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## BOOK REVIEW: Icons and Aliens

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# BOOK REVIEW

ICONS AND ALIENS. By John J. Costonis. † Urbana, Illinois: University of Illinois Press, 1989. Pp. xix, 128. \$22.50.

*Reviewed by Richard F. Babcock\**

I believe it was Goethe who observed that “daring ideas are like chessmen moved forward. They may be beaten, but they may start a winning game.” This book may beat John Costonis, but I will wager he has started a winning game.

I say this because in spite of his wit and the cartoons, he is going to make some Very Important People mad—if they will read this book. I would like to see the faces of, say, Kent Barwick, President of the Municipal Art Society of New York City, and Brendan Gill of *The New Yorker* when they read the first chapter.

For Costonis mangles many of the shibboleths that have charged the batteries of the preservationists for these last two decades. What we have done, Costonis argues, is to transfer the beauty of the museum to the courthouse, and judges simply are not qualified to issue ukases on beauty. As he says, “The Constitution contains no recipe for beauty.”<sup>1</sup> Costonis points out that *Penn Central Transportation Co. v. New York City*,<sup>2</sup> although a great victory for preservationists, was a noncase when attorneys for the plaintiff stipulated they were making a reasonable return from that icon. Justice Brennan shows how little a part beauty really played in that case, when, in the first full paragraph of his opinion he flashes his real concern: “Over the past 50 years, all 50 States and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic

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1. J. COSTONIS, *ICONS AND ALIENS* 9 (1989).
2. 438 U.S. 104 (1978).

importance."<sup>3</sup>

Later, in response to the plaintiff's taking argument, Brennan added, "Agreement with this argument would, of course, invalidate not just New York City's law, but all comparable landmark legislation in the Nation. We find no merit in it."<sup>4</sup>

If the landmark status of Grand Central were unconstitutional, as a minority of the Court argued,<sup>5</sup> what difference if *all* such legislation were invalid. But as Costonis observes, "[J]udges, like the rest of us, do not want to be counted among beauty's enemies."<sup>6</sup>

He strikes a chord with this sometime student of aesthetics when he observes:

Cherished features of our environment are preserved not because they are "beautiful" but because they reassure us by preserving, in turn, our emotional stability in a world paced by frightening change. Features serving this function are the "icons" of this volume's title. Nor is aesthetics a synonym for unbounded creativity. Quite the opposite, it justifies the exercise of state power to prevent an icon's contamination or destruction. New developments posing such threats are this volume's "aliens."<sup>7</sup>

Amen.

It is absurd to believe that the law can define beauty or that a judge can decide what is beautiful—about as silly as the battle cry of a Des Moines, Iowa, group dedicated to cleaning up the roadsides. It produced the slogan: "Help beautify junkyards. Throw something lovely away today." When judges do make an effort to define aesthetics, they may end up with such a ridiculous (and frightening) dictum as that issued by Justice Fuld in the famous *People v. Stover*<sup>8</sup> case, who upheld a local ordinance banning clotheslines in front yards: the law, he said, "simply proscribes conduct which is unnecessarily offensive to the visual sensibilities of the average person."<sup>9</sup> What a dreadful criterion!

Costonis recognizes one phenomenon that many preservationists overlook. "The Icon as a Trojan Horse," he says below a cartoon where yuppie wife says to yuppie husband, "Oh, Pete, what fun we could have doing over one of those brownstones!"<sup>10</sup> Costonis adds, "Paradox: pre-

3. *Id.* at 107.

4. *Id.* at 131.

5. *Id.* at 153 (Rehnquist, J., dissenting) (arguing that the Court, in its desire to improve public conditions, may not take a "shorter cut than the constitutional way of paying for the change").

6. J. COSTONIS, *supra* note 1, at 92.

7. *Id.* at 1-2.

8. 12 N.Y.2d 462, 191 N.E.2d 272, *appeal dismissed*, 375 U.S. 42 (1963).

9. *Id.* at 468, 191 N.E.2d at 276. The book's text speaks of Mr. Stover as the defendant. See J. COSTONIS, *supra* note 1, at 74. Actually Marion Stover, his wife, was also a defendant, and she owned the property.

10. J. COSTONIS, *supra* note 1, at 38.

... Whether neighborhood transformation is good or bad depends upon whether you are Pete or one of the children playing stickball on the sidewalk."<sup>11</sup>

I recall when one of my partners and I were doing some work in Rochester, New York, the City Council designated an area as a historic district. It was a few blocks of nineteenth century brick three-story walk-ups. Young professionals started to invade. Three or four black families would have to leave their run-down brick building. The black residents marched on City Hall in protest and within a few months the historic designation was repealed.

I wonder why Costonis did not go after the suburbs with their widespread affection for look-alike and no-look-alike ordinances. They set up architectural control agencies (usually not authorized by state law) and require everyone who wants to build a single-family house in a single-family zone to come before a board for approval of its appearance. Generally the standards set out would be void for vagueness; I recall one town that simply stated that in any block no house "shall be substantially similar to or substantially dissimilar from any other house." One North Carolina town officially labeled the board "The Pretty Committee." I doubt if even the most devout mavens of preservation would or could support their silly actions. Yet many courts have upheld such nonsense. As Costonis points out in another context, nothing so demonstrates that it is not beauty but reassurance we look for in such regulations. Adults as teenagers. It recalls to me Oliver Wendell Holmes, Jr.'s remark to Sir Frederick Pollack about "the petty larceny of the police power."<sup>12</sup>

I confess to being puzzled by Costonis's argument that aliens, the intruders, may sometimes be protected as speech by the first amendment but icons never. He gives this latter conclusion short shrift and asks, "If icons are speech, who is the speaker? Nature . . . [or] countless, usually unknown, hands . . .?"<sup>13</sup> That may be true in such historic districts as the French Quarter or parts of Charleston or Savannah, but surely we know the "speakers" of many icons: Frank Lloyd Wright, Daniel Burnham, Louis Sullivan; and God may have created Central Park, but God received some remarkable help from Frederick Low Omstead.

If, as Costonis suggests, some aliens became icons over the years, why not instantaneously, such as in Times Square in Manhattan?

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11. *Id.*

12. HOLMES-LASKI LETTERS 457 (M. Howe ed. 1953).

13. J. COSTONIS, *supra* note 1, at 93.

There the Koch administration's lust for revenues propels them into authorizing four large skyscrapers much to the anguish of such writers as Brendan Gill and critics Ana Louise Huxtable and Paul Goldberger. But, the City said, hold on: to preserve some of the ambiance and tawdriness of Times Square each building must have a wraparound lighted billboard. Learning from Las Vegas with a vengeance!

Costonis may be *vox clams in deserto* today. He will be pilloried when he should be hailed. This charming little book should be read by everyone caught up in the aesthetic lullaby.