

# GROUP SURVIVAL FACTORS

Joshua Rust & Anna Strasser

## *Abstract*

What are the factors that would account for the survival or persistence of a music group? Answers to this question must be relative to the kind of group under investigation. Following Brian Epstein (2019), we begin by describing exemplars of two kinds of music groups. First, there is a group of street musicians. This kind of group forms when musicians play together, continues as players join and leave the group as it plays music, and terminates when members stop playing after a few minutes. Those groups are best characterized by a functionalist conception (Guala, 2016) and seem to persist as long as they fulfil their function. Second, there is an institutionally structured symphony orchestra, such as the *Berliner Philharmoniker*. Such a group typically forms when articles of incorporation are filed with the appropriate authorities and typically persists until it has been formally disbanded, whether or not its members are regularly playing music. Their persistence depends on the satisfaction of their constitutive rules rather than the realization of their functions (Searle, 1995). However, the example of music groups is a fertile one, and we explore modalities of survival that resist being shoehorned into either one of these exemplary cases. For example, there are bands that are not institutionally supported, unlike the case of the symphony orchestra, but whose continued existence does not depend on music being played, unlike the case of the street musicians. Furthermore, some groups can survive the transition from one kind of group to another. Finally, there are cases where the continued existence of a group is indeterminate. In such cases, the question of persistence seems to be an empty question (Parfit, 1986) and cannot be answered but is decided by internal or external ascriptions. Discussing such interesting in-between cases, we will provide a taxonomy of music groups that is able to capture a whole spectrum instead of only two idealized cases and show how factors decisive to persistence can vary.

## 1. INTRODUCTION

It is common practice to refer to music-making collectives as music groups, and no one will question the existence of music groups. It seems to be an uncontroversial feature that members of music groups collectively produce music – they act jointly. However, not every joint action resulting in music constitutes a music group, and music groups do not continuously perform joint actions. From the perspective of social ontology, one can describe music groups as social or institutional entities. In this paper, we will focus on factors that make a music group stable as a group, i.e., ensure its survival, so to speak. To this end, we investigate the interplay of various factors that can account for the survival or persistence of a music group. This involves, for example, questions concerning how it is possible for music groups to survive the addition, loss, and replacement of members. In other words, how can we describe the relationship between group members and their group? Aiming to analyse the varieties of music groups, we discuss the conditions necessary for a music group to emerge and guarantee a group's continued existence.

An investigation into factors accounting for the survival or persistence of a music group can shed light on the nature of music groups and will demonstrate their variability regarding constitution conditions, their stability, and also concerning apparently essential features. To this end, we explore issues concerning the right to use an established group name as well as legitimate claims about a group's origin. Imagine, for example, a music band named '*Infinity*' that has been successful for some years. However, at the beginning of the seventh year, severe, unresolvable disagreements among the musicians arise. In the end, there are two subgroups, each of them aiming to continue the success story of the *Infinity* band. How can one decide which group is a continuation of the originating group when a group splits into several successor groups? What are the factors that may help in deciding whether any of the two groups (or both?) can be considered a continuation of the original group? Is this a majority decision, something that would represent a compromise of all former members, or does the former band leader have the final word? Or might this also depend on whether the public will consider the subsequent group as a continuation of the original band? And most importantly, what other factors could support the claim that one or the other of the band is *Infinity*? The band's music style, the rules along which a group plans their future, the label of the music company, or the performance venue might all be relevant to this determination. Even though we assume that there are cases in which questions regarding the persistence of a group cannot be finally decided and remain

indeterminate, we will elaborate on various features that can play a role in the determination of group persistence.

As the varieties of music groups differ in their conditions regarding persistence, we claim that a universal answer valid for all kinds of groups is out of reach. Instead, an answer to this question must be relative to the kind of group under investigation. As a starting point, we take a taxonomy, as offered by Brian Epstein (2019), that distinguishes two kinds of social entities, exemplified by a group of street musicians and a university faculty committee, the latter of which is sufficiently akin to a symphony orchestra (2. *Two paradigm cases of music groups*). In a second step, we elaborate on the relation of those two kinds of groups to two major approaches one can find in the debates about group ontology. One is a functionalist conception claiming that persistence conditions are based on an evaluation of whether the group is fulfilling or is able to fulfil its function (Guala, 2016). The other one takes constitutive rules as a decisive criterion for determining whether the group persists (Searle, 1995) (3. *Two approaches to social ontology*). The following investigation of the varieties of music groups shows that neither of those two approaches is able to capture all kinds of music groups. The persistence conditions of some music groups are neither fully described by constitutive rules nor sufficiently characterized in functional terms. Other music groups even undergo a transition from one type to another (“convertible groups”). Discussing interesting in-between cases, we will deliver reasons for expanding the taxonomy for groups (4. *In-between cases & various modes of survival*). We then discuss three lessons our investigation into the nature of music groups has for social ontological inquiry. First, we think music groups vividly exemplify the indeterminacy of some entities; there might be no fact of the matter as to, for example, which of the offshoots of *Infinity* is *the* band (5. *Embracing Indeterminacy*). Second, our investigation gives us the means to articulate and resist the thought that legal anchoring schemes or legitimating mechanisms defeat other such mechanisms (6. *The Compulsion of Legality*). Third, we suggest expanding the taxonomy of music groups to capture a wider spectrum by utilizing a disjunctive conceptual scheme that is not reduced to only two possible sets of conditions. Allowing different sets of qualificatory conditions for music groups, these in-between cases can also be described as music groups (7. *Towards a conceptual framework capturing the wide spectrum of music groups*). We finish by summarizing our findings.

Since social ontology is not yet a field that can look back to a long history of terminological specifications, it might be helpful to introduce the terms we use in this paper and say something about how we think that they relate to other frequently used terms. As far as we see it, ‘social entities’ are instances of ‘social kinds’, and a social group is a social or institutional entity that is constituted by people. If a social group is established by constitutive rules, which specify the grounds for such groups, then those groups qualify as an institutional entity.

## 2. TWO PARADIGM CASES OF MUSIC GROUPS

Music groups are not often used to explain the ontology of social and institutional entities. One exception is the description of social entities as K-groups by Brian Epstein (Epstein, 2019, pp. 4906–4907). According to Epstein’s treatment of social groups, which are social entities constituted by people, there are four exemplars of kinds of social groups (so-called “K-groups”). The first two are especially relevant to our topic of investigation because we presuppose that music groups are examples of deliberately organized groups that can differ in their forms. Epstein depicts K1 and K2 groups as two importantly different forms that such organized groups can take.<sup>1</sup>

A group of street musicians is an exemplar of the first kind of social group (“K1”):

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<sup>1</sup> Epstein’s other exemplars of K-groups include *capitalist social classes* (K3), where a group gets formed upon coming to play certain role in an economic system, and *middle-income people* (K4), which are relatively unstructured groups consisting of those who share a certain „dominant feature“ (a so-called ‚constitution-dominated‘ kinds“). Where bands are always deliberately organized groups, K3 and K4 are what Katherine Ritchie describes as („Type 2“) „feature groups,“ which lack structure-functional organization, lack collective intentionality, and people may or may not choose to be members (Ritchie, 2015, p. 314). Feature groups are not relevant to a discussion of structured music groups.

**Group of street musicians.** A group of kind K1 is formed when musicians gather together on the street, standing or sitting relatively close to one another, and start playing. Players can join the group or leave the group, with membership dependent on their being in close proximity to the others, joining in, and being responded to appropriately. A group of this kind terminates when it stops playing for more than a few minutes. (Epstein, 2019, p. 4906)

The street musicians are an instance of an organized group of the kind K1, which is defined in terms of the capacity to realize a function. Such groups are mercurial in that their persistence is dependent on a set of members who are either playing or poised to play; that is, instances of the kind, street musicians, exist only when members perform a function or are ready to perform that function so that each stage of the group is part of an unbroken sequence of stages stretching back to the origin of the group (Epstein, 2019, p. 4910).

Such groups are not formally established – they can come into existence quite spontaneously. However, the persistence of such groups depends on the fact that their members are ready to act jointly; consequently, they cannot survive long periods of inactivity. They arise quickly but can disappear just as quickly, and therefore radical changes in membership are untypical.

Epstein's exemplar of the second kind of social group ("K2") is a Tufts University faculty committee.

**Tufts University College of Arts, Sciences and Engineering elected standing faculty committees.** There are about fifteen actual committees instantiating kind K2. Groups of this kind are created by a process of voting and setup by the faculty, with members nominated and voted on by the faculty. The terms are staggered so that each year only a fraction of the members rotate out and are replaced; replacements are nominated by the faculty and voted in by the faculty. The structure and functions of the committees are dynamic over time, with proposed changes made by the dean or faculty members and voted on by the faculty. Sometimes committees perform their intended functions, and sometimes the members are at odds with one another for long stretches of time. (Epstein, 2019, p. 4906)

However, since this paper focuses on music groups, we adapt this description to the *Berliner Philharmoniker*, which we think is importantly analogous to such committees:

**Berliner Philharmoniker.** The German orchestra *Berliner Philharmoniker* is a music group instantiating kind K2. Groups of this kind are created by an act of establishment by the founding members, with further orchestra members and conductors hired on. Members are hired through an established process. The structure and functions of the *Berliner Philharmoniker* are dynamic over time, with proposed changes made in a rule-governed way. Most of the time, the *Berliner Philharmoniker* perform their intended functions, but sometimes, e.g., due to Covid, they do not give concerts.

If the group of street musicians has its members essentially, a group like the *Berliner Philharmoniker* is an instance of an organized group of the kind K2, which has an essential origin (Epstein, 2019, p. 4904) in the sense that such groups are necessarily formed by an (official) act of establishment specified by constitutive rules.

In fact, the history of the *Berliner Philharmoniker* is more nuanced than suggested here. The formation of the *Berliner Philharmoniker* was preceded by an act of rebellion: In March 1882, 50 members of the ensemble run by the musical director Benjamin Bilse decided to refuse to sign their new contracts because they found the working conditions too unfavourable as they were to earn hardly more than day laborers. The musicians decided to set up on their own and, from then on to work at their own risk. Formally speaking, the formation of the *Berliner Philharmoniker* included the forming of an intention and making a group decision which resulted in the refusal to sign a new contract with Bilse and the foundation of a new ensemble called *Ehemalige Bilsesche Kapelle*.<sup>2</sup>

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<sup>2</sup> See, <https://www.berliner-philharmoniker.de/en/history/beginning>.

	TIME	PRESUPPOSITION	GROUP ACTION
$t_0$ :	Before March 1882	50 members were not happy (found the working conditions too unfavourable)	intentions (1) not to work for Bilse anymore (2) to remain musicians and work at their own risk
$t_1$ :	March 1882	intentions remained persistent	group decisions (1) not to sign a new contract with Bilse (2) to set up a new ensemble named <i>Ehemalige Bilsesche Kapelle</i>
$*t_2$ :	1. May 1882	expiration of the ultimatum for signing the musician contracts with Bilse (April 30)	(1) intentionally refused to sign new contracts with Bilse (2) founded <i>Ehemalige Bilsesche Kapelle</i>

Table 1: Nuanced history of the *Berliner Philharmoniker*

Such groups can survive complete turnovers in membership and long periods of inactivity. For example, many orchestras cancelled all performances during the pandemic but continued to exist. Instances of groups of this kind can even survive relatively profound changes in function. Looking at the history of the *Berliner Philharmoniker*, one can describe a change in function: Starting as the *Ehemalige Bilsesche Kapelle* (*The Former Bilse's Ensemble*), they delivered two kinds of programs (functions): so-called “Popular Concerts” relying more on entertaining works, and “Symphony Concerts” presenting more challenging works and “novelties”. Nowadays, they are known as an orchestra that does not fulfil the function of presenting entertaining works.

The groups of street musicians and the *Berliner Philharmoniker* are exemplars of two importantly different types of organized groups, K1 and K2. Where K1 is organized in such a way that they are able to perform a function, K2 groups have essential origins defined in terms of their satisfaction of the relevant constitutive rules. As such, K2 groups have the ability to survive complete turnovers in membership, long periods of inactivity, and even changes in function.

### 3. TWO APPROACHES TO SOCIAL ONTOLOGY

Within social ontology, there seem to be two mutually exclusive approaches to how social entities, which also include music groups, can be captured. One emphasizes a functionalist conception and the other constitutive rules.

The former was articulated by Francesco Guala, in *Understanding Institutions* (2016), who describes a “broadly functionalist conception of institutions that runs through the book” (Guala, 2016, p. 78). According to his view, institutional kinds, such as the K1 groups in Epstein’s taxonomy, are defined in terms of a set of properties that would bring about a function – in terms of instances being able to solve a class of coordination and cooperation problems. According to the above-presented definition, one can describe the function of groups of street musicians as being ready to perform music.

This is in contrast with Searle’s claim that institutional kinds are defined by their constitutive rules.<sup>3</sup> According to Searle, institutional kinds are not exclusively characterized by functions but rather by constitutive rules. For example, where the function of U.S. dollar bills is to serve as a medium of exchange, constitutive rules specify the conditions an object needs to satisfy to qualify as an instance of the relevant social kind (Epstein, 2015, p. 75). Constitutive rules, according to Searle, have the form “X counts as Y in context C” (Searle, 1995, p. 28), where the X term specifies the conditions something needs to satisfy in order to count as an instance of the social kind Y in a social context C. The constitutive rules for U.S. dollar bills (Y) includes being issued by *Federal Reserve Banks* (X). Brian Epstein maintains that the grounding relation is what Searle is “trying to capture” with the notion of a constitutive rule (Epstein, 2015, p. 75), where a fundamental property or entity grounds a less

<sup>3</sup> Guala articulates a “unified social ontology” which attempts to reconcile the equilibria- and rules-approaches to institutions. According to the unification, institutional types are functionally defined according to the cooperation and coordination problems they solve. Institutional tokens are further subdivided according to the particular norms or regulative rules that help realize that function (Guala 2016, 196, 199). In this way, Guala’s view is primarily a functionalist account of institutions. However, according to Searle, constitutive rules define institutional types (1969, 34). The views come apart when, for example, the function of a given institution changes, but the constitutive rules remain the same, as in the case of knighthood.

fundamental property or entity if the former “metaphysically makes” the latter (Epstein, 2015, pp. 69–72), as clay might be among the grounds of a statue. As discussed above, “constitutive rules” are kinds of what Epstein calls “frame principles” (Epstein, 2015, p. 77); if the grounds are the actual ingredients of a social entity, a constitutive rule or frame principle is the recipe. Applying the formula “X counts as Y in context C” to the *Berliner Philharmoniker*, we can say, a group of musicians counts as the *Berliner Philharmoniker* in the context of the German legal system at that time, where founding members (X) count as a philharmonic (Y) in virtue of satisfying the terms of its articles of incorporation.

In this paper, we limit Searle’s notion of “constitutive rule” to actions that would bring K2 groups into existence by way of legal enactment. Constitutive rules are, thus, a particular kind of frame principle – they describe the official action that, e.g., brought the *Berliner Philharmoniker* into existence.<sup>4</sup> Since K1 groups do not have essential origins, they do not have constitutive rules, although they have frame principles that describe their grounds. In general, groups whose grounds are describable by constitutive rules are not just organized, but entities anchored in legal enactments and, so, embedded in larger institutional structures. For example, the constitutive rule that describes the creation of a faculty committee (say, by a faculty vote) can be found within the bylaws of the overall university. And the university itself may trace its origins to its enactment as a not-for-profit corporation, pursuant to the statutes of the state within which the university is found.

We can see the difference between these two proposals by considering counterfactual situations. Is there a change in kind if, on the one hand, the constitutive rules for US money production are changed but the function remains the same or if, on the other hand, the constitutive rules are fixed but the function changes? For example, *Federal Reserve Notes* are issued by *Federal Reserve Banks* and *United States Notes* were (until 1971) issued by the U.S. Treasury, but both notes perform the same function; they are still accepted as a legal media of exchange. If the grounds are specified by constitutive rules, then *Federal Reserve Notes* and *United States Notes* would appear to qualify as different kinds of U.S. currency. If the grounds are specified by their function, then they would appear to qualify as the same kind of U.S. currency.

Searle and Guala are principally concerned with answering the question of what it is for something to be an instance of one institutional kind rather than another. However, because an answer to the question of what it is for an instance of that kind to continue to exist over time depends on and is constrained by an answer to the question regarding that thing’s nature,<sup>5</sup> reasonable inferences can be drawn about what their answers to the identity question would be.

It is tempting to see Searle and Guala as offering *competing* accounts of the grounds and identity of social entities. This is not our view. Our view is that the different kinds of social entities are grounded in distinct ways. The grounds and identity conditions of some social entities are specified by constitutive rules, and the grounds and identity conditions of other social entities are specified by the functions they would perform.

This ecumenical approach is, we think, shared by Epstein. Epstein articulates types of groups in order to remind the theorist that a simple answer to the question about what groups have in common is “a non-starter:” “Too much faith in parsimony misleads an investigation of social groups from the outset” (Epstein, 2019, p. 4900).

In this paper, we extend this investigation. Music groups, like social groups in general, come in many forms. Thus, an investigation into the manifold varieties of music groups has the potential to increase our understanding of the many forms organized groups can take, beyond those that fall under K1 and K2.

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<sup>4</sup> This is not to deny that the legal enactment also determines further rules to which the group members are committed.

<sup>5</sup> As Parfit says, with respect to persons, “[i]t will help to distinguish these questions: (1) What is the nature of a person? (2) What makes a person at two different times one and the same person? ... In answering (2) we shall also partly answer (1). The necessary features of our continued existence depend upon our nature” (Parfit 1986, 202).

#### 4. IN-BETWEEN CASES & VARIOUS MODES OF SURVIVAL

In section 3, we discussed two exemplars of music groups – the group of street musicians and a symphony orchestra. We concluded that the former can be well captured by a functionalist conception, while the latter is better described by constitutive rules. Garage bands, however, do not fit neatly into either of these categories. Unlike street musicians, they survive periods of inactivity, but unlike the Berlin Philharmonic, they are not legally incorporated. Moreover, while most major bands eventually become legally incorporated, such bands typically do not identify their formation with the date of legal recognition. This suggests, first, that there are musical groups that do not fit neatly into the distinction between K1 and K2 groups; second, that there are factors, such as self-attribution, that are relevant to determining a group's identity over time; and third, that bands can survive conversions across group types. In this section, we will discuss several examples in which the question of whether a certain music group might count as a continuation of another music group cannot be answered in an either-or manner. This is because functions and constitutive rules do not exhaust the factors that are relevant to a group's survival.

Which survival factors might also be relevant to the question of whether or not a music group persists? In addition to function and constitutive rules, we consider self- and other-attribution, structure, changes in line-up, and performance characteristics.

##### 4.1. SELF-ATTRIBUTION

When it comes to music groups, intentional self-attribution by the relevant performers is a highly relevant factor in the determination of whether or not two groups, X at  $t_1$  and Y at  $t_2$ , qualify as the same group. Do the performers see themselves as an enduring group? Nobody will doubt that, e.g., *Depeche Mode*, *Die Toten Hosen*, *The Cure*, or *Swans* can look back on the long history of their group, even if they don't sound like they did in their early days or even if their members change in dramatic ways.

If the group of street musicians who met at a certain time every week to jam together agreed on a name of the group, this might be an indication that those group members are beginning to see themselves as a part of something that continues to exist even when they stop playing. Such self-attribution might, for example, license meeting elsewhere or at other times during the week as that group. Other mutual obligations might also accrue following self-attribution (Gilbert, 1990). For example, where there was no requirement that one attend the weekly jam session, performers that have started to think of themselves as members of an enduring band might reasonably expect each other to attend and may feel entitled to rebuke each other when that expectation is violated.

One important, but by no means necessary, indication that the performers see themselves as the same group over time is the name they assigned to the group. The members of the *Rolling Stones* saw themselves as a band before they had named themselves. According to Keith Richards, slide guitarist Brian Jones spontaneously named the band when, upon being prompted by a journalist for the band's name, he saw a Muddy Waters LP on the floor that included the track name "Rollin' Stone" (the band's name was changed to "The Rolling Stones" a year later, see Wikipedia entry 'The Rolling Stones').

However, self-attribution is not always the decisive factor. There are cases where groups come into existence because of external attribution. For example, groups that are formed by casting, such as *Back Street Boys* and *Take That* were created (casted) by a record company. *No Angels* resulted from a casting show in which a jury and public co-determined its composition.

##### 4.2. STRUCTURE

Katherine Ritchie describes a class of groups (namely, „Type 1“ or organized groups) that are characterized in terms of a network of relations connecting positions or roles (nodes) (Ritchie, 2013, 2020). These roles are functionally characterized by rights and obligations vis-à-vis other roles, and members occupy these roles. For example, at some universities, the President is obliged to report to the Board of Trustees. The roles in the structure of a beat band include, classically, a vocalist, lead guitarist, rhythm guitarist, bassist, and drummer (where the roles of vocalist and guitarist are often played by the same person). Key roles might also include lyric writer and songwriter.

The structure of a group is closely associated with but distinguishable from its constitutive rules. As discussed, the roles of a structured group are characterized by rights and obligations. As we are using the term, constitutive rules describe the formal or codified conditions someone or something must satisfy in order to qualify as an occupant of that role. When a band is legally recognized as, say, a Limited Liability Company, constitutive rules also describe these conditions. The role of U.S. president is characterized by the obligation to submit a budget request to Congress. The constitutive rules of the U.S. presidency include winning a majority of electoral college votes. Someone who satisfies the constitutive rules of the presidency is then subject to the rights and obligations that characterize the presidential role as a node in an overall governmental structure. However, it is important to see that some roles might not be associated with constitutive rules in the sense that one might become an occupant of a role, and so subject to normative expectations, but there are no formal or codified conditions for occupancy. Perhaps friendship and going on a walk together are like this. Typically, but not always, there are no formal procedures one follows in order to create a band or become a band member, even though being a band or a member of that band entails rights and obligations; as discussed above, a band's and band member's origins might only require that performers expressed the right intentions (self-attribution). However, some music groups' origins might be traced to the satisfaction of legally recognized, highly codified constitutive rules, as in the case of the *Berliner Philharmoniker*.

Structure is also closely related to but distinguishable from function. The assignment of rights and obligations to the various roles that constitute the structure of a group is typically guided by a sense of the group's function. But a group can have the same function while changing its structure (companies reorganize) and a group can maintain its structure while changing its function (a faculty committee can be given a new charge).

Continuity of structure can be relevant to the question of a music group's persistence. If the *Berliner Philharmoniker* are necessarily an orchestra (because a philharmonic is a large instrumental ensemble), then a "reorganization" that somehow reduced the size of this ensemble to, say, a quartet, would seem to be better characterized as a "termination".

Still, organization remains among the least significant survival factors (compared to function, constitutive rules, or self-attribution). Indeed, Ritchie acknowledges that structural continuity is relatively unrelated to the question of group persistence: "The [structure-based] view allows for groups to persist through changes in members and through changes in structure" (Ritchie, 2020, p. 412; see also Epstein, 2019, p. 4903 n10).

#### 4.3. CHANGES IN MEMBERSHIP OR LINE-UP

At first sight, the persistence of a music group seems to have a close relation to the persistence of its members. In the ideal case, all members are continuously part of the group. However, the ideal case is hardly met when it comes to bands. At least partial exchanges of members seem to be quite usual for many bands. The epithet, „Revolving Door Bands,“ describes those music groups that become notable for a constantly changing line-up. In this case, as exemplified by *The Cure's* Robert Smith or *Nine Inch Nail's* Trent Reznor, a single band member will typically serve as a persistent axis around which the door revolves. For example, Mani Neumeier (drums, vocals) is the only consistent member since *Guru Guru's* founding in 1968. The lead guitarist of *Lynyrd Skynyrd*, Gary Rossington, is the only continuous member since the band's founding in 1964 (under the name *The Noble Five*). In some cases, a rotating workforce built around a core member is by design, as it is indicated by band names such as *Sun Ra Arkestra*, *Ringo Starr and the All-Starr Band*, *Dio*, and *Mike + the Mechanics*.

*Queen* is a difficult case. Following Freddie Mercury's death, remaining-members of the band tapped the vocal talents of Adam Lambert, following his electrifying 2009 performance on *American Idol* that captured the "octave-defying range and theatrical flair" of Mercury (Hyman, 2014). Lambert went on to join the band under the name *Queen + Adam Lambert*. Apparently, *Queen* can be *Queen* without Mercury, but not with Lambert.

Extreme cases of the *Revolving Door* are characterized by an absence of any continuous member since a band's founding. For example, *Yes's* current line-up includes none of the band's founders, following bassist Chris Squire's death in 2015. Other examples of bands whose membership has been entirely

refreshed include *Iron Butterfly* (who has cycled through an astonishing 59 changes in membership), *Napalm Death*, *Christian Death*, and *Underoath*.

In many cases, but not all, the possibility of continuity across membership changes is explained by the band's satisfaction of legally recognized constitutive rules. Most professional bands become LLCs or are otherwise formally incorporated, rendering it possible for the band to persist across changes in membership or across long periods of inactivity. If the band *Infinity* would have had a designated bandleader, it is most likely that the group in which the bandleader is participating will be considered the continuation of the band *Infinity*. However, other decisive factors concerning the formal state of affairs can overwrite the above estimation. The existence of contracts and the fact who has signed them will have an influence on which of the two groups at  $t_2$  will qualify as a continuation of the band *Infinity*. If the drummer of the band was the only one who signed the ongoing contracts, and the drummer is not in the same group at  $t_2$  as the former bandleader, one could arrive at the view that the band in which the contract holder is participating will be considered the continuation of *Infinity*. Or consider the case of *Little River Band*, who had gone through a complete change of membership between its founding in 1975 and 2002. Members of the 2002 iteration of the band successfully sued the band's founding members for trademark infringement because they had been performing under the name *The Original Little River Band*. Findings relevant to the Federal Court of Australia's decision included the fact that the Little River Band trademarks and the URL „*littleriverband.com*“ were assigned to *We Two Pty Ltd.*, which was wholly owned by Stephen Housden, but who had not joined the band until 1981. We discuss this case in more detail below.

#### 4.4. PERFORMANCE CHARACTERISTICS

Normally, performance characteristics, including spirit, style, and repertoire, are only weakly relevant to the determination of whether or not a music group at  $t_1$  and at  $t_2$  are the same group. The *Beastie Boys* have hits on Billboard's Pop Song, Alternative, Rap, Mainstream Rock, Dance/Club Play Songs, and R&B/Hip-Hop charts and continues to be the biggest-selling rap group since Nielsen SoundScan started tracking this category in 1991. While the *Beastie Boys* started off as a hardcore punk band, the fact that they evolved into a rap group does not raise questions about the persistence of this group. However, when certain performance characteristics are an explicit part of a band's identity, then a change in such characteristics could be grounds for thinking that the band has ceased to persist. *Partch* is an ensemble that specializes in recreating music and instruments in the style of the American maverick composer Harry Partch (1901 – 1974). Partch was one of the first 20th century composers to work with microtonal scales, wherein the octave is divided into, e.g., 43 unequal tones. Partch then constructed his instruments, such as the Chromelodeon, the Quadrangularis Reversum, and the Zymo-Xyl, to accommodate his compositions. The ensemble *Partch*, which began as *Just Strings* in 1991, was created for the purpose of playing and commissioning music in the style of Harry Partch. If the bandmembers ceased to play music in this style, but continued to play under the name *Partch*, it is difficult to avoid the conclusion that the band would only continue to exist “in name only.”

If performance characteristics are at least weakly relevant to the question of survival, this leads us to an interesting question concerning the subtype of cover bands. Cover bands are music groups that cover pieces of other, mostly well-known groups. This can range from original to new arrangements and their own interpretations. One can distinguish between several subtypes of cover bands, such as tribute and revival bands, and top-40 cover bands (party bands).

Revival and tribute bands focus exclusively on one theme or one performer. An interesting feature of tribute bands is that they aim for the most authentic musical performance possible, e.g., with respect to the stage wardrobe, instruments, and show interludes. They try to create the illusion in the audience that they are attending a concert of the original band. Although some tribute bands include their own improvisations, they try to sound as if they could have come from the role models themselves. For example, not only does Rus Anderson perform as Elton John while wearing some of his actual “gorgeous, colorful & flamboyant” costumes, but he performed as the young Elton John in video



promotions for Elton John’s own final world tour (Anderson, 2023). Another example is *the Australian Pink Floyd Show*.<sup>6</sup>

We assume that tribute bands meet conditions that indicate that they could be considered a weak continuation of the original group – the group they cover – because the audience has the illusion that they are listening to the original band. By contrast with tribute bands, top-40 cover bands make use of the mass of well-known songs. From a musical point of view, authenticity is not as important here as it is with tribute bands and revival bands. They do not aim to be a continuation of any of the covered bands. Nevertheless, they stand in an interesting relation to the covered groups since the performance of pieces by other bands is usually subject to remuneration. A corresponding amount must be paid to GEMA. And if the material is not replayed 1 to 1, but interpreted (edited), permission must be obtained from the publisher.

So-called revival bands exclusively imitate performers who are either deceased or no longer exist as a band, whereas tribute bands relate to performers who still give concerts themselves. For example, the Detroit revival band that goes by the name, *Revival*, only plays songs by *The Allman Brothers*. One might think that *Partch* would also qualify as a rival band. However, even though *Partch* plays songs composed by Harry Partch, the band has also commissioned and premiered works by other composers in the microtonal scale which do not imitate the style of Harry Partch’s own compositions. This is why we resist characterizing it as a revival band. A better analogy would be the way in which *The Beach Boys* came to be inspired by the orchestration and personal lyrics that typified *The Beatles’* music: Brian Wilson reported that *The Beatles* “really did inspire the instrumentation I ended up using for [the album] *Pet Sounds*.”

A potentially new form of revival bands is constituted by AI-powered software. For example, there have been attempts to create “new” songs by *Nirvana* (Grow 2021) and *Amy Winehouse* (Daly 2021), complete Beethoven’s unfinished 10th symphony (Elgammal 2021), or compose chorales in the style of Bach (Hadjeres et al. 2017). One might ask oneself whether the artists, had they been alive today, would have grounds to claim ownership of these AI-enabled creations (see Karpus & Strasser, submitted).

In summary, we have argued that the exemplars of Epstein’s K1 and K2 groups – the group of street musicians and the *Berliner Philharmoniker* – represent two ways of being a group. Where the existence of the first group depends on the capacity to realize a function, the second group is legally constituted and, so, can survive long periods of inactivity and even changes in function. However, because many bands do not identify their founding with the date of legal incorporation, a more thoroughgoing taxonomy is required to describe the many ways of counting as a music group. In addition to function and the satisfaction of legally codified constitutive rules, we have identified a broader set of other survival factors – attribution (self- and other-), structure, changes in membership or line-up, and performance characteristics – that are relevant to the determination of group identity over time.

In what follows, we explore several implications of our view.

## 5. EMBRACING INDETERMINACY

It is characteristic of Derek Parfit’s view of personal survival that the question of whether a person X at  $t_1$  and a person Y at  $t_2$  is not always answerable. “It is not true,” Parfit writes, “that our identity is always determinate” (Parfit, 1986, p. 217). Imagine two persons, X and Y, that would be strongly psychologically connected but for a temporal gap – perhaps X came to suffer and then overcame an acute form of dementia. Is X the same person as Y? Because survival comes in degrees, Parfit urges us to resist the temptation to always answer this question. Or, at least, he urges us to recognize that an answer to an empty question is more like a decision than a discovery.

Similar remarks apply to instances of social kinds. Are two clubs that have identical missions, rules, and members, but are separated by an extended period of inactivity the very same club or exactly similar instances of two clubs?

There would then be no answer to our question. The claim “This is the same club” would be *neither true nor false*.

<sup>6</sup> See, <https://www.aussiefloyd.com>.

Though there is no answer to our question, there may be nothing that we do not know. ... This is why we would not be puzzled when we cannot answer the question, “Is this the very same club?” We would not be puzzled because, even without answering this question, we can know everything about what happened. If this is true of some question, I call this question *empty*. ...

When an empty question has no answer, we can decide to *give* it an answer. We could decide to call the later club the same as the original club. Or we could decide to call it another club, that is exactly similar. This is not a decision between different views about what really happened. Before making our decision, we already knew what happened. We are merely choosing one of two different descriptions of the very same course of events. (Parfit, 1995, p. 214)

The indeterminacy implied by the emptiness of some identity questions is not, on Parfit’s view, merely epistemic. Because we can know everything there is to know about the club(s) and still not be able to answer the identity question, we should resist the temptation to treat the question as a matter of discovery (Rust, 2019). To think of this question as answerable would be akin to thinking that because Lady Macbeth speaks of the joy and tenderness of breastfeeding, there must be an answer to the question of how many children she has, despite the fact that this matter is not discussed in Shakespeare’s text (Knights, 1947).

We think that bands can exhibit the same kind of indeterminacy Parfit attributes to some persons and clubs. A band with the same members and name who produces an album in the band’s characteristic style following a “hiatus” (as opposed to an “indefinite hiatus”) is the same band. But there are many cases where the question of whether the subsequent band is the same as the earlier band is empty. In such cases, rather than decide to give the question an answer, we would be better off simply reminding ourselves of the facts that speak for and against continuity claims. We think there is value in recognizing the indeterminacy inherent to many social kinds. And we do this by rehearsing the facts that speak for and against a continuity claim in the difficult cases while resisting the urge to give the question an answer.

Along these lines, consider the relation between *Jefferson Airplane* (1965–1973), *Jefferson Starship* (1974–1984), *Starship* (1984–1992), and *Jefferson Starship: The Next Generation* (1992–present). The first members of *Jefferson Starship* included *Jefferson Airplane* members Paul Kantner and Grace Slick. When Kanter quit the band in 1984, the remaining members became *Starship*, which became *Jefferson Starship: The Next Generation* in 1992 when Kanter re-joined and reformed the group. Kanter died in 2016 and Slick no longer performs but *Jefferson Starship* continues. With respect to the transition from *Jefferson Airplane* to *Jefferson Starship*, Slick noted in a 2019 interview that Kantner and Slick were legally barred from using the name *Jefferson Airplane*, because “you couldn’t call it *Airplane* unless all of the original members were making the record” (the other members were speed-skating in Scandinavia and refused to return phone calls). However, where Slick concludes that „It was the end of *Airplane*,“ in a 2012 interview Kanter described the relation between *Jefferson Airplane* and *Jefferson Starship* in more nuanced terms: „I wouldn’t so much call *Jefferson Starship* a spinoff as, perhaps, an evolution.“ He goes on to describe performance characteristics as relevant to claims of continuity between the two bands, as the two bands sound quite different.

When it comes to the hard cases, we think that Kanter’s comparison to evolutionary processes is apt. Following Richard Boyd, in some cases an individual *a*’s status as an instance of species *S* can be indeterminate. Perhaps *a* can only breed with members of *S* under peculiar conditions, or the offspring are infertile. For Boyd, in these cases, the question of whether *a* is an instance of *S* is empty (Boyd, 1991, pp. 141–142). Of course, a biologist could *decide* that *a* is an *S* by refining classificatory criteria. But Boyd recommends against such stipulation: “Any ‘refinement’ of classification which artificially eliminated the resulting indeterminacy in classification would obscure the central fact about heritable variations in phenotype upon which biological evolution depends and would be scientifically inappropriate and misleading” (Boyd, 1991, p. 142). By analogy, when it comes to the identity question, any stipulation that would move us to declare bluntly, as Slick does, that *Jefferson Airplane* and *Jefferson Starship* are simply different bands (or alternatively the same band) would have the effect of obscuring the many survival factors – function, constitutive rules, self-attribution, structure, line-up,

and performance characteristics – that create points of continuity and discontinuity between the two bands. We prefer a more ecumenical approach that resists the assumption that identity claims are, in every case, comparable to acts of discovery.

## 6. THE COMPULSION OF LEGALITY

In the previous section, we argued that music bands invite us to consider the possibility that many of our social categories are characterized by a genuine (non-epistemic) indeterminacy. Once we have the facts in sight, there may be no additional fact of the matter as to whether *Jefferson Airplane* and *Jefferson Starship* are or are not the same band. In this final section, we use David Dyzenhaus' phrase, "the compulsion of legality" (2008),<sup>7</sup> to mark a second lesson to be drawn from our investigation into the identity conditions of music groups.

What makes it the case that, for example, U.S. dollar bills must be issued by Federal Reserve Banks? After all, we can imagine a world very much like our own, but for the fact that U.S. dollar bills were issued by the U.S. Treasury (as United States Notes once were). Where the grounds of a physical entity like water are given, the fact that a U.S. dollar bill is issued by the U.S. Treasury could have been otherwise and, so, requires explanation. Epstein uses the term "anchors" to describe the mechanisms by which a social entity's grounds are "glued" or "put in place" (Epstein, 2015, p. 81). Where Searle claims that collective intentionality is the only anchoring mechanism, Epstein contends that such mechanisms are "radically heterogeneous" and may include "a mix of historical tokens, miscellaneous features of the environment, legal enactments, community beliefs and practices, and more" (Epstein, 2016, p. 216). For example, where the grounds of U.S. dollar bills are anchored in the legal enactments of the United States, the grounds of informal statuses, such as a friendship or cocktail party, are not legally defined but rather anchored in long-standing Humean conventions.<sup>8</sup> In this way we can identify two classes of social entities: those that are anchored in legal enactment and those that are not.

While various questions and points can be raised about the relation between legally enacted social entities and, other, informal social entities,<sup>9</sup> we confine ourselves to the following two claims. First, we hypothesize that when there is a conflict between corresponding legal statuses and informal statuses, there is a strong tendency to privilege the legal status over the informal status; this is "the compulsion of legality." Second, we think that we should be wary of this tendency and resist it when possible; we should, in other words, fight the compulsion of legality.

Both the compulsion of legality and a reason to resist this compulsion is vividly illustrated in our investigation into the identity conditions of music groups. Recall the case of *Little River Band*. The compulsion of legality might move one to agree that *Birtles Shorrock Goble* is not the *Little River Band* because the Federal Court of Australia declared it to be so.<sup>10</sup> And this same case also exemplifies why we should resist the compulsion of legality when possible. We think that the artists-formerly-known-as-*Little-River-Band* strike the right note when they attempt to qualify the significance of the court's ruling:

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<sup>7</sup> Our use of the phrase is a generalization of Dyzenhaus' original application. Dyzenhaus uses the phrase to express concern the internal realist's attempt to anchor Lockean prerogative and other forms of extra-legal state action in legal enactment – this view, Dyzenhaus charges, "bestows the authority of law on the arbitrary rule of men" (Dyzenhaus, 2008, p. 39). As discussed below, we use the phrase to describe the tendency to defer to legally enacted social entities over their informal counterparts in case of conflict. Gross's attempt to construe prerogative as legally anchored is, thus, a special instance of the more general tendency we are attempting to describe in this section.

<sup>8</sup> For a discussion of Hume's account, see (Epstein, 2015, pp. 53–55). We also note that legally anchored states tend to be, by design, less indeterminate than informal statuses.

<sup>9</sup> Joshua Rust, for example, argues that grounds of an informal social entity partially anchor an corresponding enacted social entity (Rust, 2021, p. 334). If *refugee* becomes a legally intelligible category, this is partially because it was already intelligible outside a legal order.

<sup>10</sup> Or alternatively, because one agrees with the reasons Federal Court of Australia cited to justify its decision – namely that, Stephen Housden, who had not joined the band until 1981, had claimed ownership of trademarks and the web address, littleriverband.com, without his band mates fully appreciating the significance of his doing so.

Unfortunately, due to a bizarre court case, Glenn, Beeb and Graeham are no longer able to perform using the name “Little River Band”. Sadly, a group of American performers have wrested away control of the band’s name and they continue to tour as “Little River Band” performing all the songs originally written, performed and made famous by Glenn, Beeb and Graeham – this despite featuring not one of the original members. (*Shorrockbirtlesgoble.com*, 2022)

Here, the original members of the band argue that the band presently performing under this name shouldn’t be regarded as *Little River Band* because the performers are not, unlike the original members, Australian (and *Little River Band*, like the river it was named after, is quintessentially Australian) and were not the authors of the band’s most famous songs. Graeham Goble wrote about the incident in a song entitled “Someone’s Taken Our History:”

Someone’s taken our history  
 Someone’s taken our songs for free  
 We wrote the words and the melody  
 Now someone else sings our harmony  
 Every night when the lights are low  
 In the darkness, they play our show  
 Just as if they were really us (Graeham Goble, 2011)

This, of course, is not a plea to the court. This is a plea to fans to ignore the court’s ruling and regard the present iteration of the band as the band in name only. It is also a plea to resist the compulsion of legality.<sup>11</sup>

Why should we resist the compulsion of legality? According to Max Weber, a perfectly rational legal order consists in the “integration of all analytically derived legal propositions in such a way that they constitute a logically clear, internally consistent, and, at least in theory, gapless system of rules” (Weber, 1920, p. 656). While the benefits of a unified and coherent network of legally recognized statuses are easy to appreciate, Searle is right to warn that “explicit codification has its price. It deprives us of the flexibility, spontaneity, and informality that the practice has in its uncoded form” (Searle, 1995, p. 88). Searle’s is a profoundly Weberian thought. Weber reminds us that explicitly codified constitutive rules sharply divide the qualificatory space into two categories: someone is either, for example, a *citizen* (*legally blind*, a *woman*, etc.), or they are not. And deontological rules, cashed out in terms of deontological powers, are no less dichotomizing: if a status gives someone a *right* or *obligation* to act, this distinction either maximizes or minimizes discretion within a deontologically constructed possibility space, eliminating weight and judgment. Anthony Laden colourfully compares the rational appeal to such deontological powers to “a kind of normative bulldozer that clears paths for action” (Laden, 2012, p. 46). But the comparison between explicitly codified rules and machines is originally Weber’s: a legal-rational economic order, bound as it is “to the technical and economic conditions of mechanical and machine production,” “determines, with overwhelming coercion, the style of life *not only* of those directly involved in business but of every individual who is born into this mechanism” (Weber, 1905, p. 120).

## 7. TOWARDS A CONCEPTUAL FRAMEWORK CAPTURING THE WIDE SPECTRUM OF MUSIC GROUPS

Having embraced indeterminacy regarding the question of whether a group at  $t_2$  qualifies as a continuation of a group at  $t_1$ , we will now sketch a strategy that attempts to capture the whole variety of music groups. Agreeing with Epstein, that hoping for a simple answer based on parsimony to the question about what groups have in common is “a non-starter,” we go a step further and claim that the taxonomy suggested by Epstein is not yet fine-grained enough. In other words, unless we expand this taxonomy, there are still instances of music groups that fall through the conceptual net.

We showed that a dichotomous distinction between K1 groups and K2 groups is not sustainable to capture all kinds of music groups, as there are cases that turn out to be neither a paradigmatic example of K1 groups or K2 groups. Characterizing those two paradigm cases with the help of functional and

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<sup>11</sup> Special thanks to Susan Peppers-Bates for her excellent feedback. Susan had thought that she had seen *Little River Band* perform live until reading this paper.

constitutive approaches, respectively, we observed that K1 groups are defined in terms of a capacity to realize a function (in terms of instances being able to solve a class of coordination and cooperation problems), whereas K2 groups are defined by the satisfaction of constitutive rules. Thereby one can conclude that K1 and K2 groups have opposing features. For example, K1 groups cannot survive complete turnovers in membership and long periods of inactivity because such groups are dependent on a relatively stable membership being organized in such a way that they are able to perform a function. In contrast, K2 groups have the ability to survive complete turnovers in membership, long periods of inactivity, and even changes in function.

	<b>functionalist</b>	<b>constitutive rule-based</b>
<b>TYPE OF GROUP</b>	K1 Street musicians <i>(persistence dependent on the ability to realize their functions)</i>	K2 Berliner Philharmoniker <i>(persistence dependent on satisfaction of constitutive rules)</i>
<b>FEATURES</b>		
<i>inactivity</i>	<ul style="list-style-type: none"> <li>cannot survive long phases of inactivity</li> </ul>	<ul style="list-style-type: none"> <li>can survive phases of inactivity</li> </ul>
<i>attribution</i>	<ul style="list-style-type: none"> <li>self-attribution through joint intentions</li> </ul>	<ul style="list-style-type: none"> <li>other-attribution by being legally incorporated</li> </ul>
<i>structure</i>	<ul style="list-style-type: none"> <li>changes in structure possible</li> </ul>	<ul style="list-style-type: none"> <li>legally binding contracts determine the structure</li> </ul>
<i>membership</i>	<ul style="list-style-type: none"> <li>membership tends to be relatively stable</li> </ul>	<ul style="list-style-type: none"> <li>changes possible</li> </ul>
<i>performance characteristics</i>	<ul style="list-style-type: none"> <li>performance characteristics tends to be relatively stable</li> </ul>	<ul style="list-style-type: none"> <li>changes possible</li> </ul>

Table 1: K1 groups versus K2 groups

However, following our analysis of the many additional varieties of features, certain music groups became visible that cannot be described along this taxonomy. There are music groups that are able to survive complete turnovers in membership without being a typical case of a K2 group, meaning they have some properties of both K1-groups and K2-groups. Taking into account that trade-offs regarding self- and other-attribution, structure, changes in the line-up, and performance characteristics also sum up to features that characterize music groups, many sets of conditions are conceivable.

The question now is how to deal with instances that are neither clear cases of a K1 group nor qualify as a K2 group and still qualify as a music group. Assuming a wider spectrum, one may take K1 groups and K2 groups as illustrations of well-defined instances with a specific set of conditions. However, we have to say something about other possible instances. Instead of characterizing music groups exclusively by two potential sets of conditions in an either-or manner, we suggest that multiple combinations of the described factors can succeed in establishing something like a family resemblance that holds for all instances. Let's assume that many combinations of at least some of the elaborated features are sufficient for establishing in-between cases. Thereby one can assume a multi-factorial account listing several factors with respect to functions, constitutive rules, self- and other-attributions, structures, changes in the line-up, and performance characteristics and then apply a disjunctive schema, determining that the appearance of some of those factors are sufficient to be justified to call an observed phenomenon a music group. This strategy has the advantage that not all the features we discussed are necessary conditions but are rather assigned different weights or degrees of salience (Ramsey, 1998, p. 64; Strasser, 2020, 2021).

So far, the terminology used is only able to describe two kinds of social entities. By proposing a disjunctive conceptual scheme that is not reduced to two possible sets of conditions, one can capture a wider spectrum of the ways of being a music group and thereby allow different sets of qualificatory conditions for music groups.

Although such an approach makes it possible to reconcile seemingly contradictory features under the concept 'music groups,' one needs a minimal joint denominator that clearly demarcates all sets of conditions from that which does not fall under the notion of a music group. In future work, one would

have to test which of the many conceivable permutations of sets of conditions should fall under the notion of a music group. A potential demarcation proposal could be to introduce one necessary condition namely that the members of a music group must at least have the disposition to act jointly with each other in such a way as to create something like music. This might be a strategy for how one can capture cases of music groups that undergo a period of not making music.

To clarify which of the many possible permutations of sets of conditions ultimately fall under the notion of music group would go too far in the context of this paper. Even though very different formations can qualify as music groups, we assume that the disposition to act jointly plays an important role. If the disposition to act jointly is relevant in order to determine musicians as group members, future elaborations on music groups could be informed by the debates on joint actions.

By following the strategy to reconcile appealingly irreconcilable approaches one could question whether normativity should be treated as an either-or question. Consider normativity a phenomenon that can vary in strengths. As the lowest common denominator that ensures that there is a joint action, it would be sufficient to find indications of minimal joint commitment. This would contradict a standard normative approach claiming that joint actions have to qualify themselves by full-fledged commitments throughout the whole course of the action, but it states that joint actions are not free of commitments. By distinguishing full-fledged from minimal commitment, we can, on the one side, do justice to normative approaches by claiming that full-fledged commitments play an essential role in constituting a joint action and consider non-normative intuitions by allowing that the full-fledged commitment may fade out throughout the course of a joint action.

## 8. CONCLUSION

We began by identifying two ideally typical ways of being a music group. On the one hand, there are, as discussed by Brian Epstein, fleeting and flickering music groups, such as a group of street musicians that only exist when they are playing. On the other hand, there are formally constituted and legally anchored music groups, such as the *Berliner Philharmoniker*, which has “essential origins” and can survive complete turnovers in membership and long periods of inactivity. However, many bands would seem to occupy a space in between these extreme cases. While, unlike the street musicians, such bands continue to exist whether or not they are playing, those existence conditions are not, unlike the *Berliner Philharmoniker*, anchored in a legal order that could account for the possibility of persistence over periods of inactivity. Moreover, if there are different ways of being a music group, the same groups can persist even across these ways of being a music group. The street musicians might begin to conceive of themselves as a persisting band and retrospectively locate the origins of that band in those jam sessions.

After identifying a number of factors that are relevant to the determination of whether a music group at  $t_1$  and a music group at  $t_2$  are the same group, we drew several lessons we think the investigation implies for social ontological inquiry in general. First, we argued that some music groups vividly illustrate the Parfitian point that not every identity question has an answer. Second, the case of the *Little River Band*, illustrates the dangers of “the compulsion to legality.” Third, we recommended a highly disjunctive conceptual scheme that is not reduced to only two possible sets of conditions. Thereby, one can capture a wider spectrum of the ways of being a music group and allow different sets of qualificatory conditions for music groups.

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