Beethoven in the Elm City:  An Economic and Legal Perspective on the New Haven Symphony Orchestra

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I. Introduction

“[A] careful observer must acknowledge the great progress New Haven has made in this art [music] during the last forty years. Particularly is this true in the appreciation of good classical concerts, and in the cultivation of the best music in the home circle in piano and organ-playing. By these means our community can justly be proud of having acquired that refined taste without which classical symphonic concerts could never be enjoyed.” Dr. Gustave Stoeckel, college organist and instructor of music at Yale University, speaking in 1885. HISTORY OF THE CITY OF NEW HAVEN TO PRESENT TIME 209 (Edward E. Atwater ed., 1887).

The above quote from Professor Stoeckel indicates that by the end of the nineteenth century, at least some of New Haven’s residents began to feel that a symphony orchestra could survive in the city. However, at the publication of Atwater’s History of the City of New Haven, the founding of the New Haven Symphony Orchestra (NHSO) we know today remained seven years in the future, and Dr. Stoeckel’s sentiments represented a hope for the future rather than a description of the current state of music in New Haven. Prior to the founding of the Symphony, New Haven gave rise to several short-lived musical organizations that formed on an ad hoc basis to present one classical masterpiece and lasted for a few seasons prior to disbanding. These attempts included a Musical Association, formed in 1847 to produce classical concerts, which lasted four seasons, and the Mendelssohn Society, founded in 1858 by Dr. Stoeckel himself to perform oratorio concerts of works such as Mendelssohn’s Elijah and Haydn’s The Seasons, which presented seven seasons of concerts.¹ In the last decade of the nineteenth century New Haven did succeed in supporting two choral organizations, the Gounod Society and the New Haven Oratorio Society, although neither of these lasted past the first two decades of the twentieth century.²

New Haven was not unique among nineteenth century American cities in its inability to maintain a symphony orchestra or choral society providing a regular concert series, as America’s musical undertakings were dominated by the type of one-shot ventures seen in New Haven until the 1890s.\(^3\) At the time the NHSO played its first concert in 1895, only the New York Philharmonic (founded in 1842), the Boston Symphony Orchestra (founded in 1881), and the Chicago Symphony (founded in 1891) gave regular season concerts, making the NHSO the fourth oldest symphony in America.\(^4\) Now in its 116\(^{th}\) Season, the NHSO has the distinction of being one of only a handful of American Symphony Orchestras to perform continuously for over a century, and one of the few orchestras outside of the nation’s twenty-five largest cities to consistently feature a roster of leading soloists.

This essay deals with the history of the NHSO from 1939 to the present time focusing on the economic and legal issues encountered by the Symphony during this time period and parallels between the development of the Symphony and the development policies of the City of New Haven. The remainder of this paper proceeds topically, analyzing the sources of financial support for the Symphony, exploring the role of the musicians’ union in the NHSO’s history, discussing tax law problems faced by the NHSO during the rise of the modern income and sales tax systems, looking at the NHSO’s attempt to become an orchestra for the region rather than just the City of New Haven, and finally analyzing the composition of the symphony board.

\(^3\) Richard E. Caves, Creative Industries: Contracts Between Art and Commerce 238-39 (2000). See also Margaret Grant & Herman S. Hettenger, America’s Symphony Orchestras and How They Are Supported 25-39 (1940) (describing the history of short-lived orchestras in the United States during the mid-nineteenth century and the eventual rise of the permanent orchestra during the last two decades of the nineteenth century).

II. Financial Support

“Thanks to endowment subsidy, the public gets music at a fraction of its cost.”

Judge Carroll Hincks, November 1946

The early by-laws of the NHSO dating from 1894 paint the picture of an organization operating as a cooperative of musicians bereft of outside financing. These early by-laws list as the orchestra’s purpose the “cultivation and performance of orchestral music.” Article V of the by-laws, governing the payment of musicians indicates that “each member shall receive his full share of the profits according to the time of attendance” and that if a musician is “unable to occupy his place due to illness, he shall still receive his full share of profit.” These early by-laws suggest a belief that a symphony orchestra would be self-supporting by selling tickets in sufficient quantity to cover its costs and thus be able to pay its members a wage sufficient to keep them performing in the next concert. However, by the Symphony’s second concert, it became clear that the NHSO would not be able to finance its concerts solely through ticket sales, as the Symphony had a deficit of $92.53, which was covered by an early benefactor, Morris Steinert. By the second concert season, the Symphony began looking for revenue sources outside of ticket revenue and was making appeals to concertgoers to donate money to maintain such a valuable cultural institution. Since that second season the NHSO has always depended on outside donations for its financial survival.

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5 Letter from Judge Carroll Hincks, then president of the NHSO, to John H. Jackson of the New Haven Register (Nov. 11, 1946) (on file with the New Haven Colony Historical Society).
6 CANNON & HUBBERT, supra note 4, at 45.
7 Id.
8 Id.
9 While the early New York Philharmonic was able to survive as a members cooperative, distributing earnings along the model envisioned in the early NHSO by-laws, orchestras quickly realized that income
A. The Theory of the Need for Donations

The inability of performing arts organizations like symphony orchestras to cover costs through ticket sales has been analyzed in the economics literature. While William Baumol and William Bowen receive credit for discovering the “cost disease” of the performing arts and Henry Hansmann has explained the reliance of nonprofit performing arts organizations on donations in order to supplement earned income, twenty-six years before Baumol and Bowen and forty years before Hansmann, Margaret Grant and Herman Hettinger had already identified many of the key components of the financial dilemma facing symphony orchestras. While not couching their analysis in the language of economics, these authors observed a productivity lag in the arts by recognizing that orchestras were unable to lower costs by reducing the number of players due to the constraints of instrumentation called for in the symphonic repertoire, and at the same time were unable to reduce the number of paid rehearsals due to the need for adequate rehearsal time in order to produce a high quality performance. These authors also recognized that the opportunity to spread fixed costs over a longer season were limited because of the relatively low demand for orchestral music concerts, and the opportunity to decrease costs by...
lowering the wages of musicians was constrained by the power of musicians’ unions and their resistance to reducing the wage rate for rehearsals or concerts.\footnote{Id. at 112-114.}

In the hands of Baumol and Bowen, the first dilemma described by Grant and Hettinger would become the “cost disease” resulting from the “productivity lag” in the arts. As Baumol and Bowen explain, sectors of the economy in which technology plays a larger role than it does in the “high arts” exhibit increased productivity as each worker produces more output per hour of labor.\footnote{BAUMOL & BOWEN, supra note 11, at 162.} However, in the case of the live performing arts this productivity increase is not observed because a forty-five minute Schubert string quartet requires the same number of hours of labor to “produce” in live performance today as it did when it was composed in the 1820s.

Over time, as productivity increases in other sectors of the economy, wages rise in those sectors, putting upward pressure on the wages of performers because performers’ wages must also increase in order to keep workers from abandoning the arts sector.\footnote{Id. at 169.} Because the productivity of performers does not increase to keep pace with their rising wages, the performing arts become a relatively more costly sector of the economy, which is to say that ticket prices for live performance increase faster than most other commodity prices.\footnote{Id. at 171.}

\footnote{Id. at 112-114.}

\footnote{BAUMOL & BOWEN, supra note 11, at 162.}

\footnote{Id. at 169.}

\footnote{Id. at 171. Baumol and Bowen’s cost disease is not without its critics, as some authors have noted that recording technologies have resulted in increasing productivity in the performing arts by allowing classical performing groups to reach an ever wider audience, while the appreciation of a wider range of repertoire has given rise to small orchestras and choruses specializing in performance of the “early music” of the Renaissance and Baroque, for which the smaller number of performers required entails lower fixed costs. See Tyler Cowen, Why I Do Not Believe in the Cost-Disease, 20 J. CULTURAL ECON. 207 (1996) (criticizing Baumol and Bowen’s string quartet productivity example because unlike the quartet of the 1780s, which was limited to Mozart and Haydn, a modern string quartet displays the product innovation}
A quick test of the validity of the cost disease can be performed by looking at the growth in the prices of the performing arts versus that in overall personal consumption expenditures over the same time frame. Using data from the National Income and Product Accounts, one can readily calculate that since 1959, prices for “live entertainment, excluding sports,” have grown at a compound annual growth rate of 5.1 percent, while prices for “personal consumption expenditures,” a measure which includes prices from all sectors of the economy, have grown at a rate of only 3.7 percent. At least one researcher conducting more sophisticated regression analysis of the cost disease with regards to symphony orchestras has found empirical support for the theory.

of the past two hundred years in that it can perform everything from Brahms to Jimi Hendrix); Alan Peacock, The Manifest Destiny of the Performing Arts, 20 J. CULTURAL ECON. 215, 219 (1996) (discussing the rise of smaller “early music” performance ensembles and the use of smaller ensembles in the works of contemporary composers). However, even Alan Peacock in his criticism of Baumol and Bowen acknowledges that the symphony orchestra specializing in the repertoire of the nineteenth and twentieth centuries comes closest to exemplifying the cost disease in its pure form because of the large number of players involved. Id. at 219. The NHSO with its focus in the 2009-10 season on “Beethoven and Beyond,” including performances of major works by Beethoven, Schubert, Brahms, Webern, Schoenberg, and Walton, fits the description of the type of orchestra most subject to the cost disease. See New Haven Symphony Orchestra, Concerts & Tickets, Symphony, http://www.newhavensymphony.com/page/symphony-55.htm.

National Income and Product Account data on price indexes for personal consumption expenditures are available online from the Bureau of Economic Analysis, http://www.bea.gov/national/nipaweb/nipa_underlying (click on “List of Underlying Detail Tables,” then select Table2.4.4U “Price Indexes for Personal Consumption Expenditures by Type of Product,” and within the table select 1959 as the first year). Obviously the measure used here is a crude one because the most specific category for performing arts is “Live entertainment, excluding sports,” which is far broader than symphony orchestra concerts. Nevertheless the fact that growth in prices by this measure has been faster in “live entertainment” than the overall economy provides at least some evidence in favor of the “cost disease” theory.

An empirical study of the cost disease in the nation’s twenty-five largest symphony orchestras over the period1972-1992 provides support for the cost disease theory in measures of orchestras’ productivity, labor costs, and ticket prices. Marianne Victorius Felton, Evidence of the Existence of the Cost Disease in the Performing Arts, 18 J. CULT. ECON. 301 (1994). This same study suggests that the cost disease may be most severe for orchestras in smaller markets (like the NHSO) because due to the smaller potential audience they have less of an ability to fight the disease by increasing the number of concerts featuring less-costly ensembles of orchestra musicians performing chamber orchestra or chamber music works. Id. at 311.
While from the cost disease theory one would expect ever-increasing ticket prices for symphony performances, Baumol and Bowen recognize a phenomenon among orchestras which may serve to counter the increase in prices. Due to the devotion of many performing arts groups to providing music to a wide range of the public, such organizations may not want to raise ticket prices in order to cover these increased costs because such an increase will prevent members of some socioeconomic groups from attending concerts.  While as will be discussed below, even in the absence of any desire to keep ticket prices low it is unlikely that orchestras could cover their costs through ticket sales alone, a desire to prevent ticket prices from increasing to the point of revenue maximization out of a desire to make concerts accessible to all will further exacerbate an orchestra’s need for donations.

A parallel line of research has further examined why symphony orchestras and other performing arts organizations rely on contributed income, often in the form of donations from the very people who purchase subscription tickets to an organization’s concert performances, rather than price tickets at a level that will cover costs. Symphony orchestras by their very nature have high fixed costs because they must pay a large group of musicians to rehearse each work performed. Once a given program of musical works is rehearsed the marginal cost of producing another performance of that same program is much lower because additional performances will not require additional rehearsals. However, due to a limited demand for symphony concerts, only a limited number of performances of each concert program can be made. The combination of high fixed costs and relatively low demand for performances leads

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21 BAUMOL & BOWEN, supra note 11, at 173.
22 Hansmann, supra note 12, at 342; CAVES supra note 3, at 224.
23 See CAVES, supra note 3, at 226.
24 Hansmann, supra note 12, at 343.
to a situation where the average cost curve of a performance is always above the demand curve, meaning that no ticket price would be able to cover the orchestra’s fixed cost.\textsuperscript{25} This problem is exacerbated by the inability of symphony orchestras to price discriminate, i.e. to charge each audience member a price equal to the amount at which they value the ticket.\textsuperscript{26} The solution to this cost dilemma involves enabling those patrons who possess untapped consumer surplus to contribute that surplus in the form of donations, or in the words of Hansmann, to “volunteer” to pay more for the privilege of attending concerts.\textsuperscript{27}

Hansmann goes on to explain that this in turn causes performing arts organizations displaying the above cost problems to become nonprofit organizations. Because nonprofit organizations do not distribute earnings to shareholders, the nonprofit form provides some assurance to donors that their contributions will be put toward advancing the art form the donor wishes to support rather than lining the pockets of orchestra directors.\textsuperscript{28} In another explanation

\begin{flushleft}
\textsuperscript{25}Id.
\textsuperscript{26}Both Hansmann and Dick Netzer suggest that while some level of price discrimination occurs by charging higher amounts for better tickets, attempts to price discriminate are frustrated by the fact that it remains difficult for orchestras to gather enough information to price discriminate by creating enough pricing tiers to adequately capture the consumer surplus of those willing to pay the most for a ticket and at the same time preventing the transferring of tickets. Hansmann, supra note 12, at 343; Dick Netzer, \textit{Arts and Culture, in WHO BENEFITS FROM THE NONPROFIT SECTOR?} 175, 197 (Charles T. Clotfelter ed., 1992). A further problem is introduced by the fact that the layout of the hall may be such that consumers willing to pay the most for a ticket end up purchasing the cheapest tickets. This occurs in concert halls where the best acoustics are in the balcony and tier seats; not an uncommon event in this author’s experience, and perhaps the case at Yale’s Woolsey Hall where the NHSO performs. See Alex Ross, \textit{Cheap Seats: The Affordable Art of Concertgoing}, \textsc{New Yorker}, Feb. 2, 2009, at 78 (noting that at the Metropolitan Opera in New York, the sound in the cheap seats of the Family Circle is better than that in the more expensive parterre level). Unfortunately, these balcony seats with superb acoustics often offer a “partial view” of the stage and are thus considered undesirable by those who go to “see” (or “be seen”) at a concert, and are therefore given a relatively low price. For the trained listener who goes to “hear” a concert, and who may be willing to pay a great deal for the ability to do so, these “partial view” seats may be the best seats. Thus those who value the performance the most may end up paying the least, further frustrating an orchestra’s attempts to price discriminate.
\textsuperscript{27}Hansmann, supra note 12, at 344.
\textsuperscript{28}Id. at 346.
\end{flushleft}
of this phenomenon, and perhaps one that is more readily apparent to the unsophisticated donor unfamiliar with business organizations and the non-distribution constraint of nonprofit organizations, Richard Caves notes that unlike a profit seeking entity, for which the maximization of profit is the chief goal, donors view a nonprofit as hiring managers who have an innate appreciation of the performing arts and who are therefore driven to produce “art for art’s sake.” This provides donors the feeling that they are contributing to an organization managed by someone who shares their cultural tastes and values. In addition, Paul DiMaggio argues that the nonprofit model played a role in creating a modern symphony orchestra presenting primarily “high art,” rather than one in which “light classics” dominate programs with only an occasional performance of “serious music.” A profit-maximizing manager may attempt to increase ticket sales to a revenue-maximizing point by including “light classics” that appeal to a broader audience and perhaps require less rehearsal time. The nonprofit model allowed donors interested in serious music to “purify” symphony orchestras for the high arts by providing donations only if

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29 CAVES, supra note 3, at 227. At least some of the NHSO’s managers would seem to fit the definition of managers with an innate appreciation of the arts, as longtime manager Harold Kendrick was an organist trained in the United States and France, Obituary, Harold Kendrick, N.Y. TIMES, Nov. 25, 1982, at B16, while Natalie Forbes, current executive director of the NHSO holds a master degree in music and graduate degree in music education, Donna Doherty, Elm City Orchestra Picks New Executive Director, NEW HAVEN REGISTER, Aug. 29, 2005, available at http://www.nhregister.com/articles/2005/08/29/import/15114425.txt, and her immediate predecessor, Michael MacCleod, had previously held several posts with orchestral groups in the United Kingdom prior to coming to New Haven. Lauren Collins-Hughes, Art, Music Mingle in New NHSO Executive Director, NEW HAVEN REGISTER, Oct. 10, 2001, available at http://www.nhregister.com/articles/2001/10/10/import/2473142.txt.

the organization would perform “serious music,” allowing the symphony managers to escape the urge to program for revenue maximization.

In contributing to cover an orchestra’s costs the donors or “guarantors” as they may be called, both ensure the survival of orchestra concerts for themselves and for other people in the community who lack the means to contribute. Donors may be driven to contribute by a variety of factors. Richard Caves describes two of the prime motivations as altruism and “warm glow.” Altruism explains donation in terms of donors receiving utility from knowing that others can enjoy great symphonic music thanks to their donation. The “warm glow” effect describes what people feel upon making a donation and seeing their name displayed in the program booklet.

Another motivation for donations, a variant on the altruism theme, comes from a fear that if symphony orchestras fail today, the art form (at least in terms of live performance) will not be around for future generations to enjoy. It could also stem from a feeling that even if the individual donating never attends a symphony concert or theatrical production, she derives utility from knowing that such organizations exist in her community and that she would be able to attend performances “someday” if she so desires.

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31 *Id.* Of course, many orchestras, the NHSO included, present a separate “pops” series featuring light classical selections, jazz, show tunes, and film scores, however, the traditional symphony series of the serious classical repertoire can still be seen as the *raison d’être* of the modern symphony.

32 This can introduce an additional problem when one considers the power donors exert over the repertoire chosen. The conservative taste of donors may lead to an overproduction of popular “warhorse” symphonies, such as Beethoven and Dvořák’s ninth symphonies, and an underproduction of new music or lesser known works of the masters. *See* HEILBRUN & GRAY, *supra* note 10, at 272-73. Fortunately for fans of contemporary music, outside nonprofit organizations like the League of American Composers and Meet the Composer stand ready to donate funds specifically for the commission and performance of “new music.” *See infra* Part II.B for a discussion of such funding.


34 Dick Netzer, *supra* note 26, at 188.
Donors also receive prestige from being recognized as people willing to contribute to the arts in their community and from gaining membership into an exclusive “club” of donors, which may or may not come with additional perks of club membership such as invitations to events with the musicians or complimentary intermission refreshments.\textsuperscript{35} Some people may also hope that their donation will cause the price of tickets to decrease, thus allowing a broader group of the public access to concerts. However, empirical research into this aspect of giving suggests that increases in donation often go to increasing musician wages rather than to decreasing the prices of tickets.\textsuperscript{36} Apart from the impact of the donation on the arts organization itself, an additional motivation for donations comes from the deductibility of donations for federal income tax purposes because as a result of the deduction, donors do not bear the full financial burden of their donation.

While as discussed above the NHSO was reliant on donations to survive from its inception, the organization also followed the principles mentioned above in terms of becoming a nonprofit by incorporating as a Connecticut Nonstock Corporation (the nonprofit organizational form in Connecticut) in 1929.\textsuperscript{37} The by-laws from 1949 state that it is “organized for the purpose of promoting, fostering, and increasing the knowledge and appreciation of music” and that “said corporation is not organized and shall never be maintained for the pecuniary profit of its members.”\textsuperscript{38} Such an organizational mission explicitly calls out the non-distribution constraint

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{35} Roland Kushner & Arthur E. Kling, \textit{Performing Arts as a Club Good}, 18 J. CULTURAL ECON. 15, 16 (1994).
\item \textsuperscript{36} Mark Lange, William Luksetich, & Phillip Jacobs, \textit{Managerial Objectives of Symphony Orchestras}, 7 MANAGERIAL DECISION ECON. 273, 277 (1986).
\item \textsuperscript{37} Secretary of the State of Connecticut, Commercial Recording Division, \url{http://www.concord-sots.ct.gov/CONCORD/online?sn=InquiryServlet&eid=99} (last visited Dec. 10, 2009).
\item \textsuperscript{38} By-Laws, New Haven Symphony Orchestra, 1949 (on file with the New Haven Colony Historical Society).
\end{enumerate}
\end{footnotesize}
and provides reassurances to music-loving donors that the NHSO is managed by people interested in “art for art’s sake” rather than making money.

The NHSO has also exhibited many of the symptoms described above over its history as it has come to rely increasingly on contributed income rather than earned income for its financial support.\footnote{Baumol and Bowen’s “cost disease” suggests that the earnings gap between earned income and contributed income will only grow over time.\footnote{Data from the early part of the twentieth century indicated a marked decline in the earned income portion of eleven leading orchestras from a high of seventy percent, immediately following World War II to only fifty-six percent in 1963.\footnote{While good data on the decline in earned income among arts organizations since that time are hard to come by, a RAND study indicates a continued decline in the percentage of earned income for symphony orchestras, noting that absent endowment income, in 1997 classical music organizations received only forty-five percent of their revenue from earned income, exclusive of endowment income.}}\footnote{Earned income is defined as revenue from ticket sales or from contracted performances for which the NHSO is paid a flat fee for performance. Contributed income is defined to include all other sources of revenue including individual donations, corporate sponsorships, and government grants.} Baumol and Bowen’s “cost disease” suggests that the earnings gap between earned income and contributed income will only grow over time.\footnote{Baumol & Bowen, supra note 11, at 292-98.} Data from the early part of the twentieth century indicated a marked decline in the earned income portion of eleven leading orchestras from a high of seventy percent, immediately following World War II to only fifty-six percent in 1963.\footnote{Id. at 295.} While good data on the decline in earned income among arts organizations since that time are hard to come by, a RAND study indicates a continued decline in the percentage of earned income for symphony orchestras, noting that absent endowment income, in 1997 classical music organizations received only forty-five percent of their revenue from earned income, exclusive of endowment income.\footnote{McCarthy et al., supra, at 83 (2001).}

The NHSO has long received even less of its revenue through earned income than the national averages reported by Baumol and Bowen or the more recent RAND study on the performing arts would suggest. During the 1939-40 season the NHSO had fifty-two percent earned income,\footnote{NHSO Income Statement for 1939-40 (on file with author). The fifty-two percent earned income figure reported by the NHSO was around the average of the earned income percentage for orchestras similar in size to the NHSO, for which 55.7% of income was “earned” income. Grant & Hettinger, supra note 3, at 88.} while by 1952 that number had dropped to forty-five percent and stayed there.
through the 1960s. This forty-five percent figure compares with a figure of fifty-five to sixty percent reported by Baumol and Bowen for major symphony orchestras during the period. Over the past decade, the NHSO’s earned income averaged thirty-eight percent of total revenue, lower than the forty-five percent national average figure reported by the RAND study for the immediately preceding period. During the past five years, the NHSO’s percentage of earned income has continued to decline, reaching a low of twenty-seven percent for 2008.

From a theoretical standpoint the fact that the NHSO’s earned income has historically been lower than that of larger symphonies makes sense because the NHSO requires the same number of musicians to perform a Beethoven symphony as orchestras in larger markets, however, it has a smaller potential audience over which to spread the costs of performance. The NHSO’s low percentage of earned income can be contrasted with the nearly eighty percent of the receipts of CAPA (the organization which manages Downtown New Haven’s Shubert Theater) that come in the form of earned income. This difference is understandable as the Shubert specializes in presenting Broadway-style musicals, which as an art form have traditionally been operated as for-profit entities that must cover costs through earned income, rather than the nonprofit model used by symphony orchestras and other “high art” performing groups.

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44 NHSO Income Statements from 1953-1969 (on file with the New Haven Colony Historical Society).
45 BAUMOL & BOWEN, supra note 11, at 295.
46 See McCarty et al., supra note 42 at 83.
47 All data on the NHSO’s earned income percentages for the past ten years come from IRS Form 990 for 1998-2008. These forms can be easily accessed online through Guidestar, http://www2.guidestar.org/Home.aspx.
49 Hansmann, supra note 12, at 344-45 (noting that Broadway plays maintain a for-profit model because they have sufficient demand for each show to present enough performances to cover their fixed costs).
B. Sources of Income

Along with the increasing percentage of contributed income in the NHSO budget, the source of that funding has also changed over time. In the early part of the twentieth century, Yale University provided much of the support for the NHSO, contributing not only Woolsey Hall as a performance space free of charge or for very low rents, but also an average of $5,000 per year to the Symphony through the White Foundation. In 1939 this $5,000 gift constituted over fifteen percent of the NHSO’s total income of $33,212.37. By the 1960s this figure had dropped to an average of 3.3 percent of total income.\(^{50}\) Yale has continued to donate $5,000 from the White Foundation each year, which in 2008 comprised only three-tenths of one percent of the NHSO’s nearly $2 million in total receipts.\(^{51}\) Thus even though the NHSO continues to perform its regular season of concerts in Yale’s Woolsey Hall, the University has come to play a much diminished role in the financing of the organization.

Another important, but extremely variable historical funding source for the NHSO was the City of New Haven. The NHSO began receiving funding from the city on an occasional basis during the 1940s.\(^ {52}\) During the era of Mayor Richard Lee (1954-1970), the Symphony sent letters annually to the City looking for funding, and was rewarded with gifts of $500 to $5000 depending on the availability of city funds.\(^ {53}\) Upon Mayor Lee leaving office, the NHSO immediately sent a letter to his successor, Bartholomew Guida, announcing that Mr. Guida, like

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\(^{50}\) NHSO income statements 1960-69, (on file with New Haven Colony Historical Society).

\(^{51}\) Telephone Interview with Natalie Forbes, Executive Director, New Haven Symphony Orchestra (Nov. 12, 2009) [hereinafter Forbes Interview].

\(^{52}\) Letter from New Haven Symphony Orchestra to New Haven Board of Aldermen (Jan. 7, 1945) (on file with New Haven Colony Historical Society).

Mayor Lee previously, would be chairman *ex officio* of the NHSO. Only four months after this welcoming letter, the Symphony again contacted Mayor Guida’s office looking for funds to provide a summer concert on the New Haven Green. While data on support from the City in the 1980s-90s are lacking, the recent financial difficulties of the City of New Haven have meant that for the past few years the city has been unable to donate to the NHSO’s general operating support.

Data on governmental support from either the State of Connecticut or the federal government are scarce for the early years of the NHSO. This is not surprising when one considers that prior to the creation of the National Endowment for the Arts (NEA) in 1965 the federal government had almost no continuous involvement in sponsorship of the arts aside from a few programs in Washington, D.C., and efforts by the State Department to send American performers abroad. One of the goals of the legislation enacting the NEA was to help states, most of which provided no direct support to the arts, start arts agencies. The process of NEA funding has focused on providing grants for special projects rather than supplying support for everyday operations, thus preventing the NEA from becoming a major source of ongoing financial support for arts organizations. The NEA has never been a significant source of revenue for the NHSO. However, the NEA has provided support to the organization in the past year in the form of both a “recovery grant” of $50,000, part of the American Recovery and

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56 Forbes Interview, *supra* note 51.
58 See HEILBRUN & GRAY, *supra* note 10, at 292-297 (explaining the NEA’s grant making procedure and contrasting this process with the ability of state governments to provide general operating support).
Reinvestment Act of 2009,\textsuperscript{59} and a $10,000 “access to artistic excellence” grant for the Connecticut Youth Orchestra Festival, in which NHSO musicians participate in workshops with youth orchestras. The “recovery grant” differs a bit from other NEA grants in that it is designed to prevent grantees from eliminating jobs, rather than to promote a specific artistic project.\textsuperscript{60}

Additional governmental support comes from the State of Connecticut which provides monies through general operating support grants and from the Connecticut Arts Endowment Fund, both of which are administered by the Connecticut Commission on Culture & Tourism. These two sources provide unrestricted support that can be applied to general operating costs, as opposed to the special project focus of NEA funding. The general operating support grants require that the recipient raise an equivalent amount from earned or contributed sources of income and will not exceed ten percent of an organization’s cash operating income.\textsuperscript{61} These grants are highly dependent on the state’s financial health, with the general operating support providing $57,000 to the NHSO last year, which declined to $19,000 this year due to the economic recession, and may decline further based on a recent announcement by Connecticut

\textsuperscript{59} Pub. L. No. 111-5, 23 Stat. 115, 171-172 (2009). The NHSO was awarded one of only four NEA “recovery grants” made in the state of Connecticut and was the only symphony orchestra among Connecticut recipients. For a list of all grantees, see NEA FY 2009 Grant Awards: American Recovery and Reinvestment Act, \url{http://www.arts.gov/grants/recent/09grants/arra09.php} (last visited Dec. 5, 2009).

\textsuperscript{60} Government aid to the arts in a time of recession is not completely without precedent, as from 1936-1939 the Federal Music Program of the Works Progress Administration sponsored Federal Symphony Orchestras throughout the country to employ out-of-work musicians. \textit{GRANT & HETTINGER}, supra note 3, at 205-223.

\textsuperscript{61} \textit{Id.} at 5. The State of Connecticut’s general operating support is awarded based on a three-year competitive grant making cycle. For more information on this program, see Connecticut Commission on Culture and Tourism: General Operating Support for Arts Organizations: FY 2010 Program Guidelines, \url{http://www.cultureandtourism.org/cct/lib/cct/arts_forms/cct_gos_fy10_guidelines.pdf} (last visited Dec. 12, 2009).
Governor M. Jodi Rell of a proposed thirty-five percent reduction in Connecticut Commission on Culture & Tourism grants.\textsuperscript{62} 

The awards provided by the Connecticut Arts Endowment Fund are dependent on the success of an organization’s fundraising efforts from private sources in the year prior to the application for funds, however, unlike the general operating support money that is awarded through a competitive grant-making proposal process, the Connecticut Arts Endowment Fund provides awards to nearly all applicants. The Arts Endowment Fund website reports that “[a]wards are calculated based on a formula designed to reward those organizations that have reported a substantial increase in the amount of private sector contributions received during the prior year. Organizations may apply these funds toward capital expenses, administrative costs, programming, or to build their own endowments.”\textsuperscript{63} The focus on what an organization raised in a previous year can make funding from the Arts Endowment Fund awards extremely sensitive to one-time increases in an organization’s contributions, such as the receipt of a large bequest, which can have a positive effect on the amount of funding received from the Fund in the year following the bequest and a detrimental effect in a later funding cycle.

Given its success in raising $526,000 in the form of individual and foundation/trust donations in FY2008, one might foresee the Arts Endowment Fund becoming a major source of


\textsuperscript{63} See Connecticut Commission on Culture and Tourism, Arts Division, Connecticut Arts Endowment Fund, http://www.cultureandtourism.org/cct/cwp/view.asp?a=2209&q=293766&cctPNavCtr=|43596|#43619 (last visited Dec. 6, 2009). The formula for making awards is governed by Conn. Gen. Stat. § 10-407 which provides for a match of twenty-five percent of donor contributions greater than or equal to $25,000 which do not exceed the amount raised in the prior fiscal year, subject to a maximum match of $250,000. For the portion that does exceed total contributions from the prior year, there is a one hundred percent match, subject to a $1 million cap.
revenue for the Symphony because of the Fund’s award formula based on the level of private donations. However, the Arts Endowment Fund formula also provides that the grants will be reduced on a pro rata basis if the endowment lacks sufficient funds to cover all requests.\textsuperscript{64} In recent years, there have been over $14 million in requests, with only around $750,000 available from endowment earnings to fund such requests. Thus the awards range from $250 to $55,000,\textsuperscript{65} far less than the amount one would expect based on a reading of the statutory formula governing awards, preventing this from becoming a major source of funding for the NHSO. Given the variability inherent in government funding from all levels of government, over the past ten years government support has averaged only 2.2 percent of the NHSO’s total receipts.\textsuperscript{66}

The largest portion of the NHSO’s contributed financial support for the past seventy years has come in the form of donations from individuals. In 1939-40 donations from individual “guarantors” constituted 11.5 percent of the NHSO’s receipts, a figure which rose to twenty-four percent of receipts by 1953 and remained at that level throughout the 1960s.\textsuperscript{67} Such individual donations comprise the mainstay of the NHSO’s financial activity today, with an average of $346,000 (or nearly thirty-four percent of contributed income during the 2006-2008 period) raised through individual donations over the past three years, a figure which rises to over $560,000 if special events are included in the total.\textsuperscript{68}

\textsuperscript{64} \textit{Conn. Gen. Stat.} § 10-407(d) (2008) (“[i]f in any fiscal year the total amount of matching grants to be paid pursuant to the provisions of this section . . . exceed the investment earnings of the Arts Endowment Fund . . . all such matching grants shall be reduced on a pro rata basis.”)

\textsuperscript{65} E-mail from Kathleen DeMeo, Program Manager, Connecticut Arts Endowment Fund, to author (Dec. 15, 2009) (on file with author).

\textsuperscript{66} Information from IRS Form 990, \textit{available at} http://www2.guidestar.org/Home.aspx.

\textsuperscript{67} NHSO income statements 1939-1969 (on file with New Haven Colony Historical Society).

\textsuperscript{68} The New Haven Symphony Orchestra, Audited Financial Statements, FY05-06, FY06-07, FY07-08 (on file with author).
In addition to individual donors, a further source of support for the NHSO has come from corporate sponsorships. Rather than provide outright gifts to the NHSO, businesses and corporations throughout New Haven support the NHSO through sponsorships of specific concerts and grants for special projects. While for FY 2006-2008, corporations provided an average of only $6075 in direct gifts and contributions to the NHSO each year, they were responsible for an average of $160,458 (nearly sixteen percent of contributed income exclusive of special events) in grants or sponsorships, meaning that corporations play a much larger role in sponsoring individual symphony concerts or projects, such as the annual summer concert on the New Haven Green, or a pops performance outside of New Haven, than they do in providing general operating support. Amongst these corporate sponsors are many leading local and national financial institutions, including Webster Bank, Bank of America, Newtown Savings Bank, and Guilford Savings Bank. Furthermore, corporations contributed a nearly equal amount, $150,000, in terms of in-kind sponsorship, largely through media outlets providing free advertising of symphony concerts and events, such as the advertising one hears on local radio stations WSHU and WMNR or reads in the *New Haven Register*. In light of the financial crisis, corporate sponsorships to the NHSO have dropped by forty-five percent over the past year.

Rounding out the list of the NHSO’s major outside financial supporters are foundations and trusts. These include local organizations such as the Community Foundation of Greater New Haven (formerly the New Haven Foundation), which has been a longtime supporter of the

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69 *ROBERTS & COUSINS*, supra note 4, at 91, 93-94.
70 The New Haven Symphony Orchestra, Audited Financial Statements, FY05-06, FY06-07, FY07-08 (on file with author).
71 *Forbes Interview*, supra note 51.
NHSO, being included on Symphony income statements since the 1950s. In October of 2009 the board of the Community Foundation of Greater New Haven announced a $70,000 grant to the Symphony payable in $35,000 installments over the next two years to be used for general operating support. Also included in the category of foundations and trusts are national organizations such as the League of American Orchestras (successor organization to the American Symphony Orchestra League (ASOL)) and Meet the Composer that sponsor specific projects, in much the same way that the NEA provides project grants. For example, the NHSO currently has a $100,000 grant from these two organizations to have composers Jim Hi Kim and Augusta Reed Thomas in residency with the Symphony for two seasons. In terms of unrestricted funds, gifts and grants from foundations and trusts have represented an average of $290,000 (or nearly twenty-nine percent) of contributed income to the NHSO for the past three years. Figure 1 provides a visual of the breakdown of sources of support for the NHSO as averages over the past three years.

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72 Annual income statements from the NHSO (on file with the New Haven Colony Historical Society).
73 The Community Foundation of Greater New Haven, Nonprofits Receive Almost $2.7 Million from Foundation, http://www.cfgnh.org/News/ReadArticle/tabid/312/smid/895/ArticleID/29/reftab/36/Default.aspx (last visited Dec. 12, 2009). The Community Foundation of Greater New Haven may be a relatively stable source of support for the NHSO at least in part due to the fact that many board members of the NHSO also serve on the board of the Community Foundation, see infra Part VI.
74 Meet the Composer, Augusta Reed Thomas and Jin Hi Kim in Residence with the New Haven Symphony Orchestra, http://www.meetthecomposer.org/node/1312 (last visited Dec. 8, 2009).
Figure 1: This amount is exclusive of amounts raised through tickets sold for galas and other special events. Note that these amounts do not add to 100 percent as each year the NHSO adds in some monies provided in previous years for restricted purposes that become available for general purposes in a given year.

In addition to contributions from outside organizations, the NHSO Foundation, the Symphony’s endowment which is organized as a separate Connecticut nonstock corporation, provides another means of support. Endowments became a mechanism of financing symphony orchestras in the early part of the twentieth century when orchestras realized that they could pool bequests into an endowment fund which could provide them with interest payments to cover costs in future years and provide a base of principal which could be drawn on in times of need.75

The NHSO established an endowment in the 1930s, with an initial value of $55,000, or about $851,000 in 2009 dollars.76 This endowment contributed about 2.2 percent of the total income of the NHSO in 1939-40. During the 1950s-60s the endowment appears to have only provided income for the NHSO in about one-half of the years, perhaps suggesting that it was only drawn

75 GRANT & HETTINGER, supra note 3, at 280.
76 ROBERTS & COUSINS, supra note 4, at 48.
on in years where funding from other sources was scarce.\textsuperscript{77} Data on the endowment from the 1970s through 1990s is missing, however in recent years the endowment has come to contribute to the NHSO on a regular basis. Given the recent turmoil in the financial sector, the value of the endowment dropped to $890,000 as of November 2009\textsuperscript{78} from a ten year average of $1,237,609.\textsuperscript{79} Over the past decade the NHSO has implemented an annual strategy of drawing down five percent of a rolling three year average of the endowment’s value, thus averaging $62,000 contributed to the NHSO or an average of 3.2 percent of total income.

A separate source of revenue for the NHSO has been special events such as the annual advertising insert which the Symphony sponsored in the \textit{New Haven Register} until two years ago, several wine tastings, and a Women of Note Luncheon and Fashion Show at the New Haven Country Club.\textsuperscript{80} Over the past decade the NHSO has spent an average of $140,790 per year on such events, generating $158,752 in net income each year, or an average of 8.2 percent of total revenue for the year.\textsuperscript{81} Such functions offer an opportunity for donors to mingle and may fulfill the “warm-glow” motive of donation in which donors derive utility from getting recognition for their contributions.\textsuperscript{82} Such events bring in revenue from corporations advertising in the \textit{Register} supplements and donating items for events, and from individuals who purchase tickets for such events.

\textsuperscript{77} NHSO income statements, 1953-1969 (on file with New Haven Colony Historical Society).
\textsuperscript{78} Forbes Interview, \textit{supra} note 51.
\textsuperscript{80} Forbes Interview, \textit{supra} note 51.
\textsuperscript{81} Expenses and income from NHSO Special Events compiled from a review of lines 9a,b, and c on IRS form 990s filed by the NHSO and available online through Guidestar, http://www2.guidestar.org/ReportOrganization.aspx?ein=06-6000592 (last visited December 2, 2009).
\textsuperscript{82} CAVES, \textit{supra} note 3, at 247 (2000).
C. The World Without Donations

Given the vast array of donations required to keep the NHSO and all other American Symphonies in operation, one interesting thought exercise involves estimating how much the NHSO would have to charge for a ticket if they did not receive outside donations. If the symphony could more effectively price discriminate, what level of ticket prices would be needed to cover its costs?\(^83\) Using data from the 2007-2008 concert season one can compute a basic estimate of the ticket price needed to cover the orchestra’s costs for the season.\(^84\)

The NHSO reported $1.69 million in expenses for the season in question and earned approximately $375,000 from ticket sales. If we assume seven concerts in New Haven with the orchestra’s average Woolsey Hall attendance of 1000\(^85\) and a repeat of each program in Fairfield County with similar attendance figures, given ticket revenue of $375,000, we have an implied ticket price of $26.76 ($375,000/14,000). Without any outside donations, that price would need to increase by nearly $100 per ticket to $121.39 to enable the NHSO to cover its expenses ($1,690,000/14,000). However, as discussed above with regards to price discrimination, ideally the NHSO would be able to determine who among its subscriber base is willing to pay the most for tickets and could charge such people the full amount of his/her willingness to pay. To illustrate this point in the extreme, we can assume that ten percent of the orchestra’s 14,000 annual ticket purchases are made by 200 subscribers who attend all seven concerts in their location and are willing to pay a large premium to hear the concert, while the NHSO continues to

\(^83\) The NHSO engages in some price discrimination, offering ten different pricing levels ranging from $10-$65 for its symphony concerts at Woolsey Hall. However, this form of price discrimination is still subject to the problems discussed in Part IIA, such as the ability of some concertgoers to subvert the price discrimination by purchasing lower-priced tickets in an acoustically superior part of the hall or by the transferability of tickets between purchasers.


\(^85\) Forbes Interview, supra note 51.
charge the average price of $26.76 to all other subscribers. In such a world the orchestra would raise $337,184.10 (12,600 * 26.76) from ninety percent of ticket sales, leaving a shortfall of $1.36 million to be made up from the 1400 “premium” priced tickets. Thus each “premium” ticket would have to be priced at $973 ($1.36 million/1400), making a season subscription to the NHSO cost over $6,811 ($973*7).

The practice of charging premium ticket prices would increase the out-of-pocket expense to donors due to the unavailability of the charitable deduction for someone purchasing an expensive ticket rather than making an equivalent donation. 86 If we assume all of the “premium” ticket purchasers earn incomes that place them in the top bracket for federal income tax purposes (thirty-five percent) 87 each “premium” concert subscription of $6,811 converted to equivalent donation would cost the donor only $4,427 in after tax terms ((1-.35)*$6,811), depriving the federal government of $2,384 in tax revenue. Thus in this simplified world, it would cost a donor $2384 more to support the NHSO solely through ticket purchases rather than deductible donations.

Given the current state of donations to the Symphony in which only eleven non-institutional donations (all of which, with the possible exception of one anonymous donation, are from couples) 88 exceed $5,000, it seems highly unlikely that the symphony could maintain an

86 This raises an interesting point because currently taxpayers purchasing tickets to a fundraising event, such as a Symphony Ball, are able to deduct the portion of the ticket price which exceeds the value of the goods and services they receive in exchange for purchasing the ticket, for example a meal received at the event. See Michael J. Graetz & Deborah H. Schenk, Federal Income Taxation: Principles and Policies 443 (2009). If symphony orchestras were able to better price discriminate and raise all revenue through ticket sales, the cost of the ticket would reflect the true cost of services received and thus would not be deductible, even though by purchasing a “premium” ticket, the patron supports the orchestra in much the same way that she does when she gives a donation.
average price of $26.76 for most tickets while passing the full cost of the symphony on to “premium” ticket purchasers. Other motivations for donations would also disappear with a system of financing solely through ticket sales, as it would be odd to think of a symphony listing the names of those buying more expensive tickets in the concert program such that the purchaser could receive the “warm glow” of seeing their name printed. Such a system would therefore further deprive the ticket buyer of some of the utility obtained by someone making a donation of equivalent value.

Obviously the preceding analysis is over simplified because at least some of the $1.69 million in costs must have been expended for contracted concerts for which the orchestra is paid a flat fee rather than reimbursed through selling tickets. In addition, the NHSO plays more than fourteen total concerts a season if one includes the pops and holiday concerts, which certainly account for some of the costs. Nevertheless, this example serves to illustrate Hansmann’s point that there likely exists no ticket price at which a nonprofit performing group is able to cover its fixed costs solely through ticket sales. This is true for the NHSO unless we believe that the demand for tickets is such that 2,000 people would pay $122 a ticket, or a small group would pay several thousand dollars for a season subscription to allow others to continue to pay an average of $26 per ticket.

III. Musicians’ Union

Like most symphony orchestra musicians in the United States, the NHSO musicians are members of the American Federation of Musicians (AFM) union. The archives of the NHSO

89 See Hansmann, supra note 12, at 343.
90 Already in 1940 unionized musicians were the norm in American orchestras. GRANT & HETTINGER, supra note 3, at 112-13. Alan Jaffe reports that the AFM has long been one of the most active unions in causing labor strife. Alan S. Jaffe, Performing Institutions and the Labor Unions, 5 ART & L. 36, 36
reveal an ongoing tension between the AFM Local 234 of New Haven, the chapter of the AFM of which the NHSO players are members, and the orchestra. Early conflicts included the refusal of the union to allow Yale students to play with the NHSO unless the students first paid the full union dues and a prohibition on the use of “imported musicians,” which at the time meant musicians from Hartford or New York who were not part of the AFM Local 234.

The most important function of the union involves negotiating the contract between the musicians and the symphony orchestra. The hallmark of such contracts is the “service rate,” which is the amount that orchestra players are paid for each service, defined as either a rehearsal or concert of set length, in which they play. The union contracts also typically set a minimum amount of rehearsal time for which the musicians must be paid and indicate an overtime rate for additional rehearsal time. For example during the 1946-47 season, the earliest date for which data are available, union members received $10 per concert service and $18 for the twelve hours of rehearsal for each concert, with overtime specified at $2 per hour following the 12th hour of rehearsal, with a provision that rehearsal time could not fall below twelve hours. The modern

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92 Letter from Judge Carol Hincks, then president of the NHSO, to the Dean of the Yale School of Music, (Oct. 25, 1946) (on file with New Haven Colony Historical Society).
93 Letter from Thomas FitzSimmons, President of AFM Local 234 to John H. Jackson, New Haven Register, NHSO Board Member handling union negotiations (Nov. 11, 1946) (on file with New Haven Colony Historical Society).
94 Email from Cathy Segal, Finance Director, New Haven Symphony Orchestra, to author (Dec. 3, 2009) (on file with author).
contract continues with the concept of paying by “service,” with the modern service consisting of a 2.5 hour rehearsal or a 2.5 hour concert, with the services compensated at $99 each.\footnote{\textit{Id.}}

When discussing the musicians, one must keep in mind that unlike for the “major” orchestras, such as the New York Philharmonic or Boston Symphony Orchestra, in which being a member can be a musician’s full-time job, playing with the NHSO is a part-time position for its members, many of whom supplement their incomes by playing in other professional orchestras or teaching music.\footnote{Forbes Interview, \textit{supra} note 51.} The orchestra consists of seventy “tenured” musicians, each of whom is required to play in four of the seven season concerts.\footnote{\textit{Id.}} With the current “service rate” of $99, a musician earns $495 per concert program, because each concert program includes five “services:” three 2.5 hour rehearsals and two concert performances. Therefore, even if a musician played all seven concerts for the year, he or she would still only earn $3,465 from NHSO concerts.\footnote{\textit{Id.}}

The biggest moment of confrontation with the union came in 1982 when the Local 234 went on strike.\footnote{“Musicians Reject Pact, Talks Break Down,” \textit{NEW HAVEN REGISTER}, Oct. 31, 1982, at B4.} The strike laid bare the economics of orchestras as the union demanded a longer season, which would consequently lead to more services and higher earnings for the union members and greater expenses for the NHSO.\footnote{The demand for longer seasons leading to more services has long been a demand of symphony orchestra unions. \textit{See} GRANT \& HETTINGER, \textit{supra} note 3, at 169; Jaffe, \textit{supra} note 90 at 37; Lunden, \textit{supra} note 90 at 19.} The NHSO published an appeal to the New
Haven community, noting that the 1981-82 season had ended with a $182,000 deficit and that a longer season was untenable because “as with most orchestras . . . the more we perform, the more money we lose.”\textsuperscript{101} While the strike ended in time to salvage the remainder of the season without the orchestra having to add additional concerts,\textsuperscript{102} the NHSO management made clear to all that by adding additional concerts, the NHSO would have to seek more donations to cover the costs of the concerts because of its inability to cover costs through ticket sales.

While one might think that orchestra musicians would want to get as much exposure as possible for their playing, the history of the union’s reactions to attempts by the NHSO to market its playing through recordings or videotaped advertisements suggest a suspicion on the part of the union that such efforts could lead to a decrease in demand for their concerts. For example, in the 1960s the NHSO struggled with the union concerning the recording of rehearsals for study purposes. Finally in 1969 the Local 234 agreed to allow taping of rehearsals for study, but refused to allow any recordings of the NHSO to be used on noncommercial Yale radio stations.\textsuperscript{103} Today, the NHSO broadcasts its concerts on WMNR fine arts radio, but once again the union imposes restrictions by allowing only one delayed broadcast of each program.\textsuperscript{104} In an extreme example of the orchestra’s limitations on rebroadcast, only one year before the 1982 strike, the NHSO attempted to broadcast its annual concert of Handel’s \textit{Messiah} via closed circuit television at Yale-New Haven Hospital and the Hospital of St. Raphael. In so doing, the NHSO had to reach an agreement with the Union that the concert would be broadcast at the

\textsuperscript{102} Letter from AFM Local 234 to AFM National explaining end of strike (Nov. 7, 1982) (on file with New Haven Colony Historical Society).
\textsuperscript{103} Letter AFM 234 to President of the NHSO (Feb. 23, 1969) (on file with New Haven Colony Historical Society).
\textsuperscript{104} Forbes Interview, \textit{supra} note 51.
hospitals on only two specific dates and times.105 Such restrictions seem premised on a theory that if the hospital broadcast the performance multiple times, it would reduce the demand of the New Haven public for future live performances of Messiah. This seems unrealistic when one considers that the broadcasts at the hospital occurred during the week of Christmas and New Years, thus after the NHSO’s Messiah performances for the season and nearly a year before the next season of performances. Many of the people viewing the performance would be hospital inpatients unlikely to get out of their beds to attend a live performance. Perhaps if more people viewed the performance at the hospital, they would be moved to attend future NHSO performances.

A similar conflict with the union continues today at a time when the NHSO has attempted to take advantage of the fact that the Beinecke Library at Yale University, located a few steps from the NHSO’s home performance venue at Yale’s Woolsey Hall, possesses nearly all of the original scores of the works of twentieth century English composer William Walton. The NHSO’s conductor, William Boughton, is a leading interpreter of the works of Walton and consequently has started “The Walton Project” to present Walton’s works at NHSO concerts over the next three years.106 As part of “The Walton Project,” the NHSO will produce recordings on the NIMBUS label of Walton’s work. However, negotiating this project with the AFM presented a challenge for the Symphony due to the restrictions on recording imposed by the union.107 The NHSO was able to negotiate a “Limited Pressing Agreement” with the national

105 Letter from Catherine Lacny, executive manager of the NHSO, to the AFM 234 indicating the times at which broadcasts would take place (Dec. 14, 1981) (on file with New Haven Colony Historical Society).
107 Forbes Interview, supra note 51.
AFM for this project.\textsuperscript{108} Details of such an agreement include limiting the number of copies produced of the recording to 10,000, requiring that members of the symphony who do not play on the recording receive two-thirds of the pay received by those who do play in the recording, specifying that musicians be paid at their standard hourly rate and that a maximum of ten minutes of music from each hour of recording may be used in the finished product, and that the orchestra make a contribution to the AFM Pension Fund equal to ten percent of the Limited Pressing scale wages earned by the musicians.\textsuperscript{109}

The effect of restrictions like the requirement that only 10 minutes be used for each hour recorded and that non-playing musicians receive payments serves to increase the fixed costs of producing a recording, while the restriction of 10,000 copies reduces the number of recordings over which the high fixed costs can be spread. Thus even when orchestras find a way to harness technology, something that at least some authors suggest could reduce the “cost disease” to which orchestras are subject,\textsuperscript{110} the union restrictions reinforce the cost disease by making the recording artificially expensive. The restrictions on recording appear left over from the days when classical recordings of the great conductors like Arturo Toscanini and Leopold Stokowski were revenue producing items for major orchestras, rather than an extension of the normal model of orchestra finance in which the recording is paid for by donations and outside sponsorships.\textsuperscript{111} The recording on the NIMBUS label produced by the NHSO is being paid for in part out of

\textsuperscript{108} Id.
\textsuperscript{110} See Cowen, supra note 18, at 208-209.
\textsuperscript{111} For a brief overview of the history of symphony orchestra recordings and how union rules have led to the decline of the classical recording industry in the United States, see Barrymore Laurence Scherer, \textit{Master of their Masters}, WALL ST. J., Jul. 21, 2005, at D8.
funding from Yale’s Beinecke Library and the Whitney Center, with the remainder underwritten by the NHSO. The need of additional donations for production of a recording indicates the flaw of treating a modern orchestral recording as if it is the source of significant revenue which the union must attempt to capture for its members.

IV. Tax

From a legal perspective, another interesting chapter of the NHSO’s history involves the attempts by the organization to comply with both state and federal tax laws. The NHSO existed prior to the institution of the Federal Income Tax in 1913 and thus had to navigate the beginnings of the modern income tax system. As the tax system continued to develop, three tax questions consumed time of the NHSO staff and its attorneys from the 1940s to the 1960s: the federal admissions and dues tax, the federal income tax exemption for educational organizations, and the exemption of religious and charitable organizations from Connecticut sales tax.

A. Federal Admissions Tax

The federal tax on admissions and dues had a major impact on the NHSO. The Revenue Act of 1924 provided for “a tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place . . . including admission by season ticket or subscription to be paid by the person paying for such admission.” Fortunately for the NHSO and other symphony orchestras, this tax expressly exempted “organizations conducted for the sole purpose of maintaining symphony orchestras and receiving substantial support from voluntary contributions . . .”

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112 GRAETZ & SCHENK, supra note 86, at 7-8 (2009) (discussing the birth of the modern federal income taxation system).
114 Revenue Act of 1924, § 500(b)(1)(A).
In an effort to raise money for the war effort, the Revenue Act of 1941 ended the exemption for symphony orchestras and other organizations exempted by the 1924 act.\textsuperscript{115} Seeking clarification on this matter, the NHSO wrote to the Bureau of Internal Revenue (as the Internal Revenue Service was known prior to 1953) inquiring as to whether the 1941 law would require them to collect the admissions tax because the Symphony was not a profit-seeking entity selling tickets. The Bureau responded in the affirmative, stating that the NHSO must collect a tax of ten cents for every $1.00 in ticket price, including on sales of subscription tickets.\textsuperscript{116} Such a change in the tax laws was detrimental to the finances of the NHSO in that suddenly the organization had to give ten percent of its earned revenue from ticket sales to the federal government to pay the tax. The tax became an even larger burden in 1944, following an increase in the tax to “1 cent for each 5 cents or major fraction thereof” in the price of admission.\textsuperscript{117}

Following World War II, the admissions tax remained in effect for symphony orchestras and other institutions that had been previously exempted from the tax. At this point, the NHSO began to lobby for the end of the admissions tax and found a sympathetic ear in the form of Congressmen Albert Morano of Connecticut’s Fourth Congressional District; a district including

\begin{footnotesize}
\textsuperscript{116} Undated response from D. S. Bliss of the Office of the Commissioner of Internal Revenue to NHSO regarding the symphony’s letter of July 1, 1942, inquiring as to the correct amount of admissions tax to be charged for ticket sales (on file with New Haven Colony Historical Society). The interpretation that following the Revenue Act of 1941 the nonprofit nature of an organization had no bearing on the imposition of the admissions tax was later clarified by the United States Supreme Court. Wilmette Park Dist. v. Campbell, 338 U.S. 411, 416 (1949) (holding that whether an organization operates as a nonprofit makes no difference for the imposition of the admissions tax because Congress had previously carved out specific exemptions from the tax and thus could easily have exempted all nonprofit organizations from the tax had it wished to do so).
\end{footnotesize}
parts of New Haven County, though not the City of New Haven itself. Congressman Morano introduced H.R. 2524 in 1951 to restore the exemption for symphony orchestras and also add an exemption for operas.\textsuperscript{118} This legislation became law in October 1951, and went into effect on November 1 of that same year.\textsuperscript{119} Unfortunately for the NHSO and other symphony orchestras, the failure of the legislation to go into effect until November 1 created a difficulty in that subscription tickets for concerts had already been sold for the 1951-52 season, and due to uncertainty regarding when the legislation restoring the exemption would pass, such organizations had collected the tax amount in the sale of subscription tickets. The American Symphony Orchestra League (ASOL), the trade organization of symphony orchestras, issued a memorandum to its members on December 1, 1951, advising smaller orchestras to send a letter to their subscribers explaining the passage of the law and asking that the subscribers allow the orchestra to keep the tax pro-rated for the post-November 1 concerts as a donation, though giving subscribers the option to request a refund of the amount if they so desired.\textsuperscript{120} The NHSO sent such a letter to its subscribers on December 3, 1951.\textsuperscript{121}

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\textbf{118} 97 CONG. REC. 1182 (1951). \\
\textbf{119} Revenue Act of 1951, Pub. L. No. 82-183, § 402, 65 Stat. 452, 519. This exemption was placed under the heading “certain religious, educational, or charitable entertainments, etc.” and provided exemption for “admissions all the proceeds of which inure exclusively to the benefit of . . . (iv) a society or organization conducted for the sole purpose of maintaining symphony orchestras or operas and receiving substantial support from voluntary contributions.” The addition of opera to the exemption, an art form not included in the exemptions in existence prior to World War II, may reflect the decline of light opera and operetta as a form of popular entertainment and the consequent move of opera into the realm of “high art” presented by nonprofit institutions requiring donations to cover their costs. For those wondering why they have never heard of the federal admissions tax, the tax was repealed in its entirety by the Excise Tax Reduction Act of 1965, Pub. L. No. 89-44, § 301, 79 Stat. 136, 145. \\
\textbf{120} Memorandum from the American Symphony Orchestra League to members (Dec. 1, 1951) (on file with New Haven Colony Historical Society). In an example of the complications often encountered with the mechanics of the tax law, for “major” symphonies (not defined in the memo) the ASOL noted that some local internal revenue officers refused to allow pro-ration of season tickets, noting that the tax was due on any sales made before November 1, which included all sales of subscription tickets. However, the IRS would allow such symphonies to cancel the ticket sales, notify the affected subscribers, ask such
The summer of 1952 presented additional difficulties with regards to the federal admissions tax because at the time the Symphony sponsored a series of summer “pops” concerts at the Yale Bowl in partnership with the Junior Chamber of Commerce. The receipts from these concerts were shared between the NHSO and the Junior Chamber, introducing a problem for exemption from the admissions tax because this arrangement allowed the proceeds of tickets to inure to an organization that was not formed “for the sole purpose of maintaining a symphony,” as required by statute. In order to avoid this problem, the NHSO restructured its arrangement with the Junior Chamber such that rather than giving the Chamber a percentage of ticket proceeds each summer, the NHSO would pay them a flat fee at the beginning of the summer for their services in promoting the concerts. After being informed of this change, the Bureau sent a telegram to the NHSO explaining that the summer concerts would qualify for this exemption given the new arrangement with the Junior Chamber.

**B. Income Tax Deductibility**

The admissions tax was not the only tax issue with which the NHSO had to deal during the 1940s-50s. While the NHSO operated without a profit from sales of tickets and was subscribers to repurchase tickets for the remainder of the season, and physically reprint and send new tickets.

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121 Letter from New Haven Symphony Orchestra to subscribers (Dec. 3, 1951) (on file with New Haven Colony Historical Society). This same letter notes that base ticket prices for future concerts would remain the same, with the amount that would have gone to pay the tax now available as revenue to the orchestras.

122 Letter from Herb S. MacDonald, President of the NHSO, to the Collector of Internal Revenue (July 17, 1952) (outlining attempts to obtain an exemption for the NHSO pops concerts and the subsequent denial of the exemption due to the profit sharing arrangement) (on file with New Haven Colony Historical Society). The original telegram from the Bureau of Internal Revenue denying the exemption has apparently been lost.

123 Letter from NHSO to the Bureau of Internal Revenue (July 29, 1952) (on file with New Haven Colony Historical Society) (explaining new arrangement with the Junior Chamber).

124 Telegram from Bureau of Internal Revenue to NHSO granting admissions tax exemption for summer pops concerts (Sept. 19, 1952) (on file with New Haven Colony Historical Society).
incorporated as a Connecticut nonstock corporation in 1929, the organization operated without exemption from federal income taxation until 1952. The absence of profits meant that the orchestra itself did not have to worry about paying income taxes; however the lack of an official exemption also meant an inability to receive tax deductible donations, an element of the federal income tax since the War Revenue Act of 1917. A letter of July 8, 1949 from Katherine Harvey, at the time president of the NHSO, to John Ecklund, attorney for the NHSO at the law firm of Wiggin & Dana and later treasurer of Yale University, inquired as to whether he could help the NHSO apply for a tax exemption with the federal government to ensure “that our large contributions can be safely deducted.” It is unclear if prior to this point in time donors were not taking income tax deductions for their contributions (something that would be unimaginable to today’s major orchestra donors, steeped in the tradition of deductible charitable donations), but the existence of this letter suggests that the ability to deduct contributions from federal income tax was becoming an important motivation behind the donations of at least a few large contributors. Nevertheless, after this letter in summer 1949, the NHSO did not actually apply for

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126 War Revenue Act of 1917, Pub. L. No. 65-50, §1201(2), 40 Stat. 300, 330 (allowing deduction for “contribution or gifts . . . to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes . . . no part of the net income of which inures to any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer’s taxable net income . . . ”).
127 Letter from Katherine F. Harvey (Mrs. Samuel Harvey) to John Ecklund (July 8, 1949) (on file with New Haven Colony Historical Society).
the exemption until April 9, 1951, though letters between John Ecklund and Mrs. Harvey suggest that the topic was discussed at NHSO board meetings throughout 1950.\textsuperscript{129}

The fact that the NHSO moved so slowly to seek the tax exemption may indicate that the tax deductibility of donations was not essential for the orchestra to continue to receive support, but merely provided an extra incentive for donors. The exemption itself was finally received in early 1952 specifying that the Bureau of Internal Revenue determined the NHSO to be a tax deductible organization because it was organized and operated exclusively for “educational purposes,” and as a result its donors would be able to deduct: 1.) contributions from income tax; 2.) bequests, legacies, devises or transfers from estate tax; and 3.) gifts of property from gift tax.\textsuperscript{130} The NHSO’s designation as a tax exempt entity due to its educational purpose came seven years prior to the promulgation of the Treasury Regulation providing symphony orchestras as an example of an organization organized for educational purposes.\textsuperscript{131}

In a sign of the important role the deductibility for federal income tax purposes of donations came to play in the solicitation of donations only fifteen years following the initial grant of the symphony’s tax exemption, the federal income tax again became a concern of the NHSO in 1967 whilst the organization was attempting to raise $500,000 to match a grant from the Ford

\textsuperscript{128} Letter from John Ecklund, attorney at Wiggin & Dana, to Katherine Harvey (Apr. 9, 1951) (explaining that application for income tax exemption was mailed that same day) (on file with New Haven Colony Historical Society).

\textsuperscript{129} See letters from John Ecklund to Mrs. Harvey of May 2, 1950; May 15, 1950; June 15, 1950 (on file with New Haven Colony Historical Society).

\textsuperscript{130} Letter from the U.S. Treasury Department to the NHSO (Jan. 8, 1952) (on file with New Haven Colony Historical Society). In an interesting sign of the times, even though the letter is addressed c/o Katherine Harvey, the opening salutation reads “Gentlemen.”

The NHSO’s attorney, Bruce Lewellyn, wrote to the IRS requesting that the Service issue an opinion that the NHSO constituted a “publicly supported” organization such that taxpayers donating to the organization could take an additional ten percent deduction from adjusted gross income (AGI), per Internal Revenue Code section 170(b)(1)(A) on top of the twenty percent deduction from AGI such taxpayers could generally take pursuant to section 170(b)(1)(B). In his memorandum to the IRS, Lewellyn explained that in order to receive $500,000 in Ford Foundation funding, the NHSO would need to raise $500,000 in matching private support over the next five years. In order to raise such a large amount, the NHSO foresaw having to raise a substantial amount from a relatively small group of donors, for some of whom the prospect of an additional ten percent deduction of AGI would be very important in the decision to make a gift.

As interpreted by the Treasury, the additional ten percent deduction available for donations to “publicly supported” organizations was available only if the organization passed either a “mechanical test” or a “facts and circumstances test” to prove its publicly supported nature.

As part of the “mechanical test” an organization had to receive greater than 33 1/3 percent of its total support from governmental units or donations made directly or indirectly by the general public in the four previous years. However, the regulations governing the “mechanical test” go on to provided that the 33 1/3 percent figure only included donations from an individual, trust, estate, or charitable organization.

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132 The Ford Foundation created an $80.2 million grant program for symphony orchestras in 1965. This was the largest grant program ever created in the arts and was designed to help orchestras build their endowments and offer higher wages to musicians. HEILBRUN & GRAY, supra note 10, at 36.
135 Lewellyn Memorandum, supra note 134.
or corporation to the extent that the donation does not exceed one percent of the organization’s total support over the four year period.\textsuperscript{138} Given the NHSO’s belief that raising the $500,000 needed to match the Ford Foundation grant would require sizeable gifts from a small number of donors, the symphony feared that a few individual gifts could comprise more than one percent of the NHSO’s total support and cause the total support figure to be so high that even with all of the organization’s smaller donations combined, such donations would not comprise 33 1/3 percent of the organization’s total support. This would of course present the irony that some potentially large donors would make a smaller gift out of a fear that a large gift could cause the donor to lose some of his or her own tax deduction.

Due to the possibility of failing the “mechanical test,” Lewellyn argued that the NHSO qualified as a “publicly supported” organization under the alternative “facts and circumstances” test.\textsuperscript{139} Lewellyn explained that the NHSO met the “facts and circumstances” test because it:

- Received the support from a “representative number” of community members
- Made a bona fide solicitation for broad-based support
- Had a substantial number of members (612), defined as those contributing over $5.00 annually
- Had a governing body representative of the interests and views of the members
- Had a board of directors whose interests were not those of a small number of the organization’s members
- Made available financial reports

\textsuperscript{138} Id.
\textsuperscript{139} Treas. Reg. § 1.170-2(b)(5)(iii)(c) (1966).
• Provided performances open to the public at “the lowest prices consistent with high standards of musicianship.”  

Additionally, the memo seeking the “publicly supported organization” determination explained that “members of the Board of Directors are broadly representative of interests and views of the New Haven public.” While the IRS responded to Lewellyn’s memo by granting the “publicly supported” designation on the basis of the facts put forward, after reading the section on board membership, infra one may question whether the NHSO really receives broad-based support representative of the community or has a board of directors representative of interests and views of the members. The elite group of New Haveners who held the presidency of the NHSO may have led one to question exactly how representative the Board of Directors were of the views of ordinary New Haveners, many of whom may not have even known of the existence of the NHSO.

C. Sales Tax Exemption

A final wrinkle in the NHSO’s tax history concerns the difficulty the NHSO encountered in attempting to obtain an exemption from sales and use taxes from the State of Connecticut by claiming to be organized for a charitable purpose. In its letter denying the exemption, the State explained that the NHSO failed to qualify as an educational or charitable organization because for taxation purposes education is construed “in the more restricted sense of offering

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140 Lewellyn Memorandum, supra note 134. The desire of the orchestra to remain a “publicly supported” organization may provide another incentive for it to price tickets below the revenue maximizing point so that it can demonstrate that it makes performances available to the general public.

141 Letter from Commissioner of Internal Revenue to Bruce Lewellyn (July 16, 1967) (on file with New Haven Colony Historical Society).


systematic instruction and training for the young in the preparation for the work of life.”

Thus while the exemption statute contained no explicit reference to exemptions for organizations with educational purposes, the Department of Revenue apparently read such an exemption into the statute because the denial letter implies that the NHSO could have received a deduction if it was an educational institution along more traditional lines.

The State of Connecticut also based its denial on the 1949 amendments to the NHSO’s articles of association which provided that “no substantial part of the activities of said Corporation shall consist of the carrying on of propaganda, or otherwise attempting, to influence legislation . . .” The state reasoned that the potential use of funds for lobbying implied that the NHSO was not organized exclusively for charitable or religious purposes, as required for the exemption.

Thirteen years later, the NHSO again sought an exemption from sales and use tax after learning that the Long Wharf Theater had been able to gain such an exemption. This time the NHSO applied for exemption on the basis of Conn. Gen. Stat. § 12-412(h), which contained language identical to its predecessor, §2096(h), exempting “charitable and religious” organizations from the tax. The NHSO included in its application for exemption the same 1949 amendments to the articles of association contained in the earlier, unsuccessful application.

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144 Masonic Bldg. Association of Stamford v. Stamford, 174 A. 301, 303 (Conn. 1934). Interestingly, Masonic Building Association dealt with exemption from property tax for which an educational purpose was grounds for exemption and not with sales and use tax, for which only “charitable and religious organizations” were exempted. Thus it is unclear why the State chose to cite this case in its letter, except that perhaps there was no sales tax case directly on point at the time.


147 Id.
This time the NHSO received a letter only one week later from the State of Connecticut granting the exemption, with no explanation for this result.\(^{148}\) Being that the NHSO’s articles of association had not changed, the statutory text remained the same, and that the NHSO was exempt from federal income taxation both in 1954 and in 1967, it remains unclear why the NHSO received different results from its two application attempts.\(^{149}\) This change may simply reflect a somewhat arbitrary decision making process on the part of state department of revenue officials.

V. Regionalization

An additional theme observed throughout the history of the New Haven Symphony Orchestra is the tension between being an orchestra for the City of New Haven versus being an orchestra for the entire Southern Connecticut Region. At the time of the NHSO’s founding in 1894, New Haven was the dominant population center in the region, however by the 1950s the city of New Haven had fallen to sixty-two percent of the population of the metropolitan area,\(^{150}\) a figure which would keep dropping to its present low of fifteen percent of the County’s population.\(^{151}\) With this shift in population, the NHSO was forced to think about how to capture audience members, donors, and funding from outside the New Haven city line.

\(^{149}\) Current Connecticut law makes it clear that the NHSO and all other 501(c)(3) organizations are exempt from state sales and use tax under Conn. Gen. Stat. § 12-412(8) exempting “[s]ales of tangible personal property to any organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 . . . and that the United States Treasury Department has expressly determined, by letter, to be an organization that is described in Section 501(c)(3) or (13) of said Internal Revenue Code.”
\(^{151}\) Estimates based on U.S. Census Data. [http://factfinder.census.gov/servlet/SAFFPopulation?_event=Search&_name=new+haven&_state=&_cou](http://factfinder.census.gov/servlet/SAFFPopulation?_event=Search&_name=new+haven&_state=&_cou)
A. The Lee Era

As discussed in the section on funding supra, the NHSO has solicited contributions from the City of New Haven throughout its history. During the 1950s, Mayor Richard Lee began to see the Symphony as a resource for the City which was worthy of support from communities around the region. In a letter dated July 1, 1957, addressed to the selectmen of municipalities bordering New Haven, Mayor Lee lamented that while residents of neighboring communities showed a great deal of “moral support” for the symphony, the level of financial support from the surrounding cities failed to keep corresponding pace.\textsuperscript{152} The Symphony may have provided a mechanism for Mayor Lee to increase his sense of importance as a regional leader by allowing him to seek funds for his city’s Symphony while also allowing him to see himself and his administration as necessary for the Symphony’s continued success. Each year during the 1950s and 1960s, the NHSO sent yet another letter to Mayor Lee explaining the basic economics of symphony orchestras; unable to cover its costs due to an inability to raise sufficient funds through the cost of concert tickets, the NHSO appealed to the City once again to contribute funds to cover its operating deficit. In spite of the requests from Mayor Lee to the region for support, the Symphony’s income statements for the 1950s-1960s do not indicate any municipal support from surrounding communities.\textsuperscript{153}

The regionalization of New Haven also played out in the attempt to build a new concert hall specifically for the NHSO. In the early 1960s, Helen Heffron Roberts, a pioneer in the field of ethnomusicology and longtime benefactor of the NHSO who would go on to coauthor A

\textsuperscript{152} Letter from Richard Lee to selectmen of neighboring communities (Jul. 1, 1957) (on file with New Haven Colony Historical Society).
History of the New Haven Symphony Orchestra, 1894-1969, had begun discussions with the NHSO about leaving a large bequest to provide for the construction of a new concert hall.\(^{154}\) Evidence of the balance of power between New Haven and the surrounding communities appears in this process, as the city of Wallingford, located thirteen miles to the north of New Haven, began to consider building a municipal auditorium and was hopeful that the NHSO might play there. Dismissing the ability of a community like Wallingford to construct a concert hall suitable for performance by the Symphony, Yale professor Beekman Cannon, then president of the NHSO, wrote in 1961 that “the whole conception of a Hall would be such an enormous asset to the City of New Haven that I am sure whatever happens at Wallingford will be regarded as irrelevant!”\(^{155}\) This sentence reflects the sentiment of the time when one considers that during this same era, Mayor Lee focused on creating opportunities for suburbanites to easily travel downtown via the construction of the Route 34 Oak Street Connector and on creating destinations for the suburban consumer, with the opening of the new Edward Malley’s and Macy’s department stores and the Chapel Square Mall.\(^{156}\) A concert hall for the NHSO would fit well with the goal of ensuring that the central city remains a destination for suburban consumers and their pocketbooks.

\(^{154}\) At the outset of discussions, Helen Roberts wished to remain an anonymous donor, as evidenced by Harold Kendrick’s letter of March 21, 1962 to “Hub” (apparently another board member) concerning discussions with Mayor Lee about acquiring property for the hall (on file with New Haven Colony Historical Society). Helen Roberts apparently did not intend to remain anonymous once the hall was built because according to sources published posthumously she intended the hall to be named in honor of her father. She even had a memorial plaque for the hall made prior to her death in 1985, which was subsequently given to the NHSO. Charlotte J. Frisbie, Helen Heffron Roberts (1888-1985): A Tribute, 33 ETHNOMUSICOLGY 97, 106 (1989).

\(^{155}\) Letter from Beekman Cannon to Helen Heffron Roberts (on file with New Haven Colony Historical Society).

\(^{156}\) For discussion of Mayor Lee’s attempt to redevelop downtown into a shopping destination via the Chapel Square Mall and Route 34 Connector, see RAYMOND E. WOLFINGER, THE POLITICS OF PROGRESS 267-72, 298-310(1974); and ALLAN R. TALBOT, THE MAYOR’S GAME: RICHARD LEE OF NEW HAVEN AND THE POLITICS OF CHANGE 117-135 (1967).
At the same time that Mayor Lee pursued redevelopment of the downtown retail scene, the idea of creating a new arts district in downtown New Haven began to emerge. In a 1962 letter, Harold Kendrick, executive director of the NHSO, mentions planning with the Mayor to purchase land from the city, with an agreement to build a hall within five to ten years. Around this same time, Kendrick began corresponding with symphony orchestras around the country, investigating how such organizations had financed their new symphony halls along with the specifications of the halls they constructed.

Kendrick’s letters reveal a fixation on the question of property tax exemption for any new hall, as it appears that from preliminary discussions with the City of New Haven, the city proposed levying property taxes on the hall, which seems odd, given the history of property tax during this period. In a 1965 letter to the manager of Lincoln Center in New York, Kendrick noted that the City of New Haven was considering construction of a new “cultural center” along the lines of Lincoln Center, and inquired as to how Lincoln Center was able to obtain its property tax exemption. Records of correspondence between John Ecklund and Beekman Cannon

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158 These letters include correspondence dated throughout the summer of 1961 to the Pittsburgh, Detroit, and Houston Symphonies and the University of Connecticut, inquiring as to hall specifications and financing. One cannot help but note the focus on cities substantially larger than New Haven. In the replies from these institutions, no one questioned Kendrick’s focus on cities much larger than his own. The fact that under Mayor Lee’s leadership, the City of New Haven was the national leader in receipt of federal funds per capita for urban renewal, ALAN R. TALBOT, supra note 156, at 159-161 (1967), may have added to Kendrick’s belief that he could play in the “major leagues” of symphony hall construction. From an artistic perspective, the roster of superstar artists the NHSO was able to bring to New Haven as guest soloists during this time period, including Van Cliburn, Artur Rubinstein, Mstislav Rostropovich, Isaac Stern, and Dame Myra Hess, ROBERTS & COUSINS, supra note 4, at 137-140 (1969), along with the invitation of the NHSO to be the first guest orchestra invited to play at Lincoln Center in 1963, id. at 97-98, may also have added to Kendrick’s belief that New Haven could support a symphony hall project on the scale of those undertaken in cities many times the size of New Haven.
159 Letter from Harold Kendrick to William Schuman, Manager of Lincoln Center (Mar. 5, 1965) (on file with New Haven Colony Historical Society). In his response, dated March 22, 1965 (on file with New
indicate that discussions between Ecklund and Mayor Lee on the property tax issue suggested that the Mayor would be willing to attempt to obtain the passage of a special property tax exemption bill for the symphony hall in the Connecticut General Assembly. Ecklund explained that the Mayor would ideally like some kind of token payment from the NHSO, though he would be willing to forego this if it would be impossible, and promised that the City would continue to make an annual contribution to the NHSO’s operating budget.\(^\text{160}\) In addition, it is unclear whether the NHSO would have required a special property tax exemption because by 1960 Conn. Gen. Stat. § 12-81(7) already provided an exemption for property used for “scientific, educational, literary, historical, or charitable purposes.”\(^\text{161}\) As an organization exempt from federal income tax because of its organization for an “educational purposes,”\(^\text{162}\) it seems the NHSO would have had a strong argument in favor of tax exemption. This argument would appear even stronger considering the Connecticut courts’ increasing liberalism in construing tax

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\(^\text{160}\) Letter from John Ecklund to Beekman C. Cannon (May 13, 1965) (on file with New Haven Colony Historical Society). Edgar B. Young, Executive Vice President of Lincoln Center explained that the New York Legislature passed a special property tax exemption designed to apply exclusively to Lincoln Center. Section 427 of New York Real Property Law, passed in 1960, provides an exemption for “[r]eal property owned by any corporation whose certificate of incorporation is approved by the commissioner of education and which is organized to sustain, encourage and promote musical and performing art, including opera, concerts, ballet, drama and other forms of artistic expression, and to educate the general public in good musical and performing art, provided the land was acquired by a municipal corporation by purchase or condemnation and sold at public auction to such corporation . . . .” N.Y. REAL PROP. TAX § 427 (McKinney 2009). According to Young, at the time of its passage, this section was conveniently drafted to apply only to the soon-to-open Lincoln Center.

\(^\text{161}\) CONN. GEN. STAT. ANN. § 12-81(7) (West 1960).

\(^\text{162}\) See, Tax Exemption Letter from the Commissioner of Internal Revenue to the NHSO c/o Katherine F. Harvey, Jan. 8, 1952 (on file with the New Haven Colony Historical Society).
exemptions for educational purposes at the time.\textsuperscript{163} Therefore, Mayor Lee’s support of a special exemption for a concert hall seems to be borne out of an abundance of caution that a future mayor, less able to obtain an influx of federal money to finance city projects, may turn to taxing the arts center as a source of revenue.

As the NHSO began planning for a new hall, the City of New Haven started planning for an arts center along Audubon Street and the Redevelopment Agency purchased properties in this area to sell to arts organizations, with the block later becoming home to the Neighborhood Music School and Creative Arts Workshop.\textsuperscript{164} The new arts district on Audubon seemed the perfect place for a concert hall, with Beekman Cannon expressing his desire in a 1967 letter to the President of the Arts Council of New Haven that the NHSO be included in the plans for the Audubon Arts Center while property still remained in the district.\textsuperscript{165} While the available correspondence on the site selection for a new Symphony Hall becomes scarce after 1967, in \textit{A History of the New Haven Symphony Orchestra} published only two years after Beekman Cannon’s letter extolling the necessity of a space for the NHSO at Audubon, the authors make an almost offhand comment that the City hoped the Symphony would choose an Audubon site for its new hall, however preliminary review by architects found the space unsuitable.\textsuperscript{166} It is

\textsuperscript{163} See Arnold Coll. for Hygiene and Physical Ed. v. Town of Milford, 128 A.2d 537, 539 (Conn. 1957) ("It is well established that the exemption granted is not limited to buildings used for educational purposes in the limited and restricted sense.").

\textsuperscript{164} The development of the Audubon Street Arts District is outlined in Carol Martens, Audubon Street: A Case Study in the Art of Urban Renewal, Spring 2004 (unpublished manuscript, on file with the New Haven Colony Historical Society). See also William E. Keish, Jr. \textit{City Acting on Culture Center Start}, NEW HAVEN REGISTER, July 29, 1965 at 1 (mentioning the initial plans for a cultural center on Audubon Street, including locations for the Neighborhood Music School and Long Wharf Theater and noting that “[i]t is hoped that the New Haven Symphony will also participate in the center in the near future.”).

\textsuperscript{165} Letter from Beekman Cannon to G. Harold Welch, Jr., President of the Arts Council of New Haven, March 15, 1967 (on file with New Haven Colony Historical Society).

\textsuperscript{166} \textsc{Helen H. Roberts} & \textsc{Doris Cousins}, \textit{A History of the New Haven Symphony Orchestra}, 1894-1969, at 100 (1969). Despite the failure of the NHSO to build a concert hall in the Audubon Arts
questionable how much trust should be placed in this account because as will become clear, its author, Helen Roberts, was involved in preventing the concert hall construction.

In addition to finding a suitable site, the NHSO faced many other challenges with regards to its concert hall construction, as highlighted in a 1965 memorandum prepared by John Ecklund for Beekman Cannon concerning discussions between Ecklund and the City of New Haven regarding acquiring land for a concert hall. These included that the donor would change her mind regarding the bequest, that Mayor Lee may not be reelected and the next mayor may not be eager to develop a symphony hall as part of an arts center, and finally that the city would not be able to hold any land condemned for a Symphony hall in Audubon undeveloped indefinitely while waiting for the Symphony’s still-anonymous benefactor to bequeath the funds necessary for construction. Ecklund’s concern with Mayor Lee’s reelection indicates that the Mayor and his desire to be seen as a regional leader coupled with his desire to engage in large-scale urban renewal projects were seen as factors that could serve the NHSO well in its pursuit of a new symphony hall. The experience with other redevelopment projects in New Haven provided hope to Ecklund that the City would be patient in waiting for the NHSO to begin construction, noting

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District, the NHSO did come to play a small role in the development of the District by purchasing office space in the former McLagon Foundry building. The Foundry was redeveloped by the Arts Council of New Haven in the early 1970s. Martens, supra note 164, at 11. The Arts Council, with the assistance of Wiggin & Dana, sold office suites in the building as condominiums. The choice to develop the foundry as a commercial condominium is notable in that the condominium was a relatively new form of ownership at the time and an extremely rare one for commercial property. See Henry Hansmann, *Condominium and Cooperative Housing: Transactional Efficiency, Tax Subsidies, and Tenure Choice*, 20 J. LEGAL STUD. 25, 28, 64-65 (1991) (discussing the origins of the condominium form in the United States in the 1960s and noting the rarity of the form for commercial buildings, with only one office building organized as a condominium prior to 1978 in New York City). Unfortunately, the need for funds eventually drove the NHSO to sell its office space in the McLagon Foundry and seek rental space, first at 70 Audubon Street and later at the University of New Haven in West Haven, before settling into its current location on Court Street in Downtown New Haven in 2009. Forbes Interview, supra note 51.

that “we know from our observation of other redevelopment projects that the time during which land is held without construction progress can be very long indeed if the City is interested in the objective and keen to have it executed.”  

From the tone of the memorandum it seems clear that Ecklund thought that the NHSO hall would be just such a project.

The NHSO continued to make plans for a new hall following this memo, proposing a 2,400 seat hall to the Arts Council of New Haven, an umbrella organization of arts groups in New Haven heavily involved with redevelopment of the Audubon neighborhood. The cost of the hall was to be $4 million (over $27 million in 2009 dollars) with an operating budget of $58,000 per year financed through renting the hall to outside engagements and through a $500,000 endowment included in the $4 million construction costs. A spring 1967 trip by Frank Brieff, conductor of the NHSO, Harold Kendrick, the NHSO’s manager, and two NHSO board members to Houston, Texas, to visit the Houston Symphony’s new Jones Hall as a possible model for the NHSO Hall also indicates the seriousness with which the NHSO pursued the prospects of a new performance venue.

Ultimately, while Ecklund’s fear that the donor would change her mind did not come true, the unwillingness of Helen Roberts to make a substantial gift during her lifetime for the construction of the hall, or the unwillingness of her attorneys to so advise her, frustrated the NHSO’s plans. As explained in a May 24, 1966 report to the Art Council of New Haven, an

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168 This comment from Ecklund illustrates a common criticism of the urban renewal programs of the 1950s-60s, in that blocks often remained vacant for several years waiting for construction to begin. See BERNARD J. FRIEDEN & LYNN B. SAGALYN, DOWNTOWN, INC.: HOW AMERICA REBUILDS CITIES, 43 (1991).

169 Martens, supra note 164, at 17.


organization involved with the development of the Audubon area, “As it [the legacy for building of the hall] is to be a gift by Will, it is impossible to predetermine when the gift will be received.”\textsuperscript{172} While the archives of the NHSO available at the New Haven Colony Historical Society are filled with references to Helen Robert’s support for the Symphony,\textsuperscript{173} attempts by the NHSO and its legal counsel to obtain \textit{inter vivos} funding from Roberts for a new hall were unsuccessful. A memo prepared by Beekman Cannon to Helen Roberts assuming an estate with $5 million in securities detailed how Roberts could make a donation of $4 million for construction of the hall, retain the securities with the highest income stream or purchase an annuity for $230,000 (requiring sale of $310,000 in securities assuming the maximum capital gain rate) paying out $25,000 a year, with the remaining $690,000 in securities available to “augment income and act as a hedge against inflation.”\textsuperscript{174} Cannon suggests that such an annuity would ensure Roberts a comfortable standard of living.\textsuperscript{175} Unfortunately for the NHSO, this memo received a rather curt response from John W. Barclay, Roberts’s attorney at Thompson, Weir & Barclay, explaining that he did not think such a donation to be “practical or in the best interest of our client . . . and in this our client concurs.”\textsuperscript{176} Beekman Cannon replied to this letter inquiring if Barclay could recommend to Roberts a smaller gift, with an attempt by the NHSO to obtain the difference between that amount and the $4 million needed for the hall through outside

\textsuperscript{172} Report Prepared for Arts Council Meeting, May 24, 1966 (on file with New Haven Colony Historical Society).
\textsuperscript{173} See, e.g., June 6, 1958 letter from Louis Hemingway, Treasurer of the NHSO, to Helen Roberts, thanking her for donating stock that would cover the NHSO’s deficit from the previous season; October 13, 1959 letter from Secretary Donald F. Keefe to Roberts thanking her for covering the NHSO’s rent for its administrative office. Folder 9B at the Society is completely dedicated to letters thanking Roberts for her gifts.
\textsuperscript{174} Draft memorandum from Beekman Cannon to Helen H. Roberts (Apr. 26, 1965) (on file with New Haven County Historical Society).
\textsuperscript{175} \textit{Id.} Adjusted for inflation, the value of $25,000 in 1965 would be over $170,000 in 2009 dollars.
\textsuperscript{176} Letter from John W. Barclay to Beekman Cannon, July 2, 1965 (on file with New Haven Colony Historical Society).
fundraising activities.\textsuperscript{177} Again Barclay responded that after reviewing the matter with Roberts, “it does not appear to be in our client’s interest to make a gift at this time . . . .”\textsuperscript{178}

Helen Roberts did bequeath funds to the NHSO in trust upon her death for use either toward a new symphony hall or for an annual summer concert on the New Haven Green.\textsuperscript{179} However, by the time of her death in 1985, Mayor Lee and his enthusiasm for the large scale rebuilding of New Haven had passed, and along with it the prospects for a symphony hall in downtown New Haven. As discussed in Part III \textit{supra}, a few years prior to Roberts’s death the NHSO had been through a strike which likely shook the confidence in the viability of the organization and its ability to manage a concert hall. The Symphony at present applies funds from the Helen Roberts Trust for its summer concerts.\textsuperscript{180}

\textbf{B. The Present Era}

Today the Orchestra continues to pursue a regionalization strategy by branching out from its traditional season at Woolsey Hall. Connecticut is a very competitive environment for symphony orchestras, with twenty-one members of the League of American Orchestras calling the state home.\textsuperscript{181} Nearby Wallingford, Bridgeport, Norwalk, Stamford, Hartford, Greenwich,  

\textsuperscript{177} Letter from Beekman Cannon to John W. Barclay, esq., July 9, 1965 (on file with New Haven Colony Historical Society).
\textsuperscript{178} Letter from John W. Barclay to Beekman Cannon, July 20, 1965 (on file with New Haven Colony Historical Society). Interestingly, the decision by Roberts does not appear to have had a negative impact on her relations with the NHSO, as four years later she collaborated with Doris Cousins in writing the history of the organization, and she remained a close personal friend of Harold Kendrick, manager of the NHSO from 1952-1980, even giving her Vermont summer house to him in the 1970s, ten years prior to her death. Frisbie, \textit{supra} note 154, at 105.\textsuperscript{178}
\textsuperscript{180} Forbes Interview, \textit{supra} note 51.
\textsuperscript{181} League of American Orchestras, Orchestra Membership Directory, http://www.americanorchestras.org/member_directory/index.php?option=com_dirlist&Itemid=838&state\_select=CT. The League of American Orchestras was known until two years ago as the American Symphony Orchestra League (ASOL). The list of League of American Orchestra members in
Danbury, and Waterbury all have symphony orchestras featuring professional musicians. In response to this competition the NHSO has tried to make its concerts more accessible to the wider region by repeating each of its classical programs in Fairfield County, at Sacred Heart University, Fairfield University, or New Canaan High School. The NHSO has also attempted to both lower costs and provide easier access to its concerts for suburban residents by moving its Pops series from the Shubert Theater in Downtown New Haven to locations in East Haven, Hamden, and Shelton, and also by presenting holiday concerts in Old Lyme and Madison, Connecticut. A rough visual guide of the NHSO’s attempt to expand coverage to more areas indicates that the NHSO has a critical mass of subscribers, single ticket buyers, and donors throughout New Haven and Fairfield Counties, and a handful of patrons from the Hartford area, far Eastern Connecticut, and even New York. Appendix 1. Because this map does not offer a comparison from before the start of the suburbanization campaign it is impossible to know if the conglomeration of audience members in Fairfield County and Shoreline Communities is a result of the suburbanization strategy or if such patrons used to travel to downtown New Haven to attend concerts.

The NHSO is also once again considering the construction of its own concert hall. Woolsey Hall at Yale University, the principal site of NHSO concerts since the opening of the

Connecticut consists of fourteen professional and semi-professional orchestras along with six youth orchestras, and one university orchestra (the Yale Symphony Orchestra).

182 Id.


184 Forbes Interview, supra note 51; see also Our First Blog, NHSO Blog, July 8, 2009, http://www.newhavensymphony.com/blog/ (listing the development of a new concert hall as one proposal under consideration as part of the Big Hairy Audacious Goals (BHAG) program, a development program of the League of American Orchestras in which the NHSO is participating).
venue in 1903, has long been recognized for its poor acoustics in orchestral performances.\textsuperscript{185} The uncomfortable wooden seats and poor sightlines from the galleries only add to the hall’s deficiencies. Because Woolsey Hall is part of Yale University, the NHSO is unable to control the concert going experience, ranging from the quality of the restrooms to the availability of a bar at intermission.\textsuperscript{186} Furthermore, many elderly patrons recall periods in New Haven’s not-so-distant past during which the city was known for its high crime rate and hence remain uncomfortable walking about downtown after dark—a necessity for any evening concert, given the scarcity of parking immediately next to Woolsey Hall.\textsuperscript{187}

For all the above reasons, the NHSO has begun working with consultants from the League of American Orchestras to analyze the possibility of constructing a new concert hall.\textsuperscript{188} These consultants have determined that any venue must have easy access to the interstate highways, ample affordable parking, and adequate security. Given the requirements of highway access, parking, and security, the preferred site for a new hall may be in a suburban rather than downtown location, suggesting a reversal of Beekman Cannon’s dismissal of Wallingford as a possible concert hall location. Funding also remains a major obstacle. While the principal of the

\textsuperscript{185} Letter from Beekman Cannon to Elliott H. Kone, Yale librarian and early advocate for a new concert hall in New Haven (Jan. 15, 1964) (explaining Woolsey Hall’s acoustical deficiencies).

\textsuperscript{186} Forbes Interview, supra note 51. The literature on the economics of the performing arts suggests that the quality of a performing venue forms part of a consumer’s demand function for the performance by contributing to the aesthetic enjoyment one experiences when attending the concert. \textit{See, e.g.}, Roland Kushner & Arthur E. King, \textit{Performing Arts as a Club Good} 18 J. CULTURAL ECON. 15, 19-20 (1994). While Kushner & King limit their discussion of the importance of performing venues to the role a hall plays in enhancing the aesthetic experience of a concertgoer, one could imagine that the quality of the venue could also impact two other factors these authors identify in the demand function of the performing arts patron: collectivity and companionship. It will be far easier for audience members to mingle with one another in a venue with inviting public spaces and the opportunity to enjoy a drink at intermission than in one with a dull lobby and no source of refreshment.

\textsuperscript{187} Forbes Interview, supra note 51.

\textsuperscript{188} Id.
Helen Roberts trust remains available for a concert hall, additional funds need to be raised from private donors and potentially government sources, all of which remains difficult due to the current economic recession. The Symphony’s schedule of about one concert per month during the academic year means that any hall would require other tenant organizations in order to fully utilize the space. However, unlike in the 1960s when Harold Kendrick considered the halls of the nation’s greatest orchestras as models for New Haven and attempted to merge his plans with Mayor Lee’s redevelopment aims, the NHSO in 2009 seems much more realistic about the prospects of a hall.

VI. Board of Directors

Like most nonprofit symphony orchestras in the United States, the NHSO is governed by a board of directors made up of community members who provide oversight of the Symphony’s finances and artistic undertakings. Over the course of the twentieth century, the Symphony Presidents represented an elite group of New Haven and Yale society, including such notables as Professor Edwin Borchard of the Yale Law School, Judge Carroll Hincks of the District of Connecticut and later the U.S. Second Circuit Court of Appeals, Mrs. Samuel C. Harvey, wife of the chairman of the Yale Department of Surgery, New Haven Superior Court and later Connecticut Supreme Court Justice Herbert S. MacDonald, and Yale School of Music Professor Beekman Cannon.\(^1\)\(^8\) Even as New Haven became an increasingly diverse community, with the board of aldermen and mayor’s office composed of members of a wider swath of New Haven society,\(^1\)\(^9\) the Symphony board leadership continued to be vested in a small group of elites. This is consistent with the view that as local elites began to lose political influence, nonprofit boards

\(^1\)\(^8\) ROBERTS & COUSINS, supra note 4, at 100.

\(^1\)\(^9\) See ROBERT DAHL, WHO GOVERN? 11 (1961) (discussing the shift of political power in New Haven from patrician Yankees, to manufacturing entrepreneurs, and finally to “ex-plebes” who “lacked wealth and social position but had the advantage of numbers”).
in “high culture” organizations provide such persons a method through which to continue to exert leadership in the community.\textsuperscript{191}

Membership on the NHSO board also provides board members a degree of visibility in the community through the fundraising campaigns used by the Symphony. From the 1950s until the mid 2000s, the NHSO had an annual fundraising supplement in the \textit{New Haven Register} which contained pictures of symphony notables and their spouses using the products or services of local merchants that donated funds to the NHSO. For example, the 1959 advertisement contained inscriptions like the following: “Mrs. Townshend, chairman of the Young People’s Concert Committee, is seen leaving Woolsey Hall with her tickets in hand in a new 1960 Custom 300D Mercedes-Benz car from Nelke Motors, 226 Whalley Avenue . . . .”\textsuperscript{192} Appendix 2. Such publicity provided board members further visibility in the community and could be seen as an attempt to link the NHSO with New Haven high society and the finer things in life, continuing the association many people have of classical music as something for the elites.

Today, the Symphony Board continues to be made up of leaders of New Haven society, able to make both donations of time, including attending one board meeting per month along with serving on an NHSO committee, and monetary donations. The members receive publicity

\textsuperscript{191} \textsuperscript{191} CAVES, supra note 3, at 249 (2000). The idea that elites want to join boards to exert power and improve status is also supported in a guide for recruiting nonprofit board members published by Board Source, a leading consultant to nonprofit organizations, which lists “community status and/or public visibility and recognition,” “prestige,” “counter other people’s perceptions of one’s self,” and “desire for power” as among the reasons that individuals choose to join boards. SANDRA R. HUGHES, BERIT M. LAKEY, & MARLA J. BOBOWICK, \textit{THE BOARD BUILDING CYCLE: NINE STEPS TO FINDING, RECRUITING, AND ENGAGING NONPROFIT BOARD MEMBERS} 18 (2000).

\textsuperscript{192} For further examples of the type of glamour shots NHSO notables received for participating in the annual \textit{New Haven Register} insert fundraiser, see Appendix 2 and 3. Note the contrast between the 1959 supplement’s focus on luxury products and the 1985 supplement’s inclusion of more everyday establishments, including a skin care shop, dog kennel, and pharmacy. This may reflect the changing of fortunes of New Haven, which by the 1980s was no longer the dominant population or retail center of the region.
as their names appear prominently near the front of orchestra playbills distributed at all concerts.\footnote{\textit{New Haven Symphony Orchestra, 2009-2010 Concert Season Program 5} (on file with author). A complete list of current board members is also available at, http://www.newhavensymphony.com/page/board-of-directors-99.htm.} New board members are chosen by the “selection committee,” a group itself made up of current board members, leading to self-perpetuation of the type of members chosen. In order to become a member of the Symphony Board, one must make an annual donation of $10,000, either contributed from personal funds or raised from outside sources.\footnote{\textit{Forbes Interview, supra} note 51. The strategy of being open about the exact dollar amount of contribution required to join a nonprofit board is becoming increasingly common in the nonprofit sector. \textit{See} Lisa Gubernick, \textit{Buying Your Way on to a Board}, WALL ST. J., May 8, 1999 at W1. In an email of December 11, 2009 to the author (on file with author) Forbes mentioned that the NHSO is reviewing the $10,000 requirement and that the orchestra is flexible in waiving it if board members can bring a unique skill to the board, such as connecting to young audiences, organizing special events, or advisement on educational matters. The board also always includes one musician as a full-voting member who is chosen by the musicians. This practice of having musicians hold voting spots on boards has become increasingly common in American orchestras since the 1980s. \textit{See} Barbara Nielsen, \textit{Musician Involvement in the Governance of Symphony Orchestras: Will it Increase Organizational Effectiveness? Part II: What Has Prompted Musician Involvement?}, Polyphonic.org, Apr. 7, 2008, http://www.polyphonic.org/article.php?id=144&page=1.} Given these requirements, it is not surprising that the NHSO board remains limited to people with access to substantial disposable funds rather than representing the community as a whole.

The makeup of today’s board members reveals a group dominated by business executives and those with independent wealth. The board’s executive committee contains two executives at local hospitals, a former CEO of a large manufacturing company, two professionals at leading financial services firms, a development officer at a private school, an independently wealthy stay-at-home mother, and a member of the city planning department.\footnote{Email from Natalie Forbes, Executive Director, New Haven Symphony Orchestra, to author (Dec. 14, 2009) (on file with author).} Thus with the exception of the member of the city planning department, the board continues to be led by people working in executive positions or possessing a background that could cause one to view them as elites. A
casual review of the remaining board members reveals a total of nineteen corporate executives, five lawyers, ten academics, and nine individuals whose only online presence suggest that they are donors who make sizeable contributions to many organizations in the New Haven area.\textsuperscript{196} The five remaining board members include a published author, a concert pianist, and three members who could not be identified because their names are so common that locating the correct biography proves nearly impossible. The board also demonstrates a marked gender imbalance, with thirty-four male members and only sixteen females. Thus while the board includes people from a variety of professions, its membership continues to be tilted toward an elite segment of the New Haven population and to follow the tradition of male-dominated boards.\textsuperscript{197}

In addition to the Board, until the 1980s the NHSO sponsored a Women’s Auxiliary Committee which was responsible for organizing fundraisers to support the NHSO. Joining the Women’s Auxiliary required a commitment to work on fundraising projects, attend the meetings, and pay dues.\textsuperscript{198} Continuing in the same vein as the advertisements in the \textit{New Haven Register},

\textsuperscript{196} Analysis of board members was conducted by conducting a Google search of the names of board members on November 28-29, 2009. While conducting an online search of the names of board members may appear to be a method prone to error, the type of academic, legal, and corporate institutions in which most board members work supply online biographies of their employees, often listing membership on the NHSO board in the individual’s biography, permitting confirmation that the search located the correct person. Many members of the NHSO board are graduates of elite institutions, including the Foote School in New Haven and Yale University, and also serve on multiple boards of directors, including institutions such as the Community Foundation for Greater New Haven (formerly the New Haven Foundation) and The Neighborhood Music School.

\textsuperscript{197} This phenomenon does not appear to be new or unique to New Haven, as even in 1940 researchers indicated that orchestra boards failed to include “members representative of important social, economic, racial, and religious elements in the community” and often included those “viewing the orchestra as a means of personal gratification or prestige rather than as a civic institution.” GRANT & HETTINGER, supra note 3, at 137. Caves notes that an individual chosen to serve on a nonprofit arts board “is likely picked not to give vigorous monitoring of policies by its club of patrons but to provide feel-good rewards to those important in fundraising.” CAVES, supra note 3, at 237 (2000).

\textsuperscript{198} By-Laws of the Auxiliary of the New Haven Symphony Orchestra, 1962.
the Women’s Auxiliary was responsible for organizing lavish fundraisers such as themed symphony balls or the Sotheby’s Heirloom Discovery Day held annually during the early 1980s in which members of the New Haven community could bring antiques to be appraised by Sotheby’s employees, much like the modern *Antiques Roadshow*. In a sign that New Haven was not alone in viewing fundraising as a female activity, the NHSO submitted this event to the American Symphony Orchestra League (ASOL) on the standard “*Women’s Association Major Fund-Raising Projects*” form.

In a sign of innovation, the NHSO in recent years has also launched a Junior Board whose members are drawn from area high schools. These teenage board members cannot bring with them the $10,000 in donations which an aspiring adult board member usually brings before acquiring board membership, however they are a source of volunteer labor for the NHSO, helping to hand out programs at concerts and organize fundraising events. The Junior Board also provides a new mechanism for the NHSO to reach out to high school students across the region by having student board members advertise upcoming concerts to their peers. Many of these Junior Board members are musicians themselves, and in addition to the opportunity to learn about the business of nonprofit management at a young age, participation as a Junior Board member can afford these young musicians the opportunity to sit in on orchestra rehearsals and even review a score with the orchestra’s music director. With the decline in the prevalence of

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200 While the form used by the NHSO in 1980 to report its volunteer activities to the ASOL bore the name “women’s,” the ASOL was already in the process of ending the regime under which fundraising activities were the exclusive domain of women, with the 1980 name change of the Women’s Council to the Volunteer Council, thereby “reflecting its expanded role in identifying and developing the League’s services for orchestra volunteers.” League of American Orchestras, History, [http://www.americanorchestras.org/utilities/history.html](http://www.americanorchestras.org/utilities/history.html) (last visited Dec. 2, 2009).
201 Forbes Interview, *supra* note 51.
the stay-at-home wife, who formed the mainstay of previous volunteer and fundraising activities like the Women’s Auxiliary, the Junior Board may provide a new source of volunteer labor and potential fundraising ability for the Symphony.

While the Junior Board provides benefits to the students involved in terms of management and musical experiences and to the Symphony in the form of the student’s labor, the application process for Junior Board members suggests that the Symphony is not completely ignorant of the wealth of Junior Board applicants. One of the questions on the Junior Board application asks for the occupation of both of the applicant’s parents. This may allow the NHSO to consider the potential that the Junior Board members’ families will become donors themselves due to their child’s participation on the board. Furthermore, the list of 2009-2010 Junior Board members indicates that not one of the sixteen members comes from a public or charter high school in New Haven, with most members coming from the New Haven suburbs, and two from New Canaan, located forty miles west of New Haven, and one of the wealthiest communities in the United States. The inclusion of students from throughout the Southern Connecticut region reflects a consistency with the NHSO’s regionalization strategy, however it also suggests that the Symphony may not be making a strong enough effort to recruit lower-

202 See CAVES, supra note 3, at 250.
203 NHSO Junior Board Application 2009-2010 (on file with author).
income students from its home town, especially when one considers that a high school dedicated to the Arts and Humanities opened last year in Downtown New Haven.\textsuperscript{205}

VII. Conclusion
The NHSO is undertaking several exciting opportunities at the current time, including the Walton Project and the appearance of the symphony in the new Hollywood film \textit{Everybody’s Fine}.\textsuperscript{206} However, the organization is not without its challenges, with the NHSO facing a record low level of earned income in the 2007-2008 concert season and the prospect of declining donations in the face of the current economic recession. The ability of the orchestra to continue to reach ever larger audiences through its regionalization strategy and the possibility of participating in the construction of a new concert hall serving as a regional arts destination could provide avenues for future growth and the possibility of increasing the percentage of income earned through ticket sales. At the same time, the NHSO governance structure suggests an organization which will continue to be led by New Haven’s elite, perhaps limiting the symphony’s ability to reach out to a more diverse group of audience members.

Going forward the NHSO will continue to seek new forms of funding by applying for government grants, such as the Connecticut Arts Endowment Fund and periodic NEA funds, while attempting to maintain and grow its base of individual donors that provide the mainstay of the organization’s funding. The symphony will also have to deal with a union which seems reluctant to adapt to the realities of modern symphony orchestra finance. Nevertheless, given its ability to survive for 115 years in the shadow of Yale University and to weather the ever

\textsuperscript{205} See Cooperative Arts and Humanities Magnet High School, \url{http://www.newhavenmagnetschools.com/Coop/About.asp} (last visited Dec. 13, 2009).

\textsuperscript{206} See New Haven Symphony Orchestra, NHSO Makes Big Screen Debut This Friday (December 4, 2009), \url{http://www.newhavensymphony.com/page/nhso-makes-big-screen-debut-this-friday-515.htm} (last visited Dec. 10, 2009).
changing fortunes of New Haven, the NHSO has a rich history on which to draw when charting its future course.

While not one of the major symphony orchestras of the United States, the NHSO with its long and well-documented history provides a lens through which one can explore many of the economic and legal problems faced by symphony orchestras from the late nineteenth to early twenty-first centuries. At the same time, the orchestra provides a useful framework for viewing the many changes taking place in New Haven over the past hundred years as the city struggled to find a way to remake itself when faced with a falling population and the decline of industry.
Appendix 1 – Map of Patron Distribution for 2008-2009 Season

Source: Email from Nicole Gallego, New Haven Symphony Orchestra, to author (Nov. 20, 2009) (on file with author).
Appendix 2 – New Haven Register Advertising Supplement 1959

NEW HAVEN SYMPHONY
BENEFIT SECTION

SUNDAY, NOVEMBER 22, 1959

SALUTATION
With this special feature section recognition is made of the service performed by the New Haven Symphony Orchestra. Since its formation 66 years ago the orchestra has contributed immeasurably to the cultural life of the community. It deserves and has fully earned the appreciation not only of the individuals and firms mentioned in these pages but that of all lovers of fine music.

LUNCHEON IN THE COUNTRY
Mrs. Charles B. O Pills and her mother. Mrs. Arthur Thompson, enjoy entering a delicious lunchroom at The Sanford Barn on the Field, Stoddard Street, in Hamden. The Barn is open for lunchroom and dinner daily except Sunday, and The Sanford Barn East is available for private parties.

MRS. ALEXANDER D. VICTOR
Mr. Paul Press of J. Press, Inc., is showing Mrs. Alexander D. Victor, chair of the Special Program Committee of the Symphony, one of his imported sweaters wear with her custom made J. Press suit. This store, with branches in New York and Cambridge, features custom tailoring for women as well as men.

VIEWING AN EXHIBITION
Mr. Ernesto L. Moreau, of the Museum Gallery, is seen showing Mrs. Virginia C. Lapham, wife of the Dean of the Yale Medical School, and a loyal worker for the Symphony, part of the exhibition of Miss Janet Lee Law now at the Gallery which is located at 269 Orange Street.
Appendix 3 – New Haven Register Advertising Supplement 1985

Peloquin

June 1985

NEW HAVEN STARLIGHT

KESTING KENNELS, Cheshire Road, Bethany. English Setter Ferguson and English Springer Spaniel Peso receive excellent care from Sharon and Mark Levine, co-owners. Assistant manager and groomers Linda Robinson and Mary Stetzer.

SANDREA SKIN CARE, 2458 Whitney Ave., Hamden. Bring their expertise in skin, makeup, nail and body massage, to their host of patrons.

COUNTRY CLUB PHARMACY, 1225 Whitney Avenue, Hamden. Lawrence Ryan, president and Louise Esposito, cosmetician, show Didi Mancheski the minimum line of products by Elizabeth Arden.

TOP NOTCH DISCOUNT LIQUOR, 140 Amity Road, Hamden. Owners Ricky Sommerfelt and Ellis Litt, inventory of wines and liquors as Frank Kolbe powdered.

V. FERRUCCI LTD, 506 Whalley Ave., New Haven. The discriminating man with a fine line of classical furnishings.

CARBONES, 100 Woodrow Street, New Haven. Mrs. Frank Gruskay (second left), past president of the NHSO Auxiliary, finds that life can be a festival of Italian culture, deli style, when hosted by manager Christina Ferrari. This

Marilyn Lender (right) and travel counselor Rosamaria the new and better location of

MARIN NA TRAVEL.