6

CULTURAL CRUELTY

Extraordinary rendition and acoustic shock

The sounds in my head began with a vengeance on the evening of Thursday 6 October 2016. I was in the audience of the first night of Christopher Brett Bailey's *Kissing the Shotgun Goodnight* at the Oval House in London, accompanying a group of students who were anticipating work by the celebrated auteur of *This is How We Die* (2014), at an event that made quite explicit the intended extreme amplification levels of the imminent show with a helpful graph indicating the contours of noise we would experience – with or without the orange ear plugs provided by the venue, I wasn't sure. At the foot of that sheet Chris had enthusiastically added: 'We will send you home with ringing in your ears'.[1] That seemed a confident claim from a practitioner whose commitment to do what he said by way of performance I never doubted. I readily wore the garish, fluorescent-cheap ear-protection from well before it began, having previously experienced Scott Gibbons' compositional work with Romeo Castellucci and Socìetas Raffaello Sanzio over a number of years, (and discussed at length in Chapter 4), with on one occasion an admirably noisy, stage-filling volcano that occupied the second half of a work called *The Four Seasons Restaurant* at the Odéon Atelier in Paris.[2] The coefficient between the complex meanings of the staging and the corporeal and psychic demands it made on those attending, was, as with all Castellucci's work, well within the margins of pleasure one might expect for an exhilarating hard-night out at the theatre. I have lived a life of such (comparatively leisured) 'hard' nights out and never subscribed to John McGrath's titular appeal for 'A Good Night Out' for the working classes. I presume we all deserve our fair share of the harshest representations of hard lives that might make some sort of difference when it comes to not just interpreting that world but changing it.

On this very different occasion at the Oval House, the much-loved original venue in Kennington that had been formative in the spirit of London's Fringe theatre scene from the 1970s, and where I had been countless times before without

hint of calamity, it was volume and volume alone, that appeared to be covering up for something that seemed to have gone missing from Chris Brett Bailey's consummate theatrical practice. Searing guitars filled the hour, with a brief, mysteriously opaque barely audible spoken interlude in the middle, by way of concession to those for whom guitar bands were passé, without apparent sense nor reason, at the end of which there *was* no reason, nor sense of hearing as I had previously experienced it left in me.

It was not that thrash-metal was new to me, as a guitarist with a 50 W Marshall amp who had spent an adolescence in Essex at the time of the great strafing diagonalist, Wilko Johnson, and his heavy-duty rhythm and blues band Dr Feelgood, that was unlikely. Indeed, since well before that adolescence my life had been marked by the *recovered* gift of hearing so I had long protected it assiduously in the manner of those who have lost something. My earliest memory after all, at four years old, was being carried into Rochford Hospital in Essex by my widowed mother, with a vertigo-inducing pain that I thought was in the middle of my head but was in fact diagnosed as mastoiditis and surgically treated with the insertion of grommets in my ears. After a week away from home, the first time I had ever left home, sitting forlorn, head bandaged, on a faded eau-de-nil ward, I was discharged with artificial bones in my flaps and a year-long schedule of consultation appointments. On that first night back at home I marvelled at the gas-poker that roared into life and lit the coal-fire with a warmth that I could hear for the first time in my memory without pain. I suppose that what follows in this chapter, 58 years later, is then some kind of reckoning with risk, an apology to the Consultant who with his NHS standard caring-expertise preserved my hearing then, and gave me the freedom to choose what I did with it for the rest of my life, until late in the day I made a serious error of judgement on that Thursday evening in South London.

I should be grateful, I know, that's how I was brought up by my working-class grandparents, the Oval House theatre box office *did* provide ear plugs which I wore throughout the 'Shotgun' show, presuming as I had done since that childhood experience, that my ears were susceptible to noise. Though as I later discovered, listening to an expert witness on the critical matter of hearing-protection in the High Court, those plugs were not fit for purpose, and made little measurable difference to the tumult on offer on that evening. My ears have been ringing away day and night ever since (two and a half years at the time of writing) which is how certain forms of hearing impairment make themselves manifest, as some of you reading this with noise in your head will know. I cannot find the words to describe the sound, and we are all sonically different anyway, so my acoustic evocation should I find a way to put language to it here would be *sui generis* to the point of partiality. Indeed by its nature sound is a phenomenological experience of rare ephemerality (which is presumably why such hard loyalties are felt for bands we enjoy), but the celebrated music journalist Nick Coleman has a valiant and wholly recognisable go in the first pages of his shattering memoir, *The Train in the Night: A Story of Music and Loss*:

> the *pfffff* evolved into a wild humming and the inside of my head began to resound like the inside of an old fridge hooked up to a half-blown amplifier […] *Pfffff-zzzzzz-mmmmnnnn*. Such are the excitements of tinnitus. Soon, every outside-world sound that went in one good ear produced a balancing, then overwhelming noise response in the other one, on top of the basic fridge noises. It was deafening in there. A fight. A riot. I began to be frightened of any sort of ambient sound and of people who threatened to make it by scraping chair legs or laughing or handling paper bags. I began to treasure the thought as well as the actuality of silence.[3]

Some three months after the shotgun had been kissed goodnight by Chris Brett Bailey there had been no improvement in my hearing, certainly no silence to speak of, and I knew why. I had been examined by Dr Harriri, an audio-consultant in a specialist clinic on the Cromwell Road in West London, who drew an image of my aural faculty and its recent impairment. As his wrist angled across the page, as though joining a giddy samphire-collector's route across the cliff, it had the unmistakeable dip of loss, or at least diminishment about it. The plunging roller-coaster graph tracked under the doctor's index finger was mute and failed to capture the sounds in my head which, triggered by the theatrical occasion at the Oval House, had brought about the condition that audio-specialists most fear because there is absolutely nothing they can do about it. The condition is irreparable. They pronounce the prognosis softly so as to recognise its lasting impact without unduly surprising you: tinnitus. I knew about this elusive condition because one of my favourite performers, Richard Lowdon of Forced Entertainment, had on the occasion of the group's 30th birthday party at the London Toynbee Hall base of Arts Admin, shared with me that he had sustained something that sounded quite similar as a consequence of a theatrical act that had gone wrong. And Richard knew he was not alone, we unfortunately never are. On the day I wrote these words the inquest into the death of the *Inspiral Carpets*' drummer Craig Gill is reported in the *Guardian* newspaper. He apparently took his own life after suffering the debilitating side effects of 20 years of 'living' with tinnitus. When Bella Bathurst recently researched her unusual aural work, *Sound: Stories of Hearing Lost and Found*, she tried to interview rock musicians about tinnitus, but none would speak to her despite its prevalence in the profession. 'Deafness is too aging' she concludes.[4] Well at my age those considerations seem less compelling, so I might as well continue now I have started in this somewhat exposing way.

The worker at play

To be crystal-clear from the outset, there is no revenge tragedy at work here, no rancour nor righteousness towards Chris Brett Bailey for whom I hold the kind of uncertain admiration reserved for those 'originals' I have had the great good fortune to work with over three decades. An artist cannot be to 'blame' for anything (within reason) given I presume they do what they have to do and I meanwhile choose to

attend to what I choose to attend to as a writer. I have spent many years defending that human 'right of expression' with the obvious caveat that it should never have been historically restricted to self-identifying artists who grant themselves a pass to behave as they wish, while all-too-often policing the line which might prevent others from joining them. Everyone has something to say and all, equally, deserve to discover and enhance the form they might need to say it in, not least of all when that requires amplification to reach above the numbing, lo-fi static of the everyday.

But a producing venue, an institution, whose arrangements will determine the experience one has of any such freedom, *does*, it seems to me, have a duty of care to those artist workers, such as Chris Brett Bailey himself, as it does to those others who have paid to be present. And in this instance we are sitting together at a place called Oval House, you could call us an audience, who have put their trust in a venue, amongst which I am the one with the ringing ears, the ones promised in the programme. I am secure and relieved in the knowledge that none of the 15 students I sat with experienced any ill-effects on that evening, (indeed given this is CBB at work they have as I expected, thoroughly enjoyed themselves), and nor did my occasional colleague, the writer Tim Crouch, who happened to be sitting close enough to me in the row in front, to act as a kind of unwitting control test for those who were not students in the audience. In the foyer after I approached Tim to ask if his ears were ringing, but other than responding with the quite funny joke 'pardon?', he appeared to be immune to the special consequences I had suffered. I had it coming you could say.

This diversity of response to sound is very well known, the diagnosis for the onset of this continuous aural state of tinnitus is of course a contested one as by definition, it is like, but really nothing like other syndromes such as Iraq War Syndrome. Acoustic Shock Syndrome, one possible trigger of tinnitus, has long been misunderstood. Just because one person does not experience it in a shared space with others who do, Tim Crouch and me in this instance, has commonly disqualified it from serious attention. Its consequences are therefore actively resisted by the medico-legal profession seeking tidy arrangements and clear causality. And its symptoms are so unnerving I did not even have the courage or clarity of thought to return to the venue and alert them to my predicament. It felt too much like 'blame', something I have never associated with the mutual agency of art, an impulse that I swiftly converted into 'shame'. My own, for being injured. I knew the venue, much loved over five decades, was about to be demolished anyway so was relieved of the fear that I would ever be reacquainted with it in the future where it had previously stood.

During the writing of this chapter over the last year, between 2018 and 2019, that state of universal denial regarding acoustic shock has changed dramatically, led by the legal case I am about to recount in the following pages, for its myriad meanings through the High Court, and it is that fundamental transition that forms the motor for this chapter on an 'artist' in proximity to their work.[5] And as a consequence, for the first time, we now have a definition of what acoustic shock is,

namely: 'An index exposure to any sound or cluster of sounds of short duration but at a high intensity'.[6] The legal 'Authorities' that might conceivably provide precedent for a claim to acoustic shock, on the rare occasions it has been allowed to reach the courts (and following my own experience I'm not about to expose myself to the barbarity of the legal-real any time soon unless a lawyer reading this would like to defend me on a no-win no-fee basis), are therefore rare and relatively recent.

The only industrial precedent for an action concerning acoustic shock in the UK is Baker vs. Quantum Clothing Group Ltd of 2011, in which a group of female textile workers in Nottingham in the UK Midlands claimed for noise-induced hearing loss, sustained from the machinery in the knitting factory in which they had worked for, in some cases, 30 years. It is Quantum that provides the 'Authorities' that legal-defence for the orchestral musician Chris Goldscheider, in Court Number 12 of the Royal Courts of Justice draws upon during March 2018. And it is Quantum that provides the landmark case for the leading disabilities-equalities' solicitors, Fry Law who act for the claimant. I heard the Quantum precedent evoked several times over the weeks of the trial, from where I was sitting observing proceedings, interested as I was in my writing on law and theatre and those incapacities, those sink holes of law, when law tries to understand or even engage sensibly with aesthetic questions and finds itself flailing at the very first mention of imponderables such as artist, beauty, genius and virtuosity.

So, this chapter responds to that experience of witnessing another kind of 'musician', the name we give to a virtuosic form of work, who has been stopped from performing and is now being 'put to work' somewhat differently in a court room. His *non-performance* as it is being inscribed in law in front of me in the real-time of the court proceedings requires me to address, as François Laruelle has done with his thinking on what he calls non-philosophy, what it is in this encounter that is concerned with practice, affect, existence, as all performance thinking is, but here exposed to a field of legal precedent where performance appears to lack a rigorous knowledge of itself, where it exposes itself as a field of objective phenomena not yet subject to theoretical overview. Such instances of non-performance then become central to my understanding of 'cultural cruelty' as developed in this chapter, where non-performance of various kinds comes as a consequence of those who would maintain, sanction or enhance violations of the human right to expression.

Chris Goldscheider whose non-performance I will explore, is (or perhaps more accurately now, *was*) a viola player, one of a remarkably 'talented' North London musical family, who had in 2012, when the incident took place that forms the substance of this court hearing, been playing with the Royal Opera House orchestra for close to a decade. In that time he has, as he said in the witness box, played in at least two, if not three full productions of Richard Wagner's *Ring Cycle*. He does not seem to know for sure quite how many, but more than two would appear likely. He was first involved in the celebrated Keith Warner Production of 2007, and then again was in rehearsal on the 1 September for its revival in 2012 when, on a Saturday afternoon, just prior to the opening night, he succumbed to the acoustic event that is at the centre of this unique legal case.

This is how David Platt QC, council for the Royal Opera House, puts it in his opening skeleton argument for the hearing:

> The operas of Richard Wagner often provoke strong emotions. Whilst probably the greatest musical theatre ever written, they have been appropriated by German nationalism and engender controversy to this day. Nevertheless it is unprecedented for it to be alleged that they cause actual injury to its participants.[7]

Despite my occasional attendance at Romeo Castellucci's operatic productions as tracked through Chapter 4 in this book, I am certainly no regular opera-goer, not at £1,400 for a stalls ticket as was being charged for this 2012 London Olympics feel-good fuelled *Ring Cycle* at the Royal Opera House. I am only here interested in this *Ring Cycle* and specifically the second of its four parts, *Die Walküre* (*The Valkyrie*), in as much as it has industrially injured the viola player Chris Goldscheider. Peculiar as this ghoulish interest might sound to those from the Royal Opera House ranks, who sat to my side during the weeks of the High Court case, I later discovered from one of their number, that the ROH management presumed I was a professor of theatre who was researching the contemporary influence of Wagner in performance. I hesitated to break it to them that I am no more familiar with Wagner than I am with the sound of an industrial sewing machine in a Nottingham garment factory, where women have worked for years, been deafened for years, and have gained recourse for that damage in law some years before this rearguard action by the ROH against equality with general standards of UK employee protection. This aesthetic ignorance makes me something of a rogue respondent to these proceedings, largely immune as I am to the special pleading of arias.

The Royal Opera House defence, a defence that its sponsors clearly perceive as constituted by what François Laruelle might call 'higher and more intelligible principles', is indeed built on drawing a strict line between the association between music and machine that I am insisting on here:

> unlike heavy industry where noise is an unwanted by-product of an industrial process, 'noise' *is the product*. The quality of that product is of the highest importance, with all its highs and lows, cadences, harmony, light and shade. Hence any system of regulation must recognise this fundamental divergence from the normative target (i.e. it should not damage or unreasonably inhibit the purpose of what the Royal Opera House does by the blunt application of regulations largely designed for others).[8]

I am intrigued here quite whom might constitute such 'others' and how their labours might differ from the 'not others' who form the work force for institutions such as the Royal Opera House, who in the opening to their defence have created this peculiar divide between one worker and another. It will not have escaped you that in evoking *my* Quantum machinic model, by drawing on these authorities in

law that constitute minorities, I am toying with a slippage between industrial worker and virtuosi which will offer the conceptual leverage for this chapter. Indeed the origin of the word *Opera*, lies at the very root of the word Operaism. 'Operaismo', as in the name of the Italian political Autonomista movement in the 1960s, comes from 'operaio' – the worker. Hence the epithet: the Workerists. This in turn is derived from the term 'opera' itself – the concrete result of a process of material labour, which in turn derives from the Latin 'opera'. The neutral, plural form of 'opus' therefore holds a reified meaning, in that it describes the objects resulting from physical, concrete labour. Opera in Italian, now, is curiously both used to indicate highbrow, intellectual production, but also very material labour, as in 'manodopera', manpower/labour, composed of 'mano', hand, and 'opera'.[9]

Continuing with the genealogical association between operatic production and work 'Workerism' (Operaismo) was the Italian movement that rethought Marxism in the 1960s and 1970s, long foreshadowing ideas of immaterial labour that were later to be developed by Maurizio Lazzarato in his work 'Lavoro Immateriale' of 1997,[10] and became co-extensive with critique of the neoliberal sphere within which work-time became synonymous with the lifetime of those persuaded as to their own responsibilities for the maintenance of the labour markets. Of course, Workerism inverts the logic of labour as the unquestioned rationale for life. Thus Workerists are counter intuitively precisely at odds with work 'at all costs', seeking ways in which to reduce workload through automatic, technical means that increase forms of social intelligence. Distinguishing themselves from the orthodox, popular Marxism of Antonio Gramsci's early influence in Italy, Operaists made a point of learning from 'the workers themselves what the reality of production was'.[11] In order to draw attention to systems of production and to counter those practices, strikes and sabotage in the workplace were the preferred political means of action, a preference that we will return to in a moment when we discuss forms of 'exit' and civil-disobedience with regard to the orchestral environment and its soft-power tyrannies.

In keeping with our discussion of the 'dictatorship of the performatariat' in the second chapter, the presumed centrality of the proletariat to political action is brought into question by the Operaists, who agitated for a new conjunction between the university and the factory as sites for struggle. Helpfully, given the place we have given the question of the performative assembly in this part of the book, Virno's thesis regarding the Operaists, is indeed a *performative* one drawing analogies between virtuosity in art, work, speech and politics. As Virno puts it:

> They are all political because they all need an audience, a publicly organised space, which Marx calls 'social cooperation', and a common language in which to communicate. And they all are a performance because they find in themselves, and not in any end product, their own fulfillment.[12]

For the Operaists and those who followed such as the anarcho-libertarian Autonomia, whose strapline was 'We are the front of luxury', performance would appear

to constitute a 'luxury that we should be able to afford: the luxury of imagining a future that would actively bring together what we are capable of'.[13]

The virtuosi

I am interested in thinking through this unusual legal case at precisely the curious conjunction of an aesthetic necessity, you could say 'luxury' for risk (if the opera house team is to be believed) or criminal neglect (if the claimant is to have his way) where X, that is the position of the musician's work-station in the pit, marks the spot. The rehearsal where the injury has allegedly occurred takes place on the afternoon of Saturday 1 September 2012. Goldscheider notes in his witness statement that the rehearsal was loud and uncomfortable, though this is apparently not 'uncommon' for orchestral musicians in *Die Walkürie*. Goldscheider is sitting, as indicated by the orchestral plan passed around court, immediately in front of the principal trumpeter, and in view of the conductor. The viola player is intermittently in response to the progress of the work inserting and removing his ear plugs as advised by the management. But in the loudest passages of the *Ride of the Valkyries* he begins to feel 'uncomfortable and strange', finishes the session and returns home. He is not alone in discomfort. In a critical witness statement, evoked at paragraph 217 of Justice Davies' final judgement an anonymised viola-playing colleague, on the same desk, has made the following damning observations to the intermediating legal team:

> The claimant's desk partner wore personalised 25 db earplugs throughout the entire rehearsal and performance period of the *Ring Cycle*. She described the noise on 1 September as 'unbearably loud' even with her 'very heavy duty plugs in'. Following the two rehearsals on 1 September she felt physically sick, her hearing was affected. She stated that she was much more sensitive to noise for a number of weeks after these rehearsals.[14]

The decibel level of the orchestra as recorded on that afternoon has been hovering in the low 100s reaching 120–130 db at peak moments (as with the rather more prosaic *Kissing The Shotgun Goodnight* at the Oval House), well above the 90 db limit that pertains to UK building sites for those working without hearing-protection. Despite the corroborating statement from the second viola player, legal-defence for the Royal Opera House, David Platt QC, insists in cross-examination it is Chris Goldscheider's ears that are the problem, 'not the sound'. But on the train returning to his home later that afternoon, it is reported Goldscheider becomes physically disorientated and begins to feel a 'pressure like a brick' behind his right ear. I recognise that feeling too though might have given it a less workerist metaphoric object by way of description. I do though, painfully, understand the idea of weight and stress being expressed here.

By describing Chris Goldscheider as a virtuosi I am making a quite specific claim that should not go untroubled, as much in the treatment of acoustic phenomena by

the court in the coming days will rest on a misunderstanding as to quite what artists *do*, and the language we use to explain that conduct that hinders rather than helps sensible critical reflection on their practices. What is a virtuosi? By 'virtuosity', Paolo Virno is primarily referring to 'the special capabilities of a performing artist', but such special capabilities (unlike vague ideas of mystical artistry) are never entirely separated from their association with other conceptions of work.[15] It must be admitted that the virtuoso is one who carries very specific characteristics that on first sight would appear to separate out their conduct from other 'workers': 'theirs is an activity which finds its own fulfilment (that is its own purpose) in itself, without objectifying itself into an end product, without settling into a "finished product", or into an object which would survive the performance'.[16] On first sight this might appear to exclude Chris Goldscheider given his output would necessarily include the production of ROH recordings for sale and distribution. It might also appear to exclude him on the grounds that he is an orchestral player rather than a soloist, one who is quite capable of taking a principal role in recitals elsewhere, or at home, but whose current position on the second-strings desk at the ROH makes him susceptible to the principal trumpeter who most certainly is a virtuosi, and don't we know it when he starts up in *Die Walkürie* without so much as a mute.

Second for Virno, and this is most certainly a characteristic borne out by Goldscheider, the activity of the virtuosi is 'an activity which requires the presence of others, which exists only in the presence of its audience'.[17] Here performance theory from Peter Brook's opening line of *The Empty Space*, to Peggy Phelan's 'Ontology of Performance' appears to have been rehearsed some years before its later reiteration for theatre. In the absence of any kind of outcome, Virno wants all political action to have a virtuosic character that associates itself with such expressive acts without end, but also wishes those aesthetic acts themselves to intrinsically bare the germ of all political action. The productive material evidence, any after-effect you might say, from the practice of the virtuosi necessarily relies upon contemporary witnesses to their acts to confirm the nature and value of those acts. This rationalisation of praxis through spectatorship is hardly a new idea having already been tried out some two millennia before by Aristotle in the *Nicomachean Ethics* (VI, 1140 b), then some centuries later by Marx himself in the Appendix to *Capital* Volume I in which he distinguishes between 'immaterial or mental activity' which results in commodities separate to the producer, and those whose acts are inseparable from the act of producing', and subsequently by Hannah Arendt who has always linked the nature of political action in the public sphere to its witness by specific audiences.[18]

The celebrated pianist Glenn Gould emphasised the *labour* values in what he did, countering the charisma of public appearance with the work and output of the recording studio, short-circuiting the fetish audiences make of those it wishes to elevate to stages they would necessarily choose for themselves. Chris Goldscheider sitting in front of me at the Royal Courts of Justice is Glenn Gould's soul-brother in some respects, underplaying at every turn what the Royal Opera House defence team want to pronounce as the 'artistry' or the 'beauty' or the 'uniqueness' of what

he does. Goldscheider knows that to accept this mystification of his labour is to accept defeat in his claim for damages, as the ineffable of art will never, however high its volume, be considered anything but an ornament on our souls as happy listeners irrespective of the damage it wreaks on our bodies. Of course the work of Chris Goldscheider is presumed to be that embarrassing kind of immaterial labour for Marx that would appear to produce a super kind of surplus value, not just as in any capitalist society by way of producing profit for the ROH (though it clearly does given the value they later put on losing three rows of prime stalls in the interest of extending the pit) but it would seem to be quite different to that value produced by servile labourers, which cannot in and of themselves produce surplus value.

For Marx then the virtuoso who is unable to produce a product slides towards the functionary mode of the servile labourer, theirs is a form of wage labour that does not conform to productive labour. This is precisely what would then appear to have opened up the opportunity for the Royal Opera House to resist Chris Goldscheider's claims against them. The claim of the Royal Opera House defence would seem to be that artistic work is somehow special while at the same time those who produce the fruits of such acts, the musicians in this case, are treated as servile figures no better than anyone else who labours. I like this defence of equal rights at work here but rather think the ROH has measured their standard to the lowest possible common-denominator. Given the health and safety protection for all those other 'servile workers' in the same institution, it would be unthinkable for a waiter for instance to tolerate a regular sound (noise though the distinction might be moot) in the bar that threatens their hearing without that racket being checked out, rectified and stopped within the shift they are working. But in the High Court the relation between that kind of industrial sound (noise) and musical sound is being resisted at all costs. The Royal Opera House know exactly what they are doing, and they have the backing of the Association of British Orchestras to do it.

It is clear from the claimant's evidence that it is the lead trumpeter from amongst the four-person trumpet section behind his right ear that has, as he puts it, wreaked 120 db havoc on his hearing, his profession, his life, his health and his mental well-being. When Chris Goldscheider takes the witness stand to recount this sorry story he necessarily becomes 'speaker' rather than the 'musician' (he once was). This verbal role would not appear to be his chosen professional idiom and he follows a litany of professional speakers into a box which appears to have been designed precisely for those who wish to represent themselves in words rather than subtle tones, cadences or refrains. The sound quality in the 76 courts of the Royal Courts of Justice on Strand is uniformally dreadful, and though Court 12 has been chosen with care as it has an orthopaedic chair that suits Justice Nicola Davies, it is notably sub-standard as an acoustic chamber in which to discuss acoustics with an alarming number of people present who appear to rely on hearing aids to establish what is going on, acoustically, not to mention those of us sitting there with ringing in our ears. But Goldscheider shares with all of us who can speak in any way whatsoever, what Virno calls 'the activity of the speaker' and all speakers by definition do what

musicians do which is to fulfil oneself through the act of doing rather than involve themselves in the physical manufacture of any 'object' that might be construed beyond such speaking. There *is* no object beyond speaking (short of recording the voice and selling it on, bought or distributed, which is the same as the musician's work in that respect). For Paolo Virno, language is 'without end product', every utterance is a 'virtuosic performance'.[19]

On the witness stand Chris Goldscheider might not quite speak to as many listeners he once played for at the ROH, but there is surely an audience of listeners here and we are, in our various states of hearing impairment, listening as carefully as we can to his quiet voice as he bears witness to the manner of his own injury. Paolo Virno asks, as though sitting in the High Court amongst us: 'what is the *score* which the virtuoso-workers perform? What is the script of their linguistic-communicative *performance*?'[20] According to Marx the score of the virtuoso is the 'general intellect', that is the abstract thoughts that support social production, and the faculty of thinking itself. Thought forms itself only as it enters the public realm and becomes part of a productive process, evidenced as here in the testimony Chris Goldscheider makes to the court about his own predicament. Since 2012 that predicament has been largely private, though supported toward this challenging form of public expression by family, friends and the ever-present, and, in respect to this case at least, much to be admired, Musicians' Union. It has certainly not been encouraged by the Royal Opera House which is quite different to saying they have not been supportive in other ways. It is just they have not been supportive in quite this way. This 'going public' kind of way that institutions often find so threatening and so diminishes the likelihood of so-called whistle blowers blowing-time on unjust practices.

The true relation between Chris Goldscheider's two scores therefore, his score for *Die Walkürie*, and his score for his testimony, is that they are both regulated by the norms of a cultural-capitalist enterprise. But in the latter case of spoken testimony while the first has given rise to faculties of profit for the Royal Opera House, the second vocal score appears to be at the very least destabilising any such presumed labour relation. This is what appears to be so troubling to some of the ROH executive and management staff who, while courteous to Goldscheider from the witness box, cannot prevent themselves, so shaped as they are by loyalty to the institution, from betraying their deep disrespect for what he has endured on their behalf. Not in speech of course, they would not be that obvious, but in their dogged continuation with defending this indefensible litigation. In law and in the very act of resisting his claim to damages they are, by legal definition, unwilling to recognise the suffering, hurt and loss that he has experienced on behalf of their 2012 Wagner *Ring Cycle*. The more virtuosic his appearance might be the more he is equated to the servile work of others, his true legacy as a *second-row* player. This should not be surprising given the fundamental link between the performance art of the waiter and waitress at the ROH and the work of the so-called virtuosi. They are in all respect the works of performing artists with somewhat different histories but inseparable roles in their subjection.

The obvious question, given the relations being articulated between musician and orchestral management in this court is as Paolo Virno asks: 'How is non-servile virtuosity possible?'[21] Chris Goldscheider offers us two ways forward that chime uncannily with Virno's own prognoses. His choices under extreme duress are civil-disobedience and exit. Rather than the common state of a 'gloomy dialectic between acquiescence and transgression', a surly conformity to circumstance, Goldscheider opts for a courageous version of Hermann Melville's 'Bartleby' resistance, that greets all invitations to return to work with the push back response of all push-backs: 'I'd prefer not to'. I suppose he 'prefers not to' sit in front of a principal trumpeter in order to have his hearing blown out in *Die Walkürie*, and on making that preference known, he literally exits the orchestra, and goes home. Taking up Albert O. Hirschman's well-known proposition that the voice of protest should give way to the *act* of exit, Goldscheider would appear to conform to that unusual departing spirit as characterised by Hirschman: 'Nothing is less passive than the act of fleeing, of exiting'.[22] It is clear at the moment that Goldscheider leaves the rehearsal on that Saturday afternoon and does not come back, that this defection has altered the rules of the orchestral game which presumes at all times that there will be manoeuvres in the dark to put things right before the show must go on for patrons who are not amused by disruption to the schedule of operatic loss and the cancellation of their human right to feel emotions.

Here exit or defection is the opposite of 'losing one's chains'. If there is nothing else to lose than one's chains, as the Autonomista group reminded us, then it would appear there is nothing much left. Rather in the act of exit Goldscheider wages a 'latent kind of wealth […] an exuberance of possibilities […]' that disrupt the smooth running of the operatic apparatus.[23] Goldscheider's exit from one place (the orchestra) after all is the precondition of his entry to this place (the High Court). It is unthinkable that anyone would be here now if he had stayed in his seat in the second tier violas having his hearing further damaged by that trumpeter. Thus Goldscheider finds another way to express his 'dramatic, autonomous and affirmative surplus' that was once directed towards the virtuosity of playing his chosen instrument, the viola, but here is expended on, or invested in, a reparatory political action, for himself, yes, but also clearly for numerous others. In this act Goldscheider impedes the seamless transfer of his own surplus value onto the bullish, much trumpeted stock of the Royal Opera House, and thus excludes it from the serene progress of a capitalist enterprise, otherwise known as Covent Garden PLC.

But who are those 'other's', and in what sense does Goldscheider's political action respond to the demand of their own predicament? Looking around the High Court I catch sight of a woman I do not recognise. In the well of the court sits the representative of Zurich Insurance Company, the global corporation who should this test case be lost will have to pay the million pounds end-of-career lost earnings that this claimant is claiming, but more significantly cover all those other consequent claims that past and future will cascade upon them from other orchestral players who have been similarly brutalised 'by' Wagner. A colleague in the well of the court whispers to me that there are apparently something like 47 such

contingent claims in the pipeline in London alone, waiting on the outcome of this landmark hearing. A historic avalanche of claims that the Royal Opera House, should they fail in this defence, seriously see as jeopardising the future of live orchestral music in the country at large and a threat that eventually draws the Association of British Orchestras into the Appeal fray.

Summing up

What kind of prosaic Real am I evoking here in that most intimate of dark theatres, the one that is playing out in Chris Goldscheider's, and my inner-ears, right now, amongst those fridge sounds channelled through a half-blown amplifier? First of all it should be acknowledged that this viola player while ostensibly a virtuosi by nature of his instrumental prowess, he could not find a berth in the Royal Opera House orchestra without such peer recognised expertise, is in fact a *Second* Desk Viola player and therefore treated by the authorities responsible for his management as lower status than the his *First Desk* colleagues, who presumably practised more when they were young, and of course yet more so, a lower class than the soloists, one of whom, the trumpet player is so virtuosic with the sustained upper registers of *Ride of the Valkyries*, that he has deafened him. Indeed I have heard it said by a well-known orchestral player I will not name that such second-string musicians are routinely referred to as 'pond life' in orchestral circles. They are after all commonly subjected to the immediate attentions of the brass section that others can distance themselves from. This question of status or caste is not just a given in the order of orchestral manoeuvres, the higher one rises in the ranks of the sensitive strings the further *away* from the brutal brass section one moves. Goldscheider is in this sense a human shield to those who play better than him, who are more virtuosic than him, a baffle to the sound of the brass section, and he is *baffled* having played that baffle and not been rewarded for his protective altruism.

Second when confronted with the argument by the Royal Opera House defence that he could not claim to have suffered 'acoustic shock' because by definition he would know the score of *The Valkyrie* so well as to prohibit any such surprise at the contours and likely volume spikes of the music, an affinity with the score that would allow him to place the regulation health and safety ear plugs in his ears in good time for any such spikes or crescendos that might otherwise damage him, the claimant quite surprisingly makes the serious claim that he does not know *The Valkyrie* that well at all, that he last played it five years before, has not seen it once in the intervening five years, and indeed has no orchestral score of *The Valkyrie* because he only has his *own part* on his music stand. In this legal process disavowal of expertise by the virtuosi becoming non-performer, has become standard.

Third *his part* is not *the* score. Here contrary to Jacques Rancière whose political claims 'on the part of those who have no part' are so well known, this, rather, is a legal claim on the part of one who *has* a part.[24] That is the whole point he *is* a part and a part only. But he is also, palpably, and sadly, 'One' and one who is 'Alone'. It is noticeable that with the exception of the Musicians' Union representative

sitting next to him no other orchestral players from the *current* ROH orchestra are present and showing support of this ex-viola player in the court. Chris Goldscheider is the exception that proves the rule, who has found a line of flight from the industrial apparatus given the name 'orchestra' to cover its industrial scale volumes, and contested the claim of the Royal Opera House that it has 'done all it can reasonably be expected to do to safeguard those who occupy the pit'.

Fourth the *pit* is the name given in all seriousness to the place of work of the orchestral players. They are literally 'down the pit'. They do not appear when naming it thus in the eighteenth century to have foreseen that Kafka's parable of *The Penal Colony* would take its place at the lip of another pit in the desert, in which the law is inscribed on a body stretched across an apparatus that scores that body with inked needles. Indeed, as though bearing out these Kafkaesque continuities, on a site-visit organised by the Crown Prosecution Service with the two defence teams and the judge to the Royal Opera House on Friday 2 February 2018 to examine this pit, the court party are asked to don bright yellow hard-hats on entering the auditorium on the grounds that for 'health and safety' purposes it is the responsibility of the management to protect them from any harm. Chris Goldscheider, the claimant, who is of course present, and returning to this pit for the first time since his sudden deafened departure five years ago, can only smile at such 'duty of care', towards those who are not required to present themselves to this workplace each day of the week, and Saturdays, the legal teams on this one-off visit (but precisely when it most mattered, not to him the lonely protagonist in this obscene, meaning literally *offstage*, drama).

As the court party enter the pit in their hard-hats they are shown the instrumental stations, the desks, the seats, the areas where the strings would have sat for the *Ring Cycle* (though I think the actual seating arrangement is set for *Giselle* that is currently playing in the repertoire), the viola stations and the proximity of the brass music stands to those seats. An unlikely staging of a trumpeter and viola player, supposedly in their *Valkyrie* rehearsal positions, is played out for them, and the once viola player I am now sitting next to, hearing about this outing on the Monday morning following their return to the High Court. It is obvious that someone on behalf of the opera house has been in early doing their very best to expand the 75 seats into as much of the pit as is physically accessible, including the alarmingly low under-croft in which players sit in just six feet of headroom from floor to the stage underside. But it is pointed out by the defence council for the claimant who knows his Wagner well, that despite these best bureaucratic efforts the seating of 75 is nothing like the seating of 120 that would be expected for the *Ring Cycle*, the opera in the whole repertoire that by definition requires the greatest possible amplification without electronic means. It is not the machinic that has wreaked havoc on hearing say the Royal Opera House, it is individual humans with instruments. 'Accidents will happen' as Elvis Costello once crooned at a modest volume. And human musicians in the end cannot be accounted for irrespective of how they got hold of their instruments. I have heard this before somewhere. Oh yes, it's a familiar argument from the National Rifle Association in America following mass shootings of innocents.

The visiting party are also shown two (or three) rows of stalls seats that would have to be removed should the advice of the hearing-specialist in defence of the claimant be adhered to, that is to expand the pit in such a way as to ensure that instrumentalists are given more room to distance themselves from their deafening colleagues. The combined building cost and loss of revenue from opera house closure, over five years of such a removal of seating, has been estimated at £50 million and is therefore presumed in court by the representative of the ROH speaking in the witness box now, to be prohibitive. But this is said as though it is a self-evident inference, and solicits a waspish response from the claimant's defence, Theo Huckle QC, who asks *what* price the Royal Opera House management *would* put on the hearing and well-being of their employees? Once council has found his contrary funny-bone he doesn't let it drop, he ramps up the logic: Indeed, why would the Royal Opera House insist on staying in an old building in Covent Garden that has been demonstrated not to be fit for purpose, if fit for purpose describes the continued well-being of its instrumentalists, or its workers as the defence council puts it?

In his summing up, on the final Friday in court, defence for the Royal Opera House David Platt QC suggests that what he has been defending is the continued existence of the ROH as a world-leading venue capable of attracting the best musicians and audiences, and that this will come under threat should this claim for damages be lost. He insists that what he is talking about 'is not a steel works in Ebba Vale, it is a music venue'. He wonders whether the pit is the workplace after all or the station at which the musicians stand? In what would appear to be a philosophical turn on the 'ontology of the event' that could well owe its opacity to Alain Badiou he suggests that the defence for what happened to Chris Goldscheider at that work-station can only stand up if there is an 'event' that would change the burden of proof, and that acoustic shock would only be arguable in the event of any such 'event'. Mr Platt (challenging what he calls the 'snake-oil charmer', actually the 'expert witness', Mr Parker, who has articulated at length the scientific proofs that have accrued to diagnoses of acoustic shock over a number of years) wants to insist for the purposes of his argument that acoustic shock is a *psycho-social* phenomena, and unverifiable in law unless consequent upon a single catastrophic injury (as one might experience say as an airport worker in close proximity to a jet-engine at maximum force). He claims that what is actually in operation in the 'event' of *Die Walküre* and that that is something quite different to any such unpredictable event, is rather in his view the delivery of a 'score' very well known to the orchestra.

Defence for the ROH David Platt continues his summing up by suggesting the score is *always* manifestly predictable, not just to the musicians but to audiences too: 'This is music that people pay large amounts of money to hear and they all know where it is going'. I am not sure quite what this says about the supposed 'widening participation' accessibility successes of the ROH. For the viola player to claim the experience of playing this canonical work is random is therefore in defence council's view, 'absurd' and *causation* of injury, the turning point

in law, cannot therefore be proven. Warming to his apparently common-sense theme David Platt QC insists:

> If there was something like a hole in the middle of the pit and the Royal Opera House had not assessed that risk and someone fell in, well that would be clear, but acoustic shock is not a hole in the middle of the pit.

Here Mr Platt raises the key question for us in this chapter: 'No one is disputing the claimant is suffering what he's suffering' but given the outcome of this case and the Appeal that follows that vain protestation of empathy with the victim might be questioned, and we will question it in some depth below given no one has in the press, cultural commentary or academic sphere, begun to address the dreadful ramifications of this case for any reasonable measure of the cultural cruelty that pervades artistic institutionalisation today.

Theo Huckle QC then sums up for the claimant, Chris Goldscheider. He opens by pointing out there has been no serving musician called to testify by the Royal Opera House, which is curious in a case of this significance. He does not quite say it but it is as though the opera house could not risk exposing a single one of their other musicians to scrutiny in this setting, given the widely held qualms that many would feel as to the management of the risk of sound. He asks how any noise policy could be sensibly separated from the fundamental health and safety issue and responsibility of the ROH. The obligation of course is not to eliminate noise in the opera house per se, that would be impossible and unwelcome, rather like a continuous version of John Cage's 'silent' *4′33″* composition of 1952. The obligation is to eliminate risk. Do you start from the proposition that you have to place this number of musicians in the pit, or do you start from standpoint of the 'safety of the musician'? While Theo Huckle recognises that what we are dealing with here is professional people and artists it is the *employer*, the producing venue, who is responsible for their health and safety. It is palpably a question of *managing* sound in the orchestra pit, that is what managers might be expected to do in the interests of their workers and, in his view the ROH adopted no serious measures, or not enough adequate measures, to mitigate the risk. Either the orchestra could have been configured, or the rehearsal postponed, but this would obviously undermine the 'keep on keeping on' contract of the business model of show-business. Since the Factory's Act of the 1930s, factory managers in the UK have not been able to simply argue 'well this is what we do'. The excuse of 'reasonable practicability' cannot apply to everything in such contexts.

The judgement in Goldscheider vs. ROH from Mrs Justice Nicola Davies arrives on 28 March 2018. It is easy enough to jump to the 235th paragraph to short-circuit the outcome, but it is nevertheless a surprise: 'By reason of the above findings there be judgement for the claimant on the preliminary issue. Damages to be assessed'. And I have to admit a relief, for Chris at least. In short Chris Goldscheider has done the impossible and set a precedent in court that will have ramifications within not just the music industry but across any public venue for the rendition,

showing and reception of performance, for the foreseeable future. Or at least until the Royal Opera House consider their options and decide to go to Appeal, which despite the stated sympathy for Chris Goldscheider they now, perhaps inevitably given the culture-class have recently become unfamiliar with being bested, do. In the meantime, we are left with Justice Davies' coruscating take-down, in its own quiet way, of a defence launched against these claims by an institution that appeared 'tone-deaf' to the prevailing health and safety climate.

The opening paragraphs of the judgement reiterate key findings of the hearing and summarise the ROH position in stark terms.[25] Justice Davies makes quite explicit her recognition of the impossibility of severing those orchestra workers from others:

> The reliance upon 'artistic value' implies that statutory health and safety requirements must cede to the needs and wishes of the artistic output of the opera company, its managers and conductors. Such a stance is unacceptable, musicians are entitled to the protection of the law as is any other worker. The employees are subject to instruction, set rehearsal times and performance hours.[26]

In paragraph 219 Justice Davies summarises her position on responsibility:

> In my view there is a clear factual and causal link between the identified breaches of the Regulations and the high level of noise which ensued at the rehearsal. It commenced with an inadequate risk assessment, continued with a failure to undertake any monitoring of noise levels in the cramped orchestra pit with a new orchestral configuration which had been chosen for artistic reasons. Even when complaints were raised the three-hour afternoon rehearsal was commenced and completed in the absence of any live time noise monitoring. All of this was done against a background of a failure by the management at the ROH to properly appreciate or act upon the mandatory requirements of Regulation 7(3) of the 2005 Regulations when it knew the noise would exceed the upper EAV.[27]

As if this demolition of the Royal Opera House's defence is not sufficient, in Paragraph 229 Justice Davies concludes:

> I am satisfied that the noise levels at the afternoon rehearsal on 1 September 2012 were within the range identified as causing acoustic shock. The index exposure was the playing of the Principal trumpet in the right ear of the claimant whether it was one sound or a cluster of sounds of short duration. It was that exposure which resulted in the claimant sustaining acoustic shock which led to the injury which he sustained and the symptoms which have developed, from which he continues to suffer.[28]

Unexceptional victim

Identifying a singular figure amongst an orchestra for a study of this kind reverses the collaborative presumptions at the heart of the previous theatre-going chapter in the Lost Gardens of Riga. But this case really is a fraught example of 'solitude in relation' as Nicholas Ridout would describe all performance assemblies.[29] The degree to which a viola player at the second desk in an orchestra pit is visible at any sensible level to an audience is anyway worthy of conjecture. The sound is collaborative in outcome, yes, but questions as to quite 'who' is responsible for making those sounds is, as this sorry saga suggests, not quite as straightforward as one might have imagined. It is clear in a Foucauldian sense that this viola player's body has been highly 'disciplined', the subduing of the body takes its place amongst others in its meshing with a machine of social reproduction that you could give the name 'elite orchestra'. Chris Goldscheider's own erupting body, its intellect, language and creativity, are not only the primary tools for the production of its value to the ROH, but also a form of immaterial labour that these proceedings operate to remind us of.

But is there a critical or even philosophical vocabulary that could be developed to offer a language to proceedings of this kind in the future? A language that could serve others, in other culturally driven scenarios of suffering and loss? It is starkly obvious that this opera business has pushed the law to its limits of expression, though it has to be said, it only takes a cursory reading of the various proceedings and judgements in Goldscheider vs. ROH to recognise how ill-equipped the law has been to encounter aesthetic nuance of any kind whatsoever. This would not be an issue should *this* mode of justice not depend upon precisely these faculties and elisions, and the following coda to this case offers a first attempt at sketching out what any such vocabulary of the artistic victim might sound like.

So what of the victim? To adopt some words from François Laruelle, the question for Goldscheider might now, during this interregnum, be one of a *vain hope*:

> Ordinary man does not have to search for the real in the possible of the Law, for it is he who gives his reality to the Law and can therefore transform it; he brings with him the primacy of the real over the possible, and the primacy of life over ethics.[30]

The real in the case of Chris Goldscheider, that is the ordinary man brought to court to claim damages from his employer, is a peculiar kind of 'real' that could in this instance be characterised in four specific ways: as a matter of loss, as an event of disappearance, as an instance of damage, and as an experience of suffering. I am sorry to say, with respect to institutions and their sometimes barbaric histories, each is predicated upon a manifestation of what the philosopher Adi Ophir would call, 'an order of evils' within an ontology of morals.[31] Where *Theatre & Everyday Life* assiduously avoided any hint of moralising cant by distancing *an* ethics of performance from the proscriptive ordering of the moral realm, here I will join Adi Ophir

in looking as unflinchingly as I can at two not-unrelated events that have *differently* (in degree and damage) effected Chris Goldscheider and myself. In doing so I seek some order to that chaotic acoustic disturbance by inverting the common presumption of the 'goodwill' inherent to all those communities responsible for creative acts to consider the degree to which culture always bears with it a certain cruelty for which the descriptor, 'evil', obviously cannot necessarily be discounted. Don't worry, if there is evil, despite everything Nietzsche counselled, good, its necessary other, will follow to conclude the chapter.

Adi Ophir in his magisterial work *The Order of Evils*, draws our attention towards what he calls 'paradigmatic situations and institutions in which the logic and production of evils becomes manifest – for example, a concentration camp, an army base, a regime of occupation, a state of war, a disintegrating family'.[32] For 'evils' simply read here: 'any injury irreparably worsening someone's condition'.[33] The idea that one might add *cultural* institutions, whether the opulent Opera House or the precarious Oval House, to any such demonic mix in which a human condition could be 'worsened by injury' would appear to be fraught and contestable, but as we have seen in some painful detail above, there is no necessary reason why cruelty in any place should be legitimated by the aesthetic quality of what any such institution believes it is in the business of producing. The commandants of the camps prided themselves on the quality of their orchestras after all. Adi Ophir's project, with specific reference to the extermination of the Jews in Europe, is to make possible the 'knowledgeable representation of superfluous evils in different cultural sectors and to pay attention to social struggles over the calculation of the accumulation and dissemination of evils'.[34] That 'paying attention' is what is underway in this book, and specifically this chapter, where an individual has been isolated by injury (the 'disappearance' and 'loss' of his hearing as he once knew it) from an orchestra, and is now seeking 'damages' for his 'suffering'.

You will notice that the four categories I have identified for discussion with regards to the implications of the Chris Goldscheider case above, are ones that readily, and without apparent abuse to their integrity, sit quite logically with any right description of the wrongs visited upon the claimant in the Royal Opera House pit. Perhaps the only disjuncture one might reasonably feel is when one arrives at the end of that sentence and I choose to situate such cruelties within an orchestral pit rather than an industrial warehouse, a place of wonder one might commonly remove from the realm of possible damages caused by occupational, health and safety law, preferring to protect its sensibilities amongst quasi-aesthetic interests such as personal commitment, talent, resilience and so forth. But these are precisely terms and categories that simultaneously dehistoricise humans while idealising the musician as something more than 'man', 'woman' or however one might identify what 'they' in their labour clearly are, workers. I give orchestral music its legitimate identity back in this chapter by insisting it is something very much more beautiful than a vague abstraction of divinely inspired genius. It is first, foremost and fundamentally, in the forms discussed here incontrovertibly part of 'the world of work', and its various managements need to start acting as though it were. In this

sense for all his virtuosity Chris Goldscheider is the epitome of the unexceptional victim.

The logics of evil that Adi Ophir identifies have, as all logics such as the logics of expulsion and loss discussed in Chapter 1 of this book, have a definable dynamic from their outset to their cessation. If there is no cessation, in Ophir's discussion of hurt, then the word for what one is witnessing or engaged in is torture. When a by-passer comments to me outside Court 12 that this viola player has been 'going through torture' by being present to this case that represents his injured life, I think this is exactly what they might mean. Adi Ophir summarises his logics of loss turning to evil, that we will follow with regard to the treatment of Chris Goldscheider in the following way:

> The transition from one category to another results from an addition, accumulation, acceleration, and intensification of the simpler, more abstract experience, and its more general conditions: an intensified presence becomes an excitation, an intensified excitation becomes suffering; a disappearance to which an interested person is added is a loss; a loss whose value is estimated in terms of a certain exchange system is a damage. Suffering that is not prevented or compensated for is an evil; when evil can be prevented but is not, can be relieved but isn't, it is a superfluous evil.[35]

The specific lower-case 'evil' that Adi Ophir refers to at the end of this dreadfully familiar litany, then becomes for Ophir a category which he capitalises as Evil, that is Evil itself. A category that all but the most reductive thinkers might recognise through the staggering breadth and depth of Ophir's work on the ontology of morals, as having been earnt. This is not some base-line knee-jerk swerve around complexity by way of avoiding subtle characterisations of wrong-doers through history, but the awful truth that stares one in the face when each of the previous manifestly preventable stages of a logics of Evil have been played out. Some court cases in their chronology have traces of such evils at work, cultural cruelty in their arrangements, but few are quite as stark as those that mark Chris Goldscheider's 'fight' for justice in the High Court.

An evil is not just any wrong, but a specific act which worsens someone's condition so that no compensation is possible. You might say that the whole point of 'going to law' allows for precisely the merits of any such compensation to be judged, in the case of Chris Goldscheider following the first hearing those damages were set at around £750,000, but of course those damages are only payable should the defence not choose to Appeal, which they summarily did. Here the Royal Opera House, paid for largely through tax payers' revenues and income collected from tickets sales and other on-site sales to the public, of which you, me and Chris Goldscheider might also be considered constituent parts, appears to be a peculiar use of the limited funds that institutions in the arts commonly call up as the spectre of our austerity days.

Compensation is only possible in states where there is any recognised system of exchange whose terms as Adi Ophir puts it 'make it possible to assess the value of

the injury'.[36] But again here it should be noted that the Royal Opera House defence is predicated on precisely the denial that the injury exists, and if it does exist they claim, without irony, that the claimant cannot have it (in the meantime amateurishly alternating substitute conditions that the claimant clearly does not have that will not make them liable for the payment of damages). The attempt to discredit the claimant's expert witness on hearing impairment, Mr Parker, as a 'snake-oil merchant', as defence for the ROH Mr David Platt does, rings loud around the court room in its awfulness and does not appear to have dented the credibility of Mr Parker's robust defence of the existence of 'acoustic shock' as a phenomena categorisable in the medico-legal literature, and one that might reasonably be adjudicated as worthy of the payment of damages should it be experienced by a worker in one's duty of care.

If Chris Goldscheider's hearing is 'damaged' in these terms, then the 'loss' of that hearing is by default assessable in some kind of compensatory or even monetary terms. But the loss of his hearing, as Goldscheider makes clear with a testimony from the witness box, that is as moving as it is appalling (he cannot listen to his children who now themselves play instruments), is like all true loss an irreversible disappearance of some irreplaceable thing. It is not as though anyone in the court can offer back Chris Goldscheider his hearing as it was before the accident, and I am as familiar with that as anyone else in the room. Loss means loss. The disappearance in question here is like all other disappearances whether it is the *desaparecidos* (disappeared) of Chile or the wedding ring that falls irretrievably through the floor boards, a transition from something that 'is there' to 'is not there'. In the case of Goldscheider's hearing it is not that the hearing has simply gone, he does not experience silence that would be a mercy, in as much as the ring that has dropped from the finger leaves no trace but for an indent or skin tone difference, but rather that the musician's hearing that was there is now no longer there, replaced by a cacophony of others sounds, noises and roaring fridges that we identified at the outset of this chapter with the help of Nick Coleman's own dreadful debilitation.

Chris Goldscheider is the one who has experienced loss. This should not be forgotten in the welter of claims and counter claims that fly around Court 12. It is recognised in the words of the Royal Opera House press-release on the matter, but the conduct of the case and the following Appeal do not quite meet that base-camp standard of empathy with the one who has suffered. This is critical to the question of evil itself, for the one who has an interest in that loss (Chris Goldscheider) experiences the disappearance of the hearing they once had as not just a plateau of interest, equal to all intents and purposes as when he first set foot in Court Room 12 of the Royal Courts of Justice, but rather, as we experience when we are left to fight for justice, the presence of the disappearance grows *more* intense. It becomes in this sense a form of continued torture and one that most humans would not seek to endure by conducting a court case that by necessity returns them again and again to the scene of the crime, the act of cultural cruelty that has brought their predicament about. It is only with the recognition that damages have occurred, that compensation might be due, and damages paid, that some form of reparation might, just

might, begin to make the presence of that original loss less, not more, intense. Any delay to such recognition, simply by definition, given the logics of temporal suffering we have outlined here, will escalate the sense if not the actuality of the disappearance and its felt loss.

Adi Ophir explores the consequences of such reparations and their delay in the following further summative set of affects that pursue such disappearances and losses, of which hearing is the one we are exploring in detail: 'Injustice will appear when the damage or loss is perceived as superfluous, unnecessary, preventable; wrong will appear when there is no possibility of demanding the restoration of what has been lost, or when the damage remains without expression or compensation'.[37] While no one in their right mind, or with an eye on the case outcome, would have ever claimed that Goldscheider's hearing loss was 'superfluous', there is something in the conduct of the ROH defence as outlined above that suggests there might be room for some misunderstanding here. And I will insist one had to be there to see this and know this. Performance study is useful in this respect at least, liveness is all on this occasion. Their defence team certainly chooses to leave this doubt hanging in the air. The judge looks genuinely surprised to hear representatives for the Royal Opera House express their own surprise, even shocked hurt you could say, that given the chaotic conditions obvious within the restraints of their current orchestra pit, they might be minded to move their base of operations from the Grade I listed Royal Opera House in Covent Garden, to a building that might be fit for orchestral purpose. One more like the capacious Sydney Opera House for instance. Indeed on one of the days, half way through the proceedings when matters might have appeared to be swinging their way, one of their team jokes with me that they have seen a 'To Let' sign on an edge-city industrial warehouse that might well 'fit the bill' for the judge's preferred removal option. The argument seems to run that losing £50 million for the closure of the building to allow the pit to be expanded to an accommodating size is £50 million too much, or some sort of 'too much' that is left hanging in the air. The obvious question alongside any such valuing of turnover and profits would be to ask precisely *what* value would one then place on the safety of the musicians one is hiring to deliver these spoils (which do have names like the *Ring Cycle*, but those names should not become a veil for any number of cruelties along the way to production and profits)? All activities have costs attached, but some activities such as opera it would appear, have costs attached that are just not equal.

Disappearance, loss, damage, compensation

Let us briefly by way of conclusion expand on each of the four categories arising in the Goldscheider vs. Royal Opera House case that could be extrapolated for thinking about forms of cultural cruelty and loss.

Disappearance is perhaps best known to theatre amongst the four as it has long stood for the ontology of performance as articulated by a counter-intuitive argument in 1993 by Peggy Phelan in her work *Unmarked:* 'Performance's only life is

in the present […] it cannot be saved, recorded, documented, or otherwise participate in the circulation of representations of representations: once it does so it becomes something other than performance'.[38] If it cannot be saved, then it must have disappeared. Here Phelan offered theatre studies a line that has ricocheted back and forth ever since giving rise to its own side branch of studies concerning the problematics of liveness through the work of Philip Auslander, Rebecca Schneider and more recently Jonah Westerman.[39] But disappearance as I am evoking it here has little to do with this sport of sparring of effects in the aesthetic realm.

It is obvious that there is a certain kind of uneasy symmetry between the ephemerality of Chris Goldscheider's beautiful playing of the viola, which disappears onto the air while it is not being recorded, and recognising the abrupt distinction between any such niceties and the disappearance of his hearing as he knows it. The problem as Goldscheider discovers to his personal cost is that while it might be relatively simple to identify the moment when something is present and the later moment when it is not, or that it exists manifestly differently, convincing *others* of this experience is a rather different challenge. There is no certain expression of the identity of that disappearance that has become the presence of an absence, the absence you feel when you no longer hear as you once did. I struggled to find words to express precisely this distinction to the consultant who cared for me.

What disappears can only disappear once it has been given a name, and in testimony it is left to Chris Goldscheider to struggle to give his hearing the name it deserves. This is the same with the disappearance of all precious ephemeral things, not just humans with names who are mourned more readily than those ungrieveable ones that Judith Butler has done much to recognise. Those, such as the unnamed 'stowaway', who fell from the undercarriage of an inbound plane, a fall that opened this book and closed an unknown life-story. Hearing amongst the senses is rather like a species that is threatened with extinction because it has not been clearly enough named to be recognisably at risk. There is little understanding of the threat to hearing that sound in venues risks daily, as a matter of course. The difference between extinction and the disappearance of hearing in this instance is that extinction as suggested in the previous chapter on the last human venue is identified at *all* times 'within time' whereas disappearance is recognised as potential for all time, but *particular* to the person in question. 'Disappearance is always for someone' as Adi Ophir puts it succinctly.[40] It is precisely disappearance for you, or of you, or of your faculty of hearing.

Disappearance (for the claimant at least) is a fact, but one that ironically rests on the testimonial of its occurrence to be made to appear in the court. The work of the ROH defence is to rubbish that claim and in so doing deny the facticity of the disappearance. For all the niceties of legal procedure that abound that is the cruel reality of these proceedings. There is just no way to get around this brutal truth. No amount of genteel courtesy, and sometimes even that disappears from the proceedings, can cover for the fact that an institution is challenging a musician's testimony that something has disappeared. Goldscheider is plainly told he does not have what he claims to have, that is acoustic shock, which is the name that describes the

disappearance of his hearing as he had previously enjoyed it and lived off it. His hearing, unusually perhaps, is his means of livelihood after all. This is his own special loss.

Loss, in the form of 'loss of hearing' that I am describing here, is like other losses: 'a singular type of disappearance'.[41] It can only be loss if is the 'irreversible disappearance of some irreplaceable thing' and as such should not be confused with other temporary and restorable losses, keys and suchlike. Keys are not only replaceable in the form of copies, irritating as this might be, they are also not irreversible in that a lock in a door is itself infinitely changeable for a surprisingly large amount of money. Hearing is not this kind of loss when it is in the form of an impairment that is irreversible and irreplaceable. While I might get by, might survive following a disappearance of something with the promise of a replacement, loss announces the end of any such hope and the inauguration of a wholly different economy of effects. It is unlikely then that the Royal Opera House, however long they delay these proceedings with their various tactics, appeals and suchlike, will persuade Chris Goldscheider to give up his 'interest' in his lost hearing. They could persuade another musician that they should give up on their hopes for an unwarranted bonus for working on a public holiday, but it is unlikely that Goldscheider is about to give up this kind of interest in the fate of his hearing any time soon. This is what some people give the name 'perseverance' to, a much admired but somewhat Kafkaesque quality that often loses support as it proceeds. This is what Adi Ophir calls 'an economy of forgetting. The one who forgets loses the loss'.[42]

In the history of orchestral music there will be countless occasions on which those injured as Goldscheider has been injured will 'choose' to forget all about it, it is all that they have left in the absence of an economy of reparation that I am proposing here. Forgetting becomes the only protection against protracted grief. Goldscheider's precedent allows for future injured ones *not to* have to forget but to choose to remember if they wish to (and many wisely do not). Given that the kinds of institutions I am talking about with regards to cultural cruelty, libraries, museums, archives are in the business of preservation, it is not surprising that those who work within them, such as musicians at the Royal Opera House, might have a heightened stake in recalling those faculties they entered the institution with, and keep some sort of rough tally as to how those faculties are doing by way of survival as they proceed to go about their labours. The very act of participating in that revival of the 2012 production of the *Ring Cycle*, is not only a preservation of Keith Warner's earlier 2006 version, but also obviously an echo of all those other *Ring Cycles* through time at the Royal Opera House, and elsewhere, that describe the ghostings, the natural history of the theatre machine.[43] Indeed having the capacity to account for such losses is a critical component of subjectivity, and an immediate mark amongst subjectivities where life has become so routinely dispossessed or precarious as to mark the irrelevance of any such taking-stock of one's future. Losses presume the existence of humans interested enough in what is worth keeping, to signal the resistance to further loss, or, in courts such as the Royal Courts of Justice, who have the means to take account of such losses and seek damages.

Bankruptcy was the form of loss that I chose to examine in the first part of this book, here in Part II other kinds of subjectivised precarity have come into play, including orchestral play.

In the case of Chris Goldscheider, the one after all who has lost something precious, what has been lost does not reside solely within the domain of his hearing, but more prosaically, in the predicted income from any future work he may be able to do. Goldscheider goes to law to seek the 'representative mechanisms' that any such claimant has to turn to (short of personal reprisals which are not unknown but tend to end badly for the wronged). Such conditions cannot in Goldscheider's case be put down to the common claim of 'bad luck' but are themselves, as we have seen with the meticulous reconstruction of the court proceedings, a structural logics of a pit that is too cramped, prey to insufficient health and safety care, a prevailing ambivalence to right management in other words.

The proceedings I am witnessing are interesting precisely because they irritate a capitalist system, with a cruel logics of its own, that cannot tolerate the kind of 'social association' being built up around Chris Goldscheider's loss as it is being represented in Court 12 of the Royal Courts of Justice in London. We are certainly not having a good time in our buzzing social worlds in there, but we are finding ways to express our association in a curious community of those with something, acoustic shock-induced tinnitus, in common. Adi Ophir recognises this problem of association for capitalism in the following way: 'The capitalist market is characterised by sophisticated mechanisms that introduce every loss into a cycle of exchange relations and do not allow it to be preserved as a problem for too long'.[44] Buck up. Seek closure. Move on (and pay for some Cognitive Behavioural Therapy if you can't). It just would not do for a system built on profits to have to make appear too readily all those instances where no such thing accrues to those who have bought into the system. This system is made up of a myriad fluid-losses that are never allowed to stabilise for long enough to cohere into a rallying cry. Before their brutal undermining unions once mediated such atomisms into purposeful, collaborative action. Now that really does sound like the essence of well-being.

While Chris Goldscheider quietly but courageously attempts to give appearance to his own loss, the market is working overtime to offer substitutes for all such losses everywhere, often in the game of privatising such losses in the form of non-disclosure agreements and other diversions from the open truth. The losses being privatised here might also extend to those memories that are turned into nostalgia by the State (or more reprehensibly cultural curators) for the purposes of memorialisation and *political* as distinct to traumatic forgetting. Grenfell Tower and its aftermath will offer a final, extreme version of such politics to end this book. But before we go to that infernal place, the more local, individual case of Chris Goldscheider has now reached the rather more prosaic question of damages. Here we begin to see the far side of an argument that when he took up his complaint must have seemed a very distant and nebulous thing. The human capacity to imagine such things as relevant to oneself is a mark of the political potential of all of us to call time on injustices that injure us, and others.

In the court system 'damage' is conceived as a 'harmful loss that is assessed as depreciation in terms of an exchange system'.[45] That system in the UK is represented in the Tort branch of Common Law, but whether the discourse that identifies someone as having a losable thing can include the loss of hearing, is in the case of acoustic shock, very uncertain. That is precisely what makes Goldscheider vs. ROH so significant a case. Is it possible for a judge in law to estimate the depreciation consequent upon the damage to Goldscheider's hearing? Though the question is complex, law is quite commonly asked to adjudicate in the context of complex damage cases, not least of all where nations are held accountable for wrongs in the conduct of war. It is obvious over years that the exchange system that allows for the measure of the depreciation of, say, a film star (should they suffer disfiguring accident) or a footballer (should they sustain a serious knee injury) is in the case of the orchestral claim somewhat more conjectural. While damage might itself evidently be attributed to a loss of some occurrence, the problem for Goldscheider was that defence for the ROH insisted on bringing into question the very occurrence that brought about his claim for damages, that did damage to him. The defence for ROH was indeed built on an exchange system that recognised *no* place for 'acoustic shock' in its vocabulary, nor in its pathology of verifiable symptoms. That seems careless given its other, acoustic pleasure, would appear to be its core business.

Those vested with the responsibility for representing these losses in court are often expert witnesses, such as Mr Parker who seeks to secure the diagnoses of acoustic shock to the claimant Chris Goldscheider. If damages are the assessment of the depreciation resulting from a loss then any such loss is surely relative to the value placed on that capacity in the instance of the claimant. As Adi Ophir puts it:

> The damage suffered by a person who has lost about 20 per cent of his hearing varies in accordance with his occupation and his hobbies: a musician will incur far more damage in such a case than the operator of a tractor, and an opera lover will incur more damage than a football fan. All this is self-evident and trivial.[46]

Trivial, and contestable, as it might appear at first sight, this equation runs through the Goldscheider case like a luminous thread throwing shade across a musician whose capacity has been brought into question. It ties together the judge's comments on the degree to which the loss might have been preventable (in her opinion it was) and the measure of what it would take to mend it (the loss that is, not necessarily the cause which is the responsibility of the venue in law). The Royal Opera House would appear to have made arguments that imply the loss is inevitable, a part of the 'privilege' of playing Wagner, the judge in her statement appears to perceive the loss, the injury, as preventable. Goldscheider is not claiming for some vague deterioration in his hearing due to age, he is claiming only what he can and should claim is the measure of loss attributable to an occurrence that was preventable by the orchestral managers at the ROH.

There is then a stark incommensurability between a defence team for the ROH who do not accept that any occurrence occurred, and those for the claimant who most certainly do. It is their responsibility in law to establish precisely where that injury occurred and through meticulous reconstruction of that fateful rehearsal they appear to do so in such a way as to convince Justice Davies of the reality of the event. And still the ROH can and do fall back on the tried and tested entertainment principle of 'exorbitant cost' as a reason to avoid responsibility for what has, now patently and in full view of the public gallery, taken place. This seems harder to fix than it might otherwise have been, given the already significant budgets and economy, the exchange system that the Royal Opera House currently works within. It might not have wholly helped the ROH's case that exactly symmetrical with the timing of this hearing they were grandly opening a major overhaul of the liminal café and other Champagne-grade spaces adjacent to the Opera House itself, on a budget of about £60 million that was wholly raised from their uniquely well-endowed private donors. That this has done nothing to improve the conditions of those actually *working* in the engine room of the opera house, the orchestra pit, could not have gone unnoticed within this particular system of economic exchanges. It brings back to mind the provocative 1988 Saatchi and Saatchi claim made for the Victoria & Albert Museum just down the road in South Kensington: 'An ace caff with quite a nice museum attached'.

Goldscheider in seeking compensation knows he is entering a pact with the devil that will inevitably lead to the silencing of a number of other adjacent issues that the case will throw up. This is the 'loss' that is inbuilt to any compensatory claim and takes the following form:

> The compensation sought, which defines the value of what was lost, ends the semiotic chain, and usually represses whatever is left without compensation. If the damaged person [Chris Goldscheider] agrees to compensation, this cancels the mediating role and the semiotic value of the damage. What is left is what was lost, the compensation, and what was lost and has no compensation – the aura left by the loss.[47]

Those who seek compensation are by definition announcing themselves as those who have a problem. While this might appear an inconsequential and colloquial reality in life it has a significant impact upon the conduct of the court case in which the claimant has to enter into an exchange system, a discourse, that often simply cannot account for the acute impact of this 'problem' on their lives. It is such 'problems' that cases are designed to close down, to bring under bureaucratic control on behalf of a State that is allergic to frayed ends. And it is precisely in the inability to close down Chris Goldscheider that an uncertain aura begins to hover around the proceedings of that which will not go away. The symptom of the problem, or at least of articulating this problem, is that those who enter court as an observer, cannot enter the exchange system of the legal process and finish up movingly but ineffectively 'loudly lamenting a loss'.[48] I have experienced this often in courts

where a claimant, frustrated with the exchange system of the chosen barristers, breaks free from the constraints of the strictly ordered ceremonial of the law and shouts out to those present (as in Holyoake vs. Candy & Candy discussed earlier) or indeed in one case leaves the court room entirely, wailing as they run down the corridor on an injured leg that is the limb under legal scrutiny. In a fashion not unakin to Walter Benjamin's evocation of the 'aura' in his essay 'The Work of Art in the Age of Mechanical Reproduction', it is then my role to open up that aura, to consider what it is at the margins of this case that might endure for further speculation. I will do that by considering how Chris Goldscheider's case advances our thinking of performance and its relationship to suffering.

Cultural cruelty

Suffering is 'the duration of the encounter with the unbearable; the unbearable is precisely what one bears when suffering, what one suffers from'.[49] For Chris Goldscheider what is unbearable is sound that happens to take the form of 'music' as composed by Richard Wagner. Wagner has become progressively 'louder' over the last century and on Saturday 1 September 2012 in the afternoon rehearsal of *Die Walkürie*, quite evidently very loud indeed. Up to 120 db loud, and then some with peaks at 130 db, close to that of a jet-engine taking off. When what is 'unbearable' takes the peculiar name of 'music', excuses appear to be made on its behalf that would not be made in any other environment of unbearable noise. Indeed, the sewing machine factory Quantum case of 2008 has set a precedent for how other workers might be able to protect themselves from such industrial brutality. But in the instance of an orchestra it would appear from the very opening passages of their skeleton argument quoted above, that the Royal Opera House defence is predicated on an economy of exchange, which is quite different to industrial precedent and apparently not legislated for anywhere. That when sound is not a bi-product but the *end* product of an activity (in this case an operatic event) this necessarily limits liability for the consequences of what might then ensue.

If the opposite of suffering is pleasure, which it is, then the logic of this defence is that the pleasure of the Royal Opera House audience would seem to have trumped (even trumpeted) the expectation of safety amongst those responsible for that pleasure. This is by no means an unusual arrangement between those who labour and their clients: sweat-shop production of fashion, sex work, pornography, boxing are just a few of the instances in which cultures of cruelty operate in and around transactions within which performance plays a mediating part in suffering. What defines suffering is the impossibility of removing 'tormenting excitation', and when that impossibility of removing such excitation continues the word for what is happening is torture. I am not for a moment forgetting the appeal and free-will of the delights of masochism here. When we discussed Pierre Klossowski in the opening to Part II of this book it would be self-evident as the chronicler of the Marquis de Sade that human freedom includes the right and capacity to choose to perpetuate such masochistic excitations and that suffering itself brings pleasure

to *some* in the absence of coercion. But workers tend not in their labour relations to choose to perpetuate suffering (though neoliberal constructions of the subject might insist that our own motivations, will, drives and appetite for work are ones that now identify us as productive humans).

While 'exit' from such suffering, as we defined it earlier, is rarely an option for any others than the relatively privileged, the impossibility of retreat from harm is the ubiquitous present of those dependent on their work for a living. The unusual capacity of Chris Goldscheider is precisely his capacity for removal. While at first he has found it impossible to leave, the judge recognises that the forces of attraction to the orchestral timetable make it impossible for him to escape to sanctuary and it is only later that he refuses to return. It is important to note here that while Chris Goldscheider and his viola colleague on the neighbouring desk have both registered the pain that they have been in in rehearsal, it is not so much pain that then subsequently assails him, as the accumulated experience of damage to his hearing experienced as sound, noise, static, interference and a 'sense' of deep unease and anxiety. I suspect this is precisely the subtlety of tinnitus that escapes legislation to this point, it seems too ephemeral for serious attention, just a bit too subjective, your word of pain against my need to keep the repertoire swinging.

All performance operates through its own economy of exchange with regards to such pain and 'suffering'. One might expect a fakir to experience a different kind of pain in training for their professional life from a ballet dancer who on-point might expect a different kind of physical challenge to someone training in courtly dance at the Royal Academy of Dramatic Art. Much has been made of the ubiquity of the abject and extreme states of physical endurance in performance art and the facile assumption that such 'suffering' brings those performers in some way closer to the 'real' that other forms of dramatic representation might miss in their illusory ways. The work of Chris Brett Bailey that opened this chapter would be considered by some to somehow be more 'real' than other reals for the manner in which it confronts us with the very thing that has been familiar from the Romantic poets on (with added volume). Sir Laurence Olivier's (perhaps apocryphal) conversation with Dustin Hoffman on the set of *Marathon Man* neatly sums this presumed relationship up. Hoffman arrives on set after his 'warm-up' extended run, sweating and gasping his way into his Method-inspired role to which Olivier, from an armchair smoking a pipe, replies: 'But that is what acting is for dear boy'. Whatever one thinks about such anecdotes, they reveal a continuous economy of relative pain within performance that this court case exposes to serious scrutiny.[50]

Adi Ophir is not talking about orchestral music when he turns in his writing to sounds and suffering but his example is a useful one in the context of the Goldscheider case:

> A deafening noise can cause suffering at the moment of the encounter itself; the barely audible sound of a dripping tap becomes excessive gradually, very slowly, until the nuisance becomes torture and the one who hears it cannot take it anymore. One drop, one too many, has made it excessive. Suffering

> begins when a sharp sense of 'too much' comes upon the one who is overcome by the feeling – 'I have had enough' – when something inside someone cries out, 'No more, stop it!'. The presence of what is exciting turns into the presence of a surplus that cannot be disposed of.[51]

The proceedings in Court 12 of the High Court in London suggest that the subtle yet necessary relations between these two quite different things on a spectrum between excitation and excess have either been ignored or wilfully misunderstood. Or less generously, the Royal Opera House has spent so long immured from the common ways of others, in labour law, health and safety, or just plain empathetic relations with workers, that the insistence on excitation at all costs, and it is 'at all costs' given the price of the seats, overwhelms their individual sense of palpable responsibility to others (as evidenced in the court proceedings). When we talk about 'institutional racism' and 'institutional sexism', we measure a woeful structural indifference to urgencies of equality. Perhaps now is the time to add other forms of less-urgent, but imperative change within cultural contexts bloated by their long-running isolation from the threats that others have faced. It is hard to estimate how cloth-eared, how tone-deaf to take two cruel metaphors the Royal Opera House was in a defence that was (as good as) ridiculed in Justice Davies' judgement. I have quoted the judgement at some length above in order that the *tone* of the judgement is quite explicitly available to those who are interested in such things, beyond the spin that post-Appeal failure damage-limitation kicks in from cultural institutions who can afford reputation managers. As the sufferer Chris Goldscheider has done what all sufferers do, he has become an addresser to the source of his suffering and cried out for help. That this 'help' comes back in the form of having to go to court to defend oneself in such circumstances (and, unforgivably again in Appeal) is, by any measure, a mark of disrespect of the reality of that suffering and its rightful resolution. By the time the case has been taken back to Appeal and lost again by the ROH, disrespect has turned to a sign of cruelty by any sensible human measure. If you doubt my definition of cultural cruelty as represented in this and other scenes in this book, then you doubt the veracity of all those who genuinely 'appeal' for your help when they suffer.[52] Ruben Östlund's Palme D'Or winning film *The Square* nails this cultural indifference as Claes Bang's curator spirals into the hell of those he lacks the empathy to help.

The sorry but inescapable logic of the Royal Opera House defence is that Chris Goldscheider is *simulating* his suffering. At the time of the railway crashes of the late nineteenth century that informed Freud's writing on 'railway spine and anxiety', adjudicators of insurance claims, early-starter loss adjustors, called this 'malingering'. Of course they would never say such a thing in today's hedged caution-culture, but that is the obvious inference of the defence they pay a great deal of money to mount against this claim for damages. That is the harsh but only plausible implication I can draw from their argument that acoustic shock *does not exist* and, to add insult to injury, even if it did exist Goldscheider is 'not suffering from it'. By displacing the sufferer's source of suffering from one diagnosis to another is a very peculiar act for an arts organisation to take to law by way of defence.

Going to law is itself an acceptance that a third party will decide upon the veracity, the credibility of what is being said. This deferral of responsibility for the Royal Opera House to accept as credible what Goldscheider has said, is the instigation of a costly process for all involved, in terms of resources and emotions, not least of all for the person who has (even according to the ROH) already suffered 'enough'. That the Appeal Court finds for the claimant in both cases, that it is the claimant who is credible and to be respected in this instance, is by obvious inference given the proceedings we have listened to so carefully, to judge that the Royal Opera House is *not* credible. At this juncture in public life an apology from the management to the claimant might commonly be expected. But I am not sure since the Appeal Court judgement in Goldscheider vs. the ROH that I have seen anywhere, either prominent or discrete, any apology from the Royal Opera House to Chris Goldscheider of this kind. I am presuming those came, perhaps appropriately, in a personal stamped letter to his new home that has rightly been kept private. For this is by any measure a very private matter, except in some significant public respects that will close this chapter.

It is left to Chris Goldscheider to introduce his suffering into a public exchange system that we call the courts of law. He does this through a claim for compensation: 'Suffering involves claiming compensation. By its very nature, but also and because to the extent to which it has caused loss – of time, health, quality of life, material resources, and so on'.[53] Compensation claims are made with respect to a damage that could have been prevented. But the science of such calculations is notoriously difficult, not least of all as experts who appraise suffering are often in sharp disagreement (often depending on whose side one might be on) as to the degree of suffering being endured or indeed how it might have been reasonably foreseen or prevented. The languages of the High Court are particularly etiolated in this respect, with two expert witnesses on the implications of acoustic shock and its consequences miles apart in their prognoses. Indeed most suffering of the kind that Chris Goldscheider has found ways of addressing, vocabularies to represent and exchange systems of discourse to enter, simply do not figure within legal discourse at large. That is why this particular case is being heard in the UK High Court, it is setting a long-overdue international precedent for the measure of such vocabularies, and by going to Appeal and being judged again in favour of the claimant is insisting as strongly as one can within UK law that this will not go on. Desist. Now. Whether the Royal Opera House is temperamentally suited to acting now or anytime soon, appears to be in question. Theo Huckle QC encourages them on the social networking site LinkedIn on the day after the Appeal judgement that they should draw a line under this now to allow Goldscheider to get on with his broken-backed life. This is the only liberation that the claimant might have hoped for but that the appeals process so cruelly forestalls and delays. 'Let it go, let it go' is a popular song sung by a tiaraed snow-bound Elsa from *Frozen*, but given it has not been part of the ROH repertoire in the recent past, it is unlikely their management will heed its timely advice.

One might, in any other circumstances, have expected Chris Goldscheider's suffering to remain unexpressed, unaddressed. This is an appalling indictment of the

maturity of the institutions that surrounded his injury with so much smoke and mirrors. None of us are under any delusions that there have not been countless others, surely, we all know that the world is littered with those who have been injured in not dissimilar circumstances but never found a way to express that suffering. That seems rational when one considers the accelerated appetite for cheaper and cheaper labour, then cheaper and cheaper natures, that drives the capitalist enterprise. Where it becomes somewhat peculiar is its featuring within the work of institutions whose very mission might be presumed to be that of justice, welfare, tolerance, beauty, social responsibility: arts institutions you could say amongst whom opera houses appear to consider themselves a refined if apparently law-lite version.

Our social unconscious of all these unspoken acts of injury and suffering are sharpened by the sense that in the end it is to the privacies of family, a loved one or friend that one turns to when the responsibility for our suffering is resisted by those who might be best held accountable. Many would presume that the arts themselves, and theatre especially, might be best suited to take up one of the emerging mediating positions for those who suffer alongside those private partners in grief. But I am sceptical as to quite how this works in practice (notwithstanding the remarkable evidence amongst others of James Thompson on war, Paul Heritage on penal incarceration) providing just one more conversion channel through which the suffering might be reached in some helpful way. One might also expect social institutions such as opera houses, galleries, theatres to play their part in such channelling too, and the evidence of confusion here as to any such role is stark. Solidarity is the word in English we use to identify such channels of shared responsibility for those who suffer, and it is solidarity that Chris Goldscheider was seeking amongst an 'order of evils' that not personally, but cumulatively, were close to denying him his basic human rights. And he is after all a viola player on the second desk in the pit of the Royal Opera House in London's Covent Garden. Pity those who sit on the desk behind, or don't sit at all, the triangle player for instance, or those with no desk, that is all of us who never made it as far as this beautiful orchestra with its precious human parts. Those in pits elsewhere.

Demonic territory

On leaving this world of Wagner and work on the final judgement day of the hearing, it is striking that the Royal Courts of Justice on Strand in London sit opposite the sites of two talismanic buildings that shape everything we see and hear within this legal process: Britain's first bank Child & Co founded on this spot in 1599, still there doing its infernal business, and, the Devil Tavern eventually demolished in 1787 and now memorialised by a handsome aquamarine ceramic plate. Directly next door to that devil-may-care neighbour, Child & Co is one kind of future-builder that has been busy building away for half a millennia. This is the oldest bank in the UK, Child & Co, still at Number 1 Fleet Street, London, where it has been since 1559, so, well before Shakespeare got around to ensuring all

children had to take theatre seriously before they needed to. This is the model business for Charles Dickens' 'Tellson's Bank', in his revolutionary novel *A Tale of Two Cities*, where the 'inconvenience' of the bank, its congenital resistance to 'rebuilding' (not unlike the Royal Opera House round the corner) is likened to the 'Country', shadowed as it is by the vast Temple Bar and its spiked, executed heads that looked back blankly at the lives 'taken' by the bank in its necrophiliac workings. Tellson's (Child & Co) is, in Dickens' words, a bank of 'death':

> very small, very dark, very ugly […] A place of death, where the utterer of a bad note was put to death, the unlawful opener of a letter was put to death, the purloiner of forty shillings and sixpence was put to death.[54]

The bank was figured by Dickens, before Anonymous, Occupy and others drew our attention to their derivative excesses, as a 'killing-machine', and long before sub-prime, eviction, crash and expulsion, ensured those who were already precarious felt more so. Bodies and perceptions is what is at stake in this precarity of course, as it has been throughout the Goldscheider vs. ROH case, and between this bank and the Royal Courts of Justice one feels this most acutely on a street called Strand.[55] Here the odd-job-man Cruncher, never allowed through the portal of the door but always on guard outside it, the 'live sign' of the house, an early embodiment of financialisation, would, when errands necessitated his absence, be replaced by his 12-year-old son, who was his 'express image'. Like father like child-son, interchangeable as with many of Dickens' adulterised labouring children. It was via this guarded portal that a child would enter Child & Co as an aspirant apprentice, and as Dickens described it:

> They hid him until he was old. They kept him in a dark place, like a cheese, until he had the full Tellson flavour and blue-mould upon him. Then only was he permitted to be seen, spectacularly, poring over large books, and casting his breeches and gaiters into the general weight of the establishment.[56]

So, against the pressing and omnipresent 'general weight of the establishment', between a bank and the legal system as represented by the Bar I am, with others critically concerned with who is 'permitted to be seen', spectacularly if need be, and under what conditions? What are the conditions that determine whether Chris Goldscheider can be seen *and* heard? He is after all not a child, in Child & Co. who might expect (in the UK at least) to be seen but not heard. He is after all an adult who dedicated his considerable talent to being heard beautifully. That 'permitted to be seen' and 'permitted to be heard' might otherwise be described as, 'the field of appearance', one small part of which we might want to identify more acutely with the specialist name 'live art', or 'theatre', or 'performance' that I am discussing in this book, given those are modes that might be expected to offer channels of signification for such acts to be sharpened and softened as fit the purpose. I am not so concerned with what we call it, just *how* we and others for whom appearance might

not be quite such a human right might be able to *do* it with more 'radical inclusivity', if indeed 'appearing' is of any interest, and it is certainly not for everyone as Peggy Phelan has made clear in her work *Unmarked*.[57]

With Judith Butler, I would ask about the make-up, the *structuring* of this field of appearance:

> Why *is* that field *regulated* in such a way that only certain 'kinds of beings' can appear as recognisable subjects, and others cannot? And why the compulsory demand to appear in *one way* rather than another that functions as a precondition for appearing at all.[58]

It is not only now that with Goldscheider's courage in mind we need to live in order to act, but that we have to act, and act politically, to secure the conditions of appearance, and therefore of existence, for those otherwise inhibited, excluded and precluded *from* such appearance. That appears to me to be the lesson that the case of Chris Goldscheider teaches us. So, a politics of possibility is at work in the narrative in this chapter of one such representation, one such appearance. And that is of course by definition also a matter of performance, always an ethics of performance as I suggested a quarter-century ago in *Theatre & Everyday Life*.[59] By acknowledging my own degree of deafness on Strand opposite the Royal Courts of Justice on that judgement day, again, quite different to others' deafness, I was not disaffiliating from the company of Child & Co, in an apparent process of ageing and retreat from appearance (as many hearing impaired people do), but rather finding a place for myself back in that company again, in the world of sonic-sensation familiar from my own childhood, indeed synonymous now I listen to it, whistling, continuous, unremitting and remarkable in its own register, if one has the courage, or is foolhardy enough to admit its comings and goings, day and night.

The financial implications of the Chris Goldscheider claim against the Royal Opera House would be of special interest to Child & Co, as £750,000 is just about the minimum credit one might require to bank with them. But those damages have come at an almighty cost to the claimant. That ceramic marker to the right of the bank Child & Co, that marks the demolished Devil's Tavern of 1787, is perhaps closer to the fiendish truth here. Thomas Mann in his novel *Dr Faustus* offers us an insight to this hell, when inspired by Søren Kierkegaard, he reached the famous conclusion that: 'Music is Demonic Territory'.[60]

As I wrote those words in March 2018 a new season was being announced at Battersea Arts Centre, an institution I have committed myself to over many years, as a punter, as a member of their Capital Board rebuilding after the devastating 2015 fire (discussed in the next and last chapter of this book), as a visitor with groups of students that number into the hundreds and as such have underwritten with their paying presence so much of the work that has yet, courageously to meet its audience. The season is promoted by *Time Out* on their web-site with the following upbeat blurb:

> Theatrical noisenik Christopher Brett Bailey presents a glorious reprise of his three most recent shows: his earsplittingly loud performance poems 'This Is How We Die' and 'Kissing The Shotgun Goodnight', plus a full-on outing for his guitar ensemble with 'This Machine Won't Kill Fascists But It Might Get You Laid'.[61]

And to back that up, on Facebook too in no less mouth-watering prose and with fonts to match:

> A marathon evening of noise-theatre and theatrical noise. For two nights only Christopher Brett Bailey brings his multi-award-winning 'cult hit' THIS IS HOW WE DIE and the 'insanely and dangerously loud' follow-up KISSING THE SHOTGUN GOODNIGHT back to London. Because his OCD manifests in a fetish for odd numbers, a double bill was never going to be enough.… The evening will climax with a performance by Christopher Brett Bailey's electric guitar ensemble, THIS MACHINE WON'T KILL FASCISTS BUT IT MIGHT GET YOU LAID. For this special occasion, they will be premiering new material and performing a surround sound concert in ear-splitting 3D audio![62]

Given the promised levels of volume (not unusual in work of this kind) I ask my colleagues in the production office at BAC whether they are aware of the recent Goldscheider vs. Royal Opera House judgement and the responsibility in law they now have, not just to offer adequate hearing-protection, but to encourage its use amongst all audience members? They don't and, typically being the always alert Battersea Arts Centre, are grateful to talk about it and open to the implications of such fundamental changes in the legal scene. I meet them two days before the scheduled opening of the 'glorious reprise' performances (in my own time and *gratis* at their premises) and discover that they are not aware of the difference between ear plugs that protect, and those that most definitely do not. So I suggest they might look into this before distributing bright-coloured but inadequate foam mushrooms to audiences that would not protect them from a madrigal concert featuring treble-recorder virtuosi. They say they will, but late on the coming Thursday evening, two full days later, I receive an email from the long-standing, indeed outstanding BAC artistic director and colleague David Jubb, that he has had to cancel the first night of the season due to 'safety concerns'. The hearing-protection has been deemed by 'health and safety' to be inadequate.

There are a crowd of unhappy ticket-holders in the bar. A banal kind of non-performance has just been staged, not the kind I have been talking about in this chapter, but the pathetic side-effect of a failure of securing not just adequate but 'right protection', that would have ensured all would proceed with the right *to* protection in place for those who chose to be protected. And after all that 'choice', an aesthetic selection amongst myriad such decisions, is itself a free choice. I offer to come and hear the public's complaints of 'censorship', the 'nanny state', health

and safety 'gone mad', as best I can through my own continuous static. I convince myself I would listen as carefully as I could to these arguments before replying, 'No, it's none of these, I am as sure of that fact as I am of my own life-long support of artists to do as they wish when and where they want'. I am confident that they will be able to hear me without hindrance and confident they will choose to agree or disagree with me, reassured that they will live to listen another night given someone at BAC has had the courage to do what they inadvertently failed to do at Oval House those two years before. As they indeed *do* listen with the delight common to Chris Brett Bailey's delirious work, in the same venue, the following night, with the arrival of new acoustic protection that *is* now adequate and the show goes up and everyone, of course, given that is the point of the freedom to protect yourself, goes fine and dandy. The title of that Chris Brett Bailey Season at Battersea Arts Centre in Spring 2018? *Are You Deaf Yet?*

Notes

1 Christopher Brett Bailey, Programme Note, *Kissing The Shotgun Goodnight*, Oval House, 6 October 2016.
2 Barthelme, Donald. (2005). *Forty Stories*. New York: Penguin Books.
3 Coleman, Nick. (2012). *The Train in the Night: A Story of Music and Loss*. London: Jonathan Cape. I am grateful to Steve Tompkins who with characteristic generosity heard me out and shared this volume with me.
4 See Bathurst, Bella (2017). *Sound: Stories of Hearing Lost and Found*. London: Profile Books.
5 See the excellent work by Bojana Kunst (2015) from which I have derived this association: *Artist at Work: Proximity of Art and Capitalism*. London: Zero Books. I am grateful to Bojana for collegiality during this writing.
6 Mrs Justice Nicola Davies, Judgment, Paragraph 224. 28 March 2018, High Court Queens Bench Division, Christopher Goldscheider: Claimant; Royal Opera House Foundation: Defendant; Theo Huckle QC and Jonathan Clarke (instructed by Fry Law) for the Claimant David Platt QC and Alexander Macpherson (instructed by BLM Law) for the Defendant. Hearing dates: 30 January to 7 February and 9 February 2018. The observations here are a combination of direct reference to this judgement, and quotations from my own written daily record of the proceedings which were checked with the court stenographers at session end.
7 David Platt, QC: Skeleton Argument of Defendant – Trial, Christopher Goldscheider and Royal Opera House Covent Garden Foundation, Claim no: HQ16 PO1778.
8 David Platt, QC: Skeleton Argument of Defendant – Trial, Christopher Goldscheider and Royal Opera House Covent Garden Foundation, Claim no: HQ16 PO1778.
9 Thanks to Professor Sonia Massai for alerting me to this significant heritage.
10 See Lazzarato, Maurizio. (1996). 'Immaterial Labor', in Eds. Paolo Virno, and Michael Hardt. *Radical Thought in Italy: A Potential Politics*. University of Minnesota Press. pp. 142–157. For an interesting discussion of Lazzarato in relation to theatre see: Ridout, Nicholas. (2013). *Passionate Amateurs: Theatre, Communism and Love*. Michigan: University of Michigan Press.
11 Virno, Paolo. (2004). *A Grammar of the Multitude*. New York: Semiotexte, p. 9. These essays were first given by Virno as three lectures when he was Dean of the Ethics of Communication at the University of Calabria in 2001.
12 Sylvère Lotringer, Forward 'We The Multitude', to Virno, Paolo, op. cit. p. 13.
13 Ibid. p. 17.
14 Justice Nicola Davies, Judgment, op. cit. p. 217.

15 See Virno, op. cit. p. 52.
16 Ibid. p. 52.
17 Ibid. p. 52.
18 Hannah Arendt in *Between Past and Future*, p. 154, quoted by Virno, ibid. p. 53.
19 Ibid. p. 55.
20 Ibid. p. 63.
21 Ibid. p. 69.
22 Ibid. p. 70.
23 Ibid. p. 70.
24 See Jacques Rancière, on 'the part of those who have no part', in Jacques Rancière and Davide Panagia. (2000). 'Dissenting Words: A Conversation with Jacques Rancière'. *Diacritics*. Vol. 30, no. 2, (Summer 2000) pp. 113–126.
25 Opening paragraphs of Mrs Justice Nicola Davies, Judgment, 28 March 2018, High Court Queens Bench Division, Christopher Goldscheider: Claimant; Royal Opera House Foundation: Defendant; Theo Huckle QC and Jonathan Clarke (instructed by Fry Law) for the Claimant David Platt QC and Alexander Macpherson (instructed by BLM Law) for the Defendant. Hearing dates: 30 January to 7 February and 9 February 2018.
26 Ibid.
27 Ibid. Para. 219.
28 Ibid. Para. 229.
29 See Ridout, Nicholas, op. cit. pp. 138–162.
30 Laruelle, François. (1993). *The Concept of an Ordinary Ethics or Ethics Founded in Man*. Trans. Taylor Adkins. Available online here: www.scribd.com/document/233744571/Laruelle-The-Concept-of-an-Ordinary-Ethics-or-Ethics-Founded-in-Man (accessed on 28 August 2019).
31 Ophir, Adi. (2005) *The Order of Evils: Toward an Ontology of Morals*. Trans. Rela Mazah and Havi Carel. New York: Zone Books.
32 Ibid. p. 18.
33 Ibid. p. 35.
34 Ibid. pp. 18–19.
35 Ibid. pp. 24–25.
36 Ibid. p. 35.
37 Ibid. p. 38.
38 See Phelan, Peggy. (1993). 'The Ontology of Performance', in *Unmarked: The Politics of Performance*. London: Routledge, p. 146.
39 See Jonah Westerman on Intermedia: www.tate.org.uk/research/features/between-action-and-image (accessed on 28 August 2019).
40 Ophir, Adi, op. cit. p. 60.
41 Ibid. p. 89.
42 Ibid. p. 91.
43 See Carlson, Marvin. (2003). *The Haunted Stage: The Theatre as Memory Machine*. Michigan: University of Michigan Press.
44 Ophir, Adi, op. cit. p. 121.
45 Ibid. p. 127.
46 Ibid. p. 129.
47 Ibid. p. 134.
48 Ibid. p. 146.
49 Ibid. p. 257.
50 Also see ground-breaking work by Schneider, Rebecca. (1997). *The Explicit Body in Performance*. Abingdon: Routledge.
51 Ophir, Adi, op. cit. p. 259.
52 The word and the sound of the word 'Help!' echoes through one of the very few mainstream cinematic works to attend to the concerns of this book: *The Square*, Dir. Ruben Östlund, 2017.

53 Ophir, Adi op. cit. p. 285.
54 Dickens, Charles. *A Tale of Two Cities*, accessible at: www.gutenberg.org/files/98/old/2city12p.pdf pp. 46–47. (accessed on 1 July 2017).
55 'Bodies and Perceptions' was the title of a panel which I chaired with Harold Offeh and Evan Ifekoya at Tate Modern as part of Sibylle Peters and the Live Art Development Agency event, *Playing Up*, Starr Auditorium, Tate Modern, 4 April 2016.
56 *A Tale of Two Cities*, op. cit. p. 47.
57 Phelan, Peggy. (1993). *Unmarked*. London: Routledge.
58 Butler, Judith. (2015a). *Notes Toward a Performative Theory of Assembly*. Cambridge: Harvard University Press, p. 35.
59 Read, Alan. (1993). *Theatre & Everyday Life: An Ethics of Performance*. London: Routledge.
60 Mann, Thomas. (1999). *Dr Faustus*. Trans. John E. Woods. New York: Vintage International.
61 www.timeout.com/london/theatre/are-you-deaf-yet-a-christopher-brett-bailey-triple-bill#tab_panel_2 (accessed on 28 August 2019).
62 www.facebook.com/events/battersea-arts-centre-bac/are-you-deaf-yet-a-christopher-brett-bailey-triple-bill/122184491883326/ (accessed on 28 August 2019).