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## Gavel

*James EK Parker*

### The Gavel's Knock

Images of the gavel are everywhere: in books, on TV, at the movies, and all over the web. I know of only one work, however, that specifically addresses the gavel as an object. It is by Italian artist Diego Tonus and was shown for the first time in Amsterdam in 2013.<sup>1</sup> At first the film is silent. The camera pans slowly across a table on which some fifty or so gavels have been collected. Close-up like this one is struck immediately by the diversity of their colour, shape, and design. From the lightest pine through the richest mahogany to the darkest ebony, each one has its own peculiar shade and grain. Some are so plain, so thick and sturdy that in any other context they would probably be mistaken for a carpenter or stonemason's mallet. Others are much finer and more heavily adorned. Their handles are curved or elaborately twisted. They have images, names, dates, and mottos carved directly into the wood, or engraved in metal or ivory. Most however are quite restrained: their figures lithe and elegant, their edges gently shaped in the process of turning them on the lathe. The degree of wear and tear varies considerably. Several are pristine, as if they have spent a majority of their days solemnly perched on a mantelpiece or neglected in some drawer. But many bear the marks of decades of handling. Sweaty palms have worn their lacquer, and they are dotted with nicks and scratches where they have been wielded carelessly or with a little too much vigour. All this, as I say, in silence.

Now the artist appears at one end of the table. He lifts a gavel in both hands and turns it from side to side, taking its measure, noting its smoothness, weight, and feel. Then, after placing one hand firmly beside the sounding-block on the table in front of him, he brings it down with a single short, sharp knock; then another, and two more in quick succession. This is how the film continues. Slowly and methodically, Tonus takes each gavel in turn, inspects and then 'plays' it for us. Every knock is different from the last. Repetition, as is so often the case, breeds difference.<sup>2</sup> Some

<sup>1</sup> Diego Tonus, *Processing Authorities—ACT I* (Stedelijk Museum Bureau Amsterdam 2013).

<sup>2</sup> On the relationship between repetition and difference in the work of composers like Tony Conrad and La Monte Young, see Branden Joseph, *Beyond the Dream Syndicate: Tony Conrad and the Arts after Cage* (MIT Press 2011).



Fig 12.1 Diego Tonus, selected frame from the film, *Soundtracks for Revolutions*  
 Source: Tonus, *Processing Authorities*.

of the variation appears to be a function of material differences between the gavels themselves: the relative density of woods, the size and shape of each one's head. But the performer is clearly a major factor too. And this, one begins to suspect, is exactly what Tonus wants us to notice. This is a music lesson. The gavels are being presented as instruments. Since the camera is in so close we can see as Tonus adjusts the tightness and location of his grip, the height, force, and direction of his swing, how long he allows the gavel to remain in contact with the block, how quickly he brings it down again. And each time we can match these adjustments to their acoustic index. Not that the ear follows the eye however. The process is more synchronized and collaborative: 'audiovisual' Michel Chion would call it.<sup>3</sup> And the result here is a form of attention that Chion terms 'causal listening'.<sup>4</sup> We are being invited to attend to each knock 'in order to gather information about its cause (or source)',<sup>5</sup> to hear each sound as a symptom: of the gavel's materiality, on the one hand, and the performer's technique, on the other.

But Tonus' film is long and this mode of listening, which is also a way of looking, is laborious. Inevitably one's attention drifts. I find myself turning away from the screen. And still the gavels impose themselves. There is something about these sounds, their peculiar pitch, timbre, duration, and attack, especially in combination with the relentless but irregular rhythm, which makes them extremely hard to tune out. Soon enough this doesn't feel like listening anymore, it feels like exposure.<sup>6</sup>

<sup>3</sup> Michel Chion, *Audio-Vision: Sound on Screen* (Claudio Gorbman tr and ed, Columbia 1994).

<sup>4</sup> *ibid* 25. <sup>5</sup> *ibid*.

<sup>6</sup> J Martin Daughtry, 'Thanatosonics: Ontologies of Sonic Violence' (2014) 32 (2 (119)) *Social Text* 25.

This is how sound often works of course. ‘When we listen, we find it fascinating’, the composer John Cage once wrote, whereas ‘when we ignore it, it disturbs us’.<sup>7</sup> To some extent this is simply a function of sound’s materiality and the physiology of hearing. The sonic is a ‘phenomenon of contact’ after all.<sup>8</sup> ‘What we call “sound” is the aurally apprehensible presence of compression waves moving through a medium’.<sup>9</sup> As vibration, therefore, sound comes to you. It works with and on the human body, and especially the vulnerable ear, which it turns out is peculiarly susceptible to certain frequencies at certain intensities.<sup>10</sup> Evidently the gavel’s knock is quite well calibrated in this respect: the piercing rap of wood on wood. But it is also easy to overstate sound’s physiological and affective powers, to grant sounds ‘themselves’ a little too much agency.<sup>11</sup> J Martin Daughtry has written about how even in wartime Iraq, soldiers and civilians were able to habituate to the sounds of distant gunfire, exploding IEDs, and the many other forms of ‘sonic violence’ that came to accompany their daily lives.<sup>12</sup> The ‘audible inaudible’ he calls it: ‘a conceptual space that house[s] sounds so distant and/or ubiquitous that they cease to draw the attention of the experienced auditor’.<sup>13</sup> When the circumstances demand it, one quickly learns *not* to listen, even to sounds that seem particularly dangerous or insistent. So if the gavel’s knock tends to impose itself, to reach out and grab one’s attention, that is not (or not just) the result of any inherent qualities of the sound ‘in itself’,<sup>14</sup> nor indeed of mere biology. Most of all it is a function of the sound’s distinctiveness in a given soundscape, which is to say it depends equally on who is doing the listening, where, and why they are doing it.<sup>15</sup> Listening is institutional. It is always a matter of context.

Here finally is the central conceit of *Tonus*’ film. Knock after knock after knock and nothing is ever actioned, no procedural consequences follow, no-one is called to order, judgment is never rendered. By refusing to present the gavels ‘in context’, by bracketing out their institutional lives and juridical effects, the film enables us to see, hear, and appreciate them that much better *as objects*. But in doing so it also demonstrates the partiality of this mode of engagement. It points to the fact that in most contexts, in most institutional settings, this is not how we listen to the gavel’s knock at all. Most of the time the situation demands that we also listen ‘semantically’.<sup>16</sup>

<sup>7</sup> John Cage, ‘The Future of Music: Credo’ in *Silence: Lectures and Writings* (Marion Boyars 1968) 1.

<sup>8</sup> Steve Goodman, *Sonic Warfare: Sound, Affect and the Ecology of Fear* (MIT Press 2010) 10.

<sup>9</sup> Daughtry (n 6) 38.

<sup>10</sup> James EK Parker, ‘Towards an Acoustic Jurisprudence: Law and the Long Range Acoustic Device’ (2018) 14(2) *Law, Culture and the Humanities* 202.

<sup>11</sup> Seth Kim-Cohen, *In the Blink of an Ear: Toward a Non-Cochlear Sonic Art* (Continuum 2009); Richard K Sherwin, ‘Too Late for Thinking: The Curious Quest for Emancipatory Potential in Meaningless Affect and Some Jurisprudential Implications’ (2015) *Law, Culture and the Humanities*, doi:10.1177/1743872115611500.

<sup>12</sup> J Martin Daughtry, *Listening to War: Sound, Music, Trauma and Survival in Wartime Iraq* (OUP 2015).

<sup>13</sup> *ibid* 77.

<sup>14</sup> Brian Kane, ‘*L’Objet Sonore Maintenant*: Pierre Schaeffer, Sound Objects and the Phenomenological Reduction’ (2007) 12 *Organised Sound* 15; Kim-Cohen (n 11).

<sup>15</sup> Ola Stockfelt, ‘Adequate Modes of Listening’ in Christoph Cox and Daniel Warner (eds), *Audio Culture: Readings in Modern Music* (Continuum 2004) 88–93.

<sup>16</sup> Chion (n 3) 28.

We expect each knock to mean something and in doing so to initiate some sort of institutional effect. And we are usually right.

Even though the gavel's semantic life differs significantly from one institution to the next there are definite continuities. When a gavel is used to 'call proceedings to order' for instance—at the opening of a session of the US Supreme Court or House of Representatives, say, or following a particularly boisterous moment at the trial of Saddam Hussein<sup>17</sup>—what this amounts to in institutional terms is a call for silence. 'Quiet!': that is what the gavel's knock 'means' here: an injunction, a 'speech act' without a speaker, a proxy for and expansion of the juridical voice,<sup>18</sup> a technique of juris-diction.<sup>19</sup> And if it is an effective one—'felicitous' JL Austin would call it<sup>20</sup>—if it really does succeed in hushing the room, this is not, or not just because of the sound 'itself', or of the authority of the judge, crier,<sup>21</sup> or speaker of the house *per se*. It is also because the gavel's knock is able to stand out or cut through in a soundscape consisting predominantly of voices,<sup>22</sup> and because everyone involved knows or senses—it is rarely a matter of doctrine<sup>23</sup>—that proceedings of this sort should be relatively quiet. Both the 'legislative' and 'judicial soundscapes'<sup>24</sup> depend on and entrench an association between silence and civility, noise and disorder, that has a long pedigree in legal and political thought in the West and elsewhere.<sup>25</sup> Silence is being figured as the proper condition out of which legal discourse emerges. The gavel is simply the object to which the task of maintaining this condition has most obviously been delegated.

<sup>17</sup> 'Saddam Hussein Trial—'Shouting Match with Angry Judge' (*YouTube*, uploaded 6 March 2010) <<https://www.youtube.com/watch?v=ly7oQwBXQfU>> accessed 13 November 2016.

<sup>18</sup> Friedrich Kittler, *Gramophone, Film, Typewriter* (Stanford UP 1999); Bruno Latour (Couze Venn tr), 'Morality and Technology: The End of the Means' (2002) 19(5–6) *Theory, Culture and Society* 247.

<sup>19</sup> On jurisdiction, see Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (Routledge 2012); Shaun McVeigh (ed), *Jurisprudence of Jurisdiction* (Routledge-Cavendish 2007).

<sup>20</sup> JL Austin, *How to Do Things with Words* (Harvard UP 1962). Austin himself was largely silent however when it came to the role of sound in the production of 'felicity'. See Michelle Duncan, 'The Operatic Scandal of the Singing Body: Voice, Presence, Performativity' (2004) 16(3) *Cambridge Opera Journal* 283, 289.

<sup>21</sup> At the US Supreme Court, the gavel is not wielded by a judge but by the 'crier' who also introduces each session with the words 'Oyez! Oyez! Oyez!' from the Old French *ouïr*, to hear: 'How the Court Works: Oral Argument' (*The Supreme Court Historical Society*) <[http://supremecourthistory.org/htcw\\_oralargument.html](http://supremecourthistory.org/htcw_oralargument.html)> accessed 13 November 2016.

<sup>22</sup> James Parker, 'The Soundscape of Justice' (2011) 20(4) *Griffith Law Review* 962.

<sup>23</sup> For attempts to delineate some rules of gavel use, though they are certainly not followed everywhere or to the letter, see George Demeter, *Demeter's Manual of Parliamentary Law and Procedure* (Bostonia Press 1961); Henry M Robert et al, *Robert's Rules of Order: Newly Revised* (11th ed, Da Capo Press 2011).

<sup>24</sup> James EK Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (OUP 2015).

<sup>25</sup> John Picker, 'The Soundproof Study' in Jonathan Sterne (ed), *The Sound Studies Reader* (Routledge 2012); Emily Thompson, *The Soundscape of Modernity: Architectural Acoustics and the Culture of Listening in America, 1900–1933* (MIT Press 2004); Jacques Attali, *Noise: The Political Economy of Music* (Brian Massumi tr, U Minnesota Press 1985) (trans of: *Bruits: Essai sur l'économie politique de la musique* (first published 1977)). For a legal example, see *In Re Dakin* (1887) 13 *Victorian Law Reports* 522 in which Dakin was found in contempt of court for refusing to stop the construction of a notice board in a yard adjoining the Supreme Court of Victoria, which was causing a lot of noise and disturbing proceedings inside.

When a gavel is used to mark a sale, decision, or verdict, by contrast, something else is going on entirely. Whether it concludes the record-breaking sale of Edvard Munch's *The Scream* at Sotheby's,<sup>26</sup> adjourns proceedings for the day, or marks the historic adoption of the Paris Agreement on climate change,<sup>27</sup> now the gavel's knock doesn't issue an injunction so much as it delineates a moment in time. It says *this* is when judgment was rendered, when the long process of deliberation and debate concluded, when what was open became closed. And it says all this, moreover, far more decisively than speech alone. '*L'accord de Paris pour le climat est accepté.*' Yes, but when exactly? The knock that follows Laurent Fabius' historic words operates like punctuation: an acoustic full stop. Phenomenologically, it produces a powerful sense of instantaneity, of before and after, and in doing so seems to cement the moment of the agreement.<sup>28</sup> Strictly speaking of course this is an illusion, an institutional sleight of hand. First, because even a sound as short and sharp as the gavel's knock has a duration. Second and more importantly, because Derrida's famous account of the iterability of the sign and the work of *différance* can also be applied to sound.<sup>29</sup> The gavel's knock only seems to register the instant of decision because of everything that has preceded it, because of the many institutional 'traces' which give it meaning, and because it initiates and depends upon a set of future procedures which—if 'conditions of effective domination' are in place and all the relevant institutional actors prepared to 'do their job'—will render it effective and give it the force of law.<sup>30</sup>

## The Gavel's History

'Gavel' has long been a legal term. The earliest references, from around 725 CE, are to 'gavelkind', a system of fealty and land tenure then operative in certain parts of what would eventually become England.<sup>31</sup> It was not until much later and far away from the historic roots of the common law that the word would start to take on the meaning it has today. Though its precise etymology remains a mystery,<sup>32</sup> the

<sup>26</sup> Laura Trevelyan, 'Edvard Munch's Iconic Artwork The Scream Sold for \$120m' (*BBC News*, 3 May 2012) <<http://www.bbc.co.uk/news/entertainment-arts-17934230>> accessed 13 November 2016.

<sup>27</sup> John Vidal, Suzanne Goldenberg, and Lenore Taylor, 'How the Historic Paris Deal over Climate Change was Finally Agreed' *The Guardian* (13 December 2015) <<http://www.theguardian.com/environment/2015/dec/13/climate-change-deal-agreed-paris>> accessed 13 November 2016.

<sup>28</sup> Don Ihde, *Listening and Voice: Phenomenologies of Sound* (State U New York Press 2007).

<sup>29</sup> Jacques Derrida, *Limited Inc* (Samuel Weber, Jeffrey Mehlman, and Alan Bass trs, Northwestern UP 1988); Kim-Cohen (n 11); Seth Kim-Cohen, *Against Ambience and Other Essays* (Bloomsbury Academic 2016).

<sup>30</sup> Robert Cover, 'Violence and the Word' (1986) 95 *Yale Law Journal* 1601.

<sup>31</sup> Silas Taylor-Gent, *The History of Gavel-Kind, With the Etymology Thereof* (1663).

<sup>32</sup> One suggestion is that the contemporary sense of the word arose from the particularly unruly nature of the courts of land tenure in which issues of 'gavelkind' were litigated, but other possible derivations include the Dutch *kevel*: a 'large hammer used in stone quarrying' and the German *gabel*: 'a gavel or fork': Robert Doyle, 'Auction Hammers and Gavels' (*National Auction List.com*, 25 February 2006) <<http://nationalauctionlist.blogspot.com.au/2006/10/auction-hammers-and-gavels-by-robert.html>> accessed 13 November 2016; GS Bragge, *What is a Gavel? A Lecture* (Joesbury and Son 1919) 5; Diego Tonus, *The Presidents' Hammers* (Roma 2018).

contemporary gavel's roots are most commonly attributed to America, where the term begins to appear in reference to a hammer or mallet wielded by some figure of authority around 1860, before coming to be associated primarily with legal institutions and especially the office of the judge soon after.<sup>33</sup> Today gavels still feature in courtrooms all across the United States, including at the Supreme Court,<sup>34</sup> as well as in many state legislatures and both houses of Congress. In other jurisdictions you will be much harder pushed to find one however, notwithstanding what you may have seen on TV and the web.<sup>35</sup> Gavels are not typically used at all in the civil law tradition and even in common law countries you will not find them in courts or legislatures in, say, the UK, India, or Australia.<sup>36</sup> Nevertheless, the gavel is hardly 'unique' to American legal institutions, despite what some may claim.<sup>37</sup>

Long before the world's screens were saturated with US legal dramas and 'reality' court shows like Judge Judy, there was already a gavel on the bench at Nuremberg<sup>38</sup> and Tokyo,<sup>39</sup> and in the twenty-first century gavels continue to feature at many of the most important institutions of international law around the world. Until their doors closed a few years ago there were gavels at both the International Criminal Tribunal for Rwanda (ICTR) and the former Yugoslavia (ICTY).<sup>40</sup> Today there is a gavel at the Grand Chamber of the European Court of Human Rights and at both the UN Security Council and the General Assembly.<sup>41</sup> True, we could read this proliferation as a symptom of the growing Americanization of global legal norms and

<sup>33</sup> Claude Simpson and Cathie McNeil, 'The Gavel' (1971) 20 *The Speech Teacher* 143–5.

<sup>34</sup> 'The Court and its Procedures', *Supreme Court of the United States* <<http://www.supremecourt.gov/about/procedures.aspx>> accessed 13 November 2016; 'How the Court Works' (n 21).

<sup>35</sup> For one website which records 'inappropriate' depictions of the gavel in the UK media, see *Inappropriate Gavels*, <<http://inappropriategavels.tumblr.com/>> accessed 13 November 2016. For a Canadian example, see 'Gavel Busters' (*Slaw*) <<http://www.slaw.ca/gavel-busters/>> accessed 13 November 2016.

<sup>36</sup> The one exception in the UK is at the Inner London Crown Court, where a gavel is apparently used 'to alert parties in court to the entrance of the judge into the courtroom': Conor James McKinney, 'No Gavels Please, We're British' (*Full Fact.org*) <<https://fullfact.org/law/no-gavels-please-were-british/>> accessed 13 November 2016.

<sup>37</sup> Stephen C O'Neill, 'Of Gavels and Maces in the Modern Courts' (2001) 7 *Massachusetts Legal History* 55.

<sup>38</sup> This gavel was apparently given to the British presiding judge Sir Geoffrey Lawrence by his US colleague Justice Francis Biddle, before disappearing a few days after the commencement of the trials: Ann Tusa and John Tusa, *The Nuremberg Trial* (Skyhorse Publishing 2010). Alexander Macdonald, *The Nuremberg Trials: The Nazis Brought to Justice* (Arcturus 2016) 209; Robert H Jackson Center, 'Nuremberg' (*La Loupe Over*, 6 May 2014) <<http://la-loupe.over-blog.net/article-nuremberg-112933159.html>> accessed 13 November 2016.

<sup>39</sup> Carrington Williams, 'The Tokyo War Crimes Trial before the International Military Tribunal for the Far East' in John Carey, William V Dunlap, and R John Pritchard (eds), *International Humanitarian Law: Origins, Challenges, Prospects* (Brill 2006) 105. Like the Nuremberg gavel, this one too was wielded by an American: this time a US Army Captain, the Marshall of the Tribunal.

<sup>40</sup> Parker (n 24); 'Judgment—Babić—29 June 2004' (*You Tube*, uploaded 9 November 2011) <<https://www.youtube.com/watch?v=Xz8lBddWgLC>> accessed 13 November 2016.

<sup>41</sup> Mike Segar (Reuters), 'Inside the UN's Headquarters – In Pictures', *The Guardian* (25 September 2015) <<https://www.theguardian.com/artanddesign/gallery/2015/sep/25/inside-un-headquarters-in-pictures>> accessed 13 November 2016; *The PGA Handbook: A Practical Guide to the United Nations General Assembly* (Permanent Mission of Switzerland to the United Nations, 2011) <[http://www.unitar.org/ny/sites/unitar.org/ny/files/UN\\_PGA\\_Handbook.pdf](http://www.unitar.org/ny/sites/unitar.org/ny/files/UN_PGA_Handbook.pdf)> accessed 13 November 2016.

practice which extends, of course, far beyond mere ‘media influence’ and the immediate example of the gavel. But this is certainly not the whole story. In particular, it fails to explain the longstanding use of hammers at auctions and to officiate meetings both in continental Europe and in many other countries where they have never been used in courts or legislatures. Not only does the gavel’s juridical life extend far beyond US legal institutions, in other words, it isn’t confined to legal institutions at all. The objects in Diego Tonus’ film for example are strictly *voorzittershamers*, ‘chairman’s hammers’ sourced mostly from trade unions and related organizations across the Netherlands.<sup>42</sup> One belonging to the influential unionist and eventual co-founder of the Dutch Social Democratic Workers’ Party Henri Polak has the date 1911 engraved on its handle.<sup>43</sup> Another from the late 1930s bears the initials of the Dutch Federation of Social Democratic Women.<sup>44</sup>

Even if the gavel owes some of its recent fame to the US therefore, it is certainly not an American object. Indeed *as* an object—which is to say long before the word came into widespread use in English—the gavel seems to have arrived in America via the traditions and rituals of freemasonry, which originated in Scotland in the seventeenth century, and had already migrated to England, Europe, and the US by the early eighteenth.<sup>45</sup> Along with the apron and the trowel, the gavel is one of the key ‘working tools’ in the freemasons’ rampant symbolic imaginary.<sup>46</sup> According to George Franklin Fort, who in addition to being a freemason was also governor of New Jersey from 1851 to 1854 and then subsequently a judge, ‘perhaps no lodge appliance or symbol is possessed of such deep and absorbing interest to the craft as the Master’s mallet or gavel. Nothing in the entire range of Masonic paraphernalia and formulary can boast of an antiquity so unequivocally remote.’<sup>47</sup> Fort is referring partly to freemasonry’s roots in the medieval stonemasons’ guilds, for whom the hammer was obviously a crucial tool,<sup>48</sup> but also to a whole catalogue of laws, myths, and customs from Germanic history. He cites Jacob Grimm’s little-known compilation *Deutsche Rechtsaltertümer*, for instance, in which Grimm describes the use of hammers in the middle ages variously to mark the conclusion of a sale and as a means of summoning a court into session.<sup>49</sup> ‘The gavel in the hand of the Master of a Masonic lodge’, Fort writes, ‘directly alludes to this ancient usage, and when it sounds the decision of a question submitted, that blow is merely the re-echo of a power current many centuries ago, in the administration of justice. The judges of our modern courts of law wield the gavel with a no less emblematic power than a Master of Masons’.<sup>50</sup> Maybe so. But there is no need to follow Fort in tracing the

<sup>42</sup> Tonus (n 32) 27.      <sup>43</sup> *ibid.*      <sup>44</sup> *ibid.*

<sup>45</sup> Simpson and McNeil (n 33); O’Neill (n 37).

<sup>46</sup> Albert G Mackey, *The Symbolism of Freemasonry: Illustrating and Explaining its Science and Philosophy, its Legends, Myths and Symbols* (Clay and Maynard 1882); Albert G Mackey, *The Principles of Masonic Law: A Treatise on the Constitutional Laws, Usages and Landmarks of Freemasonry* (JW Leonard 1855); Duncan Moore, *A Guide to Masonic Symbolism* (Lewis Masonic, 2009).

<sup>47</sup> George F Fort, *The Early History and Antiquities of Freemasonry: As Connected with Ancient Norse Guilds, and the Oriental and Medieval Building Fraternities* (Bradley & Company 1881) 273–5.

<sup>48</sup> On the history of the gavel as a stone-cutting hammer, see particularly Bragge (n 32).

<sup>49</sup> Fort (n 47) 273–5; Jacob Grimm, *Deutsche Rechtsaltertümer*, vol 1 (Salzwasser-Verlag GmbH 2013, originally published 1854) 92, 224.

<sup>50</sup> Fort (n 47) 275.

gavel's ancestry even further back to Thor's thunderous *Miölner* to appreciate the durability of the hammer as an instrument and emblem of authority across time, place, and culture.<sup>51</sup> No doubt it is partly this quality that has enabled the gavel to spread itself so widely across the world today.

In freemasonry then, the gavel is first and foremost a hammer: a tool for working stone.<sup>52</sup> It is connected to a story about craftsmanship. For the Dutch unionists whose *voorzittershamers* feature in Tonus' film, the emphasis was probably less on craft than labour. Either way, insofar as the gavel symbolizes authority, this is a form of authority that is world-creating: more about production than prohibition. But the hammer is not just a tool. It is also a weapon. It speaks equally of law's enforceability, its capacity for and dependence on violence. As a technique and icon of authority, the gavel has more in common with Justitia's sword than her scales.<sup>53</sup>

In this respect it is worth mentioning the gavel's connection to a related object which has tended to wear this association more overtly. A sibling of the club or cudgel but with a large heavy head not unlike a hammer's, the mace has a particularly longstanding history in the common law tradition. In England it had already begun to be associated with a specifically royal form of authority by the thirteenth century, and this subsequently became entrenched when in 1415 Henry V first charged his Sergeant-at-Arms with bearing a mace to the House of Commons to 'signify the royal presence' along with the threat of lawful force that entailed.<sup>54</sup> The threat was a very real one. The Sergeant-at-Arms' jurisdiction was highly unusual, authorizing the Commons to make arrests without resort either to ordinary procedures or to courts of law.<sup>55</sup> And as the House of Commons' own manual of Parliamentary procedure and practice puts it, 'since the exercise of this privilege depended on the powers vested in the Royal Sergeant-at-Arms, the Mace—his emblem of office—was identified with the growing privileges of the Commons and became recognized as the symbol of the authority of the House and of the Speaker through the House.'<sup>56</sup> As the Westminster system spread with British colonialism, so the mace was deployed as a 'common symbol' of the King's authority overseas, with the result that today maces still feature prominently in legislative contexts in the Commonwealth and have subsequently been reimagined for republican purposes in the US and elsewhere.<sup>57</sup>

<sup>51</sup> Fort writes: 'It clearly appears from the preceding proofs, I think, that the Master's mallet has descended to modern Freemasonry invested with the symbolism of Thor's hammer.' Fort (n 47) 280.

<sup>52</sup> For a succinct reading of Heidegger's account of the hammer as tool, see Graham Harman, 'Technology, Objects and Things in Heidegger' (2010) 34(1) Cambridge Journal of Economics 17.

<sup>53</sup> Dennis Curtis and Judith Resnik, 'Images of Justice' (1987) 96 Yale Law Journal 1727; Desmond Manderson, 'The Metastases of Myth: Legal Images as Transitional Phenomena' (2015) 26(3) Law and Critique 207.

<sup>54</sup> O'Neill (n 37) 59.

<sup>55</sup> Robert Marleau and Camille Montpetit (eds), 'The Physical and Administrative Setting' in *House of Commons Procedure and Practice* (2000) <<http://www.parl.gc.ca/marleaumontpetit/DocumentViewer.aspx?Sec=Ch06&Seq=4&Language=E>> accessed 13 November 2016.

<sup>56</sup> *ibid.*

<sup>57</sup> Silvio A Bedini, 'The Mace and the Gavel: Symbols of Government in America' (1997) 87(4) Transactions of the American Philosophical Society i, 4.

Wherever it is used, the similarities with the gavel are striking. It is not just the symbolism: the fact that, as weapons, both remind us of the necessary imbrication of law and violence. As objects, both play key roles in the institutional production of lawful speech. In the same way that the gavel's knock is used to open each session of the US Senate, so proceedings at the House of Representatives may only begin once the mace has been properly installed in its pedestal at the Speaker's side.<sup>58</sup> And just as a sharp rap with the gavel can in appropriate circumstances be used by the Speaker to issue a call to order, so may the formal 'presentation' of the mace:

If or when a House member becomes offensive or beyond the Speaker's control, the Speaker orders the Sergeant at Arms to proceed. The latter removes the mace from its pedestal and approaches the offending Congressman, presenting the mace before him. This action almost invariably has the desired effect of causing the offender to pause, and peace is restored once more in the chamber.<sup>59</sup>

'Peace is restored'. Once again the language suggests both orderliness and quiet. This is an assertion of authority that also manifests itself as an intervention in the soundscape. Evidently the first recorded use of the mace in this way took place on 30 January 1798 to resolve a brawl during the 3rd session of the Fifth Congress,<sup>60</sup> though there are several other examples from the nineteenth and early twentieth centuries, all of them successful.<sup>61</sup> In each instance, the mace's presentation serves as a particularly overt reminder of the institutional apparatus connecting the voice of the speaker to the force of law: precisely the same connection that, in other contexts, is embodied in the gavel. The institutional history of each object may differ, but the symbolic reserves they both draw from and the institutional work they perform are closely related.

## The Gavel's Silence

There is a strand of thinking which says that the gavel isn't what it used to be: that despite its seeming ubiquity both in popular culture and in legal institutions around the globe, you will rarely actually hear one 'in practice'; that the circulation of the gavel as an image has long surpassed its actual 'use' as an object; that in many contexts the gavel has become largely 'ceremonial', its contemporary importance 'merely' symbolic. According to a 2011 piece in the *New York Daily News*: 'The wooden gavel—which once summoned the most unruly lawyers to order—has gone the way of the powdered wig. Judges rarely, if ever, wield a gavel in the city's state and federal courtrooms these days, despite its enduring role as a prop in nearly every onscreen legal drama.'<sup>62</sup> In an interview for the piece, Brooklyn Supreme Court Justice Matthew D'Emic claimed never to have seen one used 'except on TV'.<sup>63</sup>

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<sup>58</sup> *ibid* 24.

<sup>59</sup> *ibid* 25.

<sup>60</sup> *ibid* 25–6.

<sup>61</sup> *ibid*.

<sup>62</sup> Melissa Grace and Thomas Zambito, 'Gavel Gets Bad Rap: New York City Judges Put Hammer Down, Keep Order in Court Other Ways', *New York Daily News* (12 May 2011) <<http://www.nydailynews.com/new-york/gavel-bad-rap-new-york-city-judges-put-hammer-order-court-ways-article-1.146380>> accessed 13 November 2016.

<sup>63</sup> *ibid*.

Justice Laura Ward explained that even though she kept a gavel on her bench, she had only used it once.<sup>64</sup> And in more than seventeen years Justice Jeremy Weinstein had never used one at all. The gavel ‘should not be necessary’, he said. It is ‘a thing of the past’, a relic.<sup>65</sup>

I am not so sure. There is a crucial difference between silence and obsolescence. Even if gavels are heard less often in some courtrooms than media representations would have us believe, that is not necessarily a sign of their contemporary redundancy. It could just as easily suggest the opposite: not that the gavel is outmoded, but that it has been internalized. If the gavel is partly about the production and maintenance of orderly discourse, if it offers a way of cutting through unwanted noise and restoring the peace, then its silence is surely not a failure but a success. Indeed, as George Demeter advised in the 1961 edition of his *Manual of Parliamentary Law and Procedure*, one of very few sources to say anything about the particulars of gavel use, ideally the gavel should be used as sparingly as possible. ‘It is a symbol of authority and should never be leaned on, toyed with or used to challenge, threaten, or “drown” a member’s remarks.’<sup>66</sup> The gavel’s potency *in extremis* largely depends on the economy of its use. As Justice Ward said of the one occasion when things did get out of control in one of New York’s lower criminal courts. ‘It was incredibly noisy . . . I just slammed the gavel down – and silence.’<sup>67</sup>

The misunderstanding is not so surprising. Despite the gavel’s ubiquity in both cultural representations of law and contemporary legal practice, very little has been written about it, especially when compared to, say, *Justitia* and her scales. To some extent this is symptomatic of a much broader problem with legal thought and practice. Lawyers and academics have not always been as attentive to law’s sonic dimensions as they should be.<sup>68</sup> This is true in many different contexts, but when it comes to the gavel the scholarly silence is particularly instructive. Here is an object that is clearly connected in quite complex ways to law’s acoustic life—to the relationships between speech and authority, noise and order, voice and violence, both in and out of legal institutions all across the globe—and has been, moreover, for a considerable time. Yet from the literature, you would hardly know it. From the public’s perspective, by contrast, the gavel is right at the centre of the global juridical imaginary. So much so in fact that it is constantly being inserted where, technically, it doesn’t belong: on yet another UK legal drama, in a newspaper graphic, on the website of a South African law firm.<sup>69</sup> This phenomenon is more interesting than just a ‘mistake’, it seems to me. Popular culture is intuiting something about the relationship between sound and authority that the academy routinely misses.

But if the gavel serves as a reminder that sound matters in law, it also suggests that more is needed than a simple injunction to listen. A jurisprudence attuned to the acoustic must also be what Seth Kim-Cohen calls ‘non-cochlear’.<sup>70</sup> Listening always involves more than just the ears. In order to understand an object like the

<sup>64</sup> *ibid.*                    <sup>65</sup> *ibid.*                    <sup>66</sup> Demeter (n 23) 45, 66.

<sup>67</sup> Grace and Zambito (n 62).                    <sup>68</sup> Parker (n 24).

<sup>69</sup> *Inappropriate Gavels* (n 35); ‘Fly on the Wall’ (2012) 25(1) *Advocate* 56.

<sup>70</sup> Kim-Cohen (n 11).

gavel—how it works, what it does, and why it matters—we must also attend to the myriad factors which give it meaning and effect: not just the gavel's sound but also its silences, histories, mythology, and symbolism, its materiality, image, and global circulation. Listened to like this, we can say that the gavel is truly an *international* legal object. Not only are its historical roots geographically diverse, today gavels feature in some of the most prominent institutions of international law as well as in many courts and legislatures internationally. Even in jurisdictions where the gavel doesn't appear in conventional legal settings you will still find it at auctions, conferences, and meetings, and when you do the gavel will be doing important legal work. This work may not be uniform between institutions but there are clear continuities. The gavel's knock can issue a call to order or mark a decision or verdict. It can invoke silence on the one hand and closure on the other. This distinction is not necessarily one you can 'hear' however. It isn't a matter of one knock or two, loud or soft. Most of the time, when we listen to the gavel's knock we listen 'semantically', and in this respect both the meaning of the knock and the institutional work it performs depend less on the way the gavel is played than the context in which it is heard. Symbolically, the gavel's history speaks as much of law's promise as its threat. In its connections both to the hammer and the mace, the gavel is in equal parts tool and weapon. As a tool, it is world-making: tied to traditions of craftsmanship and labour. As a weapon, it is a technique of violence: a reminder of the intimacy between apparently anodyne juridical speech and sheer brute force. These dimensions are not entirely separate of course. Whether in court or parliament, orderly discourse is both a synecdoche and attempted exemplification of the order law aspires to and demands elsewhere. Likewise, the authority of the decision, sale or verdict is fundamentally connected to the possibility of its enforcement.<sup>71</sup> And if in some contexts the gavel's knock is increasingly rare, that doesn't mean we should stop listening. In this very silence we might just hear the sound of an authority so well established and deeply entrenched that it need not speak its name.

<sup>71</sup> Cover (n 30).