have infringed on that ground alone—without having caused much damage to the value of the copyright in the original—a court might choose to exercise the extraordinary remedy the Supreme Court hinted at. It might find an infringement, award the original artist some damages for the copying, but not enjoin the display, reproduction, or distribution of the new work. It would, in effect, be granting the second artist a compulsory license for the derivative use. It cannot be assumed that this license will be used routinely; not only does it deprive a copyright owner of the long-cherished right not to authorize derivative works, but, if used excessively, it would foster infringements by those who would risk the infringement in the hope of being granted the compulsory license, thereby gutting the copyright owner's right altogether.

The potential compulsory license was probably the Supreme Court's effort to mitigate the harsh result of destroying a derivative work that had failed, however slightly, to satisfy the fair-use factors. But one can see that such a dispensation could be misused. The Supreme Court offered no guidance about the circumstances that would warrant granting such a license. It is not hard to imagine that such a resolution might be manipulated in the same way that courts formerly manipulated their evaluation of the commercial nature of the work, withholding the compulsory license from those works (and artists) that displease the courts, regardless of how transformative the derivative work is and how little likely it is to interfere with the value of the copyright in the original artist's work. One can hope that courts will invoke this compulsory license carefully, but vigilance is necessary to see that they do.

[*See also* Law and Art.]

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AQUINAS, THOMAS (1225–1274), medieval Italian philosopher and theologian. Aquinas was a Dominican friar and studied with Albertus Magnus in Cologne, and subsequently taught in Paris and Rome, among other places. *Summa Theologiae* (1266–1273), his major work, was still uncompleted at his death but contains his mature thought in systematic form. He was canonized in 1323.

The writings of Thomas Aquinas figure prominently in almost all scholarly discussions of medieval aesthetics. In *Gothic Architecture and Scholasticism* (1951), for example, Erwin Panofsky invokes Thomas to ground the "genuine cause and effect relationship" he sees to obtain between the scholastic method and the architectural principles of the Gothic cathedral. Panofsky links cathedral architecture to certain general features of Aquinas's argumentative style. More philosophically minded writers on aesthetics, such as Umberto Eco and Francis J. Kovach, take Aquinas's writings in aesthetic theory as their points of departure. Both are convinced that one can speak meaningfully of Aquinas's "writings in aesthetics"—that they constitute a discrete and important unit of his thought. Thus, in the Foreword to the new edition of *The Aesthetics of Thomas Aquinas* (1988), Eco describes his goal as the presentation of the aesthetic theory of Thomas Aquinas as a constitutive, coherent, and self-contained element of his larger philosophical system.

When following the path of texts gathered by such authors, one notices immediately that beauty is nowhere neatly thematized in Aquinas's work; it is treated in passing, if at all. Chapter 4 of Aquinas's commentary on Pseudo-Dionysius's *De divinis nominibus* represents an exception. Of all Aquinas's writings, his commentary on this treatise by an enormously influential anonymous Neoplatonist of the sixth century contains his most extensive remarks on the beautiful. His commentary on the *De divinis nominibus* is generally not invoked in attempts to reconstruct his philosophical aesthetics but is treated as something of a special case in the pertinent literature.

Theoreticians of Aquinas's aesthetics make much out of his "formal definition of the beautiful"—his effort to characterize beauty in its "objectivity," with reference to its "autonomous appearance." A thing is called beautiful, according to Aquinas, when it delights its beholder (*pulchra enim dicuntur, quae visa placent* [*S.th.* I q. 5 a. 4 ad 1]). A glance at the larger hermeneutical context of this description—that is, Aquinas's teaching about the nature of God and of the good (*bonum*) in the *Summa theologiae*—points to the incomplete character of this definition, and thereby calls into question certain standard approaches to his aesthetics. Following the view of Pseudo-Dionysius that the good, on account of its relation to the beautiful, has the character of a formal cause, Aquinas speaks of good in its proper sense as an object of the appetitive power of the soul. The beautiful, however, is an object of the rational power, when one considers its attractiveness qua object of knowledge. It is in this context that one finds Aquinas's remark about the beautiful as that whose vision "delights its beholder." Aquinas is clearly defining the concept in a very special sense. The beautiful is, to a certain extent, defined a posteriori, through an analogy to the good. Just as it belongs to the notion of the good, that in it all desire finds rest, so it belongs to the notion of the beautiful, that in being regarded or thought (*in eius aspectu seu cognitione*), intellectual desire finds rest. Aquinas begins by asking what, at the level of sense (*sensus*)—at the level of being struck and attracted in an initial and unmediated way by an object of knowledge—draws the cognitive power (*vis cognoscitiva*) to an object of knowledge. Being "struck" and "attracted" by a thing is seen as constituting the initial form of knowledge (*cognitio*) of that thing. The senses are drawn by the well-proportioned character (*debita proportio*) of an object of knowledge, for in this *debita proportio,* a kind of likeness (*similitudo*) is recognized (*S.th.* I q. 5 a. 4 ad 1). Aquinas thus first speaks of the beautiful and its modes of expression at the level of sensitive knowledge—that is, well before it acquires the character of a judgment, much less of an aesthetic judgment. In effect, he expands the cognitive power in general, by incorporating both the cognitive (*visa*) and the appetitive (*placent*) elements of the definition in his own account. Every act of knowledge occurs by means of assimilation (*per assimilationem*). Every similarity, however, is in reference to form. By means of this analysis, Aquinas confirms the Dionysian claim that the beautiful is related in a certain way to the formal cause.

Pseudo-Dionysius's claims about the beautiful also figure prominently in a second classic text traditionally invoked in reconstructions of Aquinas's aesthetics. In the *Summa theologiae,* in the midst of his discussion of the Trinity, Aquinas lists three sets of "notes of the beautiful": first, "integrity" (*integritas*) or "perfection" (*perfectio*); second, "right proportion" (*debita proportio*) or "harmony" (*consonantia*)—both terms are taken from Pseudo-Dionysius, as are their parallels, "commensurate character" (*commensuratio*) and "convenience" (*convenientia*); and third, "clarity" (*claritas*) (*S.th.* I q. 39 a. 8 c). Clarity (*claritas*) and harmony (*consonantia*), which come together in the notions of the beautiful (*pulchrum*) and the honorable (*honestum*), are traced by Aquinas, with reference to book 4 of *De divinis nominibus,* to the notion of God as cause of the beautiful (*S.th.* II–II q. 145 a. 2 c; In *de div. nom.* IV, lect. 5, 339). God is called beautiful insofar as God is the cause of the harmony and clarity of all being. A body is called beautiful when it has well-proportioned members and a "clear" (i.e., healthy) color. A soul is called beautiful that makes well-ordered use of its spiritual gifts, in accord with the spiritual clarity of reason. In the same context, Aquinas undertakes to exposit the two definitions of "comeliness or beauty" (*species sive pulchritudo*)—attributed to the Son by Hilary of Poitiers—and of "beauty or perfection" (*pulchritudo sive perfectio*) to illustrate how the Son truly and perfectly possesses the nature of the Father. Both definitions express Hilary's intended affirmation, by means of the concept of the image (*species sive imago sive pulchritudo*), of the perfect agreement in essence shared by Father and Son. Their close association to the systematic context of Aquinas's teaching on the divine nature, which itself finds confirmation in similar associations within the tradition, renders suspect the claim that this definition can be treated as a "material" definition of beauty divorced from its larger context.

The teaching of beauty as transcendental offers another starting point for the reconstruction of a medieval aesthetics (see Aertsen, 1991). With the help of this teaching, one might hope for a systematic comparison, on the metaphysical level, of beauty with other goods. As Aertsen notes, however, beauty is missing from Aquinas's most complete enumeration of the transcendentals; it is missing from his list of the most common attributes of being (*Quaestiones disputatae de veritate.* 1,1), and thus apparently holds no special place among transcendentals. It is only in connection with his teaching about the divine nature that Aquinas speaks of the beautiful alongside the good. The beautiful adds something to the notion of the good—a certain orderedness to the intellectual powers. It adds nothing to the concept of being. The good and the beautiful are really identical because both are grounded in the form qua common subject of predication. On this point, Aquinas upholds the Dionysian formula of their identity—"the good is praised as beauty" (*bonum laudatur ut pulchrum*)—although he modifies it in the sense mentioned above, through his extension of the good to the true, reiterating that the beautiful adds to the good a certain orderedness to the intellectual powers.

In a similar vein, we may question the assumption that *artistic beauty, art,* and *artist* correspond neatly in meaning to the Latin terms *pulchrum/pulchritudo, ars,* and *artifex,* respectively. The argument for a neat parallelism between both conceptual fields assumes that the same sorts of objects be characterized as "art" and as "beautiful" that the medievals spoke of with their terms *ars* and *pulchrum*. The differences between modern and medieval aesthetic sensibilities manifest themselves with particular acuity with respect to the understanding of *ars* and *artifex*. The nearest equivalents of these terms within our modern vocabulary designate, first and foremost, an *individual creative subjectivity* that (1) is conscious of itself as such; and that (2) understands artistic beauty as autonomous.

Should one seek an equivalent in Thomas Aquinas for this creative and autonomous kind of production, one will find that such activity is reserved to God alone; only the divine will is capable of creation out of nothingness (*creatio ex nihilo*). On Aquinas's view, this unique way of "bringing forth" is to be distinguished from two other ways: (1) the work of nature, which, in a way that is bound to matter, generates substantial forms; and (2) bringing forth as making in general, *facere* (*S.th.* I q. 45 a. 2 c). Aquinas explicates this second notion by appealing to the example of the *artifex* who is constrained by the limits both of his matter and of substantial form in general. He is constrained, one might say, by the limits of nature; by the matter and form of the thing to be made, which for the *artifex* assume the character of principles (*S.th.* I q. 45 a. 2 c, In II *Phys.,* lect. 1, 145). This is actually the systematic context in which Aquinas makes his well-known remarks about *ars* as the imitation of nature (*imitatio naturae*). The *artifex* remains bound to the conditions of creaturely being—it is in this sense that he "imitates" nature. Stated more precisely, *ars* is the application of right reason to something makable (*applicatio rationis rectae ad aliquid factibile* [*S.th.* I–II q. 47 a. 2 ad 3]). Consequently, as a habit of action (*habitus operativus*), it applies its powers, in conformity with its design and with the laws of production, to the task to be accomplished alone, and not on the *uses* of the thing produced or the *intentions* of its user(s). Accordingly, *ars* encompasses, in accordance with the Aristotelian distinction between *praxis* and *poiesis,* a knowledge of making but not of use/doing. *Ars* is thus, for Aquinas, primarily of a productive/technical nature, as in building or operating (*S.th.* I–II q. 57 a. 4 c). It is, then, of a necessarily *particular* nature, ordered to a certain defined and thus particular end, namely, the work to be realized, and employing certain limited means (*determinata media*) to reach this end. *Ars* only rises above its concrete, technical domain through its association with the wider horizon of human goal setting.

This understanding of *ars* derives from Aristotle and is itself an expression of that epochal turn in medieval intellectual history from Plato to Aristotle occasioned by the thirteenth-century reception of the Aristotelian corpus in its entirety. Influenced by Aristotle, Aquinas lays emphasis on particular elements of the complex *ars* concept he inherits. Through its association with the ancient educational program of the *septem artes liberales, ars* had been understood as encompassing the entire spectrum of human knowledge. The differentiation of the complex *ars* concept undertaken in the thirteenth century understood the term as mediating, on the theoretical plain, between experience (*experientia/empeiria*) and knowledge (*scientia/epistéme*). Consequently, an *artifex* became distinguished by his field-specific expertise, directed toward particular subjects. The differentiation of meanings within the *ars* concept known to Aquinas followed upon another epochal change: the loss of the notion of a theory of the sciences encompassing all human knowledge and activity, as well as of the speculative certainty, affirmed well into the twelfth century (most tellingly in the *Didascalicon* of Hugh of St. Victor), of the deep unity of the technico-productive, scientifico-philosophical, and theological bodies of knowledge. On this older view, all human knowledge was seen as ordered unconditionally to the one highest wisdom. Beauty is in this respect an expression of the anagogic character of the *artes* of this period, as well as of their objects.

The relative autonomy of "artistic knowledge" (*ars*) with respect to scientific knowledge (*scientia*), as it is articulated by Aquinas, led to the loss of the conception of beauty in this sense of an "anagogic way" (*mos anagogicus*). Nevertheless, a more restricted *ars* concept is one of the presuppositions of theoretical reflection within the specific domain of a particular art. With this reflection, which is of such a nature as to be capable of grounding its judgments, the meanings of aesthetic notions associated with individual arts began to grow. This development led finally to a modern scheme of the fine arts, which itself saw further theoretical elaboration in the Renaissance.

Such an understanding of aesthetics is not to be found in the Middle Ages; the statements of Thomas Aquinas about "art" and "beauty" must not be taken in this sense. Paul Oskar Kristeller (1965) rightly suggests that the attempt to conceptualize an aesthetics in accord with scholastic principles is a modern projection. The multiple meanings of artistic activity in the Middle Ages, each deriving from particular and diverse conceptions of beauty, can only be understood when read with respect to a general hermeneutical reservation. This does not amount to a general denial of the category of the aesthetic, whose function certainly does not consist in the manifestation of supratemporal properties of being, but is rather heuristic; it consists of an encounter, across diverse horizons of understanding, which themselves are located in this diversity of interests. It is in this respect that the enterprise of developing an aesthetic paradigm that is faithful to the medieval understanding proves valid; the enterprise must proceed reconstructively, guided by the following questions: How was that entity that we identify within modern paradigms as "art" perceived and experienced by the people of the Middle Ages? Might that entity also have been the subject of theoretical reflection and interpretation? This, I submit, is the appropriate background against which to reconsider the contribution of Thomas Aquinas to a history of aesthetics.

[*See also* Aristotle; Augustine; Beauty, *article on* Medieval Concepts; *and* Maritain.]

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ARAB AESTHETICS. In keeping with the traditional exegetical and normative method of Quranic and philological sciences, early aesthetic thought in Islam pursued a validation that might be called "argument by example and illustration." These sciences justified the validity of particular examples by finding an original accepted model of excellence and showing that the example bore significant analogies with that model. In this mode, literary critics advanced an account of the nature of poetry by examining the grammatical and philological rules present in works that were accepted as models of good poetry. Although these rules also refer to the different mental states of subjects, the play of different causal factors, or the play of imagination, they nonetheless remain dependent on linguistic factors where, in effect, if a work fails grammatically because it differs from accepted usage, lacks significant analogies with an accepted model, and fails to generate consensus through the responses of its audience, then it fails to be poetry at all.

In this context, the critics' analysis of the same examples provides a body of exemplary cases that establish what is good poetry. Analysis displays what their value consists in, why newer works are also good so far as they use these or analogous rules, and how members of the audience can appreciate the work and come to agree, by having for themselves, in response, feelings of calm and peace as factors that beautify. (See, for example, al Qāḍī al-Jurjānī, 1966, p. 320).

Poetry was arguably the premier art form in Arab Islamic culture, and among the concepts central to understanding and explaining the nature of poetry are *majāz* or figurative language and *istiʿāra* or metaphor. In *al-Bayān wa'-l-tabyīn* (1948–1950), al-Jāḥiẓ explains *istiʿāra* as calling one thing by the name of something else because of a similarity between two terms based on their contiguity and resemblance. He maintains that it concerns single words or stylistic devices, and warrants its legitimacy by analyzing its linguistic structure. Ibn Qutaybah proposes that *majāz* or figurative language underpins poetry, and in *Ta'wīl Mushkil al-Qur'ān* (1959) explains the term through such linguistic terms as *istiʿāra,* inversion, omission, and repetition.

Thaʿlab, in *Qawāʿid al-Shiʿr* (1966), analyzes the transference of meaning in *istiʿāra* in terms of mental imagery, which he explains through the language poets use to articulate imagery. He argues that "the meaning borrows a mental representation" and constitutes *istiʿāra,* for example, by borrowing "the mental image of the camel, and thus contains all the properties of the camel from which the appropriate ones can be selected to establish the [relevant] analogy." Similarly, when in *Kitāb al-Badīʿ* (1935) Ibn al-Muʿtazz sets out seventeen apparently new figures, his radical innovation is tempered by the fact that, first, earlier writers had already set out nine of these figures and in the other eight he proposes distinctions already present, if inadequately identified, in established and exemplary instances, and, second, he explains the figures by reference to the grammatical and philological rules governing their use.

In *al-Muwāzana bayn shiʿr Abu Tammām wa-l-Buḥturī* (1961–1965), al-Āmidī argues that because the purpose of discourse is to communicate something, if the borrowed word or phrase is not useful it also lacks justification and