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Symphonic metamorphoses

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

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PART V CLOSING CHORDS

18. The curtain falls? Orchestras in times of pandemic

*“And now, in this solemn and deeply stirring moment, when the confusion and distractions of everyday life are lifted like a hood from our eyes, a voice of awe-inspiring solemnity chills our heart, a voice that, blinded by the mirage of everyday life, we usually ignore: ‘What next?’ it says. And we must answer this question if we are to go on living.”*²²¹⁴

*“The uncertain fear is not only of getting infected and maybe dying, but also of the future. Government subsidies may be reduced significantly, sponsors may dramatically cut donations, families may be reluctant to send their kids to music lessons and to music colleges if their own financial situations have significantly deteriorated; there could be fewer jobs and fewer concerts for musicians, audiences could be reluctant to go to live concerts, having been forced to change their habits as well as facing financial difficulties, and the fear of being in a crowd could linger for a long time. . . . “So, we will have to rely on online distribution of music? Now there is an abundance of live streams and videos online for free, will musicians get paid after the corona virus era? What will the future be for classical musicians?”*²²¹⁵

*“For every person involved in cultural activities, from the mightiest orchestra to the humblest freelancer, the toughest concern is the long wait. We are waiting for halls to open, while at the same time we realize that when they open, our survival is compromised if only 30% of seats can be used for audiences.”*²²¹⁶

This study was motivated by first-hand experiences as a member of a celebrated Dutch radio orchestra disbanded in the wake of the financial crisis of 2007-2008. It sought to answer employment-related questions regarding the precarious position of orchestral musicians, both collectively and individually, resulting from crises. One of the most difficult moments in an undertaking of this nature is reaching an endpoint as the problems in the sector tend to proliferate rather than abate. A mediated case in which Dutch orchestral freelancers under the aegis of the union sought adequate remuneration from a major subsidized orchestra was scheduled for a final decision in February 2020. This signaled closure as the mediation committee’s advice underlined the principals of fair practice and equal pay under recent Dutch legislation: a win for the freelance musicians’ rights to adequate pay served as a clarion call for a bright future. As fate would have it, in the weeks that followed, the devastating impact of the COVID-19 crisis on the orchestral world eclipsed not only this outcome, but all previous orchestral trials and tribulations. Intended to close on a hopeful note, the

²²¹⁴ Gustav Mahler, with regard to his Symphony No. 2 known as the *Resurrection Symphony*, in *Gustav Mahler: Memories and Letters*, translated by Donald Mitchell, p. 94. Available at: https://archive.org/stream/gustavmahlermemo00mahl/gustavmahlermemo00mahl_djvu.txt

²²¹⁵ Kyoko Hashimoto, piano professor McGill University, placed the text on her Facebook page.

²²¹⁶ Conversation with Simon Woods, President League of American Orchestras; former CEO Los Angeles Philharmonic.

coda considers the immense challenges posed by a pandemic for orchestras and their employees.

18.1 COVID-19 pandemic

Of all the catastrophes that orchestral musicians and their organizations have been forced to confront, none comes close to the havoc wreaked by the pandemic and ensuing global lockdown. Regardless of geographic location, size and/or reputation, orchestras and their employees have landed in the precarious position of not knowing if, how, and when they will be able to engage in live concerts. The challenges are manifold as stakeholders question the viability of the sector to endure. “The very essence of an orchestra’s *raison d’être* depends on audience proximity and building a community of listener-participants, first through concerts and then broadcasts-recordings. When that disappears, the centrality of the concert-experience is compromised. Patronage has ground to a standstill in the past months. Those adversely affected by economic downturns during the pandemic are reticent to part with their savings and government grants earmarked for culture are reserved for the major players in the field. Looking across Dutch borders to France and Germany, where political leaders have repeated their pledge for continuous and generous support for the arts, makes our pain here in the Netherlands all the more intense.”²²¹⁷ In terms of the orchestral labor force, two major issues emerge after concert halls worldwide closed in mid-March 2020: the sustainability of ongoing compensation for salaried orchestral musicians, and the loss of revenue sources for freelance musicians.

Culture vultures not to speak of the general public were jolted by the news that one of the Netherlands’ premier venues for largescale performances (capacity just under 16,500) would not welcome Europe’s glitzy blockbuster, the 2020 Eurovision Song Contest in May 2020. The European Broadcasting Union organizers were forced to cancel due to growing concerns related to the rapid spread of the virus. More sobering news followed in mid-April 2020 when the Dutch government announced that the massive venue was to be transformed into an emergency hospital in order to accommodate the rising numbers of pandemic victims.

Research has shown that, generally, a dependence on a ‘*flexibele schil*’ (*literally* translated from Dutch as a flexible shell) of temporarily employed workers, the mainstay of a flexibilized market, is often accompanied by low(er) wages and worker

²²¹⁷ Conversations with impresario Marco Riaskoff, recently forced to bring his world-renowned concert series, *Meesterpianisten* (Master Pianists) at the Concertgebouw’s Hall to an end after 33 successful years.

uncertainty. An unprotected non-core flex workforce, whose presence onstage saves money for orchestral employers, can be financially destructive for the unexpectedly, unemployed freelancers. Add to these troubles, the undetermined impact of the surfeit of free online musical offerings (Zoom concerts and Facebook freebies) during lockdown and the desolate scene described in the following quote circulated by two leading maestros was disturbingly confirmed.²²¹⁸ “There’s a real possibility of a devastated landscape on the other side of this; orchestras may not survive, and if they do, they may face insuperable obstacles to remain solvent in our new reality.”²²¹⁹

In the United States, a steady stream of orchestras furloughed their employees in 2020, several orchestras announced 2020-2021 season closures, and the percentage of freelance musicians, many of whom draw employment from per-service orchestras, relegated to collect unemployment rose sharply in the first six months of the COVID-19 crisis. The largest performing arts organization in the United States, the mighty Metropolitan Opera (the MET) announced furloughs and employment layoffs across the board that impacted musicians and all stage-related employees in mid-March.²²²⁰ Another top-tier U.S. orchestra, the Pittsburgh Symphony, announced furloughs and salary cuts at the start of what should have been a stellar 2020-21 season.²²²¹ While heavily endowed orchestras hope to weather the storm and top-ticket maestros such as the LA Philharmonic’s Gustavo Dudamel and the New York Philharmonic’s Jaap van Zweden²²²² renounced portions of their salaries to contribute to the greater good, smaller orchestras have been acutely threatened as a wave of restructuring looms large.²²²³

²²¹⁸ Open letter to *The Guardian* written by Sir Simon Rattle and Sir Mark Elder, two of the U.K.’s most renowned maestros. Available at: <https://www.theguardian.com/music/2020/jun/10/orchestras-might-not-survive-after-coronavirus-pandemic-uk-conductors>

²²¹⁹ *Ibid.*,

²²²⁰ See U.S. statistics on orchestral employment compiled weekly at www.adaptistration.com and compare April 2020 to August 2020. <https://adaptistration.com/2020/08/31/state-of-employment-poll-review-aug-31-sep-6/>

²²²¹ “The Pittsburgh Symphony Orchestra announced additional cost-saving measures due to the pandemic, including salary reductions for musicians and salary reductions, furloughs and layoffs for 30% of its full-time administrative staff. The orchestra has canceled 115 concerts and events since March and estimates a \$5.6 million shortfall in earned revenue. Live concerts are canceled until at least the end of the calendar year.” See, <https://www.post-gazette.com/ae/music/2020/09/03/Pittsburgh-Symphony-Orchestra-salary-cuts-musicians-furlough-layoff-staff-concerts-covid-19/stories/202009030191?fbclid=IwAR1BbTT9Rlm60knAOc39V1oaEMcgq3nwdzDC63texP2kraXOMdSAnsVQnQ>

²²²² See report at: https://www.broadwayworld.com/article/Music-Director-Jaap-van-Zweden-Donates-500000-to-NY-Phil-Plays-On-Emergency-Fund-20200616?fbclid=IwAR2Stm-5FICrxUpxMci2m0miYqMfrkImcHguhGly3AYcxDWkXb3DW_K6Vs

²²²³ See weekly updated reports at: <https://adaptistration.com/2020/05/01/streamlining-the-employment-status-reporting-process/#more-49951>. European orchestral musicians who are contracted members of state subsidized orchestras have not as yet witnessed salary cuts.

This *movement* first sets forth what history can teach us with regard to pandemics and their impact on cultural activities before describing challenges in the here-and-now faced by orchestral musicians in the Netherlands and the United States. A consideration of how other areas within the classical music performance sector have reacted to the crisis follows. Subsequently, the relief measures undertaken by governments in both countries with specific relevance to orchestral musicians will be presented, painted with a broad brush as these measures change when political contingencies react to lobby groups for crisis-impacted groups. Stakeholder suggestions for a viable musical future for orchestras in their communities will close the *movement*.

Classical music organizations and performers the world over describe the disastrous effects of the COVID-19 pandemic, not only with regard to the direct financial hits such as orchestral closures, but also in connection to the uncertainty concerning eventual restarts. With no international not to speak of national consensus concerning pandemic exit strategies, it is difficult for musicians and the institutions that employ them to devise viable plans to reopen. Every major international summer music festival was cancelled in 2020, and although some orchestras and opera companies publicized the hopes of season openings in late fall 2020 or January 2021, these plans are wildly optimistic taking the real threat of COVID-19 mutations into consideration. Questions that run the gamut from ‘do we want our orchestral hall to bear the responsibility of exacerbating the spread of the virus’ and ‘how can we secure an orchestra with appropriate social distancing in an opera pit or on a concert stage?’ add to predicaments such as, ‘how can we think about flying in guest artists to perform when many countries enforce strict lockdowns that change on a daily basis?’²²²⁴ Adding to the uncertainty of how venues will be able to sustain spiralling costs, orchestras as well as other performing arts institutions have taken on watchdog roles with regard to their musicians and their future audiences. The bottom line for all orchestras is that until a vaccine is developed, readily available and universally disseminated, concert and opera halls are limited in their options to reopen. “Everyone in the sector agrees that caution and protection are key: we need to consider all options, even including drastic measures such as testing and tracing mechanisms to make sure that all who enter the concert hall will be able to enjoy performances safely.”²²²⁵ Following the germs and following the money reveals instability and crisis in both full-time employment

²²²⁴ Questions gleaned from discussions with managers and impresarios in Europe and the U.S. (March-August 2020).

²²²⁵ Conversation with Simon Woods.

and freelance spheres as well. To initiate an appraisal of what many pundits see as a fractured future for the entire sector, the *coda* reverts back to the Spanish flu 1918-1919 to attempt to find parallels and solutions to present problems before describing reactions to pandemic in interrelated parts of the music sector.

18.2 Backtrack to a previous pandemic

The Spanish flu, a misnomer for the deadly influenza that wreaked havoc worldwide at the end of WWI, afflicted over 300 million people and left an estimated 50 million casualties in its wake.²²²⁶ From virology to the differences in local and international reactions to a killer virus, parallels between the Spanish flu epidemic 1918-1919 and the COVID-19 pandemic 2020 more than a century later are startling. First reported in the United States in March 1918 as U.S. troops returned home from European battlefields, the 20th century scourge spread rapidly cross-country. A quick look back to reports from the United States in 1918 reveals a perplexing narrative of chaos and denial, as some municipalities closed down, and others disregarded the epidemic. Newspaper clippings recount tales of enraged entrepreneurs who threatened to sue the government for temporarily closing their businesses, as economic turmoil turned the tides from “patriotic acceptance to exasperated defiance.”²²²⁷ Early 20th century similarities to the unpredictable social and legal reactions to the COVID-19 pandemic in the United States in the early 2020s are alarming.

A quote taken from a film industry magazine back in those early 20th century days sheds light on a forgotten corner in the history of pandemics: their impact on culture. Although precious little documentary evidence focuses on the orchestral world, a treasure trove of articles report on the pandemic’s negative effects on the burgeoning film industry. “Because of the deplorable epidemic of influenza that has gripped the entire country, even unto its most remote corners, the clock of the motion picture industry has been stopped.”²²²⁸ The great unknown, the question as to how to evaluate and proceed towards an eventual return to normalcy was as troubling then as it is now. “Some towns which closed theaters allowed churches to remain open, while Louisville, for example, closed theaters and churches but allowed saloons to operate. New York City never closed at all. Some theaters succeeded in having their quarantines lifted,

²²²⁶ BBC *Flu pandemics, Facts and Figures*, 2009. Available at: http://news.bbc.co.uk/2/hi/uk_news/8027501.stm

²²²⁷ Richard Koszarski. “Flu Season: ‘Moving Picture World’ Reports on Pandemic Influenza 1918-19.” 2005 pp. 466–485.

²²²⁸ Taken from an article published in *Moving Picture World* 26 October 1918.

while others opened and were arrested. When theaters did reopen, business was not always as good as expected, especially if a resurgence of the epidemic kept frightened audiences away.”²²²⁹

The same fears as expressed in 1918 resound over a century later. Discrepancies between countries in which culture is (partially) subsidized and countries in which cultural support depends on the market are magnified as a quote from the director of a leading opera house demonstrates: “when your art form is a hundred people on stage, a hundred in the pit, and 2,700 in the audience, when your financial model means you break even when you sell 95% of your tickets, when public subsidy accounts for only 20% of your income, rather than 80% as it would in Germany, it is obvious that you are going to hit the buffers.”²²³⁰ The very image of a frightened audiences avoiding theater entrances back in 1918 depicted in articles and cartoons at the time is every bit as pertinent nowadays as it influences decisions as how to open halls and how to reach out to audiences in a brave new world of distanced seating and masked musicians.²²³¹ The question as to when to open is based on compliance with national health and safety requirements. Yet in the U.S., for example, there is no state-by-state consensus that dictates how and when venues are permitted to open. “Importantly, even when venues open, there is a great deal of uncertainty as how to proceed safely. We feel as if we have to look at how the major institutions react for guidance sometimes at the expense of following our instincts as to what is best for our organizations. There is a great deal of groping in the dark at this difficult moment in orchestral not to speak of general history.”²²³² Likewise in Europe, there is no recipe for post-pandemic success.

18.2.1 Orchestral musicians in dire straits

Reminiscent of comments made in the *En Route to the FNV KIEM movement* that pointed to the downside of flexicurity for the self-employed, freelancers, the most vulnerable members of the orchestral workforce are disproportionately threatened by crisis. As the *movements* centered on freelance orchestral musicians emphasized, the musicians who work as substitute players in orchestras earn incomes that generally offer little room to create financial buffers to compensate for a lack of pensions

²²²⁹ Ibid.,

²²³⁰ Alex Beard, Royal Opera House (London) chief executive, quoted by Charlotte Higgins in “We could go to the wall in 12 weeks’ – are we just going to let classical music die?” *The Guardian* 9 June 2020.

²²³¹ See, Koszarski, *supra* at fn. 2227.

²²³² Statement given by the manager of a mid-tier U.S. orchestra, anonymity assured considering the sensitive nature of the orchestra’s immediate future, June 2020.

and other social security benefits. Although the legal position of Dutch orchestral freelancers is regulated under collective bargaining agreements, and despite the fact that the WAB legislation that came into force on 1 January 2020 (discussed at length in prior *movements*) calls for equal pay, enforcement has been feeble at best. The flexible workforce consistently takes the first blow during crisis periods, as statistics post 9-11 and the following the financial crisis of 2007-2008 demonstrate.²²³³ The numbers of self-employed workers who continue to rely on assistance is staggering: by late May 2020, 240,000 of the 933,000 registered self-employed workers in the Netherlands applied for social assistance.²²³⁴ “Within the orchestral sector, safe but sorry to report that all of the self-employed musicians are hard hit, many of them cannot even apply for aid as their situations do not tick all the boxes required to receive funds.”²²³⁵

Taking a look at the impact of the pandemic on the venues that offer musical performances sheds light on the effects of the crisis on those who perform in those halls. Statistics provide stark evidence of crisis in the cultural sector starting with the 12 March 2020 shutdown of all halls, theaters, and public spaces in the Netherlands. A taskforce of accountants and cultural advisors who studied the economic consequences of the pandemic on over one hundred Dutch cultural venues reported a loss of close to €1 billion by late May 2020.²²³⁶ As the pandemic continues to rage, concert halls have been required to minimize their audience numbers, and in certain periods, shut down completely. Pared down numbers in terms of audiences translate into diminished liquidity. In a doom scenario in which a survival of the fittest mentality pervades, the burden of diminished funds transfers to the weakest parties. Ton van Capelle, an accountant in the cultural sector added: “[t]he smaller halls are transferring the financial ‘pain’ to the artists, technicians and suppliers.”²²³⁷ Answering the call for a major infusion of funding, the Dutch government announced €300 million extra support for the cultural sector in May 2020 with funds earmarked for the national treasures, the most prominent major venues including museums and major concert halls. “Although the Minister of Culture alluded to a trickle-down effect for smaller venues, and last on the list those who work in those venues, there is no trickle down to

²²³³ Information available on the website of Statistics Netherlands (CBS, Centraal Bureau voor de Statistiek) at <https://www.cbs.nl>

²²³⁴ Ibid.,

²²³⁵ Conversations with Caroline Cartens, a founding member of the Platform voor Freelance Musici (PvFM).

²²³⁶ Henk Vlaming “De klap in de cultuursector komt volgend jaar.” *NBA-platform voor accountants en financiers* 25 juni 2020.

²²³⁷ Ibid.,

the freelancers. Once a hall goes dark, that's it, no performances."²²³⁸

One small step from bad news at the venue level precedes debacle at the personnel level. Unlike the situation in the United States where even top-tier orchestras are shutting down and furloughing musicians and staff members, the subsidized Dutch BIS orchestras²²³⁹ continue to pay musician salaries although speculation has mounted as to whether or not this will be viable on the long-term. In the Netherlands, subsidized orchestras have availed themselves of regulated short-time-work options, in which a percentage of the employee's salary is covered by unemployment insurance. "Normally, our orchestra [the world-renowned Rotterdam Philharmonic] plays with a full complement and employs many freelancers. At the beginning of the 2020-21 season, a high percentage of my colleagues are forced to stay home as we cannot risk mounting performances with the full complement on stage. Yet, how long can you pay musicians to stay home?"²²⁴⁰

Turning to the plight of freelance orchestral musicians in the Netherlands, the subsidized orchestras initially promised to pay out contracted freelancers for cancelled performances scheduled during the lockdown (12 March 2020) until the end of the season (for most orchestras, late June-early July, with some variance). Although the subsidized orchestras were legally obligated to compensate contracted players, the payout only had an effect on certain musicians. Interviews with freelancers revealed that orchestras hire most of their substitute players on a last-minute basis. "Our adrenaline starts to rush as soon as a member of the orchestra calls in sick, that's the moment we make our calls. Commissioning freelancers on advance notice takes place in one of two situations. Firstly, if the music to be performed calls for an extra-large number of musicians or an unusual instrument like the banjo, we need to book a musician long in advance of the performance week. Secondly, if a member of the orchestra is indisposed for a long period of time, either we move another contracted musician to take over the musician's duties or alternatively, we hire a substitute to fill in for that specific time period, for example pregnancy leave or a recovery period."²²⁴¹

Freelance musicians irrespective of their home base rely on a diversity of orchestra performances for their livelihoods and are grievously affected by cancelled performances and the resulting loss of income and opportunities. "With an agenda that has gone from full

²²³⁸ Remark made by Dorine Schoon.

²²³⁹ See FAQs, the BIS refers to the Basic Infrastructure Subsidy allotted to nine Dutch state-subsidized orchestras as of 2020.

²²⁴⁰ Conversations with Quirine Scheffers, associate concertmaster Rotterdam Philharmonic Orchestra.

²²⁴¹ Conversations with Anneke Peerik, personnel manager (former) (RKF) Netherlands Radio Chamber Philharmonic, subsequently personnel manager Netherlands Radio Philharmonic Orchestra (RFO).

of diverse concerts and festival performances, I now have absolutely nothing. Blank. What will happen to all the freelancers whose concerts do not exist anymore? We are skirting the edge of insolvency.”²²⁴² Research shows that freelance performing artists stand to lose an average of €20,000 per person in income in 2020. Those who were not officially registered as self-employed workers (*zppers, zelfstandigen zonder personeel*, in Dutch) are not entitled to the aid packages and there are thousands of self-employed orchestral musicians who do not receive any form of aid. “I had a flourishing freelance career, playing in just about every major Dutch orchestra, touring regularly, and supporting myself with enough work and payment to support my family. As a result of the COVID-19 pandemic, no work is coming in and although relief protocols are in place, the generic measures put in place here in the Netherlands have locked me out from receiving any aid: there is no substantial trickle-down effect from the orchestral institutions themselves, and no government and/or municipal aid unless you tick all the boxes.”²²⁴³

18.2.2 Partial and limited payment options

As statistics disseminated weekly on the *Adaptistration* website show, an ever-increasing number of U.S. orchestras have stopped operations temporarily and announced furloughs and significant staff reductions, including the top-tier Boston Symphony Orchestra.²²⁴⁴ To get back into the spirit of working as an ensemble, orchestras are engaging in sectional (small group) rehearsals, even Zoom rehearsals. And as related above, almost all professional orchestras are streaming concerts online. “Yet, regardless of the level of orchestral activity, the crunch will most probably come sooner than later regardless of whether or not the orchestra is government subsidized or funded U.S.-style: how long can an organization survive if they must continue to pay employees who in essence have no work? As unionists here in the Netherlands, we cannot begin to fathom a situation in which employees will be threatened, then again, this pandemic has struck swiftly.”²²⁴⁵ Martin Kothman of FNV Media & Culture and other union colleagues emphasize the importance to develop exit strategies in consultation with all relevant stakeholders (employers, employees, and unions) in order to broaden the consensus to move forward.

18.3 Other threats I? Livestreams and Zooms replace live concerts

²²⁴² Conversations with a Dutch freelance cellist, anonymity assured.

²²⁴³ Conversations with a Dutch freelance brass player, anonymity assured.

²²⁴⁴ See, www.adaptistration.com for more information and weekly updates.

²²⁴⁵ Conversations with Martin Kothman, senior director FNV Media & Cultuur.

As concert halls and opera houses closed their doors and music festivals the world over announced postponement and cancellations, a record number of individual musicians, ensembles and orchestras found an answer to the silence by offering livestreams from empty halls, their homes and/or performance sites void of audiences. The widely advertised New York Philharmonic's 2020 Mahler Festival redeployed from diverse New York venues to a two-week digital gala jamboree replete with symphonic performance, a follow-in-the-footsteps-of-Mahler walking tour, and, for those who sought to combine lockdown listening with culinary arts, recipes. Another Mahler festivity, the Royal Concertgebouw Orchestra's Mahler Festival rerouted to an online series of documentaries and nightly orchestral reruns in May 2020. Sinfonia Rotterdam, one of the first Dutch orchestras to rethink reopening in a creative way, opted for livestream concert in the cavernous magnificence of a large church with thirty audience members in attendance.²²⁴⁶ Reactions were overwhelmingly positive, and tens of thousands of listeners followed on social media platforms. The 'what's next' factor loomed large as participants and audience members shared the view that this launch could lead to "start the ball rolling to do more than get through the crisis, but to actually to bring something new and exciting into being."²²⁴⁷

High-profile artists fill the 'pages' of Facebook, Instagram, Spotify, Twitter and YouTube with resourceful solutions to fill the vacuum left by an absence of live performances. Amsterdam's Concertgebouw Hall launched a series of Empty Concertgebouw Sessions featuring chamber music performance. Cellist Alisa Weilerstein announced a #36daysofBach project, performing a different movement of a Bach cello suite each day on various platforms. Other artists large and small in terms of fame and audience exposure have joined in the media frenzy of offerings. Individual artists and orchestras with lucrative record label representation can earn well from streaming as data journalist David McCandless first revealed in his groundbreaking charted studies back in 2010.²²⁴⁸ A caveat is in order: until earnings models based on massive downloads espoused by Instagram, Spotify and the rest of the popularly streamed platforms change, it is obvious that only the superstars will benefit financially from putting their performances out, while the vast majority will receive next-to-nothing.²²⁴⁹ To Jennifer Koh, a successful violin soloist with a solid international career, streaming classic

²²⁴⁶ Relive the Sinfonia Rotterdam experience: <https://www.youtube.com/watch?v=mIgSV9jQ4K4>

²²⁴⁷ Conversations with Sinfonia Rotterdam's Music Director and founder, Conrad van Alphen.

²²⁴⁸ <https://informationisbeautiful.net/2010/how-much-do-music-artists-earn-online/> updates available online.

²²⁴⁹ Ibid.,

music is problematic. “We don’t really have the ability to monetize as much as other fields of music, because for us the place where we are able to make income is really from live performances. I think right now, we’re in an incredibly fragile position, all of us freelancers. And it’s very scary. For me, I love collaborating with people, I love my fellow artists, but I don’t know how we’ll get through this time.”²²⁵⁰ In a 2020 BBC Radio 4 interview and on Twitter, star British violinist Tasmin Little divulged that her earning from over five million Spotify streams netted her the trivial sum of £12.34.²²⁵¹ The question remains unanswered: will new approaches to lockdown listening harm orchestras and musicians in a post COVID-19 future? A possibility for immediate research would be to investigate if revenues from livestreams could be rechanneled to benefit musicians in need, such as furloughed employees and freelancers.

18.3.1 Other threats II: conservatories react to the coronavirus

Before turning to Covid-19 exit strategies, it is instructive to review some of the momentous decisions taken since the outbreak in 2020. While the pandemic raged in China, much of the western world downplayed the possibility of pandemic spread until Italy reported its first several cases on 30 January of that year. The very next day, the prestigious Santa Cecilia Conservatory (Rome) cancelled lessons for its ‘oriental’ students alluding to their purported direct link to the coronavirus. Despite outpourings of outrage in mainstream and social media, the illustrious institution defended its choice, stating that it was duty-bound to protect its general population students and faculty even at the cost of discriminating against a specific group of students. Fearing an upsurge in backlash measures on the part of other institutions not to speak of inappropriate reactions on the part of the general public, a solidarity movement #JeNeSuisPasUnVirus gained momentum with millions voicing their support of acceptance and tolerance for Asians. Although other advanced institutions of higher education did not follow the questionable tactics of Santa Cecilia, most conservatories as well as other institutions of higher learning were forced to close down by the second week in March. On 12 March 2020, New York’s famed Juilliard School of Music called upon its students to move out of dormitories for the rest of the school year as Juilliard took “the unprecedented step of going to remote learning.”²²⁵² Reports on the ups and downs of Zoom and other forms of online lessons abound on every conceivable form

²²⁵⁰ Jennifer Koh, violin soloist. National Public Radio broadcast, March 18, 2020.

²²⁵¹ Ms. Little’s tweet at: <https://twitter.com/tasminlittle/status/1262323181228036097> Reference to the BBC4 interview at: <https://www.classicfm.com/music-news/87p-streams-musicians-hit-out-spotify-earnings-mp-inquiry/>

²²⁵² See, <https://www.juilliard.edu/campus-life/covid-19-response>

of social media with grave concerns on the viability of long-distance learning for a hands-on craft.

18.3.2 Other threats III: the suppliers face force majeure related issues

Oft criticized for their control at the top of the classical music supply chain where conductors and soloists are currency, impresarios are also coming to grips with the crisis.²²⁵³ “We need artists, they are the lifeblood who attract those who buy tickets and come to concerts. And now, in coronavirus times, small organizations cannot protect their livelihoods, their very existence, because of massive cancellations.”²²⁵⁴ In a podcast concerning the vicissitudes of the music business from the standpoint of a leading classical music agent, Jasper Parrott, one of the founders of the esteemed international concert management agency Harrison/Parrott, pointed to pressing problems that plague the sector. At the top of his list, issues related to the often-outdated force majeure clauses written into contractual boilerplates for individual artists and orchestras. Such contracts show variance with regard to the reach of force majeure and show no consensus as to the action parties can legally rely on, from short-term suspension to the right of termination. Of the 40 performer contracts examined in March 2020, none made mention of state-of-emergency circumstances with regard to an epidemic, a pandemic, and/or mandatory quarantines.

In Mr. Parrott’s opinion, standard force majeure clauses found in artists contracts “are examples of an unbalanced and unfair instrument [that] supports big and powerful organizations on the one hand but on the other hand, leave smaller organizations and individual artists in the lurch.” The standard business model in which an organization hires artists who are freelancers does not work when crisis hits, and when orchestras and opera companies are cancelling concerts and in extremis, closing down. In a variation on this crisis induced theme of closing chords in the orchestral sector, a leader amongst impresarios since 1930, the New York based Columbia Artists management (CAMI) announced plans to shut down in August 2020 due to “the prolonged pandemic environment.”²²⁵⁵

18.4 Dollars and sense: the spiraling costs of pandemic

²²⁵³ See, for example Norman Lebrecht’s observations quoted in the FAQs at fn. 358.

²²⁵⁴ Jasper Parrott’s podcast is available at: <https://www.harrisonparrott.com/news/2020-04-17/jasper-parrott-video-interview-with-musical-america-about-force>

²²⁵⁵ Taken from the CAMI press release as quoted by the *Associated Press*, August 29, 2020.

The *COVID-19 Impact on the Arts Survey* initiated and disseminated by Americans for the Arts²²⁵⁶ measured the initial financial and human impacts that COVID-19 has had on the arts in the U.S. By early April 2020, the financial losses to nonprofit cultural organizations resulting from cancelled events, forced staff reductions, and closures were estimated at \$4.5 billion.²²⁵⁷ Congress pledged an extra \$300 million in economic relief earmarked for nonprofit cultural organizations as well as public broadcasting, state and municipal arts agencies and additional relief for self-employed cultural workers. Yet, like the crisis measures adapted in the Netherlands, the trickle-down effect to those at the bottom of the receiving line, smaller organizations, and freelancers, has been minimal. A New York based freelancer quipped “business as usual, those with the loudest voices and most influential lobbies will receive some aid, by the time freelancers or formerly much-in-demand ensembles will receive anything, it will be too late.”²²⁵⁸

What is the economic cost of 197 million fewer audience members passing through the turnstiles? An *Americans for the Arts* study entitled “Arts and Economic Prosperity” gauged the price at \$6.2 billion based on the spending patterns of audience members whose night at the symphony includes paying for parking, meals, and lodging – all activities that support a wide range of jobs far beyond the musicians onstage.²²⁵⁹ “Getting people out of their houses and spending money again will be key to jump-starting the economy (70% of the U.S. economy is consumer spending). They create social and economic opportunities—attending a festival, visiting a museum, going to the theater, seeing a concert—and every time that attendee will spend an average of \$31.47 beyond the ticket cost. This provides income to local businesses, energizes our downtowns, promotes visitation to different neighborhoods, and puts people to work.”²²⁶⁰

18.4.1 Dutch vs. U.S. financial compensation

Dutch government programs intended to benefit the self-employed as well as employers who have suffered from loss of income have transitioned through several

²²⁵⁶ The survey opened on 13 March 2020, received thousands of responses. The survey is available at: https://www.americansforthearts.org/by-topic/disaster-preparedness/coronavirus-covid-19-resource-and-response-center?qt-view_content_fed_quick_tab_block_1=2#survey

²²⁵⁷ Ibid.,

²²⁵⁸ Anonymity assured, formerly active New York based freelancer.

²²⁵⁹ Americans for the Arts research available at: https://www.americansforthearts.org/sites/default/files/aep5/PDF_Files/ARTS_AEPsummary_loRes.pdf

²²⁶⁰ Ibid., p. 3.

stages of development within a first COVID-19 six-month timespan. Loans to cover the costs of paying out employee salaries were granted to employers whose businesses suffered a minimum of 20% income loss as a result of the pandemic.²²⁶¹ Orchestras and other music ensembles soon discovered that the checklists for these loans were not designed for performing arts organizations. Information concerning the Dutch remunerative funds that cater specifically to the self-employed, the TOGS and TOZO programs, can be found on several websites.²²⁶² Yet, as hundreds of formerly employed musician freelancers who enjoyed orchestral careers pre-COVID-19 observed, stipulations to receive the remuneration kept many musicians out. The Platform voor Freelance Musici (PvFM) website is replete with posts numbering over 400 that report on the vicissitudes of actually ‘getting to yes’ under these relief programs in a sector that operates quite differently from other freelance sectors. “Some of our work is really seasonally generated with high seasons in December and April and very low seasons in the summer months. This influences the way that income is calculated. . . another example that can set us apart from other freelancers is the requirement under certain relief programs for a separate studio or workspace. Most of the musicians practice at home and cannot even think to afford a private studio! The list goes on . . .”²²⁶³

18.4.2 U.S. compensation responses

On March 27, 2020, the U.S. Congress passed the CARES Act, a \$2.3 trillion aid package to offer financially support to small businesses and independent contractors as a result of their losses during the COVID-19 pandemic. Importantly, the National Endowment for the Arts (NEA) served as the overseer with the responsibility to divide 40% of the funds amongst state and regional arts agencies. The remaining 60% is slated for direct grants to nonprofits nationwide. The aforementioned nonprofit research agency, *Americans for the Arts*, launched a tracking site with the goal to monitor the path of funding to arts organizations and self-employed cultural workers in need of crucial financial relief.²²⁶⁴

²²⁶¹ Temporary Emergency Measure Bridging Employment, English translation of the (NOW) further information available in Dutch at: <https://www.uwv.nl/werkgevers/overige-onderwerpen/now/eerste-aanvraagperiode-now/index.aspx>

²²⁶² The basic welfare payments, BBZ (voor zzp'ers) in Dutch, information available at: <https://www.rijksoverheid.nl/onderwerpen/bijstand-voor-zelfstandigen-bbz/regels-bijstand-voor-zelfstandigen-bbz> Additional information on the all-important TOGS and TOZO funds can be found at: <https://www.kvk.nl/corona/het-coronavirus-check-hier-je-regelingen/>

²²⁶³ Conversations with Caroline Cartens (PvFM) co-founder.

²²⁶⁴ For more information on the CARES Act Arts Funding Tracker, see: <https://www.artsactionfund.org/CaresActFundingTracker>

On April 5, 2020, the U.S. Department of Labor provided guidelines for the implementation of the Pandemic Unemployment Assistance (PUA) program.²²⁶⁵ PUA offers a maximum of 39 weeks of benefits to qualifying individuals who are unable to work because of COVID-19 specified under the CARES Act enacted on March 27, 2020.²²⁶⁶ Under PUA, individuals who do not qualify for regular unemployment compensation and are unable to continue working as a result of COVID-19, including “self-employed workers, independent contractors, and gig workers, are eligible for PUA benefits.”²²⁶⁷ As the *FAQ movement* touched upon, union membership in the U.S. is tantamount to employment for both the regularly contracted and per-service freelance musicians. To emphasize, over 90% of U.S.-based orchestral musicians are union members. Local union webpages have provided regular updates on resources for musicians in dire straits. For example, the AFM Musicians Relief Fund offers up to \$300 for AFM members who are freelancers adversely affected by the crisis, the Los Angeles Emergency Relief Fund offers \$150 for local members who lost recording work due to the pandemic and the national AFM James Petrillo Fund offers funds for those diagnosed with COVID-19 who are unable to work.²²⁶⁸

18.5 A safe return to work?

Two North American organizations, the International Conference of Symphony and Opera Musicians (ICSOM) and the American Federation of Musicians (AFM) (see *FAQs*) distributed a detailed series of guidelines to promote a safe return to work for orchestral musicians. The insubstantiality of this admirable attempt to create a sane and solid list of protocols is emphasized in a series of caveats throughout the text. “Any agreement reached with your employer must contain safety protocols that are consistent with both scientific consensus and orders from the relevant civil authorities. This, unfortunately, is the most difficult issue to resolve, as there is yet no real scientific consensus on what constitutes a safe return to work, particularly with respect to the unique aspects of an orchestral workplace. The inconsistent and ever-changing guidance we are seeing from governmental authorities does not help either. We hope that more

²²⁶⁵ Unemployment Insurance Program Letter Directive No. 16-20 at: https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628

²²⁶⁶ Of relevance to orchestral freelance, CARES Act Section 2102(a)(3)(A)(ii)(I). For a complete text of the CARES Act see: <https://www.dol.gov/newsroom/releases/eta/eta20200405>

²²⁶⁷ See, *supra* at fn. 2264.

²²⁶⁸ See, for example the Los Angeles local AFM union’s website at: <https://afm47.org/covid19> for further information.

certainty about safest practices will develop soon.”²²⁶⁹ Added to these concerns are the mounting fears for a second wave of infection and the approaching fall-winter flu season, serious reasons for general alarm not to speak of sectoral concern.

18.5.1 Possibilities for restarts: the German reports

In a comprehensive report entitled, “COVID-19 #ExitStrategy for #Orchestras,” Gerard Mertens drew on his vast experience as Managing Director of the Deutsche Orchestervereinigung (DOV) Germany’s powerful orchestral lobby group. Taking a quote from Berlin’s *Tagesspiegel* as a point of departure, “[c]ultural enterprises were the first to close and they will probably be the last to open again,” Dr. Mertens charted a path to step-by-step recovery for orchestras in which smaller complements of string players could begin performing at safe distance before wind and brass players would be added to the complement.²²⁷⁰ “Officially announced measures by the VBG (Germany’s largest public employment insurance agency)²²⁷¹ report that every musician should have a total surround space of 20 m² (which we think is far too much). In front of wind and brass players there shall be a distance of 12 m (which is a nightmare) and aside distance of 3 m (which is another nightmare).”²²⁷² Turning to the issue of transmission testing, Dr. Mertens reported that continued testing and reports from universities world-wide have not rendered consensus concerning safe distances with special emphasis on the safe haven of distance that must be established between wind and brass players. The German report, which involved six doctors from diverse specialties takes into account the results of several other studies carried out on aerosols consisting of very small micro-droplets (in Finland, in particular). Laboratory experiments conducted independently in Japan show that droplets of a size of approximately 0.1 micron remain in suspension in the air for several years and continue to circulate several tens of minutes after their emission. European trials in August at Germany’s Freiburg University in cooperation with the Bamberg Symphony Orchestra, Berlin’s Charité Medical University and seven Berlin orchestras carried out in August 2020 recommended variable distances between 1.5–2 meters between musicians at work. All aforementioned German reports emphasized the importance of regular and reliable testing to ensure workplace safety for musicians and audiences. The imbalance between the robust testing implemented in Germany and the haphazard Dutch and

²²⁶⁹ Available and reprinted with Kevin Case’s cogent orchestra-related commentary in *Senza Sordino*, at: <https://www.icsom.org/senzasordino/2020/05/safety-in-an-era-of-uncertainty/>

²²⁷⁰ For Dr. Merten’s commentary, see “COVID-19 #ExitStrategy for #Orchestras available at: <https://orchestramanagement.wordpress.com/2020/04/16/covid-19-exitstrategy-for-orchestras/>

²²⁷¹ In German, <http://www.vbg.de/>

²²⁷² *Ibid.*,

U.S. approach to mandatory testing further weakens the ability of orchestras to face the future with confidence.

18.5.2 Viable options for general benefit, orchestral survival

From the United States, Steven Drake, a Nashville Symphony cello section member since 1984 recounted:

“So as of today, the Nashville Symphony, my employers for the last 36 years, ceases to exist in the form many of you know and love. And it won’t be back. . . for a long time, if ever. So gone is the orchestra that recorded Grammy winning recordings on a regular basis. History has taught management and musicians, but perhaps not the ones in charge (our board). During the last shutdown, we lost a significant number of our players and nearly all of our management.

Is there a way to avoid this? Unfortunately, while there might be, on one has thought of it yet. Or has deep enough pockets to bail us out. The orchestras staying in business have large endowments to draw from. . . you can’t run an orchestra with 1.2 million in payroll expenses a month without having a steady stream of concerts.”

In the best of all possible worlds, to achieve massive and grassroots support for not only famed concert halls but for the musicians that bring life to those halls, national and international recovery funds in which musicians join forces with policy makers and the general public are crucial to ensure the survival of the sector. The far-reaching destruction and fear in relation to the present pandemic heightens the perception of a bleak future. Perhaps, music could lead the way as a panacea for the alienation, isolation, and malaise that magnify pandemic woes. As the COVID-19 weeks have turned to months and years, the perception that cultural events can contribute to heal the isolation caused by social distancing and can play their part to unify communities has taken hold in both countries studied.²²⁷³ Reflecting that hopeful space, quotes taken from discussions with Dutch-based freelancers offer hope “When musicians cannot perform, we feel useless. We do not want to feel useless, but purposeful: hopefully we can help rebuild and fill the deep emotional void experienced by so many people during lockdown. Music is the answer to fear and silence.” Trading fear for cautious optimism, a U.K.-based international music journalist reflected “COVID-19 might well give us a chance to break with a somewhat broken past. It might just be a call out to all of us who believe in the power of music and the viability of musical arts to rethink along the lines of Kate Raworth’s Doughnut Model that integrates social justice and circular economy ideas to rebuild.”²²⁷⁴

²²⁷³ Media reports from *New York Times*, *Economist*, *Guardian*, and several Dutch newspapers including *NRC Handelsblad*, *Trouw* and *De Volkskrant* corroborates this supposition.

²²⁷⁴ Conversations with Ariane Todes, former editor *Strad* magazine, active blogger, violinist, and classical music consultant is a forward-looking thinker on music-related subjects.

18.5.3 In place of an endgame, an open door

Normalcy in terms of the mighty orchestra performing to a sold-out hall might never return. Nonetheless, as the brief historical consideration above intimated, musicians have adjusted to crisis in the past. To answer the question ‘will post vaccine concerts find audiences returning to concert halls in great numbers and with great anticipation?’ Michael Kaiser, a go-to cultural guru based in the U.S. votes an emphatic, yes. In speeches, blogs and broadcasts he affirms the importance of the arts as an essential tool to reconnect communities fragmented through quarantines and lockdowns: “The arts have changed for now, not forever. The problem will be that we [orchestras] will be competing with other arts organizations to do really interesting work to latch on to the audience.”²²⁷⁵ The consensus amongst musicians, even those who have not been able to work for months, remains that the creativity that lies within the craft of music-making will ultimately win the day as it is inventiveness that “keeps us from the edge of despair.”²²⁷⁶

²²⁷⁵ Michael Kaiser serves as Chair at the Devos Institute of Arts Management and was the former President of the John F. Kennedy Center for the Performing Arts in Washington D.C.

²²⁷⁶ Dutch-based wind player marking six months of unemployment, anonymity assured.