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# Music Censorship and Freedom of Expression Is China's Lady Gaga Ban a Violation of Her Human Rights?

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## **Abstract**

This thesis explores music censorship and freedom of expression, using a case study of the bans of Lady Gaga's music in China. The hypothesis under which this research lies is that the discourse on music censorship does not demonstrate sufficient understanding of freedom of expression (particularly, as understood in international human rights law), which has a detrimental effect on musicians, who, due to their unawareness of the right, are unable to assert it. The case study of the bans of Lady Gaga's music explores whether the bans could be deemed as having amounted to a violation of her freedom of expression. Since I did not find compelling analysis of both music censorship and freedom of expression, nor any material suggesting that one of the biggest pop celebrities may have had her freedom of expression violated, I was hoping to offer some discussion on these topics.

The guiding research questions are:

How, if at all, does the discourse on music censorship interpret freedom of expression?

What is the relevance of informed discussion on both?

What were the grounds for Lady Gaga bans?

Could it be said that the restrictions imposed amounted to a violation of Lady Gaga's right to freedom of expression, or could they be deemed permissible, given the content of her songs, and the values she promotes?

## Introduction

On 26 June 2016, following a meeting with Dalai Lama to discuss yoga, Lady Gaga posted a photograph of the two on Instagram.<sup>1</sup> The following day, China's Communist party propaganda department issued "an important instruction" to ban the entirety of Gaga's repertoire from China. Moreover, party-controlled news were instructed to condemn the meeting. In February 2019, on the evening of the *Oscars* ceremony, it appeared as if the ban was not limited to Lady Gaga's repertoire after all, but the entirety of her appearance, when a Chinese TV station cut out her live performance of 'Shallow' completely, and blurred out her face in the remaining instances (e.g. when all the nominees for the "actress in a leading role" were shown on the screen simultaneously, including Lady Gaga, her face was obscured).<sup>2</sup>

China considers Dalai Lama a "wolf in monk's robes"<sup>3</sup> and a separatist political exile who is, in China's view, conspiring to split the Himalayan region, Tibet, from China.<sup>4</sup> Gaga is not the first celebrity to have been banned from China on the basis of mere association with Dalai Lama, or Tibet. The list of banned musicians includes Oasis (because a band member was found to have attended a Tibetan freedom concert in 1997), Linkin Park (for taking photos with the Dalai Lama), and Bjork (for chanting "Tibet! Tibet!" at a Beijing concert), to name a few,<sup>5</sup> while the list of songs and musicians banned in China for reasons other than the aforementioned is significantly greater. In fact, even the 2016 Lady Gaga ban was only the second ban of her music in China. The first ban, blacklisting six songs of her songs 'The Edge of Glory', 'Hair', 'Marry the Night', 'Americano', 'Judas' and 'Bloody Mary' occurred in August 2011, when Chinese Ministry of Culture deemed them "vulgar content".<sup>6</sup>

<sup>1</sup> Tom Phillips, "China 'Bans Lady Gaga' after Dalai Lama Meeting," *The Guardian* (Guardian News and Media, June 28, 2016), <https://www.theguardian.com/music/2016/jun/28/china-lady-gaga-ban-list-hostile-foreign-forces-meeting-dalai-lama>. 30 July 2020

<sup>2</sup> Tracy You, "Chinese TV Station Cuts out All Appearances of Lady Gaga during Oscars Ceremony," *Daily Mail Online* (Associated Newspapers, February 28, 2019), <https://www.dailymail.co.uk/news/article-6750911/Chinese-TV-station-cuts-appearances-Lady-Gaga-Oscars-ceremony.html>. 30 July 2020

<sup>3</sup> Tom Phillips, "China 'Bans Lady Gaga'"

<sup>4</sup> Daniel Van Boom, "Lady Gaga Is Now Banned in China," *CNET* (CNET, June 28, 2016), <https://www.cnet.com/news/lady-gaga-is-now-banned-in-china/>. 30 July 2020

<sup>5</sup> Amy X. Wang, "Justin Bieber Joins the Illustrious List of Musicians Banned from China," *Quartz* (Quartz, July 21, 2017), <https://qz.com/1035721/justin-bieber-is-banned-from-china-joining-the-likes-of-katy-perry-lady-gaga-and-elton-john/>. 30 July 2020

<sup>6</sup> Owen Nicholls, "Lady Gaga and Katy Perry 'Banned in China': NME," *NME Music News, Reviews, Videos, Galleries, Tickets and Blogs | NME.COM*, August 25, 2011, <https://www.nme.com/news/music/lady-gaga-348-1286690>. 30 July 2020

Censoring songs, and other forms of art, is not a novelty. Countries, alike other actors, may have more or less legitimate reasons to censor content. For artists, however, this may be an interference with their creativity, livelihood, and identity. At times, this can even amount to a violation of their right to freedom of expression. Having a legal background, I know that freedom of expression is not an absolute human right, but that limitations on this right may be imposed.<sup>7</sup> In other words, censorship can be permitted in certain circumstances, for the protection of some other rights (e.g. right to religion) and interests (e.g. national security).<sup>8</sup> In law, an interference (e.g. censorship) with a right (e.g. freedom of expression) does not necessarily amount to a violation of the said right. For a violation to occur, certain criteria must be met.<sup>9</sup>

I came across the article about the 2016 Lady Gaga ban in China a few months ago, during research for my class on freedom of expression. I was intrigued by the event, and I continued my research, believing that I would find materials saying that China's Lady Gaga ban amounted to a violation of her right to freedom of expression. To my surprise, I did not find a single article suggesting anything along those lines. In choosing the topic for my Applied Musicology thesis, I recalled my findings (or lack thereof), and thought this was an impediment not only for the legal academia, but even more so, for the music academia (and musicians). Lack of informed discussion on music censorship in relation to freedom of expression leads to poorer awareness, and unless musicians are aware of their rights (e.g. freedom of expression and its limitations), they cannot uphold them. In relation to Lady Gaga herself, "several dozen legal cases have taken place that concern"<sup>10</sup> her various interests since 2010, and most of them were filed by her, and not against her,<sup>11</sup> yet none of them concerned an alleged violation of her human rights. Could it be that even Lady Gaga is unaware that she has a right to freedom of expression (which may have been violated)? It is this awareness of the legal norms, combined with my findings on the Lady Gaga ban, that lead me to my grounds for research. Namely, I intend to explore **how (if at all) does the music scholarship on music censorship interpret freedom of expression, and what is the relevance of informed discussion on both.** I hope to demonstrate the relevance of understanding of

<sup>7</sup> United Nations General Assembly, International Covenant on Civil and Political Rights (United Nations, Treaty Series, vol. 999, 16 December 1966) (hereinafter ICCPR), art. 19(3)

<sup>8</sup> *Ibid.*

<sup>9</sup> *Marques v. Angola* (United Nations, Human Rights Committee, 29 March 2005), para. 6.8

<sup>10</sup> Mathieu Deflem, *Lady Gaga and the Sociology of Fame: the Rise of a Pop Star in an Age of Celebrity* (Basingstoke: Palgrave Macmillan, 2019), 76

<sup>11</sup> *Ibid.* 85

freedom of expression in the context of music censorship through a **case study of the Lady Gaga bans**. Within, I wish to assess the **grounds for Lady Gaga bans**, and **whether the restrictions imposed amounted to a violation of her right to freedom of expression, or if they could be deemed permissible restrictions, given the content of her songs, and the values she promotes**.

Answering the question will include a description of Lady Gaga, her philanthropy and her artistry. An examination of the available interpretation of censorship and freedom of expression, both as understood by scholars in the field of music and humanities, as well as in the context of human rights law, will follow. Finally, based on the analysis of Lady Gaga's philanthropy and artistry, in the context of the bans and her right to freedom of expression, I will conclude whether the restrictions imposed on Lady Gaga's freedom of expression (i.e. the bans of her songs and appearance) by China were permissible, or if they amounted to a violation of her freedom of expression.

## **Methodology**

This is an interdisciplinary thesis. It is rooted in socio-musicology, as I am to analyze the various influences on the life and artistry of Lady Gaga, and the impact of Lady Gaga and her music on the society. Nonetheless, it also examines music censorship, according to the existing understanding in music and humanities, as well as in light of the right to freedom of expression in international human rights law. The research question is partly descriptive (describing the available scholarship on music censorship and freedom of expression, as well as Lady Gaga, her songs, the grounds for bans in China) and partly evaluative (assessing whether freedom of expression is sufficiently *understood* in the context of music censorship, what is the relevance of its better understanding, and whether a violation of Lady Gaga's right to freedom of expression occurred, based on the analysis of the described content). The legal framework consulted in determining whether a violation occurred will be international human rights law, customary international law, and one of the most prominent human rights treaties, the International Covenant on Civil and Political Rights (ICCPR).

In creating the **first** chapter, descriptive in nature, I consulted various academic and news sources on Lady Gaga and her artistry. Her upbringing, education and values are of relevance in understanding who Lady Gaga is now, what she stands for, and what inspired the creation of her songs. This will be followed by a selection of three songs written and

performed by Lady Gaga, described in greater detail, *Born this Way*, *Judas* and *Shallow*, with the intent to later analyze them in the context of the right to freedom of expression, to determine the possible grounds for the bans, and whether a violation occurred. I thought it would be feasible to focus on a selection of songs, and I chose those three, because all three were censored (the first two were banned, whereas, the third one was cut out from the transmission of the Oscars ceremony). Moreover, I found the three sufficiently different from one another to make an interesting case for an analysis. The said (legal) analysis of Lady Gaga bans will occur in the third chapter.

The **second** chapter is partly descriptive, offering the description of music censorship according to humanities, and freedom of expression as per human rights law. In developing the chapter, I consulted scholarly articles on music censorship. Additionally, I used legal sources on freedom of expression and censorship in general to supplement the scholarly understanding of music censorship. Other than being descriptive, the second chapter is also evaluative, as it seeks to examine whether the humanistic understanding on music censorship could benefit from expanding its discourse so as to include studies of freedom of expression.

The **third** chapter is evaluative, being a legal analysis that considers all of the previous findings, and examines whether the alleged grounds for Lady Gaga bans sufficed in making the interferences with her rights to freedom of expression permissible, or if the interferences were excessive, and amounted to a violation of her freedom of expression. This chapter was informed primarily by the ICCPR and the Chinese laws on freedom of expression, and complemented by scholarly articles on freedom of expression, among other literature.

I understand that the legal perspective and analysis offered in this thesis may seem unfit for a musicological piece. Nonetheless, as I mentioned, there is a gap in the literature on the discourse of music censorship and freedom of expression, i.e. human rights. There is some literature, but most of it superficially refers to freedom of expression, without demonstrated understanding of what it actually is in the legal sense. I trust that the scarcity of adequate literature adversely affects the understanding of musicians of their rights, potentially preventing them from enjoying those rights to a greater extent. Given the adverse effect that the present situation has (or may have) on musicians, and taking into account that musicians do not exist in a vacuum unaffected by law, I thought it would be only appropriate to combine both of my backgrounds to start filling the gap, and create a piece of writing that addresses music censorship in the context of freedom of expression (within the ICCPR, i.e. customary international law, as I will argue).

Finally, one could wonder if a potential violation of freedom of expression in China is even worth discussing, given its poor record of upholding human rights in general. Moreover, there are also formal (legal) difficulties in holding China accountable for violations of human rights (for example, before the Human Rights Committee, which is a treaty body in charge of monitoring the implementation of the ICCPR). These circumstances have not been overlooked (they will be further discussed in the third chapter). The said difficulties simply did not prevent me from analyzing whether the aforementioned Lady Gaga bans could, in theory, be considered a violation of human rights. The mere fact that a country has a poor record of upholding human rights should not automatically exempt it from being monitored and named and shamed, especially if one could argue that a violation of (customary) international law occurred. Accordingly, this thesis is intended primarily as a case study, examining the various circumstances, and applying the legal norms to determine whether, in theory, and according to the analysis, one could hold that a violation occurred.

## **Literature Review**

Some of the most helpful resources for my thesis in the context of music censorship were the writings of Martin Cloonan, who is likely to have offered the most compelling definition of censorship (in the context of music) to date.<sup>12</sup> Additionally, a beneficial, more contemporary resource, was the collection of essays titled *Researching Music Censorship*, edited by Annemette Kirkegaard, Helmi Järvilouma, Jan Sverre Knudsen and Jonas Otterbeck. Apart from a general understanding and history of music censorship, the scholars explore individual cases of music censorship of particular artists in different countries. They do touch upon the correlation between music censorship and freedom of expression, but while it is not to be ignored since it explores some unique and important aspects of music censorship and freedom of expression, it remains ‘incomplete’.<sup>13</sup> Overall, I noticed a gap in the literature combining both music censorship and freedom of expression, i.e. human rights. Therefore, in building an opposing (or better said, complementing) understanding of (music) censorship (to that in the humanities), I used primarily legal scholarly articles on freedom of expression, and censorship in general, as well as the ICCPR and the General Comments (GC) of the Human Rights Committee (HRC).

<sup>12</sup> E.g. Martin Cloonan and Reebee Garofalo, *Policing Pop* (Philadelphia: Temple University Press, 2003)

<sup>13</sup> Annemette Kirkegaard, *Researching Music Censorship* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2017)

On the other hand, there is a rich body of literature concerning various aspects of Lady Gaga. To give a few examples, *Making Monsters: Lady Gaga, Fan Identification, and Social Media* written by Melissa A. Click, Hyunji Lee and Holly Willson Holladay, provided an informative in-depth analysis of Lady Gaga's relationship with her fans, including findings based on numerous interviews, on how she influenced the fans' lives.<sup>14</sup> It was also interesting in suggesting that Lady Gaga (whom fans refer to as the "Mother Mothers", while calling themselves "Little Monsters"), redefined the *monstrous*, by turning something bad into something good (further enhancing the bond between her and her fans).<sup>15</sup> *Traces of spirituality in the Lady Gaga phenomenon* written by Adrian-Mario Gellel analyzes Lady Gaga's spirituality, from her childhood throughout the rest of her life, suggesting that there may even be a spiritual relationship between her and her fans, some of whom may see her as a divine creature, or at least a spiritual leader.<sup>16</sup> In *Camp revamped in pop culture icon Lady Gaga: The case of 'Telephone' and 'Born this Way'*, José M. Yebra explores Lady Gaga's gender and sex discourse in the context of camp sensibility.<sup>17</sup> Finally, while all of these (and more) resources, for better or worse, were helpful in developing my understanding of Lady Gaga, the, by far, most beneficial source was the book *Lady Gaga and the Sociology of Fame* written by Mathieu Deflem.<sup>18</sup> His comprehensive description of Lady Gaga's upbringing, followed by an analysis of her career, business, lawsuits, promotion strategies, relationship with the fans, activism, and music was essential in building my understanding of Lady Gaga and different aspects of her.

## Structure

This thesis is divided into three main parts. **Chapter I** provides biographical information concerning Lady Gaga, and analyzes a selection of her songs. **Chapter II** explores music censorship as understood by scholars and humanities, and censorship in light of freedom of expression and international human rights law. **Chapter III** analyzes the findings in the context of the applicable laws, and evaluates whether, based on those findings,

<sup>14</sup> Melissa A. Click, Hyunji Lee, and Holly Willson Holladay, "Making Monsters: Lady Gaga, Fan Identification, and Social Media," *Popular Music and Society* 36, no. 3 (2013): pp. 360-379, <https://doi.org/10.1080/03007766.2013.798546>.

<sup>15</sup> *Ibid.*

<sup>16</sup> Adrian-Mario Gellel, "Traces of Spirituality in the Lady Gaga Phenomenon," *International Journal of Children's Spirituality* 18, no. 2 (2013): pp. 214-226, <https://doi.org/10.1080/1364436x.2013.796309>.

<sup>17</sup> José M. Yebra, "Camp Revamped in Pop Culture Icon Lady Gaga: The Case of 'Telephone' and 'Born This Way,'" *European Journal of American Culture* 37, no. 1 (January 2018): pp. 39-55, [https://doi.org/10.1386/ejac.37.1.39\\_1](https://doi.org/10.1386/ejac.37.1.39_1).

<sup>18</sup> Mathieu Deflem, *Lady Gaga and the Sociology of Fame*

a violation of Lady Gaga’s right to freedom of expression occurred. Finally, the conclusion provides a summary of main findings, and answers the research question.

## **1. Chapter 1: Lady Gaga and her Legacy**

While many things have been written about Lady Gaga, and many more could be, this Chapter offers a glimpse into her life, artistry, career, relationship with fans, and philanthropy. It has a greater focus on three of her songs, since their play was clearly interfered with by the Chinese government. It is not intended to be a comprehensive biography, rather a tool for a general understanding of Lady Gaga, and a deeper comprehension of the condemned songs.

### **1.1. Mother Monster**

On 28 March 1986, in New York City, Lady Gaga was born as Stefani Joanne Angelina Germanotta, to parents of Italian descent. Both had a strong sense of family and tradition, which they passed on to their children, Stefani (Lady Gaga) and her sister Natali.<sup>19</sup> The sense of family is reflected in both Lady Gaga’s private, and professional life. Her second middle name is after her grandmother Angelina, whereas the first middle name is after her father’s sister Joanne, who died from lupus at the age of 19. Lady Gaga made several references to Joanne in her career, the most significant of which is likely the fact that she named her 2016 album *Joanne*.<sup>20</sup> Another indication of the family bond is the fact that Lady Gaga composed the song “Speechless” for her father, following his surgery for a heart condition, while “Dad” is tattooed on her shoulder.<sup>21</sup>

Stefani, raised in the Catholic faith, attended an all-female private school, the Convent of the Sacred Heart.<sup>22</sup> She began playing piano by ear at the age of four, and pursued classical music education.<sup>23</sup> Her father was not a professional musician, nonetheless, he played in a Bruce Springsteen cover band, and his fondness of classical rock was passed onto Lady Gaga. At the age of 13, she wrote her first song, a rock-oriented ballad “To Love Again”.<sup>24</sup> At age 11, she began taking acting classes, and continued her artistic training throughout her teen years. At 14, she started voice training with vocal coach Don Lawrence,<sup>25</sup> who coached Mick

<sup>19</sup> *Ibid.* 30

<sup>20</sup> *Ibid.* 31

<sup>21</sup> *Ibid.* 31

<sup>22</sup> *Ibid.* 31

<sup>23</sup> *Ibid.* 31

<sup>24</sup> *Ibid.* 32

<sup>25</sup> Daily Motion, 2008

Jagger, Bono (from U2), and Christina Aguilera, to name a few.<sup>26</sup> Despite being “painfully shy” as a teen, having been encouraged by her parents, Stefani performed at open-mic nights in clubs around NYC.<sup>27</sup> In the fall of 2014, she started music theater studies at the Tisch School of the Arts of New York University. A few months later, on her 19<sup>th</sup> birthday, she informed her parents that she decided to leave college to pursue her music career.<sup>28</sup> Her parents agreed under the condition that she would, within a year, become financially independent and sign a recording contract.<sup>29</sup>

In the months to come, Stefani was making money go-go dancing at bars, and performing her music as a singer/songwriter/pianist at small clubs, using her birth name Stefani Germanotta. A few days before the *one year* allocated to her by her parents to succeed in the music business, having been noticed on one writers showcase, Stefani was introduced to Rob Fusari, whom she would go on to write songs with. Fusari remarked that she could be as dramatic while performing as the late Freddie Mercury, whose band Queen performed the hit song “Radio Ga Ga”. Consequently, Fusari coined the nickname “Gaga”, and Stefani started performing as “Lady Gaga”. A few months later, her new manager Laurent Besencon introduced her to producer RedOne, with whom she would go on to create some of her biggest hits, e.g. *Just Dance*, *Poker Face*, and *Bad Romance*. Following a call from Fusari, a talent scout for Interscope Records Vincent Herbert discovered Gaga’s music. Herbert began to mentor Gaga, and introduced her to Jimmy Iovine, the then head of Streamline Records, an imprint of Interscope, with whom Gaga would sign a recording contract in 2007.<sup>30</sup> Soon afterwards, she released her debut album *The Fame*, the global sales of which amounted to nearly 16 million copies.<sup>31</sup> Followed by the writing, recording and release of 5 other studio albums, 2 Super Bowl performances, acting roles in the TV series the American Horror Story, the movie A Star is Born,<sup>32</sup> the winning of 9 Grammy Awards, 2 Golden Globes, and an Oscar, one could say ‘*the rest is history*’.<sup>33</sup>

<sup>26</sup> Mathieu Deflem, *Lady Gaga and the Sociology of Fame* 32

<sup>27</sup> *Ibid.* 32

<sup>28</sup> *Ibid.* 33

<sup>29</sup> *Ibid.* 33

<sup>30</sup> *Ibid.* 34-37

<sup>31</sup> Mjd, “Lady Gaga Albums and Songs Sales,” ChartMasters, September 19, 2019, <https://chartmasters.org/2019/08/cspc-lady-gaga-albums-and-songs-sales/>. 31 July 2020

<sup>32</sup> “Lady Gaga,” IMDb (IMDb.com), accessed August 6, 2020, [https://www.imdb.com/name/nm3078932/?ref\\_=fn\\_al\\_nm\\_1](https://www.imdb.com/name/nm3078932/?ref_=fn_al_nm_1). 31 July 2020

<sup>33</sup> Erica Gonzales, “Lady Gaga’s Oscar Win Just Got Her One Letter Closer to EGOT Status,” Harper’s BAZAAR (Harper’s BAZAAR, February 25, 2019), <https://www.harpersbazaar.com/celebrity/latest/a25994587/lady-gaga-egot/>. 31 July 2020

However, Gaga's work is far from exclusively oriented on writing and performing music and acting. As suggested earlier, her philanthropy amounts to a significant portion of her work. Being openly bisexual, Lady Gaga has been a gay rights activist.<sup>34</sup> Moreover, having struggled with it herself, Gaga also became outspoken on the topic of well-being and mental health, particularly that of youth.<sup>35</sup> Moreover, she has spoken in support of gender equality and women's rights.<sup>36</sup> Finally, rooted in her upbringing, she said she believed in Jesus and God, and considered herself "a quite religious woman", despite finding that "religion and the church are two completely separate things".<sup>37</sup> She even used religious symbols in support of gay rights, when chanting "Jesus loves everybody!" at her concerts, or in her acceptance speech at the VMAs in 2009, when she thanked "God and the gays".<sup>38</sup> These and other causes have been further supported by the work of the Born This Way Foundation, which Lady Gaga founded with her mother in 2012.<sup>39</sup>

While Lady Gaga's outspokenness and activism have provoked various reactions, some more positive than others, they are also likely some of the reasons why she managed to develop as loyal and significant fan community, a number of whom speaks of feeling a special connection with her, through familiar social roles e.g. mother, leader, and mentor.<sup>40</sup> Lady Gaga refers to her fans as "Little Monsters", which is an expression she coined during her "Monster Ball" tour, promoting her album "The Fame Monster".<sup>41</sup> The album was inspired by her various fears, revolving around the *monstrous*. Having seen her fans, at one performance, overly excited to hear the songs, "salivating at the mouth", she said they looked like *monsters*, thus she just called them "Little Monsters". The fan community embraced the nickname, and soon started calling Gaga the "Mother Monster".<sup>42</sup> Gaga used her "oddities to give shelter, support, and solidarity to her fans",<sup>43</sup> and invited them to use her as an escape, feel unafraid, not judge themselves, and not hate themselves.<sup>44</sup> Some of the fans reveal that their relationship with Lady Gaga prevented them from committing suicide.<sup>45</sup> Through her work, online presence, following her fans, communicating with them, and sharing their

<sup>34</sup> Mathieu Deflem, *Lady Gaga and the Sociology of Fame*, 145

<sup>35</sup> *Ibid.* 145

<sup>36</sup> *Ibid.* 152

<sup>37</sup> *Ibid.* 153

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.* 151

<sup>40</sup> Melissa A. Click, Hyunji Lee, and Holly Willson Holladay, 371

<sup>41</sup> Mathieu Deflem, *Lady Gaga and the Sociology of Fame*, 127

<sup>42</sup> *Ibid.* 127-128

<sup>43</sup> Melissa A. Click, Hyunji Lee, and Holly Willson Holladay, 361

<sup>44</sup> *Ibid.* 361

<sup>45</sup> *Ibid.* 373

artwork, she managed to create “a reciprocal relationship with her acolytes unlike that of any other pop-music icon”,<sup>46</sup> moreover, she rearticulated the monstrous, and turned a generally negative label, into a positive one.<sup>47</sup> An important stepping stone in that relationship was the song *Born this Way*, which is the first of the three *condemned* songs to be described.

### 1.1.1. Born this Way (Born this Way, 2011)

According to the *Billboard* magazine, one of the 100 songs that most defined the 2010s decade, *Born this Way* is an electro-pop disco track, deemed perfect for the dance floor,<sup>48</sup> but also intended to bear a message of empowerment for women and the LGBTQ community.<sup>49</sup> Many found it resembling to Madonna’s 1989 “Express Yourself”, but Lady Gaga argued that this was only due to the chord progression, “the same one that has been used in disco music for the last 50 years”.<sup>50</sup> What did inspire the song was Carl Bean’s 1986 performance of *I Was Born This Way*.<sup>51</sup> *Born This Way* begins with Lady Gaga saying on loop “It doesn’t matter if you love him or capital H-I-M”, on top of a rumbling synth and a humming bass.<sup>52</sup> With the turn of synths into beat, the first verse begins. Lyrically, the verses focus on empowerment, (self-)love and affirmation, whereas the chorus invites an unapologetic acceptance of oneself.<sup>53</sup> Allegedly, it is the first No. 1 song to have used the word “transgender(ed)”.<sup>54</sup>

The music video draws on Donna Haraway’s 1985 *Cyborg Manifesto*, using monstrousness to re-articulate fandom and identity, reconceptualizing community, belongness and Otherness.<sup>55</sup> In a post-apocalyptic scenario, drawing from surrealism and Francis Bacon, the video begins with a manifesto, and Gaga giving birth to herself (with somewhat explicit visuals) in the form of *feminae*, i.e. small human beings made through

<sup>46</sup> *Ibid.* 361

<sup>47</sup> *Ibid.* 365, 370

<sup>48</sup> Lynn Neary, “How ‘Born This Way’ Was Born: An LGBT Anthem’s Pedigree,” NPR (NPR, January 30, 2019), <https://www.npr.org/2019/01/30/687683804/lady-gaga-born-this-way-lgbt-american-anthem?t=1596231950790>. 1 August 2020

<sup>49</sup> Bill Werde, “The Billboard Q&A: Lady Gaga’s Good Romance,” *Billboard*, July 19, 2013, <https://www.billboard.com/articles//1179099/the-billboard-qa-lady-gagas-good-romance>. 1 August 2020

<sup>50</sup> Nick Levine, “Can Lady Gaga Become the World’s Biggest Pop Star Once More?,” *BBC Culture* (BBC, May 26, 2020), <https://www.bbc.com/culture/article/20200525-can-lady-gaga-become-the-worlds-biggest-pop-star-once-more>. 1 August 2020

<sup>51</sup> Lynn Neary, “How ‘Born This Way’ Was Born”

<sup>52</sup> Jocelyn Vena, “Lady Gaga’s ‘Born This Way’ Premieres,” *MTV News*, February 11, 2011, <http://www.mtv.com/news/1657726/lady-gaga-born-this-way/>. 1 August 2020

<sup>53</sup> Tanner Stransky, “Lady Gaga Releases Full Lyrics to Forthcoming Single ‘Born This Way’: Read Them Here,” *EW.com*, <https://ew.com/article/2011/01/27/lady-gaga-born-this-way-full-lyrics/>. 1 August 2020

<sup>54</sup> Bill Werde, “Lady Gaga’s Good Romance”

<sup>55</sup> José M. Yebra, “Camp Revamped in Pop Culture Icon Lady Gaga”, 42, 48

alchemy, which is followed by Gaga's mitosis aimed at creation of a new great unprejudiced race. Simultaneously, an evil (anti-)Gaga is born. The two forces co-exist.<sup>56</sup> Gaga's iconography is ambiguous and theatrical, featuring genderless monsters, and echoing religious and pagan symbols.<sup>57</sup> Otherness becomes perceived as not something to longer be afraid or ashamed of, rather, it is expected to be celebrated within the newly established social relations.<sup>58</sup>

Yebara holds that, through the words "It does not matter if you are gay, lesbian, bi, black, latino (...) you were born this way", Gaga's message is "messianic and equalitarian, but also deterministic because it reduces gender, sexual orientation and race to biological factors. There is no wrong in divine creation and hence prejudice and discrimination are unfounded", leading to a mix of essentialism and queer constructivism.<sup>59</sup> This, among other understandings, provoked mixed reception of *Born this Way*, even among the LGBTQ community. Some, including the likes of Elton John, found the song a gay anthem, having those members of the LGBTQ feel seen and represented,<sup>60</sup> while others founds it overly simplistic, criticized it over not (entirely) agreeing with the *born this way* theory (or the effectiveness of using it in erasing homophobia),<sup>61</sup> not finding themselves represented (believing that the umbrella of "LGBT" cannot be summed up by drag queens and disco references), and/or simply not liking Lady Gaga and her music.<sup>62</sup>

Be that as it may, Lady Gaga wanted to write a "this-is-who-the-fuck-I-am anthem".<sup>63</sup> She added "I want it to be an attack, an assault on the issue because I think, especially in today's music, everything gets kind of washy sometimes and the message gets hidden in the lyrical play."<sup>64</sup> Drawing from the 90s music empowering women, and the LGBTQ and other disenfranchised communities, 90s poignant melodies, and gospel and spiritual sounds, Lady Gaga wanted to create a freedom song, and an anthem.<sup>65</sup> If one were to trust some of the

<sup>56</sup> *Ibid.* 50

<sup>57</sup> *Ibid.* 50-51

<sup>58</sup> *Ibid.* 52

<sup>59</sup> *Ibid.* 51

<sup>60</sup> Lynn Neary, "How 'Born This Way' Was Born"

<sup>61</sup> Taryn Hillin, "Here's Why The 'Born This Way' Approach To Sexual Orientation Is Failing," HuffPost (HuffPost, February 9, 2016), [https://www.huffpost.com/entry/born-this-way-sexual-orientation\\_n\\_56ba4b59e4b0b40245c465f0](https://www.huffpost.com/entry/born-this-way-sexual-orientation_n_56ba4b59e4b0b40245c465f0). 1 August 2020

<sup>62</sup> Shmoop Editorial Team, "Born This Way Meaning," Shmoop (Shmoop University, November 11, 2008), <https://www.shmoop.com/study-guides/music/born-this-way/meaning>. 1 August 2020

<sup>63</sup> Bill Werde, "Lady Gaga's Good Romance"

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

aforementioned opinions, combined with its 14 million sales worldwide,<sup>66</sup> she just may have succeeded.

### 1.1.2. Judas (Born this Way, 2011)

Even prior to its official release, Lady Gaga's single *Judas* was criticized by the Catholic League for Religious and Civil Rights, for being a "publicity stunt".<sup>67</sup> It is true that the song concerns Judas, one of the twelve apostles of Jesus, who, in the Bible, betrayed Jesus with a kiss. In the song, Gaga is torn between her beliefs in Jesus and love for Judas, as she sings in the chorus "Jesus is my virtue, and Judas is the demon I cling to".<sup>68</sup> Putting aside the allegations of blasphemy, if one were to take away the Biblical references, *Judas* becomes a song about a woman torn between good and evil, i.e. according to Lady Gaga, about a woman in love with a man who betrayed her, while she could be with someone who loves her, reflecting on her difficult experiences from the past, which she could not escape from. Moreover, the singer said the song is about respecting one's inner darkness to bring oneself to light.<sup>69</sup>

Musically, it is a dance tune, which Lady Gaga co-created with RedOne, the producer whom she worked with on *Just Dance*, *Poker Face*, *Bad Romance*, *Alejandro*, etc., resulting in a sound of the song not particularly different to the aforementioned ones.<sup>70</sup> Despite its theme oriented on juxtapositions e.g. good and evil, it is a synth-driven, bass and beat heavy electro-house track.<sup>71</sup> However, regardless of the familiar production, Gaga's voice line deviated from the ordinary. In the verses and pre-chorus, vocally she opted for a half-sung, half-rapped Jamaican Patois style.<sup>72</sup> The chorus is fully sung, pursuing an 80s pop melody, unexpectedly lightening up the tone in comparison to the other parts of the song.<sup>73</sup>

The music video is no less heavily loaded with religious symbolism than the lyrics, albeit it does so in a modernized version. Lady Gaga portrays the Biblical Mary Magdalene,

<sup>66</sup> "IFPI Digital Music Report 2012" (International Federation of the Phonographic Industry, 2012).

<sup>67</sup> Jason Gregory, "Lady Gaga, 'Judas': Review," Gigwise (Gigwise, April 16, 2011), <https://www.gigwise.com/blog/62586/Lady-Gaga-Judas-Review>. 1 August 2020

<sup>68</sup> *Ibid.*

<sup>69</sup> "Lady Gaga in Love with Judas Iscariot? Upcoming Second Single Leaked," The Christian Post, <https://www.christianpost.com/news/lady-gaga-in-love-with-judas-iscariot-upcoming-second-single-leaked-49708/>. 1 August 2020

<sup>70</sup> Jocelyn Vena, "Lady Gaga Producer Calls 'Judas' Playful With A 'Serious Message'," MTV News, March 1, 2011, <http://www.mtv.com/news/1658922/lady-gaga-judas/>. 1 August 2020

<sup>71</sup> Jason Gregory, "Lady Gaga, 'Judas': Review"

<sup>72</sup> Brad O'Mance, "Listening to Lady Gaga's next Single Is an Enjoyable Experience. • Popjustice," Popjustice, August 18, 2011, <https://www.popjustice.com/briefing/listening-to-lady-gagas-next-single-is-an-enjoyable-experience/>. 1 August 2020

<sup>73</sup> Jocelyn Vena, "Lady Gaga Producer"

while the twelve apostles of Jesus are depicted as a motorcycle gang.<sup>74</sup> With a variety of dance routines, Lady Gaga shows her struggle in choosing between Judas and Jesus. Finally, alluding to Judas' kiss of betrayal, Gaga points a gun towards Jesus, which, instead of a bullet, produces lipstick applied onto his face, making Gaga complicit in the kiss of betrayal. In the final scene, Gaga appears to be caught in her unfaithfulness, and is (according to the law of the Biblical times), stoned to death. In the Bible, Jesus saved such a woman from the stoning, but upon his betrayal by Judas and Gaga, there was nobody left to save her.<sup>75</sup> The music video was directed by Laurieann Gibson, who, in describing the creation of the video said:

“Listen, I don't want lightning to strike me! I believe in the gospel and I'm not going there. And it was amazing because to have that conversation about salvation, peace and the search for the truth in a room of non-believers and believers, to me, that was saying God is active in a big way (...) the inspiration (came from the) idea that out of your oppression, your darkness, your Judas, you can come into the marvelous light. So it's about the inspiration and to never give up... We've created a new Jerusalem.”<sup>76</sup>

Notwithstanding the religious groups, some of which condemned the single, *Judas* was mostly well-received by critics, who appreciated the resemblance in production to her earlier hits, with new features, e.g. daring vocal performance, and a yet another creative story line.<sup>77</sup>

### 1.1.3. Shallow (from A Star Is Born, 2017)

Significantly different from the above two songs, *Shallow*, from the feature film *A Star Is Born*, is a slow-burning, country and folk pop influenced power ballad, featuring acoustic guitar and a resonant piano, alongside the vocals of Bradley Cooper and Lady

<sup>74</sup> Emma Osborne, “Lady Gaga - Judas,” Capital, February 7, 2012, <https://www.capitalfm.com/features/controversial-music-videos/lady-gaga-judas/>. 1 August 2020

<sup>75</sup> Matty B, “Lady Gaga's Judas Decoded: Scholar Explains What the Music Video Actually Means,” Queerty (Queerty, May 16, 2011), <https://www.queerty.com/lady-gagas-judas-decoded-religious-scholar-explains-what-the-music-video-actually-means-20110516>. 1 August 2020

<sup>76</sup> Shirley Halperin, “Laurieann Gibson: 'We've Created a New Jerusalem' With Lady Gaga's 'Judas' Video,” The Hollywood Reporter, May 2, 2011, <https://www.hollywoodreporter.com/news/laurieann-gibson-weve-created-a-176790>. 1 August 2020

<sup>77</sup> See e.g. Jason Gregory, “Lady Gaga, ‘Judas’: Review”

Gaga.<sup>78</sup> Jon Blistein described that “the track moves steadily towards a potent Gaga vocal run that culminates in a chilling final chorus, while the song also boasts some impressive harmonizing from Cooper and the pop star.”<sup>79</sup>

Gaga wrote *Shallow*, bearing in mind the connection and dialogue between the protagonists in the movie, Ally and Jackson, played by Gaga and Cooper.<sup>80</sup> Lyrically, the characters are asking one another if they are content with who they are.<sup>81</sup> Throughout the film, Jackson falls into drug and alcohol abuse, while Ally, becoming famous, experiences the gains and pains that come with fame. These are reflected throughout the lyrics “In all the good times, I find myself longing for change. And in the bad times, I fear myself”,<sup>82</sup> suggesting how difficult addiction, isolation, mental problems and pressure, etc. can be. Nonetheless, it provides a silver lining alike, also related to the movie duo, which, having met at a time of intense vulnerability, dived into a romance, and established a meaningful connection, as portrayed in the words: “we’re far from the shallow now”.<sup>83</sup>

The music video is a selection of clips from the movie *A Star Is Born*, primarily depicting the characters performing on stage (as they do in the movie), intertwined with other movie clips, depicting the character, couple and story development.<sup>84</sup> Gaga and Cooper reenacted the song at the 2019 Oscars in a simple acoustic version, which had Lady Gaga playing the piano, and the duo singing.

In regard to critical reception, Forbes summarized it as follows: “Shallow was lauded by critics upon arrival, and when awards season started up, it cleaned up pretty much everywhere it was nominated”,<sup>85</sup> winning 2 Grammys, an Academy Award, a Golden Globe,

<sup>78</sup> Lars Gotrich, “Hear 'Shallow,' Lady Gaga's Slow-Burning Power Ballad From 'A Star Is Born,’” NPR (NPR, September 27, 2018), <https://www.npr.org/2018/09/27/652124946/hear-shallow-lady-gaga-s-slow-burning-power-ballad-from-a-star-is-born>. 2 August 2020

<sup>79</sup> Jon Blistein, “Watch Lady Gaga, Bradley Cooper Perform Striking 'A Star Is Born' Duet 'Shallow,’” Rolling Stone (Rolling Stone, September 27, 2018), <https://www.rollingstone.com/music/music-news/lady-gaga-bradley-coopers-striking-star-is-born-duet-shallow-729894/>. 2 August 2020

<sup>80</sup> Nicole Engelman, “Lady Gaga Talks Keeping 'A Star Is Born' Mementos, Watching The Film Incognito in 'Variety' Cover Story,” Billboard, November 13, 2018, <https://www.billboard.com/articles/columns/pop/8484739/lady-gaga-variety-cover-interview-a-star-is-born>. 2 August 2020

<sup>81</sup> “What Lady Gaga's 'Shallow' Says About 'A Star Is Born'-and Music Itself,” Spotify, October 18, 2018, <https://web.archive.org/web/20181112123634/https://newsroom.spotify.com/2018-10-18/what-lady-gagas-shallow-says-about-a-star-is-born-and-music-itself/>. 2 August 2020

<sup>82</sup> “Shallow: How Lady Gaga and Bradley Cooper Made the Defining Song of 2018,” The Guardian (Guardian News and Media, November 4, 2018), <https://www.theguardian.com/film/shortcuts/2018/nov/04/shallow-bradley-cooper-lady-gaga-a-star-is-born>. 2 August 2020

<sup>83</sup> *Ibid.*

<sup>84</sup> *Shallow (from A Star Is Born) (Official Music Video)*, 2018 [https://youtu.be/bo\\_efYhYU2A](https://youtu.be/bo_efYhYU2A). 2 August 2020

<sup>85</sup> Hugh McIntyre, “Lady Gaga And Bradley Cooper's 'Shallow' Has Now Sold One Million Copies In The U.S.,” Forbes (Forbes Magazine, April 17, 2019), <https://www.forbes.com/sites/hughmcintyre/2019/04/17/lady-gaga-and-bradley-coopers-shallow-has-now-sold-one-million-copies-in-the-u-s/>. 2 August 2020

a BAFTA, etc.<sup>86</sup> The Rolling Stone ranked it as the second-best song of 2018, and the 14<sup>th</sup> best of 2010s, finding it a “classic-rock fantasy where the 1990s never ended”.<sup>87</sup> Other than the public’s desperate desire to know whether Lady Gaga and Bradley Cooper are dating, the song did not produce any controversy.<sup>88</sup>

## 1.2. Concluding Remarks

Lady Gaga could easily be deemed an *eccentric* musician, whose life and artistry often shock, and at times, offend. She has been the holy grail to some, and a blasphemer to others. But is that enough to have her voice (legally) silenced? That is to be explored in Chapter 3, once the concepts of music censorship and freedom of expression are explained in the following Chapter.

## 2. Chapter 2: Music Censorship

In as early as 2003, in *Policing Pop*, Martin Cloonan, whose writing significantly contributed to the area of music censorship, noted that, while some scholars did write about censorship before, fewer wrote about music censorship, and even fewer defined what they meant by “censorship”. He noted it was striking that the majority failed to do so, and has tended to use the term “censorship” indiscriminately.<sup>89</sup> In result, he offered his own definition of censorship, that being “the process by which an agent (or agents) attempts to, and/or succeeds in, significantly altering, and/or curtailing, the freedom of expression of another agent with a view to limiting the likely audience for that expression.”<sup>90</sup> He was critical of the definitions introduced until then, insofar as they focused on actions imposed by official or state censorship agencies, when they should include a wider range of processes, including e.g. market-based decisions within the music industry. He stressed that censorship can be carried out by agents other than the government, e.g. broadcasters, record labels, pressure groups, guerrilla groups, etc.<sup>91</sup> Another point of criticism was that the existing definitions

<sup>86</sup> *Ibid.*

<sup>87</sup> Brittany Spanos, “50 Best Songs of 2018,” Rolling Stone (Rolling Stone, December 14, 2018), <https://www.rollingstone.com/music/music-lists/50-best-songs-of-2018-764204/lady-gaga-shallow-bradley-cooper-764207/>. 2 August 2020. *See also* Will Hermes, “The 100 Best Songs of the 2010s,” Rolling Stone (Rolling Stone, January 3, 2020), <https://www.rollingstone.com/music/music-lists/the-100-best-songs-of-the-2010s-917532/>. 2 August 2020.

<sup>88</sup> Christi Carras, “Lady Gaga Would like You to Stop Asking: She's Not Dating Bradley Cooper,” Los Angeles Times (Los Angeles Times, November 6, 2019), <https://www.latimes.com/entertainment-arts/movies/story/2019-11-06/lady-gaga-bradley-cooper-dating-oscars-oprah>. 2 August 2020

<sup>89</sup> Martin Cloonan and Reebee Garofalo, *Policing Pop*, 14

<sup>90</sup> *Ibid.* 15

<sup>91</sup> *Ibid.* 4

implied that all regulation can be equated with censorship, whereas, he found the situation more complex, believing that regulation can be a form of policing, but does not always have to amount to censorship.<sup>92</sup> He was aware that his definition might be imperfect, but decided to publish it, given the absence of more appropriate definitions. Many years later, in 2017, Kirkegaard and Otterbeck, who are among the authors that have contributed to the field of music censorship significantly in the last years, omitted to take on the challenge Cloonan took, arguing that defining “censorship” is nearly impossible, as any universal definition could prove too wide or too narrow.<sup>93</sup> Given the fact that I have not come across a compelling definition created after Cloonan’s, I will review his assertions in the context of (music) censorship and freedom of expression.

## **2.1. Censorship and Freedom of Expression**

It is commendable that Cloonan put in significant thought and effort to define “censorship” in most appropriate terms.<sup>94</sup> Notwithstanding, I was no less surprised that he would opt to use “freedom of expression” (rather than, e.g., simply “expression”) in his very definition of censorship, and would go on to use the term rather frequently, but has failed to suggest a definition for it. It is my view, that, unless “freedom of expression” is *defined* and understood, “(music) censorship” cannot be understood either. I will, therefore, share one understanding of it, review Cloonan’s definition pursuant to my findings, and argue why it is important to discuss both “freedom of expression” and “(music) censorship” together.

### **2.1.1. Freedom of Expression and its Limitations**

Herein, the selected focus in discussing freedom of expression is that within international human rights law. Given that the ICCPR has 173 State Parties,<sup>95</sup> i.e. that it provides a human rights standard that is expected of most of the world, I will use its definition of the right to freedom of expression, as contained in Article 19 ICCPR, which reads:

“1. Everyone shall have the right to hold opinions without interference.

<sup>92</sup> *Ibid.* 15

<sup>93</sup> Annemette Kirkegaard, *Researching Music Censorship*, 5-6

<sup>94</sup> Martin Cloonan and Reebee Garofalo, *Policing Pop*, 15

<sup>95</sup> United Nations Treaties, Parties to the ICCPR (United Nations), <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4>. 3 August 2020

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.”<sup>96</sup>

A resembling definition of freedom of expression is contained in other human rights treaties, e.g. the European Convention on Human Rights, the African Charter on Human and Peoples’ Rights, the Inter-American Convention on Human Rights, etc., suggesting that this is, indeed, the required standard around the globe. Due to the concept of supremacy of international law,<sup>97</sup> this means that all of the State Parties to a certain treaty should, in one way or another, incorporate the rights set forth in the relevant treaty to its domestic law. In the context of the HRC, State duties to ensure the rights are described in Article 2 ICCPR. Article 2(1) ICCPR requires that States “respect” and “ensure” the rights to all individuals in a non-discriminatory way, which is not limited to State’s non-interference with the rights, but requires them to take positive steps to enable the exercise of those rights. <sup>98</sup> Moreover, pursuant to Article 2(2) ICCPR, States must also “take the necessary steps (...) to adopt such laws and other measures as may be necessary to give effect to the rights recognized in the present Covenant.”<sup>99</sup> Finally, according to Article 2(3) ICCPR, States should provide remedies in case of violation of a right. <sup>100</sup> The said obligations may extend to States having to protect individuals against arbitrary or unlawful interference with their rights by third parties (non-State actors).<sup>101</sup> In other words, States have extensive obligations to ensure that the rights protected by the ICCPR (including freedom of expression) are protected.

<sup>96</sup> ICCPR, art. 19

<sup>97</sup> Hersch Lauterpacht, *The Development of International Law by the International Court* (Cambridge: New York, 2010), 262

<sup>98</sup> *Ibid.*

<sup>99</sup> United Nations Human Rights Committee (HRC), General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant (HRC, CCPR/C/21/Rev.1/Add.13, 26 May 2004)

<sup>100</sup> *Ibid.* para. 14

<sup>101</sup> Dominika Bychawska-Siniarska, Protecting the Right to Freedom of Expression under the European Convention on Human Rights, Council of Europe (Council of Europe, July 2017) 90

Nonetheless, as we can see in the third paragraph of Article 19, freedom of expression is not an unlimited right. There are restrictions to freedom of expression, i.e. the expression that is not protected falls outside of the scope of the right. More often than not, it is this very “expression” that is *censored*. In order for a restriction to be legal and legitimate under Article 19(3) ICCPR, it must “(1) be provided by law; (2) pursue a legitimate aim (e.g. respect of the rights or reputation of others; protection of national security or public order, or public health or morals); and (3) be “necessary” to achieve one of the goals listed in (2).”<sup>102</sup> Additional restrictions on freedom of expression are provided for in Article 20 ICCPR, and include prohibition of war propaganda, and other “incitement to discrimination, hostility or violence.”<sup>103</sup>

Similar understanding is present with the regional courts on human rights, although, the exact implementation will vary on a case by case basis. For example, in the case *The Last Temptation of Christ. v Chile*, decided by the Inter-American Court on Human Rights, which concerned the refusal of the exhibition of a film considered blasphemous, the Court decided that, in the name of pluralism, even the disturbing, offensive, provocative, shocking or unpleasant information is protected by the Inter-American Convention,<sup>104</sup> adding that such protection exists not only in literal speech, or writing, but regardless of the medium used.<sup>105</sup> Unlike the Inter-American Court, in a similar case *Otto-Preminger-Institut v. Austria*, concerning the banning of a film allegedly offensive to the Catholic religion, the European Court of Human Rights (ECtHR) found that Austria did not violate the Applicant’s right to freedom of expression, but that it was right to ban the film in order to protect the right to religion of others.<sup>106</sup> From this also follows that not all interference with a right to freedom of expression (e.g. censorship) amounts to a violation. There are interferences that are in accordance with the law.

Notwithstanding these limitations, the human rights courts repeatedly found that individuals enjoy strong protection to their right to freedom of expression, including in regard to expressions that “offend, shock or disturb”, because “such are the demands of pluralism,

<sup>102</sup> *Ibid.* 32, 33

<sup>103</sup> ICCPR, art. 20

<sup>104</sup> *The Last Temptation of Christ’ (Olmedo-Bustos et al.) v. Chile*, Merits, Reparations and Costs, IACHR Court, Series C no 73, 5 February 2001 para. 65

<sup>105</sup> Naiara Posenato, “The Protection Of The Right To Freedom Of Expression: A Panorama Of The Inter-American Court Of Human Rights Case Law / A Proteção Do Direito À Liberdade De Expressão: Um Panorama Da Jurisprudência Da Corte Interamericana De Direitos Humanos,” *Espaço Jurídico Journal of Law [EJLL]* 16 (2016): pp. 51-68, <https://doi.org/10.18593/ejll.v16i3.9770>, 56

<sup>106</sup> *Otto-Preminger-Institut v. Austria* (European Court of Human Rights, 23 August 1994)

tolerance and broadmindedness without which there is no democratic society...”.<sup>107</sup> In regard to freedom of expression and music, the ECtHR proved this in *Mariya Alekhina and Others v. Russia*, concerning the punk rock group Pussy Riot and their performance of the song “Punk Prayer”. Below is an excerpt of the lyrics to “Punk Prayer”:

*“Virgin Mary, Mother of God, banish Putin*

*Banish Putin, Banish Putin!*

*Congregations genuflect*

*Black robes brag, golden epaulettes*

*Freedom's phantom's gone to heaven*

*Gay Pride's chained and in detention*

*The head of the KGB, their chief saint*

*Leads protesters to prison under escort*

*Don't upset His Saintship, ladies*

*Stick to making love and babies*

*Crap, crap, this godliness crap!*

*Crap, crap, this holiness crap!*

*Virgin Mary, Mother of God*

*Become a feminist, we pray thee*

*Become a feminist, we pray thee”<sup>108</sup>*

Having performed the song at the Moscow cathedral, three band members were sentenced to 2 years of imprisonment for “hooliganism” and “complete lack of respect” for Orthodox

<sup>107</sup> See e.g. *Handyside v. the United Kingdom* (European Court of Human Rights, 4 November 1976) para. 49

<sup>108</sup> “Pussy Riot – Punk Prayer (English Translation),” Genius, <https://genius.com/Pussy-riot-punk-prayer-english-translation-lyrics>. 6 August 2020

believers.<sup>109</sup> The ECtHR found that the performance was a “response to the ongoing political process in Russia”,<sup>110</sup> that it “amounts to a form of artistic and political expression covered by”<sup>111</sup> the right to freedom of expression, and that there is little scope “for restrictions on political speech or debates on questions of public interest.”<sup>112</sup> Nonetheless, it also noted that the right to freedom of expression “does not bestow any freedom of forum for the exercise of that right”<sup>113</sup>, and that, by choosing to perform that very song at the Moscow Cathedral, the band may have “violated the accepted rules of conduct in a place of religious worship”<sup>114</sup>. Since the performers may have hurt the feelings of churchgoers, some form of sanctions could have been justified for the protection of the rights of others.<sup>115</sup> However, criminal conviction and prison sentence were not proportionate to the legitimate aim, and not necessary in a democratic society, thus they constituted a violation of the band members’ right to freedom of expression.<sup>116</sup> Additionally, the three band members were awarded a compensation amounting to 37,000 EUR.<sup>117</sup> This case is a good example of the balancing of one’s right to freedom of expression with the rights of others - the type of work that human rights courts do at all times, and which is necessary for the understanding of musicians’ right to freedom of expression, and the concept of censorship itself. Moreover, the pronouncement of a violation of the band members’ right to freedom of expression, as well as the compensation that they received, demonstrate real (potential) benefits to those who assert their rights.

### 2.1.2. Why is it Important?

In regard to reviewing Cloonan’s definition, despite his undeniable efforts in getting closer to defining censorship, I do not find his definition accurate, simply because, as was presented in the previous section, not all expression is “free” (i.e. protected). Cloonan says censorship is: “the process (of) significantly altering, and/or curtailing, the freedom of expression”. However, this would entail that censorship is the (effort towards) altering and/or curtailing only the *protected* speech, which is rather far from the truth, as more often than not, the very reason for censorship is because the expression is *not*, in fact, protected (or at

<sup>109</sup> “ECHR Condemns Pussy Riot and Anna Politkovskaya Cases,” BBC News (BBC, July 17, 2018), <https://www.bbc.co.uk/news/world-europe-44857461>. 3 August 2020

<sup>110</sup> *Mariya Alekhina and Others v. Russia* (European Court of Human Rights, 17 July 2018) para. 205

<sup>111</sup> *Ibid.* para. 206

<sup>112</sup> *Ibid.* para. 212

<sup>113</sup> *Ibid.* para. 213

<sup>114</sup> *Ibid.* para. 214

<sup>115</sup> *Ibid.* para. 214

<sup>116</sup> *Ibid.* para. 228-230

<sup>117</sup> *Ibid.* para. 273

least, *allegedly* not protected). E.g. performance of neo-nazi music in Germany, inciting to violence, would likely be contrary to international human rights law (for its incitement to violence, which is not protected expression, pursuant to Art. 20 ICCPR, to name one provision). If Germany were to restrict this music, despite it seeming like a textbook example of censorship (even according to Cloonan himself),<sup>118</sup> this would not fall within the Cloonan's definition of "censorship", because it was the "expression", and not the "freedom of expression" that was restricted. In other words, a *better* definition of "censorship" would be "the process by which an agent (or agents) attempts to, and/or succeeds in, significantly altering, and/or curtailing, the freedom of expression of another agent with a view to limiting the likely audience for that expression", whereby it is the "expression", and not "freedom of expression" that is being altered and/or curtailed. It is beyond doubt that Cloonan, given his contributions to the field of music censorship, must possess significant knowledge of freedom of expression, too. However, if Cloonan, in particular, one of the most cited authors on music censorship, creates a definition, perhaps the best to this day, that in itself is inaccurate, for not presenting the accurate understanding of freedom of expression (at least, in the context of international human rights law), how could we expect other scholars, let alone musicians, to have a proper understanding of it?

The importance of this understanding lies in the fact that, if one does not know what one is "free" to express (that is, what constitutes *protected speech*), how could one know whether the censorship of that expression, which has occurred, is within the bounds of law? In other words, if musicians are aware of their right to freedom of expression, they could fight for its protection, in case (illegitimate) censorship occurs. The knowledge of their rights is essential for the musicians' (fulfillment of the) protection of their freedom of expression.

Moreover, the right to freedom of expression is not limited to sharing expression, it includes *receiving* it,<sup>119</sup> meaning that censorship can have not only an adverse effect on musicians (and their right to freedom of expression), but also, (on that of) the audiences that are prevented from hearing the banned music. This increases the musicians' responsibility to ensure that their right to freedom of expression is upheld.

I trust that the two, censorship and freedom of expression, must be discussed and analyzed hand in hand. Otherwise, the conversation on music censorship is limited to the instances that occurred, rather than it being inclusive of ways that could remedy the instances

<sup>118</sup> Martin Cloonan and Reebee Garofalo, *Policing Pop*, 3

<sup>119</sup> ICCPR, art. 19(2)

which restricted the expression. Such discussion is of little value to musicians (and their audiences), and it must be extended.

## **2.2. Concluding remarks**

Cloonan noted that scholars are eager to use the term “censorship”, without defining it. I noticed that scholars also tend to use the term “freedom of expression”, without defining it. Lack of a comprehensive understanding of both is not only an impediment to scholars in both fields, but also to practicing musicians, whose rights are likely frequently violated, perhaps, even without them knowing. Expanding the discussion on music censorship, so as to include freedom of expression, increases the chances of musicians having their right to freedom of expression protected.

## **3. Chapter 3: Analysis of the Interference with the Freedom of Expression of Lady Gaga**

In this chapter, I will examine whether the Lady Gaga *bans* in China, in particular, those concerning the transmission of *Born this Way*, *Judas*, and *Shallow*, and the entirety of her repertoire and image due to the meeting with Dalai Lama, could be deemed as amounting to a violation of her right to freedom of expression. In doing so, I will consider the ICCPR, customary international law and human rights discourse, the Chinese law, and the facts of the case.

### **3.1. China and International Human Rights**

There is a peculiar situation surrounding China and human rights, in general, and the ICCPR specifically. In 1998, China signed the ICCPR, which is a legally binding international treaty. The signing does not amount to ratifying (which is required for a country to be bound by a treaty). However, signing implies that the signatory state will make good-faith commitments to ratify it, i.e. to validate the treaty’s obligations within the domestic legal system. The Vienna Convention on the Law of Treaties (VCLT) (which has been ratified by China)<sup>120</sup> requires that essential elements of the treaty are adhered to, i.e. that its *object and purpose are not defeated*, in the interim period between the signing and the

<sup>120</sup> United Nations Treaties, Parties to the VCLT, (United Nations), <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY>. 15 August 2020

ratification.<sup>121</sup> While this interim period ordinarily does not take more than a few months, in the case of China and the ICCPR, it is yet to come to an end. Some even argue that, due to not ratifying the ICCPR, and neglecting the adherence to the rights within, China should unsign the treaty.<sup>122</sup> Apart from that, China did not sign the Optional Protocol to the ICCPR,<sup>123</sup> which could, otherwise (provided that China ratified the ICCPR), give Lady Gaga the practical opportunity to file a claim against China before the HRC. Lady Gaga does not have such standing at present. The fact that China has not ratified the ICCPR, as well as the fact that the VCLT interim obligation “not to defeat the object and purpose of the treaty” is rather ambiguous (given that it is not the same as upholding the treaty after all), and considering that China did not sign the Optional Protocol to the ICCPR, there are apparent difficulties in holding China accountable under the ICCPR.

Nonetheless, while treaties are an important source of international law obligations, they are far from the *only* source. An equally relevant source of international law obligations is customary international law (i.e. evidence of general practice accepted as law),<sup>124</sup> while judicial decisions may be used as subsidiary means in determining, i.e. interpreting the law.<sup>125</sup> As it was demonstrated in the previous chapter, the scope of freedom of expression under the ICCPR is not native to the ICCPR only. The same understanding (i.e. general practice) exists both in domestic, as well as regional case law, which implies that the ICCPR merely reflects the precedents set by customary law. That is why, although China has not ratified the ICCPR, one could still argue that China is bound to respect the right to freedom of expression by its obligations under customary international law.

Be that as it may, the purpose of this thesis is not to determine China’s next steps in regard to the ICCPR, nor to invite Lady Gaga to sue China in an international court of law, but merely to establish whether the Lady Gaga’s bans in China, within the understanding of international human rights law, could be considered a violation of her right to freedom of expression. I will, thus, proceed in the belief that, because the ICCPR uses precedents reflected in customary international law, China is bound to uphold the right to freedom of expression

<sup>121</sup> United Nations, Vienna Convention on the Law of Treaties (United Nations, Treaty Series, vol. 1155, 23 May 1969), art. 18

<sup>122</sup> Annie Hsu, “Should China Unsign the International Covenant on Civil and Political Rights?,” University of Pennsylvania School of Arts & Sciences Department of Germanic Languages and Literatures, September 30, 2019, <https://cscs.sas.upenn.edu/node/3578>. 3 August 2020

<sup>123</sup> United Nations Treaties, Parties to the Optional Protocol (United Nations), <https://treaties.un.org/pages/ViewDetails.aspx?src=IND>. 3 August 2020

<sup>124</sup> United Nations, Statute of the International Court of Justice (United Nations, 18 April 1946), art. 38(1)(b)

<sup>125</sup> *Ibid.* art. 38(1)(c)

under customary international law, and in case of the failure to do so, China's actions could be considered as amounting to a violation. Given the aforementioned, I will continue to use the ICCPR, as well as the case law of the HRC, to interpret the normative scope of the right to freedom of expression.

### 3.2. The Law

As previously mentioned, in order to establish whether the restriction imposed on freedom of expression is legal and legitimate under Article 19(3) ICCPR, a three-step test requires it to be “(1) be provided by law; (2) pursue a legitimate aim (e.g. respect of the rights or reputation of others; protection of national security or public order, or public health or morals); and (3) be “necessary” to achieve one of the goals listed in (2).”<sup>126</sup>

Article 35 of the Constitution of the People's Republic of China (hereinafter Constitution) provides that “Citizens of the People's Republic of China enjoy freedom of speech (...)”<sup>127</sup>. Article 51 provides that “the exercise by citizens (...) of China of their freedoms and rights may not infringe upon the interests of the state, of society, and of the collective, or upon the lawful freedoms and rights of other citizens.”<sup>128</sup> Moreover, Article 32 of the Regulations On Broadcasting and Television Administration (hereinafter Regulations) requires that Broadcasting stations and television stations ban the production and broadcast of programs containing elements, e.g. those that; (1) endanger the unity, sovereignty and territorial integrity of the country; (2) endanger state security, honour and interests; (3) instigate national separation or disrupt national solidarity; (4) divulge state secrets; (5) slander or insult others; (6) propagate obscenity, superstition or pay up violence, and (7) other content prohibited by law and regulations.<sup>129</sup> Notably, Chinese law uses the term *citizens* in addressing the rights-holders, whereas, Lady Gaga is not a citizen of China. However, Article 19(2) ICCPR provides that “everyone” shall enjoy the right to freedom of expression,<sup>130</sup> while Article 2(2) ICCPR requires that States “take the necessary steps (...) to adopt such laws and other measures as may be necessary to give effect to the rights recognized in the present Covenant”.<sup>131</sup> Therefore, this could be understood as more of a non-compliance with

<sup>126</sup> Dominika Bychawska-Siniarska, Protecting the Right to Freedom of Expression, 32-33

<sup>127</sup> Constitution of the People's Republic of China (4 December 1982), art. 35

<sup>128</sup> *Ibid.*, art. 51

<sup>129</sup> Regulations on Broadcasting and Television Administration (1 August 1997) art. 32

<sup>130</sup> ICCPR, art. 19

<sup>131</sup> Article 2(2) ICCPR, art. 2(2)

another requirement of the ICCPR, rather than a lack of ground for establishing whether a violation of Lady Gaga's right occurred. In any event, evidently, Chinese law provides grounds for both protection of the right to freedom of expression, as well as restrictions on it for a number of reasons.

### **3.3.a) The *Full Ban***

The *full* Lady Gaga Ban occurred on 28 June 2016, following Lady Gaga's post displaying her meeting with the Dalai Lama.<sup>132</sup> Lady Gaga has then reportedly been added to a list of hostile foreign forces banned by China's Communist party, while its propaganda department issued an instruction to ban the entirety of her repertoire.<sup>133</sup> As could have been witnessed on the night of the 2019 Oscars Gala, when a Chinese TV station blurred her face, and cut out the performance of *Shallow*, the restriction was extended to include the rest of her appearance.

The first of three steps in the three-prong test determining the legitimacy of a restriction imposed on freedom of expression is that the restriction is provided by law. China says of Dalai Lama that "the purpose of his visits and activities in other countries is just to promote his proposal for Tibetan independence."<sup>134</sup> His activities can be related to (possible infringement of) interests of the state, and state security. State interests are protected by Article 51 Constitution. Moreover, Article 32 Regulations aims that the broadcasted content does not endanger sovereignty and territorial integrity of the country, and that it does not endanger state security. Both provisions are in accordance with Article 19 ICCPR. Given the millions of sales of her singles (and not only), Lady Gaga's influence is not to be neglected. Therefore, by association with Dalai Lama, under the presumption that she shares his views on the *independence* of Tibet, and under the presumption that she has millions of young fans in China, whom she could influence with her beliefs, she could reasonably be considered as much of a *threat* to state interests and state sovereignty as the Dalai Lama. I would conclude that the restriction on expression is provided by law, and that the step (1) of the three-prong test is met.

The second step of the test requires that the restriction pursues a legitimate aim. Article 19(3)(b) ICCPR provides that expression can be limited for the protection of national

<sup>132</sup> Tom Phillips, "China 'Bans Lady Gaga'"

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

security.<sup>135</sup> Since that is the goal that China is pursuing, the second step in the three-prong test is also met.

The third step of the test requires that the restriction is “necessary” and “proportionate” to the (legitimate) aim pursued. Lady Gaga’s 51 minutes 15 seconds- long conversation with Dalai Lama is available on Youtube. The two speak of kindness, mental health, yoga, and related topics, but they do not once mention the independence of Tibet. The caption with the photograph she posted reads: “Thank you for this special day. Science tells us kindness improves health, let's take care of the body of our nation.”<sup>136</sup>, wherein there is no mention of the independence of Tibet either. Nonetheless, allegedly China banned all of her music repertoire at the time, and one TV station went as far as to blur her face, and cut out her live Oscars performance, because she posted a photograph of herself and the Dalai Lama. Had *Shallow*, performed then at the Oscars, been in fact of a song about the independence of Tibet, it would have been reasonable of China to ban it. The same cannot be said about a performance of a song that is about a heterosexual couple in love, who sings about the ups and downs of life, and appreciation for one another. I will note that the comment section on the Oscars article by *Daily Mail* suggests that this was the case with only one (or possibly some) TV stations in China (without Mandarin skills, an exact number is rather difficult for me to confirm). However, having researched Mango TV, I confirm that it is a state-owned TV station,<sup>137</sup> making it not so important whether all, or only some, Chinese TV stations blocked Lady Gaga’s Oscars appearance. Although that in itself would have been somewhat far-fetched since the two did not discuss issues relevant to state sovereignty, China could have banned the content showing Lady Gaga and Dalai Lama, e.g. the Instagram post, and the video of the two speaking – if anything. Nonetheless, a full Lady Gaga ban was not proportionate to the (legitimate) aim pursued, thus the third step of the test is not met, and a violation of her right to freedom of expression has occurred.

### **3.3.b) *Born this Way* Ban**

Prior to the full ban, a ban of 6-songs from the album “Born this Way” occurred, and it included the singles *Born this Way* and *Judas*. The said reasons for the ban were “poor taste

<sup>135</sup> ICCPR, art. 19(3)(b)

<sup>136</sup> Tom Phillips, “China ‘Bans Lady Gaga’”

<sup>137</sup> “Mango TV” <http://corp.mgtv.com/en/product/>. 3 August 2020

and vulgar content”<sup>138</sup>, risk to “cultural security”<sup>139</sup> and offensiveness for its “pro-gay content”<sup>140</sup>. I will consider the ban in light of all three grounds, applying the three-prong test.

In regard to **step 1** of the test, **neither “poor taste”, nor “vulgar content”** are explicitly listed in the Article 51 Constitution as possible **grounds for restriction**. Article 32(6) Regulations prohibits propagation of obscenity, but in my view, *vulgar* does not necessarily amount to *obscene*, and as it is not itself listed as a possible ground, I will conclude that “poor taste and vulgar content” do not satisfy the first prong of the test – being provided by law. In regard to the argument of the risk to “**cultural security**”, it is certainly ambiguous. Within the language of the Constitution, would it be a risk to state security? With all due respect to Lady Gaga and her music, I would not equate her *threat* to cultural security to a *threat* to state security of China. The term cultural *security* also appears too grave to link it to the *interests* of society, protected by Article 51 Constitution, albeit in some form, perhaps, it could be. I will, thus, at a stretch, equate cultural security to the interests of society to consider the remaining steps in that light. Finally, concerning **offensiveness for “pro-gay content”**, one would first need to establish to *whom* the “pro-gay content” was offensive. Ordinarily, however, a concern of a kind would fall within the protection of the rights of others (those that could be offended), which is also listed in Article 51 Constitution.

In regard to **step 2** of the test, and the establishment of a **legitimate aim, cultural security**, despite its unusual wording, perhaps, at an equal stretch, could be linked to the protection of **public morals**, listed as legitimate aim in Article 19(3) ICCPR. It could be argued that Lady Gaga’s love for Judas (*albeit metaphorical*) expressed in the song, or her rather provocative outfits in *Born this Way*, could have a detrimental effect on public morals. Moreover, protection of the **rights of others** is, in itself, a legitimate ground for restriction. A right **not to be offended by “pro-gay content”** is not in the ICCPR. However, perhaps, China could have argued that by, supporting the LGBTQ community, Lady Gaga was violating other people’s religious feelings. Protection of the right to religion of others could then be deemed a legitimate ground.

<sup>138</sup> Dorian Lynskey, “Lady Gaga and Katy Perry: Banned in China for 'Being Vulgar',” The Guardian (Guardian News and Media, August 24, 2011), <https://www.theguardian.com/world/2011/aug/24/banned-china-lady-gaga-perry>. 3 August 2020

<sup>139</sup> Jess Denham, “From Blacklist to Playlist: China Lifts Three-Year Ban on Lady Gaga,” The Independent (Independent Digital News and Media, January 21, 2014), <https://www.independent.co.uk/arts-entertainment/music/news/lady-gaga-allowed-back-in-china-after-three-year-ban-9074938.html>. 3 August 2020

<sup>140</sup> Erica Ho, “Lady Gaga's Album ‘Born This Way’ No Longer Banned in China,” Time (Time, July 15, 2011), <https://newsfeed.time.com/2011/07/15/lady-gaga%E2%80%99s-album-%E2%80%9Cborn-this-way%E2%80%9D-no-longer-banned-in-china/>. 3 August 2020

In determining **proportionality**, i.e. **step 3**, we could recall that **censoring, for legitimate aims, is not unusual**. Given the aforementioned case law of the human rights courts, I would not be surprised if *Judas* were found legitimately banned on grounds of **protection of public morals**, or **protection of the right to religion of others** (even though, neither the song nor the video were intended to be blasphemous. On the contrary, upon a deeper analysis of Lady Gaga's, and the music video director's religious feelings and motives, it could even be deemed as a tribute). Notwithstanding, none of the two legitimate grounds was expressly invoked by China. Furthermore, I find it unlikely that the *Born this Way* ban on the grounds of being offensive for its "pro-gay content" could be deemed permissible, given that the HRC found, in as early as 1994, in *Toonen v. Australia*, that sexual orientation is not a legitimate ground for discrimination.<sup>141</sup> Moreover, such limiting views would also be against a pluralistic and democratic society, which human rights courts stand for, especially in the context of freedom of expression. Finally, the human rights courts also found that freedom of expression extends even to those expressions that "offend, shock or disturb".<sup>142</sup> That, in itself, would reject China's ban on the ground that *Born this Way* is **offensive** for its pro-gay content.

Nonetheless, especially weighing in cultural differences, I would imagine that censoring (the music video of) *Born this Way* could be allowed on the grounds of explicit visual content (e.g. Lady Gaga giving birth to herself) either for the protection of public morals, or for the protection of the rights of others (e.g. children), i.e. that bans of both songs discussed could, with strong argumentation, be considered necessary for the furtherance of legitimate aims. Nonetheless, China did not provide any such argumentation. Instead, its arguments were weak, ambiguous, and barely relevant. With such argumentation (as offered by China), whether or not some of Lady Gaga's expression could have been offensive to some, it follows that a violation of Lady Gaga's freedom of expression could be asserted.

### **3.4. Concluding Remarks**

Despite occasionally sharing music and imagery that may *shock, offend and disturb*, according to customary international law, Lady Gaga is entitled to such expression, and by banning her music and image, without compelling argumentation, China acted in violation of Lady Gaga's right to freedom of expression and customary international law.

<sup>141</sup> *Toonen v. Australia* (United Nations, Human Rights Committee, 31 March 1994)

<sup>142</sup> See e.g. *Handyside v. the United Kingdom* (European Court of Human Rights, 4 November 1976) para. 49

## Conclusion

Having come across “freedom of expression” more than once during my research on music censorship, I have not seen a single definition, nor assertion of its actual relevance, other than *just because*. Perhaps, my findings do not go much beyond. Nonetheless, I aimed to show that, in the discussion of freedom of expression and music censorship, censorship is not the last point of the debate. Most literature stops at censorship, possibly arguing that a violation of freedom of expression occurred. However, I am of the view that censorship is only the first step towards the fulfillment of freedom of expression (and with that, the discussion of the two) – if, i.e. when freedom of expression is actually understood. There are ways to assert this right. They may not be perfect, but they may provide remedies, e.g. get *that* song back on the radio, request the State found in violation to compensate the artist, or, in a more *serious* scenario, get the artist out of prison. In a parallel human rights universe, perhaps, China would, having been so ordered by the HRC, lift its full Lady Gaga ban, get her songs back on the radio, and compensate her for the losses she has suffered during the time her music was not played. At this day and age, that specific outcome is nearly impossible. Nonetheless, I did not plan to convert China to diligently abide by all international human rights. With this thesis, I simply intended to show the functioning of a system that protects the frequently discussed, but seemingly not always understood, freedom of expression. I could ask yet again, how could a right be fulfilled, if the awareness of it does not exist in the first place? The conversations on music censorship should expand so as to include freedom of expression and human rights. Only then could musicians have a fighting chance to ensure that their freedom of expression is respected.

Due to the word limit, I did not have a chance to address, in greater depth, in the words of Annemette Kirkegaard and Jonas Otterbeck, a reflection on local norms and imagined universalism. They argue (and I humbly agree) that, in the context of music censorship, understanding and contextualizing local ethical traditions is necessary “to avoid resorting to a moralistic, judgmental position based on human rights universalism”.<sup>143</sup> I understand that it is possible I have not done justice to China. Yet again, my goal was not to criticize China, but to assess a striking situation (that has not been discussed from this perspective earlier) according to international human rights law (albeit it being an imperfect

<sup>143</sup> Annemette Kirkegaard, *Researching Music Censorship*, 5

system), present its functioning, and discuss the importance of the awareness of it. For a case analysis to be (more) complete and accurate, true consideration of local norms is necessary.

Finally, in one last reference to Kirkegaard and Otterbeck, silencing music is a serious restriction, and new insights on censorship should discuss the role of music in inspiring profound social and political exchange.<sup>144</sup> Despite being offensive to some, Lady Gaga changed the lives of many others for the better. Had her music been censored everywhere, from the beginning of her career, it would not only be her who would be deprived of the possibility to express herself, i.e. share her expression, but her fans would likewise be deprived of her music, and the positive impacts that it has had on them. Understanding and discussing music censorship together with freedom of expression can decrease the chances of music being silenced. In my view, it is a chance worth taking.

<sup>144</sup> *Ibid.* 6

## Bibliography

- B, Matty. "Lady Gaga's Judas Decoded: Scholar Explains What the Music Video Actually Means." *Queerty*. Queerty, May 16, 2011. <https://www.queerty.com/lady-gagas-judas-decoded-religious-scholar-explains-what-the-music-video-actually-means-20110516>.
- Blistein, Jon. "Watch Lady Gaga, Bradley Cooper Perform Striking 'A Star Is Born' Duet 'Shallow'." *Rolling Stone*. Rolling Stone, September 27, 2018. <https://www.rollingstone.com/music/music-news/lady-gaga-bradley-coopers-striking-star-is-born-duet-shallow-729894/>.
- Carras, Christi. "Lady Gaga Would like You to Stop Asking: She's Not Dating Bradley Cooper." *Los Angeles Times*. Los Angeles Times, November 6, 2019. <https://www.latimes.com/entertainment-arts/movies/story/2019-11-06/lady-gaga-bradley-cooper-dating-oscars-oprah>.
- Click, Melissa A., Hyunji Lee, and Holly Willson Holladay. "Making Monsters: Lady Gaga, Fan Identification, and Social Media." *Popular Music and Society* 36, no. 3 (2013): 360–79. <https://doi.org/10.1080/03007766.2013.798546>.
- Cloonan, Martin, and Reebee Garofalo. *Policing Pop*. Philadelphia: Temple University Press, 2003.
- Deflem, Mathieu. *Lady Gaga and the Sociology of Fame: the Rise of a Pop Star in an Age of Celebrity*. Basingstoke: Palgrave Macmillan, 2019.
- Denham, Jess. "From Blacklist to Playlist: China Lifts Three-Year Ban on Lady Gaga." *The Independent*. Independent Digital News and Media, January 21, 2014. <https://www.independent.co.uk/arts-entertainment/music/news/lady-gaga-allowed-back-in-china-after-three-year-ban-9074938.html>.
- "ECHR Condemns Pussy Riot and Anna Politkovskaya Cases." *BBC News*. BBC, July 17, 2018. <https://www.bbc.co.uk/news/world-europe-44857461>.
- Engelman, Nicole. "Lady Gaga Talks Keeping 'A Star Is Born' Mementos, Watching The Film Incognito in 'Variety' Cover Story." *Billboard*, November 13, 2018. <https://www.billboard.com/articles/columns/pop/8484739/lady-gaga-variety-cover-interview-a-star-is-born>.
- Gellel, Adrian-Mario. "Traces of Spirituality in the Lady Gaga Phenomenon." *International Journal of Children's Spirituality* 18, no. 2 (2013): 214–26. <https://doi.org/10.1080/1364436x.2013.796309>.

- Gonzales, Erica. "Lady Gaga's Oscar Win Just Got Her One Letter Closer to EGOT Status." Harper's BAZAAR. Harper's BAZAAR, February 25, 2019. <https://www.harpersbazaar.com/celebrity/latest/a25994587/lady-gaga-egot/>.
- Gotrich, Lars. "Hear 'Shallow,' Lady Gaga's Slow-Burning Power Ballad From 'A Star Is Born'." NPR. NPR, September 27, 2018. <https://www.npr.org/2018/09/27/652124946/hear-shallow-lady-gaga-s-slow-burning-power-ballad-from-a-star-is-born>.
- Gregory, Jason. "Lady Gaga, 'Judas': Review." Gigwise. Gigwise, April 16, 2011. <https://www.gigwise.com/blog/62586/Lady-Gaga-Judas-Review>.
- Halperin, Shirley. "Laurieann Gibson: 'We've Created a New Jerusalem' With Lady Gaga's 'Judas' Video." The Hollywood Reporter, May 2, 2011. <https://www.hollywoodreporter.com/news/laurieann-gibson-weve-created-a-176790>.
- Hermes, Will. "The 100 Best Songs of the 2010s." Rolling Stone. Rolling Stone, January 3, 2020. <https://www.rollingstone.com/music/music-lists/the-100-best-songs-of-the-2010s-917532/>.
- Hillin, Taryn. "Here's Why The 'Born This Way' Approach To Sexual Orientation Is Failing." HuffPost. HuffPost, February 9, 2016. [https://www.huffpost.com/entry/born-this-way-sexual-orientation\\_n\\_56ba4b59e4b0b40245c465f0](https://www.huffpost.com/entry/born-this-way-sexual-orientation_n_56ba4b59e4b0b40245c465f0).
- Ho, Erica. "Lady Gaga's Album 'Born This Way' No Longer Banned in China." Time. Time, July 15, 2011. <https://newsfeed.time.com/2011/07/15/lady-gaga%E2%80%99s-album-%E2%80%9Cborn-this-way%E2%80%9D-no-longer-banned-in-china/>.
- Hsu, Annie. "Should China Unsign the International Covenant on Civil and Political Rights?" University of Pennsylvania School of Arts & Sciences Department of Germanic Languages and Literatures, September 30, 2019. <https://cscs.sas.upenn.edu/node/3578>.
- Kirkegaard, Annemette. *Researching Music Censorship*. Newcastle upon Tyne: Cambridge Scholars Publishing, 2017.
- "Lady Gaga in Love with Judas Iscariot? Upcoming Second Single Leaked." The Christian Post. Accessed August 6, 2020. <https://www.christianpost.com/news/lady-gaga-in-love-with-judas-iscariot-upcoming-second-single-leaked-49708/>.
- "Lady Gaga." IMDb. IMDb.com. Accessed August 6, 2020. [https://www.imdb.com/name/nm3078932/?ref\\_=fn\\_al\\_nm\\_1](https://www.imdb.com/name/nm3078932/?ref_=fn_al_nm_1).
- Lauterpacht, Hersch. *The Development of International Law by the International Court*. Cambridge: New York, 2010.

- Levine, Nick. "Can Lady Gaga Become the World's Biggest Pop Star Once More?" BBC Culture. BBC, May 26, 2020. <https://www.bbc.com/culture/article/20200525-can-lady-gaga-become-the-worlds-biggest-pop-star-once-more>.
- Lynskey, Dorian. "Lady Gaga and Katy Perry: Banned in China for 'Being Vulgar'." The Guardian. Guardian News and Media, August 24, 2011. <https://www.theguardian.com/world/2011/aug/24/banned-china-lady-gaga-perry>. "Mango TV." Accessed August 3, 2020. <http://corp.mgtv.com/en/product/>.
- Marques v. Angola (Human Rights Committee March 29, 2005).
- McIntyre, Hugh. "Lady Gaga And Bradley Cooper's 'Shallow' Has Now Sold One Million Copies In The U.S." Forbes. Forbes Magazine, April 17, 2019. <https://www.forbes.com/sites/hughmcintyre/2019/04/17/lady-gaga-and-bradley-coopers-shallow-has-now-sold-one-million-copies-in-the-u-s/>.
- Mjd. "Lady Gaga Albums and Songs Sales." ChartMasters, September 19, 2019. <https://chartmasters.org/2019/08/cspc-lady-gaga-albums-and-songs-sales/>.
- Neary, Lynn. "How 'Born This Way' Was Born: An LGBT Anthem's Pedigree." NPR. NPR, January 30, 2019. <https://www.npr.org/2019/01/30/687683804/lady-gaga-born-this-way-lgbt-american-anthem?t=1596231950790>.
- Nicholls, Owen. "Lady Gaga and Katy Perry 'Banned in China': NME." NME Music News, Reviews, Videos, Galleries, Tickets and Blogs | NME.COM, August 25, 2011. <https://www.nme.com/news/music/lady-gaga-348-1286690>.
- O'Mance, Brad. "Listening to Lady Gaga's next Single Is an Enjoyable Experience. • Popjustice." Popjustice, August 18, 2011. <https://www.popjustice.com/briefing/listening-to-lady-gagas-next-single-is-an-enjoyable-experience/>.
- Osborne, Emma. "Lady Gaga - Judas'." Capital, February 7, 2012. <https://www.capitalfm.com/features/controversial-music-videos/lady-gaga-judas/>.
- Phillips, Tom. "China 'Bans Lady Gaga' after Dalai Lama Meeting." The Guardian. Guardian News and Media, June 28, 2016. <https://www.theguardian.com/music/2016/jun/28/china-lady-gaga-ban-list-hostile-foreign-forces-meeting-dalai-lama>.
- Posenato, Naiara. "The Protection Of The Right To Freedom Of Expression: A Panorama Of The Inter-American Court Of Human Rights Case Law / A Proteção Do Direito À Liberdade De Expressão: Um Panorama Da Jurisprudência Da Corte Interamericana

- De Direitos Humanos.” *Espaço Jurídico Journal of Law [EJLL]* 16 (2016): 51–68.  
<https://doi.org/10.18593/ejll.v16i3.9770>.
- “Pussy Riot – Punk Prayer (English Translation).” Genius. Accessed August 6, 2020.  
<https://genius.com/Pussy-riot-punk-prayer-english-translation-lyrics>.
- Rep. *IFPI Digital Music Report 2012*. International Federation of the Phonographic Industry, 2012.
- Shallow (from A Star Is Born) (Official Music Video)*, 2018.
- “Shallow: How Lady Gaga and Bradley Cooper Made the Defining Song of 2018.” The Guardian. Guardian News and Media, November 4, 2018.  
<https://www.theguardian.com/film/shortcuts/2018/nov/04/shallow-bradley-cooper-lady-gaga-a-star-is-born>.
- Shmoop Editorial Team. “Born This Way Meaning.” Shmoop. Shmoop University, November 11, 2008. <https://www.shmoop.com/study-guides/music/born-this-way/meaning>.
- Spanos, Brittany. “50 Best Songs of 2018.” Rolling Stone. Rolling Stone, December 14, 2018. <https://www.rollingstone.com/music/music-lists/50-best-songs-of-2018-764204/lady-gaga-shallow-bradley-cooper-764207/>.
- Stransky, Tanner. “Lady Gaga Releases Full Lyrics to Forthcoming Single 'Born This Way': Read Them Here.” EW.com. Accessed August 6, 2020.  
<https://ew.com/article/2011/01/27/lady-gaga-born-this-way-full-lyrics/>.
- United Nations, Vienna Convention on the Law of Treaties (United Nations, Treaty Series, vol. 1155, 23 May 1969)
- United Nations, Statute of the International Court of Justice (United Nations, 18 April 1946)
- United Nations Human Rights Committee (HRC), General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant (HRC, CCPR/C/21/Rev.1/Add.13, 26 May 2004)
- United Nations General Assembly, International Covenant on Civil and Political Rights (United Nations, Treaty Series, vol. 999, 16 December 1966)
- “United Nations Treaties, Parties to the ICCPR.” United Nations. Accessed August 6, 2020.  
<https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4>.
- United Nations Treaties, Parties to the Optional Protocol (United Nations). Accessed August 3, 2020. <https://treaties.un.org/pages/ViewDetails.aspx?src=IND>.
- “United Nations Treaties, Parties to the VCLT.” United Nations. Accessed August 15, 2020.  
<https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY>.

- “United Nations Treaties, Parties to the Optional Protocol.” United Nations. Accessed August 6, 2020. <https://treaties.un.org/pages/ViewDetails.aspx?src=IND>.
- Van Boom, Daniel. “Lady Gaga Is Now Banned in China.” CNET. CNET, June 28, 2016. <https://www.cnet.com/news/lady-gaga-is-now-banned-in-china/>.
- Vena, Jocelyn. “Lady Gaga Producer Calls 'Judas' Playful With A 'Serious Message'.” MTV News, March 1, 2011. <http://www.mtv.com/news/1658922/lady-gaga-judas/>.
- Vena, Jocelyn. “Lady Gaga's 'Born This Way' Premieres.” MTV News, February 11, 2011. <http://www.mtv.com/news/1657726/lady-gaga-born-this-way/>.
- Wang, Amy X. “Justin Bieber Joins the Illustrious List of Musicians Banned from China.” Quartz. Quartz, July 21, 2017. <https://qz.com/1035721/justin-bieber-is-banned-from-china-joining-the-likes-of-katy-perry-lady-gaga-and-elton-john/>.
- Werde, Bill. “The Billboard Q&A: Lady Gaga's Good Romance.” Billboard, July 19, 2013. <https://www.billboard.com/articles//1179099/the-billboard-qa-lady-gagas-good-romance>.
- “What Lady Gaga's 'Shallow' Says About 'A Star Is Born'-and Music Itself.” Spotify, October 18, 2018. <https://web.archive.org/web/20181112123634/https://newsroom.spotify.com/2018-10-18/what-lady-gagas-shallow-says-about-a-star-is-bornand-music-itself/>.
- Yebra, José M. “Camp Revamped in Pop Culture Icon Lady Gaga: The Case of ‘Telephone’ and ‘Born This Way.’” *European Journal of American Culture* 37, no. 1 (2018): 39–55. [https://doi.org/10.1386/ejac.37.1.39\\_1](https://doi.org/10.1386/ejac.37.1.39_1).
- You, Tracy. “Chinese TV Station Cuts out All Appearances of Lady Gaga during Oscars Ceremony.” Daily Mail Online. Associated Newspapers, February 28, 2019. <https://www.dailymail.co.uk/news/article-6750911/Chinese-TV-station-cuts-appearances-Lady-Gaga-Oscars-ceremony.html>.