January 2000

On the Difficulty of Imagining an Aesthetic Politics

Ethan J. Leib

Follow this and additional works at: https://digitalcommons.law.yale.edu/yjlh

Part of the History Commons, and the Law Commons

Recommended Citation

Available at: https://digitalcommons.law.yale.edu/yjlh/vol12/iss1/6

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Yale Journal of Law & the Humanities by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
On the Difficulty of Imagining an Aesthetic Politics


I. INTRODUCTION

We should applaud Elaine Scarry, Professor of Aesthetics and the General Theory of Value at Harvard University, for making an attempt to build a coherent political philosophy using only the building blocks of aesthetics. The result is *On Beauty and Being Just*, based on the Tanner Lectures she gave at Yale University in 1998. The book is a blueprint for a stable but revolutionary building that doesn’t need a foundation. But, upon examination, Scarry makes gestures to the metaphysical architects who can’t conceive of how to build a theory of justice without philosophical first principles. Admittedly, an antifoundationalist approach to justice is as likely to be edifying as structurally frightening. But when Scarry’s modest analogical program is distinguished from its more teleological and ambitious reaches, we can better appreciate both the uses and disadvantages of recruiting aesthetics as a handmaiden to politics.

Scarry’s book draws our attention to the fact that discussions of the beautiful have fallen out of fashion in academic and even popular discourses. She thinks that many theorists have been successful in arguing that attention to the beautiful detracts us from more important, more pressing things in life. “The problem of lateral

disregard, the problem that whatever benefits accrue to an object through its being the focus of our attention are not being equally enjoyed by nearby objects in the same class,” is linked with the “political complaint about inattention to problems of social injustice” and power dynamics. Beauty’s critics worry that fixation upon the beautiful might cause such disregard and inattention.

Scarry laments that we have let such theorists divert our gaze away from beauty. Because the beautiful can be appreciated as the source of our notions of fair and equal distribution, she argues that we should not be tempted to wage a political critique against it. Instead of being a major contributor to inequality (the condition that many theories of justice are trying to overcome), beauty, for Scarry, is inextricably linked with fair distribution of all sorts of goods. She sees her program as consistent with and essential to the project of redistribution of resources in the service of a general goal of equality.

By meeting some of the political critiques of beauty, and by exploring just what beauty can do for us when it is successful, Scarry, in her modest moments, hopes to enliven political philosophy by reintroducing aesthetic concepts to serve as a basis for justice. For her, as for most political theorists, justice always has a normative component that requires fair distribution of goods. And she modestly draws attention to an analogy between the symmetric property of the beautiful and the fair distribution of goods attributed to justice. She writes that “beautiful things give rise to the notion of distribution, to lifesaving reciprocity, to fairness not just in the sense of loveliness of aspect but in the sense of equality and fairness to all.”

But in her more ambitious (and ambiguous) moments, Scarry appears to want to supplant much political theory with aesthetic theory. Political theory often must make substantial metaphysical assumptions to proceed to a theory of justice. The advantage of starting the conversation about justice from aesthetics is that we can hope to avoid metaphysics and philosophy in the pursuit of the equal distribution of important life-sustaining goods. Because the aesthetic standpoint aims to treat all claims as a matter of taste, it removes the bite from many value judgments. Thus aesthetics is a good place to start if one wants to avoid deep moral disagreement about fundamental values. We should be delighted if Scarry’s ambitious program is successful because philosophical foundations are always contentious. If Scarry can avoid them and still achieve a coherent

---

2. Id. at 65-66.
3. Id. at 95.
theory of justice, she will have accomplished something unique indeed.

II. SOME CONTROVERSIAL AND REDUCTIVE INTELLECTUAL HISTORY

At least since we gave up on the True, or stopped capitalizing it regularly, we have been perplexed by the difficult task of establishing priorities in our polity. In capitalizing the True, we simultaneously tended to capitalize on it, repressing different conceptions of truth, alternative conceptions of the good life. But in a modern pluralistic regime containing radically divergent conceptions of the True and Good life, efforts to ground political decisions in such lofty claims are best abandoned. Political questions are always about negotiating compromises and figuring out what we can't compromise. We are always searching for better tools to cope with differing ideas about what promotes the general welfare and what ultimately will secure the blessings of liberty.

Since the Enlightenment, we have called upon Reason rather than God to shuffle through the different, often unequal hands that we've been dealt. Many in postmodernist bourgeois liberal democracies accept this death of God in the political public sphere because they wish to have a place to turn to mitigate the problems associated with the fact of value pluralism, the reality that in large and complex societies like ours, citizens will have disparate and often incommensurable values. In the liberal state, in spite of our divergent values, we often need to come to the public sphere, to politics, to find a reasonable way of having our private needs met. On this model, ideally, we let Reason arbitrate among our competing private interests, even if it may be true that some self-actualization may only be attainable in the public sphere.

However, we often fail to approximate Reason even as we gesture towards it; we let money, moral foundationalism, and politics come in the way. Nevertheless, minimally, we expect to live in a culture that prizes persuasion, one that condemns coercion and force at every turn, even if that anticipation is often too much to hope for. To

---


be sure, without any coercion, we can’t have law. But Judith Shklar, the late political theorist from Harvard, has drawn our attention to our “liberalism of fear,” the liberalism that acknowledges that the worst we can do is to be cruel.⁶ Although coercion will sometimes be necessary, liberals must always check that coercion with an anti-cruelty standard. “The self-stabilization of a well-ordered society is therefore based not on the coercive force of law but on the socializing force of a life under just institutions.”⁷

Yet, a less rosy intellectual history also pays attention to the dark side of the story. We have seen that appealing to universalized Reason and depending on states or governments as rational arbiters of good and evil has, after all, produced the Nazi and other totalitarian regimes. When popular sovereignty is sacrificed in the name of a universal, even if that universal is Reason or Science, enlightened regimes can turn absolutist. Rallying behind a universal vision of human good has always had its detractors because it tends to repress in much the same way that Truth does. These episodes of totalitarianism force us, or remind us, to appreciate our utter contingency, our total dependence on our context. Because the Nazis’ evil can be banalized,⁸ because rationalization means that we can always find a redescription that shifts accountability, we must acknowledge that our own thematizing is often more powerful than Reason. How we are habituated has drastic effects upon what Reason decides, even in an “ideal speech situation”—a public sphere where all who are affected by the conversation are given equal access and power parity.⁹

Humans have deep romances and passions that defy logic and rationality, and these “outliers” need to be incorporated into our philosophies and justice systems. By ignoring love, nationalism, religion, and other phenomena that reason sometimes has difficulty explaining, liberalism can be sure to stay only theoretical, never touching our real lives, never making a political difference. Because our identities are often deeply constituted by stories, narratives, and


⁷. HABERMAS, supra note 5, at 58.


⁹. For a valuable discussion of this Habermasian concept, see DAVID INGRAM, HABERMAS AND THE DIALECTIC OF REASON 172-88 (1987). Of course, Habermas himself questions the viability of such an ideal, reminding us that the ideal speech situation can be thought of as a “methodological fiction”: “Even under favorable conditions, no complex society could ever correspond to the model of purely communicative relations.” HABERMAS, supra note 5, at 326.
histories that Reason can never fully make sense of, our political theory must take stock of these self-understandings. Though we can aim towards cosmopolitanism in theory, without a degree of ethnocentrism in practice, we will always "bowl alone" and be lonely.10

The renaissance of the Romantic critique of Reason, or, also, the communitarian critique of liberalism, has sent shivers through the academy and elsewhere, as many have struggled to cover up the frigid reality that we might unavoidably be thrown into prejudice,11 that we might always fall back on our comfortable pre-established conceptualizations, that pre-understandings will tend to come in the way of mutual recognition and intersubjective understanding. If we can never extract ourselves from our community's influence, if our identities are opaque to outsiders, then perhaps a theory of justice must begin from within the local and homogenous community.

But if we stay too ethnocentric, too concerned with our own particular civil society, we are sure to become "Nazis" from the other direction, in a manner of speaking: Although organizing around a universalized value or catalogue of virtues may cause repression by the state, legislating in pursuit of homogeneity might have the same effect. In the regimes of both the universal and the particular, the old problem of the tyranny of the majority, the domination of the "Other," surfaces. The "Nazi," then, can be said to exhibit pathologies of both the Kantian foundational instinct toward the universal and the Hegelian foundational instinct toward the particular.

Many foundationalisms have suffered this fate: They have yielded empty formalisms on the one hand and authoritarian oppressions on the other. Foundationalisms have a tendency to stay on the level of theory and rarely take account of empirical conditions. And when they are made concrete enough to determine policy, they are often used to forward a repressive agenda because they demand strict adherence. Foundations are meant to be built upon; they have normative force. Yet, when Truth and Reason can no longer be trusted, the "ought" becomes impotent.

Postmodernism gave us "ethics as first philosophy" so we could avoid trying to provide any foundations for our ethical framework.12

---

11. The concept of "thrownness" is borrowed from MARTIN HEIDEGGER, BEING AND TIME 219-24 (John Macquarrie & Edward Robinson trans., Harper & Row 1962) (1926). For a discussion of how we can be authentic in spite of always being thrown into some inauthentic mode of existing (because we are forced to a live a way in which we cannot have ever truly chosen), see Ethan J. Leib, Authentic Falling: Heidegger's Paradox?, 4 SYMPOSIUM: J. CAN. SOC'Y FOR HERMENEUTICS & POSTMODERN THOUGHT (forthcoming May 2000).
12. See, e.g., ETHICS AS FIRST PHILOSOPHY: THE SIGNIFICANCE OF EMMANUEL LEVINAS.
By focusing our gaze on the "Other" in just the right way (or by talking about it an awful lot), all morality and politics can follow in this hopeful schema. But many have seen through this worthwhile and important utopian effort and have, instead, fixed their gaze elsewhere, setting their sights lower, into the aesthetic realm. In the aesthetic, we can leave the True, the Good, and the Moral behind, so that we can build an approach to justice from the bottom up. Top-down and radically normative approaches have recently felt unsatisfying, largely because many no longer believe in metanarratives. "Incredulity toward metanarratives" is, after all, the postmodern condition as recounted by Jean-François Lyotard, postmodernism's most famous raconteur.\(^\text{13}\)

If we buy the postmodern story, we now have to content ourselves with just talking amongst ourselves, hoping that some beautiful (or merely powerful) story will emerge that will change people's frame of reference, their paradigm. And it is easy to see why many resist the move of talking about beauty as a basis for justice. Since beauty has a subjective nature and because talk about it rarely produces intersubjective agreement, it is a rather unlikely place to begin if we are looking to inspire justice, if we still care about building consensus around a form of liberalism. It isn't clear that Beauty will fare much better than Truth or Reason as a principle for resolving radical moral disputes. An aesthetic basis for politics is likely to suffer the same pathologies as Reason or Community; it is likely to humiliate the ugly or to be balkanizing. It is, however, more hopeful precisely because aesthetic judgments aren't as infused with values as other claims.

### III. Scarry's Aesthetics

Elaine Scarry suggests that we open not only our hearts but also our minds to beauty, to allow beauty to change our lives and our thoughts. She wants us to focus our attention upon the way we are enraptured by beauty because she sees in this experience a basis for our freedom and equality.

Scarry makes some bold claims about the beautiful in her small book, though she starts rather uncontroversially. First, she directs our attention to the mimetic instinct inspired by the beautiful. From Wittgenstein, she claims that we are incited to replicate what we

---

behold as beautiful. Just as when we see a bird, we want to draw it, Plato's *Symposium* teaches that when we love, we want to reproduce. We may even agree with Harold Bloom's claim that the meaning of a poem can only be another poem, a precursory poem that demanded mimesis. This description of the beautiful isn't all that controversial anymore; one generally assumes that the beautiful is worthy of imitation even if one is an angry, ugly Marxist who thinks beauty is a constructed concept used by elites to forward their own aesthetic and/or political agenda. This kind of claim is what may have led Wendy Lesser to conclude that *On Beauty and Being Just* contains "generally unobjectionable and not terribly interesting statements about the merits of beauty." A more difficult and more interesting claim occurs when Scarry makes a case for the following counterintuitive property of beauty: We are often in error, or wrong, with respect to our beauty judgments. Prima facie, belief-propositions about beauty don't seem to be good examples of corrigible statements. Yet, Scarry wants to use this fact—that we are often wrong, or discover ourselves to be wrong, about our beauty-judgments—to assert that beauty necessarily surprises us, knocks us off our feet.

On Scarry's reading, beauty has the capacity to become a sudden center of attention that in turn de-centers the beholder. The self can dissolve in beauty's transcendence. She recruits readings of Iris Murdoch and Simone Weil to illustrate just how beauty accomplishes this feat of "unselfing." Yet, although Scarry is aware that beauty is, in each case, particular, she is still committed to a certain version of beauty that serves universal transcendent truth. Although she won't go so far as to tell us that we might apprehend the True in our apprehension of the beautiful, she does remark that the beautiful helps us long for truth, a considerable thing indeed. One of the

14. See SCARRY, supra note 1, at 3.
15. See id. at 4.
16. See HAROLD BLOOM, THE ANXIETY OF INFLUENCE 70 (1973). In Bloom's case, however, the copy always aims at replacement, not just replication.
17. Wendy Lesser, In Full Bloom, N.Y. TIMES, Nov. 28, 1999 (Book Review), at 24 (reviewing ELAINE SCARRY, DREAMING BY THE BOOK (1999), but commenting on SCARRY, supra note 1).
18. See SCARRY, supra note 1, at 9-12.
20. See SCARRY, supra note 1, at 18.
21. See id. at 31. But see John Keats, Ode on a Grecian Urn, in SELECTED POEMS & LETTERS 207-08 (Douglas Bush ed., Houghton Mifflin 1959) (1820). Keats famously concludes his "Ode on a Grecian Urn" with the proclamation, "'Beauty is truth, truth beauty,—that is all / Ye know on earth, and all ye need to know.'" Id. at 208. Scarry rejects such
most important checks on the kind of story I told at the outset is this: Just because we may grant the epistemological point that we have no access to Truth does not mean that we should yield without striving and longing for it.

Scarry remarks that beauty “has been perceived to be bound up with the immortal, for it prompts a search for a precedent, which in turn prompts a search for a still earlier precedent, and the mind keeps tripping backward until it at last reaches something that has no precedent, which may very well be the immortal.” Scarry allies the beautiful to the True and, in so doing, allays the fear that regression to aesthetics might make us into aesthetes, snobs, or narcissists, or even boorish thugs with no concern other than self-enjoyment. Instead, Scarry claims that this “tripping back,” this “search for a precedent,” engenders a primacy of the primordial. She makes a sort of Heideggerian claim: Because beauty is linked to the primordial, it is afforded conceptual priority. Because beauty exists for Scarry outside of human arrangement (which is not the case for just institutions), its empirical description as predating justice gives it normative weight.

Because beauty surprises us, it is experienced as “unprecedented.” During Scarry’s elaboration of its “unprecedentedness,” we learn of her first mystical connection of the beautiful to a political program: Beauty conveys a sense of the newness of the entire world. For Irving Howe, newness is a political condition: “People start to feel socially invigorated and come to think they can act to determine their fate.” Though Howe thinks we have lost the political inspiration associated with newness, Scarry’s vision is not as bleak. For Scarry, beauty’s recurrent newness leads to the dissolving of cultural difference in the eye of the beholder. By showing us something else that we must treat as contingent, our pleasures and pains, our aesthetic sensibilities, beauty can accomplish the task of

22. See SCARRY, supra note 1, at 30.
23. For Richard Bernstein’s argument that Rorty’s brand of “aestheticized pragmatism” has lost its course in pursuit of Deweyian liberalism, see Richard J. Bernstein, One Step Forward, Two Steps Backward: Rorty on Liberal Democracy and Philosophy, 15 POL. THEORY 528-63 (Nov. 1987). But see Richard Rorty, Thugs and Theorists, 15 POL. THEORY 564-80 (Nov. 1987), for Rorty’s reply to the concern that aestheticism might encourage the thug.
24. See HEIDEGGER, supra note 11, at 226 (claiming that “in order to master its provisional task of exhibiting Dasein’s Being, [the existential analytic] must seek for one of the . . . most primordial possibilities of disclosure”). In general when Heidegger attempts to show Dasein as most essentially a being that cares about itself, he argues that primordiality establishes a level of conceptual priority. See id. at 225-73.
25. SCARRY, supra note 1, at 22.
dissolving contingent differences. Here agreeing with beauty's critics, Scarry claims that beauty causes us to “gape” and rethink everything all over again after we “suspend thought” in our apprehension of the beautiful.27

But we need to hear more about why and how beauty accomplishes this particularly important political feat any better than its major competition in postmodernism: “difference” or “alterity.” By confronting difference as radical alterity, we might experience the same de-centering, the same ungrounding, the same appreciation of the contingency of our ipseity, the same reality that we will always make errors in our judgments.28 Scarry doesn’t really confront her “competition” head-on in this book, but in another of her essays, entitled The Difficulty of Imagining Other People, she gives us an idea about why we should abandon that strategy.29

In this essay, beauty takes the back seat. Because she acknowledges the “difficulty of picturing other persons in their full weight and solidity” in both “philosophic and literary descriptions,” we cannot depend on such imaginings to make the “Other” less other, “to eliminate altogether the inherently aversive structural position of ‘foreignness.’”30 Because she doesn’t think imagining others in their absence, even when they become close friends, can have a substantial level of “vivacity,” we must not rely upon philosophical and literary excursuses on the experience of alterity for success in our political programs that seek justice.31 Precisely because “philosophic discussions of the other typically contemplate the other in the singular,” and because “what we do not do well in the singular we do even less well in the plural,” Scarry suggests that we not cling to these kinds of contemplations to bring us to justice.32 Instead, she argues in this context that we must adhere to the more conservative approach—good constitutional design.

Scarry admits that some literary works, like Uncle Tom's Cabin33 and A Passage to India,34 have profound capacities to incite in us a legitimate way to imagine a people in their otherness and to change our political paradigm on that basis. But “more often,” Scarry claims,

27. SCARRY, supra note 1, at 29.
30. Id. at 98.
31. See id. at 102.
32. Id. at 103.
34. E.M. FORSTER, A PASSAGE TO INDIA (1924).
"we must say of literature what Auden wrote in his elegy for Yeats: 'Poetry makes nothing happen: it survives / In the valley of its saying.' In the context of this essay, she is concerned that we might depend too heavily on these exceptional moments of aesthetic triumph wherein we focus upon alterity, so she draws our attention to more practical ways of bringing about "the symmetry of everyone's relations to each other," a substantive level of equality. And she thinks working at our laws is a more dependable way to bring about social change and integrate others, even though she realizes that making constitutions will always need to draw upon our imaginative faculties.

But where does this leave beauty? We might think that her objection to "imagining others" carries over as a decisive political critique against beauty as well. If we really care about ensuring equality, it seems an awful waste of time to talk about beauty. Yet Scarry sketches a more detailed portrait of beauty to make her case more immediately politically relevant, to make beauty closer to a political necessity. Although it isn't always clear that she's making an argument as much as trying to get us to intuit things differently, her reasoning proceeds philologically: She beseeches us to notice that when something is beautiful, we call it "fair." And we also name equality of distribution likewise: "A single word, 'fairness,' is used both in referring to loveliness of countenance and in referring to the ethical requirement for 'being fair,' 'playing fair,' 'fair distribution.'" In case we thought this synonym was just that, we are provided etymological evidence indicating that both senses of fairness emerged from the same human impulse—to be pleased aesthetically when confronted with symmetry. And this is yet another feature to put in our catalogue of the beautiful, that it always involves symmetry. Methodologically, we might think it too Nietzschean to make normative claims from philology. But we also

35. Scarry, supra note 29, at 105 (quoting W.H. AUDEN, In Memory of W.B. Yeats, in COLLECTED POETRY 48 (1945)).
36. Id. at 149 (quoting JOHN RAWLS, A THEORY OF JUSTICE 12, 137 (1971)). John Rawls is consumed with the project of building a fair and just regime. Since Scarry wants to align herself with Rawls's project, she aims to satisfy in her political theory a condition associated with Rawls's articulation of his Original Position: Scarry wants a political situation that is fair among individuals such that each is "unselfed," and thus treats everyone else equally. But I elaborate upon this connection later. See infra Part IV.
37. See SCARRY, supra note 1, at 91.
38. Id.
39. See id. at 92.
40. See FRIEDRICH NIETZSCHE, On the Genealogy of Morals: A Polemic, in BASIC WRITINGS OF NIETZSCHE 460-92 (Walter Kaufmann trans. & ed., Modern Library 1992) (1887). In the first essay, "Good and Evil" and "Good and Bad," Nietzsche makes a normative though inegalitarian argument that proceeds from etymology. It seems for Nietzsche, as for Scarry, inquiries into origins that have normative force (let us call them "polemic genealogies")
might find it edifying. However, because so much hinges on this argument, it is far more elaborate. In footnote 11, Scarry even brings biological evidence to bear on symmetry’s universal appeal:

Throughout the 1990s, articles appeared in key science journals such as *Nature* claiming (1) that “symmetry” is by birds, butterflies, and other creatures chosen in mating over every other feature, possibly because it is taken as a visible manifestation of overall sturdiness of the genetic material; (2) that infants in different cultures stare longer at faces that are highly symmetrical, and also prefer classical music whose passages are symmetrically arranged...; and (3) that adults choose faces with symmetrical features, and seem to make identical choices across such distant cultures as Scotland and Japan.41

At least she is conscious that such “evidence” is not conclusive: “The research in all three areas is controversial and may well be overturned or qualified over the next decade. But even if the extreme claims of this research are retracted, symmetry will without doubt remain an important element in assessments of beauty.”42

It would behoove us to wonder what it would mean for Scarry’s biological evidence to be decisive. Could it be an acceptable program to get us to begin to appreciate “objective” beauty? If there were attributes to the beautiful that always obtained in beautiful objects, could it still be possible for beauty to surprise us? Could it cause us to be reflective if it were always the same? What would this dynamic equilibrium look like? Would Scarry really want the beautiful to have structural necessities? It appears so, because so much is at stake in this symmetrical property. If our aesthetic sensibility judges the dissonant, ironic, or asymmetrical beautiful, Scarry will have to exclude these judgments as somehow pathological.

In her insistence upon beauty’s symmetry, Scarry makes her project too dependent upon a particular proposed property of the beautiful. The reason we rarely read Burke’s *Philosophical Enquiry into the Origin of our Ideas of the Sublime and Beautiful* is because it is only of historical interest.43 Catalogues of the qualities of the beautiful don’t touch our immediate experience of it; they will only

---

41. SCARRY, *supra* note 1, at 130.
42. *Id.*
43. For historical interest, it might be worth looking at Burke’s arguments for why beauty has nothing to do with proportion or symmetry. *See, e.g., EDMUND BURKE, A PHILOSOPHICAL ENQUIRY INTO THE ORIGIN OF OUR IDEAS OF THE SUBLIME AND BEAUTIFUL* 91-104 (James T. Boulton ed., Univ. of Notre Dame Press 1968) (1757).
be tangential to the visceral response of being moved by the beautiful. The “scientization” of the beautiful, breaking it up into its molecular components, seems wrong-headed. As moving an account as Scarry’s is—and it is moving—it is just hers. The frustration of disagreement in this most subjective realm doesn’t lose its foothold.

IV. POLITICS AND METAPHYSICS

Scarry never really addresses what seems to be the first questions of an aesthetic politics:44 What do we do about the fact that people will never agree on what is beautiful? How can we depend on aesthetics when that realm gives us no point of view to help us decide between multifarious portraits of the beautiful? What can we do about a “Nazi” aesthetic—about any aesthetic that leads to a nefarious politics we’d like to avoid? Instead of speaking to these fundamental questions, Scarry rebuts two more oblique aspects of the political critique of beauty. First, she rejects the argument that attention to beauty distracts our attention from the wrong social arrangements, from injurious injustice. For Scarry, the opposite of beauty is injury—and avoiding injury is why we enter the social contract. She also refutes a second critique, the contention that the apprehension of beauty does violence to the object being perceived.

Let us bracket the second critique because, as Scarry rightly points out, we should only worry about this violence when we are beholding beautiful people.45 And even then, it is hard to imagine this critique having much bite. As long as we see the substratum and substance of the beautiful person too, we can be sure not to offend anyone when we compliment them on their beauty. Or so the sincere and unironic might put it.

But in the first critique, Scarry never answers the implicit attacks, variants of the fundamental issues raised above. Instead, she elaborates upon a comparison of the beautiful and the just, using some basic features of John Rawls’s theory of justice.46 By analogizing from Plato, where *eros* leads to *caritas*, where love of an individual leads to love of humankind,47 Scarry is able to claim that recognizing what is fair in the sense of the beautiful particular will

45. See SCARRY, supra note 1, at 64-80. Peter Singer might accuse us of being speciesist here, but I am not too troubled by the prejudice in this context. See PETER SINGER, ANIMAL LIBERATION (1990).
46. See SCARRY, supra note 1, at 81.
47. See id.
assist us in recognizing that we need to be fair universally in Rawls’s sense of “justice as fairness.” That is, for Scarry, beauty accomplishes what Rawls’s Original Position does for him: Not only does it unself the individual such that he doesn’t “know his place in society, his class position, or social status,” but it also “conveys the idea that the principles of justice are agreed to in an initial situation that is fair.” Scarry’s beauty conveys the components of the Original Position because it is primordial and exists conceptually prior to any human relations. Even though Rawls imagines his Original Position as a fiction, Scarry is committed to the facticity of her version of the beautiful, because it is only that version that seems bound up with justice. Just as Rawls is concerned with redistribution and thinks his conception of a “veil of ignorance” in the Original Position can provide the necessary and sufficient conditions for devising a theory of a just society, Scarry is also concerned about equality of distribution and the conditions necessary to achieve justice. But Scarry thinks perceiving beauty in the way she recommends may be enough to satisfy the attempt to get to a Rawlsian theory of justice as fairness. This tactic, of devising theories of justice from facts instead of fictional norms alone, is one of the topoi of postmetaphysical political philosophy. And aesthetics holds the promise of such postmetaphysical thinking precisely because tastes, portraits of the beautiful, are often separable from deep metaphysical commitments (though surely they aren’t always). But are Scarry’s aesthetics really postmetaphysical?

Scarry, like Rawls, is sensitive to the “impotence of the ought,” the frustration that “thick” theories of the good require assent to metaphysical principles by definition. With Rawls, she is searching for a way to have citizens agree on a “thin” theory of the good, but one that still demands symmetrical, and thus fair, distributions of goods. Yet one of the detractions of Rawls’s Original Position as a basis for establishing a theory of justice is that it is fictive and, at bottom, rests upon metaphysics. “By ultimately grounding the law in the conditions that the philosopher writes into the Original Position . . . the Rawlsian construction places the grounds of law, in principle, beyond reach of democratic-discursive validation.”

48. See id. at 86-93. For Rawls’s articulation, see RAWLS, supra note 36, at 3-55.
49. SCARRY, supra note 1, at 12.
50. On the “veil of ignorance,” see RAWLS, supra note 36, at 136-42.
51. For example, see RAWLS, supra note 36, and HABERMAS, supra note 5, who both proceed from the “fact of pluralism.”
52. For elaboration on the “impotence of the ought,” see HABERMAS, supra note 5, at 56-66.
53. Frank I. Michelman, How Can the People Ever Make the Laws?, in DELIBERATIVE DEMOCRACY: ESSAYS ON REASONS AND POLITICS 145, 170 (James Bohman & William Rehg
it extends beyond democratic validation, it controverts the insight that "the democratic procedure for the production of law evidently forms the only postmetaphysical source of legitimacy." Here, we can see why Scarry’s project of an aesthetic politics might be preferable, if beauty could be achieved democratically, that is, less philosophically than is required by the imaginative Original Position. If she can avoid deontological principles on the one hand, and contextualist understandings of beauty on the other, she might contribute to a postmetaphysical politics. But it isn’t clear that she avoids making metaphysical claims on behalf of her version of beauty.

Sometimes Scarry’s commitment to a metaphysical conception of the aesthetic is quite evident:

When aesthetic fairness and ethical fairness are both present to perception, their shared commitment to equality can be seen as merely an analogy, for it may truly be said that when both terms of an analogy are present, the analogy is inert. It asks nothing more of us than that we occasionally notice it. But when one term ceases to be visible, then the analogy ceases to be inert: the term that is present becomes pressing, active, insistent, calling out for, directing our attention toward, what is absent.

For Scarry, “beauty is a call.” Roughly speaking, it sounds like this in our inegalitarian society: “Hey, if you can’t be ethically committed to fairness, at least perceive beauty and make the world more beautiful, that is, more symmetrical.” Admittedly, it is a call that we would do well to hear, but it isn’t at all clear that beauty speaks loudly enough in this way. Scarry’s project, in its modest form, is to sensitize us to this calling, but she must be aware that such a calling usually falls upon deaf ears. We are more likely to own beauty than we are to own up to it in the way she prescribes. Beautiful things and people are just as likely to inspire lust or insecurity as they are likely to inspire a political commitment to undo

54. HABERMAS, supra note 5, at 448. Admittedly, Rawls counters these objections with his notions of “reflective equilibrium” and “overlapping consensus” and spends a substantial part of his later career addressing this kind of objection. All the while, he tries to avoid contextualism without erring on the side of deontological metaphysics. See JOHN RAWLS, POLITICAL LIBERALISM (1993); John Rawls, Justice as Fairness: Political not Metaphysical, 14 PHIL. & PUB. AFF. 223-51 (1985). It is beyond the scope of this Note to see how Rawls’s theories fare against the end of metaphysics. Habermas takes these Rawlsian notions to task in HABERMAS, supra note 5, at 59-63 and JÜRGEN HABERMAS, THE INCLUSION OF THE OTHER: STUDIES IN POLITICAL THEORY 49-101 (Ciaran Cronin & Pablo De Grieff eds., 1998) (1996). Rawls’s further reply to Habermas can be found in Rawls, Reply to Habermas, 92 J. PHIL. 132 (1995).

55. SCARRY, supra note 1, at 109.
56. Id.
some of the inherent inequalities in our society.

But, at other times, Scarry doesn’t seem content with her modest argument, merely recommending heeding beauty’s call. Instead, she wants to make the stronger claim that we can’t do without beauty.57 This more radical claim, however, ceases to be aesthetic when it depends upon another story of normativity: She thinks that what we might choose in an Original Position, unselfed, has moral weight.58 And once we get back to metaphysical moralisms, we have left the aesthetic realm.

Scarry performs a mental exercise at the end of the book structurally reminiscent of Rawls’s Original Position setup when she tries to convince us that we would never want to live in a world without beauty.59 For reasons she does not disclose, she believes that if we wouldn’t want to live in a world without beauty, then beauty’s place at the center of political theory would be established legitimately and firmly. In her model, our need for beauty, our incapacity to live without it, is accompanied by a moral imperative towards equality.

Scarry is sure to tell us that we would choose to have a beautiful sky in all possible worlds. Even behind a “veil of ignorance,” not knowing our hometown, class, or standing in society, we would know ourselves to be beneficiaries from its beauty no matter where in the world we stand.60 She argues that beauty’s most vociferous critics would still want future generations to experience beauty because all agree that “the absence of beauty is a profound form of deprivation.”61 She thinks that this substantiates the claim that “people seem to intuit that their own self-interest is served by distant peoples’ having the benefit of beauty.”62 She thinks that it is a political argument in defense of beauty that those she has questioned “state their hope that we will be spoken about by future peoples as beauty-loving.”63 Her anecdotal evidence doesn’t prove her point.

Scarry doesn’t view this method as simply a “thought experiment.” Instead, she thinks “there is nothing speculative about it.”64 Scarry makes the strange claim that “the vote on the sky has been taken (the recent environmental movement).” She insists that our eternal and primordial love of flowers is demonstrated by the fact that

---

57. See id. at 117-24.
58. See id.
59. See id. at 119-23.
60. See id. at 119-20.
61. Id. at 118.
62. Id. at 123.
63. Id. at 118.
64. Id. at 123.
"people over many centuries have nurtured and carried . . . flowers from place to place . . ." 65

The upshot for Scarry is that since beauty would be chosen in an Original Position, justice, too, is a moral imperative because a desire for justice, or for symmetry in the distribution of goods, is a direct consequence of the desire for beauty. What at times seems like only an analogy (and a very well-articulated one) becomes a source for metaphysical moralisms by the end of the book.

V. CONCLUSION

If, for Scarry, we can still talk metaphysically and moralistically about justice, we don’t need beauty to get us there. Beauty might assist us and make the world more pleasant, but nothing depends upon its success. Nothing is at stake if beauty fails us, because, in the final analysis, Scarry still thinks that we can take cues from other places, like metaphysics and constitutions. To be fair, by the end of the book, though Scarry makes gestures to her strong claims, she resists her ambitions and stays modest, which is both heartening and disappointing.

We might feel somewhat persuaded by the weaker version of her claim, but it is more a literary accomplishment than an advancement of progressive politics. Pointing out an analogy is interesting and expressing it beautifully is an achievement. But politics deals with real problems, not only linguistic ones. Political theory is fundamentally practical and pragmatic, so analogies may not provide the right kind of guidance for the political problems of redistribution. Even supposing all her claims about beauty’s place in the Original Position are true, it is hard to see how this reformulation of the fictive story of the state of nature could help decide our practical political problems. Often politics is about defining what symmetry and equality require of us, not stating the uncontroversial point that we should be aiming for “equal concern and respect.” Yet, I take the point that we still need to do a lot of work convincing people of the uncontroversial.

Unfortunately, the stronger claim—that aesthetics can ground or replace political theory—is where the least is said and the most work is needed. While we should be excited that someone else has taken upon herself the challenges of postmetaphysical political thinking, and has attempted to give us a solely aesthetic basis for politics, Scarry’s account leaves us mired in moralisms and avoids the real challenge of an aesthetic politics. To be sure, it is difficult to imagine

65. Id.
how a liberal state could meet the tasks of regime-maintenance without taking some kind of metaphysical stance. But after the end of metaphysics, our only hope is to minimize contentious claims and aim to build consensus around some “thin” nonmetaphysical conceptions. Clearly, aesthetics provides promise, a promise not met by Scarry’s moralisms. Whenever theorists get mired in moralism, we must start worrying about how universalistic claims often tend to oppress difference, dissonance, dissidence, and asymmetry.

Ultimately, I’m not sure that an aesthetics politics, a political philosophy derived from aesthetic theories, will necessarily be able to address the real political problems faced by our pluralistic regime. Yet such a strategy may prove very useful in coping with some of our political mechanisms that are directly related to aesthetic notions. One that comes to mind easily is representation, which has correlates in politics as well as in art. We could also well imagine that inquiry into the “symbolic uses of politics,” in the phrase of Murray Edelman, might bear an important basis for an aesthetic politics. Moreover, it seems clear that some literary aesthetic theory has pervaded political and legal thought, as evidenced in the enterprises of “law and literature” and “legal hermeneutics.” Arguably, those jurists interested in the “original intent” of laws’ authors also make an aesthetic claim. And Ronald Dworkin’s deontological Herocian judge, who often must disregard “original intent,” or the intent of the legislators, could be compared to Bloom’s strong poet without too much misreading.

I grant that the fundamental challenges to an aesthetic politics explored above are incisive. Moreover, such critiques might be decisive if we cannot find a way to solve or at least deflect the worry that having only aesthetic principles without metaphysical foundations will be frightening. Scarry doesn’t take this concern seriously; she becomes scary in another way by making contentious metaphysical claims of universality for her vision. But because such

66. For an attempt to make this more focused argument, see ANKERSMIT, supra note 44, at 21-63.
68. For a survey of these enterprises, see Jane B. Baron, Law, Literature, and the Problems of Interdisciplinarity, 108 YALE L.J. 1059-85 (1999).
69. See, e.g., RONALD DWORKIN, LAW’S EMPIRE (1986); RONALD DWORKIN, A MATTER OF PRINCIPLE 146-77 (1985); RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1978).
70. See BLOOM, supra note 16.
71. David Bromwich has claimed that resorting to bad puns at the end of an article is a strange move suggesting that the author is trying to paper over some deficiency in the essay. Seminar with David Bromwich, Bird White Housum Professor of English, Yale University (Jan. 13, 2000) (commenting on Alexander Nehemas, An Essay on Beauty and Judgment, 80 THREEPENNY REV. 4-7 (2000); Nehemas concluded that “Wilde—who thought his life was his greatest work of art—turns out to be less wild than he has seemed.” Id. at 7.). With Rorty, I have no such reservation about a last-minute pun.
a methodology—a methodology that extracts political theory from aesthetics—could address many of our contemporary debates in political and legal theory, it seems that further work in this arena would be beneficial. Back to the drawing board.

—Ethan J. Leib