

Criminal Records: The relationship between music, criminalisation and harm

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Abstract

This paper will be examining how the state and corporations use, abuse, regulate and control music. Beginning with a discussion of 'actual' harms, the paper analyses state agents' use of music in conflict situations including as part of so-called 'torture-lite' techniques, and briefly discussing the use of music as a punishment. The paper then explores the ways 'deviant' and 'dangerous' music is defined, suppressed and regulated via law and the market, leading to power imbalances and inequalities in the ability of some to access freedom of speech and expression via production or consumption of music.

Key words:

Music, torture, censorship, harm, rights

Introduction

Music (and sound in general) may not seem to be an obvious choice for criminological consideration, but there are promising areas of analysis in the relationship between sound, music, rights and harm. There are connections between music and crime beyond the obviously criminogenic ones of copyright and peer-to-peer file sharing, for example, towards wider harms that can be scrutinized in the interplay of the state, state agents and corporations. Law regulates and disciplines popular culture and there are power issues at play in whose, when, and what music and sound is labelled as deviant and this can lead to an erosion of liberty.

Agencies of control are able to define the meanings of cultural products (DeNora 2010); the state can then be in the dichotomous position of having the power to control and to define some music as deviant but then channel that offensive and undesirable music to its own purposes (via their agents such as soldiers, or via their 'partners' such as powerful corporations).

These are not new areas to social science in that cultural studies examines music, usually about its connection to societies, and cultural criminology has analysed issues of power, political control and how inequality is reproduced (Muzzatti 2006), particularly through theorists such as Ferrell et al. (2008) and Presdee (2004). However, with some notable exceptions, Cloonan (2003; 2007) and Cusick (2006; 2008) for example, sociologists and musicologists have seemed reticent to look at the 'dark side of music' (Hirsch 2007). In terms of criminology, the scarcity is more pronounced and as Kauzlarich and Awsumb (2012; 502) say 'few expressly critical criminological studies have been conducted on the relationship between music and deviance.' There are several aspects of music that should be of interest to criminologists, such as 'the relationship between music and law, music and the market, and music and the state' (Brabazon 2012; 200) and utilising a human rights and harms approach, this paper will offer a contribution to this small but growing area.

Music, sound, noise

Noise and music are not objective terms because they are connected to perception; music is regarded as positive sounds while noise is 'a problem, a disordered sound that is unpleasant to the ears' (Brabazon 2012; 50), an unwanted sound (Thompson 2014). Music is a socially defined set of sounds interpreted and constructed differently by listeners - classical music is generally less popular than rock and pop music (Kotarba 2009). Within popular music there are several well-studied genres or subcultures, such as punk (Savage 1991), heavy metal (Weinstein 2000), rap (Keyes 2002), goth (Hodgkinson 2002) and country music (Peterson 1997) which bring with them their own aesthetics and are subject to social construction via issues of 'taste' and cultural construction (Washburne and Derno 2004). Steven

Jones of the Security Association for the Maritime Industry, when discussing the use of Britney Spears songs to deter pirates off the coast of Somalia, stated: 'I'd imagine using Justin Bieber would be against the Geneva Convention' (Radnedge 2013). The reason this makes sense to us is because of perceptions about Bieber's music. There is a direct appeal to the public's understanding of his music as poppy, lacking in substance, even 'naff', so that Jones' statement about violating human rights conventions becomes humorous.

Other famous examples of using 'terrible' music as punishment include a Canadian police force threatening Christmas drink-drivers with playing Nickelback in the squad car on the way to the cells and Rockdale Council in Sydney, Australia using the music of Barry Manilow to prevent young people from loitering outside shops (Peters 2016). One judge, incensed at young people playing music too loud from their cars in certain Colorado, USA neighbourhoods, sentenced them to his music immersion programme where they were, 'punished and educated' (Hirsch 2011; 40) by having classical and easy listening pop music played to them (including, again, Barry Manilow!). The various uses of music – as a punishment, as a weapon, as (re)education and conversely as an uplifting experience - forms the thematic framework for this article, which considers the uses and abuses of music in terms of rights and harm, and the potential for the erosion of freedoms and liberty.

Using human rights (and harms) to analyse music

The source of human rights is problematic to identify as it encompasses issues of morality, politics, equality and individual and collective social justice. Criminologists draw on the concept of natural law to illustrate how, just because something is legal, that does not necessarily mean that it is morally right or just. Although for some this could be a root of human rights, modern human rights theorists tend to conceptualise rights as social constructions, driven as much by politics as anything else (Freeman 2017).

This article is concerned with the erosion of the protection of rights in the terms of freedom and autonomy which can be infringed on by the state, even when no specific

laws are necessarily being violated. In terms of wider surveillance, Cohen (1993) includes leisure as one aspect of life which is co-opted as part of the mechanism of social control which saturates public spaces in addition to the places where we live and work. Power is wielded when certain sounds or 'noise' can be heard, while the noise others can make is reduced by means of surveillance and social control (Attali 1984). Violation of human rights means that the intellectual and practical tools to improve the human condition are compromised (Quinney and Wildeman in Henry and Lanier 2001). As Presdee (2000: 17) says 'the powerful also define through culture what music is carnival and what is not; where and when it is played and where not', which often results in restrictions of expression.

This next section considers how music can be understood as violating human rights and causing harms in terms of 'actual' harm, for example direct violence such as torture and physical and psychological harm; and symbolic violence, such as cultural repression, lack of freedom of expression, state and corporate repression and suppression of music (Salmi 2004).

Music in war and conflict

The use of music in war has a long history with the use of flutes, bugles and drums accompanying marching armies since ancient Greek times (Meilinger 2016), whether to aid marching battalions or boost morale or send messages (Norris 2012). The use of music as deception during war also has a long history, illustrated during World War Two when propaganda was broadcast on allied radio by playing popular songs with anti-German lyrics (Evans 2009). Use of music during the Holocaust has been documented and there are examples of resistance in music and songs composed during this period (Flam 1992). Prisoners who were members of concentration camp orchestras had a higher chance of surviving the war as these orchestras were valued by Nazi guards (Eckhard 2001), despite music also being used to torture and terrorize in the camps (Moreno 2006).

Developments in technology added to the portability of sound in conflict situations. The use of music during the Vietnam War is particularly well known, often due to

the large number of cultural references regarding this conflict, perhaps the most well-known being the *Ride of the Valkyries* scene in the Francis Ford Coppola film *Apocalypse Now* (1979). Playing music from loudspeakers mounted on helicopters was used during Operation Lam Son 719 in Laos during the Vietnam War and it was also documented during the US intervention in Grenada in late 1993 (Garofolo 2012), although the use appears to have been more to distract the enemy, to disrupt sleep and rest and the ability to communicate to their troops rather than other purposes.

Another famous use of music as a weapon in conflict was in Operation Just Cause, when the former Panama leader Manuel Noriega was taking refuge from US forces in the Papal Nuncio in Panama City (essentially the Vatican Embassy). The *New York Times* reported that Noriega, tired and tormented by deafening heavy metal music directed towards the building, surrendered on January 4th 1990 (Archibold 2011). The music used was broadcast from United States military radio and prior to Christmas the radio station played requests from the troops, which were for bands such as Guns 'N Roses and Twisted Sister, along with seasonal Christmas songs. Following the Christmas period, the radio station was contacted by a psychological military operations (PSYOP) officer who provided a list of 95 songs to be played which were designed to demoralise Noriega, such as Bruce Springsteen's *Born to Run* and *Nowhere to Run* by Martha and the Vandellas (Ross 2016).

It does not necessarily have to be music that is used, sound in general can be used for harm (see reports of the use of sound against civilian populations in Kingsley and Henley 2015 and McGreal 2005), although the following section will look at why music can be especially problematic in cultural terms when used for hostile purposes (Cusick 2006). British government actions conducted during the conflict in Northern Ireland in the late 1960s and early 1970s was judged as tantamount to torture (Cobain 2012). In Operation Demetrius, twelve men were deprived of food and water and subjected to prolonged stress positions and 'white noise' (machine generated disturbing high-pitched sound). One man who was 20 years old at the time was so affected by the white noise that he hit his head repeatedly and began

hallucinating (Hirsch 2012). Despite an original conclusion by the European Commission of Human Rights in 1976 that the techniques were torture, this was later overruled by the European Court of Human Rights when the techniques were judged to be consistent with inhuman and degrading treatment (Gallagher 2015). There were reports of music being used by troops in the US-led coalition Gulf war. During 'Operation Desert Storm, soldiers played their own music via tape recorders and other devices as motivation for impending combat. Pieslak's (2007) study of the music used by soldiers showed that heavy metal predominated, with bands such as AC/DC and Megadeth proving popular. During the invasions of Afghanistan in 2001 and in Iraq in 2003, changes in technology meant that CD players and MP3s were more readily used by troops (Von Lunen 2012). Speakers were hooked up to vehicles during the battle of Falluja which took place in November 2004 and blaring heavy metal particularly Metallica was played over these loud speakers to anger insurgent fighters (Cusick 2006). In addition to culturally alien music being played by soldiers prior and during combat (Johnson and Cloonan 2009) music was also used for propaganda purposes. For example, allied forces distributed wind up radios across Afghanistan for the population to pick up British or American radio stations (BBC 2001). Knowing that the Taliban had banned music (discussed further in the next section), troops purposely used recordings consisting mostly of traditional Afghani folk songs to appeal to the local population and in between songs broadcast information and messages about the war.

Recent interest in music as torture arose with reports from Guantanamo Bay about the use of a range of so-called 'torture-lite' techniques. Techniques such as waterboarding, which is designed to make the victim feel as if they are drowning, were designed to cause psychological stress but not leave physical signs of harm (Cusick 2006). Loud music and sounds were used alongside sensory deprivation such as hooding to cause sleep deprivation and disorientation. Binyam Mohamed, an Ethiopian-born British resident who was arrested in Pakistan and held by the US authorities as a suspected Taliban fighter, described being tortured in Guantanamo Bay: "It was pitch black... there was loud music, Eminem's Slim Shady and Dr Dre for

20 days ..." (Swash 2008). Music that in other contexts might be associated with leisure and enjoyment have now become tools of torture.

Music, or any noise, can be a source of pain and the consequence of excessive sound can result in slower thinking, neurosis, increased respiration and heart rate, raised blood pressure and difficulties in speaking (Attali 1985). Any repetitious noise can be used for harm but in cases such the Iraq war and in Guantanamo Bay the choice of music used is culturally alien and discordant to 'the enemy' such as heavy metal and rap. For example, during interrogations of Iraqi fighters, American interrogators played the song *Enter Sandman* by the heavy metal group Metallica, which they apparently found to be effective as an interrogation tool (Smyczek 2005). There is an ideology apparent in the use of heavy metal, perceived as the loud, angry music of outsiders (Gilman 2010). Despite some opposition to the use of their music for the purposes of torture by bands such as Rage Against the Machine (Swash 2008), certain bands are not unhappy to have their music used in this way (Stafford Smith 2008), although there is little artists can do about the unauthorised use of their music beyond the possibility of utilising the concept of moral rights (Greenfield & Osborn 2003; Schwender 2013).

Censorship

The use of music within recent conflicts such as that in Afghanistan is particularly interesting considering the history of censorship of music in that region. Despite there being no Islamic ban on music and Afghanistan having a rich musical history, there have been various periods of music censorship in the recent history of the country. When the Taliban took control of Kabul in 1996 several edicts were published against music. All musical instruments were banned and destroyed, often in public, as were confiscated audio and video cassettes and TV sets. While in the west this censorship could be attributed to the puritanical interpretation of Islam practised by the Taliban, there were restrictions earlier than this throughout the Communist period in the late 1970s and in the post-Communist period (1992-1996) music was heavily censored (Baily 2001). Although it may be no surprise that the Soviet Union controlled music output, more recently the Russian government have

come under international pressure following the imprisonment of three women in the group Pussy Riot for hooliganism motivated by religious hatred (Zabyelina and Ivashkiv 2017). There is also widespread censorship of music, as well as television and other media, in Uzbekistan (Freemuse 2016).

This is not just an issue for autocratic states because these harms of omission in neo-liberal capitalist countries can suppress human flourishing and the achievement of the 'good life' (Buchanan 1989). In modern rights language, this can be restrictions of individuals' and certain groups' freedom of thought, speech and expression.¹ 'The act of music censorship implicitly or explicitly assumes that music is in some way socially significant.' (Kahn-Harris 2003; 81). Where music has perceived negative consequences then censorship can be a perceived answer, for example German authorities banned the sale, manufacture and distribution of music from neo-Nazi bands such as Storkraft because of their racist ideology (*New York Times* 1992). This could be perceived as a legitimate 'brake' on the limited right of freedom of speech and international human rights conventions provide scope for restrictions if this is for legitimate aims, such as national security or in the prevention of crime and disorder.² However, state measures against these neo-Nazi bands mean that their concerts, which the German government perceive as sites of recruitment, go underground rather than disappear (Brown 2004).

There are difficulties in defining censorship, particularly given globalisation and the rise of the internet, as trans-national classifications are problematic because of the differing histories of global players in the music industries. For example, the United States has the first amendment in the Bill of Rights.³ Despite a common-law presumption of freedom of speech (Davis 2013), the UK had some of the most restrictive censorship laws in western Europe and until the Human Rights Act had no laws protecting the public's right to free speech (Brabazon 2012; Lester 2016). However, the global reach of the internet has resulted in a decline in the power of nation states to censor materials that enter its jurisdiction.

Another issue of importance is that of purpose and intention because music involves socially determined meanings in articulation, communication and transmission and there are both moral and corporate interest protection issues to consider (Brown 2004). Restriction of access rather than outright bans might be viewed as appropriate; for example, the British Board of Film Classification (BBFC) examines and rates films and videos by age appropriateness before they are released. However, subjective values about culture and taste are brought into the systems of restriction which states operate, and also some market-based decisions within the music industry indicate that the issue is as much about alteration as it is outright suppression. As Cloonan (2003; 15) states, censorship occurs when 'an agent (or agents) attempts to, and/or succeeds in, significantly altering and/or curtailing the freedom of expression of another agent with a view to limiting the likely audience for that expression'.

In most western democracies, there is a privatisation of censorship, in that censorship is often devolved from the state into private hands. Although there may not often be state sponsored prior restraint to music production and distribution in western liberal democracies, several pressure groups have existed such as the Parents Music Resource Center (PMRC)⁴ in the US and the National Viewers' and Listeners' Association (NVALA)⁵ in the UK who make censorial demands (Cloonan 2003). These groups call for artists to exercise prior self-restraint and campaign for market based exclusions for those who refuse to accept limitations on their artistic freedom of expression. As a result, a product can be made unavailable to buy in certain high-volume marketplaces; for example, Wal-Mart has a history of not stocking certain music, demanding altered sleeve covers if the images are deemed unpalatable, and requiring sanitised versions of 'offensive' songs to fit into their 'family ethos' (Klein 2010: 166).

State political censorship is still demonstrable in liberal western democracies, however, and O'Higgins (in Brabazon 2012) describes various forms of censorship including obvious ones such as self-censorship and legal censorship, but also less recognisable ones such as subterranean and extra-legal. An example of extra-legal

censorship was the Independent Broadcasting Authority (IBA)⁶ banning The Pogues's song *Streets of Sorrow/Birmingham Six* as the IBA believed it could be considered as 'soliciting opinion' for the Irish Republican Army (IRA), an organisation proscribed by government. This is an example of political censorship but one carried out by an independent organisation rather than the state. A more recent example can be found following the death of former Prime Minister Margaret Thatcher in April 2013 when a Facebook-based campaign was launched to make '*Ding dong! The witch is dead*' (from the film *The Wizard of Oz*) number one in the UK singles chart. Although not quite getting to the top spot, the song went into the chart top 5 and there was discussion in the media about whether the weekly chart countdown show on BBC Radio One should play the song (Express 2013). The song itself would not have raised much comment, aside from why a 50-odd year-old song had suddenly made a come-back, but it was the social and political environment surrounding it that caused apprehension. The Radio One controller at the time Ben Cooper said the decision not to play the song had been a "difficult compromise", balancing respect for someone who had just died with issues around freedom of speech (BBC 2013). The UK's official charts company considered it 'one of the most controversial chart contenders of all time' (Turner 2013). It is interesting to note that commercial radio stations followed the publicly-funded BBC in not playing the song in full, despite it being a mere 51 seconds long, and both BBC and independent stations provided news reports into the reasons for the campaign rather than play the song.

Defining music as 'deviant', 'dangerous' or 'offensive' is an exercise in power which allows for its suppression, limitation and surveillance (Korpe et al 2006). For example, concerts by artists from certain genres may be banned because authorities cite potential unrest and disorder should they occur (Horsfall 2013; Topping 2012; Gray 2010), thereby meeting the requirement of a proportionate, legitimate limitation on this qualified right. Grime and urban artists have recently found themselves being unable to find venues to play in following 'risk assessments' by licensing authorities (Olutayo 2017). Decoding music is problematic, but the classification of 'danger' often focuses on words, such as perceptions of misogynistic

lyrics in rap and songs celebrating satanic rituals and violence in death metal (Brabazon 2012; Gray 2010; Weinstein 2000; Tatum 1999). Freedom of expression is an important aspect of human rights, and artistic expression is protected because of its perceived importance for individual fulfilment and as a means of communicating and developing ideas. Critics of censorship, such as the organisation Liberty, highlight the 'chilling effect' that disproportionate restriction can have on expression (Tambini et al 2008). One means by which to restrict 'dangerous' music is to suggest it is outside legitimate free speech, and has 'tipped over' into being obscene and is therefore illegal.

Social control of deviancy includes both reactive and proactive restriction on the part of the state and others (Cohen 1995) and what occurs is a form of cultural protection - in part as a means to control the masses (Korpe et al 2003). Although the US has the First Amendment under which most artistic expression is protected, material deemed obscene is not protected. The definition of obscene comes from *Miller v California*, 413 U.S. 15 [1973] and this determines 'obscene' to be 'without socially redeeming value' and lacking 'serious literary, artistic, political, or scientific value' (known as the SLAPS test) (Nuzum 2005). Material deemed 'harmful to minors' is also not covered by the First Amendment and music can be designated as 'inciteful speech' (Fischer 2003) and again outside the remit of free speech.

In the United Kingdom, legal dealings with obscenity developed incrementally via common law of obscene libel, but in England and Wales in 1959 the Obscene Publications Act was passed which defines obscenity as '*content whose effect will tend to deprave and corrupt those likely to read, see or hear it*' (Corrin and Gask 2009; 147). The first song to be prosecuted under the Obscene Publications Act was the song '*So What?*' by the Anti Nowhere League, following complaints by the pressure group the NVALA about the song's content and use of five supposedly obscene words (Cloonan 1995). With the growth of the internet, the use of various other laws has impacted on freedom of speech and expression, particularly section 1 of the Malicious Communications Act 1988⁷ and section 127 of the Communications Act 2003.⁸ Ofcom's guidance to broadcasters about not playing songs with offensive

lyrics when children are likely to hear them (Dowell 2011b) and directives about pre-watershed 'raunchy' music videos (Dowell 2011a) shows state appetite for censorship of music is still very much in evidence.

Conclusion

How the state and corporations use, abuse and control music and those who make it, play it and listen to it is a fitting topic for the criminological consideration of power, rights and harm. The misuse of cultural outputs for torture and acoustic bombardment are blatant misuses of music for harmful ends, many of which contravene human rights articles. The use of music as a weapon of war and conflict or as punishment in the criminal justice system takes something society generally perceives as intrinsically 'good' and subverts it.

States, their agents and corporations have the power to control and to define some music as deviant or offensive and therefore restrict it, suppress it, or subject it to an outright ban. In both environments, economic censorship is likely to be the greatest barrier to full expression for many people. Lack of equipment and space in which to play music, the scarcity of time and money to be able to spend on creative pursuits are immeasurable. Freedom of speech and expression are important issues because they reinforce all other human rights and are essential for society to be able to discuss, debate and effect change in society. The curtailment of expression and cultural innovation is a problematic one in free democratic countries as well as in obviously more repressive states, as is the use of violence by states and their agents, and the criminological study of music is a developing area to examine these phenomena.

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¹ Article 18 of the Universal Declaration of Human Rights (UDHR) - Article 9 in European Convention of Human Rights (ECHR) / Human Rights Act (HRA) - protects the right to freedom of thought, belief and religion and Article 19 (Article 10 in ECHR / HRA) protects the right to freedom of opinion and expression.

² ECHR Art 10 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. (European Convention on Human Rights Article 10).

³ Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (American Civil Liberties Union 2017)

⁴ PMRC were particularly influential in the 1980s, inventing the 'PAL mark', the parental advisory explicit content label which was attached to albums deemed to have excessive swearing or sexual or violent content. The label is now also used on online content and is administered via the recording industry association of America (www.riaa.com)

⁵ Now called Mediawatch UK

⁶ IBA was a telecommunications regulatory body in the United Kingdom, disbanded 1990 superseded by Ofcom and currently Ofcom (Office of Communications).

⁷ It is illegal in England and Wales to "send or deliver letters or other articles for the purpose of causing distress or anxiety"; although the Malicious Communications Act 1988 was designed pre-internet it was updated in 2001 to include electronic communications.

⁸ 'Sending 'by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character' is illegal. The Communications Act 2003 consolidates previous regulatory bodies for the broadcasting, telecommunications and postal industries into the Office for Communications (Ofcom) who regulate speech, music sound and visual images.