ABSTRACT. This paper presents a philosophical approach to the semiotics of law in terms of an exercise in symbolic transposition whereby aesthetic categories are brought to bear on jurisprudence, and in particular on two of its foundational questions. These questions, the backdrop against which the analysis unfolds, ask (1) whether law is static or dynamic; and (2) whether law ‘constitutes’ human beings, in some specific sense, or whether the reverse holds. The notions of universality and necessity and that of utopia are employed together with two opposite art symbols and a model of their antitheses is constructed revealing diverse answers as to how to conceive law in relation to the two questions. One answer is singled out by adopting the principles of Kantian aesthetic (reflective) judgement: to elicit an aesthetic claim, law must be seen as a utopian social order exhibiting purposiveness without, however, presupposing any predetermined substantive normative end. This is effected by a special reading permitting the combination of necessitation (obligation) with free play – this being the common ground shared by both law and aesthetics but only in this limiting utopian moment. This is a unique sense in which legal discourse is formally assimilated to aesthetic non-purposive judgements yet without relinquishing law’s distinctive feature as purposive order prescribing, however, prescription alone as a formal end.

Leaning on his elbow, in an attitude of profound and solemn meditation, “What a multitude of things there are” (exclaimed the dancing-master Marcel) “in a minuet!” – May we now add? – and in a law.


1. INTRODUCTION

This paper argues, and is an attempt to show in practice too, that two traditionally fundamental questions in the history and philosophy of law can be fruitfully investigated from a novel point of view: that of aesthetic symbolism as a species of semiotics. The two principal questions are (1)

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whether law is static or dynamic in a sense to be determined; and (2) whether law ‘constitutes’, ‘shapes’ or ‘fashions’ human beings, in some specific sense (‘criterial’, cf. Scs. 4.3, 5.1 & 2 below), or whether it is the other way round, namely, that law itself is nothing but a human artefact. These two questions are our guiding thread. What is considered fruitful in this mode of interdisciplinary analysis – a philosophical approach to the semiotics of law – is that both sides, disciplines or modes of thought, are positively affected; in our case more particularly, critical jurisprudence can have no less important effects on aesthetic theory than the latter is shown to have on the former in this paper.

The discussion is structured around two art symbols traditionally coined as ‘nature morte/still life’ and ‘paysage/landscape’. These are chosen because they bear an evident prima facie kinship to the two principal questions. The paper first brings forth three antitheses of the two chosen aesthetic symbols, goes on to introduce the notion of Utopia, and finally expands on an aspect in Kant’s analysis of the judgement of taste. These issues form a synthesis whose focus is the twin notions of universalizability and necessity central to the concept of law. The particular steps of the argument are thus as follows. First, there is a brief preliminary discussion of symbolism qua semiotic production, knowledge and law in both general and historical terms. Then, the two art symbols are introduced. Their function in the semiotics of law is to allow us to view in a richer and novel way different and opposing conceptions of legal reasoning: this is done by bringing these conceptions into contrasting relief by means of aesthetic categories. Next, the notion of Utopia allows us to decide which of these conceptions of legal reasoning is more pertinent to law. Then, given the function of aesthetic symbolism and the fact that our analytic framework is aesthetics, the issue of the connection between law and the category of the ‘Beautiful’ is introduced. Finally, a Kantian analysis reveals a unique sense in which law may be assimilated to judgements of taste; this provides the concluding answer to the two principal questions posited above.

One preliminary point should be strongly emphasized for it helps us situate the overall theme of this paper. While in recent times interdisciplinary discussions of legal philosophy and the semiotics of law have been on the ascending, the primary focus has been the relation of law to literary aesthetics and the semantics of interpretation in particular. This is a rather natural outcome given, on the one hand, the preponderance of linguistic concerns generally, and on the other, the obvious fact that legal reasoning itself is an interpretative discourse par excellence. By contrast, in this paper I wish to move into the relatively neglected relation between