
GIGS

JAZZ AND THE CABARET
LAWS IN NEW YORK CITY

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CHAPTER 4

REGULATION AS DENIGRATION

Once there were real cabarets in New York City. Long before the First World War and the appearance of jazz in the City, there were places with dining and song, and dancing for the patrons. As Lewis Erenberg tells us, they were among the first places of public resort for the upper-middle classes as they emerged from the world of private parties where they had found their social life during the Victorian period.¹

The cabaret was a curious hybrid of restaurant and theater, where the patrons themselves could participate, at least through dancing. The idea was borrowed from the cabarets of Paris, and lent legitimacy by the connection. Before them there had been palatial restaurants in New York, sometimes with music to accompany dining; but no one who had ever heard the term in those early days would have mistaken restaurants with music for cabarets. Although cabarets were considered bohemian by the standards of the day, because they were "meeting place[s] of the sexes in the eager pursuit of pleasure," theirs was a very staid, not to say swell and expensive, bohemia.² Nevertheless, for those who had until recently been part of the reserved Victorian world, they were thought wicked enough. Reisenweber's, where jazz music was first introduced to the city as another novelty (although it had appeared before without a naughty name), was one of them.

In their original form, cabarets were not regulated by the City

at all. There was no category for them. As long as they did not use a stage and scenery, and the patrons were gathered at tables as in a restaurant, the cabarets did not, the courts ruled, require a theater license.³ And indeed, they were not theaters; the relation between the performers and the audience was more informal and intimate than that of a theater.

By the time the City got around to regulating the "cabarets," in 1926, they were gone, destroyed by Prohibition. When the City finally passed a licensing ordinance, it was regulating speak-easies, some of which were no doubt as elegant as the famous cabarets, although more were, as we have seen, just "joints" with music and dancing. In the cabaret law, the City was seeking to apply its regulation to a genre that was already out of date, as it has done consistently from that day to this.

In 1960, during an important cabaret-law scandal, the *New York Post* interviewed Elmer Rogers, a lawyer who had helped to draft the original ordinance. He said, "To understand why this was enacted, you must recall that during Prohibition better than 90 per cent of the speakeasies were controlled by racketeers." He told how Texas Guinan, a famous proprietor of speakeasies, had opened one next to a church, forcing the outraged parishioners to encounter revellers leaving the place on Sunday morning. When the City could not get the owners of nightclubs to police themselves, the ordinance was drafted.⁴

It is apparent, though, that the City's animus ran deeper. The Board of Alderman's Committee on Local Laws was candid about its reasons:

Your committee gave two public hearings on this bill and its adoption was urged by the police and license commissioners, by clergymen of various denominations and citizens interested in social and recreational work. It was opposed by licensees and owners of cabarets, personally and by their attorneys, and by representatives of musical organizations.

These night clubs or cabarets are simply dance halls,

where food is served at exorbitant prices to the tune of jazz and tabloid entertainment. A very frank opposition was voiced by one of the licensees, on the ground that when strangers came to New York they wanted to 'run Wild.' Well, there has been altogether too much running 'wild' in some of these nightclubs and in the judgment of your committee the 'wild' stranger and the foolish native should have the check-rein applied a little bit. It is well known that the 'wild' strangers are not at all interested in our great museums of art and history, in our magnificent churches and public libraries, our splendid parks and public monuments. They are interested in speakeasies and dance halls and return to their native heaths to slander New York.

Your committee believes that those 'wild' people should not be tumbling out of these resorts at six or seven o'clock in the morning to the scandal and annoyance of decent residents on their way to daily employment.

Favorable action is recommended.⁵

And it was forthcoming. According to the ordinance, a cabaret license was required for:

any room, place or space in the city in which any musical entertainment, singing, dancing or other similar amusement is permitted in connection with the restaurant business or the business of directly or indirectly selling the public food or drink.⁶

The ordinance naturally threw together dancing and music in clubs because at that time the music was always played for dancing. Elmer Rogers later complained of a significant exception in the law, which he thought was "class legislation:" it exempted places of entertainment in large hotels.⁷ While this was probably the result of successful lobbying by the hotels, it emphasized the City's intention to control what was not "respectable."

The ordinance must have been largely directed at the black music and dance that was performed in the Harlem clubs, as well as the social mixing of races that was part of "running wild," because in 1926, the "jazz" about which the aldermen complained was being played mostly in Harlem. The aldermen were legislating in the shadow of the view, then widely received throughout the country, that the origin of jazz music and dance in black culture was a source of moral degradation. The distinguished actress Laurette Taylor, starring a hit Broadway play of 1922, *The National Anthem*, which depicted the "saturnalia" produced by jazz, was quoted saying solemnly, "Jazz, the impulse for wildness that has undoubtedly come over many things besides the music of this country, is traceable to the negro influence." In the same year the Illinois Vigilance Association attributed to jazz the "downfall" of one thousand women in Chicago.⁸

The definition of "cabaret," already anachronistic in 1926, was to remain virtually unchanged until 1961, when it was amended to allow live "incidental musical entertainment," but only by a trio of keyboard and strings. The vein of social control enunciated so unmistakably dominated the regulations for more than sixty years; they were, in fact, to become still more restrictive.

THE CABARET IDENTIFICATION CARDS— 1940-1967

The original ordinance regulated only the licensing of the clubs themselves; over the years, it would take on accretions of zoning and safety provisions. In 1931, the administration of the licensing alone, apart from the zoning and safety functions, was transferred from the City's Department of Licenses to the police, who turned it into an instrument of control over the employees of the cabarets. In 1940, the police began to fingerprint every person who worked in a licensed place, and to issue identification

Bailey, clarinet, Cyrus St. Clair, tuba, and Baby Dodds, drums. I cannot remember who took Williams' place at the piano. On that occasion, one could hear more clearly what Allen still had to say. See also Chapter Two, note 8.

21. Feather, Leonard, *Encyclopedia of Jazz* (New York: Horizon, 1955) p. 30; Shaw, p. 272.

22. Stearns, Marshall and Jean, *Jazz Dance* (New York: Schirmer, 1979) p. 1.

23. G. Giddins, "The Five Spot Closes. Highs and Lows of a Great Jazz Club," *Village Voice* February 16, 1976, p. 16; conversation with Mike Cantarino, May 14, 1990; J.S. Wilson, "For Half Note Club, It's Midtown Tempo," *NYT*, Jan. 8, 1974, p. 24.

24. See, e.g., Gioia, T., *The Imperfect Art: Reflections on Jazz and Modern Culture* (New York: Oxford, 1988); Leonard, Neil, *Jazz: Myth and Religion* (New York: Oxford, 1987).

25. Conversation with Joseph Termini, May 20, 1990.

26. Benjamin, Walter, "The Work of Art in the Age of Mechanical Reproduction" in *Illuminations* (New York: Schocken, 1969) pp. 217-251.

27. G. Giddins, *op. cit.*; conversation with Mike Cantarino, May 14, 1990. Cecil Taylor did not find the Termini nearly as appreciative as he would have liked; Spellman, Chapter One. Nevertheless, hardly any other club hired Taylor's group at that time.

28. J. Wilson, "Cabaret Business Nears Low Point," *NYT*, March 12, 1964, p. 40. cf. J. Wilson, "Comeback for the Old-Fashioned Nightclubs," *NYT*, Jan. 27, 1984, p. c1.

29. M. Gansberg, "15 'Village' Shops Ordered to Close," *NYT*, March 25, 1964, p. 43. See also the account in Chapter Four, *infra*.

30. The most complete account of this period in the Harlem jazz clubs appears to be George Hoefer's booklet of notes to *Jazz Odyssey, Vol. III, Sounds of Harlem*, Columbia Records, C3L33 (1964). There he lists some twelve clubs that had some music in 1964. For Small's Paradise in this period, see J. Williams, "Harlem Nightclub," in Clarke, J.H. *op. cit.* For the audience, H. Horowitz, "American Jazz Audience" (Washington D.C.: National Jazz Svce. Org., mimeo, 1986).

31. See also L. Ledbetter, "Aficionados of Innovative Jazz Get Their Fill at Studio Rivbea" *NYT*, July 10, 1974, p. 46.

Notes to Chapter 4

1. Erenberg, Lewis, *Steppin' Out: New York Nightlife and the Transformation of American Culture* (Chicago: University of Chicago, 1981) Chapter 1; Shaw, Arnold, *52nd Street: The Street of Jazz* (New York: DaCapo, 1977) p. 12.

2. Erenberg, pp. 114, 135, 141-2.

3. *Ibid.*, pp. 123-4.

NOTES TO CHAPTER 4

4. W. Carr, "The Cabaret Cards and the Cops," *New York Post* November 25, 1960, p. 50.
5. Proceedings of Board of Alderman, City of New York, Dec. 7, 1926, p. 572.
6. *Ibid.*, p. 573.
7. *Ibid.*, p. 574; W. Carr, *op. cit.*, note 5.
8. Leonard, Neal, *Jazz and the White Americans* (Chicago: University of Chicago Press, 1962) pp. 35–38.
9. Quoted in Ullman, Michael, *Jazz Lives* (Washington DC: New Republic, 1980) p. 32.
10. *Matter of Friedman v. Valentine* 30 NYS 2d 891, 894 (Sup. Ct. NY Co. 1941) aff'd 42 NYS 2d 593 (1 Dept. 1943); Alcoholic Beverage Control Law, 3 *McKinney's Consol. Laws of NY* section 102.
11. Material on Billie Holiday from White, J., *Billie Holiday, Her Life and Times* (New York: Universe, 1987) pp. 91–94.
12. Quoted in Hoefler ms, Dec. 22, 1960, p. 7.
13. *Ibid.*, Jan. 19, 1961, pp. 10–11.
14. Quoted in Ullman, *op. cit.*, pp. 33.
15. For Stitt, Hoefler ms, Jan. 5, 1961, p. 7; for Powell, Ullman, *op. cit.*, "Maxwell Cohen," pp. 27–36.
16. Fitterling, T., *Thelonious Monk* (Berlin: Orcos, 1987), p. 62; conversation with Buell Neidlinger, June 27, 1990.
17. Hoefler ms, December 22, 1960, p. 1.
18. *Downbeat* June 25, 1959, p. 9; "Court Test Opens on Cabaret Cards," NYT, May 14, 1959, p. 35; "Trombonist Wins, Gets Cabaret Card," NYT, May 15, 1959, p. 24; Hoefler ms, December 22, 1960, p. 12; January 5, 1961, p. 7.
19. Public Papers of Governor Rockefeller—1959 (Albany: New York State, 1959) p. 272; *Allegro*, February 1959, p. 6; December 1960, p. 1.
20. "The Cabaret Cards—Have They Killed a Man?" *Downbeat*, December 22, 1960; Hoefler ms, December 12, 1960, pp. 1, 11; conversation with Joseph Termini, May 20, 1990.
21. G. Giddins, "The Five Spot Closes. Highs and Lows of a Great Jazz Club," *Village Voice*, February 16, 1976, p. 16.
22. Hoefler ms, December 22, 1960, p. 9.
23. The *New York Times* stories, all from 1960, are: A. Gelb, "Charges of Police Corruption Made by Citizens' Group Here," November 14, p. 1; A. Gelb, "City Will Study Cabaret Charges," November 15, p. 1; A. Gelb, "Inquiry on Police Weighed by State" November 16, p. 1; L. Robinson, "City to Bid Sinatra Testify on Cabarets," November 17, p. 1; L. Robinson, "Rockefeller Asks Report on Cabaret Inquiry Here," November 18, p. 1; G. Passant, "Police Widening Cabaret Inquiry," November 19, p. 1; N. Robertson, "1,000 Policemen Check Cabarets," November 21, p. 1; E. Perlmutter, "Nightclub Losing Permit for 4 Days" November 22, p. 1; E. Perlmutter, "City Lifts Permits of 20 Night Spots," November 23, p. 1; I. Freeman,