Making a Point and Making a Noise: A Punk Prayer

Law, Culture and the Humanities
0(0) 1–13

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DOI: 10.1177/1743872113490664

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Abstract

Recent scholarship in the new interdisciplinary field of law and music has done much to explore the relationship between these two cultural forms, in terms of force and meaning, history and structure. More must now be done to show how they *matter* to one another, how music can charge a social conflict with political urgency and color it with a distinct emotional timbre. The future lies in developing these research trajectories still more intently: towards the embodied and sonic dimensions of music on the one hand, and towards its contemporary relevance on the other. Such a discussion would have to be alert to the places and times in which music inserts a kind of pressing aesthetic note into the political and juridical process. And it would have to think the aesthetic, the legal, and the political in connection with one another. These propositions are explored through a case study of the trial of Pussy Riot in Moscow during 2012. While the prosecution chose to present the group's actions as a species of 'religious hatred,' the defense characterized them as engaging in 'political dissent.' But neither adequately capture the role and meaning of the music and aesthetic elements of the performance of the three women. Yet these were integral to Pussy Riot's actions. While the trial achieved some recognition as a political trial it deserves recognition rather as one of the great trials of modern art.

Keywords

Law and music, law and the humanities, art and politics, Russian politics, aesthetics, law and modern art, Pussy Riot

I. Three Sorts of "And"

And is god.¹ It is touched by the divine, peaceably uniting contradictions: the lion and the lamb, the North and the South, the legal and the just. But it has a touch of trickery about

1. Jacques Derrida, "Declarations of Independence," *New Political Science* 7 1986, 7–15.

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it too, begging the very questions in need of an answer. What exactly does “and” mean? Does it hold its two terms separately or together? Does it identify a mere juxtaposition, a supplement or sub-set, or a fusion? In legal terms, are the two parties whom “and” has joined together to be thought of as neighbors, tenants in common, or joint tenants? Or perhaps we are dealing rather with marriage – legal alchemy – the two parties forming a new entity utterly different from its original components?

In the field of law “and” literature it has become customary to distinguish these senses.² There are many ways of articulating that taxonomy. One first step involves thinking of law and literature as two separate genres. In the work of Martha Nussbaum or Ian Ward, literature provides the insights that law does not, speaking in a different voice and appealing to a different register.³ A second possibility might conceive of law as a sub-set of literature. In the work of someone like Peter Goodrich, law is treated as a branch of rhetoric, an aspect of narrative whose history, force and meaning are amenable to a literary analysis.⁴ The narrative approach sees law as fundamentally a set of stories.⁵ A third branch would treat literature as a sub-set of law. The literary is then a way of constituting legal values and legal subjectivity. In the work of Austin Sarat or Bill MacNeil, not to mention some of my own work, children’s books, television shows, and movies are all powerful sites of legal discourse and subject formation.⁶ It is not that these genres *influence* the law, but that they *are* the law.

Similar threads of development can be traced over the past ten years or so in relation to law “and” music. The disciplinary difference between the two fields of endeavor has historically invited a loosely metaphorical connection. Much of the material in the pioneering collection assembled for the 1998 *Cardozo Law Review* symposium issue,⁷ not

2. Robert Weisberg, “The Law-Literature Enterprise,” *Yale J. Law and Humanities* 1, 1988, 53.
3. Martha Nussbaum, *Poetic Justice* (Boston, MA: Beacon Press, 1996); Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 2008).
4. Peter Goodrich, *Legal Discourse* (New York: Palgrave Macmillan, 1987); Peter Goodrich, “Law and Language: An Historical and Critical Introduction,” *Journal of Law and Society* 11, 1984, 173–206.
5. Peter Brooks, “Storytelling without fear: confession in law and literature,” in Peter Brooks and Paul Gewirtz, *Law’s Stories: Narrative and Rhetoric in the Law* (New Haven, CT: Yale University Press, 1996), pp. 114–34; Susan Sage Heinzelman, “Imagining the Law: The Novel,” in Austin Sarat, Matthew Anderson and Cathrine Frank, eds., *Law and the Humanities: An Introduction* (Cambridge: Cambridge University Press, 2010), pp. 213–40; Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007).
6. Austin Sarat et al., eds., *Law on the Screen* (Stanford, CA: Stanford University Press, 2005); Austin Sarat, ed., *Imagining Legality: Where Law Meets Popular Culture* (Mobile, AL: University of Alabama Press, 2011); William MacNeil, *Lex Populi* (Stanford, CA: Stanford University Press, 2007); Desmond Manderson, *Kangaroo Courts and the Rule of Law* (London: Routledge, 2012), “From Hunger to Love,” *Law and Literature* 15, 2003, 87–142.
7. *Symposium: The Modes of Law: Music and Legal Theory – An Interdisciplinary Workshop*, *Cardozo Law Review* 20(5–6), 1999, 1325–694.

to mention *Songs Without Music*,⁸ took a largely metaphorical approach. Music was employed more for rhetorical than analytical purposes, as a kind of affective counterpoint to legal thinking.

The second or narrative approach to law seems much more readily applied to literature than to music. It is easier to frame law as a species of “story-telling” than “music-making.” But this very challenge has led to a highly productive turn from “signifieds” to “signifiers.”⁹ Whereas a considerable amount of law and literature still suffers from a reductive focus on substance or plot, this weakness is unavailable in the field of law and music. Instead, our attention is necessarily drawn to the underlying questions of structure, performance, and style that might forge a shared vocabulary of analysis between linguistic and non-linguistic forms. If we approach music in terms of its stylistic, structural, institutional, and performative features, it is possible to start thinking not in metaphorical but in metonymic terms, recognizing, for example, shared patterns of change and development in the history of music and law alike – parallel patterns of development in terms of their performance, their social functions, and their ideology. In this sense, while we might not be able to claim that law is a kind of music, we can nonetheless see how their underlying social conditions and contexts are subject to the same great forces of cultural construction and transformation. An analysis of one might indeed shed light on the other. Recent work looking at the mutual conditions of possibility of legal and musical culture, or legal and musical history, can actually be seen as part of a long tradition of critical and cultural analyses of music, including work by Theodor Adorno, Jacques Attali, Slavoj Žižek, Frederic Jameson, and Terry Eagleton.¹⁰

Take the specific question of improvisation.¹¹ We think of classical Western music as the very opposite of improvisation, as the product of a calculated perfectionism of creation and reproduction. The composition is carefully set down and deviation is not permitted. The performer is enlisted as the servant dedicated to recreating as faithfully as possible this immemorial text. Thus the great nineteenth century music critic – and lawyer – and storyteller – ETA Hoffman commends the performer as one who “disdains to

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8. Desmond Manderson, *Songs Without Music: Aesthetic Dimensions of Law and Justice* (Berkeley & Los Angeles, CA: University of California Press, 2000).
 9. See Christian Metz, *The Imaginary Signifier: Psychoanalysis and the Cinema* (Bloomington, IN: Indiana University Press, 1982); Roland Barthes, *Elements of Semiology*, trans. Colin Smith (New York: Farrar, Straus and Giroux, 1977).
 10. See Robert Witkin, *Adorno on Music* (London: Routledge 1998); Jacques Attali, *Noise: The Political Economy of Music*, trans. Brian Massumi (Minneapolis, MN: University of Minnesota Press, 1985); Fredric Jameson, ed., *Aesthetics and Politics* (London: NLB, 1977); Slavoj Žižek, *In Search of Wagner (Radical Thinkers)* (London: Verso, 2009); Slavoj Žižek, *The Plague of Fantasies* (London: Verso, 1997); Terry Eagleton, *The Ideology of the Aesthetic* (Oxford: Blackwell, 1990).
 11. For a more comprehensive elaboration of these questions, see Desmond Manderson, “Fission & Fusion: From improvisation to formalism in law and music,” 6 *Critical Studies in Improvisation* 6, 2010, 1–10. Generally see also Desmond Manderson, “Et lex perpetua: Dying Declarations and Mozart’s Requiem,” *Cardozo Law Review* 20, 1999, 1621–48.

let his personality intervene in any way.”¹² Classical music became and to a large extent remains wedded to an ideal of perfection, accuracy, and fidelity. Yet there is an enormous tradition of improvisation in Western music. For example, figured bass writing, standard practice from 1600 to 1750, was a kind of musical shorthand in which whole parts of the *continuo* were not written out at all but left to the creative judgment of individual performers. Bach cannot be adequately performed without an understanding of the rich tradition of musical improvisation and elaboration in which he worked, including the incorporation of complex ornaments and descants to supplement the written text. Yet in the two generations after 1750 these elements of improvisation and artistic license were radically diminished. Over that time, something truly remarkable happened to the self-understanding of art music as a cultural practice.

The far-reaching nature of these changes is brought sharply into focus when we realize that a similar transformation took place in law at the very same time. The practice of improvisation might be defined as a response to a singular moment – a unique performance, a unique audience – through the exercise of personal judgment. Until quite recently, that is what judges did. Just as nineteenth century musical practice began to condemn any exercise of improvisational discretion in favor of a total subservience to the work as written, so too the exercise of *judicial* discretion was increasingly condemned in favor of total subservience to the *legal* text as written. This legal tradition, now called positivism or formalism, became increasingly dominant in the eighteenth and nineteenth centuries and continues to govern our understanding of the role of the judge and the nature of law.¹³

What happened? In a word, modernity. With it came a whole different way of thinking about texts and authority and judgment. In the aftermath of Reformation, Enlightenment, and Revolution, the key question became one of textual provenance not performative authenticity: is this document an authentic statement of the intentions of the author – whether we are talking about Shakespeare’s First Folio or a sonata by Beethoven, a section of the *Code Civil* or an Act of Parliament. Legitimacy, then, derives from the exact repetition of an original text whose identity has been duly verified – authenticated via the “signature,” which is how Derrida explains the feature that makes art, art; or via the “rule of recognition,” which is how HLA Hart explains the feature that makes law, law.¹⁴ Once the *identity* of a text has been authenticated, our duty is simply to obey it “as written.” With such parallels in mind we can begin to see law as aesthetic, just as we can begin to see music as social, each of them mutually imbricated in new ideologies concerning power, participation, and meaning.

Such an analysis presents one brief example of how music and law might *together* throw light on broad shifts in social and cultural ideology over time. Levinson and Balkin’s

12. Bruce Benson, *The Improvisation of Musical Dialogue: a Phenomenology of Music* (Cambridge: Cambridge University Press, 2003), p. 12. See also Lydia Goehr, *The Imaginary Museum of Musical Works: an Essay in the Philosophy of Music* (Oxford: Oxford University Press, 2007).

13. Roger Berkowitz, *The Gift of Science* (Cambridge, MA: Harvard University Press, 2006).

14. Jacques Derrida, “Signature Event Context,” in *Limited Inc.* (Evanston, IL: Northwestern University Press, 1988), pp. 1–24; HLA Hart, *Concept of Law* (Oxford: Clarendon Press, 1961), pp. 92–3.

seminal essay on “originalism”¹⁵ as a prevailing ideology in both music performance and Constitutional interpretation – a way of laying claim to the past in order to allay distinctly modern concerns about interpretative objectivity – is another. The more we think about these cases the more the second approach indicated above blends into the third. Like *Animal Farm*, “the creatures outside looked from pig to man, and from man to pig, and from pig to man again; but already it was impossible to say which was which.”¹⁶ It begins to seem as if music, and aesthetics, is not just an expression of social and legal change, but a way of *constituting* legal values and legal subjectivity. Thus Louis Marin’s *Portrait of the King* explores the production of sovereignty in the person of Louis XIV, taking seriously aspects of cultural life as disparate as musical performance, architecture, coin design, portraiture, and fairy tales.¹⁷ He argues that in the arts of representation are to be found the real origins and organs of social control.¹⁸ If it is debatable whether music can be properly termed an “art of representation,” its contribution to this dense web of affective ideology is surely not. The overwhelming aesthetic force concentrated in the person of Louis XIV, for example, helped to excite within a few short years growing anxieties of legitimacy and control that found reflections in the sciences, the arts, and in the law. Classical science – Newtonian science – replaced God with clockwork, a perfect machine that runs by itself. Legal science attempted the same thing, replacing singular acts of judgment – whether by a judge or a King – with universally applicable rules created at a particular moment: laws not judgments, constitutions not customs. So the key aesthetic and ideological development by the end of the eighteenth century lay in these two features: first, the search for a language of purity, abstraction, formal rigor, internal coherence, and artificial reason; and second, a decline in practices of judgment and improvisation in favor of subservience, whether judicial or musical, to a faithful reproduction of an authorized text.

The most interesting developments in the field over recent years have sought to shift the “co-implication”¹⁹ of law and cultural representation, as Alison Young puts it, out of history and into the present. In relation to literature, much critical work on the novel has been given a new urgency as part of a contemporary critique of the discourse of human rights.²⁰ In relation to art and cultural studies, WJT Mitchell did pioneering work in the 1980s breaking down the line between political and aesthetic discourse, between word and image, and between, one might say, seeing and believing.²¹ Again, the contemporary

15. Sanford Levinson and Jack Balkin, “Law, Music, and Other Performing Arts,” 139 *U. Pa. L. Rev.* 139, 1991, 1597.

16. George Orwell, *Animal Farm* (Harmondsworth: Penguin, 1946).

17. Louis Marin, *Portrait of the King*, trans. Martha House (Minneapolis, MN: Minnesota University Press, 1988).

18. See Tom Conley, “Foreword,” in op. cit., at vi.

19. Alison Young, *Judging the Image: Art, Value, Law* (London: Routledge, 2005), p. 8.

20. DA Miller, *The Novel and the Police* (Berkeley & Los Angeles, CA: University of California Press, 1988); John Bender, *Imagining the Penitentiary* (Chicago, IL: University of Chicago Press, 1987); Lynn Hunt, *Inventing Human Rights* (New York: WW Norton, 2008); Robert Meister, *After Evil: A Politics of Human Rights* (New York: Columbia University Press, 2011).

21. WJT Mitchell, *Iconology: Image, Text, Ideology* (Chicago, IL: University of Chicago Press, 1987); *Picture Theory: Essays on Verbal and Visual Representation* (Chicago, IL: University of Chicago Press, 1995).

political climate has given these intersections a real urgency. New technologies and new media have thrown us into a world hyper-saturated with visuality, whose implications in the discourses of terrorism, colonialism, capitalism, and globalization, demand to be unpacked.²² Recent work by Mitchell, Judith Butler, Nicholas Mirzoeff, Jean Baudrillard and others take very seriously indeed the role of the image in the formation of ideology.²³

How might music contribute to these new directions? On the one hand, scholars like Ajay Heble, Eric Lewis and George Lewis have emphasized the ways in which music – particularly improvised music – can be understood as offering a distinctly communitarian and responsive aesthetic social practice.²⁴ There is an infectious optimism to this work that reaches deep into the transformative power of music. The political effect of musical rhetoric is of pressing importance, although the logocentrism of the academy still reduces it too often to the study of lyrics. The haptic field of music is, it seems to me, different from art or literature.²⁵ As we have seen, it has a structural or architectonic component which lends itself to abstract reflections on the histories of form and style. But it also has an undeniably visceral element that stimulates an emotional response. That embodied and collective power is not necessarily allied with either ideology or critique. Tracey Nicholls' work, for example, on music and political dissent in the United States,²⁶ Sara Ramshaw's study of the treatment of jazz musicians in the 1950s,²⁷ or

22. See Richard Sherwin, *Visualizing Law in the Age of the Digital Neo-Baroque* (London: Routledge, 2011).

23. WJT Mitchell, *Cloning Terror: The War of Images, 9-11 to the Present* (Chicago, IL: University of Chicago Press, 2011), and *Seeing Through Race* (Cambridge, MA: Harvard University Press, 2012); Jean Baudrillard, *The Gulf War Did Not Take Place*, trans. Paul Patton (Sydney: Powerhouse Press, 2000); Nicholas Mirzoeff, *Watching Babylon: The war in Iraq and global visual culture* (New York: Routledge, 2005); Nicholas Mirzoeff, *The Right to Look* (Durham, NC: Duke University Press, 2011); Judith Butler, *Frames of War: When is Life Grievable* (London: Verso, 2009).

24. Ajay Heble and Daniel Fischlin, eds., *The Other Side of Nowhere: Jazz, Improvisation, and Communities in Dialogue* (Middletown, CT: Wesleyan University Press, forthcoming); Ajay Heble, *Rebel Musics: Human Rights, Resistant Sounds, and the Politics of Music Making* (Black Rose Press, 2003); Ajay Heble, *Landing on the Wrong Note: Jazz, Dissonance, and Critical Practice* (New York: Routledge, 2000); George Lewis, *A Power Stronger Than Itself: The AACM and American Experimental Music* (Chicago, IL: University of Chicago Press, 2008); George Lewis, "Review of Freedom Sounds: Civil Rights Call Out to Jazz and Africa, by Ingrid Monson," in *Journal of the Society for American Music* 3, 2009, 365–9; George Lewis, "Interactivity and Improvisation," in Roger Dean, ed., *The Oxford Handbook of Computer Music* (New York and Oxford: Oxford University Press, 2009), pp. 457–66; Eric Lewis, *Other Worlds – Towards a Philosophy of Jazz* (forthcoming).

25. Again I am indebted to Alison Young for her attentiveness to the question of the haptic: see Alison Young, "Arrested by the Image," *N.Y.L.S.L.R.* 57, 2012–13, 77.

26. Tracey Nicholls, *An Ethics of Improvisation: Aesthetic Possibilities for a Political Future* (Lanham, MD: Lexington Books, 2011).

27. Sara Ramshaw, *Justice as Improvisation: The Law of the Extempore* (London: Routledge, 2013).

James Parker's research into the trial of Rwandan musician Simon Bikindi for genocide,²⁸ seriously attempt to take the *musical* elements of political and social conflict seriously. The future lies in developing these research trajectories still more intently: towards the embodied and sonic dimensions of music on the one hand, and towards its contemporary relevance on the other. Such a discussion would have to be alert to the places and times in which music inserts a kind of pressing aesthetic note into the political and juridical process. And it would have to think the aesthetic, the legal, and the political in connection with one another.

II. A Punk Prayer

Let me take one example. From the point of view of law, the music that mattered most in 2012 was punk. Pussy Riot is a Russian feminist punk collective. Nadezhda Tolokonnikova, Maria Alyokhina, and Yekaterina Samutsevich were arrested after their performance of a "punk prayer" in Moscow's Christ the Savior Cathedral in February 2012.²⁹ In August, after a trial *cum* media frenzy, they were sentenced to two years' imprisonment for "hooliganism" incited by "religious hatred."³⁰ The performance has been widely interpreted as an expression of dissent from Vladimir Putin's rule and the court case as a show trial against that dissent. Throughout the trial and in the discussion of it in the media, virtually no mention was made of the musical aspects of the three women's actions. During the court case, efforts to play the video of the performance were on several occasions stymied by the judge and the prosecutor.³¹ In the end, the judge read lengthy textual descriptions of the act, focusing on their actions and the words of the song, but with no analysis of its soundscape³² or, of course, of the musical references to punk on which it drew. When finally a video of the "punk prayer" was shown in court, it was so small and distant that neither the defendants nor the spectators in the court could even hear it. The court chastised the three defendants for not paying sufficient attention to this particular artistic travesty.³³

For Judge Marina Syrova, Pussy Riot's performance amounted to a series of parodic gestures and politically scandalous remarks which happened to take place in a cathedral. That is the logic that relegated them to a species of anti-religious propaganda. The head

28. James Parker, *Listening to law: Simon Bikindi and the acoustics of justice* (forthcoming doctoral thesis at University of Melbourne); James Parker, "The Musicology of Justice," in M.J. Grant, ed., *The Soundtrack of Conflict* (Olms Verlag, 2013), pp. 189–210.

29. For YouTube record of the performance, see <https://www.youtube.com/watch?v=ALS92big4TY> (last accessed 16 April 2013).

30. The most comprehensive coverage is to be found on the Russian Legal Information Agency (RAPSI) site, http://www.rapsinews.com/judicial_analyst/20120820/264341551.html (last accessed 22 February 2013). Description of the daily events and procedures of the trial are drawn from RAPSI's daily coverage of the trial. Additional information was obtained from *The Guardian* website (<http://www.guardian.co.uk>) reportage of the trial.

31. Trial, Day 4: see RAPSI, above.

32. See James Parker, "The Soundscape of Justice," *Griffith Law Review* 20(4), 2011, 962–93.

33. Trial, Day 6: see RAPSI, above.

of the Church, whose opinions likewise were not expressed in oral testimony but admitted in writing only, argued that “it is forbidden to interfere with prayer and communion with God in the cathedral. Thus, it is forbidden to enter the church in bright, flamboyant clothing, to storm the altar, to take photographs, or to be too loud. It is especially wrong to leap and jump around, shouting blasphemous slogans.”³⁴ Again therefore, Pussy Riot was reduced to a series of slogans and rule-breaking whose musical content was irrelevant. Meanwhile, the defense and the Western media (in particular) characterized Pussy Riot’s performance as an act of “political protest” indistinguishable from a speech or a pamphlet. The place and genre of the performance were treated as simply a stunt, politically provocative but intrinsically trivial.

But Pussy Riot were not just making a point: they were making a noise. Undoubtedly the performance was intended as a provocation in movement and dress and words. But in characterizing Pussy Riot in terms of religious hatred on the one hand or political dissent on the other, the aesthetic, sensory and specifically musical aspects of their performance were ignored. The driving beat of the song, its intense and discordant sonorities, accompanied by the hi-octane angular vigor of the musicians’ dance moves, provides a physical expression of rage but also of energy. The women’s voices are high and thin. Though not unmusical, again they capture something desperate and urgent. Heard in that way, the reference to a “punk prayer” is not entirely preposterous. A prayer is likewise a kind of desperate and urgent appeal to a transcendent figure called upon when earthly solutions seem unavailing. Against this intense and frantic sonority, Pussy Riot’s YouTube video intersperses sounds of Orthodox liturgical music characterized, not surprisingly, by a kind of discipline, order, and calm.³⁵ Even polyphony came very late to the orthodox tradition which feared that multiple musical lines would muddy the theological unity of the chant. The ornate gilded aesthetics of the churches and the antique ritual quality of the chants convey a kind of awed distance, serene and controlled. The musical juxtaposition of these two musical traditions, punk and liturgical, near and far, incendiary and tranquil, cannot be plausibly understood as the expression of religious hatred. It points instead to cultural exasperation with the entrenched structures of power of Russian society, performed in the heart of that culture.

The youth of the performers, and the youth of the music – its jarring aggression, energy, and discord – do not merely *describe* the alienation of the young, of women, or of the disempowered in Russian society. They *perform* it. The aesthetic aspects of the performance – their sound and movement – was not merely the vehicle chosen to publicize a political critique. It *was* the critique, a critique about social freedom and cultural expression, positioned exactly in the citadel of that claim of belonging and aesthetic expression, the Russian Orthodox Church. Pussy Riot’s prayer asserts the connection between aesthetic, religious and political establishments strongly, while at the same time posing the contrast between aesthetic forms of life and cultural realities starkly. Yet in that punk prayer something remarkable happens. Through the sonic aggression of the music the experience of alienation and exclusion is not just expressed, but transferred

34. Trial, Day 5: see RAPSI, above.

35. See the YouTube video of the punk prayer: <http://www.youtube.com/watch?v=VtYw-d1CSxQ> (last accessed 22 February 2013).

from the performers on to the listeners. Pussy Riot's music turned the experience of belonging inside out, providing a space for the young women at the same time as it excluded and alienated the worshippers and the conservative class in general. What the listeners were offended by – and no doubt they were, as they were intended to be – was above all a shocking *aesthetic* experience: the aggression and frustration that they were made to feel, the incomprehension and bewilderment that ran through them. Listeners were made to feel, through the music, exactly as the members of the feminist punk collective had often felt themselves: *unheimlich* – that they no longer belonged, that did not understand the sounds and the feelings of the world around them, that they had lost their place in the world. It was not a political speech that communicated this. The lived experience and soundscape of the modern world was communicated in the only possible way it could be – through the *unheimlich* sounds of the music itself.

Pussy Riot's music was an aesthetic critique, and its disorienting effects were aesthetic effects. Yet the prosecution and the judge, the global media and even the young women's lawyers, spoke only diffidently about the aesthetic dimensions of Pussy Riot's music. It was left to the three women themselves to articulate the connections between music, art, and law with real conviction. Some, in Russia but not only in Russia, have suggested that the three women were “used” by Western media. This attitude has always struck me as condescending. Nonetheless, I think the point is right. Not because Pussy Riot was just a silly or naïve stunt that got out of hand but on the contrary because the band's members are in fact more profound thinkers about law and music than the reductionist media coverage ever gave them credit.

In the moment of their “punk prayer” the utter strangeness of the young women of 21st century Russia was put on show, and almost miraculously turned into the utter strangeness of “old Russia.” In her closing statement to the court Yekaterina Samutsevich said:

In our performance we dared, without the Patriarch's blessing, to combine the visual image of Orthodox culture and protest culture, suggesting to smart people that Orthodox culture belongs not only to the Russian Orthodox Church, the Patriarch and Putin, that it might also take the side of civic rebellion and protest in Russia.³⁶

It was assumed in the courtroom and in the media, in Russia and equally in the West, that the idea of a “punk prayer” was a joke, a contradiction in terms. But it was far from clear that the performers themselves thought this. Is music owned by one side or the other of a political divide? Is prayer the property of the Church? Those are the questions which the musical performance asked, but the trial only begged them.

The three women insisted on defending their performance not just in terms of political freedom but in terms of artistic expression. Nadezhda Tolokonnikova began her statement precisely by drawing out the aesthetic meaning and even more importantly the aesthetic pleasure that her performances gave her, a pleasure that was both incomprehensible and irrelevant when viewed through the crude dichotomy of “religious hatred” *versus* “political dissent.”

36. <http://www.counterpunch.org/2012/08/13/closing-statement-in-pussy-riot-trial/> (last accessed 22 February 2013).

We were looking for authentic genuineness and simplicity and we found them in our punk performances. Passion, openness and naivety are superior to hypocrisy, cunning and a contrived decency that conceals crimes. The state's leaders stand with saintly expressions in church, but their sins are far greater than ours. We've put on our political punk concerts because the Russian state system is dominated by rigidity, closedness and caste. And the policies pursued serve only narrow corporate interests to the extent that even the air of Russia makes us ill.³⁷

This is not just a plea for political liberalism. The language of "authentic genuineness and simplicity ... passion, openness and naivety" amounts to a defense of musical desire – the expression of an emotion, the explosion of a moment of free creativity. The three women saw the satisfaction and even the recognition of that desire as impossible in the repressive and immobile climate of Putin's Russia.

Perhaps the clearest aesthetic articulation was mounted in the closing statement of Maria Alyokhina. Again, the connection between art and politics is made more explicitly than by her legal defense team. To those who consistently dismissed the artistic claims of Pussy Riot and described their music as mere noise, Alyokhina defended the aesthetic vision of the group's actions. In direct contrast with the Statist uses to which the Orthodox tradition has been appropriated by the current regime, she connects religion with a constant quest that finds its counterpart in art and music.

An artistic setting can and in my view must contain inner conflict. And I'm very annoyed by the phrase "so called" the prosecution uses in modern art's regard. Our apologies are probably also labelled as "so called" in the collective chapter of the indictment, although it's insulting and causes me moral damage and emotional trauma ... For me it's this very trial which is "so called." And I'm not scared of you. I'm not afraid of lies and sham, poorly decorated lies in the verdict of this so called court, because you only can deprive me of so called freedom. This is the only type of freedom existing in the Russian Federation.³⁸

This manifesto expresses in intense miniature the workings of Pussy Riot's music. The juxtaposition of liturgical sounds and punk energy performs the inner conflict of society, and reverses the roles of authority and alienation, constituting its audience as the excluded and empowering its performers as free. So too Alyokhina reverses the language of "so-called," framing the legal process itself as lacking the authenticity with which she is accused. The music of Pussy Riot claims a space as authentic art and authentic freedom, and constructs the religious and legal establishment as *kitsch* art and *ersatz* freedom.

If Pussy Riot's music is essentially oppositional, if it works by a harsh ironic juxtaposition between integrity and complicity, there is another element that glimmers through here. It is the idea that, even if only for an instant, music has the ability to transport its participants to a realm beyond that of "so called" art and "so called

37. <http://www.counterpunch.org/2012/08/13/closing-statement-in-pussy-riot-trial-2/> (last accessed 22 February 2013).

38. <http://criticallegalthinking.com/2012/08/20/pussy-riot-maria-alyokhinas-closing-statement/> (last accessed 22 February 2013).

freedom.” Pussy Riot’s performance was a *cri de coeur*. There was a lot of pent-up rage in it. But if you listen and observe carefully you can hear also an undercurrent of abandon, even of joy, as the musicians finally and momentarily explode out of the cultural and political shackles by which they – and many like them, particularly young people, particularly women, particularly artists – feel bound. The genuineness, simplicity and passion that Tolokonnikova and Alyokhina claim as Pussy Riot’s aesthetic right is not a *conceptual* ideal, but an expressive one. What is it, we might ask, that can take pain and, by expressing it, transcend it? What can turn the suffering body into the instrument of its own release? What can turn so called freedom into the real thing? The answer given to these questions by the Russian Orthodox Church was faith; the answer given by Pussy Riot was music. The tragedy which Pussy Riot dramatized was that in modern Russia these potential allies have been so cruelly pitted against one another.

Alyokhina’s speech has been cited for its political content. Far less appreciated, but clearly at its heart, was this aesthetic argument. The trial deserves a place in the pantheon of the trials of art, alongside those of Whistler, Wilde, and Lawrence.³⁹ In each of these cases, modern art finds itself accused of being “so-called” – fraudulent, corrupt, and anarchic. And in each of these cases, the trial succeeds instead in exposing for all to see the fraudulence and corruption of the established order. As *The Guardian* observed, the punk prayer was only the sound check; the trial was the main event.

“The Russian authorities took a marginal act of arty protest and, through sheer cruelty, made it into an international cause,” wrote Michael Idov, the editor-in-chief of *GQ Russia*, adding that coverage of the trial amounted to “long infomercials against investing in, visiting and generally dealing with Russia.”⁴⁰

Yet the Russian authorities proved predictably unable to comprehend what their “vengeful backwardness” had revealed. The only response that the trial elicited from authority was the red-faced bluster of an older generation bellowing over and over again I CAN’T UNDERSTAND YOU. The State was drawn into a performance that illuminated its own ignorance and abjection.

39. Linda Merrill, *A Pot of Paint: Aesthetics on Trial in Whistler v. Ruskin* (Washington, DC: Smithsonian, 1993); Les Moran, “Transcript and Truth: Writing the Trials of Oscar Wilde,” in J. Bestow, ed., *Oscar Wilde and Modern Culture: The Making of a Legend* (Athens, OH: Ohio University Press, 2008), pp. 234–58; Costas Douzinas and Lynda Nead, eds., *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago, IL: University of Chicago Press, 1999); Laurie Adams, *Art on Trial: From Whistler to Rothko* (Walker, 1976); Alison Young, *Judging the Image: Art, Value, Law* (London: Routledge, 2005).

40. Dorian Linskey, “Pussy Riot: Activists not pin-ups,” *The Guardian*, 20 December 2012, <http://www.guardian.co.uk/music/2012/dec/20/pussy-riot-activists-not-pin-ups> (last accessed 22 February 2013). See Michael Idov, “Pussy Riot prove the only professionals in sight,” *The Guardian*, 17 August 2012, <http://www.guardian.co.uk/commentisfree/2012/aug/17/pussy-riot-only-professionals-in-sight> (last accessed 22 February 2013).

III. Music as Divine Violence

The regulation of aesthetics always operates by way of an obsession with boundaries and definitions – the dogmatic policing of the line that distinguishes prayer from parody, naked from nude, art from graffiti, or music from noise. Why does this seem to matter so much to the status quo? Why does modern art seem sometimes to draw out these hysterical responses? It has something to do with art's ability to evoke an emotional response which stirs the still waters of the establishment. But perhaps it is also because of the capacity of our sensory lives to change not what we think or what we do, but who we are. In that disruption lies a potential for something uncontrolled and illimitable to break through, with entirely unpredictable results.

Music and art then, are not political in a narrow sense. Their appeal and their threat is to the future. Benjamin distinguishes the “political strike” which uses violence in an instrumental fashion to achieve certain defined reformist goals, from the “general strike” which demands not this or that reform but rather the complete sundering of the power relations of the State.⁴¹ The latter does not use violence instrumentally but only expressively, as the clarion call to a new world which cannot be imagined until the old is done away with. This is clearly a radical, a confrontational, and even a violent agenda, but towards the end of his essay on violence, Benjamin envisages the possibility of what he calls “divine violence,” a violence which again has no purpose but the opening of the world to the new.

If mythic violence is law-making, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythic violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood ... Mythic violence is bloody power over mere life for its own sake; divine violence is pure power over all life for the sake of the living. The first demands sacrifice, the second accepts it ...

But all mythical, lawmaking violence, which we may call executive, is pernicious. Pernicious too, is the law-preserving, administrative violence that serves it. Divine violence, which is the sign and seal but never the means of sacred execution, may be called sovereign violence.⁴²

In these dense and confusing passages, Benjamin posits the possibility of a violence which is expiatory “without spilling blood.” He seems to see it on the one hand as a kind of violence unsullied by programmatic or instrumental calculations, and therefore as an expressive rather than a political moment. And on the other hand, he clearly connects this violence with sacrifice, a violence which lets its own blood, the “sign and seal” as he says but never the means of a revolutionary transformation. But what would this violence look like? How could it be productive as violence without being instrumental or political in its calculations?

41. Walter Benjamin, “Zur Kritik der Gewalt,” *Archiv für Sozialwissenschaft und Sozialpolitik* 47, 1920/21, 809–32; Walter Benjamin, “Critique of Violence,” in *Reflections*, trans. Edmund Jephcott (New York: Schocken Books, 1986), pp. 277–300, at 291–2.

42. Op. cit., at 298–300.

One answer might be, through art. For in the creative arts what is experienced as violence is only the deflection of an inner experience outwards, in order to make it visible or audible. The violence that many, particularly in Russia, heard in the music of Pussy Riot is the violence of the mirror: the exact reflection of women's own experiences made into music in order to give it an objective form. Punk violence is reflective, expiatory. The pain that it sometimes is said to inflict is directly proportional to the pain it expresses. It seeks to destroy the law rather than to set up new ones. And it is surely true that in the case of Pussy Riot one side demanded a sacrifice in order to preserve the law, while the other accepted the sacrifice in order to expose the law, the pernicious, mythical, "law-preserving, administrative violence" of the establishment. Art threatens the eruption of divine violence in order ultimately to shatter not who we are but who we will be. Walter Benjamin would not be surprised to learn that from the point of view of the Moscow district court, that utopian ambition looked exactly like "religious hatred," "hooliganism," "the violation of public order," and "a clear disrespect toward society." It could hardly be otherwise. The divine on the one hand and religio-politico-juridical machinery on the other have always been implacable enemies.

Pussy Riot threatened to unleash the energy of anger, the genie of difference and the allure of the unknown. It was no coincidence that these were articulated on a musical level. The musical dimensions of the protest were essential to the feelings and aspirations to which Pussy Riot gave voice, and likewise to the upset it provoked. To understand what Pussy Riot was trying to say and why it mattered requires us to take music seriously, to understand how it works and how it achieves its effects, and to recognize how it can charge a social conflict with political urgency and color it with a distinct emotional *timbre*. We have seen in recent scholarship how law and music relate to one another. More must now be done to show how they *matter* to one another. The divine "and" that brings law "and" music together is a divine violence, too. It promises not just a tame conjunction but something entirely new, an urgent dialogue between realms of feeling and apprehending the world. This takes us, in a funny way, back to the first step of the three-fold analysis of law "and" music with which we began. What matters is not what makes law and music the same, but what makes them unique.