June 6, 2012

Aesthetic Experience and the Relationship between Law and Religion

Kevin P. Lee, Campbell University School of Law

Available at: https://works.bepress.com/kevin_lee/18/
AESTHETIC EXPERIENCE AND THE RELATION BETWEEN LAW AND RELIGION

INTRODUCTION

Do law and religion appeal (at least in part) to a judgment that the ways of life that they help to organize and sustain are aesthetically appealing? There is something that is intuitively correct in believing that they do, since it is difficult to imagine that a religious life or a legal system would survive if it did not make possible lives that are held to be well-lived. And yet, there is little in the methodologies of contemporary legal thought that would make it possible to consider this aspect of law and its relation to religion.

This essay is on the place of aesthetic experience in the relationship between Law and Religion. Aesthetics experiences are perceptions of beauty, those experiences that accompany the judgment that a person, place, thing, idea, etc. is beautiful. These are important judgments, as are judgments of lack of beauty. Their importance is indicated by the massive writings that beauty and ugliness have provoked over the course of human history. And, in that massive body of writings, law and religion have, from time to time, surfaced as objects of beauty and occasions for making judgments about what is beautiful. Despite this historical richness, beauty has fallen on hard times among philosophers. The term has almost disappeared in philosophical discourse, even among philosophers who write on art, literature, and music criticism. As compared to the ancient and medieval world, where beauty was tightly linked to the eternal, today beauty is associated with the merely “pretty,” the ornamental, and the pleasurable. In the contemporary meaning, beauty is morally indifferent, and in a culture of celebrity, beauty is often a cover for shallowness. Nonetheless, a number of developments suggest that
beauty is returning to the foreground, and that it is particularly useful in thinking about the relation of Law and Religion. In this essay, I will examine several aspects of this reproachment with aesthetic experience and suggest what might lay ahead for legal theory.

To demonstrate the importance of beauty, it is useful to consider three moments in contemporary thought where aesthetics experience is being re-considered. Sadly, the most that I can do here is introduce a few basic concepts. First, there is a moment in the emergence of phenomenology in contemporary cognitive theory. The second is the postmodern thought of Jean Franscois Lyotard, and the third is there renewed interest in aesthetic theology. These developments, each in their own way, suggest that beauty or aesthetic experience, or aesthetic judgment has continuing importance in thinking about how human beings form meaning. Aesthetic experience appears to offer insights into how human beings form meaning. Philosophical accounts of meaning, particularly those associated with analytic philosophy, do not give attention to the ineffable dimensions of highly integrative experiences like the lived experience of art, music, literature, ritual, and performance, that are complexly present in law and religion.

**EMBODIED COGNITIVE THEORY**

That minds are “embodied” is, of course, obvious if taken to mean that minds are located in bodies. As used in recent literature, however, the phrase refers to the proposal that much of contemporary philosophy and psychology does not have an adequate understanding of the implications of having minds that dynamically extend into the physical world through material bodies. Embodied cognition science contends that the
mind is deeply dependent on the physical body and emerges through interactions with it in physical, social, and cultural environments. Embodied cognition science developed in the past twenty years out of a number of technological and computational advances, such as breakthroughs in artificial intelligence, advanced robotics, computational methods for analyzing complex systems, and the development of advanced brain imagining technologies that allows researchers to explore brain function. These developments have led some researchers to raise questions about basic and enduring questions in philosophy.

One particular development in embodied cognition theory suggests that human beings form meaning from particular kinds of experiences that integrate the cognitive, affective, and rational dimensions of the mind. This is an extremely important conclusion for thinking about how philosophy ought to be done, since it tends to suggest that the type of conceptual analysis that is dominant in Anglo/American legal thought is incomplete. Conceptual analysis, particularly the form associated with Russell and J.L. Austin, focuses on the grammar and syntax of concepts and propositions in isolation from the peculiarities and idiosyncrasies that are characteristic of human cognition and reasoning. Stanley Cavell has noted this and distinguishes ordinary language philosophy from the more formalistic approach. He writes:

[T]o trace the intellectual history of philosophy’s concentration on the meaning of particular words and sentences, in isolation from a systematic attention to their concrete uses would be a worthwhile undertaking. . . . A fitting title for this history would be: Philosophy and the Rejection of the Human.  

Cavell’s point is echoed by Mark Johnson, who writes in his recent work, The Meaning of the Body. He argues that “[contemporary Anglo-America philosophers] labor
under the illusion of the cognitivist view that meaning is properly only a linguistic phenomenon—a matter of words and sentences.” He notes that this view excludes (or at least marginalizes) non-linguistic expressive forms like dance, music, and painting.

Johnson explains that from an embodied perspective,

> From the moment of our entrance into the world, and apparently even in the womb, we begin to learn the meaning of things at the most primordial bodily level. Things are meaningful by virtue of their relations to other actual or possible qualities, feelings, emotions, images, image schemas, and concepts. We begin our lives mostly by feeling or sensing this vast complex of meaning, and we never cease to access it via feeling, even when we make use of our culture’s most remarkable tools of symbolic expression and interaction. [279]

Aesthetic experience is marginalized in analytic philosophy because it is perceived an equivocal concept that cannot be rationally verified. That is to say, it is generally accepted that there is little agreement about what beauty is, and therefore, there is impossible to empirically verify that something, person, event, idea, etc. is “beautiful.” Aesthetic judgment and the experience that provokes it, is unworthy of consideration by the dominant forms of legal thought.

**LYOTARD AND THE BEAUTY OF THE SUBLIME "OTHER"**

Jean François Lyotard’s work represents the postmodern influence on contemporary legal thought. He is probably best known for his work, “The Postmodern Condition,” which introduced the idea of the comprehensive "metanarrative." While, postmodern is notoriously difficult to define, it is generally thought of as a movement that began in the nineteenth century with Nietzsche who argued that the modern point of view is not the only possible one—that, in the end, “rational” discourse is subverted by the attraction of beauty. Truth claims have no more convincing foundation than attractive
rhetoric and moral “values” express artistic preference. These views are found in Nietzsche, who assumes that the desire for beauty is the ultimate expression of the “will to power.” Postmodern philosophy exalts an appeal to beauty that obscures “truth.”

Kant’s aesthetic theory plays a significant role in Lyotard’s later thought. The point of departure for understanding Lyotard's work on the "Other" is Immauel Kant's third "Critique," in which Kant attempts to restore unity to philosophy, which he had neatly cleaved into speculative and practical in the first two "Critiques". In the third "Critique" he sought to restore unity by turning to the critique of judgment, he intended to resolve the division with a work about judging judgment itself.[1] Kant believed that judgments of pure speculative reason and the regulative judgments of practical reason find unity in the judgment of taste.[3] Although this appeal to taste seems strange now, Hans Gadamer has shown that this was a common understanding of taste in the eighteenth century. According to him, taste was widely held to be a non-rational, but immediately known, universal conscience that was teleological in nature.[4] This means that a person who has achieved a refined awareness of good taste can make judgments that will be universally recognized by anyone with a sufficiently developed ability to discern what is truly tasteful. This is a fantastic claim today, since beauty is typically thought of as exemplifying an arbitrary, subjective, and endogenous preference.

After Kant, many philosophers and theologians stressed the dualism of beauty and the sublime. Well in to the nineteenth century, German Idealist and Romantic aesthetics continued to draw on the Platonic understanding of sublime as a transcendent reality in which metaphysics and moral philosophy can find unity. They accepted Kant’s belief that beauty is the awareness of particular kinds of cognitive states that are provoked in
reaction to art and natural objects. This means beauty is in the mind, not in the thing as the medieval philosophers had thought. The concept of “beauty” refers to a form of pleasure, and so they focused on analyzing the specific pleasures and delights associated with beauty. Standard modern academic aesthetics characterizes this type of pleasure as “disinterested” in the sense that it is indifferent to truth and morality. One can, for example, find beauty in the baronial estates of the nineteenth century American industrialists without questioning the morality of the labor practices that allowed it to be built. Kant’s reduced beauty to a feeling, but he distinguished it from the sublime referred to a cognitive state in which the faculties of understanding were exceeded. This idea would continue to provoke and confound philosophers and theologians.

In the “Critique of Judgment,” Kant draws an important distinction between beauty and the sublime. Beauty “is connected with the form of the object” having “boundaries.” The sublime, however, is formless. He writes, “We call that sublime which is absolutely great” (§25). He distinguishes between the “remarkable differences” of the beautiful and the sublime, noting that the sublime “is to be found in a formless object,” represented by “boundlessness” (§23). The sublime is the particular type of perception that incites the mind to think beyond what it can grasp and conceptualize. We might say, it is our awareness of something that we recognize as an unfathomable mystery.

For Lyotard, Kant's conception of the sublime was beguiling. He called it a foundational "propaedeutic that is itself, perhaps, all of philosophy," and he believed that the "sublime" was an important insight for reshaping the way philosophy judges of itself. He was writing in the late twentieth century, where philosophy, particular in the American style was dominated by conceptual analysis and empiricism. He believed that
this focus on clarity had caused philosophers to marginalize and devalue the type of excess, lush, and ineffable experiences that Kant intended to identify with the sublime. In Lessons on the "Analytic of the Sublime" and "Le Differend," Lyotard argued that “concepts” are abstractions that fail to express the fullness in the details of the particularity of things. What happens when we experience the sublime is a crisis where we realize the inadequacy of concepts and recognize the tension between the imagination and reason. What we are witnessing, says Lyotard, is actually the “différend;” the straining of the mind at the edges of self-awareness and at the edges of conceptuality. Lyotard’s work challenged modern culture to find some ultimate or fundamental unity among the aesthetic, cognitive, and ethical that would not ultimately be revealed to be a dominating metanarrative.

This suspicion of foundational narratives found expression in legal thought. Mainstream American legal theory was influenced only marginally by postmodern criticisms. Only a few American legal theorists have looked to Continental philosophy to ground their critical perspectives. For example, Duncan Kennedy's was influenced by the "Structuralism" of Saussure, Levi-Strauss, and Lucan. This is a development that found its greatest influences in anthropology. It is a prospective that still finds some influence in, for example, Elizabeth Mertz's linguistic analysis. Lyotard should be taken as an independent and original thinker, whose work is incomplete and sometimes fragmented.

3. Theological Aesthetics

Lyotard’s work and others like him challenge theological aesthetics to find some ultimate or fundamental unity among the aesthetic, cognitive, and ethical that would not
ultimately be revealed to be the will to dominate. This suspicion of truth and the good and the beautiful run so strongly through our culture today as the presumptions of the postmodern have become ours, even as the humanities departments, that gave birth to and nourished the postmodern, have come to be viewed as otiose or forgotten altogether.¹

At least since the fifth century Christians have affirmed a close connection between the beauty of the world and the divine peace of God’s Kingdom. For example, Pseudo-Dionysius (a cryptic fifth century figure) listed Beauty among the names that he ascribed to God. His work, The Divine Names,² was influential in the early Church and particularly for St. Augustine, St. Francis, St. Bonaventure, St. Thomas Aquinas, and St. John Chrysostom. Many other important figures in the intellectual history of Christianity cite approvingly to his thought. They all accepted the belief that God is intimately related to beauty and even, sometimes, followed Pseudo-Dionysius in naming God as “Beauty.” This pattern of naming God as beauty was developed by Augustine, who sometimes names God as “Beauty” that is experienced as an inward mystery and desire. The experience of beauty is double-edged here: it can lead to divine peace or to torment and sin. The task for the Christian is to discern the true beauty that is God from the false desires that are not. Similarly, Thomas Aquinas also draws an analogy between splendor and light to explain the way that things participate in God’s splendor (pulchre) that radiates from beautiful things.³ For him, God’s beauty illuminates our intellect with understanding. Through spiritual eyes we can see the transcendent beauty that is an ontological feature (to a greater or lesser degree) of all being.⁴

In the face of the ugliness of the horrors of the Great Wars and the concentration camps and gulags that characterized the early twentieth century, the idea of beauty took
on new complexity but it never faded entirely from the scene. Protestant theology was skeptical of aesthetics, particularly in the area of visual arts, for both historical and doctrinal reasons (especially in Reformed and Anabaptist doctrine). Karl Barth, one of the most influential theologians of the early twentieth century, showed particular interest in beauty in his most renowned book, *Church Dogmatics*. Barth noted that Protestant theologians had disregarded beauty, even finding it to be “dangerous” in its potential to lead to idolatry. Hans urs von Balthasar (a Catholic theologian who will be discussed shortly), commented that Protestants have been more attentive to “hearing” the Word and have been skeptical of “seeing.” The emphasis has been on reading and hearing rather than on seeing and perceiving, and this has shaped Protestant attitudes towards beauty in the direction of considering the beauty of God to an “event” rather than a property of beings accessed through perception and “intellection” (as Catholics would understand it).

More recently, however, Protestant thinkers have been more interested in the topic. Barth’s insistence that beauty is not reducible to and cannot be exhausted by power, and his desire to describe how God uses beauty to convince and enlighten have been influential in stimulating renewed interest in aesthetics. The distinctiveness of the Barthian approach to aesthetics is the priority of the Gospel and emotion over objective perception and ratiocination. So, when Barth writes of beauty he refers primarily to its ability to illicit emotive responses rather than a conceptual discussion, since “this insight depends too much on the presence of the necessary feeling….” God’s glory is pervasive and that is what makes it indispensible for Barth. Nicholas Wolterstorff takes a similar position to Barth. He maintains that “perceptual contemplation” is strictly subsidiary to
truth. He stresses the way art emotionally engages the viewer, allowing for effective interaction with the Christian life. Art has an important, transformative, role in the Christian life, but it is secondary to truth.\textsuperscript{vi}

For Roman Catholics, aesthetic theology was shaped by the Swiss theologian, Hans urs von Balthasar. His fifteen-volume trilogy, \textit{The Glory of the Lord},\textsuperscript{vii} is considered to be one of the most important works on Catholic theology in the twentieth century. For Balthasar, theological aesthetics makes use of a concept of “beauty,” but in modern terms. For Protestants and Catholics, beauty was associated with the divine. Balthasar’s aesthetic theology has had remarkably little influence on Catholic legal thought, where one might suppose that would have the strongest influence. Nonetheless, neither John Finnis’s so-call new natural law nor Jean Porter’s recent work, The Ministries of Law, are influenced by Balthasar. Both draw largely from the conceptual analysis that they attempt to harmonize with the rationalist and conceptualist elements of Scholasticism. Balthasar’s appreciation of the ineffable and mysterious that penetrates every moment of creation is of little consequence in these natural law theories.

The weakness of these positions is suggested by John Milbank, an Anglican theologian, who developed one of the most influential Christian responses to the postmodern challenge. He argues that Lyotard’s \textit{différend} does not offer the promise and hope of escaping violence, but only entrenches violence more thoroughly. In his book, \textit{Theology and Social Theory},\textsuperscript{viii} Milbank argues that the various discourses of postmodernity are variants of an “ontology of violence.” He means that the causal explanations of postmodernity are inherently and inescapably violent because they rest on the assumption that power is the only causal principle. Power can be exposed and
transgressed, but only by another power. Christ, who was there from the beginning, offers an alternative account of causality founded in love—an ontology of love (or perhaps a love of beings) that is ultimately more real than violence.

**CONCLUSION**

In each of these modes of thought—scientific, postmodern, Christian—there exists the recognition of an aspect of consciousness seems under-appreciated in modern philosophical writings, but might be apprehended in the lived experience of beauty. The experience of beauty indicates something beyond the limits of conceptual analysis. It holds possibilities for considering how religion and law might be related, since it seems to imply an immediate limit on argument and discursive reasoning. And the limits of the powers of the mind hold implications for thinking about how faith and reason might be harmonized.

There are a few points that we can take from this all-too-brief encounter with vastly sophisticated Christian thinkers. First, beauty is never simply a subjective matter. An aesthetic judgment appears always to call for an interpretation of the meaning of the thing being judged. Although there is not a particular thing that is “beauty”. As David Bentley Hart puts it, there is “an overwhelming giveness in the beautiful, and it is discovered in astonishment, in an awareness of something fortuitous, adventitious, essentially indescribable....” It is this aspect of beauty that allows us to expect our judgment of beauty to be shared by others. What we talk about when we speak of beauty has this quality.

Second, beauty crosses boundaries. It will not be constrained by concepts and discourse. And, it cannot be reduced to a symbolic representation. In this respect we
might say that beauty always has a phenomenal component, which means that beauty is always a subjective experience. It is brought into being as a state of phenomenal awareness. In this sense, beauty is not “about” anything. It is simply a “personal fact” that one is experiencing. In this respect, it is unlike the facts contained in propositions that comprise the speech we have about beauty. As a subjective experience, beauty transcends conceptual analysis and propositional expression. It is fathomless in an ontological sense. It isn’t the case that knowing more about it will lessen the mystery. Indeed, to know beauty more will only deepen its mystery. For this reason, beauty is not readily thinkable, and it is certainly difficulty to speak about it. Beauty in this respect challenges the more traditional names for God—Truth and the Good—which are more readily reducible to concrete concepts and demonstrable logic.

Third, beauty has authority. The experience of genuine beauty bears with it a sense of certainty. It does not come from the reductive approaches of the modern philosophies and natural sciences—approaches that seek to find essential traits or principles or, especially, forces. The certainty associated with beauty comes from the lushness, even excessiveness, of the experience: I will feel certain in my assessment of beauty because of the reliability of the experience, its depth, fullness, and embrace. Modern legal thought can benefit from an engagement with aesthetic experience precisely because it stands counter to the modern tendency to reduce persons to facts and to return to it an encounter with the mystery of human dignity.

Finally, although there is much more to say than can be said here, persons are beautiful. This is an essential claim of Christianity. Even the rotting leper, the tax collector, the prostitute, and the thief are persons and as such are beautiful mysteries. We are mysteries to each other and even to ourselves. Creatures of
immense complexity and interrelation, human beings defy reduction. Blackstone’s desire to preserve mystery in the law touches on this realization.

---


7 The entire fifteen volume set has been published by T & T Clark Ltd.
