Book Review, The Beauty Bias: The Injustice of Appearance in Life and Law

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The Dove website advertises its soap and bath products with a “Social Mission” and an official “Vision.” The “Dove Movement for Self-Esteem” asks consumers to “[i]magine a world where beauty is a source of confidence, not anxiety.” The campaign states that, since its launch in 2004, it has served “as a starting point for widening the definition and discussion of beauty.” Dove runs commercials on national television as part of promoting a message that individual beauty does not come only from meeting a single standard of beauty. In competition with other products sold by convincing women they can become beautiful, Dove combats the principle that women must use—and thus purchase—products to be beautiful and seeks to counteract the harm that stems from such campaigns.

Dove is only one of many companies attempting to influence the American public with images related to beauty. Unfortunately, the vast majority of advertisements and media portrayals are not as body-positive as Dove’s. The American public is inundated with messages about appearance: as an individual, you are told both what you should look like, and then what harm will come from either not meeting that standard or trying to meet that prescribed standard of beauty. These messages, both negative and positive, are ubiquitous. There are numerous books discussing the harms of the nearly impossible to achieve, yet “normative,” standard of beauty and what it is doing to our population—especially young women. Educators now commonly include curriculum on eating disorders in the middle-school classroom and feminist bloggers continue to criticize the white standard of beauty.

2. Id.
3. Id.
4. One example, which provides a comprehensive and intellectual discussion of this harm, is Joan Jacobs Brumberg, The Body Project: An Intimate History of American Girls (2011).
There is also a widespread recognition, even within the legal profession, that looks matter. Law students receive specific instruction in how to dress and accessorize for law firm interviews. The perception is that top corporate lawyers are also the "hottie" lawyers, since in such a competitive field only attractiveness breaks the tie between those lawyers that are equally competent and qualified. Law firms maintain that a lawyer's "appearance, male or female, contributes to their presence," and therefore success, in the courtroom. The prevalence of societal and scholarly discussion, in addition to great concern about the normative standard of beauty, will make most readers wonder: what could The Beauty Bias add to our understanding of how beauty, feminism, and society interact in a post-Beauty-Myth world?


7. For example, Berkeley Law's Career Development Office offers the following advice to students:

"A professional appearance shows respect, preparation, and that you can one day be a desirable emissary for the employer in court, with clients, or at other public appearances. For an interview, this means shined shoes, hair (including facial hair, if applicable) that is neat, clean and nicely cut, and clean and clipped nails. Clothing should be understated, conservative (usually this means dark colors), pressed and brushed. Male and female interviewees should wear a business suit. Men should wear a clean and not-too-loud tie, and a clean and pressed shirt. Women interviewees should wear an appropriate blouse and, if your suit has a skirt, you should also wear hose. Shoes or pumps should have modest-sized heels . . . Too much jewelry, particularly dangling earrings, is distracting. Avoid overdoing the make-up. Remember that employers will see you from the back as well as from the front; check your appearance from both perspectives."


9. Above the Law, a popular legal blog, runs a column entitled "Courtship Connection," where lawyers are sent on blind dates. In describing the participants for another publication, the author of this blog writes,

"The female lawyers look more like Charlotte of Sex and the City than like Miranda. There aren't any Bobby Donnell/Dylan McDermott lookalikes but many of the male lawyers are good-looking enough to have made an appearance on The Practice. Perhaps it shouldn't be surprising, though; it's competitive to become a New York or D.C. lawyer, and attractiveness is always an asset in landing a job."


11. NAOMI WOLF, THE BEAUTY MYTH (1991) (exploring how with increased social power and equality, the requirement that women meet physical beauty expectations has only grown stronger).
question through her research and careful analysis. First, the book's intersectional analysis supplements the existing dialogue in this area of scholarship. Second, Rhode adds something new to the discussion by exploring legal frameworks for prohibiting beauty-discrimination. Finally, she provides concrete strategies for change to combat this pervasive discrimination.

**AN INTERESTING, IF UNORIGINAL, COLLECTION OF FACTOIDs**

The first third of the book is very well researched and written—although it reads more like a gossip column than an academic work. Rhode has compiled an entertaining compilation of statistics related to gender and physical appearance. This section acts as an interesting introduction to a difficult legal topic, but may be more useful for a Jeopardy hopeful than someone interested in changing the law. It is not hard to imagine Alex Trebek stating:

- The percentage of teenage girls who list shopping as their favorite activity. *What is 90%? (p. 51)*
- The expensive grooming act performed by 60% of American women. *What is hair dying? (p. 57)*
- The highest paid member of Sarah Palin's Vice Presidential campaign staff. *Who is the makeup artist? (p. 9)*
- The amount of weight Miss Texas may gain before losing her crown. *What is two pounds? (p. 56)*

This inclusive and informative tour of gender and beauty in America provides an engaging critical analysis of gender and intersectionality. Rhode addresses gender, age, sexual orientation, and race as she navigates the world of the white beauty standard.

Importantly, Rhode spends substantial space exploring "what fuels our concerns about appearance," because only through understanding those concerns "can we effectively challenge their adverse consequences." (p. 45) Rhode explores sociobiological foundations; cultural values, status, and identity; market forces; technology; the media; advertising; and culture as underlying factors in

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12. In reading this portion it is hard not to be jealous of the research assistants who were paid to spend their time reading Cosmopolitan and Playboy rather than the traditional fare of court cases or administrative regulations for their law school employment.

13. This makeup artist earned $68,000 during the campaign. In addition, Sarah Palin's campaign spent over $40,000 on the hairstylist over the course of the campaign, or about $750 a day. Of course, Mrs. Palin's costs vastly outpace John Edward's highly-criticized $400 haircut (p. 97).
the modern beauty aesthetic. Although feminist explorations of these factors existed prior to *The Beauty Bias*, Rhode’s presentation is important because it explores these factors in the contemporary world and how they are currently impacted by the normative standard of beauty. For example, Rhode examines, through a modern lens, Naomi Wolf’s argument that because traditional attractiveness is believed to be required for women to succeed in work, women will invest substantial time, money, and effort in their physical appearances. Thus, women are not able to take full advantage of the gains of feminism, and instead must focus on physical appearance above education and career advancement. Despite such interesting discussions, this book concludes very little about helping women make individual decisions to resist the beauty market, made up of beauty companies constantly telling women what beauty standard they must achieve and that women can only achieve that standard with their particular product. Instead of focusing on the choices of individual women, Rhode focuses on a legal framework that allows those willing to resist pressure to conform to the normative standard of beauty to maintain their legal rights.

**INTERSECTIONAL ANALYSIS**

Rhode addresses intersectionality early on through anecdotal evidence. However, issues of intersectionality continue through the work because they are important to the legal aspect of her argument. Because most jurisdictions provide little legal protection for appearance-related discrimination, “such bias is unlawful only if it is linked with characteristics that other antidiscrimination laws cover, such as race, sex, or disability.” (p. 92)

Rhode provides three rationales for banning appearance discrimination: (1) it “offends principles of equal opportunities;” (2) it “reinforces group subordination; it exacerbates disadvantages based on gender, race, ethnicity, class, age, and sexual orientation;” and (3) it “unduly restrict[s] self-expression and cultural identity.” (p. 93)

The best argument Rhode presents for banning appearance discrimination is that denying protection compounds the barriers to success that disadvantaged groups already face. Rhode properly treats appearance as an additional axis of oppression operating against various minority groups because, for those groups, appearance discrimination often compounds other discrimination. Beauty compounds class distinctions because beauty is expensive, and only the moneyed can afford to meet the normative standards (p. 96). Racial minorities fight the additional burden of meeting a white beauty norm (p. 96). Gender discrimination lives on when women cannot present as too masculine at work, but by the time women reach upper management, being too traditionally attractive leads to the view that the women have succeeded *because of* those looks and do not deserve the position (pp. 96-97). Gender variant individuals suffer when norms prescribe traditionally-gendered clothing and appearance (pp. 98-99). Particularly in light of the disproportionate impact appearance discrimination has on those already
impacted by other forms of discrimination, Rhode is correct to seek legal frameworks and solutions to the problem.

**LEGAL FRAMEWORKS**

As Rhode proclaims, *The Beauty Bias* offers the “first systematic research on how appearance-related protections actually work.” (p. 118) She examines the woefully small number of jurisdictions that prohibit appearance discrimination. Michigan banned height and weight discrimination in 1975; Urbana, Illinois banned appearance discrimination in 1979; and the District of Columbia banned appearance discrimination in 1982. More recently, San Francisco banned discrimination based on height and weight, while Santa Cruz, California banned discrimination based on involuntary physical characteristics, and Madison, Wisconsin has an even wider-reaching law (p. 118).

Rhode analyzes each jurisdiction for the number and types of discrimination cases brought. She concludes that few have been brought and most of those cases could have also stood on another legal protection, either constitutional or statutory. Despite acknowledging the limited impact that these laws have had on litigation, Rhode argues that even these small victories have produced a chilling effect. “[E]mployers may be less likely to discriminate or to articulate their biases openly.” (p. 139)

In addition to discrimination lawsuits brought by employees, Rhode examines the additional legal tool of consumer protection regulations. Consumer protection plays a role in combating the disadvantages created by the coercion of the normative beauty aesthetic. “[F]raudulent beauty and weight-loss advertising claims . . . encourage preoccupation with attractiveness and delude purchasers about what will secure it.” (p. 141) Rhode discusses the role the Federal Trade Commission (FTC) could have in monitoring companies that provide false and misleading information about beauty products. Although the FTC has not always prioritized false or misleading appearance-related claims, the commission has more recently begun to target these advertisements—particularly bogus weight-loss products (p. 141).14

**APPROACHES TO CHANGE**

Rhode’s primary recommendation is to amend municipal and state statutes to provide legal protection for victims of appearance discrimination. She spends two hundred pages leading up to this conclusion, and spends a confusingly small amount of space discussing how such legislative change could take place. Perhaps this discrepancy is due to the recognition that it is an impossible undertaking at this time, but admitting that her proposal is politically untenable

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14. As Rhode makes clear, these fraudulent advertisements are often targeted at “populations of limited education and English language skills,” providing yet another way that the already-disadvantaged are hurt by the beauty-marketing system (p. 141).
would weaken her thesis. In addition to suggesting statutes aimed directly at appearance discrimination, Rhode acknowledges how other types of discrimination protection already in place could be used to protect against appearance discrimination. However, she does not posit this incorporation as the best way to solve the problem of appearance discrimination, nor does she explain how such a change could, and should, take place.

There is a worthwhile point to be made in explaining the intersectional impacts of appearance discrimination with other axes of oppression. What Rhode recognizes, and then glosses over, is that, in many ways, the law already incorporates appearance discrimination against otherwise disadvantaged groups. As Rhode points out in her legal analysis, appearance bias is already unlawful “if it is linked with characteristics that other antidiscrimination laws cover.” (p. 92) Those characteristics are most likely to be protected under constitutional guarantees of equal protection, free speech, and religious expression; statutes banning sex, race, ethnicity, or religion-based employment discrimination; and statutes prohibiting discrimination based on disability. Rhode believes that these current approaches have all “proven seriously inadequate.” (p. 118) However, there have been significant successes under the current laws. One example is the Supreme Court’s interpretation of Title VII in *Price Waterhouse v. Hopkins*. The plaintiff in that case had been discriminated against and denied partnership because of her appearance and mannerisms. Partners at the firm suggested that she take “a course at charm school” and “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”¹⁵ The Supreme Court interpreted Title VII to offer protection against employer discrimination if “the partners reacted negatively to her personality because she is a woman.”¹⁶ Thus, the case protects against appearance discrimination if that discrimination is based in part on sex.¹⁷

Because other laws protect against appearance discrimination, strengthening protections for minority groups in all areas of constitutional and statutory law should also provide increased protection against appearance discrimination. Rhode, however, wants to create a separate legal tool to deal with appearance discrimination that is neutral to other axes of oppression. Certainly, there are many cases that have not been properly adjudicated in the eyes of those who believe that appearance discrimination should be illegal. However, despite the legal failures of the status quo, current laws could be strengthened legislatively or judicially to offer protections for appearance discrimination more broadly. *Price Waterhouse* serves as an example of the successful expansion of *status quo ante* legal protections to include protections for non-normative appearance.

¹⁶. *Id.* at 293.
While Rhode articulates the success of her legislative proposal in a way that makes sense in a world where appearance discrimination laws are already enacted, there seems to be no substantial evidence that the passage of these laws is possible. Therefore, the major weakness in the efficacy of Rhode's conclusions is the reliance on a drastic transition from the current law. It is more politically practicable to encourage courts to interpret and use the current protections to extend to appearance discrimination. Particularly, if the main success of the laws prohibiting appearance discrimination is a chilling effect on employers, then integration of the inherently intersectional appearance discrimination into existing protections will be just as successful as broad legislative change.

Especially because "most [appearance discrimination claims] could have been brought under other civil rights law," (p. 140) it is hard to ignore the practical barriers standing in the way of protection through legislative change. Rhode’s goal is laudable: protecting the appearance a person either has naturally or chooses for themselves, particularly where the discrimination pervades multiple axes of oppression. However, if a person is already protected against appearance discrimination by being a member of a protected group, why create a new system? One benefit of Rhode’s legislative proposal is that the laws banning appearance discrimination would be available to able-bodied, white, moneyed, gender-normative men, who may not otherwise garner legal protection based on their identity. However, Rhode’s anecdotes all suggest that non-normatively attractive individuals who are actively seeking protection can garner protection through laws designed to protect additional axes of oppression, including race, gender, and disability. This is not to say that non-normatively attractive, yet otherwise privileged, individuals should not be offered protection; rather, the best protection for those at greatest risk for appearance discrimination will come through incorporation into existing law. This is true both because of the strength of the pre-existing protections once they are extended and because of the political untenability of creating anti-discrimination statutes based specifically on appearance.

In addition to legal changes, Rhode offers specific administrative and social recommendations: all small changes with an important impact, but not enough to effectuate change as fast as legal protections. Until legislatures are willing to act, courts should continue to incorporate appearance discrimination into claims adjudicated for discrimination based on protected axes of oppression.

CONCLUSION

The Beauty Bias is an important feminist, intersectional addition to the study of appearance discrimination. The industry sets beauty standards that are widely known to be unachievable by the average person. Scholars widely

18. Rhode makes recommendations for parents, consumers, businesses, the media, employers, food industries, and cosmetic industries (pp. 148-153).
criticize such standards, and Rhode adds to that discussion in meaningful ways. Both her comprehensive discussion of intersectionality and the current state of the law open a space for the legal system to address appearance discrimination. Rhode recommends new legislation to combat appearance discrimination, but her suggestions are not politically practical in most jurisdictions. For many employers, if a person cannot even discipline themselves enough to avoid weight-gain or properly groom themselves, then they do not have the discipline to perform satisfactorily at work. As long as employers continue to think this way, states and municipalities will have trouble passing or enforcing appearance discrimination laws.

The political difficulty of passing appearance discrimination laws may mean that Rhode’s primary goal cannot be met in the near future, but Rhode contributes in at least two ways to the movement to reject the normative standard of beauty as a requirement of personhood and success. First, she provides a solid survey of the problem, which will be useful when legislators address appearance discrimination. Second, Rhode’s intersectional analysis is useful to jurists and lawyers who seek to address appearance discrimination through already-existing anti-discrimination laws. Therefore, The Beauty Bias is a worthwhile feminist endeavor, and can help anti-discrimination lawyers formulate arguments in appearance discrimination cases.

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