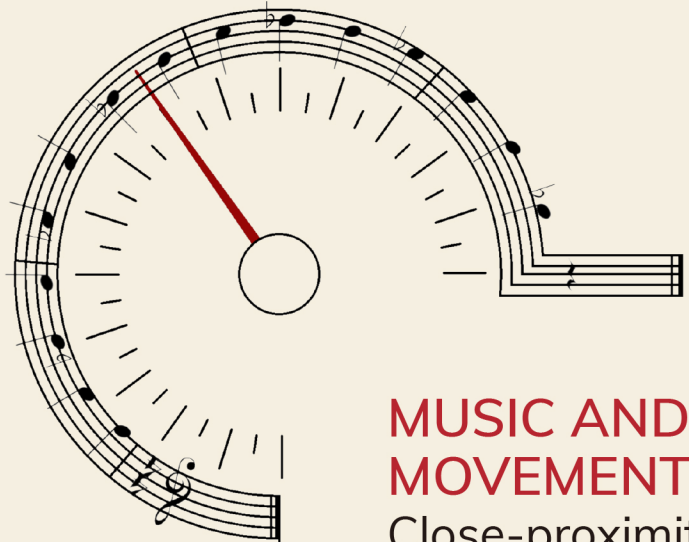




St Anne's Academic Review

Volume 12 • 2024 – 2025

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MUSIC AND MOVEMENT

Close-proximity
velocity
estimation
using musical
intuition

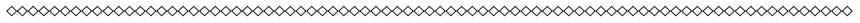


Rights and Remedies:
Similar but Distinct

Irony and Nationalism in
Nabokov and Kundera
Living With(in) the Law

English Degrees in Japan:
Beyond the Classroom

St Anne's Academic Review



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Aušra is pursuing an MPhil in Modern Languages, specialising in the European Enlightenment. Before beginning her Master's, she completed a BA in Comparative Literature at UCL, edited for The Orwell Youth Prize, and contributed to the digital edition of the *OCV*. She is currently involved in the MML Policy Engagement project and serves as Vice-President of the GGJC for the MML faculty at Oxford.

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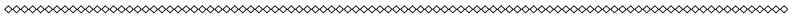
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Letter from the Editor



I am delighted to introduce the 12th issue of St Anne's Academic Review, both in print—owing to the desire to see the tangible fruits of one's labour—and online, taking advantage of the convenience and accessibility granted by our digital age. Its resurrection, after the journal was discontinued due to COVID-19, was daunting and exhilarating in equal measure. While gaining access to operational know-how, logistical frameworks, and prior management practices of the journal was a Herculean task, having such an enthusiastic and supportive team of editors and senior advisers meant we were well prepared to handle any predicaments that came our way. Our resourceful, optimistic, and diligent editors volunteered their time to think and struggle along, to edit and proofread each piece, with strong editorial participation proving that editing remains a rewarding, valuable, and highly appealing craft.

Five great pieces, representing Humanities, Sciences, and Social Sciences, take readers from Soviet-era Russia and Czechoslovakia to 21st-century Japan, from tort law to family law, exploring topics as diverse as the familiar yet rich and multifaceted concept of irony or more arcane curiosities of the Doppler effect. The mental resilience of the authors participating in a demanding peer-review process is praiseworthy. It highlights how the satisfaction of having one's work published mitigates the relief of dispensing with yet another academic worry while navigating the already demanding workload of an Oxford degree.

STAAR takes pride in offering St Anne's students the invaluable opportunity to publish their work in an indexed academic journal. This provides a competitive edge in the relentless treadmill of academia, where the pressure to 'publish or perish' increasingly narrows one's overall academic prospects. We are confident that the journal's revival, having reinvigorated interest in publishing graduate research, will pave the way for future issues, forestalling the slide into academic obscurity and encouraging the collegiate activity that is autotelic, communal, and wholesome.



Aušra Bukniūtė

Abstract—This article explores the significance of irony as a response to nationalism in Vladimir Nabokov's *Pnin* (1957) and Milan Kundera's *La vie est ailleurs* (1973). The specific type of nationalism being investigated here is defined by Hannah Arendt as an all-encompassing identification of the individual with their nation, which she identifies as the foundation of totalitarianism. Having both lost their homeland to totalitarian regimes, Kundera and Nabokov interrogate nationalism's tendency to define the individual through their nation; the former centres *La vie est ailleurs* around a young nationalist poet who immerses himself in the Czechoslovak communist revolution, while the latter's *Pnin* follows an exiled Russian professor's attempts to find a new home in America. Both novels feature a characteristically ironic style that is simultaneously critical yet indulgent towards their respective protagonists. The polyphonic and open-ended nature of irony thus makes it a fitting vehicle for Nabokov and Kundera to express deeply ambivalent stances on the relationship between the individual and the nation.

Writers in exile

As two twentieth-century émigré authors, Vladimir Nabokov and Milan Kundera are symptomatic of what has been described as a 'literature of exile' (Kellman 4). Born in 1899, Vladimir Nabokov grew up in an aristocratic family in Czarist Russia before fleeing the country during the 1917 Bolshevik revolution; after spending two decades wandering from Germany to France, he settled in the United States in 1940. On the other hand, Milan Kundera was born in Czechoslovakia in 1929; he saw the rise to power of the Communist Party in 1948 and the Soviet annexation of the country twenty years later, before emigrating to France in 1975.

From these experiences of forced exile, Nabokov and Kundera have retained a deeply ambivalent attitude towards their native lands, characterised simultaneously by disgust for their contemporaneous governments and a strong emotional attachment to memories of pre-Soviet times. While priding himself on his 'indifference to all that moves a patriotic Sovietski man' (*The Paris Review*), Nabokov readily acknowledged his homesickness for 'the St. Petersburg countryside' of his childhood (*Speak, Memory* 250). Similarly, Kundera openly lambasted the totalitarian Soviet government of post-1968 Czechoslovakia, while yearning for his native country on a personal level.

The topic of exile understandably became a major reoccurring theme throughout the writings of both authors. Many of Nabokov's works follow Russian intellectuals living in émigré communities, from his first novel, *Mary* (1926), to better-known titles like *The Gift* (1937) and *The Real Life of Sebastian Knight* (1941). In Kundera's

Book of Laughter and Forgetting (1979), the first novel he published after emigrating to France, the author interweaves stories about a post-1968 Czechoslovakia with autobiographical memories of his arrival into his new country. A form of voluntary exile also features prominently in *The Unbearable Lightness of Being* (1984), in which the freedom-loving Sabina is repulsed by the increasingly totalitarian nature of Bohemia and decides to travel ever further westward until she reaches California.

By virtue of this shared fascination with exile, Nabokov and Kundera have often been read together by scholars like Hana Píchová and Stephanie Gomory. In her thesis, *Found in Translation* (2010), Gomory points out their common ‘tendency to revise, revisit, self-translate, and effectively rewrite their work over time,’ as well as their connection of exile with ‘nostalgia, memory and language’ (4). The thematic predominance of displacement and obsession with self-revision hint towards a preoccupation with the impact of exile on identity: separation from one’s native land seems to result in a destabilised, constantly changing self-image. Píchová reaches a similar conclusion in *The Art of Memory in Exile* (2001), stressing the grueling consequences of exile on ‘those who make their living by writing, who must confront, in addition to physical uprootedness, problems of linguistic and cultural differentiation’ (7). ‘Linguistically unhoused,’ Píchová claims, ‘the writer’s very being is threatened’ – and this appears to be true even for masters of their craft like Nabokov and Kundera, who ‘successfully crossed from one shore to another’ (7).

Píchová and Gomory have drawn on the parallels between Nabokov and Kundera to examine their works from an affective and linguistic point of view respectively. While the former's *Art of Memory in Exile* studies their experimentations with time as ways to cope with the pain of homesickness, the latter's thesis skillfully compares their French writings as émigré authors. In contrast, this article will directly explore the political tension underpinning their treatment of exile – that is, the relationship between individual and nation.

Heroes (un)defined by nationality: Jaromil and Pnin

As a case study for Nabokov, this essay will focus on *Pnin* (1957), a novel about an elderly Russian professor, who, like his author, lost many loved ones to the revolution before emigrating to America. For Kundera, I will be looking at *La vie est ailleurs* (1973), which follows the young Praguian poet Jaromil as he grows progressively more indoctrinated by the ideology of the socialist revolution and eventually becomes an informant for the Czechoslovak Communist Police. This hero resembles the 'militant communiste enthousiaste' ['enthusiastic communist militant'] (Chemin 35) that Kundera was in his youth, before distancing himself from all political affiliations.

Despite Pnin and Jaromil's similarities to their authors, I do not intend to read their novels as autobiographies. My choice of texts is motivated by the ages of their protagonists, which allow me to approach my question – does one need a country in order to exist? – from two opposite angles. The teenage Jaromil is focused

1 Unless otherwise specified, all translations from French are my own.

on forging a sense of self, whereas the elderly Pnin is preoccupied with preserving what is left of his. For both, the question of national belonging is inextricably linked to their quest for selfhood: Jaromil is convinced that the only way to truly become a man is by merging with his country's revolutionary fervour; Pnin has been forced out of his native Russia and tries desperately to find a new home for himself in the States.

While Kundera's novel depicts an individual who seeks to identify himself with his nation, Nabokov's *Pnin* shows us what happens when the relationship between nation and individual is severed. In both novels, this separation is depicted as a deeply alienating experience. For Jaromil, the man who decides to leave his country is essentially a traitor, insofar as 'tout émigré devient automatiquement un agent des services d'espionnage étrangers qui veulent anéantir notre pays' ['any émigré automatically becomes an agent of the secret foreign spies who seek to destroy our country'] (Kundera, *La vie* 379). Despite harbouring no such destructive intentions, Pnin indeed finds himself alienated both from his American peers and his Russian identity: unable to 'understand American humor' (Nabokov, *Pnin* 61) and struggling to communicate in his 'patchy English' (Nabokov, *Pnin* 15), he must constantly hear his name being defaced by absurd mispronunciations (Nabokov, *Pnin* 107). In their respective ways, these novels thus showcase the dangerous implications of tying personal identity with national belonging.

These dangers have been most famously and explicitly theorised by Hannah Arendt's *Origins of Totalitarianism* (1951). In this seminal work, Arendt pinpoints nationalist ideologies founded upon 'the

identification of nationality with one's own soul' as the breeding grounds of totalitarian regimes like 'Nazism and Bolshevism' (290; 296). According to her, the 'political narrowness and shortsightedness' of nineteenth-century European nationalist movements contained in them the seeds of totalitarianism (Arendt xxvii), which begins when nationalism becomes an ideology that 'pervades every phase of private life' (Arendt 296). It is precisely this kind of nationalism that is relevant to the context of Nabokov and Kundera's works.

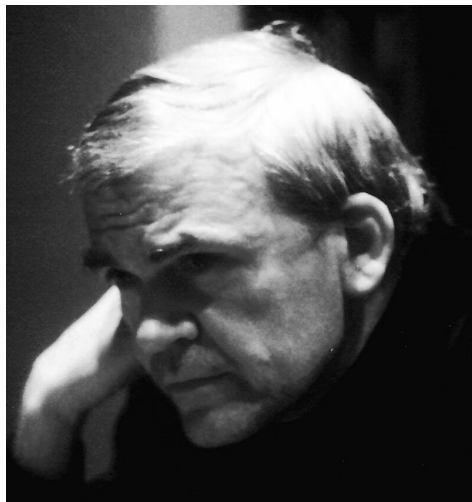
If the individual is defined by their nationality, this invites the question of what happens when this national affiliation is – either voluntarily or involuntarily – lost. The answer, according to nationalist ideologies, is that they lose all worth, insofar as 'the individual owes his value only to the fact that he happens to be born a German or a Russian' (Arendt 306). This nationalistic framework leaves people of uncertain nationality especially vulnerable, as shown by the fate of Russian interwar refugees who lost their citizenship after the dissolution of the Czarist empire. As one of these refugees, Nabokov describes them leading a somewhat unreal life in the European countries that reluctantly welcomed them, reduced to little more than 'bastards and ghosts' by local governments (*Speak* 277). For such people, 'loss of citizenship' became synonymous with a loss of 'all officially recognized identity' (Arendt 375).

Irony as a response to alienation

Nationalism implies – not always in a figurative sense – that in order to 'officially' exist as a person, one must be a member of a nation. But the existence of exiles constitutes, if not a rebuttal of

this implication, a question mark that undermines its certainty: does one's personhood truly depend on belonging to a country? As writers who were forced into exile before immigrating to new countries, Nabokov and Kundera offered possible answers to this question by centering their works around themes of national belonging and alienation. The following essay will explore these answers by focusing on a slippery yet ubiquitous feature of their writings, which follows Pnin and Jaromil through every page of their respective novels: irony.

Nabokov and Kundera's ironic styles have been commented on as much as, if not more, than their émigré status. Brian Boyd notes that many readers see Nabokov as 'a savage ironist' ("Nabokov's Humor" 154). Boyd himself describes Nabokov's humour as a tendency 'to mingle laughter and its opposites: humor and horror, laughter and loss' and sees it as integral to 'the magic of his work' ("Nabokov's Humor" 146-48). Similarly, Kundera's writing has been noted for the 'rire (grinçant)' that it produces ['the (scathing) laughter'] (Chemin 11). Kundera himself has written extensively about irony, defining it as not only a mechanism of humour but as the defining trait of the novel:



Milan Kundera, by Elisa Cabot

by decomposing the false ideal of a 'single divine Truth' into 'myriad

relative truths parceled out by men,' the irony of the novel reveals to us 'the world as an ambiguity' (*The Art of the Novel* 6; 134).

Before going further, it will be helpful to clarify what is meant by 'irony.' D.C. Muecke argues that the 'vague, unstable and multiform' nature of irony makes it impossible to find a universal definition of the concept (7). Nevertheless, he identifies 'a contrast of "appearance" and "reality"' as the element 'basic to all irony' (44). According to him, novels in particular feature a type of irony where 'the character's self-image or view of the world is variously revealed as false' (90). This novelistic irony often relies on a cruel power imbalance between the ironist and the ironised. The former is represented by an omniscient narrator, coolly aloof and 'distant in their scorn' towards the characters he observes, whose perspective is comparatively limited (Hutcheon 37). These 'harassed, or miserable' victims of irony become objects of 'amusement' for the 'dispassionate' ironist, who, by sharing their inside knowledge with readers, implicitly encourages us to adopt the same attitude of superiority (Muecke 48).

But as Muecke points out, irony has also been defined as a more 'paradoxical, or "Romantic"' concept (23) involving 'co-existing but irreconcilable, irrelatable "realities"' (45). Similarly, Vladimir Jankélévitch claims that irony itself depends on the existence of its opposite, namely 'un esprit innocent et un coeur inspiré' ['an innocent spirit and an inspired heart'] (171). This definition, derived from nineteenth-century Romanticists like Friedrich Schlegel, implies that objective reality is itself 'contradictory'; by extension, it reframes the victim of irony from being an object of ridicule to someone who evokes our sympathy (Muecke 22). Irony is therefore

best defined as a double-sided concept, composed simultaneously of cruelty and indulgence.

The ruthless side of irony is well represented by the omniscient narrator of Kundera's *La vie*, who continuously draws our attention to his young hero's naïvety and delusional idealism. Jaromil's dreams of glory – as embodied by the adventures of his fictional alter ego, Xavier – are juxtaposed with the triviality of his daily life, as he struggles with his girlfriends and his coddling mother. The contrast between dream and reality is made most glaringly obvious by Jaromil's death: after dreaming of a nobly tragic end that would secure his everlasting fame, he dies of a mundane cold from being kicked out of a party in the dead of winter.

In contrast, Nabokov's narrator appears to treat the protagonist with fond pity in the manner of an all-knowing and sympathetic god looking down at his creature, often referring to him as 'poor Pnin.' But instead of a stand-in for the author, this narrator is eventually revealed to be a rather unsavoury character within the novel who has been following and discretely sabotaging the protagonist since childhood. The end of the novel sees Pnin narrowly avoiding an unwanted reunion with this ominous character by driving off into the sunrise; he remains homeless, but has at least escaped the clutches of his narrator.

The difference between this escape and Jaromil's humiliating death highlights the seemingly unforgiving nature of Kundera's irony. Nevertheless, occasional descriptions of the deluded young poet as 'compréhensible' ['understandable'] (*La vie* 77) or 'touchant' ['touching'] (*La vie* 210) reveal traces of compassion on the part

of the author-as-narrator. This compassion does not contradict Kundera's caustic irony towards his hero's nationalist delusions, but paradoxically derives from it. The irony that Kundera deploys in *La vie* is a multi-targeting one; it shows us that the very elements that make nationalism reprehensible and deserving of mockery can also be found in the values we hold most dear – such as individualism, poetry, and even maternal love.

The poet Jaromil, victim of irony

1. From individualist to totalitarian

Long before becoming involved in politics, Jaromil is obsessed with himself to the point of narcissism, delighting in being considered 'un enfant exceptionnel et singulier' ['an exceptional and singular child'] (Kundera, *La vie* 31) with 'un univers intérieur original' ['an original internal universe'] (Kundera, *La vie* 53). The scope implied by 'univers' highlights the inflationary aspect of his narcissism: Jaromil 'avait l'impression d'être encerclé par sa propre personne... de remplir toute la maison' ['felt like he was surrounded by his own person... filling the entire house'] (Kundera, *La vie* 35). The narcissistic self expands and projects itself outwards into an ever bigger space, primarily through the medium of language: convinced that her son is destined to become a poet, Jaromil's mother decorates his bedroom walls with illustrations of his sayings (Kundera, *La vie* 35). After growing up 'entouré d'un mur de miroirs' ['surrounded by a wall of mirrors'] at home (Kundera, *La vie* 247), the poet naturally conceives of the future as 'des lointains inconnus' ['unknown reaches'] waiting to be filled by his glory (Kundera, *La vie* 153).

The self-inflation of the narcissistic ego eerily reminds one of totalitarianism's 'global' ambitions and reliance on 'exterior expansion' (Arendt 509-10). There is little wonder, then, that Kundera's hero would throw himself into a revolution that grows from 'un peuple en marche' ['a people in movement'] (*La vie* 197) to eventually including 'le globe terrestre' ['the entire globe'] (*La vie* 296). In one of Jaromil's poems, set in a future where the whole world has joined the revolution, a woman greets a socialist militant by telling him, 'Tu es ici chez toi, ceci est ton monde' ['You are home here, this is your world'] (Kundera, *La vie* 297). This greeting summarises the devolution of Jaromil's individualism into totalitarianism: in its expansion, the ego turns its home and eventually the world into a projection of itself.

Paradoxically, the act of becoming one with the world leads to the dissolution of the ego, whose self-destruction is emphasised by the evolution of Jaromil's language: during the peak of his country's revolutionary fervour, the poet surprises himself by adopting the plain language of communist newspapers (Kundera, *La vie* 196). As he becomes more involved in politics, his poetic aphorisms are deformed into the most basic of propagandic slogans – slogans which, as Kundera points out, are recycled indiscriminately by the French youths of May 68 (*La vie* 264). Lost in the revolution, Jaromil's specificity dissolves into a sinister sameness that seems to transcend the boundaries of time, space, and language. The ego turns the whole world into its home and, in the process, ceases to be a discrete individual.

2. The unbearable weight of totalitarianism

Jaromil's narcissism also leads him to take himself extremely seriously. For this sake, it enlists the help of the tragic, which Kundera defines as the source of 'the lovely illusion of human greatness' (*The Art of the Novel* 125). The poet's obsession with death is presented as an attempt to lend gravitas to himself by merging with something 'indivisible et indissoluble' ['indivisible and indissoluble'] (Kundera, *La vie* 159). In his fantasies, Jaromil imagines himself as a fictional alter ego named Xavier, a revolutionary militant who leads an exciting and infinitely meaningful life by virtue of the fact that 'chacun de ses actes... se mesure au critère suprême qui est la mort' ['each of his actions... is measured by the supreme criterion that is death'] (Kundera, *La vie* 129). This need to see everything as a matter of life and death is what Jankélévitch identifies as the defining trait of personalities who absolutely reject irony; it is also, according to him, what makes them 'infiniment vulnérables' ['infinitely vulnerable'] (24-25).

The reason for this vulnerability is that not everything can or should be taken seriously. Irony arises from the inevitable proximity of the tragic with the trivial and the comic (Jankélévitch 29), which, according to Kundera, 'brutally reveals the meaninglessness of everything' (*The Art of the Novel* 125). Through his adolescence, Jaromil is torn between the majesty of historical events and the 'trivialité monumentale' ['monumental triviality'] of daily life (Kundera, *La vie* 46). This triviality, not death, is the biggest fear of the narcissistic self, insofar as it forces it to confront its own 'petitesse' ['smallness'] (Kundera, *La vie* 91). As far as Jaromil is concerned, the real tragedy

of his story is the untragic character of his death; the lack of a self-aggrandising ‘signification solennelle’ [‘solemn significance’] keeps him confined within ‘le piège de la farce’ [‘the trap of the farce’] (Kundera, *La vie* 450).

The poet’s refusal to accept the coexistence between the serious and the mundane is best illustrated by his behaviour with his girlfriend: outraged by her ability to start talking about everyday matters right after exchanging passionate vows with each other, he fantasises about dissolving this perceived flaw in the purifying solution of his love (*La vie* 320). This need for purification and complete control evokes the Kunderian concept of ‘kitsch’ as ‘the absolute denial’ of ‘everything... which is essentially unacceptable in human existence’ (*The Unbearable Lightness of Being* 249). According to Kundera, this denial is both totalitarian insofar as ‘everything that infringes on kitsch must be banished from life,’ and anti-ironic ‘because in the realm of kitsch everything must be taken quite seriously’ (*The Unbearable Lightness* 252-53).

Following the totalitarian logic of kitsch, Jaromil abjects every instance of the ridiculous or trivial as something alien to himself in order to maintain the illusion of his ego as an infinitely meaningful entity. This abjection is emphasised by Kundera’s repeated use of the word ‘étranger’ [‘foreigner’], which is employed in its most nationalistic sense when Jaromil learns that his girlfriend’s brother intends to ‘trahir la révolution’ [‘betray the revolution’] by going ‘à l’étranger’ [‘abroad’] (*La vie* 379). But in previous chapters, the word is merely used to describe people or things that exist outside of Jaromil’s control, and therefore clash with his narcissistic delusions:

the girl who falls out of love with him is an 'étrangère' ['foreigner'] and his own badly timed erection becomes 'un clown étranger... entre ses jambes' ['a foreign clown between his legs'] (Kundera, *La vie* 219). The multivalency of the word 'étranger' thus highlights the link between totalitarianism and narcissistic individualism in a way that mocks them both.

3. The pervasive reach of irony

However, Jaromil is not alone in this dangerously expansionary individualism. Kundera surrounds his hero with characters who share similar self-aggrandising tendencies, like his mother, who imagines pregnancy as a transformation of her body into an entity that 's'élevait jusqu'aux étoiles et emplissait l'univers' ['reached the stars and filled the universe'] (*La vie* 22). When her husband dares to mock this romantic mindset by putting dirty socks on her Apollo statue, she mentally expels him from the family unit and starts cultivating 'l'idéal d'un amour maternel où le père ne s'immisce pas' ['an ideal of maternal love in which the father does not intrude'] (Kundera, *La vie* 17-18). Motherhood itself is not immune to the totalitarian need for expansion and absolute control.

Neither does narcissistic individualism spare the real people featured in the novel, like Rimbaud, Lermontov, and Shelley. By interweaving Jaromil's life with biographies of celebrated poets, the author shows each of them to be trapped in a 'maison de miroirs' ['house of mirrors'] (Kundera, *La vie* 254), desperate to show the world 'son autoportrait... saisi sur l'écran des vers' ['his self-portrait... projected on the screen of his verses'] (Kundera, *La vie* 322-23). These

poets are indiscriminately picked from the French, English, and Czech literary canons, in another demonstration of the protagonist's desire to achieve glory by merging with the universe. Instead, this comparison lowers his literary models to his level in a way that seems to put poetry itself on trial: Rimbaud becomes a moody teenager, running away from his mother 'avec un collier scellé à son cou' ['with a collar sealed around his neck'] (Kundera, *La vie* 243), and Lermontov is reduced to a stubborn youth who throws his life away for pride (Kundera, *La vie* 446).

Kundera's irony thus desacralises individualism, motherhood, and even poetry by unveiling in them the same mechanisms as those that underpin pretotalitarian nationalism. Like Jaromil's mother scrutinising the 'taffetas changeant' ['shifting taffeta'] of her past (Kundera, *La vie* 161) for a 'morceau de vie qui n'était pas souillé par le mensonge' ['a piece of life unsullied by lies'] (Kundera, *La vie* 173), us readers are left scrambling for something to take seriously, something worth believing in. Our search seems to be met only by an ironic 'perpetual deferment of significance' (Muecke 31) that evokes the imaginary Xavier's race through his dreams. The young man's claim that his 'chez-soi' ['home'] exists only in his never-ending dream travels implies that there is no fixed locus of meaning we can trust (Kundera, *La vie* 111). Xavier thus illustrates Jankélévitch's portrayal of the ironist as 'le voyageur des voyages oniriques... toujours un autre, toujours ailleurs' ['the dream traveller... always another, always elsewhere'] who 'flotte entre des réalités... sans se poser nulle part' ['floats between realities... without landing anywhere'] and, in the process, reveals the fragility of each of them (139).

4. A ruthless reminder of our limitations

The latter chapters of *La vie* show the extent of irony's destructive potential: the disillusioned Jaromil eventually finds himself 'épouvantablement abandonné' ['frightfully abandoned'] (Kundera, *La vie* 450), like 'le pauvre Quichotte dans un monde sans chimères' ['poor Quixote in a disillusioned world'] (Jankélévitch 114-15). In the wake of this destruction, Kundera's irony paradoxically becomes an invitation to indulgence: the fact that no one is immune to irony encourages us to have sympathy for its victims. While holding his hero accountable for his crimes, the author encourages readers not to judge him too harshly by framing the revolution as 'un piège incomparable tendu à la poésie et à la jeunesse' ['an incomparable trap set for poetry and youth'] (Kundera, *La vie* 402). In the interest of fairness, Kundera's indulgent irony preserves the truth in its self-contradictory complexity: Jaromil remains simultaneously the executioner and victim of the socialist revolution, both 'l'innocence' ['innocence'] and 'son sourire sanglant' ['its bloody smile'] (Kundera, *La vie* 401).

This conflicted final judgment of the poet implies that irony's deferment of meaning cannot really be perpetual. Speaking as himself, Kundera acknowledges that Xavier's flirtation with endless possibilities represents an 'inaccessible' ideal; in both the novel and real life, one needs to adopt a 'poste d'observation' ['observation post'] that will necessarily offer only an incomplete perspective on the world (Kundera, *La vie* 400). Herein lies the value of irony, which, by juggling multiple viewpoints, highlights the limitations of each one and reminds us that 'les îles ne sont pas des continents, ni les

lacs des océans’ [‘islands are not continents, nor are lakes oceans’] (Jankélévitch 22). Kundera argues that the irony of the novel forces us ‘to take, with Cervantes, the world as ambiguity’ and to reject the uncompromising absoluteness of totalitarianism for ‘the *wisdom of uncertainty*’ (*The Art of the Novel* 6-7). The same irony reminds us that our observation post, wherever we may place it, is never all-encompassing.

Additionally, the medium of translation adds a metatextual dimension to this irony: *La vie est ailleurs* is the French translation of a novel originally written in Czech, *Život je jinde*. Although this translation was heavily vetted by the author and confirmed to be as authentic as the original, reading a translation means that we are literally not reading what the writer wrote (*Quatre-vingt-neuf mots* 14-15). The ‘contrast of “appearance” and “reality”’ that Muecke described as ‘basic to all irony’ is represented here by the clear difference between the modified ‘appearance’ of the translated text and the ‘reality’ of its original (44). This ironic difference reminds us that the observation post from which we read *La vie* only affords us an incomplete view of Kundera’s novel.



Vladimir and Vera Nabokov 1969

‘Poor Pnin’

1. Nabokov’s two-faced narrator

At first glance, we may assume that the irony of *Pnin* is the same as the one Kundera deploys in *La vie*, a means for the author to condemn his creature’s behaviour by fondly yet consistently ridiculing him. However, this assumption is contradicted by the novel’s penultimate chapter, which reveals that the ironic narrator is not actually the author. Despite many resemblances to the real-life Nabokov, he is a fictional ‘character on Pnin’s level,’ a fellow Russian émigré whose elegant narration betrays a much more successful integration into American culture (Boyd, *The American Years* 277). This diegetic presence in the novel inevitably limits the narrator’s perspective, destroying the illusion of his omniscience.

The credibility of this pseudo-Nabokov is further brought into question by Pnin, who calls him a 'dreadful inventor' and accuses him of falsifying many details of his memories (Nabokov, *Pnin* 185). While making us wonder how much we can trust the truth of *Pnin's* narration, this claim also implicitly reminds us that all novels are artificial constructs.

Pnin is one of many examples of Nabokov's lifelong predilection for using false doubles of himself as unreliable narrators (Boyd, *The American Years* 277). This unreliability applies not only to the reality that the narrator depicts, but also to their moral compass. According to Ellen Pifer, Nabokov often created 'artistically inspired' characters who were nevertheless 'downright evil' (57). The refined style of *Pnin's* 'narrator Nabokov' conceals an underlying cruelty, which is perhaps most saliently revealed by his flippant description of his ex-lover's suicide attempt as a 'contretemps' (Nabokov, *Pnin* 182). The revelation of his character invites us to retrospectively question his true feelings for the hero: the affection supposedly implied in the narrator's oft-repeated 'poor Pnin' becomes closer to disdainful pity (Nabokov, *Pnin* 44).

2. Between sadism and sympathy

This false pity draws our attention to the inherent sadism of comical irony, which initially seems to invite us to 'laugh at another person's misfortunes' (Boyd, *The American Years* 271). The link between comedy and suffering is highlighted by physical humour. From the beginning of the novel, Pnin's awkward body is marked as an object of ridicule on par with his uneasy mastery of the English language: the introductory description of it, starting from the impressive

‘great brown dome’ of his head only to end with his ‘curiously small, feminine feet,’ evokes the discrepancy between the setup and punchline of a joke (Nabokov, *Pnin* 7). Throughout the novel, we are then repeatedly reminded of this ‘topheavy’ build via a series of clumsy falls (Nabokov, *Pnin* 12). The novel’s humour is predicated on Pnin being constantly at odds with the world around him, from a not only linguistic and cultural, but also physical point of view.

The hero’s body is also frequently depicted as a locus of pain, in a way that progressively awakens our pity and destabilises our desire to laugh. Through its ‘blend of tragedy and comedy,’ Boyd has described the novel as Nabokov’s ‘most amusing’ yet ‘most poignant’ work (*The American Years* 271). This tension between the comic and the pathetic illustrates Jankélévitch’s description of irony as something that ‘déclenche le rire, pour immédiatement le figer’ [‘provokes laughter, only to immediately freeze it’] (119). The narrator’s claim that ‘one of the main characteristics of life is discreteness... death is divestment, death is communion’ gives an undeniable seriousness to Pnin’s bumbling search for lodgings: the walls of a home that keep him ‘separate from his surroundings’ are as necessary for his survival as the ‘film of flesh’ that prevents his ‘porous and pregnable’ self from ceasing to exist (Nabokov, *Pnin* 20). Along with his highly imperfect English, his efforts to find a home represents the precarious existence of the émigré in a new land: in Píchová’s words, Pnin is both physically and ‘linguistically unhoused’ in a way that seems to threaten his very being (7). Through his awareness of his own finiteness, Pnin represents the opposite of Jaromil: while the latter seeks to transcend his own limits, the former demonstrates that borders are simultaneously signifiers of privacy and guarantors of existence.

According to Boyd, *Pnin* was written as ‘an answer to Cervantes,’ after Nabokov reread the highly ironic *Don Quixote* and felt outraged at its ‘implicit invitation’ to laugh at the hero’s ‘pain and humiliation’ (*The American Years* 272). In response, *Pnin* features Nabokov hiding behind his mocking narrator to ensure that the reader sympathises with the hero after laughing at him. Though some of the narrator’s knowledge can be explained by encounters with other characters and his own memories, Pnin’s innermost feelings can only be known with certainty by the author – the only actual omniscient *dieu caché dans sa création*. The fictional narrator can picture the comical scene of an unwell Pnin getting off the bus and worrying about the ham he ate; but the following, distressingly vivid description of Pnin’s seizure can only be given to us by the omniscient author (Nabokov, *Pnin* 21).

3. Privacy as the ultimate value

The fact that this moment of privacy from the narrator coincides with intense pain seems to support the poor professor’s belief that ‘private sorrows’ are ‘the only thing in the world people really possess’ (Nabokov, *Pnin* 52). This implies that respecting others’ privacy can sometimes mean refusing to share or reveal their pain. At Pnin’s lowest point, after losing his job and possibly breaking Victor’s bowl, all we get as readers is a description of the ‘film of tears’ in his eyes (Nabokov, *Pnin* 172). Instead of sharing his insights as the omniscient author, Nabokov purposefully slips back behind the mask of the fictional narrator, who can only observe the protagonist from the outside. By doing so, Nabokov allows his hero to retain ownership over his pain in his most vulnerable moment: the details of Pnin’s private sorrows are for him alone to know.

In this light, we may read *Pnin*'s open ending as the author's gift to his character. If Kundera is a disciple of Cervantes, ruthless in his exposure of truth's relativity, Nabokov is the merciful friend of Don Quixote: while the former observes the trap closing around Jaromil, the latter pulls Pnin out of its reach, into 'a soft mist... where there was simply no saying what miracle might happen' (*Pnin* 191). According to Pifer, Nabokov described the novelist's power in 'autocratic terms' precisely in order to highlight the 'inhuman' nature of absolute authority as something only 'ethically tolerable' in the realm of fiction (56). By allowing Pnin to escape this realm, he sets him 'free at last' both from the scrutiny of the (malicious) narrator and the control of the (sympathetic) author (Nabokov, *Pnin* 191). The hero thus finds ultimate privacy not in the safety of a house, but in the freedom of the road – a freedom that implicitly defies the constraints of both space and language, since the protagonist's escape coincides with the end of the novel.

Nabokov's sympathy for Pnin implies that, far from using him as a bad example as Kundera does with Jaromil, he actually supports his lifestyle. In his personal life, the author indeed advocated for 'the much abused ivory tower' as 'a fixed address' for the writer, so long as it had 'an elevator just in case one might like to... have a friend come up for a game of chess' (Nabokov, "The Art of Literature and Commonsense" 371). This balance of privacy and sociality evokes Pnin's simultaneous delight at 'living in a discrete building all by himself' and eagerness to throw a housewarming party (Nabokov, *Pnin* 144-46). It also reminds one of Kundera himself, who used secret doorbell codes with his friends and led a generally secluded life in his Paris apartment (Chemin 14). The relative solitude of Nabokov and

Kundera evokes Arendt's description of 'isolation' as a state of being alone, but staying 'in contact with the world' on one's own terms, through creative and intellectual work (623-24). As authors, Nabokov and Kundera maintained this contact with the world through language: against the odds determined by their forced linguistic unhousing, the two wrote in a masterfully adopted language that deliberately retained traces of its foreign origins and, through its idiosyncratic heteroglossia, managed to preserve its individual specificity.

4. The foreigner's happiness: a precarious balance

Freedom is admittedly not always synonymous with happiness. Having lost his job and home at the end of the novel, Pnin's future is uncertain at best: any joy he may feel must be an ambivalent one. Nevertheless, Nabokov's depiction of the road as a 'thread of gold' gives a generally optimistic tone to *Pnin* (191). In its ambiguous ending, its hinting towards the 'unité originelle du comique et du tragique' ['original unity of the comic and the tragic'] (Jankélévitch 124), and its ability to unmask our illusions without destroying hope (Jankélévitch 115), the novel deploys a more Romantic irony than Kundera's. One must imagine Pnin happy; or, at the very least, ready once again to search for a home in the 'beauty of distance' (Nabokov, *Pnin* 191).

One may then wonder why Kundera's irony is more ruthless in its attacks on 'les inépuisables mensonges du moi et de la société' ['the endless lies of the ego and society'] (Jankélévitch 113-14). The difference between these two ironies may be justified by their

targets. *La vie*'s cutting irony has a corrective purpose: it provides a wakeup call for an innocent executioner whose nationalist delusions endangered the lives of real people. But Pnin's moral responsibility is never questioned; the only victim of his absent-mindedness is himself. In contrast to Jaromil's 'sourire sanglant' ['bloody smile'] (Kundera, *La vie* 401), his smile is merely toothless (Nabokov, *Pnin* 173).

Despite deploying different ironies, Kundera and Nabokov ultimately come to an agreement in their rejection of nationalism. Their answer to the question of whether one can be a person without a nation is a resounding yes, with the provision that one nevertheless needs a home defined by borders, a fixed observation post that affords a (limited) perspective on the wider world. In their personal lives as in their novels, Kundera and Nabokov conceived of this home as an eminently private space, separate from the concept of nation, where they expressed themselves in a deeply personal, hybrid language transcending the boundaries of maps.

Nevertheless, it seems that the mere need for a space of one's own inevitably makes one vulnerable to the ideology of nationalism: as Arendt demonstrated through the example of stateless refugees, identity remains inextricably tied to knowing where one belongs in the world (375). The knowledge of this vulnerability explains why Kundera and Nabokov's ironies, despite their apparent cruelty, are tempered by varying degrees of indulgence for their protagonists.

Works Cited

Arendt, Hannah. *The Origins of Totalitarianism*. Penguin Classics, 2017.

Boyd, Brian. "Nabokov's Humor." *Stalking Nabokov*, Columbia University Press, 2015, pp. 145–56, <https://doi.org/10.7312/boyd15856-014>. Accessed 10 June 2024.

---. *Vladimir Nabokov: The American Years*, Princeton University Press, 1991, <https://doi-org.ezproxy-prd.bodleian.ox.ac.uk/10.1515/9781400884032>. Accessed 10 June 2024.

Chemin, Ariane. *A la recherche de Milan Kundera*. Editions du Seuil, 2021.

Gold, Herbert, and Vladimir Nabokov. "The Art of Fiction (Interview with Vladimir Nabokov)." *The Paris Review*, no. 41, 1967.

Hutcheon, Linda. *Irony's Edge: The Theory and Politics of Irony*. Routledge, 1994.

Jankélévitch, Vladimir. *L'ironie ou la bonne conscience*. Presses Universitaires de France, 1950.

Kellman, Steven G. "Translingualism and the Literary Imagination." *The Translingual Imagination*, Ebook, ProQuest Ebook Central, 2000.

Kundera, Milan. *The Art of the Novel*. Translated by Linda Asher, Faber and Faber, 2005.

---. *La vie est ailleurs*. Translated by François Kérel, Gallimard, 1987.

---. *The Book of Laughter and Forgetting*. Translated by Michael Henry Heim, Penguin, 1987.

---. *The Unbearable Lightness of Being*. Translated by Michael Henry Heim, Harper Collins, 1984.

---. *Quatre-vingt-neuf mots*. Gallimard, 2023.

Muecke, D.C. *Irony and the Ironic: The Critical Idiom*. 2nd ed., Methuen, 1982.

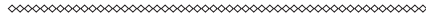
Nabokov, Vladimir. *Pnin*. Random House, 1989.

---. *Speak, Memory: An Autobiography Revisited*. Random House, 1989.

---. "The Art of Literature and Commonsense." *Lectures on Literature*, Harcourt, 1980.

Pifer, Ellen. "On Human Freedom and Inhuman Art: Nabokov." *Slavic and East European Journal*, vol. 22, no. 1, 1978, pp. 52–63, <https://doi.org/10.2307/305675>. Accessed 10 June 2024.

LIVING WITH(IN) THE LAW: REGULATING *DE FACTO* PARTNERS IN FAMILY LAW



Abstract—A trend emerging within family law sees states incrementally recognising the rights and responsibilities of cohabiting couples, regardless of the legal status of their relationships. Rights, benefits, and responsibilities no longer solely inhere in those who have made a formal legal commitment such as that of marriage or civil partnership. However, regulation of *de facto* relationships as opposed to *de jure* relationships raises a host of important considerations—some normative, and some relating to design. I argue that any move to automatic regulation of cohabitants requires broad consideration of three aspects: (i) the desirability of state regulation; (ii) the justification for regulation of *de facto* partners; (iii) the design of regulation. These partners will experience a certain amount of care and may be entangled in an interdependent relationship. It follows from this that certain vulnerabilities arise from such caring and/or interdependent relationships. It is rather the nature of the relationship, rather than the formal legal status of the relationship, that entrenches these vulnerabilities, although a formal legal status may alter how those vulnerabilities are navigated. I argue that the law should regulate *de facto* partners because of the vulnerabilities that they face by virtue of being in such a relationship. However, the design of the legal regulation should be context specific, based on the issues and vulnerabilities in question, family patterns, socio-economic structures, and general jurisprudence of each country.

Introduction

As human beings, we are ontologically vulnerable, and dependent on each other to survive and flourish. We make sense of ourselves through our relationships (Herring 2019). Family law engages with human beings in their relational selves and seeks to regulate the intimate aspects of interpersonal relations. In this essay, I unpack what should be the basis of family law's regulation of those in *de facto* (informal) relationships and not just those in formal legal relationships. My central argument in this paper is that *de facto* adult relationships should be regulated to redress the vulnerabilities experienced by partners in such relationships.

By regulation, I mean recognising adult relationships, intervening in times of need or post-relationship breakdown, and supporting relationships through legal distribution of rights, benefits, and responsibilities. I limit adult relationships to horizontal, non-fleeting, close, personal relationships among adults (following Gheaus 2022). For the purpose of this paper, I use the term *de facto* relationships to cover informal adult relationships, which can include cohabitation and live-in relationships. [The term cohabitation can refer to persons who share the same residence, without necessarily being in a romantic or sexual relationship. On the other hand, those in a live-in relationship usually share a romantic and/or a sexual relationship.] I will not consider the vertical relationships between adults and children, although I acknowledge that in some cases it is hard to regulate adult relationships without considering their impact on children. I limit the scope of regulation to family law, including overlaps with property distribution, domestic violence, etc.

Those in formal legal relationships such as marriage or civil unions automatically come within the fold of legal regulation—there are proper legal methods for separation, divorce, maintenance, property allocation, succession, protection from domestic violence, etc. However, those in *de facto* relationships often face the same or similar vulnerabilities as those in formal relationships, without necessarily enjoying the same legal rights and responsibilities. I argue that *de facto* relationships require equivalent, adequate, efficient, and sensitive state regulation in several aspects.

In this paper, I break down the issue of regulation of *de facto* adult relationships into three parts.

In the first section, I examine why adult relationships should be regulated in the first place. I trace the history of how forcing the state to intervene in adult relationships was the result of several (ongoing) feminist battles to break the public-private divide. I argue that regulation of relationships is essential for a multitude of reasons—to protect the vulnerable, provide legal determinacy, and ensure smooth and fair separation. However, I also caveat the notion that regulation is always desirable, noting the ways in which regulation inevitably strengthens the state. Regulation may open up a space for the state to discipline and control individuals, something which needs to be guarded against.

In the second section, I examine the normative basis for regulating *de facto* relationships in particular. I first counter the utilitarian reasoning for recognising *de facto* relationships, arguing that privileging marriage as the ideal-type adult relationship promotes

problematic heteronormative reasoning. I propose an alternative justification for regulating *de facto* relationships—the vulnerability that is inherent in the relationships and experienced by the partners. This vulnerability arises from physical, emotional, and financial interdependence, and can be compounded if partners are sharing the same space as well. I argue that the state has a duty to redress such vulnerabilities through legal recognition and intervention, because the state also benefits from the existence of *de facto* (caring) relationships.

In the third section, I briefly trace the contours of the design of regulation. I address the common counterargument that regulating *de facto* relationships would be stripping parties of their agency to consciously fall out of the fold of regulation. I argue that this can be rectified through a design choice. I also argue that different areas of family law need different models of regulation, based on their aims and scope, and discuss a couple of examples.

The paper concludes with a brief summary.

Overall, this work seeks to offer a normative overview of the jurisprudential basis for state regulation of *de facto* adult relationships. I borrow case studies mainly from India and the United Kingdom to contextualise my arguments. I use literature from care and vulnerability studies to inform concepts in family law, and aim to add to the growing interdisciplinary scholarship in this area.

1. Why do adult relationships require regulation?

The way adult relationships are regulated by the state today is a consequence of decades of primarily feminist campaigns, conversations, and legal reforms (Bartlett, 1999; Nussbaum, 2016). Previously, people's private lives and their relationships were thought to be out of the purview of state interference, either because they were 'private' or because they were considered to be 'naturally ordered'. For example, domestic violence was predominantly seen as a 'private matter' (Herring, 2020) with 'issues in the home' not being concerns of the state (Suk, 2009). Feminists have been striving to reiterate the systematic nature of domestic abuse as a manifestation of structural gender-based violence primarily against women. This has subsequently been recognised in international human rights law (CEDAW General Recommendation 35, 2017) and at a national level in the form of legislations punishing domestic violence and providing remedies and safeguards for victims. To take another example, the idea of equal division of matrimonial property was non-existent for several centuries because women were simply not allowed to own property (Kahn-Freund, 1970; Kahn-Freund, 1959). Even today, the rules on property allocation following breakdown of formal legal relationships are complex, convoluted and not always equal or just. For example, it is rare that unmarried women with children get financial support from their partners following the end of a relationship. This makes it especially difficult for them to carry out the childcare responsibilities (Herring, 2005). Striving for equal and just allocation of matrimonial/adjacent property and other financial arrangements is a continuing fight for women and feminists even today (Ullrich, 1986; Agnes, 2009; Auchmuty, 2022).

These are just some examples of how state intervention in several aspects of personal adult relationships is an outcome of constant efforts to invite and cement effective and sensitive regulation in many jurisdictions.

Today, regulation of adult relationships is a complex, multi-faceted process. Issues such as marriage, divorce, separation, maintenance, alimony, allocation of matrimonial property, inheritance, domestic violence, beneficiary recognition (for welfare schemes), taxation, and caregiving are just some of the most prominent aspects of adult relationships that need legal clarification and adjudication. These are just aspects of the horizontal relationships between adults. Parent-child relationships involve even more complex questions such as guardianship, custody, allocation of parental rights and responsibility, consent for medical and other important decisions, and succession, to name a few.

Regulation is not just necessary for all these aspects, but desirable as well. Adult relationships require regulation for a variety of factors: ‘to protect the vulnerable, secure justice, provide legal determinacy, settle third-party rights and duties, and appropriately direct state taxation and provision’ (Chambers, 2017, p 143). There are (or should be) several positives to regulating family law. It provides clarity for adults in relationships regarding their legal rights, empowers them to make informed decisions, and ensures that vulnerable parties have some legal and financial protection. It also means the state can support various relationship structures and apportion rights, responsibilities, and benefits to individuals in these relationships. There may be different justifications for regulating

specific areas of law—for example, the considerations involved in awarding maintenance may be different from those seeking to identify coercive control in intimate relationships. While the scope, justification, and normative content of regulation varies according to the issue, regulation *per se* is central to and necessary for family law.

However, state regulation of personal relationships risks intruding on and undermining individual autonomy. Often, the state acts in a prejudiced and controlling manner, using regulation as a weapon to morally police and control certain socially and historically marginalised relationships. I will refer to two examples in furtherance of this argument – the recent law relating to live-in couples in a state in India, and the scholarly and activist responses within the queer community to the demand for same-sex marriage.

In India, the situation always has been extremely precarious for inter-caste, inter-faith, inter-class and same-sex couples. (Verma and Sukhramani, 2018; Saathi, 2023; Arya, 2023). These couples have not just faced violence from their natal families and communities for their choice of partners, but also from the police and other state apparatus. The recently introduced Uniform Civil Code in a state in India, Uttarakhand, exacerbates the social disapproval and violence faced by these couples. The Uttarakhand Uniform Civil Code 2024 ('UUCC') makes it mandatory for couples in a 'live-in relationship' to declare and make an application for registration within a month of the relationship before the Registrar of that jurisdiction, failing which a fine and/or imprisonment may follow (UUCC, s 378). The Supreme Court of India has affirmed that every individual above the age of eighteen has the right to choose their own partner (*Shafin Jahan v.*

Asokan KM, Supreme Court of India, 2018). The Supreme Court has also reiterated that live-in relationships are not illegal (*Lata Singh v. State of UP*, Supreme Court of India, 2006). However, the UCC contains a provision where the Registrar ‘shall’ inform the parents of those in a relationship if the parties are below the age of twenty-one (UCC, s 385). Furthermore, it is bizarre that the Registrar has been given the power to refuse to register the relationship on grounds other than the usual list of prohibitions (incest, bigamy, consent obtained by coercion or fraud, and minority of parties) (UCC, s 381). This takes agency away from the cohabitants and allows a punitive state to police live-in relationships. This form of regulation violates the personal autonomy of couples and threatens their safety as well.

On a related note, the queer movement worldwide has been divided on the idea of same-sex marriage, for the same reasons. There have been two main responses to the demand for queer marriage—assimilationist and abolitionist.¹ Both these responses have different starting points on recognition and regulation within family law. I will provide a summary of the main arguments, although by no means capturing the nuances or internal disagreements within these viewpoints. The former camp argues that true equality would mean

1 For examples of the assimilationist argument, see Martha Nussbaum, *From Disgust to Humanity: Sexual Orientation and Constitutional Law* (OUP 2010) in the context of the US, and Thomas John, ‘Liberating marriage’ in Arvind Narrain and Alok Gupta (eds), *Law Like Love* (Yoda Press 2011) in the context of India. See these articles for a sample of the abolition argument, although all authors themselves may not agree with it: Tom Boellstorff, ‘When Marriage Falls: Queer Coincidences in straight Time’ (2007) 13(2) GLQ 3; Michael Warner, ‘Normal and Normaller: Beyond Gay Marriage’ (1999) 5(2) GLQ 119; Andrew Clark, ‘Falling through the Cracks: Queer Theory, Same-Sex Marriage, *Lawrence v Texas*, and Liminal Bodies’ (2011) 20(4) *disClosure: A Journal of Social Theory* 25.

recognising same-sex marriage, which would be beneficial to queer people. The latter argue that such a move may dangerously enable the state to discipline queer individuals into a heteronormative way of life that benefits the state. Some ask for marriage as an institution to be abolished for everyone. Others argue that the state should step out of the business of recognition of relationships. They ask that marriages be officiated in private ceremonies with no legal consequences, and that regulation govern only the tangible aspects of relationships (welfare benefits, finances, violence, property, childcare arrangements), either through individual contracts or in a piecemeal manner by the state.

The examples of the UCC and the debates on same-sex marriage highlight a fundamental battle concerning state regulation. On one hand, when we require the state to intervene and legally regulate relationships, we may be facilitating the betterment of individuals in such relationships. On the other hand, on a structural level, it may embolden the state to act with impunity. The state could dictate the functioning of relationships in a manner that may not be in their best interests (Fischel, 2018). The concluding comment I wish to make on the above discussion is that regulation is not always utilised as a tool for the vulnerable or those needing regulation—often, it is precisely meant to discipline and control certain subjects.

My broader point here is not to argue that regulation is always problematic, but merely to caveat the uncritical assumption that regulation is always good. The law is inescapable—we are all ‘folded-in together with the law’ (Vashist and Sood, 2020, xix). Any form of state intervention therefore is accompanied by the law’s ability to

shape meaning. It is inevitable that this will influence choices and discipline individuals and relationships, perhaps even inadvertently but often intentionally. I would still argue that regulation of adult relationships is valuable because it is tied to the feminist ideas of breaking the public-private divide, recognising the private sphere as a source of oppression and vulnerability especially for women and children, and viewing law as a tool (albeit double-edged) to redress vulnerability. The argument of misuse by the state, while important to keep in mind, is not an uncommon one restricted to family law alone. It is then the job of stakeholders involved to keep questioning the assumptions and the functioning of the state and ensure that the regulation of adult relationships remains beneficial to the (vulnerable) parties involved.

2. Caring for partners: Care and vulnerability as the justification for regulating *de facto* relationships

In the previous section, I argued that regulation is inevitable and desirable, with a caveat that sometimes, unfortunately, state regulation may be intrusive and overbearing. The second part of my broader argument pertains to a justification—not for regulating adult relationships in general, but for the state regulation of *de facto* relationships in particular. *De facto* relationships produce some or all the goods that marriage and civil unions produce as well—sex, care, financial interdependence, shared division of labour, shared parenting, etc. This means that the practical justifications for regulating marriage should be extended to *de facto* relationships as well. In fact, we can argue that those in *de facto* relationships face enhanced precarities *precisely* because the law refuses to regulate such relationships, which may embolden some to abuse and exploit their partners.

There is a common counterargument against regulating *de facto* relationships: Since the parties consciously did not opt to formalize their relationships, the law ought not to interfere and intervene (the autonomy argument). This is a serious concern and while there can be both normative and practical rebuttals to this position, it is acknowledged that it is ultimately a policy choice to choose the regulation of *de facto* relationships over non-interference in this area. I will, anyway, outline my rebuttals below, taking the position that overall, regulation of *de facto* adult relationships is still beneficial and desirable.

There are two rebuttals I offer to the counterargument of party autonomy. *First*, the parties have made an active choice to be in an adult relationship together. This means that they should be ready to accept any responsibilities that arise vis-à-vis the relationship, that the law imposes. The argument of autonomy of parties cannot and should not normatively be used to supersede conditions of vulnerability that arise from adult relationships. Further, it is often the vulnerable party that approaches the Courts for some kind of legal resolution when there are issues in *de facto* relationships. At that point, there is one partner or ex-partner who actively wants the relationship to have some legal recognition in law. For example, upon separation, it is often the women in heterosexual *de facto* relationships who approach the Courts asking for maintenance or some form of compensation, based on the labour and care they have put into the relationship (Tee, 2001). At that point, the argument of autonomy fails as it is neither a mutual desire for autonomy from state intervention, nor does it account for the security of the partner approaching the Courts. *Second*, even beyond this, if both parties

wish to consciously opt-out of any regime of regulation, this can be solved as a matter of design (explained in the next section), in a way that allows parties to create their own method of resolving issues arising upon termination or breakdown. An opt-out regime brings all parties *prima facie* within the fold of regulation, and allows them to consciously exit the regulatory regime if they have alternatives in place (Eskridge, 2012).

In this section, I will mainly address the normative justification for the regulation of adult relationships. I contest the utilitarian reasoning for it, and build an argument based on the vulnerability of partners and state responsibility to intervene. I believe that the issue of justification comprises three questions:

- i. What are the state's interests in regulation of informal adult relationships?
- ii. What are the circumstances requiring state intervention in *de facto* relationships?
- iii. Do (i) and (ii) need to align? Should state intervention in *de facto* relationships serve the needs of the state or those of the parties, or both?

The following paragraphs in this section seek to answer these three questions.

Contesting the utilitarian justification of regulating *de facto* relationships

A common justification for regulating *de facto* relationships is that they perform similar functions to marriage, which are in state or societal interest. The argument may typically present as follows: ‘the state has an interest (or even a duty) that justifies imposing duties on a party without its consent with regard to the function that cohabitation fulfils for society’ (Scherpe, 2005, p 211).

Scherpe has argued (albeit, in his early writings) that there should be a distinction made between long-term and short-term cohabitation. Those who have only been living together for a short while were seen as neither needing nor deserving protection (Scherpe, 2005). Of course, cohabitation here can be used as a proxy for *de facto* relationships where the parties are also cohabiting. However, regardless of the factor of cohabitation (which can add unique vulnerabilities owing to the nature of the space and the property being shared), this argument can be extended to adults in *de facto* relationships even where the parties are not living together.

However, I submit that the above is an example of a dangerous view of why cohabitation must be regulated by the law. References to the ‘function’ that cohabitation or any relationships fulfil in society are usually adjudged against what marriage is said to offer to society. If the aim is to treat all cohabitants the same way, upholding *marriage* as the default signifier of relationships and adjudging the functional utility of cohabitation against marriage is problematic. The implication is that marriage serves a social function of regulating reproduction, privatising care, and maintaining a certain moral

idea of family (Brake, 2023). This reasoning is heteronormative and patriarchal and was (and continues to be) used to deny same-sex couples the right to marry. This perpetuates an essentialising, gendered view of marriage, with its ultimate purpose as childbearing and rearing. Even if we remove children from the equation, marriage as it exists today has a certain form of its own, and a normative meaning to it. Extending that to and expecting that from *de facto* relationships will exclude several kinds of alternative families, and kinds of relationships (e.g., non-conforming relationships (whether heterosexual or queer), polyamorous relationships, cohabitation between those who are not sexually/romantically involved, etc). This exclusion is starkly exhibited in the case of the Burden sisters, decided by the European Court of Human Rights ('ECtHR') (*Case of Burden v. the United Kingdom*, ECtHR Grand Chamber).

The Burden sisters 'lived together, in a stable, committed and mutually supportive relationship, all their lives; for the last thirty-one years in a house jointly owned and built on land inherited from their parents.' (*Burden v. The United Kingdom*, ECtHR, para 1). Upon the death of one of the sisters, the other would have to pay inheritance tax, whereas survivors among married couples or civil partners were exempt from the same. The sisters argued that in effect, their relationship was no less in form, quality, or affect than that of married or civil union couples. The ECtHR held that 'the relationship between siblings is qualitatively of a different nature to that between married couples and homosexual civil partners' (*Burden v. Burden*, ECtHR, para 62). The Court stressed upon the difference between consanguinity and conjugality, holding that it was valid for the state to specially protect conjugal and conjugal-adjacent relationships.

However, as witnessed in the Burden sisters' case, there may practically be no difference between these two kinds of relationships in terms of the quality and quantity of care, interdependence, cohabitation, and property ownership. It does not make sense that one relationship is elevated *merely* because of the sexual/romantic nature of it. This reflects the amatonormative bias in the law, which is the assumption that sexual/romantic relationships are inherently more valuable and conducive to human flourishing than other kinds of relationships (Brake, 2012). However, once we break down the basis of the special treatment of conjugal relationships, it becomes clear that the independent values and aspects sought to be protected can be found in several other relationships as well.

Adjudging *de facto* relationships against the ideal of marriage also carries with it moral undertones about which relationships 'deserve' protection. This implicates the state in making value judgements about the conception of the 'good' (Cave, 2019). While there are mixed interpretations of state neutrality vis-à-vis promoting a certain conception of the 'good' through marriage, it is nonetheless exclusionary and patronising for the state to promote specific moral values and family forms in the first place (Cave, 2019). An example of how this may play out in an unsatisfactory manner can be seen in the Indian legislation 'Protection of Women from Domestic Violence Act', 2005.

Under the 2005 Act, only women in 'domestic relationships' are protected from cases of domestic violence. Domestic relationships have been defined as relationships by blood, adoption, marriage or 'in the nature of marriage' (2005 Act, s). Relationship in the

nature of marriage' has been interpreted in a particularly restrictive manner, likening it to a common law marriage. The Supreme Court of India has held that the requirements for such relationships to be recognised under the 2005 Act include 'voluntarily cohabit(ing) and hold(ing) themselves out to the world as being akin to spouses for a significant period of time' (*Velusamy v. Patchaiammal*, Supreme Court of India, 2011). This would exclude several *de facto* relationships. The Act has been criticised for not being expansive enough and circumscribing the protected group to what it considers a notion of a legitimate family under the law (Kaushik, 2011). If the Act truly wanted to capture the harm of intimate partner abuse, it could have broadened the definition to all cohabitants, or all those in an intimate relationship with their partner(s). In such a case, treating marriage as the gold standard and the normative form from which we draw legal protections for other forms of cohabitation can be restrictive, exclusionary, and ineffective in addressing issues such as domestic abuse. The state's notion of morality must not be allowed to temper the reach of the law's protective arm.

The constructionist view of family law offers us the lens not just to critique and interrogate the channelling function of law (i.e., how the law nudges people into entering and maintaining certain family forms), but also the tools to challenge it. The constructionist view of family law contests the 'naturalness' of certain family forms such as marriage. It unpacks the historical, social, and discursive functions of the law in systematically privileging and constructing certain family forms as the ideal type— for example, marriage as the ideal adult relationship, and a nuclear, biological, heterosexual dyad as the ideal parental unit (Dermott and Fowler, 2020).

There is no ideal ‘natural’ family form that is inherently *deserving* of legal regulation. Rather, we must go to the root of *why* families or relationships need regulation in the first place and based on that rationale, adult relationships ought to be regulated. This means that the state must not shy away from the regulation of *de facto* relationships simply because they do not resemble married couples. Thus, there is a strong argument to be made for the treatment of *de facto* partners on par with married couples, depending on the legal issue in question. In a nutshell, the normative basis for regulation is dependent not on *what* adults in relationships look like or are labelled as but rather *why* adults in relationships *need* specific regulation.

This argument has been recognised by the Supreme Court in India. In the recent case on marriage equality for queer couples (*Supriyo v. Union of India*, Supreme Court of India, 2023), the Government of India argued that the primary purpose of marriage is to regulate heterosexual reproduction, and therefore it would not align with its social function to permit same-sex couples to marry. Although marriage equality was not recognised by the Court, this reasoning was explicitly rejected in the minority judgment of the Chief Justice. He held, ‘the State recognizes that the party [in relationships] with lesser power and autonomy may be subjected to violence and suppression and consequently, seeks to democratize the space through regulation’ (*Supriyo v. Union of India*, 2023, para 370).

It is interesting that the Supreme Court explicitly refuted the Government’s reasoning and characterised regulation as a function of protection of the vulnerable. I argue that going forward, an important consideration justifying the regulation of adult relationships should

be the vulnerability of parties in such relationships. This also aligns with certain feminist understandings of care, dependence and vulnerability, as elaborated upon below. As a caveat, it is to be noted that the concept of vulnerability is contested and treated differently within disability studies, and literature on care relating to disability. I limit myself to the writing on care and vulnerability in the context of family law and the general regulation of *de facto* adult relationships, without examining the specificities that arise in adult relationships involving people with disabilities and their carers.

Regulating adult relationships on the basis of vulnerability

Some care ethicists argue that the state is obliged to support caring relationships and carers, because caring is morally valuable (Herring, 2013). Parties in intimate adult relationships perform the labour or function of caring for each other, essentially privatising what the state would otherwise have to ensure for human beings, for their welfare. This argument is made in the context of caring for children, where parents (usually mothers) undertake the role of social reproduction which is essential to the survival of the state and beneficial for the effective functioning of the state (Fineman, 2000; Ruskola, 2018). Hence, mothers should receive benefits from the state as compensation for the caregiving labour that they are carrying out that benefits the state.

Similarly, I argue that adults in caring relationships are performing a similar function, or ought to be, as a consequence of the structure of the relationship. I argue that they should be

supported by the state for three reasons: one, it is morally valuable to promote caring relationships through the support of the state through regulation; two, it is only fair that the state compensate parties for the caring labour undertaken within such relationships by ensuring neat and just separation, financial division, and protection from abuse; three, any relationship that involves care and dependence automatically invites vulnerability to the caregivers—they may be more prone to abuse or exploitation, be it physical, mental, emotional, financial, or sexual. Therefore, the state should step in to protect such parties within caring relationships. Whether a relationship is caring or not does not depend on the status of the relationship, i.e., whether it is a formal legal relationship by virtue of marriage or civil union status. Rather, it is based on the goods that the relationship produces—sex, care, dependence, sharing of certain things like finances, household labour etc. It is a policy decision for each state to choose which goods ought to be a part of characterising a relationship as ‘caring’; although, ideally, the ambit of such goods ought to be as wide as possible, to bring a majority of relationships within the fold of regulation.

De facto partners experience a certain amount of care and are entangled in an inter-dependent relationship with their partners. It follows from this that certain vulnerabilities arise from such caring and/or interdependent relationships (Herring, 2019). It is the nature of the relationship, rather than the formal legal status of the relationship, that entrenches these vulnerabilities, although a formal legal status may alter how those vulnerabilities are navigated. I argue that the law should regulate cohabitants because of the vulnerabilities that they face by virtue of being in an intimate adult relationship.

For example, let us take the case of *Burns v. Burns* in the UK (*Burns v. Burns*, England and Wales Court of Appeal, 1984). Valerie Burns was in a relationship with her partner, Patrick Burns for 19 years and lived with him. They had children, and Valerie was the one who took care of the household, performed domestic labour and practically raised the children. The house they lived in was purchased by Patrick, who paid the purchase price and the mortgage instalment repayments. Upon separation, when Valerie made a claim on the house, the Court dismissed her appeal. The Court stated that mere participation in the domestic activities of the household and childcare did not entitle her to have an interest in the property. Since there was no marital relationship between the partners, there was nothing to suggest that she had sufficiently contributed to the house in a financial capacity. This case is often cited as a warning to show the vulnerabilities that cohabitants experience, even though they are in a relationship with a partner that, in effect, is no different from a marital relationship. Auchmuty argues that this case may not be decided the same way today; cases following *Burns* have applied different tests to gauge contribution and assess intention to co-own property (Auchmuty, 2016). However, the underlying point remains that not formalising a relationship may lead to unfavourable outcomes. It is important for the law to note these gaps and enable such relationships to come under the purview of regulation. People should not be penalised for a choice they make on the formalisation or the lack thereof of a relationship. The vulnerabilities that they experience in a relationship should be addressed adequately by the law.

There is one critique of my argument, which challenges the causal link between vulnerability and caring relationships. *One*, there

may be abusive relationships with vulnerable and interdependent parties, without the necessary presence of bilateral care, support, financial sharing, etc. Several goods which arise from caring adult relationships may not necessarily be present here. If the state only seeks to protect and reward caring relationships, there is a fear that such relationships involving abuse may be ignored or deliberately unregulated. However, I argue that this should not be the position in law. It is even more imperative that relationships involving abuse are regulated, as the vulnerable parties within abusive relationships are the ones who may require stronger financial support, rights of residence and property, rights relating to custody, etc. The definition of *de facto* relationships should be broad and not mandate the necessary presence of certain goods in relationships to invite regulation. The kinds of protections extended to abusive relationships can also be more nuanced and responsive to the needs of the vulnerable parties.

A second critique of my argument is that most of the caregiving labour generally falls primarily on women in heterosexual relationships. The gendered division of labour and structural oppression in society leaves women financially and emotionally worse off in such relationships (Parkinson, 2003). Although dynamics may change in queer relationships or based on the intersectional identities of parties in relationships, the underlying point is that caring labour may not be justly or equally divided. The state promoting or protecting such relationships may indirectly entrench such unequal distribution of labour. However, this issue cannot only be solved through the law. It reflects a larger structural problem of patriarchy and capitalism, which contribute to such arrangements

within families: where men are considered breadwinners and women are seen as nurturing the home and family, whether it is their primary labour or something they undertake *alongside* paid work. The arguments by care ethicists cannot be dismissed only because they fail to address the underlying and more structural issues of gender inequality. That is a pervasive issue built into legal structures which needs to be addressed more holistically.

To conclude, *first*, regulation of *de facto* relationships by the state need not and ought not to be tied only to the interests that the state has in such regulation. That would be problematic and may lead to skewed results, with the state trying to promote an idealised version of marriage, and nudging couples towards formalising their relationship to align with this ideal. *Second*, on the other hand, the state has a duty to recognise and redress vulnerabilities within relationships and protect the parties in such relationships. The law is meant to act as a tool to facilitate and empower parties and minimise the ways in which it morally disciplines these parties. Using vulnerability and care as the basis for the regulation of *de facto* relationships challenges the traditional justification of utility and provides a strong alternative normative justification for regulating such relationships. There are more subtle and nuanced questions of policy and design, which reflect both normative and practical choices pertaining to state regulation of *de facto* relationships. These questions have to be answered in a manner that is responsive to the pattern of relationships existing within different jurisdictions, which is explored in the subsequent section of the paper.

3. A brief note on the design of regulation

Whenever it comes to regulation, there arise questions of definition and questions of design. How we define ‘*de facto* relationships’, who can be included within their ambit, what parameters we choose to identify such relationships—these are definitional questions which will impact the inclusion or exclusion of certain individuals from the law’s regulation (Scherpe, 2017). These questions are also determined by a complex mix of factors: historical and contemporary understandings of sex and marriage, public morality, a state’s attitude towards LGBTQ+ persons, etc. Design refers to how the state intervention can be structured—opt-in versus opt-out, the options available for formal registration of a relationship (marriage, registered partnership, recognition of contractual agreements, etc), the focus on form versus function for capturing informal cohabitation, etc (Chambers, 2017).

As mentioned above, one of the common rebuttals for regulating *de facto* relationships or cohabitation is that these parties consciously chose not to formalise their relationships, and their agency must be respected. In the paper, I have argued that it is not so much about the choice of the parties, but rather a focus on the nature of the relationship and the vulnerabilities accrued that requires the law to intervene when necessary. To still enable parties to fall out of the fold of regulation consciously, an opt-out design may be chosen for a jurisdiction. An opt-out regime means that all *de facto* relationships would be automatically regulated under the law, but there would be an explicit option for parties to opt out under this scheme and make a conscious and informed declaration to that effect to the regulating

authorities (Eskridge, 2012). This solves the problems of parties being caught unawares about their rights and responsibilities in *de facto* relationships. It also enables parties to make a serious, informed decision about how they wish to regulate their relationships. In such cases, parties may present an alternative plan on how they would deal with separation, termination or financial issues in the relationship, i.e., through contracts or other binding arrangements. This ensures that all couples are governed in some manner or the other—either by falling within the purview of state regulation or through their own, private mechanism. This, however, does not negate the possibility of power dynamics between partners, and the coercion (implicit or explicit) of opting out. There will therefore have to be intelligent safeguards built into the alternative methods of regulation that the parties may undertake (i.e., contract or other arrangements).

Another complication to this entire scheme arises when we deconstruct the package of rights and benefits that accrue with a traditional understanding of marriage and disaggregate the same to understand how different rights and benefits may be mapped onto different considerations (Fischel, 2019). This means that the umbrella of legal issues grouped under the ambit of family law may contain different justifications, definitions, and consequences for people and their relationships based on the concern at hand.

For example, we may want to ensure that as many people as possible are able to seek protection under the domestic violence legislation, as it regulates a certain kind of intimate violence that people in most caring relationships may be prone to. The specific vulnerability arising from domestic violence may often be tied to the

dependence and caregiving, and the possibility of intimacy always carries with it the risk of abuse. On the other hand, when it comes to financial regulation of property between cohabitants, we may want to have flexibility based on the length of the relationship, the extent of financial sharing of wealth, income and expenses, the needs of the parties, and an idea of compensation/sharing based on the life the parties have lived. Therefore, the scope of *de facto* partners may vary in a domestic violence legislation, and a maintenance or property-related legislation. Questions of definition and design require a certain empirical backing and should be highly localised and contextualised, according to the lived realities in each jurisdiction. However, the general principles must be to maximise the welfare of parties and enable as expansive an understanding of cohabitation as possible.

Conclusion

In this paper, I have provided a brief sketch of the complexities involved in arguing for the regulation of *de facto* relationships. I have first established why adult relationships need regulation, although with some caveats that such regulation must be closely scrutinised to ensure that the state is not pursuing any insidious and intrusive aims. I have then argued that *de facto* relationships should be regulated to redress the vulnerabilities produced within such relationships and to empower the parties in such relationships. In effect, *de facto* relationships may not differ significantly in function from formal legal relationships, and therefore it is the nature of the goods and vulnerabilities produced that ought to attract regulation. Finally, I raised some points regarding the design of such regulation,

highlighting how different design choices may be made based on empirical and ideological nuances of each jurisdiction.

I have not delved into the aspect of vertical relationships between parents and their children in this paper. Regulation of *de facto* relationships becomes even more complex when children are involved, because it raises additional issues of custody, guardianship, maintenance, childcare, decision-making etc. Especially if there is separation or termination of the adult relationship, this may affect the way parents continue to have rights and responsibilities vis-à-vis their children. Therefore, those laws must be amended alongside laws which regulate the aspects of the horizontal relationships between the adults.

John Dewar argues that overall, family law is an incoherent system of regulation, often with contradictory norms and values (Dewar, 1998, p. 468). The coexistence of several moral justifications, legal principles, and legislative and judicial choices contributes to the 'normal chaos' of family law (Dewar, 1998, p. 468). Within this normal chaos, it is still important to carefully engage with the question of regulating *de facto* relationships, keeping in mind the broader aim of maximising their welfare and widening the ambit of legal protection and benefits to as many persons and groups as possible.

Bibliography

Agnes, F. (2009). Patriarchy, sexuality and property. In K. M. Cuno and M. Desai (Eds.), *Family, Gender, and Law in a Globalizing Middle East and South Asia*. Syracuse University Press.

Arya, D. (2023, 28 July). 'India LGBT couples: My parents were ready to kill me for their honour'. *BBC*. <https://www.bbc.com/news/world-asia-india-66245194>

Auchmuty, R. (2016). The limits of marriage protection in property allocation when a relationship ends. *Child and Family Law Quarterly*, 28(4), 303-324. <https://centaur.reading.ac.uk/67764/>.

Auchmuty, R. (2022). Feminism, property and divorce law reform in the 1960s. In J. Miles, D. Monk, and R. Probert (Eds.), *Fifty Years of the Divorce Reform Act 1969*. Hart Publishing.

Bartlett, K. (1999). Feminism and family law. *Family Law Quarterly*, 33(3), 475-500. https://scholarship.law.duke.edu/faculty_scholarship/977/

Brake, E. (2012). *Minimizing marriage: Marriage, morality, and the law*. OUP.

Brake, E. (2023). Marriage and Domestic Partnership. In Edward N. Zalta & Uri Nodelman (Eds.), *The Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/archives/win2023/entries/marriage/>.

Cave, E. (2019). Liberalism, Civil Marriage, and Amorous Caregiving Dyads. *Journal of Applied Philosophy*, 36, 50-72. <https://philpapers.org/rec/CAVLCM>.
Chambers, C. (2017). *Against marriage*. OUP.

Croft, J and Cameron-Chileshe, J. (2023, 14 January). Lawyers urge UK ministers to speed up reform of cohabitation rights. *Financial Times*. <https://www.ft.com/content/ea82e8dc-d95d-42b0-891d-1b0d6d90c8b1>.

Dermott, E and Fowler, T. (2020). What Is a Family and Why Does It Matter?. *Social Sciences*, 9(5), 83-93. <https://doi.org/10.3390/socsci9050083>

Dewar, J. (1998). The Normal Chaos of Family Law. *Modern Law Review*, 61(4), 467-485. <https://www.jstor.org/stable/1097304>.

Esckridge, W. (2012). Family Law Pluralism: The Guided-Choice Regime of Menus, Default Rules, and Override Rules. *The Georgetown Law Journal*, 100, 1881. https://openyls.law.yale.edu/bitstream/handle/20.500.13051/4316/Family_Law_Pluralism_The_Guided_Choice_Regime_of_Menus_Default_Rules_and_Override_Rules_100_Georgetown_Law_Journal_1881_2012.pdf?sequence=2.

Fineman, M. (2000). Cracking the foundational myths: Independence, autonomy and self-sufficiency. *Journal of Gender, Social Policy and the Law*, 8(1), 13-29. <https://digitalcommons.wcl.american.edu/jgspl/vol8/iss1/2/>.

Fischel, J. (2019). Social justice for gender and sexual minorities: A discussion with Paisley Currah and Aeyal Gross. *Critical Analysis of Law*, 6(1), 82-101. <https://cal.library.utoronto.ca/index.php/cal/article/view/32565/24944>.

Gheaus, A. (2022). Personal Relationship Goods. *The Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/archives/win2022/entries/personal-relationship-goods/>.

Herring, J. (2005). Why financial orders on divorce should be unfair. *International Journal of Law, Policy and the Family*, 19(2), 218-228. <https://ssrn.com/abstract=915425>

Herring, J. (2013). Making family law more careful. In J. Wallbank and J. Herring (Eds.), *Vulnerabilities, Care and Family Law* (pp. 43-59). Routledge.

Herring, J. (2019). *Law and the relational self*. CUP.

Herring, J. (2020). *Domestic abuse and human rights*. Intersentia.

Kahn-Freund, O. (1959). Matrimonial property - some recent developments. *Modern Law Review*, 22(3), 241-272. <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1959.tb00525.x>

Kahn-Freund, O. (1970). Recent legislation on matrimonial property. *Modern Law Review*, 33(6), 601-648. <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1970.tb01300.x>

Kaushik, S. (2011). Relationship in the nature of marriage – hope and disappointment. *Journal of ILI*, 53(3), 474-490. <https://www.jstor.org/stable/45148566>.

Nussbaum, M. (2016). Women's progress and women's human rights. *Human Rights Quarterly*, 38(3), 589-622. <https://www.jstor.org/stable/24738037>

Parkinson, P. (2003). Quantifying the Homemaker Contribution in Family Property Law. *Federal Law Review*, 31(1), 1-55. DOI:10.22145/flr.31.1.1.

Ruskola, T. (2018). Notes on the neutered mother, or toward a queer socialist matriarchy. *Emory Law Journal*, 67(6), 1165-1173. <https://scholarlycommons.law.emory.edu/elj/vol67/iss6/4>.

Saathi, S. (2023). Marriage murders and anti-caste feminist politics in India. *Women's Studies International Forum*, 100. <https://doi.org/10.1016/j.wsif.2023.102816>

Scherpe, J. (2005). Protection of partners in informal long-term relationships. *International Law Forum du Droit International*, 7, 206–212.

Scherpe, J. (2017). The Past, Present and Future of Registered Partnerships. In J.M. Scherpe and A. Hayward (Eds.), *The Future of Registered Partnerships: Family Recognition Beyond Marriage?* (pp. 561-586). Intersentia.

Suk, J. (2009). *At home in the law: How the domestic violence revolution is transforming privacy*. Yale University Press.

Tee, L. (2001). Division of property upon relationship breakdown. In Herring, J (ed). *Family Law*. (Willan Publishing).

Ullrich, V.H. (1986). Equal but not equal—A feminist perspective on family law. *Women's Studies International Forum*, 9(1), 41-48. [https://doi.org/10.1016/0277-5395\(86\)90075-0](https://doi.org/10.1016/0277-5395(86)90075-0).

Vashist, L and Sood, J.D. (2020). *Rethinking Law and Violence*. OUP.

Verma, S and Sukhramani, N. (2018). Interfaith Marriages and Negotiated Spaces. *Society and Culture in South Asia*, 4(1), 16-43. <https://doi.org/10.1177/2393861717730620>.

Legal references

Lata Singh v. State of U.P. & Anr., AIR 2006 SC 2522.

Velusamy v. Patchaiammal AIR 2011 SUPREME COURT 479.

Shafin Jahan v. Asokan KM AIR ONLINE 2018 SC 1136.

Supriyo v. Union of India 2023 INSC 920.

Case of Burden v. the United Kingdom, (Application no. 13378/05), ECtHR Grand Chamber.

Burns v. Burns [1984] EWCA Civ 4.

Committee for the Elimination of All Forms of Discrimination Against Women, 'General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19' CEDAW/C/GC/35 (2017).

Protection of Women from Domestic Violence Act, 2005.

Uttarakhand Uniform Civil Code 2024.

RIGHTS AND REMEDIES: SIMILAR BUT DISTINCT



Abstract—It is said that where there is a right, there is a remedy. However, the remedy might not have the same content as that of the right. A party may have a right to have someone perform at a concert. In case of refusal by the latter party, courts will most likely order the latter to pay damages to the innocent party. Here, there is a dissonance between the right (to have someone perform) and the remedy (monetary compensation). However, if the right would have been to restrain somebody from unlawfully entering one’s property, the court would order a remedy, the content of which would be the same as that of the primary right.

This difference in the orders given by the court is justified, as the determination of the rights of the parties (“substantive-rights-stage”) is guided by different considerations as compared to those guiding the ultimate remedy (“remedial-stage”). This is because after determining the parties’ primary obligations, the court seeks to do justice by ordering a remedy that is most appropriate, all things considered. These considerations involve factors beyond the litigants, and highlight the court’s role as a public institution.

This piece shall consider the extent, if at all, to which the considerations in deciding whether to grant a court order are different from those relevant to determining the substantive rights of parties to a dispute, and to what extent should they be, focussing on the fields of contract and tort law.

1. Introduction

It is said that where there is a right, there is a remedy.¹ However, the remedy might not have the same content as that of the right. For instance, the contractual right to have a singer perform at your theatre might be breached by the singer refusing to do so. However, the court might not order the singer to perform, instead, it may award damages.² This is not always true. Court orders also sometimes ‘replicate’ the substantive rights of parties, that is, order the party to perform the same obligation they had a primary duty to perform.

This difference in the orders given by the court is justified, as the determination of the rights of the parties (‘substantive-rights-stage’) is guided by different considerations as compared to those guiding the ultimate remedy (‘remedial-stage’). This is because after determining the parties’ primary obligations, the court seeks to do justice by ordering a remedy that is *most appropriate, all things considered*.³ These considerations might involve factors beyond the litigants.

Part II of this essay discusses the factors guiding the substantive-rights-stage and the remedial-stage in tort law followed by **Part III** which discusses the same in contract law. **Part IV** argues that this difference is justified followed by **Part V** that concludes.

1 *Ashby v White*, (1703) 92 ER 126.

2 *Lumley v Wagner*, [1852] 21 LJ Ch 898.

3 Alex Georgiou & Sandy Steel, ‘Remedies and the Public Interest’ (Forthcoming publication).

2. Tort Law

Courts exercise a discretion to either grant an injunction to stop the impugned activity or order damages to compensate the plaintiff. In *Miller v Jackson*, when the plaintiff complained of nuisance from cricket being played in the neighbouring playground, the court, while holding the defendants liable for nuisance, did not order an injunction to stop them from playing.⁴ It considered the public interest in allowing the defendants to continue their 70-year old activity of playing cricket and their generosity in taking preventive steps to stop the ball from causing any injury. Interestingly, Lord Denning (dissenting) relied on these factors to not only refuse an injunction but also hold that there was no nuisance. This has been criticised, and rightly so. Public interest factors can play a role at the remedial-stage but must not be considered at the substantive-rights-stage, which (generally) determines rights on the basis of the relation between the litigants.

One might argue that public interest plays a greater role at the substantive-rights-stage where one of the litigants is a statutory/public body. This is not entirely true. When public interest was raised as a defence to nuisance being caused by a military base, the court rejected it, holding that if such factors are allowed at the substantive-rights-stage and if public interest overrides the plaintiff's interests, the latter would be deprived of any remedy whatsoever, including damages.⁵ This would amount to a court authorising nuisance.

⁴ *Miller v Jackson*, [1977] QB 966.

⁵ *Dennis v Ministry of Defence*, [2003] 2 EGLR 121.

It was preferable to hold the defendant liable for nuisance, but not order the shutting down of the base in light of its public importance, ordering substantial damages instead.

Another factor which courts do not consider at the substantive-rights-stage but becomes relevant at the remedial-stage is cost to the defendant. When the cost of providing support to land worth £1,500 was £35,000, the court refused to order an injunction to restore the land and awarded damages instead.⁶ Similarly, inadequacy of damages was another factor favouring an injunction, a consideration irrelevant to the litigants' substantive rights.⁷

Earlier, courts had rejected public interest considerations at the remedial-stage, holding that plaintiffs were 'entitled' to injunctions once they had established their rights at law.⁸ In *Shelfer v City of London*, the defendant being a statutory body, argued against an injunction on public interest grounds.⁹ This was rejected, with the court holding that the case was between private litigants and public interest plays very little role in it. Gradually, this trend changed with cases weighing the enjoyment of the public against the nuisance suffered by the plaintiff to either not grant an injunction or order a limited prohibition on the defendant's activities only so as to remove the nuisance.¹⁰

6 *Redland Bricks v Morris*, [1970] AC 652.

7 *Bristol Missing Link Ltd v Bristol City Council*, [2015] PTSR 1470.

8 *Imperial Gas Light & Coke Co v Broadbent*, [1859] 7 HLC 600.

9 *Shelfer v City of London Electric Lighting Co*, [1895] 1 Ch 287.

10 *Kennaway v Thompson*, [1981] QB 88; *Coventry v Lawrence*, [2014] UKSC 13.

Finally, defendants started raising authorisation by planning permission to argue that the noise caused by the permitted activity did not cause nuisance.¹¹ The Supreme Court held that a planning permission does not, of itself, affect the parties' substantive rights (holding the defendants liable for nuisance) but could change the character of the locality, which might influence the determination of nuisance. However, it primarily had an impact on the remedy granted, wherein the court did not award an injunction to stop the activity in light of, *inter alia*, the planning permission and awarded damages instead.

3. Contract Law

The rights and obligations of contractual parties are governed by the contractual terms. Public policy factors are already embedded in the law of contracts which invalidates contracts in the absence of consent or consideration, or unconscionable bargains, etc. In the absence of such factors, the substantive obligations of parties are based on the contract. The remedy, however, is influenced by other factors such as the costs to the parties, supervision by the court, etc. It was rightly held in *Evans v Bertola* that courts have shifted from asking whether damages are an adequate remedy to asking whether it is just '*in all the circumstances*' to restrict a claimant's remedy to damages.¹² Thus, factors beyond the parties are considered at the remedial-stage.

¹¹ *Coventry v Lawrence*, [2014] UKSC 13.

¹² *Evans Marshall & Co. Ltd. V. Bertola S.A. and Independent Sherry Importers Ltd.*, [1973] 1 Lloyd's Rep. 453.

Damages are the usual remedy for contractual breaches, with specific performance being ordered when damages are inadequate. In contracts involving sale of goods, courts generally award damages so that the plaintiff can purchase substitute goods from the market.¹³ This does not mean that he did not have the right to buy the good from the defendant. It only reflects that, at the remedial-stage, the court wants to make an appropriate order that does not require supervision by the court and puts an end to litigation, which is better promised by damages as compared to specific performance. This is because an order of specific performance often involves the Court to verify whether the defendant has indeed complied with the specific order of the Court, which might involve more litigation, as opposed to an order for damages which merely requires a money-transfer between the parties.

When the plaintiff performed his contractual obligations despite the defendant's repudiation and then sued for specific performance, the court ordered the defendant to pay for the plaintiff's services.¹⁴ Lord Reid held that if the plaintiff had no legitimate interest in the performance of the contract other than claiming damages, he would not be entitled to specific performance.¹⁵ Here, a lack of the plaintiff's legitimate interest does not extinguish his contractual rights. This was merely a factor which could have led to an order for damages. Consequences of the remedy on both the parties are also considered

13 *Fothergill v Rowland*, [1873] LR 17 Eq 132.

14 *White & Carter (Councils) Ltd v McGregor*, [1962] AC 413.

15 *Id.*, p. 432.

at the remedial-stage.¹⁶ When the vendor of land (defendant) suffered immense difficulties, such as suffering from bone cancer, getting a leg amputated, giving birth to two children, and her husband becoming bankrupt, the court rejected the plaintiff's claim for specific performance on grounds of hardship, despite none of these concerns being related to the contract.¹⁷

Lastly, courts refrain from ordering specific performance in personal service or employment contracts as forcing a person to work for another might be tantamount to slavery.¹⁸ Sometimes, an injunction prohibiting a defendant from contracting with anyone else might, in effect, force him/her to specifically perform his/her contract. Here, courts are sceptical about granting an injunction, unless it is restrained in time and space.¹⁹ Thus, the factors considered at the remedial-stage, namely, costs to the defendant, supervision by the court, consequence on the parties, hardship, etc., are different from those guiding the substantive-rights-stage.

4. In support of Precedent

It is submitted, in line with the courts' practice, that different considerations must govern the substantive-rights-stage and the remedial-stage. Remedies are orders given by the courts, which are

16 Millett LJ, *Co-operative Insurance Soc Ltd v. Argyll Stores (Holdings) Ltd*, [1996] 3 All ER.

17 *Patel v Ali*, [1984] Ch 283.

18 *Lumley v Wagner* (n 1).

19 *Warner Bros Pictures Inc v Nelson*, [1937] 1 KB 209.

public bodies entrusted with delivering justice.²⁰ An order must not only be just to the litigants but also not create unjust results for third parties. This justifies why courts might not order injunctions to close a factory which provides local employment, even though it might be causing nuisance. Here, a court might (a) determine that a tort has occurred but still (b) exercise its discretion to not order stopping of the tortious act and award damages instead. On the other hand, if the same factors guide the determination of (a), we might reach a result where the defendant is not held liable at all, depriving the plaintiff of any compensation as well. Further, if a court orders the closure of an activity authorised by the government to give effect to the parties' rights and ignores all other considerations, it will, in effect, be overriding a decision by the executive. However, when the executive authorises an activity, it balances a whole range of factors such as impact on the environment, the growth of the area, etc. Courts, on the other hand, cannot carry out such an exercise as they lack access to the requisite information. Thus, courts must refrain from giving orders that work in isolation of such public policy factors. It is best to find an alternative remedy in the form of damages, which saves the court from acting like the executive but also delivers justice to the litigants.

Further, discretion cannot be exercised at the substantive-rights-stage as primary obligations govern the relation between parties and hence need to be more certain. Whether trespass has been committed or a contract has been breached must not depend upon balancing incommensurable factors such as costs, hardship,

²⁰ Georgiou & Steel (n 2).

supervision, and consequences on the environment with the plaintiff's rights. Thus, when a life-saving medication is introduced in the market in violation of patent, the plaintiff must know that his patent rights have been infringed. However, the court must consider the benefits of that product before ordering any remedy.²¹ This uncertainty at the remedial-stage is justified as court orders, involving factors such as reasonability, foreseeability, etc., are inherently indeterminate.²²

Additionally, court orders are coercive. Their breach would result in contempt proceedings, while the breach of primary obligations leads to initiation of judicial proceedings. Any coercive measure must involve the consideration of wider public policy factors, while private law duties are bilateral and hence need bilateral reasons for their justification (this is subject to overarching public policy measures based on consent, self-defence, etc.). Here, the issue of illegality suffers from a lack of clarity as to whether it affects the parties' substantive rights (makes contracts void *ab initio*) or just the remedy (makes contracts unenforceable).

A contrary view is that when the courts in *Miller v Jackson* and *Patel v Ali* refuse injunctions on grounds of public interest and hardship, they indirectly acknowledge that these considerations impact the substantive-rights-stage. In other words, public interest can take away a plaintiff's right to live nuisance-free. It is submitted that barring Lord Denning's dissent in *Miller*, which has received

21 *Evalve v Edwards Lifesciences*, [2020] EWHC 513 & 514 (Pat).

22 Georgiou & Steel (n 2).

immense criticism, there is hardly any precedent for this argument. Courts have explicitly held that the defendants are liable for violating their substantive obligations, while giving reasons for not enforcing the same obligation and ordering an alternative remedy.

5. Conclusion

Thus, there exists, and rightly so, a distinction between factors guiding the court at the substantive-rights-stage and the remedial-stage. The ultimate purpose of courts is to give an *appropriate* order, *all things considered*. While the plaintiff has a right to get assistance in enforcing his primary rights, the means of enforcing such right can and must be decided by the court. The court may consider all the incommensurable factors cumulatively and exercise its discretion in reaching an appropriate remedy. While factors such as public interest may guide the court in choosing one remedy over the other, they must not be given undue weight such that they can independently serve as a sufficient justification for a remedy in the absence of any such obligation existing *inter se* the parties.²³ Private law disputes are best settled using principles governing the relations between the litigants, with an aim to achieve as much certainty in the remedy as well.

²³ Georgiou & Steel (n 2).

Bibliography

Primary Sources

Lumley v Wagner, [1852] 21 LJ Ch 898.

Miller v Jackson, [1977] QB 966.

Dennis v Ministry of Defence, [2003] 2 EGLR 121.

Redland Bricks v Morris, [1970] AC 652.

Bristol Missing Link Ltd v Bristol City Council, [2015] PTSR 1470.
Imperial Gas Light & Coke Co v Broadbent, [1859] 7 HLC 600.

Shelfer v City of London Electric Lighting Co, [1895] 1 Ch 287.

Kennaway v Thompson, [1981] QB 88; Coventry v Lawrence, [2014] UKSC 13.
Coventry v Lawrence, [2014] UKSC 13.

Evans Marshall & Co. Ltd. V. Bertola S.A. and Independent Sherry Importers Ltd., [1973] 1 Lloyd's Rep. 453.

Fothergill v Rowland, [1873] LR 17 Eq 132.

White & Carter (Councils) Ltd v McGregor, [1962] AC 413.

Millett LJ, Co-operative Insurance Soc Ltd v. Argyll Stores (Holdings) Ltd, [1996] 3 All ER.

Patel v Ali, [1984] Ch 283.

Warner Bros Pictures Inc v Nelson, [1937] 1 KB 209.

Evalve v Edwards Lifesciences, [2020] EWHC 513 & 514 (Pat).

Secondary Sources

Alex Georgiou & Sandy Steel, 'Remedies and the Public Interest' (Forthcoming publication).

THE EMPLOYABILITY OF ENGLISH-MEDIUM DEGREE GRADUATES IN JAPAN: THE IMPORTANCE OF UNDERSTANDING THEIR EXPERIENCES CONTEXTUALLY AND CONCEPTUALLY



Abstract—English medium instruction (EMI) has grown phenomenally over the recent decades. It is commonly supposed that studying an academic subject (e.g. history, chemistry, sociology, etc.) through the medium of English in countries where English is not an official language has benefits. Many assume it boosts students’ English proficiency through the linguistically immersive nature of studying academic content. It is also widely thought to develop the global competence of learners due to the global focus of EMI curricula and teaching materials. Such beliefs encourage many to enrol on EMI programmes in the hope that the hard-fought nature of gaining an EMI degree will result in better job opportunities at graduation, and far beyond it. Research remains scant on the alleged career enhancing nature of EMI study, and what little evidence there is rests largely on stakeholder perceptions rather than actual experience, and existing studies can appear theoretically light, methodologically unambitious, and analytically unsophisticated. It is essential that future research draws on the wider literature on employability to help contextualise, explain, and appraise whether EMI graduates experience enhanced career prospects. This review article provides a critical overview of EMI employability research and points the way forward.

Graduate employability has become an increasing concern among governments and HE institutions (Tight, 2023). The shift to a ‘knowledge-based’ economy has underlined the apparent necessity of a highly skilled workforce to meet the challenges of a world in flux (Brown et al., 2020). Time at university, so the argument runs, should not be a pleasurable interlude of self-discovery but a period in which useful vocational qualities are developed (Robson, 2023). This more instrumental view of education has emerged in recent times (Marginson & Xu, 2023). The expansion of higher education globally has signalled a ‘high’ participation era (Marginson, 2018), but this has meant that a degree is seemingly no longer the mark of distinction it once was in previous eras, when a small minority went to university (Lauder & Mayhew, 2020). Many entering higher education are becoming increasingly aware that it is “no longer enough just to be a graduate, but instead an employable graduate” (Tomlinson, 2012, p. 415).

Graduate employability has received far less attention in certain contexts outside the Anglosphere. Japan, the context of the current study, is no exception. Policy makers and the business community in Japan appear more concerned with graduates’ *future trainability* within companies than any skills and attributes developed at university (Amano, 2011). However, with globalization intensifying, there has been growing recognition in Japan that the valued qualities of the Japanese employee—diligence, doggedness, and deference (Takahashi, 2015)—need to be supplemented with a measure of global capability, both linguistic and cultural. This has encouraged many to enrol on degree programmes that are perceived to nurture such skills (Bradford, 2021).

The rapid growth of English-medium instruction (EMI) programmes is widely believed to offer graduates an employability boost (Curle et al., 2020). Students appear mindful of the value-added nature of EMI degrees (Sahan & Sahan, 2021) in providing content learning outcomes, improved English proficiency (Rose, 2021) and a nurturing of ‘global competence’ (Bradford, 2021). The research evidence, however, for actual gains is mixed (see Macaro, 2018; Aizawa et al., 2023) This leads to the belief, widespread but unsubstantiated, that EMI study boosts graduates’ employability (see Curle et al., 2020; Sahan et al., 2021), i.e. a graduate’s ability to secure and retain a desired job (Rothwell & Arnold, 2007). Iwaniec and Wang (2023) found that students in China strongly believed that EMI offered a competitive edge for future employment, with participants driven by witnessing their seniors “reaping benefits” professionally (p. 14).

Yet perception is not the same as actual experience. A more critical and empirically driven exploration is overdue, but future research must situate and enrich findings with sufficient contextual and conceptual understanding given the complexity and multifaceted nature of graduate employability.

English Medium instruction (EMI)

As English-medium instruction spreads across different educational contexts and geographic regions, definitional precision is crucial (Macaro, 2018). A recent study to produced a typology of 51 features across ten curriculum categories (Richards & Pun, 2021). Macaro’s (2018) general definition has been central to a growing research field. According to him, EMI refers to “the use of the English

language to teach academic subjects (other than English itself) in countries or jurisdictions where the first language (L1) of the majority of the population is not English (p. 9). This definition of EMI is not without its critics (see Wingate, 2022; Veitch, 2021; Smut & Diaz, 2014) who favour broader and less geographically specific definitions. However, Macaro's definition is chosen as appropriate to the Japan context, the focus of the current study. What characterises EMI, particularly in Japan, is that English is not the first language of most students, and, unlike in Anglophone Higher Education Institutes (HEI) most EMI instructors are not native or near-native speakers (Macaro, 2018). Further, as Macaro and Rose (2023) underline, an explicit policy decision to permit or require English use as the medium of instruction on academic programmes, rather than the first language, distinguishes EMI. In Japan, this policy decision has been explicitly channelled through successive government initiatives and comprehensively put into practice at the institutional level, invariably in response to internationalization processes impacting Japanese HE. By 2018 EMI was offered to undergraduates at 42% of Japan's 780 universities, and at the graduate level 36% of institutions offer EMI courses (MEXT, 2019).

Vocational-related benefit: Improved English language proficiency

Language learners often seem guided by what improved proficiency brings to their life chances. It is often suggested that we live in a neoliberal age, and today's language learner is a *homo economicus* – an entrepreneur concerned with developing linguistic capital through investing time and effort (Block, 2018). Such 'linguistic entrepreneurship' (De Costa et al., 2021) is focused on language as

a marketable commodity, a crucial skill and a prized possession, no mere CV fodder.

There is a growing realization within corporate Japan that English has a vital role in overcoming obstacles in global business practices (Terauchi & Akari, 2016). Education First (EF), a global education company, in its 2023 English Proficiency Index (EF EPI 2023, n.d.) ranks Japan's estimated English proficiency level only 87th out of 113 countries, and 15th out of 23 in Asia, hardly befitting the world's 4th largest economy in a rampantly global era.

East Asian students tend to believe that EMI study is a way of developing English proficiency (Chapple, 2015; Galloway et al., 2017, 2020; Kojima & Yashimi, 2017; Hu & Lei, 2015), due to its linguistically immersive nature (Briggs et al., 2017). However, empirical evidence is patchy and often contradictory (Macaro, 2018). Furthermore, EMI courses taught may differ widely both between contexts, making comparison across contexts –and within them– difficult (Macaro, 2018). Nonetheless, given the *promise* of English language learning, many of those attracted to EMI study sense a knock-on effect on future career prospects (Galloway et al., 2017, 2020; Rose et al. 2020). A spirit of 'linguistic entrepreneurship' seemingly pervades, i.e. the sense of English proficiency as an economic commodity and vehicle of personal and professional advancement (De Costa et al., 2016).

Vocational-related benefit: Global competence development

Few studies have probed whether EMI study contributes to students' global competence, a concept widely used but vaguely

understood This stems from the array of terms used interchangeably, e.g. intercultural competence, intercultural communication competence, intercultural sensitivity, intercultural understanding, global citizenship, global leadership, and cross-cultural understanding (Sakamoto & Roger, 2022), and the varied academic fields it occupies (Lueng et al., 2014). In Japan, the more prominent articulation of global competence is the governmental and corporate push for *gurobaru jinzai* (global human resources) defined by the Japanese Ministry of Internal Affairs and Communications as those with “(a) high levels of language ability and communication competence, (b) autonomy and proactiveness, and (c) a spirit of intercultural understanding” (Kubota & Takeda, 2021, p. 9).

Corporate Japan’s view is that time abroad is critical in developing globally competent graduates (ibid.). Clearly, EMI programmes, through the internationalized curriculum content, the more diverse student enrolment, and in Japan, often an integrated study abroad component (Bradford, 2020), represent a means of nurturing a more global outlook and proactiveness. The prevailing relevance of the term global *jinzai* to the corporate world (Chapple, 2014) makes it essential to probe whether the EMI degree signifies sought-after global skills that offer an advantage over those graduating from degree programmes conducted in students’ first language.

EMI’s vocational dividend?

In sum, there is a widespread assumption that EMI study helps nurture English language skills and global competence, although firm empirical evidence is lacking. While EMI programmes may attract students eager to develop skills and attributes, existing studies tell us

little about whether it translates to an actual career enhancement for graduates. This represents a significant gap in the research field, and, the next section explores research that might help us to understand whether these assumptions are reasonable, and what further research is necessary to help us understand the relationship between EMI education and career success.

EMI employability research

Table 1 summarizes a selection of pertinent studies related to EMI employability. There appears broad consensus that EMI aids employability, though as can be seen, what sparse research there is centres on *perceptions* of stakeholders rather than actual graduate *experiences* within the job market. Existing studies are focused on contexts where EMI is a relatively new and emerging phenomenon (see Sahan et al., 2021). Japan, a more mature EMI context (Curle et al., 2023), has been almost completely overlooked. This is particular unusual given the volume of EMI students and alumni in Japan, whose experiences stretch over many years. Indeed, the economic context of Japan differs vastly from that of less developed economies chosen as research settings. In Vietnam, for instance, the rapidly growing economy and greater exclusivity of EMI qualifications may ensure EMI graduates are valued highly. There is scope to explore how far EMI study facilitates employability in more advanced economies. As Aizawa and McKinley (2020) state, “we need more empirical evidence about improved job opportunities” (p. 29).

Student perspective

Empirical evidence of actual enhanced job prospects, beyond participants’ perceptions and beliefs at enrolment, remains extremely

scant. An exception are two recent studies of alumni experiences in the Turkish context (Sahan & Sahan, 2021, 2023). The first study compared the perceptions of prospective, current, and past students regarding learning and professional outcomes of EMI study (n = 416) via a questionnaire, online interviews, and in-person focus groups. Prospective students, current students, and graduates agreed that EMI provided professional benefits, particularly in the context of a globalized economy. EMI graduates implied that the English skills accrued may help job-hunters stand out and may improve salaries and job opportunities, but they did not accept wholeheartedly that EMI enhanced careers to the extent students believed. What emerged from the data was that the issue of EMI employability was more “complex and subtle” than it is commonly portrayed (Sahan & Sahan, 2021, p.14). In sum, “EMI alone is insufficient to secure economic stability” (p. 16).

The more recent study (Sahan & Sahan, 2023) explored the post-degree experiences of four Turkish EMI engineering graduates through a narrative inquiry into their experiences studying EMI, particularly their emotional journey and career story. The researchers found that participants’ emotional journey fitted a neoliberal framework: developing English language skills for career purposes was an abiding theme. Language proficiency meant a badge of honour vocationally for one of the graduates, who used it to secure a position at an international company. Neoliberalist discourses hovered over participants’ beliefs about language learning and the vocational value of EMI study. Yet their EMI experience was often beset by frustrations, challenges, and setbacks, indicating a more complex, contextually shaped relationship between neoliberal

linguistic entrepreneurship and actual experiences. Tellingly perhaps, three of the four participants opted to remain or return to full-time education. Both studies hint at the perceived EMI career-boost not materializing quite as hoped.

The assumption that knowing another language is an asset in the job market has been rarely examined using more objective measures, like wage disparities. In the United States context, Saiz and Zoido (2005) discovered slightly higher salaries for those with a second language. In Bolivia, Godoy et al (2009) found that minority language speakers with fluent Spanish (the majority language) attracted far higher salaries than those with only moderate proficiency in Spanish and those without it.

Corporate stakeholder beliefs

Yuksel and Altay (2023) recently examined the perspectives of 12 company managers and 12 human resources supervisors based in an industrial region of Turkey. The disciplinary subject of the EMI graduates in question is not mentioned, but it is likely they are engineering graduates. One central aspect of EMI graduates' professed employability related to their English language proficiency, both in general communicative and technical contexts. English abilities appeared to trump technical know-how. The level of commitment involved in nurturing technical English was burdensome, participants suggested. Second, the value of an EMI degree vied with other factors such as 1) internship experience, 2) grades and specialism, and 3) additional certificates and courses completed. Third, many EMI graduates had surprisingly low English proficiency, which appears to challenge the widespread belief that

EMI offers a linguistic dividend to its students (see Macaro, 2018). Finally, the tendency of EMI graduates to lack adequate content knowledge was an issue. Overall, Yuksel and Atlay maintain that an EMI degree is “a valuable human capital asset” (p. 15) but not the sole factor in graduate recruitment. While the researchers acknowledged the importance of context in examining the transition to professional life for EMI graduates, very little was done to provide it. One learnt nothing of the regional economy except that it was manufacturing focused, nothing of the recruitment process except that it involved managers and HR, and nothing of selection criteria except that it involved a mixture of things. Short journal articles leave much detail out by necessity, but the findings appear completely uncontextualized.

EMI employability research: contextually ‘light’ and theoretically ‘thin’

Existing EMI employability research appears patchy and shallow. Studies may sprinkle terms like the ‘recruitment process’ and ‘stakeholders’ over their findings, but the context in which EMI graduate recruitment occurs is superficially portrayed and, frustratingly, unexplored. It is time to heed the repeated calls for applied linguistics to embrace inter-disciplinary insights and frameworks (see Douglas Fir Group, 2016). In Japan, the educational system and the highly structured graduate recruitment process shapes the experience of job hunting and needs to be central to the analysis. Yet it is necessary, too, to provide greater conceptual underpinning to issues of EMI employability through drawing on wider research outside of applied linguistics, given the multifaceted nature of ‘employability’ as a concept (see Robson, 2023). This should

allow a better estimate of how far EMI degrees contribute to the employability of graduates, and ultimately provide richer insights into the post-EMI experience, a crucial transition period largely neglected.

Country	Author (s)	Grade & major	Data sources	Stakeholder perception OR graduate experience	Key findings
Nepal	Sah (2023)	Undergraduates (n = 19) Nursing, business, education	Interviews, focus groups	Perception	EMI students “guided by the belief that the EMI program can help them overcome their socioeconomic struggles” (p. 6). EMI students are ‘linguistic entrepreneurs’ wanting to enhance their competitiveness in a neoliberal world
Uzbekistan	Rahmanova & Yangin Eksi (2023)	Undergraduates (n = 15), majors unstated	Questionnaire, interviews	Perception	EMI builds English proficiency, consequently “we will be able to work in prestigious foreign companies” (p. 465). EMI also a means of international mobility
Vietnam	Nguyen, Degrave, Van Steendam, & Sercu (2023)	Undergraduates (n = 339), 7 academic faculties	Questionnaire	Perception	EMI degree promises “many opportunities for my later employment” (p. 5), “a great help in my later work” (p. 6), and “a great number of job openings, higher wages, and the opportunity to work for global corporations” (p. 6).
Bangladesh	Hamid, Jahan, & Islam (2013)	Undergraduates (n = 37) and instructors (n = 17) from six departments	Interviews	Perception	Private universities “follow EMI instruction to create more job opportunities for their students” (p. 157).

Oman	Denman & Al-Mahrooqi (2019)	Undergraduates (n = 415) various majors,	Questionnaire	Perception	Studying courses in English increases graduates' chances of finding suitable jobs after graduation: M = 4.01 (1 = Strongly Disagree / 5 = Strongly Agree)
Tunisia	Abdeljaoued (2023)	Undergraduates (n = 434) computing, engineering, business, management	Questionnaire	Perception	EMI programmes offer student more employment opportunities: Agree (28.6%), Strongly Agree (64.3%)
China	Huang & Curle (2020)	Undergraduates (n = 50) and graduates (n = 50), finance	Questionnaire	Perception / experience	Undergraduates perceived EMI study helped as a pathway to studying abroad as graduates, but university prestige and individual ability more of a factor for job seekers than degree type. Graduates felt EMI programme was somewhat deficient in terms of furnishing work-readiness.
	Wang & Iwaniec (2022)	Undergraduates , (n = 257), vast array of majors	Questionnaire	Perception	EMI students "clearly goal-driven, seeing EMI as a facilitator to their career, and giving them opportunities to be part of the international community" (p. 17).
China & Japan	Galloway, Kriukow, Namajiri (2017)	Undergraduates (n = 579), instructors (n = 28)	Questionnaire , interviews, focus groups	Perception	EMI study offers "upward mobility, getting access to better jobs domestically and abroad" (p. 23).
Turkey	Sahan & Sahan (2021)	Pre-sessional students, undergraduates, graduates (n = 416), engineering	Questionnaire , focus groups, interviews,	Perception / experience	An EMI degree demonstrates that candidate has made an investment in their English skills, but EMI is not the silver bullet that ensures job security.

	Attay & Yuksel (2021)	Graduates (n = 139) of engineering EMI programmes	Questionnaire	Experience	Mixed results regarding employment opportunities between engineering majors. However, all electrical engineering graduate participants had found jobs and were more likely to have found subject-related positions.
	Yuksel & Atlat (2023)	Managers (n = 12) human resource personnel (n = 12)	Interviews	Experience	EMI degree serves as “a valuable human capital asset” (p. 15) but not the sole factor in a graduate’s employability
	Sahan & Sahan (2023)	Graduates (n = 4)	Interviews	Experience	EMI degrees offer no guarantee of suitable employment

Table 1: An overview of key EMI ‘employability’ related studies

Japan’s graduate recruitment context

As of 2021, a total of 783 universities in Japan are vying for new undergraduate student recruits in an era of universal or high participation. This has not meant that degrees are devalued per se. Increasingly, a university degree is a “defensive necessity” in troubled times, “no longer *sufficient* to earn one a secure future, but it remained necessary” (Breaden, 2021a, p. 37)

Despite its near 800 universities, an intense application selection process occurs, particularly for high-ranking Japanese institutions (Breaden & Goodman, 2023). Research on graduate employability has established that in an era of mass higher education participation, institutional prestige often carries more weight in graduate recruitment contexts (Isopahkala-Bouret & Tholen, 2023; Waters, 2023). This seems plausible in Japan (Yonezawa, 2020). A Japanese

educational institution at whatever level is primarily judged on the degree of access to prestigious education and career paths (Pilz & Alexander, 2011). This is reflected in the undergraduate applications data. Prestigious universities remain highly selective: the top 30 private universities in Japan still receive roughly half of all total applications, the top 100 over 80% (Breaden, 2021b).

The stampede for places at prestigious universities is entirely understandable. Graduating from a ‘good’ university in Japan makes it more likely one will be offered a graduate position at a ‘good’ company offering security and status, a higher salary and benefits (Kariya, 2004, 2010). In 2022 the top four Japanese universities globally in terms of student employability were Tokyo (25th), Waseda (37th), Kyoto (52nd), and Keio (56th) (QS, n.d.), all of which are old, prestigious universities, that are both over-subscribed and highly selective. Qualification from a particular institution serves as useful “biographic signals” for recruiters (Inui & Hosogane, 1995, p. 166). Modern Japan has become “not so much a ‘which level?’ credentialing society as one which emphasizes ‘which institution’” (Amano, 2011, p. 215). Employers in Japan can appear more concerned with *where* someone studies rather than *what* degree and courses they took. Yet could it be that accelerating global forces and fiercer trade competition have altered recruitment practices? If a degree from a prestigious university still bestows “a distinctive advantage” (Ishida, 2004, p. 304), is it conceivable that an EMI degree serves as an additional ‘biographic signal’?

Theories of graduate employability

Existing studies of EMI employment fail to grasp the cruciality of employability theory in illuminating and explaining experience. This is curious given the repeated calls for applied linguistics to embrace inter-disciplinary insights and frameworks (see Douglas Fir Group, 2016).

At root, graduate employability is the “propensity of students to obtain a job” (Harvey, 2001, p. 98), which invariably means an appropriate ‘graduate-level’ job, fitting one’s salary expectations and skill level (Rothwell & Rothwell, 2016). For Japanese graduates, as elsewhere, this is generally a graduate trainee position. Yorke (2006) fleshes out the specifics with employability representing “a set of achievements—skills, understandings and personal attributes—that makes graduates more likely to gain employment and be successful in their chosen occupation, which benefits themselves, the workforce, the community and the economy” (p. 8). A vast literature is dedicated to defining employability, a multifaceted and much queried concept (Blaquière et al., 2019), which may explain why EMI researchers shy away from it. Graduate employability definitions tend to view education as either a marker of productive skills, a signalling mechanism, or an instrument of social closure (Van de WerfHorst, 2011). It is vital, however, to situate and explain such theories within two broader conceptualizations of employability.

Positional consensus theories

A valuable starting point is Philip Brown’s (2016) distinction between two broad conceptualizations of employability. Positional

consensus theories emphasize how the emergence of a knowledge economy means an increasing need for high-skilled workers and a central role of higher education in supplying them (Lauder & Mayhew, 2020). Everyone benefits from this ‘opportunity bargain’: those motivated and resourceful enough to gain credentials would fill high-skilled (often highly paid) positions. Academic credentials allow recruiters a proxy measure of a job candidate’s knowledge, skills, and attributes. Governments, by widening participation in higher education, can supply the high-skilled labour-force required of today’s increasingly competitive and fastmoving economy (Brown, 2022), and this more meritocratic arrangement would be fairer and more efficient than one ordered by hereditary principles (Brown et al., 2020). Higher education appeared to offer an ‘opportunity bargain’; the gaining of qualifications was seen as a means of building ‘human capital’ and securing high-skilled positions in the workforce. Put simply, ‘learning = earning’.

Central to the positional consensus theories is the idea of a university degree as an ‘investment’ leading to certain future ‘returns’ (Robson, 2023). The chief return is the substantially higher, on average, earnings of graduates compared to non-graduates, i.e. a clear ‘graduate premium’ (see Britton et al., 2020). Human capital theory (HCT) emerged out of the work of Thomas Schultz and Gary Becker in the 1960s (for a useful overview see Brown et al., 2020) It understands higher education as a developer of productive vocational-related skills or competences (Tholen, 2022), such as specific technical know-how or more generic communication and collaborative skills. It is marketable skills gained through training or education that are “the most important investment in human

capital” (Becker, 1994, p. 17), and many policymakers believe the accumulation of human capital is a, or even the, key purpose of higher education (Tight, 2023).

HTC offers an attractive narrative. It is easy to view students opting for EMI degree schemes, for instance, believing that the skills accrued will offer enhanced career prospects and outweigh the substantial challenges arising from challenges in gaining the qualification (see Curle et al., 2020). Yet often transitions are not as smooth as we hope, and the productivity-position relationship not always as neat as human capital theory suggests (Marginson, 2019). In Japan, like elsewhere, labour market pressures and HE expansion are pushing people into traditionally non-graduate occupations (Hori & Nakajima, 2018). Talk of a graduate premium in HE policy pronouncements overlooks vast differences between academic subjects and institutions (see Britton et al., 2022), and research tends to mistakenly treat graduates as an homogenous group (Tholen, 2023). Some subjects are clearly focused on nurturing work-related skills, e.g. medicine, engineering, and law, yet many graduates enter roles for which their knowledge and skills are unrelated (Tholen, 2023).

Human capital theory presents a view of graduate recruitment bleached of economic context, occupational and organizational differences, and other variables like gender, ethnicity, and class (Lauder & Mayhew, 2020). It is important to understand graduate employability *contextually*. A sole focus on individual attributes implies that employability is all about the supply-side of ‘employable’ graduates. Individuals appear overly atomistic; gaining a position is

a question of merely the match between skills and job requirements. Employability as just the ‘possession’ of skills and attributes (Holmes, 2013, 2023) neglects all-important context and the potential conflict inherent in gaining employment (Tholen, 2015). Human capital theory focuses too much on labour market outcomes and not enough on the structural and social dimensions of graduate employability that a more sociological approach may reveal. In short, a fuller account of graduate employability must also account for “the *process* of evaluation itself” (Rivera, 2011, p. 72, emphasis original).

Positional conflict theory

The more fundamental problem with positional consensus theory, however, is its failure to grasp the extent to which the relationship between education and the job market has been transformed over recent decades (Brown, 2022). HCT presents the graduate labour market as a seemingly pure form of meritocracy in which investments are made, human capital is built, and higher salaries achieved, potentially by all. Yet as Philip Brown (2022) reminds us, the employability boost represented by credentials hinges on “how many job openings there are and how many suitably qualified candidates are chasing them” (p. 358). The supply side of the job market (candidates and their credentials) has preoccupied researchers to the neglect of the demand side (the hiring decisions of recruiters). As Bills et al. (2017) point out, “Employer agency in hiring fills a gatekeeping role that can lead to closure and exclusion as easily as it can to merit and inclusiveness” (p. 304).

Screening theory (Stiglitz, 1975) focuses on how employers deal with a lack of information on candidates' productivity. Recruiters are not especially concerned whether valuable attributes are generated at university but how to *identify* them (Goldthorpe, 2014). Recruiters need to compensate for lack of information about applicants' future productivity as employees by screening applications, e.g. filtering candidates by educational credentials, which is a relatively quick and cheap method for companies to adopt. However, expansion of higher education has led to an excess of degree-holders in many contexts. With university degrees ubiquitous, the value of possessing one is reduced. As Hirsch (1976) highlights, "If everyone stands on tiptoe, no one sees better" (p. 5). This degree inflation makes recruitment more difficult given the volume of graduates with comparable qualifications. In many contexts, this has encouraged a scramble for additional academic and professional qualifications (Collins, 2019). However, in Japan postgraduate qualifications are seen to make little difference to one's initial job prospects or future earnings, outside of science and engineering (Ishikawa, 2021).

Signaling theory (Spence, 1973, 2002) suggests that education serves as a proxy measure of an applicant's likely productivity once in the job, as something more tangible than a graduate's professed skills and abilities at application. These signals are positive or negative, and based on experience of similarly qualified people (Caplan, 2018). Recruiters may consider other signals, such as duration of study and grades to establish suitability (Tholen, 2023). They may also judge the status of the institution an applicant is graduating from. The veneration of prestigious institutions is not uncommon. A study of the recruitment practices of elite US banks, law firms and

management consultancies (Rivera, 2011) revealed that graduates from the top four Ivy League universities were favoured; “the credential that employers valued was not the education received at a top school but rather a letter of acceptance from one” (p. 79). There are indications of this screening process happening in other contexts, notably Britain, where the status of the graduating institution is used to filter applicants (Richardson, 2019). Top universities select the best, therefore hiring their graduates is a way of reducing risk (Morley & Aynsley, 2007). Perhaps what matters in the labour queue in some contexts is not to be in possession of multiple degrees but to have one from an elite university.

This seems plausible explanation for the Japan context. In contrast to the ‘vertical’ competition and credentials’ arms-race in many contexts first highlighted in the late 1970s by Randall Collins (2019), in Japan there is more amplified ‘horizontal’ competition: attending an elite institution is commonly perceived to enhance one’s career prospects, far beyond initial entry into the job market (Kariya, 2009). Positional conflict theory offers a more plausible account of the realities of graduate recruitment, of an often intense and jostling positional competition in which candidates’ material and cultural resources may well influence recruitment decisions.

A contextually and theoretically enriched approach to EMI employability

The brief outline above points the way forward to a more contextually and conceptually informed approach to gauging the employability of those graduating from English-medium degrees.

Existing research relies too much on future expectations rather than actual experiences. While studies are gradually appearing that chart the experiences of EMI graduates, they present a view of the graduate labour market as bleached of vital context. There is not one graduate job market, but many, and contextual detail can help explain employability experiences, particularly in a context like Japan where the graduate recruitment process is highly structured and may well differ significantly from other research contexts. A fuller account of EMI employability would also need to view it more holistically, encompassing both the supply and demand sides, i.e. the views of those seeking graduate jobs and those making the hiring decisions for such jobs. In addressing this, positional conflict theory appears more fruitful as a means of enriching an analysis of how EMI graduates fare, in recognizing the complex and multifaceted nature of employability, how intense and contingent is the recruitment process, and how congested and jostling is today's graduate job market.

Conclusion

This paper has focused on establishing the state of existing research and pointing the way forward. EMI has grown phenomenally over the recent decades, yet there is a paucity of research dedicated to the commonplace assumption that it raises the employability of EMI graduates. Studies providing further evidence of a *perceived* boost to future job prospects only take us so far. Research exploring actual *experiences* which is more holistic and contextually aware in its approach can better illuminate whether EMI students enhance their employability. Research should explore the experiences of graduates

at different stages of their careers, for instance, those who have recently joined the workforce and those at the midcareer stage. This will better gauge if the alleged 'boost' job prospects are noticeable, and if they are, whether it is felt at initial transition to the workforce or is sustained over a longer period. There is also a need to track the experiences of jobhunters, in terms of gauging how much their EMI learning experience aids their competitiveness at various stages of the selection process. Did interviewers appear interested in their degree or indifferent or oblivious to it? At interviews, were they asked about the extent of their practical English skills and global competence? Research should also turn attention towards the employers themselves, a much-neglected aspect of EMI employability research up to now. Are employers aware of EMI qualifications, see benefit in studying for them, and prefer candidates who possess them? And ultimately, what do they think of EMI graduates as employees? Such studies will not just fill a gap in the research. There is a tendency for many EMI programmes to be marketed on their career enhancing properties, and a tendency perhaps for students to desire the supposed professional cache of eventual EMI qualifications. Firmer evidence of improved EMI graduate employability can not only establish the veracity of such assumptions. It can also contribute to improvements in how EMI is implemented in meeting the needs of students, in the classroom and beyond it.

References

- Abdeljaoued, M. (2023). English-medium instruction in Tunisia: Perspectives of students. *Frontiers in Psychology*, 14, 1112255. <https://doi.org/10.3389/fpsyg.2023.1112255>
- Aizawa, I., & McKinley, J. (2020). EMI challenges in Japan's internationalization of higher education. In H. Bowles & A. C. Murphy (Eds.), *English-Medium Instruction and the Internationalization of Universities*, 27–48. https://doi.org/10.1007/978-3-030-47860-5_2
- Aizawa, I., Rose, H., McKinley, J., & Thompson, G. (2023). A comparison of content learning outcomes between Japanese and English medium instruction. *Language and Education*, 1–20. <https://doi.org/10.1080/09500782.2023.2238688>
- Amano, I. (2011). *The origins of Japanese credentialism*. Trans Pacific Press.
- Altay, M., & Yuksel, D. (2021). Effectiveness of different EMI engineering programmes on job prospects. *Participatory Educational Research*, 8(2), 460–475. <http://dx.doi.org/10.17275/per.21.49.8.2>
- Becker, G.S. (1994) *Human Capital: A Theoretical and Empirical Analysis with Special Reference to Education*, 3rd ed. University of Chicago Press.
- Bills, D. B., Di Stasio, V., & Gërkhani, K. (2017). The demand side of hiring: Employers in the labor market. *Annual Review of Sociology*, 43(1), 291–310. <https://doi.org/10.1146/annurev-soc-081715-074255>
- Blaquière, G., Nolan, D. J., & Wray, K. (2019). “Joining Up the Dots.” *Journal of Teaching and Learning for Graduate Employability* 10 (2): 15–35. <https://doi.org/10.21153/jtlge2019vol10no2art699>
- Block, D. (2018a) Language, Education and Neoliberalism: Critical Studies in Sociolinguistics, *ELT Journal*, Volume 72, Issue 4, October 2018, (pp.452–454), <https://doi.org/10.1093/elt/ccy035>
- Block, D. (2018b) Some thoughts on education and the discourse of global neoliberalism, *Language and Intercultural Communication*, 18:5, 576–584, DOI: 10.1080/14708477.2018.1501851
- Bradford A. (2020) Internationalizing Japan's Undergraduate Education

Through English Medium Instruction. In: S. Dimova S. & J. Kling (Eds.), *Integrating Content and Language in Multilingual Universities. Educational Linguistics*, 44., 53-74. Springer.

Breaden, J. (2021a). The Heisei period: Plus ça change? In P. Snowden (Ed.), *Handbook of Higher Education in Japan* (pp.32-46). essay, Amsterdam University Press.

Breaden, J. (2021b). From Showa to Heisei: The Formation of Japan's Contemporary Higher Education System. In P. Snowden (Ed.), *Handbook of Higher Education in Japan* (pp.13-31). essay, Amsterdam University Press.

Breaden, J., & Goodman, R. (2023). *Family-run universities in Japan: Sources of inbuilt resilience in the face of demographic pressure, 1992-2030*. Oxford University Press.

Britton, J., Dearden, L., Waltmann, B., & van der Erve, L. (2020, February 29). *The impact of undergraduate degrees on Lifetime earnings*. Institute for Fiscal Studies. <https://ifs.org.uk/publications/impact-undergraduate-degrees-lifetime-earnings>

Britton, J., van der Erve, L., Belfield, C., Vignoles, A., Dickson, M., Zhu, Y., Walker, I., Dearden, L., Sibieta, L., & Buscha, F. (2022). How much does degree choice matter? *Labour Economics*, 79, 1–22. <https://doi.org/10.1016/j.labeco.2022.102268>

Brown, P. (2022). Higher education, credentialism, and social mobility. In J. E. Cote and S. Pickard. (Eds.). *Routledge Handbook of the Sociology of Higher Education*. Routledge, pp. 351-362.

Brown, P., Lauder, H., & Cheung, S. Y. (2020). *The death of human capital? Its failed promise and how to renew it in an age of disruption*. Oxford University Press

Brown, P., & Souto-Otero, M. (2018). The end of the credential society? an analysis of the relationship between education and the labour market using Big Data. *Journal of Education Policy*, 35(1), 95–118. <https://doi.org/10.1080/02680939.2018.1549752>

Caplan, B. D. (2018). *The case against education: Why the education system is a waste of time and money*. Princeton University Press.

Collins, R. (2019). *The Credential Society: An Historical Sociology of Education and Stratification*. Columbia University Press.

Curle, S., Sahan, K., Jablonkai, R., Mittelmeier, J., & Veitch, A. (2020). *English in higher education – English medium Part 1: Literature review*. In N. Galloway (Ed.), *English in higher education*. British Council.

De Costa, P., Park, J., & Wee, L. (2016). Language learning as linguistic entrepreneurship: Implications for language education. *The Asia-Pacific Education Researcher*, 25, 695-702.

De Costa, P. I., Park, J. S. Y., & Wee, L. (2021). Why linguistic entrepreneurship?. *Multilingua*, 40(2), 139-153.

Denman, C. J. , Al-Mahrooqi, R. (2019). English Medium Instruction, Arabic and Identity in Oman's Higher Education Institutions: Teacher and Student Attitudes. *English Teaching & Learning*, 43, 317–335. <https://doi.org/10.1007/s42321-019-00032-3>.

Douglas Fir Group. (2016). A transdisciplinary framework for SLA in a multilingual world. *The Modern Language Journal* 100(S1), 19-47. <https://doi.org/10.1111/modl.12301>

Galloway, N, Kriukow, J. & Numajiri, T (2017) Internationalisation, higher education and the growing demand for English: an investigation into the English medium of instruction (EMI) movement in China and Japan. ELT Research papers 17.2. *British Council*. Available online at: https://www.teachingenglish.org.uk/sites/teacheng/files/H035%20ELTRA%20Internationalisation_HE_and%20the%20growing%20demand%20for%20English%20A4_FINAL_WEB.pdf

Godoy, R., Reyes-Garcia, V., Seyfried, C., Huanca, T., Leonard, W. R., McDade, T., Tanner, S., & Vadez, V. (2009). Language skills and earnings: Evidence from a pre-industrial economy in the Bolivian Amazon. *Economics of Education Review*, 26, 349–360.

Goldthorpe, J. H. (2014). The role of education in intergenerational social mobility: Problems from empirical research in sociology and some theoretical pointers from economics. *Rationality and society*, 26(3), 265-289. <https://doi.org/10.1177/1043463113519068>

Hamid, M. O., Jahan, I. & Islam, M. M. (2013) Medium of instruction policies and language practices, ideologies and institutional divides: voices of teachers and students in a private university in Bangladesh, *Current Issues in Language Planning*, 14(1), 144-163, <http://doi.org/10.1080/14664208.2013.771417>

Huang, H., & Curle, S. (2021). Higher education medium of instruction and career prospects: An exploration of current and graduated Chinese students' perceptions. *Journal of Education and Work*, 34(3), 331-343. <https://doi.org/10.1080/13639080.2021.1922617>

Holmes, L. (2013). Competing perspectives on graduate employability: Possession, position, or process? *Studies in Higher Education*, 13(5), 538–554.

Holmes, L. (2023). Graduate employability and its basis in possessive individualism. In P. Siivonen, U. Isopahkala-Bouret, M. Tomlinson, M. Korhonen, & N. Haltia (Eds.), *Rethinking graduate employability in context discourse, policy and Practice* (pp. 29–49). essay, Springer International Publishing.

Inui, A. & Hosogane, T. (1995). Education as a foundation for work? The efficiency and problems of Japanese upper-secondary school. In L. Bash & A. Green (Eds.) *Youth, education and work [World yearbook of education 1995]* (pp. 162–172). Routledge Falmer.

Ishikawa, M. (2021). Between local distinction and global reputation: university rankings and changing employment in Japan. In M. Stack (Ed.), *Global University Rankings and the politics of knowledge* (pp. 153–171). essay, University of Toronto Press.

Ishida, H. (2004). Educational credentials and labour market entry outcomes in Japan. In Y. Shavit & W. Müller (Eds.), *From school to work: A comparative study of educational qualifications and occupational destinations* (pp. 287–309). essay, Clarendon press.

Ishikura, Y. (2021). Undergraduate admissions: Shifting trends. In P. Snowden (Ed.), *Handbook of Higher Education in Japan* (pp. 122–132). essay, Amsterdam University Press.

Isopahkala-Bouret, U., & Tholen, G. (2023). Relative Employability: Applying the Insights of Positional Competition and Conflict Theories Within the Current Higher Education Landscape. In P. Siivonen, U. Isopahkala-Bouret, M. Tomlinson, M. Korhonen, & N. Haltia (Eds.), *Rethinking graduate employability in context discourse, policy and Practice* (pp. 51–72). essay, Springer International Publishing.

Iwaniec, J., & Wang, W. (2023). Motivations to enrol in EMI programmes in China: An exploratory study. *Applied Linguistics Review*, 14(6), 1563–1587.

Kariya, T. (2004). From high school to college to work in Japan: Meritocracy through institutional and semi-institutional linkages. In Y. Shavit & W. Müller (Eds.), *From school to work: A comparative study of educational qualifications and occupational destinations* (pp. 311–336). essay, Clarendon press.

Kariya, T. (2007). “Gakushu shihon shugi to kyoiku kakusa: shakai seisaku toshite no kyoiku seisaku” (Inequality in education and the rise of “learning capitalist society”). *Shakai seisaku gakkaiishi* 17, 32–48.

Kariya, T. (2009). “From credential society to ‘learning capital’ society: a rearticulation of class formation in Japanese education and society.” In H. Ishida & D. H. Slater (Eds.), *Social Class in Contemporary Japan: Structures, Sorting and Strategies*. Routledge, 105–13

Kubota, R., & Takeda, Y. (2021). Language-in-education policies in Japan versus transnational workers’ voices: Two faces of neoliberal communication competence. *TESOL Quarterly*, 55(2), 458–485. <https://doi.org/10.1002/tesq.613>

Lauder, H., & Mayhew, K. (2020). Higher education and the labour market: an introduction. *Oxford Review of Education*, 46(1), 1–9. <https://doi.org/10.1080/03054985.2019.1699714>

Macaro, E. (2018). *English medium instruction: Content and language in policy and practice*. Oxford University Press.

Macaro , E., & Rose , H. (2023). Introduction to the special issue on English medium instruction: Areas of research needing urgent attention. *Studies in Second Language Learning and Teaching*, 13(2), 257–269. <https://doi.org/10.14746/ssl.38274>

Marginson, S. (2018). 'High participation systems of higher education'. IB. Cantwell, S. Marginson, and A. Smolentseva (eds), *High participation systems of higher education*. <https://doi.org/10.1093/oso/9780198828877.003.0001>, accessed 19 Dec. 2023.

Marginson, S. (2019) 'Limitations of human capital theory', *Studies in Higher Education*, 44(2), pp 287–301.

Marginson, S., & Xu, X. (2023). "The Ensemble of Diverse Music": Internationalization Strategies and Endogenous Agendas. In S. Marginson & X. Xu (Eds.), *Changing higher education in East Asia* (pp. 1–32). essay, Bloomsbury Academic.

Ministry of Education, Culture, Sports, Science and Technology (MEXT) (2019). *Reiwa Gannendo Gakko kihon chosa (School basic survey in 2019)*. [online]. Tokyo, MEXT. Available from: www.mext.go.jp/component/b_menu/other/_icsFiles/afieldfile/2019/08/08/1419592_1.pdf

Ministry of Education, Culture, Sports, Science and Technology (MEXT), (2020a). *Support for internationalization of universities* [online]. Tokyo: MEXT. Available from: www.mext.go.jp/en/policy/education/highered/title02/detail02/1373875.htm

Morley, L., & Aynsley, S. (2007). Employers, quality and standards in higher education: Shared values and vocabularies or elitism and inequalities?. *Higher Education Quarterly*, 61(3), 229–249. <https://doi.org/10.1111/j.1468-2273.2007.00353.x>

Nguyen, P-B-T., Degrave, P., Van Steendam, E., & Sercu, L. (2023). Self-determination in EMI education. A study of university students' motivation in Vietnam. *International Journal of Educational Research*, 5, 100295. <https://doi.org/10.1016/j.ijedro.2023.100295>

QS graduate Employability Rankings 2022. Top Universities. (n.d.).<https://www.topuniversities.com/employability-rankings>

Pilz, M., & Alexander, P. J. (2011). The transition from education to employment in the context of stratification in Japan—a view from the outside. *Comparative Education*, 47(2), 265-280. <https://doi.org/10.1080/03050068.2011.555115>

Rahmanova, G., & Ekşi, G. (2023). English-Medium Instruction in Higher Education in Uzbekistan: Views on Effectiveness, Career Prospects and Challenges. *World Journal of English Language*, 13(5). <http://doi.org/10.5430/wjel.v13n5p458>

Richards, J. C., & Pun, J. (2021). A typology of English-medium instruction. *RELC Journal*, 54(1), 216–240. <https://doi.org/10.1177/0083688220968584>

Richardson, H. (2019) ‘Job applications “filtered by university ranking”’, *BBC News*, 18 September. <https://www.bbc.com/news/education-49728941>

Rivera, L. A. (2011). Ivies, extracurriculars, and exclusion: Elite employers’ use of educational credentials. *Research in Social Stratification and Mobility*, 29(1), 71-90.

Robson, J. (2023). Graduate employment and employability. In S. Marginson, B. Cantwell, D. Platonova, & A. Smolentseva (Eds.), *Assessing the contributions of higher education* (pp. 178-197). Edward Elgar Publishing.

Rose, H. (2021). Students’ language-related challenges of studying through English: What EMI teachers can do. In D. Lasagabaster & A. Doiz (Eds.), *Language use in English-medium instruction at university: International perspectives on teacher practice*, (pp. 145–166). essay, Routledge, Taylor & Francis Group.

Rose, H., McKinley, J., Xu, X., & Zhou, S. (2020). Investigating policy and implementation of English medium instruction in higher education institutions in China. *British Council*. Retrieved January 1, 2024.https://www.teachingenglish.org.uk/sites/teacheng/files/K155_Investigating_policy_implementation_EMI_China_web.pdf

Rothwell, A., & Arnold, J. (2007). Self-perceived employability: Development and validation of a scale. *Personnel review*, 36(1), 23-41.

Rothwell, A., & Rothwell, F. (2016). Graduate Employability: A Critical Oversight. In M. Tomlinson, L. Holmes, A Rothwell, & F. Rothwell (Eds.) *Graduate employability in context: theory, research and debate* (pp. 41–63). Palgrave Macmillan. https://doi.org/10.1057/978-1-137-57168-7_2

Sah, P. K. (2023). Emotion and imagination in English-medium instruction programs: Illuminating its dark side through Nepali students' narratives. *Linguistics and Education*, 101150. <https://doi.org/10.1016/j.linged.2023.101150>

Sahan, K., Mikolajewski, A., Rose, H., Macaro, E., Searle, M., Aizawa, I., Zhou, S., & Veitch, A. (2021). Global mapping of English as a medium of instruction in higher education: 2020 and beyond. *TeachingEnglish*. Retrieved January 1, 2024, from <http://www.teachingenglish.org.uk/article/global-mapping-english-a-medium-instruction-higher-education-2020-beyond>.

Sahan, K., & Şahan, Ö. (2021). Investigating student and alumni perspectives on language learning and career prospects through English medium instruction. *Teaching in Higher Education*, 1-22. <https://doi.org/10.1080/13562517.2021.197340>

Şahan, Ö., & Sahan, K. (2023). A narrative inquiry into the emotional effects of English medium instruction, language learning, and career opportunities. *Linguistics and Education*, 101149. <https://doi.org/10.1016/j.linged.2023.101149>

Saiz, A., & Zoido, E. (2005). Listening to what the world says: Bilingualism and earnings in the United States. *The Review of Economics and Statistics*, 87, 523–538.

Spence, M. (1973). Job market signaling. *Quarterly Journal of Economics*, 87, 355-374.

Spence, M. (2002). Signaling in retrospect and the informational structure of markets. *American Economic Review*, 92, 434-459.

Takahashi, N. (2015). Japanese work ethic and culture. *Annals of Business Administrative Science*, 14(5), 261–278. <https://doi.org/10.7880/abas.14.261>

Terauchi, H., & Akari, T. (2017). English skills that companies need: responses from a large-scale survey. In K. Murata (Ed.), *Exploring elf in Japanese academic and business contexts: Conceptualisation, research and pedagogic implications* (pp. 180–193). essay, Routledge.

Tholen, G. (2015). What can research into graduate employability tell us about agency and structure? *British Journal of Sociology of Education*, 36(5), 766–784. <https://doi.org/10.1080/01425692.2013.847782>

Tholen, G. (2023). *Modern work and the marketisation of higher education*. Policy Press.

Tight, M. (2023). Employability: a core role of higher education?, *Research in Post-Compulsory Education*, 28:4, 551-571, DOI: 10.1080/13596748.2023.2253649

Tomlinson, M. (2012). Graduate Employability: A Review of Conceptual and Empirical Themes. *Higher Education Policy* 25 (4): 407–431. doi:10.1057/hep.2011.26

Tomlinson, M. (2019). Competences, capabilities and capitals: conceptual paradigms in the educational employment relationship. In A. Mann, P. Huddleston, and E. Kashfepakdel (Eds), *Essay on employer engagement in education* (pp. 53–67). Routledge.

Van de Werfhorst, H. G. (2011). Skills, positional good or social closure? The role of education across structural–institutional labour market settings. *Journal of Education and Work*, 24(5), 521-548. <https://doi.org/10.1080/13639080.2011.586994>

Wingate, U. (2022). Student support and teacher education in English for Academic Purposes and English Medium Instruction: Two sides of the same coin? *Language Teaching*, 1-12. doi:10.1017/S0261444822000465

World Bank. (n.d.). *GDP (current US\$)*. World Bank Open Data. https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2022&most_recent_value_desc=true&start=1960&view=chart

Yonezawa, A. (2020). Challenges of the Japanese higher education amidst population decline and globalization. *Globalisation, Societies and Education*, 18(1), 43-52. <https://doi.org/10.1080/14767724.2019.1690085>

Yuksel, D., & Altay, M. (2023). Perspectives of business stakeholders about EMI in Turkiye. *Journal of English-Medium Instruction*. <https://doi.org/10.1075/jemi.22021.yuk>

CLOSE-PROXIMITY VELOCITY ESTIMATION USING MUSICAL INTUITION



Abstract—An intuitive method for velocity estimation is presented, taking advantage of the Doppler effect as it is commonly experienced by humans in close proximity to moving objects. This usually involves hearing two tones in sequence, a higher approaching tone, and a lower receding tone, both of which relate closely to the tone emitted by the moving object as experienced in its own reference frame. Individuals with basic musical training exhibit the ability to accurately discern musical intervals between two distinct fundamental tones. Generally, this ability takes the form of perfect or near-perfect “relative pitch” whereby a musical “interval” between two tones can be expressed in an integral number of semitone pitch shifts. A novel method is shown for musically-trained individuals to use their ability to map pitch intervals in the western equal-temperament musical scale onto a range of object velocities, valid from stationary objects up until approximately 50% of the speed of sound.

1. Introduction

Individuals with basic musical training are adept at identifying certain elements of musical phrases. A key ability in musical practice is the ability to identify chords, which often requires musicians to be able to rapidly and accurately identify the musical interval between pairs of tones. It has been shown that this ability can be taught to individuals of almost any age over a relatively short time period, possibly a few days, even without extensive musical training otherwise (Litke & Olsen, 1979).

The western musical scale is typically represented as a single octave of notes on a traditional piano keyboard, as depicted in Figure 1. A *semitone* is the name given to the musical interval between two adjacent notes on this keyboard, such as $E - F$ or $G - A^b$. With some familiarity, musicians are able to hear the tones produced by playing any two keys and accurately describe the semitone interval between them, with some intervals being particularly recognisable as components of common chords.

For example, a musician may hear somebody strike the C and $G\#$ keys on a piano and recognise this interval via the following intuitive steps:

1. Recognize that this interval *almost* sounds like a “major fifth”, or an interval of 7 semitones (red interval in Figure 1).
2. Recognize that the higher pitch, if one semitone lower, would produce a “major fifth”.

3. Enumerate the semitone interval between C and $G\#$ intuitively by counting:

$$\overbrace{C - C\# - D - D\# - E - F - F\# - G - G\#}^{8 \text{ semitones}}.$$

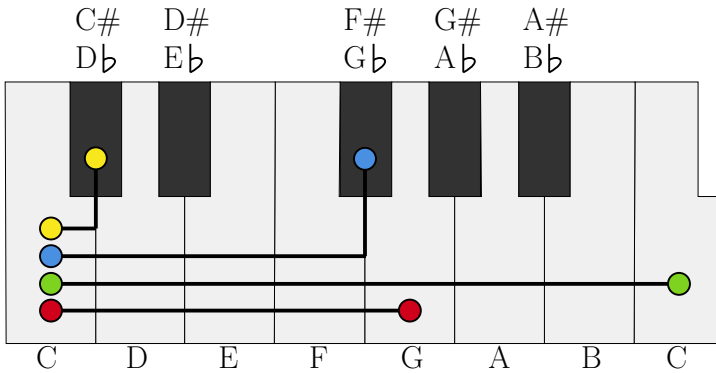


Figure 1: Depiction of a single octave, from C to the C an octave above, composed of individual semitone intervals. The intervals shown are: 1 semitone (yellow), 6 semitones (blue), 12 semitones (green), and 7 semitones (red).

This may appear to be a foreign or unintuitive process, but to most musicians, this is second nature and can be executed rapidly (see (Zatorre & Halpern, 1979) for further reading).

Beyond settings where musical instruments are present, there is another situation in everyday life where one may experience differing tones: the passage of a noise-emitting object at close proximity and considerable speed. To the reader, it may be a familiar experience to have heard a speeding motorbike pass by. As the vehicle approaches, the engine noise assumes a higher pitch than

what is heard as the vehicle retreats. In this scenario, the above procedure can be applied to easily obtain an accurate estimate of the number of semitones in the pitch interval between the two tones. As it turns out, there is a simple procedure to take this information and use it to determine the vehicle speed in metres per second. For an object moving at speed v , one can count the number of semitones in the interval Δp between the approaching and retreating tones, and it simply follows that the approximation

$$v \approx 10\Delta p \tag{1}$$

is sufficiently accurate up to large speeds by everyday standards. The rest of this work will be dedicated to showing *that* this is the case, *why* it is the case, and how accurate the prediction is.

2. Musical Intervals

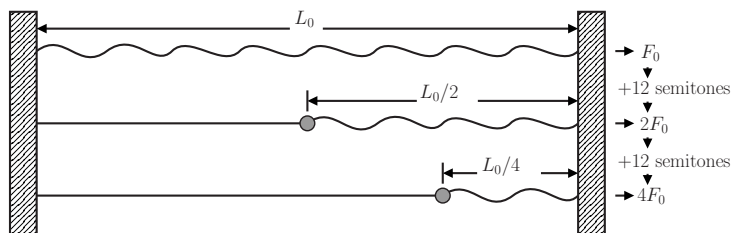


Figure 2: Depiction of exponential relationship between tone frequency and number of semitones in octave intervals.

A relatively simple experiment can be performed to understand the relationship between the number of tones in an interval and the frequencies of each tone. By playing an octave interval on a piano, one can identify the two tones in relation to each other relatively easily (Litke & Olsen, 1979). Now, this interval can be generated on a taut string of length L_0 , as on a guitar, violin, or rubber band

stretched between two supporting structures. It becomes rapidly apparent that, to generate the octave interval on the string, under the same tension, the string must be shortened to a length of $L_0/2$, hence doubling the vibrating frequency, since the frequency of vibration F scales as

$$F \sim \frac{1}{L} \quad (2)$$

where L is the length of the string. Similarly, to increase the tone by another octave, the length must be halved again to a length of $L_0/4$. This is shown in Figure 2.

In general, for an arbitrary initial frequency F_0 , the frequency F_k of a tone k octaves above the initial frequency is given by

$$F_k = 2^k F_0. \quad (3)$$

By inspecting Figure 1, it is clear that a single octave is made up of 12 semitones. When the frequency ratio between each pair of adjacent notes is equal, this is called the *equal-temperament* scale (in contrast to the *just intonation* scale), which is how the vast majority of modern instruments are tuned. Given that the frequency ratio between adjacent notes is a constant, then (3) becomes

$$Fp = 2^{p/12} F_0, \quad (4)$$

where $p = k/12$ is the number of semitones in the interval between the notes with frequencies F_p and F_0 . It becomes clear that the ratio of frequencies between adjacent notes on the scale is simply $2^{1/12} \approx 1.0594$. Now, taking two arbitrary tones at intervals of p_1 and p_2 , their frequency ratio is given by

$$\frac{F_{p_1}}{F_{p_2}} = \frac{2^{p_1/12} F_0}{2^{p_2/12} F_0} = 2^{(p_1-p_2)/12} = 2^{\Delta p/12}, \quad (5)$$

where $\Delta p = p_1 - p_2$ is the pitch interval that can be easily intuited from the procedure in Section 1. Note that this can be verified by measuring that each successive fret on a guitar shortens the string by $\approx 6\%$, or by using online tone generation software.

3. Doppler Effect

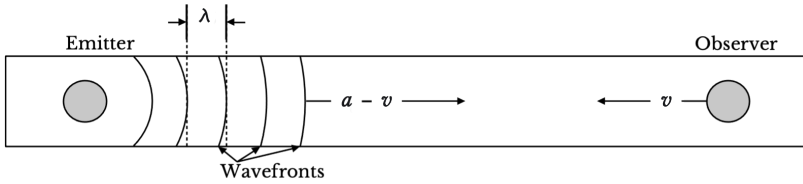


Figure 3: Depiction of the Doppler effect in the frame of reference of the moving object (emitter).

The Doppler effect is a phenomenon that ultimately stems from the fact that sound is a wave that travels at a finite velocity through a medium. The Doppler effect can be observed in many contexts in the physical sciences, such as cosmological imaging (Bedran, 2002) and velocimetry. Figure 3 illustrates the sound waves emitted by the moving body, or the “emitter”, approaching the “observer” in the frame of reference of the emitter. From the perspective of the emitter, the air is travelling backwards with a velocity v , meaning the effective speed of sound is then $a - v$, where a is the speed of sound in the air. Supposing it emits a tone of frequency F_0 in its own frame of reference, the physical wavelength between features on the sound wavefronts is then given by

$$\lambda = \frac{a - v}{F_0}. \tag{6}$$

The observer and emitter disagree on the perceived frequency, but agree on the observed wavelength. Therefore, the frequency F_0^+ perceived by the observer obeys

$$\lambda = \frac{a - v + v}{F_0^+} = \frac{a}{F_0^+}, \quad (7)$$

and equating (6) and (7) leads to the relation

$$\frac{a - v}{F_0} = \frac{a}{F_0^+}, \quad (8)$$

or

$$F_0^+ = \frac{a}{a - v} F_0. \quad (9)$$

The expression (9) gives the (higher) approaching frequency, and the (lower) retreating frequency can simply be found by negating the object velocity $v \rightarrow -v$, yielding

$$F_0^- = \frac{a}{a + v} F_0. \quad (10)$$

Now, computing the frequency ratio between the approaching and retreating frequencies is done by simply taking the ratio of (9) and (10), giving

$$\frac{F_0^+}{F_0^-} = \frac{a + v}{a - v}. \quad (11)$$

Note that the frequency ratio diverges as $v \rightarrow a$, indicating that some level of inaccuracy is expected as the emitter approaches the speed of sound. Note that this formulation relies on the linearity of the propagation of acoustic waves, which is a valid assumption for propagation through free air at audible frequencies (Claes, Steidl, Hetka"mper, & Henning, 2020; Falco, 2024).

4. Velocity Estimation

The expressions (5) and (11) both give expressions for frequency ratios, and can therefore be equated to give the relationship between the semitone interval Δp and the velocity v . Let $M = v/a$, then

$$\frac{F_0^+}{F_0^-} = \frac{a+v}{a-v} = \frac{1+M}{1-M} = 2^{\Delta p/12} \quad (12)$$

Now, solving (12) for M gives

$$M = \frac{2^{\Delta p/12} - 1}{2^{\Delta p/12} + 1} \quad (13)$$

Noting that, by definition, the hyperbolic tangent of a number x is given by

$$\operatorname{anh}(x) = \frac{e^{2x} - 1}{e^{2x} + 1}, \quad (14)$$

the expression (13) can be placed in the form of (14):

$$M = \frac{2^{\Delta p/12} - 1}{2^{\Delta p/12} + 1} = \frac{(e^{\log(2)\Delta p/12} - 1)}{(e^{\log(2)\Delta p/12} + 1)} = \frac{e^{\log(2)\Delta p/12} - 1}{e^{\log(2)\Delta p/12} + 1} = \frac{e^{2(\log(2)\Delta p/24)} - 1}{e^{2(\log(2)\Delta p/24)} + 1} = \tanh(\log(2)\Delta p/24). \quad (15)$$

To arrive at the final approximation, the Taylor series expansion

$$\operatorname{anh}(x) = x - \frac{x^3}{3} + \frac{2x^5}{15} + \dots = x + \mathcal{C} \quad (16)$$

yields

$$M = \frac{v}{a} = \tanh(\log(2)\Delta p/24) \approx \log(2)\Delta p/24, \quad (17)$$

or

$$v \approx a \log(2)\Delta p/24. \quad (18)$$

In dry air, the speed of sound a can be found in any fluid mechanics textbook (e.g. (Blazek, 2001)) and is given by

$$a = \sqrt{\gamma RT} \approx 20.05\sqrt{T} \quad (19)$$

where T is the ambient air temperature in Kelvin, $\gamma = 1.4$ is the ratio of specific heats, and $R = 287.15 \text{ kg K}^{-1}$, resulting in

$$v \approx \left(20.05\sqrt{T} \log(2)/24 \right) \Delta p = \beta \cdot \Delta p, \quad (20)$$

where β is the proportionality coefficient. Taking the air temperature to be somewhere between a “cool” condition at $T = 15^\circ\text{C}$ and a “warm” condition at $T = 30^\circ\text{C}$ yields proportionality coefficients

$$\beta_{\text{cool}} = 9.83 \text{ and } \beta_{\text{warm}} = 10.1, \quad (21)$$

which clearly justifies the approximation

$$v \approx 10\Delta p. \quad (22)$$

Figure 4 shows a comparison between the exact relation

$$v = a \tanh(\log(2)\Delta p/24) \quad (23)$$

for the hot ($T = 30^\circ\text{C}$) and cold ($T = 15^\circ\text{C}$) conditions and the approximate relation derived above. This shows that the approximation (22) is a very accurate prediction for the object speed, up until a pitch interval of ≈ 15 semitones, at which point the relative error is 5% and the predicted object speed reaches ≈ 150 m/s.

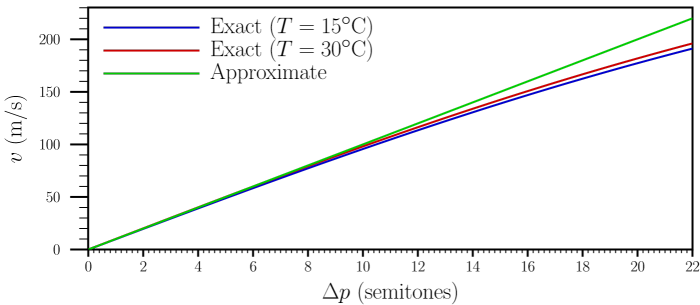


Figure 4: Comparison between the exact interval-velocity relation (23) for hot/cold conditions and the approximation $v = 10\Delta p$.

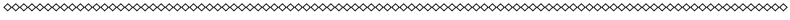
5. Conclusion

While the ability to measure velocity in metres per second is generally not of great interest to musicians, nor do those interested in measuring object speeds require musical training, the approximation (22) is accurate up to surprisingly high speeds. For reference, 150 m/s is roughly twice the speed at which many commercial aircraft take off, 65% faster than most hunting bows will loose an arrow at, and is significantly faster than the top speed of any street-legal automobile at the time of writing. This conclusion is independently verifiable by searching for Doppler effect media online, standing at the side of the road by a speed limit sign and listening carefully, and many other ways.

References

- Bedran, M. (2002). A comparison between the Doppler and cosmological redshifts. *American Journal of Physics*.
- Blazek, J. (2001). *Computational fluid dynamics: Principles and applications*. Elsevier.
- Claes, L., Steidl, C., Hetka'mper, T., & Henning, B. (2020). Estimation of acoustic wave nonlinearity in ultrasonic measurement systems. *arXiv*.
- Falco, L. (2024). *Single-point nonlinearity indicators for the propagation of high-amplitude acoustic signals* (Unpublished doctoral dissertation). The Pennsylvania State University.
- Litke, E., & Olsen, C. (1979). Acquiring Relative Pitch Perception as a Function of Age. *Journal of Research in Music Education*, 27.
- Zatorre, R., & Halpern, A. (1979). Identification, discrimination, and selective adaptation of simultaneous musical intervals. *Perception and Psychophysics*, 26.

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