Our Orthodox Viol Sizes: The Historical Evidence Re-Examined

John Catch

Virtually all viols in present-day use conform broadly to sizes laid down in Nathalie Dolmetsch's 1962 book *The Viola da Gamba*, which are substantially those given by Hayes in 1930.¹ Encyclopaedias, textbooks, popular texts, museum catalogues and exhibit labels, makers' information, and advertisements of viols for sale, all accept these sizes as 'standard'.

The continuing debate on sizes and pitches has inescapably been coloured by this consensus that these sizes are a standard family, a basis of reference for other hypothetical families. Yet it has always been known that Simpson in his Division Violist of 1665 stated that a typical division viol should have a vibrating string length (vsl) of 30 inches - 76 cm by Imperial measure, not the orthodox 65cm or so. In my young days this was comfortably accounted for by supposing that Simpson was using not the English measure established and standard since the Middle Ages, but some such measure as the Brunswick inch of 23.76 mm (0.936 Imperial inches). In retrospect, it would have been more rational to re-examine on the basis of the primary evidence how the consensus on 'standard' sizes had come to be established. Having done so, I conclude that there is no good historical foundation for that consensus.

Table 1 sets out the sizes laid down by Arnold Dolmetsch in 1915, by Hayes in 1930, by Nathalie Dolmetsch in 1962, and by Praetorius in 1619 (see front cover illustration) for his lower-pitched viols. The figures in square brackets are vsl's relative to that of the treble viols of each set.²

The first two of these conform exactly with the precept of Mace that the relative vsl's should be 1-1.5 -2 for treble in d-tenor in G-bass in D. That conformity is suggestive. The authors had no *measurements* to guide them in this other than those of Praetorius, which do not conform to Mace's rule.³ Nathalie Dolmetsch's figures are more arbitrary but follow substantially the 1:2 rule for treble and bass.

Arnold Dolmetsch merely stated his sizes ex cathedra without comment. The absence of an alto tuning is noteworthy, since there is no historical evidence of more than three consort tunings –

			Table I						
Consort bass	Division	Lyra	'True' tenor	'Small' tenor	Alto	Treble			
•		Sizes (vsl's) acc	cording to A. Dolme	etsch (cm) 1915					
76.2	-	-	57.8	-	-	38.1			
[2.0]			[1.50]			[1.0]			
		Sizes (vsl's) according to Haye	s (cm) 1930					
71.1	63.5-66	58.4-63.5	53.3	48.3	39.4	35.6			
[2.0]			[1.50]			[1.0]			
		Sizes (vsl's) acc	cording to N. Dolme	etsch (cm) 1962					
68-70.5	65-66	53.5-60	45-52		35-40.5 35-35.5				
[1.92-2.01]		[1.51-1.71]	[1.27-1.49]			[1.0]			
		Sizes (vsl's) a	ccording to Praetori	ius (cm) 1619					
[GG tuning]		b tes	[Alt:tenor, D tuning]			[adj. for G tuning]			
74.7			62.5			46.4			
[1.81]			[1.35]			[1.0]			

Table 1

treble/tenor/bass - other than in France; Praetorius, Mace, Simpson and Playford all show no knowledge of an alto tuning. Old viols consistent with his sizes are common enough. But in 1930 Dolmetsch unreservedly endorsed Hayes' work.4 Hayes had much reduced the sizes, affirming (incorrectly) that no bass viols of such size were known, introduced an alto tuning, and distinguished 'true' and 'small' tenors.⁵ Old viols of his bass, treble and alto sizes were, again, not uncommon; but his tenor sizes are rare. The one or two of which I know (e.g. the cornerless instrument illustrated in Nathalie Dolmetsch's book, p. 18, date 'ca. 1500') look suspiciously like forgeries. Having examined something like a hundred old pictures of viols up to about 1750, I have never seen one of a cornerless viol, but, significantly, that was supposed a century ago to be the earliest form.6

Hayes went to much trouble to weigh up the evidence of bigger-than-'standard' viols and was clearly not wholly happy with his conclusions, which resorted ultimately to the unsafe guidance of 'common sense';

Yet this is one of those cases which we meet in all walks of life, where the dictates of common sense must override a mass of apparently unimpeachable evidence'.⁷

The two tenor sizes, and the alto tuning for England, which has lingered in some use to the present day, appear to be the result of 'creative thinking', that siren of the perplexed scholar. Hayes I suppose justified his assumptions by taking Mace's 'so many Equal and Truly-Scized viols' to mean 'of sizes closely proportional to their pitch'. That is no doubt a possible interpretation, but improbable remembering the complete lack of documentary evidence in England. Viols of about Hayes' 'alto' size are not uncommon, and according to Mace's rule on proportions would be trebles for Simpsonsized basses. But, as I have observed, viols of Hayes' tenor sizes are rare and of doubtful genuineness. Old viols are never labelled by their function, and there are not to my knowledge any documents before about 1690 which relate measurements and functions, other than those considered in this paper.

There is a school of thought today which holds that before overspun strings came into use (they are not clearly described before 1659) and when strings were (hypothetically) entirely of gut, sizes and pitches were indeed closely related. Ian Harwood expounded this belief in a lecture to the Viola da Gamba Society in 2002.⁸ It has however been disputed by the present writer, on the grounds (briefly) that – Dimensioned pictures and tuning table in *Syntagma Musicum* show two viols of the same vsl tuned no less than a fifth apart;

Praetorius gives a tuning FCGda for a five-stringed bass violin wholly in fifths which is in effect a cello Cgda and a subbass FCGd in one;

If Praetorius is right, the problem of reconciling Simpson's 30-inch division viol with the high organ pitches in use in England in his time is solved.⁹

Nathalie Dolmetsch, who further reduced the sizes of consort bass and lyra viols, gives an even smaller range of tenor sizes, and retains the alto, again without offering any comment or evidence for her conclusions.¹⁰ Note that the bass has now closely approached the vsl of a modern cello, and the treble that of the violin.

It is possible to offer an explanation of these changes. Before Dolmetsch came on the scene it was generally held that viols were the direct ancestors of the violin family, so that bass viol and cello and treble viol and violin were seen as closely related in function and in size (the tenor viol was supposed in those days to have been a braccio fiddle with five or six strings – as indeed was the treble viol also).¹¹ The fallacious ancestry was discredited, but that did not imply rejection of the affinities of function and size. We must remember also that playing the bass viol persisted in a modest way throughout the nineteenth century, and that those players used bass viols of cello size. It must have seemed common sense that a bass viol would have been of that size. Mace's rule would then determine the sizes of treble and tenor, what could seem more likely? There was, again, a naïve general supposition in those days that viols throughout the ages would have been essentially the same in general character and presumably in sizes.

Hayes' conclusions, endorsed by Dolmetsch, were generally accepted as authoritative. A decade later the American scholar Bessaraboff made a commendably painstaking study of the problem, taking into account what was then known of organ pitches, but (rather surprisingly) without examining critically the basis for the Hayes-Dolmetsch sizes.¹² His long and involved argument arrived at a tidy and plausible conclusion; the English, about 1600, moved up a step from the big Continental sizes. His conclusion is best summarised in his Table VII of p. 372 (note that he compares body lengths, not vsl's):

German Nomenclature (Praetorius)	BODY LENGTH, CM.		English Nomenclature		TUNINGS: 'ORDINARY' FOR ENCLISH VIOLS 'FIFTH LOWER' FOR				
	Practorius	English	INOMENCLATORE					IOL	
		36	The Treble	d	g	c'	c'	a'	d''
Cantus	40.5	40	The Alto	A	ď	g	Ь	e'	a/
		48	The Tenor	A	d	g		c'	
Alt	56.7	57	The Lyra-Viol	D	G	c	c	a	d'
Tenor	68.5	68.5	The Consort Bass	D	G	с	c	a	ď
Kleine Bass-Viola	78.5			GG	С	F	A	d	g

TABLE VII

COMPARATIVE N	VAMES, S	IZES, AND	TUNINGS OF	GERMAN	AND	ENGLISH	VIOLS	
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There are some flaws in his argument. The 40.5 cm given for the *Cantus* is misleading; the drawing in Praetorius's Plate XX does not allow of accurate measurement of the body length. If Bessaraboff had worked with vsl's, which are what we are properly concerned with and which can be measured quite accurately from Plate XX, he would have got a larger figure. In calculating relative vsl's we must remember that Praetorius's tuning for his *Cantus* was an octave and a tone higher than his *Kleinbass*; a treble a tone lower in G would in principle be about 11% longer in vsl. If these corrections are made we get the relative string lengths already given in the earlier Table.

Bessaraboff also assumed, as had Kinsky before him, that Praetorius's consort must have included a tenor of vsl 68.5 cm tuned in D, for which he gave no illustration or tuning. That is possible, in the sense that it is consistent with the laws of Nature, but a hypothesis which depends on such an unsupported assumption is necessarily somewhat suspect. The *Alt: Tenor* of Praetorius has this same D tuning and pitch in his *Tabella* but his picture shows only one smaller size, vsl 62.5 cm.

Bessaraboff was aware of the vsl (75 cm) and tuning (D-G-c-e-a-d') of the Viol Bastarda of Praetorius's Plate XX, but failed to draw the inference that two viols of the same vsl might differ in pitch by a fifth. He was to be sure handicapped by lack of information on contemporary English organ pitches. He noted that Simpson's 30-inch viol did not agree with his conclusion, but supposed that some oldfashioned players may have continued to use the older bigger viols at the lower pitch. As with so many students of this subject, he does not take notice of the total absence from the primary evidence of any explicit statement of high- and low-pitched families.

Taking all this into account his solution of the problem is no longer tidy and plausible.

Conclusion

The reader is not to suppose that I disparage the work of the pioneers of the early music movement; anyone who studies their work must be impressed by their industry and achievement, working in circumstances which would discourage many of us nowadays. I am attempting to get nearer to the historical truth of this matter in the light of more than half-a-century of later evidence and study.

The evidence is still frustratingly meagre, but there is enough to suggest strongly that our presentday 'standard family' of orthodox 'Dolmetsch' sizes is an early twentieth-century concept unsupported by historical evidence, and that the supposition that sizes before the mid-seventeenth century must have been closely proportional to pitch is, again, not supported A reading of Mace without by the evidence. preconceived ideas tells us that sizes were not standardised: odd viols assembled to form a 'chest' are to be chosen 'especially for Scize'; 'Let your Bass be Large; 'Full-Scized Lyro-Viols'. There were 'small' basses; some lyra-viols were not 'full-sized'. I suggest that the Hayes-Dolmetsch sizes were based on the apparent correspondence of pitch and function of bass viol and cello and treble viol and violin, the sizes of bass viols still in use at the end of the nineteenth century, and the assumption that the Mace ratios were universally applicable. There was also a measure of the creative thinking which so insidiously takes over at the point when factual information is deficient.

So what were consort sizes and pitches in the English 'Golden Age'? I suspect that sizes were generally large, but that they varied a good deal; and for pitch, I find the evidence of a generally high pitch, particularly that from study of chamber organs of the period, convincing. If this is so, we need to revise assumptions currently common about the sound of viols in the seventeenth century. This paper is a study of the historical evidence, not advocacy of any particular practice for our own time. Historical or not, the orthodox sizes are versatile and effective general-purpose instruments for the present day, and many players will no doubt continue to use them rather than attempt to re-create historical practices which are, one must recognise, still in some measure conjectural. Most people who play baroque bass viol music as well as consort music will find a vsl greater than about 70cm awkward. It would however be instructive to hear 'big' consorts played, not just at the low pitches which are so commonly believed to be appropriate, but at the highest pitch that good modern gut will bear. Nathalie Dolmetsch, *The Viola da Gamba* (Hinrichsen, 1962), 31; G. Hayes *Musical Instruments*, vol. 2 (Oxford, 1930), 37.

2 A. Dolmetsch, *The Interpretation of Music of the XVIIth and XVIIIth Centuries* (Novello, n.d. but 1915), 449; M. Praetorius, *Syntagma Musicum II* (Wolfenbüttel, 1619, facsimile reprint, Bärenreiter, 1996), pl. XX and 'Tabella Universalis 20', 25.

3 The ratio 1:1.35 for Praetorius's treble (calculated for g instead of a) and tenor in D is very close to the Mace rule, which would be 1.33. The bass size is 'foreshortened', as is the violin family. Mace's rule would make the vsl of the debateable 'tenor violin' G/d/a'/e' as long as the cello, and that of the cello three times that of the violin, i.e. nearly 100cm. This does not rule out the possibility that Mace was right for English consorts of his own time. Surviving viols from about 1620 which have every appearance of being genuine have vsl's ranging from about 32 to 85 cm. There is no evidence to suggest that (in our period) the smallest carried any other than the standard treble tuning. The largest might have been basses or quint subbasses.

4 Hayes, Musical Instruments, ix.

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- 5 Examples of bass viols can be found in the catalogues of the Heyer Collection (1912, vol. 2) and the Musikhistorisches Museum Kopenhagen (1911, p. 33; Stainer 1652).
- 6 There are at least two small four-cornered (?)tenor viols made by Hintz of London in the mid-eighteenth century, a problem in themselves, but not relevant to this discussion.
- 7 Hayes, *Musical Instruments*, 41. Caution is needed in rejecting a mass of apparently unimpeachable evidence in favour of common sense. Common sense tells us that the heavenly bodies rotate about the earth as centre.
- 8 This lecture is reported briefly in Newsletter 120 of the Viola da Gamba Society (January, 2003), 5-7. My criticisms used the full text of the lecture, which was helpfully made available by Ian Harwood.
- 9 J. Catch, Chelys, 32 (2004), 61-65.
- 10 The book makes no reference to Simpson's or Preatorius's measurements.
- See the article 'Violin', Grove's Dictionary of Music and Musicians, 1st ed. (London, 1890).
- 12 N. Besseraboff, Ancient European Musical Instruments (Harvard University Press, 1941), passim.

eBay and Early Music

Andrew Woolley

The online auction website, eBay (www.ebay.com), was established in the United States in 1995. In 1999 its operations expanded to the United Kingdom (www.ebay.co.uk) and are today used internationally as a forum for the sale and purchase of almost anything. eBay is both an auction house and a car-boot sale on a grand scale and has become considerably popular in recent years. The website itself states that there are 157 million users worldwide, 75 million coming from the US and 82 million from elsewhere. Its cultural presence in Britain can be felt in many places, perhaps best illustrated by the Radio 4 Today show, which now, in addition to politics, sport and new dietary health warnings, covers the latest remarkable auctions (the illicit selling of 2005 'Live Aid' concert tickets, or the City of Birmingham Symphony Orchestra's recent sale of a conducting day come to mind).

The format of the auction is simple. An item for sale is left open to bidding for a certain amount of time (usually 5 days or a week) upon which bids are placed above a seller's minimum amount or the previous bid. The item is then won by the highest bidder when the time of the auction is completed. Though this seems straightforward, the buying process can be very competitive, particularly when an item is highly sought after. Speed of mouse clicking and internet connection can often determine the winner of an auction. A buyer may also place a bid far in excess of a current bidding total, often in the final seconds of an auction, thus excluding the possibility that this total may be surmounted by other bidders within the remaining time (when two bidders are intent on this, an item may sell far in excess of its value; I once saw a CD of Coprario go for over £100 because of this!).

The sale of items is open to anyone who feels they have something worth selling. An initial fee is charged to the seller for the auction and eBay takes a small cut of the final sale price. Each item sold is given a description and is often accompanied by a picture or pictures. A seller's repute may be seen by the reports of sales given by previous buyers. For some sellers it appears that eBay forms a business operation of sorts in which a large quantity of items or a particular type of item is sold. Some of these sellers have the privilege of their own eBay 'shop' in which buyers may browse their stock. According to the site, in the United States alone there are more than 724,000 professional sellers who use eBay as a primary or secondary source of income. The sale of copied CDs and other illegitimate or faulty items seems to an extent controlled by the system of feedback and eBay's prerogative for excluding sellers of such items (though this is dependant on the complicity of buyers).

From the perspective of the musician, eBay is a useful port-of-call in searching for rare or out-of-print books and recordings, and even instruments. A search engine on the site enables the typing of a key-word or phrase within particular categories which include 'Music' (sheet music and CDs) and 'Musical Instruments'. Within the category of 'Music' is the category of 'Classical', which has its uses. For example, typing 'Byrd' would otherwise mostly give results relating to the 'The Byrds' (a plural-sensitive search engine sometimes has its disadvantages it seems). A particular author may be searched through The a general 'Books and magazines' category. descriptions of items are also word-searchable, which is useful for identifying items that relate to a more obscure composer or a particular publisher's series.

The sale of recordings on eBay is extensive and buying records and CDs is perhaps the safest form of transaction on the site for the musician. Many sellers of CDs appear to be reputable and some specialise in early music (though it is perhaps the more occasional sellers that tend to offer the real bargains). Given that eBay has an international base it is possible to buy CDs not ordinarily available in this country, and often at a more reasonable price than can found from standard international retailers of CDs on the internet. Second-hand CDs on eBay can sometimes be rare or out-of-print and are thus an opportunity for specialist interest. The cheaper CD labels are usually even cheaper on eBay; you can often obtain someone's unwanted Naxos CD for £1. LP records are also sold and appear to be less in demand than CDs. These can often be fine LP collections also sold extremely cheaply; I noticed once that Christopher Hogwood's LP recording of the Fitzwilliam Virginal Book went for about ten pounds. LPs in particular may of course be recordings now out-of-print. If you don't own a record player for LPs, there is usually someone selling a second-hand one, though new ones seem to be in short supply (and if a part-time seller is offering a large quantity of new electrical equipment, suspicion as to its origins may be aroused!).

Sheet music and academic books can be found, however, older and less-scholarly editions of sheet music are the norm; you will not often find Musica Britannica on eBay. Though 'popular' editions are common, there can also be older scholarly editions that were originally made to be cheap and accessible to the general public (such as the Stainer and Bell Early Keyboard Series, for example). For the same reasons it seems, Dover reprints are often for sale as well. Those academic books available tend to be earlier editions of books that are well-known or those that are classics. A fine early edition of The Bach Reader might be found, for example. Unlike the sale of recordings though, there appear to be few organised dealers of academic books, and these tend to be geared towards general historical interests. Some success can be had however; I myself purchased a 1940s replica facsimile of Parthenia for £7 once; a second-hand bookshop on the internet at that time was selling a copy for £40.

A major search category on eBay is devoted to musical instruments, and with a large number of sales

in this area alongside the sale of accessory items (bows, metronomes, tuning devices etc.), this seems merited. Instruments for early music are to be found; I have seen lutes, viols, clavichords and numerous harpsichords sold. There are, however, few organised sellers and many instruments appear to have been acquired through an accident of circumstance. Particularly with early instruments, the seller may not actually know what the instrument is (though it may be identified from available pictures), or know of its state of repair. Nevertheless, instruments are often sold for convenient disposal, and with due caution, some considerable bargains may be had. This was the case with my own purchase of a harpsichord on eBay, sold by a gentleman in Hove who had made up a John Storrs kit about fifteen years ago. Upon viewing the instrument, it was evident his expertise as a cabinet and boat maker came through in the instrument's casing, but not with the mechanics, which were probably never made correctly. Despite this, I went through with the purchase and made a long journey from Leeds to Hove to pick it up, convincing a friend to drive the van. To my relief I found it was possible for the instrument to be repaired, and it has turned out much more economical to buy a cheaper instrument on eBay than to buy a secondhand instrument from a dealer (such as the Early Music Shop).

Searching items related to early music on eBay can produce surprisingly good results it seems. That the website offers a vast quantity of goods facilitates this, though this volume can create difficulties in finding specific types of items. Browsing for early music generally requires a range of keyword searches, and searching is more efficient when a particular item is required. Despite some drawbacks though, to the early music enthusiast not too afraid of computers, eBay offers a variety of uses, some good bargains, and occasionally a rare find.

Daniel R. Melamed, *Hearing Bach's Passions* OXFORD UNIVERSITY PRESS, 2005. 178 pp. ISBN 0 19 516933 6 (Hardback) £15.50

Bryan White

As an academic involved in the work of teaching historical musicology to university students, one of my primary personal aims is to stimulate what I think of as historical imagination. This involves taking whatever empirical facts are available, and knitting a world of ideas around them that allows one to enter the historical world, to look around it, hear it, and experience it as a discrete entity. It is not possible, of course, to experience such a world in the same way as those living people of whatever particular time and place is to be evoked, but part of the excitement of such imaginings is the distance, and the way in which that distance conflicts with, interacts with, and refigures one's experience of his own time and place. When I sense that I have succeeded in encouraging a student to make such an imaginative leap, it is immensely rewarding, in part because I recognize the experience myself. And I am certainly grateful to anyone who helps ignite my own historical imagination. David Melamed's short study, Hearing Bach's Passions, certainly succeeded in this way with me, opening up Bach's world, his thought and his music, and placing its differences to modern approaches and understanding of the passions in sharp and fascinating relief.

Melamed is an established Bach expert, but in this book, he wears his scholarship lightly. It is aimed at a general musical audience, does not assume any technical musical knowledge, and dispenses with footnotes and endnotes in favour of select bibliographies and discographies relating to the topics of each of the chapters. As he points out in the introduction, two of the chapters began as extended programme notes, and one as an article in the New York Times, but serious readers need not fear any dumbing-down of the content, for this is an erudite and sophisticated examination of the passions. The book's seven chapters are grouped under three headings: 'Performing forces and their significance', 'Passions in Performance' and 'Phantom Passions', and each chapter stands alone so that there is no need either to progress through the book in order, or to read every chapter. For those who may well find the book so compelling as to read it cover to cover over a

short space of time (as I did), the structure results in some repetition between chapters, but Melamed's concise prose style and clear-sighted approach to the subject matter mitigates any sense of tedium when points are repeated.

The book's introduction serves to put the reader on guard against assuming that the passions as we know and experience them today have a significant correspondence with the way in which Bach and his audience conceived them. This as he puts it, does not render the passions meaningless to us, 'just different'. And this difference is where the excitement lies, and where the historical imagination is ignited.

The group of chapters focusing on performing forces develop the now familiar arguments advanced by Joshua Rifkin and Andrew Parrott on Bach's choir, namely that most of the choral music was written to be performed by one voice per part, sometimes supported by ripieno singers, also distributed one voice to a part. Melamed produces an elegant argument based on interpreting the design of the performance materials, which neatly summarizes the one voice to a part argument. Yet he also explores the way in which each of the concertists sang throughout the work, including solos, choruses and recitative. This situation, he argues, has important implications for the complex attitude of Bach and his contemporaries to the dramatic aspects of the passions.

The second section of the book examines performance histories of individual works. With respect to the St Matthew Passion, Melamed questions the orthodox notion of the work as one for double choir and orchestra. He traces its evolution over several revivals, suggesting that it originated as a work much like the St John, but with a more extended role for the ripieno group. This role was subsequently expanded in 1736 to give a greater degree of independence to the ripienists, now the second chorus. Nevertheless, this second choir remained subsidiary to the first, that is, the concertists. Another chapter offers up the complicated history the St John Passion, and its several versions, which are in some cases significantly different from one another. I found the final chapter, however, to be the most fascinating. Here Melamed examines Bach's use of a passion that was not own The way in which he used it, cutting it, altering it and adding to it provides new insight into Bach's own passions, and their nature as functional liturgical works, meant to suit the needs of a particular time and place.

The book's final section deals with Bach's 'lost' passion, the *St Mark*, and the 'apocryphal' *St Luke*. Bach's recourse to the standard eighteenth-century practice of parodying other works, whether they were his own or those of another composer, is scrutinized, both for its use in the *St John* and *St Matthew Passions*,

and for its implications in reconstructing the *St Mark Passion* for which a libretto and a date of performance (Good Friday 1731) are known, but for which the music is no longer extant. The case for considering the *Ode for Mourning* BMV 198 as a likely source of parody movements for the *St Mark* is discussed. Nevertheless, even after identifying such a likely source for the passion, many gaps are left. Melamed's convincingly concludes that any attempted reconstruction is destined to fail if we wish to understand it as a work by Bach, though it may succeed as a genuine attempt at eighteenth-century pastiche.

Throughout the book, the way in which the author succeeds in bringing the relevant detail to each discussion without the need for references is refreshing, and makes the text as pleasurable to read as the many insights into Bach and his world are absorbing. I find it hard to imagine any reader, whatever their background and knowledge of Bach's works, failing to find this book thoroughly stimulating. I would also add that the book is beautifully produced, and for those who still value the tried and true technology of pages and paper, it sits rather nicely in the hands while reading (in other words, don't wait for the paperback).

Finally it is worth noting that Melamed has no interest in prescribing how the passions should be interpreted today, either intellectually or in performance. He recognizes that in their altered and myriad twenty-first century manifestations, Bach's passions speak with great immediacy to the back row of the second sopranos, the expert practitioner using early instruments, and to the scholar. His concern is to enrich our understanding of these works by clarifying aspects of their original purpose and meaning, leaving us to wonder at how such artefacts from the past manage to transform themselves into works of the utmost importance to us today.

An Unknown Bach Aria Discovered

John Cunningham

In May last, a previously unknown aria by J. S. Bach was discovered in Weimar's Duchess Anna Amalia library. The two-page aria was found amongst documents in a shoebox by researcher Michael Maul. Maul made the discovery whilst working on an ongoing research project begun in 2002, which will systematically survey all central German church, communal and state archive collections.

The shoebox containing the aria was one of 50, 000 volumes (including a 1534 bible that belonged to Martin Luther), which were saved from the fire that ravaged the Anna Amalia library last September. The library, also known as 'Germany's literary memory', houses one of the country's most valuable collections. Thousands of items were taken from the library for restoration before the fire, in which many precious items were lost, including manuscripts by Schiller and Shakespeare. The library has since re-opened, February last.

The aria is the first new Bach piece to come to light for over thirty years. The last unknown piece was discovered in a private collection in 1974 when a copy of the 'Goldberg Variations' was found to have extra canons for keyboard in the composer's hand. The last previously unknown authentic vocal piece by Bach was discovered in 1935: the single movement cantata fragment 'Bekennen will ich seinen Namen'.

The newly-found aria was composed (and dated) by Bach in October 1713, when he was 28. Bach composed the piece as a gift for the fifty-second birthday of Duke Wilhelm Ernst of Saxe-Weimar, for whom he worked as a court organist. The aria is a setting of a twelve-stanza poem by the theologian Johann Anton Mylius, the first words of which are 'Alles mit God und nichts ohne Ihn' ('Everything with God and nothing without him'): the Duke's family motto. The setting of the strophic aria with ritornello is for solo soprano, accompanied by strings and basso continuo. Professor Christoph Wolff (of Harvard University, chair of the Board of the Bach Archive at Leipzig, and initiator and supervisor of the current research project) commented, 'It is no major composition but an occasional work in the form of an

exquisite and highly refined strophic aria'.¹ The aria is one of the few works surviving from Bach's early period and is the composer's only known strophic aria; the precise date of the composition will make it of considerable interest to researchers studying the development of Bach's early style.

The four-minute aria is written in Bach's hand on two sheets of rare marble paper. Indeed, it was not the music but the paper and the binding that first attracted Maul's eye. He recalled, 'I was flipping through a file of occasional poetry without any particular expectations - and then I found this sheet music behind the Mylius poem. After ten hours of work without a break, without food, without water, I thought I was having a hallucination. But, pretty quickly, I was around 80 percent certain that it was the handwriting of Bach. A quick comparison with other Bach handwriting substantiated the thesis and the employees of the Bach Archive were also sure beyond a doubt'.2 The aria was authenticated by a comparison with Bach's works in Harvard University. The aria (of which there has been no prior record, or reference) had been overlooked because it is not mentioned in any of the archives, and because it does not bear Bach's signature.

'Alles mit God und nichts ohne Ihn' was premiered by the English conductor Sir John Eliot Gardiner on September 3, the first anniversary of the library fire. In May this year, Gardiner received a medal in recognition of his performance of Bach's music from the Saxony city of Leipzig, where Bach was cantor of St Thomas Church for 27 years. There are also plans by Germany's Bärenreiter publishing house to publish a facsimile and performing edition of the composition in the autumn.

1 http://www.bach-

leipzig.de/main_englisch/aktuelles/menu/aktuelles/start_fr.html 2 As quoted in The Irish Times, 9 June 2005.

Hyperion Records Limited vs. Dr Lionel Sawkins

John Cunningham

In May last, Hyperion Records Limited lost its appeal against the ruling in the copyright case brought against it by Dr Lionel Sawkins. The dispute dates back to 2001, when four pieces, by Michel-Richard de Lalande, edited by Dr Sawkins were performed and recorded; they were subsequently released by Hyperion in 2002, on a CD entitled *Music for the Sun King*. Dr Sawkins claimed musical copyright on the editions, which Hyperion refused to recognise. The matter went before the courts in 2004, where Dr Sawkins sued Hyperion for breach of musical copyright: judgement was found in favour of Sawkins.

Dr Sawkins is a recognised authority on the music of the French Baroque composer Michel-Richard de Lalande; Lalande (1657-1726) was the principal court composer to the French kings Louis XIV and Louis XV. Since his retirement as a music lecturer in 1985, Dr Sawkins has devoted much of his time to giving lectures on Lalande as well as preparing many editions of Lalande's music (as well as other composers, such as Lully, Rameau and Royer). The sources of Lalande's music (both manuscript and copy) are often incomplete and contain many ambiguities, which require resolution by the editor. Many parts of the music require the addition of figures, ornaments and performance directions.

In 2001, Dr Sawkins prepared an edition of four Lalande pieces, which were performed by the choral group *Ex Cathedra* at concerts in Paris and in Birmingham. These concerts were recorded with the intention of being released as a CD by Hyperion. Hyperion paid Dr Sawkins the appropriate hire fee to use the editions, but refused to recognise his claim of copyright to the edition.

Dr Sawkins had made it clear that he intended to produce a faithful representation of Lalande's work, and not an interpretation or an arrangement thereof (which would have legal status as an original work). Hyperion's main objection was that unless the edition was 'a new and substantive musical work in its own right [or] unless the performing edition is original'¹ then it could not amount to a new musical work. Hyperion conceded that Dr Sawkins' skill and labour in compiling the edition did give him a literary copyright in the text, but argued that this could not extend to the musical sound, as this was Lalande's own.

In 2003, Dr Sawkins sought legal advice from Carter-Ruck, the firm which has an arrangement with the NATFHE (the university and college lecturer's union). Carter-Ruck agreed to take on the case on nowin-no-fee basis. The case went to trial in May 2004 and lasted for six days. Mr Justice Patten handed down the judgement in favour of Dr Sawkins in July 2004. It was ruled that Dr Sawkins had done enough work in producing the editions to entitle him to copyright protection. However, it was also decided that an insufficient amount of one of the works appeared on the CD to amount to an infringement. Hyperion were awarded leave of the court to appeal. The consequences of the verdict were so far-reaching for other record labels, and musicians generally, that Hyperion were given £50,000 to pursue the appeal by the British Phonographic Industry

The appeal was heard last May and initial judgement upheld (the the Appeal Court Judgement is available at www.bailii.org/ew/cases/EWHC/Ch/2004/1530.html). Hyperion Records Limited were ordered to pay royalties to Dr Sawkins and to seek his permission before any further exploitation of his work can take place. The cost of the royalties, according to Hyperion, are not estimated to be very high; however, the no-win-no-fee basis on which Carter-Ruck took the case on Dr Sawkins' behalf means that legal costs are likely to be twice that of the real costs and are estimated to be as much as one million pounds. This will have a drastic affect on the company's ability to record future projects. According to Hyperion's website:

Hyperion now is forced to reconsider its general recorded output and will be reducing dramatically its commitment to many new recordings over the next year or two to concentrate on fundraising activities to help with the legal costs and to keep a limited number of new recordings in its diary. The collateral damage caused by this decision not only will affect the prosperity of the company but also the dozens of artists and groups, producers, engineers, composers, music publishers and musical editors but most importantly the record buying public whose access to rare and collectable repertoire served by Hyperion, and perhaps many of the other record labels, will be severely diminished.

Hyperion was founded twenty-five years ago by Ted Perry (who died from lung cancer in 2003) and is now run by his son, Simon. In that time the label has pioneered recordings of lesser-known composers and neglected repertoires, such as the English Orpheus Series. An appeal for donations was launched through the company's website, and the label hopes to release twenty-five recordings over the coming months.

One wonders whether Dr Sawkins' personal victory is not also a pyrrhic one for editors of early music as a whole. The judgement means that almost every out of copyright work will actually have its own musical copyright, as the law will view it as 'original'. This will have severe ramifications for the recording of early music, as recording companies will now have to seek, and pay for, a licence before recording or performing a piece of music from an edition. Furthermore, the judgement has significantly broadened the legal definition of 'originality' in music performance, and opens the way for performers to claim a musical copyright in addition to their performing rights. These extra expenses are sure to limit the ability of companies like Hyperion to continue to produce much needed and important recordings. It is a judgement, which has divided the musicological community and, one that is likely to have a dramatic and far-reaching effect on the recording of early music.

1 Hyperion website

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