AESTHETICS AND AMERICAN LAW

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I. INTRODUCTION

Pierre Schlag in “The Aesthetics of American Law” argues for an investigation of the aesthetic attributes of law. Aesthetics, Schlag contends, is broader than an understanding of beauty, and is better seen as a discipline that “pertains to the forms, images, tropes, perceptions, and sensibilities that help shape the creation, apprehension, and even identity of human endeavors, including, most topically, law.” Schlag identifies and deploys four “recurring forms,” the: (1) grid aesthetic; (2) energy aesthetic; (3) perspective aesthetic; and (4) the dissociative aesthetic, to explain various aspects of legal theory and practice. The main point of Schlag’s “The Aesthetics of American Law” is that not only do aesthetic issues influence the decisions and internal workings of law, but aesthetics “bring what we call law into being.”

Some issues in American law have a direct connection to aesthetics, but the aesthetic issues are resolved by ordinary legal procedures (although both philosophical and jurisprudential issues may be raised, even if unaddressed by these legal procedures). Obscenity laws which separate legitimate art from pornography are a clear example. Courts deal with municipal aesthetic regulations and decide what is permissible architecturally and what is legally prohibited. And still more obviously, free speech issues intersect constantly with artistic creativity. We also find aesthetic issues decided by courts in the area of

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* Assistant Professor of Philosophy, University of North Carolina-Ashville.
2 Id. at 1050.
3 Id. at 1051-1052.
4 Id. at 1053. I agree with Schlag’s claim that aesthetics permeates the internal workings of law and conspires to bring law into being. But there is more to the aesthetic analysis of law than Schlag explores in his “The Aesthetics of American Law.” In this essay I highlight some issues which Schlag either gives short shrift or ignores altogether. Further, I will argue that Schlag’s characterization of aesthetics is, in a fundamental way, misleading.
Copyright law\textsuperscript{7} and environmental law.\textsuperscript{8} In all of these areas, aesthetic issues are determined through legal mechanisms.

Beyond the substantive legal issues raised by aesthetics and addressed directly by the law, Schlag is concerned about still broader issues of textual interpretation (of interest to both courts and jurisprudential scholars) and philosophical issues common to both law and aesthetics and it is those broader, global philosophical issues which I bring here.\textsuperscript{9}

I begin by exploring the claim that artistic expressions influence the way law is practiced. The effects can be found detrimental or edifying. For instance, some scholars find the influence of modern media detrimental to the neutrality and fairness promised by way of legal process. Other scholars, particularly those associated with the field of “law and nature,” argue that literature may be helpful in sensitizing legal professionals to the broader context and intricacies within which law is acted and practiced.

Law itself may be considered as a form of artistic production. And yet it is not an art in itself; we may find in the study of legal practice aesthetic qualities associated with authority and reason, the primary traits associated with law. Since both reason and authority are central concepts, and law attempts to objectify these ideas with concrete abstractions, we may find that a study of aesthetics allows us to expose suppositions about authority, reason and the relationship between them as they relate to the rule of law. Finally, I return to Schlag’s analysis and argue that he has offered a flawed conception of what it means for something “aesthetic” means in the study of law and jurisprudence.

II. Influences of Art on Law

The products of cultural art influence legal practice in various ways with varying results. The argument over results is taken up by Richard Sherwin in When Law Goes Pop\textsuperscript{10} where he claims that an ever-present contemporary media has a detrimental effect upon the legal profession, that the law has been so infected by television and film representations of law and lawyers that legal practice has been irretrievably altered.\textsuperscript{11} Sherwin argues that this media infection of the law has so detrimentally “thinned” legal meanings that law has become spectacle. The “customary balance within the legal system among disparate forms of knowledge, discourse, and power” are “flattened out as they yield to the compelling visual logic of film and TV images and the market forces that fuel their production.”\textsuperscript{12} Law, according to Sherwin, had traditionally refused to privilege a single source of knowledge.\textsuperscript{13} But with the influence of the media, legal storytelling is now beginning to adapt to the expectations of TV storytelling. The courtroom is now awash in the images and metaphors drawn from mass media. While “[l]aw cases enact a battle for reality” the fight must now take place within the (reductionist) options offered by the media.\textsuperscript{14} Sherwin finds that this “estheticization of the real”\textsuperscript{15} conflates law with the media images of law and in doing so delegitimates legal practice by calling into question the “autonomy” of law and the justice of individual case results.

Law, infected by popular culture, also loses its ability to act as a check upon popular passions. What is offered by the media is stereotypes and intensified passions, not the reasoned articulations about particulars that might lead to justice.

Sherwin goes on to seek out sources of narrative meaning that will help combat the leveling aspects of pop culture. In doing so, he repeats, if in altered form, the conventional belief that images, as opposed to argument, short-circuit our reasoning abilities and aim at baser (less rational) faculties such as those related to physical consumption and pleasure. In other words, image-based persuasion is a shallow and pernicious form of “illicit persuasion.”\textsuperscript{16} Sherwin is concerned that an “image-based” justice can be so seductive that it sweeps away the “actual facts and applicable case law.”\textsuperscript{17}

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\textsuperscript{7} See e.g., Alfred Yen, Copyright Opinions and Aesthetic Theory, 71 So. Calif. L. Rev. (1998).
\textsuperscript{8} For environmental laws see John Coetlos, ICONS AND ALIENS (Urbana: University of Illinois Press, 1989).
\textsuperscript{9} In recent years, scholars have begun to address these philosophical issues of ethics and law. See Costas Douzinas & Lynda Neal, LAW AND THE IMAGE (Chicago: University of Chicago Press, 1999); Adam Geary, LAW AND AESTHETICS (Oxford: Hartshorne, 2001); Roberta Reavelson (ed.), LAW AND AESTHETICS (New York: Peter Lang, 1991); Desmond Manderson, SONGS WITHOUT MUSIC: AESTHETIC DIMENSIONS OF LAW AND LIE (Berkeley: University of California Press, 2000).
\textsuperscript{11} Id. at ix
\textsuperscript{12} Id. at 4
\textsuperscript{13} Id. at 216
\textsuperscript{14} Id. at 24
\textsuperscript{15} Id. at 26
\textsuperscript{16} Id. at 243
\textsuperscript{17} Id. at 193
The conclusion offered by Sherwin in When Law Goes Pop is that pop culture subverts the legitimate aspects of legal practice—the specific institutional competencies of the legal system—and substitutes simplifying images for the more rational processes and competing literary narratives traditionally deployed in law courts. Whether Sherwin’s descriptions of traditional law or the effect of modern media on contemporary legal practice are to be accepted is less important than his larger philosophical argument that aesthetic products of modern culture have deep and influential effects upon the practice of law.

In contrast to Sherwin’s claims, other scholars who accept the premise that law is influenced by culture and art do not find the same negative effects and results as does Sherwin. For example, we find that some cultural products, most significantly the literary novel, have an edifying effect on law and legal actors. Martha Nussbaum, in Poetic Justice, argues that legal argumentation and judicial decision-making would be greatly improved if lawyers and judges adopted a diet of novel reading. In contrast to the technical, legalistic style of today’s legal opinions, “the novel constructs a paradigm of a style of ethical reasoning that is context-specific without being relativistic, in which we get potentially universalizable concrete prescriptions by bringing a general idea of human flourishing to bear on concrete situation, which we are invited to enter through the imagination.” Nussbaum argues that legal reasoning (of the best kind) requires sympathy for the human condition, and for particularities, that other formal modes of legal reasoning and reasoning based on law and economics cannot provide. Nussbaum finds a novel effective in stimulating the ability to imagine oneself in the place of another, and therefore prompts a more nuanced version of justice than results from impersonal, institutional driven approaches to law qualities of law which some find to be its most distinct virtues. If this argument is correct, legal education would need to make place for the reading of novels as well as judicial opinions (a practice some law teachers have already adopted). Following Nussbaum, we may find that images (construed broadly) made available by culture deepen meanings and expand the arguments we find in law rather than flatten them.

With both Sherwin and Nussbaum we find thoughtful explorations of how artistic products influence practices within the realm of law. But there is another more intimate way to explore the connection of law with aesthetic issues. As Schlag hints, law can be investigated as an aesthetic product in its own right.

III. LAW AS LITERATURE

The most common and accessible characterization of law as an aesthetic enterprise can be found by legal scholars associated with the “law and literature” movement, which is part of what may now be called “narrative jurisprudence.” As Robin West argues, even jurisprudential and legal theorists (writing in what they assume are abstractions), “persistently employ narrative plots at strategic points in their arguments.” Consequently a schema like Northrop Frye’s aesthetic theories can be adapted by West to analyze the aesthetic modes of modern jurisprudence.

The rhetorical and narrative strategies of law reviews—the traditional source of commentary on legal doctrine—is called into question by Patricia Williams’s critique of legal reasoning and legalistic attitudes of law students in The Alchemy of Race and Rights. Williams recounts how she provided a law review with a manuscript which centered on a racially charged experience at Benetton’s. Williams describes how her law review article changed as it went through multiple edits authored, by the student editors of the law review. As she tells it, in the first edit, all the painful emotions of the experience were eliminated in favor of the “passive impersonal.” In the second edit all references to Benetton’s were eliminated for “legal” reasons. Finally, another edit eliminated all references to her race. Arguing against the changes she was told by the student editor she was being too emotional. “What was most interesting to me in this experience,” says Williams, “was how the blind application of principles of neutrality, through the device of omission, acted either to make me look crazy or to make the reader participate in old habits of

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21 Richard Posner has argued that the claims of the “law and literature” scholars are overstated. See Richard Posner, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 79 (Cambridge: Harvard University Press, 1988). Posner does, however, concede that the study of literature may properly sensitize lawyers to the “great issues that law intersects.” Id. at 175.


24 Id. at 47
cultural bias." She concludes that the “impersonal” writing demanded by the law review was a form of “denial of self.” We may indeed want to deny the self, but we should, argues Williams, “be clearer about that as the bottom line of the enterprise. We should also acknowledge the extent to which denial of one’s authority in authorship is not the same as elimination of oneself; it is a ruse, not reality.”

Williams sees this formulaic and impersonal writing style as entailing a legal education that enforces an “aesthetic of uniformity.” It is this aesthetics of law review style—a styled neutrality—which eliminates significant human experiences from the realm of the “legally cognizable.”

Beyond analysis of the literary elements of jurisprudential theory and law review article aesthetics is an analysis of legal practice as a literary enterprise. Desmond Manderson claims that “the discourse of law is fundamentally governed by rhetoric, metaphor, form, images, and symbols.” Thomas Beebee argues that “[j]udicial procedure constructs not just law itself, but also reality” therefore law is a type of “poesis.”

A proper understanding of legal practice would highlight its constructive poesis. Law as poesis is a place where narrative possibilities compete for the right to be held as the “true” description of the world. Law, in this sense is creative every bit as much as it is reactive in nature, a fact that both traditional theories of law and an aesthetics of law must explain. A theory that ignores the creative aspect of law can be seen as descriptively false.

Further, admission of the poesis of law and the creative side of legal practice, forces acceptance of a new self-image for legal practitioners, with new obligations. For example, Adam Gearey in Law and Aesthetics observes that awareness of the proactive, constructive side of law, would push us toward a “Nietzschean aesthetic responsibility” where w is based upon a duty to create. Reading the law as a creative literary practice has been the foundation of James Boyd White’s scholarly writing over the past thirty years. White sees the literary and historical aspect of law as placing legal activity in the realm of the humanities rather than as a social science. The main question, in this view of the law, is “what worlds, what communities, our expressions and writings create. In our hands, what kind of theater can the law be, or become.” With this view of law, our view of lawyers, our sense of legal argumentation, and the role of judges changes (as do so many other aspects and “images” of the law).

Even if the hope for Nietzschean creativity is discounted (as I think it should be), and lawyers are not expected to be artists, it seems hard to argue against some of the “law as literature” claims. The greater part of law is a language-based product. Lawyers and judges make up a profession of writers. Case law, statutes, and constitutions are all written documents. Acknowledging the craft and influence of writing shows a close connection between law and aesthetic issues. And yet, the consciousness of the law’s (and lawyers) literary qualities have remained marginal in both legal education and the practice of law.

IV. THE AESTHETICS OF AUTHORITY AND THE AESTHETICS OF REASON

Why are the literary aspects of law so often ignored, the aesthetic aspects of law so conspicuously discounted? Law and legal practice purport to be an “discipline” and an academic subject of study that need not claim allegiance to either the social sciences or the humanities. Yet, if the law stands apart as a discipline, it must still justify itself. The most important type of justification law offers—over and above—is that it produces results that are derived from legitimate authority. Yet, law signals its authority via aesthetic means. As Peter Goodrich explains, law “is in many aspects to be taken as a plastic art, of architecture, statuary, dress, heraldry, painting and insignia—gold rings, rods, coifs, seals and rolls—which provide popular consciousness with a justice which can be seen and remembered.” We are presented the law by way of the judge’s robe, the ritualistic invocation of oaths and seals—all clearly aim at reinforcing the appearance of authority. Apparent even to lay observers, the activities of the law, especially trials, take place within temple-like structures. In comparison to other public institutions,
law seems more aesthetically charged with symbolic meanings than any other branch of the government. Even the most visible institution in the private side of law, the law firm, is aesthetically packaged so as to attach its power to the authority of tradition, culture and knowledge.

The aesthetics of authority offered by law is, in many ways, similar to the aesthetics of authority found in religious practices. Robes, rituals and grandiose buildings are common to both, as are the esoteric texts and specialized methods of interpretation. Also common to both religion and law are ritualistic appeals to the traditions and legitimacy of institutional hierarchies. Law, like religion, is tethered to its metaphysical transcendental sources of authority. Yet, in modern society law is largely viewed as a domain detached from religious sources of justification; law purports to replace religion with a metaphysics of democratic procedure and "reason."

Whether law is characterized as a system of social organization, dispute resolution, or a means of particularized justice, its contemporary claim to justification rests largely upon its appeal to being founded upon and driven by reason drawing on firmly established principles. It is reason and principle that we assume to be the basis for justness of court decisions. (A bad judicial decision is, thus, attributed to bad reasoning.) Law's claim to legitimate authority rests, in large part, upon its characterization as a system ruled by reason, reason which must be presented in its symbols, symbols used operationally by legal practitioners so routinely that they become a form of popular consciousness.

Beginning with Blackstone's Commentaries, according to Daniel Boorstin, we find an "aesthetics of reason" used to justify English common law. It is an aesthetics of simplicity, symmetry and balance, but also an aesthetics which contemplates disorder, complexity, and obscurity. It was, from beginning to end, a "rationalist aesthetic." For Blackstone, the aesthetics of the common law naturally mirrored nature, a nature made real because it was a manifestation of universal laws of reason. Janice Toran identifies a similar attitudinal aesthetic in contemporary legal reformers. According to Toran, aesthetic considerations such as simplicity, elegance and coherence are factors which directly influence legal decisions. Adam Geary describes this as "a belief in the inherent worth of form." This aspect of law often carries with it a sense of harmony; everything in its own proper place. The questionable move here is to assume that we are talking about reason (in the rhetoric of neutrality and objectivity) and not aesthetics.

Law may be guided by reason, but the law provides no means by which to test its system of guidance other than to appeal to its own internal formalistic criteria. As Adam Geary puts it, "[l]aw is a kind of confidence trick, as way of making society appear. If one is not aware that legal concepts are reified and abstracted, they appear to have some kind of foundational substance, a kind of autonomy or independent being. This loses sight of the notion that the system manufactures its own conditions of legitimacy and then attempts to legislate them as a priori universals that have a legitimizing effect through their appeal to reason."

The best example of this type of circular and insular internal justification grounded in an aesthetics of reason is Ronald Dworkin's theory of "law as integrity." Dworkin's theory rests upon a strong attachment to the concept of "principle" and his view of "rights as trumps." A principled system of law is largely characterized as one that rejects "checkerboard" laws and results. The checkerboard effect results in similar legal events distinguished in an "arbitrary" manner on grounds which vary case to case. But just what exactly is a similar case and when is treatment arbitrary? And why do checkerboard laws fail at offering anything more than arbitrary distinctions? These are, of course, key issues in most legal philosophy. Dworkin's explanation is telling. First, he admits that checkerboard laws may hypothetically succeed in providing fair solutions (and he further admits that some non-checkerboard laws are unjust). So the dilemma: "we have no reason of justice for rejecting the checkerboard strategy in advance, and strong reasons of fairness for endorsing it. Yet our instincts condemn it."

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35 Id. at 355.
37 Id. at 22.
39 "Rights as trumps" is one of many powerful images found in Dworkin's jurisprudence. The seductive nature of Dworkin's arguments rests largely upon his masterful use of vivid imagery.
40 Id.
41 Id. at 180.
42 Id. at 182.
solution: we oppose checkerboard laws because “we say that a state that adopts these internal compromises is acting in an unprincipled way.”

They don’t live up to the vision of law as integrity that Dworkin offers. So how does Dworkin help us understand his “legal integrity” argument? The law is to be imagined as “chain novel.” And it is with the “chain novel” metaphor and image that Dworkin’s grounds his jurisprudence in aesthetics.

According to Dworkin judges should interpret laws as if they were authors of a chain novel where a “group of writers writes a novel seriatim; each novelist in the chain interprets the chapters he has been given in order to write a new chapter.” The interpretive rule that governs the enterprise is that each author “has the job of writing his chapter so as to make the novel being constructed the best it can be.”

First, note the Latin flourish—a legal profession favorite. Second, note that “best” here rests largely upon an assumption that unity is better than fragmentation.

This seems to be an aesthetic preference that Dworkin finds no reason to justify but can assume as a given.

The two tests that the law and the chain novel must pass are “fit” and the result must reflect the “best all things considered,” both of which even Dworkin admits are largely aesthetic considerations.

The circularity and of this theory should be apparent as well as is Dworkin’s belief in the inherent worth of form, in the equation of reason with simplicity and coherence. It is meant to look like rigorous and principled reasoning, although most of the more important questions go unanswered. While both Geary and White would have the lawyer, judge, and scholar ask which narrative possibility creates the “best” world, Dworkin’s integrity thesis places us squarely in the realm of law as a separate domain. Dworkin’s judge makes law the best it could be—not the world.

Returning to Schlag’s exploration of law and aesthetics, we find Schlag arguing that “Dworkin achieved his elegant solution only by imbing to an exceedingly rarefied level of abstraction,” offering a jurisprudence “never touching the ground, always spinning in on self.”

Aesthetics teaches that law most surely cannot be separate and part from the world in which we must both produce and judge the law’s suits. But this isn’t to condemn Dworkin because his jurisprudence is determined by aesthetic principles, but rather due to the fact that his adopted aesthetic is not the most desirable one.

V. PIERRE SCHLAG’S VIEW OF AESTHETICS

There are aesthetic aspects to law that Schlag either ignores or glosses too quickly. More importantly, there is an aspect of Schlag’s analysis I think seriously misleading, primarily his conception of what attaching the label “aesthetic” means to a discipline or dispute.

The attachment of the label “aesthetic” to a discipline is important because, as Schlag claims, aesthetic issues “shape the ways in which we think law, do law, and imagine law’s future directions. They shape its very identity.”

This shaping is a substantial part of legal education where students are inculcated “sub rosa with a certain aesthetic of social and economic relations.” Finally, this aesthetic shaping (and the inculcation of an aesthetics) is of practical importance because our aesthetic conceptions of law become so convincing that they make our conclusions seem required and inevitable when they are neither necessary nor particularly appealing.

The labeling of an aesthetic enterprise is first broached by Schlag when he states his own aims in writing the article. Describing the article itself as an aesthetic project, Schlag views his work as “an attempt to awaken in the reader a sensitivity for and a recognition of the different aesthetics of law.” Yet, he “cannot define these aesthetics or prove their existence” but can only show “how it feels to enact or inhabit a particular aesthetic.” For Schlag, once a project is labeled aesthetic in nature, reasoning and argument are at an end. What is now demanded of the reader is no longer the capacity to reason but “a certain imaginative empathy.”

Once a dispute becomes explicitly a contest of aesthetics, there is not a whole lot more to say other than, “Well, that’s just the way I see things.” The obvious reply, “Well, you should see things my way,” is perhaps worth a try, but it is just as likely to meet with the answer, “I tried, but I just don’t see it that way.”

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53 Id. at 1102.
54 Id. at 1104.
55 Id. at 1114.
56 Id. at 1054.
57 Id.
58 Id. at 1105-1106.
This is a view aesthetics as the limit of the rational, a view consistent with Sherwin's claim that images (drawn from popular culture) short-circuit the law's reasoning processes. For Schlag, once this characterization of aesthetics and reason is accepted, "a great number of jurisprudential problems become at once clear, rationally insoluble, and no longer terribly interesting." That is, the issues become largely a matter of "I just do or don't see it that way."

This, I think, is a serious misunderstanding of what labeling something aesthetic entails. First, the argument falls prey to something very analogous to that of thinking that aesthetics only deals with issues of beauty. As any person familiar with modern art knows, even a narrow picture of aesthetic issues must include with beauty, issues of the ugly, the sublime, and the meaningful (and how we are to talk about and represent these notions). We have, with these issues, a combining of the sensory and the cognitive in ways that make them inseparable. But does this mean that the cognitive, and our "rational" capacities become irrelevant and may not still be dispositive of many issues. Indeed, the agreement in scholarly circles on distinctions about the nature and quality of various works of art can be properly attributed to rational argumentation. That mistakes will be made and adjustments necessary is not a counter-example but simply suggests that rationality should not be associated with certainty in any field. The view of the aesthetic as the limit of the rational is a symptom of a conception of reason too attached to architectonic distinctions and purified realms of objectivity. The reductionist conclusion that aesthetics is the limit of the rational is analogous to the mistaken idea that moral beliefs are best characterized as simply emotive preferences and cannot be explored or resolved by rational argument.

This leads to a second worrisome aspect of Schlag's characterization of aesthetics as offering four "meta-aesthetics" (or "meta-analogies") that determine choices. The main problem here is that we are given a top-down (deductive) view of the influence of aesthetics on legal practice and theory. The aesthetic is, I contend, in a far more intimate relationship with the rational than Schlag suggests and is admittedly less "univocal." A contrast to Schlag, I find multiple, overlapping, intersecting types of reasoning in law, and that these forms of reasoning rely upon aesthetic images and aesthetic argument. In my view, we need a less hierarchical structure of legal argumentation, one which does not seek to make it immune from influences from the most humble of the "lower" sources.

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60 See e.g., id. 1109-1110.
61 Id. at 1109.

In law (and aesthetics), the questions often come down to analogies and our ways of seeing the world. Some are more useful, more accurate, and more seductive, more beautiful, than others. We choose an analogy for its usefulness, its aesthetics, and through traditional means of argumentation and reason. Aesthetic stances are not self-enclosed and homogeneous domains, therefore we can reason from one to the other; we can reason within them, between them, and around them. Even if one aesthetic is dominant, we may by way of argument, find that we can be convinced that another analogy (or aesthetic) is more justified. This calls into question the impression Schlag gives that one can reason within an aesthetic but not between them.

Adopting a more cognitive-oriented, nuanced conception of aesthetic, allows us to see that the distinction between argument form and aesthetic form is not one of type but of degree. From this juncture we can see that the claim that law is inherently an aesthetic enterprise is not nearly so radical as it sounds. It is a matter of seeing how people argue for their aesthetic beliefs (and the conclusions that follow from them) instead of stopping with a platitude: "There is no accounting for taste." If we find Dworkin's jurisprudential theory misleading as well as aesthetically determined, we don't have to say, "I just see things differently" but things like, "Dworkin's theories always seem to have the feel of a foregone conclusions," or, "While I often agree with Dworkin's ultimate conclusions the reasons he offers often seem insubstantial." With statements of this kind, the reasoning process remains intact and can now begin in earnest. We have not used aesthetics to end the conversation with the claim and the impasse: "We just choose to differ." While a person who desires clarity over descriptive accuracy might want to see aesthetics as non-cognitive and reason, at its best, purified of aesthetic bias (what Schlag describes as aesthetic "skewing"), this position does not lend itself to our best understanding of the workings of law, lawyers, and judges.

VI. CONCLUSION

In this survey of the ways that aesthetics is implicated in our understanding and practice of law, one thing becomes clear--aesthetic issues are unavoidable. Law deals with various aesthetic concerns explicitly and directly, but is at its core a more aesthetic shaped enterprise than we generally think. It is quite odd that a domain of
social practice so thoroughly overdetermined symbolically, can be viewed as if it were immune to and independent of aesthetics. Or worse, aesthetics is viewed as the basis for bias, emotion, and pernicious passions. But we might note, that an impoverished sensitivity to the aesthetic nature of a discipline is not the same thing as lacking an aesthetic. Law's aesthetic gains legitimacy as it denies its aesthetic and holds itself forth as a highly formalized aesthetics of reason and authority, a fetish of form. But this is a highly questionable source of legitimacy.

While Pierre Schlag is right to see aesthetic issues as being constitutive of legal practices the conclusion he draws from this premise is misleading. We need not conclude that a dispute, legal problem, or legal practice, viewed as a contest of aesthetics means that we end the conversation with, "Well, that's just the way I see things." Aesthetics need not (indeed cannot) take us beyond the limits of rational inquiry and argument. The aesthetic is always in an intimate relationship with the rational. We can always attempt to argue rationally between aesthetic accounts and premises of the law just as we have learned to do in dealing with any art.


