

# The Research Scope of Law and Music from the Perspective of Legal Aesthetics

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## Abstract

As an interdisciplinary discipline of law and aesthetics, the object of study of legal aesthetics should be divided into two parts: law and beauty; the beauty of law. As a theme of the study of legal aesthetics, law and music has always been talked about by scholars. At present, the research on the theme of law and music is mainly divided into four parts, and it is also the four-level progressive relationship between law and music. First, the copyright law on music. Second, the interaction of law and music in the process of development. Third, the similarity between law and music. Fourth, the essential connection and internal unity of law and music. When law and music is an object of the study of legal aesthetics, the scope of research should be limited to the latter three parts. Among them, the second and third parts are the study of law and beauty, and the fourth part is the study of the beauty of law.

**Keywords:** legal aesthetics, object of study, law, music

## 1. Introduction

Legal aesthetics provides new methods and perspectives for legal research, and also broadens the horizon and dimension of legal understanding. Under rationalism, positivist jurisprudence, jurisprudence of economic analysis and jurisprudence of interests understand legal phenomena with a rational, serious, and scientific attitude, while the musical and artistic dimensions of legal aesthetics discussion bring vivid humanistic elements such as sensibility, emotion, and aesthetic psychology. This helps to change the traditional understanding of jurisprudence and helps legal research to jump out of the framework of high rational constraints. This paper selects the theme of law and music in legal aesthetics, tries to analyze the historical background and origin of the research, and defines the research scope of law and music from the perspective of legal aesthetics by expounding the research objects of legal aesthetics.

## 2. How Did Law and Music Become the Research Theme of Legal Aesthetics

The discussion about law and music is mainly based on the rise and development of legal aesthetics. Under the background of rapid development of science and technology and commodity economy, modern jurisprudence is deeply influenced by rationalism, especially scientific and technological rationality, and lays great emphasis on the rational character of law itself. The extremely strong logic and compulsion of law, as well as the equity and calculation of interests, make it more inclined to quantification, instrumentalization and technicalization, and greatly widen the distance between law and perceptual art and aesthetics. Nevertheless, legal aesthetics, as a young research paradigm, has broken the shackles of high rationalization of law and tried to re-understand and study legal phenomena from the perspective and method of aesthetics. And law and music, as one of the research themes of legal aesthetics, has gradually come into people's view. The following is the analysis of the reasons.

### 2.1 The Development and Establishment of Modern Irrationalism

Around the nineteenth century, western philosophers Schopenhauer, Kierkegel, and Nietzsche showed the tendency of irrational epistemology when expounding their philosophical theories. Schopenhauer, for example, believed that irrational intuitions are the source of our knowledge. (Schopenhauer, 1997) In the 20th century, a strange antinomy appeared in the field of human spirit, that is, the more developed rationality and science, the stronger the tendency to be anti-rational and anti-scientific. (FENG Yuzhen, 2013) Marcuse, Marx, Horkheimer, Heidegger and other famous philosophers have also clearly expounded the limitations of technology and reason. People under the influence of modern irrationalism have realized that technology and reason are not omnipotent, and technological reason is not supreme. In the field of law, which cannot completely reject the influence of irrational factors such as personal emotions and intuition, highly rational and scientific schools of legal theory also show unavoidable limitations. Therefore, humanism, which emphasizes the human dimension, has gradually received attention in the field of law. Sensuous humanism has given people new perspectives on the legal system, and aesthetics, including the aesthetics of music, is one of these new perspectives.

### 2.2 Law and Music Are Closely Linked in History

As early as 800 BC, the educational concept of ancient Greek city-states had attached great importance to the role of music in the construction of national laws and institutions, and regarded both physical training and musical training as the most basic educational methods for citizens. (SHU Guoying, 2014) In ancient China, the connection between music and law was also close and profound. First of all, the names of Yin Lv (music in Chinese) and Fa Lv (law in Chinese) had something in common from the origin. The Chinese character Lv for Fa Lv was a kind of tubular instrument used to correct musical sound standards in ancient China. In addition, the relationship between law and music was also reflected in the thoughts of Chinese ancient governance. Under the ritual system of Western Zhou, music was an important tool for ruling the state. Not only did the nobility use music for their ceremonies, but there were strict rules about the music and instruments to be played in different occasions. (HUANG Aimei, 2018) The Confucian classic *The Ritual of Zhou* emphasized the ancient Chinese idea of building harmonious relations with other countries through music. There was also an opinion in *The Annals of the Confucius* that “if the ritual system is disordered, the punishment will not be proper”, which clearly reflected the close relationship between music and punishment in Confucianism. Therefore, although exploring law from the perspective of law and music is a new method of legal research, the content of its research is not a whim but has a deep historical foundation.

### 2.3 A Trend of Interdisciplinary Research in the Field of Law

From the intersection of law and economics, history, sociology and other humanities and social disciplines, to the intersection of law and medicine, information technology, big data and other science and technology disciplines, interdisciplinary research methods are emerging and developing in the modern law research. Among them, law and society, law and economy are the earliest ones, and they both emphasize the application of scientific analytical paradigms in legal research. (Anna di Robilant, 2001) With the development of irrationalism, a new research path has been opened up in the field of legal research, which is law and literature. As an art of writing, literature, like music, drama, painting, architectural design and so on, requires artists to express a certain aesthetic awareness through sincere emotion, bursting passion and rich imagination. Law and literature is an early theme in the study of legal aesthetics. The subject of law and music is newer and less fruitful, but its youth is also destined to mean that there must be many bright jewels that have never been discovered in this treasure house, waiting for us to pick.

## 3. Research Status of Law and Music

### 3.1 Research Status

Not counting the articles that only mentioned the subject of law and music in a few words or some sporadic related viewpoints, there are also many articles that systematically combine the two themes of law and music.

In 1947, Jerome Frank argued in *Words and Music: Some Remarks on Statutory Interpretation* that statutory interpretation is not a science but an art, and he drew an analogy between a judge's interpretation of the law and a musical performer's interpretation of music. (Jerome Frank, 1947) Desmond Manderson described three aesthetic dimensions of law and justice in his book *Words and Music: Some Remarks on Statutory Interpretation*, which are the dimension of aesthetic methodology, the dimension of aesthetic epistemology and the dimension of aesthetic norms. He tried to explain that the aesthetic of music will subtly affect the way people think about law and justice. (Desmond Manderson, 2000) There are many other related articles, such as *Words and Music: Some Remarks on Statutory Interpretation* by Jerome Frank(1947), *Fusion Folk: A Comment on Law and Music* by Carol Weisbrod (1999), *Interpreting Law and Music: Performance Notes on “The Banjo Serenader” and “The Lying Crowd of Jews”* by J. M. Balkin and Sanford Levinson (1999), *Music and Law* by Bernhard Grossfeld and Jack A. Hiller (2008); *Why the Law Needs Music: Revisiting NAACP v. Button Through the Songs*

of *Bob Dylan* by Renee Newman Knake (2011).

There are also some scholars in China who have paid attention to the study of law and music. In the article *The Art of Law*, John C.H. Wu argued that there is a real unity between law and the arts such as music, poetry, and painting. (John C.H. Wu, 2012) In the article *Law and Music*, Shu Guoying believed that whether in ancient Greece or in the Pre-Qin dynasty in China, the training, production and assignment of music were all official affairs managed by the state through a highly organized form. The reason is that music can change the order of people's minds, shape people's characters and guide the formation of people's values. (SHU Guoying, 2014) The article *Beethoven's Symphony No. 9 and German Civil Code—German Spirit in Music and Law* by Wang Tao selects the most representative classical works of law and music for comparison and tries to prove the connection between music and law with specific examples. (WANG Tao, 2011)

### 3.2 Existing Problems

First, the research depth is not enough. The so-called research depth refers to how deep the relationship between law and music has been discovered through research. The present research content is roughly divided into two levels. First, the relationship between law and music as two subjects, which is further divided into two aspects, one is the similarity between law and music, and the other is the interaction between law and music. Second, the inherent unity of law and music in nature. At present, most of the academic circles focus on the former, however, there are very few researches on the deeper question of the latter. On the one hand, scholars find some commonalities and similarities between law and music and other art categories through analogy, and then use music, opera, etc. as metaphors for law. On the other hand, scholars have explored the interaction between law and music and other arts by examining ancient music as a tool for state governance and art such as poetry, language, clothing, and architecture as expressions of law. The above-mentioned research to explore the relationship between law and art is to use music and other art categories as a tool to understand and explain legal phenomena, and it is at the surface level. This level of research is necessary but should not be final. This can be called an interdisciplinary study of law and beauty, but it cannot be called the beauty of law. From the perspective of legal aesthetics with the beauty of law as the research object, the study of law and music needs to go beyond the disciplines of law and music and seek their inner true connection. Although John C.H. Wu clearly maintained that the law was truly consistent with the arts such as music, poetry, and painting, he had only briefly described this consistency and had not demonstrated it in detail. In addition, although Desmond Manderson explores the three aesthetic dimensions of law and justice through musical works, his exploration of the deep relationship between music and law is still tentative.

Second, the research is not yet systematized. Looking at the research status of various countries, scholars' thinking on law and music and even legal aesthetics seems to have only flashed the sparks of thinking. It is in the initial stage of exploration and trial, and a complete system has not yet been established. The discussion of law and music within the legal aesthetics is also scattered, and needs further thinking, sorting and systemization.

In order to solve the problems of insufficient depth and fragmentation in the study of law and music, it is necessary to define and clarify the research objects of law and music from the perspective of legal aesthetics. Only in this way can the jurisprudential aesthetic discussion on this issue be truly clear.

## 4. The Research Object of Legal Aesthetics: Law and Beauty and the Beauty of Law

Legal aesthetics refers to the understanding of legal phenomena from the concepts and perspectives of aesthetics and art, and is a way of thinking and research paradigm. Its research objects are divided into law and beauty and the beauty of law.

First, legal aesthetics studies law and beauty. This research content regards law and beauty as two independent individuals, and studies the relationship between law and other beautiful things (such as various art categories) through analogy and other methods. Law and beauty is the research objects of legal aesthetics, and it is also the research method of legal aesthetics. Under this theme, people discuss the similarity between art and law, and the interaction between them. In this case, some theories of aesthetics such as literature and art often become a method for understanding and interpreting the law and even educating the people through the law. For example, the scholar-officials in the Song Dynasty often added poems, stories and metaphors to the judgments to inspire the inner consciousness of the parties. (CHEN Jingliang, 1997)

Secondly, the aesthetics of law studies the beauty of law. This theme deeply explores the beauty of law itself from various aesthetic perspectives, which is the research purpose of legal aesthetics. At this level, law and beauty are no longer two independent individuals, but are perfectly blended together, and law itself is beauty. For example, the ancient Roman jurist Ulpianus directly identified law as the art of goodness and justice. The eighteenth-century Italian philosopher Giovanni Battista Vico described the poetic ancient Roman law with meticulous and vivid description and a unique aesthetic perspective, and his idea also belonged to the category of the beauty of law. (Vico, 2008)

Of course, law and beauty and the beauty of law are not unrelated or completely separate. When we take law and beauty as the research method of legal aesthetics, we may also be able to find the beauty of law as the research purpose of legal aesthetics along this way. For example, when we use literary and rhetorical theories to explain the law, or when we write judgments in beautiful, moving and profound language, we may be on the road to finding the beauty of law.

## 5. Definition of the Research Scope of Law and Music

### 5.1 *The Four-level Progressive Relationship Between Law and Music*

Law and music have a progressive relationship of four layers. First, the laws about music. The law and music research under this relationship mainly involves the copyright of musical works. This research is by no means a purely legal issue. The grasp of the originality of a musical work and the judgment of the plagiarism, cutting, and patching of a musical work are both inseparable from the understanding of its orchestration, harmony, texture, musical structure, and style characteristics. However, these understandings are limited to the understanding of music itself, and do not involve transferring such methods of knowledge or conclusions to knowledge of law. Therefore, at this level, law and music are two independent entities with loose links. Secondly, as two independent subjects, law and music are interrelated and function in the process of origin and development. Thirdly, the similarity between law and music as two independent subjects. Finally, law and music are integrated, and they have an essential connection and inner unity. The first-level relationship does not belong to the scope of legal aesthetics research. The second-level and third-level relationships are the study of law and beauty. The fourth-level relationship can further infer the beauty of law from the perspective of music aesthetics. It will be elaborated in detail below.

### 5.2 *Law and Music as the Subject of the Study of Legal Aesthetic*

When law and music become the research topic of law aesthetics, its research scope should be based on the basis of law and beauty and the beauty of law. Although the relationships between law and music are multi-layered and different, not all related content can be a study of law and music from the perspective of legal aesthetics. The study of law and music from the perspective of legal aesthetics should include three parts, which will be analyzed separately below.

#### 5.2.1 The Connection and Interaction of Law and Music in Historical Development: Law and Beauty

Legal aesthetics studies the relationship and interaction between law and music as two independent subjects, that is, the second-level relationship between law and music. It contains two aspects.

First of all, legal aesthetics seeks whether there is any connection between the origin of law and music by analyzing the background, reason and sequence of the birth of them. When we learn about music in western civilization, we will find that music has a close connection with the law in its birth and development process. Every progress and turn in the inner life of Western music is closely connected with the pulse of the whole society, politics, religion and ideological trend. For example, none, as the most important musical variety in ancient Greece, refers to music works that strictly follow the rules of classical aesthetics, but its original intention is actually law. (Paul Henry Lang, 2014)

Secondly, Legal Aesthetics studies the mutual influence of law and music in the process of historical development. Legal aesthetics should take a specific geographical scope and historical period as a unit to analyze the influence of a certain theory, thought or even social movement on a certain law and certain music under certain historical conditions. Music and law also influence each other. Far from being irrelevant to harsh political and legal events, music may even be a driving force for political and legal development. For example, in the 1960s, music was an important catalyst for the civil rights movement in the United States. Influenced by the album *The Freewheelin' Bob Dylan* released by American singer and music creator Bob Dylan, the court's judgment held that the First Amendment to the U.S. Constitution protects the right of the National Association for the Advancement of Colored People (NAACP) to provide legal aid to individuals in the implementation of the Constitution and civil rights. Music was no longer an intermission in the serious politics. It was a motivator, an explainer, and as much a binding force as ideology or program. Above all, it was a weapon. (Renee Newman Knake, 2011) Furthermore, music with no political color in theory may have substantive political content in practice. Some scholars have focused on the discussion of songs of protest that abound in the folk music tradition. (Carol Weisbrod, 1999)

#### 5.2.2 The Apparent Aesthetic Similarity of Law and Music: Law and Beauty

Law aesthetics studies the aesthetic similarity between law and music as two independent subjects, which is the third layer of the relationship between law and music. First, the aesthetics of forms, that is, their similar practice paths and technical methods. Second, the aesthetics of content, that is, the interplay of sensibility and reason. Third, the aesthetic of function, that is, the elimination of contradictions and moral indoctrination.

First of all, law and music have highly similar practical paths (as shown in Table 1) and technical methods in terms of form. The practice path of music is “composers’ composition→ score→ performers’ performance→ music presentation→ audience”, which contains a variety of composition methods and performance skills such as mode, interval, chord, rhythm, dynamics and so on. The practical path of law is “legislators’ legislation→ laws→ judges’ adjudication→ judgment documents→ the parties and the public”, which also contains various legislative techniques and legal interpretation methods. American legal realists intend to distinguish law on the books from law in action. Law on the books (i.e., the legal text) does not constitute the social practice of law, just as music on the scores does not constitute the social practice of music. Like other performing arts, legal performance is more than the performer’s interpretation of the text: it involves a triangle of mutual influence between the creator of the text, the performer of the text, and the audience affected by those performances. (J. M. Balkin & Sanford Levinson, 1999) Jerome Frank drew an analogy between a judge’s interpretation of a statute and a musical performer’s interpretation of a musical composition. Just as music composers delegate some subordinate creative activity to musical performers, legislatures delegate some subordinate legislative creative activity to courts. Judges, like musicians, must be creative in interpreting the law. (Jerome Frank, 1947)

Table 1. The similar practical paths of law and music

	Step 1	Step 2	Step 3	Step 4	Step 5
Music	Composition	Score	Performance	Music presentation	Audience
Law	Legislation	Laws	Adjudication	Judgment documents	Parties and the public

Secondly, from the perspective of content, law and music both contain sensibility and rationality. On the one hand, they have the meaning of sensibility, but on the other hand, they are constrained by certain rules. The beauty of sensibility is the main feature of music, but music, especially classical music, must also follow certain rules and regulations. Symphonies, concertos, and sonatas created by classical musicians such as Beethoven, Mozart, Bach, Brahms, and Haydn are very rigorous in their structures, intervals and modes, although they express a variety of musical emotions and make the listener deeply intoxicated. The beauty of rationality is the main feature of law, but this does not mean that the law is only a cold tool to adjust social relations and resolve social disputes. When legal texts need to be explained or legal loopholes need to be filled, legal workers creatively apply the law within the requirements of the legal system and incorporate the emotive reason into judicial decisions, which are all emotional manifestations of the law.

Finally, from a functional point of view, both law and music can morally educate people through spiritual motivation, thereby resolving certain social contradictions. As mentioned above, the educational concept of ancient Greek city-states attached great importance to the role of music in the construction of national laws and institutions. Ancient China also had the concept of using music to govern the country. The intention was to make people’s psychology and physiology undergo corresponding benign changes through good music, and then promote the standardization and ordering of people’s behavior. (ZHANG Feizhou, 2005) Although the law is embodied as a serious law in reality, the spirit of justice, freedom and equality of law can penetrate into people’s hearts, imperceptibly affect people’s external behavior, and make people consciously respect others and be kind to others.

### 5.2.3 The Inner Aesthetic Unity of Law and Music: The Beauty of Law

Legal aesthetics studies the intrinsic connection and inner unity of law and music at the inner level, which is the fourth-level relationship between law and music. This is the beauty of law that legal aesthetics ultimately seeks.

There is a substantial connection between law and music. Law contains regularity, order and harmony, which are exactly the elements of musicology. John C.H. Wu believes that music, painting, law and other arts are the orderly, symmetric and harmonious arrangement and combination of materials, and the difference is that different arts use different materials. Music uses tone, poetry uses language, painting uses color, and law uses interests. (John C.H. Wu, 2012) Law is the art of balancing interests, and the beauty of justice in law is just the right proportion and orderly arrangement.

The study of law and music at this level is no longer limited to the superficial level of form, but boldly explores the profound, essential and universal relationship between them in a state of mutual interweaving. If the first two levels of research are the means, then the research at this level is the goal, and is the search for the true beauty in law. Kant believed that the judgment of taste is free and without any interest. He also believed that the combination of the agreeable with beauty, which properly concerns only form, would hinder the purity of the judgment of taste. (Immanuel Kant, 2000) The reason why law is essentially beautiful is not because of its perfect form and moving words, but because of its inherent beauty elements such as order and harmony, which

also exist in the beauty of music. Research at this level can no longer be positioned as interdisciplinary research that simply combines law and music but must be gradually deepened on the basis of interdisciplinary research to reach the level of transdisciplinary research.

## 6. Conclusions

As a theme of law aesthetics, the research scope of law and music should be determined based on the research objects of legal aesthetics, which are law and beauty and the beauty of law. At present, the scope of research on law and music is relatively broad. The research scope of law and music from the perspective of legal aesthetics should be limited to three parts. First, the interaction between law and music in the development process. Second, the similarity between law and music. Third, the essential connection and internal unity of law and music. The first two parts are the study of law and beauty, and the third part is the study of the beauty of law.

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