Nomos is an Air: Hearing as a Juridical Faculty

Julia Chryssostalis

μέλπονται πάντων τε νόμους και ἤθεα κεδνά
—Hesiod[1]

νόμων ἀκούοντες θεόδματον κέλαδον
—Pindar[2]

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,

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[1] [*melpontai pantōn te nómous 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] [*nómōn 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 Europeum* [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, νέμεσις, 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*

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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 beings[12] 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 (αὐλωδικός*, *aulōdikos) nomos*, where the verses were sung to the accompaniment of an aulos (single-reed pipe), and the *kitharistikós* (*κιθαριστικός)* and *aulētikós (αὐλητικός*) *nomos*, that were performed by a solo kitharist or aulete respectively.

Importantly, *nomoi* became the most typical contest pieces performed during local or Panhelleninc 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] 'Ὁμήρου μέν τα ἐπη, Ὀρφέως δε τά 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), ὀμφαλός (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: Ϝοῖδα 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*: Ϝέπη τάδε και μέλος Ἀλκμάν/εὗρε 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'education 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 music[42] 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 iurisprudentis* (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 iurisprudentis*, 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 hearing[72] – '[t]he hearing is the heart of the law,' writes James Boyd White[73] – 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

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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 paretm*: 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 quicunque 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, Miffin 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, *inauditum 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 audibility[90] 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 Chryssostalis, '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, 2019 (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 Elder[96] – 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.

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[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 wigged 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 other[99] – 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 multitudine 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.

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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'; Haldar, '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

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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, *L'ombilic 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.1 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 languages[110] 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, *ὑπακούω* 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, *gehorchen*, obey, also derives from hören, to *hear*, while in many Slav languages, *slušati*, to obey, can also mean to listen. In Arabic, *tāʿa*, obedience, is connected to hearing in a political context, as in the political principle of *al-samwaʾa al tāʿa*, 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 earshot 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, *melpontai pantōn te nómous kai ēthea kedná* 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 trials[124] 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 verité de l' histoire* (1769), and to the popular *topos* of history as a court of law, which was encapsulated in Schiller's formula, *Die Weltgeshichte 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.

Acknowledgements

With thanks to Westminster Law School, and the College of Liberal Arts and Sciences at the University of Westminster, for granting me a period of sabbatical leave in the Fall Semester of 2019 that allowed me to work on this piece. I am deeply indebted to Peter Goodrich for his work on the theatrical dimension of law, the legal sensorium and the corporeality of the legal organs more generally, and on hearing and the ear in particular, over the past thirty or so years. I would also like to thank Peter for encouraging me to write on law's ears and for reading the text and offering incisive comments; Bert van Roermund for his insightful questions and comments; Danilo Mandic for his kind patience, support and suggestions; Andreas Philippopoulos-Mihalopoulos, for gentle prodding, practical advice, enthusiastic comments and soul-warming conversations; Maria Drakopoulou, Costas Douzinas, and Hans Lindahl for their friendship and intellectual sustenance; Sara Ramshaw, for her supportive comments; Patricia Tuitt and Melanie Smith for their helpful suggestions on an early draft; Andrew Lockett for his keen eye, and most patient, attentive and gracious editorial assistance; Brenton Smith for the caffeine and camaraderie; and Patrick Hanafin for being there.

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