

# LITERATURE ALONGSIDE LAW AS A CONTEMPORARY PARADIGM

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## ABSTRACT

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This article presents and evaluates two paradigms and their relevance within the law and literature discourse. According to the first one, the *global law* paradigm, the law appears as a huge web or as a unified and orderly meta-network, which encompasses human experience in all realms, and provides a normative response for every aspect of it. This paradigm may be set against an alternative perception, the paradigm of *literature alongside law*. Within the framework of this paradigm, vulnerable parts of the law, some of its false pretences as well as the hidden processes shaping it, are exposed. Next, there is the establishment of both hope and the ability to fulfil it, animated by imagination, shaped by literature and reflected in it, to put things right; to arrive at concrete truths and justice in a reality which does not enable comprehension of the whole, and never abandoning the strife towards the complex and the constantly changing equilibrium between human needs and human limitations.

*Key Words* ◇ global law paradigm ◇ law and literature ◇ legal postmodernism  
◇ literature alongside law paradigm

### *Literature alongside Law*

Law and literature, though deeply rooted in human culture, is a relatively young academic field. It deals with an integrated investigation of literature and of law, applied with an assortment of methodologies, in order to reach insights and propositions which could not be attained by investigating each of the disciplines separately. These insights refer both to law and to literature, but primarily to the relations between human beings, and between them and the world.

The starting point of the current study of law and literature is usually marked by James Boyd White's *The Legal Imagination* (1973). The book gave rise to a continuous wave of publications, and provided a highly significant impetus to the development of the law and literature movement, particularly in the United States. The academic discourse connected to law

and literature is rich and very diverse.<sup>1</sup> Nevertheless, significant parts of it share a common starting point or a similar direction, which is basically the pursuit of ways in which literature—including both literary creation and research—serves the law. This leads many to engage in an analysis concerning the points of similarity which allegedly exist between law and literature. The implied assumption is that 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 or influenced by it, or by means of its contemplation of various conflicts belonging to the field of law.

A similar starting point is also concealed in the conventional categorization of law and literature into two subfields: *law as literature* and *law in literature*.<sup>2</sup> The field of *law as literature* seeks to implement methodologies and terminology which belong to the field of literary criticism for pure legal purposes, such as analysis of legal texts or investigating the nature of legal rhetoric. *Law in literature* involves an examination of the contribution of literary works for the purpose of deepening our understanding of law and developing legal criticism.<sup>3</sup> It would appear that both subcategories support the postulate regarding the use of literature in the service of law, in order to somehow improve the law.

I suggest that the integrated investigation of law and literature does not require a postulate of this sort. Its core is not 'harnessing' the cart of literature with all its machinery, in order to improve the course of the law, and does not aim to serve the law. The major significance of law and literature discourse is related to its ability to depict a map setting law in relation to other settings and to a wider context. Concurrently, it shows the setting and functioning of literature within the web of human experience.

A discourse, with this starting point, is not required to engage in examining the similarities between law and literature. It is based on a perception of law and literature as two very different cultural creations, which are constantly linked in a complex manner. They are not 'two faces of one creature', as the phenomena of *Halacha* (Jewish law) and *Aggadah* (Jewish legend) were once described (Bialik, 1965: 216),<sup>4</sup> but two completely different creations, which, despite their differences, complement and supplement each other.

The broader name, *law and literature*, with an emphasis on the conjunction 'and', reflects this orientation better than each of the two conventional subcategories. Possibly, a more exact term would be *literature alongside law*, by means of which I propose to define the relationship between the two fields as linked, but devoid of hierarchical value. This relationship possesses the nature of two streams flowing in independent channels, yet linked by numerous substreams, and thus creating continuous reciprocal influence.

This constantly reciprocal flow of law and literature has always been vital. One of its fascinating manifestations is the combination between *Halacha* and *Aggadah*.<sup>5</sup> This association, whose uniqueness and strength are still

prominent today, many centuries after it was generated, creates an inherent integration of the two phenomena, which are so different and at the same time essential to each other. Very broadly speaking, the *Halacha* is the normative element, which is analogous to law. The *Aggadah* is the narrative element, which is analogous to literature, and like literature is very diverse. *Aggadah* includes interpretation of biblical stories, fables, proverbs, philosophy, legends, folklore and much more. While *Halacha* has a general and impartial nature, *Aggadah* has an episodic and subjective nature, and relates to an emotional zone. Although the two are entirely different, often even contradictory, they were created and used by the same sages, who combined them in the *Gmarah*: the integration of the two places, the Halachic system in an expansive context. By means of the *Aggadah*, the *Halacha* stays in constant touch with the boundless matrix of human experience, which is always present in its background. Simultaneously, due to its practical normative approach, the *Halacha* makes its followers focus on specific fragments of this matrix.<sup>6</sup>

#### *On Law as a Contemporary 'Grand Narrative'*

Is law the grand narrative of our times? The term *grand narrative* is derived from postmodern discourse. This discourse extends over a wide range of cultural and social issues, and is notorious for its conceptual vagueness (Jameson, 1992: 62). Perhaps vagueness is the inescapable result of the nature and substance of this cultural occurrence, which rejects approaches that wish to authorize or grant significance. Thereby it is also difficult to grant a unified significance to the postmodernist occurrence itself (Minda, 1995: 2). Alternatively, it is possible that this obscurity is connected to the huge variety of voices, linked to the postmodern choir, which seem to be very far from producing a single or harmonious tune. Nevertheless, it would appear that one note which is frequently heard from the postmodern choir is the rejection of a certain facet of the modernist position. The modernist position, according to the argument put forward by the postmodernists, aspires *per se* towards the grand narrative.

The grand narrative represents the attempt to set out a general, unified, harmonious, complete and sufficient explanation of the problems inherent in the human condition. The roots of this attempt are linked to the Enlightenment tradition, and its great stories of wisdom and liberty. Postmodernism, in contrast, as famously defined by Lyotard, is the condition of basic lack of belief in grand narratives (Lyotard, 1984: xxxiv).<sup>7</sup> The reasons influencing this critique are many and complex. The wars which made their oppressive mark on the first half of the 20th century, the profound cultural changes which followed the appearance of new theories exposing the power structure and control concealed behind paradigms which had

seemed absolute—all these were factors which undermined and even tore apart the existing framework stories. Thus, postmodernism is 'by nature' a mode of thinking, or intellectual style, more than a distinct theory (Mindia, 1995: 2), and is often linked to disillusionment around belief in the power of humankind to understand, control and be saved by reason and science (Boyne and Rattansi, 1990: 3).

In this state of affairs, there are some who perceive law as the only great story remaining intact, as a means of achieving harmony and order. Law is seen as the single certainty in a chaotic and incomprehensible reality,<sup>8</sup> as the sole reality in postmodernist culture' (Goodrich, 1990: 11). This approach may be termed *the global law* paradigm. According to that paradigm, the law appears as a huge web or as a unified and orderly supernetwork, which encompasses human experience in every direction, and provides some sort of normative response to every aspect of it. According to this paradigm, law in general, and specifically constitutional law, which determines the 'rules of the game' in terms of the relevant rules of interpretation and the doctrine of justiciability, expresses the grand narrative of modern society. It reflects the belief in one distinct perception or discipline that provides some sort of normative response to every aspect of human existence.

This paradigm may be set against another one. This is an alternative perception, which I shall call the paradigm of *literature alongside law*. This paradigm represents a highly complex process. The first part of the process unites with the postmodernist tendency, as it doubts every grand narrative, including the legal one. Indeed, the use of the term postmodernism in the legal context, though it cannot be identified with a single, distinctive and unified theory, indicates a certain orientation. This orientation leads towards the rejection of the assumption that law, by means of theories, interpretive rules and judicial professionalism, produces unified, correct solutions.<sup>8</sup> Similar to the direction taken by legal postmodernism, the first part of the process reflected by the *literature alongside law* paradigm negates the perception of law as an autonomous system, which may be described and analysed in terms of the objective perceptions of the legal interpreters, and possessing the ability to produce an appropriate, just and right set of answers to human problems. The second part of this process takes us a few steps further, and offers us additional elements that are generally absent from the postmodernist discourse. Within the framework of the *literature alongside law* paradigm, naming the vulnerable parts of law and the exposure of the hidden processes shaping it are used not for the purpose of discrediting the law, but the opposite. Having considered the failures of existing law, the next step is the establishing of hope, animated by imagination, to put things right, and to arrive at concrete truths and justice in a reality which does not enable comprehension of the whole. This step includes a striving towards the complex and the constantly changing equilibrium between law<sup>9</sup>, human needs and human limitations.

### On Law, Literature and the Whole

I shall start with the first part of this complex process, represented by the paradigm of *literature alongside law*—the constant literary subversion under the *global law* paradigm. This subversion takes place not by direct reference to the law, but rather by constant reference to another network, the existence of which negates the characteristic of completeness attributed to the legal network. I shall look into that by means of an observation offered by Italo Calvino (1996).

We often encounter, writes Calvino, the expression of fear for the fate of books and literature in the modern age of post-industrial technology. Calvino himself was not worried at all. His faith in the future of literature is based upon the knowledge that things exist which only literature can provide, using tools which are exclusive to it (Calvino, 1996: 3). Among those, Calvino includes the way in which literary creations are used as special methodologies of knowledge, as a genre of boundless encyclopaedia which represents a network of relations between human beings, between events and between world components (1996: 105). Calvino describes how a literary work is likely to become a point of origin for a huge number of roads spreading out and leading to infinity: '[t]he matter in hand spreads out and out, encompassing ever vaster horizons, and if it were permitted to go on further and further in every direction, it would end by embracing the entire universe' (Calvino, 1996: 107).

'Comprehend that everything embraces everything and encircles everything and there is nothing between circles and encircled except the first cause' (Agnon, 1975: 169). Agnon directs us towards a similar insight. So too does the sage who commented: 'Scholars of the *Torah* used to say: If you wish to know he who created the world, learn *Aggadah*' (*Sifvei, Eker*, 11, 22), referring to the capability of the *Aggadah* to offer a taste of the whole, which only the Almighty is capable of conceiving in its entirety. This exclusive quality of literature—the ability to provide some taste of the whole—has a special significance in the context of law. Literature constantly challenges the assumption that all the activities of men and women may be weighed within the framework of a harmonious legal network. It does so by emphasizing the partial nature of such a network within a boundless web of countless additional networks. Time and again, in a variety of ways, literature makes us acknowledge that we live within a reality which consists of endless and timeless relations and interrelations between those networks, most of which are hidden, and which exert an influence and are subject to influence by each other.

The legal attitude, which is designed to provide a concise summary of a certain distinct experience, appears in literature as very limited when it stands alone. It acquires its full coherence only when viewed at a distance and is considered in terms of its possible setting within a broader context.

This does not invalidate the law. In order to function in the manner expected of it, law must focus its gaze on a limited segment, and relate to it as if to a whole, ignoring its partial nature and the endless links between this segment and the greater background.

The ability of law to do just this is a characteristic of its instrumental nature. The great gap between law and conception of the whole not only reflects the limits of law but also expresses a conscious and pragmatic choice. The law cannot deal with attempts to draw as close as possible to the perception of the totality, as, if it did so, it would fail. Accordingly, the legal mode of action must waive reference to that infinite experience which is known as 'reality', which engulfs us, and adopt a small number of elements from it. Law, by its nature, focuses on the particular: the case. This is the way in which any particular event may acquire significance which is relevant from a legal point of view; the same significance we expect the law to distil from reality.

Indeed, the law cannot afford to hesitate, delay in the face of the unexplainable and point to the incomprehensible. It must function despite all these difficulties. Nevertheless, the consumers of the legal device or experts in its implementation should not attempt to repudiate them. The constraints and relativity of law must be left clear and in view. When this is not the case, and instead intensive use is made of the *global law* paradigm, several risks are faced. The *global law* paradigm tends to ignore some characteristics of the law, as a human system which is limited and relative by its nature; it obscures the boundaries and weakness of the law; and represents an additional danger, namely, the 'over-legalization' of society. When the legal network is perceived as the ultimate network, we naturally look to the law at all times, attempting to cling to it, exploit it for political and economic purposes, bring to it every single matter. We abandon the use of empathy, openness and understanding of the other, or the effort to arrive at agreed balances rather than harsh and coercive, sometimes violent, legal strictures.

This problematic tendency appears to be a universal condition, and is reflected in contemporary culture, in which the involvement of law in every aspect of our existence, for good and bad, is consistently increasing.<sup>9</sup> Indeed, the image of the legal network as encompassing everything has a foothold in reality. However, this image is incapable of transforming the law or enlarging its capacities. Law that is required to deal with matters which are not within its scope often leads to a dead end, or to dim and unsatisfactory solutions. Enabling judicial interventionism in every section of our lives, perceiving the law as a secular religion and sometimes almost as a cult (Rozen-Zvi, 1995), is not only doomed in advance, but also promotes an undesired process: legal norms become an unsatisfactory replacement for social and moral norms and understandings. An additional negative by-product is the weakening of the legal system. Law being required to exceed its boundaries and satisfy all tastes and needs, in every realm, will inevitably

leave many disappointed. From there it is a short stop to impairing the symbolic consent and legitimacy which are the source of the law's authority and the shield of the rule of law.

The function of literature is contrary to that of law. It deals with the story missed by the law, whether because it was obliged to miss it in order to function properly, or because it encountered an obstacle which precluded it from perceiving certain stories. Literature places law within broad contextual circles. It requires the examination of the actions of law from an extra-legal vantage point which frequently emphasizes the fragmentary impoverishing nature of the legal point of view, while having the power to charge the legal imagination with new insights.

One way to describe the functioning of literature in relation to law was offered by Dimock. In her portrayal, literature is a phenomenon which refuses to confirm the existence of an order of things which is structured and rational, thereby creating an increasingly broad range of inquiry (Dimock, 1996: 10). Another perspective is to describe literature as a phenomenon which penetrates 'unavailable territories' (Iser, 1989: 212), by means of its consistent consideration of the banished, the unknown and the inconceivable (Iser, 1989: 211), which the law tends to ignore. One might also point to the power of literature to reduce or weaken the attempt to describe the law as a conceptually coherent, unified and complete system. As Brooks contends, the cross-disciplinary infiltration of interpretive theory from literary studies into law emphasizes the problematic facets of legal interpretation (2000: 4).

Through literature, law appears not as an omnipotent great network, which encompasses the universe, but rather as one optional model. By means of this legal model it is possible to refer, to a certain limited extent, dependent on contexts of place, period and culture, to part of what takes place in the world. Sometimes, this approach leads to satisfactory results, or at least to results which appear to be satisfactory, and on other occasions, the legal model fails to deliver solutions.

At the same time—and at this point I wish to move towards the second part of the process represented by the paradigm of *literature alongside law*, namely, to the dimension which literature adds beyond pointing out the limitations of the law—literature does not transfigure the impossible into the possible and the inconceivable into the conceivable. It does not attribute any utopian virtues to the inconceivable or to the non-existent (Iser, 1989: 212). This is also true with regard to the law. Literature does indeed emphasize the faults and partial nature of the law, but it does not negate either the law and the need for its existence or the ways in which it operates. It flows alongside the law. It helps to establish the collective recognition that law is vital to human existence. It accompanies, documents and influences the creation of the legal ethos, in contexts which are universal and local. At times it is concerned with the essentiality of the law and its power, and at others

it is concerned with sharp criticism. It ignites and generates moments of discovery and change in law. It paves the way towards insightful observations, free of any illusion as to the real powers of the law. It exposes areas of vulnerability within the law.<sup>10</sup> Perhaps its most significant influence lies in its perception of the law not as a clear, distinctly bounded substance or as a process the stages of which are fixed and determined in advance, but rather as the fruit of human activity, or as the product of broad diversity, entailing numerous social and cultural processes. When law is perceived in this way, imagination acquires a central role. As James Boyd White noted: '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' (1994: 306).

The power of the imagination extends over every corner of the legal realm, whatever our view regarding the proper boundaries of that realm. Imagination enables us to obtain a specific answer even when we do not have at our disposal a complete theoretical model, a single, unquestioned truth or a comprehensive and harmonious grand narrative. Richard Rorty, who frequently alludes to the roles of literature and the imagination in similar context, illustrates the phenomenon by referring to the tension between the individual and the community. Initially, he shows how pointlessness is the striving 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 (Rorty, 1989: xv). Yet, he does not leave us at the impasse which ensues from this approach, but suggests a pragmatic way out. The gap between individual and public may be bridged not by means of theoretical investigations, but rather by means of the imagination, by the development of sensitivity to the suffering of the other and identification with him or her. By this process, the other is transformed into one of us, and our acknowledgement of his or her pain is deepened. The creation of this process, which leads towards human solidarity, is primarily the function of literature (Rorty, 1989: xvi). Literature fulfils this function, not only by means of the personal literary reservoir which accompanies each one of us and is comprised of the books we have actually read; it also refers to a more extensive collective reservoir, which always exists in our cultural background. This reservoir stands at our disposal, as an option for consideration, as a method of knowledge, as a vital source of images and also as a tool which ignites the imagination and generates hope.

Literature is the vehicle which enables us to create a rich and complex vision of the world:

Since science has begun to distrust general explanations and solutions... the grand challenge for literature is to be capable of weaving together the various branches of knowledge, the various 'codes', into a manifold and multifaceted vision of the world. (Calvino, 1996: 112)<sup>11</sup>

The challenge of combining a worldview composed of partial threads of knowledge has always been and will continue to be the province of literature.

### Conclusion: *The Blind Man and the Elephant*

Grant Gilmore likened our dealings with the law to the attempt of a blind person to 'see' an elephant:

Like the blind man dealing with the elephant, we must erect hypotheses on the basis of inadequate evidence. That does no harm—at all events it is the human condition from which we will not escape—so long as we do not delude ourselves into thinking that we have finally seen our elephant whole. (Gilmore, 1977: 110)

Indeed, we would all like to act with total awareness of our limitations. However, how can we avoid the dangerous delusion that we have managed to see the elephant whole? Or the delusion that what we perceive with our common sense and what is regulated by our legal system is the whole picture?

Here the critical nature of the *literature alongside law* paradigm becomes manifest, precisely today, at the beginning of the new millennium, in a society where the status of law and its essential role in every part of life is ever increasing. Against this background, the paradigm of *literature alongside law* instils the recognition of the inevitable failure. Blind persons can never grasp the whole of the elephant, both because of their blindness, and because of the huge and inconceivable dimensions of the elephantine existence, as well as the strangeness of the latter in terms of their blind experience. But that same paradigm, alongside the recognition of the failure, provides us with a sense of outside space. It expresses the desire to search for the substance and essence of the elephant. It supports the drive to continue the effort, to invest therein one's utmost skills and abilities, and never to abandon the hope of knowledge, which is encapsulated by many modes of human thought and action, as well as by the law.<sup>12</sup>

When one is placed alongside the other, the two fields, law and literature, 'modify' the extremism reflected by both. In the place where law holds no sway, literature unfurls its wings. It takes the final point of law, the decision, and opens it to an endless expanse. It refers to that which has been pushed aside, to the unknown and to the inconceivable domains, the relevance of which is not acknowledged by the law. In this process, literature and law merge in certain ways. If the law is indeed 'a collection of symbols which has the power to wake in us ideas and feelings', as proclaimed by Glanville Williams (1945: 86), it is literature, largely, which has made it so.

The combination of law and literature is a response to or a manner of coping with the dialectic which underlies the human condition. On one hand, there is the tranquillity achieved through reason and the use of human wisdom and predetermined patterns, by means of which it is activated in

order to perceive reality. On the other hand, there is the constant fear in the presence of the unknown, and of the invalidity of these patterns against the dim background of the unknown. Law enables us to diminish the fear, to blur the uncertainty. Literature enables us to meet the high price set by the law in consideration of that service. Literature leads us towards a perception of the law as a phenomenon which reacts to the human experience, and not as a phenomenon which commands it. As a phenomenon which, even if representing hegemony, power and control, also represents or at least is required to represent sensitivity, flexibility and a willingness to meet changing needs and circumstances. Literature distances us from attempts to draw an equals sign between law and science, or from proposals proclaiming that by means of the law we can be purified or saved. Literature causes us to perceive the legal function in a more modest light. Yet, it establishes the force of hope and imagination as tools which will help us to achieve moral goals.

To summarize, the paradigm of *literature alongside law* reflects a special combination which carries within it its opposite. By means of the power of artistic expression it exposes the arbitrary, delusory basis of the legal sphere, and at the same time re-establishes it as part of a huge and eternal cultural practice. It represents law not as a grand narrative, not as the greatest story, but as one of the central stories in our experience; as an essential effort connected to the most earthly and most spiritual aspects of existence. It is an effort cursed by mistakes, failures, disappointments and frustrations, but also blessed by courage, vision and achievements. Within our incomprehensible experience, the continuous flow of literature alongside law enables us to never give up hope of understanding, seeing, exposing, arranging, putting things right and doing what is good.

#### NOTES

At the core of this article are presentations at the conference on 'The Law in Israel at the Next Jubilee', held at Bar-Ilan University in January 1999, and at the conference 'Spectres of Law', held at Birkbeck College, University of London, in September 1999. I would like to thank Ariel Bendor and Ziporah Kagan. My conversations with them contributed to the development of my ideas. I would also like to thank Pinna Alon and Michal Andreason for their help in preparing this article.

1. A detailed bibliography of the major publications up to the middle of the 1990s may be found in Ward, 1995: 246–60. Some of the works published in recent years, belonging to the field of law and literature, include Almog, 1999, 2000; Berris, 1999; Brooks, 2000; Brooks and Gewirtz, 1996; Freeman and Lewis, 1999; Morrison and Bell, 1996; Nussbaum, 1995; Polloczek, 1999; Posner, 1998; Rockwood, 1998; St Joan and McElhiney, 1997; Schaller, 1997; Simon, 1998; Thomson, 1998; Van Roermond, 1997; West, 1997; Ziolkowski, 1997.
2. For details of this categorization, see Minda, 1995: 150–3; Ward, 1995: 22–7. A number of scholars have pointed out that a sharp distinction between the two fields is not always possible and that discourse forms exist in the field of law and

literature which are difficult to classify definitively as 'law in literature' or 'law as literature' (see Minda, 1995: 166; Ward, 1995: 26). Others have offered slightly different categorizations. Thus, for example, Posner constructed his book on the basis of the distinction between 'literary texts and legal texts' and 'literary texts as legal texts' (1998: 10, 209). Robin West (1993) suggests three major classifications: examination of legal themes in literary works, examination of the links and *nexus* between literary criticism and legal criticism, and reference to legal texts as literature. Yet, it would seem that the distinction between law in literature and law as literature still prevails as a starting point in the discourse connected with law and literature.

3. The roots of investigating 'the law' found in literature, are not new. A famous example is the essay of the American 19th-century jurist, John Wigmore, who compiled a list of 'legal novels', 'in which a lawyer, most of all, ought to be interested' (Wigmore, 1908: 574). Wigmore remarks that apparently 'the pioneer list was that of Professor Eugene Wambaugh, published in the Iowa University Law Bulletin in 1889' (1908: 586 n. 1).
4. The links between the phenomena of law and literature and *Halacha* and *Aggadah* are discussed in this article.
5. For a description of the cultural complexity selected by the combination of *Halacha* and *Aggadah*, see Kagan, 1988.
6. For a further discussion see Almog, 1997.
7. For a description of the development of postmodern thinking as an answer to the failure of modernism, see Harvey, 1989: 10–65.
8. As described by Minda: 'Modern legal theorists believe that they can discover the "right answers" or "correct interpretation" by applying distinctive legal method. . . . 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, 1995: 5). For the attribution of such a legal position to contemporary theories, see also Goodrich and Carlson, 1998: 2–3.
9. For a description of the phenomenon, see Ben-Ze'ev and Almog, 1996: 56. As mentioned, the phenomenon is present throughout the world, and one of its facets is the huge importance and the global attention given to legal or semi-legal affairs which have occupied the USA. The Simpson case and the Clinton affair are two examples of the extensive use of law, alongside the counter-reaction of repugnance at the extreme use made of it. For a critical description of the setting of the law in American culture see Campos, 1998.
10. For a description of the literary tendency to describe law's limitations and failures see Ziolkowski, 1997: 3–19.
11. For a fascinating illustration of the impossibility of holistic perceptions, as part of the human condition, see Calvino (1992: 73).
12. Cf. the comments of Arthur Leff, who points out that Gilmore describes law as a game, and claims that the people who play the legal game are all destined to lose. This is possibly the case, Leff writes, and adds: 'But at least there is this: on the way to those final defeats, there are, at least for some, some beautiful innings' (Leff, 1978: 1011).

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