of scriptural stories; a type of writing in Rabbinic literature." Neusner, *ibid.* at 192.

<sup>22</sup> Even though extensive use was made of the Aggadah in later times, there was no period, following that of the Talmud, in which there was any comparable degree of merging between Halakhah and Aggadah as can be found in Talmudic literature. See Alon, *supra* note 20 at 95.

<sup>23</sup> Even if there are unique characteristics in the Halakhah and Aggadah phenomenon, combinatory models with similar characteristics can be found in the history of other cultures as well. For the integration of Greek ideals of law and justice with other cultural achievements see W. Jaeger, *Paideia: The Ideals of Greek Culture*, trans. By G. Highet, 2<sup>nd</sup> ed., vol. 1 (Oxford: Oxford University Press, 1945) at 99-115. Scholars have noted the links between ancient French literature and the formation of French law in the twelfth and thirteenth centuries. See H.R. Bloch, *Medieval French Literature and Law* (Berkeley: University of California Press, 1977). For links between Christian legends about the lives of saints and the formation of legal concepts, see I. England, "The Stick of Rava, The Altar of St. Nicholas and the Chain of King David" (1981/82) 52 *Tarbiz* 591 at 591-94 [Hebrew]. For correlations between law and literature in fourteenth-century England, see R.F. Green, "A Crisis of Truth – Literature and Law" in *Ricardian England* (Philadelphia: University of Pennsylvania Press, 1999). For the links between Shakespeare's plays and

analogy, Halakhah might be compared to current scientific literature, while Aggadah is parallel to current fiction.<sup>24</sup> Another analogy suggests: "Like the Roman two-faced God Janus, Halakhah and Aggadah, which are tied together by their roots and bases, present the different faces of the same existence."<sup>25</sup> Some sages referred to the two genres as inseparable: "One does not learn from the *halakhot* or from the *aggadot* but from the Gemara."<sup>26</sup> The same sages were engaged in both Halakhah and Aggadah, sometimes in one breath. Only rarely was there a sage who dealt with only one of the two.<sup>27</sup> The training process for sages in those times included both Halakhah and Aggadah.<sup>28</sup>

What were the aims that originated the intertwining? Several explanations were suggested. Alon writes that Aggadah served as the philosophy of Halakhah, and was used by sages who wanted to supplement the reasoning to the halakhic rules.<sup>29</sup> Others maintain that with the Aggadah the sages were able to create changes in halakhic rules according to evolving needs,<sup>30</sup> to settle conflict between biblical narratives and halakhic rules,<sup>31</sup> and to express their own controversies.

Such explanations point out practical, easily detectable functions of the Halakhah and Aggadah juxtaposition, and they seem to share a perception of Aggadah as a device that primarily serves Halakhah. However, this perception is problematic, because the link between Halakhah and Aggadah is far from being linear. Aggadic discourse and Halakhic norms rarely intersect in detail.<sup>32</sup> Most often "the Aggadah simply sits side by side with the Halakhah, each of the two classifications of Rabbinic discourse scarcely acknowledging the presence of the other."<sup>33</sup>

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the developments in English legal methods, such as the tensions between common law and equity, see J. Dickinson, "Renaissance Equity and Measure for Measure" (1962) 13 *Shakespeare Quarterly* 287; G.W. Keeton, *Shakespeare's Legal and Political Background* (London: Sir Issac Titman & Sons Ltd., 1967). For the links between literary works and the emerging of various doctrines in American law, see B. Thomas, *Cross-Examinations of Law and Literature: Cooper, Hawthorne, Stowe, and Melville* (Cambridge: Cambridge University Press, 1990).

<sup>24</sup> I. Shechter, "Introduction to Aggadah" in *Introduction to Oral Law* (Tel Aviv: The Open University of Israel, 1992) 250 [Hebrew].

<sup>25</sup> A. Shinan, *The World of Aggadic Literature* (Tel Aviv: Ministry of Defense, 1987) at 102 [Hebrew].

<sup>26</sup> *Jerusalem Talmud*, Peah 2a.

<sup>27</sup> Shinan, *supra* note 25 at 96.

<sup>28</sup> *Ibid.* at 97.

<sup>29</sup> Alon, *supra* note 20 at 102-104.

<sup>30</sup> Shinan, *supra* note 25 at 99.

<sup>31</sup> H. Mack, *The Aggadic Midrash Literature*, 2<sup>nd</sup> ed. (Tel Aviv: Ministry of Defence, 1995) at 25, 110-11. According to another assumption, the Aggadah was promoted not only to serve legalistic needs of the sages, but also as a result of demand by the people of Israel, who needed its escapist dimension as a distraction from daily hardship. Shinan, *supra* note 25 at 18-19.

<sup>32</sup> J. Neusner, *The Aggadic Role in Halakhic Discourse*, vol. 3, (Lanham: University Press of America, 2001) at 265.

<sup>33</sup> *Ibid.* at 266. See also Neusner, *supra* note 19 at xii: "Overall, the category-formations of Aggadah and those of the Halakhah are indeed incompatible. The Aggadic documents rarely introduce Halakhic materials in their exposition of Aggadic propositions. And the contrary is also the case."



Bearing in mind the lack of direct interrelationship, many were puzzled by the presence of Aggadah in the Halakhic neighborhood. As Sarpstein puts it:

On the face of it, nothing could be more alien to the nature of systematic religious philosophy than the aggadah of the classical rabbinic literature. By the tenth century, when a far more logically rigorous and coherent style of exposition had come into vogue, the aggadah was rapidly becoming a source of confusion, consternation, and embarrassment for many Jews. A growing corpus of literature, produced both outside and within rabbinic Judaism, portrayed various aggadic utterances as trivial, foolish, irrational, or absurd.<sup>34</sup>

Accordingly, the stature of the Aggadah was subject to deep controversies. Some sages have tried to disassociate Aggadah from Halakhah, while enhancing the self-sufficient, comprehensive nature of the Halakhah, as a source that does not need any external implementations. As a result of such controversies, the status of Aggadah declined during the generations, and it even suffered periods of hostility or ridicule, that primarily stem from a strict legalist perception of the Halakhah.<sup>35</sup>

This sharpens the question: if there are not obvious contextual links between Halakhah and Aggadah, what does the intriguing *mélange* mean?

Neusner, who established that the links between Halakhah and Aggadah are not linear, writes that nevertheless, the proximity of the two is valuable in the religious framework of their origin:

In our terms, we should call it a story with a beginning, middle, and end. In sages' framework, we realize, the story embodies an enduring and timeless paradigm of humanity in the encounter with God: man's powerful will, God's powerful word, in conflict, and the resolution thereof.

When sages distinguished Halakhah from Aggadah, it was to deal in an orderly manner with the two dimensions of one and the same coherent entity, God's teaching through Israel for humanity, the one concerning behavior in concrete terms, the other, belief in abstract ones. Halakhah, normative law, tells Scripture's story of humanity in terms of behavior that Aggadah narrates that same story in terms of beliefs.<sup>36</sup>

Ziporah Kagan offers a perception that is not dichotomic to Neusner's view, although she focuses not upon the religious significance of the combination, but rather upon its wide cultural properties. Kagan sees Halakhah and Aggadah as reflecting a stimulating paradox:

What characterizes the genre of Halakhah and Aggadah is the discipline of give and take, of a legal system which develops a model for scrutinizing both states of human existence, and the fact that both

<sup>34</sup> Saperstein, *supra* note 21 at 1.

<sup>35</sup> *Ibid.* at 1-20. As Saperstein elaborates, attacks upon the Aggadah appeared not only in Jewish discourse, but also in the polemical literature of Islam and in medieval Christian literature. *Ibid.* at 1-6. See also Mack, *supra* note 31 at 20-26.

<sup>36</sup> Neusner, *supra* note 32 at 268.

are different and yet connected together creates a paradoxical situation in which each of the two sets a borderline to the "rule" or authority of the other.<sup>37</sup>

The paradox lies in the fact that Aggadah and Halakhah are so different, and in the same time intertwine in a way that makes one indispensable to the other one. They represent two states of human existence. Halakhah supplies us with norms and decisions, while the Aggadah forces us to doubt all decisions. The combination of both led to the construction of a revolutionary paradigm that allowed for free flow between the legal system of Halakhah and the narrative system of Aggadah. As a result, each system can be linked with the other one, and at the same time preserve its individuality:

The purpose of the paradoxical connection is not intended as a representation of the difference between Halakhah and Aggadah or between law and literature, nor to emphasize their similarity. Its purpose is to express what cannot be expressed in the general linguistic conceptual system.<sup>38</sup>

This function of Halakhah and Aggadah as described by Kagan, is compatible with the two phases of the literature alongside law paradigm. The setting of ever critical, ever doubting Aggadah alongside the decisive, obligatory and all-knowing Halakhah makes it difficult to perceive the Halakhah as an autonomic, self-sufficient and omnipotent system. To use the terms introduced previously, Halakhah in tandem with Aggadah means rejecting the global law paradigm that depicts law as a unified network, which fully and satisfactorily encompasses human life. But locating the two—Halakhah and Aggadah—in such immediacy carries an important message: exposing the fractional nature of the legal system, does not imply renouncing law altogether. What it does imply is that law should be treated as part of a wider social system. The same sages that dealt with legal rules saw as their parallel obligation to engage with stories. However, the stories were not meant to be interpretive means applied on legal rules, but to create a convergence between law and the world, or law and the world as it should be.<sup>39</sup> Dealing with stories means constantly examining law, while embracing it. The sophisticated narratives of Aggadah scrutinize the flaws of law, while reaffirming legal regime. The Aggadah makes us realize that law, like narrative, is a useful cultural practice that can and should be continuously shaped according to evolving needs and active imagination.

<sup>37</sup> Z. Kagan, "Halakhah and Aggadah – The Paradoxical Context" (2002) 18 Bar Ilan Law Studies 213 at 214 [Hebrew].

<sup>38</sup> *Ibid.* at 217.

<sup>39</sup> Compare to Cover's distinction between interpreting law and interpreting literature. Although acknowledging the immeasurable value of narrative to law, Cover explains that interpreting law is an essentially different discipline from interpretation in literature and the humanities. R. Cover, "The Bonds of Constitutional Interpretation: Of the Word, The Deed and the Role" (1986) 20 Georgia L. Rev. 815 at 816.

### *Halakhah and Aggadah as a Mode of Interpretation*

In a recent work, Wolfgang Iser asserts that interpretation as it is understood today in Western culture emerged from the biblical exegesis in Jewish tradition.<sup>40</sup> This tradition is exceptional because of two aspects that complement each other. The first is the open-sealed character of the canon it created, and the other is the living-dialogue mechanism it established between the canon and the community it served. Canonization is the process of selecting texts that become an authoritative source for the interpretation of other texts subservient to them. This process in Jewish culture included the endowing of irreversible authority to the texts chosen as canonical, while defining the authorized range for interpreting these texts as open, wide and flexible. The result is the creation of a single canon based on the Bible that is both open and closed at the same time.<sup>41</sup>

Thus, the interpretative activity is conducted from a position of both subservience and superiority towards what is being interpreted.<sup>42</sup> This interpretative duality necessitates the setting up of an open channel of interflow between the canonical text and the community.

Actually, what this duality creates and maintains, is a mechanism of applying what the paradigm of literature alongside law calls for: reciprocal flow between criticism and affirmation, between stability and purposive struggle for change. A similar mechanism is manifested by the phenomena of Halakhah and Aggadah.

Rabbi Kook, an enthusiastic and central advocate of using the Halakhah and Aggadah orientation as a bridge between old lore and the renewing Hebrew culture, wrote: "We have another barrier in which we also have to make an opening in order to facilitate the entry and exit from border to border, that is: between the wisdom of the Aggadah and the wisdom of the Halakhah".<sup>43</sup>

The Halakhah and Aggadah vibrancy is indeed based on an interpretive "entry and exit". Aggadah creates a living, dynamic link between the closed Halakhah and the open expanse surrounding it, giving the system the remedial dimension of openness through the use of narrative. The greater the

<sup>40</sup> W. Iser, *The Range of Interpretation* (New York: Columbia University Press, 2000) at 13.  
<sup>41</sup> *Ibid.* On the concept of the duality of the canon, Moshe Halbertal writes: "The sealing of the text engenders both the bestowal and the removal of authority (...) The moment the text was sealed, authority was removed from the writers of the text and transferred to its interpreters; denied to the prophets and awarded to the Sages." M. Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, Mass.: Harvard University Press, 1997) at 18.

<sup>42</sup> Iser quotes Rojzman in this connection: "The role of the interpretation is to combine units from differing systems, to link the textual with the ritual, written characters with existential significations (...) [The] uncertainty principle—situated between precise boundaries—will allow us to lay the methodological foundations of commentary. Jewish exegesis has constructed for itself an entire hermeneutic apparatus that regulates these relations between textual premises and existential conclusions, between original formulations and semantic translations." B. Rojzman, *Black Fire on White Fire: An Essay on Jewish Hermeneutics from Midrash to Kabbalah*, trans. by S. Rendall (Berkeley: University of California Press, 1998) at 4-5.

<sup>43</sup> Rabbi Kook, *Igrot Harayah*, 2nd rev. ed. (Jerusalem: Rabbi Kook Institute, 1965) at #103, 123 [Hebrew].

importance given to Aggadah, the more open does the system of Halakhah become, and vice versa.<sup>44</sup> Law and literature discourse fulfils alike purposes today.<sup>45</sup>

### *The Oven of Akhnai: Narrative as Lawmaker*

The central role of narrative in creating concepts of self and society has become clear in various fields, including those addressing law-related issues such as race, community, gender and the practice of law.<sup>46</sup> A significant contribution to the study of the links between law and narrative was constituted by the discipline of law and literature.

One of the ways to describe the dialectics related to the connections between law and narrative is suggested by James Boyd White, who distinguishes between "the mind that tells a story" and "the mind that gives reasons".<sup>47</sup> According to White, in order to achieve any expression that can be labeled as "true" in the field of law, one must create an apparently irreconcilable connection between "these discordant modes of thought and expression, these incompatible, uncommunicating sides of oneself" and ask how they can "be brought under the control of a single active intelligence? How can they be reconciled, if only for a moment, in a single work of the imagination?"<sup>48</sup>

One example for this complex and patently impossible connection between the mind that tells and the mind that judges might be the use of such expressions in the field of law as "honor", "good faith", "mental anguish" and "intention." Behind legal practice which weighs and measures these vague and abstract terms and uses them formally, stands an intricate narrative corpus which charges them with concrete meaning. In other words, the establishment of positive legal structures is possible only through the use of building blocks carved out of rich cultural discourse in which both narrativity and aesthetic creativity are meaningful components.

Another way to describe the complex interconnections between law and literature is proposed by J. Hillis Miller who speaks of the necessary link that exists between any system of ethics and narrativity.<sup>49</sup>

<sup>44</sup> One should note that the perception of Aggadah and its importance changed during the generations. Generally, the Aggadah, although never entirely abandoned, diminished in stature. See Mack, *supra* note 31 at 20-26.

<sup>45</sup> Peter Brooks writes: "Only from another tradition of critique and reading can we summon the law to recognize what it represses (...) What has become a loosely-defined movement called "law and literature" represents a conscious breaching of barriers between disciplines, maintaining that those barriers are artificial dykes erected against the inrush of forms of critical thinking the law considers irrelevant, an attempt to disturb certain complacencies of legal thinking." P. Brooks, "Policing Stories" (2002) 18 Bar Ilan Law Studies 249 at 261 [Hebrew]. The creators of Halakhah and Aggadah, so it seems, indeed defied any complacency of thinking, legal or other.

<sup>46</sup> D.M. Engel, "Origin Myths: Narratives of Authority, Resistance, Disability, and Law" (1993) 27 L. & Soc'y Rev. 785 at 789-90.

<sup>47</sup> J. B. White, *The Legal Imagination* (Boston: Little, Brown & Company, 1973) at 859.

<sup>48</sup> *Ibid.* at 859-60.

<sup>49</sup> J. Hillis Miller, *The Ethics of Reading* (New York: Columbia University Press, 1987) at 2.

The main point here is not the possibility of seeing stories as a kind of thematic realization of principles, rulings and judgments. Rather than that, the very ability to express something as a narrative gives it ethical validity. Linguistic formulations known as narratives convert an argumentative structure or formula into expressions that contain ethical significance. Without the validation of narrative, law, argumentation and ruling principles are empty shells that contain no real substance.

The constant avowal of such a concept lies at the heart of the Halakhah and Aggadah paradigm. Important legal principles are anchored in narratives and derive their ethical validity from stories. I will elaborate this, leaning on a famous Aggadah—the story of Akhnai's oven.

There is a rigorous legal dispute between Rabbi Eliezer ben Hyrcanus and Rabbi Joshua and his colleagues. Rabbi Eliezer claims that a certain oven is pure, while the others claim that the oven is impure. Rabbi Eliezer tries to prove to the other Rabbis that he is in the right regarding this Halakhic question:

On that day R. Eliezer brought forward every imaginable argument, but they did not accept them. Said he to them: 'If the *Halachah* agrees with me, let this carob-tree prove it!' Thereupon the carob-tree was torn a hundred cubits out of its place – others affirm, four hundred cubits. 'No proof can be brought from a carob-tree,' they retorted. Again he said to them: 'If the *Halachah* agrees with me, let the stream of water prove it!' Whereupon the stream of water flowed backwards. 'No proof can be brought from a stream of water,' they rejoined. Again he urged: 'If the *Halachah* agrees with me, let the walls of the schoolhouse prove it,' whereupon the walls inclined to fall. But R. Joshua rebuked them, saying: 'When scholars are engaged in a *halachic* dispute, what have ye to interfere?' Hence they did not fall, in honour of R. Joshua, nor did they resume the upright, in honour of R. Eliezer; and they are still standing thus inclined. Again he said to them: 'If the *Halachah* agrees with me, let it be proved from Heaven!' Whereupon a Heavenly Voice cried out: 'Why do ye dispute with R. Eliezer, seeing that in all matters the *Halachah* agrees with him!' But R. Joshua arose and exclaimed: '*It is not in heaven.*'<sup>50</sup>

Rabbi Eliezer tries to involve God in order to convince the others, and God does intervene. He provides several supernatural signs to verify the position of Rabbi Eliezer, finally expressing his view explicitly by a heavenly voice. Alas, supernatural truth has no value in a legal arena. Rabbi Eliezer had an extraordinary spiritual quality<sup>51</sup> that perhaps granted him divine help and the revelation of supernatural testimony. But the supernatural evidence, although it may demonstrate the greatness of the man, has no real value as evidence, and cannot be taken into account in order to establish factual or interpretative truth.

<sup>50</sup> *Babylonian Talmud*, Baba Mezi'a 59b.

<sup>51</sup> On the extraordinary personality of Rabbi Eliezer, see Kagan, *supra* note 19 at 35-50.

The story together with its rich interpretive history, brilliantly illustrate the two phases of the literature alongside law paradigm. In the first scene, the most distinguished Rabbis of their time engage in a heated debate. They are not able to reach an agreed resolution. One of them uses his authority, his reasoning and his logic, but fails to resolve the dispute. Having exhausted all human resources, he decides to recruit God. Is that scene not a powerful illustration to the ever relative authority of human law?<sup>52</sup> The next scene involves a stream of water that flows backwards, trembling (but not falling) walls, a carob tree that is torn a hundred, or perhaps even four hundred cubits out of its place, a heavenly voice crying out in favor of one of the Rabbis, and the other Rabbis standing firm and resolute against all those, only because they believe in their human authority. Even if God does have a clear position regarding the truth, and even if it is miraculously revealed, the decisive interpretation is made only by human beings, who took upon themselves the ultimate responsibility of deciding a matter of law. Legal interpretation is not a godly power.

The stand taken by Rabbi Eliezer's rivals gains approval from the conclusion of this narrative, in which God says 'My sons have defeated Me'<sup>53</sup> and thus confirms the position of Rabbi Joshua, by agreeing that legal truth is attained by human beings on the basis of relevant argumentation and examination, and not by supernatural intervention.<sup>54</sup>

Could there be a better illustration to the second phase of the literature alongside law paradigm, the phase that focuses upon the courage, vision and hope embedded in law? The Rabbis, armed only with their legal authority, do not hesitate to contradict God. One should bear in mind that their courage is even more impressive, considering that the issue they are dealing with is purely Halakhic in nature, and God who is the source of Halakhah, is allegedly its optimal interpreter. The courage to insist upon their standing stems, so it seems, from a wide-ranging vision concerning the way a legal system should operate, fortified by hope that constituting and maintaining such a system is an attainable task.

Both phases of the literature alongside law paradigm are also apparent when one considers the intricate and abounding interpretive history of the story. The interpretations of the story in rabbinic literature are numerous, varied and often opposing.<sup>55</sup> The story was perceived by some as

<sup>52</sup> As Cover notes, the issues raised by this narrative "are connected to the theoretical, philosophical, and theological disputes that raged in Judaism for hundreds of years concerning the relative authority of law and prophecy." Cover, *supra* note 6 at 118, n. 66.

<sup>53</sup> This is one of the two conclusions cited in connection with this *aggadah*. For the other conclusion and the significance of the difference between the two conclusions, see A. Sagi, 'Elu va-Elu': A Study on the Meaning of Halakhic Discourse (Tel Aviv: Hakibbutz Hameuchad, 1996) at 14-18 [Hebrew].

<sup>54</sup> Menahem Alon interprets this in the same sense by saying that even if the 'abstract truth' is according to Rabbi Eliezer, the legal truth is according to the view of the Sages. Alon, *supra* note 20 at 260-61.

<sup>55</sup> A useful introduction to this vast literature may be found in I. Englard, "Majority Decision vs. Individual Truth: The Interpretations of 'The Oven of Achnai' Aggadah" (1975) Tradition 137.

representing the greatness of the Rabbis who rejected the standing of Rabbi Eliezer and the heavenly voice; some maintain that Rabbi Eliezer was wrong, and that the story proves how even great rabbis can be legally erroneous; other interpreters maintain that all parties involved were legally right.<sup>56</sup> Be that as it may, it seems the potency in the story lies not in any "right" answer suggested by it, but rather in its capacity to evoke doubts as to the feasibility of any absolute truth, and as to the ability of legal process to produce truth. At the same time, the stream of interpretations, that actually never dwindled, leads us towards the second phase of the literature alongside law paradigm. The ever existing commotion that surrounds the story, the intellectual efforts invested in its deciphering and in harnessing it to a vast array of legal, religious and political theories and ideas—magnificently embody the hope, imagination and vision entrenched in the idea of law.<sup>57</sup>

## Conclusion

To conclude, I would like to return to the Talmudic readings of Emmanuel Levinas that are sealed with the Halakhic discussion regarding the responsibility for fire damages in the Talmudic tractate of Baba Kama. The Mishna states the rule: the responsibility lies with the person who lit the fire in the field. From here the Gemara goes into a discussion by the sages, with one view limiting the responsibility to obvious damages, in opposition to the view which widens the field of responsibility. Further on the Gemara engages in the Aggadha that deals with the ethical responsibility for the predicaments that afflict the world and the fate of the righteous and the wicked. After this, the discussion passes on to Halakhic rulings relevant to a city which is stricken with famine. In the final section of the Gemara, the text inverts once again and ends with the following Aggadha:

<sup>56</sup> *Ibid.*

<sup>57</sup> For further discussion about "The Oven of Akhnai" see J.L. Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore & London: The Johns Hopkins University Press, 1999) at 34-63. Another well known story deals with the decision regarding the dispute between the two schools of thought, Beth Hillel and Beth Shammai: "R. Abba stated in the name of Samuel: For three years there was a dispute between Beth Shammai and Beth Hillel, the former asserting, 'The *halachah* is in agreement with our views' and the latter contending, 'The *halachah* is in agreement with our views.' Then a *bath kol* issued announcing, '[The utterances of] both are the words of the living God, but the *halachah* is in agreement with the rulings of Beth Hillel.'" *Babylonian Talmud*, Erubin 13b. Here, too, as in the story in Baba Mezi'a, a heavenly voice intervenes, but the influence of voice is completely different in this case. In the first story the Sages altogether negate the intervention of the heavenly voice which Rabbi Eliezer calls upon to vindicate him in the dispute between them. In the second story the intervention of the heavenly voice is accepted. According to the analysis of Sagi, the difference in the status of the heavenly voice is to be found in the different role it plays in each of these two stories. In the first story, it functions as a means to deny open discussion, to negate any validity and legitimacy to accepted truths. In the second story, on the other hand, its role is the opposite: it indicates the value of open argument, and the value of the rejected viewpoint, that of Beth Shammai. (Sagi, *supra* note 53 at 16). According to the final rule, the position of Beth Hillel is to be preferred. But even if the ruling is according to Beth Hillel in the practical sphere, from the theoretical standpoint the position of both schools of thought are identical. Both are of equal value because 'both are the words of the living God.' This is true just as that is true! For further discussion of this Aggadha see Rubenstein, *Ibid.* at 1-2.

Rav Ammi and Rav Assi were sitting before Rabbi Isaac, the blacksmith. One asked him to treat of the Halakhah and the other of the Aggadah. When he began of the Halakhah, he was prevented by the latter; When he began an Aggadah, he was prevented by the former (...) He then said to them: I will tell you a parable. This can be compared to a man who had two wives, one young and the other old. The young one tore out his white hair, the old one his black hair, so that he became bald on both sides.<sup>58</sup>

Levinas writes:

Aggadah and Halakhah are (...) compared to youth and old age. I defined them completely differently when I said: Halakhah is the way to behave; Aggadah is the philosophical meaning—religious and moral—of this behavior. It is, however, not certain that the two definitions contradict each other. The young obviously think that the Halakhah is gray hair, mere forms: forms which have lost their color. The young woman plucks them out: the young interpret to the point of uprooting the roots of terms. The old woman is the traditional point of view: orthodoxy which reads the texts literally. She preserves them in their decay. For her, there is no text to rejuvenate; the white hairs still stand. They count. In contrast to the young woman, she plucks out the black hair, which are harbingers of all the vitality, all the impatience of innovative interpretation.<sup>59</sup>

This quaint story brings out the essentiality of acknowledging the power of law and narrative, an acknowledgment that is implanted in the literature-alongside-law paradigm. The combination of law and literature is a response or a manner of coping with the dialectic that underlies the human condition.<sup>60</sup> On the one hand, there is the peace of mind and complacency that accompanies the wisdom of the old. On the other, there is the vivaciousness, alacrity, and sometimes peace-disturbing nature of the young. The intermingling of Halakhah and Aggadah embraces both and thus creates an authentic balance. The balance is authentic because it acknowledges different human pulls and interests and our inability to reach full settlement and harmony. The balance is authentic also because it offers some kind of sense that we can grasp and accept, in part because it accepts the presence and weight of the other and because it is not blind to the contingencies of reality. Such balance makes the endeavor of law feasible. In this troubled, challenging time, perhaps taking up the notion of Halakhah and Aggadah, will enable us to keep most of our hairs, black and white, intact.

<sup>58</sup> *Babylonian Talmud*, Baba Cama 60b.

<sup>59</sup> Levinas, *supra* note 1 at 194.

<sup>60</sup> Almog, *supra* note 9 at 61.



## Résumé

L'étude des rapports entre la Halakhah (loi hébraïque) et l'Aggadah (légende juive) intéresse nombre de disciplines s'occupant du droit en tant que pratique culturelle et particulièrement le champ de droit et littérature. Cet article propose comme cadre d'analyse le paradigme en deux phases de la littérature accompagnant le droit. Dans cette perspective, on considère dans un premier temps les limites sinon les défauts du droit, pour ensuite tenter de les affronter efficacement et d'atteindre la vérité et la justice au sein de réalités difficiles. La combinaison de la Halakhah et de l'Aggadah reflète ce paradigme de la littérature accompagnant le droit en ce qu'elle crée un modèle d'interprétation dynamique dérivé d'un canon qui est « à la fois scellé et ouvert » et d'un large recours à la narration. La juxtaposition de la Halakhah et de l'Aggadah crée un vrai équilibre qui, tout en demeurant conscient de la faiblesse du droit, en réaffirme continuellement le souffle vital, caractérisé par des échecs et des déceptions tout autant que par des avancées et de l'imagination.

## Abstract

The interrelationship between Halakhah (Jewish law) and Aggadah (Jewish Legend) evokes potent insights, relevant to most disciplines that investigate law as a cultural practice, especially in the present-day Law and Literature field. This contention will be elaborated by proposing the two phased paradigm of literature alongside law. According to this paradigm, after considering the limits and sometimes failures of law, the next step is the attempt to deal with those effectively and to keep striving towards truth and justice within difficult realities. The Halakhah and Aggadah combination reflects the literature alongside law paradigm by creating a dynamic model of interpretation that is derived from a canon that is "both sealed and open", and from the extensive use of narrative. Thus the Halakhah and Aggadah juxtaposition creates an authentic balance that while being aware to the weakness of law, continuously re-establishes it as a vital effort, characterized by failures and disappointments, but also by vision and achievements.

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