The Triad of the True, the Good, and the Beautiful: Schenker’s Moralization of Music and His Legal Studies with Robert Zimmermann and Georg Jellinek

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Eduard Steuermann once ridiculed Heinrich Schenker as a “funny little man who haunted the back streets exposing his analytic graphs, which no one understood.” 1 Yet Oswald Jonas, who understood Schenker’s graphs quite well, praised his mentor’s insights as “tantamount to an acoustic perception of the moral law.” 2 Like the ancient Greeks, Schenker conceived of music as nomos, a lawful guide to the well-ordered life. 3 Music for him expresses what philosophers throughout the ages have called the “Triad of the True, the Good, and the Beautiful”—a conjunction of metaphysical verity, ethical propriety, and aesthetic perfection. 4 The “lives of the tones” (Tonleben) encode hidden values

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3 Nomos, the ancient Greek word for law, also means melody. “Our songs,” says Plato, “are our laws.” See Plato, Laws: §799e, trans. in Thomas Mathiesen, Apollo’s Lyre (Lincoln: University of Nebraska Press, 1999), p. 60. Nomos derives from the idea of justice as fair distribution or just apportionment, giving each their proportionate due or just deserves according to merit rather than equality, that is, “to render to each his own” (jus suum cuique tribuere). See The Digest of Justinian, trans. Alan Watson (Philadelphia: University of Pennsylvania Press, 1998), I.1.10. See also The Institutes of Justinian, trans. J. B. Moyle (London: Oxford University Press, 1913; reprinted Union, NJ: Lawbook Exchange, 2002), p. 3 (slightly different translation as “to give every man his due”). Nomos therefore simultaneously connotes well-ordered differentiation in both society and music, a principle central to Plato’s Republic and Schenker’s allocation of unequal weights to tones. Thus, says Schenker, “justitia artis fundamentum” (justice is the fundamental principle of art). See Schenker, Tonwille II, p. 136. See also Wayne Alpern, “Musical Justice and Tonal Inequality,” (unpublished manuscript, 2010).
4 The Triad of the True, the Good, and the Beautiful has ancient roots in kalokagathia, an aristocratic Greek ideal equating external beauty with internal goodness, yielding the
imbued with a transcendent power to uplift, whose purpose is not simply to enliven or entertain, but to ennoble and enrich. Schenkerian analysis, the art of music’s decipherment, is an act of edification.

How did Schenker’s aesthetic vision acquire this ethical valence? Why was voice-leading a manifestation of virtue? How did music become moralized, and the Ursatz the incarnation of das Wahre, das Gute, und das Schöne?  

During his first semester as a young law student at the University of Vienna in the fall of 1884, Schenker took a course in Practical Philosophy with the influential Viennese philosopher Robert Zimmermann. Zimmermann introduced him to the idea of artistic, moral, and rational monism: that aesthetics, ethics, and reason share a common nexus through the intermediary of form. According to Zimmermann, these different types of judgment all implicate the same underlying mental processes distinguished only by their content. Schenker encountered an aesthetic-ethical-rational Formenlehre, an integral doctrine of precepts governing mind, music, and morality alike. This correlation, such
that the norms of art are analogous to the norms of verity and virtue, offered a foundation for Schenker’s moralization of music in the Triad of the True, the Good, and the Beautiful.

_Schenker’s Legal Education_

Music theorists tend to forget that Schenker’s formal training in law surpassed his formal education in music. He studied jurisprudence at the University of Vienna for four years from 1884 to 1888, from the age of sixteen to twenty. Taught by the foremost legal scholars of his day, Schenker received his Doctor Juris degree on February 1, 1890, a few months before his twenty-second birthday. His law school transcript, _Meldungsbuch des Studirenden Heinrich Schenker aus Wisniowczyk, Inscribirt in der juridischen Facultät der k. k. Universität zu Wien den 14 October 1884_, is the only existing record of this rigorous intellectual experience. This short, neglected document confirms that Schenker endured a comprehensive curriculum of over thirty courses in Legal Philosophy, Legal Methodology, History of Law, Civil and Criminal Procedure, Political Economics, Canon Law, International Law, Statistical Analysis, and numerous aspects of Roman, German, and Austrian substantive law, including Contracts, Property, Inheritance, Administrative Law, Commercial Law, and Family Law. This extensive coursework culminated in a battery of rigorous state law ex-

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6 Schenker studied music with Anton Bruckner for three years from 1887–1890 in the Conservatory of the University of Vienna beginning his last year of law school. This accounts for the delay in receiving his law degree, which was conferred when he left the University in 1890.

7 Schenker’s law transcript, stamped “K. k. Universitäts-Quästor 19 Apr. 88 Wien,” is in the OC B/435. The name “Wisniowczyk” (the Polish equivalent of “Cherryville”) in the title refers to the tiny shtetl of a few thousand people, mostly Jews, where Schenker was born in Ukraine (then Poland). Until he entered law school in Vienna at the youthful age of sixteen, he lived in the nearby village of Pidhaytsi (Podhajce; meaning “in the woods”) with less than 5,000 people in a densely Jewish area of the central Ternopol region of southern Galicia at the foot of the Carpathian Mountains, about fifty miles south of Lvov and 250 miles southwest of Kiev, in the epicenter of the Hasidic Jewish movement. Schenker grew up in the moralistic Yiddishkeit world of _Fiddler on the Roof_, whose “central trait,” according to Irving Howe, “was an orientation toward otherworldly values.” See Howe, _World of Our Fathers_ (New York: New York University Press, 2005), p. 8. Although he was a secular but believing Jew, most Galizianer Maskilim (“Enlightened” Galician Jews) like Schenker retained a Yiddishe Kop (Jewish mentality) and remained true to their faith and tradition.
aminations (Staatsprüfung) that Schenker passed to earn his doctorate. He was proud of his legal education and continued to use his professional title throughout his life as “Dr. Heinrich Schenker,” referring to his law degree, not a degree in music, which he never attained.

Following a venerable tradition in law as in music, Schenker pursued the theoretical study of jurisprudence as an academic discipline (Rechtstheorie) rather than its professional practice as an occupational craft (Rechtspraxis).

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8 Schenker testified to the rigor of his law examinations in an undated letter to Ludwig Bösendorfer in late 1889 or early 1890 before he received his doctoral degree on February 1, 1890. Referring to his “promotion to Doctor of Law that will occur in the not too distant future,” he indicates, “I had passed the most gruelling of the examinations for the doctorate,” and signs the letter “Heinrich Schenker, Doktorandus juris [Cand. Dr. Juris].” Schenker Documents Online: The Correspondence, Diaries, and Lessonbooks of Heinrich Schenker (1868–1935), http://mt.ccnmtl.columbia.edu/schenker/correspondence/letter/gdm_briefe_1_188990.html, GdM Briefe, [1]: 1889/90. Schenker took a series of three doctoral exams: May 15, 1889 on Austrian law, July 10, 1889 on German law, and January 8, 1890 on political science, the last of which was apparently the most demanding. Ibid., n. 1, citing University of Vienna archive, Faculty of Law 1890, doctoral examination protocol No. 133, from Yu-Ring Chiang, “Heinrich Schenkers Wiener Gedenkstätten: Gedanken zu seinem sechzigsten Todesjahr,” in Mitteilungen der Österreichischen Gesellschaft für Musikwissenschaft 30 (September 1996), pp. 41–51 (42–43).

9 The Israelitische Kultusgemeinde (IKG), the official institution administering religious and philanthropic affairs of the Jewish community in Vienna, issued a certificate dated January 23, 1895 referring to “Heinrich Schenker, Dr. juris.” In Federhofer, Heinrich Schenker, pp. 3–4, n. 10. Schenker evidently undertook legal studies to satisfy his father, a not uncommon scenario especially among upwardly mobile Jewish families. He explained years later in his diary that he was not inclined toward legal practice because of his aversion to the stereotypical image of a “Jewish lawyer,” in contrast to that of a profound Jewish scholar like Abraham ibn Ezra. Ibid., pp. 314, 345, citing Tgb. 18. V. 1916. Schenker’s reference to this twelfth-century rabbinical polymath and Torah commentator reveals a deep knowledge of his religious tradition.

10 The ancient cleavage between Rechtstheorie and Rechtspraxis dates back to the Roman jurisprudentes or jurisconsults, who left the mundane task of practice to the pragmatici or advocati. This bifurcation parallels that in music, with knowledge ranking higher than application. For more on this, see Roscoe Pound, The Lawyer from Antiquity to Modern Times (St. Paul: West Publishing Co., 1953), John MacDonell and Edward Manson, Great Jurists of the World (Boston: Little Brown, 1914; reprinted Union, NJ: Lawbook Exchange, 1997), p. 81 (“theory represents the captain, practice the men”), and Thomas Christensen’s Introduction to the Cambridge History of Western Music Theory (Cambridge: Cambridge University Press, 2002), pp. 2–3.
Continental legal education has always been more abstract and conceptual than the pragmatic vocational training of Anglo-American law schools. The distinction parallels that between music theory and musicology as intellectual studies of music’s principles and history as opposed to technical training in the practical skills of composition and performance. In the nineteenth century in particular, the scholarly study of jurisprudence was primarily an indoctrination in social values and the cultivation of character (Bildung). The focus was upon civil science, juridical wisdom, and the general theory of law (allgemeine Rechtslehre) as a cultural institution and social process, with instruction in rhetorical advocacy and scholarly exegesis rather than tangible skills to ply as a trade or profession. Especially among Jews like Schenker, who had been historically barred from legal practice, jurisprudence was studied without pragmatic aspirations as a form of erudite higher education.


12 Schenker’s studies of Roman Law (Pandektik) with Adolf Exner, Dean of the Law School and expert in Roman Pandects, Legal Methodology (Juristische Methodologie) with Johann Tomaschek, pedagogical reformer and expert in Legal Methodology, and Statistical Analysis (Statistik) with Karl Inama-Sternegg, pioneer of modern statistical analysis, included technical training in textual exegesis, legal rhetoric, forensic argumentation, and graphic tabulation of empirical data.

13 The study of law has been a tradition among Jews for hundreds of years, yet they were barred from legal practice in Austria, Germany, and most other countries until the nineteenth century. It was only the year before Schenker’s birth that the Austro-Hungarian Constitution of 1867 bestowed legal equality to Jews, entitling them to practice as lawyers and serve as judges and public servants of all ranks. De facto anti-Semitism persisted nonetheless, and Jews were discriminated against for such positions. See Franz Kobler, “The Contribution of Austrian Jews to Jurisprudence,” in The Jews of Austria: Essays on their
Assessing the influence of this legal experience on Schenker’s musical thought from the perspective of intellectual history stands on firmer ground than that of more general philosophical ideas permeating his cultural milieu. We know exactly which courses Schenker took and the professors who taught them. To some degree, we may infer what was conveyed to him from their own scholarship. Although Schenker’s ideas about music evolved gradually over time, it is not unreasonable to consider whether his early training in jurisprudence at a formative period of his intellectual development may have exercised a subtle and even unconscious influence, if not necessarily a direct or conscious one, upon his subsequent mode of thought. The long-term effect of this jurisprudential experience might not have consisted of any retention of factual legal knowledge, but rather an imprint of a legal method and manner of reasoning, a rhetorical style of discourse, an impulse toward abstract

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14 Stephen Peles wearily complains, “the number of Schenkers to emerge is growing daily. We’ve had Kantian Schenkers, Hegelian Schenkers, Nietzschean Schenkers, organicist and non-organicist Schenkers, a lawyerly Schenker, and more … I can think of no more perilous world, in the West at least, in which to search for influences, roots, and origins than the twilight world of the Habsburg empire.” See Stephen Peles, “Review of Leslie Blasius, *Schenker’s Argument and the Claims of Music Theory*,” *Journal of Music Theory* 45/1 (2001): 176–90 [p. 178]. Unlike these other influences, Schenker’s legal education is empirically grounded.
systematization and, above all, a theoretical appreciation of the nature and efficacy of law itself.\textsuperscript{15}

What is unquestionable is that at an early and impressionable stage of his life, Schenker was introduced to the role of jurisprudence as a critical way of thinking, and a rational and ethical instrument to reconcile competing social values and interests. His mind was saturated with sophisticated theories about hierarchical structure, the tension between order and freedom, and the relationship of the individual to the collective mediated by the rule of law. Schenker was a brilliant student, towering over others, and surely probed and absorbed the deepest lessons of his educational experience.\textsuperscript{16} Although he never practiced law and likely never intended to do so, he nonetheless emerged from this juridical baptism with a legal temperament and cast of mind (\textit{juristischer Sinn}): Schenker became a \textit{musikalischer Rechtswissenschaftler}—a musical jurist learned in the law.\textsuperscript{17}

[The Continental law] student is guided toward developing the standards of a scientific approach to any problem arising from the clash of individual interests with one another, or with the interests of groups, or with that of society as a whole ...

\textsuperscript{15} Law school provides a rigorous training ground in analytic reasoning, discernment of orderly arrangements, extraction of governing principles, problem solving, and the rhetorical power of persuasion, which is generally considered to leave an enduring intellectual imprint that unfolds over time. Schenker’s student, Oswald Jonas, who also studied law at the University of Vienna, professed decades later that it “taught him how to think.” Quoting Irene Schreier, Jonas’s stepdaughter, from a private conversation on March 13, 1999. See also Jonas’s \textit{Introduction to the Theory of Heinrich Schenker}, trans. and ed. John Rothgeb (New York: Macmillan, 1982), p. v. Earning his own law degree at Vienna, Eric Schweinburg recalls that the law student “is expected to derive from his study a firm grasp of the aggregate of concepts, ideas, theories, and principles which pervade the legal system [and] is given vision generative of further and later clarity.” Schweinburg, \textit{Law Training in Continental Europe: Its Principles and Public Function} (New York: Russell Sage Foundation, 1945), p. 10.


\textsuperscript{17} See W. E. Walz, “Some Aspects of Legal Education in Germany,” \textit{Maine Law Review}, vol. III, no. 2 (December, 1909), pp. 41–51. “[O]f paramount importance in a student’s education,” the author writes in 1909, “is the drawing out and the evolution of what is known as a legal mind, or as the Germans call it, ‘\textit{der juristische Sinn},’ or legal sense” [p. 46].
If the student is fashioned into anything definite and practical at all, it is into a “jurist” [with] a specific turn of mind … A degree in law grants membership in a distinct intellectual elite … Not the broad education in general, nor the widening outlook counts; it is the mind trained in and through law which is favored.\textsuperscript{18}

A natural affinity exists between law and music theory. They are both abstract ordering processes—one between people, the other between tones. Each regulates normative conduct among constituent elements within a dynamic system of interaction on the basis of a self-referential hierarchy of relationships. The structures of law and tonality are comparable modes of conceptual architecture implementing formal constraints that arise from and shape patterned behavior to promote the organic cohesion of the whole, while preserving essential autonomy and freedom of expression. The significant number of music theorists with legal training like Schenker attests to this strong correlation.\textsuperscript{19}

Unprecedented in Schenker’s case, however, is the significant degree to which he invokes law as a central metaphor for musical phenomena and, more importantly, law’s integration as an operative component in his conception of musical structure and analytic approach.\textsuperscript{20} Schenker’s legal training

\textsuperscript{18} Schweinburg, \textit{Law Training in Continental Europe}, pp. 10–12. Schweinburg outlines Viennese legal education as imparting “(1) a broad, general education as background; (2) a specific yet conceptual education concerning the political, economic, administrative, and social aspects of public and private life; (3) a systematic approach to problems of any kind, particularly to those of directing social-economic action; (4) trained acumen and incisiveness of thought.” \textit{Ibid.}, p. 11.

\textsuperscript{19} The long and impressive roster of other music theorists and musicologists who studied law includes—in addition to Schenker—Guido Adler, Johann Agricola, C. P. E. Bach, Christoph Bernhard, Joachim Burmeister, Thomas Campion, Francois Castil-Blaze, Edmond Coussemaker, Jean D’Alembert, Siegfried Dehn, Johann Forkel, Eduard Hanslick, John Hawkins, Johann Heinichen, Oswald Jonas, Ludwig Köchel, Jaap Kunst, A. B. Marx, Johann Mattheson, Leopold Mozart, Friedrich Niedt, Francis North, Roger North, Gustave Reese, Hugo Riemann, Georges Saint-Foix, Johann Scheibe, Giuseppe Tartini, Abbé Vogler, Gottfried Weber, and many others. The list of law-trained composers adds several more, among them Dufay, Tinctoris, Handel, Schumann, Tchaikovsky, Sibelius, and Stravinsky. Like Schenker and these others, the author also has a dual background in law and music theory.

\textsuperscript{20} Citing “ongoing research by Wayne Alpern,” Cook claimed prior to his \textit{Schenker Project} that if Schenker’s legal training arguably instilled in him “a conception of law as based on
resonates on multiple Schichten of his oeuvre: in the foreground of his pervasive legal imagery and innumerable “laws of music” (Gesetze der Musik), in the middleground of his reductive analytic technique and rhetorical mode of argumentation, and in the background of his conceptual juridification of music itself. His conscious ideas about music have a legal unconscious. Perhaps unwittingly, this musikalischer Rechtswissenschaftler came to conceive of music as a microcosm of society, a rational and ethical community of tones (Tongemeinschaft) in a musical state of harmonic citizenship, regulating their interactions and adjudicating their differences in accordance with the laws of Schenkerian jurisprudence.

Robert Zimmermann

The embryonic roots of Schenker’s moralization of music may be traced to his study of Practical Philosophy (Praktische Philosophie) with Robert Zimmermann (1824–1898) during his first semester of law school in the fall of 1884. Zimmermann was one of Schenker’s few professors outside the law faculty. That his lectures were required of all incoming law students manifests the degree to which Schenker’s legal training emphasized the ethical dimension of jurisprudence as an instructional guide to instill social and cultural values, as opposed to practical vocational training. What is significant, however, is that ethics for Zimmermann were also construed aesthetically, and conversely, aesthetics were construed ethically. Together with reason, they formed a conceptual Triad of the True, the Good, and the Beautiful that mirrors fundamental values embedded in Schenker’s approach to music.

precedent and aiming at persuasion,” it nonetheless “left its mark on his analytic practice” but “was never properly assimilated into his theory.” See Nicholas Cook, “Epistemologies of Music Theory,” in Christensen, Cambridge History of Music Theory, p. 95, n. 74. Here and elsewhere I contend that Schenker’s conception of law deriving from his legal training was in fact assimilated into both his theory of music as well as his analytic practice.

21 This article is a substantial expansion of chapters in my comprehensive unpublished study, “Schenkerian Jurisprudence: Echoes of Schenker’s Legal Education in His Musical Thought” (Ph. D. diss., City University of New York, 2004), which in turn develops the thesis of my earlier publication, “Music Theory as a Mode of Law: The Case of Heinrich Schenker, Esq.,” Cardozo Law Review 20/5–6 (1999): 1459–1511. There are no comparable investigations of Schenker’s jurisprudential training and its relationship to his musical thought.
Although not widely known today, Zimmermann was a prominent nineteenth-century Viennese intellectual and “for decades Austria’s most influential philosopher.” His work expands upon that of his mentor, Johann Friedrich Herbart (1776–1841), the pedagogical pioneer of aesthetic formalism and aesthetic, ethical, and rational monism. Herbartianism was considered “the official philosophy of Austria, much as Hegelianism had been of Prussia.” Zimmermann was Herbart’s leading and most rigorous disciple. Given his strict adherence to Herbartian principles, it may be inferred that Zimmermann’s instruction included a comprehensive and faithful transmission of Herbartian thought.

Herbart’s ideas found more familiar and enduring expression in the work of Eduard Hanslick, often regarded as the most prominent and effective nineteenth-century aesthetic formalist. In asserting that the value of art lies in its formal relations rather than its expressiveness, Hanslick invoked the same aesthetic principles of Herbart found in Zimmermann’s work. Hanslick, in short, was also a Herbartian. Significantly, however, it was Zimmermann who first introduced Hanslick, his close personal friend and colleague, to Herbartian formalism and had a determinative impact upon his thinking. In fact, Hanslick’s seminal essay, Vom Musikalisch-Schönen (On the Musically Beautiful, 1854), little more than a pamphlet yet now the most influential exposition of aesthetic formalism, is a concise articulation and elaboration of Herbartian principles transmitted to Hanslick via Zimmermann. Zimmermann’s own

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monumental three-volume *Allgemeine Aesthetik als Formwissenschaft* (*General Aesthetics as a Theory of Form*, 1865) systematically develops in far greater detail the same fundamental concepts succinctly outlined in Hanslick’s pithy yet more popular account. “Any educated Viennese of the 1890s might have said that Zimmermann was a man of greater distinction than Hanslick.”

Zimmermann was among an elite group of scholars handpicked by Count Leo Thun-Hohenstein, Austrian Minister of Worship and Education, to revitalize the antiquated Viennese legal curriculum during the mid-century reform of Austrian education in the aftermath of the social and political upheavals of 1848. The kingpin of the group was Georg Jellinek, the “Old Master of Political Science,” a leading figure in nineteenth-century jurisprudence and Schenker’s most prominent and influential professor. These intellectual mandarins constituted a caste of secular priests—“German bearers of culture” steeped in “the moral impact of learning [and] its effect upon the whole person,” enlisted for “the transfer of cultural and spiritual values.”

Acting on behalf of Emperor Franz Joseph, Thun-Hohenstein revamped Viennese legal training on the more progressive and rigorous model of German jurisprudence. Schenker and his fellow law students were cultivated and groomed to become Austria’s intellectual aristocracy, its elite Intelligentsia, by undergoing comprehensive training and character development designed

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25 Payzant, “Hanslick and Zimmermann,” p. 1. Like Schenker, Hanslick studied jurisprudence at the University of Vienna but later pursued an active career as a civil servant. He lamented the brevity of his short work compared to Zimmermann’s, attributing it to the distractions of a busy legal career. Hanslick acknowledged his intellectual debt to Zimmermann by dedicating five of the ten German editions of his book to him. Zimmermann repaid this homage by dedicating his own large and learned treatise to Hanslick and writing a favorable review of his lesser contribution. See Payzant’s Introduction to Hanslick, *Musically Beautiful*, p. xv, noting “we are tempted to say this [dedication] was the least [Hanslick] could do to acknowledge his debt.” Schenker and Hanslick corresponded and met in 1894. Their correspondence can be accessed at: [http://www.schenkerdocuments.org/profiles/person/hanslick_eduard.html](http://www.schenkerdocuments.org/profiles/person/hanslick_eduard.html).

26 Schenker’s other professors included Heinrich Siegel, founder of the Vienna School of Germanist legal history; Anton Menger, radical utopian and socialist critic of private property; Lujo Brentano (brother of Franz), eminent Austrian economic historian of medieval trade guilds and fraternal associations; Gustav Demelius, well-known expert in Roman civil procedure; Joseph Zhismann, noted canon law specialist; and several other distinguished legal scholars.

27 Ringer, *The Decline of the German Mandarins*, pp. 3, 104, and 109, respectively.
to “raise the scientific mind and wake the necessary seriousness of the spirit through] methods prescribed by the contemporary state of knowledge from which a new conservative Intelligentsia would emerge.” This included “a scientific course of study of Austrian special law and the study of so-called political science and the most significant systems of philosophy of law and their historical development.” The faculty was charged with subject[ing] the young Austrian Intelligentsia to a gigantic reeducation process whereby a proper comprehension of the law and public affairs was assured, and tempting idealistic directions were guarded against.” After four years of intensive study, Schenker and his classmates were required to demonstrate a scientific depth of knowledge of the subject through a series of three challenging oral and written state examinations evaluated by a committee of experts. In all instances, “the knowledge of the law student was not permitted to be simply dogmatic [or] conceived of apart from either a historical or philosophical understanding.”

At a crucial period in the history of Austro-German jurisprudence witnessing the climactic collision of the western world’s two great legal systems, Roman and Germanic law, Schenker was subjected to a comprehensive, carefully planned, and highly organized state program of ideological indoctrination and pedagogical purification administered by educational experts, immersing him in profound social, jurisprudential, and philosophical ideas that reverberate in his later musical thought.

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29 The universities of Vienna, Berlin, and other prestigious seats of learning throughout the Austro-German world became the stage for the climactic confrontation between the two great traditions of Roman law and Germanic law in the late nineteenth-century. Historical jurists were sharply divided into two rival camps, Romanists and Germanists. Both sought to discover hidden structural forces and reduce the law to normative prototypes through their analysis of the past. They shared the same nostalgic mythos of historicism
The Triad of the True, the Good, and the Beautiful

The Morphology of the Beautiful

Practical Philosophy, the subject Schenker studied with Zimmermann, is a Herbartian term derived from Kant’s *Critique of Practical Reason* (1788) referring to the study of ethics as the philosophy of practical action, as opposed to the “Pure Philosophy” of metaphysical speculation developed in his *Critique of Pure Reason* (1781). Herbart defines it as a moral “theory of commission and omission,” recognizing that we seek not merely to understand the world, but to act properly within it. The goal of Pure Philosophy is correct knowledge; the goal of Practical Philosophy is correct conduct. “The Science of Law,” according to the *Zeitschrift für das gesamte Handelsrecht* in 1888, “is nothing other than *civilis sapientia*, the Practical Philosophy of civil society.”

Herbart transformed the traditional study of ethics by redefining it as the psychology of the human mind, emphasizing its cognitive functions and formal properties. Following his teacher, Zimmermann conceived of aesthetics, ethics, and logic as three parallel branches of a single theory of lawful behavior based upon structural correlations between external data and our affective responses pursuant to *a priori* laws of cognition. Recurrent “forms of presentation” (Vorstellungen) process the raw input of perception into coherent “mental images” regardless of context or content. These images are interpreted (Geschichtlichkeit) and were engaged in a profound and even mystical search for national spirit and origins. Each, however, advocated a different interpretation of history yielding opposing conclusions for the future: one championed ancient Rome as a Golden Age of legal reason, the other championed medieval Germany as a Golden Age of legal purity. Their quarrel was not just methodological, but ideological and cultural as well. This celebrated feud dominated legal discourse with social, political, and intellectual repercussions across Europe, reaching a boiling point in the heated controversy over German statutory codification. A millennium of legal conflict came to a head at the precise time and place Schenker studied law. See Franz Wieacker, *A History of Private Law in Europe* [1967], trans. Tony Weir (Oxford: Oxford University Press, 2003).

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normatively in accordance with fixed and finite standards of comprehension and coherence. Aesthetic judgments of beauty, ethical judgments of rectitude, and rational judgments of truth all evoke similar favorable psychological reactions by triggering mental images manifesting the same normative properties of form. As Zimmermann explains:

the forms which are essentially and universally pleasing will be found to be eternal, and everywhere the same ... the forms which make [our] desires and actions pleasing or displeasing are immutable.\(^{32}\)

All conduct for Zimmermann is aesthetic in the sense of being creative, because we dynamically “create” our conception of reality through the operation of these cognitive forms. Since each individual imposes order on experience by means of his or her own constructive capacities, our understanding of things is created or synthetic. Zimmermann “envisioned all mental and practical activity as subdivisions of a single gigantic pursuit known as art [and] endeavored to assert continuity between knowledge, practical life, and fine art.”\(^{33}\) Practical Philosophy is thus the scientific study of structural forms articulating the “morphology of the beautiful”:

Aesthetics as a pure science of forms is a morphology of the beautiful. By showing that it is only forms that give, or fail to give, pleasure, aesthetics demonstrates once and for all that everything that gives, or fails to give pleasure does so by means of forms.\(^{34}\)

Zimmermann’s \textit{General Aesthetics as a Theory of Form} generalizes and extends aesthetics as a primary mode of sensibility to the realms of reason and ethics as well. The same \textit{a priori} forms that govern our conception of beauty also govern our conception of truth. Logical propositions for Zimmermann are judged not by their intellectual content, but rather by their structural coherence. Aesthetics and reason are parallel manifestations of integral form, one addressing the structure of art, the other the structure of knowledge, but both


\(^{34}\) Zimmermann, \textit{General Aesthetics}, p. 42.
in the same way. Hence, as the Grecian Urn reveals to John Keats, “beauty is truth, truth beauty.”  

Zimmermann explains:

Aesthetics is the science of forms, it is allied to logic as a science of forms.... Logical forms are directed to being and knowing, aesthetic forms to pleasing ... logical forms are norms for conceiving truth in the same way as aesthetic forms are norms for conceiving what is pleasing.  

To complete the Triad of the True, the Good, and the Beautiful, the same forms of cognition governing beauty and truth govern ethics too. Moral judgments are evaluated in accordance with the same formal categories as aesthetic and rational ones. Virtuous conduct partakes of an essential “moral beauty” (moralische Schönheit) analogous to aesthetic beauty, since “the beautiful in its most general sense,” says Herbart, “includes the morally good.”  

As one nineteenth-century Herbartian observes:

Certain harmonious relations give rise to inevitable feelings of pleasure, and their opposites give us equally inevitable feelings of displeasure or pain. From this fact our moral judgments arise, just as our judgments of harmony or discord in music arise. We do not ask why a certain combination of tones pleases; we decide that it does.  

The material content conveyed through Zimmermann’s mental images is a secondary epiphenomenon extrinsic to its deeper and more essential structural character, determined solely by its internal configuration in relationship to universal criteria of cognitive coherence. Beauty, virtue, and truth all trigger analogous psychological responses in our minds. Beauty for Zimmermann is thus the aesthetic expression of virtue and truth, virtue the moral enactment of truth and beauty, and truth the logical embodiment of beauty and virtue. They are all cognitive correlates of each other: great art is virtuous, virtue is beautiful, and beauty is truth objectified.

36 Zimmermann, General Aesthetics, p. 44.
The methodology of Zimmermann’s Practical Philosophy entails the abstract reduction of specific artistic, ethical, and rational presentations to their fundamental structural configurations, which are predicate to and platonically prioritized over any empirical content they contain. Individual particularities are abstracted away, leaving only the generalized forms. The goal of Practical Philosophy is to clarify the operation of this reductive process in order to guide future decisions and evaluate prior ones on the basis of their congruence with normative patterns of behavior. Zimmermann elaborates:

The *a priori* nature of aesthetic forms enables them to serve as norms in judging all that demands judgment. Aesthetic forms are not commandments and prohibitions. They are simply what is absolutely pleasing and absolutely displeasing. Anything that presents itself to the aesthetic judgment as pleasing or displeasing can only do so by the fact that its forms are copies of aesthetic forms.39

The scientific realism and structural formalism of Zimmermann’s psychophysiological approach radically opposed the intellectual climate of his time. He rejected both the subjectivist and absolutist tendencies of German idealistic philosophy and adumbrated the positivist orientation of modern psychology, cognitive science, linguistic philosophy, and epistemology. This shift toward a more empirical methodology reflected a reluctance to base aesthetic, ethical, and rational valuations on either the relative grounds of subjective preference or the absolute grounds of some externally objectified truth by rooting them in structural features triggering the mind’s lawfully governed affective responses.

On one hand, Zimmermann dismissed relativist claims that experience is individually endowed with private content manifesting the personal preferences of a single observer. On the other hand, he rejected the absolute objectification of experience, either as empirical data subject to autonomous scientific scrutiny, or as predetermined phenomena in accordance with an overarching metaphysical scheme. For Zimmermann, our perception of the world is determined neither through internal endowment by the subjective self nor the objective verification of empirical data, but rather is processed, organized, and interpreted by normative, supra-individual mental constants.

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and lawfully operative *a priori* forms of cognition. Our assessment of the beauty, value, and meaning of a musical composition, therefore, is a function of the same mental process implicated in our ethical evaluation of right and wrong, and our rational differentiation between true and false. That which appears aesthetically beautiful, morally right, and logically true all elicit our preference because their internal structures evoke a favorable cognitive form. Conversely, that which seems aesthetically flawed, morally wrong, and logically false all elicit our disfavor because they conflict with some triggered normative response.

Zimmermann’s *Urformen* enshrine a generally harmonious and organic state of affairs, entailing such things such as agreement, balance, closure, correctness, perfection, and the characteristic. In all judgments, whatever the content, says Zimmermann, “harmony is [the] form, and disharmony is its opposite.” In music, for example, “it would be rash to maintain that no composer in the future will discover new harmonies, but by no means rash to feel sure that musical beauty will always have to include the harmonious.” Although different “spheres of presentation” activate different materials in evoking these uniform and universal reactions—music via tones, painting via colors, poetry via words, ethics via actions, logic via propositions—the modes of cognition that process this raw data and guide our evaluations, regardless

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40 See Günter Zöller, “History of Kantian Aesthetics,” in *Encyclopedia of Aesthetics*, ed. Michael Kelly (Oxford: Oxford University Press, 1998), pp. 45–46. Relative subjectivism and absolute objectivism may broadly be characterized as Kantian and Hegelian. In contrast, Zimmermann’s positivism “aspires to scientific exactness and may be seen as an illustration of [his] enthusiasm for the scientific method” (Bujic, *Music in European Thought*, p. 9). Schenker’s praise of his own scientific law-like approach is occasionally accompanied by his critique of the subjective relativity of aesthetics. In touting that “Philosophers and aestheticians will be able to establish a general theory of music as an art only after they have absorbed my concepts,” he quotes Nietzsche’s dismissal of the “velleities” of aestheticians like Herbart and Schopenhauer as mere personal taste, and Nietzsche’s complaint that “What we lack in music is an aesthetic which would impose laws upon musicians.” See Heinrich Schenker, *Free Composition*: xxiv, n. 3, quoting Friedrich Nietzsche, *The Will to Power*, trans. Walter Kaufman and R. J. Hollingdale, ed. Walter Kaufman (New York: Vintage Books, 1968): §838, pp. 440–41. Zimmermann’s principal goal was to do just that: formalize aesthetics, as well as ethics and logic, as universal laws rather than relative preferences—just like Schenker—which explains why his course was mandatory in law school.

41 Zimmermann, *General Aesthetics*, p. 43.

of medium, are inherently the same since they are all embodied forms of thought. These abstract preferences govern all our conceptions and judgments of beauty, virtue, and truth, because in each case the variegated “material which falls into those forms” is subordinate to the forms themselves. Since these structural relationships “are indifferent to materials,” says Zimmermann, “they are suited to all.” As Edward Lippman explains, for Zimmermann:

the development of art concerns only the material, while aesthetics has the task of seeking out the forms. Which tonal connections are pleasing, for example, is decided by the ear, but the forms by means of which they please can be determined only by thought. Ideas themselves and their attributes are sufficient.

The application of Zimmermann’s Practical Philosophy to music as a “sound-presentation” is illustrated by his explanation of the cadence and dissonance resolution. According to him, we have an innate preference for consonance over dissonance, balance over imbalance, closure over nonclosure, and so on, hardwired into our cognitive apparatus. Once a musical passage is registered by the ear, the mind by necessity seeks to organize and interpret it in accordance with these innate normative categories. The degree to which the internal structure of the music correlates with these laws of cognition determines our perception of pleasure and judgment of beauty. A ca-

43 Ibid., p. 45.
44 Ibid., p. 43.
47 In a radically different context, John Cage’s compositions suggest that there is no such thing as purely aleatoric music, since our mind inevitably organizes even random sounds upon repeated listening to make some formal sense. While this may not necessarily follow Zimmermann’s conceptual categories, it nonetheless confirms his cognitive scheme. One critique of Zimmermann, as well as of Schenker himself, is their conservative tendency to treat the normative as necessary and valorize what already exists, reifying Dr. Pangloss’s dictum that “whatever is, is right.”
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dence is pleasing because it triggers the mental form of closure and generates a psychic sense of harmonious satisfaction. Dissonance creates an unpleasant disturbance motivating a desire for progression because it disrupts the psychic forms of balance and correctness. A normative mental state is restored through consonant resolution.\(^{48}\) Instructing his students like Schenker that although the material content of art and music may change, their future validity depends upon their compliance with these immutable structural forms, Zimmermann concludes:

Any enrichment that aesthetics may hope to obtain not only from increased experience but from pioneers of the new in art, can only be in the realm of the material: the forms which are essentially and universally pleasing will be found to be eternal and everywhere the same. No one can prophesy the desires and actions of our descendants, but the forms which make the desires and actions pleasing or displeasing are immutable.... The artist who wishes to give pleasure must make aesthetic forms the norm of his art, and the critic who wishes to judge correctly must take aesthetic norms as the standard of his criticism.\(^{49}\)

The Moral of Ordered Freedom

Zimmermann conceives of aesthetics, ethics, and logic as allied departments of a unified \textit{Geschmacklehre} or theory of sensibility, organizing and interpreting data in accordance with their lawful conformity to a single set of normative forms, which he specifically applies to music. Significantly, however, he does not view the relationship between these \textit{Urformen} and their particular manifestations in a rigidly deterministic manner. Although the raw input of experience must elicit a uniform psychological reaction in order to be comprehensible, the objective world nonetheless exists independently from our internal forms of cognition, and can only be partially apprehended or structured through them. Mental presentations of external stimuli are therefore incomplete or partial approximations of reality, which Zimmermann says are “inevitably reduced to being a function of the thought.”\(^{50}\) “Beyond a certain point,” he explains, “our senses themselves are insufficient to determine ev-

\(^{48}\) Lippman, \textit{Musical Aesthetics}, p. 311.
\(^{49}\) Zimmermann, \textit{General Aesthetics}, p. 43.
\(^{50}\) \textit{Ibid.}, p. 47 (emphasis added).
ery individual nuance that may be brought into harmonious or unharmonious relationship with another one.” 51 This structural limitation is affirmed by Herbart’s observation that the beautiful “is meant to please by its form which resides in its limitation … what distinguishes the object from its aesthetic attributes is precisely the fact that it is not exclusively determined by this attribute.” 52 The basic forms, Herbart says suggestively, may actually be something “the free man of genius seeks to evade.” 53

The process of apprehension for Zimmermann therefore entails a mental act of abstract reduction to finite prototypes, with the recognition that reality itself embodies their manifold elaboration. Although these structural norms are recurrent and restricted, their external manifestations are distinct and infinite. Zimmermann notably characterizes this partial indeterminacy of these paradigmatic forms in a physical or spatial sense, as entailing “intervening spaces” (Zwischenräume) or “gaps in the presentation” which are “filled in” by our creative “imagination.” 54 Indeed, despite the forms, or rather because of their inherent limitation, “the quantity and variety of that which can in any way become part of an aesthetic relationship is limitless.” 55 Since things acquire meaning only through the self-limiting activity of the mind, they are therefore simultaneously free and constrained at the same time.

This disparity between an empirical object and its cognitive reduction for Zimmermann is critical to practical application. “Whereas the theory of forms is not concerned with material,” he emphatically points out, “that is of prime importance to artistic theory.” 56 Musical, moral, and mental actions are thus not mechanistically predetermined by immutable a priori standards,
but are subject to individual judgment and creative freedom within general constraints of normativity. By the same token, it is precisely the conceptual distance in mapping infinite possibilities onto finite patterns, or conversely employing limited patterns as normative templates to spawn multitudinous possibilities, that gives the fundamental forms themselves legitimacy and pragmatic utility as generative guides and reductive structural schemata.57

Georg Jellinek

Zimmermann’s dialectic of cognitive creativity within cognitive constraints resonates with the jurisprudence of Georg Jellinek (1851–1911), who taught Legal Philosophy (Rechtsphilosophie) to Schenker during his fourth semester of law school in the spring of 1886.58 Jellinek was a leading Austrian proponent of the nineteenth-century German School of Historical Jurisprudence and method of Legal Science (Rechtswissenschaft) founded by the great Friedrich Carl von Savigny. Law for historical jurists was neither chosen nor imposed, but rather an organic manifestation of the indigenous Volksgeist of a particular culture, specifically the Rechtsgeist or legal spirit of its unique legal consciousness (Rechtsbewusstsein). The shifting epiphenomena of legal institutions in


58 Jellinek lectured on Legal Philosophy to Schenker’s class from 11 a.m. to 12 noon, four days a week (except Thursday) in Hall no. 29 of the University of Vienna Faculty of Law. See Öffentliche Vorlesungen an der k. k. Universität zu Wien, Rechts- und staatswissenschaftliche Facultät (Sommer–Semester 1886), p. 5. Schenker also studied International Law with Jellinek during his seventh semester in the fall of 1887. Legal relationships among states, like those among individuals within them, also involve interactive dynamics between autonomous entities within a partially structured system of normative constraints. Jellinek’s approach to International Law applies principles comparable to those discussed here. See Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960 (Cambridge: Cambridge University Press, 2001), pp. 198–208. As Koskenniemi observes, “Acting within the international sphere, the sovereign State [for Jellinek] is in an analogous position [as the individual]. It legislates for itself and its capacity to do so—its autonomy—is the exhaustive explanation for why it is bound” (p. 204).
the jural foreground emanated from what Savigny called “internal, silently-operating powers” (innere, stillwirkende Kräfte) deeper in the background, which practitioners of systematic “historicization” (Historisierung) and a reductive process of legal analysis sought to reveal.\(^{59}\)

Pioneering the modern theory of constitutional law (Staatsrechtslehre) with his “social theory of the state,” Jellinek’s dominant concern was the reconciliation of the interests of society with the competing interests of the individual through a system of normative relationships balancing order (Ordnung) with freedom (Freiheit)—the “metaphysic of history,” as he calls it, being a timeless battle between these polar principles. For Jellinek, “the relation of law to liberty through the delimitation of “the true boundaries (Grenzen) between the individual and the community is the highest problem that thoughtful consideration of human society has to solve.”\(^{60}\) Like his colleague Zimmermann, Jellinek construes law psychologically and ethically as the embodiment of elementary moral precepts, an “ethical minimum” (ethisches Minimum) necessary for civilized life. Jellinek’s Rechtsphilosophie, like Zimmermann’s Praktische Philosophie, is also methodologically reductive, stripping away the differentiated features of the legal surface to distill a substrata of “ideal types” (Idealtypen) or prototypical “forms of the state” structuring this fundamental dichotomy between order and freedom in a variety of ways.\(^{61}\)

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61 Jellinek, *Theory of the State*, p. 34 ff. Jellinek’s reductive approach is premised upon his “Two-Sided Theory of the State” (Zwei-Seiten Lehre), which distinguishes between an empirical-historical conception of the state as a political entity and a theoretical-normative conception of the state as a juridical entity, the latter of which he viewed as a mental construction. This distinction parallels Zimmermann’s differentiation between empirical per-
Jellinek attempted to reconcile the forces of social conservatism entrenched in Austria and Germany with the forces of radical libertarianism sweeping Western Europe. Traditional legal scholars were deeply shaken by the tumultuous events across the Rhine and their tremors in the democratic upheavals of 1848. They recoiled at the collapse of social order due to what they perceived as excessive personal autonomy on one hand and repressive Napoleonic authoritarianism on the other in favor of greater integration between individual and collective interests within the context of a constitutionally limited monarchy and a laissez-faire state, thus saving the German people from the rampant convulsions of the West.62


62 Jellinek’s efforts to reconcile individual freedom with collective order represented a pervasive German response to French and English populism, ameliorating perceived excesses of democracy through limited state control, yet without succumbing to the authoritarianism of restoration. The period between 1848 and 1919 focused politically around the tension between monarchical centricism and social solidarity on one hand, versus democratic pluralism and individual freedom on the other, and the process of their gradual mediation through emerging constitutionalism and the classical liberal state. “Whose rights are to predominate in the State, the rights of the ruler or those of the people, the rights of the governed or those of government? It is this vexed question which produces tension in the structure of constitutional monarchy.” Fritz Kern, Kingship and Law in the Middle Ages, trans. S. B. Chrimes (New York: Frederick A. Praeger Publishers, 1956; reprinted Union, NJ: Lawbook Exchange, 2006), p. 3.

63 Rechtsstaat, a “law-state,” legal state, or constitutional state based on the rule of law
ture was its love of liberty and simultaneous commitment to unity, together comprising a “German idea of freedom,” both of which were woven into the structure of ancient Teutonic law.\textsuperscript{64} The genius of the Germanic legal spirit (\textit{Rechtsgeist}) for Jellinek was its insight that their reconciliation could only be achieved through the operation of a higher fundamental law, a transcendent and autonomous \textit{Urgesetz} of universal validity beyond both the will of the people (\textit{Volkswille}) and the will of the state (\textit{Staatswille}).\textsuperscript{65}

The Gothic \textit{Rechtsstaat} became Jellinek’s jurisprudential prescription for the Austrian constitutional monarchy, mediating between the \textit{Absolutismus} of the Napoleonic despot and the \textit{Radikalismus} of the revolutionary masses, by subordinating both the power of the ruler and the independence of the individual to the superior authority of a constitutional framework.\textsuperscript{66} This of-

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\textsuperscript{65} The idea of an inviolable fundamental law (\textit{Urgesetz}) antecedent and superior to the will of the ruler has ancient roots in medieval Germanic jurisprudence. The rule of law is supreme not because of the authority which imposes it, but because it expresses a higher truth. Nineteenth-century Romanists regarded the “divine Roman Law,” as Schenker puts it, as an eternal paradigm or \textit{Urgesetz} itself. Both Germanist and Romanist branches of Historical Jurisprudence therefore invoked the authority of a higher fundamental law, although these originated from different historical sources.

ffered a middle way or “special German path” (deutscher Sonderweg) between the hegemony of order and the abyss of freedom, resolving what Jellinek calls “the subtle dialectic and merciless logic of the fact of absolute Kingdom and radical Republic bound together.”

The guardians of this reconstituted Germanic Rechtsstaat were “the specialists initiated into its mysteries, and trained in its folkways,” as Kenneth Ledford observes, namely, “university-trained jurists” like Jellinek and his law students like Schenker, “functioning as standard bearers for [its] ideals and values … advancing its goals, and enabling it to achieve social as well as political hegemony.”

Significantly, Jellinek uses the same term, Zwischenräume or “intervening spaces,” which Zimmermann applies to gaps of indeterminacy in the structure of the human mind, to describe comparable gaps of indeterminacy in the

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67 Georg Jellinek, “Die Politik des Absolutismus und die des Radikalismus: Hobbes und Rousseau” [The Politics of Absolutism and Radicalism: Hobbes and Rousseau] (1891), in Ausgewählte Schriften und Reden 2 (Aalen: Scientia, 1970), pp. 2–22 [p. 16]. Steven Beller explains, “After 1867, the nature of the Austrian Monarchy as a balance between the power of the crown and of the people is emphasized … it is described as a constitutional monarchy but also with equal frequency as a Rechtsstaat … a kind of legal duality … That Austria was a Rechtsstaat was also specifically stressed as something teachers should impart to their students.” See Steven Beller, Rethinking Vienna 1900 (New York: Berghahn Books, 2001), p. 103, n. 29.

68 See Kenneth Ledford, From General Estate to Special Interest: German Lawyers 1878–1933 (Cambridge: Cambridge University Press, 1996), pp. 8, 19. “The task of the legal profession,” a prominent German attorney echoing Jellinek proclaimed in 1869, “consists of bringing the interest of freedom and of the rights of the individual into harmony with the interest in the civic order.” Ibid., p. 57, quoting Siegfried Haenle, Referat über die Freigabe der Advocatur erstattet auf dem IX. Anwaltstag, Sonntag, den 6 December 1868 zu Nürnberg (Nürnberg, 1869), p. 13. Max Weber argues that the Rechtsstaat, as a formal and rational legal system requiring specialized legal knowledge, both generated and was generated by a discrete class of legal specialists. Ibid., p. 18, citing Weber, “Sociology of Law,” in Economy and Society II, p. 775. By the same token, Schenkerian analysis, as a formal and rational musical system requiring specialized musical knowledge, both generated and was generated by a discrete class of musical specialists.
the structure of Germanic law. These interspaces or intervals embody what Jellinek calls “the free sphere [Freiheitssphäre] of the individual emancipated from the bonds of the state,” which he says, “must necessarily remain between those rules with which the state surrounds the individual.” As Roscoe Pound explains, the Rechtsstaat for Jellinek paradoxically represents a “systematic restriction of freedom in the interest of free individual self-assertion.” The same legal structure, in other words, that provides order also protects freedom so that, as in Zimmermann’s scheme, the individual is simultaneously constrained and free at the same time. The periodic obligations of law serve as structural safeguards for the preservation of liberty within their interstices, as

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69 The word Zwischenraum (“between-space”) comes from zwischen (between) or zwei (two), that is, between two things, and Raum (space). Savigny also describes the law as “the recognition of an invisible boundary within which the existence and activity of each individual gains a secure, free space. The rule by which those boundaries and that free space are determined is the law.” See Friedrich Carl von Savigny, System des heutigen römischen Rechts [System of Modern Roman Law], trans. William Holloway (Madras: J. Higgenbotham, 1867; reprinted Westport: Hyperion Press, 1993), p. 269. Hans Kelsen, Schenker’s Viennese contemporary and the preeminent continental jurist of the twentieth century whose stature in law ranks with that of Schenker in music, notably posits structural “gaps” (Rechtslücken) and free “spheres” (Freiheitssphären) within the law as areas of conduct where the state does not prescribe normative behavior, and thus “permits the behavior of an individual when the legal order does not obligate [him] to behave otherwise.” Kelsen, Reine Rechtslehre [Pure Theory of Law], 2nd ed. (1960), trans. Max Knight (Gloucester, MA: Peter Smith, 1989), p. 246.


71 Roscoe Pound, Jurisprudence, 5 vols. (St. Paul: West Publishing Co., 1959; reprinted Union, NJ: Lawbook Exchange, 2000), p. 231. Steven Beller confirms, “In Austria the rule of law tended overwhelmingly to guarantee freedom of expression rather than to suppress it.” See Beller, Rethinking Vienna, p. 99. See also Ringer’s discussion in The Decline of the German Mandarins (p. 122), quoting Troeltsch, “Die deutsche Idee von der Freiheit”: “The utopian Germanic state was ‘the organized unity of the people on the basis of a duty-bound and yet critical submission of the individual to the whole, supplemented and corrected by the independence and individuality of free intellectual and spiritual cultivation.’”
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well as the freedom of the community as a whole from the unlawful interference and tyranny of the state, which retains central authority yet also permits independence through its own constitutional self-limitation (*Selbstbindung*). In Jellinek’s words:

In spite of the nominal omnipotence of the state, a limit [*Grenze*] which it shall not overstep is specifically demanded and recognized in the most important fundamental laws [*Grundgesetzen*] [whereby] the old Teutonic legal conception of the state’s limited sphere of activity finds expression … This liberty accordingly was not created but recognized, and recognized in the self-limitation of the state and in thus defining the intervening spaces [*Zwischenräume*] which must necessarily remain between those rules with which the state surrounds the individual. What thus remains is not so much a right as it is a condition.72

Jellinek’s synthesis of ordered freedom in the Teutonic *Rechtsstaat* is not only an historical ideal, but a moral one as well.73 The scaffold of its gapped or partial legal framework reconciles the ethical needs of the individual with those of society though their mutual restraint. In Jellinek’s metaphor, by submitting to the guardianship of the state like a “night watchman” (*Nachtwächter*) standing vigilant over both order and freedom alike, the individual becomes a legal citizen endowed with reciprocal private rights and public duties.74 At the same time, by acceding to the supremacy of a higher law imposing constitutional constraints upon its own hegemonic power, the attenuated state is

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73 The classic formulation of the *Rechtsstaat* supplied 1856 by Friedrich Julius Stahl, an important Austrian jurist preceding Jellinek, asserts that the *Rechtsstaat* “is not merely a legal entity; it is also a ‘moral realm,’ an institution anchored in the divine world order.” In Friedrich Julius Stahl, *Die Philosophie des Rechts nach geschichtlicher Ansicht* [An Historical View of the Philosophy of Law] (Stuttgart, 1856), p. 138, quoted in Böckenförde, *State, Society, and Liberty*, p. 55.
elevated to a superior position of moral authority as the custodian of liberty rather than its enemy. As Jellinek contends:

By virtue of self-limitation [Selbstbindung], the State changes from physical to moral force, its will rises from an unlimited power to a power legally limited in regard to other personalities ... transfer[ing] by analogy to the State the principle of modern ethics, that is, moral autonomy.75

Here was a pure deutscher Typ arising from the indigenous Germanic Rechtsgeist, an ethical union of freedom within order and autonomy within authority through mutual self-limitation, thereby replicating Zimmermann’s dialectical structure of the mind in the dialectical structure of the law.76

The Moralization of Music

Schenker’s musical approach parallels Zimmermann’s philosophical approach and Jellinek’s jurisprudential approach in a number of important ways. His fundamental musical structures, like Zimmermann’s cognitive forms and Jellinek’s juridical types, invoke recurrent processes and immutable categories

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76 W. Michael Reisman and Myres McDougal, co-founders of the New Haven School of jurisprudence at Yale Law School with Harold Lasswell, explain the historic significance of this preservation of a private sphere within public order through the advent of a “partial” state as follows: “The great contribution of Western civilization has been the legitimization of the ‘partial’ state, a conception of social order in which the power of the state is intentionally limited so that what some scholars call a private sphere or ‘civic order’ exists outside of and is protected by public power ... ‘It is the domain of social process in which the individual person is freest from coercion, governmental or otherwise, and in which a high degree of individual autonomy and creativity prevails. [It] thus includes all of the processes and institutions of private choice, as distinguished from public decision’ [where] individuals may conduct their own lives as they wish.” Reisman, Law in Brief Encounters (New Haven: Yale University Press, 1999), pp. 15–16, in part quoting McDougal, et al., Human Rights and the World Public Order (New Haven: Yale University Press, 1980), p. 815. This characterization of law as a flexible framework of reciprocal public duties and private rights also survives in the Jellinek School of constitutional jurisprudence in Austria.
transcending any particular instantiation. Schenker’s normative musical standards prioritize the same sort of harmonious relationships and moderate values as theirs. His analytic methodology entails an analogous act of structural reduction of infinite phenomena to finite prototypes.77

More importantly, Schenker juridifies music by referring to the tonal system as a “higher collective order, similar to a state [Staatswesen], based on its own social contracts by which the individual tones are bound to abide.”78 He treats musical notes as “living beings with their own social laws,” “creatures” that “resembl[e] a human being,” who form a “higher collective order, similar to a state, based on its own social contracts by which the individual tones are bound to abide ... in anthropomorphic terms, a constitution.”79 Schenker’s notes are the acoustical analog of citizens in a musical Tonrechtsstaat with legal capacity to exercise “the rights and duties of tones” through die Gesetze der Musik.80 The “world of tones” (Tonwelt) cannot be fully understood, he says, “unless one thinks and feels with these tones exactly as they themselves think, so to speak.”81 This in turn requires thinking in jurisprudential and moral as well as aural terms—music “is a realm of its own, with its own laws,” instructs

77 Schenker’s theory of prolongation is rooted in psychological operations reminiscent of Zimmermann’s cognitive approach to aesthetics. The original title of Schenker’s treatise on counterpoint was Psychology of Counterpoint. See Harmony, p. xxvi. The prolongation of a structural tone beyond its temporal duration is predicated upon cognitive processes of mental “retention” (Festhalten) and “long-distance hearing” (Fernhören). See Counterpoint II: p. 57; Masterwork II, p. 10; Tonwille I, p. 22.
78 Harmony, p. 84.
79 Counterpoint, p. 16; Harmony, p. 6 and 84, respectively.
80 Tonwille II, p. 31. The hierarchical levels of musical structure (Schichten) in Schenkerian theory progressively emanating from a constitutional Grundnorm or “fundamental law” at the highest tier of authority are analogous to the hierarchical levels of federalized legal administration in the Austro-Hungarian Empire. Both law and music have a stratified bureaucratic structure unfolding through multiple layers of jurisdiction. Kelsen’s conception of the “hierarchical structure” of law, i.e., that the “legal order is not a system of coordinat-ed norms of equal level, but a hierarchy of different levels of legal norms” emerging from a fundamental Grundnorm, parallels Schenker’s view of hierarchical levels of musical structure devolving from the Ursatz. See Kelsen, Pure Theory of Law, pp. 221–22. Like Schenker, Kelsen also studied with Jellinek and acknowledged him as an important influence on his thinking. See William Johnston, The Austrian Mind: An Intellectual and Social History 1848–1938 (Berkeley: University of California Press, 2000), pp. 95–97.
81 Tonwille I, p. 29.
Schenker, and “to become fully versed in these laws involves educating the spirit and the ear.”

Of greater interest but less transparency is the imbrication of his law professors’ ethical synthesis of ordered freedom in Schenker’s aesthetic conception of musical structure itself. Zimmermann’s and Jellinek’s normative frameworks both provide incomplete or partial organization through their own inherent self-limitation, preserving internal zones of freedom within normative structural constraints—one in the mind, the other in the law. The partial organization and self-limitation of Schenker’s tonal framework allow for and facilitate a similar degree of circumscribed freedom within normative structural constraints to achieve a comparable synthesis between order and freedom in the jurisdiction of music. Zimmermann’s idea of autonomy within cognitive limits and Jellinek’s idea of autonomy within legal limits are mirrored in Schenker’s idea of autonomy within musical limitations embodied in his famous motto, “always the same, but not in the same way” (*semper idem sed non eodem modo*).

Zimmermann’s and Jellinek’s intervening spaces (*Zwischenräume*) within their respective cognitive and constitutional frameworks are analogous to the intervening tonal spaces (*Tonräume*) within Schenker’s musical framework. These spatial gaps between harmonic *Stufen* and structural melodic tones in the *Ursatz* create a porous yet durable matrix paralleling his professors’ dualistic conceptions of the mind and the law. The pillars of the fundamental structure serve as buttresses that “bear the burden of dissonances” across intervening “tension spans,” says Schenker, like the “soaring vaults” of a cathedral. These weight-bearing beams of architectonic support constitute inter-
mittent boundaries of lawful demarcation and formal differentiation, points of articulation circumscribing prolongational channels of contrapuntal freedom within a larger self-limiting harmonic and melodic frame in which the composer exercises creative license in a variety of ways. “The spaces of tonal movement,” assures Schenker, are “finite and small; but the possibilities for filling them are infinite.”

The lawful constraints of the musical background guide without dictating the intricate web of individual tonal interactions across intervening spans of prolongation in the foreground. They provide sufficient public order to generate an organized whole, yet not so much as to preclude private choice and freedom of expression. Like the *Urgesetz* of the Teutonic *Rechtsstaat*, the Schenkerian *Ursatz* is a guardian of musical liberty, not a structural straightjacket; it acts as a rudder, steering the compositional craft between the Scylla of tonal totalitarianism and the Charybdis of atonal anarchy. The greatest combined measure of order and freedom arises through a system of mutual compromise and reciprocal guarantees. Despite its obligatory points of lawful structure in the background, or rather because of them, the musical flow in their intervening spaces in the foreground is remarkably free. The *Ursatz* serves as a musical constitution permitting its tonal citizens and the composer as well individual autonomy to regulate their transactions and affairs through freedom of contract, freedom of movement, and freedom of association within the structural parameters prescribed by law. The inexhaustible array of prolongations and

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85 *Masterwork II*, p. 8. Schenker uses the term “prolongation” with respect to the idea of freedom, citing “free composition’s prolongations of the law [of strict counterpoint], which do not cancel it but rather validate it in freedom and newness” (*Tonwille* I, p. 53). Even prolongations are not completely free, however, but only reasonably so within the constraints of harmonic contrapuntal practice. These are not anarchical areas of no law at all, but of substantially less law and greater freedom. The difference lies in Schenker’s distinction between “free composition” (*der freie Satz*), implementing the more liberal contrapuntal laws of harmonic prolongation on one hand, and “strict composition” (*der strenge Satz*) implementing the laws of strict intervallic counterpoint on the other. Thus, “while [prolongations] appear unbound to any rule and unrestrained in their freedom, [they] are in fact a fulfillment of a basic principle of strict counterpoint” (*Tonwille* II, p. 73). See also John Rothgeb, “Strict Counterpoint and Tonal Theory,” *Journal of Music Theory* 19/2 (1975): 260–85, who explains, “By isolating those constraints and liberties that belong to pure voice leading independently of harmony, strict counterpoint immeasurably enriches our understanding of the interaction of those dimensions in free composition” (p. 264).
pieces that nonetheless conform to the same normative constraints is ample evidence of their freedom. Indeed, it is precisely because the structuring force of the *Ursatz* as *Urgesetz* acts as a “unifying regulator” says Schenker, or a “guarantor of coherence” as Carl Schachter describes it, that music is freed.86

Schenker’s veneration of the masterworks as canonic templates endowed with normative significance also mirrors the jurisprudential conception of history as an ongoing process that is prolonged into and shapes, yet without determining, the present. Both the law and Schenker “imbue the past with prescriptive authority,” tempered by the inherent plasticity and indeterminacy of the individualized present.87 The historically sanctioned norms of Schenkerian analysis, like precedential mandates of law, frame individual decisions by delimiting their ambit, without dictating their result.88 Like the jurists of Historical Jurisprudence with whom he studied, Schenker analyzes the masterworks of the past not as antiquated musicological relics, but as evidentiary repositories of living lessons, universal principles, and normative standards to guide, structure, and evaluate musical choices, mitigated by the inherent indeterminacy and freedom of the creative process.89 Schenker addresses this


89 The goal of nineteenth-century Historical Jurisprudence that dominated Schenker’s legal studies was not to analyze history for its own sake from an antiquarian perspective, but to derive general principles of prescriptive application to the present. Its essence was not historicism but historicity, “not a return to the past, but a recognition that law is an
mystery of musical creativity within musical constraints at the outset of Free Composition by inquiring, “If all fundamental lines are similar, what accounts for the dissimilarity of form in the foreground?” His reply elucidates the synergy between structural order and prolongational freedom, replicating his teachers’ dialectic through the mediation of musical laws in place of cognitive or jurisprudential ones:

A particular form of the fundamental structure by no means requires particular prolongations; if it did, all forms of the fundamental structure would have to lead to the same prolongational forms. Indeed, the choice of prolongations remains essentially free, provided that the indivisibility and connection of all relationships are assured.

It is this lesson of lawful liberty, of freedom within order and creativity within constraint, embedded in the notion of prolongation within structure in the dialectical act of “free composition” (der freie Satz), that Schenker encountered in his formative years as student of jurisprudence. Like his law professors, he sought and ultimately found a middleground, a deutscher Sonderweg, ongoing historical process developing from the past into the future.” See Harold Berman, “Toward an Integrative Jurisprudence: Politics, Morality, and History,” in Faith and Order: The Reconciliation of Law and Religion (Grand Rapids: Eerdsman, 2000), pp. 289–310 [p. 305]. In particular, the rationale of Roman Pandectism, the primary object lesson of Schenker’s legal education, was not to compile historical facts about ancient Roman law, but to extract enduring values from an authoritatively endowed canon of historical precedents in order to formulate a framework for present actions. See generally James Whitman, The Legacy of Roman Law in the German Romantic Era (Princeton: Princeton University Press, 1990). This distinction is manifest in the contrast between Savigny’s Geschichte des römischen Rechts im Mittelalter [History of Roman Law in the Middle Ages], addressing the evolution of Roman law as legal history on one hand, and his System des heutigen römischen Rechts [System of Modern Roman Law], demonstrating the living vitality of Roman law as an effective basis for a nineteenth-century legal system on the other. “Roman law, like the Bible, was not seen as the product of a particular and transient historic phase, but as an eternal paradigm, a treasure-house of timeless wisdom and a revelation for all time.” See R. C. van Caenegem, Legal History: A European Perspective (London: Hambledon Press, 1991), p. 129.

90 Free Composition, p. 25.
91 Ibid. Elsewhere Schenker compares the composer to a mountain climber guided by a trail-map (Wegkarte) as a means of orientation, who nonetheless retains responsibility to “negotiat[e] every path, stone, and morass.” See Masterwork I, p. 109.
92 Normally translated as “Free Composition,” Der freie Satz may also be construed as “free
reconciling the dichotomy between autonomy and authority on a higher level of unity in a musical *Tonrechtsstaat*, a lawful community of tonal citizens under the self-limited monarchy of the *Ursatz*, “governed by necessity,” says Schenker, “yet at the same time free.”93 The Teutonic *Rechtsstaat* was the original “constitutional monarchy [that] implied a synthesis of the monarchical principle with the limitation of the monarch by the law.”94 Years later, Schenker referred to such a “synthesis of the state,” and pointed to the “state-syntheses of the past” that were “just and perfect” as the lawful model for a lost musical art. Might he have had this ancient Germanic *Rechtsstaat* in mind?95

Recognizing that the mandates of structure are the safeguards of freedom, great composers willingly accept the yoke of lawful limitation as a means of fostering creativity, not forfeiting it. This is an ethical achievement for Schenker and not just a purely musical or aesthetic one, for thereby the composer “brings the morality of lawfulness to fulfillment.”96

To compose creatively from this background is to open up to oneself an unlimited world of foreground and melody ready to be articulated through an unlimited world of genius. In all this infinitude of genius and melody there is but one boundary [*Grenze*]. This is the boundary drawn by Nature itself with its primary sonority, and by man with his tonal space [*Tonraum*] and *Urlinie*. Genius is grateful for this boundary for it offers a necessary protection and control of freedom.97

structure,” which more clearly portrays its reconciliation of freedom within structure and creativity within constraint. In a significant sense, the title of Schenker’s *magnum opus* is an oxymoron, an emblematic conjunction of seemingly incongruous terms embodying their dialectical unity at a higher level of synthesis.

93 *Tonwille* II, p. 118.
94 Kern, *Kingship and Law in the Middle Ages*, p. 140.
95 *Counterpoint* II, p. xvii. Schenker studied and was interested in medieval legal history. His course in History of the Austrian State with Heinrich Zeissberg during his first semester of law school in the fall of 1884 was “essentially a course in medieval constitutional history.” See Lentze, “Austrian Law Schools,” p. 171. Schenker’s personal interest in the medieval period is evident from his choice of an elective in the History of the Middle Ages with Zeissberg during his fourth year of law school in the spring of 1888.
96 *Masterwork* III, p. 70.
97 *Masterwork* I, p. 113. The dual meaning of *Grenze* both as “limitation” and “boundary” is significant. The word *law* derived from *lah* or *lag*, meaning something fixed or physically laid down like a wooden “log” as a boundary marker between adjacent properties. *Gesetz*, the German word for law, likewise means that which is laid or “set down” (*setzen*) in a comparable manner. The Latin *lex* comes from *legere*, to lay, and the Greek word for law, *dike,*
The performer must also understand the moral of ordered freedom underlying the symbiotic relationship between musical structure and creative expression to render a meaningful performance of the masterworks. Quoting Goethe, who also studied jurisprudence, and Schiller, who also taught the ethical dimension of art, Schenker explains the jural wisdom of “freedom born from constraint” inherent in the nexus between music, law, and morality by posing the question, “What is freedom of performance?” He then answers:

It is the same as freedom in morality or politics. It is what freedom is in general: a highly developed constraint chosen in freedom by a mind that fully understands the material. Goethe had a notion of the complete uniformity of the concept of freedom: “Only law can give us freedom.” As did Schiller: “The harsh fetters of the law bind only the servile mind that disdains it.” Again, therefore, it is the genius who, through his own practical experience in synthesis, is also led to the concept of a freedom in performance that is born from constraint. But with mankind it is different, for people prefer to understand freedom as the antithesis of any constraint.98

The law Schenker studied for four years is in essence the art of reconciliation and the science of compromise—“the technique for the resolution of incompatibilities.”99 As the great jurist Benjamin Cardozo once wrote, “The reconciliation of the irreconcilable, the merger of antitheses, the synthesis of oppositions, these are the great problems of the law. Nomos, one might fairly say, is the child of antinomies, and is born of them in travail.”100 Great


musicians for Schenker, like great jurists, are masters of this reconciliatory synthesis between order and freedom. As the ancient Teutons, they calibrate an equilibrium, he says, a middle path between “freedom and morality” and between “right and duty,” by forsaking “reprehensible liberties,” “the lure of undisciplined freedom,” and “the caprices of vanity,” and disentangle themselves from an “immoral understanding [that would] carry their ostensibly personal rights over into art without any restriction.”

They alone recognize that “even the most boundless freedom should be secretly governed [by] constraints” and “bound by the strict discipline of a truly profound and hidden controlling force” to yield “a confluence of artistic logic and freedom.”

These rare artists reject the unbridled “freedom that wild horses possess” in favor of a genuine “freedom [that] is born from constraint”—a moral autonomy of self-limitation that paradoxically liberates as it obligates—by embracing the regimentation of the Ursatz and “negotiat[ing] the laws and rules” prescribed by music itself, for they are the “true wealth” through which they learn to command their art and become truly free.

Acting not through passive obedience to the Gesetze der Musik, but rather from conviction in the efficacy of law itself, these “masters of synthesis [are] in harmony with nature as well as with the eternal demands of art and ethics,” and thereby “gain access [to] humanity-synthesis by means of the experience forged in the synthesis of their own creations.” Only by embracing this juridical enigma of freedom within order can a gifted musician for Schenker become a great one: a “musical genius.” Only by learning the first law of music, music’s lawfulness itself, can a musician become liberated as an “artist-as-individual” (Schaffender als Einzelner). For only then does one become a creatively dis-

101 Tonwille II, p. 31; Heinrich Schenker, J. S. Bach, Chromatische Phantasie und Fuge (J. S. Bach’s Chromatic Fantasy and Fugue) (1910), trans. and ed. Hedi Siegel (New York: Longman, 1984), p. 38; Free Composition, p. 94; Tonwille II, p. 31, respectively.
102 J. S. Bach’s Chromatic Fantasy and Fugue, pp. 38, 39, 49, respectively.
104 Tonwille II, p. 31.
105 Masterwork III, p. 72. In particular, for Schenker it was the great German musical geniuses of a golden age past—Bach, Haydn, Mozart, Beethoven, and an elite handful of others—who realized their own individuality as artists and were “governed by necessity yet at the same time free.” See Tonwille II, p. 118. Imbued with the indigenous Germanic spirit of
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diciplined human being and a free spirit grounded in a rational, ethical, and aesthetic sensibility—a prophet of the Triad of the True, the Good, and the Beautiful.

Schooled in the venerable science of *juris prudentia*—what the Emperor Justinian thirteen centuries earlier called “the knowledge of things divine and human” (*jurisprudentia est divinarum atque humanarum rerum notitia*)—Schenker went on to create a jurisprudence of music reconciling law with liberty by encoding this lesson of lawful freedom through self-limitation in a partially structured system of normative constraints.¹⁰⁶ We hear it echoing the words of his teacher Georg Jellinek, “the rights of liberty rest simply upon the supremacy of the law,” and resounding in those of his students Hans Weisse, “no law without freedom, no freedom without law—this is the moral of art,” and Ernst Oster: “there exists in art, as in life, no unbridled freedom, no freedom without law.”¹⁰⁷ Schenker himself characteristically captures this juridical paradox at the heart of law and music alike—Jellinek’s “metaphysic of history”—by posing a lawyerly interrogatory: “Does the *Urlinie* signify freedom or constraint?” He pauses socratically, and then replies:

*The *Urlinie* signifies freedom in that [it] brings with it just as much constraint as man needs to escape a savage freedom he can by no means master … Creating under the irresistible constraint of the *Urlinie*, the great masters nevertheless felt completely free … To those who have only to take cognizance of the *Urlinie*, it signifies constraint alone … having fallen victim to a falsely understood freedom, [they

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¹⁰⁶ *The Institutes of Justinian*: I.1.1. There is no question Schenker studied the *Institutes*, the handbook of all European law students since the sixth century, the principal text of continental legal education, and one of the most important jural treatises ever written. This is evidenced by his reference to the “divine Roman Law” in his 1889 letter to Max Kalbeck, n. 5, *supra*. See further, Wayne Alpern, “Schenkerian Pandectism: Heinrich Schenker’s Study of Roman Law,” (unpublished manuscript, 2010).

perceive] even the most beneficial necessity as superfluous constraint. Because the *Urline* signifies freedom, it also brings the artist a tranquility unknown to those who are not free.\textsuperscript{108}

This idea of ordered freedom, like *nomos* itself, is an ancient one dating back to the Greeks. Plato compares law to the ruled lines in a notebook that guide how one may write, but not what may be written. Herodotus observes that the Greeks “are free, but not entirely free: law is for them a master”; and Cicero declares, “We are the slaves of law in order that we may be free.”\textsuperscript{109} Similar views have been expressed throughout the course of history in law and the arts as well. Schenker’s unique genius, growing perhaps from his own confluence of legal training with music, lies in his singular transformation of this venerable jurisprudential ideal into the centerpiece of a revolutionary conception of musical structure embodying the Triad of the True, the Good, and the Beautiful.

*The Grecian Urn*

The most important music theorist of the twentieth century, perhaps of all time, studied law for four years during an intellectually formative period of his life and a climactic stage in the history of jurisprudence. He was inducted as a young man into an elite caste of legal *literati*, inculcated with jural doctrines and socialized in the values of law by leading scholars and pedagogues implementing a concerted government program to revitalize the Austrian

\textsuperscript{108} *Masterwork* I, p. 110.

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intelligentsia. At the outset of this rigorous educational experience, Schenker encountered an integral theory of aesthetic, ethical, and rational monism propounded by the distinguished Viennese philosopher Robert Zimmermann, who established a cognitive correlation between beauty, virtue, and truth as triadic manifestations of the same underlying norms and principles, conjoined through the lawful operation of a unitary and universal process of judgment. The structural limitations of this conceptual organization preserve inherent aspects of indeterminacy and creativity within each of these coordinate realms of sensibility.

Zimmermann’s psychological framework was reinforced and externally projected into the structure of society by Georg Jellinek, one of the preeminent jurists of the day, to create a distinctly Germanic synthesis of ordered freedom in a community of citizens mediated by the rule of law. Jellinek’s Teutonic Rechtsstaat presented a template for Schenker’s juridification of tonality as a microcosmic system of Gesetze der Musik, establishing a comparable reconciliation between authority and autonomy in terms of structure and prolongation within a juridical community of tones. The Ursatz is a constitutional Urgesetz, the sentinel of musical order and freedom, upholding the law of their limits.

Zimmermann’s nexus between the aesthetically beautiful, the ethically good, and the rationally true provided a synaptic link for Schenker’s ultimate

110 “Like Plato, the state of music for [Schenker] was a barometer for the state itself.” [“Analog zu Plato war ihm der Zustand der Musik zugleich ein Gradmesser für den Staat selbst”]. See Federhofer, Heinrich Schenker, p. 324 (my translation). Music for Schenker, explains Nicholas Cook, “embodies the principles of a just society, but in musical form.” In Cook’s Schenker Project, p. 198. The lawful “lives of the tones” (Tonleben) for Schenker, however, do not simply mirror society but offer a remedy for social ills. “Art may be recommended to mankind as the only help in time of need,” he pleads, “the only means of reconstruction!” See Counterpoint II, p. xvii. Carl Schachter further confirms, “Schenker certainly saw relations between music and social organization[,] but mainly he viewed music as a model for an ideal society, not society as a model for music.” See Schachter, “Elephants, Crocodiles, and Beethoven: Schenker’s Politics and the Pedagogy of Schenkerian Analysis,” Theory and Practice 26 (2001): 1–19 [p. 10]. The complementary notion that lawyers should act with artistic creativity in molding society is stated in an 1864 article urging, “All lawyers in private practice should be the artists who should shape the raw material of the political, social, legal life of the nation into its ever more complete forms.” See “Die Advocatur in Preussen,” Preussische Jahrbücher 14 (1864): 424–39 [p. 431], quoted in Ledford, German Lawyers 1878–1933, p. 52.
transformation of these intellectual insights into the jurisdiction of music. Since music, mind, and morals all implicate the same inherent and irreducible categories of thought, the aesthetic individual is also the ethical and rational one; the musical creation is also a moral and logical one. The masterpiece is an aural incarnation of the aesthetic choices, ethical intuitions, and enlightened decisions of a musical genius and a superior being. Its purpose for Schenker is not simply to please, but to edify, even sanctify. The greatest music enshrines a mental and moral beauty whose lesson of lawful liberty and creative constraint teaches us not only how to listen, but how to think and act. Just like his own learned studies in the law, musical analysis for Schenker is not merely about the pragmatic application of rules and techniques, but more deeply about Bildung, the cultivation of character.\footnote{The concept of Bildung itself ideally embraces this same dialectical synthesis of private autonomy with public obligation at the core of Schenker’s juristic conception of music. See Sorkin, “The Theory and Practice of Self-Formation (Bildung),” pp. 66–69.} Properly deciphered, the musical score is a sonic scroll encoding the Triad of the True, the Good, and the Beautiful. And just like Keats’s Grecian Urn, it contains “all ye know on earth, and all ye need to know.”\footnote{Keats, “Ode on a Grecian Urn.” Few others have dared to draw favorable moral lessons from Schenker. See, for example, Nicholas Cook, who claims Schenker’s musical masterworks are “practical manuals in social understanding” demonstrating “how individual differences can be reconciled with social cohesion;” analysis is thus a means to a “better society through the balancing of apparently incommensurable demands.” See also Cook, “Heinrich Schenker, Modernist: Detail, Difference, and Analysis,” Theory and Practice 24 (1999): 91–106 [p. 101]. Elsewhere Cook maintains that “Schenker’s conception of music was fundamentally ethical rather than aesthetic.” See Cook, “Schenker’s Theory of Music as Ethics,” Journal of Musicology 7/4 (1989): 415–39 [p. 425, n. 29]. Similarly, William Pastille describes Schenkerian lessons as ones of “self-discovery, deep engagement, and responsible judgment.” See Pastille, “Music and Life: Some Lessons,” Theory and Practice 24 (1999): 117–19 (pp. 118–19).} Music theory for Schenker, like jurisprudence for the emperors of old, is truly “the knowledge of things divine and human.” It expresses his belief in the intelligibility of art and its capacity to fulfill our noblest aspirations, yet also a genuine faith in the lawful morality of the universe itself. Law for Schenker is part of the cosmic order. All that is true and good and beautiful is lawful; all that is false and bad and ugly is lawless. There is no “new” law; law is discovered, not created or enacted. Schenker’s Gesetze der Musik are morpho-
logically fixed with the permanence of transcendence. They are not up to anyone to decide or choose. They may be clarified, purified, ratified, or codified, but never nullified or replaced. They may be obscured, misunderstood, ignored, or forgotten, but never abolished or amended. The greatest composers for Schenker are lawful men, prophets and heroes unlike ordinary people, because they manifest the Triad of the True, the Good, and the Beautiful. Yet even they do not create it; nor does Schenker himself. The laws of music reveal themselves, so to speak, through their works.

Law in its earliest stages was a form of sacerdotal wisdom. Schenker’s conception of music theory as a mode of law is also imbued with a profound sense of the sacred; his moralization of music is often couched in the context not just of edification, but of redemption. “Only in creating art do humans become the true likeness of God,” he proclaims from on high. Alone among music theorists, Schenker has achieved almost sacerdotal status—praised by some, maligned by others, noble to some, ignoble to others, but by none ignored. Yet those possessing knowledge of the law, or claiming to possess such knowledge—let alone those daring to declare it—have been vilified and feared, ridiculed and revered, since the dawn of the Middle Ages.

In the last analysis, what we want from the study of music, like the study of jurisprudence, is more than greater detail, but greater perspective, and

113 It is not “possible (or even necessary) to create new laws with each new motion of hand or mouth,” Schenker asserts, and thus he professes, “I apprehended the Umlinie, I did not calculate it!” Counterpoint II, p. xvii and Masterwork II, p. 19.


through it, greater meaning. And that is precisely what Schenker attempts to deliver. He offers an integrated and prophetic conception of music, life, and the world with a systematic and coherent message rooted in a deeper sense of purpose and value. “We receive not only profound pleasure from a masterpiece,” Schenker once reflected, “but we also derive benefits in the form of a strengthening of our lives, an uplifting, and a vital exercise of the spirit—and thus achieve a heightening of our moral worth in general.” 117 Perhaps it is this, the morality of music—the seed of an ancient idea planted in the fertile mind of this musikalischen Rechtswissenschaftler in his youthful study of law—that marks its highest calling, and music’s mission to enlighten, and thereby redeem, its supreme ideal.

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117 Free Composition, p. 6.

(grave 8, row 4, group 3, gate 4 in the Jewish section of Vienna’s Zentralfriedhof) reads: “Hier ruht der die Seele der Musik vernommen, ihre Gesetze im Sinne der Großen verkündet wie keiner vor ihm.” [Here lies one who, like no other before him, understood the soul of music and proclaimed its laws in the sense of the great ones].