The Acoustic Abject

Sound and the Legal Imagination

Modernity, the authoritative *Oxford Handbook of Sound Studies* states, "has brought about developments in science, technology, and medicine and at the same time increasingly new ways of producing, storing, and reproducing sound."[1] Indeed, in modernity sound becomes more "thing-like . . . measured, regulated, and controlled."[2] Maybe so. Yet as the current paradigmatic shift toward hyper-objects, object-oriented ontologies, new materialism, thing theory, and animal studies indicates, the very concept of an object—alongside narratives of subjectification based on "epistemic virtues" such as objectivity—has never been more uncertain.

One of the epistemologies that is often overlooked in discussions of sound and yet is indissolubly entwined with liberal notions of subjectivity and, by implication, the sensory mediation of the subject to the object world is law. This is not to say that musicologists, ethnomusicologists, and other scholars of music ignore law altogether. For example, for the past decade a substantial literature has emerged in response to the legal implications of the digital revolution and hip hop's rise to hegemony. Yet the primary concern of works such as Patrick Burkhart's *Music and Cyberliberties*, Joanna Demers's *Steal this Music*, and Kembrew McLeod and Peter DiCola's *Creative*

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License is more with the chilling effect copyright law's ever more aggressive intrusion into every aspect of creative practice has on the future of the democracy and the public sphere than with sound's increasingly marginal status as a result of the collapsing of the idea-expression dichotomy at the heart of copyright doctrine brought about by a flurry of *de minimis* cases.

On occasion, sound also features in legal scholarship. For instance, Bernard Hibbits, in a discussion of the "sound of law," surveys a large number of cultural and historical contexts in which sound occupies a prominent role in law's metaphorology.[3] For his part, Desmond Manderson, possibly the legal scholar who has written most prolifically on the relationship between music and law, suggests that music's role in law resembles that of a "structural device," a metaphor, a point of historical comparison, or a frame of reference.[4] A similar analogy between music and law also informs Sara Ramshaw's study of New York bebop in *Justice as Improvisation*. Like bebop, she boldly claims, justice is a "species of improvisation" that entails a "negotiation between abstract notions of justice and the everyday practice of judging."[5]

Although imaginative, the crux with this literature is that sound's deep entanglement with law and legal practice is either narrowly and unambiguously framed in instrumental terms as a means serving legal ends or, alternatively, figured as a question of regulation of undesirable sonic practices such as noise pollution. By contrast, in the pages that follow I substantiate a concept of sound that questions both the means-to-ends logic and the objectification of sound in the legal imagination. My argument is twofold. Instrumentalist and objectifying discourses of law's sound, I suggest, not only neutralize sound as a mere medium and in the process uncritically perpetuate sound's absence from musico-aesthetic and legal constructions of subject-object relationships, but they also foreclose the possibility of engaging sound's agency *in specific legal ways*. Sound, as I will show in the second prong of my argument, using two rather graphic examples of the place of hate speech, "noise," and music in constitutional law and international criminal law, has injurious potential and hence might be considered more as a doing than a mere medium for vocal utterance. But, paradoxically, for us to speak legally about this elusive yet viscerally, vibrationally "real" of sound and its ability to shape, subject, terrify, and obliterate, sound itself would need to be expelled from the realm of juridical reason.

This aporia of speaking about an object that must be ejected from the realm of the speakable to instantiate a speaking subject is at the center of Julia Kristeva's concept of abjection. Readers familiar with Kristeva's

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sono-linguistic elaboration of Lacan's theory of subject formation in terms of an ontological oscillation between the prosodic-rhythmic realm of the semiotic and the denotative sphere of the symbolic might expect here a discussion of her adumbration of the unitary subject as the result of the Law (of the Father), understood as a system of social domination. In what follows I will resist such a move as a simplistic identification of the social and the legal and will focus instead on the potential of Kristeva's concept of the abject for rethinking the place of sound in law *as a specific epistemology and practice* that not only shuns sound (even as it constantly evokes it) but exploits sound's liminality as a necessary condition of its own distance from the object world. Put differently, on the one hand, law naturalizes sound as being inextricably intertwined with the subject: as voice, as verbal utterance, and as an expression of the self's innermost intentions. At the same time, however, sound is also barred from forming a durable basis for instantiating a (legal) subject. The "strange privilege of sound in idealization," the "indissociable system" of φωνή (voice) and subject that Jacques Derrida made the center of his critique of phonocentrist presentism, in law dissolves in the same breath that the oath has been sworn, the testimony has been given, the plea has been entered.[6] Sound, in law, not only leaves no trace; it never attains the status of an object to begin with. Yet far from jeopardizing the possibility of a subject-object relationship at the heart of modernist (formalist or realist) jurisprudence's claims to rationality and thus from undermining law's very legitimacy as a sui generis epistemology, this sonic limbo, this aporia must be seen as law's very condition of possibility, as the possibility of law, despite *and* because of sound's absence, to be itself.

On the Edge: Julia Kristeva and the Abjection of Sound

Kristeva's *The Powers of Horror: An Essay on Abjection* (1982) has what one might call an "acoustic dead angle." Although much of its two hundred or so pages are about sonic phenomena such as language and poetry, sound in its raw materiality hardly ever figures. Usually read as an elaboration of Lacanian psychoanalysis and as an extension of Kristeva's earlier writings on language and literature, *The Powers of Horror* instead might be interpreted itself as being an act of abjection—of sound. As a reminder, the novelty—if one may call it that—of Kristeva's theory of abjection consists in having shifted Freud's concept of primary repression from that of a

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subject's forbidden desire for a particular relation to a given object to that of the repression of the antecedent ambiguity of the subject-object relation itself. Hence, in contrast to Freud's return of the repressed, things such as uncontrollable body fluids, cadavers, or milk curd do not evoke specific traumas as much as they recall the fragility of the borders separating the inside from the outside. It is these unstable boundaries that form the space proper of what Kristeva famously calls "signifiance."

The latter term—along with other original Kristevan portmanteaus such as "genotext" and "phenotext"—was subsequently adopted by Roland Barthes and developed into a theory of the musical voice that played a significant role in the formative period of New Musicology. Irrespective of Barthes's influence, however, musicological readings of Kristeva's concept of abjection—which is intimately linked to the theory of signifiance—have remained surprisingly scarce. There are some noteworthy exceptions, though. For instance, in a wide-ranging classic of the field, Lawrence Kramer has sought to revive classical music's waning appeal not by fetishizing its role as an anchor of enlightened subjectivity but by embracing music's inescapable and irredeemable abjection.[7] Kramer arrives at this conclusion by way of an intricate argument that bears closer scrutiny because of its significance beyond the realm of classical music—and, indeed, the musical realm generally—for the argument of this chapter about the sonic abject in the legal imagination.

Since the mid-eighteenth century, Kramer writes, music has been closely tied to what he calls a "logic of alterity."[8] Much of New Musicology's initial project (including, prominently, Kramer's own work) has centered on figuring this "logic" as the "opposition of form and sensuous plenitude," or as the "rational" containment of excessive, "oriental," "effeminate" sonority. But the opposition between the unitary identity that the Enlightenment self recognizes and the others it depends on for the construction of that identity is not only an imaginary one, as Lacan would say, articulated within specific musical terrains and serving cultural institutions that continually reproduce this opposition; it also rests on a "systematic contradiction in the identification of self and other." The "othering" that is articulated in the "opposition of form and sensuous plenitude" intensifies further when music as a whole comes to stand as the Other. It is then, Kramer argues, that this othering of music begins to decenter the process by which musical form constructs a musical self, for if "the self speaks through music when form contains (limits and encloses) sonority, then formally articulate music cannot stand as other. Yet the very presence within music of a po-

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sition between form and sonority presupposes that something in music must be other."[9]

Unsurprisingly, Kramer never quite frees himself from the binary of self and other that he identified as being at the heart of music's "logic of alterity." Over the breadth and length of his article, the eponymous abject hardly ever comes into view. For sure, Kramer advocates an auditory stance, or what he calls "performative listening," which "subsumes the logic of alterity but can never be subsumed by it."[10] He also envisages a type of "pragmatic" experience in which "presymbolic involvement, symbolic understanding, and keenness of pleasure or distress can all coexist, precisely because there is no imperative to reconcile them or order them hierarchically." Yet such incantations of a "more contingent logic of postmodern musical experience" do not bring us a single step closer to the instability of the subject-object relationship, that strange *je ne sais quoi* that is said to be at the heart of music and that the reflexive self must discard to be itself.

The problem is not Kramer's alone. The difficulty of locating this "something in music" that is other also troubles emerging work on the cultural production of the abject in popular art forms. Thus, in a discussion of country music—a genre of music often decried for its alleged aesthetic plainness and right-wing political sympathies—Aaron Fox argues for country's "alchemical" transformation from a state of abjection as "bad" music to an object of intense desire, or, as Kristeva might have put it, to the abject that "is edged with the sublime."[11] In a slightly different vein, Nataša Pivec finds that in the intense, in-your-face music videos of the rock artist Marilyn Manson, various material, spatial, and symbolic forms of "dirt" are employed tactically to subvert "hegemonic masculinity."[12] What unites this scholarship beyond, or precisely because of, its Kristevan echoes, is something far more concrete than abjection though. It is the assumption that various forms of identity—masculine, country, working class, and so forth—are already in place and that as such they can be deconstructed, restructured, or redeemed by harnessing the abject, by stabilizing the inescapably fragile boundaries between self and other by aesthetic means. Thus it is that country music's abjection—its plebeian flouting of the rules of political correctness or liberal gender politics—is being subsumed under what Fox calls "a cultural logic" through which "bad" is sublimated into "good."[13] The abject sublime becomes readable within social logics of race, class, and gender that may confirm or contest identities without, however, the concept of identity itself being questioned.

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In fairness, throughout Kristeva's oeuvre a similar reluctance may be sensed to engage the sonic at the same level of theoretical rigor as in her readings of Céline, Mallarmé, and Joyce. Thus, all assertions to the contrary of "signifiance" being an "unlimited and unbounded generating process" and enabling a "passage to the outer *boundaries* of the subject," whenever she invokes music, such open-endedness is renounced in favor of binary oppositions. For instance, the primary signifiers within the semiotic and the symbolic—the two "modalities" of signifiance—are organized in opposites: rhythm and intonation are situated within the realm of the semiotic or chora; music and melody, in the symbolic order.[14] At the same time, however, the relationship of these terms among one another is anything but obvious. Thus, one cannot be but struck by the near-inscrutability of claims such as the one that Céline's declared intention of mining the emotional depths by "imparting to thought a certain melodious, melodic twist" constitutes the moment when "melody alone reveals, and even holds, such buried intimacy" and when the worship of emotion "slips into glorification of sound."[15] Whence this total metonymy of melody and sound, redolent of romantic ideas of mellifluous excess undermining the rationality of musical form? Why this constant oscillation between the pre-symbolic intimacy of music and its containment in melody? And what is one to make of the perplexing assertion, in her pioneering *Revolution in Poetic Language*, that music is a nonverbal signifying system that is "constructed exclusively on the basis of the semiotic," when elsewhere we are told that the semiotic consists of non-signifying pulsations of rhythm?[16] Finally, what is the meaning behind the suggestive, if unlikely, claim that, in Céline, Joyce, and Artaud, music and rhythm merge into a strange sort of polyphony that is meant to "wipe out sense"?[17]

Kristeva's blistering analysis of Céline's work in the last pages of *Powers* may provide some clues. In it, Kristeva berates Céline's project—modernism's project—to let language "fly off its handle" as a failed project. On the one hand, Céline is to be applauded for having downgraded the "logical or grammatical dominant of written language," but on the other hand, he undermines that effort by means of transformations situated at the deeper, "semiotic" level through devices such as segmentation, preposing, displacement, ellipsis, and, most crucially, intonation. Usually thought of as a mere acoustic instantiation of the language system, intonation, especially for Kristeva, exists prior to enunciation, producing language and, of course, the subject of enunciation itself—through the symbolic integration of rejection and death drive in the first place.[18] For all of his vulgar,

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hate-filled verbal convulsions—thus, Kristeva's crushing verdict—Céline is a "grammarian who reconciles melody and logic admirably well."[19]

Clearly, Kristeva's sonic imagination is a rather impoverished one. Contrary to the grandiose title—"From Content to Sound"—of the chapter quoted earlier, much of her work might be said actually to take us in the opposite direction: from sound to content. Kristeva fails to embrace sound's abjection because her perspective on sound has already been filtered through a discourse that assigns to "rhythm" a subordinate position as the Other of more hegemonic parameters such as "melody." By blindly reproducing the othering implicit in the common repertoire's placing of rhythm at the bottom of the hierarchy of parameters, Kristeva fails to query musical form's control of the musical order over and against sonority and visceral excess. Kristeva's sonic world is firmly integrated into the symbolic order.

Still, although musicians and music scholars may find it difficult to relate Kristeva's sweeping terminology to the specifics of musical grammar and practice, they might recognize in her writing something of the intensity with which previous generations of thinkers have tackled the *je ne sais quoi* of sound, a quest that has been renewed with unprecedented vigor in sound studies. Although this field may be credited for having provided during its formative period a much needed corrective to the dominance of vision as the sensory core of Western epistemology, current sound scholarship has since moved into what Jonathan Sterne and Mitchell Akiyama call its "postsonic" phase.[20] Stretching the sonic spectrum to its outer limits—to unwanted, aesthetically disparaged, unbearable, repulsive, deafening, or barely audible sound—researchers are increasingly questioning "axiomatic assumptions regarding the givenness of a particular domain called 'sound,' a process called 'hearing,' or a listening subject." Good examples of such scholarship are David Novak's *Japanoise*, a study on Japan's underground Noise scene, or Brendon LaBelle's evocative *Lexicon of the Mouth*, partly a compendium and partly a philosophical essay on orally produced abject sounds such as sloshing, belching, and puking.[21] But in doing so, these and other authors do not simply open up new topics of investigation; they also alter conventional object-centered methodologies. In tandem with this shift toward the edges of the sonic spectrum, sound is being repositioned from an object of knowledge to a way of knowing. Inspired by Steven Feld's influential concept of acoustemology, the cultural study of sound stands in for a type of knowledge production about the world that does not a priori presume essences such as "human," "animal," or "sound"

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and that, as a consequence, also refuses to recognize the subject-object framework structuring the relationship of such essences in traditional epistemology. Acoustemology, Feld suggests, accepts the "conjunctions, disjunctions, and entanglements among all copresent and historically accumulated forms" as what holds the world together.[22]

Perhaps the most promising direction sound studies has taken in recent years, however, is toward a deeper understanding of sound *as* abjection—that is, as an obliterating force deployed in situations of extreme violence such as war or torture. Thus, Suzanne Cusick, in a seminal piece on sound and music in detention facilities used in the U.S. "war on terror," has probed the de-territorializing effects of sound and music during, or as, a technique of torture and the all-encompassing damage it inflicts on the perpetrators, their victims, the public, and even music itself.[23] Meanwhile, J. Martin Daughtry introduced the term "abject acoustic victims" to refer to Iraqi detainees who were being hooded during interrogation by their U.S. captors and whose exposure to extremely loud sounds deprived them of sensory control of their surroundings, trapping them "in a resonant acoustic territory within which they were not and could never be citizens."[24] The point, then, about such "belliphonic sounds" (another Daughtry coinage) is not only that they strip their victims of their entire being by casting the abject back on bodies that, under normal circumstances, would eject them as extreme, painful, or unpalatable. Occupying "intracorporeal acoustic territories," the breakdown of subject-object boundaries created by such weaponization of sound also opens up entirely new possibilities for radically reshaping conventional Enlightenment notions and rules of identity formation focusing on the autharchic body, feeding what Steve Goodman calls the "ecology of fear" in their wake.[25]

But acoustic boundary violations are not confined to the association with real or threatened physical violence. Less traumatic (albeit by no means any less morally debilitating) is the way more aestheticized manifestations of the sonic abject invade, stretch, and explode the confines of what Didier Anzieu, a student of Lacan, calls the "skin ego," causing revulsion, disgust, and outrage in their wake.[26] Steven Connor, in a series of texts that draw on this and other related terms introduced by Anzieu such as the "acoustic envelope," explores the role of sound in upsetting the conventional notion of the skin as a mere outer shell that separates the outside (other) from the inside (self).[27] On this account, the tympanum is not what Derrida famously derided as the "organ . . . of absolute properness"—that is, of the distinction between what is proper to oneself and what is the

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realm of the Other.[28] Quite to the contrary: skin as a whole, not just the eardrum, assumes resonant, acoustic qualities.[29] Skin is the space of nowhere par excellence and as such it belongs neither to the subject nor to the object. This is why this void frequently invites a different form of the sonic abject. As Lisa Coulthard points out in an essay on "dirty sound" in New Extremism (which includes films by the likes of Lars von Trier and Philippe Grandrieux), images and sounds of abjection, dissociation, and disturbance materially implicate or immerse audiences in what one might call a complicity of sublime acoustic violence.[30]

The Silence of the Law

The question, then, becomes a broader one for the assertion of this chapter that sound is not an object but an abject of law. If the abject is what "does not respect borders, positions, rules," and if, as shown earlier, scholars consider sound one of the privileged sites of abjection by dint of its ability to de-territorialize and reterritorialize self and other, what work does the sonic abject do in the legal imagination?[31] Why is it that the law is suffused with acoustic metaphors and procedures that are central to its functioning, such as the doctrines of hearsay and viva voce, but that the law at the same time goes to extraordinary efforts to keep sound at bay? Why do legal practitioners and legal scholars, faced with an ever growing presence and awareness of sounds both wanted and unwanted in areas from environmental pollution and conflicts over land to debates about cultural heritage and intellectual property rights, turn a deaf ear to sound? In the second half of this chapter, we will see that the life of the law—its identity, formal integrity, self-referentiality, and, most important, claims to autonomy and neutrality—are contingent on the abjection of sound. The law, as Stanley Fish famously puts it in his controversial essay "The Law Wishes to Have a Formal Existence," is "continually creating and recreating itself out of the very materials and forces it is obliged, by the very desire to *be* law, to push away."[32]

We will return to Fish's essay in more detail later, but first we must begin, in proper legal fashion, with a case. In September 2006, a Rwandan pop singer named Simon Bikindi was put on trial at the International Criminal Tribunal for Rwanda on charges of incitement to genocide. In 1994, Rwanda (and a largely passive world audience) became witness to one of the worst genocides of the twentieth century, in the course of which

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more than half a million Tutsi and tens of thousands of moderate Hutu were murdered in fewer than one hundred days. A key role in the mass slaughter was played by Radio Télévision Libre des Mille Collines (RTLMC), a station that flooded the Rwandan airwaves with Tutsi-baiting rhetoric and Bikindi's songs. Although for much of its duration the trial looked and sounded more like a "musical trial" than a criminal trial—the tribunal frequently finding itself tuning in to Bikindi's music, hearing evidence from musicologists, and even listening to Bikindi himself as he sang his final statement—it was not for his songs that Bikindi was eventually convicted but for two inflammatory speeches the singer gave from a truck in which, to the sound of his own music, he exhorted the public to go out and exterminate all Tutsi. In a way, then, Bikindi's voice and music might be said to have provided the soundtrack to the genocide. But why is it, James Parker wonders in his pioneering *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi*, that the tribunal never explicitly engaged the materiality of sound permeating the "judicial soundscape"?[33] And, at the same time, why is the law "never without the problem of sound"?[34] At bottom, Parker concludes, the main reason for the tribunal's sonic obtuseness is the crude, instrumentalist conception of mass media, music, and the voice. In the chamber's opinion, these merely functioned as language's handmaiden. For instance, RTLMC was seen as a vehicle for disseminating and amplifying messages of hatred but never as an agent of violence. For its part, music was to be understood as separate from song, as instrumental backing and as such irrelevant to the "content" or lyrics of the song.

The voice is a different matter. On the one hand, voice is to speech what "music" is to the lyrics of a song; it is speech's natural embodiment and material form, and as such it is extraneous to thought. But at the same time, voice figures in a more ambiguous role, drawing together vocalization, thought, intent, and even technology (RTLMC, the public-address system, and so on) into a perilous, even tautological metonymy, or what Parker calls an "expressive chain."[35] What enables this chain and ultimately secured Bikindi's conviction, Parker argues, is a peculiar conflation of the jurisprudential reasoning underpinning the doctrine of incitement, on the one hand, and the legacy of phonocentrism as defined by Derrida, on the other. In essence, the tribunal treated Bikindi's speeches as an "expression" of individual criminal intent. Yet the concept of "expression" is so deeply enshrined in a host of legal doctrines—from the law of evidence and the law of criminal procedure to copyright law—that it no longer requires justification, particularly in relation to the law's most taken-for-granted,

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"natural" entity, the voice. This is why the court had no difficulty in merging voice and subjectivity in its effort to lend plausibility and weight to the finding that, in making these speeches, Bikindi not only had genocidal intentions but that, as such, these intentions can clearly be deduced from his vocal utterances. Thus, ultimately, what is essentially an ontological problem—the "problem of sound"—here comes down to a question of juridical convenience. Eschewing sound by separating the sonic materiality of the voice from its enunciative outcome is simply a sophisticated "jurisprudential technique" for silencing the voice precisely "in the process of 'giving voice' to speech."[36] Through the "substitution of the language of voice for that of subjectivity," sound is sacrificed to evidentiary reliability and, ultimately, to the stability of the subject.

While the court's decision to abstract meaning and intention and their expression in spoken (or even sung) language from sound and thereby also to deny sound's agency to inflict bodily harm clearly highlights the paucity of law's sonic imagination, it amounts to more than technique. Jurisprudential technique, Fish might weigh in, is anything but a sign of legal trickery or a lack of self-reflexivity. Quite the contrary, it is the "trick by which law subsists."[37] What makes law the law, then, of necessity entails the abjection of sound.

In her *Excitable Speech: A Politics of the Performative*, Judith Butler faces a similar conundrum. Like Parker, Butler seems to imply that the judicial attribution of injurious speech to a singular subject is a matter of basic linguistics or a mere "grammatical requirement of accountability."[38] And although she, like Parker, sees such attribution as little more than a "juridical constraint on thought," she might also find herself at odds with Parker in that she rejects any attempt at judicial censoring of injurious speech as curtailing the possibility of political opposition to such speech. More usefully, however, Butler also seeks to broaden the question of agency in hate speech by attending to the role of the non-constative foundation of speech as transcending the utterer-utterance divide underpinning the concept of efficacious, violence-inducing speaking. In a familiar, Derridean move, she denies to the utterer any claims to antecedence to the utterance. Much as "auto-affection" does not characterize a being that is already itself, the injuriously speaking, morally, and juridically accountable subject first needs to be produced through a prior configuration in which the question of "who is accountable for a given injury precedes and initiates the subject, and the subject itself is formed through being nominated to inhabit that grammatical and juridical site."[39]

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This leaves us with the question of what agent might replace the doing subject now demoted to an aftereffect of a prior grammatical and juridical configuration. It will come as no surprise that, throughout her analysis, Butler studiously avoids the "problem of sound"—except once, as metaphor. Discussing a case in which the U.S. Supreme Court pondered the question of whether the Ku Klux Klan–style burning of a cross on the front lawn of an African American family in St. Paul, Minnesota, constitutes protected speech under the First Amendment (*R.A.V. v. City of St. Paul*, 505 U.S. 377 [1992]), she touches on the relationship the ruling establishes between the "noncontent element (e.g. noise)" and the "content element" of speech. Delivering the opinion, Justice Antonin Scalia revisits the "fighting words" doctrine of constitutional law according to which speech acts unprotected by the U.S. Constitution are those that "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality" (*Chaplinsky v. New Hampshire*, 315 U.S. 568 [1942]). This wording, Scalia argues, would appear to legitimize the absurd claim that "the unprotected features of the words are, despite their verbal character, 'nonspeech' elements of communication."[40] Thus, to shield any act of speech communication from government interference, Scalia, in a remarkable twist of formal legal reasoning, invokes an analogy with sound. "Fighting words," he writes, are "analogous to a noisy sound truck." In other words, by distinguishing between a medium ("noise truck,") and an expression ("idea," "message"), the sound of a speech act may well be considered injurious, but the message it conveys may not. And while injurious acts such as "noise" may be regulated (e.g., by noise ordinances), "the government may not regulate use based on hostility—or favoritism—towards the underlying message expressed."

The ruling thus might be said to fit a square peg into a round hole. It elevates an otherwise punishable act of destruction (on someone else's private property, no less) to a protected expression of a viewpoint. Or, as Butler puts it, by assuming a connection between the signifying power of the burning cross and what may or may not constitute its speech-like character, the burning of the cross, now construed as free speech, is no longer a doing, an action, or an injury. It is only an "expression" that, although repugnant, is to be tolerated precisely for that reason.[41]

But ambiguity remains. On the one hand, sound, construed by *R.A.V.* as a container of speech, is demoted to the rank of a mere nuisance to be prevented by means other than by proscribing the content of the speech it

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houses. Such sound, then, can be ejected from "order" and "morality" and their foundation in speech into a space from which it cannot exert any discursive power. Devoid of agency, it simply endures in a state of abjection. But on the other hand, the same sound, now stripped of its unproductive, violent force, reemerges in purified and, in a sense, inaudible form to support the unhindered flow of free speech.

Such is, precisely, the ambiguity of the sonic abject. And it is the same ambiguity that constitutes the very possibility of the law's "formal existence." This is what Justice John Paul Stevens must have had in mind when, in a dissenting opinion, he offered an alternative to what he calls the majority's "absolutism in the prohibition of content-based regulations" of speech. The difference between injurious and free speech, he argued, can be established not formally but by interpretation—that is, in context.[42] A word, for instance, says Stevens, quoting the legendary Justice Oliver Wendell Holmes, "is not a crystal, transparent and unchanged" but the "skin of a living thought" that may vary in "color and content according to the circumstances and the time in which it is used."[43] Ignoring the racial undertones of Holmes's adumbration (duly critiqued by Butler), yet being mindful of the ambiguities of skin as a site of identity formation, it is worthwhile to examine the concept of "context" a little further and how Butler ties Stevens's opinion back to her theory of hate speech and discursive power. In Butler's Foucauldian understanding of symbolic violence, the relationship between an injury and the act of a subject is not a causal one between a doer and a deed; it is more a "kind of discursive transitivity."[44] This more performance-like process is best grasped by attending to the moments, sites, and techniques of power in and through which it is enacted—in short, by attending to Stevens's "context."

Stevens's contextualist dissenting opinion and Butler's performative-constitutivist reading of it are no doubt incisive and thus indicative of the kind of readings critical legal studies routinely bring to bear on the style of reasoning espoused by formalists such as Scalia. While rhetorically virtuosic, such readings might argue, Scalia's opinion in *R.A.V.* equally could be seen as logically questionable, if not downright politically expedient. Indisputably, the Scalia opinion is both. But the reverse seems equally true. Both Butler's "discursive transitivity"—that is, the notion that the lethal power of contemporary acts of injurious speech is the cumulative effect of iterative uses of past "fighting words"—and Stevens's accommodation of "cultural" contingency raise a number of troubling questions. What qualities invest some sounds with more agentive, injurious potential than others?

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At what point does the line between medium and "expression" get blurred to the extent that it becomes possible to consider sound itself as injurious? And vice versa: what happens when the words are injurious but the sound is not? Can Bikindi's songs be exonerated from being categorized as hate speech simply because their light-touch, pop sound might seem to predestine them for uses that are radically opposed to mass killings? But have we not heard of marching bands playing "happy" tunes while the innocent were being commandeered to the quarries? And what about the sounds of Islamic piety that provide the acoustic backdrop to all those death squads currently roaming the Middle East?[45] Is music abject only when it is loud, continuously playing, or dissonant or when it operates by association, such as when Wagner's "Ride of the Valkyries," in Francis Ford Coppola's *Apocalypse Now*, blares from helicopters dropping napalm bombs on unsuspecting Vietnamese villagers?

Conversely, what productive, regenerative force might inhere in those poignant moments in which expressions of pain and suffering burst forth from the bodies of traumatized victims of violence and disrupt the legal protocol—for instance, during the trial of Adolf Eichmann, when the Holocaust survivor K. Zetnik collapsed on the witness stand? Does such a dramatic moment or "mute cry," as he himself later called it, prove the trial a failure, as Hannah Arendt famously argued? Or is the mute cry rather what Shoshana Felman calls a "necessary failure," one that not only exposes the trauma but, more significantly, "creates a new dimension in the trial, a physical legal dimension that dramatically expands what can be grasped as legal meaning"?[46]

In a similar vein, Sonali Chakravarti argues that the particular tone, modulation, and cadence of an individual's voice—or what she calls the "kinetic dimension of anger"—expressed by a victim of violence during proceedings of restorative justice such as the South African Truth and Reconciliation Commission can open up new avenues for political agency and civic engagement.[47] Although courts tend to shun such overtly emotional expressions, giving victims the opportunity to let go of the restraint imposed by the ideology of reasoned discourse as the basis of truth when sounding their deepest feelings instantiates a political practice of listening in relation to judgment that goes beyond catharsis. Such sounding becomes constitutive of justice.

Clearly, if one person's minuet can be another's funeral march, the basis on which such "expressions" can be judged as being either injurious or protected speech becomes a very fragile one—and one, to boot, that the law con-

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stantly has to stabilize. But this effort to achieve "formal existence" does not operate by suppressing interpretation, context, and morality. Rather, it operates, as Fish eloquently puts it, by telling two stories, "one of which is denying that the other is being told at all."[48] Translated into this chapter's concern with the "sonic abject," one might conclude, silencing sound by denying it the status of an object of legal discourse (at least in cases involving doctrines based on distinctions among "expression," "idea," or "act") is the *conditio sine qua non* and, if we are to believe Fish, the very reason for law's remarkable resilience (e.g., in bringing perpetrators such as Bikindi to justice). By the same token, however, it is not too far-fetched a counterclaim to suggest that the unease with the "problem of sound" articulated by Parker, Butler, and Stevens also partakes of what Fish calls a "feat of legerdemain."[49] The interpretive, contextualizing stance advocated by critical legal scholarship, when it comes to sound, must present itself as "common sense," beyond contingency and interpretation. What better way to do this than to abject sound?

Notes

1 Bijsterveld and Pinch, "New Keys to the World of Sound," 4.
2 Bijsterveld and Pinch, "New Keys to the World of Sound," 5.
3 See Hibbitts, '"Coming to Our Senses.'"
4 Manderson, *Songs without Music*, 49.
5 Ramshaw, *Justice as Improvisation*, 2.
6 Derrida, *Of Grammatology*, 23.
7 See Kramer, "From the Other to the Abject."
8 Kramer, "From the Other to the Abject," 35.
9 Kramer, "From the Other to the Abject," 36.
10 Kramer, "From the Other to the Abject," 65.
11 Fox, "White Trash Alchemies of the Abject Sublime"; Kristeva, *Powers of Horror*, 11.
12 Pivec, "Drags, Drugs and Dirt," 123.
13 Fox, "White Trash Alchemies of the Abject Sublime," 59.
14 Kristeva, *Powers of Horror*, 17.
15 Kristeva, *Powers of Horror*, 190.
16 Kristeva, *Revolution in Poetic Language*, 93.
17 Kristeva, *Desire in Language*, 142.
18 Kristeva, *Powers of Horror*, 196.
19 Kristeva, *Powers of Horror*, 192.
20 Sterne and Akiyama, "The Recording That Never Wanted to Be Heard and Other Stories of Sonification," 556.

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21 See Novak, *Japanoise*; Labelle, *Lexicon of the Mouth*.
22 Feld, "Acoustemology," 12.
23 See Cusick, "You Are in a Place That Is out of the World . . ."
24 Daughtry, *Listening to War*, 107.
25 Goodman, *Sonic Warfare*, 107.
26 See Anzieu, *The Skin-Ego*.
27 See Connor, *The Book of Skin*.
28 Derrida, "Tympan," xvii.
29 See Erlmann, *Reason and Resonance*.
30 See Coulthard, "Dirty Sound."
31 Kristeva, *Powers of Horror*, 4.
32 Fish, "The Law Wishes to Have a Formal Existence," 181.
33 Parker, *Acoustic Jurisprudence*, 3.
34 Parker, *Acoustic Jurisprudence*, 2.
35 Parker, *Acoustic Jurisprudence*, 114–18.
36 Parker, *Acoustic Jurisprudence*, 122–23.
37 Fish, "The Law Wishes to Have a Formal Existence," 195.
38 Butler, *Excitable Speech*, 50.
39 Butler, *Excitable Speech*, 46.
40 Butler, *Excitable Speech*, 386.
41 Butler, *Excitable Speech*, 56.
42 Butler, *Excitable Speech*, 427.
43 *R.A. V. v. City of St. Paul*, 505 U.S. 377 (1992), 427n5; see also Holmes, *The Essential Holmes*, 287.
44 Butler, *Excitable Speech*, 47.
45 Shirin Jaafari, "How ISIS Uses Catchy, Violent Tunes for Propaganda," December 18, 2014, https://www.pri.org/stories/2014-12-18/how-isis-uses-catchy-violent-tunes-propaganda.
46 Felman, "A Ghost in the House of Justice," 38.
47 Chakravarti, *Sing the Rage*, 149.
48 Fish, "The Law Wishes to Have a Formal Existence," 200.
49 Fish, "The Law Wishes to Have a Formal Existence," 184.

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