

LAW AND THE SENSES

IWEAR

Edited by Danilo Mandic, Caterina Nirta,
Andrea Pavoni, Andreas Philippopoulos-Mihalopoulos

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Edited by
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Caterina Nirta
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Introduction

Danilo Mandic

[see]

One can look at seeing;
One can't hear hearing.¹

1. Law and the Senses

Philosophy tends to relegate senses to the realm of phenomenology, experience or subjectivity. By contrast, critical theory has gradually eroded the holy opposition between knowing and sensing, to the extent that new speculative trends are now seeking to rebuild it. While the social sciences endeavour to frame sensing within socio-historical genealogies, scientific research draws deterministic connections between our sensing of the world and generic neuro-physics hardware. At the same time, planetary modifications gesturing towards

¹ One of the notes from Marcel Duchamp's work *Box 1914*. Marcel Duchamp, *The Essential Writings of Marcel Duchamp*, eds. Michel Sanouillet and Elmer Peterson (London: Thames and Hudson, 1975), 23.

the seemingly unavoidable extinction of humanity, suggest literally ‘post’ human ways of sensing, with novel technologies that enable us to understand things that escape human capacity to sense, thus widening up perception to inhuman scales and temporalities. Meanwhile, capitalism relentlessly crafts our sensorial immersion into hyperaesthetic atmospheres, mirrored by art’s ongoing fetishisation of site-specific sensoriality.

Law is present in all this, and with a complexity that is yet to be addressed in the current sensorial turn in legal thinking.² In fact, law and the senses have been mostly explored as the usual law vs. ‘what escapes law’ framework, one that characterises many of the ‘law and ...’ approaches (e.g. law and space, law and materiality etc.). In other words, the tendency in most cases has been that of remaining trapped within a phenomenological understanding of senses, oscillating between two sides (law vs. the senses) of an unquestioned opposition, occupying each of the sides of the partition, without fully exploring its promising threshold.³ This has generated a series of compelling but ultimately limited narratives. Namely, law is assumed to be the anaesthetic par excellence,

² We are not the first to deal with this. See Lionel Bently and Leo Flynn, eds., *Law and the Senses: Sensational Jurisprudence* (London: Pluto Press, 1996); Bernard J. Hibbitts, ‘Coming to Our Senses: Communication and Legal Expression in Performance Cultures’, *Emory Law Journal* 41, no. 4 (1992): 873–955. See also the ongoing project ‘Law and the Regulation of the Senses: Explorations in Sensori-Legal Studies’, coordinated by David Howes at the Centre for Sensory Studies. <http://www.centreforsensorystudies.org/related-interest/law-and-the-regulation-of-the-senses-explorations-in-sensori-legal-studies>.

³ For a recent attempt in this direction see Sheryl Hamilton et al., eds., *Sensing Law* (Abingdon: Routledge, 2017).

constantly numbing the polymorphous realm of the sensorial in order to assert the rational domain of normativity. According to this narrative, the legal project is a systematic attempt to depurate law from any compromise with the sensible and its contingent imprecision. The violence, coldness and alienation of legal abstraction, and its systematic denial of the polymorphous and sensual spontaneity of life, are the *de rigueur* accusations addressed to law, whose failure the critical thinker is quick to point out: senses are not amenable to legal machinations, they always escape its cumbersome and sad, to put it à la Spinoza, apparatus.

Hence the call to re-materialise, re-spatialise, re-sensitise law: to let law come to its senses, that is. Except that law has never been outside of senses. Its way of making-sense of the world is always premised on its sensorial immersion in the world itself. This appreciation requires not only thinking law differently, but also thinking senses differently. This could open a path, we argue, towards exploring the sensoriality of law, both in the epistemological way in which law engages with, and indeed senses the world, as well as the ontological emergence of law from the sensorial continuum of the world itself. Senses, no longer an anarchic escape from law, thus become a way to explore the functioning, limits and possibilities of law, questioning how law works and deals with senses, how law senses, how law makes sense. This series intends to pursue this path through four intersecting conceptual endeavours.

First, to disarticulate the sensorial from its reduction to the phenomenological, the subjective, the personal and the human dimension. This reductionism, which law is simultaneously responsible for as well as in denial

of, underlines the majority of approaches dealing with law and the senses, and constitutes the unspoken fissure around which the two realms are split. Disarticulating the senses from their direct subjective and phenomenological relevance may enable them to appear as a gateway to a posthuman and ecological understanding of the spatio-legal – thus repurposing them as a promising tool with which to investigate the materiality of law's relation to the world. At the same time, gesturing towards the inhuman dimensions of sensing that climatic catastrophes, technological innovations, and philosophical and artistic praxis hint at, may allow us to think of novel ways, subjects and objects of sensing, whose impact on questions of agency, responsibility and politics is paramount.

Second, to dismantle the law/senses separation by widening the fissure into a complex ontology, and thus revealing the necessary but ultimately insufficient critique to law's 'anaesthetising' enterprise. This entails challenging the taken-for-granted presupposition of the law as a systematic attempt to purify itself from any compromise with the sensible and its contingent frictions. This, in fact, is only a part of the story. Law is certainly an anaesthetising project aimed at manipulating, governing, and channelling the senses into precise categories, boundaries and definitions, protecting from and numbing the sensorial, the bodily, the libidinal. Yet, law is also an emerging process, that is, a diffuse normativity emerging out of the intermingling of bodies and senses that constitutes our being-together, and as such inseparable from it. The relation between law and the senses is not one of straightforward oppression or control of the latter

by the former, but rather a surface on which sensorial law (law folding into senses) and legal senses (senses folding into law) are reciprocally affected, and on which surface each fold pursues its own mythology of origin, meaning, direction, teleology. The law-senses assemblage should be thus addressed by fully tackling the consequences of the unavoidable discrepancy between the de-sensitising project of legal control and the multi-sensorial process of legal emergence.

Third, and expanding on the foregoing observation: to expose the role of law in keeping this very dichotomy in place. By suggesting that, beneath law itself, unruly sensorial freedom would lie, the law perpetuates a grand trick. An anarchic illusion apparently offering critique with an easy target (law's supposed denial of senses), which is only a decoy, however, in which critique all-too-easily ends up ensnared. Law's attempt to manipulate senses should not be underestimated or simplified. In a sense, law is constantly engaged in numbing the senses into commonsense by manipulating, channelling and controlling the sensible; inserting properties and forbidding contacts; dissimulating violence, regulating sounds, defining taste. More precisely, law constructs its meaning (its sense, its direction) by orchestrating the senses in three ways. First, the law 'names' the senses, puts them into categories, thereby adding the moral weight of its sensorial judgement. Second, the law controls when senses should be kept apart and when blended; thus encouraging synaesthesia (namely coalesced sensorial modalities that encourage the attribution of one sensorial stimulation to another sense), or anaesthesia, depending on the way it

adjusts its universal teleology to the particularity of the situation. In so doing, the law dissimulates the fact that these senses are blended or anaesthetised by something other than the individual herself. In other words, the law maintains an illusion of phenomenological perception and evaluation of senses, while on another level, the law works hard to build socio-political and cultural receptacles of sensorial taste construction that dissimulate the fact that the law is behind all this, deftly orchestrating both senses and its very own apparent absence of involvement. Finally, law elevates the phenomenology of senses to the corollary of the liberal individual's sense of personal freedom: what best exemplifies freedom than sensorial taste of food, colouring, odours, materials? The law manages to fool us by allowing us to think that we own our senses in full phenomenological immersion; while all along, the law inverts their 'sense', by constructing their origin and facilitating a fake causality from senses to atmosphere, rather than from the legally constructed, preconscious atmosphere in which senses come to be perceived as individually owned.⁴ This complex interplay of intervention and disappearance obviously requires much more than simply assuming senses as a dynamic excess to law's static numbness. As much as overestimating it, underestimating law is a perilous strategy.

Fourth, to envisage an approach to law beyond these strictures, unfolding alternative strategies and methodologies to which law attuned to its senses may open up.

⁴ Andreas Philippopoulos-Mihalopoulos, 'Atmospheres of Law: Senses, Affects, Lawscapes', *Emotion, Space and Society* 7 (2013): 3–44.

We do not simply wish to push legal thinking beyond its comfortable socio-legal and critical methods. This series rather intends to pursue a constructive endeavour, namely ushering law into a different mode of dealing with the world: one which is tentative, tempting, reflexive and uncertain, a mode of sensing, that is, which sanctions the impossibility for law to avoid its own materiality. This requires emphasising at the same time the posthuman and the inhuman quality of law, and understanding its relations to senses accordingly. On one level, in fact, law emerges out of the coming together of human and non-human bodies, spaces and times. On another level, law pretends to address a purely rational and disembodied, inhuman subject, namely a fully institutionalised subject whose 'humanity' is constructed to the extent that is useful to the institution. Both dimensions are crucial. The first suggests that law is not a socio-cultural construct that is superimposed over an inert matter, but a normativity made of flesh and stones, thought and water streams, cosmic and everyday interaction, human and non-human sensing: a way in which the 'world' is organised. The second points to the fact that law is a force of abstraction and, insofar as abstract, plays a generative role in creating and giving consistency to identity, relations, spaces and worlds.⁵ Thinking the posthuman and inhuman dimension of senses thus permits rethinking law's sensorial engagement and entanglement with the world, at the

⁵ Dereck P. McCormack, 'Geography and Abstraction: Towards an Affirmative Critique', *Progress in Human Geography* 3, no. 6 (2012): 717–18.

same time gesturing towards different ways to use legal abstraction, beyond their absolutisation or dismissal.

2. Hear

[hear]

Hearing is an intricate modality of sensory perception. It is continuously enfolded in the surroundings in which it takes place. While passive in its disposition, hearing is integral to the movement and fluctuations of one's environment. For this reason, hearing is unceasingly involved in, and perceptive of, its environment. At all times, hearing remains open, (in)active but attuned to the present and continuously immersed in the murmur of its background. A delicate perception that is always situated but fundamentally overarching and extended into the open. Hearing is an immanent modality of being in and with the world.

[here]

Hearing is in its core a spatial perception. Topological in its nature, hearing informs a direct relationship with the surroundings and contributes to structuring and defining a place.⁶ As a sense, it contributes to the creation of a spatial territory in which the personal and the collective intersect or overlap. Always emplaced, hearing goes beyond the locality of one's own hearing. It is an aural perception that reaches out to seize and capture sonic matter

⁶ Paul Rodaway, *Sensuous Geography: Body, Sense and Place* (London: Routledge, 1994), 4.

by standing still and being subjected to its surrounding. It navigates within spatial limits, it brings continuity and connectedness. It is a sense of situating: gauging, approximating and positioning its own presence in the world. It is a modality of being here. Hear.

In addition to the spatial position that 'here' indicates, hearing is a durational, temporal sense. The temporal manifestation of hearing is not only related to its unceasing modality, but more so to the act of perceiving its object of attention – sound. Hearing is immersed in the multitude of transient sounds that dissipate in the background, eventually becoming silence. In its spatio-temporal reach, hearing is without exception always emplaced in a resonating space, a sphere of space and time in which hearing can hear.

While such an auditory space has been traced and associated with preliterate cultures where the aural and oral coalesce,⁷ the development of technologies and the possibilities of recording and replying sound has brought about a concept of acoustic space that extends beyond its immediate environment. This acoustic space:

... has no favoured focus. It's a sphere without fixed boundaries, space made by the thing itself, not space containing the thing. It is not pictorial space, boxed-in, but dynamic, always in flux, creating its own dimensions moment by moment. It has no fixed boundaries; it is indifferent to background. The eye focuses, pinpoints, abstracts, locating each object in physical space, against a

⁷ Walter Ong, *Orality and Literacy: The Technologizing of the Word* (London: Routledge, 1982).

background; the ear, however, favours sound from any direction.⁸

This often invoked quote encapsulates its dynamic and overflowing quality, and the extent to which hearing as a sensorial perception creates and interacts with the spatial. However, it also confirms that hearing as a sense has mainly been approached by juxtaposing it to seeing: immersive hearing as opposed to objectifying seeing; immediate hearing as opposed to distant seeing; transient hearing as opposed to static seeing; subjective hearing as opposed to objective seeing; temporal hearing as opposed to spatial seeing.⁹ While such gestures have the epistemic potential to challenge the ocularcentric comprehension and organisation of the world, they are quite reductive in that they understand hearing only through the lenses of seeing. The ‘audiovisual litany’, as Jonathan Sterne rightly characterises this approach, is not only unreliable but it also tends to divide and fall within the contested hierarchical divisions of the senses, in which seeing has the ultimate relation to sense as reason.¹⁰ Along these lines, Veit Erlmann demonstrates that such an approach obscures the fact that the ear and the hearing have played a role in the processes of rationality, and how hearing and vision coalesce with the conceptions of subjectivity

⁸ Edmund Carpenter and Marshall McLuhan, ‘Acoustic Space’ in *Explorations in Communication*, eds. Edmund Carpenter and Marshall McLuhan (Boston: Beacon Press, 1960), 67.

⁹ Jonathan Sterne, *The Audible Past: Cultural Origins of Sound Reproduction* (Durham: Duke University Press), 15.

¹⁰ Ibid.

and sense, thus remaining intrinsic within the process of sensation.¹¹

Within sensory studies, the largely phenomenological tendency to categorise and define senses is established primarily with reference to their objects of perception (sound, in our case). While some objects can simultaneously stimulate several sensory receptors, the capacity to fully comprehend the quality and modality of hearing is directly related to the elusive but material quality of sound as object of perception. Sound is matter that escapes any solid apprehension. Disappointingly, therefore, its conception is often limited to being merely a property of an object, an event or a physical wave.¹² No doubt that the object of hearing is indeed ubiquitous and thus difficult to ‘delimit or materialize [its] location.’¹³ Sound, as Brandon LaBelle notes:

performs with and through space: it navigates geographically, reverberates acoustically, and structures socially, for sound amplifies and silences, contorts, distorts, and pushes against architecture; it escapes rooms, vibrates walls, disrupts conversation; it expands and contracts space by accumulating reverberation, relocating space beyond itself ...¹⁴

¹¹ Veit Erlmann, *Reason and Resonance: A History of Modern Aurality* (New York: Zone Books, 2010).

¹² Casey O’Callaghan, *Sounds: A Philosophical Theory* (Oxford: Oxford University Press, 2007); Christopher Cox, *Sonic Flux: Sound, Art, and Metaphysics* (Chicago: University of Chicago Press, 2018).

¹³ Jean-François Augoyard and Henry Torgue, *Sonic Experience: A Guide to Everyday Sounds* (Montreal: McGill-Queen’s University Press, 2005), 130.

¹⁴ Brandon LaBelle, *Background Noise: Perspectives on Sound Art* (London: Bloomsbury, 2015), xiii.

Similarly to sound, hearing is capable of permeating and circumventing obstacles, perceiving something that is not as reachable or evident as it might be to some other senses. Hearing's capacity simultaneously to extend and gather makes it essentially a sense that renders secondary such distinctions as here and there, oneself and another, internal and external. Hearing is a modality simultaneously delocalised and hyperlocalised. Murray Schafer puts it memorably: 'Hearing is a way of touching at a distance.'¹⁵ A signal carried along the tactile waves and vibrations, it reaches the perceiving organs and acquires immediacy.

This state of immediacy, intrinsic to both sonority and hearing, is probably nowhere better grasped than in the writing on listening by Jean-Luc Nancy: '[t]o be listening is to be *at the same time* outside and inside, to be open *from* without and *from* within.'¹⁶ This is the outcome of the resounding quality of the sonorous that collapses distinctions and goes beyond othering. For Nancy, listening is both a material act and a conceptual means that amplifies the presence of the resonant subject who simultaneously hears and is heard: the subject becomes both place and space by being immersed in the resounding property of sound.¹⁷

It might be necessary for a minute to put the semantic and aesthetic form of sound to the side, in order to discover what we could call its elemental aspect. In Michel Chion's words, sound is simply the *auditum* ('something

¹⁵ Murray R. Schafer, *The Soundscape: Our Sonic Environment and the Tuning of the World* (Rochester: Destiny Books, 1994), 11.

¹⁶ Jean-Luc Nancy, *Listening*, trans. Charlotte Mandell (New York: Fordham University Press, 2007), 14.

¹⁷ *Ibid.*, 12.

heard’):¹⁸ but this means that sound as a sensory modality for hearing is also a medium that carries information, signifies, and represents. Perhaps this is the elemental core of hearing: hearing as meaning-making. Hearing is one of the conditions to sensorially experience and comprehend the world, and is fundamental to knowledge formation. Meaning-making, however, does not occur when the sound is received by the ear, but when the brain’s neural receptors decipher and transform it into meaning.

This is when the sense of hearing attains its other *sense* – meaning – integral to the process of understanding. It is therefore not coincidental that the sense of hearing is associated with the mode of understanding.¹⁹ To hear is to perceive the auditory stimuli, which is a ‘physiological phenomenon’ always exposed to a monological continuity coming from an outside that needs to be deciphered. To listen, in contrast, is a ‘psychological act’ which is dialogical in its nature and manifested in its capacity to comprehend or, in Nancy’s words, ‘straining toward a possible meaning.’²⁰ Beyond this distinction, based on biological and cognitive principles, listening is nevertheless ‘a definite cultural practice’ which ‘requires hearing but is not simply reducible to’ it.²¹ Accordingly, while hearing is intrinsically and materially a participative affair thus integral to the processes of building communities and subjectivities,

¹⁸ Michel Chion, *Sound: An Acological Treatise*, trans. James A. Steintrager (Durham: Duke University Press, 2016), 192–93.

¹⁹ Michel Serres, *Genesis*, trans. Geneviève James and James Nielson (Ann Arbor: University of Michigan Press, 1995), 7.

²⁰ In French, [e]ntendre, “to hear,” also means *comprendre*, “to understand”. Nancy, *Listening*, 4, 6.

²¹ Sterne, *Audible Past*, 19.

the politics of everydayness, and the emergence of the sensorium as apparatus;²² listening is always a socially and culturally embedded means of conducting and responding, extending and gathering. Beyond the interplay of these closely connected notions, which for different reasons often tend to overlap, for our purposes here we approach hearing as a sense of attention and reception; and listening as an intention to understanding and making *sense*.

[h]ear

The geographical and spatial conceptions of place understand the 'hearer, or listener, is at the centre of the soundscape',²³ and while the notion of soundscape has achieved its purpose in recognising additional sonic layers of spatial experience and conception, it often nevertheless remains a designation to an 'anthropocentric sonic environment'.²⁴ Indeed, as far as the cultural and philosophical tradition goes, there is no hearing beyond the human. Sterne is right to comment that when we think about sound and hearing there is nothing outside the anthropomorphic comprehension of it. To this end, this is not only substantiated by the growing technological possibilities to access sonically and perceive previously unheard and inaudible realms and worlds, but also in the environmental demands which require

²² Peter Szendy, *Listen: A History of Our Ears* (New York: Fordham University Press, 2008), 141.

²³ Rodaway, *Sensuous Geography*, 86.

²⁴ Birger Ohlson, 'Sound Fields and Sonic Landscapes in Rural Environments', *Fennia – International Journal of Geography* 148, no. 1 (1976). <https://fennia.journal.fi/article/view/9210>.

challenging the anthropocentric direction [*sens*] by espousing posthumanist conceptions and learning to listen to the world.²⁵

Hearing, and its extension of listening, should not be reduced only to the capacity of a subject (who can hear and listen), let alone a human one. In fact, the sonorities of our times go beyond the division and the anthropocentric listening to the world, by challenging the established dualisms of culture and nature, subject and object.²⁶ This means taking into account any agent that makes possible or has a potential of hearing beyond the auricular or what an ear can hear. This is what Michel Serres shows in *The Five Senses*, where the hierarchical division of the senses, favoured by phenomenological, linguistic and logical traditions, dissolves before their material intermingling.²⁷ Serres presents hearing as something that goes beyond the realm of what is audible to the human ear. By introducing three different audibles – one's own body, the world, and the social – he traces the corporealisation of the sensuous across different domains and systems of relations where cells, shells, closures, bodies, halls, molecules, houses, cities, and collectives become or constitute the material conditions of hearing. From the cellular level to the social one, Serres demonstrates

²⁵ Michel Serres, *Biogea*, trans. Randolph Burks (Minneapolis: Univocal, 2012); Stefan Helmreich, *Sounding the Limits of Life: Essays in the Anthropology of Biology and Beyond* (Princeton: Princeton University Press, 2016).

²⁶ Frances Dyson, *The Tone of Our Times: Sound, Sense, Economy, and Ecology* (Cambridge: The MIT Press, 2014).

²⁷ Michel Serres, *The Five Senses: A Philosophy of Mingled Bodies*, trans. Margaret Sankey and Peter Cowley (London: Bloomsbury, 2016), 87–150.

the constant force of transforming and translating matter to information which takes place through continuous acts of passing boundaries, from one body to another, and maintaining interchange between hard and soft, sensation and information. Hearing becomes a skin, surface, vibration, resonance, attunement and immersion, translation and transmission, spatialisation and temporalisation, being in and with the world.

3. Law and Hear

Beyond the capacity of sensory perception, hearing is a *sense-making* activity which remains intrinsic to law's functioning. In the performative space of the court, the hearing takes place in an auditorium in which sounds and voices reverberate and bounce off the walls, but also in which the resonating force and the sonority of law, its principles and procedures, call for our attention to the acoustics of justice.²⁸ Hearing is indeed 'the ultimate juridical act in which adjudication takes place and law's sensorial and reasoning capacity – a sense and

²⁸ James Parker, Sara Ramshaw, and Mehera San Roque, eds. Special Issue on the Acoustics of Justice: Law, Listening, Sound, *Law Text Culture* 24 (2020), <https://ro.uow.edu.au/ltc/vol24/iss1>; Brandon LaBelle, *Acoustic Justice: Listening, Performativity, and the Work of Reorientation* (New York: Bloomsbury, 2021); Veit Erlmann 'The Acoustic Abject: Sound and the Legal Imagination' in *Sound Objects*, ed. James A. Steintrager and Rey Chow (Durham: Duke University Press, 2019), 151–166; James E. K. Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (Oxford: Oxford University Press, 2015); Sara Ramshaw, *Justice as Improvisation: The Law of the Extempore* (London: Routledge, 2013); Desmond Manderson, *Songs Without Music: Aesthetic Dimensions of Law and Justice* (Berkeley: University of California Press, 2000).

sense – come together.’²⁹ While her eyes are veiled, Justice is ‘all ears’ to perceive and apply herself to comprehend the intersubjective relations, to hear their voices, and apprehend their positions so it can balance out, decide and then speak aloud, pronounce and articulate her reasoning. By restricting her sight and pricking up her ears, Justice relies on the labyrinthian opening of the ear as a marker of justice. And in that labyrinth, sense-making explodes, diffracts and becomes plural: ‘[t]here is no perfect *point of hearing*; only interpretations.’³⁰ Law remains a realm of endless interpretations in which hearing as a sensory modality allows law to listen, comprehend and reason.

The significance of the relation between hearing and law should not be reduced only to the spatial acoustics of a court but should also extend to the temporal dimension of the reverberating law. For Peter Goodrich, hearing carries a meaning of a trial in which ‘audition of the cause’ takes place, but also attains a meaning of the temporal process in which hearing is an act of transmission of rules and principles ‘first heard and then determined.’³¹ For law informs its authority and standing on the condition of hearing and being heard. For law decides and adjudicates by declaring a right (*jus dicere*), by voicing out its

²⁹ Danilo Mandic, ‘Law with the Sound of Its Own Making’, *Law Text Culture* 24 (2020): 532. <https://ro.uow.edu.au/ltc/vol24/iss1/20>.

³⁰ Patricia Kruth and Henry Stobart, ‘Introduction’ in *Sound*, ed. Patricia Kruth and Henry Stobart (Cambridge: Cambridge University Press, 2000), 4.

³¹ Peter Goodrich, ‘Auriculation’ in *Law and the New Media: West of Everything*, ed. Christian Delage, Peter Goodrich and Marco Wan (Edinburgh: Edinburgh University Press, 2019), 57–8.

reasoning and speaking aloud (even when it reads itself silently).³² Despite its mute inscriptions, law articulates, pronounces, enunciates, judges and decides. But before law can even hear, it is for the law to grant a 'voice' so that a subject or an object can be recognised. It is in this vocative and imperative force of speech that law calls upon and orders; it is here that its *logos* – language and logic – resonates and ostensibly conveys meaning and sense. Indeed, the tradition of Western thought and our system of knowledge is based on the sonority of the word which speaks and carries reason – *logos*. In addition to its meaning, associated with enunciation, the etymology of the verb *legein* – to shelter, gather, receive, keep – directs us, however, to recognise the 'relational propensities which seem to disappear entirely at the level of the substantive noun *logos*' and which are fundamental to the act of listening proper.³³ In her commentary, Gemma Corradi Fiumara writes that there is no speaking without hearing and that speaking is integral to listening. Thus, listening should be approached as 'a development of relationships that become knitted together into an ever increasing involvement.'³⁴ Undeniably, the significance of listening is inseparable from the ethical and political processes of controlling and constructing collectives, giving voices and recognising

³² Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (Princeton: Princeton University Press, 2005).

³³ Gemma Corradi Fiumara, *The Other Side of Language: A Philosophy of Listening* (London: Routledge, 1990), 1.

³⁴ *Ibid.*, 114.

subjects – processes and constructions in which law plays a fundamental role.³⁵

If listening has a dichotomous dimension, hearing has more to do with an immersion, a being-hear/here. Hearing manifests itself as being *within the law* – where law is an immanent murmur in which one is surrounded by. In this sense, one cannot obey or disobey as they are already inside of law, made of law and of law, as a norm of life. The etymology of hearing indicates that in addition to the meaning ‘to judge’, it also contains the injunction ‘to obey’.³⁶ The verb ‘obey’, in fact, literally means to hear before something or someone (from *ob* [in front of] and *audire* [to hear]), that is, not only the act of listening to, but also the condition of being situated *before* something or someone. *Listening to the law*, in other words, tends to be framed vectorially as the exposed condition of being *before the law*, where law crystallises as a transcendent power that singles out the listener – that is, selects and abstracts her from being-hear/here –, artificially postulating a binary and asymmetric relation that compels the listener to obey. It is in this very capacity, both conceptually and pragmatically, that listening manifests its exercise of power. Law is indeed an authority of discourse that prescribes relations and frames what one can listen, subjugating subjects and objects to its sensorial apparatus in order to listen and thus obey to what is said.³⁷ For the

³⁵ Dylan Robinson, *Hungry Listening: Resonant Theory for Indigenous Sound Studies* (Minneapolis: University of Minnesota Press, 2020).

³⁶ In Old English *heran* (obey, judge). Similar meanings, for instance, are also found in Proto-Slavic (*so*)*slušati*.

³⁷ François J. Bonnet, *The Order of Sounds: A Sonorous Archipelago*, trans. Robin Mackay (Falmouth: Urbanomic, 2016).

law, '[t]he ear becomes both the target and the conduit of legal power.'³⁸

[continually, here's an ear that hears]

The pronouncement of law aims not only to subject its subjects and objects but to also silence any disorder that threatens its system of value or that is external to its order. In so doing, the law substantiates its murmuring presence, its nauseating properties becoming noise itself, which overpowers and confirms the omnipresence and omnipotence of both the court and the law that reverberate beyond its walls.³⁹ In that sense, law is not only a hearing device but one that resonates too. Its sonorous quality emphasises its intangible but material presence, but also becomes something that informs or is intrinsic to law's gesture of deciding. This manifests itself in two different instances. First, in the act of hearing when the pronouncement of a judgment not only needs to be heard but also needs to be sound. The sonic matter and the quality of 'being sound' coalesce in the body of law. Second, in the act of making a division, a cut, a boundary by which *nomos* – norm and law – separates from the rest and manifests itself. Similarly, for sound to become a sound, it requires a boundary, it needs to separate itself to be heard.⁴⁰ But also, for the sonorous to materialise and

³⁸ Tyler Whitney, 'Listening to the Law: Acoustical Embodiment and Industrial Space in *Der Proceß*', *Colloquia Germanica* 46, no. 4 (2013): 345.

³⁹ *Ibid.*, 358; Parker, *Acoustic Jurisprudence*, 160–66.

⁴⁰ Seth Kim-Cohen, 'Dams, Weirs, and Damn Weird Ears: Post-Ergonal Sound' in *The Routledge Companion to Sounding Art*,

become audible, there needs to be a body so that it can ‘make a mark and thus to make a territory of the place.’⁴¹ While the sonicity of law is further traceable in the movement of *nomos mousikos* as sound,⁴² sound embodies and resonates the judicial gesture of setting boundaries, as well as in informing the corpus of law, and materialising it as a sonic artefact.⁴³

For Nancy, a body is always an (ex-)tension to the outside, which Nancy traces in the Greek origin of the word *tonos* which means a tone.⁴⁴ To hear or to listen is thus a spatial tension that both extends and expands by taking place. The authority of law comes from the sonorous that enlarges and gives density and amplitude. Nancy is right, when he notes that in contrast to the visual ‘which persists until its disappearance; the sonorous appears and fades away into permanence.’⁴⁵ Law is a perennial sonority that continuously constructs the spatial instances in which hearing takes (or could take) place, as much as it decides on who can hear or not. It is a resonating spatiality which marks movements and their temporalities. It is its condition of always being ‘here’ – sounding and hearing – that makes law a normative resonance [re-sonance]. The lawscape, manifested in a soundscape that

ed. Marcel Cobussen, Vincent Meelberg and Barry Truax (New York: Routledge, 2017), 5.

⁴¹ Bonnet, *Order of Sounds*, 64–5.

⁴² Thanos Zartaloudis, *The Birth of Nomos* (Edinburgh: Edinburgh University Press, 2019), 338–384.

⁴³ Mandic, ‘Law with the Sound of Its Own Making’, 515–549.

⁴⁴ Jean-Luc Nancy, *Corpus*, trans. Richard A. Rand (New York: Fordham University Press, 2008), 134.

⁴⁵ Nancy, *Listening*, 2.

reverberates – from sense to *sense*, a law that hears and is heard.

Hearing encapsulates spatio-temporal qualities of being and understanding, of ontological and epistemological potential, as well as of the normative structures that are both informed and decided upon, heard and unheard. Hearing, in this sense, can be approached as constitutive to any system, body, technical device, or an institution – as a process that simultaneously receives and then transmits. Indeed, hearing is a process in which law becomes a receiver and transmitter that hears and is heard, which receives and sends back, translating events into affects and vice versa, by which it partakes in organising, transmuting, transforming, and translating matter into information. In this sense law is a device of yet another kind. It does not only transform and translate object into concepts, but also introduces *logos* to bring sense into that translation. Yet, while hearing informs the sphere of simultaneous relations, it also challenges and breaks normative distinctions that law generates and maintains. While hearing encompasses the very act of adjudication, of deciding and making a decision – a cut between two sides – it is also a sensory modality that in a paradoxical way goes beyond such divisions. As mentioned above, hearing, like its object of perception – sound – is elusive and all-encompassing, a continuous mode of attending to or being attentive that overflows the normative walls and obstructions, or abstractions for that matter. ‘There are things, facts, a world beyond our language and logic,’ writes Serres, and this is what hearing unfolds, a materiality of law that goes beyond its *logos*, phenomenology, and

understanding.⁴⁶ Sound, or the object of hearing, is what resounds and fills the space of law by breaking any division between external or internal, us or them, subject and object, before, after, or *within* the law. Here. Hear.

This penultimate volume of ‘Law and the Senses’ gathers contributions from across different disciplines working on the relationship between law and hearing, the human vocalisations and non-human echolocations, the spatial and temporal conditions in which hearing takes place, as well as the forms of order and control that listening entails. Resonating with some of the aspects addressed above, these textual ruminations explore the notions and practices of improvisation and noise, attunement and audibility, sonic spatiality and urban sonicity, to explore, challenge and expand the structural and sensorial qualities of law. In an attempt to hear the ambiguous, indefinable and unembodied nature of hearing, as well as its object – sound and silence – this volume approaches hearing as both an ontological and epistemological device to think with and about law.

Accordingly, the volume opens with Julia Chrystostalis’s rich and engaging text that explores the intrinsic relation between law and hearing and argues that hearing is ‘a key faculty of the juridical sensorium.’ The discussion begins with tracing the meaning of *nomos* and its quality of fencing off, enclosing and delineating the land that is ascribed to law and constitutive of legal order. However, here *nomos* is not related to any division of spatial land but is associated with that of air that carries the music,

⁴⁶ Serres, *Five Senses*, 102.

the speech and the sounds of law. Chrysostalis traverses different accounts of ancient Greece, Roman law, etymologies of words and legal scholarship to present various interpretations and connections of the aural, auditory and acoustic dimension of law, but also to demonstrate how music – as sonorous air – is constitutive and integral to law’s performativity and speech.

Sara Ramshaw reflects on the notion of the ‘attunement’. In her compelling discussion, attunement is not approached as of a process/instance of achieving harmony, or as a constructed ideal of law’s purpose, but as a possibility to bridge the division between hearing and listening in an attempt to answer the question that opens the chapter: ‘What can be heard when we learn to listen imperfectly?’ By drawing on the myth of Odysseus and the Sirens – as well as a range of other works from Homer, Kafka, Blanchot, Derrida, musical improvisation and Pauline Oliveros’s concept of ‘deep listening’ – Ramshaw provides an understanding of attunement as ‘an imperfect listening’ which always incorporates the ‘other’, it is open and dialogic as much as it is inventive, and aims to open the ears of law to the sounds and silences of others, where justice is possible.

For the potential to hear the ‘other’, Margret Grebowicz’s contribution questions the recognition of whales and their personhood within the established framework of human rights. Beyond the anthropocentric act of merely giving voice to the animals, Grebowicz argues for the necessity to go beyond the language that frames personhood and recognition of subjectivities. In contrast to the humanist and posthumanist conceptions of

language, there is a necessity to go beyond its logic and *logos*, and recognise it as a primary tool/sign that demands hearing, ‘as the foundation of political life’. The political weight of hearing is in recognising how voices and aural qualities constitute personhood before what the legal construct of a ‘person’ entails. Indeed, if the word person has the slightest relation to *per sonore* – that through which sounds passes – then animals are actual persons too. While this relation between humans and animals is where questions of justice open up, in a provocative and chilling conclusion Grebowicz ponders whether the proximity and similarity to whales is what prevents us from hearing them.

This is followed by an intervention by Carson Cole Arthur, Petero Kalulé and AM Kanngieser who versify on the possibility to hear, to listen differently away from any sonic certitude. Each of the 62 statements that make up this piece is a separate instance of meditative propositions and questions. Without any intention to be conclusive, the authors present enthralling ruminations on what listening is (not), how it informs the functioning of law in the form of speech, testimony, and recognising legal subjects that can speak. In this stream of utterances, they call for listening as an unfolding that aims to attune, to go beyond, that what does ‘not hear’ and is ‘not here’; a listening that goes beyond the representations and logic of law; a listening that is not subjected to anthropocentric sensorial and sense-making structures that are violent and invading but has a capacity to perceive the non-human; a listening that is not constrained within normative frameworks and established systems of listening

but that what is open and sets free. Without any intention to apprehend listening, this intervention demands from us to try and listen to listening, to acknowledge its aporetic and elusive quality.

Nathan Moore directs our attention to the human music-making activity of free improvisation as a counterpoint to reflect on or, better yet, to deflect the acts of deciding and making distinctions as intrinsic to the normative structures and functioning of law. Whilst improvisation – as both a process and a product – can hardly be separated, Moore argues for the necessity to record improvisation as an archival modality that not only makes improvisation possible but also allows for apprehending how ‘decisiveness can be structured and unfolded’. The archive as such becomes a means of grasping and listening improvisation, but also a conceptual counterpart to think about enclosures, *nomos*, *katechon*, power and their intrinsic techniques of improvisation.

Resonating with his engaging work on sonic agency and acoustics of justice, here Brandon LaBelle aurally traverses space of everydayness, domestic and public scenes. This contemplative intervention, however, does not aim to develop an argument, but rather to poetically perceive, sound out, reflect and touch upon the acoustics of different territories and spaces, the sounding of different bodies and agency, the sounds of scraping chairs, objects, gestures, and surfaces, as instances through which the intimate and the political intertwine, where the social agency is informed to voice out, challenge and reverberate.

Nicola Di Croce considers the sonic which is intrinsic to social formations, but also the extent to which it merges

with the normative systems that frame and regulate urban atmospheres. Di Croce introduces an understanding of sonic co-existence in which sound and listening, connections and attunement, spaces and bodies intertwine, one that requires inclusive but nevertheless uncomfortable interaction. Accordingly, he argues for the recognition of a multi-species sonic ecology that embraces otherness and goes beyond, or more specifically opposes, the current sensory politics of normalisation and sanitisation of the sonic environment.

Budhaditya Chattopadhyay presents us with a dialogical essay between an artist and a researcher – in which Chattopadhyay himself is the only interlocutor – to spatially explore and sonically wander across internal and external, private and public domains, to contemplate on the aurality, sonic environments, immersion and noise. Starting with a line from Allen Ginsberg's *Howl*, 'Listening to the Terror through the wall,' Chattopadhyay invites us to lean onto the walls so we can hear and perceive the potency of noise to control, subject and inform structures of power. The walls are porous, as well as the sound and the hearing. By drawing on his practice(s), he provides an imaginative reflection on the different manifestations of 'noise' and the extent to which its permeating presence challenges established formations, as well as normative structures within different social, political, cultural and artistic contexts.

To grasp the multi-layered qualities of listening and law, the volume ends with James Parker's lexicon of law and listening. By introducing a selection of terms, Parker illustrates a variety of notions, concepts, and contexts to

demonstrate the manifold processes and interconnection of law and listening, law and sound, and law and hearing. Some of these entries are specific, succinct and detailed, whereas others are free and open-ended reflections that remain ambiguous. Both informative and stimulating, this lexicon demonstrates the interdisciplinary dimension in which the aural, as one of the many sensorial instances, is a potent object of attention, as well as a means, to sound out law's techniques, functions and soundings.

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Nomos is an Air: Hearing as a Juridical Faculty

Julia Chryssostalis

μέλπονται πάντων τε νόμους και ἦθεα κεδνά
—Hesiod¹

νόμων ἀκούοντες θεόδματων κέλαδον
—Pindar²

1. *Nomos* is an Air

Nomos is an air, a song, an *aria*;
a strain to be heard, listened to and followed;
a timbre you harken to;
a rhythm you keep,
an arrangement you pass on and sometimes alter,

¹ [*melpontai pantōn te nōmous ēthea kedna*] ‘[the Muses] sing the laws of all and the godly ways [of the immortals]’ *Theogony*, 66. Hesiod, *The Homeric Hymns, and Homerica*, Loeb Classical Library, trans. H. G. Evelyn-White (London: William Heinemann: 1914), 82–3. †

² [*nōmōn akouontes theodmaton keladon*] ‘hearing the divinely fashioned sound of melodies.’ Fr. 35c, Hymn I, ‘For the Thebans in Honour of Zeus’ in Pindar, *Nemean Odes, Isthmian Odes, Fragments*. Loeb Classical Library 485. Ed. and trans. William H. Race (Cambridge: Harvard University Press, 1997), fr. 29–35, pp. 232–43; at 242–3. ††

a score that scores you and scars you,
 a melody you hum, you chant, you whisper,
 a line you are given to play, respond to, sing along, alone
 and with others,
 a tune you are in; or out of.

At your own peril.
 And at times with deadly consequences.³

Nomos, to be sure, is famously of the earth: related to it, bound to it, rooted in it. According to this story, law begins with the fence, the wall, the enclosure, the line in the soil, the furrow in the field. At its root, is the violence of the land grab; not the rational calculations of the contract, nor the dutiful acceptance of a gift from above. For Giambattista Vico, and more recently Carl Schmitt, it is precisely in the double meaning of the word *nomos*, as both ‘law’ and ‘pasture’, that we are able to grasp the inherent connection of the law to the earth.⁴ It is therein, in the lexical overlap of these two senses of *nomos*, and the common *etymon* that produced it, Schmitt would add, that we glimpse law’s tellurian ground and its origin

³ Author’s text.

⁴ Giambattista Vico, *The New Science* [1744]. Trans. and ed. Jason Taylor and Robert Miner (New Haven: Yale University Press, 2020): §607, 253; and §1058, 426. Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* [1950], especially 42–47, trans. G. L. Ulmen (New York: Telos, 2003). For a meticulous examination of Schmitt’s philological operations in his construction of the ‘theoretical-jurisprudential’ *dispositif* of *nomos* and a compelling argument that carefully traces its poetic character, see Katerina Stergiopoulou, ‘Taking *Nomos*: Carl Schmitt’s Philology Unbound’, *October* 149 (2014).

in a primeval land appropriation, whose subsequent divisions and distributions generated the differentiation and localisation of the laws of the earth. Notwithstanding how revealing this tale of law's origin might be – of the founding violence that marks the constitution of a legal order; of the 'real' nature of the 'radical title' at the basis of the law of the land; or indeed of the ways that law's earthly ensigns render visible the normed forms of our sociality – it is also misleading:⁵ at the root of *nomos*, we find something other than appropriation; and at its beginning, we find all sorts of meanings other than 'law.'

Let us begin with the etymon of the word *nomos*. The pre-Homeric verb *némein* (νέμειν), in whose family of words *nomos* belongs, means 'to assign,' 'allot,' or 'distribute'; not 'take' – or 'appropriate' as Schmitt would have it. In fact, according to French linguist Emmanuel Laroche, whose extensive study of the linguistic root *nem-* across different periods and dialects of ancient Greek has been of pivotal importance for our understanding of the semantic history of *nomos*, *nemein*, in its most ancient and prevalent sense, refers to a concrete act of 'distributing,' or 'dealing out.'⁶ This act of distribution moreover does not refer

⁵ I touch on this in Julia Chryssostalis, 'Reading Arendt Reading Schmitt: Reading *Nomos* Otherwise?' in *Feminist Engagements with Legal Philosophy*, ed. Maria Drakopoulou, (London: Glasshouse Press, 2013), 162–163, and 178 n.19. In more detail, see Thanos Zartaloudis, *The Birth of Nomos* (Edinburgh: Edinburgh University Press, 2018); and extensively Stergiopoulou, 'Taking *Nomos*'.

⁶ Emmanuel Laroche, *Histoire de la racine nem- en grec ancien (νέμω, νέμεις, νόμος, νομίζω)* (Paris: Librairie C. Klincksieck, 1949): 9–10. Laroche's study examines the linguistic root *nem-* across different periods (Homeric, archaic, classic, and Hellenistic) and dialects (Attic, *koinē*, Ionian) of ancient Greek. With regards to *nomos*, Laroche distinguishes between two main periods in its 'development':

to 'lots' of land or pasture or the distribution of *moirai* (plural of *moira* (μοῖρα), 'fate', destiny', 'portion') at this point, but to acts of 'ritual' distribution of food to guests at a feast.⁷ Alongside this sense of *nemein*, there is also a number of so-called 'pastoral' uses of the word, in both the active voice *nemō* (νέμω), 'to graze', and the middle voice *nemomai* (νέμομαι), 'grazing' for domestic animals.

In Homeric times, these pastoral senses (of the middle voice especially) stabilise to signify 'to exploit, enjoy, and possess',⁸ initially a piece of land (*témenos*, τέμενος), and from this 'to inhabit', an area or specific domain (for instance, a sacred forest or woodland).⁹ Further, according to Laroche, it is a mistake to think that these pastoral senses refer back to some original division between shepherds or animals of the pastureland or the pasturage, that the animals graze on.¹⁰ Rather, as *nemō* and *nemomai*-graze involve a spreading out of the animals across an unlimited space, a mountainside perhaps, a forest, or the flat expanse around a city,¹¹ these pastoral senses of *nemomai*-exploit-enjoy-possess, as well as -devour (as in the case of fire), do not come within the semantic line of *nemō*-distribute.

The noun *nomos* enters the Greek lexicon as two words, the oxytone *nomós* (νομός) and the paroxytone *nómos*

one from the eighth to the fifth century BC, and one from the fifth to the first century BC.

⁷ On this, see further Zartaloudis, *The Birth of Nomos*, 4–8, and 35–37.

⁸ Laroche, *Histoire de la racine nem-*, 10.

⁹ *Ibid.*

¹⁰ *Ibid.*, 12.

¹¹ As Deleuze puts it in Gilles Deleuze, *Difference and Repetition*. Trans. Paul Patton (New York: Columbia University Press, 1994), 309, n.6.

(νόμος). As Laroche has convincingly argued, the oxytone *nomós* is Homeric and ‘primary’. It signifies pasture for animals in undivided land, and a habitat without limits for human beings¹² and as such is unconnected to the semantic root of *nemein*-to distribute. The paroxytone *nómos* is post-Homeric and ‘secondary’. Its appearance can be situated right after the composition of the Homeric poems and right before the end of the eighth century BC,¹³ and it is first met with in Hesiod.¹⁴ From this point on and until roughly the fifth century BC, when *nómos* begins to be used to describe also written ‘laws’ or ‘norms’¹⁵ and the sense of *nomos*-law becomes commonplace, the word *nómos* is characterised by an astonishing polyvalence and expansiveness.¹⁶ Its rich variety of meanings range from a ‘normal order of things’, ‘a way of living or acting’ for humans or animals, and a ‘normal or proper way in which something is done’ (e.g. when carrying out a ritual sacrifice, farming, or administering a remedy), to a ‘commonly held belief’, a ‘linguistic usage’, a ‘customary practice’, a ‘ritual process’, and ‘the mores of a particular

¹² Laroche, *Histoire de la racine nem-*, 119, n. 18.

¹³ *Ibid.*, 166.

¹⁴ Hesiod, *Works and Days* 276–80; and 388–9; *Theogony* 66; and 416–7; and fr. 20 (Porphyrius, *De abstinentia* ii.18). On this, see Laroche, *Histoire de la racine nem-*, 164–6, and 171–2; Martin Ostwald, *Nomos and the Beginnings of Ancient Democracy* (Oxford: Clarendon Press, 1969), 21; and more extensively Zartaloudis, *The Birth of Nomos*, 171–81.

¹⁵ Rosalind Thomas, ‘Written in Stone? Liberty, Equality, Orality and the Codification of Law.’ *Bulletin of the Institute of Classical Studies* 40 (1995): 63.

¹⁶ This polyvalence and expansiveness of early *nomos* is the subject of Thanos Zartaloudis’s erudite and magisterial, *The Birth of Nomos*.

group of people.¹⁷ In other words, at the beginning of *nómos*, we do not find ‘law’ but a whole range of other meanings instead.

And this is not all. *Nómos* finds also a remarkable use in music, when, at some point in the seventh century BC, Terpander of Lesbos, celebrated musician and musical innovator, who is also considered the founder of ancient Greek music (because of his systematisation, or ‘codification’, of the musical styles found in the tunes of Greece and Asia Minor),¹⁸ is said to have invented a particular style of song, the *citharoedic* (κιθαρωδικός, *kitharōdikos*) *nomos*, which he used in order to sing the Homeric epic: with the aid of *kithara* (lyre), he would wrap melodies around the Homeric verses.¹⁹ Terpander’s invention, or *καινοτομία*, was significant not only because it inaugurated what, according to Thomas Mathiesen, is ‘the most intriguing’ of all the musico-poetic forms of ancient Greek music,²⁰ but also because, by being the first to set poetry to music, melding ‘Homer’s words with Orpheus’s

¹⁷ Ostwald identifies at least thirteen such meanings (Ostwald, *Nomos*, 20–54).

¹⁸ Karl-Otfried Müller, *History of the Literature of Ancient Greece. Vol. 1* (London: Baldwin and Cradock, 1840), 159.

¹⁹ Pseudo-Plutarch, *De Musica*, 1132c. On Terpander’s innovations and significance, see further John C. Franklin, *Terpander: The Invention of Music in the Orientalizing Period* PhD diss. (London: University College London, 2002). Also, M. Paola Mittica, ‘When the World Was *Mousikē*: On the Origins of the Relationship Between Law and Music’. *Law and Humanities* 9, no. 1 (2015): 44–48.

²⁰ Thomas Mathiesen, *Apollo’s Lyre: Greek Music and Music Theory in Antiquity and the Middle Ages* (Lincoln: University of Nebraska Press, 1999), 58.

melodies,²¹ as well as the first to use a heptatonic lyre, he radically altered the ancient Greek musical idiom and came to symbolise the melic revolution of the Archaic period.²² As Mathiesen further observes, the *citharoedic nomos* was a style of song ‘of great complexity, and one that came to be associated with virtuoso performers.’²³ In subsequent years, a number of other styles were added to the *citharoedic nomos*, namely, the *auloedic* (ἀύλωδικός, *aulōdikos*) *nomos*, where the verses were sung to the accompaniment of an aulos (single-reed pipe), and the *kitharistikós* (κιθαριστικός) and *aulētikós* (αύλητικός) *nomos*, that were performed by a solo kitharist or aulete respectively.

Importantly, *nomoi* became the most typical contest pieces performed during local or Panhellenic games, where ‘their mimetic features seem to have been gradually developed in order to improve the power and potential of their storytelling.’²⁴ Originally created for ritual or worship functions, with a narrative content related to the god it was addressed to,²⁵ *nomos*, as a musical genre, had a definite mode and rhythm that was conventionally formed and fixed,²⁶ so much so that both the composer

²¹ ‘Ομήρου μὲν τα ἔπη, Ὀρφέως δε τὰ μέλη.’ Alexander Polyhistor *FGH 273F77*, cited in ps-Plutarch, *De Musica*, 1132 e-f.

²² Franklin, *Terpander*, 41–49.

²³ Mathiesen, *Apollo’s Lyre*, 58.

²⁴ Eleonora Rocconi, ‘The Music of the *Laws* and the *Laws* of Music’, *Greek and Roman Musical Studies* 4 (2016): 73.

²⁵ Rocconi, ‘The Music of the *Laws*’ 72.

²⁶ Terpander divided the *citharoedic nomos* in seven sections, as many as the strings of his new lyre: *επαρχά* (beginning), *μεταρχά* (after-beginning), *κατατροπά* (down-turn), *μετακατατροπά* (after-downturn), *ὄμφαλός* (navel or centre), *σφραγίς* (seal), *ἐπίλογος* (conclusion). Mathiesen, *Apollo’s Lyre*, 63. For the English translation

and the performer were bound by its 'rules' of composition and performance, while at the same time it remained open to variation.²⁷ Further, alongside this technical, musical, sense of *nomos*, *nomos* as a musical genre, we also encounter *nomos* in a non-technical, general and broad musical sense especially in works of poetry and drama. The earliest example of such music-related use is found in Alcman, a poet who was active in the late seventh century, in a fragment, where he says: *Φοῖδα ὀρνίχων νόμωσ / παντῶν*, 'I know the *nomoi* [the ways of singing (possibly)] of all kinds of birds.'²⁸ Whether or not *nomoi* has a musical sense in this verse is disputed, as it could also mean 'language', 'idiom', or 'speech'. However, such interpretation becomes plausible when this fragment is considered along with another fragment, fr. 39, where Alcman names himself as the 'discoverer of words and melody that put into human language the voices of

of the names of the parts, see Zartaloudis, *The Birth of Nomos*, 370–371.

²⁷ *Nomoi* were thus identifiable by geographic location (Boetian, Aeolian, etc), composer, function, or occasion on which they were performed, rhythm or other musical feature. On this point, see further Martin L. West, *Ancient Greek Music* (Oxford: Clarendon Press, 1992), 217; and Zartaloudis, *The Birth of Nomos*, 378. It should be noted that such acceptable variation did not include the addition of a string to the established seven by Terpander, for instance, and the Spartans apparently decreed to punish the musician Timotheus, who preferred complexity and virtuosity to the grandeur and simplicity of the ancient style, with expulsion from the city. Mathiesen, *Apollo's Lyre*, 68, citing Boethius.

²⁸ Fr. 40 in Denys L. Page, ed., *Poetae Melici Graeci* (Oxford: Clarendon, 1962). On this point, see further Eleonora Rocconi, 'The Music of the *Laws* and the *Laws of Music: Nomoi* in Music and Legislation.' *Greek and Roman Musical Studies* 4 (2016): 73; and Zartaloudis, *The Birth of Nomos*, 379.

partridges.²⁹ A musical sense of *nomos*, is also met in Hesiod's *Theogony*, where the poet refers to the Muses 'sing[ing] the *nomoi* [the ways] and cherished usages [of all the immortals]' – and although *nomoi* here is often translated as 'laws' and considered the earliest use of *nomos* in a 'legal' sense, this is unlikely as *nomos* does not yet mean law at this time. By the fifth century BC, *nomos* in a musical sense also appears in the work of dramatists, such as Aeschylus, Sophocles, and Euripides,³⁰ and comes to mean 'melody', 'tune', 'song', 'hymn' and 'air', and specifically 'any melody with a definite identity or character: the songs of different birds, a mourner's song, the songs in a particular musician's repertory, and so forth.'³¹

It remains unclear how exactly *nomos* came to signify 'law'. As Laroche notes, '[n]o truly satisfactory etymology

²⁹ Page, *Poetae Melici Graeci*: *Ἔπη τάδε και μέλος Ἀλκμάν/εὔρη γεγλωσσαμέναν /κακκαβίδων ὅπα συνθεθεμένος.*

³⁰ For examples of some characteristic instances of such references, see Zartaloudis, *The Birth of Nomos*, 381. As Rocconi points out, *nomos* in a musical sense is frequent in Aeschylus and is always described by an adjective, e.g. 'shrill', 'piercing', 'high-pitched', 'soporific' etc. (Rocconi, 'The Music of the Laws', 74–75). According to Thomas J. Fleming, 'The Musical Nomos in Aeschylus' *Oresteia*' *Classical Journal* 72, no. 1 (1977): 232, some of these allusions to *nomos* in the musical sense play upon the legal sense, which appears to be emerging in this period. An example of this can be seen in *Agamemnon*, at 150–1, where the chorus uses the word *ἄνομον* (*ánomon*) to describe the sacrifice of Iphigeneia as an act of sacrifice performed without song but also possibly as an act unsanctioned by any norm, an act contrary to the normal order of things. In other words, in the musical sense of *ánomos* (without song), an emerging normative sense could also be heard. See, Aeschylus, *Oresteia: Agamemnon, Libation-Bearers, Eumenides*, ed. and trans. Alan H. Sommerstein. Loeb Classical Library 146 (Cambridge: Harvard University Press, 2009).

³¹ West, *Ancient Greek Music*, 212. Also, Laroche, *Histoire de la racine nem-*, 166.

has been proposed for [it].³² *Nomós*-pasture is unrelated to the semantic root of *nemein*-to distribute, and its subsequent, post-Homeric sense, ‘to arrange’, ‘place in order’, ‘divide into parts’, and ‘govern’, from which both *nómos*-mousikos and *nómos*-law appear to derive. As such, the line that connects *nemein*-to distribute and *nómos*-law is uncertain and unclear. At the same time, Laroche also insists that *nómos* in a normative-juridical sense ‘cannot be explained [by the musical sense of *nomos* and its uses]’³³ either, since the normative-juridical sense develops at roughly the same time as the musical one. However, as Zartaloudis convincingly argues, insofar as, in early and later Greek societies, *bios* was *mousikós*, it is possible to hypothesise that *nomos* in a musical sense also had the wide uses the word *nómos* had in a non-musical sense, as ‘an idiom, a way of being or acting, a custom or convention and in some cases a more specified (over time) “rule/manner” that is proper and that is to be followed’³⁴ and ‘that these (wide but concrete) uses [in music] precede (historically and etymologically) those of *nómos*-law encountered in the fifth centuries BC.’³⁵ Yet if this is the case, could it be that a normative sense of

³² Laroche, *Histoire de la racine nem-*, 163; as translated by Janet Lloyd in her English translation of Jasper Svenbro, *Phrasikleia: An Anthropology of Reading in Ancient Greece*. (Ithaca: Cornell University Press, 1993): 109.

³³ Laroche, *Histoire de la racine nem-*, 171.

³⁴ Zartaloudis, *The Birth of Nomos*, 383.

³⁵ *Ibid.* And it is on this basis, that one could read *nomoi* in Alcman’s fr. 40 not only in a musical sense but also with a normative inflection, as does François Lasserre, in *Plutarque, De la Musique: Texte, traduction, commentaire, précédés d’une étude sur l’éducation musicale dans la Grèce antique* (Lausanne: Urs Graf-Verlag, 1954), 25.

nomos, a *nómos hōdēs* (νόμος ᾠδῆς), a “rule/manner” that is proper and that is to be followed,’ in a particular type of song, developed first in the context of music before it did in law?³⁶

There is also another twist to the story of *nómos* that supports this idea. A significant body of evidence indicates that in ancient Greece laws were sung.³⁷ Giorgio Camassa argues compellingly that in archaic Greece the ‘art of law-making [was] inseparable from the supreme command of rhythmic speech, capable of shaping the soul thanks to its psychagogic and evocative power.’³⁸ This was particularly the case in the island of Crete, the birthplace of ancient Greek law-making, where according to the legend, king Minos received the laws directly from Zeus, and where the children learned the laws *metá tinós melōdías* (μετά τινός μελωδίας, with the accompaniment of melodies)³⁹ and the art of law-making was taught by *mousikoi*. One

³⁶ Similarly, Mittica, ‘When the World Was *Mousikē*, 32; and Zartaloudis, *The Birth of Nomos*, 391–392.

³⁷ For a discussion of the ancient sources, see Luigi Piccirilli, “‘Nomoi’ cantati e “nomoi” scritti’, *Civiltá Classica e Cristiana* 2 (1981). Giorgio Camassa, ‘Aux origines de la codification écrite des lois en Grèce’, in *Les Savoirs de l’écriture en Grèce ancienne*, ed. Marcel Detienne. (Lille: Presses Universitaires de Lille, 1988), 144–147; Thomas, ‘Written in Stone?’, 63–64; Giorgio Camassa, ‘Leggi orali e leggi scritte: i legislatori’, in *I Greci: storia, cultura, arte, società*, ed. Salvatore Settis (Torino: Einaudi, 1996). For a recent discussion in the field of law and the humanities, see Mittica, ‘When the World Was *Mousikē*’, esp. 40–44; and Zartaloudis, *The Birth of Nomos*, 384–396.

³⁸ Camassa, ‘Leggi orali e leggi scritte’, 362. ‘Psychagogic’ means literally ‘leading the soul’ from ‘ágō’ (ἄγω, to lead) and *psychē* (ψυχή, psyche, soul).

³⁹ Aelian. *Historical Miscellany [Varia Historia]*, trans. Nigel G. Wilson. Loeb Classical Library 486 (Cambridge: Harvard University Press, 1997), II 29; cf. Strabo. *Geography, Volume V: Books 10–12*,

such *mousikós* was Thales of Gortyn, whom Plutarch considered as ‘a forerunner of Lycurgus in Sparta,’⁴⁰ one of the legendary ‘law-givers’ of archaic Greece. And it is no coincidence perhaps that Lycurgus befriended Thales during his travels in Crete and learned from him the art of law-making. In Plutarch’s account, what Thales was famous for was precisely his ability to render the laws sweet, and thus persuasive, by setting the word of law in poetry and casting it in rhythmic intonation that reached the auricles of the heart.⁴¹ When Lycurgus eventually returns to Sparta and produces the *rhetras*, or laws, suggested to him by Apollo, the ancient Greek god of music, harmony and order, he also invites Terpander to set his laws to music⁴² and prohibits that the laws be written.⁴³ Significantly these are not isolated occurrences. Luigi Piccirilli cites Martianus Capella, who relates that it was common practice in many ancient Greek cities to recite or sing the laws.⁴⁴ Charondas of Catania, another legendary

trans. Horace Leonard Jones. Loeb Classical Library 211 (Cambridge: Harvard University Press, 1928), X 19c 482.

⁴⁰ *Lycurg.* IV3 in Plutarch, *Lives, Volume I: Theseus and Romulus. Lycurgus and Numa. Solon and Publicola*, trans. Bernadotte Perrin. Loeb Classical Library 46 (Cambridge: Harvard University Press, 1914).

⁴¹ ‘For his odes were so many exaltations to obedience and harmony, and their measured rhythms were permeated with ordered tranquillity, so that those who listened to them were insensibly softened in their dispositions, insomuch that they renounced the mutual hatreds which were so rife at the time, and dwelt together in a common pursuit of what was high and noble.’ *Lycurg.* IV2–3, in Plutarch. *Lives*.

⁴² Thomas, ‘Written in Stone?’ 63.

⁴³ On the significance of the longevity of this prohibition, see Mittica, ‘When the World Was *Mousikē*’, 41, n. 42.

⁴⁴ Piccirilli, ‘Nomoi’ cantati e ‘nomoi’ scritti’, 9.

‘law-giver’ of archaic Greece, whose laws were used in many cities across the ancient Greek world, had his laws sung at festivals immediately after the paeans ‘so that the ordinances become engrained.’⁴⁵ Moreover, as reported by Hermippus, the laws of Charondas, were also sung by Athenians ‘at banquets’ or *symposia*,⁴⁶ while, according to Strabo, the Mazakenoi in Cappadocia, that employed the laws of Charondas as well, relied on a *nomōdós* (*νομωδός*), an official who was tasked not only to sing the laws but also explain them, in other words, to be their exegete, their interpreter.⁴⁷ It is in this context that (ps-)Aristotle in his *Problemata* wonders whether sung *nomoi* were so called ‘because before men knew the art of writing they used to sing their laws in order not to forget them, as they are still accustomed to do among the Agathyrsoi.’⁴⁸ Even in Rome, as Cicero recalls reminiscing, children used to learn the Twelve Tables as a ‘compulsory song’, a *carmen necessarium*, during the time of his youth.⁴⁹

This ancient connection between law and music, therefore, does not fit well with the account that traces law’s

⁴⁵ Thomas, ‘Written in Stone?’ 63.

⁴⁶ Cited in Piccirilli, ‘“Nomoi” cantati e “nomoi” scritti’, 9. See also, Thomas, ‘Written in Stone?’ 63.

⁴⁷ Piccirilli, ‘“Nomoi” cantati e “nomoi” scritti’, 8; ἐξηγητής τῶν νόμων, says Strabo (cited in Piccirilli, *ibid.*). On this point see further Mittica, ‘When the World Was *Mousikē*’, 43.

⁴⁸ Aristotle. *Problems, Volume I: Books 1–19*, ed. and trans. by Robert Mayhew. Loeb Classical Library 316 (Cambridge, MA: Harvard University Press, 2011), XIX 28, 919–920a.

⁴⁹ Leg. 2.59, in Marcus Tullius Cicero, *De re publica. De legibus*, trans. Clinton W. Keyes. Loeb Classical Library 213 (Cambridge, MA: Harvard University Press, 1928). Cf. Thomas, ‘Written in Stone?’ 63; Camassa, ‘Leggi orali e leggi scritte’, 363.

‘fundament’ to an originary appropriation of the earth,⁵⁰ and renders the primary scene of the birth of *nomos*-law infinitely more complex. Further, and importantly, in it, we do not find simply a link of law to music, to melody and sonority, but, more than that, we find music inscribed in the lexical core of the juridical. And insofar as ‘music is sonorous air,’⁵¹ according to Italian pianist and composer Ferruccio Busoni’s definition, *nomos*’ crucial connection to music means that *nomos* not only is an air but also is of the air. My main concern here, thus, is not with law and music as such, but with hearing, *auditus*, with precisely the sense that, according to the *Etymologies* of Isidore of Seville, ‘catches the sounds when the air is reverberated’; and with the ear, *auris*, which always according to the *Etymologies*, has as its ‘natural function’ to capture ‘what is to be heard.’⁵² Unlike seeing, hearing is little examined in law.⁵³ In what follows, focusing in particular on the

⁵⁰ Although both Vico and Schmitt acknowledge law’s connection to song and music, they both significantly downplay it. In Vico, there is a notable shift in the meaning of *nomos*, from the early work, *De constantia iurisprudientis* (1721) to the final version of the *New Science*. The emphasis on the double meaning of *nomos* as both ‘law’ and ‘song’, in *De constantia* is replaced in the *New Science* as the double meaning of ‘law’ and ‘pasture’, Giambattista Vico [1721], *De constantia iurisprudientis*, ed. by Fausto Nicolini (Bari: Laterza, 1936), II, Cap. XV, 6, p. 389. Vico, *The New Science*; Schmitt, *The Nomos of the Earth*.

⁵¹ Ferruccio Busoni, ‘Sketch of a New Esthetic of Music’ in *Three Classics in the Aesthetics of Music* (New York: Dover Publications, 1962), 77.

⁵² Stephen A. Barney, et al, trans., *The Etymologies of Isidore of Seville*, (Cambridge: Cambridge University Press, 2006), XI i.22 and 24.

⁵³ Notable exceptions until recently were Peter Goodrich, ‘Attending the Hearing: Listening in Legal Settings’, in Graham McGregor and R.S. White (eds) *Reception and Response: Hearer Creativity and the Analysis of Spoken and Written Texts* (London & New York: Routledge, 1990); Bernard J. Hibbitts, ‘Making Sense of Metaphors:

aural, the acoustic, and the auditory in the law, I argue that hearing is a key faculty of the juridical sensorium. There can be no justice without hearing, while as legal subjects, we are connected to the law through our ears. Obedience as the fundamental relationship of the subject to the law is intimately linked to hearing. And more than that, obedience is the other side of the juristic speech, of jurisdiction, and as such designates the auditory and relational character of the juristic utterance.

2. Jerome Frank's 'Law like Music'; And (How to) Miss Hearing at the Hearing

In 1947, Jerome Frank, one of the main representatives of legal realism, and a judge on the United States Court of Appeals for the Second Circuit, published an article, titled 'Words and Music: Some Remarks on Statutory Interpretation'.⁵⁴ In this article, which is one of the first pieces of legal literature connecting law and music, Frank argues that interpretation in law resembles that in music. Key to his comparison is a distinction that he draws between two instances of legal hermeneutics found in adjudication, namely statutory construction and fact-finding, and contends that the similarity between legal and musical interpretation is to be found in the

Visuality, Orality and the Reconfiguration of American Legal Discourse' *Cardozo Law Review* 16 (1994); and Piyel Haldar, 'Acoustic Justice', in *Law and the Senses: Sensational Jurisprudence*, ed. Lionel Bently and Leo Flynn. (London: Pluto Press, 1996).

⁵⁴ Jerome N. Frank, 'Words and Music: Some Remarks on Statutory Interpretation' *Columbia Law Review* 47, no. 8 (1947): 1259; see also Jerome N. Frank, 'Say It with Music', *Harvard Law Review* 61, no. 6 (1948): 921.

interpretation of the rules rather than in the interpretation of the evidence.

Legislatures, his argument goes, are like composers; they write the law but ‘must leave interpretation to others, principally the courts.’⁵⁵ The legal text is like a musical score and the courts are like the musical performers, that are called to bring a piece of music to life through their interpretation. The task of the court in interpreting the law is to give meaning to it using imagination and ‘an insight which transcends [the] literal meaning [of a statutory provision],’⁵⁶ since, as Frank notes citing Learned Hand, ‘the meaning of a sentence [in a statute] may be more than that of the separate words, as a melody is more than the notes.’⁵⁷ As such, the meaning of a provision is something ‘to be felt rather than to be proved,’⁵⁸ according to Holmes’ well-known formulation, and statutory

⁵⁵ Frank ‘Words and Music’, 1264,

⁵⁶ *Ibid.* quoting Ernest Krenek, *Music Here and Now* (New York: Norton, 1939), 227. Krenek’s ‘The Composer and the Interpreter’ *Black Mountain College Bulletin* 3, no. 2 (1944) was a major influence in Frank’s thinking concerning musical and statutory interpretation. On this, see further Frank, ‘Words and Music’, 1260, n. 9.

⁵⁷ Frank ‘Words and Music’, 1267, quoting Billings Learned Hand in *Helvering v. Gregory*, 69 F.2d 809, 810–11 (C.C.A. 2d 1934).

⁵⁸ Frank ‘Words and Music’, 1265, quoting Oliver Wendell Holmes Jr. in *United States v. Johnson*, 221 U.S. 488, 496 (1911). Frankfurter also makes this point using the same reference to Holmes in Felix Frankfurter (1947), ‘Some Reflections on the Reading of Statutes’, *Columbia Law Review* 47, no. 4: 531. Interestingly, Marcílio Franca concludes his contribution to the volume dedicated to sight in this series by discussing a similar point, namely that law is something that one feels, made also by several Brazilian jurists. Marcílio Franca ‘The Blindness of Justice: An Iconographic Dialogue Between Art and Law’, in *See ed. Andrea Pavoni et al.* (London: University of Westminster Press, 2018), 194.

interpretation is an art,⁵⁹ an integral part of the art of law, or *ars juris*, the oldest legal tradition.⁶⁰ Insight, feeling and imagination, make the interpretive act not only singular but also profoundly personal. However, unlike other arts, such as poetry, where the artist ‘can give free play to [their] fancy’,⁶¹ the court does not have free reign in construing the law. Tasked as it is to put the ‘legislative message across’,⁶² the court like the musician interpreting a score, ‘must ‘obey the prescription of the composer as well as [they] can’⁶³ and subordinate their creativity to it.

By contrast, Frank continues, courts, when interpreting the evidence before them in order to ascertain the facts of a case, have powers with a creative scope that musicians lack when interpreting musical scores. Frank identifies here three critical moments. First, as the facts of a case are not already given, ‘waiting somewhere, ready-made for [the court] to discover’,⁶⁴ but in question, disputed, the court, when ‘finding’ the ‘facts’, in effect *re-constructs* the events of the case. Like a historian who, recounting the events of the past, provides a testimony of the testimonies at their disposal, the court, in appraising the evidence, pieces it together into a narrative that

⁵⁹ Frank, ‘Words and Music’, 1259. Similarly, Frankfurter, ‘Some Reflections’, 527.

⁶⁰ Celsus’s famous definition of law as ‘the art of goodness and fairness’ is cited in the first book of Ulpian’s *Institutes* in the opening lines of Justinian’s *Digest* (1, 1, 1), trans. Alan Watson (Philadelphia: University of Pennsylvania Press, 1985).

⁶¹ Frank, ‘Words and Music’, 1265.

⁶² *Ibid.*, 1264.

⁶³ *Ibid.*, 1265 citing Krenek.

⁶⁴ Frank, ‘Say It with Music’, 923.

tells a particular story about what took place.⁶⁵ Second, the court at this point also determines which rule is applicable to the particular ‘facts’ it has ‘found’, that is to say to the particular account of events that the court has put together and ascertained as the ‘facts’ in this particular case. And in determining which rule is applicable to the particular account of events it has established, a court controls ultimately the application of the law. It can activate or ‘prevent the operation of the legislative purpose’⁶⁶ of a piece of legislation, as courts can sometimes use their power to find facts in a way that allows them to ‘evade the necessity of applying a legal rule to a case to which it would otherwise be applicable.’⁶⁷ Thus, finally ‘[i]n deciding any case’, Frank concludes, ‘a court contrives, so to speak, an individual *song* (a song for that particular case) in which the legal rules are the music and the “facts” are the words. Those two elements fuse in a composite [...], the unique character of which derives principally from the “facts”’.⁶⁸

I do not want to go into the merits of Frank’s theory of judicial interpretation here. Instead I want to focus on the way that he uses music. On one level, the analogy that he draws between law and music fits neatly in what Desmond Manderson and David Caudill have called the ‘metaphorical reading’ of the interface between law

⁶⁵ Ibid. ††††

⁶⁶ Frank, ‘Words and Music’, 1274.

⁶⁷ Ibid. 1275 citing John Dickinson, ‘Legal Rules: Their Function in the Process of Decision’, *University of Pennsylvania Law Review* 79, no. 7 (1931): 855.

⁶⁸ Frank, ‘Words and Music’, 1277; my emphasis.

and music.⁶⁹ In using music as a metaphor and likening statutory interpretation to the interpretation of a musical score, Frank draws attention to a performative dimension of legal interpretation that text-centred approaches to law often obscure or forget.⁷⁰ In this way, his reading is able to offer fresh insights about the creativity of legal judgement and its limits. On another level, however, Frank's account of a performatively attuned legal hermeneutics is strikingly silent about what makes such hermeneutics possible in the first place, and apparently oblivious to the possibility of a non-metaphorical accounting of the relationship between law and music, one that would involve a 'matterphorical apprehension'⁷¹ of law's sonorities, and would pay attention to the heightened sense of legal hearing and to the keen and well-trained legal ear that are necessary in the type of legal hermeneutics that he describes. For if the performance of the legal interpreter is in any way like that of the musical interpreter, as Frank argues, then this requires the former to have a discerning and distinctly

⁶⁹ Desmond Manderson and David Caudill, 'Modes of Law: Music and Legal Theory – An Interdisciplinary Workshop Introduction' *Cardozo Law Review* 20, nos. 5–6 (1999): 1327. Also, Desmond Manderson, 'Making a Point and Making a Noise: A Punk Prayer' *Law, Culture and Humanities* 12, no. 1 (2016): 18–19.

⁷⁰ On the shared performative dimension of musical and legal interpretation, see further Sanford Levinson and Jack M. Balkin, 'Law, Music and Other Performing Arts' *University of Pennsylvania Law Review* 139, no. 6 (1991); Jack M. Balkin and Sanford Levinson, 'Interpreting Law and Music: Performance Notes on "The Banjo Serenader" and "The Lying Crowd of Jews"' *Cardozo Law Review* 20, nos. 5–6 (1999); and Jack M. Balkin, 'Verdi's High C', *Texas Law Review* 91, no. 7 (2013).

⁷¹ I would like to thank Peter Goodrich for this formulation.

developed sense of audition and a specially tuned acoustical apparatus in law as the latter does in music.

At the same time, Frank's silence about, in fact his deafness to, audition, as a specifically juridical faculty and practice, is even more remarkable given how hearing is central to the iconography and dispensation of justice, the lexicon, rules, and fantasmatic organisation of the trial, and the role of the judge in it. For not only is the trial constituted as the event, or performance, of a hearing⁷² – '[t]he hearing is the heart of the law,' writes James Boyd White⁷³ – and the fairness, and justice, of its outcome is dependent on the fairness and justice of its ways of hearing. But hearing and listening (as well as being heard and making oneself heard), are at the heart of what a judge does more generally, and justice involves invariably some form of attunement,⁷⁴ some form of acroatic performative

⁷² Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (Princeton: Princeton University Press), 171.

⁷³ *Heracles' Bow. Essays on the Rhetoric and Poetics of the Law* (Madison: University of Wisconsin Press, 1985), 241. See also James Boyd White, *The Legal Imagination*, abridged edition (Chicago: University of Chicago Press, 1985), 17: 'It is often said that the hearing is at the heart of the legal process.'

⁷⁴ Richard Dawson's key argument in *Justice as Attunement* is also that attunement is central to justice, and understands attunement as 'a way of paying attention to ... "variations in meaning" [in order to] do justice to ourselves and to others,' Richard Dawson *Justice as Attunement: Transforming Constitutions in Law, Literature, Economics and the Rest of Life* (Abingdon: Routledge, 2014), xvii. This differs from how I understand attunement, which is influenced by Jean-Luc Nancy's discussion of listening and Sara Ramshaw's emphasis not only to the attention and care that attunement requires but also to an embodied acroatic dimension, an effort and straining to listen and understand both echoic and anechoic formulations and patternings. As such, attunement, in my view, involves an operation and practice of tonal alignment and ordering,

alignment of norm and fact, of rule and its application, of discordant norms and disputing parties, some form of reconstitution of the broken phantasmatic *concordia*, or ‘harmony of the commonweale,’⁷⁵ regarding what is right and just. In other words, ‘[j]ustice [...] is all in the ear,’⁷⁶ as Peter Goodrich has incisively and concisely put it, and to do justice, the law should have its ears open. It is not sufficient simply to resolve a dispute. This must be done justly, in accordance with the immemorial law that grants the parties a hearing, an audition, the opportunity to be heard – whether out of wisdom or out of fairness.⁷⁷

Indeed, as John Kelly shows, the principle *audi et alteram partem*, or *audiatur et altera pars*, that is, the requirement that both sides in every case must be heard, but especially if a party risks having their legal position worsened, or being in any way harmed, being ‘hurt at common law’ says the court in *Boswel’s Case*,⁷⁸ by a judge or anyone exercising a judicial function, is an ancient principle of both justice and wisdom that was widely

and of active orientation towards the other, that entails this embodied acroatic dimesion. Jean-Luc Nancy. *Listening*, trans. Charlotte Mandell (New York: Fordham University Press. 2007); Sara Ramshaw, ‘The Song and Silence of the Sirens: Attunement to the “Other” in Law and Music’, in this volume.

⁷⁵ Jean Bodin, *The Six Bookes of a Commonweale: A facsimile reprint of the English Translation of 1606, corrected and supplemented in the light of a new comparison with the French and Latin texts*, ed. Kenneth Douglas McRae (Cambridge: Harvard University Press, 1962), 760.

⁷⁶ Goodrich, ‘Auriculation’, 56.

⁷⁷ On this point, see further John M. Kelly, ‘Audi Alteram Partem; Note’ (1964) *Natural Law Forum*. Paper 84. http://scholarship.law.nd.edu/nd_naturallaw_forum/84.

⁷⁸ *Boswel’s Case* (1606) 77 *Eng. Rep.* 331.

accepted throughout the Greek, Roman, and Christian antiquity, as well as the Middle Ages and the Renaissance.⁷⁹ In ancient Rome, the *more audiendum*, the customary rule that dictated that an accused ought to be heard, was a *mos maiorum*, an ‘ancestral’ customary principle, and as such one of the most sacred principles of Roman customary law. According to it, it was wrong to condemn an accused unheard, *inauditus*, and *indefensus*, without hearing them out first, and without giving them an opportunity to defend themselves.⁸⁰ The force of this principle was such that it was only during the last days of the Republic, following the execution of the captured Catilinarian conspirators, that the *leges Clodiae*, the laws sponsored by the tribune Publius Clodius Pulcher, were brought in to restore the neglected principle, establishing that the execution of a Roman citizen without a trial was a capital offence for the magistrate responsible for it – even if the magistrate in question in this case was none other than Cicero, the *pater patriae* after all, who, as a result, was exiled from Rome in 58 BC for a short period.⁸¹

In common law, following *Boswel’s Case* in 1606, the earliest judgement that deals with the requirement that those affected by the decision of someone in a judicial function

⁷⁹ Kelly, ‘Audi Alteram Partem’. For an overview of the principle from Roman law to modern legal systems, see Daan Asser, ‘*Audi et alteram partem*: A Limit to Judicial Activity’, in *The Roman Law Tradition*, ed. Andrew Lewis and David Ibbetson (Cambridge: Cambridge University Press, 2009), 209–23.

⁸⁰ Kelly, ‘Audi Alteram Partem’, 106.

⁸¹ On the *leges Clodiae*, see briefly Allan Chester Johnson, Paul Robinson Coleman-Norton, Frank Card Bourne, *Ancient Roman Statutes: A Translation with an Introduction, Commentary, Glossary, and Index* (Austin: University of Texas Press, 1961), 78.

be heard, the law grants the parties a hearing by relying on the authority of the Roman poet, philosopher and dramatist, Seneca, citing in Latin a couplet from his *Medea*, where the homonymous heroine says to Creon: ‘*Quia quicumque aliquid statuerit parte inaudita altera, æquum licet statuerit, haud æquus fuerit*: The man who judges, one side still unheard, Were hardly a just judge, though he judge justly.’⁸² Roughly a century or so later, in *Bentley’s Case*, the court upheld the requirement of a hearing and held that ‘the whole proceedings [whereby the University had deprived Bentley of his degree] to be illegal for want of a summons,’⁸³ this time though as a matter of natural justice rather than Roman moral poetic reason. According to Justice Fortescue, ‘the laws of God and the laws of man both give the party an opportunity to make his defence.’ And to strengthen the point, Fortescue goes on to add:

I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat? And the same question was put to Eve also.⁸⁴

To put it differently, insofar as it is a *dictat* of ‘natural justice’ that the parties be heard, the very possibility of

⁸² Seneca, *Medea* cited in *Boswel’s Case* (1606) 77 *Eng. Rep.* 331 (in Latin in the original). English translation by Ella Isabella Harris, *Two Tragedies of Seneca: Medea and The Daughters of Troy* (Boston: Houghton, Mifflin and Company, 1899).

⁸³ *R v. The Chancellor, Master and Scholars of the University of Cambridge (Bentley’s Case)* (1723) 93 *Eng. Rep.* King’s Bench (1378–1865) 704.

⁸⁴ *Ibid.*; my emphasis.

justice, even of divine justice, begins with the injunction to hear, that is with the *audi* in the maxim, *audi et alteram partem*. To remain unheard is unjust, *inaudutum est injustum*. And being a judge, failing to hear, as well as failing to remember what has been previously heard, makes one an unjust judge. In short, without hearing there is no justice. Ultimately, this is the reason why for William Blackstone, the ‘rule’ of ‘summon[ing] the party accused before he is condemned is ... held to be an indispensable requisite’, in fact a *universal* requisite, since it is ‘a rule to which all municipal laws, that are founded on the principle of justice, have strictly conformed.’⁸⁵ Similarly, for the classical, Kantian, Enlightenment tradition, the right to a hearing and of being heard is fundamental: not simply a right ‘[a]mong the most basic of all legal rights’ but coeval, as Cornelia Vismann notes, with ‘the capacity to act as a subject of rights’ and with receiving ‘recognition of one’s subjective rights.’⁸⁶

Therefore, for there to be justice, for justice to be done, there has to be a hearing. Justice inhabits the ear. And it is no coincidence that the early modern Inns of Court, law’s early spaces of audition, were built in the shape of an ear.⁸⁷ To give the parties a hearing, moreover, the law sets up ‘a peculiar auditory space’⁸⁸ and institutes a set

⁸⁵ William Blackstone, *Commentaries on the Laws of England. Volume IV: Of Public Wrongs*, ed. Ruth Paley (Oxford: Oxford University Press, 2016), 280.

⁸⁶ Cornelia Vismann, ‘Three Versions of a Defendant’s Final Statement to the Court’, *Law and Literature* 23, no. 3 (2011): 297. On the right to speak and to be heard, using an acoustic framework, see Brandon LaBelle, *Acoustic Justice. Listening, Performativity and the Work of Reorientation* (London: Bloomsbury, 2021).

⁸⁷ David Evans, ‘The Inns of Court: Speculations on the Body of Law’, *Arch-Text* 1 (1993); and Goodrich ‘Auriculation’, 70–72.

⁸⁸ Goodrich, ‘Attending the Hearing: Listening in Legal Settings’, 11, 16.

of specifically legal acoustics,⁸⁹ with their own material, substantive and procedural protocols of audibility⁹⁰ to this end. Justice then ‘comes into play in the acoustical apparatus of legality.’⁹¹ It is precisely within this apparatus that a judge *must* ‘hear’ the case, the *causa*, before them, including the evidence of the parties, the parties themselves, how well their arguments ‘sound’ in law,⁹² and the score of the law itself echoing through the juristic citational chain. As Oliver Wendell Holmes perspicaciously reminds us, ‘statutes form a system with echoes of different moments,’⁹³ and precedents in this respect are not much different. *Juris dictio*, law’s speech, resonates and resounds. Whether spoken or whispered, cited or recited, ‘sung’ or ‘chanted’, as Frank would have it, inasmuch as *dictio*, or speech, law’s speech sounds and echoes, and as such, it is heard, that is, sensed and apprehended, grasped through the ear of the jurist, before being recorded, or transcribed, however accurately or inaccurately. In this

⁸⁹ On legal acoustics and acoustic jurisprudence, see Parker, *Acoustic Jurisprudence*; Parker, ‘Towards an Acoustic Jurisprudence: Law and the Long Range Acoustic Device’. *Law, Culture and the Humanities* 14, no. 2 (2018): 202–218.

⁹⁰ I touch on this in Julia Chrystostalis, ‘Beyond Otonomy; Or, The Ear of the Law and the Voice of Literature’, in *Law and the Art of Logos*, ed. Yota Kravaritou (Athens: Sakkoulas, 2008). In Greek. †††††

⁹¹ Goodrich ‘Auriculation’, 72.

⁹² Peter Goodrich, ‘Operatic Hermeneutics: Harmony, Euphantasy and Law in Rossini’s *Semiramis*’, *Cardozo Law Review* 20, nos. 5–6 (1999): 1653.

⁹³ *Hoeper v. Tax Comm’n*, 284 U.S. 206, 209 (1931) cited in Felix Frankfurter, *supra* n. 7, 533. More recently and tentatively, Anne Bottomley and Nathan Moore, also suggest that law could be thought of as a score or even better in terms of ‘law-sonorities, [of] concrete blocks, [...] which echo constantly, giving an ever varying legal timbre.’ Anne Bottomley and Nathan Moore, ‘Sonorous Law II’, in *Zizek and Law*, ed. Laurent de Sutter (Abingdon: Routledge, 2015).

sense, ‘the role of reading, the scrutiny of the precedent texts, is one of legal otoscopy, of staring into the auditory canal of the juridical institution, of listening to the past with the variable apparatuses of an acoustics of memory.’⁹⁴ Thus, in Justice Fortescue’s ‘*I remember to have heard*’ in *Bentley’s Case*, we find precisely one formula of such an acoustics of memory on which the transmission of the oral tradition of the common law relies. Legal erudition then also requires a keen ear, a developed sense of hearing, attentive and patient auscultation to grasp and recollect law’s *dicta*. And yet, to do justice to law’s speech (and to the parties), it is not enough to lend an ear. One should also have ‘ears for the unheard’, in Nietzsche’s fortuitous formulation – ears for what the law’s speech says between the lines, what it must mean, what it means to mean. Moreover, if the very logic of law entails a structure of memory, as Goodrich has argued,⁹⁵ a structure of recalling, remembering, and recollecting the *dicta iuris*, of playing back and repeating what has been said before, and if the seat of memory is to be found in the bottom of the ear, as the Romans believed – *est in aure ima memoriae locus*, says Pliny the Elder⁹⁶ – then hearing is a sense and a site where the logic of law is played out, where the *ratio* of the judgement is relayed, communicated and transmitted, while the echo is precisely the most apt metaphor for law’s iterative modality.

⁹⁴ Goodrich, ‘Auriculation’, 69–70.

⁹⁵ Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld and Nicholson, 1990).

⁹⁶ Pliny *Naturalis Historia* XI 251 *Natural History*, Vol. III: Books 8–11 trans. Harris Rackman, Loeb Classical Library 353 (Harvard: Harvard University Press, 1945), 590.

Tradition then, as Goodrich has maintained recently, is something that we listen to, a tympanum, an eardrum that we strike to hear the strains, the conflict and cases of the past. It is these reverberations, the echo chambers of an acoustically generated memory, that tilt the wiggled head towards decision, in the direction of the potential of law, and wherein lies the promise and possibility of justice.⁹⁷

3. Hearing as a Juridical Faculty: Prolegomena for a Legal Otology

Admittedly, Frank's deafness to audition, striking as such deafness might be, particularly in light of his summoning of music to expand our understanding of legal interpretation, is nonetheless hardly unusual. If legal theory has generally paid little attention to music and its legal uses,⁹⁸ it has paid even less attention to legal audition, auscultation and aurality, and the corporeality of the legal auditory organs. And this despite the fact that hearing, and more broadly the auditory dimension and the auricular as its sign, are crucial, not only to judging but also to law and to our relation to the law more generally. Frank briefly touches on this acoustic dimension of the law when he recasts the court decision as a song – or a chant, as the case might be, depending on how singular or mechanical the decision turns out to be. In doing so, he invokes not only a classical formulation of the song as a combination of narrative, or diegesis, and melody – in

⁹⁷ Goodrich, 'Auriculation', 70.

⁹⁸ Although this has been gradually changing, especially in the last thirty years or so, with more work appearing on law and music.

other words, as *logos* (word) on the one hand, and *harmonia* (tune) and *rhythmos* (rhythm) on the other⁹⁹ – but also, and significantly, an aural and auditory tradition of legality that may begin with sung laws and sung archives, but more generally emphasises the sonic, sonorous, resonant and resounding dimensions of the law. A tradition that in treating the legal pronouncement as vocalised sound, and hence as a form of sonic patterning, understands law as something to be heard and listened to, as something that we first of all hear. That is, whether we recall here notions of justice, norm and rule as song, melody, rhythm, and echo, instantiations of the law as voice, *logos*, command, as *viva vox*, *dictio*, *dictat* and *edictum*, as *proclamatio* and *declaratio*, or juridical devices of acclamation such as preambles and anthems,¹⁰⁰ what

⁹⁹ Cf. Rocconi, 'The Music of the Laws,' 80, on the priority of *diegesis* in Plato (in the *Laws* and *The Republic*).

¹⁰⁰ On regal acclamation as part of the Medieval liturgy and its significance, the classic study of some of the early sources is Ernst Kantorowicz, *Laudes Regiae: A Study in Liturgical Acclamations and Medieval Ruler Worship* (Berkeley: University of California Press, 1946). For an examination of the central character of acclamations in religious and political life through the work of Kantorowicz, Peterson and Schmitt, see further Monserrat Herrero, 'Acclamations: A Theological-Political Topic in the Crossed Dialogue between Erik Peterson, Ernst H. Kantorowicz and Carl Schmitt,' *History of European Ideas*, Vol 45:7 (2019). On the significance of glory in the liturgies of power more generally, see Giorgio Agamben, trans. Lorenzo Chiesa (with Matteo Mandarini) *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*, (Stanford: Stanford University Press, 2011 [2007]), especially his analysis of liturgical acclamations and angelical hymns in relation to structures and operations of power. Peter Goodrich picks up this thread in Agamben and explores the choral and acclamatory qualities of the common law in 'Spectres of Law: Why the History of the Legal Spectacle Has Not Been Written,' *UC Irvine Law Review* 1 no. 3 (2011) 793 ff. On anthems, see Emanuele Conte, 'Il popolo é una multitude che canta. Osservazioni storiche sulla

invariably comes through is the significance of sound and hearing for our understanding of the law, our place in it and the way in which law orders our sociality, whether through governance or justice. It is worth recalling here, for instance, that in classical Roman law, legal communication in general was highly formulaic, requiring the utterance of specific words for legal acts to take place. This suggests that the legal force of such utterance was coeval with its performative character, both in the sense that the words that were used performed a given action, bringing about certain legal effects that changed the relationships and the positions that those involved in them had in the world, and in a dramaturgical or theatrical sense in that the performance of these utterances were part of a *theatrum juridicum*, that required that these utterances were enacted in public, before an audience, and were therefore heard, before they could produce any legal effect. This requirement applied also to those who had the *officium jus dicentis*, the function of declaring the law and what was right, such as magistrates, or praetors. For example, as Varro (*Ling.* 6.29–30) explains, praetors were allowed to pronounce the words ‘I allow, I affirm, I assent’ (*do, dico, addico*) on certain days (*dies fasti*) and prohibited to do so on others (*dies nefasti*), on which, as a result, no legal question could be dealt with because the utterance of these words could not be performed.¹⁰¹

funzione istituzionale della musica’ in Giorgio Resta (ed.), *L’armonia nel diritto. Contributi a una riflessione su diritto e musica* (Roma: Roma Tre Press, 2020), 37–52.

¹⁰¹ On the meaning and significance of days that were calendrically designated as ‘divinely sanctioned and unsanctioned’ (*fasti* and *nefasti*), see briefly Roger Woodward, *Myth, Ritual, and the Warrior*

Charting this unwritten tradition of legality, marking its acoustical apparatus and economy, and sketching a legal otology by tracing the register of the aural and the auditory, the scenes and regimes of the audible, the acousmatic and the acroamatic, and the instances and postures of the acoustic and the auscultatory in our legal lexicons, technologies, practices and spaces, are large tasks that are well beyond the limits of this piece. In recent years, legal scholarship has been increasingly attending to questions relating to the acoustics of the juridical, the soundful character of the legal world and legal experience, and the sonic and auditory dimensions of predominantly the Western legal tradition, bringing to bear different modalities of analysis on these themes.¹⁰² My main point here is that the ‘umbilicus of audition,’¹⁰³ to use Goodrich’s felicitous formulation, marks our relationship to the law.

in Roman and Indo-European Antiquity (Cambridge: Cambridge University Press, 2013), 69–71.

¹⁰² See for example, Goodrich, ‘Attending the Hearing: Listening in Legal Settings’; Hibbitts, ‘Making Sense of Metaphors: Visuality, Orality’; Halder, ‘Acoustic Justice’; Borrows, ‘Listening for a Change’; Ramshaw, *Justice as Improvisation*; Bottomley and Moore, ‘Sonorous Law II’; Parker, *Acoustic Jurisprudence*; Parker, ‘Towards an Acoustic Jurisprudence’; Ramshaw and Stapleton, ‘Just Improvisation’; Parker, ‘Gavel,’ in *International Law’s Objects*, ed. Jessie Hohmann and Daniel Joyce (Oxford: Oxford University Press, 2018); Parker, ‘Listening About Law in the Sonic Arts’; Parker, Ramshaw, and San Roque, *Law Text Culture* 24, 2020, Special Issue on ‘The Acoustics of Justice: Law, Listening, Sound’; Danilo Mandic, ‘Law with the Sound of Its Own Making,’ *Law Text Culture* 24 (2020); Sean Mulcahy, ‘Singing the Law: The Musicality of Legal Performance’ *Law Text Culture* 24 (2020); Ramshaw, ‘Rainbow Family: Machine Listening, Improvisation and Access to Justice’; Danilo Mandic and Sara Ramshaw, ‘Law as Sonic Performance,’ *Auralia.Space*, (Royal Central School of Speech and Drama, 2021), <https://doi.org/10.25389/rcssd.14061674.v1>; and contributions in this volume.

¹⁰³ Goodrich, ‘Auriculation,’ 57. It is worth recalling here that Friedrich Nietzsche, in the Fifth Lecture ‘On the Future of Educational

For if law is a system of echoes, as Holmes has it, a resounding *corpus* of past legislative moments and judicial precedents, it is through hearing that we are delivered to its echo chamber. It is *per aurem*, it is from the ear, in other words, that we are pulled into the realm of the law – to recall here an ancient Roman law ritual gesture for summoning a witness, that can also be found in a number of other geographical and historical contexts.¹⁰⁴ If it is through song, that the law reaches our heart, it is through the ear that our heart is led. Additionally, it is

Institutions' (23 March 1872), also compares audition to an umbilical cord that connects, in this case, the students to the university in Friedrich Nietzsche, *The Complete Works. Vol.III. On the Future of our Educational Institutions*, ed. Oscar Levy, trans. J.M. Kennedy. (Edinburgh: T.N. Foulis, 1910), 125. Jacques Derrida, commenting on this whole passage, that not only describes this "curious" process but also situates it in the apparatus State, takes Nietzsche's point further, so that the cord, that connects the mouth of the professor to the ear of the student and, through the ear, to the student's pen transcribing the professor's lecture, is extended (or doubled) beyond the professor, with a further, or second umbilical cord, that connects this time the professor to the State that employs him, and whose functionary therefore the professor is. As such, the cord, that originally connected the professor's mouth with the student's ear transcribing the professor's lecture, now appears as 'a leash in the form of an umbilical cord' connecting the student's writing all the way 'to the paternal belly of the State'. Jacques Derrida, *The Ear of the Other*, trans. Peggy Kamuf (New York: Schocken, 1985), 35–36. For a psychoanalytic reading of the relationship between the navel and the voice, see Denis Vasse, *Lombilic et la voix. Deux enfants en analyse* (Paris: Éditions du Seuil, 1974).

¹⁰⁴ On this gesture of summoning, see Luca Loschiavo, *Figure di Testimoni e modelli processuali tra Antichità e primo Medioevo* (Milano: Giuffrè Editore, 2004), 15. Also Nella Lonza, 'Pulling the Witness by the Ear: A Riddle from the Medieval Ragusan Sources', *Dubrovnik Annals* 13 (2009): 23–55, who traces this practice of summoning from Ancient Rome (from the fifth to the first century BC) to the Germanic peoples of Central Europe between the fifth and twelfth century, and the Adriatic south east from the thirteenth to the fifteenth century.

through the ear that our knowledge is set, and it is through the ear that, at least from Christianity onwards, we are captured, by the law. Without earlids,¹⁰⁵ impossible to close, and always exposed, the ear is the defenceless entry point into our *foro interno*, the opening through which malevolent talk enters to poison, stab, seduce or corrupt our hearts and souls.¹⁰⁶ Equally, the ear is also the orifice that the Word penetrates to impregnate our hearts with the seed of faith: *fides ex auditu*, ‘faith cometh by hearing’ says Paul in *Romans* (10:17);¹⁰⁷ while, in the case of the Virgin Mary, the ear is precisely the organ with which she conceives, the orifice through which the Word of God enters her body and literally impregnates her. In medieval Christian iconography, the scene of the Annunciation is also a depiction, at times more explicit than others, of Mary’s *conceptio per aurem*.¹⁰⁸ At the same time, the

¹⁰⁵ ‘[W]e have no ear-lids to close sound off’ notes famously Michel Chion, in Michel Chion, *Audio-Vision: Sound on Screen*, trans. Claudia Gorbman (New York: Columbia University Press, 1994), 33; and Pascal Quignard develops this point further in Pascal Quignard, *The Hatred of Music* (New Haven: Yale University Press, 2016), 71–92. For the French psychoanalyst, Jacques Lacan, the very significance of the ear has to do with the fact that it cannot be closed. ‘[T]he body has some orifices’, he observes, ‘of which the most important is the ear, because it cannot be shut.’ Jacques Lacan, *The Sinthome – The Seminar of Jacques Lacan, Book XXIII*, ed. Jacques Alain Miller, trans. A.R. Price (Cambridge: Polity Press, 2016), 9. (Sem. I of 18.11.1975).

¹⁰⁶ On this point, see further Tibor Fabinyi. ‘The Ear as Metaphor: Aural Imagery in Shakespeare’s Great Tragedies and its Relation to Music and Time in *Cymbeline* and *Pericles*’, *Hungarian Journal of English and American Studies* 11, no.1 (2005).

¹⁰⁷ The Vulgate text of this verse is ‘*ergo fides ex auditu auditus autem per verbum Christi*’ (and the King James version, ‘So then faith cometh by hearing, and hearing by the word of God’).

¹⁰⁸ An astonishing depiction of the Annunciation scene in terms of the idea of the *conceptio per aurem* can be found on the Northern gate

ear is the aperture through which the law gets under our skin, seizes our hearts as well as our minds, takes hold of our words and our actions, commands our obedience. Once heard, the law cannot but be listened to – with the ear but also with the heart. If we do not listen, our heart is either damaged, deaf, slack, corrupted, or simply not there.¹⁰⁹ Summoned by the voice of the law, a voice that can be sonorous or thunderous, silent and aphonic, *viva* as well as *intexta*, or even purely sonic and non-vocalic, we, as legal subjects, are meant to be all ears: at hand, at the ready, open, attentive, listening, compliant, obedient, even if we occasionally turn a deaf ear.

Once summoned, the subject of law cannot but obey. There is after all a clear etymological connection between hearing and obedience in many languages¹¹⁰ that hints to the centrality of hearing, and of the listening posture more generally, for the relationship of obedience, as the elemental relationship of the subject to the law. In English, to obey, and its act, obedience or obeisance, derive from the Old French *obeir*, which in turn derives from the Latin *ob-audire*, that combines *ob-*, a prefix that denotes proximity, exposure, and openness, being before and being near, being at hand, and *audire*, to hear, which, according to Isidore of Seville, in the *Etymologies*, comes

of the Marienkapelle of Würzburg, where a proboscis coming out of God's mouth arrives at the ear of the Virgin while she is listening to the words of archangel Gabriel.

¹⁰⁹ Popular story concerning St. Anthony in Jack Hartnell, *Medieval Bodies: Life, Death and Art in the Middle Ages* (London: Profile Books, 2019), 142–143.

¹¹⁰ On this point see also Mladen Dolar, *A Voice and Nothing More* (Cambridge: The MIT Press, 2006), 75–76; and Corrado Bologna, *Flatus vocis. Metafisica e antropologia della voce* (Bologna: Il Mulino, 2000), 51–52.

from *aurire*, i.e. *haurire*, to draw in, to ‘drink in’, that is to say ‘catch sounds when the air is reverberated.’¹¹¹ Thus, to obey in English means literally to be at hand to hear, to catch or imbibe the sound of the law. In Greek, *ὕπακούω* combines the prefix, *ὑπό-*, meaning under, below, and *ακούω*, to hear, to listen, suggesting that one listens and obeys a speech that comes from above, the pronouncements of a lord or *dominus*, whether divine or worldly, in any event hierarchically superior. In German, *gehörchen*, obey, also derives from *hören*, to *hear*, while in many Slav languages, *slušati*, to obey, can also mean to listen. In Arabic, *tāʾa*, obedience, is connected to hearing in a political context, as in the political principle of *al-samwāʾ al tāʾa*, used to legitimise political authority, the authority of a leader, whose pronouncements one is bound to follow, and literally translates as ‘I hear you! I obey you!’¹¹² Moreover, in English, obedience, according to the *Oxford English Dictionary*, has a further, now rare, almost obsolete, sense in which it coincides with jurisdiction and with the idea of a sphere of authority, a realm, or dominion, so that to be ‘under the obedience’, for instance, of an ecclesiastical or state authority, means to be within and under its jurisdiction, subject to both its rule and its rules. Jurisdiction, however, defined in the *Digest* as *officium jus dicentis* (*Dig.* 2, 1, 1), refers, in its most basic and general meaning, to the function, the *officium*, of pronouncing, declaring or speaking the law or right.¹¹³ And therefore

¹¹¹ Barney, *The Etymologies of Isidore of Seville*, XI. i. 22 and 46.

¹¹² I am grateful to Anicée Van Engeland for her assistance in clarifying the meaning of obedience in Arabic.

¹¹³ Costas Douzinas, ‘The Metaphysics of Jurisdiction’ in Shaun McVeigh (ed.), *The Jurisprudence of Jurisdiction* (Abingdon: Routledge-Cavendish, 2006), 22–23.

to be ‘under the obedience’ of, say, an ecclesiastical or state authority, means to be at the ready, in the proximity, and within reach of, such an authority, in order to hear its *juris dicta*, its juristic pronouncements. In short, to be ‘under the obedience’ of such an authority means to be before its words of law and right, to be within ear-shot of its legal utterances, within the acoustic range of its voice. It means to be at hand, to be near to hear the word of law. And equally, for an authority to have ‘obedience’ in this sense, that is, jurisdiction over a realm or a dominion, means to have its juristic pronouncements, its normative utterances, its statements of law and right, heard. It means to make itself heard when speaking the law and pronouncing what is right.

Importantly, the lexical grafting of jurisdiction onto the vocabulary of obedience does not only reveal the intimate connection between juristic diction and subjectal audition, or that law’s word must sound, become audible, and pass through the ear; but also that jurisdiction is an auditory phenomenon and that ‘an acoustics regulates our relationship to the law.’¹¹⁴ To put it differently, what obedience names here is precisely the acoustic economy of jurisdiction,¹¹⁵ and it is as such that ‘*obedientia est legis essentia*’, obedience is the essence of law, as the court says in *Bagg’s Case* from 1615, another case where the right to a hearing was considered at length. Once sounded, the words of law are meant to be heard, that is ‘drunk in’, imbibed, caught, and consumed by the subjects of the law with their ears. Obedience in this sense

¹¹⁴ Douzinas, ‘The Metaphysics of Jurisdiction’, 28.

¹¹⁵ I owe the concept of acoustic economy to Douzinas, ‘The Metaphysics of Jurisdiction’, 29.

thus designates the auditory and relational character of the juristic utterance, its acoustic range and reach, the positioning, emplacement and hearing posture of its addressee, its binding of the subject to the words of the law in the *copula* and *vinculum* of audition.



Figure 1.1: Silver, Ex-votive Plaque from Belgium, depicting an ear. Source: Julia Chryssostalis. Horniman Museum, London (Museum Number 12.1591).

Commenta in Coda

† A slightly different meaning of Hesiod's verse, *melpon-tai pantōn te nōmous kai ēthea kednā* is yielded by the recent translation of G. W. Most: '[the Muses] sing, and

they glorify the ordinances and the cherished usages [of all the immortals].¹¹⁶ At this point in time, though, *nomos* does not correspond to what we would generally understand as the modern sense/s of ‘law’, but rather to ‘a way of life’, and therefore this verse could be rendered perhaps as ‘[the Muses] sing the ways and cherished usages [of all the immortals]’ (my translation).¹¹⁷

†† This translation of Pindar’s verse does not quite capture the richness and ambivalence of *nómōn akouontes theodmaton keladon*. Instead, ‘hearing the god-built rushing sound of [Zeus] *nomoi*’, based on Alex Hardie’s translation comes closer.¹¹⁸ ‘Kelados’, the distinctly aquatic sound of rushing water, according to the Liddell-Scott-Jones, is here used to describe the sound of Zeus’ nomic sung-speech, sung-call, or melodic juris-diction. In this translation, *nomoi* is left untranslated to render the term’s ambivalence, as, in the 5th century BC, *nomos* carried the senses of both ‘melody’ and ‘law’ and also referred to the practice of ‘sung-laws’, of singing the laws.

Pindar’s ‘Hymn to Zeus’ is a re-working of Hesiod’s *Theogony* and hence is often referred to as the Theban ‘theogony’ or ‘cosmogony’. It (re) tells the story of the creation of the universe, of the gods and of mankind using Thebes as its setting. In contrast to Hesiod’s canonical account, in Pindar’s version, Zeus is reconciled to the Titans, and

¹¹⁶ Hesiod, *Theogony, Works and Days, Testimonia*, Loeb Classical Library 57, trans. G. W. Most (Cambridge: Harvard University Press, 2006), 8–9.

¹¹⁷ I would like to thank Thanos Zartaloudis for his advice on this proposed translation. Cf. also Zartaloudis, *The Birth of Nomos*, 380.

¹¹⁸ Alex Hardie, ‘Pindar’s ‘Theban’ Cosmogony (The First Hymn)’, *Bulletin of the Institute of Classical Studies* 44 (2000): 37.

Apollo is not only included in the story but also has an extensive and significant role. In ‘giving a show of correct music’ (fr. 35), Apollo *Musagetes* guides the Muses in their song of praise to Zeus and the *cosmos* he created and thus reveals to mankind the true nature of Zeus’ cosmic order through music as *armonia*, or harmony. Justice then, following this account, is a matter of attunement, of resonating with Zeus’ harmonic *cosmos*, of hearing the song of his laws in the rushing sound of the noise of the universe he created.¹¹⁹

† † † This is beginning to change in the last few years. See for instance, James E. K. Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (Oxford: Oxford University Press, 2015); Sara Ramshaw and Paul Stapleton, ‘Just Improvisation’ *Critical Studies in Improvisation* 12, no. 1 (2017); James Parker, ‘Towards an Acoustic Jurisprudence: Law and the Long Range Acoustic Device’, *Law, Culture and the Humanities* 14(2) (2018); Peter Goodrich, ‘Auriculation’, in Christian Delange, Peter Goodrich, Marco Wan (eds), *Law and New Media: West of Everything* (Edinburgh: Edinburgh University Press, 2019); James Parker, Sara Ramshaw, and Mehera San Roque, *Law Text Culture* 24 (2020), Special Issue on

¹¹⁹ The standard account of the hymn’s fragments can be found in Bruno Snell’s essay ‘Pindar’s Hymn to Zeus’ in Bruno Snell, *The Discovery of the Mind: The Greek Origins of European Thought* [1946] (Cambridge: Harvard University Press, 1953), 71–89. A fresh assessment, that takes into consideration recent scholarly insights in Pindar’s sources of inspiration and in Greek cosmology, can be found in Hardie, ‘Pindar’s ‘Theban’ Cosmogony, 2000. On Pindar’s use of *kelados*, and its significance for his metapoetic language, see Amy Lather, ‘Pindar’s Water Music: The Acoustics and Dynamics of the *Kelados*’, *Classical Philology* 114, no.3 (2019), 468.

‘The Acoustics of Justice: Law, Listening, Sound’; James Parker, ‘Listening About Law in the Sonic Arts: John Cage’s 4’33” and Lawrence Abu Hamdan’s *Saydnaya (The missing 19dB)*’ in *Routledge Handbook of International Law and the Humanities*, ed. Shane Chalmers and Sundhya Pahuja (London: Routledge, 2021); Sara Ramshaw, ‘Rainbow Family: Machine Listening, Improvisation and Access to Justice in International Family Law’, in *Routledge Handbook of International Law and the Humanities*, ed. Shane Chalmers and Sundhya Pahuja (London: Routledge, 2021).

†††† It is interesting to note here that Frank, like other legal scholars who are critical of legal formalism during roughly the same time, finds in history an alternative way of thinking what the judge does when they deal with the *quaestio facti*. Guido Calogero, for example, turns to history for similar reasons and argues that the ‘logic’ of the judge is historical rather than purely logical-syllogistic, and that this is the case not only with respect to the *quaestio facti* but also the *quaestio juris*.¹²⁰ Piero Calamandrei’s review essay of Calogero’s book, ‘Il giudice e lo storico’ [‘The judge and the historian’] attempts to reframe and reset the analogy of the judge’s ‘historical’ logic by carefully laying out the differences between the work of the judge and that of the historian.¹²¹ More recently, Luigi Ferrajoli, envisages the trial as a ‘singular instance of historiographical experimentation.’¹²² Yet what happens when

¹²⁰ *La logica del giudice e il suo controllo in Cassazione*. [1937] (Padova: CEDAM, 1964).

¹²¹ *Rivista di Diritto Processuale Civile* 16, no.1 (1939).

¹²² *Diritto e Ragione. Teoria del garantismo penale* (Roma-Bari: Laterza, 1989), 32.

the dispute of the case concerns historical fact? The historian Carlo Ginzburg, in *The Judge and the Historian*,¹²³ a book whose title makes a direct reference to Calamandrei's essay, examines the important differences in the conventions of proof and admissibility that direct the activity of the judge and that of the historian. This thread has been extensively explored in legal scholarship in relation to the Holocaust trials¹²⁴ as well as Native Title cases in Australia.¹²⁵ Finally, we should not forget the significance of the trope of the tribunal in history and what Ginzburg calls the 'judicial model' of historiography, which he traces to Henri Griffet's comparison of the historian to a judge carefully evaluating the evidence in his *Traité des différentes sortes de preuves qui servent à établir la vérité de l'histoire* (1769), and to the popular *topos* of history as a court of law, which was encapsulated in Schiller's formula, *Die Weltgeschichte ist das Weltgericht* ['the history of the world is the world's court of justice'], that Hegel subsequently adopted.¹²⁶

††††† Procedural protocols of audibility mean that parties are not always heard. For a classic example, see the case of *Western Forest Products Ltd. v. Richardson and Others* (1985) before the Supreme Court of British

¹²³ Carlo Ginzburg, *The Judge and the Historian: Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice* (London: Verso, 1990).

¹²⁴ See for instance, Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001).

¹²⁵ For a helpful overview, see Tanya Josev, 'Australian Historians and Historiography in the Courtroom', *Melbourne University Law Review* 43, no. 3 (2020).

¹²⁶ Ginzburg, *The Judge and the Historian*, 13–14.

Columbia discussed in Goodrich, 'Attending the Hearing: Listening in Legal Settings', 11–13, where testimony as to the title of the Haida Indians to the land was presented to the court in a variety of forms, including song, yet the court deemed the evidence not legally relevant and as such in legal terms 'inaudible'. Interestingly, the case also does not appear in the Supreme Court of British Columbia law reports and the only record is the trial transcript, which however, as Goodrich notes, 'cannot be copied or removed from the Supreme Court building' (34). For a discussion of the injustice of remaining 'unheard', see Jill Stauffer, 'A Hearing: Forgiveness, Resentment and Recovery in Law' *Law Review of the Quinnipiac University School of Law* 30, no. 3 (2012), and extensively Jill Stauffer, *Ethical Loneliness: The Injustice of Not Being Heard* (New York: Columbia University Press, 2015). In Canada, the approach taken by the courts in relation to receiving and interpreting testimonies grounding Aboriginal claims began to change with the groundbreaking case, *Delgamuukw v. British Columbia* (1997), in which the Supreme Court of Canada acknowledged the problem. For a discussion, see John Borrows, 'Listening for a Change: The Courts and Oral Tradition', *Osgoode Hall Law Journal*, 39, no. 1 (2001).

††††† See Sanford Levinson and Jack M. Balkin, 'Law, Music and Other Performing Arts', *University of Pennsylvania Law Review*, 139, no. 6 (1991); Hanne Petersen, 'On Law and Music – From Song Duels to Rhythmic Legal Orders', *Journal of Legal Pluralism and Unofficial Law* 41 (1998); Desmond Manderson and

David Caudill (eds), Special Issue on Law and Music, *Cardozo Law Review* 20, nos. 5–6 (1999); Manderson and Caudill. ‘Modes of Law: Music and Legal Theory – An Interdisciplinary Workshop Introduction’ *Cardozo Law Review* 20, nos. 5–6 (1999); Jack M. Balkin, and Sanford Levinson, ‘Interpreting Law and Music: Performance Notes on “The Banjo Serenader” and “The Lying Crowd of Jews”’, *Cardozo Law Review* 20, nos. 5–6 (1999); Peter Goodrich, ‘Operatic Hermeneutics: Harmony, Euphantasy and Law in Rossini’s *Semiramis*’, *Cardozo Law Review* 20, nos. 5–6 (1999); Desmond Manderson, *Songs Without Music: Aesthetic Dimensions of Law and Justice* (Berkeley: University of California Press, 2000); Norbert Rouland, ‘La raison entre musique et droit: consonances’, in *Droit et musique: actes du colloque de la Faculte de droit d’Aix-Marseille* (Aix-en-Provence: Presses de l’ Université d’Aix-Marseille III, 2001); Jack M. Balkin, ‘Verdi’s High C’, *Texas Law Review* 91, no. 7 (2013); Sara Ramshaw, *Justice as Improvisation: The Law of the Extempore* (London: Routledge, 2013); Desmond Manderson, ‘Towards Law and Music’ *Law and Critique* 2, no. 3 (2014); M. Paola Mittica, ‘When the World Was *Mousikē*’; Manderson, ‘Making a Point and Making a Noise’; Ramshaw, ‘The Paradox of Performative Immediacy: Law, Music, Improvisation’, *Law, Culture and the Humanities* 1 no. 1 (2016): 6–16; Filippo Annunziata and Giorgio Fabio, eds. *Law and Opera*. Dordrecht: Springer, 2018; Parker, ‘Listening About Law in the Sonic Arts: John Cage’s 4’33” and Lawrence Abu Hamdan’s *Saydnaya (The Missing 19db)*’; Resta, Giorgio (ed), *L’ armonia nel diritto: Contributi a una riflessione su diritto e musica* (Roma: Roma Tre Press, 2020); Zartaloudis, *Birth of Nomos*, Ch. 10, p. 339–396.

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The Song and Silence of the Sirens: Attunement to the ‘Other’ in Law and Music

Sara Ramshaw

Now the Sirens have a still more fatal weapon than their song, namely their silence. And though admittedly such a thing has never happened, still it is conceivable that someone might possibly have escaped from their singing; but from their silence certainly never. Against the feeling of having triumphed over them by one’s own strength, and the consequent exaltation that bears down on everything before it, no earthly powers can resist. [...]

But Ulysses, if one may so express it, did not hear their silence; he thought they were singing and that he alone did not hear them.

—Franz Kafka¹

The Sirens: evidently they really sang, but in a way that was not satisfying, that only implied in which direction lay the true sources of the song, the true happiness of the song.

—Maurice Blanchot²

¹ Franz Kafka, ‘The Silence of the Sirens’, in *The Complete Short Stories of Franz Kafka*, ed. Nahum N. Glatzer (London: Vintage, 1999), 431.

² Maurice Blanchot, ‘The Song of the Sirens: Encountering the Imaginary’, in Maurice Blanchot, *The Station Hill Blanchot Reader*:

The other is ‘heard’ in the text and this ‘hearing’ leads to an understanding of how one may open a place where the other comes to the fore. The necessity of ‘hearing’ this other in a text is akin to what has been termed ‘attunement’.

—Nathan Crawford³

Dedicated to Peter Fitzpatrick

What can be heard when we learn to listen imperfectly?⁴ When we resist law’s attempts to fully control⁵ or make selective our listening⁶ and instead open our ears to the

Fiction and Literary Essays, trans. Lydia Davis (Barrytown: Station Hill Press/Barrytown Inc., 1999), 443.

³ Nathan Crawford, *Theology as Improvisation: A Study of the Musical Nature of Theological Thinking* (Leiden: Brill, 2013), 75.

⁴ Deriving from the Latin, *imperfectus*, imperfection can mean ‘unfinished, incomplete’: Andy Hamilton, ‘The Art of Improvisation and the Aesthetics of Imperfection’, *British Journal of Aesthetics* 40, no. 1 (Jan 2000): 168–185; (171).

⁵ The powerful controlling effect that the acoustics of law has on the bodies of its subjects, or what Whitney terms the ‘auditory logic’ of the legal system, is explored further below. For more on the auditory logic of law in the writings of Kafka, see Tyler Whitney, *Spaces of the Ear: Literature, Media, and the Science of Sound 1870–1930* (PhD diss., Columbia University, 2013), 93; and Tyler Whitney, ‘Listening to the Law: Acoustical Embodiment and Industrial Space in *Der Proceß*’ [*The Trial*], *Colloquia Germanica* 46, no. 4 (2013): 343–365. It is perhaps of note that, according to Whitney, Kafka’s ‘The Silence of the Sirens’ was composed around the same time as *The Trial*, most likely October 1917: Whitney, ‘Listening to the Law’, *ibid.*, 362, fn 8.

⁶ James Parker’s research on his experience at the International Criminal Tribunal of Rwanda (ICTR) in 2011 is a telling example of the desire for auditory selectivity in law. At the ICTR, those in the public gallery can only listen to the legal proceedings through headphones, which become ‘your exclusive portal into the juridical world you see before you through the glass’. Technology allows

voices of the ‘other’, thereby inviting justice to be done? Employing the story of Odysseus and the Sirens, this text interrogates the possibility of ‘attunement’, as that which bridges the hearing/listening divide and is both grounded in the material/corporeal (hearing), yet also reaches or *strains* beyond such hearing to the unknown or the as-of-yet-unheard (listening).

To connect attunement to the song and silence of the Sirens and to the (non-)listening taking place in *The Odyssey* is calculative. Unlike the eye, the ear never closes.⁷

one to become selectively attuned to the law. However, even those in the central chamber wear headphones, although these are not a condition of hearing. Thus, this selective attunement to the law actually works to separate one from other beings/sounds/etc. Parker reasons:

Indeed, headphones are quite literally a condition of participation in a trial at the ICTR. As a result, acoustic experience there has become radically personalized. From the perspective of an acoustic jurisprudence, one of the most interesting aspects of the soundscape at the ICTR is not so much *what* it sounds like, but the technical means by which you are required to listen. James E. K. Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (Oxford: Oxford University Press, 2015), 184 (emphasis in the original).

⁷ Seth Kim-Cohen, *In the Blink of an Ear: Toward a Non-cochlear Sonic Art* (New York: Bloomsbury, 2013), xviii. See also Peter Goodrich, ‘Auriculation’, *Law and New Media: West of Everything*, eds. Christian Delage, Peter Goodrich and Marco Wan (Edinburgh: Edinburgh University Press, 2019), 56–72 [129–166 iBooks edition], 129 (iBooks edition). Does the use of technology, though, close our ears to attuned listening? Lawyer and performance artist, Julie Lassonde, has created an interactive performance piece focusing on the unwritten laws/norms on/of public transit. Via the use of technology (earbuds), her performance explores the constraints on attuned listening that such technology can produce. See Julie Lassonde (with Sara Ramshaw and Kristen Lewis), ‘Three Experiments in Developing Unwritten Laws/Norms’, 2018 Performing the World Conference, New York City, 21–23 September 2018. See also James Parker’s work on the headphones used at the ICTR: Parker, *Acoustic Jurisprudence*, above.

So, too, attunement demands openness, an ever-openness to the 'other': to sounds, persons, and ways of being. As Lisbeth Lipari notes: 'some kind of listening is happening everywhere, all the time.'⁸ Yet, at the same time, 'truly engaged listening hardly happens anywhere.'⁹ Attunement as attentive listening strives towards an engagement with all that surrounds us. This listening can be both 'deep', as per Pauline Oliveros,¹⁰ or 'shallow', as Kim-Cohen explains:

Deep listening suggests something to be quarried, something at the bottom, a bedrock, an ore, a materiality that contains riches. Oliveros, working along Cagean lines, imagines that sounds-in-themselves are deeply valuable entities, imbued with eternally rewarding sensual and experiential qualities. Imagine the same volume of listening attention. But instead of condensing it within a concentrated, narrow-gauge bandwidth, shallow listening pools at the surface, spreading out to encompass adjacent concerns and influences that the tunnel vision of the deep model would exclude. ...

⁸ Lisbeth Lipari, *Listening, Thinking, Being: Toward and Ethics of Attunement* (Pennsylvania: The Pennsylvania State University Press, 2014), 2 (emphasis in original). John Cage makes a similar point: 'There is Always Something to See, Something to Hear': John Cage, *Silence: Lectures and Writings* (London: Marion Boyars, 1968 [2009]), 8.

⁹ Lipari, *ibid.*, 2.

¹⁰ Deep Listening[®] is a philosophy and practice developed by the late 'improvising composer' Pauline Oliveros, which expands the 'perception of sounds to include the whole space/time continuum ... Such expansion means that one is connected to the whole of the environment and beyond'. As such, 'deep listening' begets compassion and understanding. 'In this way,' she writes, 'discovery and exploration can take place. New fields of thought can be opened and the individual may be expanded and find opportunity to connect in new ways to communities of interest. Practice enhances openness': Pauline Oliveros, *Deep Listening: A Composer's Sound Practice* (Lincoln: iUniverse, 2005), xxiii, xxv.

With shallow listening, there is no there there – or there is no ore. Rejecting the material riches of sound-in-itself as an outright impossibility, shallow listening also rejects the transcendent ineffability to which sound often lays claim. Shallow listening, insists on immanence. Shallow listening insists that we retain the ability to intervene and to effect the sites at play in the sonic work.¹¹

Somewhat mirroring Kim-Cohen’s ‘non-cochlear sonic art’,¹² which refuses to turn a deaf ear to the world and instead ‘responds to demands, conventions, forms, and content not restricted to the realm of the sonic’,¹³ attunement, be it ‘deep’ or ‘shallow’, strains to listen to a beyond that is always ever outside of ‘ear’ range.

Attunement, though, is not simply about how we can be better listeners in law or in music, although it is also about that.¹⁴ Borrowing from Lipari, to be attuned is to probe how we can understand listening as carrying humans into *being*. She calls this way of thinking about listening as *akroatic thinking*,¹⁵ a ‘*thinking*

¹¹ Seth Kim-Cohen, *Against Ambience and Other Essays* (New York: Bloomsbury, 2016), 134–135.

¹² According to Kim-Cohen, the “non” in non-cochlear is not a negation, not an erasure, not, as Derrida puts it, “absence, negativity, non-Being, lack.” It is most definitely not silence. The non-cochlear and the cochlear “pass into one another indefinitely.”: Kim-Cohen, *In the Blink*, xxii. In essence, non-cochlear sonic art ‘maintains a healthy skepticism toward the notion of *sound-in-itself*’: *ibid.* (emphasis in original).

¹³ Kim-Cohen, *In the Blink*, xxii.

¹⁴ See Section 5 on attunement in judicial practice.

¹⁵ The term, ‘*akroatic listening*’ is derived from the Greek word *akroatic*, meaning ‘hearing’, and what German musicologist Hans Kayser calls ‘a very specific mode of thinking’: Lipari, *Listening, Thinking, Being*, 2, 4 and 223, fn2.

listening as a way of being.¹⁶ Akroatic thinking, for Lipari, is closely connected to an ethics of attunement, that is, ‘an awareness of and attention to the harmonic interconnectivity of all beings and objects.’¹⁷ Even the most isolated of listening is dialogic in that ‘words from the past as well as the future continually reverberate with sounds, phrasings, voices, and meanings far distant from their utterance at any given moment in time.’¹⁸ As such, attunement *is* being; it is a relationality to and with others, with the ‘other’, which is enacted through listening.¹⁹

Beginning with Homer’s story of the Sirens, and Kafka’s and Blanchot’s reinterpetations, this chapter explores ‘attunement’ as an imperfect listening that tunes its ear to the inaudible and unknowable ‘other’. Compared to Kafka’s law, understood as a relentless and unceasing ‘droning noise’, the origin of which is unlocatable,²⁰

¹⁶ Lipari, *Listening, Thinking, Being*, 2 (emphasis in the original).

¹⁷ *Ibid.*, 2–3.

¹⁸ *Ibid.*, 5.

¹⁹ *Ibid.*, 7.

²⁰ Franz Kafka’s short story, ‘Advocates’, provides an excellent example of this. In this story, the law is represented by a unlocalisable ‘droning noise’, which is everywhere and nowhere at the same time (similar to how Deleuze and Guattari describe the law in Kafka’s work as ‘always in the office next door, or behind the door’: Gilles Deleuze and Félix Guattari, *Kafka: Toward a Minor Literature*, trans. Dana Polan (Minneapolis: University of Minnesota Press, 1986), 45.). Kafka writes: ‘What reminded me of the law court more than all the details was a droning noise in the distance which could be heard incessantly in the distance; one could not tell from which direction it came, it filled every room to such an extent that one had to assume it came from everywhere, or, what seemed more likely, that just the place where one happened to be standing was the very place where the droning originated, but this was probably an illusion, for

justice as attunement is read here through a Derridean deconstruction of law and musical improvisation to suggest that, instead of endeavouring to harness and control the sonic like Odysseus did, it should be permitted to sing – ‘throats rising and falling, ... breasts lifting, ... lips half-parted’²¹ – in the place between song and silence, where listening is always a listening-*with*.

1. The Song and Silence of the Sirens

The story of the Sirens is most famously told in Homer’s *The Odyssey*. It is often read as a myth of origin, a tale of the emergence of modern law and society²² or the triumph of law over wild transgression. The seductive Sirens of Homer’s poem are ‘savage’ and ‘monstrous’²³ sea demons: half woman and half bird. They are also ‘remarkable musicians’.²⁴ Living on an island in the Mediterranean and attracting passing sailors with their music, the ships would be drawn too close to the rocky coast by the wondrous song of the Sirens and would crash amongst the rocks. The Sirens would then devour the sailors.²⁵ As the

it came from a distance’. Franz Kafka, ‘Advocates’, in *The Complete Short Stories*, ed. Nahum N. Glatzer (London: Vintage, 1999), 449.

²¹ Kafka, ‘The Silence of the Sirens’, 431.

²² See Theodor W. Adorno and Max Horkheimer, *Dialectic of Enlightenment*, trans. John Cumming (London: Verso, 1997) and Theodor W. Adorno, Max Horkheimer and Robert Hullot-Kentor, ‘Odysseus or Myth and Enlightenment’, *New German Critique* 56 (1992): 109–141.

²³ Adriana Cavarero, *For More Than One Voice: Toward a Philosophy of Vocal Expression*, trans. Paul A. Kottman (Stanford: Stanford University Press, 2005), 103.

²⁴ Pierre Grimal, *The Penguin Dictionary of Classical Mythology* (London: Penguin Books, 1991), 403.

²⁵ *Ibid.*, 403. According to Jankélévitch, the Sirens ‘have only one goal: to reroute, mislead, and delay Odysseus. In other words, they

story goes, Odysseus/Ulysses is warned by the Goddess of the Goddesses (Circe) about the danger the Sirens posed:

... Now heed what I say and the God himself will quicken it in your memory. Your next land-fall will be upon the Sirens: and these craze the wits of every mortal who gets so far. If a man come on them unwittingly and lend ear to their Siren-voices, he will never again behold wife and little ones rising to greet him with bright faces when he comes home from sea. The thrilling song of the Sirens will steal his life away, as they sit singing in their plasket between high banks of mouldering skeletons which flutter with the rags of skin rotting upon the bones.²⁶

She advises him to ‘stop the ears’ of his ship crew with beeswax so that they do not hear a sound. ‘Perhaps,’ she inquires of Odysseus, ‘you wish to hear their singing?’ She suggests that he have himself lashed against the mast with rope and ensure that, if at any time he tries to get loose, the crew should only bind him tighter. ‘That way,’ she says, ‘you may safely enjoy the Sirens’ music.’²⁷

Odysseus takes heed of her advice and later recounts the story of his encounter at a banquet in his honour: ‘such words they sang in lovely cadences. My heart ached to hear them out.’²⁸ He admits that he had struggled to free himself in order to follow the music of the Sirens, but his crew had heeded his original command and had

derail the dialectic, the law of the itinerary that leads our mind toward duty and truth’: Vladimir Jankélévitch, *Music and the Ineffable*, trans. Carolyn Abbate (Princeton: Princeton University Press, 2003), 3.

²⁶ Homer, *The Odyssey*, trans. T.E. Shaw (Gloucester: Alan Sutton, 1986), 169–170.

²⁷ *Ibid.*, 170.

²⁸ *Ibid.*, 174.

bound him tighter to the mast. As a result, Odysseus and his shipmates emerged unscathed from their encounter with the Sirens.

Kafka, in his short essay, 'The Silence of the Sirens', adds three twists to Homer's tale.²⁹ First, Kafka has Odysseus stuffing his ears with beeswax, instead of those of his crew members.³⁰ Secondly, Kafka places the power of the Sirens not in their song, but in their *silence*.³¹ Finally, Kafka speculates that Odysseus did not hear the silence of the Sirens; he instead imagines they are singing and that he has 'mastered their voice'.³² It is then the gaze of Odysseus, 'so alluring in its self-confidence', which induces the Sirens to fall 'desperately in love with him',³³ thereby forgetting to sing.³⁴ In Kafka's version, the Sirens 'no longer had any desire to allure; all they wanted was to hold as

²⁹ Elizabeth Boa, 'Revoicing Silenced Sirens: A Changing Motif in Works by Franz Kafka, Frank Wedekind and Barbara Köhler', *German Life and Letters* 7, no. 1 (2004): 8–20, 12. See also Steven L Bindeman, 'Kafka's Appropriation of Silence', in Steven L Bindeman, *Silence in Philosophy, Literature, and Art* (Leiden: Brill/Rodopi, 2017), 124–125.

³⁰ It is intriguing that Kafka is completely silent as to whether the crew members also stuffed their ears with wax as they did in Homer's original tale.

³¹ *Ibid.*, 431. According to Elizabeth Boa, common to Kafka's short story and Adorno and Horkheimer's *Dialectic of Enlightenment* 'is the silencing of the Sirens as the uncanny modulates into travesty, a shift reflecting the authors' growing sense of their collusion in a culture which was oppressive to women, yet at the same time an inability to break free from the prevailing gender ideology. In both texts the Sirens lose their song, which is appropriated to fuel the supposedly androgynous creativity of the male artist': Boa, 10.

³² Renata Salecl, 'The Sirens and Feminine Jouissance', *differences: A Journal of Feminist Cultural Studies* 9, no. 1 (Spring 1997): 14–35, 30.

³³ *Ibid.*

³⁴ Kafka, 'The Silence of the Sirens', 431.

long as they could the radiance that fell from [Odysseus's] great eyes'.³⁵

What Kafka makes evident in his interpretation is that the Sirens could not and did not actually sing their perfect, absolute or universalising song during their encounter with Odysseus. For, if they had, he would not have survived to tell his tale. As Kafka writes: 'The song of the Sirens could pierce through everything, and the longing of those they seduced would have broken far stronger bonds than chains and masts'.³⁶ Blanchot suggests, though, that the Sirens could not have been perfectly silent either:

The Sirens: evidently they really sang, but in a way that was not satisfying, that only implied in which direction lay the true sources of the song, the true happiness of the song. Nevertheless, through their *imperfect* song, songs which were only a song still to come, they guided the sailor towards the space where singing would really begin.³⁷

³⁵ Ibid.

³⁶ Ibid. Slavoj Žižek argues that it was the desire the Sirens had for Odysseus that caused them to become subjectivized and this subjectivization caused their music to cease:

When desire subjectivizes itself, when it is subjectively assumed, the flow of words is set in motion, since the subject is finally able to acknowledge it, to integrate it into its symbolic universe; when drive subjectivizes itself, when the subject sees itself as the dreadful Thing, this other subjectivization is, on the contrary, signalled by the sudden onset of *silence* – the idiotic babble of *jouissance* is interrupted, the subject *disengages* itself from the flow. The subjectivization of drive is this very withdrawal, this pulling away from the Thing that I myself am, this realization that *the Monster out there is myself*. Slavoj Žižek, *The Ticklish Subject: The Absent Centre of Political Ontology* (London: Verso, 1999), 305 (emphasis in the original).

³⁷ Blanchot, 'The Song', 443 (emphasis added). The Siren song is imperfect, argues Bonnet, in that it plays 'tricks on listening, in the sense that [the sounds] do not hold together, and refuse to participate in bringing about comprehension through listening': François

For Blanchot, the impossibility of perfect song (Homer) and/or perfect silence (Kafka) is best understood as the *imperfect* song that Odysseus *imagines*³⁸ he hears when he sees the embodiment of sound³⁹ or, to quote Kafka, the Sirens' 'throats rising and falling, their breasts lifting, their eyes filled with tears, their lips half-parted.'⁴⁰ The Siren song becomes, what François Bonnet would call, 'phantom sounds,' as that which plays 'tricks on listening, in the sense that they do not hold together, and refuse to participate in bringing about comprehension through listening.'⁴¹ Thus, this space of imagined/phantom song and/or imperfect listening can only gesture towards a listening (as comprehension) that is 'still to come.'⁴²

It is this *imperfect listening* that I am here naming 'attunement'. It is a movement or, in Jean-Luc Nancy's words, a *straining*,⁴³ towards the acoustic 'other', which, borrowing from Blanchot in another context, is not only 'unknown, obscure, foreign, but such that apart from this movement it does not seem to have any sort of real prior

J. Bonnet, *The Order of Sounds: A Sonorous Archipelago* (Falmouth: Urbanomic Media Ltd, 2016), 19.

³⁸ The importance of the imaginary is detailed below.

³⁹ I am reminded here of a quote by Kathleen Stewart: 'The senses sharpen on the surfaces of things taking form. They pick up texture and density as they move in and through bodies and space, rhythms and tempi, possibilities likely or not. They establish trajectories that shroud and punctuate the significance of sounds, textures, and movements': Kathleen Stewart, 'Atmospheric Attunements', *Environmental and Planning D: Society and Space* 29 (2011): 445–453, 448. Thank you to Andreas Philippopoulos-Mihalopoulos for guiding me towards Stewart's work.

⁴⁰ Kafka, 'The Silence of the Sirens', 431.

⁴¹ Bonnet, 19.

⁴² Blanchot, 'The Song', 443.

⁴³ Jean-Luc Nancy, *Listening*, trans. Charlotte Mandell (New York: Fordham University Press, 2007), 6.

existence.⁴⁴ As Nancy explains: ‘To be listening is always to be on the edge of meaning, or in an edgy meaning of extremity, and as if the sound were precisely nothing else than this edge, this fringe, this margin.’⁴⁵ Yet, it is in this movement or straining towards the unknown that the ‘true sources of the song, the true happiness of the song’⁴⁶ is called forth.

Before engaging further with this concept of imperfect listening as attunement to the (acoustic) ‘other’, and its relation to law and music, it is important to consider the relationship between ‘hearing’, ‘listening’ and ‘attunement’.

2.1. Hearing/Listening

No clear consensus exists as to whether there is a distinction between ‘hearing’ and ‘listening’, or whether these concepts are interchangeable in significance and intent.⁴⁷ Lipari provides an extended discussion of the distinction:

As it turns out, in the English language we have two words for the auditory process: ‘hearing’ and ‘listening.’ The verb ‘to hear’ derives from the Middle English *heren* and is related to Old High German *hören* and the Latin *cavēre*. *Webster’s* defines ‘to hear’ as ‘1: to perceive or apprehend by the ear’ and ‘2: to gain knowledge of by hearing.’ [...] The verb ‘to listen,’ in

⁴⁴ Blanchot, ‘The Song,’ 447.

⁴⁵ Nancy, *Listening*, 7.

⁴⁶ Blanchot, ‘The Song,’ 443.

⁴⁷ Andrew Dobson, for example, applies the terms interchangeably, yet only includes ‘listening’ in the Index under the heading ‘listening and power’: Andrew Dobson, *Listening for Democracy: Recognition, Representation, Reconciliation* (Oxford: Oxford University Press, 2014), 213.

contrast, is derived from the Middle English *listnem* and is defined by the idea of attention to sound. [...] This etymology illustrates that ‘listen’ and ‘hear’ are not simply synonyms, but are inflected with different meanings that suggest different ways of being in the world. Etymologically, ‘listening’ comes from a root that emphasizes attention and giving to others, while ‘hearing’ comes from a root that emphasizes perception and receiving from others.”⁴⁸

Jean-Luc Nancy keeps alive the distinction between ‘hearing’ and ‘listening’ in his book, *Listening*, by opposing the French *écouter* (translated as ‘listening’) and *entendre* (‘hearing’, which means *understanding*, as well as hearing). He explains:

Entendre, ‘to hear,’ also means *comprendre*, ‘to understand,’ as if ‘hearing’ were above all ‘hearing say’ (rather than ‘hearing sound’), or rather, as if in all ‘hearing’ there had to be a ‘hearing say,’ regardless of whether the sound perceived was a word or not.⁴⁹

Entendre thus ‘imposes a truth on what is heard. It suggests that we hear sonorous form as presented figures, or that we hear internally consistent, knowable, and identifiable *beings*.’⁵⁰

⁴⁸ Lipari, *Listening, Thinking, Being*, 50.

⁴⁹ Nancy, *Listening*, 6.

⁵⁰ Michael Gallope, ‘Review of Jean-Luc Nancy. 2007. *Listening*, translated by Charlotte Mandell. New York: Fordham University Press,’ *Current Musicology*, no. 26 (2008): 157–166, 158 (emphasis in original). This imposition of ‘truth’ may also be why we use the term ‘hearings’ in relation to law. As James Parker notes, the Old English *heran* means not only to hear, but also to *judge*: James Parker, ‘A Lexicon of Law and Listening,’ *Jindal Law and Humanities Review*, no. 1 (2020): 2–23, 9 [also published in this collection]. Seth Kim-Cohen gives ‘hearing’ the properties of ‘both a listening and an *investigation*’: Kim-Cohen, *In the Blink*, xviii, (emphasis

In contrast, *écouter* ('listening'), for Nancy, entails a 'straining toward a possible meaning, and consequently one that is not immediately accessible.'⁵¹ It implies an orientation towards the unknown other, beyond the presented sound: 'Listening means that we strain from one moment to the next, splitting and stretching the listening subject into the grounded opening of experience itself.'⁵² Not seeking to understand what we hear in advance, listening, in this way, orients us towards a reference or referral 'that maintains no stable identity over time or across space'⁵³ – similar to Derrida's deconstruction/*différance*.⁵⁴ Thus, according to Grant:

[For Nancy,] listening (*écouter*) holds a privileged place over the more constrained hearing (*entendre*) in his account. Listening, he maintains from the beginning, is closer to sensing or touching, preserving the radical intra-alterity of the sonorous, while hearing intends a defined, knowledgeable object separate from a perceiving subject.⁵⁵

added). James Boyd White also writes on the importance of the 'hearing' in relation to law:

The hearing is the heart of the law ...; but the hearing reaches its fullest significance only when it is coupled with the obligation to explain. Then the judicial opinion becomes a form with wonderful possibilities for meaning. It is a composition in which the speaker must choose a language for telling a story and justifying a result, and must do so against the reasonable claims of the losing side that he or she speak differently. James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of Law* (Madison: University of Wisconsin Press, 1985), 241.

⁵¹ Nancy, *Listening*, 6 (emphasis added).

⁵² Gallope, 'Review', 158.

⁵³ *Ibid.*, 158 and 159.

⁵⁴ See below for a discussion of Derridean deconstruction and attunement.

⁵⁵ Roger Mathew Grant, 'Review of *Listening* by Jean-Luc Nancy', *Journal of the American Musicological Society* 62, no. 3 (2009):

The notion of listening as a ‘straining’ is important to my conceptualisation of attunement. Attunement requires effort or labouring.⁵⁶ Sean Mulcahy analogises it to John Cage’s experience of straining to listen in the anechoic chamber,⁵⁷ suggesting that attunement is also *embodied*: ‘we stretch forward to listen, furrow our brows to comprehend, sometimes cup our hands around our ears to block out extraneous sounds.’⁵⁸ The embodiment of listening is clearly

748–752, 750. Also distinguishing between ‘hearing’ and ‘listening’ is theoretical psychologist Johanna Motzkau who, drawing on the work of process philosophers and others such as Henri Bergson, Gilles Deleuze, Isabelle Stengers and Alfred North Whitehead, theorises listening as an *emergent* configuration that is at once social and personal: Johanna Motzkau, ‘Around the Day in Eighty Worlds: Deleuze, Suggestibility and Researching Practice as Process’, *Theoretical Psychology: Global Transformations and Challenges*, eds. Paul Stenner, Johanna Motzkau, John Cromby, and Jeffrey Yen (Toronto: Captus Press, 2011), 59–72. In other words, while ‘hearing’ is viewed as a *passive* taking in of information, ‘listening’ needs to be *active*, an active use of personal and professional discretion and curiosity, as well as communication between individual professionals and agencies. Listening, for Motzkau, is a continuous process of attention, selection, ordering and sense-making. That said, due to the simultaneity of most hearing and listening, the distinction, while important for theorising, has very little practical significance: from personal conversations between the author and Motzkau.

⁵⁶ For James Parker, the ‘strain’ of listening, its ‘effort, care, work,’ is especially important in law: Parker, *Acoustic Jurisprudence*, 6.

⁵⁷ Cage, *Silence*, 8. This experience will be detailed further below.

⁵⁸ Personal correspondence with Sean Mulcahy (October 2018). For others, such as Salomé Voegelin, the important distinction is not as between ‘listening’ and ‘hearing,’ but between the visual and the acoustic. ‘Hearing,’ for her, is the acoustic, which, similar to Nancy’s *écouter* (‘listening’), is ‘full of doubt: phenomenological doubt of the listener about the heard and himself hearing it’: Salomé Voegelin, *Listening to Noise and Silence: Towards a Philosophy of Sound Art* (New York: Continuum, 2010), xii. D. T. Copenhafer writes of how our ‘inner voice’ complicates any distinction between listening and hearing:

In addition to raising the question of what language sounds like when it is not spoken aloud, inner voice troubles any easy distinction

evidenced in the story of the Sirens and Odysseus' act of binding himself to the mast to protect his ears from the power of the sound. While space does not exist in this text for an extended discussion of attunement and embodiment or embodied attunement, the relationship between attunement and the auditory is explored in the section to follow.

2.2 Attunement

My preferred understanding of 'attunement'⁵⁹ is that forwarded by Nathan Crawford in his 2013 book, *Theology as Improvisation: A Study in the Musical Nature of Theological Thinking*. In this book, Crawford unites the philosophy of Jacques Derrida with musical improvisation to think attunement as a way of thinking the other in/as improvised music.⁶⁰ Taking up the thought of Jewish

between 'active' listening and 'passive' hearing. Listening to our inner voice, we realize how much thinking, reflection, is a hearing, an overhearing of the incessant calamity of a voice speaking within us. Do we speak in this voice, or are we spoken by it? Do we listen or do we hear? (David Tyson Copenhafer IV, 'Invisible Ink: Philosophical and Literary Fictions of Music' (PhD diss., University of California, Berkeley, 2004), 4).

⁵⁹ One notable approach to attunement in law is that of Richard Dawson's who, in his book *Justice as Attunement: Transforming Constitution in Law, Literature, Economics and the Rest of Life*, understands attunement as an orientation towards (shared) meaning, a 'getting on the same page'. For Dawson, attunement is 'a way of paying close attention to ... "variations of meaning" ... [in order to] do justice to ourselves and to others': Richard Dawson, *Justice as Attunement: Transforming Constitution in Law, Literature, Economics and the Rest of Life* (Abingdon: Routledge, 2014), xvii. For reasons that will, hopefully, become obvious, I do not share Dawson's understanding of attunement. In other words, we are not in attunement with respect to the concept of attunement.

⁶⁰ Crawford, *Theology as Improvisation*, 27.

theologian, Michael Fishbane,⁶¹ Crawford reads attunement as a 'relation with the other'. For Fishbane, being attuned with the world means understanding one's place in relation to the rest of the world, to one's interaction with all things. Attunement, for both Fishbane and Crawford, consists of 'becoming aware' that the world is not a fixed, static place, but is instead a 'dynamic happening that one knows through the irruptive and caesural event that is the contingency of worldly existence.'⁶²

This 'becoming aware' is closely connected to improvised music in its ability to train musicians in attentive or 'deep listening', to borrow from the late Pauline Oliveros. Crawford explains:

... attunement seeks to cultivate a certain type of person by allowing one to be mindful of one's interaction with the world. This is because a large part of attunement is the cultivation of a self who is capable of being attuned to the other however that other may come. Part of this cultivation of the attuned self is the development of one's ability to listen with attention and humility.⁶³

Attunement is not simply passive reception, though. It actively engages (with) otherness through listening and

⁶¹ See Michael Fishbane, *Sacred Attunement: A Jewish Theology* (Chicago and London: University of Chicago Press, 2008). Attunement is linked by Fishbane to law in that his understanding of such is found in two moments in the life of Moses. The first takes place in the covenant (contract) that God makes with Moses, promising that he 'shall be', that is, be there for Moses and the people Moses leads. The second moment of attunement in Moses' life is his call to the Israeli people to abide by God's laws to provide meaning and structure to their being in the world and interaction with it. (Crawford, *Theology as Improvisation*, 30 [paraphrasing Fishbane, 52–6]).

⁶² Crawford, *ibid.*, 28–29, 30.

⁶³ Crawford, *ibid.*, 30.

responding. ‘Responsiveness is a necessary part of what it means to be attuned,’ writes Crawford.⁶⁴

As will be detailed below, responsiveness is a key concept in both musical improvisation⁶⁵ and law.⁶⁶ Before embarking on that analysis, it is important to elaborate upon the bridge between musical improvisation and law and how Crawford’s use of Derrida to establish the ontological qualities of attunement⁶⁷ applies equally to law and music. As will be explained, Derrida calls on us to think attunement as a ‘way of being,’ to borrow from Lisbeth Lipari,⁶⁸ as that which avoids closure and thinks texts (musical, legal or otherwise) anew.⁶⁹ Moreover,

⁶⁴ Ibid., 30–31.

⁶⁵ Davide Sparti theorises responsiveness in musical improvisation as follows:

The act of improvisation makes constant reference to (and use of) the improviser’s ability to expose himself [sic] to music in such a way that he is able to respond both creatively and continuously to whatever happen and to whatever he makes happen. Improvisation is a peculiar emergent accomplishment, constructed diachronically and bearing the marks of collaborative authorship. This circularity, moreover, is only possible because the musical event itself is implicitly richer than the individual musicians who have generated it, containing a plethora of virtualities, each with the capacity to open up new musical horizons. Davide Sparti, ‘On the Edge: A Frame of Analysis for Improvisation,’ in *The Oxford Handbook of Critical Improvisation Studies (Volume 1)*, eds. George E. Lewis and Benjamin Piekut (New York: Oxford University Press, 2016) 182–201, 195.

⁶⁶ Peter Fitzpatrick, ‘Access as Justice,’ *Windsor Yearbook of Access to Justice* 23, no. 1 (2005): 3–16, 9. See also Peter Fitzpatrick, *The Mythology of Modern Law* (London: Routledge, 1992) and Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge: Cambridge University Press, 2001).

⁶⁷ Crawford, *Theology as Improvisation*, 33.

⁶⁸ Lipari, *Listening, Thinking, Being*, 2.

⁶⁹ Crawford, *Theology as Improvisation*, 34–35. Crawford is writing here in relation to improvisation and attunement. I add law to this list in light of Fitzpatrick’s call to view law not as fixed and stable but as simultaneously (and necessarily) responsive and ever-changing: Fitzpatrick, ‘Access,’ 8–9.

Derridean deconstruction *as* attunement highlights the necessary, but problematic, ‘interaction between saying something “new” and being faithful to the tradition’⁷⁰ – an issue that lies at the heart of both musical improvisation and law. In both realms, complex negotiations take place as between the pre-existent and the original/new; generality/universality and singularity. In legal decision-making, for instance, pre-existing generalised precedents/laws are applied to a new and singular case or set of facts; while musical improvisation, to be recognised *as* improvisation, must always gesture or strain towards a particular melody or musical tradition, even as it takes flight into seeming randomness and chance.⁷¹

Derridean deconstruction (as attunement to the ‘other’) provides a perfect bridge to understanding the improvisational qualities of law, along with the inevitably structured nature of musical improvisation, upon which the next section will expound.

2.2.1 Deconstruction as Attunement

Crawford puts forward a persuasive case for Derridean deconstruction as that which ‘flows out of a concern of being in rhythm with, or in-tune with, the other of the text’.⁷² This attunement can be evidenced in Derrida’s term *différance*, which inserts an ‘a’ in place of the ‘e’ in order to capture the dual movement of difference and

⁷⁰ Crawford, *Theology as Improvisation*, 35.

⁷¹ For more on the relationship between law and musical improvisation, see Sara Ramshaw, *Justice as Improvisation: The Law of the Extempore* (London: Routledge, 2013).

⁷² Crawford, *Theology as Improvisation*, 67.

deferral.⁷³ Deferral temporises, makes temporal, gives space to, delays.⁷⁴ Difference, on the other hand, 'others': makes 'not identical.'⁷⁵ *Différance* thus 'forbid[s] at any moment, or in any sense, that a simple element be present in and of itself, referring only to itself.'⁷⁶ It continually defers (pure) presence in favour of a 'trace' of that which never arrives. Not (pure) absence or nothingness, the 'trace' 'permits the possibility of thinking beyond the binary opposition of presence and absence'⁷⁷ and, by analogy, it challenges all oppositional constructions, such as old/new, pre-existing/original, generality/singularity.

For Crawford, in order to understand how one becomes attuned to the 'other' requires a supplement to *différance*, namely Derrida's conception of '*rhythm*' in his two-volume *Psyche*.⁷⁸ With several of the essays pursuing a musical theme,⁷⁹ to be attuned is to hear the rhythm of the text as that which opens up to possibilities and 'lives in the gap that exists between the way that the text speaks and the way one should receive that speaking through listening.'⁸⁰ Attunement to rhythm resists totalisation of meaning and 'opens a path for thinking that resists any

⁷³ James K.A. Smith, *Jacques Derrida: Live Theory* (New York: Continuum, 2005), 44. See also Geoffrey Bennington, 'Derridabase', in *Jacques Derrida*, eds. Geoffrey Bennington and Jacques Derrida. (Chicago: University of Chicago Press, 1993), 70–71.

⁷⁴ Crawford, *Theology as Improvisation*, 67.

⁷⁵ *Ibid.*, 68.

⁷⁶ Jacques Derrida, *Positions*, revised edition, trans. Alan Bass (London: Continuum, 2002), 26 (emphasis in original).

⁷⁷ Smith, *Jacques Derrida*, 76.

⁷⁸ Jacques Derrida, *Psyche: Invention of the Other, Volumes I and II*, trans. Peggy Kamuf and Elizabeth Rottenberg (Stanford: Stanford University Press, 2007–8).

⁷⁹ For example, 'What Remains in Force by Music', 'The Deaths of Roland Barthes', 'Désistance'.

⁸⁰ Crawford, *Theology as Improvisation*, 72.

attempt at closure.⁸¹ It owes itself to ‘iterability’,⁸² which strains towards the ‘other’ (as ‘pure anteriority’⁸³) through the repetition of the originary act, thereby calling forth originality while all the while denying it. Attunement thereby permits justice to be done to the other. In Crawford’s words: ‘The other is “heard” in the text and this “hearing” leads to an understanding of how one may open a place where the other comes to the fore.’⁸⁴

While there is much more that could be said on the relationship between deconstruction and attunement, in the interests of space, it is necessary to open up the discussion and direct attention to attunement as a musical way of thinking.

3. Attunement *to/in/as* Musical Improvisation

Listening⁸⁵ is central to music making,⁸⁶ particularly improvised music.⁸⁷ Moreover, the so-called ‘unpredictable

⁸¹ Ibid., 70.

⁸² Derrida, *Psyche*, 51.

⁸³ Peg Birmingham, ‘Toward an Ethic of Desire: Derrida, Fiction, and the Law of the Feminine’, in *Feminist Interpretations of Jacques Derrida*, ed. Nancy J. Holland (Pennsylvania: Pennsylvania State University Press, 1997), 131.

⁸⁴ Crawford, *Theology as Improvisation*, 75.

⁸⁵ Musicians can be just as guilty of privileging ‘listening’ over ‘hearing’. Writes Lipsitz:

... in social life as well as in musical life much can be lost by not listening. Hearing just happens, but listening entails attention and interpretation. Listening is an act of deliberation and discernment, a capacity that gets cultivated through experience. (George Lipsitz, ‘Improvised Listening: Opening Statements. Listening to the Lambs’, in *The Improvisation Studies Reader: Spontaneous Acts*, eds. Rebecca Caines and Ajay Heble [Abingdon: Routledge, 2015], 11).

⁸⁶ Crawford, *Theology as Improvisation*, 93.

⁸⁷ According to sound artist Maria Chavez, ‘[s]kill in improvisation more than instrumental technique is about the skill of the

creativity' of improvisation can 'forge new relationships among different sounds' thereby 'teaching people ways of envisioning and enacting new relationships among different people'.⁸⁸ This, in turn, enables musicians (and non-musicians alike) to 'revise the terms of listening and learning',⁸⁹ as George Lipsitz explains:

Improvisation plays a crucial role in creating the capacity for an augmented sense of listening because at its core, improvisation is an art that opens doors. It creates new understandings of previousness and futurity in order to explore hidden possibilities. It privileges temporary and ephemeral resolutions over permanent and set in stone closures, recognising that yesterday's resolutions always require renegotiation and adaptation tomorrow as situations and conditions change.⁹⁰

Thus, when new relationships are forged as between different sounds during the process of musical improvisation, it provides a basis for understanding and teaching people 'ways of envisioning and enacting new relationships among different people', both on stage and off.⁹¹

Crawford advances attunement in improvisation as 'a way of thinking that opens a musician(s) to the possibility of taking apart and reorienting a piece so that it may be heard anew'.⁹² He does this by stressing the 'multiple places

performer as a listener': 'What the Participants are Saying', Information Booklet for the UK Arts and Humanities Research Council (AHRC)-funded project, *Into the Key of Law: Transposing Musical Improvisation. The Case of Child Protection in Northern Ireland*, 2015. See <http://translatingimprovisation.com/wp-content/uploads/2016/02/IKOLBooklet.pdf>, 10.

⁸⁸ Lipsitz, 'Improved Listening', 11.

⁸⁹ *Ibid.*, 12.

⁹⁰ *Ibid.*, 11.

⁹¹ *Ibid.*

⁹² Crawford, *Theology as Improvisation*, 94.

a musician is attuned in order to create music,⁹³ especially improvised music. Not only do musicians need to be attuned to a particular piece of music and to the tradition within which it resides, but also to the other musicians, the audience, their instrument(s), and to the acoustics of the space in which they are performing.⁹⁴ Numerous critical improvisation scholars have highlighted these multiple attunements. For example, Ingrid Monson, who interviewed musicians for her 1996 music ethnography, *Saying Something: Jazz Improvisation and Interaction*, writes about how listening (as attunement) in musical improvisation means not just having a basic knowledge of the framework of a tune, its melody and harmonic structure, but musicians must be so thoroughly familiar with these elements that they 'can attend to what everyone else in the band is doing'.⁹⁵ According to Monson:

Nearly every musician who talked to me mentioned the importance of listening in good ensemble playing. Listening in an active sense – being able to respond to musical opportunities or to correct mistakes – is implicit in the way the musicians use this term. It is a type of listening much like that required of participants in a conversation, who have to pay attention to what is transpiring if they expect to say things that make sense to the other participants. Listening affects what musicians decide to play at a particular moment...⁹⁶

⁹³ Ibid.

⁹⁴ Thanks to Sean Mulcahy for reminding me about the importance of the performance space, and Johanna Motzkau, the instruments.

⁹⁵ Ingrid Monson, *Saying Something: Jazz Improvisation and Interaction* (Chicago: The University of Chicago Press, 1996), 83.

⁹⁶ Ibid., 84.

Failure to be attuned or respond to other musicians is often the sign of ‘bad’ improvisation: ‘To say that a player “doesn’t listen” or sounds as though he or she is playing “something he or she practiced” is a grave insult.’⁹⁷ Although failures in attunement can sometimes be productive and lead to interesting interactions and outcomes, such is beyond the scope of this article.⁹⁸

Attunement in musical improvisation is therefore ‘dynamic and quintessentially social,’⁹⁹ calling ‘communities into being’ and serving as ‘markers for new social identities and social relations.’¹⁰⁰ For Crawford, ‘[l]istening produces attunement because it opens me up to the other and finds meaning elsewhere.’¹⁰¹ Jean-Luc Nancy, in his book *Listening*,¹⁰² explores listening in relation to his

⁹⁷ Ibid.

⁹⁸ AMM guitarist Keith Rowe has spoken about the (ethical) possibilities of non-listening:

The act of NOT listening is very important, preferring juxtaposition to confabulation, disturbing the congruity and avoiding Pavlovian laminates. Non listening for me is about the intensification of the edge, or frame. This might be seen as an attempt to limit certain aspects of encroachment of the external environment, and it’s always been a part of my musical makeup. I’m very aware that it’s almost heretical to praise not listening, but nevertheless I feel there is a place for it. (Cited in Marcel Cobussen and Nanette Nielsen, *Music and Ethics* [Farnham: Ashgate, 2012], 60).

See also Sara Ramshaw and Paul Stapleton, ‘From Prepeace to Post-conflict: The Ethics of (Non) Listening and Cocreation in a Divided Society’, *Playing for Keeps: Improvisation in the Aftermath*, eds. Daniel Fischlin and Eric Porter (Durham: Duke University Press, 2020), 300–324.

⁹⁹ Lipsitz, ‘Improvised Listening’, 12.

¹⁰⁰ Ibid., 12. (referencing Franz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1968), 243).

¹⁰¹ Crawford, *Theology as Improvisation*, 98.

¹⁰² Nancy, *Listening*.

radical singular-plural ontology¹⁰³ in which being and alterity are understood as ‘singular plurality’,¹⁰⁴ as that which presupposes ‘innate otherness.’¹⁰⁵ Sound, according to Grant, allows Nancy to ‘rethink the relationship of self to self (in identity and community)’ and it is in the concept of the ‘return, or *renvoi*,¹⁰⁶ of resonant sound’ that ‘Nancy finds a sonic elaboration of his singular-plural construct.’¹⁰⁷ To elaborate:

... we become subjects in the same way that sound vibrates through the cavity of an instrument – sound belongs to nothing and everything and is everywhere simultaneously, already different unto itself. Listening, then, is nothing short of a way of conceptualizing being in the world, tuned in to the *renvoi* [return] and self reference of the reverberation.¹⁰⁸

Musical performer and composer Wilfrido Terrazas concurs: ‘Improvisation makes you conscious and alert to the

¹⁰³ For more information, see Jean-Luc Nancy, *Being Singular Plural*, trans. R.D. Richardson and A.E. O’Byrne (Stanford: Stanford University Press, 2000).

¹⁰⁴ Grant, ‘Review of *Listening*’, 748–752, 749.

¹⁰⁵ *Ibid.*, 749.

¹⁰⁶ Jean-Luc Nancy explains this concept in further detail in his Foreword to Peter Szendy’s book *Listen: A History of Our Ears*:

A sound is always ‘returned,’ restored: it is restored from itself to itself. A sonorous body that is struck *returns* the blow by the sound that is the vibration of the blow itself. Sound is at the same time *struck* (pinched, rubbed, breathed, etc.), *returned*, and *heard* [*entendu*, understood] in the precise sense that it is *understood* [*s’entend*] or that it *makes itself* heard [se fait entendre]: and for that, in that, it *listens to itself* [*s’écoute*]. (Jean-Luc Nancy, ‘Foreword: *Ascoltando*’, trans. Charlotte Mandell, in Peter Szendy, *Listen: A History of our Ears* [New York: Fordham University Press, 2008] ix–xiii, x.

¹⁰⁷ Grant ‘Review of *Listening*’, 749.

¹⁰⁸ *Ibid.*, 749–50.

world. It awakens listening skills that are highly specialised and that make you aware of your sonic surroundings. It makes you be conscious of other people playing with you.¹⁰⁹

While the above interrogated the importance of listening to *sound* in musical improvisation, the section to follow questions whether *silence* has itself important properties that are equally worthy of pursuit as they relate to attunement in/to/as musical improvisation

3.1 The Sound of Silence in Musical Improvisation

*Man fears the absence of sound as he fears the absence of life. ... Since modern man fears death as none before him, he avoids silence to nourish his fantasy of perpetual life.*¹¹⁰

Silence, more often than not, equals negation, and arises from a not-listening or a lack of attunement: a cue or introduction missed; spaces meant to be filled that are left vacant, etc. Not all silences, though, emerge from ‘disengaged hearing’. In addition to active and deliberate (non) listening,¹¹¹ the choice to be silent can have a creative and

¹⁰⁹ What the Participants are Saying, Information Booklet for the UK Arts and Humanities Research Council (AHRC)-funded project, *Into the Key of Law: Transposing Musical Improvisation. The Case of Child Protection in Northern Ireland*, 2015. See <http://translatingimprovisation.com/wp-content/uploads/2016/02/IKOLBooklet.pdf>, 10.

¹¹⁰ R. Murray Schafer, *The Soundscape: Our Sonic Environment and the Tuning of the World* (Rochester: Destiny Books, 1993) 256. Compare with John Keats’ *Ode on a Grecian Urn*: ‘Heard melodies are sweet, but those unheard/Are sweeter’: <https://www.poetryfoundation.org/poems/44477/ode-on-a-grecian-urn>.

¹¹¹ See Rowe (cited in Cobussen and Nielsen, *Music and Ethics*, 60); and Ramshaw and Stapleton, ‘From Prepeace to Postconflict’, 308.

productive dimension. Miles Davis is but one example of an improviser who listened to other musicians and audiences in order to open up ‘opportunities for strategic silences that could make what was *not* played as important as what was played.’¹¹² To quote Davis: ‘I always listen to what I can leave out.’¹¹³

For the late musical composer John Cage, silence was integral to music itself and he gave it equal weighting in terms of significance to sounded notes.¹¹⁴ Cage’s 4’33”, perhaps one of the ‘most misunderstood pieces of music ever written’, is also one of his most appreciated.¹¹⁵ It was first performed by David Tudor in Woodstock, New York on 29 August 1952. Tudor came on stage at the Maverick Concert Hall, sat down at a piano, lifted the lid and did not play a note for 4 minutes and 33 seconds. He then closed the lid,

¹¹² Lipsitz, ‘Improvised Listening’, 13 (emphasis in original).

¹¹³ *Ibid.* Felix Nobis explains the power of silence in relation to law and theatre:

I think [silence] can speak, it can recalibrate the listener, it can give the listener opportunity to find themselves again within the story. That’s incredibly valuable. It can also give an audience an opportunity to adjust and scratch if they’ve been holding on to a moment. Doing a long one person show of 60–70 minutes, it’s important to find those moments of allowing the audience to move or to cough if they’ve been holding that in for that long. It’s a matter of timing, tuning in to the audience and then finding a moment to pull back, maybe having a little cough yourself even if you don’t need it, to just shake things up a little bit and break the tension which couldn’t possibly hold that long. There’s an element of orchestrating that suspension of tension and then pulling it back. Silence can often work as a tool like that. Sean Mulcahy, ‘Acting Law | Law Acting: A Conversation with Dr Felix Nobis and Professor Gary Watt’, *Exchanges* 4, no. 2 (2017): 189–200, 194.

¹¹⁴ Kyle Gann, *No Such Thing as Silence: John Cage’s 4’33”* (New Haven: Yale University Press, 2010), ix. See also Cage, *Silence*, 8; and Libby Scheier, ‘There is No Such Thing as Silence’, *Canadian Woman Studies* 14, no. 1 (1993): 9.

¹¹⁵ Gann, *ibid.*, 10.

stood up and exited the stage.¹¹⁶ While this may appear like a very lazy composition by Cage, involving no work at all, in actual fact, Cage revealed later that 4'33" took him longer to write than any other piece of music, involving a four-year gestation period.¹¹⁷ For Cage, this was his 'most important work'.¹¹⁸ It is a piece of music that deflects back to the listener the question of 'what is music?' and/or what does it mean to listen?¹¹⁹ It also begs the question: what is silence?¹²⁰

Oft retold by Cage, the idea for 4'33" came to him in 1951,¹²¹ after he spent time in the anechoic chamber at Harvard University:

For certain engineering purposes, it is desirable to have as silent a situation as possible. Such a room is

¹¹⁶ Voegelin, *Listening to Noise and Silence*, 205, fn 1. See also Gann, *ibid.*, 6.

¹¹⁷ Gann, *ibid.*, 14. BBC Radio 3 and BBC 4 (television) broadcast a performance of 4'33" by the BBC Symphony Orchestra at London's Barbican Centre in 2004 as part of a programme of events dedicated to Cage's work. The audience response was mixed. See 'Radio 3 Plays Silent Symphony', *BBC News*, 19 January 2004. <http://news.bbc.co.uk/2/hi/entertainment/3401901.stm>

¹¹⁸ Gann, *ibid.*, 15.

¹¹⁹ Daniel Belgrad, 'Improvisation, Democracy, and Feedback,' in *The Oxford Handbook of Critical Improvisation Studies (Volume 1)*, eds. George E. Lewis and Benjamin Piekut (New York: Oxford University Press, 2016), 289–306, 295.

¹²⁰ Silence, especially in places such as Northern Ireland, can have political ramifications. See Hilary Bracefield, 'Musical Perspectives. The Politics of Silence: The Northern Ireland Composer and the Troubles', *Music, Music Therapy and Trauma: International Perspectives*, ed. Julie P. Sutton (London: Jessica Kingsley Publishers, 2002), 83–93. Also of note is Seamus Heaney's poem, 'Whatever You Say, Say Nothing' in Seamus Heaney, *North* (London: Faber & Faber, 1996), 52–55. See also Ramshaw and Stapleton, 308–309.

¹²¹ According to Gann, determining the exact date of Cage's visit to the anechoic chamber at Harvard is 'a maddening puzzle': Gann, *No Such Thing as Silence*, 164.

called an anechoic chamber, its six walls made of special material, a room without echoes. I entered one at Harvard University several years ago and heard two sounds, one high and one low. When I described them to the engineer in charge, he informed me that the high one was my nervous system in operation, the low one my blood in circulation. Until I die there will be sounds. And they will continue following my death. One need not fear about the future of music.¹²²

This experience is said to have spawned the so-called Cagean aesthetics of ‘letting sounds be themselves.’¹²³ No longer hearing sound and silence as opposites, Cage understood them as aspects of the same continuum, thereby dissolving dualities.¹²⁴ And yet, 4’33” is not simply a sonic or musical phenomenon, as Kyle Gann explains:

It called upon the audience members to remain obediently silent under unusual conditions. The pianist’s refusal to play calls a whole network of social connections into question and is likely to be reflected in equally unconventional responses on the part of the audience.¹²⁵

Cage challenged or exploited the conventions of modern concert hall etiquette by ‘programming the work to be performed at a prestigious venue, with high-status players and conductor.’¹²⁶ Accordingly, the audience’s expectations were heightened long before the performance

¹²² Cage, 8; see also Kim-Cohen, *In the Blink*, xvi; and Gann, *ibid.*, 160–66.

¹²³ Kim-Cohen, *In the Blink*, xvi.

¹²⁴ Gann, *No Such Thing as Silence*, 163.

¹²⁵ Gann, *ibid.*, 19.

¹²⁶ Frances Wilson, ‘Sounds of Silence: thoughts on John Cage’s 4’33”’, <http://www.interlude.hk/front/sounds-silence-thoughts-john-cages-433>.

began and they felt ‘cheated’ the first time they heard it. Recalls Cage:

They missed the point. There’s no such thing as silence. What they thought was silence, because they didn’t know how to listen, was full of accidental sounds. You could hear the wind stirring outside during the first movement. During the second, rain-drops began pattering the roof, and during the third the people themselves made all kinds of interesting sounds as they talked or walked out.¹²⁷

Attunement to silence in musical improvisation is thereby as dynamic and quintessentially social as listening to sounded notes themselves – perhaps even more so. As Adam Jaworski notes, ‘[o]ne of the most important uses of silence in every society is maintenance of a taboo... Paradoxically, as with many other instances of silence, its study is only possible when it is *broken*.’¹²⁸

Seth Kim-Cohen warns of the danger of making sound itself omnipotent.¹²⁹ If, as John Cage suggests, even silence is sound, then everything *is* and ‘[s]ound alone,

¹²⁷ Ibid. In a conversation with Michael John White, Cage described the audience reaction further:

People began whispering to one another, and some people began to walk out. They didn’t laugh – they were just irritated when they realized nothing was going to happen, and they haven’t forgotten about it 30 years later: they are still angry. Bindeman, 14 (citing Cage in Richard Kostelanetz, *Conversing with Cage* [London: Routledge, 2003], 66).

¹²⁸ Julie Sutton, “‘The Pause that Follows’ ... Silence, Improvised Music and Music Therapy’, *Nordic Journal of Music Therapy* 11, no. 1 (2002): 27–38, 28 (citing *Silence: Interdisciplinary Perspectives*, ed. Adam Jaworski (Berlin: Mouton de Gruyter, 1998), 392).

¹²⁹ Kim-Cohen, *In the Blink*, 259.

signifies itself'.¹³⁰ Invoking Derrida, Kim-Cohen maintains that sound in and of itself is 'just as inconceivable as self-presence'.¹³¹ Perfect silence, in other words, is an impossibility, just as perfect song/sound. Perhaps a more productive way of perceiving silence (and sound/song) is as 'contingent and relational'.¹³² 'musicians hear silence as not only part of the music but also as a reference point out of which musical sound emerges'.¹³³ Silence communicates.¹³⁴ However, the communicative potential of silence can be difficult to perceive,¹³⁵ which is perhaps why we find silence so discomfoting.¹³⁶

What does all this have to do with law, you might ask? The next section aims to bridge the sound and silence of musical improvisation with that of the Common Law legal system to probe the relevance or applicability of attunement to justice in law.

¹³⁰ Kim-Cohen, *ibid.*, 259 and 260. Salomé Voegelin argues, though, that Cage is not trying to suggest that all silence is sound, but instead that every sound, including silence-as-sound, is *music*: Voegelin, *Listening to Noise and Silence*, 80.

¹³¹ Kim-Cohen, *In the Blink*, 259.

¹³² Marie Thompson, *Beyond Unwanted Sound: Noise Affect and Aesthetic Moralism* (New York: Bloomsbury, 2017), 121.

¹³³ Sutton, "'The Pause that Follows'", 30.

¹³⁴ *Ibid.* Blanchot has also written about the impossibility of silence: 'But without language, nothing can be shown. And to be silent is still to speak. Silence is impossible. That is why we desire it': Maurice Blanchot, *The Writing of the Disaster* (New Edition), trans. Ann Smock (Nebraska: University of Nebraska Press, 1995), 11.

¹³⁵ Sutton, "'The Pause that Follows'", 30.

¹³⁶ According to Yiannis Gabriel, '[s]ilence is fatal because it is unbearable', http://www.yiannisgabriel.com/2016/11/when-sirens-fall-silent-and-silence_25.html (emphasis removed).

4. (Attuning to) Imperfect Law

Returning to the Sirens' story, to understand the impossibility of perfect song – and perfect silence – it is worthwhile to engage with Blanchot's concepts of the 'limit' and the 'imaginary'. In the tale of Odysseus and the Sirens, we are told that '[e]ach wants to be everything, wants to be the absolute world'.¹³⁷ However, co-existence with the 'other absolute world'¹³⁸ is impossible for how can something stand opposite a universal?¹³⁹ Phrased slightly differently and borrowing from critical legal theorist, Peter Fitzpatrick, '[t]he antithesis of the universal can only be utterly antithetical. It has to be of a totally different kind of existence'.¹⁴⁰ Such is the paradox of universality:

... anything which stands opposite the universal in its completeness can only be utterly different or absolutely 'other' to the universal. At the same time, whatever provides the constituent negation of the universal must somehow be transgressively beyond a universal which remains constantly cued to it.¹⁴¹

The aporetic encounter between the singular and the universal is accordingly best understood through an engagement with the concept of the 'limit'. Once traced or inscribed, the limit serves to discriminate between a certain order (Odysseus/law) and a certain disorder (Sirens/

¹³⁷ Blanchot, 'The Song', 448.

¹³⁸ *Ibid.*, 448.

¹³⁹ Fitzpatrick, *Modernism*, 63.

¹⁴⁰ Peter Fitzpatrick, "'In God We Trust' Can Relieve Us of Trusting Each Other", *The Believer* 3, no. 8 (2005): 63–72, 69.

¹⁴¹ *Ibid.*, 63.

transgression). While the two concepts on either side of the limit are disjoined from one another, they do not exist in isolation, as Fitzpatrick explains:

... if the limit were completely divisive there could be no relation between what is separated by the limit. The two sides of the limit would exist in complete difference, not knowing at all of each other. So, with the limit there must be some subsisting relation and thence some commonality between the two sides. In a pure relation, the two sides would simply appear or disappear in each other and there could be no limiting division between them. We are, then, 'bound' to an irresolution between the limit as a condition and quality of our contained, distinct being and the limit as an opening onto all that lies beyond and is other to that being.¹⁴²

The same holds true for Western law. As with Odysseus and the Sirens, law wants to be everything, wants to be the absolute world.¹⁴³ Modern law, however, cannot be *everything*, that is, truly universal and unchanging. As Fitzpatrick writes, '[i]n coming to and being at where it is now, the common law will have been responsive to historical change, or to the needs of the nation, or to the development of society'.¹⁴⁴ In stark contrast to its purported fixity and stability, 'it will have accommodated changing facts, all coming from beyond it'.¹⁴⁵ Conversely, law cannot be purely singular or unpredictable either: 'If law is to "be", to "take place" at all, it cannot subsist as ineffably responsive

¹⁴² Fitzpatrick, *Modernism*, 59.

¹⁴³ Blanchot, 'The Song', 448.

¹⁴⁴ Peter Fitzpatrick, "'No Higher Duty': *Mabo* and the Failure of Legal Foundation,' *Law and Critique* 13 (2002): 233–252, 236.

¹⁴⁵ *Ibid.*, 236.

but must come to a place of determination. This place, in turn, must not just contain law's responsiveness but must habitably sustain it.¹⁴⁶ Law, for Fitzpatrick, thus lies in an aporetic space within which the demands of determinacy and responsiveness are played out.¹⁴⁷

In Homer's tale, Odysseus triumphs over the Sirens through his being bound to the mast and his crew members having had their ears stuffed with wax. As Kafka points out, though, such measures would have been futile for the Sirens' song could pierce through everything and the longing they induced from those they seduced 'would have broken far stronger bonds than chains and masts.'¹⁴⁸ Kafka instead has the Sirens forgetting to sing, remaining *silent*, and, for that reason alone, Odysseus escapes death.

Of interest here is how Kafka reconciles this interpretation with his later assertion that the power of the Sirens actually lies in their silence. He writes:

Now the Sirens have a still more fatal weapon than their song, namely their silence. And though admittedly such a thing has never happened it is conceivable that someone might possibly have escaped from their singing; but from their silence certainly never.¹⁴⁹

The Sirens, accordingly, could not have been perfectly silent either. Otherwise Odysseus would never have survived to tell his tale, as the next section illustrates.

¹⁴⁶ Fitzpatrick, *Modernism*, 7.

¹⁴⁷ *Ibid.*, 91.

¹⁴⁸ Kafka, 'The Silence of the Sirens', 431.

¹⁴⁹ *Ibid.*, 431.

4.1 The Sound of Silence in Law

*I wonder if justice silenced would actually be justice lost, in that we wouldn't have our day in court, we wouldn't have our hearing, we wouldn't have the sense that our voice has been heard ... There might be something absolutely essential to justice in society to having the sound heard.*¹⁵⁰

As noted above, silence in musical improvisation is often interpreted negatively, as an *absence* (of sound).¹⁵¹ Similarly, silence in law can be unsympathetically construed. It often marks the place of the oppressed and the voiceless, of victims and victimisation. In her book, *Just Silences*, Marianne Constable offers a very Cagean provocation, which endeavours to hear the possibilities of justice in the silence of law: 'One often hears that an absence of voice is an absence of power and an absence of justice and, conversely, that voice means empowerment and justice.'¹⁵²

Focusing on current judicial practice in Australian courts, Katharine Biber relatedly writes about the 'jurisprudence of silence' in which:

¹⁵⁰ Gary Watt in Mulcahy, 'Acting Law', 192. According to Peter Goodrich: 'It is both literally and legally true that without hearing there is no balancing, no justice': Goodrich, 'Auriculation', 153 (iBooks edition). See also Peter Goodrich, 'Attending the Hearing: Listening in Legal Settings', in *Reception and Response: Hearer Creativity and the Analysis of Spoken and Written Texts*, eds. Graham McGregor and R.S. White (Abingdon: Routledge, 2015), 11–36.

¹⁵¹ Andreas Philippopoulos-Mihalopoulos, *Absent Environments: Theorising Environmental Law and the City* (Abingdon: Routledge-Cavendish, 2007), 95.

¹⁵² Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (Princeton: Princeton University Press, 2005), 8.

... the accused's silence must be accompanied by exhaustive judicial speech; the jury must be rigorously tutored in all of the inferences that are unavailable from silence. They cannot be left at large to experience the silence for what it is: the work of a judicial apparatus.¹⁵³

She argues that law alone refuses to hear silence as ambiguous in meaning and that only lawyers demand that 'silence means nothing'.¹⁵⁴ She concludes by arguing:

A sensitivity to silence — its performance, its absence and its interpretation — would transform the jurisprudence of silence. To fully grasp what silence is, where its limits lie and what might be done with it, is law's ongoing project. Since *Weissensteiner*,¹⁵⁵ Australian appellate courts have urged that we smother silence with words. This doctrine prevents silence from simply being heard. Silence, wherever it occurs in law's jurisdiction, must be explained and explained and explained. In this babble of explanation law misbelieves that it protects silence; further, it often misattributes the term 'silence' to certain kinds of noise. Law's commentary forecloses the possibility that silence might be deliberately ambiguous, that it

¹⁵³ Katherine Biber, 'How Silent is the Right to Silence?', *Cultural Studies Review* 18, no. 3 (2012): 148–170, 160.

¹⁵⁴ *Ibid.*, 161.

¹⁵⁵ In *Weissensteiner v R* [1993] HCA 65, the accused, Mr Weissensteiner, was arrested by the Australian Federal Police in Papua New Guinea for the murder of a young couple last seen in his company. He did not call any evidence at trial or take the witness stand. As a result, the trial judge directed the jury that they were entitled to draw an inference of guilt due to the Defendant's failure to explain the circumstances surrounding the case, circumstances of which he undoubtedly had some knowledge. This has become known as the Weissensteiner Direction.

might invite speculation, or that inferences demand to be drawn from it.¹⁵⁶

The power of silence in law is also explored by law and theatre scholar, Sean Mulcahy, who argues that ‘[s]ilence is a recurring element in legal performance. Silence affects and, in particular, attunes the audience to the legal performance.’¹⁵⁷ Considering courtroom silence in its ‘aesthetic sense’, Mulcahy looks to performance studies to explain the sound of silence in law. Gary Watt provides a telling description: ‘Silence is so much more eloquent than words very often. ... When you shout the sound immediately dies away, whereas silence gets louder and louder and louder the longer it lingers. It’s not emptiness, but a solid thing that demands our attention.’¹⁵⁸ Perhaps this is why, for Dawson, law requires ‘attentive silence’ so that attentive listening may occur: ‘Justice begins in “silence” and in listening’.¹⁵⁹

For Peter Goodrich, ‘[t]he genius of law is in its nose. Justice, however, is all in the ear’.¹⁶⁰ This suggests that, while law and legal reasoning focus on ‘sniffing out ... malversation’, justice cannot but listen; it is ‘forced to

¹⁵⁶ Ibid., 163–64.

¹⁵⁷ Sean Mulcahy, ‘Silence and Attunement in Legal Performance’, *Canadian Journal of Law and Society* 34, no. 2 (2019): 191–207, 194.

¹⁵⁸ Gary Watt in Sean Mulcahy, ‘Acting Law | Law Acting: A Conversation with Dr Felix Nobis and Professor Gary Watt’, *Exchanges: The Warwick Research Journal* 4, no. 2 (2017): 189–200, 194.

¹⁵⁹ Dawson, *Justice as Attunement*, 29. Jack Tan’s soundscape, *Waiting for hearing to begin*, is a perfect example of this. See <https://jacktan.wordpress.com/art-work/hearings>. Much gratitude to Sean Mulcahy for alerting me to Tan’s artwork.

¹⁶⁰ Goodrich, ‘Auriculation’, 129 (iBooks edition).

receive'.¹⁶¹ The listening of justice, though, is primarily linguistic and there is a 'continuing sense of norm and rule as rhythm, as sonic pattering'.¹⁶² This can be problematic in that, as Andreas Philippopoulos-Mihalopoulos observes, 'silence has been populated by sounds, and more specifically by words'. Thus, silence is defined 'antithetically, as the absence of language or of specific sounds'.¹⁶³ 'Silence', argues Philippopoulos-Mihalopoulos, 'remains what language is not', and 'one can only see silence when one sees the trees – without trees [words/sound] there is no silence'.¹⁶⁴ Silence then becomes an inherent part of legal language.¹⁶⁵ Philippopoulos-Mihalopoulos instead calls for legal unutterance:

Unutterance goes beyond silence, in that it does not purport to be communication in the societal way, it cannot be converted into language or meaningful gestures or even the absence of that, and it is not a projection of society. Unutterance remains a meaningless perturbation irritating the system through its *malgré soi* invitation. It lies beyond the communicative possibilities of meaning, and cannot be domesticated by a system. Unutterance is not simply a retreat

¹⁶¹ Ibid.

¹⁶² Ibid., 135 (iBooks edition). See also Julia Chryssostalis' recent writings on nomos and legal otology (incl. pp. 59–68), as well as Julia Chryssostalis, 'Beyond Otonomy, or Beyond the Law of Law's Ear', *Journal of Law and Society* 31, no. 1 (2004): 149–158.

¹⁶³ Philippopoulos-Mihalopoulos, *Absent Environments*, 96.

¹⁶⁴ Ibid.

¹⁶⁵ Thank you to the anonymous reviewer for steering me towards Philippopoulos-Mihalopoulos's *Absent Environments*, which includes an extended discussion of silence and the Sirens in Chapter 4. See also Andreas Philippopoulos-Mihalopoulos, 'The Silence of the Sirens: Environmental Risk and the Precautionary Principle', *Law and Critique* 10, no. 2 (1999): 175–197.

from communication, ... but a double negation: negation of language and negation of non-language. By underlining and erasing the form language/non-language, unutterance silences the logocentric meaning of silence.¹⁶⁶

While there is a great deal more that can be said about unutterance as a mode of breaking free from the song/silence binarism in law, I will leave such for another day. Instead, I return once again to the Sirens, and re-imagine justice as attunement through the imperfect listening of justice to the 'other' in law.

4.2 The (Siren) Song (and Silence) of Law

What led, ultimately, to Odysseus's alleged victory over the Sirens? The answer lies, I believe, in Blanchot's opening sentence wherein he writes: 'The Sirens: evidently they really sang, but in a way that was not satisfying.'¹⁶⁷ Reading Blanchot through Kafka it can be said that Odysseus and the Sirens are brought together through an *imperfect* listening to the (imagined) Siren song, which, for Blanchot, is what gives the Sirens their power.¹⁶⁸ But it is this imaginary that, in turn, robs the Sirens of their mighty silence for, in Odysseus' mind, they are *actually* singing: their outward physical appearance (lips, throat, breasts: parting, lifting and falling) mirrors those of songstresses.

To aid comprehension, a brief accounting of Blanchot's concept of the 'imaginary' is necessary. The image, for

¹⁶⁶ Philippopoulos-Mihalopoulos, *Absent Environments*, 97.

¹⁶⁷ Blanchot, 'The Song', 443.

¹⁶⁸ *Ibid.*, 445.

Blanchot, is best understood as a cadaver, a ‘cadaverous presence [that] establishes a relation between here and nowhere.’¹⁶⁹ S. Brent Plate explains:

Just as a cadaver is typically thought to come ‘after’ the being itself, the image, if all it did were to imitate the ‘real’ thing, would be subordinated as a secondary event. But for Blanchot, contrarily, the image is ‘not the same thing distanced, but the thing as distancing’ The perception of the image exists in an in-between place, a mediated site.¹⁷⁰

Thus, while most accounts of the imaginary posit the ‘real’ and the ‘image’ as belonging to distinct and stable orders,

... Blanchot argues that the imaginary is within the thing or, if you like, that the distance *between* a thing and its image is always *within* the thing. On this understanding, it is none other than being that subverts any attempt to compare the real and the imaginary.¹⁷¹

Blanchot, in other words, redefines ‘experience’ such that it becomes ‘a perilous exposure to the absence at the heart of being.’¹⁷²

¹⁶⁹ Maurice Blanchot, ‘Two Versions of the Imaginary,’ trans. Lydia Davis, in Maurice Blanchot, *The Station Hill Blanchot Reader: Fiction and Literary Essays* (Barrytown: Station Hill Press/Barrytown Inc., 1999), 419.

¹⁷⁰ S. Brent Plate, ‘Lacan Looks at Hill and Hears His Name Spoken: An Interpretive Review of *Gary Hill* through Lacan’s ‘Ts’ and Gazes,’ *Postmodern Culture* 6, no. 2 (January 1996), para. 3.

¹⁷¹ Kevin Hart, ‘Review of Geoffrey Hartman, *Scars of the Spirit: The Struggle Against Inauthenticity* (New York: Palgrave Macmillan, 2002),’ *Bryn Mawr Review of Comparative Literature* 4, no. 1 (2003), <https://www.brynmawr.edu/bmrcl/Summer2003/Hartman.html> (URL no longer accessible; copy with author; emphasis in original).

¹⁷² *Ibid.*

The imperfect song of the Sirens, to which Odysseus imagines he is *not* hearing, lies in the space *between* perfect song and perfect silence, which is its true place. The impossibility of perfection (as unity or self-presence) requires that the Sirens' song always be insufficient, 'still to come', a song that simply guides sailors to 'that space where singing would really begin'. This song, in other words, can only be but a 'movement towards the song', 'an expression of the greatest desire': 'the desire for a marvelous beyond'.¹⁷³

Bringing Blanchot's analysis to bear on the subject of Western law, we see that the power of law lies similarly in its imperfection, in its failure to be 'everything' or 'absolute world'. Law's trick, like that of Odysseus, 'is to seem to limit [its] power: in a cold and calculating way [law] finds out what [it] can still do, faced with the other power'¹⁷⁴ (i.e., transgression). By maintaining a limit between the two, by 'think[ing] its other',¹⁷⁵ law effectively reins in or controls – 'interiorize[s], incorporate[s]'¹⁷⁶ – its transgressive and perilous outside. Of concern here is whether the other is able to escape this 'maneuver of incorporation at the limit or by surprise'.¹⁷⁷ In other words, just as the imperfect song gestures towards the 'song to come',¹⁷⁸

¹⁷³ Blanchot, 'The Song', 443–445.

¹⁷⁴ *Ibid.*, 448.

¹⁷⁵ Hélène Cixous, 'Apprenticeship and Alienation: Clarice Lispector and Maurice Blanchot,' in Hélène Cixous, *Readings: The Poetics of Blanchot, Joyce, Kafka, Kleist, Lispector, and Tsvetayeva*, trans. Verena Andermatt Conley (Minneapolis: University of Minnesota Press, 1991), 90.

¹⁷⁶ *Ibid.*, 90.

¹⁷⁷ *Ibid.*, 90.

¹⁷⁸ Blanchot, 'The Song', 443.

so too does the imperfect law announce the possibility of a justice ‘to come’,¹⁷⁹ which is a coming that never arrives, but which promises nevertheless ‘gradual and necessary transformation’¹⁸⁰ within law and society?

In the penultimate section of this article, I interrogate what attunement as imperfect listening would look or sound like in the everyday practice of law, particularly as it applies to judicial decision-making.

5. Attunement in Practice: The Power of Imperfect Listening in Law

As the above attests attunement as imperfect listening is always a listening-*with* (others/the ‘other’/otherness). This is why improvised music practices are so important to law. Not entirely intuitive, attunement in both law and music must be learned and honed. As Bennett Hogg (composer/improviser/cultural theorist) clarifies: ‘It’s to do with picking up the messages other people are putting out and responding to them, which requires a level of nuance and a kind of listening training that you get from studying an instrument well.’¹⁸¹ Improvised musical practices thus speak not only to music, but to other realms as well, such as law and justice, as the UK Arts

¹⁷⁹ Jacques Derrida, ‘Nietzsche and the Machine,’ in Jacques Derrida, *Negotiations: Interventions and Interviews, 1971–2001*, ed. and trans. Elizabeth Rottenberg (Stanford, California: Stanford University Press, 2002), 240.

¹⁸⁰ *Ibid.*, 241.

¹⁸¹ What the Participants are Saying, Information Booklet for the UK Arts and Humanities Research Council (AHRC)-funded project, *Into the Key of Law: Transposing Musical Improvisation. The Case of Child Protection in Northern Ireland*, 2015. See <http://translatingimprovisation.com/wp-content/uploads/2016/02/IKOLBooklet.pdf>, 11.

and Humanities Research Council (AHRC) sponsored research project, *Into the Key of Law: Transposing Musical Improvisation. The Case of Child Protection in Northern Ireland*, evidences.¹⁸² One key finding arising from this project was the importance of listening – *really* listening – to the voices of others in the courtroom and in other legal settings. For instance, at the Just Improvisation Symposium held at Queen’s University Belfast (QUB)’s Sonic Arts Research Centre (SARC) on 29–30 May 2015, Her Honour Judge (HHJ) Patricia Smyth, a Northern Irish District Court family law judge, says this about the importance of listening:

[I]f people genuinely feel they have been listened to, that the judge has understood their point, that the judge has given it proper consideration, even if they lose, they can deal with it ... because they have been listened to. ... And, it is a key task for any judge to not just listen, but to convey the fact to the person that they have been listened to, and, in my own experience in the family court, I think it is an absolute priority that the vulnerable parents are made to feel that they matter, that they are treated with dignity and respect, and I consciously speak directly to parents, for example. I do it deliberately and consciously so that they understand, and very often some of the vulnerable people who find their way into court, they’ve never been listened to by anyone, they’ve been treated like a piece of dirt by authorities everywhere all their lives, and, as a judge, I make it a priority that in my court they will not feel like that.¹⁸³

¹⁸² For more information on this project, see www.translatingimprovisation.com/ahrc.

¹⁸³ The transcript of this discussion is with the authors. For video documentation of the panel discussion in which HHJ Smyth

The process of listening described above by HHJ Smyth is, to my mind, the epitome of attunement in law: an active engagement with the ‘other’ through listening and responding – which accords nicely with Cobussen and Nielsen’s description of musical improvisation as ‘an open listening attitude, an openness towards other voices and the voices of others.’¹⁸⁴ This is perhaps why Oliveros,¹⁸⁵ who was in the audience during HHJ Smyth’s talk, responded to her description of judging by exclaiming, ‘*It’s deep listening!*’¹⁸⁶

In an interview following the Symposium, HHJ Smyth was asked what it means to listen openly and/or respectfully in law. In response, she provided some very practical advice for how to evidence to litigants that they are being listened to:

Body language is key. Eye contact is key. I use my voice very deliberately. I used my voice very deliberately in a lot of different spheres as a judge.

participated, see Panel 3, ‘Imagining the Future,’ <http://translatingimprovisation.com/portfolio/symposium>.

¹⁸⁴ Cobussen and Nielsen, *Music and Ethics*, 10 (emphasis added).

¹⁸⁵ Oliveros passed away on 24 November 2016 at her home in Kingston, New York at the age of 84. For those unfamiliar with her work, see the Deep Listening Institute website, <http://deeplisting.org>, and the Pauline Oliveros website, <http://paulineoliveros.us>. For further information on Pauline and her career, see, for example, a tribute in *The New York Times*: Steve Smith, ‘Pauline Oliveros, Composer Who Championed “Deep Listening”, Dies at 84,’ *New York Times*, 27 November 2017, <https://www.nytimes.com/2016/11/27/arts/music/pauline-oliveros-composer-who-championed-deep-listening-dies-at-84.html>.

¹⁸⁶ The transcript of this discussion is with the author. For video documentation of the panel discussion in which Pauline Oliveros commented from the audience, see Panel 3, ‘Imagining the Future.’ <http://translatingimprovisation.com/portfolio/symposium>.

... Calling a person by their full name ... Speak to them with respect. Also, I will explain in very clear, simple terms what the problems are, so that they build a rapport with me. I mean, I have had a lot of cases, which would be in regularly for various reasons, and I would build a rapport. I think it was enormously important in getting breakthroughs. ... [T]hat requires very determined conscious effort.¹⁸⁷

To the question of whether the skills of attentive listening in law can be taught, she answered: ‘Absolutely. ... It’s a very, very important skill. And, it *can* be taught.’¹⁸⁸ Also, noting the hard work that goes into attentive listening or attunement in law, and the current limitations in the legal system as they relate to (judicial) time and resources, HHJ Smyth said the following regarding whether there is enough time for attuned judgment: ‘It’s not a time issue. It’s not a time issue. I mean I could spend all day *not* listening to people, if I wanted to. Or, I could spend five minutes really listening. So, it’s not a time issue, it’s a training issue.’¹⁸⁹

6. Attuning to Attunement in Law and Musical Improvisation: Concluding Remarks

According to François Bonnet, for Kafka, it is the *desire* to hear as opposed to the hearing itself in which voice/sound gains meaning.¹⁹⁰ The imperfect listening of attunement, in which there exists no stable or fully present

¹⁸⁷ Sara Ramshaw and Seamus Mulholland, ‘The Improvising Judge ...’ *Critical Studies in Improvisation* 12, no. 1 (2018).

¹⁸⁸ *Ibid.*, 11.

¹⁸⁹ *Ibid.* Much more can be said on the relationship between law, attunement and time, but that is for another time.

¹⁹⁰ Bonnet, *The Order of Sounds*, 145.

voice-object, offers the possibility of deep or attentive listening to the other in both law and music. It is an ever-open listening, which takes into account the singularity of the situation, even when constrained by rules/resources/time/etc. It is especially important when seeking justice for litigants, particularly, but not solely, in the family law realm.

In light of the above, attunement in both law and improvised music can be defined as possessing the following key characteristics. Although not an exhaustive list, attunement as imperfect listening aims to be:

- (1) Dialogic/responsive (Lipsitz; Fitzpatrick; Lipari);
- (2) Open/generous (Nancy; Lipari);
- (3) An emergent process (Motzkau);
- (4) Hard work (HHJ Smyth; Nancy; Parker; Lipari; Moore;¹⁹¹ Stewart¹⁹²);
- (5) Risky/courageous (Motzkau; Lipsitz; Lipari); and
- (6) Inventive (Lipari).¹⁹³

¹⁹¹ As Nathan Moore shrewdly observed at the *Legal Otologies | Hear Law Sound* event hosted by Westminster Law School in December 2020, there would not be an instance where attunement would not be necessary; the difference is the effort or work one devotes to the task (I hope that I have interpreted Nathan's comment accurately). For writings by Moore on the acoustic or sonorous in/of law, see Anne Bottomley and Nathan Moore, 'Sonorous Law II: The refrain', *Zizek and Law*, ed. Laurent de Sutter (Abingdon: Routledge, 2016) 201–219.

¹⁹² According to Kathleen Stewart, '[e]very attunement is a tuning up to something, a *labor* that arrives already weighted with what it's living through. The intimacy with the world is every bit about that world's imperative; its atmospheres are always already abuzz with something pressing': Stewart, 'Atmospheric Attunements', 448 (emphasis added).

¹⁹³ According to Lipari, several recurring themes shape an ethics of attunement: 'interconnection and generosity, impermanence and humility, iteration and patience, and invention and courage': Lipari, *Listening Thinking, Being*, 6.

Judicial attunement, in particular, takes place on three interrelated planes of meaning, or what Crawford calls 'triple attunement':¹⁹⁴ (1) attunement to tradition (for example, legal texts signifying a broad range of laws, such as precedents and statutes, rules of procedure, both formal and informal, etc.); (2) attunement to other legal professionals (colleagues, judges of other courts and jurisdictions, barristers and solicitors, police, social workers, etc.); and (3) attunement to the general public (required for the continued legitimacy of the legal system). I would add one more, which is attunement to time and space, that is, context and the singularity of the event of listening.

In conclusion, this article sought to offer an engagement with the concept of attunement that goes beyond current enquiries in contemporary law and legal theory. It does so by pairing attunement with imperfect listening, deconstruction and musical improvisation, the aim being to open up the ears of law to the sounds (and silences) of the 'other'. Attunement as imperfect listening to otherness and alterity hearkens to a 'now-time',¹⁹⁵ which is 'precisely not a temporality that remains identical to itself as an immediate presence'.¹⁹⁶ Instead, according to Lorey, the now-time is a 'constructive temporality in which the splitters of history are composed anew, in which history

¹⁹⁴ Crawford, *Theology as Improvisation*, 101 (he is writing here of the place of attunement in musical improvisation).

¹⁹⁵ Walter Benjamin, 'On the Concept of History' in W. Benjamin, *Selected Writings, Volume 4: 1938–1940* (Cambridge: The Belknap Press of Harvard University Press, 2003), 395.

¹⁹⁶ Isabell Lorey, 'Presentist Democracy: The Now-Time of Struggles', *Subjectivation in Political Theory and Contemporary Practices*, eds. Andreas Oberprantacher and Andrei Siclodi (London: Palgrave Macmillan, 2016), 149–63, 156.

always arises.¹⁹⁷ Now-time is thereby a ‘creative midpoint’, borrowing again from Lorey, ‘not a transition of the past into the future.’¹⁹⁸

Likewise, attunement is not a perfect attentiveness to absolute song or silence, but a ‘creative midpoint’ in which the imperfect listening to the imagined song directs the way to the ‘still to come’, where listening (and justice) *really* begin. Bending Blanchot’s opening sentence into the closing one here, we can say: justice – it seems it does indeed exist, but in an unfulfilling way, one that only gives a sign of where the real sources of justice originate...¹⁹⁹

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¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Maurice Blanchot, ‘The Song’, 3. I rely here on the translation of ‘Encountering the Imaginary’ in *The Book to Come*, trans. Charlotte Mandell (Stanford: Stanford University Press, 2003), 3.

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Close Call: Sagan's Humpbacks and Nonhuman Politics

Margret Grebowicz

In 2010, an association called The Helsinki Group published 'The Declaration of Rights for Cetaceans,' calling for an international order in which the rights of individual cetaceans to life, freedom from captivity, and an ecologically stable living environment are fully recognised by all governments. It hangs on the idea of personhood, and declares that, based on the principle of equal treatment of all persons, cetaceans have the right to life, liberty, and wellbeing.¹ The Declaration does not argue for cetacean personhood, and rightly so: by the time someone's claim to personhood is intelligible, said personhood probably goes without saying. But clearly, the notion of personhood operative here is grounded entirely in the human rights paradigm. We are talking, in a sense, about granting human rights to whales, on the same grounds

¹ The Helsinki Group, 'Declaration of Rights for Cetaceans: Whales and Dolphins', 22 May 2010, <https://www.cetaceanrights.org>.

on which they are granted to humans – not because they are *Homo sapiens*, but because they are a kind of people.

The idea that whales are people is hardly news to those indigenous societies whose lifestyles put them in close contact with whales in many different respects. However, personhood in this context is not reducible to an abstract definition of or catalogue of rights. That whales are people means nothing more than that humans can communicate with them, and vice-versa. An article in *Hakai* magazine that went viral, ‘When Whales and Humans Talk’ by Krista Langlois, reported that Arctic indigenous societies have always – since time immemorial – understood themselves to be communicating with whales.

While Westerners domesticated and eventually industrialised the animals we eat – and thus came to view them as dumb and inferior – Arctic cultures saw whale hunting as a match between equals. Bipedal humans with rudimentary technology faced off against animals as much as 1,000 times their size that were emotional, thoughtful, and influenced by the same social expectations that governed human communities. In fact, whales were thought to live in an underwater society paralleling that above the sea. Throughout history, similar beliefs have guided other human-animal relationships, especially in hunter-gatherer cultures that shared their environment with big, potentially dangerous animals.²

The piece appears to be about the Arctic whale hunters’ claim to be able to talk to whales, but much of it is

² Krista Langlois, ‘When Whales and Humans Talk’, *Hakai*, 3 April 2018, <https://www.hakaimagazine.com/features/when-whales-and-humans-talk>.

actually about something else, namely the ways that these societies shaped their lives around ways to *attract* whales. From rituals of keeping quiet, so as not to scare the whales underneath the ice, to singing to them prior to the hunt, to carving amulets meant to flatter whales, to be placed at the bottom of the boat, facing down into the water, these cultures had elaborate traditions that took seriously the power of attraction, and of the special role that hearing plays in that process. Their survival depended on the whales actually being interested in them.

We learn from Lacan that there is no sexual rapport,³ but tell that to the Arctic whale hunters whose lives depended on their ability to attract whales and other large, intelligent, dangerous animals.

Today's argument for whale personhood seems to have put the dimension of communication between whales and humans at its periphery. Along with communication, we have deprioritized rapport as operative in the problem-space of what it means to be persons-in-communication. In contrast to the contemporary posthumanist trend of rejecting of language as a primary feature of personhood, I believe that language is absolutely primary, but not for the reasons we tend to think. Protection of the human is the protection of language, but not language understood as 'the already said' (or what we can understand). It is the protection of what we don't understand, or what has yet to be said. The human, in short, is coextensive with the place of hearing in political life.

³ Notably, '*il n'y a pas de rapport sexuel*'. Jacques Lacan, *Le Séminaire. Livre XVII. L'envers de la psychanalyse, 1969–70*, ed. Jacques-Alain Miller. (Paris: Seuil, 1991), 134.

We can say with ever more scientific certainty that cetaceans 'have' language. Analysis of humpback whale recordings show that humpback pods seem to be communicating in idiolects, unique sound patterns that do not get repeated. The whales in one pod sing the same song, which changes over time in pitch and sometimes volume. Whales in the same area tend to sing one song, but other humpbacks in other locations sing completely different songs, and patterns are not revisited over time, as one 19-year-long study has shown.⁴ It seems as if humpbacks have discrete, shared songs that evolve over time, just like human language does.

Unlike humpbacks, who live in loosely knit, transient groups, orcas live in very stable pods, each of which has a discrete dialect. Although pods associate frequently, individuals never change pods and dialects are strictly maintained. In other words, there is no one 'language' that could be called 'orca', in a way similar to how there is no language that is called 'human', while behaviour and social organisation indicates that linguistic communication is taking place within particular groups. Sperm whales are now thought to exhibit similar diversity among dialects to orcas. As with orcas, we still understand almost nothing about how this works, but dialect is so central to sperm whale social life that scientists refer to the sperm whale social unit as a 'vocal clan', a group that can number in the thousands of individuals.

⁴ Katharine Payne and Roger Payne. 'Large Scale Changes over 19 Years in Songs of Humpback Whales in Bermuda', *Zeitschrift für Tierpsychologie*. 68 no. 2 (1985): 89–114. <https://doi.org/10.1111/j.1439-0310.1985.tb00118.x>.

Carl Sagan had a good sense of the political weight of this when deciding to include whale sounds on the Voyager Golden Records. Humpback sounds are currently hurtling through interstellar space, among the most important bits of information that humans in 1977 wished to communicate to whatever alien intelligences might intercept them in the distant future. It will be forty thousand years before they make a close approach to any other planetary system. The whale vocalisations are included as part of the 'Human and Whale Greetings' section, in which 'Hello' appears in sixty human languages spoken by U.N. delegates, as well as one whale language, humpback. Sagan could have included whale sounds in the 'Sounds of Earth' section, along with bird songs, or the music section, which inexplicably includes Chuck Berry. But he chose instead to present whales as speakers, the only non-humans included in the 'Greetings' sections.

At the same time that he demonstrated whale personhood by presenting them as speakers, however, Sagan insisted that the power of the Golden Record had nothing to do with what could be said in words. What set Voyager apart and made it a more exciting project than the preceding Pioneer probes was that for the first time '... we could send music. Our previous messages had contained information about what we perceive and how we think. But there is much more to human beings than perceiving and thinking. We are feeling creatures.'⁵

And yet, it wasn't about the actual music, either, but something else. The whole record itself was something

⁵ Carl Sagan et al., *Murmurs of Earth: The Voyager Interstellar Record* (London: Hodder and Stoughton, 1978), 13.

which demanded hearing, in the broadest sense: 'It is, as much as the sounds of any baleen whale, a love song cast upon the vastness of the deep.'⁶ The Voyager Golden Record may be seen as an appeal to hearing as the foundation of political life.

The idea that humans are animals is nothing new, of course. But in contrast to the received notion that our animality is the space in which nature takes over and we are off the hook concerning justice, perhaps questions of justice open precisely there where the animality of humans and the personhood of animals announces itself. And yet, what has come to be called Anthropocene theory seems to have the big, social, speaking animals last on its list, except when they provide an opportunity to theorise affect, social media, cinema, or environmental collapse. They threaten to pull us back into anthropomorphic projection, outdated discussions of subjectivity, agency, intelligence, and language, which in turn threatens to keep us stuck in voice, and finally, in hearing. And so, the post-humanities consistently point away from the big animals and towards packs, swarms, microbiomes, mushrooms, objects, and hyperobjects. New materialisms avow rapport and attraction but disavow subjectivity. Object-oriented ontology avows intimacy only if it arises from alienation.⁷ Animal studies goes to great lengths to avoid the language problem by steering us towards new paradigms like biosemiotics, which allows for aurality, but disavows language.

⁶ Carl Sagan, *Cosmos*. (New York: Random House, 1980), 287.

⁷ Timothy Morton, *Humankind: Solidarity with Non-Human People*. (London: Verso, 2019).

And yet, the problem of language haunts the production of the human, as it endlessly manages its animality, which announces itself vocally, where voice is not reducible to the carrier of the logos.

The problem may simply be that cetaceans are not a good Anthropocene subject. In *Wildlife in the Anthropocene*, Jamie Lorimer offers some reasons that megafauna are out of style among theorists: 'they are too sociological and sagacious to be objects, too strange to be human, too captive and inhabited to be wild, but too wild to be domesticated. There are multiple natures at play in these ecologies and valued ways of being that are more-than-human. There are long, fraught histories of interspecies exchange that precede the originary moment of the Anthropocene and trouble its epochal status.'⁸ This is how he describes Sri Lanka's elephants, but it maps well onto any of the large animals who have historically lived in proximity to humans. Whales challenge the idea that the Anthropocene is a new era, not only because people have been around them for much longer than the Anthropocene has announced itself, but also – and more importantly – because there were always also 'other' people, namely whales.

In humans' ongoing overtures to whales, personhood is not only a legal construct, or a conceptual placeholder that can be discarded once we come up with something less anthropocentric. At its heart lives a complicated tangle of affects that points to everything about language that is not reducible to logos. In the end, that tangle itself is

⁸ Jamie Lorimer, *Wildlife and the Anthropocene: Conservation after Nature*. (Minneapolis: University of Minnesota Press, 2015), 20.

probably a sign that we are dealing not with a concept 'person', but with actual persons. Is it possible that, while we are busy theorising animal alterity, some animals are so like us that we cannot hear them?

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To Listen Differently, Away from Sonic Certitude: Some Propositions, Some Questions

Carson Cole Arthur, Petero Kalulé
and AM Kanngieser

A scene that grapples with the unbearable. A stop.
There is syncopation. Geographies start and stop.
A beat continues.

—Keguro Macharia

My spoken words you say do not enter your ears but
your inside they have entered.

—Gabriel Okara

It is the **hearing** of their voices that may be tenuous.

—Unaisi Nabobo-Baba

1. If to listen is to sit at the door of law – before law’s ear – which is a vestibule to the state, what might it mean to write of such an audiographic encounter?¹

¹ The material has been previously published in another version as ‘Abolitionary Listening: Propositions & Questions’ on the website blog ‘Critical Legal Thinking’ at <https://criticallegalthinking.com/2021/09/22/abolitionary-listening-propositions-questions>. It is

2. What might it mean to listen to the violence of the state as a violence that arrests and imprisons, that acts upon reason, evidence, and on 'common' sense? What might it mean to write of such a listening; to be on the thresholds of a listening that appropriates and invades our bodies causing a constant loss of transmission, a sensual-epistemic quiver, shudder, stutter, tremor?
3. What might it mean, correlatively, to think listening when we, too, are listeners? We listen and are listened to.
4. We listen in a way that often never listens back. Listening is aporetic.
5. Listening tends to be conditional. Listening (like care) can be deployed in ways that un-human even when it claims to do otherwise.
6. We speak of 'listening', but we deal only in univocal echoes – which always already assume an original, a finitude. Echoes: where each utterance replaces the last, yet is heard as irreplaceable – the singularity of it *all*. This finitude: the last, the lasting, the at-last.
7. These echoes; a multitude of announcements, commands, and interpellations; of past judgements, of pledging and oath taking seek verification, authorisation and the singularity of consensus, to awaken the senses. They must be translated, made 'sensical'.
8. The same happens with state-run technologies, apparatuses, and bio-logic 'sensings' (or univocal grammars) of war, capture, definition, certainty and graspability that give listening its determined/corrective-disciplinary effects.
9. One is multipliably instructed to partake in listening such that one may enforce a particular kind of 'transcendental' (*yet self-referential*) will to knowledge onto others. This is transmitted through legal-regulatory practices of assessment, criminalisation,

gradation, arbitration, cross-examination, peer review, correction, refinement, evaluation, measurement, evidence *and its admissibility*, justice, rationality, clarity, scrutiny, the universalising project of human rights, and so on.

10. To listen (with the expectation that you will understand and will be understood) is to calibrate a 'consensus' that relies on a shared delimitation of what and who can be heard and how. It is to reproduce, restore and relay the strategic exclusionary closure (and arrest) of politics/police.
11. To listen is to reason with the singular, i.e., it is to accept and uphold a singular and univocal notion of 'truth' with regard to meaning, translation and representation.
12. This conduct submits listening to a measurement of good or bad, success or failure, truth or lie – knowledge as acknowledging, an agreement to disagree, the appreciation of the differing, the differentiation of opinions.
13. From this conduct is affirmed a standard towards improvement, an imperative to listen *well*. And yet, any claim that there is a lack of listening (which is equated to a lack of understanding) is a judgement on the intelligibility of a subject.
14. Law summons. It demands that the witness be capable, competent, articulate, *which is to say* 'human' in order to speak.
15. Law is perceived as receptive and capable of listening but the event of testimony/bearing witness is integral to making a witness compliant before the law.
16. And so, we could say that the witness is obliged to law. That bearing witness is premised on the idea of testimony as 'authentic truth'.
17. Testimony (i.e., the oath to law) is what makes the speech of the witness credible or believable. However, to connect this belief to the mouth (or ear) is to assume that the witness's voice can be translated, recognised or represented. As such, there is always

already a belief that speech is to (be-)come. This belief is a prefigurative listening.

18. The personhood of the witness in law is tied to state sovereignty. The sovereign affords recognition. But this is not complete or foreclosed. For instance, Indigenous articulations of sovereignty push against the sovereign of the colonial nation-state. As Mohawk scholar Audra Simpson writes, Indigenous sovereignty offers a different 'structure of apprehension.' Thus, there are other possible formulations of 'sovereignty' before colonial-legal distinctions.
19. Perhaps all sovereign structures of apprehension grapple with listening as capture, with listening as the calculability of law. How are we to undo this?
20. In the face of these legal processes and demands, one has to 'worry' at these sovereign tonalities; to trouble their 'soundness,' their integrity, authenticity.
21. One has to be committed to what we will call the uncapturable. One has to attune to a musical/oral/aural sound that undoes listening as telos, as epistemic return, as a written word, as letters, as literacy.
22. The uncapturable may be what Charles Lloyd is trying to get at when he says that 'words don't go there' ... or when Anthony Heilbut writes 'words can't begin to tell you, but maybe moaning will'. The uncapturable abandons interpretation.
23. The uncapturable undoes the cognitive and interpretal. It does away with the conception that there are constatives that have multiple decidable 'meanings' imagined as unchanging and discernible.
24. It may be to depart from the violent human-as-man logics of *representation*, of *performativity*, and their pervasive witnessing modes that are predicated on authenticity, expertise and univocality.
25. Perhaps such a departure is an attunement to the resonant 'excess' of intervallic irruption. This intervallic irruption is a polychromatic spacing, a temporal-spatial troubling, an insistent labyrinth of worry.

26. Worrying is an affective perception, a 'fill/feel' of the haunt beyond 'mental cognition'. Worrying happens as if to let us know that there is always already a human desire to master 'representation' – from the evocation, the invitation, the call for civic-intellectual self-appointment.
27. Worry is a necessary *im*-perception of the fact that the human *as is* can never adequately perceive, or fully relate to the non-human.
28. Worrying is rocked with as a work of mourning with and for the non-human end of the earth.
29. Worrying is incessant sorrow. It's a durational resonance or sway that's attentive to the dying, the dead, the burning flooding earth, the non-human.
30. Try as we might, worry as we might, 'we' still for some reason desire to become human.
31. Yet because we remain marked as human as by a legal-carceral order of representation, we are subtended by a sensual-sense-wavelength that only programmes subjection.
32. Worry is perhaps a mourning, a mourning not simply of who or what has passed but a portal of affirmation of our relations with each other, *living and dead*.
33. There is no separation, no border, no boundary, between the living and the dead. That threshold without door inundates, it is always open.
34. What is being evoked here is not an entrance, an access, or frame of open door, not a vestibule, but the crossover, the threshold.
35. Reconnecting our relations to our non-human dead in us/with us at this threshold is not a loss or end. It may help us think of a listening after the human i.e., a listening that frees.
36. What might listening be if it happens *alimbo*, at this crossover beyond life and death?
37. The figure of the ghost, the spirit moves elsewhere it demands for and promises something else.
38. What might listening be if it went beyond a mode of human temporality that wants to be heard as *human*

modernus, as a sensing with-in the metaphysical anthropocentric axiomatics – of subjection in a ‘world-sensuality’ that already delimits, regulates and represents?

39. How then might we ‘unrepresent’? Which is to say how then might we interrupt and upend the rhythms and intonations of this anthropocentric listening that the law demands?
40. If the listener as listener, is always prefigurative, can the listener move from the relation of hierarchical enclosure? Can we move towards a gathering that crosses over?
41. Can we move away from an economy of appropriative assimilation of listening and attune towards relation, to the differential erotics and poetics of relation?
42. We provisionally call this an abolitionary listening. It is a mode of listening that compels us to move out of the violent rubrics of human representation toward what Dionne Brand calls ‘another place, not here’. This ‘not here’ which is also a ‘not hear’ – where words don’t go is not a-there, or a-here, that is found and inhabited. It is an open-ended polychronic and polyrhythmic injunction to listen differently.
43. An open-ended polychronic and polyrhythmic injunction to listen differently moves way-away from sonic certitude, towards a differential inter-play of whatever is shared or listened to unconditionally.
44. The kind of abolitionary listening we are searching for works toward another temporality, one that is always already separate from the diagnostic and panoptic ear of the law towards a freedom we cannot delimit yet, or rather a freedom that we should in fact not understand as delimitable.
45. It is a continuum of nonhuman-sensuality that departs from the state’s very witnessing programmes, one that is de-instituted and de-sovereignitised.
46. The intervallic freedom loaded heavy in Nina Simone’s blue s lip, or Albert Ayler’s shrieky Ghosts is de-instituted, de-sovereignitised. It is a mutual or

gathered desire for a freedom to come, a freedom we understand (*to love somebody/spiritual unity*) – but do not know, but can not know, in the sense that it floods us in a way that is mutually *intuited* but can not be accounted for.

47. Hush; an altering (*an altar*) a separation ... a separation of difference that still sustains intervallic freedom.
48. Such intervallic freedom gathers and; it engenders a sensuality that perhaps only Billie Holiday (our favourite trembler of pitch and tonality) touches and invites us to touch ‘what love endures’ when she sings: *hush now, don’t explain*. ‘Hush now’ (it seems) is an impassible hushed accretion of deprogrammed instantiated fullness that freely dissociates from and pressures all claustrophobic white supremacist logics of sense, inscription and bio-logic intelligibility. It is freedom’s crossover call and thus also at once law’s abolition, now – an ‘unconditional *resonant* affirmation.’
49. ‘Don’t explain’ is a syntax of listening, of irreducible response or responsiveness. It is what suspends the uncapturable *im*-possibility of unrepresentable freedom now. This isn’t a ‘mystified elsewhere,’ it is a visceral elsewhere that always already fills, feels, and vibrates a charge, here, now. We walk it.
50. We could listen or respond to Billie’s hush or Nina’s scream or Ayler’s ghosts (these are the same things) as uncapturable attempts that playfully yet urgently affirm a indefinitive deprogrammed promise that takes listening somewhere else, freely, (after law’s representation) to the singer and to the song’s beyond ... to where words do not go – *without condition*.
51. The song’s beyond is not a destination, it is not a promise of complete, transcendent being. It is not found by unhearing the semantic. One does not get towards the song’s beyond by listening with all of their being, for listening is not entrance to being. It is not an end or beginning to being.
52. The intervallic infers a spacing, a kind of communitarian call and response. The intervallic also

displaces the ear as a central point. It moves listening beyond the essentialism of the bio-logic ear and transforms listening toward an elsewhere, an elsewhere that exceeds a mere straining.

53. What is an elsewhere but a crossing over into what does not meet our expectations? What is an elsewhere but surrender?
54. Surrender then has got to be open to an unanticipatable openness to shared perhapses. It has got to be an extemporaneous poetics and erotics of relation that puts us in touch with whatever is here and also beyond us.
55. We could think of this as a listening beyond certitude, as a listening *sans* telos.
56. A Lordeian loop, a direction to hear and listen differently: 'it is a question of how acutely and fully we can feel in the doing.'
57. Perhaps it is more akin to sitting with listening as a turning towards more than a turning away from, a kind of intervallic attunement that can find itself with-in unknowability – embracing the feeling of unknowability as a non-horizon.
58. We can not and will not try to delimit what this listening gathers, what it might look like or feel like ... it is here and yet not here, it is present, it is remembered, but also yet to come. Again, we will not master the representational. We will not re-present representation nor misrepresentation. We will not issue a judgment.
59. To listen as such is to make way for the incommensurable, an absolute difference that cannot be assimilated, which flourishes precisely in its alterity. This invites letting go of comparison and the search for conclusion.
60. But, one can't talk about listening. One simply does it, somehow.
61. Because listening stops the moment we mark limits. The moment we think that we know exactly what it is.

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Why Record Improvisation?

Nathan Moore

Introduction

Human life does not coincide with itself, so only very little – almost nothing – can be taken as self-evident, fully-present, auto-legitimizing, ultimately authorised, or absolute. Less prosaically, this means that humans cannot avoid making distinctions, nor deciding. However, to limit decision to a question of friend-enemy, or as being of the exception, is both petty and disastrous. Is it possible to claim back decisiveness from the Schmittian vision?¹ That is a much broader question than I can tackle here. Instead, I describe an alternative method for human discrimination, deciding, and intervention. This alternative

¹ Here the reference is, of course, to Schmitt's well known formulation that the sovereign is the one who decides on the exception. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab. (Chicago: University of Chicago Press, 2006).

is not offered as a model, nor as something exceptional. Rather, it is simply an example.

To orientate this writing, I discuss the *archive* as a diligent mode by which decisiveness can be structured and unfolded, using improvised music as an example in this regard. More specifically, I consider how improvised music not only archives itself but, indeed, only becomes possible – as a site of human activity – through such archiving. The technique of archiving I prioritise here is recording. Recording underscores that human practice is not to be restricted to either a naïve notion of presence, nor to an overbearing exceptional decision-making in the face of presence's equally naïve absence.

In the last part, I discuss the Pauline *katechon* – as filtered through the Schmittian *nomos* – as an example of another way in which human activity and decision-making can be formulated. The point with this discussion is to show how the *katechon* affords an overly rigid system that, through its obsessive concern with restraint, inevitably ends up consuming itself without end. This is, of course, the problem of auto-immunity; and so the piece ends by returning to music, but this time using Donna Haraway's references to the image of the immune system as an orchestra that, through time, begins to organise itself in a more de-centred manner (and perhaps even begins to improvise?)

Consequences of Listening

Free improvisation, non-idiomatic improvisation, experimental improvisation ... such phrases denote a music

making activity whose work, outcome, or product cannot be separated from the processes and techniques by which it is made. One either listens to improvised music knowing it to be improvised; or, perhaps encountering it by chance and being moved by it, one soon finds out that it is improvised – irrespective of whether this comes as a welcome discovery for the listener or not. In short, the appreciation of improvised music probably requires the listener to at least be aware that the method of production is improvisation. There is a necessary degree of reflexivity in freely improvised music. In this context, I am not referring to what might be called generic improvisation: improvised music that takes place in the context of a ‘type’ of music, such as jazz, rock, classical, raga, etc. Rather, as the idiomatic designator ‘non-idiomatic’ attempts to point out, I refer to improvised music that is, as it were, improvised from scratch and that, in its unfolding, actively avoids using the resources of pre-existing genre musics (unless deployed ironically or as in quotation).

In this sense, it is trivial to point out that ‘non-idiomatic’ improvisation has become an established idiom; rather, the better point is that it is an idiom that does not rely upon pre-established harmonies, rhythms, timbres, or patterns in order to exist as an idiom as such. To the extent that there is a ‘non-idiomatic’ style, it is the style of the individual, worked out and refined so that they may perform alone but also – and for this writer, more importantly – in conjunction with others. Like all good music, free improvisation gives the individual a voice and submerges that voice, making it part of something else. Improvising together requires an awareness of

process and, in this, can give a ritualistic – even shamanic – aspect to freely improvised music, as a condition of its emergence. This is not unique to such music-making but becomes more obvious because the usual supports of performance – a score, a repertoire, ‘hits’ – are absent. Improvisation is less about the pre-construction of musical tropes and figures, and more about the construction of social situations where such music can be played and heard. Sometimes (unhelpfully) referred to as ‘instant composition’, it is better to think of free improvisation as being, first and foremost, a social composition that happens to find expression through the various technologies of sound.

Freely improvised music foregrounds a number of problems – even, perhaps, *mysteries* – that are both implicated in, and go beyond, its ritualistic aspects. First would be the question: why bother with improvised music? Unless there is State or philanthropic support, performers of such music are not likely to make a living from it alone. Yet, at this time, a number of highly skilled musicians (meaning, musicians who could, at various points, have likely made a comfortable living from playing genre musics) have dedicated their musical lives to it. Is this dedication to an art? Perhaps, but this smacks a little too much of ascetism, overlooking both the significance of the social aspect of improvising and too, a possible ethical dimension inasmuch as it allows for a mutual yet individualistic self-defining.

Second would be the question: what *is* free improvised music? The difficulty of such a question is that this music can contain music but also noise and silence. What it

interrogates, then, is the social construction of sonorous material: why do we experience this as music, that as noise, and something else as silence? And are they really so different in essence? We might say that all sound is vibrating air, implying an immediate equalisation of all such material, whether 'music', 'noise' or 'silence'. Yet, asserting such equality is already a strategic and political gesture: all sounds might be equal, but no sound is innocent – that is at least, no sound echoing in a human ear. Improvised music is open to any potential sound, but it must be understood that the occurrence of any such sound will be judged, evaluated, decided upon by performer and listener alike. As such, a provisional, necessarily partial definition of free or non-idiomatic improvisation might be: music that, in its performing, attempts to respond to the consequences of its own sounding.

Third would be the question: what is free improvised music for? Catharsis for performer and/or listener? Or therapy? Or mimesis? These uses (and more) can all be present. Yet, it might be that the main aim of improvised music is to avoid manipulation. I mean by this that improvised music does not seek to illicit some particular outcome or use: it does not want to reconcile us, redeem us, uplift us, cure us, reassure us, make us fall in love, soundtrack our lifestyles, confirm our identities, bring us to a climax/prevent us from a climax. It confronts us with the possibility – and burden – of not being guided or manipulated, of not being brought to an epiphany whether negative or positive in tone. It exposes us, instead, to the potentiality of our human being. Of course, it is not the only human practice that can do

this – I do not wish to claim some special ontological status for improvised music – but it is nevertheless a practice which does, I would argue, depart from most of the current trends in music.

Not being concerned to manipulate, improvised music can be thought of as a *slow* medium. It does not have pre-formatted gestures or signifiers designed to trigger a definite, short-hand response. For this reason, it takes time and some concentration to get anything out of it. It requires a listening appreciative of the performer's listening. Over time, it requires some familiarity with the style of a performer to better appreciate how they, the performer, listen and, too, how they react to that listening. The performer of improvised music is to be heard working through the consequences of their own listening: that is their individual style. It is at this point that the performer's relationship to their instrument, voice, or other sonorous material becomes important. What counts is not mastery of an instrument, but having a singular style of playing.

What is the function of recording in all of this? In many ways, given the event-specific nature of free improvisation as a shared, and social, listening, it would seem anathema to record the sound of a performance for playback at some later time. Yet record labels such as Incus and Matchless Recordings rank amongst the first independent labels in the UK, and are still active. It is difficult to imagine that, having got their foot in the door, such labels thought they would produce riches of the scale seen with major labels such as EMI and Virgin. Nevertheless, one would accept that trying to get the music heard more broadly was a

rationalisation for such endeavours. However, more than this, I want to suggest that the recording of improvised music – and the circulation of those recordings (no matter how restricted that might be) – also serves another purpose, more integral to the practice of improvised music itself. Recording enables some sense to be made of improvised music.

In this context, sense should not be equated with meaning nor rationalisation. Improvised music is not practised to be recorded. However, recording enables a certain distance to be taken from the event of music making itself. If listening is already a central component of improvised music, it is not too surprising that a re-listening might also be desirable. A distanced re-listening allows for a different type of hearing, for other things to be heard. Most obviously, a recorded piece becomes a piece through the fact of being recorded – recording gives discreteness to improvised music, and this discreteness also allows for a different type of listening. In short, recording allows for an archive.

Discreteness, distance, sense. These are the products of archiving, not to preserve for some future time, but in order to make some sense of what is happening now. It is for this reason that the recorded archive should be understood as an *active* ingredient in the current practice of non-idiomatic improvisation.

Discreteness. An interesting and recurring experience of playing improvised music with others is that, very often, it will be clear to all performers when the end has been reached – i.e., when it is time to stop. I suspect that this shared experience has something to do with the forgoing

improvisation inasmuch as a *good* improvisation will suggest its own concluding. I do not mean by this the suggestion of a linear narrative structure (a 'beginning, middle, and end'), but rather a shared sensitivity that something has become exhausted. Of course, a player might decide to resist this, and to carry on – but this cannot be done without this resistance to the end itself becoming a figure of the continued music. The point here is that, having reached an end and stopped, the players (and audience) are left with the sense that something has happened. However, because improvised music does not organise itself around the standard manipulations (indeed, it prefers to avoid these in the main), it is difficult to know what it is that has just happened.

To flesh this out, it is useful to return to the question of what improvised music is for, slightly recast as: *what does improvised music do?* The short answer is that free improvisation makes *music differ from itself*. The first consequence of this statement is that improvised music does not involve the application of exterior forms or principles: no bar lengths, no harmonic movement, no melodic development is to be *applied* to improvisation. The development of an improvisation occurs according to the resources of the performers in the context of their performing. For this reason, improvisation should be understood as an immanent practice (and as a practice of immanence). The differentiations that give a piece its characteristics derive from it internally, as a sort of concrete affectation made manifest by the materials and choices of, and in, the performing event. A piece begins and ends, but what gives it its specificity are the

potentials of the situation (never explicitly adumbrated but, in the event of music, 'felt' as affected and affecting); along with the *actualisation* of certain potentials and the *non-actualisation* of other potentials.

This might seem confused, depending upon one's understanding of immanence. For Jean-Luc Nancy, immanence is an absolute, perfectly complete unto itself and – in the face of such completion – violently refusing of all that challenges its faith in that completeness; including, of course, its *own assertion* of completeness.² For Deleuze, immanence is not this, but the refusal of transcendence as an explanatory principle for existence. For him, immanence is not the rejection of difference, but the full internalisation of it: difference is not an externalised relation between pre-given terms, but the persistence of relationality itself, even in the absence of any such relatable terms.³ In other words, difference is the first term, meaning that there is nothing which does not differ *from itself*.

Deleuze's vision of ordering (individuation) is then not premised upon discrete, well-defined borders and identities. Rather, there are *singularities* which have a specificity and individuality (but not an identity) arising out of their existences; meaning, out of their arrangements, functionings, slippages, connections and disconnections, and so on. The edge or border of a singularity is not distinct, but fuzzy in essence so that, all one can finally say, is that one has moved from one singularity to another, without being

² Jean-Luc Nancy, *The Inoperative Community*, trans. P. Connor et al. (Minneapolis: University of Minnesota Press, 1991).

³ Gilles Deleuze, *Difference and Repetition*, trans. P. Patton (New York: Columbia University Press, 1994).

entirely sure just when or where the transition occurred. Of course, this also means that for immanence any singularity is itself composed only from other singularities.

The issue of discreteness in improvised music is then not one pertaining to pieces but, instead, to singularities. Each improvisation is a singularity, and it is the task of the performer to both realise this and, to an extent, make it explicit. This latter is a delicate operation, because it does not simply require making musical events happen but, just as much, making sure that inappropriate events *do not happen*; or, more accurately (because the inappropriate always does occur), being able to incorporate the inappropriate into the music's own singularity, as a bifurcating point of immanent difference. This means, then, that rather than a fixed piece – perhaps written out, with so many bars, notes, and chords – the specificity of improvised music lies in its mood or affective manifestation. Does this indicate that the music is simply in the ear of the hearer? No, because, the hearer is not, in fact, given licence to hear just anything at all – the immanent withholding of such permission is the very singularity of the musical 'piece'. This is also why political and ethical issues cannot be separated out from music: something is done to the hearer, to which the hearer can respond or not.

Distance. It follows that the idea of distancing is complicated for immanence. The usual critical notion of taking some distance so as to better reflect on events must be understood as an action *internal* to immanence itself. Abstraction is not a transcendence of the material, but an encounter with the powers that the material has to diverge from itself. Critical distance is perhaps better thought of

in terms of speeds: the speed with which abstractions can be manifested, meaning the power to make connections and disconnections in the material, as well as responding to surprising, possibly random, connections and disconnections. Distance-abstraction is the famous ‘diagram’ concept to be found in Deleuze and Guattari’s work,⁴ which can be thought of as a sort of evolving blueprint (or, even, score) *fostering* certain developments, actions, and connections, whilst also *following* developments, actions, and connections. By fostering and following, the diagram highlights the role of feedback in the continuation and transformation (positive or otherwise) of any given singularity. For this reason, distance-abstraction is present in any event of encounter between materials (whether real or ideal), with consequences that can happen both ‘quickly’ and ‘slowly’; indeed, the composition of speeds is inextricably involved in the specificity of a singularity – how fast and slow some things can (or cannot) happen.

Distance is the fuzzy border of the singularity, incorporated into the singularity itself but, too, extending it, making it difficult to say just where and when one crosses from a particular singularity to another (to what extent is an experience, idea, practice, trauma, feeling, etc., still operative?). The discreteness of improvised music is not the bringing to an end of a singularity, but – for that time and space, and for those people and materials concerned – the exhausting of a singularity. Who knows who will pick up the arrow in the future?

⁴ Gilles Deleuze and Félix Guattari, *What is Philosophy?*, trans. H. Tomlinson and G. Burchell (London: Verso, 1994).

Sense. Improvised music is a human activity. This points not to human exceptionality, but to human specificity. If we wish to make sense of improvised music we face difficulties, because it is a music that is often close to (sometimes indistinguishable from) noise and silence. Improvised music does not externalise its relationships with noise and silence so as to better distinguish itself; rather, noise and silence are internal to it from the beginning, making the status of improvised music continually problematic. As Cage pointed out in 1952,⁵ what we consider silence is sounds that we are not paying attention to. Similarly, noise is sounds that bring into question the specificity of an attentive listening; noise seems to be an unwelcome disruption or strikes as something out-of-place, but only because a specific listening has already been intended that would seek to bracket out such sounds. Improvised music plays with the aims and limits of such intentions, encouraging surprise for both performer and audience as sound that was not expected, because not *necessarily* intended. The distance-abstraction of what a music can and can't do in a particular moment is thereby brought to the fore, making both noise and silence strategies for improvised music.

It is in this assemblage of music-silence-noise that the Derridean 'archive fever' of improvisation is perhaps most apparent. Such a fever points to the provisional uncertainty of the sense of such music, in both its hearing and its performing, and it is this uncertainty which must nevertheless be made sense of if the music is to have

⁵ John Cage, *4'33"*, London: Edition Peters, 1952

consistency. The great conceptual difficulty is that this sense-making *remains* provisional – it is never conclusive, even after the music has ended. From this perspective, silence and noise become the membranes between performances, porosities through which things can pass from improvisation to improvisation; through which things can be filtered out; and through which other elements might be translated through. Silence and noise space music out.

Like any system, the system of improvised music is open to the differences that make a difference,⁶ an assemblage of repeating patterns interacting with discontinuities, mutations, and divergences. Only because there is difference is repetition possible (and *vice versa*),⁷ such that each repetition is itself a singularity. Repetition is a function exercised over and through what is encountered, evolving as a result, and calling into question relations of identity and transformation. The archive only endures through change. Here, if I prefer the term ‘archive’ to the term ‘system’, it is because I wish to mark the specificity of human systems as something singular yet, nevertheless, unexceptional. An archive is the systematic construction of human memory, the manner of our own feedbacking – intended and unintended – into systems and assemblages. If human existence is contingent, the problem remains of how to live with, and through, such contingency. How to archive or memorialise?

⁶ Gregory Bateson, *Steps to an Ecology of Mind: Collected Essays in Anthropology, Psychiatry, Evolution, and Epistemology* (Chicago: Chicago University Press, 2000).

⁷ Deleuze, *Difference and Repetition*.

Memory, of course, is not a static thing. More to the point, it is not simply in the past, but remains active as a condition of perception and action.⁸ From one perspective, neoliberalism⁹ might be considered as the honing of such activeness, with its constant demands for innovation and the embracing of change. Yet, this would be to radically underestimate the archival aspect of memory. Indeed, it would not be inaccurate to say that neoliberalism resists any archive at all, inasmuch as it always requires yet another ‘new beginning’ to remain permanently available to it. But such ‘new’ perceptions and actions are without value or, better, are to be valued simply because they have no value: no weight, no comparison, no past. Against this, an archive can only proceed by creative analogy when encountering a difference. If analogy-making is not possible for it – if a selective evaluation is beyond its power – then this is because the encounter

⁸ Henri Bergson, *Matter and Memory*, trans. N.M. Paul and W.S. Palmer (New York: Zone Books, 1988).

⁹ To be more specific, I mean by neoliberalism the infusion of an ethic of competition into any and all aspects of human life. ‘Activeness’, ‘innovation’, and ‘change’ should be understood in this register, as means to achieve more competitiveness. On the centrality of introducing, and maintaining, an ethic of competition as the essence of neoliberalism, see Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978–1979*, trans. Graham Burchell (Basingstoke: Palgrave Macmillan, 2008); Wendy Brown, *Undoing the Demos: Neoliberalism’s Stealth Revolution* (New York: Zone Books, 2015); Pierre Dardot and Christian Laval, *The New Way of the World: On Neoliberal Society*, trans. Gregory Elliott (London: Verso, 2013). A consequence of this ethos is the de-emphasis, or relativisation, of history as an explanatory or determining process. At best, in light of competition, history is something to be continuously overcome as, perhaps, ‘standing reserve’ – see Martin Heidegger, *The Question Concerning Technology and Other Essays*, trans. William Lovitt (New York: Harper and Row, 1977).

involves no difference at all (thus no change is required); or because the difference is too great (and the archive is potentially overwhelmed or destroyed). The problem of archiving is the encounter with contingency, of a power to affect and be affected.

In this light, and with reference to music, the term 'consistency' is to be preferred to 'composition' (instant or otherwise): how to give an improvisation sufficient consistency that it can be considered as an archival event or, even, as an entity (and not simply as one sound followed by another)? The musician's response can only be provisional: what might work as a consistent piece in one situation will not necessarily do so in another. Consequently, improvisation must be repeated (rather than recited), because consistency is not consistent once and for all. Improvised music is not eternal in this sense. In many ways, it might be thought of as a genealogical music, inasmuch as it could always have been otherwise, with alternate branchings and relays. This begins to bring us toward an answer to the question, 'why record improvised music'? What can be heard in such recordings is not only the consistency of the players' responses, but also the consistency of how they didn't respond, *but might have*. This connects with two earlier points.

The recording of improvised music allows the hearing of the players' listening and, from this, an appreciation – and possible evaluation – of their response to their own listening. Perhaps the most obvious example is when one player quotes a phrase from another player in a group, developing it and permutating it according to their style and ability (something that Cecil Taylor, amongst others, was a master of). Perhaps less obviously, but nonetheless

crucial to the consistency of a piece, is hearing how a player might refuse to respond, or perhaps respond ‘negatively’ or in a destructive manner. This brings us to the second point: how a player responds (or not) to their own listening is a question of their style (of their own archival fever). Recording allows for an appreciation of a player’s style to be more quickly acquired through repetition, and by allowing for a broader dissemination of improvised music than reliance upon live performance alone. This means that recorded improvisations are more than a record: in the true manner of an archive, they influence the reception and development of future music by allowing a more acute appreciation of style and, just as importantly, by providing a means for the performer to be able to reflect (with ‘more’ distance or slowness than available in performance itself) upon their own style. The recorded archive provides an important method for evaluating the consistency of a performance and, furthermore, for the future development and modification (through feedback) of the archive. In other words, recorded improvisation constitutes an evolving repository of evaluative techniques that accelerates the developmental potentials of performance itself.

Hearing the Sound Of

Recording as an archive – in a sense close to that of Derrida’s account in *Archive Fever*¹⁰ – cannot, in its specificity, be presupposed. Like the ‘content’ of an archive, the

¹⁰ Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. E. Prenowitz (Chicago: University of Chicago Press, 1998).

very existence of an archive is a matter of contingency and genealogy. Why do archives become necessary or desired at a particular time? How is it that they become individualised? There is, of course, no universally applicable answer to such a question. Evan Eisenberg's superb account of the shellac and vinyl record in *The Recording Angel*,¹¹ considers a number of psychological and socio-economic contingencies as context for the twentieth century's enthusiasm for records as commodities, art objects, *records*, and so on. Yet, Kittler, in his *Gramophone, Film, Typewriter*¹² highlights a stunning fact: the materials needed for the production of a phonograph (metal, wax, a pig's bristle) have been available since before the time of the ancient Greeks; yet it does not seem to have occurred to anyone to utilise these materials as a device to record sound until the nineteenth century. Why? What is it that, in the nineteenth century, made the desire for an archive of recorded sound *active*?

In *The First Concert*, Edwin Prévost imagines the first time that our early human ancestors might have listened: not listened generally but intentionally, with an awareness that they were listening. At that point, listening became something framed or assembled through consciousness of a specific faculty. Furthermore, that faculty would have become instrumentalised in the sense of being directed and capable of focus; the possibility of comparing what was being heard comes to the fore, with the potential

¹¹ Evan Eisenberg, *The Recording Angel: Music, Records and Culture from Aristotle to Zappa* (New Haven: Yale University Press, 2005).

¹² Friedrich A. Kittler, *Gramophone, Film, Typewriter*, trans. G. Winthrop-Young and M. Wutz (Stanford: Stanford University Press, 1999), 28–29.

for the listener to ‘compose’ what they hear by choosing to concentrate on certain sounds rather than others.¹³ Directed listening becomes an attribute, but this does not yet make of sound *something in its own right*. If we continue to imagine out from the scenario described by Prévost, our ancestors might have heard the sound of animals, forest noises, the grunts of their colleagues, thunder storms, singing, drums, and flutes – but all of these would have been the sound *of* something. The reception of sound as the sound *of* sound itself comes, I would suggest, much later, with the recording of sound. As Eisenberg points out, when we hear a clarinet on a recording, we are not hearing the sound of a clarinet, but the sound of the recording,¹⁴ and this becomes a matter of hearing the sound of sound itself. In this sense, all recorded sound is acousmatic even when we know its original source. Recording marks a radical distinction between the sound of a clarinet and the sound of such a sound – the latter becomes an entity in its own right, taking on the materiality not only of tape, vinyl, and bits, but too as a complex vibration of air, with frequencies and amplitudes susceptible of a more ‘abstract’ understanding via techniques such as Fourier analysis.¹⁵

However, this is not straightforwardly a phenomenon of science alone: Kittler’s point that recorded sound was possible much earlier in human history raises a question as to why this was not achieved. As he points out,

¹³ Edwin J. Prévost, *The First Concert: An Adaptive Appraisal of a Meta Music*. (Matching Tye: Copula, 2011.) See Chapter 8 in particular.

¹⁴ Derrida, *Archive Fever*.

¹⁵ Fourier analysis, as the analytical decomposition of complex sounds into sine waves, could be applied.

for the human voice to be thought of as recordable – meaning, here, a sound in its own right – it was necessary for the voice to have become conceptually detached from humans themselves. Voice, breath, anima, pneuma, spirit, soul – all of these were too intertwined for it to occur to anyone that just one of them – the voice – could (or should) be separated from the rest and preserved in a technical medium for re-playing at will. We might say that a certain degree of disenchantment was needed before it occurred to anyone that the voice could be recorded – the soul itself first had to be considered as the result of so many techniques and processes:

Only when the soul has become the nervous system, and the nervous system ... so many facilitations, can Delboeuf's statement [that the 'The soul is a notebook of phonographic recordings'] cease to be scandalous.¹⁶

This suggests that something like improvised music could not have occurred without recorded sound, to the extent that it depends upon the capacity to hear sound as sound. There is nothing inherently sterile or scientific in such a technique, because improvised music is still a music – meaning that it is more than an inventory or taxonomy of sounds. But, to generate its own archive as a human practice and memory, it needed to be able to hear sound as something in itself and thus as 'distanced' or abstract, so long as this is understood in reference to immanence: the sound of sound is the hearing of sound's potential, the hearing of how sound differs from itself.

¹⁶ Derrida, *Archive Fever*, 29.

The improviser must survey the parameters of a sound: not just pitch, harmonic relation, and rhythm but, more importantly, timbre as a variable compound of harmonics, frequencies, and amplitudes. This abstraction is to be heard immediately, in the time of its sounding, as part of the very concreteness of a sound. The improviser's abstraction is not something ideal or transcendent, but an encounter with the singularity of sound in its abrasiveness, with its being-there as eliciting a human response to foster, follow, or refuse. Nothing is more abstract than the potentiality of the concrete, the skill of the improviser then being to select such potentials with style.

What does potential mean in this context? The short answer I would like to propose is, 'an encounter with contingency'. Recently, the problem of contingency has come to the fore as an explicitly philosophical problem – most notably in Quentin Meillassoux's *After Finitude*.¹⁷ If contingency *is*, how does order become possible? Equating contingency with chaos is misleading, to the extent that the latter indicates an empty void or – which amounts to the same thing – an undifferentiated clamour. In distinction, Deleuze and Guattari's concept of the virtual insists upon difference as immanent and, in light of this, upon the singular quality of any 'part' or zone of the virtual.¹⁸

¹⁷ Quentin Meillassoux, *After Finitude: An Essay on the Necessity of Contingency*, trans. R. Brassier (London: Continuum, 2008). For an interesting account that makes a distinction between probability and contingency, see Elie Ayache's *The Blank Swan: The End of Probability* (Hoboken: Wiley, 2010). Yuk Hui's *Recursivity and Contingency* (London: Rowman & Littlefield, 2019) is another important contribution to the topic.

¹⁸ Deleuze and Guattari, *What is Philosophy?*

Contingency is thus better thought of as new information – a difference that makes a difference. In this sense chaos is relative, being too much information applied at the wrong level of systematic operation. However, I do not wish to complicate matters by attempting an analysis of the various theoretical contributions to date but, instead, to return to the archive as the human mode for encountering contingency.

The archive enables contingency to be met at a human level. Sometimes the archive is not successful in this, suffering disintegration at the hands of contingencies that are ‘too great’ for it; or calcification because of a failure to respond to contingencies that are ‘too small’ for it. In this, the importance of the archive is that, in and through its endurance, it becomes a power to meet contingency. Derrida has outlined the difficulties and problems that arise when, as has been the case ‘traditionally’, archives have failed to understand themselves as the consequence of contingency. There is nothing eternal or necessary about an archive, yet the human propensity to think otherwise has enabled the threat or problem of contingency to become attenuated; in the place of chance: a God, a sign, a nature, a cosmos. Nietzsche’s entire philosophy is concerned to confront this difficulty head on: can humanity survive its gods? Perhaps, more banally: can humanity survive the hearing of sound *as sound*? Not without ambiguity, recording would seem to be a significant method for doing so.

According to its composition and processes, its authority and memories, an archive re-constitutes itself in the encounter with contingency; from this, and assuming its

parameters¹⁹ have not been exceeded, it changes whilst remaining itself. If today, contingency is becoming a problem – meaning, the problem humanity has in confronting its own contingency – then we must expect that archives too will have to find a way to ‘process’ their own contingency. In other words, the archive must come to terms with the fact that it is itself a contingent assemblage – that it could have been otherwise than it is and, more to the point, *that it remains capable of being otherwise*. The rise of the disrupter in politics and economics illustrates the dangers of making of contingency nothing more than a new transcendent principle.²⁰ Instead, the purpose of the archive is to allow for selectivity – contingency does not mean that all potentials must be realised, but that what is actualised develops the archive in a particular direction – its ongoing specificity resulting from encountering such contingent events. At the same time, potential survives its actualisation,²¹ such that the archive is never closed nor complete ... and so remains prone to veering off course.

The archive is a memory moving from encounter to encounter, being capable of such encounters because of the specific qualities it has. It is a set of powers for filtering encounters. The task of the archive is to extract information from such encounters. To reiterate: information does not pre-exist in some raw state, but is the product of the encounter between an archive and the contingent.

¹⁹ My use of this word derives from Manuel De Landa’s *Assemblage Theory* (Edinburgh: Edinburgh University Press, 2016).

²⁰ As most forcefully presented in Naomi Klein’s *The Shock Doctrine* (London: Penguin, 2007).

²¹ See Giorgio Agamben, *Potentialities: Collected Essays in Philosophy*, trans. D. Heller-Roazen (Stanford: Stanford University Press, 1999).

The archive makes the encounter, according to the potentials of both its powers and the qualities of what it encounters. To exhaust an encounter means to use it to enrich the archive to the fullest extent possible and, here, enrichment should be understood in a Spinozist register: to increase the archive's capacity to affect and to be affected (that is, to foster and follow). Such processes must set the archive in relation to its own immanent difference; for the improviser, this means making the archive's own contingency central to its own operation. The archive – as a human system – must be 'aware' of its own contingency. Is contingency a threat or a possibility? Such a question once more makes it necessary to distinguish the simple-minded neoliberal tendency, which sees all disasters as opportunities, from the enrichment of the archive. The latter does not turn contingency into a transcendent principle in its own right, but continues to recognise that the contingent is always an encounter, a relation, a hybrid. As Krapp indicates, there is no God-place from which to 'celebrate' the contingent as something in-itself but, rather, only the persistence of relationality and the ongoing complications of memory.²² Recording helps us to grasp that it could be – can be – otherwise, even in the very last moments. In this sense, a counter-intuitive (and perhaps tragic) consequence of recording *is that it fails to fix anything*.

For the improviser, the persistence of potentiality, continuously re-presented through the contingency of relations, means that music, sound, and silence cannot be

²² Samuel Beckett, *Krapp's Last Tape* (1958), in *The Complete Dramatic Works* (London: Faber and Faber, 2012).

essentially distinguished from one another. This also indicates that free improvisation is unlikely to sit well with any Pythagorean notion of a harmony of the spheres.²³ Yet, improvisation is not without its orderings – but they are emergent orderings, in movement and under review. In this sense, we can think of recording as an example of second-order cybernetics, allowing not just for a specific type of abstraction from performance but too – and arguably more crucially – an abstracting of sound itself. This has encouraged a ‘re-wilding’²⁴ of music inasmuch as it has fostered the extension of acceptable sounds to include noise and silence. Recording has also fostered the return of an experimental attitude in relation to any sound-making material. The specificity of improvisation in our time is indicated here by the use of the word ‘experimental’, to indicate abstracting in light of the continuous potential for further abstraction. To stress once more, this is not a refinement or transcendental operation, but an encounter with contingency; more to the point, it is an encounter with contingency at a time when the essential or necessary fact of contingency is increasingly incorporated into the perception and conception of human action.

Airs, Sweet and Turbulent

Like Hobbes, Carl Schmitt articulates a clear notion of sovereignty at exactly the point at which the notion

²³ For critiques of the Pythagorean Harmony of the Spheres, see Tony Conrad, *Writings* (New York: Primary Information, 2019), and Edwin Prévost, *An Uncommon Music for the Common Man* (Harlow: Copula, 2020).

²⁴ Discussed in Prévost, *The First Concert*.

described is becoming untenable. Just as the centralised sovereign-compact of protection for obedience is slipping away in the mid-seventeenth century, so too the idea of humans being able to decide what is exceptional is withering in the first part of the twentieth century. Before proceeding, I want to be clear that neither Hobbes nor Schmitt have anything to do with improvised music. At the same time, I also want to stress that I am not offering improvised music up as a model for political or social organisation. However, if I am justified in bringing improvised music into relief with political philosophy, it is because the archive of improvised music *is just as valid as any other human activity* as a framing of questions concerned with order and interactivity. Immanence means that we must dispense with the idea of a centralised power or authority, from which all other such power or authority is delegated. Rather, an archive simply *takes power* through its very consistency. If the centre cannot hold, then we must also grasp that the status of otherness is not exceptional. Instead, the continuing political demand to refuse the marginalisation of the other must be grasped as the continuing unfolding of an abstraction. If so, it might be that human ethics should be re-cast as an immediate attempt to activate an *nth stage of repetition*. In other words, if humanity is to foster and follow itself, the point must be reached where the idea of an 'exceptional person' ceases to be thinkable.

Instead of exceptions, there are examples.²⁵ As a counterpoint, it is useful to consider Schmitt's later work on the

²⁵ Here, I am thinking of the ambiguous quality of the example as set out by Agambenn: that an example stands out as being a remarkable

idea of *nomos*.²⁶ The reason for this is that here, Schmitt proposes an idea of order that could be construed as potentially ecological,²⁷ inasmuch as it attempts to think a human archive as something inscribed on the land itself; the archive as an environment. As such, Schmitt is interested to investigate the parameters by which a system of human law could be made operational, with enough resilience that it would, in effect, repeat itself. The key to such a system for Schmitt is the land: more to the point, the inscribing of the land (marking it, giving it character), such that the legal system has enough order and orientation that it can administer itself in the face of contingencies. The right balance of closure and openness, whereby the earth itself becomes archival. The law should be written onto the land – most obviously through the use of boundaries and other markings – becoming, as it were, the very program or algorithm of the law. This is the idealisation of a law that would not need to be applied by anyone because it would be self-administering: human behaviour would be conditioned and controlled by the arrangements of space, movement would be guided,

indicator of a more generic grouping; yet, at the same time, the example is as generic as any other member of that group. The ambiguity, then, is about the example as being, simultaneously, both general and specific. See 'What is a Paradigm' in Giorgio Agamben, *The Signature of All Things: On Method*, trans. L. D'Isanto and K. Attell (New York: Zone Books, 2009).

²⁶ Carl Schmitt, *The Nomos of the Earth*, trans. G. L. Ulmen (New York: Telos Publishing, 2003).

²⁷ In what follows, I use this word with reference to Gregory Bateson, *Steps to an Ecology of Mind*. (Chicago: Chicago University Press, 2000).

nudged, blocked, and directed.²⁸ The marking of the land would be the foundation for all other law, the bedrock of a legal code inscribed first and foremost in the visible and resistant features of the human environment. The land, so overwritten, provides the sense of direction by which a subsequent human society can be given an orientation, allowing new encounters and contingencies to become adapted to the pre-existing order.

Obvious to say that with Schmitt, we leave the ear behind. The ordering of the earth is first and foremost *to see how the earth has been divided and bordered*. It is worth noting in passing a performative contradiction here, inasmuch as to be able to see the divided earth it will already have been necessary to have left the orientation of its inscribed surface so that *it might be seen from above*.²⁹ From that vantage point, the eye can probe into the distance, to compare, refer, verify, and so on. The Schmittian eye directs itself to the proper allocation of things, depending upon the divided earth. In contrast,³⁰ we can consider the ear to receive more than it directs, and as being caught up in an

²⁸ For more on these themes, see Nathan Moore, 'Diagramming Control' in *Relational Architectural Ecologies: Architecture, Nature and Subjectivity*, ed. Peg Rawes (London: Routledge, 2013).

²⁹ On the significance of the aerial view (and imaginary) see Jeanne Haffner, *The View from Above: The Science of Social Space* (Cambridge: MIT Press, 2013).

³⁰ I do not wish to set an essential difference between the ear and the eye but, rather, to use their mobile specificities as a way to draw a distinction between the archive and the katechon (see further in the text). Nevertheless, it is not without merit that Marshall McLuhan wrote, 'There are no boundaries to sound'. See 'Visual and Acoustic Space' in *Audio Culture: Readings in Modern Music*, eds. Christopher Cox and Daniel Warner (New York: Continuum, 2004), 68.

endless process of attunement,³¹ through which it gathers itself. In this sense, both the eye and the ear are *diligent*, except that the ear falls upon collecting and assembling more than the eye, which focuses upon the selecting and separating of what has been gathered.

Selectivity and separation also imply, for Schmitt, the problem of retaining and holding, as is clear from his treatment of the etymology of ‘*nomos*’. From the three senses of *nomos* he describes,³² it is the case that the working of the land to make it productive, and the allocation of the land as so many plots and claims, are dependent on a prior appropriation. Seizing land is the most basic ground of *nomos* including, of course, the problems of then holding onto it. Consequently, there is clearly no ecological dimension to Schmitt’s thinking because it remains resolutely anthropocentric: how to seize land from other humans, and how to protect ownership against other humans. Holding land, *nomos*, makes those that hold it exceptional, because of their very power to appropriate. This is the ground of sovereignty, showing a consistent thread throughout Schmitt’s work: from the definition of the sovereign as he who decides upon the exception, to the *nomos* of the earth as the power of appropriation.

Exception and *nomos* can be brought under the envelope of the *katechon*.³³ Rather than an ecology, archive, or

³¹ See Sara Ramshaw, ‘The Song and Silence of the Sirens’ in this volume.

³² Schmitt, *Nomos of the Earth*.

³³ Roberto Esposito, *Immunitas: The Protection and Negation of Life*, trans. Z. Hanafi (Cambridge: Polity, 2011), 71. *Katechon* is a term that has become significant because of its use by St Paul in his Second Letter to the Thessalonians. Its interest derives from a seeming contradiction, whereby evil is held at bay but only at the expense

open system, the katechon maintains closure – this is its ‘power’ and its exceptionality. The katechon is that which withholds or restrains – clearing an appropriated space and holding it. Esposito analyses the katechon as a paradigm of immunity:

[T]he *Katechon* restrains evil by containing it, by keeping it, by holding it within itself. It confronts evil, but from within, by hosting it and welcoming it, to the point of binding its own necessity to the presence of evil. It limits evil, defers it, but does not eradicate it: because if it did, it would also eliminate itself.³⁴

The danger, as articulated by Esposito following Derrida, is that the immunising action of the katechon comes to recognise its own functioning as not only restraining evil but, too, as also allowing for the survival of evil. At that point, the katechon tips over into auto-immunisation, fighting itself in a headlong (and suicidal) rush to preserve itself by eradicating itself. Might this be understood as something akin to second-stage cybernetics, whereby the katechon begins to take its own operation into account as an element of its ongoing operation? Auto-immunising – the immune system attacking itself to preserve itself – might be akin to the processing of sound *as sound*; except that improvisation does not – generally – seek to eradicate itself.³⁵ The crucial difference, between the nomic katechon, and the archive of improvisation, is that the latter

of putting off the coming of God’s Kingdom. As well as Esposito and Agamben, it has also been discussed by Massimo Cacciari in his *The Withholding Power: An Essay on Political Theology*, trans. Edi Pucci (London: Bloomsbury Academic Press, 2018).

³⁴ *Ibid.*, 63.

³⁵ Although this perspective perhaps raises interesting questions about the use of certain minimalist approaches in free improvisation.

does not prioritise closure. Whilst certain compositional strategies might seek to enclose improvisation,³⁶ free or experimental improvisation not only remains open to contingency, *but finds its very necessity in it*.

Donna Haraway has already pointed out the dangers of over-estimating immunity as an appropriate diagram for human organisation.³⁷ The katechon is over rigid, inflexible, concerned to hold the enemy out and at bay and, in so doing, draws out a sort of eternal now.³⁸ Haraway perhaps did not have Schmitt in mind when she wrote, yet her concern over the ‘militarisation’ of the immune system, as an object of scientific discourse, problematises the notion that the body to be protected could ever be, in practice, discrete, unified, non-porous, or clearly differentiated. In short, there are no *exceptional bodies*; instead, only bodies (as systems) encountering other bodies. Haraway writes:

[T]he immune system is in some sense a diagram of relationships and a guide for action in the face of questions about the boundaries of the self and about mortality. Immune system discourse is about *constraint and possibility* for engaging in a world full of ‘difference’, replete with non-self.³⁹

³⁶ See Prévost, *The First Concert*.

³⁷ Donna Haraway, *Simians, Cyborgs, and Women: The Reinvention of Nature* (London: Free Association Books, 1991). See Chapter 10.

³⁸ As Agamben has pointed out, the temporal aspect in play here is highly ambivalent: it is concerned to keep the forces of evil at bay; yet, it cannot reach the final security/immunity of the kingdom without first confronting – indeed, being overrun by – those forces. Consequently, the katechon keeps both God and Satan at a distance. This produces a suspended or halted time: not quite the end, but the time ‘just’ before the end. See Giorgio Agamben, *The Mystery of Evil: Benedict XVI and the End of Days*, trans. A. Kotsko (Stanford: Stanford University Press, 2017), 34.

³⁹ Prévost, *The First Concert*, 214 (my emphasis).

The point is that if non-self is to be ‘contained’ – rather than encountered – then the militarised notion of immunity cannot avoid attacking itself, because it is not able to finally separate itself from its non-selves. There is no body that stands separated from the situation of its particular time and space (i.e. its ecology), being, ‘necessarily finite, rooted in partiality and a subtle play of same and different, maintenance and dissolution.’⁴⁰

Archive and Katechon

Of course, it is no surprise that if Schmitt fails to achieve an ecological thinking, it is because he remains committed to the idea of the exception until the last. As such, he is not so much interested in an archive as he is in the katechon. On the one hand, a flexible system adapting to (and producing), where possible, contingency; on the other, a rigid system intent on erasing contingency and thus, in the process, ultimately intent on eradicating itself.

As noted above, the discreteness of the archive involves a high level of undecidability about where the edge of an improvised ‘piece’ actually is. This does not make any given improvisation undifferentiated, but means that the process of the improvisation is ongoing beyond the confines of its own performing (or, indeed, recording). The specificity of an improvisation is in the composition of its occurring, in terms of the players and their styles, the audience and their listening, and (where applicable) in its recording and playback. At a certain level, this means that ‘bad’ improvisations are just as significant as ‘good’ ones,

⁴⁰ Ibid., 205.

without the ability to distinguish the two being lost: both are information for subsequent improvisings. In this way, the archive of improvisation does not seek to eradicate either its non-self or – more significantly – its own difference from itself. Indeed, according to the above, this latter is what it seeks to elicit.

The *distance* of the katechon – its abstracting – is transcendental, inasmuch as it seeks to make the material conform to its own idealised account of itself. There can be no hesitation or working through of what informs it; instead, what is idealised is an ever faster ability to distinguish ‘friend’ from ‘enemy’, so that the latter might be contained or destroyed. The nomic body aims to transcend itself, and so to exist outside of itself, through a forced, but impossible, convergence on its (future-projected) self. Rather than differing from itself, it aims to coincide with itself now and forever. But, in the end, the only thing that does not differ from itself is death: non-being as a uniform void or absence. *Nomos* is not responsive, it does not foster nor follow, but assimilates and equalises: it is a negentropy aiming at the ‘completion’ of entropy.

The *sense* of the katechon is not related to duration through change or discontinuity. Rather, it tends to depart from any experience of duration, becoming an eternal instant or end of history happening *now*. Referring to Agamben, we might say that nomic sense is both already and not yet,⁴¹ serving to suspend any possibility of evaluation or judgment, in favour of a brute will

⁴¹ Giorgio Agamben, *The Time that Remains: A Commentary on the Letter to the Romans*, trans. P. Daley (Stanford: Stanford University Press, 2005).

to power masquerading as decisiveness. Lacking the means to evaluate, the nomic katechon tends to present everything without perspective, as crisis or impending catastrophe. The best that can be said is that whatever is encountered should be appropriated if at all possible, not so *nomos* can repeat and differ, but so that it might carry on in its unchanging nowness and petrifying continuity. Consequently, there is no nomic sense (or nonsense)⁴² to speak of. Neither chronic nor aionic, the time of the end cannot be made sense of.

This all suggests a basic point: there can be no system of systems (no catalogue of catalogues); and the decision in favour of the katechon, rather than the archive, can only be at the cost of a dangerously unstable tendency towards auto-immunity. From this perspective, it might be that something more remains to be said about Haraway's account of how the immune system was represented through different editions of Golub's *Immunology: A Synthesis* textbook, in the 1970s and 80s.⁴³ Haraway describes how the human immune system was depicted in Golub's text-book as an orchestra, initially with certain cells presiding over events as a conductor would, with other specialised functions being both subordinate to, and coordinated by, the immunological baton. As Haraway writes, the illustrations, through the various editions, 'are about co-operation and control'.⁴⁴ Yet, through subsequent editions, the conductor is increasingly side-lined,

⁴² Gilles Deleuze, *The Logic of Sense*, trans. M. Lester and C. Stivale (New York: Columbia University Press, 1990).

⁴³ Prévost, *The First Concert*, 205.

⁴⁴ *Ibid.*, 206.

with the illustrations tending to depict a more decentralised (musical) organisation. By the end,

The joke of the single masterly control of organisational harmony in the symphonic system responsible for the integrity of 'self' has become a kind of post-modern pastiche of multiple centres and peripheries, where the immune music that the page suggests would surely sound like nursery school space music. All the actors that used to be on the stage-set for the unambiguous and coherent biopolitical subject are still present, but their harmonies are definitely a bit problematic.⁴⁵

Leaving to one side what we might understand by 'post-modern' in this context, the more interesting point might be that from a divergence of specialisms and tendencies, systems and bodies come to be affected by, and to affect, each other. More than this, that these bodies do not exist as such outside of the relations that they enter into or, better yet, that through these relations certain potential tendencies are actualised and, through these actualisations, certain other potentials are elicited in the other bodies encountered which, in turn, feedback to turn on or off potentials in the other bodies. And yet, even more, through all of this, new potentials can emerge, either to be realised or not. This is not the katechon but an improvised archive or, to borrow the (in)famous phrase of William S. Burroughs: there is nothing here now but the recordings.⁴⁶ Something which has never not been true.

⁴⁵ Ibid., 207.

⁴⁶ William S. Burroughs, *Nothing Here Now But the Recordings*, Industrial Records, 1981.

Conclusion

Drawing distinctions are useful and, indeed, inevitable. Yet, any given distinction must not become over-determined. Haraway's account of the immune system-as-orchestra shows that slippages, breakdowns, and dis-harmonies can begin to show through in even the most ordered of representations. If this is so, it is because the difference between archive and katechon is very small – even, more or less nothing. Yet, in this almost-nothing, the call for human decisiveness resides, even if I must express it here, by way of a conclusion, in a crude or superficial way: archive *and* katechon/archive *or* katechon. The undecidability between 'and' *and/or* 'or' already indicates that a decision cannot finally ground itself, leaving further decision-making unavoidable. The danger is to make of this unavoidability a proper ground or apparent legitimation – i.e., to make it into the exception. Against this – and this is the appeal of the archive – decision calls for recursivity,⁴⁷ as the process through which the archive endures in its concrete abstraction.

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⁴⁷ See Yuk Hui, *Recursivity and Contingency*. (London: Rowman & Littlefield, 2019).

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The Free Scene, A Free Acoustic

Brandon LaBelle

Shall we play dead?
Shall we run?
Shall we find the exit?
Shall we continue to dream?
Shall we honour the fallen?
Shall we storm the gates?
Shall we capture the flag?
Shall we wait?

Pause
Hesitate
Occupy

The coming together of the coming apart – the neighbourhood torn at the seams – the bottles and the smiles, the sofa onto which he falls – the togetherness, the warm embrace, the disappointments and the longing that leads to crafting new bodies – this body, the one he hopes to give away – is this not the heart of the

matter: the heart that wishes against the odds – he steals the opportunity, to create a context for sharing the deep innermost desire, the desire that pours out through the creativity that is living, to enwrap these together into a fragile community (the evicted and the expelled, the poor and the self-built, those susceptible to the push and pull of gain and loss) – the chairs gathered from out of the backroom, marked and scraped, and placed together, giving way to the articulation of an aesthetic expressivity, the arrangement that says: *let us speak, let us listen, let us find a way* – the folded blankets, the banners they make at home, on the kitchen table – the scribbled notes, and the captured archives sewn together into an assemblage: *he she them this, and others* – the newcomers that we are – onto the scene, this scene of the new knowledge – the tonalities of collective invention taking shape – like a mix-tape pirated from the media streams and nocturnal listening: *wait, I love this song ... from out of nowhere* – from the paintings taped together to the tables screwed into place, from the colours that speak of other worlds to the hand that reaches, suspended in mid-air as it constructs from nothing a body of thought, a resistant idea – *I wish for a new conscience, the project of loving relations* –

Shall we scratch the surface, or dig deep?

Shall we create another territory?

Shall we hold hands?

To carry the weight...

Together?

As the words resound across the parking lot, he pulls the threads, draping them through the chain-link fence,

fastening in place signs for tomorrow, the blue messages sent from across the networks, planting their transmissions and horn-blasted calls so as to give way to a mutational future, as he pulls again the threads, aligning the near and the far, the black unicorns and rainbow churches, into coalitional frameworks, the solidarity economies ... which she sketches onto the side of the building, the words resounding across the parking lot.

The street, the night, the hand, extending to float, to exit only to come up again, to balance between the vague idea, this hopeful activity, and the concrete form: what might such poor constructs provide for the scene of social movement and the needs of the many – upon a line that becomes a glowing thread vibrating with the excitement of new dialogue, intimacy, the uncertainties of the project, and the compassion of heart-beating work – to lose, to grapple with the brutal weight of nothing, and then everything: *he she them this, and others* – the tension of this thread always on the verge of breaking – he tries to hold it, they try to sustain the practice, this fragile community – what he learned during walks through the night with his friends by the ocean, and the noise, the whispers, and the deep silence, the tidal force of togetherness, these sounds that would always make his heart stop, to dream and to give shelter to the fugitive idea – *O, teach me how to be vulnerable* – where are the rooms in which such sounds may find their reverberation, their resonant lessons – where are the cities that might shiver with the touch of this vibration, the thread that may become a street under his steps, hers and the others, close, closer – his friends beside him, and he for them – that is the

beginning, the first scene from which all others emerge: the scene of love, and of rebellion, of intimate rhythms and wild synchronizations – *this body that grates against the lines of legality* –

Shall we turn the other way?

Shall we strike?

Shall we refuse to pay the rent?

Shall we build an underground culture, secret?

Within this scene of togetherness and threadbare hope, improvisation and joint attention, he listens into the darkness, the wind, into language and the voices of others, each sound a defiant guide – this listening that gives way to a new social body: the punctuated timing and multiplied spacing, the horizontal caring and attending, to each and the other, a heated breath passed from lung to lung – this passionate listening as the basis for what some call ‘redemocratisation’ and that he overhears, pronounced like a dizzying refrain sent here and there, within the unrest that captures life and the body and the hidden planetary rhythms – drawing together, with-drawing – into a composition of fragments: *being-with-with* – the others speak of self-determination, universal beings, the pressures of the global project, the city of signals and disposable buildings, the economy of the event which exhausts the imagination with its feverish productions and channels of distressed longing – this speaking that proliferates and that searches for ways to enter while staying out of bounds, on the move – edges that fray under the push and pull of gain and loss, threaded into a coming together, the outlaw neighbourhood, of pink streets and caravans of the erased, self-made gardens and open

parks – this resistant togetherness figuring soft thresholds and another tongue – vocabularies of dissonance and stillness, of affection and the sounding out of vague territories, queer orientations and tender gestures that collect in their sweet vibrations other worlds: the law of ecosophical actions that rework the space of appearance – ducking undercover and through, alongside and with, into regions of interconnection, the tensed and fecund arenas of restless discourses, humming, punctuating, the erotic becoming that flows the common body in and around the barriers and the abandoned – birthing a soulful imaginary –

Shall we hold still?

Shall we escape?

To give way to the utopian ideas held between?

He does not know which way to turn, along this street, as she taps out another rhythm with her steps, sounding out the materials underneath, the acoustic below, to listen across its surfaces, its chambers, like vessels trafficking in differentiating echoes, scratching the lines of this dominant form, this scene of struggle, with the elsewhere suddenly here, within and without, frequencies of alien life always already upsetting the border regimes, and the bounded frontiers, to weave from pulled threads and wet whispers, the restless formation of a general vitality, a distributive agency that he and she carry, give away, making of the city a scene of thresholds, of slowness and creative passages – the fair hearing (of this, of that, those and them: a tribunal of the street) that nurtures a more-than-human movement: the immediate crafting of solidarity, for that which staggers the decrees of independent life with its pirate care.

The square, the circle, the rounding dance, those that spin into the night – the emergent networks – the continual drive, precarious, like a weak-strength – the weakness of this thought, this body, resilient and persistent – to trespass: to fan the flames of a polyphonic interruption, an acousticking act: *he she them this, and others* – a scene of floating subjects, threads – to give way to the knowledge found on the palms, held, carried and opened on this occasion, born from blisters of loss and making – clasped together, blister to blister – the incursions that are always a question of love and rage, law and the legible, and the daring to speak, to proliferate the named, the counted, the heard – as the absolute intruder, this which refuses to go away – the trans-figuring mix, the bright words, the dirty sound that captures contemporary life as it is – she tells of what was left behind, she maps the territories of broken homes, she argues for new concepts of science and the commonwealth – he speaks of the squats, the poverty and the crowbar needed, and the neighbourhood parties they would create – and the others question, grasp the pile of straw and bags of crumpled paper, making pillows and vague constructs that become benches and shelves for the books – to make an arena of dialogue, this proliferating echo – as if –that gives way to an art of noticing of crafting –

They say then

We say now

They say to produce

We say to have and to need

They say when

We say whenever

They say the time has gone
We say the time has come
They call it the service provider, the benefits
We call it the apparatus, anxiety, control
They say the said
We say the saying, as if

The living, the breathing, the journeys and the anarchic formations, suddenly – the night walks, border academies, the fragile community – wishing and dreaming, losing and singing, threading constructs of common space pulled from institutional parameters and the discourses that refuse entry – the crafting from your experiences (your touch...the touching, ear to ear, hand to hand) and the shared narratives of survival a free city – the free zones, and the free articulations given traction – an acoustic care in support of other orientations, the reverberations – where we may meet – to shelter from the perennial pace of everything/nothing, gain/loss – what may come from the open body more than itself – the wild ontologies founded on the right to listen –

Shall we disrupt, disappear?
Shall we interrupt, attune, and realign the sightlines of justice?
To look out for others, to hold this scene?
For the resonating reach of the not-yet ...

Pause
Hesitate
Occupy

Sonic Coexistence: Toward an Inclusive and Uncomfortable Atmosphere

Nicola Di Croce

1. Listening and Designing Urban Atmosphere

Venice, Autumn 2018

Every morning I meet a young African guy begging around the corner. Even when I look away his voice trembles and makes me tremble. The sorrow manifesting through his words is uncomfortable to me because it collides with my thoughts, it awakes me as from a sweet dream. 'Hey boss' he says, disclosing a hierarchy that places him at my mercy. Beyond any definition of pleasant and unpleasant this voice attracts my curiosity, yet it brings me outside my comfort zone, it makes me face what is other than me. His sonic presence is subtle; it resonates inside my body, makes my attention threshold higher, helps me reframing the idea of noise and nuisance, gives me unpredictable keys to access the complexity of the urban sonic environment.

Critical listening can support understanding *the other*, the unknown, and even the awkward; it can unveil the rhythms that structure everyday life. Following Lefebvre's rhythmanalytical project it is possible to claim that rhythms can 'express the complexity of present societies',¹ the undergoing urban transformations and social dynamics. In fact, as every rhythm has its own pattern, it usually remains unnoticed as long as an occurrence changes its course. This happens for example 'when rhythms "of the other" make rhythm "of the self" impossible',² when a voice from a stranger suddenly undermines one's thoughts. This is why listening critically to the sonic environment can uncover the patterns that remain unnoticed, as every 'Rhythm appears as regulated time, governed by rational laws, but in contact with what is least rational in human being: the lived, the carnal, the body.'³ Understanding the entanglement between the bodily (the sonic) perception and the normative system is central to this reflection as it involves processes of social formation and territorialisation.⁴

Firstly, body perceptions give access to the experienced character of a place, to its urban atmosphere. As stated by Böhme 'The atmosphere of a city is the subjective experience of urban reality which is shared by its people.

¹ Henri Lefebvre, *Rhythmanalysis: Space, Time and Everyday Life* (London: Continuum, 2004), 44.

² *Ibid.*, 99.

³ *Ibid.*, 9.

⁴ Andrea Brighenti and Mattias Kärrholm, 'Beyond Rhythmanalysis: Toward a Territoriology of Rhythms and Melodies in Everyday Spatial Activities', *City, Territory and Architecture*, 5, no. 4 (2018): 1, <https://doi.org/10.1186/s40410-018-0080-x>.

They experience atmosphere as something objective, as a quality of the city.⁵ But how an atmosphere is structured, and more precisely how do everyday sounds shape urban atmosphere? The contribution of sound to urban atmosphere has been explored by many authors⁶ who refer to the special ability performed by the sonic environment to influence the image of a place. Among others Feigenbaum and Kanngieser state that: ‘Sound creates atmospheres through its pitches, tones, volumes, frequencies and rhythms, which penetrate and travel through material and immaterial matter across distances, filling spaces within and between bodies.’⁷ Influential studies have also demonstrated how human sounds enhance the attractiveness of public space,⁸ even if the hubbub itself could be seen as uncomfortable by many dwellers if removed from its original context. The overlapping sounds of an urban situation often contribute to an atmosphere that is recognised as lively in so far as it shows it is a rich set of layers and reveals the presence of human activities. Following

⁵ Gernot Böhme, *The Aesthetics of Atmospheres* (London: Routledge, 2016), 133, <https://doi.org/10.4324/9781315538181>.

⁶ See in particular Michael Gallagher, ‘Sound as Affect: Difference, Power and Spatiality.’ *Emotion, Space and Society* 20 (2016): 42–48, <https://doi.org/10.1016/j.emospa.2016.02.004>. See also Michael Gallagher, Anja Kanngieser and Jonathan Prior, ‘Listening Geographies: Landscape, Affect and Geotechnologies’, *Progress in Human Geography* 41, no. 5 (2016): 618–637. <https://doi.org/10.1177%2F0309132516652952>.

⁷ Anna Feigenbaum and Anja Kanngieser, ‘For a Politics of Atmospheric Governance’, *Dialogues in Human Geography* 5, no.1 (2015): 82, <https://doi.org/10.1177%2F2043820614565873>.

⁸ See among others Francesco Aletta and Yan Kang, ‘Towards an Urban Vibrancy Model: A Soundscape Approach’, *Environmental Research and Public Health* 15 (2018): 1712, <https://doi.org/10.3390/ijerph15081712>.

this line Wissman claims that ‘The cacophonous mix of urban sound that surrounds us in an urban environment is usually not disturbing because what we hear is an integral and accepted part of the urban dweller’s life.’⁹ In fact, when talking about the urban vibrancy of a square or a street one may refer to its background noise, to the special buzz that animates public space giving voice to its protagonists and their sonorous everyday practices. No matter if the sonic environment is too loud or noisy: it is accepted as part of the routine, it is comfortable by a majority as it makes them participate in a shared yet contradictory space.¹⁰

The centrality of sounds in shaping people’s everyday experience introduces the notions of *affective atmosphere* as a product of the interaction and mutual influence between human and non-human bodies. Following Anderson: ‘Affective atmospheres are a class of experience that occur before and alongside the formation of subjectivity, across human and non-human materialities, and in-between subject/object distinctions.’¹¹ From a sonic perspective this includes what a body hears and immediately finds comfortable or uncomfortable beyond any cognitive process, therefore before a certain emotion emerges. Listening to everyday sounds means then

⁹ Torsten Wissmann, *Geographies of Urban Sound* (Farnham: Ashgate, 2014), 1.

¹⁰ See: Mags Adams, Trevor Cox, Gemma Moore, Ben Croxford, Mohamed Refaee and Steve Sharples. ‘Sustainable Soundscapes: Noise Policy and the Urban Experience.’ *Urban Studies* 43, no. 13 (2006): 2385–2398, <https://doi.org/10.1080/00420980600972504>.

¹¹ Ben Anderson, ‘Affective Atmospheres’, *Emotion, Space and Society* 2, no. 2 (2009): 78. <https://doi.org/10.1016/j.emospa.2009.08.005>.

encountering a multitude of stimuli that prior to being processed orient urbanites' experiences and actions. As accounted by Rodríguez Giralt, López Gómez, and García López: 'At any hour, sound and sonorous practices reveal themselves to us as a valuable means for ordering, attracting, advertising, complaining, limiting, affecting, silencing or producing a breaking point within urban life, which is already booming on its own.'¹² Central to this framework is the heterogeneity of urban sounds, especially when they contribute to fashion an affective situation where people are involved in a distinctive scene, participating to a 'soundsphere' – an atmospheric bubble.¹³ In this sense sounds and (more widely) vibrations as 'affective tonalities' are not just passively part of the interaction between bodies, rather are actively influencing those bodies, their movements and feelings. As Goodman pointed out, '[a]ffective tonality can be felt as mood, ambience, or atmosphere. [...] As such, and unlike an emotional state, affective tonality possesses, abducts, or envelops a subject rather than being possessed by one.'¹⁴ Through Goodman's account it's clear how sounds and vibrations are crucial to acknowledge the politics of human interactions, as they are used to orient

¹² Israel Rodríguez Giralt, Daniel López Gómez, Noel García López. 'Conviction and Commotion: On Soundspheres, Technopolitics and Urban Spaces', in *Urban Assemblages: How Actor-Network Theory Changes Urban Studies*, ed. Ignacio Fariás and Thomas Bender, 183. (New York: Routledge, 2009).

¹³ Peter Sloterdijk, *Bubbles: Spheres Volume I: Microspherology* (Cambridge: MIT Press, 2011).

¹⁴ Steve Goodman, *Sonic Warfare: Sound Affect and the Ecology of Fear* (Cambridge: MIT Press, 2010), 189.

affective atmospheres or even deployed as subtle and powerful weapons.¹⁵

How then is an atmosphere engineered? As suggested by Cobussen: ‘Urban spaces are being politicized through design. They are being designed to invoke affective responses. Through a particular design of a sonic atmosphere, its impact as well as the ways in which it is experienced can be enhanced, decreased, stabilized, or altered.’¹⁶ The policing of the sensible is then strictly tied to the institutional and normative system, to the set of norms and urban policies that surround and follow human everyday experience, or more precisely to what Philippopoulos-Mihalopoulos defines as *lawscape*. As he suggests: ‘The atmosphere of the lawscape is perfectly engineered to appear as a city that is guided by preference, choice, opportunity, freedom. Scratch the surface and you feel the law pushing all these preferences into corridors of affective movement, atmospherics of legal passion that are material through and through yet appear reassuringly distant and abstract.’¹⁷ The effectiveness of lawscape can be found in its abstract yet affective value, in its atmospheric yet material formation. Within this framework – that of affective interactions and legal influences – citizens navigate in a multilayered sea of stimuli where their

¹⁵ See also: Jordan Lacey, *Sonic Rupture: A Practice-led Approach to Urban Soundscape Design* (London: Bloomsbury, 2016).

¹⁶ Marcel Cobussen, ‘Towards a “New” Sonic Ecology’. Inaugural lecture of Auditory Culture at the Universiteit Leiden, 28 November 2016, <https://cobussenma.files.wordpress.com/2011/10/cobussen-inaugural-text.pdf>.

¹⁷ Andreas Philippopoulos-Mihalopoulos, ‘Atmospheres of Law: Senses, Affects, Lawscapes’, *Emotion, Space and Society* 7 (2013): 42. <https://doi.org/10.1016/j.emospa.2012.03.001>.

attention is captured and guided by the affective qualities of the environment.¹⁸ This is an environment where, as accurately expressed by Brighenti and Pavoni, urban (policy) design is ‘tailoring various sensuous regimes to foster inclusion within an atmosphere that is meant to be comfortable, consensual, shared, convivial.’¹⁹ A pleasant urban environment is likely to be the ultimate aim of those urban policies that are less and less tolerant to unfamiliar sensory stimuli,²⁰ and are thus tailoring a ‘safe’ urban environment that is meant to be comforting and entertaining – that which Thrift defines ‘the security-entertainment complex’ whose purpose is to ‘mass produce phenomenological encounter.’²¹

Within such an immunised environment where the rhetoric of urban safety is exploited as to gain control of human interactions, dwellers are driven to avoid any form of stress and eventually get accustomed to a sanitised routine – an environment that still needs to catch their attention by entertaining them so as to perpetuate the logics of global capitalism. This brings to a perverse circle

¹⁸ Matthew G. Hannah, ‘Attention and the Phenomenological Politics of Landscape’, *Geografiska Annaler B* 95 (2013): 235–250. <https://doi.org/10.1111/geob.12023>.

¹⁹ Andrea Brighenti and Andrea Pavoni, ‘City of Unpleasant Feelings. Stress, Comfort and Animosity in Urban Life’, *Social & Cultural Geography* 20, no. 2 (2017): 145. <https://doi.org/10.1080/14649365.2017.1355065>

²⁰ Catharina Thörn, ‘Soft Policies of Exclusion: Entrepreneurial Strategies of Ambience and Control of Public Space in Gothenburg, Sweden’, *Urban Geography* 32 (2011): 989–100. <https://doi.org/10.1080/14649365.2017.1355065>.

²¹ Nigel Thrift, ‘Lifeworld Inc – And What To Do About It’, *Environment and Planning D: Society and Space* 29 (2011): 5. <https://doi.org/10.1068%2Fd0310>

of underexposure and overexposure to sensory stimuli which, as stated by Brighenti and Pavoni, ‘results in an increased difficulty in experiencing urban space – hence, heightened levels of stress, anxiety and fear in public space.’²² Therefore such urban environment leads citizens’ everyday experience to a complex mix of stress and boredom, empowerment and adaptation, hyperesthesia and anesthesia; an artificial and ‘immunological, “immersive” imaginary that multiplies the mismatch between a fiction of comfort and a reality of conflict.’²³ In order to tackle this mismatch the present reflection intends to focus on the possibility of uncomfortable sounds to challenge the ‘comfort bubble’, thus questioning the aestheticisation and anesthetisation of the (sonic) environment. The notion of uncomfortable is considered as a pivotal key to both reveal the hidden conflicts manifesting throughout public space and support the foundation of a politics of sonic coexistence. Here, sonic coexistence develops through an active and creative engagement with uncomfortable sounds as it invites citizens to critically listen and embrace those affective situations that manifest a sense of otherness.

²² Brighenti and Pavoni, ‘City of Unpleasant Feelings’, 145.

²³ *Ibid.*, 145. Following Brighenti and Pavoni’s account, urbanites are in constant search for sensible stimuli yet they are at the same time overwhelmed by those stimuli, therefore falling into a whirlpool that lead alternatively to boredom and depression (as for Sloterdijk) or overstimulation and anesthesia (as for Simmel). See: Peter Sloterdijk, *The World Interior of Capitalism: For a Philosophical Theory of Globalization* (Malden: Polity Press, 2013). See also: Georg Simmel, ‘The Metropolis and Mental Life’, in *The Sociology of Georg Simmel*, ed. Kurt H. Wolff (Glencoe: The Free Press, 1950).

2. Towards a Multi-species Sonic Ecology

Venice, Summer 2019

I realize I'm more and more attracted by the sound of kids playing loudly in Campo Santa Margherita; their voice, their everyday rhythm creating an atmosphere not entirely contaminated by tourists. Nonetheless I'm afraid this atmosphere will be disappearing year by year because of the loss of residents and young families in the island. I always pass through this place, trying not to step in the invisible football playground children build up with their bags – as not to interrupt their game. I particularly enjoy how the screams subvert the tranquillity of this silent city, and I always wonder why no one really complains. Is this buzz better than others? Is it better than the chatter produced by young people drinking and talking outside the cafes in the same place but just a few hours later having their aperitif? It's surprising how Campo Santa Margherita embraces such a plurality of voices, yet it's impressive how some of those are considered more pleasant than others. I feel like I'm in need of this place because of its contradictions, in need of its afternoon and evening atmosphere. That buzz profoundly affects me. I want to be part of it every day, even just for a few minutes.

By introducing the concept of sonic coexistence, uncomfortable sounds turn to be key to enter the agency and the affectivity of everyday sounds. In order to better outline the traits of sonic coexistence it is then essential to deal more widely with uncomfortable sounds rather than just noisy ones. This has to include not only polluting sonorities, but also unpleasant events and affective

situations that result as uncanny or unhomey²⁴ – that ‘marks the disruptive presence of something unknown’²⁵ – even though they are not exactly accounted as noisy.

More generally, noise has been associated to the rise of modernity²⁶ and to the evolution of capitalism.²⁷ To some extent it is possible to argue how noise is more likely an evident form of discomfort. It is usually explicit²⁸ in the way it produces an immediate effect (a complaint for example); it manifests as an ‘unhealthy’ or harmful condition. This is why it has been regulated and monitored in the past century through quantitative parameters by noise zoning plans amongst other planning

²⁴ See: Brandon LaBelle, *Sonic Agency: Sound and Emergent Forms of Resistance* (London: Goldsmiths Press, 2018). See also: Sigmund Freud, ‘The Uncanny’, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud, vol. XVII*, 217–256 (London: The Hogarth Press and the Institute of Psychoanalysis, 1966).

²⁵ Mikkel Bille, Peter Bjerregaard and Tim Flohr Sørensen, ‘Staging Atmospheres: Materiality, Culture, and the Texture of the In-between’, *Emotion, Space and Society* 14 (2015): 34. <https://doi.org/10.1016/j.emospa.2014.11.002>.

²⁶ See: Luigi Russolo, *L'arte dei rumori* (Milano: Edizioni futuriste di poesia, 1913). See also: R. Murray Schafer, *The Soundscape: Our Sonic Environment and the Tuning of the World* (Rochester: Destiny Books, 1977).

²⁷ Jacques Attali, *Noise: The Political Economy of Music* (Minneapolis: University of Minnesota Press, 1984).

²⁸ Even if noise is evident most of the time, it is worth mentioning, as shown by Goodman (*ibid.*, 11), how inaudible frequencies such as infra and ultra-sounds are actually used as sonic weapons and can result in serious health damages (*ibid.*, 20). About imperceptible sounds and the politics of frequency see: Mitchell Akiyama, ‘Silent Alarm: The Mosquito Youth Deterrent and the Politics of Frequency’, *Canadian Journal of Communication* 35 (2010): 455–471. <https://doi.org/10.22230/cjc.2010v35n3a2261>. See also: Kelly Ladd, ‘Bad Vibrations: Infrasound, Sonic Hauntings, and Imperceptible Politics’, in *The Acoustic City*, ed. Matthew Gandy and BJ Nilsen (Berlin: Jovis Verlag GmbH, 2014).

tools – although such tendency has been contested by many authors who argued for the importance of ‘challenging the strategy of noise abatement which could produce a conformity of soundscape that homogenises place and dissolves local uniqueness.’²⁹ However, it is a matter of fact, according to the World Health Organization,³⁰ that noise pollution is a serious health hazard, especially for what regards cardiovascular disease, cognitive impairment, sleep disturbance, hearing problems and stress. Noise reduction has become a relevant strategic policy in the EU; particularly the European Environmental Agency³¹ has declared the importance of preserving the acoustic quality of quiet urban spots within the built environment – those everyday quiet areas that bring benefits to city users in reason of their noiselessness.³² Nevertheless, noise complaints remain a challenge for urban planning, especially because they make explicit the tensions between different cultural frameworks. For example, by mapping the noise complaints in different

²⁹ Adams et al., ‘Sustainable Soundscapes’, 2385.

³⁰ World Health Organization, ‘Burden of Disease from Environmental Noise: Quantification of Healthy Life Years Lost in Europe’, 2011. https://www.euro.who.int/__data/assets/pdf_file/0008/136466/e94888.pdf.

³¹ European Environmental Agency, ‘Good practice guide on quiet areas’, Technical Report n.4. Publications Office of the European Union, Luxembourg, 2014. <https://www.eea.europa.eu/publications/good-practice-guide-on-quiet-areas>.

³² Antonella Radicchi, ‘Everyday quiet areas. What they mean and how they can be integrated in city planning processes’ (paper presented at INTER-NOISE and NOISE-CON Congress and Conference, Chicago, USA, August 26–29 2018). See also: Antonella Radicchi, et al., ‘Sound and the Healthy City’, *Cities & Health* (2020). <https://doi.org/10.1080/23748834.2020.1821980>.

neighbourhoods of New York City, researchers Legewie and Schaeffer³³ revealed how the number of complaints increases in proximity to racial enclaves.³⁴ This is particularly relevant as it reveals the socio-economic tensions and the racial boundaries between communities; in other words illustrates how social polarisation manifests through uncomfortable sonic situations. The same logic is well displayed within gated communities, and more generally in those high income neighbourhoods where the sonic environment is carefully controlled and every source of disturbance suppressed. This is why noiselessness is considered as an extremely important economic feature and is preserved through alarms and other kind of (sonic) control devices.³⁵

Besides noise complaints and evident sources of stress, this text intends to focus on the agency of those uncomfortable sounds that are subtly entering and orienting human body's feelings and actions, even when they cannot be unequivocally identified and controlled. Though those sounds are difficult to be categorised (as 'good' or 'bad' for example) as they respond to 'affective affinities' determined among other factors by 'audiosocial

³³ Joscha Legewie and Merlin Schaeffer, 'Contested Boundaries: Explaining Where Ethnoracial Diversity Provokes Neighborhood Conflict', *American Journal of Sociology* 122, no. 1 (2006): 125–161. <https://doi.org/10.1086/686942>

³⁴ Similar researches report that gentrified areas show among the highest rates of noise complaints. See Laura Bliss, 'Where New Yorkers Can't Stand the Racket', *City Lab*, 25 January 2016. <https://www.citylab.com/design/2016/01/mapping-new-york-city-noise-complaints-311/426606>

³⁵ Rowland Atkinson and Sarah Blandy, *Gated Communities: International Perspectives* (London: Routledge, 2006).

predeterminations such as class, race, gender, and age.³⁶ In fact, following Goodman's account predeterminations are central to understand the reception and processing of sounds from different economic and cultural perspectives. This is why it is interesting to stress the notion of *decorum*: the system of gestures and feelings considered as culturally appropriate by the majority. Thrift has retraced this notion arguing for 'a decisive change that has taken place in Western cultures as older ideas and practices of decorum, based on a notion of abstinence, have gradually been replaced by newer cultural frames which emphasise quite different ways of making sense of the world.'³⁷ Assuming that social and cultural frameworks have outlined behavioural limits also concerning the production and reception of uncomfortable sounds, then it is possible to address decorum as a constraint to plural expression; a limitation that now gives way to a novel and potentially uncomfortable sense-making. Therefore, from a sonic perspective noise-making can be seen as a cultural reaction to abstinence as well as an expression of cultural identity, whereas the understanding of uncomfortable sounds can inspire a new way of making sense of the world. This is particularly poignant as uncomfortable sounds challenge the normative system that regulates human sonic interactions – the set of urban policies and cultural settings governing sound emissions. In fact, beyond sound planning regulations, uncomfortable

³⁶ Goodman, *Sonic Warfare*, 191.

³⁷ Thrift, 'Lifeworld Inc', 14.

sounds can be absolutely ‘legal’ yet sharply questioning the *status quo*.³⁸

As a form of resistance, performing uncomfortable sounds turns to be a political and aesthetic practice that contributes in shaping an inclusive urban atmosphere. This echoes in Thibaud’s reflection when he questions ‘how an ambiance-based approach positions itself, amidst the tension between planning strategies and inhabitant tactics, between the spheres of power and resistance movements.’³⁹ In particular, the idea of an inclusive atmosphere challenges the dogmatic understanding of sonic ecology⁴⁰ that rigidly counterposes noise and silence explicitly condemning the latter.⁴¹ Beyond such a distinction, following Thompson, uncomfortable sounds need to be tackled through a ‘relational, ethico-affective approach’ that embraces ‘noise as a productive, transformative force and a necessary component of material relations.’⁴² Echoing Thompson’s account it is pivotal to

³⁸ About the freedom of expression and the politics of listening see also: Davide Tidoni, ‘A Balloon for the Barbican: Politics of Listening in the City of London’, in *On Listening* ed. Angus Carlyle and Cathy Lane (Axminster: Uniformbooks, 2013).

³⁹ Jean-Paul Thibaud, ‘Urban Ambiances as Common Ground?’, *Lebenswelt, Aesthetics and Philosophy of Experience* 4, no. 1 (2014): 289–290. <https://doi.org/10.13130/2240-9599/4205>.

⁴⁰ Schafer, *The Soundscape*.

⁴¹ In particular, Schafer (ibid.) defines and contrasts *hi-fi* soundscape to *lo-fi* soundscape. The former is described as the one in which every single sound diffused within the sonic environment is clearly recognisable by human perception, while the latter results in overlapping and noisy sounds that make them impossible to be acknowledged separately.

⁴² Marie S. Thompson, *Beyond Unwanted Sounds: Noise, Affect and Aesthetic Moralism* (Doctoral Thesis, International Centre for Music Studies, Newcastle University, 2014), 2. <https://theses.ncl>

understand noise – and more broadly uncomfortable sounds – not as a negative feature of the sonic environment, rather as a political possibility for the listeners (the citizens) to re-consider their cultural framework thus empowering their ability to better understand the *other-than-them*.

To what extent are urbanites ready to critically accept uncomfortable sounds in multicultural cities? This question does not simply challenge the way to govern the level of ‘permitted’ noise pollution, rather it suggests the importance of developing a sonic awareness based on the acknowledgment of diversity.⁴³ Such an attitude toward ‘otherness’ – the way citizens position themselves among the multifaceted everyday sonic environment – recalls the need to advance the notion of ecology from a sonic perspective. ‘Sonic ecology’ has been described as the relationship between the sonic, the cultural, the social and the perceived environment. In particular Augoyard and Torgue defined it as: ‘the interaction between the physical sound environment, the sound milieu of a socio-cultural community and the “internal soundscape” of every individual.’⁴⁴ Most of these definitions inevitably reflect a human-centred tendency; however it is crucial in this context to embrace a wider understanding of sonic

.ac.uk/jspui/bitstream/10443/2440/1/Thompson%2C%20M.%202014.pdf.

⁴³ Nicola Di Croce, ‘Audible Everyday Practices as Listening Education’, *Interference Journal* 5 (2016): 25–37. <http://www.interferencejournal.org/audible-everyday-practices-as-listening-education>.

⁴⁴ Jean-François Augoyard and Henry Torgue, *Sonic Experience: A Guide to Everyday Sounds* (Montreal: McGill-Queen’s University Press, 2005), 9.

ecology that includes the affective capabilities of human sound, the 'voices' of non-human bodies as well as the vibrations of matter.⁴⁵ In this regard Cobussen calls for 'alternative ways of interaction between the environment, the human body and sound',⁴⁶ pointing out that 'The track towards a new sonic ecology is simultaneously a track towards a new social, political and ethical milieu.'⁴⁷ A multi-species sonic ecology thus needs to focus on the political implications of recognising equal rights to human and non-human audible expressions, which encompasses a new understanding of uncomfortable sounds.

In order to undermine the primacy of human agency over the sonic environment it's then pivotal to engage with a new sonic ecology that critically deals with uncomfortable sounds, thus embracing the plurality of human and non-human sonic expressions. Questioning the human disposition toward uncomfortable sounds can, in fact, lead to challenge the politics of attention that is so imbricated in urban design and sensory policies. Hence, moving toward a (policy) design-oriented perspective, a new understanding of uncomfortable sounds can contrast the apparent 'softness' of sensory policies – their 'more elastic and fluid form of power'.⁴⁸ This giving that 'the processes of aesthetisation that increasingly shape public and private spaces also entail the possibility of sharing and staging an atmosphere' which 'draws the attention to social

⁴⁵ Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham: Duke University Press, 2010).

⁴⁶ Cobussen, 'Towards a "New" Sonic Ecology', 4.

⁴⁷ *Ibid.*, 12.

⁴⁸ Thörn, 'Soft Policies of Exclusion', 989.

and political manipulations of people's experience of their world, beyond the realm of the individual.⁴⁹

3. Attuning to Uncomfortable Sonic Atmosphere

Venice, Spring 2020

I keep walking, no one around. Suddenly I hear a voice, someone crossing my path talking to a friend on his cell. The topic is too predictable. It's surprising how in the past few days I was searching for a definition of affecting atmosphere, and now while listening to my steps reverberating in the narrow stone alleys I sense I am in front of my definition. A silent and leaden grey afternoon playing the presence of few steps, distant echoes coming out the interiors, and the absence of most of my everyday reference points. Apparently there's no uncomfortable sounds, they have been silenced by a norm. Yet what is uncomfortable is their disappearance, the empty space, the inconsistency of the sonic environment, the lack of a scapegoat to address my estrangement – no words to describe it. I am out of my border, unauthorised, following with curiosity the intensity of this moment.⁵⁰

To inhabit a sonic world of strategies and tactics, of norms and loopholes, brings questions about how to address uncomfortable sounds; how to cope with the sense of otherness and estrangement that rises during unpredictable encounters and reverberates between bodies and the environment. Putting in the foreground the

⁴⁹ Bille, Bjerregaard and Sørensen, 'Staging Atmospheres', 1.

⁵⁰ Listen to the soundwalk here: <http://www.venicesoundmap.eu/sounds/entry/282>.

political ecology of urban atmosphere, it is crucial as stated by Thibaud not to 'ignore the increasing development of means of instrumentation and instrumentalisation of the sensory world.'⁵¹ In other words it is central to think carefully about 'the public and cultural policies underpinning sensory planning, and [to] test hypotheses about the pacification, sanitisation and normalisation of shared sensory spaces.'⁵² In this regard, so as not to conflict with a notion of sonic coexistence that critically aims to engage uncomfortable sounds, such policies and hypotheses need to be further explored.

A path towards sonic coexistence is not necessarily heading to pacification, sanitisation and normalisation of the urban atmosphere. In fact, sonic coexistence does not have to lead to a passive acceptance of others' expressions, rather to a critical encounter between distant social and cultural frameworks as well as distant species and matter. To that end sound and listening practice make room for such an encounter⁵³ activating and supporting forms of conflict, confrontation and fight between voices, cries and vibrations. This is particularly relevant when an unknown (uncanny, unhomely) sound reveals the sense of otherness that emerges from the margins (of society, but not only), yet it is systematically silenced as to preserve the status quo.⁵⁴ This might be the case of the cries

⁵¹ Thibaud, 'Urban Ambiances as Common Ground?', 289–290.

⁵² *Ibid.*, 290.

⁵³ Nicola Di Croce, 'Sonic Empowerment: Reframing Atmosphere Through Sonic Urban Design', *Rukkuu. Studies in artistic Research* 13 (2020), <https://dx.doi.org/10.22501/ruu.549598>.

⁵⁴ Thörn, 'Soft Policies of Exclusion'.

of homeless people to be silenced⁵⁵ or their ‘disturbing’ presence to be evicted from commercial spaces through a soft and never explicit articulation of power that, by promoting attractive and inclusive spaces, excludes the most vulnerable minorities. The staging of urban atmosphere is central to this reflection as ‘soft policies’ often tend to normalize and sanitise the sonic environment by eradicating the sensory signs of disparities, yet affirming a precise power strategy. Indeed, following Allen ‘[p]ower in this instance works through the ambient qualities of the space, where the experience of it is itself the expression of power.’⁵⁶ Sound and listening practice are thus crucial tools to reveal the apparent softness of urban and cultural policies, especially when they tend to pacify and aestheticise the sensory environment. Urban and cultural policies therefore play a central role in the path toward a sonic coexistence. Their mission, beyond fostering vital forms of participation and collaboration, and beyond tackling social inclusion and fighting ‘indifference,’⁵⁷ need to support a sonic (and multi-sensory) attunement with the multifaceted dimensions of otherness – with the uncomfortable.

⁵⁵ Nicola Di Croce, ‘Sonic Territorialisation in Motion. Reporting From the Homeless Occupation of Public Space in Grenoble,’ *Ambiances International Journal* 3 (2017). <https://doi.org/10.4000/ambiances.1001>.

⁵⁶ John Allen, ‘Ambient Power: Berlin’s Potsdamer Platz and the Seductive Logic of Public Spaces,’ *Urban Studies* 43 (2006): 441. <https://doi.org/10.1080%2F00420980500416982>.

⁵⁷ Leonie Sandercock, ‘Cities of (In)Difference and the Challenge for Planning,’ *disP – The Planning Review* 36, no. 140 (2000): 7–15. <https://doi.org/10.1080/02513625.2000.10556728>.

Listening to the uncanny sounds of the everyday environment with no escape – for example within a not sanitised sensory space – means getting the chance to approach and acknowledge alterity. Here, urban atmosphere can stand for a critical togetherness, ‘a resonance between those who live together’,⁵⁸ meaning that the staging of atmosphere can also be ‘a way of being together, of sharing a social reality.’⁵⁹ Building upon an inclusive staging of urban atmosphere, the understanding of sonic coexistence requires a critical eye (and especially an ear) over urban and cultural policies, especially when culture-led urban regeneration processes make use of public art and relational aesthetics and when sound-related practices are used as to invigorate sonic awareness among citizens and institutions. In these cases, and more broadly when public art provides a means for social inclusion, even though it is assumed as through Deutsche that the ‘task of democracy is to settle rather than sustain, conflict’,⁶⁰ a politics of uncomfortable sounds – of sonic coexistence – is possible when ‘something messier and contested may be required to facilitate transformation.’⁶¹ Therefore to address sonic coexistence means to encourage

⁵⁸ Peter Sloterdijk, *Neither Sun nor Death* (Los Angeles: Semiotext(e), 2011), 245. Cited in: Bille, Bjerregaard and Sørensen, ‘Staging Atmospheres’, 4.

⁵⁹ Ibid.

⁶⁰ Rosalyn Deutsche, *Evictions: Art and Spatial Politics* (Cambridge: MIT Press, 1996), 270. Cited in: Joanne Sharp, Venda L. Pollock, and Ronan Paddison, ‘Just Art for a Just City: Public Art and Social Inclusion in Urban Regeneration’, *Urban Studies* 42, nos. 5–6 (2005): 1004. <https://doi.org/10.1080/00420980500106963>.

⁶¹ Venda L. Pollock and Joanne Sharp, ‘Real Participation or the Tyranny of Participatory Practice? Public Art and Community Involvement in the Regeneration of the Raploch, Scotland’,

forms of collective action that claim for an inclusive and plural sonic environment as a mirror of a just city.⁶²

The notion of sonic coexistence finds a strong foundation in the possibilities of sound and listening as outlined by LaBelle. The artist and scholar mobilises sound ‘as a structural base as well as speculative guide for engaging arguments about social and political struggle’,⁶³ aiming for a ‘critical and creative togetherness’⁶⁴ grounded on listening awareness. Central to his account is the concept of ‘sonic agency’ as a means for enabling emancipatory practices opening up new relational possibilities for embracing ‘the figures of the invisible, the overheard, the itinerant, and the weak.’⁶⁵ Through his account he is then able to offer an unprecedented understanding of the uncomfortable, the uncanny, the unhomely sounds that pervade everyday experience, thus unfolding the agency of sound and listening. Approaching Bennett’s lesson,⁶⁶ LaBelle points out that: ‘Agency, as the capacity to affect the world around us, is thus interwoven into complex assemblage of materials and forces which, Bennett suggests, requires that one ‘listen’ – to perceive the nuanced and ever-changing relations in which the self is always embedded.’⁶⁷ Accordingly, listening practice leads to a deep understanding of the plurality of (human,

Urban Studies 49, no. 14 (2012): 3075. <https://doi.org/10.1177/02F0042098012439112>.

⁶² Sharp, Pollock, Paddison, ‘Just Art for a Just City’.

⁶³ LaBelle, *Sonic Agency*, 2.

⁶⁴ *Ibid.*, 5.

⁶⁵ *Ibid.*, 17.

⁶⁶ Jane Bennett. *Vibrant Matter: A Political Ecology of Things*. (Durham: Duke University Press, 2010).

⁶⁷ LaBelle, *Sonic Agency*, 8.

non-human and material) relations which underpins the very foundation of a multi-species community.

The sonic togetherness suggested by LaBelle recalls the process of attuning to distant and unhomely voices and sounds, and echoes the concept of ‘taqiyya’ that artist Abu Hamdan⁶⁸ introduces as the basis of Druze religion. Investigating the politics of listening – especially the ‘inaudible’ voices cut out from free speech – Abu Hamdan finds in taqiyya the invitation to attune to the language and knowledge of any interlocutor and to accept/respect their speech: ‘Tuning means here unifying. If Taqiyya is not based on unity, then it is a total misconception. You have to prepare people to be ready to listen to your knowledge.’⁶⁹ Spirit of adaptation and will to understand and ‘blend into your surroundings’⁷⁰ makes taqiyya a precious approach toward coexistence. Such interpretation of mutual adaptation makes then room for a sonic togetherness – suitable for human interaction, yet envisioning new forms of engagement with non-human and matter⁷¹ – that can radically shift the understanding towards an inclusive sonic environment and urban atmosphere.

⁶⁸ Lawrence Abu Hamdan, *[inaudible] A Politics of Listening in 4 Acts* (Berlin: Sternberg Press, 2016).

⁶⁹ *Ibid.*, 39.

⁷⁰ *Ibid.*, 40.

⁷¹ See: Salomé Voegelin, *The Political Possibility of Sound: Fragments of Listening* (London: Bloomsbury Publishing, 2018), 27. Voegelin relates to ‘inhabited possibilities’ in reference to a ‘reciprocity of the heard’ where: “These inhabited possibilities also include non-human actors, their soundings and listening, to produce a plurality of worlds without the “hierarchy of humans””.

From these premises sonic coexistence unfolds its political possibilities by tracing listening practice, as suggested by Voegelin, as a ‘political practice that hears and generates alternatives.’⁷² Moving toward a ‘sonic cosmopolitanism’ through a political imagination fostered by sound and listening, Voegelin does not aim for a sanitised and pacified sonic environment, rather she claims that ‘The political possibility of sound [...] does not answer violence with anti-violence but with a shout that calls from the unseen different possibilities into being that activate desire and create the actions of a plural imagination.’⁷³ In other words ‘This sonic imaginary does not limit its possibility to opposition, but generates an alternative [...] it invites a listening to the breath as a continuous resonance of otherness in a shared space.’⁷⁴ Drawing from the resonances emerging within a plural and inclusive sonic environment, Voegelin is of great help in advancing a sonic acknowledgement of the invisible that is deeply political as it brings out ‘what remains unheard’, thus opening ‘politics, political actions, decisions and institutions to the plural slices of this world.’⁷⁵

Exercising a political imagination informed by sound and listening practice can, in conclusion, orient individuals and eventually the political discourse as well as urban policy-making to address uncomfortable sounds and uncanny atmospheres in a radically inclusive manner. Inspiring a new understanding of otherness, sonic coexistence can

⁷² *Ibid.*, 29.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, 37–38.

finally encourage an uncomfortable yet deeply inclusive approach towards all the sounds and vibrations that humans, non-humans and matter share every day.

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Howl Redux: On Noisific(a)tion

Budhaditya Chattopadhyay

[L]istening to the Terror through the wall ...

—*Howl*, Allen Ginsberg (1956)

He (The parasite) becomes invisible by making, on the contrary, a lot of noise. One can hide by being too visible or too perceptible. The parasite hides behind the noise and to-do of the devout. He becomes invisible by being impossible. Impossible, absurd, outside reason and logic. That is what is interesting; that is the point; that is what must be thought about...

—*The Parasite*, Michel Serres (2013)

After a solitary and austere winter in Copenhagen, sound researcher Budhaditya Chattopadhyay again meets media artist Budhaditya Chattopadhyay in Berlin. It is a small but cosy apartment turned film studio in the Alt Trep-tow area, just beside the canal where Rosa Luxemburg was assassinated in 1919. Summer is just sprouting between arrays of grey buildings; calm and domesticised balconies are listening to each other. The courtyard resonates with children safely grazing the greener grass and

the buzzing neighbourhood leaves out shabby outsiders on the park benches, or under the bridge. One can hear the faint sounds of an opera aria played on a vinyl from a gentrified drawing room. As they sat opposite to each other in the kitchen, coffee was brewing. Following are the snippets of the ensuing intraaudition¹ as it was scribbled. These inwardly contemplative discourses may reveal artistic research as a self-aware conversation between the artist and the researcher often present in the same body.

1. Aural Intrusion

Researcher – What are you thinking while looking outside the window?

Artist – I am thinking about the transparent glass in the window separating the safety and privacy of the room-tone from the outdoor ambience of a thriving urban living; as if there is a border between inside and outside realities, and this border is architecturally built through this windowpane. Often, windows and walls separating the outside and inside worlds are made soundproof. Why

¹ This un-grammatical coinage is invented to understand soliloquy in sonic terms. The coinage also relates to the idea of intraview (which is also another coinage made earlier, if not already used elsewhere) more precisely, where one speaks with oneself, focusing on the aural. Self-talk is a common everyday practice, but not so much discussed in the scholarly discourses in the arts and humanities. The coinage has been previously employed in two recent publications from a series of intraauditions: Budhaditya Chattopadhyay, 'Unrecording Nature', in *Sound, Art, and Climate Change*, ed. Petri Kuljuntausta (Helsinki: The Frequency Association, 2021); and Budhaditya Chattopadhyay, 'Autolisting', in *Exercises in Listening* issue 3, ed. Richard Francis (Auckland: End of the Alphabet Records, 2017).

are the ambient sounds considered unwanted noise in a domestic household? Is it because the sanctity of the private has a margin of acceptance where the public sphere needs to stop and wait? When a householder opens a window and leans down to see and hear what's happening at the street corner, her curiosity crosses this margin. I focus on her curiosity. This is a moment when sounds from outside enter the domestic sphere and inform it with news, perspectives and views. Is this intrusion unwanted? Does it imply disruption?

R – Intrusion by whom? Disruption of what?

A – Intrusion of the public sounds, termed *noise*, in private territories disrupting the domestic sphere obsessed with a sense of safety and security. Like an aural infection, the sound of a bomb blast, a scream on the street, an angry motorcycle or an obvious car crash will shake up and affect the health of the household bliss and those of its inhabitants and caretakers. For those who are outside of this inner familial territory, for them, however, being strangers and aliens are manifested in tuning their ears for the outside, for the catastrophic sound. To their curiosity, this anarchic infection is life.

R – I see the first edition of Allen Ginsberg's *Howl* on your hand. Are you reading it now?

A – Few books I often keep in my travel bag, or on the table in a makeshift lodging, or beside my bed, wherever I sleep in my meanderings. I don't always read or reread them – but I stay fervently inspired in their presence. Sometimes I read a few passages from these works, and contemplate the words in silence and solitude.

R – Do you like to share with me some of your thoughts on reading or re-reading *Howl*?

A – Like a broken record, I am stuck in this phrase: ‘Listening to the Terror through the wall’. I am thinking how much our walls do protect us from imagined terror, and if the idea of protection is at all an important point. Perhaps walls are symbolic structures that have varied degrees of porosity, with an embedded desire to break through. Recently, one of the busiest train stations in Berlin decided to use atonal and noise music to deter drug users; the German rail operator, Deutsche Bahn, thought that playing noise music will stop people using drugs.² Deutsche Bahn wanted to use sound as a kind of wall to segregate people who are deemed outsiders to its hyper-capitalistic system of gentrification and protectionism. To my understanding, organised noise can be counterproductive as a tool for urban gentrification. The people from the social margin can more relate to noise music rather than classical music, as a liveable and inviting sonic world, and prefer to comfortably inhabit this world. On a similar note, two years ago activists in front of the Trump administration building played back loud recordings of the cry and whining of the children kept in the US detention centre on the Mexico border. In both the cases, noise was deployed as a trigger for social disruption and rupture. However, in the first case, the state used noise to control the public life, and in the second, noise was incorporated to disrupt and question the

² See: Newshour, ‘Berlin Station to Use Atonal Music to Deter Drug Users’, *BBC Sounds*, <https://www.bbc.co.uk/sounds/play/p06j24s3>.

legitimate power embedded in the control of the state itself. Again, in both cases, affect was an aspect that was considered intimately linked to the deliberate noisification of the social situation in order to change the behaviour of select public, revolving around the issues of law. It will be interesting to (un)critically listen to the noise reproduction in various contexts used as tools and methods of social intervention both by state and its other. For a project, *Exile and other Syndromes*,³ I made field recordings at various dehumanising urban sites, such as industrial zones and supermarkets, large underground basements and car sheds, examining their cold and estranging environments and the poetic attributes of noise present in these environments for the migratory listeners' search for connections and emancipation.⁴ Marc Augé terms such super-modern sites and 'cold, gloomy space of big housing schemes, industrial zones and supermarkets' as *non-places*.⁵

2. Aural Contemplation

R – What inspires you to work with noise and listening in your artistic practice?

³ See: Budhaditya Chattopadhyay, *Exile and Other Syndromes* (Sound Installation), IEM Cube, 2015. <https://iem.kug.ac.at/fileadmin/media/iem/projects/2016/budhaditya.pdf>.

⁴ See: Budhaditya Chattopadhyay, 'Listening In/To Exile: Migration and Media Arts', *VIS – Nordic Journal for Artistic Research* 2 (2019). <https://doi.org/10.22501/vis.564694>.

⁵ In his work *Non-places*, Augé notes: '(...) bypasses, motorways, high-speed trains, and one-way systems have made it unnecessary for us to linger in them. But this turning away, this bypassing, is not without some feeling of remorse' (1992), 73–74.

A – I don't undermine noise as it is done from the traditional Schaferean soundscape approach.⁶ I even don't like the term *noise*; everything is sound. I rarely get annoyed with so-called 'noise' in public and private spaces, because often such a concern is socially constructed. I am fascinated by the materiality of noise, its many splendours, many textures and multiple layers. My motivation, or the drive to work with noise or sound is to develop a kind of inclusive, contemplative relationship with the lived environment. Since I am an immigrant artist, I have travelled extensively. And through these travels, like a philosophically positioned nomadic entity, I have come across and experienced different kinds of sound environments. The multitude of their characteristics and their unfolding situations are evocative for me, as an artist, my primary reaction is to take a kind of contemplative and phenomenological survey of these environments. And this relationship is something quite dynamic; at the same time, they are inclusive and familiarizing. I am more interested in going beyond the obvious sounds that are immediately heard; I rather focus on the subtle inaudible layers, which are often elusive for the human perception – certain vibrations that are like a distant presence. These kinds of sonic layers trigger my artistic

⁶ R. Murray Schafer's notion of the soundscape tends to simplify the complex ecological discourse of the constantly changing sonic environments into fixed binaries: differentiating between 'lo-fi' and 'hi-fi' soundscapes. This approach has been criticized by sound scholars (Kelman, 2010). To incorporate the factors of chance and flux, and consider the evolving nature of sonic environments, see the idea of 'auditory situation' (Chattopadhyay, 2013a, 2013b, 2014, 2015a, 2015b, 2017, 2019, 2020, 2021a, 2021b) underscoring a situationist approach to everyday sounds and ambient noises.

imagination. My artistic practice as a sound/media artist and composer using field recording is based on a contemplative approach to listen intently to the different layers that constitute a sonic environment or ambience of a particular site, part of which is humanly inaudible or imperceptible.

R – Would you like to explain a bit more about the context?

A – Primarily, I work with a number of contexts. My interaction with sonic environments is heard through the lenses of multitudinal contexts and conceptual positions. These drive my work, namely, the climate crisis, mass migration and race, consumerism and urbanisation of rural life, migratory urban experience, impermanence and urban alienation. These kinds of contexts inform my practice not only in the sense of departing points but also, they shape my intervention in a particular way that there is a stronger discourse triggered by the work itself.

R – How are specific concepts like migration, alienation, and impermanence reflected in your work? Do you take these ideas as points of entry, or as evolving perspectives?

A – Impermanence, presence, absence – these are thoughts aloud in my work; also, truth and evidence. Recently I visited Cairo National Museum, and there was one exhibit with an English translation written under it, which reads ‘maa-kheru’ – an expression in Egyptian, translated into English: ‘true of voice’ – as provided by the Museum. The context was a court case between Horus and Seth. It was a discourse on legitimacy and evidence. I was struck by this idea of a true voice: the true

voice of an artist, a place, or a community – how does it sound? True voice might be an idea which is linked to the notion of presence. How do you find the true presence of a place or the narrative of a place, or the history of a place reshaped in a sound work? In my work, this sense of presence is not obvious; it's not like listening to hear and now: I visit a place to pick up some sounds – it's not like that. It's more inclined to historical inquiry into a place through specific trajectories and various connotations around the place, various temporalities. These kinds of inquiries are something I am interested in; for example, if I'm encouraged to develop a piece based on a particular place, I travel to the place and stay there for, let's say, three to four months, just to initiate the research – site specific exploration or non-extractive excavation of the place. I examine the history of the place; I try to figure out the unfolding situation of the spatial situation. I speculate on the futurity of the place. The trajectory of the place is something I try to respond to. I also dig into archival sonic materials. For my piece *Eye Contact with the City*,⁷ I researched spool tape recordings where room-tones of the 1930's and 1940's colonial households were archived. I incorporated these room-tones as a primary layer in the work. These kinds of in-depth inquiries are part of my artistic practice. Through such practice, I intend to reach the true voice of a place.

R – Do you choose specific sites or is it just where your life leads you to, and you put yourself out there?

⁷ See: Budhaditya Chattopadhyay, 'An Elegy for the City: Composing the Urban Character', *Leonardo Music Journal* 24 (2014): 49–51, https://doi.org/10.1162/LMJ_a_00202.

A – The departing point is actually curiosity about a particular place; I try to get to know about the place beforehand. For example, Bangalore was a city I explored between 2009 and 2013, and then a number of European cities I explored from 2012 to 2019 – Berlin, Den Haag, Vienna, Brussels, Graz are some of these European cities. There are similarities between these cities in terms of ‘non-places’. I wanted to self-attune with, internalise and contemplate what I listen to being at these dehumanising spaces in these cities. Examples are airports, large basements, underground car sheds and abandoned houses or large constructions, abandoned industrial sites, platforms which are not used – these kinds of dehumanising spaces – they sound alienating for the individual’s human agency. So, in order to reconnect with these spaces, a sensitive listener may aim to attune their ears to the contemplative and poetic attributes of noise presence in these spaces.

3. Aural Disintegration

R – Do you think this approach alters the audience’s perception of the work?

A – The semantics of sonic interactions in alienating and oppressive urban environments is often dissolved and disintegrated into Asemic fragments. What remains is pure phenomenological experience. I would like to touch this pure phenomenology of nomadic listening. The outcome is a disjunction between language and immediate meaning, transcending epistemological chains of cognitive decoding. Through this modulation and modification of the listening text, which is no more a mere description

of the place but far more contemplative and poetic, this disjuncture opens up a sonic experience which is emancipatory and disconnected from the here and now. Since noise only has ontology but no epistemology, this epistemic void and neutrality in noise's presence are inviting contexts for an artist like me to contemplatively engage with.

R – What makes you want to break the immersion? In a recent paper, which was presented at ISEA2020 in Montreal, and published in RUUKKU Studies in Artistic Research, titled 'Post-immersion', I'm trying to develop a counterargument against immersive medial experiences. What I'm trying to suggest here is to create post-immersive situations via the means of sound, where immersion is broken to install a sense of discursivity. It's a kind of subjective formation through sound. In immersion, the audience is enveloped by the sonic and visual experience. And in this envelopment the discursive faculty of the audience is suspended. Hence, the audience cannot question the content and context of the experience. What is your position?

A – Immersion is something I also question in my work. What I like to do is break that immersive space to encourage a subjective formation of the audience, where he or she can nurture his or her discursive potential and the questioning faculty. In the contemporary sound art, there are many examples of a less thoughtful and more indulgent sonic experience – sound art experiences with a fetishised use of the idea of immersion. Take for example the audio-visual performances and installations by popular sound artists like Ryoji Ikeda and Alva Noto. Among numerous other artists working today, both produce pure

sensorial experiences via large-scale multichannel sound projections along with live or preprogrammed visuals. Their notoriously abstract and spectacular immersive sound works often drown the potent subjective contemplation of the sensitive listener to foreground the entertaining spectacle itself. There are many noise artists performing regularly in the festival circuits and the club scenes, promoting a popular kind of immediately immersive sound works that are made to move the body and chill out. One can argue that a discursive situation in an artistic experience occurs when the spectator/listener is free to detach him/herself from a sonic experience to open it for multiple possible interpretations, rather than being fixed in an ontological relationship with the experience, as it takes over the phenomenological freedom of the listener. This disjuncture is crucial in my own sound art practice as a mode to personalise an immersive sonic experience for a self-aware critical faculty to emerge. Intrusion of noise, or a sudden loud scream, as an alarm mechanism, or through asynchronism⁸ – a divorce of sound and image in an audiovisual experience as a noise intrusion or glitch in the narrative development – these are my artistic strategies to break the immersion.

R – Does it hint at psychogeography and psychological experience of situated noise? I am personally interested in the psychogeographic approach in listening and urban

⁸ In his essay 'Asynchronism as a Principle of Sound Film', Soviet film director Vsevolod Pudovkin argued for a non-naturalist use of sound in cinema divorced from the slavery of the visual image to create narrative counterpoints between sound and image. In *Film Technique and Film Acting*, trans, ed. Ivor Montagu. (New York: Grove Press, 1960).

sounds. In two of my articles published: ‘Sonic Drifting: Sound, City and Psychogeography’⁹ in *SoundEffects* and ‘Listening in/to Exile: Migration and Media Arts’¹⁰ in *VIS*, I discuss these issues. I am curious to know how you practice these ideas in your artworks.

A – Yes, it does. I don’t actually create music out of noise, but I decipher the sonics of the spatiality through a recording style that is informed by multiple levels of auditory transduction. It’s not composing with field recordings but transforming the quasi-musical elements in recording itself. I use this site-specific approach to underline a historically extended temporality and a participatory spatiality in sound rather than composing it with a musical intention.

R – It’s almost like you don’t have an idea to start with but you just tend to use the material to find something within it. Would you say there is a chance factor?

A – Yes, chance is central here. I think there is a specific emotive context that I start with: like the development of melancholia, loss or some sort of dark emotion in relation to a place and my relationship with it. I start with this particular mood and this mood drives the entire work. It also sets the tempo and the kind of textural exploration I make. That mood is something I start with from the very beginning. If my relationship with the place is creepy, the mood is very creepy.

⁹ See: Budhaditya Chattopadhyay, ‘Sonic Drifting: Sound, City and Psychogeography’, *SoundEffects* 3, no. 3 (2013): 138–152.

¹⁰ See: Budhaditya Chattopadhyay, ‘Listening in/to Exile: Migration and Media Arts’, *VIS – Nordic Journal for Artistic Research* 2 (2019). <https://doi.org/10.22501/vis.564694>.

R – Spending a lot of time finding different environments. It seems like, placing yourself in different situations through travelling is as important as recording and composing.

A – Yes, exactly. Self-inviting me in different kinds of situations is crucial in my practice. I let the places choose me, and the noise choose, rather than I choose them.

R – It could be a form of generative music itself, the fact that you move yourself around in different places.

A – As a kind of interlocutor.

R – Do you think this speaks more widely of your works and how they are something much greater than sound itself, or the sound work is trying to hint at something which is greater than itself, something beyond art and music and sound all together?

A – Yes, of course. It is not the momentary experience of a place, but it is a broad understanding of the evolution of the place, evolution of the city, the evolution of a particular nation or community or culture or strands of a culture, or a landscape.

R – How do you listen to the contemporary time and its refracting noises?

A – If I listen to the contemporary times without a hurried or frenzied frame of mind, I can mostly hear the silence of fear. With careful attention, the sounds that envelop me every day in this continent where I have been living more or less for the past ten years, unfold with a sense of discomfort lately. On the streets and inside institutional corridors of Europe, I have met faces that refused

to let me walk freely, with my dignity or a sense of safety intact. The looks in these eyes have dripped with fear and loathing for the *different*; their ears refused to listen to my voice, pertaining to the dissimilarity in reference to a dominant mode. Not everyone is safe in this Europe. Not everyone feels equally respected, duly appreciated and valued in this land.

R – Do you consider yourself an outside, a stranger, an alien, or an obtrusive figure?

A – An outsider is he, who lives in the margin of thoughts, and intends to come to the centre of thinking-process. Thus, he becomes a noise. Noise is song of the oppressed. We cannot stay away from noise of any kind. Noise is powerful because it is omnipresent. Noise can infiltrate from any side of a tightly closed room, be it the living room of the clerics, or the security-proof corridor of the corporates. Noise can buzz around the ear until one tends to recognise it and interpret a meaning. Noise has its own aesthetics that can enchant parts of the institution to move from their indifference. Noise has its own dynamics that can disturb the limbs of the unresponsive public mechanism to take a decisive action. People whose voices are considered ‘noise’ by not-listened-to, may determine using the very form of noise as a counter-tactic instead of forced silences expected of them by non-responding bodies, as philosopher Michel Serres suggests in his work *The Parasite* (2013), ‘He becomes invisible by being impossible, absurd, outside reason and logic.’¹¹ The art of noise can be the tool to disrupt the regu-

¹¹ Michel Serres, *The Parasite*, trans. Lawrence R. Schehr (Minneapolis: University of Minnesota Press, 2007), 218.

latory fences of a complacent people and corporate nexus, if strategic deafness of this nexus does not discourage and dishearten the socially, environmentally and politically committed sound artists and noisemakers, and they persist to reverberate the silent walls using the revolutionary methodology of noisific(a)tion. Here the position of the artist as noisemaker is at the absurd margin or outside of a stagnant society; and noise is the fertile ammunition in the hand of the artists to disorder and reorder a society through its self-questioning and regeneration.

R – What can be a superlative future sound experience? Can we imagine a soundwork of discursivity and dissent?

A – Sound artists ‘have been recording protests around the world to create a sound collective that reflects today’s political environment.’¹² What these recordings mostly contain are the shouts and screaming made on the streets. Yes, it is a scream – a loud earth-shaking scream – that is what the future may sound like. That is only when the pleasant immersion can be broken through which the light of alert, aware and mindful actions may break in. This is the power of a scream, a loud *Howl* on a global scale.

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¹² See: Victoria Turk, ‘This Is the Sound of Global Protest, From Trump to Brexit’, *Wired UK*, 7 August 2017, <http://www.wired.co.uk/article/sounds-of-protest-trump-brexit-sound-map>.

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A Lexicon of Law and Listening

James E. K. Parker

Ahem: Before We Begin

There is something satisfying about the alphabet: about alphabetisation, and so dictionaries and lexicons.¹ They feel complete. There is a sense of coverage and of order. This is a fantasy, of course. But it is one in to which we are inducted from our very earliest encounters with the world of writing and so also, in a manner of speaking, of law.² How strange that, so often, the medium of this induction is the voice: that we learn to read by listening. Law's textuality has been systematically overstated. Even texts sing. And if there is a more familiar refrain in the English language than the 'Alphabet Song', I would be surprised. As a way into thinking about, or arranging

¹ The Lexicon has been previously published in the *Jindal Law and Humanities Review*, no. 1 (2020):1–23. It is reproduced here in accordance with the same Creative Commons license (CC BY-NC-SA 4.0).

² See for instance, Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld and Nicolson, 1990).

thinking about, the relationship between law and listening, therefore, the lexicon is quite suggestive. It offers a roadmap that is at once arbitrary and entirely governed by the strange logic of the ‘phonotext’.³

There is a long history of allowing one’s thought to be governed and extended like this. The immediate inspirations for this lexicon were two books from the field of Sound Studies: Steven Connor’s *Beyond Words: Sobs, Hums, Stutters and Other Vocalizations* (2014) and Brandon LaBelle’s *Lexicon of the Mouth* (2014), both organised not-quite alphabetically, both concerned with cataloguing and understanding a series of not-quite linguistic vocalisations: coughs, growls, hisses and hums; in Connor’s case from ‘ahem’ to ‘Zzzz’.⁴ But I also had in mind Teju Cole’s hilarious and penetrating series of alphabetised tweets, beginning on 26 August 2013: ‘a modern-day glossary of received wisdom’, which Cole set out to skewer in 140 characters or less.⁵ Some examples:

AUSTRALIANS. Extremely fit. Immune to pain. If you meet one, say ‘Foster’s.’ The whole country is nothing

³ Garrett Stewart, *Reading Voices: Literature and the Phonotext* (Berkeley: University of California Press, 1990).

⁴ Jonathan Sterne (ed), *The Sound Studies Reader* (New York: Routledge, 2012); Trevor Pinch and Karin Bijsterveld (eds), *The Oxford Handbook of Sound Studies* (New York: Oxford University Press, 2012); Michele Hilmes, ‘Is There a Field Called Sound Culture Studies? And Does It Matter?’ *American Quarterly* 57, no. 1 (2005): 249; Steven Connor, *Beyond Words: Sobs, Hums, Stutters and Other Vocalizations* (London: Reaktion Books, 2014); Brandon LaBelle, *Lexicon of the Mouth* (New York: Bloomsbury, 2014).

⁵ ‘Teju Cole’s dictionary of received wisdom – what would you add?’, *The Guardian*, 27 August, 2013, <https://www.theguardian.com/commentisfree/2013/aug/27/teju-cole-modern-glossary#comment-26387013>.

but beaches. CRIME. Illegal activities involving smaller amounts of money. JAZZ. America's classical music. The last album was released in 1965. SMART. Any essay that confirms your prejudices. TELEVISION. Much improved. Better than novels. If someone says 'The Wire,' say 'The Sopranos,' or vice versa. ŽIŽEK. Observe he's made some good points, but.⁶

As Cole would later explain, the whole thing was a contemporary riff on Gustave Flaubert's *Dictionnaire des Idées Reçues* (1913) ('Dictionary of Received Ideas'), as well as Ambrose Bierce's more cynical *Devil's Dictionary* (1906). But I thought immediately of OULIPO, the circle of writers and mathematicians founded by Raymond Queneau in France in 1960 with a view to exploring the literary potentials of formal constraints. Thus, Queneau's *Cent Mille Millions de Poèmes* (1961) ('Hundred Thousand Billion Poems'), comprising 140 lines of rhyming sonnet to be arranged by the reader in any order, or Georges Perec's famous lipogram *La Disparition* (1969) ('A Void'), which does not include the letter 'e'.⁷ Though infinitely (or at least a hundred thousand billion times) more modest, this lexicon is also a literary experiment of sorts. Its formal conceit – one entry for every letter of the English-Latin alphabet – is also an engine of jurisprudential production; an exercise, you might say, in 'jurisography'.⁸

⁶ Teju Cole, 'In Place of Thought', *New Yorker*, 27 August 2013. <https://www.newyorker.com/books/page-turner/in-place-of-thought>.

⁷ Warren F. Motte, ed., *Oulipo: A Primer of Potential Literature* (Lincoln: University of Nebraska Press, 1986).

⁸ Ann Genovese and Shaun McVeigh, 'Nineteen Eighty Three: A Jurisographic Report on *Commonwealth v Tasmania*', *Griffith*

Another obvious reference point in the history of legal writing is the law dictionary – extending back through Butterworths’ (1997 – present) to Black’s (1891 – present), Jacob’s (1729) and beyond – though this text makes no claim to be either comprehensive or authoritative. Just the opposite actually. What follows is intended as an opening outward, an invitation to other jurists and sonic thinkers. I hope the reader will quickly see the lexicon’s conceit for what it is: that insofar as this text gathers a vocabulary and set of themes and methods for thinking the many relationships between law and listening, any initial sense of coverage or completeness soon gives way to the realisation that each and every entry might equally have been another. From A to Z and beyond, there is a whole world of alternatives. Indeed, this lexicon is written in only one alphabet, in just one language, and in a specifically British-Australian idiom at that. It was written on unceded Wurundjeri land, in the settler colony of Australia, from the perspective of someone trained in, amongst other things, the common law. I hope there is something of general interest here, but more than anything this is a (neatly alphabetised) archive of my own jurisprudential preoccupations and prejudices.

This is not my first attempt to think law and listening together. One of the things I want to do here is make ‘usable’ ideas I have developed elsewhere, precisely by untethering them from their original contexts and allowing them a certain room to breathe. My book *Acoustic*

Law Review 24, no.1 (2015): 68–88; Ann Genovese, Shaun McVeigh and Peter D Rush, ‘Lives Lived with Law’, *Law Text Culture* 20 (2016): 1–13.

Jurisprudence: Listening to the Trial of Simon Bikindi (2015) emphasised depth over breadth. It tried to elaborate a specifically acoustic jurisprudence by staying with the details of just one case, in just one jurisdiction: the trial – by the International Criminal Tribunal for Rwanda – of a singer, accused of inciting genocide with his songs.⁹ The book's depth, I hope, was its strength. This lexicon is very different. It offers 'shallow listening' as a virtue instead.¹⁰ In addition to excising examples developed elsewhere, it follows through on thoughts I have not had an opportunity to pursue at greater length, or which have been developed already in other fields but warrant further jurisprudential elaboration. It can also be read, therefore, as a series of veins to be further mined and explored.

So with that throat clearing out of the way...

A is for **acoustic**, from the Greek *akoustikos*, 'pertaining to hearing or listening'. In contemporary usage, we often talk about the acoustic of a space or building: a church, an office, a courtroom. In this way of thinking, the acoustic has to do with ears, subjectivities and institutions. It is, you might say, anthropocentric. But **a** is also for **acoustics**, the branch of physics concerned with the 'generation, transmission, and reception of energy as vibrational waves in matter'. 'In a strange turn of historical events',

⁹ James E. K. Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (Oxford: Oxford University Press, 2015).

¹⁰ Seth Kim-Cohen, 'No Depth: A Call for Shallow Listening', in *Against Ambience* (New York: Bloomsbury, 2013), 131–43.

Benjamin Steege explains, ‘it has become possible, perhaps even common, to define acoustics in almost completely nonaural terms’;¹¹ what humans hear is just a tiny slice of the vibrating world.¹² So which is it? Is the acoustic about human aurality or vibrant matter? What is the relation between the two? And what has law got to do with it? Exactly. The task for an *acoustic* jurisprudence is not to resolve such questions in advance, but precisely to investigate them.¹³ How does the acoustic appear in the texts and conduct of law? What kind of work is it doing? With what effects? How, finally, might our very conceptions of the acoustic be bound up with juridical practices of world making?

B is for **bell**, a juridico-acoustic technology of particularly long standing. In Franchino Gaffurio’s treatise *Theorica Musicae* (1492), bells are used to illustrate the principles of Pythagorean harmony, so influential on Greek and Renaissance ideas of music, science, law and cosmology. And in Alain Corbin’s extraordinary account of bellringing in nineteenth century rural France, village bells quite literally institute life.¹⁴ They toll to mark the beginning and end of each work day, the call to mass, ceremonies and festivals, births, weddings, deaths, and funerals. They peal to mark the presence of the monarch,

¹¹ Benjamin Steege, ‘Acoustics,’ in *Keywords in Sound*, eds. David Novak and Matt Sakakeeny (Durham: Duke University Press 2015), 22.

¹² Jonathan Sterne, ‘Hearing’ in *ibid.*

¹³ Parker, *Acoustic Jurisprudence*.

¹⁴ Alain Corbin, *Village Bells: Sound and Meaning in the 19th-Century French Countryside*, trans. Martin Thom (New York: Columbia University Press, 1998).

the opening and closing of the polls, the arrival of the tax collector, and to signal danger or joy. By virtue of their limited geographic reach, bells orient and territorialise. They are a technique of juris-diction: of law's acoustic expression. Which law? In Corbin's telling, the process of modernisation from the 1830s onwards was a process of desacralisation. During this period, bells became the objects of vigorous contestation between the ecclesiastical and other competing jurisdictions. At stake here was more than just authority or sovereignty over acoustic space, but entire modes of ordering life: in particular, the broad shift from qualitative to quantitative time. Today, bells still mark events of course. At the European Court of Human Rights, an electronic bell rings to call proceedings to order and again to bring them to a close. And when, in August 2017, London's 'Big Ben' chimed for the 'final time' in four years whilst Parliament's Elizabeth tower underwent restorations, only its marking of clock time was being muted. The 13-tonne bell would still ring out on New Year's Eve and Remembrance Sunday. Nevertheless, as if to confirm Corbin's analysis, the justification for this controversial move could hardly have been more secular, prosaic or – for that matter – juridical. The bell was silenced for reasons of workplace health and safety.¹⁵

¹⁵ Jessica Elgot, 'Big Ben Bongs Sound for Final Time for Four Years', *The Guardian*, 21 August 2017. <http://www.theguardian.com/uk-news/2017/aug/21/big-ben-bongs-to-sound-final-time-for-four-years>.

C is for **copyright**, a way of protecting and monetising the circulation of – amongst other things – melodies, musical scores, audio-recordings, and ideas about our acoustic worlds. But also, and just as importantly, copyright is a profound intervention *in* those worlds that (i) stifles creative expression as much as it protects it, (ii) places legal interpretation at the centre of the creative process, and (iii) transforms practices of listening, since listening to sacred or festive music is, after all, very different to ‘listening-to-a-work’.¹⁶ It is not a matter of picking sides in the ongoing war between the so-called ‘copy left’ and ‘copy right’. One needn’t align oneself with the politics of Pirate Bay and its proliferating strategies of lawfare or have a position on the aesthetic merits of plunderphonics, hip-hop or vaporwave to appreciate the basic jurisprudential point here. Copyright intervenes in the soundscape. It juridicizes creativity and the act of listening, just as norms of music production and consumption affect the law of copyright in turn.

D is for **decibel (dB)**, a logarithmic unit for measuring the intensity of sound, officially endorsed by the International Organization for Standardization since at least 1971 and now commonly used by courts and legislatures all over the world in the regulation of sound and noise. The decibel is not just a technique of regulation, however. It is a *product* of it: a co-production of law, technoscience and, as it happens, the soundscape and citizenry of New York City. As Emily Thompson has shown, it

¹⁶ Peter Szendy, *Listen: A History of Our Ears* (New York: Fordham University Press, 2008), 15.

was developed collaboratively by Bell Labs, the Johns-Manville Corporation and a range of others, including scientists at the Department of Health, in response to a call by the New York Noise Abatement Commission, which had been established in response to rising noise-related health complaints in 1929. The decibel wasn't the first unit developed to measure noise, just the most successful. The data it yielded for the commission – including the fact that the subway regularly reached 120 dB, the threshold for ear pain in humans – initiated a wide-ranging legislative response aimed at eliminating noises at the source: replacing whistle-blowing traffic police with silent traffic lights, amending building codes so that welding could be used to silence the noise of riveting, classifying a wide range of noises and simply making them illegal. When this did not result in a quieter city, a different regulatory response emerged: the mandating of new sound-absorbing building materials. Noise abatement turned from prohibition to architecture for help.¹⁷

E is for **eavesdropping**. According to Blackstone,

eavesdroppers, or such as listen under walls or windows or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance and presentable at the court-leet: or are indictable at the sessions, and punishable by fine and finding sureties.¹⁸

¹⁷ Emily Ann Thompson, *The Soundscape of Modernity: Architectural Acoustics and the Culture of Listening in America, 1900–1933* (Cambridge: MIT Press, 2002).

¹⁸ William Blackstone, *Commentaries on the Laws of England: Vol 4* (Oxford: Oxford University Press, 2016), 169.

Two hundred and fifty years later, eavesdropping isn't just legal, it's ubiquitous. What was once a minor public order offence appended to the law of slander has become one of the most important politico-legal problems of our time, as the Snowden revelations made abundantly clear. But eavesdropping isn't just about surveillance and security. It is an emergent form of power that extends far beyond those idioms: the ever-increasing access to and capture of our sonic worlds by state and corporate interests. On behalf of the world's most powerful governments and corporations, our smart-phones, televisions, toys, and CCTV cameras listen to us 24/7; always everywhere, always on, and often perfectly legally. 'Please be aware that if your spoken words include personal or other sensitive information, that information will be among the data captured and transmitted to a third party through your use of Voice Recognition', Samsung explained in the so-called privacy policy for one of its Smart TVs in 2015.¹⁹ Public pressure forced the company to change the wording, though not the effects, of this policy, and in March 2017 a new cache of documents released by Wikileaks referred to a CIA hack known as 'Weeping Angel' which allegedly enabled the agency to exploit this function and listen in to owners of Samsung TVs using the devices' built-in microphones.²⁰

¹⁹ Nick Grimm, 'Samsung Warns Customers New Smart TVs "Listen in" on Users' Personal Conversations', *ABC News*, 10 February 2015. <http://www.abc.net.au/news/2015-02-10/samsung-warns-customers-new-smart-tvs-listen-in-on-users/6082144>.

²⁰ Sam Biddle, 'WikiLeaks Dump Shows CIA Could Turn Smart TVs into Listening Devices', *The Intercept*, 7 March 2017. <https://>

F is for **forensics**, the juridical art of proof from matter. For Lawrence Abu Hamdan, the matter in question is sound. ‘Forensic listening’ describes a range of practices all concerned with sound’s ability to reveal truth. In Britain, one decisive moment was the *Police and Criminal Evidence Act* (1984) which, for the first time, required that police interview rooms be equipped with tape recorders. The law was intended to protect against falsification of confessions, but in doing so it yielded an enormous new archive for forensic investigation. ‘The act exponentially increased the use of speaker profiling, voice identification, and voice prints in order to, among other things, determine regional and ethnic identity as well as to facilitate so-called voice line-ups.’²¹ As these new techniques blossomed, so did the range of audio-evidence available for analysis. ‘Soon the forensic listener was required not only to identify voices, but to investigate background sounds in order to determine where, with what machine, and at what time of day a recording had been made – thus enabling a wide range of sonic frequencies to testify.’²² Testify to *what* exactly? And how to know? Abu Hamdan himself did the audio-ballistics for a case involving the shooting by Israeli soldiers of two Palestinian teenagers in the West Bank and, based on his analysis of recordings of the incident, was able to prove that the soldiers had fired live ammunition rather than

theintercept.com/2017/03/07/wikileaks-dump-shows-cia-could-turn-smart-tvs-into-listening-devices.

²¹ Lawrence Abu Hamdan, ‘Aural Contract: Forensic Listening and The Reorganization of The Speaking Subject’, *Cesura//Acceso* 1 (2014): 202.

²² *Ibid.*

rubber bullets as they'd claimed.²³ But he also warns against proliferating pseudo-science. A company called Nemesysco, for instance, claims to be able to detect everything from whether or not a person is lying, to embarrassment, anxiety, and even a propensity for sex-offending, simply by analysing their speaking voice. A study conducted by researchers at the University of Stockholm showed the company's claims to be bogus. But that hasn't stopped its software being bought up by the Los Angeles Police Department, European, Russian and Israeli governments, and insurance companies all over the world. At stake here is the difference between forensic listening and a new 'phrenology of the voice'.²⁴

G is for **gavel**, technique and symbol of acoustic authority. Gavels feature today in some of the most prominent institutions of international law – at the Grand Chamber of the European Court of Human Rights and at both the UN Security Council and the General Assembly, amongst others – as well as in many courts and legislatures internationally. Even in jurisdictions where the gavel doesn't appear in conventional legal settings, you will still find it at auctions, conferences and meetings, and when you do the gavel will be doing important juridical work. This work may not be uniform between institutions but there are clear continuities. The gavel's knock can issue a call to order or mark a decision or verdict. It can invoke silence

²³ 'Nakba Day Killings', *Forensic Architecture*, <http://www.forensic-architecture.org/case/nakba-day-killings>.

²⁴ Abu Hamdan, 'Aural Contract: Forensic Listening and The Reorganization of The Speaking Subject', 223.

on the one hand and closure on the other. This distinction is not necessarily something you can ‘hear’ however. It isn’t a matter of one knock or two, loud or soft. Most of the time, when we listen to the gavel’s knock we listen ‘semantically’, and in this respect both the meaning of the knock and the institutional work it performs depend less on the way the gavel is ‘played’ than the context in which it is heard. But the gavel is also one of the most widely recognised symbols of law. Images of it are everywhere: in books, on TV, at the movies, and all over the web. Symbolically, the gavel speaks as much of law’s promise as its threat. In its connections both to the hammer and the mace, the gavel is in equal parts tool and weapon. As a tool, it is world-making: tied to traditions of craftsmanship and labour. As a weapon, it is a technique of violence: a reminder of the intimacy between apparently anodyne juridical speech and sheer brute force.²⁵ But, of course, the gavel’s semantic and symbolic dimensions are not entirely separate. Whether in court or parliament, orderly discourse is both a synecdoche and attempted exemplification of the order law aspires to and demands elsewhere.²⁶

H is for **hearing**. Roland Barthes provides the following succinct definition, echoing a common position. ‘Hearing is a physiological phenomenon’, he writes. ‘Listening is a psychological act’. ‘It is possible to describe the physical conditions of hearing (its mechanisms) by recourse to

²⁵ Robert M. Cover, ‘Violence and the Word’, *The Yale Law Journal* 95, no. 8 (1986): 1601–1629.

²⁶ James E. K. Parker, ‘The Gavel’, in *International Law’s Objects*, eds. Jessie Hohmann and Daniel Joyce (Oxford: Oxford University Press, 2018).

acoustics and to the physiology of the ear'.²⁷ Not so with listening. Hearing has to do with the body, listening the mind. Hearing is natural, listening enculturated. Contemporary work in Sound Studies suggests that things are not so simple: that even bodies have histories, that the ear-brain relationship is both multidirectional and plastic, and that we 'have no direct intellectual or experiential access to the faculty of hearing in its supposed state of nature' in any case.²⁸ From a jurisprudential perspective, the distinction is further complicated. *The hearing* is an institution. Though it may depend on a naïve concept of the human body, and an 'able' body at that (legal institutions have historically been very bad at providing access to justice to the deaf or hearing impaired), the hearing also implies a certain kind of institutional space, the presence of certain institutional actors, certain norms and procedures of argumentation and judgment (*audi alteram partem* being one of the foundational principles of the common law), and a complex relationship with prior hearings and legal texts. Perhaps we should not be so surprised. The word hearing derives from the Old English, *heran* (Anglian), *hyran* (West Saxon), which meant not only to hear or 'perceive by the ear', but also – crucially – to judge.

I is for the **ineffable**, the profound difficulty, even the impossibility, of putting certain experiences to words.

²⁷ 'Listening' in Roland Barthes, *The Responsibility of Forms: Critical Essays on Music, Art, and Representation* (Berkeley: University of California Press, 1991), 245.

²⁸ Sterne, 'Hearing', 72.

Sound and music often get singled out in this respect: when people struggle to describe that special quality in a favourite singer's voice, or the power and impact of certain recordings and live performances. As Victor Hugo is supposed to have put it, 'music expresses that which cannot be said and on which it is impossible to be silent'.²⁹ For Vladimir Jankélévitch, in his little-known treatise on the topic, the ineffable is that which 'provokes bewilderment'. Like Hugo before him, for Jankélévitch music is ineffable not because it is somehow meaningless. If it resists description or cannot be explained, that is because 'there are infinite and interminable things to be said of it', not zero. So it is only in the 'imagining and dismissing, and doing it again, and again' of a piece of music's meaning, power and import, that 'one asymptotically approaches an intimation of something that will elude any and all searchlights'.³⁰ Consider the problem this poses for law, when legal institutions are called upon to determine a song or piece of music's (juridical) significance or effects. The demands of legal judgment – its peculiar urgency, and its pairing with institutionalised and ostensibly legitimate violence – are inherently in tension with Jankélévitch's insistence that we approach music 'again and again', on to infinity. In law, remember, judgment must come soon, and it must be finite. But perhaps music is not such a special case after all. Perhaps it just points us particularly

²⁹ On the somewhat mysterious origins of this quote and the idea it encapsulates, see Susan Fast and Kip Pegley, eds., *Music, Politics, and Violence* (Middletown: Wesleyan University Press, 2012), 8.

³⁰ Carolyn Abbate, 'Jankélévitch's Singularity', in Vladimir Jankélévitch, *Music and the Ineffable* (Princeton: Princeton University Press, 2003), xiii.

clearly to the dilemma of all legal judgment. In Derrida's well-known phrase: 'Law is not justice. Law is the element of calculation, and it is just that there be law, but justice is incalculable, it requires us to calculate with the incalculable'.³¹

J is for **jurisdiction**, from the Latin *ius dicere*, to speak the law. The word judge has identical roots. *Iu-dex*: he who declares the law, she who pronounces judgement. In contemporary usage, jurisdiction refers primarily to matters of procedure, territory, and the conflict of laws. It is about the distribution of authority: about which institutions are authorised to do what, when, how and on whose behalf. Jurisdiction, thus, is how law acts in the world. It is law's mode of articulation, what 'gives legal form to life and life to law'.³² We could notice two things, therefore. First, jurisdiction installs questions of voice and audibility right at the heart of jurisprudence. Even if these connotations are subdued in, say, maritime disputes or controversies regarding the responsibility to protect in international law, that does not mean they are absent. After all, 'if the law must speak in order to exist, [it] needs a mouth and voice'.³³ The very idea of jurisdiction depends on a metaphysics – perhaps even a metaphysics – of the body. Second, thinking law in terms of jurisdiction opens up the

³¹ Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"', *Cardozo Law Review* 11, nos. 5–6 (1990): 947.

³² Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (London: Routledge, 2012), 1.

³³ Costas Douzinas, 'The Metaphysics of Jurisdiction' in *The Jurisprudence of Jurisdiction*, ed. Shaun McVeigh (London: Routledge-Cavendish, 2007), 25.

question of law's acoustic expression more broadly. Different jurisdictions give voice to law differently in different places at different times: from the police car's siren to the church bells of Christianity to the call to prayer in Islam to the songlines of Aboriginal Australia. 'The abstractness and immateriality of law is greatly exaggerated,' McVeigh and Dorsett write with jurisdiction specifically in mind.³⁴ Sound remains a key feature of law's expressive life: its conduct, transmission, and embodiment.

K is for **keynote sound**, coined by R. Murray Schafer in his seminal work *The Soundscape: Our Sonic Environment and the Tuning of the World*. 'Keynote', of course, is a musical term: 'the note that identifies the key or tonality of a particular composition': its anchor, the harmonic centre around which everything else modulates.³⁵ In Schafer's hands, the phrase 'keynote sound' is intended to capture something similar: those sounds so ubiquitous in a particular environment that, though they may not be listened to consciously, nevertheless come to orient and order life there. 'The keynote sounds of a given place are important', he writes, 'because they help to outline the character of men living among them.'³⁶ Schafer is thinking primarily of 'natural' sounds here – the sounds of 'water, wind, forests, plains, birds, insects and animals' – because, as an early pioneer of sonic ecology, he is concerned about what is lost when the sounds of commerce and industry

³⁴ Dorsett and McVeigh, *Jurisdiction*, 5.

³⁵ R. Murray Schafer, *The Soundscape: Our Sonic Environment and the Tuning of the World* (Rochester: Destiny Books, 1994), 9.

³⁶ *Ibid.*

come to dominate instead. ‘Which sounds do we want to preserve, encourage, multiply?’³⁷ By now this question is well embedded in the debate around noise abatement, which for Schafer was already a matter of noise *pollution*. But the concept is fertile in other legal contexts too. What might the keynote sounds of a contemporary courtroom be, for instance, working away *beneath* all the law-talk, the whispers, and the knocking of gavels? That familiar hum of strip-lighting, air-conditioning units, and computer fans, just audible over the soundproofed quiet: what do *these* sounds tell us? What are their effects on those ‘living among them’? Compared with, say, the open-air *Gacaca* courts of post-genocide Rwanda,³⁸ or ‘on country’ hearings in Australia?³⁹ They speak perhaps of a financial situation deemed appropriate to the workings of urban contemporary justice, and a form of bureaucratic and technological efficiency which operates by means of a dislocation from the vicissitudes of time and place. Despite Melbourne’s choking summer heat, despite London’s chill winter, the waning light, and the civic hubbub outside, these sounds announce that work, the day-to-day business of judgment can and should go on regardless.

L is for **law** and **listening**, in their proximity and mutual constitution. Law *like* listening, law *as* listening, laws *about* listening, the laws *of* listening, listening *to* law, how

³⁷ Ibid.

³⁸ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (Cambridge: Cambridge University Press, 2010).

³⁹ Michael Black, ‘Developments in Practice and Procedure in Native Title Cases,’ *Public Law Review* 13, no. 1 (2002): 3.

law listens: law and listening, together and co-produced. Law and listening as ways of ordering experience, law and listening as techniques for encountering, knowing and making the world, law and listening as practices of judgment, as forms of rationality, as domains of expertise, as servants of capital, as techniques of domination, injustice and power. Law and listening: gendered and gendering, colonial and colonising, raced and racialising, classed and productive of class relations. Law and listening: cognitive, embodied, technological, unconscious, historically constituted, aesthetic, ethical, normative, political. Law and listening: sites of opportunity and struggle.

M is for **music**, an object of legal governance, and not just in the worlds of intellectual property or noise abatement. Think of the great debates concerning the use of polyphony in sacred music during the Renaissance.⁴⁰ Think of New York City's infamous *Cabaret Law*, passed in 1926 and used to suppress the new forms of jazz that would emerge so explosively over the following decades.⁴¹ Think of its British equivalent, the *Criminal Justice and Public Order Act 1994*, used similarly to outlaw raves with their 'repetitive beats' as s.63 of the Act so infamously put it. Think of Simon Bikindi, accused by the International Criminal Tribunal for Rwanda of inciting genocide with his songs,⁴² or the conviction of three members of Pussy Riot on charges of 'hooliganism motivated by

⁴⁰ Parker, *Acoustic Jurisprudence*, 17–19.

⁴¹ Sara Ramshaw, *Justice as Improvisation: The Law of the Extempore* (London: Routledge, 2013).

⁴² *Prosecutor v Bikindi* (Judgment) ICTR-01-72-T (2 December, 2008).

religious hatred' for a performance of their 'Punk Prayer' at a Moscow Cathedral in 2012.⁴³ Think of the court's consistent attempts to prevent witnesses like Phil Ochs and Arlo Guthrie from singing during the trial of the Chicago Seven,⁴⁴ or the court's decision in *People v Kelly* to prohibit the use of particularly 'evocative' music like Enya or Celine Dion in victim impact evidence at death penalty sentencing hearings.⁴⁵ In all these examples, the courts and legislatures in question are expressing certain musical imaginaries, understandings of what music is, how it works and what it does, and how all this relates to questions of social order and justice across different media and performance settings. But music is not just an object of law. For Desmond Manderson, it is also a source of it. Music necessarily serves a 'normative, and thus a legal function', he writes, 'establishing the conditions of life of which the law is but a particular expression'.⁴⁶ Polyphony, bebop, rave, *imbyino*, punk, folk, Enya: they all contribute to the *nomos*. Music influences profoundly our senses of justice and relationships to legal institutions and authority. Moreover, that is often precisely how it ends up being the object of legal controversy in the first place.

⁴³ Desmond Manderson, 'Making a Point and Making a Noise: A Punk Prayer,' *Law, Culture and the Humanities* 12, no. 1 (2016): 17–28.

⁴⁴ Pnina Lahav, 'Theater in the Courtroom: The Chicago Conspiracy Trial,' *Law and Literature* 16, no. 3 (2004): 381.

⁴⁵ *People v Kelly*, 171 P.3d 548 (Cal. 2007) 555.

⁴⁶ Desmond Manderson, 'Et Lex Perpetua: Dying Declarations & Mozart's Requiem,' *Cardozo Law Review* 20 (1998): 1628.

N is for **noise**, currently ‘the number one quality of life issue for New York City residents’,⁴⁷ and source of more than two hundred thousand official complaints in the first half of 2017 alone, all dealt with according to a thicket of national, state, and local regulations.⁴⁸ Obviously, the problem is not limited to New York. In an extraordinary report from 2011, the WHO concluded that in Western Europe the ‘disability-adjusted life years (DALYs) lost from environmental noise’⁴⁹ was ‘61,000 years for ischaemic heart disease, 45,000 years for cognitive impairment of children, 903,000 years for sleep disturbance, 22,000 years for tinnitus and 645,000 years for annoyance.’⁵⁰ Whatever these numbers truly index, they are clearly intended to convey a sense of scale and urgency and to prompt a commensurate regulatory response.⁵¹ And

⁴⁷ ‘Noise Code’, *NYC Environmental Protection*, <https://www1.nyc.gov/site/dep/environment/noise-code.page>.

⁴⁸ Michael Gartland, ‘Noise Complaints Reaching New Highs Amid City’s New Rules’, *New York Post*, 28 June 2017. <https://nypost.com/2017/06/28/noise-complaints-reaching-new-highs-amid-citys-new-rules>.

⁴⁹ According to the report, ‘DALYs are the sum of the potential years of life lost due to premature death and the equivalent years of ‘healthy’ life lost by virtue of being in states of poor health or disability’.

⁵⁰ Frank Theakston and Weltgesundheitsorganisation, eds., *Burden of Disease from Environmental Noise: Quantification of Healthy Life Years Lost in Europe* (Copenhagen: World Health Organization, Regional Office for Europe, 2011).

⁵¹ Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 Relating to the Assessment and Management of Environmental Noise [2002] OJ L189/12; Saeed Hydaralli, ‘What is Noise? An Inquiry into its Formal Properties’, in *Reverberations: The Philosophy, Aesthetics and Politics of Noise*, eds. Michael Goddard, Benjamin Halligan and Paul Hegarty (London: Continuum, 2012).

sure enough, the jurisprudence on noise is mounting, at least insofar as it affects humans. The effects of noise on animals and marine life are another matter entirely. Anthropogenic underwater sound – ‘ocean noise’ caused by a whole range of military, commercial and industrial sources: shipping, sonar, the use of high energy airguns in seismic surveying – is a mounting ecological crisis. It is not just a matter of hearing loss or noise-induced stress and disease, though these are all prevalent. ‘To many scientists, it is the cumulative impact of subtle behavioural changes that pose the greatest potential threat from noise’: a kind of ‘death of a thousand cuts’ as the former Chief Scientist of the US’ National Oceanic and Atmospheric Administration put it.⁵² ‘That some types of sound are killing some species of marine mammals is no longer a matter of serious scientific debate.’⁵³ And yet, from a legal perspective, desperately little is being done about it. Certainly, there is no international legal instrument purporting to deal comprehensively with ocean noise. And in both Canada and the US, commercial shipping, which currently contributes around 75 per cent of the world’s ocean noise,⁵⁴ is specifically exempted from existing regulations.⁵⁵ Noise, for Jacques Attali, is always an expression

⁵² Michael Jasny, *Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (New York: Natural Resources Defense Council, 2005), v.

⁵³ *Ibid.*

⁵⁴ Alexander Gillespie, ‘Vulnerability and Response to the Risk of International Shipping: The Case of the Salish Sea,’ *Review of European, Comparative & International Environmental Law* 25, no. 3 (2016): 317–332.

⁵⁵ Max Ritts, ‘Amplifying Environmental Politics: Ocean Noise: Amplifying Environmental Politics: Ocean Noise,’ *Antipode* 49, no. 5 (November 2017): 1416. <https://doi.org/10.1111/anti.12341>.

of power. As such, it does not exist in itself, but ‘only in relation to the system within which it is inscribed.’⁵⁶ Evidently, this is a system which is profoundly anthropocentric and where the laws of listening are frequently aligned with the interests of capital.

O is for **oath**, a – perhaps *the* – quintessentially juridical form of vocalisation, whether in or out of court, sworn by a witness, a president,⁵⁷ a lawyer or a judge. The oath is a ‘speech act’, to use J.L. Austin’s well-known terminology: a ‘performative utterance’, speech that binds.⁵⁸ *How* does it bind? On this question, Michelle Duncan points out, Austin was ‘lamentably silent on the role of the voice.’⁵⁹ As a condition of enunciation, Duncan writes, ‘the manner in which an utterance is spoken ... must surely enter into the equation of its variability.’⁶⁰ If a witness tried to whisper or shout or sing their oath, or if their delivery seemed overtly ironic or sarcastic, that would surely render it ineffective: not merely incomprehensible, intimidating, or beautiful, but ‘infelicitous’ too. As a speech act, the oath would fail. That the range of possible acoustic infelicities is neither closed nor known in advance doesn’t change anything in this respect. Indeed, the fact that the proper delivery of

⁵⁶ Jacques Attali, *Noise: The Political Economy of Music*, trans. Brian Massumi (Manchester: Manchester University Press, 1985), 26.

⁵⁷ Marianne Constable, *Our Word Is Our Bond: How Legal Speech Acts* (Stanford: Stanford University Press, 2014).

⁵⁸ John Langshaw Austin, *How to Do Things with Words* (Oxford: Oxford University Press 1975).

⁵⁹ Michelle Duncan, ‘The Operatic Scandal of the Singing Body: Voice, Presence, Performativity’, *Cambridge Opera Journal* 16, no. 3 (2004): 289. ‘Tone of voice’, ‘cadence’, and ‘emphasis’ are briefly alluded to in Austin’s sixth lecture, but they are never taken up again in detail.

⁶⁰ *Ibid.*, 291.

the oath so rarely presents a problem in practice is evidence of the extent to which the norms of oralisation are entrenched, not proof of their absence. But even more than the specifics of vocal delivery, it is the fact of vocalisation *per se* that matters most where the oath is concerned. Yes, there is a correlation between the oath's content, what the speaker thereby commits themselves to and the juridical consequences that may, therefore, result in the case of proven breach. Yes, the oath involves a kind of 'theological prejudice' and may summon a certain metaphysical weight, even without any religious text being directly involved.⁶¹ But in the end, the act of oath swearing is about surrendering one's (speaking) body to the authority of the institution, *whether or not* the mind or soul are also in tow. An act of vocal submission which marks the transition 'from the external world to the internal order of legal process.'⁶²

P is for **prudence**, as in juris-prudence, the prudence of *ius*: 'law's consciousness and conscience',⁶³ a concern for law's good conduct. For Cicero, prudence was a 'means for negotiating a dynamic field of expectations and demands, one replete with tensions that could be managed only through skilful attention to the requirements of public performance'.⁶⁴ Prudence, thus, is what

⁶¹ Jacques Derrida, *Of Grammatology*, trans. Gayatri Chakravorty Spivak (Baltimore: Johns Hopkins University Press, 1976), 323 n 3.

⁶² Manderson, 'Et Lex Perpetua ...'

⁶³ Costas Douzinas and Adam Gearey, *Critical Jurisprudence: The Political Philosophy of Justice* (Oxford: Hart Publishing, 2005), 3.

⁶⁴ Robert Hariman, ed., *Prudence: Classical Virtue, Postmodern Practice* (University Park: Pennsylvania State University Press, 2003),

is required ‘precisely when one is no longer safely within a realm wholly determined by one art, one subject, one group, one objective,’⁶⁵ as one always is where law is concerned. Prudence ‘cannot be reduced to an abstract set of principles or goals because it recognises that each situation calls for a different response; a different assessment of the forces that are playing themselves out, of strategic possibilities and limitations.’⁶⁶ Jurisprudence is not therefore about the realisation of some foundational, all-encompassing justice, but the responsible navigation of a whole range of competing, and possibly even incommensurable demands. If it is a form of reason or rationality, then it is certainly not in the usual sense. Prudence is more a matter of conduct and craft. It ‘is distinct from both theoretical knowledge and wisdom,’ Michael Charland explains, ‘in that it is not conceptual but performed: prudence is manifest in “right action” ... not a form of knowledge but an embodied type of understanding.’⁶⁷ Which is to say, amongst other things, that prudence is just as concerned with the technical, material, and affective dimensions of the practice of judgment as it is the logical or calculative. To do jurisprudence is to recognise that we are responsible for law for many different

viii; Marcus Tullius Cicero, *On the Ideal Orator*, trans. James M. May and Jakob Wisse (Oxford: Oxford University Press, 2001), 16–23.

⁶⁵ Robert Hariman and Francis A. Beer, ‘What Would be Prudent? Forms of Reasoning in World Politics,’ *Rhetoric & Public Affairs* 1, no. 3 (1998): 299, 303.

⁶⁶ Douzinas and Gearey, *Critical Jurisprudence*.

⁶⁷ Maurice Charland, ‘Lyotard’s Postmodern Prudence’ in Hariman, *Prudence: Classical Virtue, Postmodern Practice*, 263.

reasons and in many different ways: including in relation to its audibility and engagement with our sonic worlds. An acoustic jurisprudence, thus, is about opening up scholars and practitioners' ears to the diverse ways in which law and sound deeply and necessarily bound to each other. Its ambition is not – or not exclusively – doctrinal change. More or better laws will not do the work of improving the world on their own. If it is normative, an acoustic jurisprudence is about developing a greater sensitivity to questions of sound with a view to thinking and practicing law better.

Q is for **Queer**. For Drew Daniel, 'all sound is queer'. Not in the way that this or that song by Judy Garland, Madonna, Lil' Louis or Bikini Kill might be queer: precisely not in its recognisability, coding or association with this or that queer subculture. 'At its worst and most alienating,' Daniel writes,

the experience of music generates not belonging, not identity, not community, but an oppressive experience that ... Althusser termed 'Hailing'... Hey you! You are this kind of person! This is your music! The obligation to 'Enjoy!' is the ceaseless imperative of the culture industry and its sub-cultural variants.⁶⁸

If music, in this sense, is normative, sound queers identity.

The promiscuous open-ness of the ear, a hole that takes all comers, means that we as living systems are open to and invaded by the world. Sound queers the self/world boundary, all day, every day. In doing so, it blurs the edges of any self that the

⁶⁸ Drew Daniel, 'Queer Sound', *WIRE* 333 (2011), 42.

subject-machine cares to hail; even in the midst of the ‘hey you, here’s your house music’ there are other noises afoot, other sounds playing, other ways to become something more or less than one more obedient minority subject.⁶⁹

The queerness of sound extends far beyond the formation and politics of identity though. It is epistemological (since the indexicality of sound, its bond to the object or event that produced it, is always compromised) ontological (in its materiality, its existence as and rendering of the listener as ‘vibrant matter’⁷⁰) and political too (because ‘the confusing eruption of the sonic into our life ... makes possible a certain kind of ... perceptual community that we share together by remaining perpetually open to the world beyond that community’).⁷¹ Each of these dimensions of sound’s queerness has consequences for legal thought and practice... to the point that we might begin to wonder whether law isn’t queer too? In spite of and against itself?

R is for **recording**, audio-recording, the first known mechanism for which was invented and patented in 1857 by Édouard-Léon Scott de Martinville some twenty years prior to any device that could also reproduce the sounds it had captured. We can say this with certainty now since in 2008 an organisation called First Sounds was able to ‘play back’ several ‘phonautograms’ – graphic traces

⁶⁹ Ibid.

⁷⁰ Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham: Duke University Press, 2009).

⁷¹ Daniel, ‘Queer Sound’.

produced by the machine's stylus on smoked glass – from as early as 1860, which it then made available online under a creative commons licence.⁷² Today, the reproducibility of recorded sound is simply taken for granted, along with the proprietary nature of virtually all audio-recordings, media devices, platforms and formats. But it is worth reflecting on the logic at work in their pairing and what it implies about the (juridical) worlds in which they take place. Consider this notion of the 'reproduction', for instance. There is a sense in which it is simply a fallacy. What I hear when I listen back to Martinville's 1860 'recording' of *Au Claire de la Lune* is mostly crackle and fuzz: not at all identical to what was 'actually' sung, or what anyone present that day would have heard. According to Jonathan Sterne, historically, the analytic response to this acoustic gap between recording and reproduction has typically been in terms of what he calls the 'discourse of fidelity'.⁷³ Thereby, the difference between the two is always figured as a loss which the latest and greatest technology always promises to overcome, but never can. And if the notion of the 'reproduction' is problematic, so too is that of the 'recording' because the possibility of *re*-production transforms the practice of production itself. The singer sings, the lawyer speaks, the witness testifies *to* the microphone, *to* the media-technological network that will enable its later 'reproduction' and proliferation. The 'recording' is always already mediated.

⁷² 'Our Sounds', *First Sounds*. <http://www.firstsounds.org/sounds>.

⁷³ Jonathan Sterne, 'The Social Genesis of Sound Fidelity' in *The Audible Past: Cultural Origins of Sound Reproduction* (Durham: Duke University Press, 2003).

Sterne's point is generalisable in at least a couple of ways. First, recordings aren't just mediated by the technologies and performance practices involved but also by the laws governing those technologies and performances: not just the law of intellectual property, but also privacy, criminal, constitutional law and so on, depending on the context. Second, in a world in which every smartphone is also a recording and playback device, and in which we know that audio and data from these devices is constantly being captured, both covertly and as a function of complex and non-negotiable user agreements, the precise ways in which we allow (or are made to allow) these devices to modify our behaviours has significant social, political, and justice implications.

S is for **soundscape**. For Schafer, who started using the term at the end of the sixties, the soundscape was simply our 'sonic environment', or 'any portion of the sonic environment regarded as a field for study'.⁷⁴ Thus, forests, coastlines, villages and cities were all included, but also musical compositions, factories, concert halls and radio broadcasts. In each case, Schafer's project was overtly normative. It was about the cultivation and preservation of 'sounds that matter' (for Schafer, mostly the harmonious sounds of 'nature') as well as 'raging against those which don't' (man-made, mechanical, dissonant).⁷⁵

⁷⁴ R. Murray Schafer, *The Book of Noise* (Wellington: Prize Milburn, 1968); R. Murray Schafer, *The New Soundscape* (Ontario: Berandol Music, 1969), 1; Schafer, *The Soundscape: Our Sonic Environment and the Tuning of the World*, 274.

⁷⁵ Schafer, *The Soundscape, Our Sonic Environment and the Tuning of the World*, 12.

And although law reform was certainly important in this respect, for Schafer it was always secondary to and dependent on the broader revolution in listening he hoped to bring about. Thus ‘multitudes of citizens (preferably children) needed to be exposed to ear cleaning exercises in order to improve the sonological competence of total societies’, since ‘if such an aural culture could be achieved, the problem of noise pollution would disappear.’⁷⁶ Jurisprudentially, there are a few possible gestures here. First, to diversify the politics of listening so that ecological concerns – important as they are – are not the soundscape’s only possible measure. Second, to extend the range of soundscapes under investigation to include those of key legal institutions and practices: to study diverse judicial, legislative, deliberative and carceral⁷⁷ soundscapes, for instance, and to think through how sound matters there and why. Finally, to deepen the account of law so that the question is no longer simply: how might law be mobilised to preserve or improve the soundscape? But also: in what ways are our sonic environments already lawful? And: how is sound experienced through or in relation to law? It is a matter of recognising, in other words, that the soundscape is always also a lawscape.⁷⁸ Our sonic worlds have as much to do with civilisation as nature.⁷⁹

⁷⁶ Ibid., 181.

⁷⁷ Tom Rice, ‘Sounds Inside: Prison, Prisoners and Acoustical Agency’, *Sound Studies* 2, no. 1 (2016): 6–20. Lily E Hirsch, *Music in American Crime Prevention and Punishment* (Ann Arbor: University of Michigan Press, 2012).

⁷⁸ Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Law-scape, Atmosphere* (Abingdon: Routledge, 2015).

⁷⁹ Thompson, *The Soundscape of Modernity*, 2.

T is for **transcription**, an essential but little remarked upon feature of legal practice. Its Western roots are in ancient Rome and the method of shorthand – the *notae tironianae* – developed by Cicero’s clerk Marcus Tullius Tiro.⁸⁰ But the system practiced at hearings and depositions today is much more sophisticated, a complex function of at least three technical registers. First, the technological: an assemblage comprising the court reporter’s shorthand machine and proprietary software like CATalyst, the ‘industry leader’ in so-called ‘computer aided transcription.’⁸¹ Second, the virtuoso skill of the reporter: the manual dexterity required to operate their ‘writer’, combined with a highly developed form of audile technique which requires them to listen phonetically rather than semantically (which is to say a totally different form of listening to everyone else involved in the judicial soundscape). Third, and more institutionally now: a whole series of judgments concerning both *what* should be transcribed – what sights and sounds are worthy of ‘enscription’⁸² – and *how* this should then be represented ‘on paper’. Today, stenographers increasingly work from digital recordings, off-site and after the fact, a development which they say compromises the quality of the transcripts they produce.⁸³ Where/whenever transcription takes place, though, it undoubtedly

⁸⁰ Anthony Di Renzo, ‘His Master’s Voice: Tiro and the Rise of the Roman Secretarial Class’ *Journal of Technical Writing and Communication* 30, no. 2 (2000): 155–168.

⁸¹ ‘Stenograph News’, *Stenograph L.L.C.* <http://www.stenograph.com>.

⁸² Joseph Sung-Yul Park and Mary Bucholtz, ‘Public Transcripts: Entextualization and Linguistic Representation in Institutional Contexts’ *Text and Talk* 29, no. 5 (2009): 485–502.

⁸³ Chris Summers, ‘Is Stenography a dying art?’ BBC News, 27 April 2011. <http://www.bbc.com/news/magazine-13035979>.

intervenes in the soundscape. Consider practices like the recitation of appearances, the reading of the case, or simply speaking ‘for the record’. In all these examples, the act of oralisation is doing something totally different to what it does in the case of, say, oath swearing or the pronouncing of judgment. It is less a matter of orality, ritual, or publicity than *dictation*. The purpose is simply to establish a usable archive of proceedings, in the knowledge that appeal is always a possibility, and which both anticipates and appreciates the material labour involved in managing the ‘Babylonian stacks of files’ upon which contemporary legal practice also depends.⁸⁴

U is for the **United Nations (UN)**, not an organisation one would immediately associate with the relationship between law and listening. But consider the challenge posed by an institution with 193 Member States whose citizens speak many more languages than that. The UN is a veritable Babel, and if it somehow functions, that is largely the result of a system of ‘simultaneous interpretation’ which has come to dominate the soundscape of international law and relations since it was first developed ‘by trial and error in an attic’ at the Nuremberg trials in 1945.⁸⁵ Today, for reasons that are both pragmatic and (therefore) highly political, the UN operates in six official languages. By virtue of r 52 of its *Rules of Procedure*, any speech given in any of these languages must be

⁸⁴ Cornelia Vismann, *Files: Law and Media Technology* (Stanford: Stanford University Press, 2008), 1.

⁸⁵ Francesca Gaiba, *The Origins of Simultaneous Interpretation: The Nuremberg Trial* (Ottawa: University of Ottawa Press, 1998), 11.

interpreted into all of the rest.⁸⁶ Considering that the standard team for a six-language meeting comprises fourteen interpreters, the scope of this commitment is immense.⁸⁷ And its consequences for the deliberative soundscape are just as far-reaching. For simultaneous interpretation to work, every relevant space must be hardwired for sound: microphones, headphones, and multi-channel receivers made available at each desk; acoustically separate booths must be made available to interpreters; these interpreters must not only speak multiple languages but have been trained in the exceptionally difficult art of listening and speaking at the same time in different languages; for speakers, simultaneous interpretation requires that they slow down and pause regularly, and that they learn to ‘play’ their hardware correctly; listeners must learn to listen past the fractured rhythm and strange intonation of interpreted speech.⁸⁸ Simultaneous interpretation mediates almost all official UN discourse. Indeed, it is virtually a condition of its possibility.

V is for **voices**, the many registers in which law and vocality encounter each other. A provisional survey: the voice as thought’s instrument, the necessary medium in speech, its acoustic form and material support; the voice, paradoxically, that ‘disappears’ in the utterance, that turns our

⁸⁶ UN Rules of Procedure of the General Assembly, A/520/Rev18, Rule 52.

⁸⁷ ‘Interpretation Services: Department of General Assembly and Conference Management’, *United Nations*. <http://www.un.org/depts/DGACM/interpretation.shtml>.

⁸⁸ Parker, *Acoustic Jurisprudence*, 190–202.

attention to the what as opposed to the how of discourse;⁸⁹ the voice that seems to imply a will or agency therefore, the voice in its seeming proximity to ideality or subjectivity itself;⁹⁰ or again, the voice that *troubles* notions of intent: the ‘scandalous’ voice,⁹¹ in its corporeality, with its grain;⁹² the affective voice: the voice that luxuriates in itself, the ‘voice beyond logos’, the voice that moves and stirs;⁹³ the voice in its ‘extimacy’: neither interior nor exterior, uncanny;⁹⁴ voices that swear; voices that testify; voices that judge and condemn; voices that are heard; voices that aren’t; voices silenced; voices misunderstood; God’s voice; the dictator’s voice;⁹⁵ the people’s voice, at protests and polls; gendered voices;⁹⁶ raced voices;⁹⁷ the voice as apparent index of nationality or class; voice ‘line-ups’; ‘voiceprints’; voice recognition software; Adobe Voco; forensic phonetics; forensic transcription; voice acoustics and other forms of vocal science; live voices;

⁸⁹ Mladen Dolar, *A Voice and Nothing More* (Cambridge: MIT Press, 2006), 15.

⁹⁰ Derrida, *Of Grammatology*.

⁹¹ Shoshana Felman, *The Scandal of the Speaking Body: Don Juan with J L Austin, or Seduction in Two Languages* (Stanford: Stanford University Press, 1983), 66.

⁹² Roland Barthes, ‘The Grain of the Voice’ in *Image, Music, Text*, trans. Stephen Heath (London: Fontana, 1977), 179–89.

⁹³ Dolar, *A Voice and Nothing More*, 30.

⁹⁴ *Ibid.*, 96.

⁹⁵ Max Horkheimer and Theodor W Adorno, *Dialectic of Enlightenment: Philosophical Fragments*, ed. Gunzelin Schmid Noerr, trans. Edmund Jephcott (Stanford: Stanford University Press, 2002), 129.

⁹⁶ Adriana Cavarero, ‘Women Who Sing’ in *For More than One Voice: Toward a Philosophy of Vocal Expression* (Stanford: Stanford University Press, 2005).

⁹⁷ Jennifer Lynn Stoeber, *The Sonic Color Line: Race and the Cultural Politics of Listening* (New York: NYU Press, 2016).

recorded voices; broadcast voices; intercepted voices;⁹⁸ clear voices; distorted voices; damaged voices; non-voices: the cough, the laugh, the sob, the cry of pain;⁹⁹ ‘visible’ voices; acousmatic voices;¹⁰⁰ authoritative voices; hateful voices; interpreted voices; transcribed voices; the voice in the text as it sings.¹⁰¹ It is not just that the voice is at the very centre of legal thought and practice. It is there in all its extraordinary diversity: from the metaphysical to the supposedly mundane.

W is for **weapon**, and more specifically the growing weaponisation of sound. ‘Sonic warfare’, to use Steve Goodman’s term: the manipulation of our sonic environments and listening bodies for the purposes of inflicting violence, terror, coercion, and control.¹⁰² We could imagine a spectrum. At one end, sound at extreme volumes. So extreme, in fact, that volume may not even be the right word, where what is being exploited is sound’s brute materiality and intensity, its explosive, assaultive force: the GBU-43/B Massive Ordnance Air Blast, dropped by the U.S. in Afghanistan on 13 April 2017, so loud that it shattered windows and terrified residents literally miles

⁹⁸ Ava Kofman, ‘Finding Your Voice: Forget About Siri and Alexa — When It Comes to Voice Identification, the ‘NSA Reigns Supreme’’, *The Intercept*, 19 January 2018. <https://theintercept.com/2018/01/19/voice-recognition-technology-nsa>.

⁹⁹ Dolar, *A Voice and Nothing More*, 23.

¹⁰⁰ Brian Kane, *Sound Unseen: Acousmatic Sound in Theory and Practice* (New York: Oxford University Press, 2014).

¹⁰¹ Cavarero, *For More than One Voice*, 131–32.

¹⁰² Steve Goodman, *Sonic Warfare: Sound, Affect, and the Ecology of Fear* (Cambridge: MIT Press, 2012).

away;¹⁰³ IED explosions in Iraq, the compression wave from which can be so ‘big’ and so ‘heavy’ that it may ‘permanently deafen and concuss those who are exposed to it’;¹⁰⁴ the sonic booms unleashed at the order of Israel’s Prime Minister Ehud Olmert on the people of Gaza night after night for five full weeks in 2006.¹⁰⁵ At the other end of the spectrum a device like the Mosquito, used to ward off ‘undesirable’ teenagers at malls and train stations since 2005 by means of its high pitched buzz, inaudible to anyone over the age of about twenty-five: more gently and differentially coercive now.¹⁰⁶ In between, shades of physical and psychological trauma and duress produced in a whole range of different contexts: music torture at Guantanamo;¹⁰⁷ silent prisons in Syria;¹⁰⁸ the psychic trauma of living under drones in Pakistan: not just the ‘buzzing, mosquito-like sound’ they make, but everything

¹⁰³ S. E. Rasmussen, ‘It Felt like the Heavens Were Falling’: Afghans Reel from Moab Impact’, *The Guardian*, 14 April 2017, <https://www.theguardian.com/world/2017/apr/14/it-felt-like-the-heavens-were-falling-afghans-reel-from-moabs-impact>

¹⁰⁴ J Martin Daughtry, ‘Thanatosonics: Ontologies of Acoustic Violence’, *Social Text* 32, no.2 (2014): 25, 38.

¹⁰⁵ Susan Schuppli, ‘Uneasy Listening’, in *Forensis: The Architecture of Public Truth*, eds. Eyal Weizman, Haus der Kulturen der Welt and Franke Anselm, 381–392 (Berlin: Sternberg Press, 2014).

¹⁰⁶ Mitchell Akiyama, ‘Silent Alarm: The Mosquito Youth Deterrent and the Politics of Frequency’, *Canadian Journal of Communication* 35, no. 3 (2010): 455.

¹⁰⁷ Suzanne G. Cusick, “‘You Are in a Place That Is Out of the World. . .’: Music in the Detention Camps of the “Global War on Terror””, *Journal of the Society for American Music* 2, no. 1 (2008): 14; Morag Josephine Grant, ‘Pathways to Music Torture’ *Transposition: Musique et Sciences Sociales* 4 (2014), <https://doi.org/10.4000/transposition.494>.

¹⁰⁸ Lawrence Abu Hamdan, *Saydnaya (The Missing 19dB)*, Sharjah Biennial, March 2017.

this sound portends;¹⁰⁹ the role out of technologies like the Long Range Acoustic Device in urban policing all across the world.¹¹⁰ And through all of this, law is there at every turn, not just as a check on this emergent form of power but actively productive of it: complicit; part of the problem. Sonic warfare is a co-production in which law is less war's other than its medium.¹¹¹

X is for **xenophobia**, from the Greek *xenos*, meaning foreign or strange, and *phone*, meaning sound or voice. The term appears very occasionally, though unsystematically, in the medical literature to refer to a range of vocal abnormalities and speech disorders.¹¹² But in principle it is much more suggestive. Xenophobia: strange speech; a voice that sounds different or foreign; more and other than just an 'accent': the voice of the other; xenophobia's auditory counterpart; a technique of ear discipline; the consequence of historically accreted practices of

¹⁰⁹ 'Psychological Terror? Lessons from Pakistan and Yemen on the Psychological Impact of Drones' *All Party Parliamentary Group on Drones*, (5 March 2013). <http://appgdrones.org.uk/appg-meetings/psychological-terror-lessons-from-pakistan-and-yemen-on-the-psychological-impact-of-drones-5-march-2013>.

¹¹⁰ James E. K. Parker, 'Towards an Acoustic Jurisprudence: Law and the Long Range Acoustic Device,' *Law, Culture and the Humanities* 14, no.2 (2015): 202.

¹¹¹ James E. K. Parker, 'Sonic Warfare: On the Jurisprudence of Weaponised Sound,' *Sound Studies* 5, no.1 (2019): 72–96. <https://doi.org/10.1080/20551940.2018.1564458>.

¹¹² Zhiqing Wang, Wenjun Yu and Yiting Cai, 'Treatment of Xenophobia in Male Youths by Extralaryngeal Massage and Language Training,' *Journal of Traditional Chinese Medicine* 13 (1993): 221–22; Zis Panagiotis and Bryan Timmins, 'Xenophobia: A New Term in Psychiatry?', *Psychiatric Bulletin* 33, no. 07 (2009): 275, <https://doi.org/10.1192/pb.33.7.275b>.

racialised speaking and listening. Now the term would get at something close to what Jennifer Stoever (following W.E.B. Du Bois) calls the ‘sonic color line’: ‘both a hermeneutics of race and a marker of its im/material presence.’¹¹³ For Stoever, the sonic color line ‘enables listeners to construct and discern racial identities based on voices, sounds, and particular soundscapes ... and, in turn, to mobilise racially coded batteries of sounds as discrimination by assigning them differential cultural, social, and political value.’¹¹⁴ Think of the use and cultivation of ‘black voice’ in minstrelsy and its connections to the law and policy of Jim Crow. Think of the constant policing of African American or Aboriginal Australian vernacular Englishes in schools, corporations, and courts by virtue of what Stoever calls the ‘white ear.’¹¹⁵ Or think of the infamous booing of Adam Goodes – celebrated Australian rules football player, Indigenous man, and former Australian of the Year – for months after performing an Indigenous war dance during a match in 2015. As Stan Grant wrote in *The Guardian*, ‘to Adam’s ears, the ears of so many Indigenous people, these boos are a howl of humiliation. A howl that echoes across two centuries of invasion, dispossession and suffering.’¹¹⁶ Xenophobia:

¹¹³ Jennifer Lynn Stoever, *The Sonic Color Line: Race and the Cultural Politics of Listening* (New York: NYU Press, 2016), 10–11.

¹¹⁴ *Ibid.*, 11.

¹¹⁵ *Ibid.*, 277–280.

¹¹⁶ Stan Grant, ‘I Can Tell You How Adam Goodes Feels. Every Indigenous Person Has Felt It’, *The Guardian*, 30 July 2015, <https://www.theguardian.com/commentisfree/2015/jul/30/i-can-tell-you-how-adam-goodes-feels-every-indigenous-person-has-felt-it>; discussed in Poppy de Souza, ‘What Does Racial (In)justice Sound Like? On Listening, Acoustic Violence and the Booing of Adam

the vocal expression of racist colonial power; a specifically acoustic form of injustice.¹¹⁷

Y is **YouTube**, by far the dominant way of accessing music freely and ‘legally’ online today. According to one industry report from 2017, YouTube accounted for ‘46% of all time spent listening to on-demand music’ that year.¹¹⁸ Which makes YouTube, and more to the point its owners Alphabet (which also owns another streaming service in Google Play), a massive player in the law, policy, culture, and economics of contemporary music consumption. But it isn’t just music you’ll hear on YouTube. Nor is it only humans doing the listening. In March 2017, Dan Ellis, a Research Scientist at Google’s ‘Sound understanding Team’, announced the launch of AudioSet, a collection of over 2 million ten-second YouTube excerpts totalling some 6 thousand hours of audio, all labelled with a ‘vocabulary of 527 sound event categories.’¹¹⁹ According to what Google refers to as AudioSet’s ‘ontology’, the category ‘human sounds’, for instance, is broken down into ‘human voice’ (which includes tags like ‘speech’, ‘shout’, ‘screaming’ and ‘whispering’), ‘respiratory sounds’ (‘breathing’, ‘cough’, ‘sneeze’ ...), ‘human group action’

Goodes’ *Continuum: Journal of Media and Cultural Studies* 32, no. 4 (2018): 459–473.

¹¹⁷ de Souza, “What Does Racial (In)justice Sound Like?”

¹¹⁸ Connecting with Music: Music Consumer Insight Report (IFPI 2017). https://www.musikindustrie.de/fileadmin/bvmi/upload/06_Publikationen/Music_Listening/Music_Consumer_Insight_Report/Music_Consumer_insight_Report_2017_DE_Fassung.pdf.

¹¹⁹ Dan Ellis, ‘Announcing AudioSet: A Dataset for Audio Event Research’, *Google AI Blog*, 30 March 2017. <https://ai.googleblog.com/2017/03/announcing-audioset-dataset-for-audio.html>.

(‘clapping’, ‘cheering’, ‘applause’, ‘chatter’, ‘crowd’ ...) and so on across six other categories. Elsewhere in the dataset, there are currently 76,767 samples labelled ‘inside, small room’ and a further 4,221 labelled ‘gunshot, gunfire’. The avowed purpose of all this is to use the dataset to train Google’s ‘Deep Learning systems’ in the vast and expanding archive YouTube so that, eventually, it will be able to ‘label hundreds or thousands of different sound events in real-world recordings with a time resolution better than one second – just as human listeners can recognise and relate the sounds they hear’.¹²⁰ The point, of course, is to make sound searchable, and so monetizable in turn. And not just in YouTube. With ubiquitous and increasingly autonomic computing,¹²¹ the rise of voice operation, and so increasing comfort levels with devices that are set to listen by default, YouTube is just the kindergarten for a potentially enormous corporate listening apparatus – an algorithmic ‘panacousticon’¹²² – the effects of which we should not expect to be benign.

Z is for **zoning**, a crucial technique of noise abatement, an ‘attempt to legislate the landscape of urban life’ as Thompson

¹²⁰ Jort F Gemmeke et al, ‘Audio Set: An Ontology and Human-Labeled Dataset for Audio Events’, *IEEE International Conference on Acoustics, Speech and Signal Processing (ICASSP)* (2017): 776–780.

¹²¹ Antoinette Rouvroy, ‘Technology, Virtuality and Utopia: Governmentality in an Age of Autonomic Computing’, in *Law, Human Agency, and Autonomic Computing: The Philosophy of Law Meets the Philosophy of Technology*, eds. Mireille Hilderbrandt and Antoinette Rouvroy (New York: Routledge, 2011), 125.

¹²² Peter Szendy, *All Ears: The Aesthetics of Espionage* (New York: Fordham University Press, 2017), 16–23.

puts it.¹²³ But there is already too much in this lexicon on the regulation of noise. **Z** is for Eberhard **Zwicker** then, the influential psychoacoustician whose research was crucial to the invention of the mp3 audio coding format, source of considerable litigation over the years, but patent-free in the EU since 2012 and with only a few remaining US patents today.¹²⁴ Too esoteric perhaps. **Z** could be for **Zulu Nation**, the early hip-hop pioneers headed by Afrika Bambaataa and known for their political radicalism, afro-futurism, and enormous influence on contemporary (music) culture. But why them of the countless musicians whose work is demonstrably world making? Frank **Zappa**, **Ziggy** Stardust or John **Zorn**, for instance, just to name a few **Z**'s? After all, it is not just law and narrative that are 'inseparably related' as Robert Cover put it,¹²⁵ but also law and music, law and lyrics, law and the rhythmachine?¹²⁶ Am I reaching here? Maybe. But I'm tempted to agree with Steven Connor that 'there is something arbitrary or superfluous about the letter *z*':¹²⁷ that is not so much a letter at all, in fact, as a non-letter whose main function seems to be to close out the alphabet, and even then, 'far from rounding off the sequence of letters with a satisfying finality, making A to Z the equivalent of Alpha to Omega', can

¹²³ Thompson, *The Soundscape of Modernity*, 125.

¹²⁴ Jonathan Sterne, *MP3: The Meaning of a Format* (Durham: Duke University Press, 2012).

¹²⁵ Robert M. Cover, 'The Supreme Court, 1982 Term—Foreword: Nomos and Narrative', *Harvard Law Review* 97 (1983): 1, 5.

¹²⁶ On afrofuturism and the rhythmachine see Kodwo Eshun, *More Brilliant than the Sun: Adventures in Sonic Fiction* (London: Quartet Books, 1998).

¹²⁷ Connor, *Beyond Words*, 170.

only muster a kind of ‘bathetic dribbling away’.¹²⁸ The fact that there are connections to be made at all here could therefore be read as testament to how much has been left out where a letter seemed more resonant or fertile. The point is this: even these twenty-six entries offer only the merest opening into a world of jurisprudence that has hardly been explored.

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¹²⁸ *Ibid.*, 193.

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Hearing is an intricate but delicate modality of sensory perception, continuously enfolded in the surroundings in which it takes place. While passive in its disposition, it is integral to the movement and fluctuations of one's environment. Always attuned to the present and immersed in the murmur of its background, hearing remains a situated perception but fundamentally overarching and extended into the open. It is an immanent modality of being in and with the world. It is also the ultimate juridical act, a sense-making activity that adjudicates and informs the spatio-temporal acoustics of law and justice.

This collection gathers multidisciplinary contributions on the relationship between law and hearing, the human vocalisations and non-human echolocations, the spatial and temporal conditions in which hearing takes place, as well as the forms of order and control that listening entails. Contributors explore, challenge and expand the structural and sensorial qualities of law, and recognise how hearing directs us to perceiving and understanding the intrinsic acoustic sphere of simultaneous relations, which challenge and break the normative distinctions that law informs and maintains. In exploring the ambiguous, indefinable and unembodied nature of hearing, as well as its objects – sound and silence – this volume approaches it as both an ontological and epistemological device to think with and about law.



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