

Introduction: The Law of the Metal Scene

Peter Pichler

Heavy Metal is the law that keeps us all united free
A law that shatters earth and hell
Heavy Metal can't be beaten by any dynasty
We're all wizards fightin' with our spell¹

This programmatic text passage comes from the chorus of the classic Helloween song 'Heavy Metal (Is the Law)', which was released on the band's debut album *Walls of Jericho* in 1985. As its title suggests, it is a music piece that expresses what heavy metal stood for at that time for the group. The song was meant to *represent* heavy metal as its own popular culture. The band intentionally used a specific, powerful notion to unfold this lyrical representation – the notion of the law: “*Heavy Metal is the law.*”

This example of a lyrical perspective on ‘the law of the metal scene’ is only one of the many possibilities for interdisciplinary research in metal studies that the notion allows. If one understands laws broadly as *social conventions, i.e. as man-made and culturally stabilised creations of rules (of a cultural, musical, moral, religious, aesthetic, or lyrical nature, for example)*, a diverse network of possible theoretical and empirical research paths emerges that this operational definition allows. Metal culture functions according to certain social rules (for example, at concerts), which can be called laws in this sense.² The musical language of metal since the 1970s has developed its own set of conventions that can also be placed in this framework.³ The values of metal scenes, as in principle in every subcultural community, take on the forms of moral conventions that can be described according to this pattern.⁴ If one understands metal as a sphere of religion-oriented practices, for instance in the use of religious symbols on black metal clothing, conventions are also evident here that can be explored.⁵ Also, one can consider such conventions and rules in the tradition of the ‘*nomos*’ discourse in philosophy.

Such laws are the subject of the present anthology, which emerged from the discussions at a workshop held at the Institute for the Foundations of Law at the University of Graz in September 2021. It brings together a number of debate-

1 Helloween 1985.

2 For instance, see Kahn-Harris 2007; Diaz-Bone 2010, 241–321.

3 See Elflein 2010; Walser 1993.

4 Cf. Weinstein 2000, 93–144; Pichler 2020, 34.

5 See Höpflinger 2020.

oriented contributions from the core disciplines of metal studies as well as related academic disciplines, in which conventions of this kind are fundamental.⁶ As is always the case in metal studies, these discussions showed that the encounter of a multitude of different disciplinary perspectives is both the great benefit and the central challenge of working together in our field.⁷ Finding fruitful forms of interdisciplinary working and establishing them in the long term is a key goal in the current academic institutionalisation of metal research.⁸

Through the joint reflection of the contributors on an exemplary topic – *the laws of metal in the sense of social conventions* – this volume aims to take a further step towards achieving this goal. The topic is intentionally chosen as an example and conceptually delimited by the operational definition. The theme cuts across all the disciplines brought together in this anthology: philosophy of law, sociology, social ethics, religious studies, musicology, cultural history, linguistics, and aesthetics. The working definition is intended to allow a reflection of the approaches to the topic in these disciplines.

This leads to a research territory that first wants to be opened up by exploring new, interdisciplinary paths. Thus, the aim in this book is not an encyclopaedically complete survey of this territory, but a first exploration of the possibilities and limits of the interdisciplinary discussion. The subject should be illuminated from a variety of perspectives, in order to draw conclusions from this for further debates in metal studies.

The volume opens with an introductory contribution by Christian Hiebaum, who analytically measures the space of the debate in its fundamental parameters from the perspective of legal philosophy as one of the academic origin discourses of ‘law’ as a concept.

This is followed by seven individual contributions from the academic disciplines mentioned. To ensure coherence, authors were asked to structure their articles around three points. In a *first step*, the authors describe their theoretical views, which necessarily differ from each other in part strongly. Here, the focus is on the question of how the respective discipline approaches the phenomenon of the laws of metal theoretically. In a *second step*, the contributors describe their practical approaches using examples and/or empirical data that they consider paradigmatic. As a *third point*, in order to allow for discursive connections, each author formulates his or her central result for the discussion.

In his contribution, Karl Spracklen explains how the metal scene and the social rules that apply within it can be researched from a sociological perspective. He focuses on the metal scene as a component of the leisure industry in late modernity that has been economised and capitalised.

6 These are mainly legal philosophy and social ethics.

7 For survey texts and anthologies on metal studies and the state of research, see Heesch/Höpflinger 2014; Brown et al. 2016; Nohr/Schwaab 2012; Gardenour Walter et al. 2016; also, see Weinstein 2000; Walser 1993; Kahn-Harris 2007.

8 See Pichler 2020, 9; Hickam 2015.

In the following contribution by social ethicist Thomas Gremsl, the laws of the metal scene are examined from the perspective of this discipline. Using the comparative example of football as a game, he proposes a distinction between laws, values, norms, and principles.

The fourth article, by Anna-Katharina Höpflinger from the perspective of culture-oriented studies of religion, deals with dress codes in metal. It turns out that following and breaking rules always go hand in hand.

Then Charalampos Efthymiou, a musicologist, writes about the rules and laws typically found in metal songs and how they can be analysed. The analysis of the metal classic 'Breaking the Law' by Judas Priest provides him with a paradigmatic example.

This is followed by cultural historian Peter Pichler, who argues that history is primarily concerned with long-term developments in metal. The empirical case of the metal scene in the Austrian province of Styria serves as a practical example.

Linguist Riitta-Liisa Valijärvi shows how the metal scene is characterised by social conventions of a linguistic form. Linguistics makes it possible to recognise the various manifestations of language in metal in their socio-cultural meanings.

In the article by Jörg Scheller, who writes about metal from the perspective of philosophically oriented aesthetics, the focus is on classic metal of the 1980s. Aesthetics turns out to be a way of exploring a place in metal that is 'between the laws'.

A conclusion at the end of the volume, written by the editor, sums up the results of the discussion and highlights the synergies, but also the difficulties, of the debate under investigation.

All in all, the contributions in this book do not aim to 'codify' the law of metal, as Helloween demanded in their classic, but rather to discuss in an interdisciplinary way how nuanced and differentiated the exploration of the rules that apply to metal is.

References

- Brown, Andy R. et al. (Eds.) 2016: *Global Metal Music and Culture: Current Directions in Metal Studies*, New York/Abingdon: Routledge.
- Diaz-Bone, Rainer 2010: *Kulturwelt, Diskurs und Lebensstil. Eine diskurstheoretische Erweiterung der Bourdieuschen Distinktionstheorie*, Wiesbaden: Verlag für Sozialwissenschaften.
- Elflein, Dietmar 2010: *Schwermetallanalysen. Die musikalische Sprache des Heavy Metal*, Bielefeld: Transcript.
- Gardenour Walter, Brenda et al. (Eds.) 2016: *Heavy Metal Studies and Popular Culture*, Basingstoke/New York: Palgrave Macmillan.

- Heesch, Florian/Höpflinger, Anna-Katharina (Eds.) 2014: Methoden der Heavy Metal-Forschung. Interdisziplinäre Zugänge, Münster: Waxmann.
- Helloween 1985: 'Heavy Metal (Is the Law)', on *Walls of Jericho*, Berlin: Noise International.
- Hickam, Brian 2015: Amalgamated Anecdotes: Perspectives on the History of Metal Music and Culture Studies, in: *Metal Music Studies* 1 (1), 5–23.
- Höpflinger, Anna-Katharina 2020: Religiöse Codes in der Populärkultur. Kleidung der Black Metal-Szene, Baden-Baden: Nomos.
- Kahn-Harris, Keith 2007: *Extreme Metal: Music and Culture on the Edge*, Oxford/New York: Berg.
- Nohr, Rolf/Schwaab, Herbert (Eds.) 2012: *Metal Matters. Heavy Metal als Kultur und Welt*, Berlin: LIT.
- Pichler, Peter 2020: *Metal Music, Sonic Knowledge, and the Cultural Ear in Europe since 1970: A Historiographic Exploration*, Stuttgart: Franz Steiner.
- Walser, Robert 1993: *Running with the Devil: Power, Gender and Madness in Heavy Metal Music*, Hanover, CT: Wesleyan University Press.
- Weinstein, Deena 2000: *Heavy Metal: The Music and its Culture*, Boulder, CO: Da Capo Press.

Law and Its Cultural Representations (With a Focus on Heavy Metal Studies)

Christian Hiebaum

1 Introduction

Law is a constitutive part of every highly complex society. In such a society, 'lawlessness' is almost synonymous with 'anomie'. Whether we are aware of it at any given time or not, law shapes our lives significantly by constraining and incentivising actions, and even making some actions, such as entering a contract, possible in the first place. It also constitutes identities (status, roles) and protects, contributes to, or thwarts others. And it provides us with concepts and ways of reasoning about ourselves and our relationships with other people. Extending into all areas of social life (if only by granting limited liberty and autonomy to individuals, groups, or organisations), its core function, under the most general description, is to create trust, or more technically, to stabilise normative expectations under conditions of disagreement (especially moral disagreement) and conflicting interests.¹ As an institution that defines and allocates rights and duties, law makes up for some of our cognitive and motivational shortcomings, thus solving or mitigating social problems. But it may also cause or aggravate problems by producing inequality that undermines social cooperation. It can be, and in fact is, used for the protection of the weak and vulnerable as well as for committing atrocious crimes against humanity.

Since law is such a sweeping and multifaceted phenomenon it lends itself to a huge variety of types of analyses. Accordingly (and fortunately), it's not only dealt with by lawyers and legal scholars, but also by philosophers, historians, economists, social scientists, cultural theorists, psychologists, and theologians, even, as this volume shows, by musicologists.² Some of them focus on the conceptualisation, evaluation and explanation of law itself (including its consequences), while others are more interested in cultural images of law, regardless of how well these images reflect the actually existing law or the 'nature of law'. Obviously, there is a connection between the two different levels of analyses, i.e.

1 See Luhmann 2004.

2 What is more, I wouldn't be too surprised to learn (actually, I'm pretty sure) that there already exists an academic field called 'neurojurisprudence', analogous to neuroeconomics.

between law and its cultural representations. For law, as a social entity, is ontologically subjective.³ It depends on what we collectively think and do: it is a 'discursive construction'.

In contrast to ontologically objective entities like planets, mountains, and atoms, if nobody cared about the law it would not exist. In a sense, not only does law *depend* for its existence on our thoughts and practices, it *exists by being thought and done*.⁴ Thus, it could be different or even non-existent, depending, to be sure, not on each of us individually, but on us together. It is historically contingent. Not every society in the history of mankind had a legal system, or needed one for its existence or flourishing, let alone law as we know it from modern society.

Though this chapter is about the intersection between law and thought or talk *about* law, I want to clear away one misunderstanding right at the beginning. It is an understanding suggested by, or sometimes justified with reference to, certain theories of the capital-T variety⁵ that still seem popular in the field of cultural studies: the claim that since social entities like the law are contingent cultural-discursive constructions, intervening in cultural discourse necessarily alters its object (and is therefore necessarily a serious political activity). This claim is false. From the fact that law cannot exist outside of some sort of 'text' about law (including pictures and imaginations) that can be characterised as a cultural-discursive construction it does not follow that the law changes with every shift in cultural discourse about it. Not all representations are created equal. Everything depends on the type of representation and on who is doing, whether consciously or unconsciously, the representing. For example, representations of law within subcultures such as the metal culture use to have, if any at all, considerably less or less immediate impact on actual law itself⁶ than the representations common in those social milieus out of which the most prominent personnel of the legal system (lawyers, judges, administrative officials, and law professors) are recruited. Even less so are textual, visual, and sonic representations within popular culture *constitutive* of law. Conversely, cultural representations of law within a population can be expected to vary according to kind and degree of familiarity with the workings and the functioning (or dysfunctionality) of a given legal system. In short, there is no direct, let alone short, path from social-ontological generalities to empirical and cultural specifics and back.

3 Searle 1995.

4 Somek 2021.

5 See Patai/Corral 2005.

6 Let alone that the impact is harder if not impossible to establish through empirical research (as opposed to be more or less plausibly speculated about).

This volume is about law and heavy metal culture. However, as a legal philosopher and legal sociologist appreciating a variety of pop- and subcultural genres of music such as postpunk, dub, and rap,⁷ but without any real metal expertise, I don't have much to say about the details of the relationship between metal (its social scenes and music) and the law. Therefore, I shall restrict myself to some conceptual clarification and to highlighting a few dimensions and aspects of such *types* of relationship, thus providing little more than a rough map of law and heavy metal as a multi- or interdisciplinary field of study, yet ultimately of any 'law and x' field of study with 'x' as a placeholder for a subcultural entity *like* heavy metal.

First, I'll say a bit more about what law is in its essence, i.e. irrespective of how it is represented or referred to in pieces of art, and how law contributes to the existence, persistence, and development of subcultures. In addition, I shall point to a link between scholarly discourses about the law itself and its representations in pop culture (as well as analyses of such representations): the fact that the concept of law is part of a whole family of concepts organising our thoughts and practices (2). Then I turn to 'culture' focusing on those concepts and possible aspects of culture particularly relevant to the study of social subgroups and their artistic expressions (3). After hopefully having thinned out the fog characteristic of much of contemporary culture talk, we should be in a position to better understand cultural representations of law which come in two types: representations produced by, so to speak, the law itself, and representations outside the legal system by, for example, producers of literature, music, films, etc. (4). I conclude with (a replication of) a list of topics that, at least to me, an interested outsider, define law and heavy metal studies (5).

2 Law

'What is law and how does it relate to morality?' is the first question of jurisprudence and still – perhaps surprisingly to many non-philosophers and non-lawyers given the ordinariness and long history of law – hotly debated among positivists and non-positivists. Yet, whatever the precise nature of law and the details of the relationship between law and morality may be, not even positivists who deny that the validity of legal norms necessarily depends on the moral quality of their content (such that we cannot be legally bound by massively immoral rules or that some norms are legal norms just by virtue of their content) deny that it is a close relationship. They readily accept that law is a proper object of

7 As a matter of biographical fact, my interest in philosophy, sociology, and cultural theory was sparked by subcultural pop music and pop music theory, including quite a bit of capital-T theory I now consider 'bullshit' (in the sense of Cohen 2013).

moral evaluation (in fact, they claim, that to be such an object it has to be distinct from morality), that it has moral functions, and that positive law often does not determine decisions so that judges are forced to make use of moral judgement, their sense of equity. On the other hand, non-positivists who assume a necessary connection between morality and the legal validity of norms do not deny that particular legal systems are not just creatures of reason, let alone a god, but also, or rather primarily, of human authority and custom. Thus, even if, as non-positivist legal theorists claim, social facts are not all there is to law, i.e. even if law also includes moral principles that are not reducible to what people (contingently) believe or accept, everybody agrees that existing law is a social institution. What's controversial in jurisprudence is whether it is *just* that.

For the purposes of this chapter, we do not have to dive into the nowadays extremely sophisticated, at times even rather scholastic, controversy about the nature of law.⁸ Instead, we may proceed from the concept of law proposed by Peter Koller, as it makes explicit what seems to be common ground between positivists and non-positivists as well as between the rest of us outside of academia:

“The law is a collective social practice aiming at the provision of generally binding social norms, a practice which is characterised by the following features: (1) it includes authorised power represented by agents who are deemed to be empowered to create and/or apply its norms; (2) it is backed by organised force, i.e., its norms may be enforced by authorised people in a determined way; and (3) it entails a two-sided claim to legitimacy, laid on the part of its authorities on the one hand and on the part of its addressees on the other.”⁹

The features (1) and (2) distinguish law from other systems of social norms, such as mere conventions, while (3) distinguishes law from orders which virtually nobody believes to consist of *binding* norms as opposed to rules backed by nothing but brute force. In addition to being minimally effective, i.e. influencing behaviour, legal systems as systems of binding norms depend on their being held to be legitimate by a majority or a sufficiently powerful minority within the respective community.

(3) can be further elaborated in more positivist or more non- or post-positivist ways, from different, yet entangled perspectives: the perspectives of mere observers (e.g. sociologists, political scientists, and historians), of participants (ordinary addressees of legal norms, lawyers, officials, legal scholars), and of lawmakers (everybody thinking about the value of existing law and how the law should be). What should be clear, though, is that norms, in order to be legally binding, do not have to be considered morally ideal, let alone *be* ideal (if there is such a thing as objective moral idealness). Sometimes we have good moral reasons to ignore legal duties without doubting that the system imposing them is

⁸ Just see Murphy/Coleman 1990, ch. 1; Finnis 2002; Bix 2002; Marmor 2002; Himma 2002.

⁹ Koller 2006, 192.

sufficiently legitimate if only because of the absence of available better alternatives. Sometimes we may even have a moral *duty* not to comply with the law. Most of all, my own moral-political conception of legitimacy, philosophically well-grounded as it may be, does not determine whether I am legally bound by norms.

Put differently, and perhaps better: in any remotely plausible view of legitimacy, much depends on what the others believe and believe others to believe. Hence, despite the legitimacy condition, in contrast to morality, law is a system of heteronomous norms. This is also true of perfectly democratic law. On the other hand, the fact that I am legally *bound* to act in a certain way, more often than not, is only *one* reason to act in this way, and not necessarily the decisive reason. We need not cease to act strategically or be motivated by moral beliefs once it is clear what the law requires us to do. We often comply with the law mainly because we don't want to bear the costs of noncompliance (sanctions and other legal consequences) or have independent moral reasons to fulfil our legal duties (e.g. to keep a promise that has created a contractual obligation). And I suppose, equally often we do *not* comply and more or less rationally take the risk of being sanctioned without disputing the bindingness of the law (just think of speed limits).

Now, such an abstract *concept* of law, though in a sense fundamental, doesn't do much for the social and cultural study of heavy metal. It only ensures that we talk about roughly the same thing when we refer to 'law'. It makes clear that we are not dealing with 'law' in the purely causal sense (e.g. laws of nature), the laws of logical inference and rational thinking, the moral law, or rules of art genres, but with a particular type of social institution, relying on, but also distinct from customs and conventions, let alone mere social regularities. Moreover, the concept of law presented above is abstract enough to suggest that a particular legal system is never *by nature* what it is or appears to be at a given time in a given place. The legal order can be liberal, authoritarian, bourgeois, socialist, or even the materialisation of some sort of anarchy (as opposed to anomie).

What is more relevant to 'legal heavy metal studies' as done by sociologists, cultural analysts, and historians than analyses of the concept of law are *conceptions* of law.¹⁰ For conceptions provide us with more details. They may be (i) conceptions of law as it *actually exists* (conceptions of the structures and contents of legal systems and legal reasoning in general and conceptions of particular legal systems or subsystems such as Austrian criminal law, German civil law, or U.S. constitutional law) or (ii) political conceptions of what the law *should be*, how it should organise social life including its own production and enforcement, i.e. conceptions we rely on when evaluating (criticising or justifying) the given law or proposing reforms.

10 For a famous, though not uncontroversial distinction between concepts and conceptions of law, see Dworkin 1986, 90–96.

As far as they are empirically adequate, that is, fit actually existing law, conceptions of type (i) contribute to the explanation of how subcultures and genres of subcultural art emerge and develop. Law does or does not constitute and protect liberties of association, artistic expression, and intellectual property rights, thus influencing social interactions as well as the (re-)production and spread of artistic styles. It may facilitate subcultural scene-building and scene activities¹¹ or, on the contrary, make them more difficult and unlikely or, by arousing counter-cultural passion, make them riskier and more likely at the same time. It may foster or hinder artistic innovation, and it may foster or hinder the codification of styles and the establishment of genres and subgenres. It goes without saying, however, that law is only one factor, beside technology, levels of education, religion, political culture, the media landscape, etc., to be taken account of in a full explanation of subcultural phenomena, and probably often not the most important one.

Conceptions of type (ii) should also have a place in metal studies, as an *explanans* as well as an *explanandum*. References to law in metal music (including album covers, flyers, clothing, hair styling, dancing, and gesturing) express or are inspired by political conceptions of law. Those usually somewhat vague conceptions may be critical or uncritical of existing law or just utopian or dystopian fantasies of empires and order that are not supposed to be taken as serious comments about the law as it exists or should exist. On the other hand, subcultural activities and music (again, in the broadest sense) can influence political conceptions of law held by the members of the subcultural scene. But they can also have an impact on the conceptions held by outsiders that may find themselves irritated and their own moral-political commitments challenged. As a consequence, such commitments, most notably commitments to the rule of law and to tolerance in the form of equal liberty rights, may be sharpened or qualified, strengthened, or weakened.¹² Such consequences can be explained by a variety of social and psychological mechanisms. Though there are no strict laws (in the causal sense), what the mechanisms are and under which conditions which one is more likely to be triggered than the others seems to be a worthwhile subject of law-related heavy metal studies.

The content of both type (i) and type (ii) conceptions of law can only be determined by thinking about some other phenomena and values. Inevitably we make use, either explicitly or implicitly, of an array of political concepts and

11 For examples see Pichler 2021.

12 What is more, commitment to liberal principles can also be caused by legal repression of subcultural activities. If, for example, young metalheads get into trouble with the law, their loving, but bourgeois and until then politically quite reactionary parents, though still abhorring metal culture, may suddenly discover the value of liberal principles (thinking “heavy metal is awful and immoral, but none of the state’s business”) and thenceforth hold them high for non-strategic reasons, as part of their new moral-political identity.