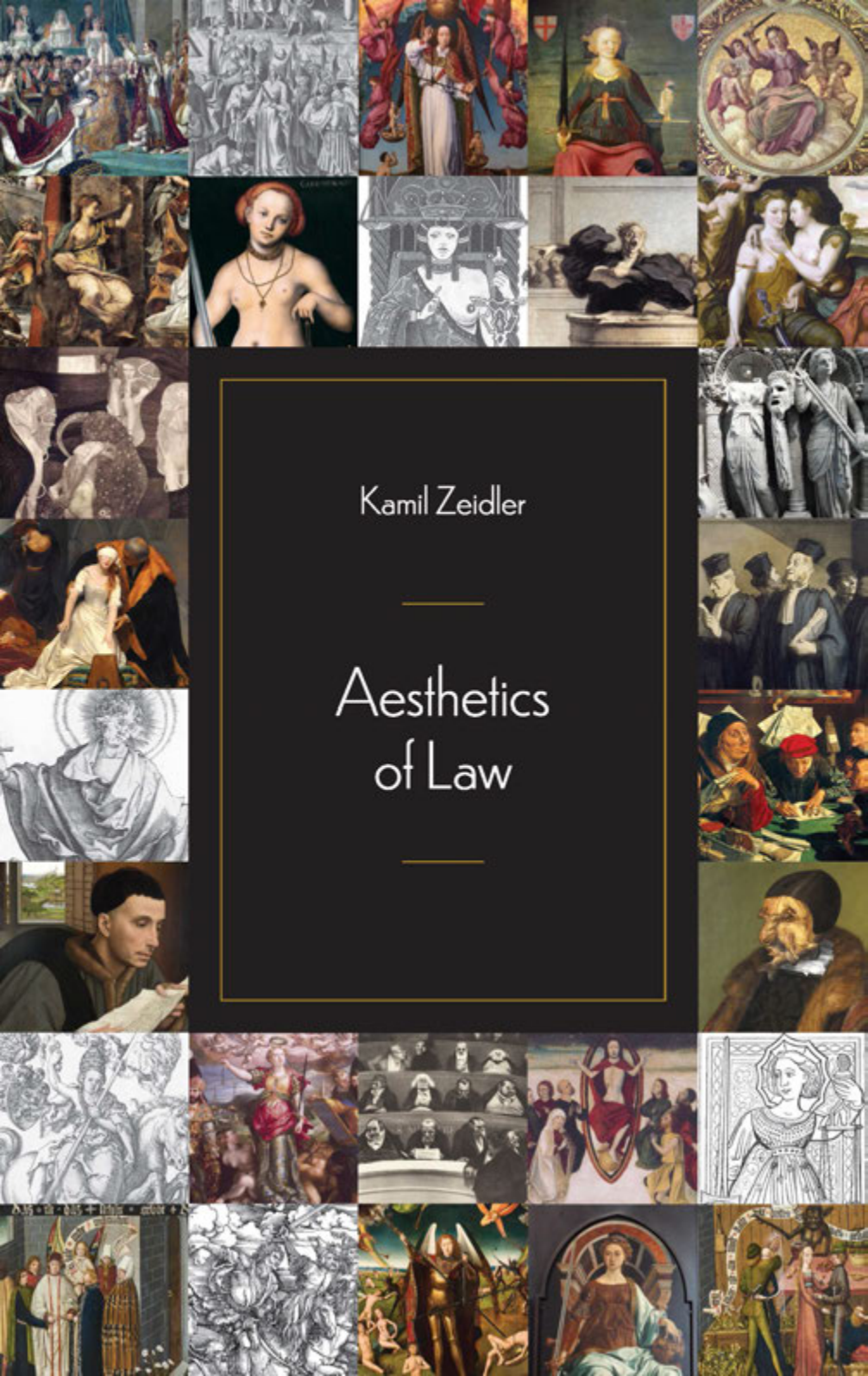

Kamil Zeidler

Aesthetics of Law

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Series Editor

KAMIL ZEIDLER

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Aesthetics of Law

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INTRODUCTION, ON THE FIFTH FIELD OF PHILOSOPHY OF LAW

At first glance, the idea of addressing the issue of the aesthetics of law may provoke surprise, and even lead to the conclusion that this is just another undertaking that is unimportant from the perspective of the main lines of the theory and philosophy of law and is probably not worth substantial consideration. Jerzy Zajadło perversely asks whether such a specific, auto-poetic, conventional, and formalized phenomenon as the law can be ascribed any aesthetic values at all, experiences that respond to those, and aesthetic evaluations; or whether, in general, there exists something like an aesthetics of law. He notes at the same time that the very juxtaposition of law and aesthetics is capable, among traditionally inclined philosophers and jurists, of producing a whole series of doubts, if not, indeed, violent opposition.[1] Despite this, I will attempt to demonstrate that aesthetics is in no way a marginal issue, but rather that the scope of its influence in legal studies is broader than may at first appear. Further, I will try to show that the extensive set of issues embraced by aesthetic reflection on the law is not just an exceptionally interesting field, but, in addition, turns out to be a field that is important on a practical level.

[1] J. Zajadło, "Estetyka – zapomniany piąty człon filozofii prawa," *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 2016, no. 4, p. 18.

The traditional fields of philosophy that are important here are ontology, epistemology, logic, ethics, and aesthetics. Let us just recall that ontology is the theory of being, often also called metaphysics; epistemology is the theory of cognition, or gnosology; logic is the study of language and the activities of investigation, understanding, definition, and classification etc.; ethics is the study of morality; and aesthetics is the general theory of the beautiful.

The classic demands *vis-à-vis* the law, understood as *lex* (legislation), come down to those that it be: *certa* (sure), *scripta* (written), *stricta* (exact), and *praevia* (anterior). This refers, above all, to criminal law in the context of the principle of *nullum crimen sine lege*, but on the basis of the philosophy of law we can give this a somewhat broader meaning. We can suggest a correlation of the divisions of classic philosophy with those very required features of law. If we take a closer look at the above adjectives, it emerges that they are congruent with the four basic divisions of philosophy, that is: ontology, epistemology, logic, and ethics. *Lex certa* refers to law as a specific entity in an ontological sense, the substance of which is determined less by the fact that it "is" and more that it "is in force," in relation to fulfilling designated rules of being in force. *Lex scripta* relates to the fact that law is above all language, one in which legal norms are formulated and which itself is the source of cognition of the law. This language, however, cannot be arbitrary, for it must fulfil the demand of *lex stricta*, that is, it must be exact, precise, and succinct – and this is a matter of logic. Nevertheless, as regards the connection between *lex praevia* and ethics, this formulation does not indicate this simply, but does so indirectly, since it is possible – if one draws on Lon L. Fuller's conception of the internal morality of the law – to see ethical aspects in the fact that a legal norm should be prior to the occurrences that we evaluate on its basis. Thus, in this study, the central ques-

tion is where, in that case, can we see the fifth division of philosophy, that is, aesthetics? In other words, should *lex* not also be *pulchra* (beautiful)?[2]

If we accept the hypothesis of the usefulness of general philosophy for the philosophy of law, or even further, for legal studies in general, one is tempted to make an analogous arrangement of the fields of the philosophy of law to that which obtains in general philosophy. Thus, we can distinguish: the ontology of law, the epistemology of law, legal logic, legal ethics, and, finally, the aesthetics of law. This book focusses on this final division of the philosophy of law.

Today a discussion of the aesthetics of law is increasingly widespread. Especially with regard to particular manifestations of it – which I describe in chapter 6 of this book – it is already possible to find a large scholarly literature, relating, for example, to legal rhetoric or to the movement called law and literature, but not only to those topics. Many important issues from the point of view of aesthetics that are discussed in the relevant literature, are not always seen from the perspective of aesthetics, and are even less examined from that perspective. One can point to many important examples of this type of discussion in the work of scholars, who, while writing of the aesthetics of law, do not particularly focus on the aesthetics of law. There is a huge number of traces of aesthetics of law in the work of jurists, which we only begin to notice when we read books and articles so as to search out those elements, notice them, and subsequently interpret and develop them. This scholarly disposition is very inspiring and absorbing. One can discover most about the aesthetics of law in English-language

2 *Ibidem*, pp. 17–18.

literature. These are often quite substantial, extensive, interesting, and inspirational texts, and the very concept of the aesthetics of law is strongly grounded in them, and they will be considered in a later part of this study.

I first presented my reflections on the aesthetics of law during the Twentieth Congress of Departments of the Theory and Philosophy of Law, which was organized in Łódź in 2012 by the Department of the Theory and Philosophy of Law of the University of Łódź. At that time, I read a paper that was subsequently published as an article entitled "Estetyka prawa – ujęcie zewnętrzne i wewnętrzne" (The Aesthetics of Law – The External and Internal Frame), obviously after taking into consideration the many interesting comments and suggestions raised during discussion.[3] It was there that I attempted to give an outline of the subject and scope of research into the aesthetics of law, sketching out some kind of map and giving a rough list of contents. In Poland, the topic of the aesthetics of law has been taken up by Jerzy Zajadło, who has published important articles on the subject.[4] While working on this book, I have also given several papers at conferences and I have published several smaller pieces that contain broad references to the aesthetics of law.[5] In 2018, at the Twenty-Third Congress of Departments of the Theory and Philosophy of Law, organized in Lublin by the Department of the Theory and

[3] K. Zeidler, "Estetyka prawa – ujęcie zewnętrzne i wewnętrzne" (in:) *Integracja zewnętrzna i wewnętrzna nauk prawnych*, part 2, eds M. Król, A. Bartczak, M. Zalewska, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2014, pp. 61–67.

[4] See: J. Zajadło, "Prawo, estetyka, estetyka prawa?," *Edukacja Prawnicza* 2015, no. 3 (159), pp. 9–12; *idem*, *Estetyka – zapomniany piąty człon*..., pp. 17–30; *idem*, "Graficzny obraz systemu prawa," *Edukacja Prawnicza* 2016, no. 1 (166), pp. 3–8.

[5] See, for example: K. Zeidler, "Estetyka prawa: ekslibris prawniczy," *Gdańskie Studia Prawnicze* 2017, vol. 38, pp. 645–658; also: *idem*, "Po co prawnikom filozofia?" (in:) *Księga życia i twórczości. Księga pamiątkowa dedykowana Profesorowi Romanowi A. Tokarczykowi*, vol. 4, *Filozofia*, ed. Z. Władek, Polihymnia, Lublin 2014, p. 502.

Philosophy of Law of the John Paul II Catholic University of Lublin, in a paper entitled "Państwo i estetyka – o wpływie na kształtowanie świadomości prawnej" (The State and Aesthetics – On Its Influence in Shaping Legal Consciousness), I presented several conclusions that I had come to over the previous several years of thinking about the aesthetics of law. This came together with finishing the book now before you. It is worth adding, however, that while writing the book, I drew on notes and sketches gathered over the previous several years.

It turned out – and this was something I experienced myself, like Monsieur Jourdain, the character in Molière's play *Le Bourgeois gentilhomme* – that I did not know that I had been "speaking prose," that I had begun to deal with the aesthetics of law much earlier than I imagined. This earlier concern was connected with my research work into both cultural heritage law,[6] and to legal rhetoric, but also relating to law and literature and film-making on legal topics. And just as the character mentioned above, I was rather surprised by the fact. In *Le Bourgeois gentilhomme*, Monsieur Jourdain cries out to the philosophy teacher: "By my faith! For more than forty years I have been speaking prose while knowing nothing of it." For me, too, it was a pleasant surprise, for, although I had been "speaking prose" perhaps not for forty, but for twenty years, I was, thus, confirmed in my belief in the legitimacy of more broadly addressing the aesthetics of law.

When one undertakes a consideration of the aesthetics of law, on the one hand, it is necessary to remember the necessity of applying varied research methods characteristic for different disciplines and fields of knowledge within what can be broadly conceived of as the humanities and

[6] See: K. Zeidler, *Zabytki – prawo i praktyka*, Wydawnictwo Uniwersytetu Gdańskiego–Wolters Kluwer, Gdańsk–Warszawa 2017.

social sciences. On the other hand, it is essential to resort to methods that have been developed in aesthetics. Further, when we refer to specific fields of artistic creation, such as the fine arts, literature, theatre, film, and even music, it is necessary to consider the achievements, including the methodological achievements, of these fields. It is in the nature of things that in this book there are also meta-aesthetic discussions. What is more, it appears that today the cutting edge of scholarship lies at the points of contact of disciplines and fields, and its substance is rooted in the interdisciplinary, although this situation is usually exceptionally challenging.

The above is why the aim of my study *The Aesthetics of Law* is, on one hand, to organize what has already been written on this subject by using, above all, the tools of legal studies – the philosophy and theory of law. On the other hand, my aim is to suggest a specific programme of further studies in the aesthetics of law. In addition – and in writing this book, this proved the most absorbing and satisfying aspect – to examine individual manifestations (as I call them) of the aesthetics of law. In this particular point – and I must confess it in this introduction – I have dived deep into what Umbetro Eco calls the "infinity of lists."[7] Alongside, the two traditional and contrasting scholarly/scientific approaches – analysis and synthesis – Eco introduces yet another division. On one hand, there is the celebrated model of description, ordered, drawing inspiration from the principle of a harmonious and finished completion, that is, a poetics that argues that all is present.[8] On the other hand, Eco claims there is the model of the list, the register, the enumeration, and the catalogue, which in the complexity of the contemporary world rarely attains the status of

[7] U. Eco, *Szaleństwo katalogowania* (literally: The Madness of Cataloguing), trans. T. Kwiecień, Dom Wydawniczy Rebis, Poznań 2009.

[8] *Ibidem*, p. 7.

a *numerus clausus*, that is, it is marked by the poetics of "and so on." Eco cites examples of both from Homer: for the first, the description of the shield of Achilles, forged for him by Hephaistos at the request of his mother Thetis, which appears in Book XVIII of the *Iliad*; for the second, the enumeration of ships that begins the *Iliad*.

Chapter 6 of my study also contains such an enumeration. Perhaps this is, *inter alia*, because in the course of my investigations into the aesthetics of law, it turned out that these aesthetics are more all-embracing than seemed to me the case initially. Its manifestations, both within the law (internal frame) and outside the law (external frame), are so many that it is impossible to capture, present, or describe them all here. Eco notes that when the borders of what one wishes to present are unknown, when one does not know how many things there are of which one is speaking, and when one assumes that their number is, if not infinite, then astronomically large; or also when one is dealing with a reality the essential definition of which one cannot provide; then to speak of that reality, to render it comprehensible, in some measure perceptible, one enumerates its features.[9]

However, here there is a risk, which I acknowledge, and of which Władysław Tatarkiewicz writes thusly: "whoever makes a selection encounters considerable difficulties: he cannot eliminate himself completely, his own preferences, and evaluations, his understanding of what is eternally important and what is important for specific ages."[10] This concern is especially valid when we speak of art, as the present study does. Let this, therefore, be my justification in answer to the possible stricture of excessive subjectivity in the examples cited and the enumerations offered in this book.

[9] *Ibidem*, p. 15.

[10] W. Tatarkiewicz, *Dzieje sześciu pojęć: sztuka, piękno, forma, twórczość, odtwórczość, przeżycia estetyczne*, PWN, Warszawa 1988, p. 6.

The above has led me to one more comment on my "gathering" of traces of the aesthetics of law in its most varied forms. I have thought that perhaps it is a kind of collecting. Not collecting of material objects, but of ideas, of thoughts, of works from the past; a collecting with no right of possession, but, nonetheless, heavily permeated by a need for possession. Indeed, in collecting, it is not only a matter of material objects, but perhaps even more of the immaterial values that they demonstrate. The Polish poet Julian Tuwim, who himself briefly studied law, writing of his passion, explains that his collecting is an "incurable mania, from childhood, for collecting rare and unusual printed materials," and a symptom of, as I can call it, an "unemptying emptiness" or "vanity without vanity." Jerzy Stelmach, in turn, defines his concept of "inveterate partiality" (*delectatio morose*), putting it in the form of seven questions, which are accompanied by seven important admonitions. I will not discuss the entirety of these here, but I will cite only these words of his: "Collecting is an attempt to achieve the dream of possessing one's own world. (…) collecting is, above all, a struggle against diffusion and excess. Out of chaos, we procure things and persons, protecting those things and persons from forgetting and silence."[11] In these senses, it is possible, particularly in chapter 6 of this book, to find that passion for collecting that belongs to the searcher for links between law and art. Finally, however, it should be added that my passion for gathering has also embraced literature from the field of the fine arts, of aesthetics, of aesthetics of the law, of law and literature, etc., in the nature of things in English and German, only a small part of which I cite in this study.

Altogether, this has made it possible for me to create a specific "core," or "foundation," upon which further aesthetic-

[11] J. Stelmach, *Uporczywe upodobanie. Zapiski kolekcjonera*, Bosz–Wolters Kluwer, Olszanica–Warszawa 2013, pp. 15, 19.

legal reflection may develop, one that – I have high hopes – may involve other researchers. For it seems that this "fifth element of the philosophy of law" is much more all-embracing than might seem at first, and the results of further work on the aesthetics of law may be practically useful in the process of creating and applying law. However, certainly that is not all, for such work also relates to the formation of the legal consciousness of the addressees of the law and of their attitudes towards the law. I have no doubt that in the aesthetics of law, we may still discover *terra incognita*.






"Kamil Zeidler's book, many years in preparation, will soon be a scholarly event on an interdisciplinary level – and not just in Poland. Its outstanding value is a result of the author's broad scholarly horizons, and his vast erudition in the philosophy of law, aesthetics, and European art history. I was amazed by the wealth and quality of illustrations that most effectively supplement the author's discussion."

Professor Juliusz A. Chrościcki


"This study not only makes it possible for the reader to learn a great deal about the relations of law to a variety of dimensions of culture and art, but, above all, it offers a rare opportunity to accompany an author in cutting fascinating new paths in the philosophy of law."

Professor Tomasz Pietrzykowski



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