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Tacit Consent Civil Disobedience

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Tacit Consent and Civil Disobedience

Abstract

Referring back to the (juridical) cases of Socrates (in Athens) and Thoreau (in Concord), which both discuss dissent, Hannah Arendt's essay "Civil Disobedience" elaborates on the question of a strict distinction or complicity between a single person's moral decisions, and its participation, as member of a group, in political decision-making. How to approach the relation between morals and politics, ethics and jurisdiction; or, still otherwise, between *Polis* and *Ethos*, both words pointing (in different ways) towards places or sites? Both these *topoi* turn out to be linguistically determined through and through, constantly haunted by the question of how to speak (or not to speak), of how to listen (in order to obey or disobey, to consent or dissent) to what the laws do have to say (though not speaking at all). At the core of this tense and obscure *paralinguistic* relation to the (moral and juridical) law, between express and tacit consent (or dissent), silence and speech (or silence *as* speech), language and mutism, phasis and aphasia, lies the notion of *homología*, as discussed by Socrates in Plato's dialogues *Crito* and *Gorgias* (to which Arendt's essay constantly refers). This contribution takes on the Platonic notion of *homología* (as a promise of consent about a law's content), and its relation to Hannah Arendt's original and challenging version of the political and juridical notion of *tacit consent*, as discussed in "Civil Disobedience."

Keywords

Private and public ears, civil disobedience (in Thoreau and Arendt on Thoreau), two prisoners (Socrates in Athens; Thoreau in Concord), Pilate (in Arendt and Eichmann), Plato (*Crito*, *Gorgias*), *homología* (in Plato), tacit consent (in Arendt).

[...] wenn ich nur euer Ohr finden kann. [...]
ach könnte ich nur das Ohr der Fürsten finden [...].
Jakob Michael Reinhold Lenz, *Über die Soldatenehen*

Listen to your ears! How to obey, how not to obey such an order, prayer, or command, hesitating between determination and despair? Up to what point are these my own private ears (an *idiot's* ears, as they would have said in Ancient Greece)? Up to what point are those ears part of, or participating in, a public sphere? Public ears? Where exactly do I draw the line and distinguish between private and public hearings when it comes to listening to my ears?

Listen to your ears! How to obey, how not to obey—or disobey—to what I hear with my own ears? (But do I *own* them?) And how to listen—*here*—to the one word *obedience*—or disobedience—in private or public, with my private or my public ears, if such a distinction can be made (and maintained) at all? What if the belief in a strict distinction between *idiot* and *politician*, between private and public ears (private and public *words*), remains the effect of sheer rumor, or *hearsay*? Especially in the case of the one word *obedience*—or *disobedience*. For both words seem to turn around the question of how to listen to, in order to agree (or disagree) with; in order to consent or to dissent to what just has been said, with what has hit my ears. When approaching the word *obedience* with your ears, you will still hear traces or resonances of its Latin origins: *ob-audire*, to literally *subject* (myself) to what I hear, to listen to my ears and to *obey* or *disobey* what they hear; to agree or disagree with what my ears seem to collect or recollect, seem to connect with or to disconnect from, as a meaningful or meaningless, public or private utterance. The particle *ey* in the English verb *obey*, the particle *éir* in the French verb *obéir* are echoes of *audire*, on the brink of sighs or cries of despair.

The sigh, or cry (as if of despair), returning from inside the verb *obey* (and *disobey*) may have to do with the threat or promise of a certain indistinction between not only my public and my private ears, but between inner voices and voices coming or calling from outside. How to distinguish, with the help of my ears, but also lost inside their labyrinth, left abandoned without help; how to distinguish voices that seem to return

from inside myself and call me up before some inner *moral court*, *in foro conscientiae*, to justify my acts of disobedience from outside voices, voices from the so-called public sphere, the quintessence of which seems to be condensed into the voice of the *law*, or into the law as *voice*, that is into an (anonymous) voice calling me up, *in the name of the law*, before some public *legal court*, *in foro iurisdictionis*, to justify my acts of disobedience? Now, imagine the unimaginable: a situation in which a rumor has reached my ears, that the voice of the law has got lost, that I can no longer hear its voice, that the law is dead. How to listen to such a sentence in such a situation: “The law is dead”? How to reach out to and obey its meaning? How to disagree, how not to disagree with it? Is there still a *law* at work inside such a sentence, dictating how to listen to this: that “The law is dead”? But how to listen to a law returning from inside the sentence “The law is dead,” commanding how to listen to and understand this very sentence? Are there voices (returning) from beyond the grave (inside a sentence)? Does to say “The law is dead” mean that a law has died and will be replaced by another, newborn, living law? Does the sentence suggest that the law has two bodies, by saying something like: *La Loi est morte, vive la Loi*? Or does the sentence mean to say that this is no longer about the life and death of particular laws, nor of the law in general, but that this is the end of the belief in living and dead laws, in laws as alive or dead, the end of a certain anthropomorphization of the law, for the origin of believing in laws as living or dead entities has been detected as an effect of rhetorical machination: of *prosopopoeia*? But what exactly does remain behind the face or mask when it is said, “Face this: laws don’t have faces?” (Nor voices). And obey...

This is the particular situation in which Hannah Arendt found herself in the spring of 1970 in New York City, when the Bar Association of the City of New York celebrated its centennial with a symposium on the question “Is the law dead?” In the opening sentence of the preface to her own contribution to the symposium, published for the first time in a first version, in the September issue 1970 of *The New Yorker* under the title “Civil Disobedience,” Hannah Arendt calls this a “rather dismal question” (Arendt 1970: 70). She receives or reads the question “Is the law dead?” less with her eyes but rather, listening to it with her ears, as a *cry*. For she continues, not in *The New Yorker*, and not in a slightly expanded version, part of a volume collecting the contributions to the symposium (Arendt 1972a), but in a third version of her contribution, published two years later in 1972, in a volume entitled *Crises of the Republic* (echoing “cries”...), as if the question had taken its time to turn in Hannah Arendt’s ears into something else, to return from inside her ears, from inside the question—almost *tacitly*—as a *cry*: “It would be interesting to know what precisely inspired this cry of despair” (Arendt 1972b: 51). No less interesting would it be to find out why Hannah Arendt (however belatedly) received and (almost ironically) obeyed to this question as a *cry of despair*. From the

beginning of the essay, everything seems to be about *listening*, about the distinction between a public and a private ear—which would imply some *third ear*, listening for the distinction between those two; from the beginning everything seems to be about how to distinguish between obedience and disobedience, how to relate and respond to voices returning from some inner or outside *court* or *forum*, whether we call it the *ethical* or *political*. At stake in both cases are laws and their voice—be it the voice of conscience or that of the Athenian laws. Arendt’s essay, “Civil Disobedience,” is composed as a series of remarks, responding to the first of two questions or topics from the call for papers, back before the symposium: to discuss “the citizen’s moral relation to the law in a society of consent” (Arendt 1972b: 51).

This call, or question, to which Hannah Arendt responds in her essay refers back to a peculiar dual system of law in the United States, permitting “the possibility that state law will be inconsistent with federal law” (Arendt 1972b: 53). For Arendt, this duality (law versus law) “has given rise to a strange and [...] not altogether happy theoretical marriage of morality and legality, conscience and the law of the land” (Arendt 1972b: 52). Her first incisive gesture in “Civil Disobedience” is to divorce the married couple and to strictly distinguish between *moral* and *civil* disobedience. According to her, there is discord or disobedience between moral and civil disobedience. You should not allow yourself to couple them. *Disobedience* seems not to obey one single, individual meaning, but to disobey (from before the beginning)—depending on how you listen to the word—*itself*. From the outset of Arendt’s essay, this first distinction is coupled, one might say, with another, no less incisive separation: moral disobedience remains limited to a single individual, whereas civil disobedience implies more than one, a group of some or many to which each individual belongs as a *member*. (Whether such a group in its turn may take the shape of an *individual* or *para-individual body*—politics—remains an open question.) As distinct and incompatible as they may appear, the individual conscientious objectors and the group of civil disobedients, they do share the experience of *listening to voices* (trying to obey or disobey, to agree or disagree with what these voices seem to mean to say, with what the one and the many hear); be that a (tacit) call of conscience, returning from inside myself, or the provocation of a concerted action that springs “from an agreement with each other” (Arendt 1972b: 56) among all *individual members* of a group of civil disobedients, listening to one another. About the distinction between the single individual and the same individual, now split-up, separated from itself, and considered a part, or *member*, of a group, Arendt (near the end of the preface to her essay) is as clear-cut as possible: “[...] the civil disobedient [...] never exists as a single individual; he can function and survive only as a member of a group. [...] we must distinguish between conscientious objectors and civil disobedients” (Arendt 1972b: 55–56). But who exactly is the one—sketching here the

strange position of a *third*—to appear *as* a single individual as well as a member of a group? Who is the one sharing—or coupling (in a monstrous marriage)—divisibility and indivisibility *at once*? Or has this *one* never been one, one and the *same*?

Not one single individual, but two emblematic examples, *images* or names, Hannah Arendt reminds us from the outset of her essay, have travelled the centuries, each one embodying a strange marriage (or divorce) of moral and civil disobedience. What an odd couple: Thoreau and Socrates! “[...] two famous men in prison—Socrates in Athens, and Thoreau, in Concord” (Arendt 1972b: 51). What they share is a prison cell they never shared, separate from each other in time and space. But both men found themselves in prison because of what they seem to share: disagreement with, disobedience of (or so it seems) the law. Hannah Arendt reconsiders both their cases, reopening both files, looking at texts and records, to find both men excluded from the group of civil disobedients. They remain separate. What leads up to this judgment or verdict in Arendt’s essay are highly selective readings, a couple of *dissecta membra* from both files, that is from Thoreau’s “Resistance to Civil Government” (1973), and Socrates as portrayed in Plato’s *Gorgias* and *Crito*. In what follows, I re-approach Arendt’s rereadings, here and there, to help reopen and leave both cases open, to not again suture up both textual bodies, to invite future readings and rereadings, and to suspend a final judgment—on disobedience to civil disobedience. Near the end of my contribution, I will risk a couple of remarks—in view of another opening—on Hannah Arendt’s fascinating discussion of *tacit consent*.

The judgment on Thoreau comes early on in Arendt’s essay, in a troublesome passage where Arendt in a strange gesture cuts the name or *term* of *civil disobedience* out of Thoreau’s text declaring it “part of our political vocabulary,” but also pointing out that Thoreau “argued his case not on the ground of a *citizen’s* moral relation to the law, but on the ground of individual conscience.” This is the passage: “[Thoreau] protested against the injustice of the laws themselves. The trouble with this example is that in ‘On the Duty of Civil Disobedience,’ the famous essay that grew out of the incident and made the term ‘civil disobedience’ part of our political vocabulary, he argued his case not on the ground of a *citizen’s* moral relation to the law, but on the ground of individual conscience” (Arendt 1972b: 60). The verdict is clear: the famous term of *civil disobedience* is misleading, for Thoreau’s disobedience was not *political* but resulted from his “conscience’s moral obligation.” In the end, Thoreau not only remains excluded from the term *civil disobedience*, associated with his name, but also dispossessed. For he never published the famous essay under the title Hannah Arendt suggests: “On the Duty of Civil Disobedience.” When Thoreau first published his essay, its title was “Resistance to Civil Government”; only after his death was it republished by his sister as “Civil Disobedience,” which Arendt made the title of her own essay, leaving open

whether she intended to simply quote or to correct Thoreau's—misleading—use of the term *civil disobedience*. When listening to both titles, “Resistance to Civil Government” and “Civil Disobedience,” one could be tempted to cut the term *civil disobedience* in two and read: *disobedience to civil government*; or, even more disturbing (on the brink of *civil war*): *civil disobedience to civil government*. The resistance to paying his poll tax, in order to not support a government that permitted, and even promoted slavery, was—and this is Hannah Arendt's verdict—not a *political* act, but happened “on the ground of individual conscience” (Arendt 1972b: 60). This ground, though, is shaky. The quintessence of an individual's *moral* concern, in contrast to a citizen's *political* concern, according to Hannah Arendt, is this: “[Conscience] trembles for the individual self and its integrity” (Arendt 1972b: 61). Arendt quotes from Thoreau's essay in order to support her plea for Thoreau's moral, not political disobedience. This is her first quotation: “It is not a man's duty, as a matter of course, to devote himself to the eradication of any, even the most enormous, wrong; he may still properly have other concerns to engage him; but it is his duty, at least, to wash his hands of it, and, if he gives it no thought longer, not to give it practically his support.” And Arendt repeats the turn of phrase *to wash his hands of it* verbatim in what follows: “Thoreau did not pretend that a man's washing his hands of it would make the world better or that a man had any obligation to do so” (Arendt 1972b: 60). This gesture, though—*to wash his hands of it*—is not indifferent or innocent, and Thoreau did not invent it, but comes up here and quotes (without quotation marks) the most overdetermined gesture between theology and politics known to the Western tradition. Further down in her essay, Hannah Arendt will quote from Shakespeare's *Richard III*. In this play's first act, Shakespeare has a *Second Murderer* say this: “A bloody deed, and desperately dispatched! / How fain, like Pilate, would I wash my hands / Of this most grievous, guilty murder done!” (Shakespeare 1997: 538). Pilate's washing his hands of it is not a scene *in foro conscientiae* but a public gesture (mixing political, theological, and juridical implications). In The Gospel According to St. Matthew, from which Shakespeare, Thoreau, and Hannah Arendt (tacitly) quote (without saying so), it is said: “When Pilate saw that he could prevail nothing, but that rather a tumult was made, he took water, and washed his hands before the multitude [*coram populo; vor dem Volk*], saying, I am innocent of the blood of this just person” (Matt. 27:24). Pilate, by washing his hands of it, leaves the juridical case he was supposed to close by pronouncing a judgment open. He turns into the paradoxical figure of a judge who *publicly* refuses to judge, disrupting the juridical scene and machine he was supposed to represent, to be and function as a part of, irreversibly. Pilate, by washing his hands of it, puts his hands into the executing machine of Roman Law, causing a shudder, if not a friction, *counter-friction*, and bringing the machine (although it will continue to work) to a halt. In a famous gesture of resistance to celestial

government, Pilate, at one point during the interrogation, hears Jesus say (as told by *The Gospel According to St. John*): “Thou sayest that I am a king. To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice” (John 18: 3–38). But instead of listening to and obeying Jesus’ words, Pilate seems to listen to his own ears, as if they had failed to deliver the truth about truth, asking: “What is truth?”

Pilate

The specter of Pilate washing his hands in innocence (or water), linked to the question of the *oral* character of conscience and law, and to the undecidability between identity, unequivocity, and ambiguity of the *voice* of law (and conscience), already haunted Hannah Arendt’s book *Eichmann in Jerusalem. Report on the Banality of Evil* (2006 [1963]). The three core chapters (7–9) of *Report on the Banality of Evil* refer back to Pontius Pilate’s gesture through Eichmann’s repeatedly reported (hallucinatory) identification, at the moment of the Wannsee Conference, with (in his words) “a kind of Pontius Pilate feeling, for I felt free of all guilt” (Arendt 2006 [1963]: 114).¹ At this point of her report, which in the first sentence of chapter 7 (“The Wannsee Conference, or Pontius Pilate”) she calls “My report on Eichmann’s conscience” (Arendt 2006 [1963]: 112), Arendt recalls the day of the (so-called) Wannsee Conference where the finalization of the so-called Final Solution, the last tuning, so to say, of (in Arendt’s words) the *extermination machinery* took place, from Eichmann’s perspective: “Now he could see with his own eyes and hear with his own ears that not only Hitler, not only Heydrich or the ‘sphinx’ Müller, not just the S.S. or the Party, but the élite of the good old Civil Service were vying and fighting with each other for the honor of taking the lead in these ‘bloody’ matters. ‘At that moment, I sensed a kind of Pontius Pilate feeling, for I felt free of all guilt’” (Arendt 2006 [1963]: 114). Eichmann, at this moment, identifying less with Pilate than with *einer Art Pilatusscher Zufriedenheit*, seems to compare them all—Hitler, Heydrich, Müller, the S.S., the Party, and “the élite of the good old Civil Service”—with the crowd of Jews yelling at Pilate to turn Jesus over, thus tacitly counting himself as a (silent or mute) member among that crowd, and implicitly turning Jesus into the personification of the European Jews (soon to be, according to the Wannsee consent, exterminated), leaving the place of Pilate empty. Although Arendt repeatedly, and ironically, in the opening sentences of chapters 8 and 9, reminds us of Eichmann feeling like Pontius Pilate—

¹ See also the remarks on Eichmann’s (refusal of) identification with Pontius Pilate in Stangneth (2014: 216, 223, 281).

chapter 8: “So Eichmann’s opportunities for feeling like Pontius Pilate were many, and as the months and years went by, he lost the need to feel anything at all” (Arendt 2006 [1963]: 135); chapter 9: “Between the Wannsee Conference in January, 1942, when Eichmann felt like Pontius Pilate and washed his hands in innocence, and Himmler’s orders in the summer and fall of 1944, when behind Hitler’s back the Final Solution was abandoned as though the massacres had been nothing but a regrettable mistake, Eichmann was troubled by no questions of conscience” (Arendt 2006 [1963]: 151)—she leaves the discussion of possible juridical, theological, and political implications in Pilate’s gesture, of washing his hands of it, untouched. Her focus, instead, is on “the case of the conscience of Adolf Eichmann” (Arendt 2006 [1963]: 149). In other words, on (hearing, and listening to, or not) the *voice* of conscience (and law). But Arendt’s approach to this *vocal* character of law and conscience remains no less reserved than her reservation to take a closer look at Pontius Pilate’s gesture, *coram populo*, of abstaining from judging the case in question. Taking up on the question of how to listen to the voice of conscience or, more precisely, to have the voice of conscience challenged and changed by listening *to voices from outside*, Arendt writes:

His [Eichmann’s] conscience was indeed set at rest when he saw the zeal and eagerness with which “good society” everywhere reacted as he did. He did not need to “close his ears to the voice of conscience,” as the judgment has it, not because he had none, but because his conscience spoke with a “respectable voice,” with the voice of respectable society around him. / That there were no voices from the outside to arouse his conscience was one of Eichmann’s points, and it was the task of the prosecution that this was not so, that there were voices he could have listened to, and that, anyhow, he had done his work with a zeal far beyond the call of duty. Which turned out to be true enough, except that, strange as it may appear [*so merkwürdig das klingen mag*, in the German translation], his murderous zeal was not altogether unconnected with the ambiguity in the voices of those who at one time or another tried to restrain him (Arendt 2006 [1963]: 126).

And further down: “Clearly, the story of the ‘mitigators’ in Hitler’s office belongs among the postwar fairy tales, and we can dismiss them, too, as voices that might possibly have reached Eichmann’s conscience. / The question of these voices became serious, in Jerusalem, with the appearance in court of Probst Heinrich Grüber, a Protestant minister [...]” (Arendt 2006 [1963]: 129). Grüber, the personification of one among those ambiguous outside voices, was unable to appeal to Eichmann’s conscience, for his *voice* had already been compromised, contaminated by Nazi ideology: unable to challenge the one voice, Hitler’s voice, which, for Eichmann, had become the voice of the law:

In Jerusalem, confronted with documentary proof of his extraordinary loyalty to Hitler and the Führer's order, Eichmann tried a number of times to explain that during the Third Reich "the Führer's words had the force of law" (*Führerworte haben Gesetzeskraft*), which meant, among other things, that if the order came directly from Hitler it did not have to be in writing. He tried to explain that this was why he had never asked for a written order from Hitler (no such document relating to the Final Solution has ever been found; probably it never existed), but had demanded to see a written order from Himmler. To be sure, this was a fantastic state of affairs, and whole libraries of very "learned" juridical comment have been written, all demonstrating that the Führer's words, his oral pronouncements, were the basic law of the land. Within this "legal" framework, every order contrary in letter or spirit to a word spoken by Hitler was, by definition, unlawful [...]. The extensive literature on the subject usually supports its case with the common equivocal meaning of the word "law," which in this context means sometimes the law of the land—that is, posited, positive law—and sometimes the law that supposedly speaks in all men's hearts with an identical voice. Practically speaking, however, orders to be disobeyed must be 'manifestly unlawful' and unlawfulness must "fly like a black flag above [them] as a warning reading: <Prohibited!>"—as the judgment pointed out. And in a criminal regime this "black flag" with its "warning sign" flies as "manifestly" above what normally is a lawful order—for instance, not to kill innocent people just because they happen to be Jews—as it flies above a criminal order under normal circumstances. To fall back on an unequivocal voice of conscience—or, in the even vaguer language of the jurists, on a "general sentiment of humanity" [...].—not only begs the question, it signifies a deliberate refusal to take notice of the central moral, legal, and political phenomena of our century (Arendt 2006 [1963]: 148).

In this passage Arendt points out, as unequivocally as possible, that to question the supposedly *identical voice of the law* (whether natural or positive, posited), and the supposedly *unequivocal voice of conscience* is among if not *the* central moral, legal, and political task "of our century." But she leaves the question of the origin and elements of such a *voice* (of law, or conscience), as well as this other question, intimately linked to the first, of how to distinguish between *the letter and spirit* of a word spoken, untouched. Arendt's last remark, in *Eichmann in Jerusalem*, on the relation between a *voice* of law and *voice* of conscience, tacitly folds the question of tacit consent into the core of such voices: "And just as the law in civilized countries assumes [the German translation, authorized by Arendt, has "*tacitly* assumes": "von der *stillschweigenden* Annahme ausgeht"] that the voice of conscience tells everybody 'Thou shalt not kill,' even though man's natural desires and inclinations may at times be murderous, so the law of Hitler's land demanded that the voice of conscience tell everybody:

“Thou shalt kill’...” (Arendt 2006 [1963]: 150). This last remark (tacitly) touches upon a strange complicity between *tacit consent* and (dis)obedience, whether civil or not, as if (silently) asking to listen to what remains silent (or silenced) in voices (of law) telling voices (of conscience) to tell everybody...

Arendt continues to quote from Thoreau’s essay, but the fragments she extracts are less and less coherent syntactical periods, they spring from more and more incisive (but tacit) interventions, as if she had risked putting her hands into the textual machine—one might say—of Thoreau’s essay, isolating *dissecta*—textual—*membra* and prosthetically inserting them into her sentences (leading towards a final sentence). Thoreau, she writes, “did not pretend that a man’s washing his hands of it would make the world better or that a man had any obligation to do so. He”—and now she quotes—“came into this world not chiefly to make this a good place to live in, but to live in it, be it good or bad.” Commenting on this quote, she continues: “Indeed, this is how we all come into the world—lucky if the world and the part of it we arrive in is a good place to live in at the time of our arrival, or at least a place where the wrongs committed are not”—and she quotes again—“of such a nature that it requires you to be the agent of injustice to another’.” “For only if this is the case,” she continues, and ends the sentence with another (incisive) quotation from Thoreau, “then, I say, break the law’.” Followed by this conclusion, in Arendt’s words, reconfirming her verdict on Thoreau’s case: “And Thoreau was right: individual conscience requires nothing more” (Arendt 1972b: 60). The last two truncated citations from Thoreau’s essay in Arendt’s essay are not concerned, though, as Arendt suggests, with a pre-ethical and pre-political existence of humans as living beings in the world, but Thoreau’s essay is dealing in this passage with “the machine of government” (Thoreau 1973: 73). When Arendt writes: “Indeed, this is how we all come into the world—lucky if the world and the part of it we arrive in is a good place to live in at the time of our arrival, or at least a place where the wrongs committed are not,” and continues and ends the sentence by quoting Thoreau: “of such a nature that it requires you to be the agent of injustice to another” (Arendt 1972b: 60), the pronoun *it* from inside the Thoreau-quotation hangs in the air, *it* no longer serves the syntactical machine, for the plural *wrongs* which Arendt uses, (tacitly) replaces the singular *injustice* in Thoreau’s text, to which the pronoun *it* refers. This passage in Thoreau is not dealing with moral issues, but with the frictions of a political-judicial machine, and with the need, at times, for counter frictions: “If the injustice is part of the necessary friction of the machine of government, let it go, let it go: perchance it will wear smooth,—certainly the machine will wear out. If the injustice has a spring, or a pulley, or a rope, or a crank, exclusively for itself, then perhaps you may consider whether the remedy will not be worse than the evil; but if it is of such a nature that it requires you to be the agent of injustice to another, then, I say, break the

law” (Thoreau 1973: 73). And Arendt draws the following consequences from the verdict on Thoreau, embodying nothing but *individual conscience*: “Here, as elsewhere, conscience is unpolitical.... it trembles for the individual self and its integrity” (Arendt 1972b: 60–61). But what follows the almost law-like command in Thoreau’s “Resistance to Civil Government,” “then, I say, break the law” is, in exact opposition to Arendt’s judgment, this: “Let your life be a counter friction to stop the machine” (Thoreau 1973: 73–74). A person who breaks the law, in order to stop the machine of government, puts his or her life at risk. But what exactly does it mean, not only *to break the law*, and not only *to say* to break the law, but to listen—in order to obey or disobey—to what is said when, then, I say, as if imposing a law or counter law: *break the law*? Do laws *speak*? Do they claim something like *textual obedience*? And if yes, then obedience to what exactly: to the *spirit*? To the *letter*? To both at once? To neither nor? But what if laws don’t speak? What exactly, then, do I break or ask to break, when saying: Break the law? What do I think I hear the law say (to me, to others), in order to, then, say (to others, to myself): Break the law? What if, what I hear the law say, were an acoustic hallucination? Do I run the risk of risking my life, only because of my ears, only because of an aural breakdown? Listen to your ears! What do they have to say?

These questions surround, among a multitude of other questions, Socrates in prison, after having been sentenced to death, waiting for his execution, as described and textually staged in Plato’s dialogues *Gorgias* and *Crito*. Arendt’s consideration and discussion of Socrates in prison is similar to what she had to say about Thoreau. Socrates is in *moral*, not in *political* or *legal* disagreement. He listens to the *counsels* of conscience, for according to Hannah Arendt, who follows here (without questioning or challenging) a long tradition, conscience *speaks* (or—if only tacitly so—calls). She insists on this *oral* character of conscience. Listen: “These are the rules of conscience, and they are [...] entirely negative. They do not say what to do; they say what not to do” (Arendt 1972b: 63). But what Hannah Arendt does not say here is, where she has heard that conscience and the rules of conscience do *speak* at all. She seems to tacitly agree (with what seems to be a common saying or a common place: in other words, a *political* reading of *moral* issues). But her statement about what the rules of conscience say, if applied to Thoreau’s “then, I say, break the law,” falls apart. For this law-like command to break the law—whether directed towards myself or a multitude remains open here—does not say what not to do; instead, it seems to say what to do. The *oral* character of conscience, applied to Socrates, seems to imply that what Socrates has to say—when in *moral* disagreement with the polis—is what he has heard his conscience say to him. In his case as well a strict distinction between an individual’s moral disagreement and a multitude’s political disagreement seems to be in place. This is Hannah Arendt on her way towards a quotation from Plato’s *Gorgias*: “The counsels of conscience are not only unpolitical; they

are always expressed in purely subjective statements. When Socrates stated that ‘it is better to suffer wrong than to do wrong,’ [489a-b] he clearly meant that it was better *for him*, just as it was better for him ‘to be in disagreement with multitudes than, being one, to be in disagreement with [himself].’[482b-c]” (Arendt 1972b: 62). This last passage is of particular interest because of the difficulty of distinguishing between the many or most men—*pleístous anthrópous*—and the one, being one—*onta ... emauto*. The passage turns around the *ear*, more than one ear. It is about how to listen to others—in order to agree or disagree—how to listen to oneself. Listen: “And yet I think, my excellent friend, that it is superior to have my lyre out of tune and discordant, and any chorus I might equip, and for most men to disagree with me and contradict me, than for me—just one man—to be discordant with myself and contradict myself” (Plato 1980: 56). What Socrates is saying here, a moment of almost telepathic telecommunication with that other famous prisoner, Thoreau (so far away in space and time), is this: I want to be in *concord* (with myself). I’d rather agree not to agree with others, Socrates seems to say, they may dislike my lyre out of tune—*diaphonein*—my *diaphonic* music, and the many contradict me—*me homologein*—not be in *homology* with me, than for me to contradict—*enantía légein*—[the verb here is *antilegein*, the opposit of *homolegein*] myself, and not to be concordant—*asúmphonon*—with myself. I want my relation to myself to be *symphonic* and in *homology*, unthreatened by *diaphonia* and *antilogía*. What I am looking for, what I am longing for is *phonic* and *semantic* (that is *content* oriented) *consent* with myself. In other words, I am not, not *one*, one with myself. As if saying, evoking what is called Socratic irony: I am the one who is not one. The one man, or oneness of the man, his individuality or indivisibility is at stake in this passage. Socrates is not a given, but a promise or desire for *homología* with himself. The fulfillment of such a promise, a kind of contraction, *contradiction* or *contract*, to avoid or attenuate or to exclude discord and *asymphonia*, depends on *ears*, on how they listen to sounds and voices in the air, including the voice of the law, or voices of the laws (oscillating between the one and the many). For the promise of *homología* is not only at the core of the project of becoming one and the same (person), to concile or reconcile (as if for the first time) with oneself; but *homología*—and this causes the breakdown of a strict distinction between *good man* and *good citizen*, between *moral* and *political* obedience or disobedience, the promise of *homología* is also at stake at the core of Socrates’ relation to the laws (in Athens). This is the other scene (linked to Socrates in prison) turning around *ears*, and around the question of how to listen to my ears as if they were listening to the laws raising their voices and addressing them. This passage, where Socrates gives face and voice not only to the Athenian laws—*nomoi*—but to the city as a whole—*koine polis*—(as if laws and polis were speaking, and speaking with *one* voice), a moment of *prosopoeia*, that is of rhetorical machination, on the brink of acoustic

hallucination, is to be found in Plato's *Crito* (1914). At one point in the dialogue, Socrates confesses to always following or obeying the one sentence—*logos*—that “on consideration seems to me best” (Plato 1914: 161). One such sentence at stake here is to follow what is just (*dike*, *dikaíosúne*), not what is unjust (*adikía*) (Plato 1914: 165). With such a sentence at hand (in our ears) we cannot turn our back, Socrates further states, to the polis and its laws, breaking the promise or agreement—*homología*—about what we once considered just (*dikaia*) (Plato 1914: 175). *Homología*, here translated as *agreement* (in Schleiermacher's German translation as *promise*—*Versprechen*) always (only) agrees to agree. What *homología* agrees upon is to agree upon. Its promise is fissured, double-faced. For *homología* has to promise that it once promised) (once upon a time), and has to promise that once (in some near or distant future) the promise will have been fulfilled. But neither its archeological nor its teleological tendency can be confirmed. *Homología* in Plato's *Gorgias* and *Crito* is the quintessence of Socrates' relation not only to himself but to the laws, and it remains disrupted, cut off, split from itself, from the one *logos* it will have promised to your ears as one and the same—*homologos*—in agreement or *in tune* with itself as well as with your—listening—self. At this (most *critical*) point in the dialogue, Socrates pleading for *homología* (with the laws) and *Crito* confessing not to understand at all (Plato 1914: 175), Socrates gives voice to the laws. Imagine that they approach us on our way out, into exile, leaving the polis forever. What would the laws—*nomoi*—say if they could speak? What would we hear them say, when listening to their words? (But they don't speak, do they?) (How can I hear the law speak, how can I hear the law not speak?) Does the one who makes the law *speak*, obey or disobey the law? The first thing (or word) they would remind us of, says Socrates, would be *homología*: “What then if the laws should say, Socrates, is this the agreement— *homológeto*—you made with us...?” (Plato 1914: 177). But this moment of personification, to make the laws say what I think they would say if they could speak, makes the promise of *homología*—between the laws and Socrates, between what the laws have to say (but they don't speak) and what I hear them say—implode. Which agreement—*homología*—is at stake between the laws and Socrates? If they could speak, says Socrates, they would say don't be surprised, followed by a series of rhetorical questions: “In the first place, did we not bring you forth—*eggnésamen*—? Is it not through us that your father married your mother and begat you?” (Plato 1914: 177). The agreement seems to be about Socrates' birth, life, and death: Socrates would not have been generated and born, come to life and into the world, a *biopolitical* world, if not in *homología* with the laws. To disagree with them, *with what they say*, would imply not only to destroy the laws but oneself, one's own existence, or to destroy the chance of being put to death according to the laws. But who will decide whether I was generated and born (and will have died) in agreement with some law or not? And are the laws who seem to decide

upon generation, life and death, alive or dead? *Is the law dead?* Socrates (in Plato's *Crito*) seems to be aware that to give the laws a face and voice, and to listen to what they seem to have to say, is not the revelation of truth (about *homología*) but a moment of hallucination. *Acoustic* hallucination. This is what Socrates has to say after the laws seem to have spoken, after he seems to have listened to what they had to say. It is the end of the dialogue: "Be well assured, my dear friend Crito, that this is what I seem to hear—*ego doko akoúein*—, as the frenzied dervishes of Cybele seem to hear the flutes, and this sound of these words re-echoes within me and prevents my hearing any other words" (Plato 1914: 191). As if Socrates and Crito were in tacit agreement or consent here about the hallucinatory and phantasmatic character of both, *homología* and *antilogía*, the *symphonic* and *a-symphonic* tendency of *phonic* events. To agree or disagree (that is, to agree to disagree), obey or disobey, may always remain haunted by moments of aural *possession* (and *dispossession*). But how to, as I just suggested, tacitly consent? Is tacit consent not the other, no less hallucinatory side of civil obedience or disobedience (when it comes to listen to your ears)?

This hallucinatory scene (hearing the laws' voices in the air, conjuring *homología*) near the end of Plato's *Crito* has been read and reread, and listened to over the centuries, to finally be considered, throughout the seventeenth and eighteenth centuries, especially in John Locke and David Hume, the primal scene at the origin of *political* communities, condensed into the notion of tacit consent. This is Hume, in his essay "Of the Original Contract," on Socrates (in Plato's *Crito*): "[He] refuses to escape from prison, because he had tacitly promised to obey the laws" (Hume 1987 [1748]: 487). The word *promise* (no less than the word *consent*) here translates the Greek *homología*: tacit promise—tacit consent—tacit *homología*. In the third and last part of her essay, "Civil Disobedience," Hannah Arendt approaches the question of tacit consent in the context of discussing different theories of social contract in the seventeenth century. Against Thomas Hobbes' vertical version, she opts for John Locke's horizontal version of social contract, where people are bound to each other "through the strength of mutual promises" (Arendt 1972b: 87). In other words, through (the promise of) (explicit and less explicit) *homología*. But what, back before explicit or express consent, is a *tacit* promise, and how to listen to it? In this most enigmatic passage, less explicit than elliptically, tacitly condensed, Hannah Arendt encapsulates her theory of tacit consent. It is a silent opening, around a child to come (and its cry); the moment of birth: "Every man is born a member of a particular community and can survive only if he is welcomed and made at home within it. A kind of consent is implied in every newborn's factual situation; namely, a kind of conformity to the rules under which the great game of the world is played in the particular group to which he belongs by birth. We all live and survive by a kind of tacit consent, which, however, it would be difficult to call voluntary"

(Arendt 1972b: 87–88). You may have heard it: the passage proceeds discreetly, tentatively, cautiously, syncopated by the recurrent turn of phrase “a kind of”: “A kind of consent [...] a kind of conformity [...] a kind of tacit consent.” What kind of (turn of phrase) is “a kind of”? What kind of consent is “a kind of consent,” and “a kind of tacit consent”? How to listen, back before the promise or desire to distinguish between agreement and disagreement, when it comes to “a kind of” (tacit) consent? At times, it may prove helpful to allow oneself to listen to Arendt’s texts written in English with an ear open for other words from other languages, returning from inside a supposedly English word. Here, from inside the turn of phrase “a kind of.” What (almost tacitly) returns to the fore here is a child: *ein Kind*. A kind of—*Kind*. The hesitations inserted into this passage, with “a kind of consent” and “a kind of tacit consent,” not only touch upon the question of where political communities do originate, but upon the question, a child’s question: *Where do children come from?* (And where do they, where do their ears belong to: to private or to public spheres?) “A kind of” political question, on the brink of language, speechlessness, *phásis* and *aphasia*, silence and mutism, on the brink of *tacit* consent. But *consent*, this time, is less about “the community’s tacit welcome of new arrivals, of the inner immigration through which it constantly renews itself,” as Hannah Arendt writes in the same passage further down (Arendt 1972b: 88). It points toward the question of *sexual* contact, back before *sexual contract*, and erotic implications in what Rousseau calls *consentement tacite* between those (not yet, but soon to fall) in love.² It is difficult to speak of and listen to silence and then to—explicitly—interpret silence as consent. (This is how *silence* has been read, listened to, or interpreted throughout the centuries, especially in Roman and Canonical Law: as if being in agreement or *homología*, as if saying, without saying so: *Yes*.) “Tacit consent,” writes Hannah Arendt near the end of this passage in “Civil Disobedience,” “is inherent in the human condition” (Arendt 1972b: 88). You know, for you still can hear it, that *condition* is a composite of the Latin prefix *con-* and the verb *dicere*: to speak together, or in agreement: another translation (or interpretation) of *homología*. But only to listen *unconditionally* to what speaks, to what does not speak at all in the word *condition* (whether we call it *human* or not) will help undo the hallucinatory character of what we call being in agreement or disagreement with ourselves or others. To learn (or not to learn) to listen to and to unfold the *pause* between these two sentences, “The law is dead” and “Long live the

² In a note to his *Lettre à d’Alembert*, Rousseau writes: “Arracher ce consentement tacite, c’est user de toute la violence permise en amour. Le lire dans les yeux, le voir dans les manières, malgré le refus de la bouche, c’est l’art de celui qui sait aimer” (1995 [1758]: 78). Rousseau here makes the discovery of tacit consent on the side of the beloved dependent on an art of reading on the side of the lover: on a *tacit sense*, not consent, for *philology*.

law,” as if with a child’s ears, will decide upon the future of our political and *parapolitical*, linguistic and *paralinguistic* contacts, conditions, contracts, and communities, especially there, where only one and one individual only seems to be in *homología* with him- or herself.

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