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Ethical Issues on Musical Appropriation

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Abstract

This paper aims to shed light on the question of whether musical appropriation is ethically unobjectionable. James Young (2021) has recently advanced a position on this topic, according to which, whereas the appropriation of a whole work is uncontroversially non-permissible, the appropriation of parts of a work is usually permissible. He grounds this view in ontological matters and in a criterion of fair use in terms of economic harm to the source work's composer. I argue that, pace Young, we cannot make general ethical claims about musical appropriation because their truth is sensitive to the musical genres that the involved works belong to. First, I clarify the scope of musical appropriation by means of considerations on musical practices and ontology. This will reveal that versions and covers are not genuine cases of musical appropriation. In a second step, I consider a specific kind of musical appropriation: using the first measures of a source work as the first measures of a secondary work. I show that, even if we assume Young's ontological framework and his criterion on fair use, the instances of this kind of musical appropriation count as fair or unfair depending on the musical genres of the involved works due to their normative implications for the composition and appreciation of those works.

Keywords

aesthetics, copyright, fair use, musical appropriation, ontology.

1 Introduction

Musical appropriation is a usual phenomenon in Western musical tradition. It does not constitute an exception in Western artistic practices. As James Young notes, "artists do not

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create *ex-nihilo*" and they "are always borrowing parts of artworks and artistic elements from each other" (Young 2021: 53). Sherry Irvin observes in this vein that "borrowing from the work of other artists has been a time-honoured practice throughout much of art history" (Irvin 2005: 124). Examples in the musical field are profuse. Beethoven borrowed from Haydn a motivic rather than phraseological technique of musical composition. Puccini appropriated some ways of orchestrating music from Debussy and Ravel. Brahms used Haydn's *St. Anthony Choral* as the first movement of his *Variations on a Theme by Haydn*.

Despite the entrenchment of appropriation in Western musical practice, one might wonder whether any sort of musical appropriation is ethically unobjectionable. Indeed, some particular cases have ended in courts because the composer of the source work has felt offended or harmed for other people appropriating her music (cf. Ortland 2016, Young 2021: 6–7, 109–10). The aim of this paper is to shed light on this topic, contributing to clarify the extent to which musical appropriation is fair. In this attempt, I will not address questions about actual legislation. Nor will I consider the appropriation of what Young calls "artistic elements", e.g., styles, techniques of composition or ways of orchestrating (cf. Young 2021: 21). Instead, I will concentrate on scrutinizing the legitimacy of appropriating works or parts of them, that is, a composer's literal appropriation in a new work of musical material (e.g. cells, melodies or themes) belonging to a previous work (the source work) by another composer.

Young has recently advanced a position concerning this sort of musical appropriation. On the one hand, he argues that the appropriation of a whole musical work is uncontroversially non-permissible. On the other hand, he observes that the appropriation of a work's atomic part (e.g. a single note) is uncontroversially permissible. The controversial cases are on the middle: those in which "something more than an atomic part has been appropriated" (Young 2021: 101). On the basis of historical evidence, Young claims that those borrowings are "usually thought to be permissible" in Western classical music and derives similar consequences for contemporary and pop music (Young 2021: 107). Additionally, he proposes two sorts of considerations to elucidate controversial cases: first, a study of the ontological nature of the concerned works; and second, a criterion of fair use based on an economic notion of harm: when there is no economic harm to the source work's composer, the use is fair and the appropriation is thus permissible (cf. Young 2021: 108, 101, 113). He concludes that, with very few exceptions, the appropriation of a musical work's parts is permissible and beneficial for composers' creativity and for audiences.

In this paper, I will defend the thesis that, *pace* Young, we cannot make general ethical claims about musical appropriation because the truth of ethical claims on this issue is

relative to the musical genres that the involved works belong to. According to this thesis, ethical claims about musical appropriation are neither true nor false *simpliciter*; their truth or falsity is sensitive to the genres of both the source work and the secondary work. My aim here is to show that this thesis holds even if we assume Young's view on fair use. For this purpose, I will put aside other notions of harm as a condition for fair use, for instance, offence to the source work's composer or infringement of her moral rights. Instead, I will try to show that, even if we limit ourselves to Young's economic view of harm, the instances of one and the same kind of musical appropriation, namely, using the first measures of a composition as the first measures of a new one, count as fair or unfair depending on the musical genre of those works. The reason, as we shall see, is that different musical genres have different normative implications as to how musical works are to be composed and appreciated, which in turn entail different consequences for the harm that a same kind of musical appropriation causes to the source work's composer. Accordingly, the view I will defend here should not be understood as a rejection of Young's account, but rather as a revision and development of it.

The plan of the paper is as follows. Young's view will be introduced in more detail in the next section. In section 3, I will clarify the scope of musical appropriation. A focus on musical practice and examination of the ontological nature of versions and covers will reveal them as failing to be cases of musical appropriation. Then, in section four, I will show that using the first measures of a source work as the first measures of a secondary work is fully permissible relatively to the genres of theme and variations, tribute works and liturgical music, whereas it is ethically objectionable when both the source work and the secondary work belong to the genres of film music, opera overture and minimal music. This will drive to the conclusion that the elucidation of the fairness of musical appropriation is relative to musical genres.

2 Young's view on musical appropriation

As noted above, Young's account on how to decide whether a case of appropriation is unobjectionable involves considerations about the ontological nature of the concerned works and about the doctrine of fair use. About the first, he maintains that musical works are types (Young 2021: 21–2): they are abstract objects (i.e. objects that do not exist in space, although they may exist in time) that can be instantiated in multiple tokens, namely, concrete physical objects (e.g. musical performances) that exemplify the set of properties that individuates the type. Given their abstract nature, musical works qua types are non-

structured entities: they have no spatiotemporal parts. However, Young notes that it makes sense to say that a sonata, a symphony or a concerto has parts. His solution to this puzzle appeals to the strategy of analogical predication: "abstract types have parts when a token of a type is divisible into parts" (Young 2021: 28). A work's tokens are concrete physical objects, and hence they are divisible in spatiotemporal parts. Insofar as it is literally true to say that a performance of Beethoven's *Symphony No. 1* has four movements, it is also true to say that Beethoven's *Symphony No. 1* has four movements: in the latter case, however, the predicate 'having four movements' expresses the property of *being such that something cannot be a properly formed token of Beethoven's Symphony No. 1 unless it has four movements*.[1]

The ontological nature of musical works entails direct consequences as to how those works can be appropriated. Young describes artistic appropriation in general as cases involving two artworks: a source work and a secondary work (Young 2021: 39). If musical appropriation consists in borrowing musical material from a source work for the creation of a new work, and musical works are abstract objects (i.e. types), what is appropriated in this case is not a concrete physical object. It is not a case of *token appropriation*: what is appropriated is not a token of a source work to create a secondary work. In addition, as Young notes, musical works qua types "can be endlessly copied by the creation of new tokens" (Young 2021: 39). However, since a work's tokens are not themselves artworks (they do not articulate an artistic content different from the content of the work of which they are tokens (cf. Dodd 2020), creating a token of a work is not a genuine case of musical appropriation.

The genuine cases of musical appropriation are instead cases of what Young calls *pattern appropriation*: those in which a previously discovered or created type (the source work), or a part of it, is appropriated in a new type (the secondary work). Young's view on the ethical status of this sort of appropriation is clear. Whereas the appropriation of a whole type is uncontroversially non-permissible, the appropriation of atomic parts of a work is uncontroversially permissible (Young 2021: 101). The complicated cases are those in which less than the whole type but more than an atomic part is appropriated. However, Young notes that "borrowing from other musicians (…) has almost certainly been around since the invention of music" (Young 2021: 107). On the basis of a vast list of examples (Young 2021: 107–09), he illustrates that the appropriation of a work's parts has been a

[1] For a detailed analysis of analogical predication applied to musical works, see Dodd (2007: 45–8) and Dodd & Letts 2017.

permissible practice through centuries of musical history.

It might be objected, however, that we cannot draw lessons from past cases in the history of music to contemporary cases of musical appropriation. Indeed, from the fact that something was done this way or another in the past, it does not follow that the same should be done today. In addition, the objection goes on, musical practice was much less regulated before the emergence of copyright laws, and the idea of intellectual property in music was not as explicit as it nowadays is. To this extent, Young goes beyond the verification of the empirical historical fact that the appropriation of a work's parts was a permissible practice. He supplies an independent justification of the general ethical claim that the appropriation of a work's parts is a permissible and right practice.

Young's account of fair use plays a crucial role in support of this ethical claim. He notes that musical works are not the sort of things that can be owned, due to their ontological nature (Young 2021: 43–4). Since they are abstract objects, they are not tangible property. Consequently, a composer does not possess a thing, her work, but she has certain rights as to how her work can be used. Young appeals to the Millian Principle as a criterion to decide when a certain use is fair: there is no foul in using a work when no harm is done to its composer (Young 2021: 113). He understands harm in a purely economic sense: the use of a work is harmful when it prevents its composer from making a living as a composer, that is, as a creator of types. Accordingly, Young's criterion of fair use can be put as follows: the use is fair if and only if the appropriation causes no economic harm to the source work's composer.

Young observes that, in creating a type, the composer also creates the capacity for other people to benefit from creating tokens (instances) of that type. To this extent, the composer enables other people to make a living instantiating types, that is, performing or recording musical works. In Young's view, the capacities to produce tokens of types are a composer's stock "every bit as much as apples and cheeses are a farmer's stock in trade" (Young 2021: 51). Consequently, the composer deserves a temporary monopoly on the creation and distribution of new tokens of her work, and the basis of this right is that she would be economically harmed in the absence of such compensation: she would be prevented from making a living as a creator of types.

By Young's criterion of fair use, any use of a work that does not harm its composer in this economic sense ought to be permitted. Young argues that, usually, when a composer creates a new work, even if she appropriates some part of a previous work, "no one is deprived of anything" (Young 2021: 49). The composer is just creating a new type, T, different from the type in which the primary work, T*, consists. In doing so, she is providing other people

with the capacity to create tokens of T, but she is usually depriving people neither of their capacity to create tokens of T* nor of a sustained interest in hearing tokens of T*. T is not, in other words, a "market substitute" of T* (Young 2021: 116). In most cases, the composer of T does not harm the composer of T* because people interested in hearing and performing T* can continue doing so, and T*'s composer can continue economically profiting this. There are hence no grounds to prohibit in general the appropriation of parts of a previous work.[2]

Furthermore, such a prohibition would harm both composers' creativity and the public. Young highlights that composers do not create musical works *ex-nihilo*, and that they systematically draw from parts and elements of works created by other composers (Young 2021: 53). He notes, crucially, that "this borrowing enabled Handel to be the creative genius that he was" (Young 2021: 55). Constraining the appropriation of parts of works imposes thus a hard constraint to composers' creativity, which harms the public insofar as they are deprived of enjoying the outcomes of that creativity. From these considerations, Young maintains that "the maximum amount of freedom to appropriate artistic elements and parts of pattern-types" ought to be permitted (Young 2021: 46). Therefore, the appropriation of a work's parts is not only a permissible practice, but also a beneficial one for composers and audiences in Young's view.

On the basis of this account, Young addresses other practices of musical appropriation in the contemporary era as, for instance, sampling. This is a very extended practice in hip hop music, which consists in appropriating parts of recordings of previous songs (mainly of rock music) to create a single track. Courts have usually regarded sampling as non-permissible arguing that it constitutes a violation of copyright of the source work's composer and performer. Young opposes this view. He maintains that, as in the case of classical music, sampling is a case of pattern appropriation: despite samplers' use of electronic devices, "both the classical composer and the sampler appropriate the same thing, a pattern-type" (Young 2021: 111). By "parity of reasoning", Young concludes that "if limited borrowings of pattern-types by classical musicians are permissible, limited borrowings of pattern-types by means of sampling ought also to be permissible" (Young 2021: 107). From an ontological

[2] As we shall see below, Young acknowledges an important exception to this view. However, it is important to stress that Young does not accept the libertarian view that only tangible things generate property rights, and hence, that any appropriation of pattern types is permissible. He explicitly rejects this approach (Young 2020: 47–52) and, as noted above, he argues that a composer deserves compensation for creating the capacity of instantiating her work.

point of view, what samplers do today is not something substantively different from cases of the appropriation of a work's parts in classical or academic music, and thus their acts of appropriation should deserve the same ethical evaluation.

The only exception in Young's account to his claim that the appropriation of a work's parts is permissible and beneficial is the composition of some musical arrangements, particularly those that could have been created by the source work's composer (cf. Young 2021: 121–2). He argues that, in creating a work, the composer also creates the capacity of creating arrangements based on the existence of the primary work. Creating such a capacity is one way for a composer to make a living, and thus she deserves economic compensation for this. This is, for Young, the only exception to the general permissibility of appropriation of a musical work's parts.

3 Clarifying the scope of musical appropriation: versions and covers

Following Young's account introduced in the previous section, the relevant sense of musical appropriation is that in which two works are involved: a source work and a secondary work. They are cases in which the source work, or a part of it, is appropriated in a new work, namely, cases of pattern-appropriation in which a type, or a part of it, is appropriated in a new type. This sense of musical appropriation excludes the appropriation of styles, techniques of composition, ways of orchestrating, harmonies or rhythms. These are artistic elements and, in Young's view, *artistic elements* are not parts of works from an ontological point of view.[3]

Even so, the scope of cases of musical appropriation is narrower than Young takes it to be. He assumes that versions and covers are cases of musical appropriation (Young 2021: 116). Crucially, Young's view here is not as liberal as concerning the cases considered in the previous section. While he observes that the different covers of Leonard Cohen's *Halleluiah*, for instance, are not market substitutes of the original song given their differences in tempo, key, lyrics, instrumentation or vocal tessitura, he argues that "unlicenced covers ought to be regarded as a violation of copyright" (Young 2021: 116). The reason he gives is that the

[3] Young defines artistic elements as ways or principles for arranging parts of works (Young 2021: 32). Consequently, they are not parts of those works. I assume Young's view on this point. For a detailed discussion, see Young (2021: 29–32).

original songwriter is a co-creator of the covers insofar as covers are new concrete types[4] that could not be created without her contribution (Young 2021: 117). Accordingly, the original songwriter is economically harmed if she does not receive compensation from the sales profits of the covers. This differentiated account that Young assigns to covers suggests, however, that they do not easily assimilate to the typical cases of musical appropriation. Indeed, as I will argue next against Young's view, neither versions nor covers are genuine cases of musical appropriation.

My main argument is as follows. A work's versions are not different works of music but different ways of presenting a same work in performance. When a work's version is composed, no new work is created; instead, what is created is a different way of performing the same work. Similarly, a song's covers are not different songs. When a song's cover is created, no new song is created; instead, what is created is a different way of presenting that song. Insofar as there is only one work (or song) involved, there is no distinction between a source work (or song) and a secondary work (or song). Since this distinction cannot be drawn, these are not cases in which some musical material belonging to a source work (or song) is appropriated in a new work (or song). Therefore, a work's versions and a song's covers are not *sensu stricto* cases of musical appropriation.

The main premise of the argument finds empirical support in musical practice, where a work's versions deserve a different treatment than typical cases of musical appropriation. Brahms' *Variations on a Theme by Haydn* wholly appropriates Haydn's *St. Anthony Choral*; yet, it is regarded as a secondary work different from *Haydn's St. Anthony Choral*, the source work. By contrast, Bruckner was not considered to have composed a new symphony when in 1890 he composed the second version of his *Symphony No. 8*. The same treatment deserves a version composed by other than the original work's composer. With his version of Handel's *Messiah*, Mozart was not taken to have composed a new oratorio, and Wagner's version of Beethoven's *Symphony No. 9* was by no means regarded as a new different symphony composed by Wagner in 1873.

A plausible explanation of these facts is that, whereas an inspired work articulates a different artistic content than the source work, a work's versions do not articulate different artistic contents. Haydn's *St. Anthony Choral* is just a starting point for Brahms to elaborate a

[4] According to Young, a concrete type is a multiply instantiable abstract entity whose pattern can only be specified by reference to a concrete particular. A cover is a sound structure encoded in a master recording: its pattern can only be specified by reference to the master recording (Young 2021: 24).

new musical content with a different musical form within a romanticist aesthetic framework. Brahms appropriated Haydn's work to articulate a new artistic content unanticipated in the source work. In turn, the composer of a work's version is work-focused: she is focused on the work the version is of. Her aim is to evince understanding of the target work's content by means of indicating a kind of performances that are insightful and revelatory of that content. This is a matter of interpretive authenticity: being true to a work by means of presenting it insightfully and in a revelatory way (cf. Puy 2022; see also Dodd 2020).

Supporting this hypothesis, we can observe that the changes introduced by Mozart in his version of Handel's *Messiah* did not aim to articulate a new artistic content. Instead, they were intended to enrich the expression of the work's climatic points to "clarify for contemporary audiences the structural outlines of the Baroque oratorio" (Cowgill 2002, 30). Along similar lines, Wagner composed his version of Beethoven's *Symphony No. 9* motivated by his experience as conductor, and hence, as interpreter of Beethoven's work. His aim was to solve some problems in balance, projection and expression that he found when conducting Beethoven's original version of this work. In Wagner's view, those problems prevent from making sense in performance of the whole point of certain passages of the work (cf. Wagner 1966, 239–40). In the same vein, with his cover of Cohen's *Hallelujah*, Jeff Buckley did not aim to articulate a new artistic content, but to provide an interpretation of this song different from the one given by Cohen, with the aim of further evincing its point.[5] The understanding provided by Buckley's cover definitely contributed to the popularisation of the song. As Nathan Chang claims, "Leonard Cohen didn't make the song famous, Jeff Buckley did".[6]

The fact of a work's versions and a song's covers not articulating different contents and not being treated as different works ultimately rests on ontological matters that have important consequences for copyright. The composition of a version or a cover is not a case of pattern appropriation but of *pattern instantiation*. A work's versions are types that can be multiply instantiated in musical performances, but they are types of lower order that instantiate a type of higher order, i.e. the work they are versions of (Puy 2019: 248–51).

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[5] This aim was clearly stated by Buckley in an interview he gave in 1994 to the Dutch magazine *OOR*, where he defended his interpretation of the song against Cohen's in the following terms: "Whoever listens carefully to "Hallelujah" will discover that it is a song about sex, about love, about life on earth. The hallelujah is not a homage to a worshipped person, idol or god, but the hallelujah of the orgasm. It's an ode to life and love" (https://www.oocities.org/sunsetstrip/stage/1706/itw12OO.htm).

[6] https://www.curatormagazine.com/nathan-chang/buckleys-hallelujah/.

Following this picture, the pattern that individuates the work qua higher-order type is less specific than the patterns that individuate its versions qua lower-order types. It has variables that allow for structural differences in the patterns of the lower-order types (i.e. its versions) in which it is instantiated. Accordingly, Bruckner's *Symphony No. 8 is* a higher-order type that is instantiated in two types of lower order (the 1887 and the 1890 versions that Bruckner indicated of that symphony), which in turn are instantiated in multiple performances as tokens of those lower-order types.

Two important remarks on this point are to be made. First, since a type manifests itself in its instances, when we hear a performance of the 1890 version we do not hear only that performance, but also the 1890 version; however, since the 1890 version is also an instance of the work, Bruckner's *Symphony No. 8*, we also hear the work when hearing the 1890 version by means of its performances. Similarly, since Mozart's version is an instance of Handel's *Messiah*, when we hear Mozart's version in a performance, we also hear the work, Handel's *Messiah*. Second, the composer of a work's original version creates two things: she creates the version (a way of presenting a work) and the work this version is of (Puy 2021). The work is created by means of creating its original version. Accordingly, Bruckner created his *Symphony No. 8* by means of creating the original version of that work in 1887, and Handel created his *Messiah* by means of the original version that he specified in his score.

The ontological nature of covers comes along similar lines. A song's covers are concrete types that can be multiply instantiated when reproduced in appropriate devices. However, those concrete types instantiate a type of higher order, the song they are covers of. The pattern of the song qua higher-order type is less specific than the patterns of its covers qua concrete types. The song, Cohen's *Hallelujah*, is a higher-order type that Cohen created by means of creating its original version, a concrete type encoded in a master recording. This higher-order type is also instantiated in other concrete types, for instance, the covers made by Buckley and John Cale. Since those concrete types are instances of the same higher-order type, we hear the same song, the *Hallelujah*, when we hear the reproductions of Cohen's original version and Buckley's and Cale's covers.

The recognition that a work's versions and a song's covers are cases of pattern instantiation instead of pattern appropriation has direct implications for copyright. Such implications illustrate more clearly the differences that Young intuited with respect to the canonical cases of musical appropriation. In its most simple and original sense, copyright is understood as "the exclusive right to make copies" (Young 2021: 2). According to Young, works that are types can be copied by means of multiply tokening them (Young 2021: 39).

Those tokens count as copies of the work insofar as they instantiate the work. As we have seen in section 2, Young argues that, in creating a type, a composer also creates the capacity to instantiate that type, and hence she would be harmed if she does not have a temporary monopoly on the creation and distribution of instances of her work: she would be prevented from making a living as a composer. Since versions (and covers) also are instances of a work (or a song), the work's (or song's) composer would be harmed in the same sense if she does not have a temporary monopoly on the creation and distribution of versions (or covers) of her work. If the creation of a work's performances ought to be protected by copyright, parity of reasoning demands that the creation of a work's versions and a song's covers is also to be protected by copyright.

Apart from this, there is nothing wrong in composing versions and covers of a work, like there is nothing wrong in performing a work or reproducing a song. On the contrary, versions shed new light on, and reveal new aspects of a work's content, contributing directly to the achievement of the ultimate goal of Western work-performance practice: to facilitate the understanding of the performed works (cf. Dodd 2020). The same seems to be true of covers of songs as Cohen's *Hallelujah*. Buckley's cover reveals new aspects of the content of that song that are not evinced by Cohen's original version. But even if a cognitivist approach to the aesthetic appreciation of popular music is rejected, covers are valuable because they provide new ways of obtaining sensory pleasure of a same song. Public should not be prevented by copyright laws from this cognitive or hedonic wealth. This suggests, in line with Young's view (cf. 2021: 52–66), the suitability of some constraints to copyright law.

Finally, it is important to note that, under the picture drawn above, a work's versions are neither the same thing as, nor are reduced to, the work they are versions of. They are different instantiable entities: they are lower-order types that instantiate the same work, a higher-order type. The same applies to covers. A song's covers are neither the same thing as, nor are reduced to, the song they are covers of. Instead, they are different instantiable entities: they are concrete types that instantiate the same work, a higher-order type. Pierre Henri Dutron, with his version of Mozart's *Requiem*, created a lower-order type of this work. Consequently, as a creator of types, even if such types are of lower order, he deserves a temporary monopoly on the creation and distribution of instances of them. If not, he would be prevented to make a living as a composer. In the same sense, Buckley created a concrete type with his cover of Cohen's *Halleluiaj*. Even if he has to pay a compensation to Cohen for this, Buckley is also a creator of types, and hence, he deserves a temporary monopoly on the creation and distribution of instances the concrete type he created. In

this sense, Buckley can legitimate profit from his cover of Cohen's *Halleluiaj*.

4 The genre-sensitivity of the permissibility of musical appropriation

The scope of the genuine cases of musical appropriation is clearer now. Versions and covers fall out this scope. As we have seen, they are cases of pattern instantiation. A work's versions are not different works but new lower-order types that instantiate a same work, a higher-order type. Similarly, a song's covers are not different songs but new concrete types that instantiate a same song, a higher-order type. The genuine cases of musical appropriation are instead those in which musical material belonging to a source work is borrowed in a new work. They are cases of pattern appropriation: a previously created type (the source work), or a part of it, is appropriated in a new type (the secondary work).

To recall it, Young's view on musical appropriation introduced in section 2 can be summarized in three main claims:

(1) The appropriation of a whole type (the whole source work) is uncontroversially non-permissible.

(2) The appropriation a work's atomic parts is uncontroversially permissible.

(3) With very few exceptions, the appropriation of small parts of a work is permissible and beneficial for composers and the audience.[7]

These are three general ethical claims on musical appropriation. In what follows, I will concentrate on (3) and, tangentially on (1), leaving aside (2). As we shall see next, (3) and (1) are neither true nor false *simpliciter*. They are sometimes true and sometimes false. The reason is that their truth and falsity is relative to the musical genres that both the source work and the secondary work belong to, even if we assume Young's account on fair use in terms of economic harm. I will try to show this by means of considering a specific kind of

[7] In its initial step, Young's view is that the appropriation of parts is permissible when no harm is caused and when the parts appropriated are small. Nonetheless, as we have seen in section 2, claim (3) corresponds to the conclusion that Young arrives on the basis of ontological analysis and historical evidence on the practice of appropriating a work's small parts, which has revealed it as usually harmless for the source work's composer and beneficial for composers' creativity.

musical appropriation: borrowing the first measures of a source work, using them as the first measures of a new work. As we shall see, different instances of this kind of musical appropriation will count as right or wrong depending on the musical genre of the involved works: in some genres but not in others this kind of appropriation economically harms the source work's composer.

Artistic genres, and hence musical genres, are artistic categories that classify artworks by their purpose. A genre is distinguished from others by the purpose that is to be satisfied by the works belonging to it (Abell 2015: 31). The purpose of some genres is to elicit a certain effect in the audience. For instance, the genre of comedy has the purpose of making laugh. The purpose of other genres, in turn, has to do with some aspects of the articulation of a work's content; for example, the purpose of science fiction is "to describe logically coherent alternative worlds" (Abell 2015: 31). In contrast to art forms, genres can be cross-media (cf. Dodd 2016: 257, Lopes 2007: 248). Whereas an art form is systematically linked to an artistic medium (i.e. to a certain sort of stuff and techniques to manipulate it), genres are linked to artistic purposes (i.e. to the artistic sense of the manipulation of a certain stuff). This way, genres settle a relation between artistic means and artistic goals: they enable us to aesthetically and artistically evaluate how the artist's manipulations of a medium to produce a work serve to achieve a certain purpose (cf. Abell 2015: 36). A work in a certain genre is expected to perform a certain purpose and its failure in achieving that purpose deserves a negative evaluation. To this extent, a genre normatively constrains the sort of manipulations of the medium by an artist to produce a work in that genre (cf. Bonds 1996: 27).

I will consider next six musical genres: *theme and variations*, *tribute works*, *liturgical music*, *film music*, *opera overtures*, and *minimal music*. Each of them is characterised by a specific purpose and, consequently, they normatively constrain differently how a composer can manipulate the musical medium to produce a work in those genres and how people aesthetically appreciate that work. The list, of course, is by no means exhaustive of all musical genres, but it is enough to show the genre-sensitivity of the permissibility of musical appropriation concerning both purely and non-purely instrumental music. We will see that, when the secondary work belongs to one of the former three genres, the use of the first measures of a source work as the first measures of a secondary work is fully permissible. By contrast, things will be more complicated concerning the latter three genres: the use of the first measures of a source work as the first measures of a secondary work is non-permissible when the source work and the secondary work belong to a same genre; it is only permissible under certain circumstances when the source work and the secondary work belong to

different genres.

4.1 Fully permissible cases

Let us consider first the genre of *theme* and *variations*. The point of this genre is to explore the possibilities of transformation of a given theme without fully escaping from it, providing a sense of altered repetition.[8] To this extent, the genre normatively constrains the composer's manipulation of the medium to produce a work: works in this genre must have a specific formal structure, namely, the exposition of a theme followed by a series of contrasting variations of that theme in a non-fixed number of movements. All sorts of compositional techniques can be put at the service of satisfying the genre's purpose: the theme's modifications can be rhythmical, melodic, harmonic or contrapuntal. Crucially, the genre puts no restrictions as to the *origin* of the theme. The genre only sets some formal conditions to be satisfied by the theme in order to facilitate its acoustic recognition and its possibilities of modification: it should not be too fast, it should avoid small figurations and have a simple structure (cf. Bas 1922: 213). Once a theme satisfies such formal conditions, it is indifferent whether it is original or it is borrowed from a previous work.[9]

Appropriating the first measures of a source work, using them as the first measures of a secondary work, is thus a fully permissible practice when the secondary work is a theme and variations. There is no ethical problem with Beethoven's *Three Variations of 'Rule, Britannia!'* and Hummel's *Variations on 'Rule, Britannia!'* having the first measures in common. Both works belong to the genre of theme and variations and appropriate Thomas Arne's *'Rule, Britannia!'*. The theme is just a standpoint for the variations, and its originality is irrelevant.

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[8] Along similar lines, Riccardo Nielsen characterises this purpose as "the deepen interpretation, the clearer illumination and the renewal of the pre-existent fact of the matter (the theme) by means of an intensive valorisation of all (musical) resources" (Nielsen 1959: 202; my translation).

[9] Robert Schumann distinguished three categories of this genre. He characterised the third as one in which "the centre of gravity lies neither in the theme alone nor in the variations alone, but rather in the psychological bond between the two" (cited in Sisman 2001). And he goes on claiming, concerning this third category, "that the theme is usually an invention of the composer's—a so-called original theme—is entirely in the nature of the thing" (cited in Sisman 2001). Schumann's view would question my claims in this paragraph. However, Brahms contested this view arguing that Schumann confuses the genre of theme and variations with the genre of fantasy-variations (cf. Sisman 2001). Accordingly, we cannot consider Schumann's view as the basis for a serious objection to the conclusion that, in the genre of theme and variations, the appropriation of the theme from a different work is a fully permissible practice.

The aesthetic interest of works in this genre lies not in the theme (the appropriated material), but in how the variations of this theme are implemented by the secondary composer, in how she develops her imagination and technique. The appropriated material functions here as a kind of quotation, but the aesthetic focus is put on the variations. Accordingly, the appropriation does not make the secondary work a market substitute of the source work. There is no economic harm to the source work's composer.

In this vein, it is even permissible to appropriate a whole type (the whole source work), as Brahms did when he wholly appropriated Haydn's *St. Anthony Choral* as the theme for his *Variations on a Theme by Haydn*. Likewise, it is fully permissible to appropriate, for instance, Salvador Sobral's *Amar pelos Dois* or Bruce Springsteen's *I'm on Fire* full songs as a theme to compose a work in the genre of theme and variations. The secondary work would not be a market substitute of the source work and neither Sobral nor Springsteen would be harmed. Therefore, concerning the genre of theme and variations, Young's claim (3) is true, whereas (1) is false: the appropriation of even the whole source work, using it as the beginning of the secondary work, is permissible when the secondary work is in the genre of theme and variations and the source work is in another genre.

Using the first measures of a composition as the first measures of a new one is not only permissible in the genre of *tribute works*, but also sometimes constitutes a good-making feature of them. The purpose of works in this genre is that of honouring another composer or work. The aesthetic interest in this genre lies in recognising parts of works of the honoured composer in a new work and in how these are developed and musically praised by another composer. The use of the first measures of an honoured work (the source work) as the first measures of the tribute work helps the audience to identify easily the intentional object of the tribute. This is the case, for instance, of Valentí Miserachs' *Pucciniana*, an orchestral fantasy whose point is to pay tribute to Giacomo Puccini. Miserachs literally appropriates the first one and a half measures of the instrumental *Intermezzo* of Puccini's opera *Manon Lescaut*, and uses them as the start of his *Pucciniana*. The appropriation of this part of Puccini's very well known *Intermezzo* plays the role of facilitating the audience to be introduced into the thematic, atmosphere and purpose of the tribute work, drawing out our attention to Puccini and his work. There is no harm to the source work's composer, but rather a memory that makes him present for a contemporary audience.

Therefore, (3) is true for works in this genre and, by contrast with the genre of theme and variations, (1) is also true. The genre demands the integration of the source work's material within the new work, rather than the exposition of a full theme to be followed by its variations. Tribute works should not be confused with covers or versions. As we have

seen, a song's covers or a work's versions are not different works and there is no distinction, in them, between a source work and the secondary work. Tribute works, in turn, are works different from their source works, articulating a different artistic content and having a different point.

As in the case of tribute works, the appropriation of the first measures of a source work is not only permissible but also positively valued in the genre of liturgical music. Works in this genre are characterised by having a liturgical text (i.e. a text that is part of the liturgy). This is the case of Domenico Bartolucci's polyphonic vocal work *Ave Regina Caelorum*. Its text is that of a Marian antiphon with the same title that closes the service of *Compline in the Liturgy of Hours*. The beginning of Bartolucci's work is a literal appropriation of the melody of the Gregorian piece *Ave Regina Caelorum Brevis* corresponding to the first verse of the text. No special problem is raised by this procedure. Works of Gregorian chant can be regarded as what Young calls "commonplace patterns": types that exist in multiple artworks and that belong to public domain, as it happens in literature with the type "once upon a time" (cf. Young 2021: 104). The view of Gregorian chants as commonplace patterns is reinforced by Popes' recommendation of using them for new compositions in the genre of liturgical music (cf. Pio X 1903: §3; Benedict XVI 2007: §42). As Young observes, the appropriation of commonplace patterns is fully permissible.

The case complicates, however, when we note that, some years after Bartolucci composed his work, Giuseppe Liberto composed another polyphonic vocal work with the same title (*Ave Regina Caelorum*) that begins exactly as Bartolucci's work: with the melody of the Gregorian piece *Ave Regina Caelorum Brevis*. Liberto not only appropriates the same part of the commonplace pattern as Bartolucci; he also appropriates Bartolucci's *use* of this commonplace pattern, using it as a monodic beginning for his polyphonic work. Even if the appropriation of commonplace patterns is fully permissible, we may wonder whether appropriating *the same use* of *the same commonplace pattern* is also ethically acceptable. Whereas the pattern appropriated is a commonplace, Bartolucci's use of that pattern is not.

Originality, even in a work's opening, is a value in the genre of liturgical music: a work of liturgical music is better when it is original, other things being equal. Yet, originality is not a fundamental value in the genre of liturgical music: it is not a final value for works in this genre and it can be negotiated to maximize other more fundamental values. The purpose of works in this genre is "the glory of God and the sanctification of the faithful" (*Sacrosanctum Concilium* 1963: §112). Originality can thus be sacrificed for the sake of maximizing other values that are more effective to secure the realization of the genre's purpose. Using a commonplace Gregorian piece to start a new work has an important

didactical value, helping the faithful to easily recognise the prayer, as well as facilitating their participation in the liturgy. In addition, it helps to connect the composition with the liturgical tradition. Accordingly, Liberto's appropriation of Bartolucci's use of a specific commonplace pattern of Gregorian music is not only permissible; it also adds value to Liberto's work because it helps the work to better achieve the genre's purpose. Bartolucci is not harmed in any sense: when he intended his work to be in the genre of liturgical music, he implicitly accepted the norms and values of this genre, and hence, he accepted that other composer may appropriate his use of that specific Gregorian chant if this contributes to successfully realize the purpose of the genre. The work's opening serves here to identify a commonplace for the sake of facilitating the achievement of the genre's point, and the work's aesthetic value lies on how this commonplace is integrated in a full contrapuntal composition that enhances the text's structure and meaning.

4.2 Non-permissible cases and exceptions

The consequences for the permissibility of musical appropriation are different when the source work belongs to one of the three following genres: film music, opera overture, and minimal works. When the source work and the secondary work belong both to the same genre, the use of the first measures of the source work as the first measures of the secondary work is non-permissible. There are nonetheless some exceptions when they belong to different genres.

The genre of *film music* illustrates neatly this contrast with respect to the genres analysed above, particularly with the genre of liturgical music. Let me concentrate specifically on the soundtrack for the opening credits of a film. The purpose of music for a film's opening credits encompasses three fundamental functions. First, the music should introduce the audience into the atmosphere and mood of the film, and situate the viewer in the place and time of the scene (cf. Gallez 1970: 45). Second, when the soundtrack is based on the technique of leitmotif, the music of a film's opening credits serves to introduce the leitmotifs associated to the film's main characters or psychological states, helping the viewer to become familiar with them before being developed (cf. Bribitzer-Stull 2015: 10, 262, 268 and ff.). And third, the first seconds of the music for the opening credits serve as a label to identify the film: they should have a very well defined motive that serves as a wake-up call for the audience.

Greatest composers of soundtracks have usually been very concerned with the successful achievement of those functions. A paradigmatic example is provided by Nino Rota's music

for *The Godfather*. The trumpet solo melody at the beginning of the opening credits univocally identifies the film, and anticipates in a condensed way the macabre and melancholic mood that characterises this movie and its main leitmotif. The same point is had by the flute solo melody at the beginning of Ennio Morricone's music for the opening credits of *The Good, The Bad and The Ugly*, or by the brass fanfare and the trumpet melody with a fifth interval in John Williams' music for *Star Wars*. They univocally identify those films, anticipating their main mood and one of the leitmotifs. The examples can be multiplied. The crucial point is that the successful realisation of those functions is a value for musical works of this genre: a work belonging to the genre of film music is better if it effectively realizes those functions, other things being equal; and so, *ceteris paribus*, the better the soundtrack realizes those functions, the better the soundtrack is. And this value, insofar as it directly derives from the very end of the genre, seems to be non-negotiable for the sake of other musical values or preferences.

It follows that the music of a film's opening credits can realize those functions only if it is exclusive of that film; that is, only if no other film has the same music for the first seconds of its opening credits. Accordingly, it is non-permissible to use the first seconds of a previous film's soundtrack (the source work) as the first seconds of a new film's soundtrack. The appropriation would prevent the source work from continuing to fulfil the functions that characterise the purpose of this genre, which would damage its value. Imagine that Woody Allen produced in 2019 a comedy film whose opening credits begin with the same music as *The Good, The Bad and The Ugly* (*GBU* in what follows). Imagine also that this film is a success and that it becomes more famous for new audiences than *GBU*, a film released more than fifty years ago. In this scenario, part of the value of Morricone's soundtrack is lost: the first seconds of his music no longer univocally identify *GBU* because new audiences would associate them with Allen's new film. In addition, when watching the opening credits of *GBU*, the audience would associate the music with the atmosphere and content of Allen's film; this would prevent Morricone's soundtrack from anticipating the mood and character of *GBU*. The aesthetic and artistic value of Morricone's music is diminished insofar as it is henceforth prevented from achieving the purpose of the genre it belongs to. The appropriation in Allen's film is aesthetically destructive for Morricone's soundtrack for *GBU*, causing what Lisa Jones calls the *aesthetic derogation* of the source work (cf. Jones 2016).

The decrease of the source work's aesthetic value (Morricone's soundtrack) by the appropriation included in the secondary work (the soundtrack of Allen's film) causes harm to Morricone in Young's sense of economic harm. A work's aesthetic value is also an economic value. It is a good-making feature of a work that *ceteris paribus* makes it preferable

to other works that lack it, and this preference makes people to be disposed to pay more for that work than they would for the others. People are prone to pay more for a work that has more aesthetic value than for one that has less aesthetic value. It is also a motivation for people to consume that work rather than one whose aesthetic value is lower.[10] The aesthetic value of a film's soundtrack contributes to the overall aesthetic value of the film. If Allen's appropriation diminishes the aesthetic value of Morricone's soundtrack, it also diminishes the overall aesthetic value of GBU; if so, less people would be interested in watching the film, which would decrease Morricone's income from the screenings and sales of the film's copies. This is an economic harm that prevents Morricone from making a living as a composer. Therefore, the use of the first measures of the source work as the first measures of the secondary work is not fair when both the source work and the secondary work belong to the genre of film music.

Things complicate, however, when a soundtrack appropriates a commonplace pattern. This is, in principle, a fully permissible practice. In his soundtrack for the series *Los Gozos y Las Sombras* released in 1982, Nemesio García-Carril appropriated a Galician vocal folk song.[11] He used it as a monodic purely instrumental melody performed by an ocarina (a Galician instrument made of clay and whose timbre is similar to a warm flute) to start the opening credits. This use of this folk melody served to satisfy the purpose of the genre: it locates the audience in the place where the action is developed (Galicia), introduces one of the leitmotifs that will be developed later and, due to its well defined

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[10] It might be objected that there are two important exceptions to this general relationship between aesthetic and economic value. The first is the case of forgeries. It might be argued that, when we discover that *x* is a forgery, the economic value of *x* tends to decrease despite *x*'s aesthetic value being the same. The second is the case of reattributions of works. It might be argued that, when *x* is attributed now to an author more famous than the former, the economic value of *x* tends to increase despite *x*'s aesthetic value being the same. However, the claim that *x*'s aesthetic value is the same in both cases is controversial. The objection only works under an empiricist notion of aesthetic value. Under a more contextualist approach to aesthetic value, aesthetic properties supervene on the relationships between *x*, its author and the author's context. Since *x*'s authorship changes in both cases, it is expectable that the supervenient aesthetic properties are also different, and hence, that *x*'s aesthetic value also changes. In addition, the objection just concerns marginal cases (e.g. forgeries and reattributions), and thus it cannot be considered as an objection to the idea that, in normal cases, a work's aesthetic value is taken to be an economic value. I am very grateful to an anonymous referee for this remark.

[11] The song is an *alalá* from the region of Lugo, collected in the *Cancionero Musical de Galicia* (Sampedro y Folgar 1982: No. 20) and in the *Cancionero Gallego* (Torner and Bal y Gay 1973: No. 97).

sonic profile, serves as a label to identify the film, anticipating its predominant dark, mysterious and nostalgic character. Four years latter, the group Milladoiro also appropriated the same folk song to use it as the beginning of their music for the opening credits of the film *La Mitad del Cielo*, whose action is also developed in the north of Spain with a predominantly dark and mysterious aesthetic. Milladoiro used the folk song exactly in the same way as García-Carril: as a monodic purely instrumental melody performed by an ocarina to start the opening credits.

This Galician folk song is a commonplace pattern and, as we have previously seen, there is no damage in appropriating a commonplace pattern. However, Milladoiro does not only appropriate the same commonplace pattern as García-Carril; they also appropriate García-Carril's *use* of *that* pattern. Whereas the pattern is a commonplace, the use of that pattern is not. By contrast with the genre of religious music, having an original start is a fundamental value for works in the genre of film music: it cannot be sacrificed for the sake of maximizing other values. The lack of originality here prevents a soundtrack for the opening credits from fulfilling the purpose of this genre: to be a wake-up call for the audience by means of univocally identifying the film, anticipating its main atmosphere and leitmotifs. The realization of this purpose achieved by García-Carril in his soundtrack of *Los Gozos y Las Sombras* is now destroyed by Milladoiro's appropriation of García-Carril's use of the same folk song: the appropriation has here the same derogatory effects as in Morricone's case analysed above, generating an equivalent economic harm.[12]

In sum, using the first measures of a source work as the first measures of a secondary work is not permissible when both works belong to the genre of film music. The appropriation prevents the source work from realizing the purpose of the genre, which harms the source work's aesthetic value and results in economic harm to its composer. When the secondary work is in the genre of film music, the appropriation is fair only when the source work belongs to a different genre, especially when the source work is of public domain.[13] However, it is not permissible to appropriate the same use given to a work of public domain in a previous soundtrack: you can use, for instance, a same folk song to start the opening credits,

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[12] Certainly, no harm would have been produced if Milladoiro had given the folk song a use different from the one given by García-Carril, for instance, changing its instrumentation, texture, and rhythm, or even using it in its original vocal form or in a different place of the film.

[13] As we have seen, folk songs are paradigmatic cases. But the source work appropriated in the music for a film's opening credits can perfectly be an authored work of public domain when demanded by the script (e.g. one of Chopin's piano works as it happens in *The Pianist*).

but you must use it differently, with a different instrumentation, texture, dynamics or tempo. If not, derogative effects for the first soundtrack and harm to its composer are caused.

All this applies to the genre of *opera overtures*.[14] Post-Rossini opera overtures have the same purpose as the music for a film's opening credits. In fact, the music for a film's opening credits is usually regarded as an overture that inherits the place and functions of opera overtures (cf. Bribitzer-Stull 2015: 102, 261–2). Thus, the functions of works in the genre of opera overture is to "prepare musically a psychological atmosphere adapted to the forthcoming drama" (Nielsen 1959: 296), to anticipate the opera's leitmotifs (cf. Bribitzer-Stull 2015: 102) and to serve as a wake-up call for the audience that identifies the opera. Consider, for instance, the electroacoustic start followed by the fortissimo entry of brass and strings in alternated clusters over constant timpani beats of the overture of John Adam's *Doctor Atomic* (2005), an opera that focuses on Robert Oppenheimer and that explores the psychological ambient around the preparation of the atomic bomb. Using this part as the start of a new opera that focuses on Hitler would have the same derogative effects for the appreciation of Adam's work as for the cases of film music considered above, causing him a similar harm. Accordingly, appropriating the first measures of a source work to use them as the first measures of a secondary work is not permissible when both works belong to the genre of opera overture. The exceptions to this principle are the same as for works in the genre of film music.

Using the first measures of a source work as the first measures of a secondary work is also not fair when both works belong to the genre of *minimal music*. The reason is that, in many cases, the secondary work is a market substitute of the source work, which causes economic harm to the source work's composer.

The unquestionable purpose of the genre of minimal music is to reduce at minimum the musical material to compose a work. Apart from this ultimate aim, other additional purposes of works in this genre have been pointed out: to provoke a "trance-inducing" effect (Suzuki 2013: 120), to induce a "new mode of hearing" (Phillip Glass, as cited in

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[14] It might be questioned whether opera overture is a self-standing musical genre. Instead, it might be argued that it is merely a sub-form of a bigger musical composition, and that the only self-standing relevant genre here is the genre of opera. If the reader prefers, she may consider that the genre at stake is the genre of opera in the full sense. This does not affect what will be said in what follows. Since the overture is the beginning of an opera, the conclusion achieved is that it not ethical to appropriate the beginning of an opera when the secondary work is also an opera.

Mertens 1983: 79), to purify the concept of musical work or even to provide phenomenal knowledge of properties of time (Puy 2018). In any case, the way to achieve those purposes requires the strict repetition of a minimal musical cell (cf. Puy 2018: 1286–7). This way of manipulating the musical medium results in works that present some typical characteristics: steady beat, static instrumentation, pure tuning and an easily audible structure (cf. Gann, Potter & Siôn 2013: 4–6).

The strict repetition of a minimal cell during several minutes leads, however, to a perceptual problem: listeners stop paying attention to the stimulus because of their familiarity with it (consider, for instance, the continuous ticking of the hands of a clock). Minimalist variations along the multiple strict repetitions are needed to avoid this perceptual problem. Minimalist composers developed to this extent three techniques of minimal variation: (i) successive superposition of other repetitive series of different cells (e.g. Steve Reich's *Music for Pieces of Wood*), (ii) application of additive processes within the one and only cell of the work (e.g. *La Monte Young's Death Chant* and Phillip Glass' *Music in Fifths*), and (iii) phase-shifting processes in the repetitions of the one and only cell of the work (e.g. Steve Reich's *Piano Phase*) (cf. Puy 2018: 1288–91). These three techniques constrain at a minimum the possible variations of the repetitive piece for the sake of satisfying the main purpose of the genre.

Given these normative constraints imposed by the genre of minimal music to compose a work in that genre, if you appropriate the first measures or seconds of a minimal work to use them as the first measures of another minimal work, the secondary work will be extremely similar to the source work in its acoustic profile and expressive character. This is particularly notorious if both the source work and the secondary work are composed following the techniques (ii) and (iii), since both works would consist in the continuous repetition of one and the same minimal cell. This high degree of similarity qualifies the secondary work as market substitute of the source work: many people that hear the secondary work would loose interest in hearing the source work, which causes economic harm to its composer. The original cell is the core of the source work because such a cell is to be minimally developed in this genre. Appropriating it and its first repetitions is appropriating the core of the work, especially if both works are composed following the techniques (ii) and (iii).

The situation here is radically different from the one described when considering the case in which the secondary work belongs to the genre of theme and variations. In that case, as noted in 4.1, the genre requires the appropriated theme to be varied in very different and contrasting ways, applying to this extent a great variety of compositional techniques: elongation, reduction, contrasting tempos, changes of tonalities, textures and

instrumentation, and so on. The resulting variations present great differences concerning their sonic profile and expressive character, despite keeping some links with the theme varied. The appropriation does not make in this case the secondary work a market substitute of the source work. None of this happens when the secondary work is in the genre of minimal music, where the variations of the appropriated material are demanded to be minimal according to the way of manipulating the musical medium mandated by this genre.

Therefore, using the first measures of a work as the first measures of a secondary work is not permissible when both the source work and the secondary work belong to the genre of minimal music. Some exceptions to this principle can be found when the composition of the source work follows technique (i) and the composition of the secondary work follows techniques (ii) or (iii), and vice versa. In those cases, since one of the works involves the repetition of more than one minimal cell, the two works may exhibit a lesser degree of resemblance, which may fail to qualify the secondary work as a market substitute of the source work. In addition, there is in principle no ethical problem in using the first measures of a minimal work if the secondary work is in a different genre (e.g. a tribute work, a theme and variations or an overture), and vice versa. The secondary work would never count as a market substitute of the source work given the way of manipulating the musical medium demanded by those genres.

In sum, the use of the first measures of a work in the genre of film music, opera overture or minimal music as the first measures of a secondary work is not fair when the secondary work is in the same genre as the source work. The appropriation causes harm to the source work's composer in Young's economic sense. In those cases, Young's general claim (3) on musical appropriation, i.e. that the appropriation of a work's parts is usually permissible and beneficial for composers and audiences, is false. The situation is the opposite when the secondary work is in the genre of theme and variations, tribute works and liturgical music, where the appropriation is always fair. In addition, when the secondary work is in the genre of theme and variations, Young's general claim (1), i.e. that the appropriation of the whole source work is uncontroversially non-permissible, is also false.

5 Conclusion

The results achieved in the previous section speak in favour of the thesis that the truth of ethical claims on musical appropriation is sensitive to the genres that the involved works belong to. I have considered a specific kind of musical appropriation: using the first measures of a source work as the first measures of a secondary work. This use does not

count as fair or unfair *simpliciter*. Assuming Young's view on fair use, according to which a use counts as fair if no economic harm is caused to the source work's composer, we have seen that using the first measures of a source work as the first measures of a secondary work causes harm when the works are in certain genres but not in others. Accordingly, the claim that this kind of musical appropriation is permissible is sometimes true and sometimes false. It is true, for instance, when the secondary work is in the genres of theme and variations, tribute works or liturgical music. It is false, however, when both the source work and the secondary work are in the genres of film music, opera overture and minimal music. As a consequence, Young's general claims that the appropriation of a whole work is not permissible and that the appropriation of a work's parts is permissible are sometimes true and sometimes false. Their truth is sensitive to the genres of the involved works.

Ontological matters are relevant to elucidate the permissibility of artistic appropriation. They have played a crucial role here to define the scope of musical appropriation: a work's versions and a song's covers fall out of this scope because they are not cases of pattern appropriation but of pattern instantiation. In addition, Young's view of fair use based on economic harm and the Millian Principle is simple, clear and provides an interesting balance between protecting the interests of composers and those of the audience. However, to obtain a complete notion of fair use, one that secures justice and equality, the normative role that musical genres play in the production and appreciation of works needs to be considered. I hope I may have contributed something in this regard.[15]

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