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Symphonic metamorphoses

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

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3. Intermezzo: the literature passes review

Precisely because orchestras can be classified in so many ways, academics from a multiplicity of disciplines, ranging from historical inquiries to analyses of the peculiarities of orchestral hierarchies, and collective behavior in the orchestral workplace, have produced interesting orchestra-related research. Yet, despite this outpouring of academic material related to the orchestra, the often precarious work lives of orchestral musicians and the freelance substitute players who fill the ranks of orchestras has not motivated substantial research. As orchestras face increasing financial setbacks, with the additional burden of COVID-19 challenges, research that examines the multidimensional nature of musician employment taking musician narratives into consideration could lead to practical remedies. To undertake research that attempts to fill the gap left open by the available literature on orchestral musicians, an assessment of prevalent approaches and materials that provided much needed background information follows.

Like orchestras faced by financial crisis, libraries have undergone self-examination as the threat of extinction looms large. The 2012-2013 subsidy cuts that forced the Dutch Broadcasting Music Center (MCO)¹² into reorganization sounded the death knell for its renowned library of books, pamphlets, and scores, a reference and lending mecca that contained centuries of music publications in every conceivable genre, “several kilometers of materials.”¹³ During the weeks preceding closure as general malaise concerning the future of the entire organization set in, the librarians took matters in hand. Long tables filled with books, trade magazines, sheet music, and scores were set up in the MCO foyer. As the library dismantling loomed, MCO musicians and staff members were encouraged to take duplicate materials. As I was hurrying to leave the building following a townhall meeting to discuss impending cuts, a frayed volume perched atop a pile of crumbling French opera scores caught my eye. Published decades ago, by an independent publisher and written by Dr. George Seltzer, a musician-researcher, *The Professional Symphony Orchestra in the United States* presents a compendium of articles that explore every conceivable aspect of orchestral employment.¹⁴ Years later, delving further into research on orchestral employment, the aptness of Dr. Seltzer’s reflections holds true. From observations on the contradictions between autocratic conductors

¹² MCO=Muziekcentrum van de Omroep, Dutch Broadcasting Music Center.

¹³ Conversations with MCO librarian, Paul van den Berg.

¹⁴ Dr. Seltzer, a member of the clarinet section in the U.S. Army Air Corps Band was Professor of Music at Miami University in Ohio. See, George Seltzer *The Professional Symphony Orchestra in the United States* 1975.

and orchestral musicians seeking greater democracy at the workplace to the plethora of comments from leading lights such as Leonard Bernstein and Gunther Schuller on the future of orchestras, the abandoned volume has remained a source of inspiration for me.

A second ‘old’ discarded volume entitled, *Bach, Beethoven and Bureaucracy: The Case of the Philadelphia Orchestra* beckoned.¹⁵ Written by a distinguished orchestral musician who also earned a PhD in political science, the manuscript tackles such issues as musicians’ disenfranchisement related to employment issues, the differences between perceptions on the part of musicians, boards and management, and the predicament faced by orchestras plagued by constant economic-related calls to cut corners. Addressing the problems of the world famous ‘Philadelphians,’ Dr. Arian observed, “[t]he Orchestra now faces a basic dilemma. It is currently following bureaucratic policies of economy and efficiency whose costs threaten to destroy it.”¹⁶ His perceptive reporting on the causes of alienation in Philadelphia read like a blueprint of grievances that plagued ‘my’ orchestra on the eve of its destruction in 2013 with discernable parallels to the situations faced by orchestral regulars and freelancers on both sides of the Atlantic in the 21st century. Leafing through this abandoned book in a treasured library that was to close its doors forever shortly thereafter felt like a portent of things to come.¹⁷ Within months, a complex reorganization process decimated the ranks of two world-class orchestras in the Netherlands, a thriving education department, and the renowned library.

Mindful of the pitfalls of embarking on research that crosses over into several fields of inquiry, I realized that it was very important to read ‘across’ borders for a more comprehensive understanding. This book is as much about the ‘musicians’ and their position within the orchestra as it is about the phenomenon of the ‘orchestra’ as a collective. The orchestra can be situated across several focus areas: a musical organization, a social enterprise, a financial collective as well as a combination of all three. Present-day pressing employment-related issues that impact the future of the orchestra inspired by questions posed by musicians, managers, and other orchestral stakeholders steer this quest for information.

¹⁵ Edward Arian. *Bach, Beethoven, and Bureaucracy: The Case of the Philadelphia Orchestra* 1971. The former Philadelphia Orchestra bassist’s (1947-1967) insider observations are invaluable precisely for their unabashed subjectivity and criticism of orchestral bureaucracy and hierarchical complications.

¹⁶ *Ibid.*, p. 123.

¹⁷ See, <http://www.muziekbibliotheekvandeomroep.nl/> its website reads, ‘Voormalige’/Former Dutch Broadcasting Music Library, 2016. To date negotiations intended to find a new home for the collection as part of a national library have not led to a solution.

A literature review brings to the fore subject areas that have already been examined comprehensively and further seeks to uncover those areas that need to be researched in the future. To provide the reader with an introduction to some of the academic voices that inspired this research, the survey that follows takes into account works that show evidence of a direct relationship to orchestras and their musicians and alludes to gaps concerning the precarity-vulnerability dimension.

3.1 The historical lens

The orchestra as a musical institution has been described by a great number of chroniclers: composers, critics, music historians, social historians, and of course, musicians. Descriptions abound of the formation and inner workings of Europe's first orchestras from daily challenges to repertoire and social evolution. Monteverdi's disciplined Italian musicians who were engaged to premiere the opera *Orfeo* in 1607, Louis XIV's magnificent Versailles 'band', *les 24 Violons du Roi*, and Leipzig's collegia that performed at Johann Sebastian Bach's beck and call have been amply discussed in the works of European academicians.¹⁸ 18th century diarists exemplified by the witty Dr. Burney shared travel-logs that reported on the trials and tribulations faced by musicians throughout the Continent.¹⁹

Along with the multi-volume *Groves Dictionary of Music and Musicians* and Grout's essential classic, *History of Music*, John Spitzer, and Neal Zaslaw's *The Birth of the Orchestra: History of an Institution, 1650-1815* is highly recommended for its mix of scrupulous historical scholarship and critical discourse.²⁰ In addition, several excellent studies provide a comprehensive history of the orchestra from European origins to its 'migration' to the new world on the American continent. Adam Carse's publications are reliable sources for 18th and 19th century orchestral history with particular regard to the development of the modern maestro and musicians' moving towards unionization.²¹ The eclectic genius-composer Hector Berlioz' memoirs and autobiographical sketches let the reader enter into the orchestra pit to reveal the orchestral musician's world from the inside out.²²

¹⁸ See, Iain Fenlon. "Correspondence Relating to the Early Mantuan Performances" 1986 pp. 323–353 for more information on the Leipzig Collegia. In addition, John Spitzer and Neal Zaslaw. *The Birth of the Orchestra: History of an Institution, 1650-1815* for comprehensive descriptions of early orchestral life.

¹⁹ See, Charles Burney's exhaustive reports in *Dr. Charles Burney's Continental Travels, 1770-1772 and the superbly annotated Dr. Burney's musical tours in Europe: being Dr. Charles Burney's account of his musical experiences* (Percy A. Scholes editor) 1959.

²⁰ See, Spitzer and Zaslaw, *supra* at fn. 18.

²¹ Adam Carse. *The Orchestra in the XVIIIth Century* 1940.

²² Hector Berlioz. *Mémoires De Hector Berlioz: Comprenant Ses Voyages En Italie, En Allemagne, En Russie Et En Angleterre, 1803-1865*.

Firmly entrenched in the U.S., Henry Swoboda's *The American Symphony Orchestra* gives a balanced introduction and a 'biography' of the leading symphony orchestras from inception to their 20th century heyday.²³ His honest assessment of the ordeals inherent in cultural organizations dependent on philanthropic handouts is enriched by commentary from practitioners ranging from such distinguished conductors as Maurice Abravanel and Erich Leinsdorf to the 'statesman' amongst U.S. music critics, Paul Hume. John Henry Mueller's 1951 contribution on orchestras takes a social history point of departure replete with anecdotes provided by musicians and other stakeholders during the orchestras' formative years.²⁴ Dr. Edward Arian's in-depth exposé of the trials and tribulations of the famed Philadelphians mentioned above is certainly one of the most 'tell-all' of orchestral 'biographies' although Don Rosenberg's volume on the Cleveland Orchestra written almost a decade later comes close in terms of divulging inside information in the orchestral workplace.²⁵

Multiple reports make for mandatory U.S.-based reading concerning facts and figures related to U.S. orchestras, including: the National Endowment of the Arts (NEA) Foundation reports (1965, 2000-2013), the Wolf Report (1992), the Andrew Mellon Foundation report (1998) and the League of American Orchestras reports starting in the 1940s, categorized respectively in *Recapitulation: Sources*.²⁶ The charismatic U.S. orchestral advocate Helen Thompson's "Report of Study on Governing Boards of Symphony Orchestras"²⁷ deserves a place in the history section as her 1958 investigation into the intrigues within the powers-that-be that fund and ran orchestras was crucial to the foundation of the American Symphony Orchestra League, a U.S.-based lobby group for the interests of orchestras. Philip Hart, both music educator and management maven, sifts through many economic factors including audience demographics in his thorough analysis of the orchestra as an 'industry' in the United States in his critical volume, *Orpheus in the New World*.²⁸ Relying on case studies of post-financial crisis tales from corporate boards in Japan and the United Kingdom, labor law and corporate law expert Simon Deakin offers telling examples of how governance can fail when intransigent boards do not engage in critical analyses of their modus operandi.²⁹ Although Professor Deakin examines corporate structures,

²³ Henry Swoboda. *The American Symphony Orchestra* 1967.

²⁴ John Henry Mueller. *The American Symphony Orchestra: A Social History of Musical Taste* 1951.

²⁵ Donald Rosenberg. *The Cleveland Orchestra Story: Second to None* 2000.

²⁶ <https://americanorchestras.org/knowledge-research-innovation/osr-orchestra-statistical-report.html>

²⁷ Helen Thompson. "Report of Study on Governing Boards of Symphony Orchestras" 1958.

²⁸ Philip Hart. *Orpheus in the New World* 1973.

²⁹ Simon Deakin. "What Directors Do (and Fail to Do): Some Comparative Notes on Board Structure and Corporate Governance" 2011.

his observations in particular concerning the failure of boards bear great resemblance to case studies of U.S. orchestras in crisis.

3.2 The comparative lens

Orchestras are collectives made up of individual musicians who have perfected their skills by spending long, solitary hours of practice and preparation, in the vernacular of the musician, 'doing time.' The individual musician's interaction with the collective orchestra has been captured the attention of academics in fields such as collective behavior, creative studies, and social interaction research. The Viennese-born sociologist Peter Blau who once quipped that all who come into existence in his hometown are 'born into the arms of classical music' developed a theory that links status quo interactions to their parallel relations within larger collectives.³⁰ According to his view, orchestral musicians are wont to mimic the actions within the hierarchy that operate their orchestras. An increase in the size of the organization intensifies 'structural differentiation' that in turn sanctions a growth in terms of personnel. A case in point can be found in orchestral facts and figures on both sides of the Atlantic: the surge in the numbers of administrators and marketeers since the late 1980s is remarkable especially in light of the ongoing discussion related to the number of musicians essential to the orchestral complement (the complement, see the *FAQ movement*).

The multi-cultural triumvirate Jutta Allmendinger, J. Richard Hackman, and Erin Lehman group effort "Life and Work in Symphony Orchestras" paints a painstaking portrait of musicians' work lives with much attention paid to job satisfaction.³¹ Economic historian Michael Montias³² cited lessons for U.S. orchestras to learn from their European counterparts in an investigation with results that are sadly outdated in post-crisis Europe where orchestras are wont to suffer from what A. J. Goldmann in his probing study, regards as similar, longstanding problems inherent to both systems.³³ Aside from the aforementioned studies there is a noticeable lack of comparable data on the work lives of orchestral musicians across jurisdictions, save for analyses related to the role of women in orchestras and surveys on comparative job satisfaction across

³⁰ Peter Blau. *On the Nature of Organizations* 1974.

³¹ Jutta Allmendinger, J. Richard Hackman and Erin V. Lehman. "Life and Work in Symphony Orchestras" 1986.

³² Michael Montias. "Support for the Performing Arts in Europe: Lessons for the United States?" 1983.

³³ A.J. Goldmann. "Continental Shift: In the Wake of the Financial Crisis, Are European Orchestras Becoming More like Our Own?" 2013.

different professions. With regard to the latter, orchestral musicians ‘score high’ in terms of intrinsic job satisfaction, that is if they can attain a position in an orchestra.

3.3 The public policy lens

Why public funds should be directed toward orchestras and other cultural organizations is a topic of lively discussion in the literature on both sides of the Atlantic and of particular relevance to state-subsidized orchestras in their struggle to solidify finances in Europe. The discussion has resounded in the United States as the National Endowment of the Arts has endured major cuts for decades, most significantly under the Trump administration.³⁴ Pitting cultural institutions as proponents of ‘elitist art’ against other sectors more deserving of state support is common to the discourse in the Netherlands and the United States, a subject of further discussion in the *movements* to follow. One of the first pieces of research to compare subsidy information from different nations with different systems of supporting the arts (France, Sweden, the U.S.) public policy expert Dick Netzer’s *The Subsidized Muse* (1978) concluded that the U.S. should take a cue from the excellent and varied cultural programs in Europe to validate strong government support for culture in general and orchestras in particular. Professor Netzer found that the social and economic benefits of culture were indisputable, a substantial source of general benefit. The author provided examples of how market failure, a concept easily related to the vicissitudes of the ‘cost disease,’ was not a valid argument to counter a reliance on subsidies. Continuing along similar lines of investigation, Kevin Mulcahy and Margaret Wyszomirski³⁵ devoted additional studies to the government and the (lack of) arts funding from the U.S. perspective while Gunther Schulze and Anselm Rose investigated the generous orchestral funding in Germany, providing copious amounts of empirical information.³⁶

John Alford’s co-authored article, “Making Sense of Public Value,” provides an persuasive basis for positivists in the pro-cultural support field building on David Austen-Smith classic justification that when economies fail to self-support the arts, the government should step in.³⁷ John O’Hagan’s broad-brush comparative study,

³⁴ See Sarah Cascone’s report on the third year of the Trump administration NEA cuts: <https://news.artnet.com/art-world/trump-budget-national-endowment-arts-1490917>

³⁵ Kevin V. Mulcahy and Margaret Jane Wyszomirski. *America’s commitment to culture: government and the arts* 1995.

³⁶ Gunther G. Schulze and Anselm Rose. “Public Orchestra Funding in Germany: An Empirical Investigation” 1998.

³⁷ See, John Alford and Janine O’Flynn. “Making Sense of Public Value: Concepts, Critiques and Emergent Meanings” 2009 pp. 171-191.

The State and the Arts - An Analysis of Key Economic Policy Issues in Europe and the United States presents arguments in support of government intervention in cultural affairs with chapters devoted to taxation and direct expenditures. To supplement, John Holden's British-based research on how cultural spending can play an intrinsic role within a state's economic policy includes valuable ammunition to broaden the cultural value discussion.³⁸ Tyler Cowan's brilliantly penned *In Praise of Commercial Culture* presents an antidote to the Allan Bloom 'closing of the American mind' brand of pessimism rampant in U.S. academic circles during the latter part of the 20th century.³⁹

Turning to the many scholars who dissect issues related to how arts professionals proliferate despite marked precarity in terms of earnings and other vulnerabilities in terms of employment, the French sociologist Pierre-Michel Menger discusses the general issue of an oversupply of artists in his essay, "Artistic Labor Markets and Careers," written at the cusp of the millennium. Professor Menger's earnings distribution and supply hypotheses are echoed by observations found in the Berenschot reports and a whole gamut of Dutch Ministry reports referenced in *Recapitulation: Sources*. In the subsection devoted to Dutch publications below, attention will be paid to Hans Abbing's hypotheses with regard to the 'overabundance' of 'artists' and his perception of an overreliance on subsidies in the Netherlands.

3.4 The nonprofit and the 'new' philanthropy lens

As U.S. orchestras are nonprofits that rely primarily on support through endowments, and private as well as corporate patronage, it comes as no surprise to discover that the lion's share of the literature on philanthropy originates in the United States. Lester Salaman's 2012 contribution on nonprofits in America devotes considerable attention to the field in general with some specifics concerning financing and human resource challenges in the orchestral sector.⁴⁰ Stefan Toepler and Margaret Jane Wyszomirski have written for decades on the state of nonprofit America and the roles played by grant-making foundations. Turning his attention to the U.S. post 2007-2008 financial crisis, a German professor of nonprofit studies, Stefan Toepler, describes the dire situation faced by U.S. orchestras and other arts institutions forced to deplete endowments for survival in 2013.⁴¹

³⁸ John Holden. *Capturing cultural value: how culture has become a tool of government policy* 2004.

³⁹ Tyler Cowan. *In Praise of Commercial Culture* 1998.

⁴⁰ Lester M. Salamon. *The State of Nonprofit America* 2012.

⁴¹ Stefan Toepler. "Shifting cultural policy landscapes in the USA: What role for philanthropic foundations?" 2013 pp. 167-179.

Concert attendance and performance quality find renewal in Mark Lange's collaborative empirical research comparing management goals of orchestral non-profits to for-profits,⁴² while organizational management specialist Paul DiMaggio's numerous writings on nonprofit enterprises examines almost every aspect of the orchestra from the role played by managers to the concept of 'music as cultural capital.' 'Almost every aspect' should be taken literally, as the legal dimension does not feature significantly in Professor DiMaggio's oeuvre.⁴³ Arthur Brooks' empirical research on public subsidies' impact on private philanthropy in the 1990s is still relevant to discussions in which orchestral CEOs attempt to carve new sources for income.⁴⁴ John Holden's *Demos* supports the notion that the language of investment could replace the language of subsidy for a more equitable, culture-friendly system.⁴⁵ Taking her cue from the literature on a new wave of investment possibilities, Helleke van den Braber researched philanthropic giving in the 21st century, a non-traditional source of income for cultural organizations in the Netherlands.⁴⁶

3.5 The cultural economics lens

Cultural economics, a comparatively new 'branch' within economics, has expanded significantly with major scholarship emanating from the Netherlands, Germany, the United Kingdom, and the United States in the past half century. William Baumol and William Bowen sent shock waves through the orchestral world in the mid-1960s with their dire predictions for the orchestra's inevitable demise based on the effects of 'cost disease,' which will be discussed fully in the *Intermezzo* devoted to the subject.⁴⁷ Taking up the gauntlet to apply the tools of the economists trade to the 'suffering' arts including orchestras, Mark Blaug became a champion of the subject matter in his anthology on the *Economics of the Arts* published in the 'economics and arts' heyday in the mid-1970s.⁴⁸ Variations on many aspects of economics applied to cultural production and support provided by leading lights Alan Peacock, Ruth Towse, and David Throsby are classics in the field of cultural policies and economics that have shaped the discourse on orchestral finances up until the present day.⁴⁹

⁴² Mark Lang William Luksetich and Philip Jacobs. "Managerial Objectives of Symphony Orchestras" 1986 pp. 273-278.

⁴³ See *Recapitulation: Sources* for a relevant selection of Paul DiMaggio's works.

⁴⁴ Arthur Brooks. "Do public subsidies leverage private philanthropy for the arts? Empirical evidence on symphony orchestras" 1999 pp. 32-45.

⁴⁵ John Holden. *Cultural value and the crisis of the legitimacy: Why culture needs a democratic mandate* 2006.

⁴⁶ Helleke van den Braber. "De rentree van de mecenas" 2008 pp. 29-34.

⁴⁷ William Baumol and William Bowen. *Performing Arts: The Economic Dilemma* 1996.

⁴⁸ Mark Blaug. *The Economics of the Arts* 1976.

⁴⁹ *Recapitulation: Sources* provides ample references to the works of these scholars.

Stanford Graduate School of Business' Robert Flanagan accepted a commission from the Andrew W. Mellon Foundation to complete empirical research to present trends in specific cultural sectors between 1987-2008.⁵⁰ Moving forward to research the economics of orchestras, Professor Flanagan used the now infamous 'cost disease' theory as a point of departure to consider a cocktail of explosive factors centering on the incongruence between shrinking audience attendance and the 'grey-ing' of cultural audiences, the ever-increasing musicians salaries, and the orchestra's iffy revenue structure to predict an unstable future for U.S. orchestras.⁵¹

Well worth reading are blog posts by Kevin Case, a U.S.-based lawyer and musician specialized in orchestra-related issues. In 2012, he penned a prophetic article based on field experience that brings to the fore several management-musician related issues that engender a race-to-the-bottom for musicians' employment regardless of geographical location.⁵² The publicist and active blogger Norman Lebrecht,⁵³ the king of classical music polemics, wrote two controversial books in the 1990s that exposed the power games and market forces that created wealth for top billed maestros, and their impresario cronies in sharp contrast to the modest salaries of rank and file musicians.⁵⁴ Both volumes shed light on oft-forgotten issues that are of great importance in a consideration of the working lives of 'ordinary orchestral citizens', the musicians. With conductor and soloist salaries ever on the rise, as orchestral musician salaries fall under increasing scrutiny, and as orchestras face financial crises, Lebrecht's controversial findings add another dimension to discussions centered on orchestral futures.

3.6 From inside the orchestra

3.6.1 *Orchestral experiences*

The German organizational management researchers Sabine Boerner and Christian Greiherr analyzed the effects of a conductor's leadership style on the orchestra's level of cooperation and positive performance in "Transformational Leadership and Group

⁵⁰ Robert J. Flanagan. Report to the Andrew W. Mellon Foundation: The Economic Environment of American Symphony Orchestras 2008.

⁵¹ Robert Flanagan. *The Perilous Life of Symphony Orchestras: Artistic Triumphs and Economic Challenge* 2012.

⁵² Kevin Case. "The Commoditization of Symphony Orchestra Musicians" available on the author's website at: <http://www.caseartslaw.com/perch/resources/article-re-commoditization.pdf>

⁵³ Norman Lebrecht's blog, *Slipped Disc* first appeared in 2007. The blog is the classical music industry leader in terms of readership. Although sometimes derided for its 'high on gossip but low on research' content, it is prized for its breaking news factor.

⁵⁴ Norman Lebrecht. *The Maestro Myth: Great Conductors in Pursuit of Power* 1991 and *Who Killed Classical Music? Maestros, Managers, and Corporate Politics* 1997.

Climate: Empirical Results from Symphony Orchestras.”⁵⁵ However, to orchestral players interviewed in the past few years, their results smacked of “academics who have never really set foot in the pit with the musicians who actually work with conductors day in and night out.”⁵⁶ Warren Brodsky’s linear study of British orchestral players looks at orchestral work conditions and perceptions of employment within a selection of U.K. orchestras. His contribution to new research methods was based on mood induction, an artificial construct to replace face-to-face interviews in his quest to discover what motivates orchestral musicians to work in a professional setting that contains a high level of stress, precarity, and a comparatively low level of income. Surprised by his own findings after longitudinal interviews with 54 professional orchestral musicians, he related that for performers “all that remains is the music, the performer and his or her stage performance experience.”⁵⁷

Turning to orchestras during periods of industrial strife, the Boston-based sociologist M.A. Glynn scrutinized the Atlanta Symphony Orchestra (ASO) in the late 1990s during one of their pre-21st century periods of industrial unrest with an eye to analyze how a closed organization hierarchy can dissolve institutional identity and actually fuel conflicts. Her findings show how board ineptitude, a conductor’s apparent indifference to the orchestra’s financial setbacks, and musicians’ employment challenges exacerbated institutional predicaments.⁵⁸ Professor Glynn’s suggestions for the ASO to focus on reclaiming organizational identity in the ‘aftermath’ of the strike and her warning to the organization’s management and board leadership to heed messages from the orchestral players fell on deaf ears: less than two decades later, the ASO was locked out twice within a two-year period.⁵⁹

Harvard Law School’s negotiation maven Robert Mnookin was instrumental in designing and implementing experiments in non-confrontational forms of collective bargaining from the front lines of the San Francisco Symphony. His results presented in “A New Direction: Transforming Relations within the San Francisco Symphony”⁶⁰ might entice the reader to believe in a new pacifistic era for U.S. orchestral bargaining,

⁵⁵ Sabine Boerner and Christian Freiherr. “Transformational Leadership and Group Climate-E empirical Results from Symphony Orchestras” 2005.

⁵⁶ Comment gleaned from a collection of musician responses to the article cited.

⁵⁷ Warren Brodsky. “In the wings of British orchestras: A multiple-episode interview study among symphony players” 2006 pp. 673-690.

⁵⁸ M.A. Glynn. “When cymbals become symbols: Conflict over organizational identity within a symphony orchestra” 2006 pp. 285-298.

⁵⁹ The ‘double’ ASO lockouts 2012, 2014 are discussed in the FAQs.

⁶⁰ Robert Mnookin with Gary Friedman and Joel Cutcher-Gershenfeld. “A New Direction: Transforming Relations within the San Francisco Symphony” 2001.

however contradicted by reports from musicians inside the symphony whose responses are tallied in the *FAQ movement*. In a study that has relevance to musicians' concerns with the quality of management in the orchestral workplace, the Italian scholars Luigi Sicca and Luca Zan describe the negative power of imbedded assumptions, and the impact of distrust offering insights into the importance of managerial rhetoric. Their observations ring true when applied to the distortion between 'words and deeds' that has characterized crisis situations at the workplace as case studies from Baltimore to Hilversum will reveal in the *movements* to follow.⁶¹

To gain more insight into the power of the conductor, the sociologist Robert Faulkner describes several of the hierarchical challenges inherent within the traditional orchestral set up in which the conductor sways a scepter, 'over' the collective body of musicians, concluding that what may be 'musically necessary' in terms of authority is not necessarily beneficial to the mental health of musicians.⁶² Yaakov Atik furthered the research on hierarchy and conductors' leadership styles, and how different approaches on the part of the maestro and his/her interactions with the collective body of orchestral musicians are perceived and re-translated into working relationships. His findings present provocative albeit highly subjective data with regard to implications for leadership, followership, and functionality within the orchestral organization.⁶³

Research with an eye to restructure the orchestra's traditional and hierarchical model of organization has resurfaced in the works of several scholars including Harvard psychologist J. Richard Hackman, a proponent of the theory that an individual's perception of accomplishment is intrinsic to the success of a larger collective. Professor Hackman spent months imbedded in New York's Orpheus Chamber Orchestra to study its ability to excel without a conductor as ultimate arbiter.⁶⁴ He argues that although Orpheus is a small orchestra, its non-traditional model of organization in which players take part in all aspects of operation should be adapted to suit the needs of larger orchestras. Tossing aside the notion that such interaction would "violate the labor contract and conductors would never stand for it," he noted that "large orchestras...leave enormous amounts of musical talent unused on the rehearsal stage

⁶¹ Luigi Sicca and Luca Zan. "Much ado about Management: Managerial Rhetoric in the Transformation of Italian Opera Houses" 2005 pp. 46-64.

⁶² Robert Faulkner. "Orchestral Interaction: Some Features of Communication and Authority in an Artistic Organization" 1973 pp. 147-157.

⁶³ Yaakov Atik. "The Conductor and the Orchestra: Interactive Aspects of the Leadership Process" pp. 22-28 1994.

⁶⁴ According to the Orpheus website, "the world's foremost chamber orchestra since 1972," the ensemble is 2/3 the size of a symphony orchestra with many members who graduated from the Juilliard School of Music.

and sufficing with less engagement and commitment from musicians than they could have.⁶⁵ As later *movements* will show, these observations could brush against legal limitations with regard to employee participation at the workplace set forth in the National Labor Relations Act (NLRA), not to speak of the financial perils experienced by self-governing orchestras without solid financial structures.⁶⁶

Key resources with references to insiders' orchestral experiences including employment and labor issues are available from blogs created by musician-writers (see blogs, below). Robert Levine, a member of the Milwaukee Symphony Orchestra penned an essay on orchestra musician's maladies in 1996 that has remained an industry benchmark.⁶⁷ One of the best reads on how musicians' experience their positions is provided in a short blog by Gerald Elias, an accomplished violinist and former member of the Boston Symphony Orchestra. With eloquence and respect, he questions the viability of a hierarchical system in which musicians exert so little influence on their employment futures.⁶⁸ Another insightful offering, music educator Robert Freeman's *The Crisis of Classical Music in America*, touches upon a range of issues from financial crisis to interview-based reports how financial instability affects the individual musician's job-longevity.⁶⁹

3.6.2 *Of boards and management*

Organizational practice in the orchestral world forms an important part of the literature. The nonprofit scholar Paul DiMaggio (see above) argues that professionalization of arts management (including orchestras) is vital for industry success⁷⁰ while the management studies guru Peter Drucker emphasized the importance for managers in the for-profit segment to study nonprofits such as universities and orchestras to glean 'out-of-the-box' management tools.⁷¹ Henry Hansmann would disagree with Professor Drucker, asserting that performing arts managers are a breed unto themselves. A

⁶⁵ J. Richard Hackman. *Leading Teams: Setting the Stage for Great Performances* 2002.

⁶⁶ The contrast between the 'fortunes' that back the semi-self-governing Vienna Philharmonic Orchestra and Berlin Philharmonic Orchestra as compared to the London self-governing orchestras that have significantly less financial support has been traced in Erin Lehman's unpublished dissertation "Models of self-governance and workplace democracy: a comparison of select orchestras in Germany, the U.S. and U.K." 2001.

⁶⁷ Seymour and Robert Levine. "Why They're Not Smiling: Stress and Discontent in the Orchestra Workplace" 2012. Available at: http://esm.rochester.edu/iml/prjc/poly/wp-content/uploads/2012/02/Stress_Discontent_Levine.pdf

⁶⁸ Gerald Elias. "A Labor of Love: A Primer in Symphony Orchestra Musician/Management Relations." blogpost 13 May 2013.

⁶⁹ Robert Freeman. *The Crisis of Classical Music in America* 2014.

⁷⁰ Paul DiMaggio. *Managers of the Arts* 1987.

⁷¹ Peter Drucker. "The Coming of the New Organization" 1988 pp. 45-53.

particularly insightful biography of Arthur Judson, one of the most versatile and feared U.S. orchestral and international artistic managers, examines how style has affected orchestral decision-making past and present.⁷²

Online records from the Aspen Institute, the League of American Orchestras and the now-defunct Symphony Orchestra Institute provide copious materials on the successes and failures of ‘real time’ management practices with interviews from America’s leading orchestral managerial lights including CEOs and former presidents of such illustrious ensembles as the Cleveland Orchestra, the Los Angeles Philharmonic, the New York Philharmonic, and the San Francisco Symphony.

The subject of board and management accountability has inspired studies in both countries under scrutiny. Of special note, Melissa Middleton’s “Nonprofit Boards of Directors: Beyond the Governance Function” still relevant decades post-publication, imparts field-based workable tips from successful boards that continue to inspire commentary on contemporary orchestra blog sites such as *Adaptistration*.⁷³ Beyond blogs, Ms. Middleton’s tips lend valid support to cultural boards in need of guidance especially with regard to potential conflict of interest situations.

Michael Kaiser, former President of the Kennedy Center (2001-2014), Washington’s multi-arts complex, is respected as a cultural ‘turnaround king’ who could turn straw into gold for failing arts organizations worldwide. Mr. Kaiser published a disheartening state of the arts epistle with special regard to U.S. cultural organizations after the 2007-2008 financial crisis.⁷⁴ Critical of many cultural organizations that cutback essential personnel (musician complements) before cutting administrative staff, Kaiser insists that boards and managements must set the austerity tone by taking the first blows rather afflicting, in the case of orchestras, the musicians. He underlines the crucial role that a healthy board should take on in times of crisis, pointing out that more often than not symphony orchestra boards are made up of well-intentioned moneyed members who show little understanding of what makes a cultural organization successful. Instead of meddling in operations, boards should focus on building community support and fundraising. In the face of declining resources, he holds adamantly to backing the core mission at all costs: “I have never seen an arts organization get healthy by spending

⁷² J. Doering. *The Great Orchestrator: Arthur Judson and American Arts Management* 2013.

⁷³ Melissa Middleton. “Nonprofit Boards of Directors: Beyond the Governance Function.” in Walter Powell *The Nonprofit Sector* 1987 pp. 141-153. Relate to the many board-related posts easily accessed on www.adaptistration.com

⁷⁴ Michael Kaiser. *Curtains? The Future of the Arts in America* 2015.

less.”⁷⁵

3.6.3 Musicians’ organization and the role of unions in shaping orchestral lives and livelihoods

Along with a plethora of union publications and websites in both jurisdictions, several books and articles provided worthwhile information on the development of the union as part of the sustainable symphony orchestra bargaining team. The websites of the American Federation of Musicians (AFM) and locals across the United States as well as the International Federation of Musicians (FIM) site, and Dutch musicians’ union sites operated by the *FNV* and *Kunstenbond* unions are regularly updated. Pertinent information from these sites continues to provide invaluable information on the state of the orchestral arts and employment related issues.

Back in 1948, Vern Countryman’s “The Organized Musicians” pioneered with its fully descriptive profile of U.S.-based orchestral musicians and their participation in unions in the formative 20th century years.⁷⁶ Julie Ayer’s *More than Meets the Ear*, based on copious interview materials, tells the turbulent story of ‘how symphony musicians made labor history’ in the 1960s from the musicians’ standpoint.⁷⁷ Particular focus is given to Ms. Ayer’s home orchestra, the Minnesota Orchestra, whose bitter 16-month lockout was yet to begin at the time of the book’s publication in 2005. Philip Hart’s previously noted volume also provides invaluable information concerning ‘those militant American musicians’ who fought for a place at the bargaining table in the 1960s.

In “Collective Bargaining in the Arts and Culture Sector: An Examination of Symphony Orchestras in Germany and the U.K.,” Andrea Broughton examines power relations and collective bargaining structures in several ‘types’ of orchestral organizational structures at the cusp of the 21st century.⁷⁸ Her groundbreaking research motivated several strands within this post-crisis enquiry. The burgeoning field of industrial relations research in Europe with regard to the effect of codetermination and works councils has not focused research specifically on orchestras. However, the substantial literature on works councils as part and parcel of industrial relation policies and

⁷⁵ Ibid, p. 125.

⁷⁶ Vern Countryman. “The Organized Musicians (Part I)” Faculty Scholarship Series. Paper 4778, 1948.

⁷⁷ Julie Ayer. *More than Meets the Ear: How Symphony Musicians made Labor History* 2005.

⁷⁸ Andrea Broughton. “Collective Bargaining in the Arts and Culture Sector: An Examination of Symphony Orchestras in Germany and the U.K.” 2000 pp. 327-34.

employment partner-policies can be examined for relevance.

3.7 Through the Dutch lens

To balance the bulk of information emanating from the United States cited throughout this *intermezzo*, a brief review of relevant works from the Netherlands follows. Exhaustive information related to Dutch cultural life inspired by Emmanuel Boekman's pre-WWII thesis can be found in multiple publications provided by the Boekman Foundation.⁷⁹ Further, the Lowlands has produced an impressive number of cultural policy and cultural economic commentators: the Flemish researchers Katia Segers, Annick Schramme, and Roel Devriendt on evolutions within the subsidy system for artists over the period of 7 years. Their finding that the increase in overhead costs due to the increase in managerial costs outstripped artist's wages parallels studies of musicians vs. conductor/manager fees in the United States.⁸⁰ The Flemish cultural critic Hans Waege proved successful as a researcher on public participation in the arts but garnered unanimous criticism from disaffected musicians when he applied some of his findings as director of the Rotterdam Philharmonic Orchestra.⁸¹

Focused on subsidy issues in the Netherlands, the Dutch artist and economist Hans Abbing's polemic *Why are Artists Poor?* minimized the importance of the cost disease to bring other issues to the fore such as problems caused by government subsidies and cadres of expert arts advisors. Dutch researchers Thijs Adams and Frans Hoefnagel contributed to the debate on subsidies and their impact on diverse cultural organizations including orchestras, in their appeal for increased support in times of financial distress.⁸² The champion of cultural value arguments in the Netherlands, Arjo Klamer, published frequent editorials to offer strong support for Dutch orchestras in the dark days of 2013. Joined by his colleague Cees Langeveld, Professor Klamer created a long list of ideas for creative self-support for the arts to inspire Holden-like (read investment, not subsidy) thinking processes.⁸³

⁷⁹ For excellent early research on the role of the government in the arts sector, see Emanuel Boekman, *Overheid en kunst in Nederland*. Tragically, Dr. Boekman was unable to continue his original research: he committed suicide on May 15, 1940, the day the Netherlands capitulated to Germany.

⁸⁰ Katia Segers, Annick Schramme & Roel Devriendt. "Do Artists Benefit from Arts Policy? The Position of Performing Artists in Flanders (2001–2008)" pp. 58-75.

⁸¹ Hans Waege's conflicts as Director of the Rotterdam Philharmonic Orchestra were much publicized in Dutch press preceding his departure in 2014.

⁸² In Dutch, Thijs Adams and Frans Hoefnagel. *Kunstbeleid in tijden van cholera: een nieuwe rol voor de overheid* 2011.

⁸³ In Dutch, Arjo Klamer and Cees Langeveld. *PAK AAN: 100 en 1 ideeën voor kunst en cultuur* 2011.

Turning to the singular Royal Concertgebouw Orchestra (RCO) on the occasion of the orchestra's 75th anniversary, the Dutch music historian par excellence Marius Flothuis penned a forthright appraisal of the power struggles that raged within the legendary ensemble in the 20th century.⁸⁴ His disclosures spare little detail and include scathing commentary on power struggles within the venerable institution with its distinctive organizational and governance structure.

Rick van der Ploeg, eminent economist and former Dutch State Secretary of Education, Science and Culture (1998-2002) the government official who announced the first wave of culture cuts in the late 1990s, wrote many articles that influenced policy makers for decades on such topics as how tax affects labor markets and the impact of social policy on employment. Dr. van der Ploeg's 'conventional wisdoms' couched in the jargon-heavy terminology of the economist are ever-popular in present-day political debates concerning cultural funding in the Netherlands. His criticism of a 'one-sided focus on supply' led to the formulation of plans to grant subsidies based on strict obligations including the receiver's openness to multicultural offerings and commercial viability in terms of generating revenues.⁸⁵ These reoccurring themes will return in several forthcoming *movements*.

A Dutch-based study on boards in the cultural sector presents eye-opening data on the closed network, the 'ons kent ons' processes⁸⁶ that dominates the methods involved in board selection.⁸⁷ Although intriguing in subject matter, the study takes board 'directors' as a point of departure without adequate consultation with other stakeholders who hold relevant viewpoints related to the cultural institutions surveyed. Other points of criticism such as the comparatively small number of interviews presented as hard data and the highly subjective leading questions posed to elicit responses point to the need for well-structured research in a field closely related to the future of orchestral institutions.

The Dutch Council for Culture (Raad voor Cultuur, RvC) anthologies and newsfeeds as well as the Ministry for Education, Culture and Science's (OCW) publications provide updated information on subsidies and the rationale that motivates cultural policy decision-making. Compendia of cultural policies for individual European

⁸⁴ In Dutch, Marius Flothuis & J. Giskes (red.) *Waar bemoei je je mee: 75 jaar belangenstrijd van de Vereniging 'Het Concertgebouworkest'* 1989.

⁸⁵ In Dutch, Rick van der Ploeg. "Cultuur als confrontatie - Uitgangspunten voor het cultuurbeleid 2001-2004."

⁸⁶ 'Ons kent ons' loosely translated 'the insiders' 'those whom we (insiders) know.

⁸⁷ In Dutch, *Directeuren willen meer*

countries, most pertinently, the Netherlands available at: <http://www.culturalpolicies.net> are invaluable tools for comparison.

3.8 The legal lens

To emphasize, there is a marked dearth of literature focused on orchestras and legal issues. Analyzing the world-renowned Vienna Philharmonic and its legal status with a focus on internal employment relations and external labor relations, Josef Bartosch's 1981 report is the only such systematic investigation found to date. Although several U.S.-based law scholars published articles on orchestral musicians with regard to NLRA managerial exceptions and anti-trust employment jurisprudence, most other aspects of musicians' employment have not caught the attention of legal analysts.⁸⁸

In the groundbreaking Dutch-based competition vs. collective bargaining case *FNV Kunsten Informatie en Media (KIEM)*⁸⁹ involving substitute players in orchestras and their right to engage in collectively bargaining to gain adequate wages, the European Court of Justice created the somewhat controversial category of 'false self-employed' workers that has sparked a lively international academic debate that will fuel the fires of enquiry in subsequent *movements*. Ioannis Lianos' research sheds light on conflicting goals within EU policy relating to clashes of social goals with the oft-emphasized economic goals of the union.⁹⁰ Mark Barenberg and Eva Grosheide teamed up to suggest byways, a series of U-turns, a term used to find solutions for self-employed workers to avail themselves of minimum fees without suffering from the strong arm of competition law restrictions.⁹¹ John Griffiths and Sally Merry provide ample evidence that a right can extend into diverse areas of the law and importantly, that certain aspects within a legal system can run along a 'collision course.'⁹² Grappling with jurisprudence that runs that very collision course between competition law and labor law while juggling musicians' questions concerning adequate wages, fair practice, and the right to bargain has been aided by readings from different theoretical points of departure.

⁸⁸ The pair of articles: Rochelle Gnagey Skolnick "Control, Collaboration or Coverage: the NLRA and the St. Paul Chamber Orchestra Dilemma" 2006, and Molly Eastman's "Orchestrating and Exclusion of Professional Workers from the NLRA: Has the Supreme Court Endangered Symphony Orchestra Musicians' Collective Bargaining Rights?" 2004.

⁸⁹ *FNV Kunsten Informatie en Media* Case C-413/13, ECLI:EU:C:2014:2411

⁹⁰ Ioannis Lianos. "Some Reflections on the Question of the Goals of EU Competition Law" 2013.

⁹¹ Eva Grosheide and Mark Barenberg. "Minimum Fees for the Self-Employed: A European Response to the Uber-ized Economy."

⁹² See, John Griffiths. "What is Legal Pluralism?" 1988 pp. 2-55 and Sally Merry, "Legal Pluralism" 1988.

A decade ago, Judy Fudge's observation that "labour law is in a conceptual, normative crisis"⁹³ reverberated across scholastic chambers. Leading lights the likes of Guy Davidov, Marc Freedland, Brian Langille, and Alain Supiot advanced expansive normative frameworks applying social justice as a tool to rebalance the inequalities inherent within the employer-employee relationship while moving toward the sphere of redistribution. Building upon Mark Freedland's hypotheses advanced in *The personal employment contract*,⁹⁴ and research undertaken by Bob Hepple and Bruno Veneziani,⁹⁵ Nicola Countouris⁹⁶ and Valerio De Stefano developed a theory that challenges what they perceive of as the antiquated, binary divide between the employed workers and the increasingly wide category of self-employed workers within the boundaries of labor and employment law. Their recommendations aim at an expansion of legal rules that center on an individual's personal work relationship (PWR) with his/her employment to meet the requirements of rapidly changing global employment patterns in recent decades. A particularly inspiring article pointing to a reconciliation between competition law and labor law calls for European courts and legislators to take a 'reality check' by recognizing and espousing the economic realities of present-day employment to take labor markets rather than product markets as a starting point to redesign competition law. Their advocacy of an exemption for the false self-employed from the strict EU competition regime gathers inspiration from CJEU jurisprudence particularly the famed *FNV Kiem* case that will be discussed in subsequent pages.⁹⁷

3.9 The precarity lens

Last but certainly not least, writings on the subject of precarity provide something of an embarrassment of riches as writers such Isabell Lorey and her activist soul-mentor Judith Butler open a brave new world of consideration to researchers who consider the futures of contingent employment.⁹⁸ Professor Butler's cri-de-coeur calls for activists to push for an agenda of normative obligation that embraces equality under the law to protect 'commonly shared precariousness' in order to mitigate inequality.⁹⁹ Their

⁹³ Judy Fudge. "Labour as a Fictive Commodity" in G. Davidov and B. Langille eds., *The Idea of Labour Law* p. 124.

⁹⁴ Mark Freedland. *The personal employment contract* 2003.

⁹⁵ B. Veneziani. "The employment relationship" in B. Hepple and B. Veneziani (eds): *The transformation of labour law in Europe: A comparative study of 15 countries 1945–2004* 2009.

⁹⁶ Several publications spell the author's last name as Countouris whereas other publications, Kountouris.

⁹⁷ Ioannis Lianos, Nicola Countouris & Valerio De Stefano. "Re-Thinking the Competition Law/Labour Law Interaction Promoting a Fairer Labour Market" 2019.

⁹⁸ Isabell Lorey, Aileen Derieg (translator) and Judith Butler. *State of Insecurity: Government of the Precarious* 2015.

⁹⁹ Judith Butler. "Precarious Life, Grievable Life" in *Frames of War* 2016 p. 28.

application of the term ‘precarity’ to embrace a wide categorization of the vulnerable is philosophically challenging to researchers who look at gig workers through a legal/labor law tinted lens. In their *Weltanschauung*, precarity goes beyond a form of inequality, as it is a calculated and manipulated part of state domination over the individual. The philosophical challenges posed by scholars inspired by Professors Butler and Lorey find solid, quantitative resonance in research undertaken by Eurofound 2017 (*Aspects of nonstandard employment in Europe*) that links precarity to the gig economy.¹⁰⁰ Combining the forces of employee voice theory with capability theory, Simon Deakin has called for a rethink, a veritable new view in evolving legal norms and practices.¹⁰¹

3.10 Trade magazines and blogs

To keep up with employment-related issues and breaking orchestral news, the musician’s union magazine *International Musician*, the League of American Orchestras’ *Symphony*, the International Conference of Symphony and Opera Musicians’ (ICSOM) *Senza Sordino* and the International Federation of Musicians’ website are essential reading. The resources provided by back issues of *Harmony*, published by the now defunct Symphony Orchestra Institute, go much further than a trip down memory lane.¹⁰²

Editorials and debates presented by orchestral insiders provide thought-provoking and ever-relevant topics related to the survival of the orchestra. To provide one small but telling example: a web encounter with the Birmingham-based musician and arts activist Catherine Arlidge’s June 2015 blogpost entitled, ‘Are our orchestral musicians ‘violin operators’ or ‘evangelists for our art’?’ was incorporated into materials pertinent to Dutch-based musician’s union bargaining planning sessions, fostering the type of cross-pollination that research should engender.

The vast number of blog and social media input relevant to the study of the challenges faced by orchestral musicians should be highlighted along with more traditional references. Trends, breaking news, relevant commentary written by insiders, practitioners, musicians, or organizations range from tweets to full-fledged blog articles.

¹⁰⁰ Eurofound’s introduction warns of precarity (p. 2): “Still, a sizeable share (12.6%) of the self-employed in the Netherlands and Germany – countries with relatively well-developed social protection systems– could be classified as ‘precariously self-employed’ and develops the theme further (see p. 14). The Eurofound 2017 study is available at: <https://www.eurofound.europa.eu/publications/customised-report/2017/aspects-of-non-standard-employment-in-europe>.

¹⁰¹ Simon Deakin and Aristeia Koukiadaki. “Capability theory, employee voice and corporate restructuring” 2012.

¹⁰² Henry Fogel, former President of both the Chicago Symphony Orchestra and the League of American Orchestras was the mastermind behind the Symphony Orchestra Institute in the 1980-90s.

Needless to say, some blogs need to be taken with multiple grains of salt. The level of fact checking is lower than for print media publications and often the bloggers eagerness to get their viewpoint across obviates nuance prized in more traditional forms of research. Caveats aside, Drew McManus' *Adaptistration* and his sub-blogs¹⁰³ deserves the grand prix for the scope of his reporting and research focused on U.S. orchestras.

3.11 Visionaries and storytellers

It would be unfair not to acknowledge a body of literature that might be initially bypassed by those who endeavor to research the future of orchestral musicians. Honing in on a body of literature with a legal bent while engaging in interviews with musicians was frustrating at best as the very large elephant in the room centered on the question: what does 'law got to do with it'? Isn't the musicians' demise directly coupled to financial and not legal matters? As alluded to earlier, there is a paucity of literature that pays attention to voices within the sector, increasingly raised voices that attest to increased vulnerability in the orchestral sector. U.S. musicians were curious to learn about the status quo for orchestral musicians and substitute players in the Netherlands with particular interest in proactive initiatives by freelance musicians exemplified by accomplishments booked by the *Platform voor Freelance Musici* (PvFM) discussed at length in subsequent *movements*. Conversely, Dutch musicians were fascinated by the significant amount of U.S. litigation that involved orchestral musicians.

So, aside from solving the clashes between competition (antitrust) and collective bargaining, what does 'law' got to do with it? On a late afternoon in Amsterdam as raindrops and ennui set the tone, a quick look at my erudite officemate's bookshelves brought a breath of encouragement, fresh air in printed form.¹⁰⁴ Perusing titles that conjure images of legally savvy hedgehogs and foxes, it became clear that at least in some legal circles, law reaches into every aspect of societal endeavor, and vice-versa. As dusk set in, a cursory introduction to overlap prompted an examination of what Lon Fuller dubs a 'miniature legal system' where one finds a 'quasi system at work in the orchestral organization.'¹⁰⁵

Another rainy day read introduced Alain Supiot's visionary hope for a transformed global labor market that embraces human capital in place of the financial markets

¹⁰³ See *Recapitulation: Sources* under blogs for more listings.

¹⁰⁴ The author has the good fortune to share an office with Dr. Chantal Mak Professor Private Law University of Amsterdam.

¹⁰⁵ Lon Fuller. *The Anatomy of the Law* 1968.

as a source of deployment. Professor Supiot's theory that law without justice-based autonomy operates solely as an expression of political power bowing to contrived economic advantages takes on a deeper meaning when applied to a reading of Trump-era NLRB decisions in which workers have 'lost out' in terms of labor rights to big business. His plea for a return to the principles within the ILO's Declaration of Philadelphia (1944) argues for a social bill of rights as a point of departure for an estimable return to normalcy post 2007-2008 financial crisis.¹⁰⁶ As Professor Countouris and colleagues have pointed out recurrently, not only the U.S. but also the EU have not embraced a Supiotian idea of 'labor beyond employment' with its vision of a healthy, diverse reliance on workers as a common resource of greater importance than institutional efficiency and profit benchmarks. Current struggles faced by orchestral musicians and freelancers in their quest for adequate wages and benefits find theoretical support in many of the aforementioned writings.

An additional stimulating 'read' was presented by Peter Friedman, an inspiring U.S.-based law lecturer and blogger, who mentioned en passant a slim volume in praise of narrative as a means to convey law-related subjects.¹⁰⁷ Although litigation techniques are the main thrust of the book, its author persuasively legitimizes the notion of storytelling as a means to an end, a useful, creativity-inducing and indispensable method to reach academics, practitioners, and beyond to a broader audience.¹⁰⁸ In the wonder world of academic enquiry, this researcher has been awed by a wide range of sources to push the boundaries of this exploration beyond the goals originally set.

¹⁰⁶ Alain Supiot. *The Spirit of Philadelphia: Social Justice vs. the Total Market* 2012.

¹⁰⁷ Peter Friedman launched his blog 'What is Fair Use?' in 2008. He has taught a variety of courses at Case Western Reserve Law School, served as a commercial litigator at leading firms in New York and at present is the Director, Corporate Sponsored Research and Strategic Industry Alliances at Case Western.

¹⁰⁸ Philip Meyers. *Storytelling for Lawyers* 2014.