So Gaian structures coexist in different dimensions (p. 276); and the court can move between different dimensions of the model without ever leaving it. There is some suggestion that this happens only in "situations of ambiguity" (p. 267), when the persona\text{e}l\text{res} dimension is unsatisfactory.

Propositional models cannot solve all problems, and neither does this model purport to. What it is is "the means of grasping and controlling the chaos of social fact" (p. 272). But it is not quite straightforward to do that by applying this model. The pervasiveness of the Gaian institutional model of law is certainly remarkable and deserves great emphasis (p. 241). But the use of the Gaian terms can seem to cause difficulties. \textit{Res} in Latin can mean more or less anything; here it is used to cover a wide range of things: objects (usually), the best interests of a patient (p. 188), social interests (p. 269). But \textit{res} are not always what they seem: a wheelchair is said not to be a \textit{res} because it is part of its occupier's persona (p. 276). The Gaian model works because of its level of abstraction. Likewise, the universality of this proposed model is a strength, but its explanatory force is somewhat reduced by the abstraction and lack of precise denotation of the Gaian terms on which it is based. A model is presumably only as stable as the structures from which it is built; and these structures are protean and elusive.

D.E.L. Johnston


The authors of a recent critical introduction to game theory rightly began by posing the following question: does game theory merely repeat what everyone already knows in a language that no one understands? The answer provided by an examination of \textit{Game Theory and the Law} is an important but unexciting "yes and no". Yes, because for Douglas Baird and company game theory seeks, whenever possible, to articulate and formalise the intuitions we already have when faced with particular instances of strategic behaviour. No, because the language of this book, although drawn from the depths of philosophical and economic thinking about game theory, is crystal clear. The supposed complexities of game theory are unpacked in such an admirably lucid way that one is left wondering how complaints about the abstraction and difficulty of this field could ever have been taken seriously. That alone is conclusive proof that this book—intended, as the dust-jacket tells us, "as a primer on game theory for non-specialists"—is a success.

You will be disappointed, however, if your expectations are such that you think a primer on game theory will help improve your chess. For, as John von Neumann, one of the founders of modern game theory reportedly remarked: "[c]hess is not a game. Chess is a well-defined form of computation. You may not be able to work out the answers, but in theory there must be a solution . . . [R]eal games are not like that at all. Real life consists of bluffing, of little tactics of deception, of asking yourself what is the other man going to think I mean to do. And that is what games are about in my theory". Moreover, that is exactly what games are about according to Baird and company. They are concerned with "[s]trategic behaviour [which] arises when two or more individuals interact and each individual's decision turns on what that individual
expects the others to do” (p. 1). Baird et al. hold that those preoccupied with the nature of law and its impact upon social action should be interested in such behaviour and the means used to understand it for this reason. Game theory illustrates the way in which all manner of legal regulations, in all manner of contexts, will influence the behaviour of rational beings. And, Baird et al. assume, perhaps optimistically, knowing that may help us to understand the actual behaviour of specific people in particular situations faced with specific legal regulations. The book therefore seeks to show the way in which those interacting strategically will react to, inter alia, different rules and regimes of motor accident compensation (ch. 1), information disclosure in contract and other settings (ch. 3) and to different models of the litigation process (ch. 8). In the course of doing this the book serves to introduce and unpack the various tools of game theory, including the various types of game that can be used to model instances of strategic behaviour and the many different solutions appropriate for each kind of game or strategic interaction. This is all clearly and elegantly done by reference to numerous appropriate examples drawn from outwith and within the legal context (cinema buffs will be intrigued to see scenes from The Maltese Falcon used to illustrate the “perfect Bayesian equilibrium” solution to games in which the parties have unequal knowledge: pp. 80–83).

The problems that beset this book do not concern the execution of the task the authors set themselves but the nature of that task itself. For an attempt to propagate game theory entails, rather obviously, a commitment to that body of thought and its various, eminently contestable assumptions. But little is done in the book to put these assumptions—both substantive and methodological—to the test. Two such assumptions demand scrutiny. An important methodological assumption this book shares with both law and economics and critical legal scholarship is that an adequate explanation and understanding of some area of social practice and individual actions can depart quite considerably from either or both the surface appearance of the practice/action or the participants’ understanding of the practice/action. One way in which the adequacy of such approaches to explanation and understanding are debated with current legal scholarship is in terms of the dispute between “instrumentalist” and “formalist” approaches to legal phenomena. Proponents of the latter kind of approach maintain that an adequate explanation and understanding of law must be in some sense “internal” to the phenomenon. Proponents of the former use some implicitly or explicitly normative value or set of values (the most obvious of which are economic efficiency and distributive justice) “external” to the law, against which the law is compared and in the image of which the law is to be developed. Whether or not those whose actions constitute the social practice “law” view it as instantiating or tracking these values is not an important consideration for instrumentalists. Now the fact that there is indeed a debate here—conducted at the most general level in the philosophy of the human sciences and manifest at the specific level of legal philosophy—and that proponents of game theory are committed to the “instrumentalist” position in it, suggests this issue is worthy of attention. It is therefore a little disappointing that Baird et al. did not see fit to tackle it: given the clarity of their application of game theory one cannot but lament that minds and pens were not brought to bear on this issue.

The second assumption is in fact a series of micro-assumptions sharing a concern with the nature and limits of rationality. One concerns the uses of rationality and holds that reason can only help us select the best means to
assumed ends, having nothing to contribute toward the determination of which ends are worth pursuing. Another posits that all agents are capable of ideally instrumental rationality. Creating models of how such agents act allows us to understand actual actions, with the caveat that we must always factor into our assessments the degree of information actual agents have here and now. Game theory therefore promises to bridge the gap between ideal explanatory models of action and the explanation of actual actions. But, again, these assumptions are eminently contestable and, again, little is said by Baird et al. to quell readers’ worries about them. Game theory, like law and economics and critical legal studies, comes into the world heavily laden with epistemological, methodological and normative baggage. As consumers of this body of thought, lawyers need to be informed of such matters if only as a prophylactic against disciplinary infatuation (the symptoms of which are legal scholars clutching to their breast a body of thought and zealously “applying” it to any aspect of the law, accepting either without question or awareness the self-image and assumptions of the adopted discipline). Game Theory and the Law is admirably clear, the cost of which may be a failure to grapple with some of the underpinning assumptions of the body of ideas it seeks to propagate. Thus the product it sketches appears hard to resist. For this reason, it lends itself to evangelism and that is both its strength and weakness.

WILLIAM LUCY


Although Waluchow’s book is a hard and at times frustratingly difficult read, it is well worth the effort since there are many insights and a very useful re-run of arguments about the nature of law, so unfashionable at present. Nevertheless, there is a main problem that his own thesis, that “inclusive” legal positivism is the best theory of law, is not as clear as it might be (in this terribly difficult area). I think the problem arises from his not being sufficiently sensitive to what are the appropriate criteria of good theory creation, and that because he has decided to improve upon Hart’s theory by incorporating insights of Dworkin’s theory, his thesis must remain tied to the different purposes of these two theorists. Here is a question which would draw his attention to this issue. If he is sure positivism is right, why is he so concerned to ensure that moral judgments are integral to law? Why not just join Dworkin, who is the subject of so much attack in his book?

Let us first get clear what positivism means for Hart: he defines it in chapter nine of _The Concept of Law_ as the doctrine that moral judgments are not required in identifying what counts as _valid_ law. Hart’s acceptance of this doctrine is in the same tradition as Bentham (censorial jurisprudence is distinguishable from expository jurisprudence) and Austin (the merits and demerits of law must be distinguished from its existence). Legal positivism for Hart serves various purposes, one of which is to ensure that people do not make the mistake of supposing that the existence of law is _conclusive_ of the question of their obedience to it. Waluchow appears to dub my description here of Hart’s positivism as “exclusive” positivism, meaning that it excludes morality as a part of legal reasoning. But he thinks exclusive positivism is wrong for reasons that are not clear, favouring instead “inclusive” positivism.