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### Symphonic metamorphoses

*Variations on vulnerability: orchestral musicians' employment in times of crisis*

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#### Publication date

2022

[Link to publication](#)

#### Citation for published version (APA):

Kurzbauer, H. R. (2022). *Symphonic metamorphoses: Variations on vulnerability: orchestral musicians' employment in times of crisis*. [Thesis, fully internal, Universiteit van Amsterdam].

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# 1. Prelude: a prologue on orchestras at the brink

“What’s past is prologue”<sup>1</sup>

*“But in the thousand combinations that are possible with the monumental orchestra there would reside a harmonic richness, a variety of sounds, a succession of contrasts, which cannot be compared with anything...When in a state of agitation, it would recall tropical storms. Its silence would strike awe through its solemnity.”*<sup>2</sup>

The first decade of the 21<sup>st</sup> century wrought bitter changes for orchestral musicians the world over. From prestigious U.S. symphonies to Europe’s finest, orchestras were silenced in the wake of the financial crisis 2007-2008. Disquieting reports from the U.S. on the state of the orchestral arts proliferated as the mighty Philadelphia Orchestra announced bankruptcy in 2011 and many regional orchestras toppled. Across the Atlantic, orchestral misfortunes reached Germany where a longstanding reverence for symphonic culture had encouraged generous state support since the late 1800s. Trouble in German paradise was signaled following the announcement of a reorganization and merger between two famed German orchestras.<sup>3</sup> A hotly contested German Federal Labor Court decision in which orchestral salaries were detached from civil service pay scale requirements portended additional misfortune for German-based musicians accustomed to stable incomes.<sup>4</sup>

Akin to Germany, state and municipal subsidies form the basis of financial support for cultural institutions in the Netherlands. Drastic budget cuts following the financial crisis 2007-2008 led to an unprecedented number of consolidations, closures, and dismissals in the Dutch orchestral sector. At the outset of the 21<sup>st</sup> century’s third decade, stage lights have all but dimmed completely and musical life has been jettisoned as the international community grapples with the enormous impact of the COVID-19 pandemic. Now more than ever, the world of work for orchestral musicians, from those employed in major orchestras to the ever-precarious freelancers is in flux. Musicians have rarely taken center-stage in analyses of employment. Now is the time to listen to their voices in order to gain an understanding of a profession fraught by precarity and to take the first research steps to understand the economic and legal conditions that exacerbate vulnerability in the orchestral musicians’ sector.

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<sup>1</sup> William Shakespeare. *The Tempest* Act two scene 1.

<sup>2</sup> Hector Berlioz. *Mémoires De Hector Berlioz: Comprenant Ses Voyages En Italie, En Allemagne, En Russie Et En Angleterre 1803-1865* p. 162.

<sup>3</sup> Reference to the proposed merger between the famed Stuttgart Radio Symphony and the SWF Orchestra Freiburg slated for 2016.

<sup>4</sup> Bundesarbeitsgericht (BAG) (Federal Labour Court, Erfurt) BAG, 25.09.2013 - 10 AZR 282/12 25 September 2013.

Musicians have been well-acquainted with a range of vulnerabilities in the context of employment precarity throughout history. Legal definitions of employment precarity took shape in the last century and include key markers such as: a comparatively high degree of insecurity with regard to employment continuity, pay scales below the remuneration for fully contracted employees performing the similar tasks, indeterminate access to collective representation, and the lack of clear workplace safeguards. Several manifestations of workplace safeguards of significant importance to orchestral musicians' wellbeing will be studied including issues related to physical/mental health and discrimination.

Another sort of vulnerability plays a central role in this research story: economic vulnerability.<sup>5</sup> Conventionally defined in terms of how individuals and/or groups react to what social and economic researchers categorize as 'exogenous shocks,' unpredictable events such as financial market crashes and pandemics, the effects of such crises lie close to the surface of musicians' increased vulnerabilities.

At first glance, this was to be an inquiry into employment-related predicaments that impacted orchestral musicians when a sacrosanct Dutch orchestra was dismantled in 2012-2013. The realization that even musicians who were fully employed under solid collectively bargained agreements could be vulnerable was something of an epiphany as accepted definitions of precarious employment customarily exclude the fully employed. The strikingly vulnerable position of orchestral musicians who assumed that they would be protected from job loss is the point of departure for a study that has grown in scope to extend its reach to examine a diversity of vulnerabilities in an orchestral microcosm within the cultural sector. As we soon shall discover, orchestras depend on a significant cadre of freelance substitute players who work side-by-side with fully contracted colleagues and share performance responsibilities. Their vulnerable employment position calls attention to vexed questions at the center of the freelance dilemma in which musicians' freedom to choose employment has diminished as a result of increased financial vulnerability and reduced employment opportunities within the sector.

The central research question asks: what are the vulnerabilities that have impacted orchestral musicians' employment and how have these vulnerabilities intensified under external stresses such as financial crises and the COVID-19 pandemic?

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<sup>5</sup> Elias Giannakis and Adriana Bruggerman. "Determinants of regional resilience to economic crisis: a European perspective" 2017 pp. 1304-1415.

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The experiences of individual orchestral musicians and collective vulnerabilities will be scrutinized. Here, the concept of vulnerability extends to identity-based criteria such as gender, race, and age with several intersectional examples. To many esteemed scholars, anecdotal narratives are perceived to be the enemy of objective research. Taking this skepticism to heart, a short defense of the importance of anecdotal narrative as an engine for inspiration and reinforcement is paramount. In a tale of two countries where musicians face increased employment challenges, these narratives not only add depth and place the musicians at the heart of the research but also serve to support the hypothesis that the concerns iterated anecdotally resonate with orchestral musicians regardless of their positions or locations. To bring the research home to those who are most deserving of support calls for a cognizance of musician articulations expressed through the myriad anecdotes that unfold here. This project attempts to plumb the depths, to explain the vulnerabilities particular to orchestral musicians in a series of *movements* and *intermezzi* that uncover aspects of vulnerability in a profession increasingly challenged by labor market insecurity and financial instability.

Vulnerability in consort with precarity lies at the center of the pages to follow. At this early juncture, it is imperative to reflect on the choice of the term ‘vulnerabilities’ within a larger framework of ‘precarity.’ For the purpose of this research, I have chosen to embrace wide definitions of the two terms within the parameters that follow. Precarity has evolved into a catch-all term to describe labor situations in which workers are subject to a wide range of injustices. Precarious workers fulfil permanent jobs without receiving the benefits of the wages and protections received by permanent employees. Here, precarity is used as a lens to study musicians’ exposure to the vicissitudes of employment insecurity, low wages, unregulated occupational hazards, and the lack of adequate protection against discrimination.

Vulnerability operates in a larger space of enquiry than precarity and examines external factors beyond musicians’ employment relationships that impact their work status. A key concept within multiple research areas, vulnerability studies report on focus groups’ coping mechanisms in the face of change. Traditionally, vulnerability research frames perspectives on large global issues exemplified by climate change, ecological disaster, and global health issues. On a musical terrain, vulnerability in the context of this research reflects on the reactions of orchestral musicians to complex interactions between culture, finance, and legal processes.

To fortify a call for equality at the workplace, to add to the discourse on how to change institutional and legal norms that perpetuate disadvantage are the not-so-hidden

prescriptive aims that motivated this study. Grounded in the experience of musicians-as-workers and triggered by anecdotal leads, this enquiry examines the phenomenon of vulnerable employment in a sector often neglected by labor research projects. It seeks to turn the spotlight on external, as well as internal, factors within the orchestral organization that have increased musician vulnerability. Significantly, other factors central to the relationship between a musician and his/her chosen *métier* fosters vulnerability. These predispositions inherent within the profession compound the difficulties in 'getting to yes' with regard to employment protection as the *movements* and *intermezzi* that follow will soon reveal.

Inherent predispositions:

- Musicians refer to their profession as 'a calling'– orchestral musicians consider their work their passion, and vice-versa
- Like athletes, musicians' paths to success start at an early age and involve years of focused preparation. Singularity of purpose to attain success in a highly competitive field influences musicians' interpretations of employment situations

The employment experiences of regularly employed orchestral musicians as well as the experiences of the even more vulnerable freelance substitute players are given equal voice. Within the professional orchestral world, the demarcation between the designation freelance substitute and freelancers is blurred. Firstly, freelance musicians do not refer to themselves as freelance substitutes even if this term is the most accurate description of their employment. Secondly, there is no formal definition that separates the freelance substitutes from freelancers in general.

Descriptive research reaches a normative objective in order to spark, citing musical chord annotation, 'major' steps forward to 'diminish' employment-related vulnerabilities that keep so many musicians 'in mineur' (a Dutch expression that denotes in a 'minor' key or mood). Interviews with musicians and other orchestral stakeholders in the aftermath of the financial crisis 2007-2008 supplemented by follow-up discussions during the COVID-19 pandemic confirm my choice for the selection of the following external and internal factors.

Selected external factors:

- changes in the perception of the value of 'classical' culture leading to decreased financial support
- lack of clarity in the legal frameworks covering workers who are seen by the law as employees, and those who are seen as self-employed

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- general economic crises and, of late, the COVID-19 pandemic's effects on workers in a sector plagued by labor market insecurity

Selected internal factors:

- traditional hierarchical structures within the orchestra foster individual musician's passivity
- long-established discriminatory practices in orchestral organizations with regard to gender, race, and age
- increased market strain as supply (top-class musicians) far exceeds demand
- orchestral hiring relies on a strata of substitute players who work under temporary contracts and perform alongside regulars. Conventionally categorized as self-employed, these musicians report unequal access to benefits

The choice of two countries is certainly not intended to lead the reader down a comparative research path. Decades of performance opportunities in the Netherlands and the United States have afforded the author a sizeable network of contacts in both countries. The access to stakeholders who share similar professional concerns yet operate within orchestral organizations differentiated from one another in terms of external factors advanced the opportunity to consider diverse vantage points. Ideally, the experiences of musicians from two musically important countries will reverberate with great intensity to musicians worldwide.

A music-related subject calls for musical structure: the sounds of music have not only motivated but moved the research along its course. The choice for *movements* and *intermezzi* to replace traditional chapters is intentional, placing content and context on a similar wavelength, and reflecting the desire to lend musical structure to a music-related subject. *Movements* can be compared to chapters in a traditional enquiry, whereas *intermezzi* are interludes that true to their musical form convey information to enhance the *movements*.

The **Prelude** outlines the overarching research questions, puts forward the methodology suitable to a compendium that examines a range of topics of concern to orchestral musicians and points to relevance beyond the musical sphere.

An enquiry linked to the impact of crisis on a specific category of workers in two countries crosses into a multiplicity of fields. Sometimes, legal considerations have been relegated to take a back seat to economic, historical, and social factors in the

orchestral sphere. To foray into uncharted territory called for broad-based reading across multiple music-related disciplines and revealed a marked lack of literature specifically focused on orchestral musicians' work lives. Rather than viewing a dearth of information as a disadvantage, the *Intermezzo: the literature passes review* sheds light on a diversity of sources to aid the reader in replicating the researcher's quest for background material. Through an understanding of the different 'lenses' that have been employed by scholars viewing musicians-at-work, readers can create their own space for deliberation to enhance future research.

I have tied specific research questions linked to *movements* and *intermezzi* as follows:

**Background to orchestral journeys** opens with **Frequently Asked Questions (FAQs)**. The somewhat unorthodox choice of *FAQs* marks an attempt to answer a wide range of questions offered by non-musicians who vociferously expressed strong opinions that musicmaking was more of a pleasant diversion than a real profession, insinuating that musicians are not suitable subjects for serious inquiry. Answers to their questions, reinforced by additional questions posed by orchestral musicians in the two 'focus' countries (the Netherlands and the United States) motivate the introductory placement of *FAQs*. The *movement* intends to fill general knowledge deficits with regard to orchestral organizations and their musicians.

*Intermezzo: of competitions, horse races and orchestral auditions* enlarges upon issues touched upon in the *FAQs* by providing essential information concerning the gateway to the orchestral profession: the audition process. How does a highly competitive process permeated by listener subjectivity influence player choices and future employment? Significant parts of the audition revelations are revisited in **Of Rowe and race**, the *movement* devoted to bias and interconnected vulnerabilities.

**Haydn rewrites history** sheds light on important historical processes and employment-related problems that are relevant to modern orchestral narratives. The aim of this primarily historical exercise is to trace the origins of present-day orchestral vulnerabilities. The power structures that impact musicians work lives at present find their roots in early-day musical organizations. Joseph Haydn's inventive leadership style and his interactions with an extraordinary band of musicians in the late 18<sup>th</sup> century pave the way to a deeper understanding of links between the past and the present. The *movement* explores the question: how does the complex history of the orchestra and an analysis of specific employment issues relevant to these antecedents shed light on current employment-related dilemmas?

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**Follow the money: economics at the orchestra** reflects on aspects of orchestral financing, pausing to reflect on the seminal work of William Baumol and William Bowen, pioneers in the field of cultural economics. How has their cost disease theory and its derivatives continued to influence decision-making on cultural expenditures and orchestral finances? Have these theories contributed to vulnerability in the sector?

The story that provided the original impetus for the research, **Requiem for an orchestra** is embedded in the first of two symphonic variations, a pair of *movements* within the larger structure of **Symphonic variations: orchestral employment and the law**. **Requiem for an orchestra** moves beyond a description of a complex reorganization process to expose the angst, trials, and tribulations of orchestral musicians confronted by dismissal. What issues played into the demise of a major orchestral entity in the Netherlands, where state subsidies were deemed to protect cultural organizations? What particular vulnerabilities were exposed both in terms of collective musician employment and the weakened position of individual musicians? Are there ways in which the dismantlement process could have been mitigated to the greater benefit of the orchestral musicians? How did orchestra members react to redundancy and loss?

One of the factors that accounts for heightened awareness and changes in the perception of musicians-as-workers in Europe can be attributed to the after-effects of the *FNV KIEM* case. The second *movement* under the rubric **Symphonic variations: orchestral employment and the law**, **En route to the FNV KIEM case: competition and labor law** offers a doctrinal focus to examine seminal cases at the cusp of competition (antitrust) and labor law, and the effects these cases have had on orchestral musicians' work lives. European Court of Justice (ECJ) jurisprudence on the determination of worker status – with specific regard to freelance substitute players in orchestras – has stimulated not only legislation that takes court findings into account but has inspired litigation and collective action on the part of freelance musicians and other creative professionals who continue to actively defend their employment status. This *movement* considers the case and its legacy in light of competition law to ask: are competition laws and social protections on a collision course or marching to the same drummer? How has the *FNV KIEM* case with its spotlight on the false self-employed contributed to changes in the status of orchestral freelancers?

Orchestral freelancers, substitute players in orchestras in the United States and the Netherlands who are the most vulnerable amongst orchestral performers are further represented in the bipartite **Symphonic variations: the original gig workers**. The first

*movement*, **A long and winding road: freelance musicians in a tale of two countries** focuses on freelance substitute players. Litigation on the part of orchestral musicians in the U.S. and the Netherlands opens the space of deliberation to examine: what roles have different courts played in determining specific outcomes with regard to the classification of orchestral players? In what way have these decisions led to classification clarity? An exploration of the socio-political dynamics that have contributed to recent legislative changes to equalize the playing field between the fully employed and the self-employed in the Netherlands with direct impact on freelance substitute orchestral musicians opens the door to a leitmotif that culminates in the **Coda: Quo Vadis?**

**Back in the USA** shifts back to the U.S. where the National Labor Relations Board (NLRB) has been particularly active in adjudicating cases that classify workers, including orchestral musicians. The *movement* examines specific employment-related tests and key NLRB decisions to ascertain: where do orchestral freelancers fit in within classifications of employees found in U.S. legislation? How have the courts and the NLRB reacted to specific employment-related assertions? How have the NLRB and the courts interpreted legislation on employment status? How have these interpretations affected working musicians? Attention is paid to the political nature of NLRB composition and its impact on decisions.

*Movements* that examine cases involving gender, race, and age-related issues intend to fuel the vulnerability discussion by introducing historical material that carries relevant social phenomenon to the fore. The pair of *movements* and the *intermezzo* under the rubric **Dissonance: discrimination in the orchestra** explore gender, race, and age-related issues in orchestras to expose noteworthy cases of discrimination. Musician colleagues interviewed were vociferous in their appeal for the inclusion of materials on discrimination at the orchestra as the #metoo movement gained international traction. Their comments pointed to an ongoing acceptance of many forms of discrimination within the orchestral workplace. Musicians' reticence to voice their concerns to management and/or peer committees, and most certainly to speak out within a public forum speaks volumes with regard to vulnerability as well as the lack of protective measures to ensure safe working conditions on and off-stage.

The introductory material in **Of Rowe and race** exposes gender stereotypes that have plagued the profession for centuries and sets the stage for a pay-disparity case that rocked the music world in 2018. A *movement* focused on gender-related discrimination at the orchestra, and other issues associated with implicit bias intends

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to raise awareness and encourage dialogue to mitigate the negative effects of this noteworthy form of discrimination that exacerbates vulnerability within the orchestral sphere. The *intermezzo*, *Singing the #metoo classical blues* gives pride of place to two #metoo narratives to uncover how two major orchestras (true to form, a U.S. and a Dutch orchestra) responded to harassment allegations.

**Greener Pastures: coming of age in the orchestral workplace** presents background and case-based materials on age-related issues in orchestras giving voice to another group of vulnerable musicians: older players who have litigated with regard to age discrimination and ‘combination’ discrimination. How do age-related factors play into the larger discrimination questions that compound the anxieties of musicians employed in the orchestral workplace? As a side note, attention will be paid to certain procedural restrictions that have had a deterrent effect on discrimination cases (including orchestral musicians’ litigation) in the U.S.

Further extending a musical metaphor, **Closing chords** sets forth a double coda. **The curtain falls? Orchestras in times of pandemic** describes the COVID-19 turbulence in the orchestral sector with an emphasis on increased vulnerabilities. How has the COVID-19 pandemic changed the playing field for orchestras and increased musician vulnerability? Aside from an intensification in vulnerability for the entire sector are there positive messages to be gleaned from well-nigh two years of pandemic-induced silence?

**Coda: Quo Vadis? Contemporary and countervailing reactions to orchestral musicians’ vulnerability** To close, breaking news and a brief report on the enduring employment shutdown at the leading U.S. opera house, the Metropolitan Opera (The Met) expose current failures and successes in the quest for greater employment security for vulnerable orchestral musicians.

True to musical formats, the **Recitative** lists the names of interviewees; the **Recapitulation** recounts bibliographical material and the **Epilogue** presents the appendices referenced throughout the enquiry. **Da capo** inspired by the musical term that bears its name suggesting repetition, offers synopses in English and Dutch.

*Movements* and *intermezzi* can be read as parts of a whole symphonic metamorphosis or can be extracted individually to engage readers with specific interests. For example, those familiar with the orchestra and its distinctive characteristics could skip the **FAQs** and proceed to **Symphonic variations: employment and the law** or peruse **Dissonance: discrimination in the orchestra**. The curtain rises.