

ON LAW AND MUSIC FROM SONG DUELS TO RHYTHMIC LEGAL ORDERS?

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Perhaps in a world of compromise and relativity, a Justice with sword, scales, and blindfold can no longer be emblematic of the application of law... (Curtis and Resnik 1986-87: 17-74).

Lady Justitia is a euro-centric - but nonetheless very widespread - image of law. Is she still an adequate visualisation of justice in the contemporary world? Is there room for other images, and what developments would necessitate such other images?¹

The logo of the Greenlandic Judiciary is a drum with a drumstick, and in the drum you see two figures. This logo draws on the eskimo tradition of song-duels, one of the devices used to 'solve' conflicts between individuals. Whether this is really a living symbol today, and whether the voice of the drum is actually still heard may be questioned.² But you will find the drum hanging on the walls of magistrates' courtrooms throughout Greenland.

¹ I have discussed other aspects of symbolic images of Justice in Petersen n.d.

² The Greenlandic singer, Rasmus Lyberth, who now works as a consultant in matters regarding the prevention of crime, youth problems, and unemployment for the municipality of Qaqortoq in Southern Greenland, claimed during a conversation on law and music in July 1996 that the drum is actually silenced at the moment.

My intention is not to present an extensive historical account of the tradition of the song-duel in this article but rather to discuss whether some of the elements out of which it was built are perhaps relevant and necessary also in a post-modern world, where an image of justice with 'sword, scales, and blindfold' may be in need of change. It may be thought a somewhat speculative and eclectic presentation, linking elements which to the legally trained western ear may seem almost totally unconnected. However, I hope to be able to contribute enough thoughts for an audience to continue listening.

The relation between law and music has occupied my mind now and again over a period of six years, since I first drew parallels between the phenomena of 'informal law', on which I have written extensively (Petersen 1991), and rhythmical (or non-classical) music. I noticed then that informal law, legal pluralism, 'unofficial law' and other forms of 'folk-law' had had - as rhythmical music had had - difficulties in finding acceptance at the 'classical conservatories' of law and music in the western world.³ When I moved to Greenland in 1995 to live and teach, the historical connections between law and music became so obvious that I decided to delve more into this topic.

I first present a very brief and selective overview of the characteristics of song-duels in order to draw attention to some of the elements I find relevant. From there I continue with some speculations on the relations between music, language and law. Thereafter I discuss the relation between law and rhythm, understood not only as musical but as societal rhythm. What happens in periods of changes in rhythm in a society? I want to suggest that both law and music, as cultural forms, may and do contribute to the creation of societal order and equilibrium or balance, and that we might be in need of a world order more attentive to the tunes and tones played by its members and participants.

Elements of the song duel

The song duel was used until the beginning of the 20th century on the east coast of Greenland. Music and songs of different kinds were of renowned importance in all Eskimo societies in the Arctic, and the song duels have been mentioned by many writers (Bentzon et al. 1950; Hoebel 1964: Chapter 5, "The Eskimo: rudimentary

³ My exact knowledge regarding the situation of rhythmical music is limited to Denmark, where the first Rhythmic Music Conservatory was established in 1986. A bit of the history of the conservatory is presented in the 10th anniversary jubilee publication, Rytmsk Musikkonservatorium 1996.

law in a primitive anarchy"; Rosing 1969-70; Kleivan 1971; Anderson 1974/75; Eckert and Newmark 1980; Breinholt 1982; Lumholt 1993; for an especially thorough analysis of conflict solution among the Inuit see Rouland 1979; for an account of the musical aspect see Hauser 1992).

In Eskimo societies, which were without a state organization, song duels were used to reestablish societal, mental and emotional equilibrium. Song duels took place at festive occasions and served the combined functions of the communication of tension and of information about other people, the prevention of open conflict, and entertainment. There was no impartial third party judge, but rather the audience seems to have served as 'judge'. The roles of public opinion, community participation in the conflict and the ambiguity and ritual isolation of the conflict are repeatedly underlined in the descriptions. The purpose of the song duel seems to have been not so much to declare guilt or recognise right as to reintegrate conflicting community members into the community. Many writers emphasize the ritual, psychotherapeutic and cathartic elements of the song duels and the psychological character of the sanctions. Social order was maintained by internal control as much as by external. Song contests took place in and produced a community of feeling.

These functions of the song duels have led several authors to warn against direct comparison between European notions of law and litigation and the use of the song duel in an Eskimo context, where it was used also when conflicts arose between individuals for complex interpersonal reasons. Nevertheless, the conception of the song duel as both an artistic and a disputative event is perhaps not so alien to the western legal mind. Today the dramatic aspects of court cases and the court room are increasingly displayed on a global level. The O.J.Simpson case is a prime example. Such cases focus on what seems to have been a very strong focus of the song duels also: gender relations, jealousy, homicide, violence and competition.

The song duels were used in a non-state society which was also a non-industrial society, and where survival under very harsh climatic conditions was the main goal. Eskimos did not produce, but lived from hunting, fishing and gathering berries. The instruments to maintain social and mental equilibrium probably reflected these economic, ecological and spiritual conditions. With the advent of Christianity the power of the shamans and the drum dancing and song duels were gradually undermined. In contemporary Greenland the judiciary closely resembles a European judicial structure, but with the very important difference that the magistrates who decide cases on the lowest level are lay judges without legal training, who are guided by the Criminal Code, the Code of Procedure, and common sense. The language spoken in the Magistrate's court is also predominantly Greenlandic,

whereas both Greenlandic and Danish are used in the Greenlandic Appeal Court, where the staff consists of Danish lawyers trained in Denmark.

Speculations on music, language and law

Perhaps there is a relation between language and the dominant form of law, just as according to Steve Reich there is evidence of a connection between a nation's music and its spoken language:

If the folk music of a given country is tied closely to at least the rhythm of everyday speech, and the art music is in turn tied to the folk music, then we can begin to see the connections between a nation's language and its music.

In Africa these connections are much more pronounced and built not only on the rhythm of speech but on the pitch as well. This is the case because in many African countries they speak tonal languages. In a tonal language the speech melody is not only a kind of emotional aura surrounding what is said, but *is part of the literal meaning of the words*. If the speech melody is different, the words have a different meaning. (Reich 1996; emphasis in the original)

Many African languages are polysynthetic, as are the Inuit languages including Greenlandic. A working relationship between law and language - the possibility of speaking of and about law in one's own language - has been denied to huge parts of the populations of the world (Bronstein and Hersch 1991, Soifer 1993).⁴ Each exclusion of this possibility has necessitated a shift not only of language but also to a certain extent of world view in the legal context, since the concomitant relation between language and 'reality' is of course also influenced. Because epistemology and language are related, our view of what is law and legal is related to the type of language we use. Analytical languages and analytical alphabets have been claimed to lead to an individualistic cosmology and an instrumental legal and legislative ideology (Jørgensen 1995).

Greenlandic lacks the European type of abstract legal terminology, which has to be re-created, inevitably in a circumscribed form, when 'translated' from Danish to Greenlandic. Equally Danish seems to lack the Greenlandic metaphorical ways of

⁴ Derrida (1992) discusses the issue of law and language more generally.

describing relations and understandings, which then in the process of transference from Greenlandic to Danish are curtailed. Listening to court interpretations I have heard clearly that the tone and reverberation of a Greenlandic witness narrating an account differs from the tone, rhythm, and pace of a Dane or European.

In accounts of song duels the power of language and of the word is also often mentioned. If somebody was challenged to a song duel, he or she could not just withdraw. That possibility was excluded by the power of the word. Even in contemporary Greenland the power of the word is not taken lightly, as I understand it. Somebody who has committed a crime will confess and not deny it in court. The female magistrate of the Magistrate's court of Nuuk, Greenland, claims that it is only Danes who will lie in court and deny that they have committed crimes they have actually committed. A Greenlander would hardly ever do that.⁵

Edward Said, in his little book *Musical Elaborations* writes that music, like literature, is practised in a social and cultural setting, and he advises the reader to think of the relation between music and social privilege, music and the nation, or music and religious veneration. He sees in the public form of contemporary musical performance a way of bridging the gap between the social and cultural spheres. He mentions his own childhood experiences of local middle eastern music dominated by an aesthetic "whose hallmark was exfoliating variation", which however he did not appreciate at the time. His education, both musical and academic, was preponderantly western, and he "seemed to be dedicated to an ethic of productivity and of overcoming obstacles" (Said 1991: 98).

The role of music in the song duel was to establish a community of feeling, "a regularly shared experience" (Maconie 1990), and to provide the context for the expression by different means of certain emotions in order to reestablish equilibrium. Its underlying ethic was not one of productivity but of equilibrium. Its form is thus probably closer to the middle eastern 'musical elaborations' than to the western sonata.

Music has, in western theory as elsewhere, traditionally been closely linked to emotions. Susanne Langer writes that music articulates forms which language cannot

⁵ During three weeks in July 1996 I followed the work of the Greenlandic Appeal Court as it travelled by boat along the south coast of Greenland from Nuuk to Nasarmijit (Frederiksdal), about 460 nautical miles, visiting villages and trading posts to hear appeals. Most of the cases were criminal cases. It was extraordinarily rare for the question of guilt to be in issue. Appeals mostly concerned the duration and type of sanction.

pronounce. She argues that the forms of human emotions are closer to musical forms than to linguistic forms, and thus music can disclose the nature of emotions with a richness of detail and truth which language cannot reach (Langer 1969: Chapter 8). If music plays an important part in resolving individual and social conflicts, perhaps it is the emotional or immaterial aspects of these conflicts which are addressed in this way rather than the material aspects.

There seems to be an acknowledged relationship between language and law, which needs much more investigation. There seems also to be some evidence of relations between music and language (see also Adorno 1978). I suggest that we should look further into the relationship between law and music, perhaps by examining the relation of both to language. I cannot claim with any confidence that there is a significant relationship between these elements, but others might add more insights and reflections.⁶

My tentative hypothesis would, however, be that western legal systems and theories, which have cut out or ignored the cultural and 'musical' components of law, have also to a large degree excluded and ignored emotionality in law; and that we might have reached a point where this is becoming counterproductive. Cutting out and off with the sword, and measuring and weighing with the scales may not be the most creative way of engendering societal balance and ecological sustainability.

Law and societal rhythm

In this section I suggest that the understanding of law which has been dominant in the western world, and which has been very influential in westernized parts of the world, is a form of understanding closely related to a society embedded in a rhythm of industrial production and industrial productivity. This rhythm also generates a certain ethic of aesthetics, as mentioned by Edward Said. Such a rhythm, focusing upon an identical daily rhythm, and downplaying the importance of both annual seasons and individual life cycles, must be clearly different from the rhythms of societies which are embedded in agricultural production and its concomitant rhythm, or of hunting and fishing societies, whose rhythms underlie the reproductive rhythms of the living resources on which their livelihood depends.

⁶ Bruce Chatwin in "Songlines" deals somewhat with the role of songs among Aborigines in Australia in establishing commerce and property 'rights'. Poh-Ling Tan (1995) mentions the relation between dreaming and property.

Undoubtedly there are very few contemporary societies, communities or economies which are 'pure' and adhere to only one rhythm. It is however not farfetched to claim that the industrial rhythm has been the all-dominant rhythm in the legal 'symphony' of the 20th century. It is not very daring either to prophesy that this will not be the dominant rhythm of the century to come. There are many signs of this, one of them being the re-acceptance of women's work and its societal importance, and a certain reintegration of women into the so-called labour market. The entrance of women into the paid labour market of western societies is forcing these markets and societies to accept a somewhat different rhythm, more applicable to human procreation.

The coming century may not have one dominant rhythm, but rather a polyphone rhythmic elaboration. At the moment it sounds as if some of the rhythms which might generate and stimulate followings will be rhythms of creativity, spirituality, procreation (often also called reproduction), and sustainability. They may be rhythms of both more local and more global impact, and may create shifting and temporary communities. Creating or recreating equilibrium between human nature and non-human nature, or between material and immaterial interests, may be an important task for a postmodern and post-industrial order. Such a development and acceptance of varying societal and individual rhythms may require the development of a consciousness of a more 'musical' kind. The Danish musician and physicist, Peter Bastian, who has been playing Balkan music for two decades, writes in a very interesting book about the need to develop our musicality so that we shall no longer overlook interrelations which we cannot afford to overlook. We need to develop our musicality in relation to other human beings, to nature, and to society. In the first relationship this musicality is called love, and leads to respect and tolerance. In the second relationship, to nature, we call this musicality insight and we gain humility. And when directing our musicality towards society we sense the relations which link separate individuals to each other. This, which we call culture, leads to a feeling of responsibility (Bastian 1987).

It is my impression that the legal canonical literature of most of the world is still very western, although important changes are underway (Chiba 1989, 1994; Petersen and Zahle 1995; Ferrari 1995; Sinha 1996). It is also still strongly oriented towards the allocation of guilt and attribution of rights, although an abundant literature on 'alternative dispute resolution' clearly demonstrates the need for another approach to conflicts (Fischer et al. 1991; Gifford 1989; Vindeløv 1995). But it still takes sensitive ears to hear and feel the emerging change of rhythm in legal language.

This change may resound more audibly in the economic language of the music industry. In an interview in January 1996, Ken Berry, president of EMI Music

International said that the demand for American music was starting to recede. "Now, the big growth is in local artists." This has seemingly sent the 40 billion dollar music industry into a dramatic transformation. "It is changing from a business relying heavily on US sales and exports to one that is far more decentralized and geared to local tastes" (Business Week 1996). Looking through a catalogue of World Music,⁷ it is striking to see the differences and the sources and sites of musical energy and creativity. Surely Jamaica, with a small population, has had a global impact in music (see also Røgilds 1988).

Re-creating equilibrium in periods of social and mental change - roles of law and music?

It is beyond question that so-called indigenous peoples have gone through periods of great turbulence and turmoil in the latter half of the twentieth century. Their social, economic, mental and legal situations have undergone dramatic changes. (For an account of aspects of this, and especially the legal situation, see Tennant 1994). The costs in terms of alcoholism, high suicide rates, and social and mental distress are well known. The gains are to be seen mainly in terms of increased political influence and self-rule.

These processes have been treated in music. In Canada the music of Susan Aglukark on the CDs/MCs "Arctic Rose" and "This Child" deals with social and spiritual problems of Canada's Inuit Population. The title track of "This Child", dealing with the tragedy of suicide, was written to accompany the film broadcast of "Trial at Fortitude Bay", which depicts clashes between Inuit and western senses and conceptions of justice. In Greenland a socio-political role has been placed by musicians and the Greenlandic recording company ULO (a name which refers to a woman's knife), established to disseminate and conserve popular Greenlandic music, culture and art, for the process of obtaining home rule. This has to my knowledge not been studied. It seems possible, however, to trace a shift in the issues treated in popular Greenlandic music since Home Rule was obtained in 1979. Where the issues about two decades ago were directly political, they now seem to deal more with nature, love and emotions.⁸

⁷ The Danish NGO, Mellempøkeligt Samvirke (MS), which has dealt with development aid for half a century, amongst its activities also runs a book and musicshop in Copenhagen. In 1995 MS published a 32-page catalogue of World Music categorized according to region and country.

⁸ One of my students, Tina Davidsen, wrote a 10-page synopsis for an examination in a course on research methodology dealing briefly with the importance of

It is not only among indigenous people that music has played a role in current social transformations. Estonia is said to have experienced a 'singing revolution', and in the other Baltic countries also musical heritage and tradition have been an important motivating elements in the struggle for political autonomy.⁹

Perhaps one meeting ground for law and music in a post-nationstate, post-modern phase could be that of ethics. The many complex and diverse questions facing today's societies, from survival, sustainability and reproductive technology to racial and sexual discrimination, seem to be met less with legislation and more with ethical codes and codes of conduct. World law seems to consist less of legislation and more of ethics and etiquette. Maybe it is significant that in an affluent small country like Denmark there is now an enormously increasing demand for musical education for very small children from 0-6 years, and there are now more amateurs performing music than sports.¹⁰ Maybe music, as well as other cultural forms and norms, may influence conduct as much as legislative codes. And maybe we should be much more aware of the interplay between these different forms.

Michel Maffesoli in his article "The Ethic of Aesthetics" claims that the essential conditions of collective life in post-modernity are sensitivity, communication and collective emotion, and that the source of energy will be intention or artistic will. The ethical function of aesthetics is to provide common and collective experience. Aesthetics serve as cement, and determine a new form of solidarity in complex societies. They also lead to a collapse of the separation between nature and culture. Nature becomes culturalized and culture becomes naturalized. Maffesoli claims that the faculty of sympathy and the capacity for action are closely related. The aesthetic dimension might ensure social synergy and bring out the effectiveness of forms of social affinity and sympathy. The culture of postmodernity is a culture of sensation (*Gefühlskultur*), which moves from a logic of identity to a logic of identification. The thematic of postmodernity is a movement from liberation to attraction or

songtexts for the Greenlandic population. From her material and informal talks with other informants, it seems that texts concerning nature, love and emotions are more dominant today than 20 years ago.

⁹ Personal communication from historian of religion Dagmara Beitners, Academy of Sciences, Riga, Latvia.

¹⁰ Information obtained during an interview with Erik Moseholm, present director of the Rhythmic Music Conservatory, Copenhagen, May 1996. For a discussion of sports law as a form of postmodern law, see Chiba (1994).

sensuality. Maffesoli quotes Yourcenar, who writes of “the elaboration of a system of human knowledge based on eroticism, a theory of contact” (Maffesoli 1991).

If these observations are correct, as I believe they are, they herald an important role for cultural forms such as music in creating and re-creating communal balance and harmony. The implications of this for our conception of law could perhaps be that we should give more attention to the re-creation of a more ‘musical’ or rhythmic form of order, if we want ‘law’ also to contribute to a process of establishing balance and harmony on local and global levels. But maybe this is too idealistic?

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