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(Review) Desmond Manderson, Songs Without Music: Aesthetic Dimensions of Law and Justice

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Abstract

This elegant, wide-ranging and stimulating book has everything but the music. In graphic form, even the music is available as a frontispiece to each chapter, introduced with an extract from the score of the music for which it is named. The work begins with a 'Prelude' and 'Fugue' (Bach) and has a 'Requiem' (Mozart) on the death penalty, while 'Quartet for the End of Time' (Messiaen) opposes modernism and the reification of law, looking to space (in legal geography), rather than time, for the source of a 'critical pluralism'. Surprisingly, this apparently precious device works, and it works at a number of levels. Analogies with the pieces of music help to illustrate the point of each chapter and the playful counterpoint between the music and the argument is a source of, well, aesthetic pleasure. By drawing our attention to the appreciation of formal structure shared by music and law, as in the sparse, elegant prose of the opening 'Prelude', Desmond Manderson uses the format of the book to illustrate his theory.

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Desmond Manderson, *Songs Without Music: Aesthetic Dimensions of Law and Justice*. Berkeley: University of California Press, 2000, 316 pp., £37.95 (hbk).

This elegant, wide-ranging and stimulating book has everything but the music. In graphic form, even the music is available as a frontispiece to each chapter, introduced with an extract from the score of the music for which it is named. The work begins with a 'Prelude' and 'Fugue' (Bach) and has a 'Requiem' (Mozart) on the death penalty, while 'Quartet for the End of Time' (Messiaen) opposes modernism and the reification of law, looking to space (in legal geography), rather than time, for the source of a 'critical pluralism'. Surprisingly, this apparently precious device works, and it works at a number of levels. Analogies with the pieces of music help to illustrate the point of each chapter and the playful counterpoint between the music and the argument is a source of, well, aesthetic pleasure. By drawing our attention to the appreciation of formal structure shared by music and law, as in the sparse, elegant prose of the opening 'Prelude', Desmond Manderson uses the format of the book to illustrate his theory.

The book's argument is simple and inclusive: law is based on aesthetics. This is not just seen in the literary devices of judges or the architecture of the court or the trial, but suffuses all legal practice and judgement. 'Where is the aesthetic in law? The answer is, everywhere' (p. 201). A committed pluralist, Manderson finds an aesthetic basis for the diversity of legal regimes. This does not simply apply to various social groups, but also explains individual interpretations: 'law means something to me which is different from what it means to you, just as does a piece of music or a book' (p. 175). The radical relativism that this position could imply is tempered by the possibility of moral persuasion that forms part of Manderson's very social conception of aesthetics.

This robust theory of aesthetics owes most to George Santayana: it includes symbols and sensory force, shared culture and personal experience. His appreciation of semiotics is broad (even transatlantic: Peirce and Kevelson as well as Goodrich and Derrida), yet he rejects the semiotic assumption that there is 'something else' behind the surface: 'There is nothing contingent about the surface, the image: it is itself a system of meaning and a representation of culture' (p. 39). The important message of this work is that we can still make judgements while concentrating on the surface. These are aesthetic judgements with practical consequences throughout law and legal scholarship.

Manderson makes aesthetics do a lot of work. It carries the burden well, if better in some areas than others. Methodologically, the aesthetics of law helps to explain many legal phenomena, and becomes a valuable perspective to guide research. It can be used to interrogate historical statutes, as in 'Motet', where a study of English statutes from the 13th to the 16th centuries reveals the changing audience to whom they are addressed (from agents of the king to subjects). In 'Variations on a Theme', drug laws are seen as an expression of an aesthetic judgement of cleanliness and filth, the basis of the boundary of crime between insiders and outsiders. Here, and in 'Requiem', aesthetics is at its strongest, allowing an understanding of particular laws while offering a basis for their critique.

As a foundation for legal reasoning or justice, aesthetics is up against a long tradition of alternatives. In theories of legal reasoning, it is not offered much opposition by the positivist common law orthodoxy of Hart or other versions of naïve rationalism, Manderson's favourite target.¹ However, traditions of phronesis and rhetoric from Aristotle to Gadamer offer a vision of justice and practical moral reasoning that has much in common with Manderson's aesthetics. Each comprehends the diversity of 'local knowledges' and seeks a reason of the

heart as well as the head, which can make fair decisions, or criticize unfair laws, in an imperfect world. This book is a useful contribution to the rehabilitation of a pre- (or post-) Kantian conception of aesthetic reasoning which does not relegate such judgements to the realm of taste. Its somewhat hasty move from an aesthetics of law to one of justice in the final chapter would benefit from a broader appreciation of its place in this project.

In a book sparkling with a breadth of sources and illustrations (without pictures), the musical and literary sources work better than those from science or its history. The celebration of chaos theory as a metaphor for a critical pluralism is more confusing than instructive. The discussion of the discovery of perspective in the context of 13th-century statutes would have added more to the work on the 15th century, where Manderson's dates show it belongs.

A book on law and aesthetics devoting more attention to music than to visual arts or literature would in itself be a valuable corrective to previous studies. This book achieves much more by proposing, with beautiful clarity, a way of approaching law through aesthetics which allows for pluralism with judgement, and for reason with feeling. The musical theme reinforces the message of the text by drawing down the visceral impact of music into legal discourse. This is movingly illustrated by applying Mozart's commentary on death in his 'Requiem' to the death penalty which, as Manderson shows, pretends it is about anything but death. The University of California Press missed a beat by not bringing out the CD to accompany the book.

Notes

1. Manderson does not only choose easy targets. While influenced by Derrida, he criticizes the latter (in common with so many others) for concentration on performative law, noting that 'legal interpretation happens in every corner of the social system' (p. 98).

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