

# Jack Sammons as Therapist

by Joseph Vining\*

This has been one of my deep fears—that people around me might put simple pleasure as enough reason for living, and that I might be unable to persuade them otherwise and would have to believe they were ultimately serious in saying so.

“There *is* only pleasure out there to seek,” people often say. As for accepting pleasure as “enough,” I can imagine them telling me that it is always easier to accept something as enough if there is nothing more. They would remind me how rich the basic pleasures are if sought and achieved, of consciousness itself, of sex, of the taste of food, of strength and health, of the thrill of winning a game and at once beginning the game again.

They would also say none of this that is enough has any meaning. There is no need for meaning. Meaning is superfluous as well as illusory.

I have feared all this with a personal fear. There is always an inner temptation, I think, to be as modest as possible with one’s own view and one’s own doubts, and therefore temptation to conclude despite one’s doubts that because others all around believe this, I actually, deep down, do too. Then there would be not much between me and death.

Except that I know Jack Sammons. I talk with him and what he says stays with me. I read his work and if I’m in a library reading room people say “Quiet” at my unrepressed grunts of delight as I finish a sentence.

What would Sammons do with me if I came to him with my fear? He would take me back to my own experience of music and poetry, he would take me to law, and he would turn me toward the natural world as such. He would show me a connection to the transcendent in all of them, named so without any embarrassment of speech, a connection through

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\* Hutchins Professor of Law Emeritus, University of Michigan Law School. Yale University (B.A.); Cambridge University (M.A.); Harvard University (J.D.). Fellow, American Academy of Arts and Sciences. Life Member, American Law Institute. Life Member, Clare Hall, Cambridge.

which they can bring meaning into our world to exist there as purpose and presence. All of them, including law. Sometimes law is particularly unlucky in those who take it up. Law reached out to Sammons and implored, and is rejoicing that he did take it up. There is no one like him.

### I. MUSIC AND LAW

I think Sammons would take me to music first. Someone with fear that there is nothing in the world for us save pleasure might observe that notes in music go up and come down, go up and come down; come down because there is nowhere else to go but down. It would be un-Sammons-like for him to turn to Shelley in reply, “[But] music lift[s] up the listening spirit/ Until it walk[s], exempt from mortal care,/ Godlike, o’er clear billows of sweet sound.”<sup>1</sup> That would be to shout, and Sammons doesn’t shout. But he might just draw me forward and say again what he wrote after I gave him my favorite performance of the Archduke Trio – he has allowed me to suspend here the sacred trust of epistolary confidence: “I’m very tempted,” Sammons said, “to try to imagine a judge who treated law in the way that Beethoven, at least the later Beethoven, treated music: one who radically, but respectfully, changed it forever; one so trusted by the muse that she listened to him.”<sup>2</sup>

Sammons would take me from music to law, and through law back to music. The boldness, the originality, the genius in his doing this and in the way he does it astonishes. I will refer to three of his recent pieces—*Censoring Samba: An Aesthetic Justification for the Protection of Speech*, from 2008;<sup>3</sup> *The Law’s Mystery*, from 2011;<sup>4</sup> and *The Law’s Melody*, from 2013.<sup>5</sup>

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1. PERCY BYSSHE SHELLEY, *Prometheus Unbound: A Lyrical Drama in Four Acts*, in *THE MAJOR WORKS* 229, 273 (Zachary Leader ed., Oxford World’s Classics 2009) (act II, sc. 4, lines 77-79). The original reads: “And music lifted up the listening spirit / Until it walked . . .” *Id.* Sammons has reached for Shelley elsewhere. I have ruined the sound of these lines in the text to bring them into the present tense for Sammons to speak.

2. Letter from Jack Sammons to Joseph Vining (Mar. 26, 2012) (on file with author).

3. Jack L. Sammons, *Censoring Samba: An Aesthetic Justification for the Protection of Speech*, 37 *STETSON L. REV.* 855 (2008) [hereinafter Sammons, *Censoring Samba*].

4. Linda L. Berger & Jack L. Sammons, *The Law’s Mystery*, 2 *BRIT. J. AM. LEGAL STUD.* 1 (2013) [hereinafter Berger & Sammons, *The Law’s Mystery*].

5. Jack L. Sammons, *The Law’s Melody*, in *LEGAL AFFINITIES: EXPLORATIONS IN THE LEGAL FORM OF THOUGHT* 79 (Patrick McKinley Brennan, H. Jefferson Powell & Jack L. Sammons eds., 2013) [hereinafter Sammons, *The Law’s Melody*].

### A. Music

*Censoring Samba* moves to a Brazilian context to understand freedom of speech. A bold move in itself, but one that moves toward an understanding less centered on our own First Amendment and what may be culture bound in its literature, and more suited to a protected value that now appears as a basic human right.<sup>6</sup> The music Sammons looks to here is Samba, popular not classical, and with it he raises our arguments about what “speech” is and why its protection matters to a new level.<sup>7</sup> The universal application of what he says emerges naturally—perception and understanding are borne up by the undoubted universality of music.

The work is cast as a response to those today who would have judges in this country acknowledge that the protection of speech they provide is a political ordering of values on their part, not really a matter of “principle.” American judges do not adequately explain the extent of their protection of speech—their unique reluctance to silence speech. It seems not the product of inferential reason, “pretheoretical.” Sammons responds, yes, it is “pretheoretical,” and he points us to “activities that we commonly recognize as self-justifying or, said differently, within the category of non-inferentially (and pretheoretically) justified. The easiest and most common examples of these are play and art” whose justifications are found “in the experience of the thing itself.”<sup>8</sup>

In the course of placing expressive speech in this same kind of activity, Sammons calls up Justice Holmes as an example—Holmes so well known for his defense of free speech:

Justice Holmes’s own approach, viewed over time, showed little consistency between each attempted articulation of a justification. Each one, for Justice Holmes, became inadequate to the task and, at the end of his career, he was left only with a vague but certain intuition that something important was going on, something well worth defending.<sup>9</sup>

Justice Holmes often said that he did not believe his own theory of free speech, “which [as Holmes wrote to Harold Laski in 1919] did not mean he believed in something opposed to it,” but “little as [he] believe[d] in it as theory [he] hope[d] [he] would die for it.”<sup>10</sup>

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6. See, e.g., LEE C. BOLLINGER, *UNINHIBITED, ROBUST, AND WIDE-OPEN: A FREE PRESS FOR A NEW CENTURY* (2010).

7. See Sammons, *Censoring Samba*, *supra* note 3, at 861 & n.22, 881-85.

8. *Id.* at 855-59.

9. *Id.* at 887-88.

10. *Id.* at 886-87 & n.111, 887-88 (alteration in original) (quoting GEOFFREY R. STONE, *PERILOUS TIMES: FREE SPEECH IN WARTIME* 203 & n.279 (2004) (citing Letter from Oliver

Sammons's offer here is to help begin to understand the "something important" that is going on still, an "act of *hospitality*," as Sammons puts it, "toward[] our very real selves. It need not be anything else or serve us in some other fashion."<sup>11</sup>

*Censoring Samba* is one of the most revealing and exciting pieces of writing I have read, dauntingly clear, crystallizing, as it were, from all the range of what inarticulately bathes us and sustains us. It is simply a beautiful piece of work. The piece is more than a bit like its subject, self-authenticating, the kind of thing it is so very rare to read. It gave me new hope for the future of the effort he has devoted his life to, this part of law that is the reflective part.

### B. *Mystery*

*The Law's Mystery* takes up the phenomenon central to our professional practice of law, the judicial opinion. Initially a conference presentation in 2011, it was published in 2013,<sup>12</sup> together with Linda Berger's response to it in a detailed analysis of one well-known opinion, *Cohen v. California*.<sup>13</sup> The guiding question in it is what makes an opinion good or great, with staying power, or poor, with a short half-life as a statement of and about the law.

Sammons begins with what a judge's opinion is about, which is law with a singular article before it, what we call "the law." The piece is in many ways a condensation of much that Sammons has given us. Since its length is that of law review articles before the invention of the word processor, and it is too beautiful not to quote, I want to draw some full paragraphs from it here:

This immaterial and yet external "law" somehow discloses itself to us, . . . since nothing we can say about it (and, therefore, none of our ways of thinking about it) is sufficient to let us know what it is. This is surely mysterious and, because a law that is beyond our conceptions of it is also beyond our control to some extent, it is unsettling in its uncertainty.

This characteristic of "law" as resting upon mystery and uncertainty is, however, also the source of the law's enchantment for us, however little we may now acknowledge it. It is this enchantment that we depend upon for law to be authoritative over us, as we hope it will be, rather than authoritarian and reducible to the political and thus to

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Wendell Holmes to Harold Laski (Oct. 26, 1919)).

11. *Id.* at 885, 888.

12. Berger & Sammons, *The Law's Mystery*, *supra* note 4, at 2-3.

13. 403 U.S. 15 (1971).

power. In simple terms, the mystery of the law—its being beyond us in this way—is its legitimate authority over us. The task this imposes upon us, the one I undertake here, is to explore a way of thinking such “law” without destroying it by concealing from ourselves its mystery or avoiding its uncertainty.

...  
This law, which discloses itself to us, does so through the openings that language provides. For our culture, judicial opinions are its primary way of doing this. Yet judicial opinions can do this only when judges resist the temptations towards control and avoidance I have described and are sufficiently humble before the law that they are willing to become inconsequential to opinions they have written in order to permit the law to speak.<sup>14</sup>

Further on in the piece he says, “The power of a great opinion is not just that ‘it lets us see, but [through language] *it lets us see the seeing.*’”<sup>15</sup> And further still, “[J]udges . . . who have these capabilities . . . are judges who seek ‘*to change the world,*’ but only ‘*to change it into itself.*’”<sup>16</sup>

At this point Sammons turns to music to evoke what “see the seeing” and “change the world into itself” can mean or, better, feel like. Here it is classical music rather than the popular music of *Censoring Samba*. The example he chooses is the Ode to Joy, the end of Beethoven’s Ninth Symphony, which is now the Anthem of Europe.

What follows is a marvelously gentle leading of his reader into the familiarity of “mystery” in everyday life—

those odd and surprising moments in which something strikes us as something we already knew but did not know, until that moment, that we knew it. . . . not something predictable, but something that suddenly and often surprisingly appears as that which must be, although you did not know this before its appearance. Inevitability then, in art and in opinions, appears only in the performance and can be known in no other way.

...  
It is a very ordinary and common perception.<sup>17</sup>

The mark of all great poetry, Sammons says using Harold Bloom’s words, is “phrasing that cannot be avoided, that *must* be. . . . [It is] the

14. Berger & Sammons, *The Law’s Mystery*, *supra* note 4, at 4-5 (footnotes omitted).

15. *Id.* at 8 (alteration in original) (emphasis added) (drawing the phrase from JAMES C. EDWARDS, *THE PLAIN SENSE OF THINGS: THE FATE OF RELIGION IN AN AGE OF NORMAL NIHILISM* 212 (1997)).

16. *Id.* at 11-12 (emphasis added) (drawing the description of the artist from ROWAN WILLIAMS, *GRACE AND NECESSITY: REFLECTION ON ART AND LOVE* 18 (2005)).

17. *Id.* at 8.

uncanny power of unavoidable . . . phrasing.”<sup>18</sup> The greatness of Beethoven’s music is that it is “the product of Beethoven’s ability to discover what the next note has to be,” Sammons says drawing from Leonard Bernstein.<sup>19</sup> The so-called “joy melody” in the Ode to Joy, here I quote Sammons again, “was the product of an enormous struggle over very many years for Beethoven. At the end of the struggle he wrote in the margin notes: ‘Ah! Here it is! It’s been found. . . .’”<sup>20</sup>

In 2013, the contemporary composer John Tavener said much the same: “It’s not so much a question of finding my voice as finding *the* voice.”<sup>21</sup>

Like Sammons, I have been intrigued by the use in law of the word “found,” really since beginning law school. A judge or lawyer finds the law. We do not say it’s something new he made up on the spot. Everyone’s attitude toward it would change utterly. What Sammons is doing in this extraordinary series of works looking to music is to take seriously law’s authority and our dependence on it. Those newly engaged today in what they call the “empirical study of law” do not take authority seriously, and they are no more realistic than the “legal realists” of various kinds that flourished in the last century. It is Sammons rather who is doing empirical work, and at a time when it was never more important.

### C. *Melody*

*The Law’s Melody*,<sup>22</sup> from 2013, the third of these works on music I want at least to draw attention to, takes us into the inner workings of music and the way in which they illuminate the inner workings of law and legal practice. “[O]ur perception of melody, our experience of it,” Sammons observes,

[D]isplays for us a third way of perceiving and, by analogy, suggests a way around the division of internal and external that so haunts our jurisprudence.

What music reveals for us is a non-conceptual mode of knowing and a different dimension of being that our ordinary understanding of experience obscures from us or even denies. Note, quickly, that this

18. *Id.* at 9 (second alteration in original) (quoting HAROLD BLOOM, *THE ART OF POETRY* 36, 39 (2004)).

19. *Id.* at 9 & n.27.

20. *Id.* at 10 (alteration in original) (quoting ESTEBAN BUCH, *BEETHOVEN’S NINTH: A POLITICAL HISTORY* 103 (2004)).

21. Allan Koozin, *John Tavener Dies at 69: Composer with Eye on God*, *N.Y. TIMES*, Nov. 13, 2013, at A25 (emphasis added).

22. Sammons, *The Law’s Melody*, *supra* note 5.

need not be about something transcendent in the common understanding of this term, for this does not transcend our abilities to perceive, but is a matter of our ordinary perceptions, available to anyone who can hum a tune. Accordingly, no particular belief other than a belief in our perceptions is required. Music, it is said, reveals to us another world, and this is true, but, as in Rilke's observation, it is the same as this one.

It is this different dimension revealed to our perception, this "excess" if you will, of the things we perceive that music, more clearly than anything else, reveals to us.

...  
Musicians, by which I mean composers, performers, and audiences, must attend to this excess as reality. They must seek it out in the particularity of the work. How utterly useless ordinary realism would be to them! To attempt music in a world that took for granted where the boundary lines of our perceptions are to be drawn would always be futile; it would be to miss entirely what music is.

With this understanding of the reality of music, we can readily understand how a good composer or performer can be described as revealing as new meaning something that is there to be revealed in the tones, the rhythm, and the melodies, of music. This is not to suggest that composing is only a revealing of what is there. It is not to say that composing is not creative. It is to say that in music any distinction between the two is inherently suspect. . . .

If we want to understand how law can have its own ontology . . . we need only think of the law in the same way as we have been thinking of music.<sup>23</sup>

This essay too is beautiful, original, provocative. It has, I think, a classic quality to it. All is said, about things so large, in such a quietly crafted way, so normal a tone of voice. If not discovered by all those who should discover it, the history of works of such quality makes me confident it will be in due time. I do not know when I have read something in or about this aspect of the world hearing inside myself such steady, repeated noises of admiration and hope. Over and over again, to sentence, phrase, summing up, opening up, the only response possible for me has been in some way a physical one, underlining, circling—or, as I confessed before, making a noise out loud like one of our cousin animals might make.

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23. *Id.* at 83-85 (footnotes omitted).

## II. MEANING IN THE NATURAL WORLD

Then the third of the places Sammons would take someone burdened with the fear I described: the natural world as such, after music and poetry, and law.

In moving to this third place Sammons displays again the empirical in his work, his attention to the breadth and depth of human experience without leaving anything out. I sent him, really needing to know what he might say, a review of Arthur Danto's *What Art Is* in which the reviewer Ian Ground brings in "Kant's dictum, . . . 'work of art must be recognized to be such and not nature.' And Wittgenstein too, . . . 'the work of art compels us—one might say—to see it in the right perspective, whereas without art the object is a piece of nature like any other.'"<sup>24</sup>

There are of course many contemporary examples of assertions all around that there is a gulf between things human and things natural. Alan Lightman, a much read and much honored expositor of contemporary cosmology, recently summarized what he took to be a scientific view of Nature:

Our comfort with nature is an illusion.

. . . For all of recorded history, humankind has had a conflicted view of nature.

. . .

I would argue that we have been fooling ourselves. Nature, in fact, is mindless. . . .

Nature is purposeless. Nature simply is. We may find nature beautiful or terrible, but those feelings are human constructions. . . . There is no mind on the other side of the wall.<sup>25</sup>

Knowing how incompatible with Sammons's way with the world such axiomatic assertions are, I sent him with the Kant and the Wittgenstein also part of a book that has stayed with me since I stumbled upon it, Philippe Jaccottet's *Landscapes with Absent Figures*,<sup>26</sup> to suggest a context for what Sammons might say to help me. I will put here paragraphs from it, and end with Sammons's response because there is no better way to end than Sammons speaking.

Here is Jaccottet, after having described in detail a landscape that had struck him:

24. Ian Ground, *No Accident*, *Times Literary Supp.*, Oct. 25, 2013, at 9 (reviewing ARTHUR C. DANTO, *WHAT ART IS* (2013)).

25. Alan Lightman, *Our Lonely Home in Nature*, *N.Y. TIMES*, May 3, 2014, at A19.

26. PHILIPPE JACCOTTET, *LANDSCAPES WITH ABSENT FIGURES* 114-18 (with Preface by Michael Hamburger) (Mark Treharne, trans., 1997).



Once we had started up again towards the top of the plateau, the wind whistling in the pines seemed to be coming from the ends of the earth; a coomb appeared through the tree trunks, with harvested cornfields and one bare, earth-coloured field. All *this* is what struck me, all this together, and for no reason at all. Things, the world. The body of the world. . . .

· All this is what distinguishes poetry from history—from a certain sort of history—and from all forms of science. The way I was suddenly entranced by this scene was quite as much influenced by the flight of the egret as by the sound of the wind, the pure line of the ramparts, or more primitively designed tombs. The convergence of all these things provoked words which were still living and absolutely not some reconstruction of the past, nor even a meditation. . . . I *did* not meditate upon the fate of empires . . . . I embraced all these signs together, and only if I had been able to select and arrange them would they have had something to say to others in turn, in the form of words.<sup>27</sup>

Here is Sammons's response:

Those pages are about as wonderful as writing can get precisely because, as he says, what *strikes us* is "all this together, and for no reason at all," and all we can do, as he has done, is select and arrange. He is, in words you and I might use I think, trying to describe a musical world, one that, like music, has its own way of meaning. How different this is from an aesthetic appreciation of nature; how different it is from what Kant and Wittgenstein seem to have in mind in the quotes. It does seem to me now that nature (in its complexity and its tragedy) and art (in its complexity and its tragedy) both render truths that can be compared and that each dictates the perspective each requires for truth. Our problem is paying attention. I think this means we must think of thinking as that which Jaccottet does before he select[s] and arranges. Perhaps that is the test of poetry, no?<sup>28</sup>

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27. *Id.* at 117-18 (emphasis added).

28. Letter from Jack Sammons to Joseph Vining (Dec. 5, 2013) (quoting JACCOTTET, *supra* note 26, at 117) (on file with author).

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