

11-2014

## Public, Private, Popular: Pop Performers, Liberalism and the Limits of Rights

Matt Stahl  
*The University of Western Ontario*

Follow this and additional works at: <https://ir.lib.uwo.ca/fimspub>



Part of the [Library and Information Science Commons](#)

---

### Citation of this paper:

Stahl, Matt, "Public, Private, Popular: Pop Performers, Liberalism and the Limits of Rights" (2014). *FIMS Publications*. 270.

<https://ir.lib.uwo.ca/fimspub/270>

# Public, Private, Popular: Pop Performers, Liberalism and the Limits of Rights

MATT STAHL

---

*Abstract: American popular music discourse and pop performers' political practice frequently give prominence to questions of rights, particularly in relation to musical property and labour. This article examines these two rights issues as they appear in popular media and in lawmaking. The article invokes the liberal division of life into "public" and "private" realms in order to explicate the mechanics of rights claims in media and legislative forums, and to explore their relationship with aspects of liberal common sense. It draws on a political-theoretical framework to problematize liberalism's basic division of life into "public" and "private" realms, and suggests that pop performers' efforts to protect or expand such rights may enact a self-cancelling or even regressive logic.*

*Résumé: Le discours sur la musique populaire américaine et la pratique politique des interprètes pop accordent fréquemment une place prééminente à la question des droits, en particulier en relation avec la propriété musicale et le travail. Cet article examine ces deux questions de droits tels qu'ils apparaissent dans les médias populaires et l'élaboration des lois. Il invoque la division libérale de la vie entre domaines « public » et « privé » afin d'expliquer leur relation avec certains aspects du bon sens libéral. Il se base sur un cadre politico-théorique pour problématiser la division libérale basique entre les domaines « public » et « privé », et sur le fait que les efforts des interprètes pop de protéger ou d'étendre de tels droits peuvent relever d'une logique d'auto-annulation, voire de régression.*

---

"I got a right"  
– Iggy Pop

When popular music performers (or their advocates) seek credit for or control of intellectual property, or when they contest the authority of their paymasters to dictate aesthetic or career choices, they are making explicit or implicit rights claims. In liberal-democratic society, rights to property and self-determination undergird important areas of individual agency. Jason Toynbee argues that Anglo-American popular music-makers

embody “exemplary agency,” a heightened capacity to act that arises out of their simultaneous occupation of two contrasting positions, “that is, being ordinary, typically of the people, and being marvellous, showing what life could be like ‘if only’” (2000: x). This agency is frequently coupled with cultural expectations regarding their proprietorship and autonomy, and appears most strikingly in popular music performers’ political-economic relations with the capitalists who dominate the markets for their intellectual property and labour. Performers depend on these capitalists, but these capitalists depend on performers too. This interdependence gives performers high degrees of “institutional autonomy” (Toynbee 2000, 2003), or self-determination with respect to their work and careers. Toynbee’s “if only” invokes a basic liberal aspiration: ordinary people with extraordinary liberty. And discourses of popular music often frame the rights of music-makers—to credit for or control of intellectual property, to freedom from interference in their aesthetic or career decisions—as fundamentally positive and empowering.

Yet a critical analysis of rights emanating from the discipline of political theory complicates such understandings. From this perspective, while rights may undergird agency, they should not be seen as universal or generic solutions to problems of expropriation or domination. Rather, rights should be understood as particular (perhaps even particularistic) political technologies that embed and express the conditions of their historical emergence. Generally, rights in Anglo-American liberal society are *bourgeois* rights, bearing specific affordances and tendencies related to their important role in liberal market society. They are good for opening particular kinds of space for particular kinds of agency; they are good for constraining government power, for (re) asserting the primacy of the individual, and for (re)legitimizing certain kinds of social (class, race, gender) power. This means that even while rights can and do benefit oppressed people, they have a second edge: resulting settlements seem inevitably also to reinscribe bourgeois institutions and values. This perspective, then, suggests the hypothesis that music-makers’ demands for and exercise of rights against capitalists may exemplify bourgeois liberal forms of agency and political tactics as much as (or more than) they contradict them, and may thus turn out to be less radical than they often seem.

This article investigates performers’ exemplary agency with an empirical focus on: (1) media representations that feature it and argue for it; and (2) legal claims for rights that (aim to) wield it and strengthen it, suggesting that the double-edgedness of music-makers’ rights claims brings the limitations of rights as a bourgeois political technology into focus. The framework developed here perceives a basic linkage of liberal rights, bourgeois agency

and subjectivity, and capitalist social organization: each is a major component of liberal market society and, in that context, to name one is to invoke the others. The article aims to help specify how performers' rights claims define and intervene in the social relations of music-making at the turn of the 21<sup>st</sup> century, and to explore how such claims—and their supporting arguments—participate in liberal practice and discourse. Relatedly, it raises questions about music-makers as models and anti-models of liberal subject and social positions. In section (2), I outline arguments for rights made by performers and their advocates in contemporary documentaries and biopics and before legislators. In section (3), I analyze these claims through the lens provided by Wendy Brown's Marxian critique of liberal rights. The legislative cases are drawn from existing research (Stahl 2013); I anticipate analyzing additional cases (such as arguments for performance rights in sound recordings [cf. All 2012]) in future work. I conclude the essay with further questions that arise out of this disciplinary conjuncture.

For the purpose of this discussion, I understand liberalism as a political ontology that assumes a "radical division of life into social and political components. The political (or public) sphere pertains to government; the social (or private) sphere relates to all of the remaining interrelationships of men and women" (Mason 1982: 5). In this scheme, public or political issues are phenomena in which the community has a legitimate interest (to scrutinize and/or regulate), and private or non-political issues are phenomena deemed outside the purview of the community's group decision-making. As examples such as employment, healthcare, education, the environment, emergency services, incarceration, cultural heritage and so on suggest, the line between public and private is often a matter of contestation. To succeed in defining something as public or political is to invite scrutiny and regulation; to succeed in defining something as private or non-political is to render it off-limits to such attention. The rights arguments of music-makers and their filmmaking or legislative advocates are thus also about how public and private should be delimited in any given case.

The discussion below foregrounds two questions along these lines, and then explores some of the difficulties associated with these questions that the critique of rights throws into relief. First, should musical authorship (and thus the ability to enjoy royalties and/or public attribution) be determined privately in contracts forged between social unequals? Or ought creative contributors (like side musicians) have rights regarding authorship or attribution that set limits on the terms their employers can impose? Second, to what degree should the contents of recording contracts, like other employment contracts, be regulated as a matter of public interest? Should matters such as contract

duration be determined solely in private, with more powerful parties able, for example, to keep less powerful parties under contract indefinitely? Advocates on either side of these questions propose contrasting arguments about how far moral and legal rights, as matters of public policy, can or should be extended into conventionally private milieus. Brown's critique suggests, at least in part, that even where persons or social groups succeed in gaining or extending rights, they risk doing so at the cost of reproducing the very public/private binary that fostered the original injury or oppression. A basic conceit of this article is that popular music performers' exemplary agency—in conjunction with their extraordinary visibility and audibility—transmutes their struggles over these questions into focal points of mass attention, concretizing some of liberalism's basic tensions in what are often very sympathetic and broadly circulating non-fiction narratives.

Anglo-American scholarship on music and rights has largely accepted liberal conceptions of rights and has focused mainly on two broad themes: the rights of performers themselves, and their interactions with broader rights struggles. Scholars have studied the censorship and expression rights of performers (e.g., Cloonan 1996; Cloonan and Garofalo 2003; Jones 1991; Korpe 2004). Especially since the rise of digital sampling, scholars have examined music-makers' relationship to intellectual property rights, focusing, for example, on the ways that copyright intervenes in to limit or support certain forms of musical creation and circulation (e.g., Demers 2006; McLeod 2011), and how copyright has come to protect certain forms of music and kinds of music-makers in unequal ways (e.g., Barron 2006; Greene 1999, 2008; Hesmondhalgh 2006; Toynbee 2006). Another body of scholarship considers the rights of musicians as workers, in settings formal (governed by union contracts) and informal. This scholarship has examined the rights of musicians to perform in quasi-public and public spaces (e.g., Chevigny 1991; Tanenbaum 1995); musicians' pursuit of labour and workplace rights (e.g., Kraft 1996; Mulder 2009; Peterson 2013; Stahl, 2013); African American musicians' pursuit of "the right to rock" (Mahon 2004), and even musicians' (in some cases racialized) struggles *within* their union (e.g., Burlingame 1993; Gorman 1983; Miller 2007). Scholars have also examined how performers have aligned themselves with or participated in social movements and struggles around civil and human rights (Eyerma and Jamison 1998; Fischlin and Heble 2003; Garofalo 1992; Monson 2007; Garofalo 1992; Peddie 2006.). A minority focus on what might be called the political affordances of popular music, suggesting that, as a distinct socio-cultural form, it has a unique role to play in political life (e.g., Love 2006; Street 2012). In much of this scholarship, rights become problematic in terms of their insufficient protection, (mal)distribution, or (mis)application; explicit or implicit normative

scholarly prescriptions (as well as of music-makers themselves) frequently hinge on adjustments in the allocation or scope of rights.

Anglo-American popular music scholarship has long examined popular music's (ambivalent, troubled, celebratory) relationship to capitalism and capitalist institutions (e.g., Frith 1981; Hesmondhalgh 1999; Keightley 2001; Kelley 2002). But if liberalism is capitalism's ideational flipside, then it is worth considering popular music's relationship to liberal conventions and institutions as well.<sup>1</sup> This study seeks to contribute to this literature by addressing a blind spot revealed by contemporary political-theoretical critiques of rights. If rights are *not* an unalloyed good, and if they may in fact themselves be a problem, then music-makers' struggles for rights—their own and those of other social groups—deserve an additional kind of scrutiny.

## Rights Claims by and on Behalf of Popular Music-Makers

### *A. Attribution and Authorship in Popular Music Documentary and Copyright Legislation*

The first type of claim to be examined has to do with intellectual property rights in popular music, including rights both to credit/attribution and to authorship/control. In this section I first canvass a trio of recent documentary films, each of which argues for the widespread recognition of largely unknown studio musicians, and then outline a 2000 claim by recording artists that Congress should recognize and affirm their rights as authors.

Three documentaries tell about studio musicians who made notable creative contributions to culturally and economically important popular music. The films frame these musicians' obscurity as a form of injury. *Standing in the Shadows of Motown* (2004) brings to light the Funk Brothers, Motown Records' "house band" from 1959 to 1971; *Twenty Feet from Stardom* (a 2013 Academy Award winner) focuses on backup singers (most of the singers appearing in the film are African American women); *The Wrecking Crew* (2015) concerns a group of Los Angeles studio musicians; all explore issues of unrecognized authorship. These films' subjects typically earned relatively high wages for their work, often enjoyed wide interpretive autonomy, and many found themselves in convivial, long-term relations of "industrial community" (Blauner 1964). Nevertheless, these films implicitly and explicitly take the position that they are correcting past institutional injustice and flawed cultural memory, making public both these musicians' original, distinctive, and personal contributions to American culture and their chronic neglect in official and received histories of pop.

Excerpts of *The Wrecking Crew* have been made available on the Internet as part of a campaign to raise the funds necessary to license the songs recorded by its subjects. Several of these clips feature surviving members of that elite group of studio musicians testifying that record producers were dependent on the Crew's creative abilities. "Producers presented musicians with a road map; it was just chord symbols," says one; "they put notes on paper, but that's not music," clarifies another. "We made up a lot of the arrangements ourselves," asserts a third; "we would either augment or totally replace the groove," adds a fourth. The film's trailer devotes attention to bassist Carol Kaye's on-the-spot composition of the opening bass notes that distinguish Sonny and Cher's 1967 hit "The Beat Goes On" (see also Hartman 2012: 164). TV impresario Dick Clark speculates that "maybe one of the reasons they [record companies] left the names [of the musicians] off the albums was because the same musicians played on so many people's records—it would have been an embarrassment." In this perspective, technically expert musicianship shades into creative musical authorship, which threatens to undermine the authority of the producers.

Neither the musicians nor the filmmaker appear to be arguing that Crew members should have intellectual property rights (as composers or joint authors) with respect to the songs to which they contributed original parts. Rather, the focus appears to be on attribution and recognition: it is an injustice that these musicians were concealed behind the stars they accompanied and the producers who employed them. *Standing in the Shadows of Motown* and *Twenty Feet from Stardom* bring pathos to this restorative impulse. For example, the former recounts the story of the Motown guitarist who contributed the opening guitar notes of "My Girl" and who, according to the filmmaker, died unexpectedly, "desperately needing recognition"; the latter tells the story of an early 1960s studio singer who was elated to hear her new recording on the radio for the first time, only to hear the DJ attribute it to another performer. These patterned narratives call to mind Marx's famous lines, "the object which labour produces—labour's product—confronts it as something alien; as a power independent of the producer" (1978b [1844]: 71, original emphasis).

The obscurity of these musicians is readily explained: they were employees in private workplaces and, in legal terms, could no more be authors than the recording equipment that captured their performances. This is the "work for hire" or "employer ownership" aspect of copyright law. Absent a contract to the contrary, the employment relation interacts with copyright law to assign authorship to the employer and to render employees non-authors, no matter how creative or essential or original the employees' contributions might be. The routine denial of attribution has often accompanied work for hire's denial of (joint) authorship, and it is something these films set out to

correct. They share assumptions about authorship as something of a natural property right, or a moral right, as in some European copyright systems. In this view, if you create something original, you should have some claim to it, even if it is only a claim of attribution. In this context, the function of employment to strip creative people of rights and responsibilities regarding their creative activity appears as an injustice, as a problem.

The struggle between recording artists and record companies over a 1999 amendment to copyright law illuminates tensions around the delimitation of public (interest) and private (bargaining) with respect to creators' relations to music recordings. In the films discussed above, famous recording artists such as Cher, Martha Reeves, Brian Wilson, Bruce Springsteen, Sting, and Nancy Sinatra praise the skills and creativity of these backup musicians. Yet many of the recording artists who play such consecrating roles in these films are or have been members of the Recording Artists Coalition (RAC), a lobbying group formed in early 2000 by recording artist Don Henley to protest and demand repeal of a 1999 change to copyright law engineered by the Recording Industry Association of America (RIAA). This amendment imposed work-for-hire terms on recording artists, effectively transforming them from intellectual-property owning authors into employees with no rights in their recordings (Stahl 2013). Henley signed up Sheryl Crow and a number of other performers to the RAC, recruited high-profile entertainment attorneys and other interested and influential parties, and pressured lawmakers into holding a hearing to consider repealing the law. The RAC's most emphatic arguments hinged precisely on the subordinate status of side musicians like those featured in the documentaries discussed above. The recording artists built the case against *their* expropriation on their own longstanding practice of expropriating the side musicians and other collaborators on whom they routinely depend for distinctive creative contributions to their recordings.

On the one hand, the recording artists argued to the public that they were not employees sequestered in hidden abodes of production, but partners in joint ventures with record companies. Henley's organization asserted on their website that:

Recording artists are not employees. We are not entitled to the benefits of employees such as pensions and health care, and as such we do not create works for hire. In fact, the working relationship between a recording artist and a record company is that of a joint venture/partnership. [T]he recording artist works with the record company as a functional partner.... (Recording Artists Coalition 2001)



However, on the other hand, to legislators, the recording artists argued that what mattered was that the hiring relationship and work for hire were *already* operating in the production of sound recordings, between recording artists and their employed side musicians. They averred that the RIAA's legislative move was flawed and should be repealed because it failed to take this into account.

In her congressional testimony representing the RAC, Sheryl Crow called herself "the captain of the [recording] ship" (qtd. in Stahl 2013: 204), who has authorship and ownership rights not by virtue of creating original recorded performances, but by virtue of hiring people to execute her vision. She was an author, in other words, because she was an employer. Crow insisted that any lack of clarity in recording artists' relationships with their companies was obviated by the stark clarity in their relationships with their side musicians: recording artists' arguments against expropriation turned on their longstanding practice of expropriating their employed collaborators through private, consensual and statutory processes. My object here is not to point out hypocrisy—recording artists' high regard for their side musicians is not necessarily contradicted by their desire to own and control their sound recordings—but to outline the socio-political mechanics of their claims to proprietorship.

### *B. Autonomy in Popular Music Biopics and Employment Legislation*

The second type of claim to be considered here concerns autonomy and control with respect to work and careers. In this section, I survey another selection of films and outline an early 2000s effort by recording artists to gain protection under California labour law.

The films *Ray* (2004, a biopic about Ray Charles), *24 Hour Party People* (2002, concerning Factory Records' head Tony Wilson and his relationships with 1970s and 80s Manchester bands) and *I Am Trying to Break Your Heart* (2002, a documentary about the band Wilco), all zero in on pivotal negotiations between recording artists and their record companies over control of musical labour and careers. Turning points in these stories include Ray Charles' negotiation of unprecedented autonomy and proprietorship (ownership of his master recordings) in his first major label record contract, Tony Wilson's forging (in his own blood) of a contract giving extraordinary control to the band Joy Division, and Wilco's release from their Warner Bros. contract with ownership of the masters they had just recorded for that company.

Contractual employment relations routinely place individuals in

subordinated positions in enterprises. That music-makers should *not* be so subordinated and should be free to decide how and for whom they will work is a basic assumption underlying these films. Music-making in these stories is about autonomy, in terms both of self-determination and self-expression, and how it is often frustrated in occupational or professional settings. These stories are normatively narrated, with expectations of eliciting shared cultural expectations and sympathetic responses. We are invited to identify with and root for the music-maker(s), most of the time, and to savour their victories in contests with executives.

Much of *I Am Trying to Break Your Heart* focuses on Wilco's refusal to make changes demanded by their record company to the finished mix of their 2002 album *Yankee Hotel Foxtrot*, and that refusal's aftermath. Executives at Reprise Records threatened to drop the band from the company's roster if the band didn't make the requested changes. Industry outcry at this situation threatened a public relations problem for Warner Bros. (Reprise's parent company) with a result that was so unusual that it may have been unprecedented in the annals of the modern recording industry. Tony Margherita, the band's manager, plays an important role in the film. From his perspective, what happened was "the coup of all time for us": "to get one of the biggest entertainment corporations in the world to release us from a contract essentially scot-free, with [ownership of] a record that they had already paid for, and then [to] sell it back to them [by signing to Nonesuch Records, another subsidiary of Warner Bros.] for three times the money [the approximately \$200,000 originally advanced by Reprise to make the record]. They disliked the record so much that they paid for it twice!" The film's celebration of this outcome is so effulgent that its final scene and credits are accompanied by Leslie Bricusse and Anthony Newley's song "Pure Imagination," as performed by Gene Wilder in the 1971 film *Willy Wonka & the Chocolate Factory*. Playing Willy Wonka, Wilder sings the song as he introduces a group of lucky children and their parents to the fantastic interior of his super-secret magical chocolate factory. The band's achievement of rights—not only over their own labour (via release from their contract) but over their recording—is so extraordinary that the filmmaker allegorizes it as entry into a children's-book paradise, a "world of pure imagination" where agency is maximal, where, if they "want to change the world ... there's nothing to it."

These documentary and biopic themes are linked to specific claims for rights and recognition by and on behalf of performers with respect to law. One interesting case has to do with employment law. Most performers unhappy with their record companies do not find themselves in Wilco's position; since 1987, U.S. recording artists have not had an effective right to end a

contract with a record company. In the mid-1980s, the Recording Industry Association of America (RIAA) pressured the California legislature to change the state's labour code in order to exclude recording artists (and recording artists alone) from the state's "seven year rule," an 1872 law that limits the duration of employment contracts (Stahl 2013). This story is interesting in itself. My focus here is on the effort 15 years later to repeal this bill, led by Kevin Murray, a state senator and former talent agent with the William Morris Agency. Senator Murray convened a hearing in the state capital at which several recording artists testified. In their arguments, recording artists sought to convince lawmakers that they were *employees*, entitled to the right to change employers at least every seven years just like every other employee in the state of California. Singer Patti Austin rhetorically justified this categorization by arguing that without a limit to the duration of their contracts, recording artists were subject to what was effectively *slavery*. "I was always told that Lincoln freed the slaves," she told the state legislature, "and I didn't realize that he excluded recording artists from that list" (qtd. in Stahl 2013: 144). While ultimately ineffective in swaying legislators, this critique did help open the hearing up to some fascinatingly sweeping arguments invoking contrasting conceptions of freedom and regulation in American society.

The original 1872 law took the employers' right to compel employees (through injunction or threat of damages) to work indefinitely *off* the bargaining table; effectively, the 1987 carve-out put that right back *on* the bargaining table. In other words, the original seven-year rule asserted a public interest in the duration of employment contracts: the state did not allow workers to bargain away their right to walk away from the job at the seventh anniversary of their employment. The 1987 amendment represents the privatization of that right for recording artists: they could only have that right if they could bargain for it behind closed doors (I have found no record of any artist successfully bargaining for that right with a major record label since its privatization).

Since around the turn of the 20th century, Anglo-American employment law has recognized the categorical vulnerability of employees to the superior social power of employers and has incorporated aspects of this insight (Davidov 2002; Deakin 2005; Linder 1989). California's 1872 limit on contract duration is a perfect example of how employment law works: it sets limits on what can be bargained for so that those seeking employment are not put in a position of endangering themselves or their liberty beyond what a legislature finds reasonable. Employee protections such as the contract duration limit, workplace injury compensation and limits on the length of the working day recognized "employee" as what Wendy Brown terms a "politicized

identity.” What produces a politicized identity is “the treatment of a particular social identity as the basis for deprivation of suffrage, rights, or citizenship” (1995: 105). Modern employment law says, in effect, that workers need rights and protective legislation because they have not had, and do not have, the power to protect themselves individually against such deprivations. In their arguments for repeal of the 1987 carve-out, recording artists sought to convince lawmakers that they were just like other California employees and on that basis were entitled to the protections of the state’s employment law. For example, Jim Guerinot, an artists’ manager, testified that the 1987 law “defies fairness” because it “separates artists from every sector of labour in California: the waiter, the insurance person, store clerks; it makes musicians separate from every single worker in California” (qtd. in Stahl 2013: 174). Assertions like Austin’s and Guerinot’s aimed to characterize their treatment under the carve-out as an oppressive deprivation of a worker’s basic right to change employers at least every seven years.

The cinematic celebration of pop performers’ exemplary agency contrasts with performers’ assertions that they are deprived even of the rights of waiters, insurance people and store clerks. Pop stars with audiences far larger than Patti Austin’s have occupied both positions simultaneously—sometimes spectacularly—as in the 1990s when Prince performed with the word “slave” written on his face and when George Michael struggled and failed to separate from Sony. Before legislators and judges and at bargaining tables, performers often seek to actualize cultural expectations of exemplary agency by endeavouring to protect or extend their rights over their labour and property in legal and/or rhetorical terms. And while the critique of liberal rights explored below suggests that liberal common sense obscures the paradoxical nature of such efforts, pop stars’ status as highly audible and visible (and often very sympathetic) public figures seems to present (otherwise rather abstract) liberal paradoxes as topics of popular debate.

## Performers’ Rights Claims, Critique of Rights

At more or less the same time in the early 2000s, some of America’s most visible, audible, wealthy and powerful recording artists were making explicit rights claims, trying to convince some lawmakers that they were not employees and therefore should not be subject to work-for-hire, *and* trying to convince other lawmakers that they were employees and therefore should enjoy the protections of the state’s employment law. The former effort met with success, the latter one, failure.

On one level, these are simply examples of how powerful parties fight over laws in order to improve their positions, involving lobbyists, hearings, the press and public opinion. However, on another level, these are stories about the character and affordances of bourgeois rights, and about liberalism's division of the world into public/political and private/non-political realms. The following discussion deals with two interlocking themes, drawing on Marx's essay "On the Jewish Question" (1978a [1843]) as well as Wendy Brown's *States of Injury: Power and Freedom in Late Modernity* (1995), which develops many of Marx's points. The overall aim here is to further explore empirical material from earlier work (Stahl 2013), and to lay the groundwork for the examination of additional cases by means of this framework.

First, to summarize one of the major themes of Marx's essay, liberalism's achievement was not to eliminate pre-liberal forms of domination, but to depoliticize them. Under cover of formal equality and individual sovereignty, and in the guise of a new dimension of privacy, he suggests, liberalism smuggles hierarchy and domination into modern society. Marx writes about the liberal "political revolution" that divided a ranked, traditional society shot through with political domination into an apparently more horizontal (but basically dualistic) social world made up of a domain of private persons and spaces ("civil life" of households, markets and so on) and a public or political domain, which enfranchised private persons may enter to engage in collective decision-making. The political revolution, writes Marx, "liberated the political spirit from its connexion with civil life and made of it the community sphere [or public/political domain], the *general* concern of the people, in principal independent of ... particular elements of civil life" (1978a: 45, original emphasis; see also Duby 1988). In broad terms, Marx outlines the transformation of a social world in which the ability to participate politically was determined largely by social status (particularities of gender, occupation, family, religion and so on) to a society in which political participation is universalized and abstracted as a right, "in principal independent" of those particularities. Crucially, however, the flip side of this abstract universalization is the preservation—as private or non-political—of exactly those determinative particularities of status. This ensures, in Marx's analysis, the relative preclusion of public decision-making from addressing—that is, politicizing—disparities in wealth, education and other, now "private," social particularities. Liberalism's achievement was to make the political sphere a place of aridly formal universalistic participation, while at the same time preserving social power as nonpolitical, such that much of the important business of life would take place in the private or nonpolitical realm.

Many democratic political thinkers propose employment as a pre-eminent site of such privatized domination in liberal society; in Kathi Weeks'

words, “the work site is where we often experience the most immediate, unambiguous, and tangible relations of power that most of us will encounter on a daily basis” (2011: 2). Putting an even finer point on it is American labour activist and public intellectual Stan Weir, who argues that when we are on “employer time” we become “an extension of the employer’s private property” and thus subject to the employer’s “own private government” (2004: 187). And liberals work very hard to keep the workplace private, to control access to what Marx called “the hidden abode of production.” Employers’ and employees’ formal equality before the law has little effect on the private relations of power enacted when employer and employee enter the workplace, whereupon the employee becomes legally subsumed under the tutelage of the employer (Ellerman 1992). Indeed, political theorist Corey Robin (2011) suggests that liberal society outsources political domination into—and thereby depoliticizes it in—the private institutions of employment.

What does this perspective bring into the foreground? For one thing, it suggests that documentary films and biopics such as the ones I discussed above have a distinctly political character. They aim to illuminate what goes on in hidden abodes such as recording studios and executive suites. They aim to reveal and question—implicitly or explicitly—the mechanisms by which some people appropriate (in economic and symbolic terms) the creative work of others and by which some people push back against the authority of others.

This perspective also aids in developing a fuller understanding of the politics of music-makers’ own claims about creator and worker rights. On the one hand, in 2000, recording artists argued that they were *partners* with their companies in order to overcome their effective reclassification and dispossession as employees. They emphasized that they were already the employers of side musicians, which, by placing them in a dominating civil position, also placed them on a more substantively equal footing with their companies. In other words, the recording artists were not challenging domination and exploitation, just arguing that *they* should be recognized as legitimate dominators and exploiters in this instance, not the companies. Their claims to intellectual property rights were based on their status as employers.

On the other hand, labour law recognizes the essential vulnerability of the employee in market society, and so appears, as I noted above, to recognize “employee” as a “politicized identity” in need of rights and protections. The 1987 change affirmed the interests of employers over those of employees, privatizing a formerly state-regulated contract term; it pushed the right to enforce a contract beyond seven years from the public into the private realm. The outcomes of *both* cases affirm the momentum of privatization as a basic liberal impetus. Ronald Mason wryly observes that “the major problem

has never been the wanton spread of the political into all sorts of patently unpolitical areas” (1982: 10). Rather, the problem has been that the liberal impetus denies that many areas of life are political, wrongly declaring them private; the wanton depoliticization of important areas of life has marked the decades since Mason’s study was published.

The second point extends and complicates the first one, and here these ideas become somewhat more propositional. In both legislative cases, the artists were addressing questions of *inalienable* rights. The 1976 US Copyright Act vests an inalienable right in authors to reclaim control of a copyright-protected expression 35 years from the date of their licensing it to a publisher or record company, no matter what the licence agreement says (Stahl 2013). The California Supreme Court affirmed in 1944 that the seven year rule was inalienable because it would be meaningless if an employee could bargain it away (*De Haviland v. Warner Bros. Pictures* 1944). In the artists’ estimation (as well as that of their supporters and many legislators), their exclusion from these rights-bearing categories were unjust abuses of power, *injuries*, to use Wendy Brown’s term.

The rights claim, in Brown’s analysis, is a distinctly liberal practice of freedom, and, as such, it is to a certain degree preconfigured to operate within, and even reinforce, the very social-political structuring to which it is a response. Liberal freedoms and rights, she argues, register in the political sphere, but generally do little to address established social powers. They do not cut against the separation of the civil and political realms, because liberalism is premised on that very separation. Arguing that they should be recognized as employers (and therefore proprietary authors), the recording artists endorsed a definition of the employment relation as a private, non-political matter. Arguing that they should be recognized as employees (and therefore entitled to the legal protections that intervene into the hiring relationship), they advocated situating that dividing line between public and private in a different way. In that latter case, they sought to make their work public and political, even if in a very limited and incremental—and instrumental—fashion. But Brown’s point is that to contest an injurious social arrangement through the use of rights—a liberal instrument through and through—risks “inceptive self-cancellation” (1995: 7). From this perspective, both efforts appear to operate entirely within the scope of liberal rights discourse and practice.

Brown offers a political genealogy of rights as a distinctly liberal “practice of freedom.” Practices of freedom, she writes, “respond ... to a particular practice of domination whose terms are then often reinstalled in its practice,” reinstalled, that is, in the responding practice of freedom (1995: 8). The institutionalization of liberal freedom put its stamp on rights such

that they have a certain local character that belies their universal idiom: they don't actually work the same way for everybody every time. Rights gained currency "both as a vehicle for emancipation from political disenfranchisement or institutionalized servitude and as a means of privileging an emerging bourgeois class" in a discourse and (imagined) domain of universalistic political participation (Brown 1995: 99). They "emerged as both a means of protection against arbitrary use and abuse" by rulers "and as a mode of securing and naturalizing dominant social powers—class, gender, and so forth" (1995: 99). Rights are articulated to liberalism's division between civil and political realms, such that the invocation of rights tends toward this dual effect: the protection of the claimant from certain abuses of power emanating from (a sovereign) above, and the securing and naturalizing of the claimant's social powers over the (classed, racialized, gendered) rabble below (see also Robin 2011). Assertions of rights attempt to redraw the line that divides the political from the non-political, and while they may adjust local power relations between contestants in progressive ways, in so doing, they typically affirm the liberal principle of dividing the world in this manner.

Achieving rights can and sometimes does improve the situations of the groups seeking them. The American Civil Rights movement is Brown's example; the late 19<sup>th</sup> century and early 20<sup>th</sup> century labour movements and socially responsive labour legislation are another (Roediger and Foner 1989; Rogers 2009; Scheirov 1998). Yet the flipside of employee rights and protections, secured by the legislative and judicial victories of the labour movement, was the simultaneous and correlative fixing of the employee, in a still-subordinate position, in a further legitimated and reified social status hierarchy (see also Biernacki 2001). The function of copyright law preemptively to expropriate creative employees—institutionalized in the same turn-of-the-20<sup>th</sup> century period as the expansion of protective labour legislation (Fisk 2009)—is an example of the double-edgedness of rights that Brown's analysis illuminates. The many paradoxes of rights threaten always to confound, limit or pervert their emancipatory potential. In Brown's words, "[r]ights that empower those in one social location or strata may disempower those in another, [because] rights converge with powers of social stratification and lines of social demarcation in ways that extend as often as attenuate these powers and lines" (1995: 98). The recording artists' claims converged with those powers and lines in ways that reinforced and renaturalized the logic of employment to dispossess employees, and the power of employers to enjoy an unmarked position with respect to the state. In the work-for-hire case, recording artists sought to define their effective classification as employees as political; in the contract duration case, recording artists sought to define



their denial of employee status as political. In the former case, their effort succeeded and the private or non-political conception of the employment relation prevailed. In the latter case, they failed, and a similar reaffirmation took place.

## Conclusion

Performers' rights struggles and cinematic works that narrate the social and subject positions of music-makers in rights-oriented frameworks have contradictory tendencies: they both reaffirm and challenge liberalism's division of the world into public and private, political and non-political realms. I think this has a great deal to do with what Toynbee (2000; 2003) identifies as performers' exemplary agency, and with the highly mediated nature of their work and relations with their paymasters. The political-theoretic analysis of performers' explicit and implicit rights claims increases our knowledge about what goes on in their work worlds. But because pop performers and their work relations are so audible and visible, the bigger questions for me have to do with their role in the production of liberal subjectivity and in social reproduction.

My goal here is not to abolish the line between public and private in favour of some Orwellian "place where there is no darkness." Rather, it is to take advantage of popular music's unusual combinations of publicness and privateness in order to highlight the stakes and politics at issue when a particular division between public/political and private/nonpolitical becomes relevant or a matter of contest. Discourses and political practices of popular music that emphasize rights of authorship or attribution, and to self-determination and self-expression, articulate unevenly in specific historical claims for rights to intellectual property and to control of labour. This unevenness is prominent in the disjuncture between conventional discourses of musical authorship and attribution and music-makers' actual tactics for achieving or retaining rights over their recordings. It is also prominent in the success of some claims and the failure of others. These forms of unevenness skew toward the continued ontologization of liberalism's division of the world into political and non-political, and to the specific (re)naturalization of the liberal conception of employment as private and non-political.

These discourses and practices resonate with basic liberal conceits of individual freedom. Ronald Mason points out that "[l]iberalism is the tradition of thought into which most of us are born. As political socialization affects our everyday thoughts and actions, so does liberalism affect our theoretical political

thinking—in ways that are unrecognized” (1982: 3). Dissecting the political discourses and practices of popular music-makers—in addition to examining their (resistant, ambivalent, celebratory) participation in capitalism—provides opportunities both to discover how agency is being exemplified, on a massively mediated scale, in the course of contemporary political socialization, and to reflect on our own political socialization.

Popular music-makers’ and filmmakers’ predilection for publicizing the conditions of performers’ private relations of work, and the problems of authorship, attribution and autonomy that animate much musical discourse and practice, highlight and sometimes trouble the conventional liberal boundary between the civil and political realms. Even as it routinely licenses private relations of appropriation and domination in most worlds of employment, the common-sense liberal assumption of employers’ and employees’ formal political equality often fails to draw its figleaf over relations of music-making. In the perspective developed here, the obdurate publicness of music-making has a politicizing thrust. On the other hand, rights claims that are thematically linked with these efforts and impulses appear to have tendencies and affordances of their own, and do not serve in the neutral, universalistic fashion in which liberal thought presents them.

Two of the questions that spring from this analysis have to do with the specificity of music-making and music-makers. First, this project has been approaching “employee” as an example of “politicized identity,” but given the examples that Wendy Brown offers (women, people of colour, gays and lesbians), is this desirable or reasonable? More to the point, is it desirable or reasonable to approach “musician” as a “politicized identity”? Historians of law, labour and social power (e.g., Bendix 1974; Linder 1989; Orren 1991) trace the transmutations of authority in the birth of liberal society; some thoughts about the secular music-maker in the pre-modern West highlight the possible specificity of music here. Walter Salmen’s (1983) account of the denigrated, disfranchised, and unusually vulnerable status of musicians in the Middle Ages and early modern era offers some very provocative evidence along these lines. At certain times and places in European history, for example, musicians could not take oaths or give evidence, could not carry knives or swords, and had to wear certain colours “as an identifying stigma” (1983: 25). The list goes on.

This leads to a second question: is occupational popular music-making a social phenomenon of its own kind, occupying an irreducible place within what Raymond Williams called “the general social process”? Might tracing the status of occupational popular music-makers (with acknowledgement about the complications of the qualifier “popular”) across the ebb and flow of private and public power in the years since the Black Plague give us special

knowledge about political change, as Attali (1985) might suggest? Startling bits of testimony from the past provoke questions about music-makers' political heritage. Histories of music guilds in the early modern era *and* in the 20<sup>th</sup> century indicate a longstanding difficulty with controlling the profession, a sort of basic and involuntary publicness of music. As was not the case with many other occupations, music's mysteries were difficult to keep within the ranks (e.g., Salmen 1983; Loft 1950). And on the other hand, it appears that special status has long been available to very small numbers of specially favoured music-makers; sinecures in the old days, celebrity endorsements and royalty income today. Work in liberal society is a mode of privatized and depoliticized domination. And while music-makers' (and their supporters') efforts to claim rights may turn out to be as regressive as they are progressive, music-making as a form of work seems to pull toward publicness, with compelling implications for our liberal political socialization. 🍀

## Notes

Acknowledgement: Thanks to Christina Baade, Susan Fast and Line Grenier of IASPM-Canada for their invitation, to colloquium participants at Carleton University, Cornell University and Université de Montréal for subsequent opportunities to discuss these ideas in some detail, and to Marina Peterson and the Humanities and Social Sciences Association Writing Group at the University of California, Berkeley, as well as two anonymous reviewers, for their comments and suggestions on earlier drafts of the article.

1. An important recent examination of popular music's engagement with the changing content of liberalism outlines the phenomenon of "Bonoism." This highly individualistic, pro-social but anti-state "structure of feeling" is "the philosophical expression of a class formation: those whose labour is not directly productive, but is also not wholly intellectual and whose income is derived from the production, manipulation, and circulation of symbolic forms"—the so-called "creative class" (Finlayson 2011: 40). Finlayson names this philosophy in light of the political ideas and activities of the famous U2 singer and argues that it should be recognized as central to the transformation of British social policy under Tony Blair and then David Cameron.

## References

- All, Jay. 2012. Again from the Top! The Continuing Pursuit of a General Public Performance Right in Sound Recordings. *Albany Law Journal of Science and Technology* 22 (1): 1-48.

- Attali, Jacques. 1985. *Noise: The Political Economy of Music*. Minneapolis: University of Minnesota Press.
- Barron, Anne. 2006. Copyright Law's Musical Work. *Social & Legal Studies*, Vol. 15 (1), 101–127.
- Bendix, Reinhard. 1974. *Work and Authority in Industry: Ideologies of Management in the Course of Industrialization*. Berkeley: University of California Press.
- Biernacki, Richard. 2001. Labor As an Imagined Commodity. *Politics and Society* 29 (2): 173–206.
- Blauner, Robert. 1964. *Alienation and Freedom: The Factory Worker and His Industry*. Chicago: University of Chicago Press.
- Brown, Wendy. 1995. *States of Injury: Power and Freedom in Late Modernity*. Princeton, NJ: Princeton University Press.
- Burlingame, Jon. 1993. *For the Record: The Struggle and Ultimate Rise of American Recording Musicians Within Their Labor Movement*. Hollywood: Recording Musicians Association.
- Chevigny, Paul. 1991. *Gigs: Jazz and the Cabaret Laws in New York City*. New York, NY: Routledge.
- Cloonan, Martin. 1996. *Banned!: Censorship of Popular Music in Britain, 1967–1992*. Aldershot (UK): Arena.
- Cloonan, Martin and Reebee Garofalo, eds. 2003. *Policing Pop*. Philadelphia: Temple University Press.
- Davidov, Guy. 2002. The Three Axes of Employment Relationships: A Characterization of Workers in Need of Protection. *University of Toronto Law Journal* 52 (4): 357–418.
- De Haviland v. Warner Bros. Pictures*. 1944b. 67 Cal. App. 2d 225; 153 P.2d 983.
- Deakin, Simon. 2005. *The Law of the Labour Market: Industrialization, Employment and Legal Evolution*. Oxford: Oxford University Press.
- Demers, Joanna. 2006. *Steal This Music: How Intellectual Property Law Affects Musical Creativity*. Athens: University of Georgia Press.
- Duby, Georges. 1988. Private Power, Public Power. In *A History of Private Life: Revelations of the Medieval World (Vol. 2)*, 3–31. Ed. Georges Duby and Philippe Ariès. Cambridge MA: Belknap Press.
- Ellerman, David. 1992. *Property and Contract in Economics: The Case for Economic Democracy*. Cambridge, MA: Blackwell.
- Eyerman, Ron and Andrew Jamison. 1998. *Music and Social Movements: Mobilizing Traditions in the Twentieth Century*. Cambridge, UK: Cambridge University Press.
- Finlayson, Alan. 2011. Cameron, Culture and the Creative Class: The Big Society and the Post-Bureaucratic Age. *Political Quarterly* 82 (1): 35–47.
- Fischlin, Daniel and Ajay Heble, eds. 2003. *Rebel Musics: Human Rights, Resistant Sounds, and the Politics of Music Making*. Montreal: Black Rose Books.
- Fisk, Catherine. 2009. *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800–1930*. Chapel Hill, NC: University of North Carolina Press.

- Frith, Simon. 1981. *Sound Effects: Youth, Leisure and the Politics of Rock'n'Roll*. New York: Pantheon.
- Garofalo, Reebee, ed. 1992. *Rockin' the Boat: Mass Music and Mass Movements* Boston, MA: South End Press.
- Gorman, Robert A. 1983. The Recording Musician and Union Power: A Case Study of the American Federation of Musicians. *Southwestern Law Journal* 37 (697-787)
- Greene, K.J. 1999. Copyright, Culture, & Black Music: A Legacy of Unequal Protection. *Hastings Communication & Entertainment Law Journal*. 339
- Greene, K.J. 2008. "Copynorms," Black Cultural Production and the Debate over African American Reparations. *Cardozo Arts and Entertainment Law Journal* 25 (3) 1179-1227.
- Hartman, Kent. 2012. *The Wrecking Crew: The Inside Story of Rock and Roll's Best-Kept Secret*. New York: Thomas Dunne Books.
- Hesmondhalgh, David. 1999. Indie: The Institutional Politics and Aesthetics of a Popular Music Genre. *Cultural Studies* 13 (1): 34-61.
- Hesmondhalgh, David. 2006. Digital Sampling and Cultural Inequality. *Social & Legal Studies* Vol. 15 (1), 53-xx
- Honneth, Axel. 2004. Organized Self- Realization: Some Paradoxes of Individualization. *European Journal of Social Theory* 7 (4): 463-78.
- Jones, Steve. 1991. "Ban(ned) in the USA: Popular Music and Censorship." *Journal of Communication Inquiry* 15 (1): 73-87.
- Kelley, Norman, ed. 2002. *Rhythm and Business: The Political Economy of Black Music*. New York: Akashic Books.
- Keightley, Keir. 2001. Reconsidering Rock. In *The Cambridge Companion to Pop and Rock*, 109-142. Ed. Simon Frith, Will Straw, and John Street. New York: Cambridge University Press.
- Korpe, Maria, ed. 2004. *Shoot the Singer: Music Censorship Today*. London: Zed Books.
- Kraft, James P. 1996. *Stage to Studio: Musicians and the Sound Revolution, 1880-1950*. Baltimore: Johns Hopkins University Press.
- Linder, Marc. 1989. *The Employment Relationship in Anglo-American Law: A Historical Perspective*. New York: Greenwood.
- Loft, Abram. 1950. Musicians' Guild and Unions: A Consideration of the Evolution of Protective Organization Among Musicians. PhD dissertation, Columbia University.
- Love, Nancy. 2006. *Musical Democracy*. Albany: State University of New York Press.
- Mahon, Maureen. 2004. *Right to Rock: The Black Rock Coalition and the Cultural Politics of Race*. Durham, NC: Duke University Press.
- Marx, Karl. 1978a [1843]. On the Jewish Question. In *The Marx-Engels Reader*, 26-52. Ed. Robert Tucker. New York: W. W. Norton.
- Marx, Karl. 1978b [1844]. Estranged Labour. In *The Marx-Engels Reader*, 70-81. Ed. Robert Tucker. New York: W. W. Norton.
- Mason, Ronald. 1982. *Participatory and Workplace Democracy: A Theoretical Development in Critique of Liberalism*. Carbondale, IL: Southern Illinois University Press.

- McLeod, Bruce. 1993. *Club Date Musicians: Playing the New York Party Circuit*. Urbana, IL: University of Illinois Press.
- McLeod, Kembrew. 2011. *Creative License: The Law and Culture of Digital Sampling*. Durham, NC: Duke University Press.
- Miller, Leta E. 2007. Racial Segregation and the San Francisco Musicians' Union, 1923-1960. *Journal of the Society for American Music* 1 (2): 161-206.
- Monson, Ingrid. 2007. *Freedom Sounds: Civil Rights Call out to Jazz and Africa*. Oxford: Oxford University Press.
- Mulder, Catherine P. 2009. *Unions and Class Transformation: The Case of the Broadway Musicians*. New York: Routledge.
- Orren, Karen. 1991. *Belated Feudalism: Labor, the Law, and Liberal Development in the United States*. New York: Cambridge University Press.
- Peddie, Ian, ed. 2006. *The Resisting Music: Popular Music and Social Protest*. Burlington, VT: Ashgate.
- , ed. 2011. *Popular Music and Human Rights*. Burlington, VT: Ashgate.
- Peterson, Marina. 2013. Sound Work: Music as Labor and the 1940s Recording Bans of the American Federation of Musicians. *Anthropological Quarterly*, 86 (3): 791-823.
- Recording Artists Coalition. 2001. Work for Hire. *archive.org*: <http://web.archive.org/web/20010715235259/http://www.recordingartistscoalition.com/workforhire.html> (accessed Oct. 1, 2013).
- Robin, Corey. 2011. *The Reactionary Mind: Conservatism from Edmund Burke to Sarah Palin*. New York: Oxford University Press.
- Roediger, David and Philip Foner. 1989. *Our Own Time: A History of American Labor and the Working Day*. New York: Greenwood Press.
- Rogers, Donald. 2009. *Making Capitalism Safe: Work Safety and Health Regulation in America, 1880-1940*. Urbana, IL: University of Illinois Press.
- Rojek, Chris. 2011. *Pop Music, Pop Culture*. Cambridge: Polity Press.
- Salmen, Walter. 1983. The Social Status of the Musician in the Middle Ages. In *The Social Status of the Professional Musician from the Middle Ages to the 19th Century*, 3–29. Ed. Walter Salmen. New York: Pendragon.
- Schneirov, Richard. 1998. *Labor and Urban Politics: Class Conflict and the Origins of Modern Liberalism in Chicago, 1864-97*. Urbana, IL: University of Illinois Press.
- Stahl, Matt. 2013. *Unfree Masters: Recording Artists and the Politics of Work*. Durham, NC: Duke University Press.
- Street, John. 2012. *Music and Politics*. Cambridge, UK: Polity Press.
- Tanenbaum, Susie. 1995. *Underground Harmonies: Music and Politics in the Subways of New York*. Ithaca: Cornell University Press.
- Toynbee, Jason. 2000. *Making Popular Music: Musicians, Creativity and Institutions*. London: Arnold.
- . 2003. Fingers to the Bone or Spaced out on Creativity? Labor Process and Ideology in the Production of Pop. In *Cultural Work: Understanding the Cultural Industries*, 39–55. Ed. Andrew Beck. New York: Routledge.

- . 2006. Copyright, the Work, and Phonographic Orality in Music. *Social & Legal Studies* Vol. 15(1), 77–99.
- Weeks, Kathi. 2011. *The Problem with Work: Feminism, Marxism, Antiwork Politics, and Postwork Imaginaries*. Durham, NC: Duke University Press.
- Weir, Stan. 2004. *Singlejack Solidarity*. Edited and with an afterword by George Lipsitz. Minneapolis: University of Minnesota Press.