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# The Journal of Law, Social Justice & Global Development

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To construct dialogue, collaboration and collegiality between scholars, researchers, intellectuals, development workers and activists in the Global South and Global North.

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# *The Journal of* Law, Social Justice & Global Development

## **Cultural Rights and Cultural Policy: identifying the cultural policy implications of culture as a human right**

Jonathan Vickery

### Article Information

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### Abstract

This article explores the parameters of ‘culture’ as a Human Right – Cultural Rights – and culture in the Human Rights system of international law and its now globally-pervasive set of axioms. The article attends to definitional issues on the use of culture to determine critical loci of human identity formation and fundamental ethics, and the use of culture to conceptualise the scope and scale of human freedom. Its aim is to define Cultural Rights in direct relation to the interests of cultural policy making and more importantly in relation to the scholarly field of cultural policy research. This will involve defining the legal-institutional sphere of Human Rights and range of applications but only insofar as to focus on issues central to current cultural policy research and its contingent questions of interpretation (such as the meaning of a ‘cultural right’ in particular social contexts). The secondary aim of this article is to define how cultural policy research (historically invested in particular historical evolution of national arts traditions and heritage management) could be central to the study of ‘rights-based’ global development.

### Author

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## Introduction

Cultural Rights, in their various iterations as precepts, principles and ultimately internationally-recognised laws, are clear and specific, and to be found in varying form all nine of the international Human Rights treaties. Clarity and specificity, however, is less forthcoming in the application and implementation of Cultural Rights, and there arises a consequent challenge in determining how cultural policy can delimit and reinforce a realm of rights within the cultural sphere. The challenge is in some ways a mirror image of the challenge facing sociologists when attempting to delimit a specific sphere of social life called “the cultural”. The characteristics of “culture” are subject to interminable debate, interpretation and contestation, and do not apparently adhere to the usual coordinates of social life – as self-evidently framed by the private, the civil, political or economic realms. Culture is of course a “realm” of social life and yet permeates (and thus faces demands from) all other realms.

Thus, culture has traditionally been regarded by scholars as the most pervasive expression of social identity and collective self-determination, tradition and heritage, but is also noted by its facility for differentiation (or seemingly endless mutability). Moreover, while culture is intrinsically collective, it provides for the means of profound individualisation, dissent, protest and the self-representation of particular interests. Culture, as defined by UNESCO, ranges from the historical-intellectual traditions of the arts and philosophy, to the everyday utilitarian design of shelter, clothing or making food, to media, design, technology and small-scale industrial production (Huxley, 2010; Singh, 2011; UNESCO, 2015b). In its entirety, culture is therefore not a single object of law or public policy, and so its relation to universal Human Rights is particularly intriguing. All seven UNESCO Conventions offer a robust assertion of culture as an object of international law, the last of which – the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (UNESCO, 2005) – attracted an almost unprecedented unanimity in passing through the UN Assembly. Yet its legal force in the realm of Human Rights remains muted (Donders, 2015).

The hope that the multivalent, multidimensional and endlessly differentiated phenomenon of culture could be made specific through the creative industries and concomitant policies for creativity is somewhat disappointing (O’Connor, 2016). But this, it must be said, is less of a concern in the Global North, where culture is institutionalised and professionalised (where rights to and in “the arts” or “cultural sector” is defined and protected by other legal frameworks); beyond the North and into the Global South, the question of rights are somewhat more urgent and complex. Though, even in Europe, with the rise of multiculturalism under mass migration, the “right” of, or to, culture is becoming less obvious. There is, altogether little research on the jurisprudence of Human Rights as a “hermeneutics” of the cultural – how international law defines what culture is, and *could* be, under radically changing social conditions (Lury, 1993; Borelli, Lenzerini, 2012; Goonasekera, Hamelink, Iyer, 2003). Of consequent interest to this article, therefore, is how the legal appropriation of culture as an object of international law has in turn defined what counts as culture itself, particularly for policy makers. It is the purpose of this article to chart the various semantic, epistemic and hermeneutic implications of culture as an object of human rights law – exposing the areas of lack in cultural policy research.

The aims of this article are therefore necessarily expansive, and will involve broaching a theoretical account of the landscape of Cultural Rights as a cognitive discourse on culture – as a way of understanding culture and its potential appropriation in a global (i.e. universal) social or “public” realm. The term “public” cannot be assumed to be universal, of course, but can be used as a political metaphor for a putative social realm of self-determination outside the orbit of the State and even supra- or inter-state systems (McGuigan, 2005; Rao and Walton, 2004). The central trajectory of this article therefore works towards making Cultural Rights explicit in their relevance to the scholarly field of cultural policy research, and this will involve defining the legal-institutional sphere of rights and their range of applications only insofar as to focus on cultural

policy issues and questions of interpretation. The assumption underlying this direction of inquiry is that all too often public policies for culture avoid certain areas of culture or activity; as noted above, they are perhaps too diffuse a subject – culture is subject to endless variables, contextual and environmental conditions. The task of cultural policy is to make the diffuse specific, if all too often culture is defined principally in terms of established historical categories (the arts, for instance) or is framed by another category of policy (social policies on access for marginalised people, for example). This article will not attempt to explain how Cultural Rights have emerged historically from human rights (which is a task left to other articles in this special issue, and see Stamatopoulou, 2007; Barth, 2008; and Orgad, 2015), but will indeed remark upon the institutional apparatus of UN Human Rights system and what it teaches us about how Cultural Rights become human rights by their operation with the “field” of culture or within, say, the range of competencies afforded an institution like UNESCO.

The secondary aim of this article is to define how cultural policy research (historically invested in particular historical evolution of national arts traditions and heritage management) could be central to the study of global development. If culture is indissolubly bound up with the interface of society and environment, then it is strategically relevant to the politics of sustainable development – as promoted and applied by the UN, its agencies and the vast development community of development, aid and relief INGOs, and also regional courts and member state institutions (Ghai, Emmerij, and Jolly, eds., 2004). The challenge of Cultural Rights is to frame the shifting relation between universal and particular – the global and the local, between UN-level legal terminology and its specific (and fair and just) application to local, often very traditional, places and situations.

A summary of the spectrum of literature and research on the subject of Cultural Rights is not altogether possible here, although it is necessary to refer to the sources of inspiration as much as information on the part of this particular article:

firstly, the UNESCO discourse known as ‘Culture and Development’ remains a huge if neglected resource. Significant publications that define this discourse feature below, but a preliminary reference must be made to the collection of papers published as the book *Cultural Rights and Wrongs* (Institute of Art and Law and UNESCO, 1998). While focusing on the challenges for cultural policy in the face of indigenous peoples, the book is animated by reflections on the 1948 Universal Declaration of Human Rights and underscores its continued relevance. A latter publication, *Exploring Cultural Rights and Cultural Diversity*, has also been important in scoping this subject (Blake, 2014).

The preparations for Wroclaw (Poland) European Capital of Culture 2016, gave rise to two conferences that featured notable representatives from European universities and cities – the Council of Europe, European Institute for Comparative Cultural Research (ERICarts) and the European Association of Cultural Researchers (ECURES) – concerned with cultural research and Cultural Rights. Informed by the significant EC/ERICarts collaboration on the Compendium of Cultural Policies & Trends in Europe, a monumental publication emerged, *Culture and Human Rights: the Wroclaw Commentaries* (Wiesand, Chainoglou, Sledzinska-Simon, and Donders, 2016). This, arguably more than any publication before it, has consolidated the subject of Cultural Rights as a research sub-field for cultural policy. Reference must also be made to the position paper and declaration ‘The Right to Culture as a Human Right – A Call to Action’ (Warsaw/Wroclaw, 2014) as well as a reminder of the historic European Cultural Convention (Paris, 1954), which it echoes and which remains a necessary reference point for all dialogue on culture and rights (including the European Convention on Human Rights of 1950, The European Social Charter of 1961, and The European Framework Convention for the Protection of National Minorities of 1995).

The Council of Europe, over the years, has built on the 1954 Cultural Convention to provide for numerous research projects and publications relevant to our subject. This includes ongoing



citizenship studies (Laaksonen, 2010; cf. Bírzea, Kerr, Mikkelsen, Froumin, Losito, Pol, Sardoc, 2004), the design of democratic competencies (cf. the recent three volume Reference framework of competences for democratic culture (Council of Europe, 2018), and the evolving Indicator Framework on Culture and Democracy (IFCD: Council of Europe, 2018). Other notable areas of research literature closer to the subject of the arts-and human rights include the edited volume *Music & Cultural Rights* (Weintraub and Yung, 2009), the few research articles on cultural policies and cultural rights (Baltà and Dragicevic Šešic, 2017) and the very many on law and international treaties (a particularly helpful volume being *Economic, Social and Cultural Rights in Action* edited by Baderin and McCorquodale in 2007. In each example of the diversity of literature on this subject, a central problematic one encounters is interpretative – how we locate an indissoluble interconnection between the abstractions of legal universality (international legal principles) and the specific realms of cultural actions, objects and agency.

### The Conundrum of the Cultural

Cultural policy is, de facto, a matrix of value propositions. Functioning as the political management of cultural discourse, organisation and production, the role of policy (national and local) is intrinsically normative and often prescriptive on the local functioning of culture in society and economy. The complexity of cultural policy as a research field is, at least in part, because political authority is rarely effective in achieving hegemony and most cultural production only occurs as power is devolved to professional or expert agents and actors (institutions, funding bodies), and the fact, of course, that large realms of ‘culture’ always remain outside policy governance altogether – a central if often neglected task of cultural policy research is, therefore, to step outside the continuum of policy and politically authorised management in order to examine the broader politics of that continuum: the outcomes, people, places and processes, by which culture inhabits broader realms of social, civic and economic life. Indicative of this is the proliferation of research involving the relation

between cultural participation and social justice – principally for the arts (Wilson, Gross and Bull, 2017), urban development (Mould, 2015) and museums and institutions (Sandell, 2016).

There are also many objects of cultural policy that are already inflected with rights-based assumptions and even terminology. These commonly include disability policy, equality and diversity policies, widening access, education, outreach (community) policy, information and communications policy, and so on. These are all interconnected, of course, and are often enforced by funding agencies without explicit reference to their legal origin or their international legitimacy. It is easy to see human (and cultural) rights simply through the context of their incorporation into domestic or national law (and applied in a range of directives and procedures into institutional life). Museums and other national institutions of culture can often appear to be rights-driven, in terms of their approach to marketing, access or “audience development” policies (Arts Council England, 2018; cf. Home, 2016). Assumptions on the “right” of a public to both access and enjoy public institutions in UK has its origins in the nineteenth century, but has evolved into a more explicit legal mandate for communication and information, often according to pre-identified market segments or other categorisations. Since Bourdieu’s now famous studies on French society (Bourdieu, 1979/1984), the notion that culture is a condition of both individual social mobility and economic opportunity has formed a set of normative principles for museums and public galleries, whose perceived responsibilities are often discharged (with mixed impact) in terms of education or ‘outreach’ programmes (Jensen, 2013).

Moreover, with regard public institutions of culture, the attribution of rights cannot be assumed to prioritise the citizen or human subject: an institution can exercise rights, indeed culture itself is awarded rights – to be preserved, protected from people or their physical environment. The recent work of the International Committee of the Blue Shield (ICBS: ‘Blue Shield International’) in Syria is a reminder that culture cannot be assumed only to be public property or

an endless resource to be used at will (even in the perceived interests of a given public, such as a society steadily conforming to religious conservatism). Heritage is no longer defined in terms of patrimony, as the early UN *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (The Hague Convention of 1954) underlined.

Common assumptions on the cultural function of rights are also evident in policy trends that have emerged from ‘identity politics’ or the privileged recognition afforded to minority groups who ‘self-identify’ with a set of sectorial interests. Identity politics is often confused with the sprawling set of political principles identified as multiculturalism, and multiculturalism is often confused with pluralism or other concepts attempting to set out how a given country or place can maintain cohesion and unity while admitting radical cultural difference (cf. Charles Taylor’s classic statement: Taylor, 1994). While Western liberal democracies are themselves currently in a state of flux as to the conditions of belonging, allegiance and citizenship, the role of culture in national and local membership remains an open debate (Phillips, 2007). This is perhaps why rights and culture together find a specificity in the realm of protest, resistance or oppositional politics – such as the Right to the City movement, or the less radical (but no less important) Agenda 21 for Culture, or even UNESCO and its crusading rhetoric in using science, culture and education to transform the world in the cause of justice (cf. the current issue of *The UNESCO Courier*, October-December 2018). Rights discourse tends, of course, to appear as an ethically-charged political campaign, and is now deeply embedded within global policy innovations like the UN’s Sustainable Development Goals (SDGs) and more explicitly as in UNESCO’s two ‘global priorities’ as Africa and Gender Equality, where gender equality is often defined as a solution to poverty or economic development but nonetheless motivated by human rights (UNESCO, 2014). Rights discourse can transform terminology, or motivate a range of neologisms promoting a form of justice and recognition.

Rights activism has been attributed less to the

realm of citizen-based protest or resistance than the operation of regional courts, legal professionals and NGOs. The low-key but enduring influence of the European Court of Human Rights (ECHR), for example, has provoked political consternation in the UK but its evolving history of case law on Cultural Rights is considerable (if yet to be fully assessed by research scholarship (Council of Europe/European Court of Human Rights research division, 2011). There is a sense in which the concept of rights should not need extensive research at all as it is legally self-evident (as any other regulation, statute or law). After all, rights have been around a long time: if defined in terms of protections and the empowerment to represent, express or assert one’s own interests, we can trace a lineage of human rights from time immemorial (aside from legal traditions of philosophical thought, of the Greeks or Romans for example) from the Babylonian Code of Hammurabi (c. 1750 B.C.E.), the Torah of Israel (c. 1500), Analects of Confucius (c. 480 B.C.E.), the Quran (600 A.D.), the Magna Carta (1215 A.D) and so on and on (cf. Ishay, 2008). Pre-modern rights, however, in almost every case, assume or posit a giver of rights or absolute authority from whom rights are revealed or awarded (and on specific bases, including conditions of class, gender and kinship). It is English Bill of Rights (1689) that arguably begins to conceptualise a ‘right’ as an essentially political (historical and evolving) relation to distinct and separate powers and mechanisms of representation – and to an authority whose power is placed in question by virtue of the ‘right’, and therefore limited by this political condition of legitimacy.

A further leap can be found in the 1776 US Declaration of Independence, 1787 Constitution and the 1789 French Declaration on the Rights of Man and the Citizen. These declare an absolute distinction between an individual and a corporate authority, and define their relation in contractual terms. But where all previous iterations of general rights were but one component on a spectrum of sovereign-awarded competencies, responsibilities and duties, it was the post-War Universal Declaration of Human Rights (UDHR) that first set out the features of a non-awarded right (an assumed right) that remain formative of our



concept of human rights today. Proclaimed by the United Nations General Assembly in Paris on 10 December 1948, its rights do not derive from an authority but are assumed to be already possessed by every human individual. As universal and inalienable, rights were not, in fact, defined in terms of a contractual relation to any authority – even the authority of a putative international community of nations. Article 1 of the UDHR states that human beings are "born free and equal in dignity and rights". While it is true that the 1945 UDHR echoes the natural law traditions of the seventeenth century, it nonetheless appeals to a new political reality (Danieli, Y., Stamatopoulou, E., Dias, C., 1999). This reality is that rights provide an incontestable legitimacy and mission for a global political sphere of united nations, but not issuing forth from that sphere. Rights are recognised, and then allowed to be actualised by the consensual provision of social, civil and political conditions required. And these tasks are ethical in the sense that they emerge deductively from an assessment of the basic conditions of human development before they are inflected by partisanship and political ideology.

It is with the United Nations and its global political discourse of rights, that a transformation in the conception of basic "human life", and even of culture, is still being developed and developed according to an ever-proliferating interpretation and application of rights-based ethical thought. The UDHR Article 19 states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Notwithstanding the problematic concept of "expression", the qualification "regardless of frontiers" is not immediately apparent in the political economies of UN member states, East or West. It is certainly characteristic of the highly strategic, agenda-driven political discourse of international relations since the post-War era. Its meaning, rather is to be found in the ethical content internal to the "right". The distinction between ethics from rights is never wholly explicit; indeed it is this ambiguity that ensures that rights are equated with ethics and rights maintain the normative force of a

universal and mandatory obligation. This became explicit with the emergence of "rights-based development" and approach to International development aid, which was initiated by the 1993 UN World Conference on Human Rights in Vienna (and its subsequent Vienna Declaration). If provoked by the dissolution of the Soviet Bloc after 1991, the rights-based approach to development has served to integrate the three historic UN responsibilities of development, security and rights to create a more holistic "good society" narrative of global progress as applicable to the Global North as to so-called "developing" countries of the South. Against past classical modernisation theories (Walter Rostow's 1960 anti-communist *The Stages of Economic Growth* being one of the most influential), society does not necessarily "develop" around the dynamics of economic "growth" (Rostow, 1960). Rather – in the formulation of the *UN Declaration on the Right to Development* proclaimed in 1986 – the order of priority begins with an entitlement to "participate in, contribute to, and enjoy economic, social, cultural and political development" (Article 1), and where this takes place, human rights and fundamental freedoms are fully realised. The UN's rights-based approach to global development is, theoretically (in terms of how policy is conceptualised) grounded in organised participation aiming for the full expression of individual human capability and aspiration – a formulation shaped by Amartya Sen's concept of Human Development (Sen, 2000; cf. Sen, 2004) now central to the working ethos of the UNDP.

There is a strong sense in which cultural policy can be fruitfully framed as a species of development policy (Maraña, 2010; UNESCO, 2013a). It promotes activities around "common" and inherited social practices, whose spatial, collective, institutional and legal conditions are embedded with profound powers to confer identity, stimulate belonging and allegiance, enhance or denigrate, include or exclude. A rights-based approach to culture as development – a general orientation that this article promotes – will imply a range of obligations generally absent from traditional cultural policy and established post-War frameworks of international development (UNESCO, 2015a; Vlassis, 2015). It

implies accountability and a potential framework of ethical evaluation as pertaining to the people involved. It prioritises individual beneficiaries and the individuals who bear the cost of development (in the sense of a cost for the imposition of change in their common socio-economic environment). It awards attention to social exclusion, disparities and injustice. It offers a way of interconnecting social, economic and cultural factors in a civil and political context – not just the practical aims of development. It underlines the rule of law, and by implication opposes impunity and corruption. It promises access to justice outside disadvantageous local or national contexts. Finally, a rights-based approach to culture as development, theoretically at least, can be used to challenge power structures – the agencies and actors whose role involves being the neutral, independent or devolved media responsible for providing the conditions for both culture and development.

### Navigating the Conceptual Landscape of Cultural Rights

Cultural Rights only became a substantive legal phrase with the *International Covenant on Economic, Social and Cultural Rights* (UN, 1966). The Constitution of UNESCO (1945) remains a surprisingly relevant document in the historical evolution of a concept of a right to culture; the *Universal Declaration on Cultural Diversity* (UNESCO, 2001), and then *UN Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (UNESCO 2005), are the most recent and explicit articulation of cultural policies as “rights-based” policies. The Fribourg Declaration (UNESCO, 2007) is a landmark statement, based on a research project that consolidates the rights-based cultural content of all human rights treaties (from the 1948 UDHR). To this short list we could add two other categories of treatise. Intellectual Property Rights (IPRs) are seminal, quite obviously: from the historic *Berne Convention for the Protection of Literary and Artistic Works* (1889) to the 1996 WIPO Copyright Treaty, which has now been adapted to the digital age of reproduction, internet curation and endless sampling, editing or appropriation. Secondly, the discourse of

sustainability emerged with a tacit assertion of “rights” conferred on nature – material nature not just human nature. The 1987 Brundtland Report and the Agenda 21 “Earth Summit” on sustainable development (UN, 1992; WCED, 1987) presented an attempted democratisation of our relationship with nature and its resources, favouring the reproductive autonomy of material nature. The cultural implications of this are to some degree expanded in the Agenda 21 for Culture (UCLG, 2004) – an innovation of the United Cities and Local Governments (UCLG). Agenda 21 for Culture devise and negotiate frameworks of cultural governance for cities, integrating Cultural Rights, participatory cultural democracy and environmental sustainability.

These two categories of treatise (IP law weighed in favour of the individual, for sustainability, ‘the collective’) remind one on how the spectrum of rights-based cultural policies necessarily appeal to either moral norms or fundamental ethics. Aside from the anthropological substrate of rights discourse – concerning essential human integrity and optimal developmental potential of the individual subject – a ‘right’ presupposes a benefactor of rights (the one in need of identity and recognition, the minority subject, victim, citizen, one belonging) or a normative ‘good’ (e.g. the good life; a society where freedom and self-determination, respect and integrity, are central). In designing and implementing cultural policies, the two axes of moral imperative and social good should be explicit.

For UNESCO, this is achieved, as noted above, through redefining culture as inherently “diverse” (in analogical comparison with biodiversity and natural reproduction) (UNESCO, 1995; UNESCO, 2001; De Beukelaer, Pyykkönen, Singh, 2015). The essential diversity of culture is, by implication, always threatened by monoculture or the homogenising demands of nationalism and political authoritarianism. Political pluralism, as the 2001 UNESCO Declaration goes, provides for the social, economic and environmental conditions of diversity, by implication diversity does not evolve without collective, public or governmental rights to resources. A robust rights regime is the most significant protection by which

a diverse cultural realm can survive and flourish within the homogenising and disorientating impact of political and economic globalisation.

Institutionally, the concept of diversity is not central to the UN Human Rights system as such, but that system often appeals to fundamental ethics or moral norms in its deliberations and negotiations (Li, 2006; Koivunen and Marsio, 2007). When not acting specifically against a regime in the act of human rights infringement, the ethical-moral dimension of human rights provides a rhetoric of care and concern seemingly free of partisanship (i.e. a universality allied to basic human welfare and not specific political, cultural or religious alliances). This is to some extent why human rights law seems interconnected with Humanitarian law (on the lawful conduct of conflict) even though it is not. It is difficult to argue that UN member states are less prone to human rights abuses because of the work of, for example, the UNHRC; but, what is certain is that the wide range of human rights 'instruments' – mainly the nine conventions but also the declarations and 'optional protocols' (treaty additions, largely for procedures of inclusion or exemption) – provide an effective and reflexive sphere to develop international consensus (Lee and Lee, 2010). The condition of consensus can be understood as discourse, for UN treaties function as semantic authorities (establish the definition of terms), epistemic frameworks (facilitate the process of making a situation intelligible to a rights-based judgement, or a rights-based analysis), an appending mechanism for cognate legal terms (such as self-determination, discrimination, freedom and enjoyment) and further provide fields of eligible scrutiny (from practices of slavery, servitude, forced labour, to press or media communications, marriage, family and youth, to statelessness, asylum and refugees) (Ghai, and Cottrell, 2004; Leckie, Gallagher, 2006; Senyonjo, 2009; Riedel, Giacca, and Golay, 2014; Schmid, 2015 ).

The multivalent and multi-dimensional character of rights therefore demands a multi-faceted approach – particularly given how rights always pertains to an embodied subject in a dynamic social relation to collective cultural, civil and

political life generally. To gain any measure of force they need to be supported by multiple conditions. For member states, being both signatory (and ratification – its observance in domestic law) the formal obligations of a rights treatise demand three fundamental Obligations of Action – to respect (do not interfere), to protect (uphold and facilitate), and to fulfil (work toward their realisation) (from OHCHR, 2012a: Part II; OHCHR, 2012b: 18). They also demand four Obligations of Process – of non-discrimination (between groups or types of right), of adequate progress (political commitment), of participation (citizen collaboration), and of effective remedy (or substantive responses by authorities to the hindering of any of the above). For cultural policy research, rehearsing the Obligations of Action and Obligations of Process in a cultural arena (arts policy, or public galleries, for example) can be instructive.

Concerning Obligations of Action, respect (non-interference) afforded to contemporary artists, for example, might be an obvious application. What is perhaps not obvious are the boundaries of rights of response to art works that intentionally offend, ridicule or oppose other agents, groups or belief systems. The latter could be so adverse as to make the former redundant. Under the Obligations of Process – non-discrimination (between groups or types of right) might order, for example, an equal distribution of financial resources for art. Yet, this in itself may only serve to entrench established (and expensive) interests and promote the exclusionary practices that raise rights-issues in the first instance. Interpreting a cultural "right", therefore, is only the first stage of implementation – and might subvert the intended aim of that implementation. It instantiates, nonetheless, how a rights-based approach to cultural policy must not be understood simply in terms of an implementation of rights terminology, empirically and incrementally. Rather, it calls for the grounding of cultural policy in a systematic analysis of the multivalent and multidimensional embeddedness of rights in the overlapping realms of social and cultural life.

In UN OHCHR methodology, rights can be identified as a quantitative and objective



phenomenon (by a numbering of cases of blatant abuse, for example) or a quantitative and subjective phenomenon (a numbered of testimonials, reports, attitude surveys, on cases of abuse, for example: OHCHR, 2012: Part II). Rights can also be identified as qualitative and objective phenomenon (representing the force of political activity in support of rights, for example) or qualitative and subjective phenomenon (how public discourse in a given place reinforces discrimination; or the extent to which minorities can represent their interests in the public sphere, for example). These four categories of research data preferred by the UN system are articulated across three registers (in which rights as a practice emerges in any given social system or country): in (i) structural frameworks – legal, policy, institutions and resources programmes, and so on; (ii) policy supported processes and procedures of representation – reporting, record-keeping and official archiving and scrutiny of reporting, procedure-supported responses, and so on; and (iii) in outcomes – articulated by the range of indicators (common to policy evaluation and assessment) that make available official recognition of how rights are working or not, for individual, places and groups.

The significance of the UN matrix methodology is that it allows for a thorough analytically comprehensive research, where agency, institution and programme (actions) are made distinct and responsibility can be apportioned. More importantly are the extra-bureaucratic function of this matrix – how it can prevent the direct conflation of rights and ethics (and so the ideological oppression that comes with the institutional use of “rights” as a means of power, or where rights can be used by one group to garner extra resources, or cast aspersions on another group). The extra-bureaucratic implementation of rights can also empower institutional activism – where it is revealed that institutions do not possess the resources or control over their own environment of operation because of state failings, market encroachment, or lack of regulatory protection, or many others. The implementation of rights is subject to multidimensional conditions that can involve tradition, customs and norms; infrastructure or

resources and capacity in other cultural agencies; civil society and resistance groups; and other non-state actors (such as religious groups or community authorities). Such a multi-dimensional analysis is critical when assessing the cultural rights of minority or migrant groups (Marks, 2003; Barth, 2008; Orgad, 2015; Guild, Grant and Groenendijk, 2018).

A most significant moment in the policy relation between culture and human rights was UN resolution 10/21 in March of 2009, for the appointment of a Special Rapporteur in Cultural Rights. Article 1 of the resolution affirmed that “Cultural Rights are an integral part of human rights, which are universal, indivisible, interrelated and interdependent” (UNHRC, 2009: 2). The significance of the Special Rapporteur in this area is primarily intellectual – human rights becomes a subject of cultural analysis and hermeneutics (“translated” into cultural terms); conversely, culture becomes an object of special human rights protections and promotions. The position of Special Rapporteur was occupied by Pakistan's Farida Shaheed (2009—2015) and is now Karima Bennouna (USA, since 2015). The work of this role remains significant, as they are effectively mobile, in dialogue with both the Office of the High Commissioner of Human Rights and the UN Human Rights Council, and in doing so they are not only pivotal to the contemporary discourse of culture and human rights but mandated to create dialogue with countries, NGOs and other agents of change. Their intellectual approach is “holistic”, and so find the conceptual means of extending the discourse of Cultural Rights into topical areas, such as gender, religion and the rise of fundamentalism, and the negative responses to mass migration. The UN cannot routinely “enforce” human rights, but rather uses the pressure, persuasion and negotiation made possible by discourse and dialogue, notably in the context of integrating a rights-based development programme or rights-based security policy (made attractive to the member state through funding and assistance, such as training).

In the Special Rapporteur’s (Farida Shaheed) Fifth thematic report (UNHRC, 2013: A/HR/23/34)] artistic freedom is positioned as a central issue for

human rights. Artistic expression – (to define art as “expression” situates it in the orbit of individual rights) – embodies fundamental norms of freedom and dignity and while individual artistic works can be interpreted in various ways, and even legitimately opposed, the opposition to artistic production and public display *per se* is a Cultural Rights matter. Moreover, opposition can emerge from unexpected places, for example, from limited uses of public space, or threats of litigation from commercial actors or copyright agencies for communications ancillary, to the artists’ work. Harassment and self-censorship are also cultural realities often under the radar of political inquiry. The now well-known example of artist Nadia Plesner (Denmark) starting in 2008, is cited in the Fifth thematic report (UNHRC, 2013: 12), where the object of contention was an Audra handbag (a favourite of the socialite and media celebrity Paris Hilton) launched in 2003. Displaying Louis Vuitton’s ‘Multi colore Canvas Design’ (by designer Takashi Murakami), Plesner created an image of a starving black child holding a small dog and the said handbag, imprinted on T-shirts that were sold as ancillary to her art project and subsequent exhibitions. In obvious imitation of Hilton, but more contentiously, where the brand identity of the handbag was evident, design owner Louise Vuitton exercised legal action. Plesner’s project was motivated by the injustice of global media neglect of human suffering (at the time, the Darfur genocide) in the face of media fascination with celebrity (Paris Hilton). She observed: “[t]he point was never originally about Louis Vuitton ... [it] was about celebrity obsession at the expense of things that matter. But it became about rights and artistic freedom” (Rigby, 2011; cf. Plesner, 2018).

The T-shirts and posters sold alongside art work were “retail” and yet whose proceeds were donated to the campaign Divest for Darfur (an activist NGO). In 2008 Louis Vuitton successfully sued at the Tribunal de Grande, Paris, where a subsequent €5000 a day fine was marshalled against Plesner for further use of the image. The legal basis of Louis Vuitton’s case was the common “Community Design right” (ownership of the design and its unregulated use by others damaged its reputation). Yet Plesner’s later appeal

(at the Court of the Hague, May 2011) saw Louise Vuitton referring to Article 1 (1stProt) of the European Convention on Human Rights (ECHR) – the right to property. This was in relation to Plesner’s legal defence appealing to ECHR Article 10 – the right to artistic freedom. The Court weighed the two articles in relation to the actual complainant’s assertion of “damages” to reputation and brand and ruled the superiority of the right to artistic freedom. This was on the basis that it was (in relation to ‘democracy’) more fundamental (and where no damages could be quantified). The case is interesting, as where Louise Vuitton was, technically, correct in its appeal to brand protection, the right to culture was given the weight of the right to democracy itself. A portion of the ruling is as follows: “...the fundamental right of Plesner that is high in a democratic societies’ priority list to express her opinion through her art. In this respect it applies that artists enjoy a considerable protection with regard their artistic freedom, in which, in principle, art may “offend, shock or disturb” [here quoting a previous ruling in which the rights of an artist to offend was ruled as inviolable: European Court of Human Rights 25 January 2007 RvdW 2007 452 Vereinigung Bildener Künstler v Austria ground for the decision 26 and 33].” (Court of the Hague, 2011: 8).

A legally defensible alliance between art and democracy within EU human rights law provokes the question, does “art” itself have rights (i.e. apart of the artist), and to what extent? ‘Art’ may be cast as the product of the artist (for the most part a commercial product, often for sale), the property of an owner (where its sale is incidental; its character embodies another, artistic, rationale), or expression, and therefore symbolic of the agency of the citizen and their possession of rights. The exercise of freedom of speech is deemed inherent to citizenship and thus democracy itself. In human rights law, “expression” is assumed, and yet it is not clear why, or whether, the agency of expression is essential to the conferring of a right (what of a work of art without an identifiable producer?) or whether the object is not democracy but the civil order (of citizens) that is the precondition of a functioning democracy. It may be that artistic

expression is a constitutive component of public communication and debate that is the public sphere (and the public sphere is the fulcrum of all democratic societies). Yet legal rulings re-state points of codified law and not theoretical assertion – and our questions here indicate that latent in the ruling on Plesner seems to appeal to an internal theoretical rationale – a theory of expression (or democratic expression) (cf. Mercer, 2002; Tomka, G. 2013).

The point here is that where law is a sphere of conceptual activity assumed to be explicit, literal and acting on a rigorous scrutiny of empirical reality, it nonetheless requires an intellectual reflexivity that betrays how far it inhabits a broader public discourse of civil and political scale. The EU Charter of Fundamental Rights (2000) Article 13 on Freedom of the Arts and Sciences states that “The arts and scientific research shall we free of constraint”. The European Convention on Human Rights (1950/1953) is similarly generous in its awarding of the arts and culture rights and protections, but, for example, Article 10 in providing the right to freedom of expression at the same time subjects this “in accordance with law” and what is “necessary in a democratic society”. While this right includes the freedom to hold opinions and to receive and impart information and ideas, it also allows restrictions for interests of State – which are commonly understood to be (principally) as follows: national security, territorial integrity or public safety, the prevention of disorder or crime, protection of health or morals, protection of the reputation or the rights of others, and preventing the disclosure of information received in confidence and maintaining the authority and impartiality of the judiciary.

The tension between an assumption on artistic freedom in the face of an ever increasingly complex and sprawling State regime, is highlighted by the now established (if largely ineffective) discourse on the rights of the artist, first exemplified by the 1980 UNESCO ‘Recommendation on the Status of the Artist’. Based on the UDHR, Art. 22, 23, 24, 25, 27, 28, and the ICESCR Art. 6 and 15, is asserted a recognition of artists as professionals (i.e. in legal

and financial systems), welfare, social, union and institutional supports (as other workers), and the obligation for their participation in both cultural policy making and international exchange mechanisms.

The immediate problem facing the use of the concept ‘artist’ as a legal term to be awarded rights, is the fact that the designation itself is unstable – who decides and on what criteria? While the discourse has evolved a criteria based on self-representation (UNESCO, 1980; EUDGIP, 2006), such as professional associations and other supportive agencies, a principal challenge is, as noted above, the role of the State as mediator of internationally recognised rights – and doing so in terms of “local” or specific freedoms. Where the State is the principal agency in recognising rights situations, it will conceivably only do so in proportion to its own sovereignty. A right to culture implies the right to ways of life, values and practices outside – and even against – the interests and cohesion of the nation state. A “right” to culture can imply that individuals or groups outside official or national culture have a right to separate themselves and live differently, and in relation to its politically defined management of identity and allegiance (a nation state depends on its citizens for its own defence, e.g. in security forces and civil society cooperation – compromised by non-participation or non-identification). All of this can add up to a crisis of ‘justiciability’, which is probably the largest challenge facing Cultural Rights in relation to artistic freedom – What rights can be articulated and acted on within the human rights regime (at whatever level) and therefore legitimised by the power of UN rulings.

The Special Rapporteur reports consistently, if incrementally, aids the boundary extension of the justiciability of Cultural Rights. What requires further investigation is how the ‘cultural’ extends the complexion of a ‘right’ itself, as in the Special Rapporteur reports a ‘right’ is more than a self-evident legal concept (of literal and explicit semantics, formed to be utilised by lawyers in legal deliberation). It is an ethical imperative for the recognition of the self-assertion of sub-cultural expression or dissent in general – or any



forms of self-representation on behalf of minorities; it is a literary metaphor, validating the otherwise undefinable character of artistic expression; it is a theoretical concept deployed for hermeneutic purposes – for identifying the relation between institutionally-recognised cultural value and the needs, benefit or welfare of individuals. Political philosopher Michael Freedon might see cultural rights as an ideological phrase, indicating the validation of culture by legal institutions who incorporate the realm of culture for its use in social and economic institutions (Freedon, 1996). Rights, as a term, plays a significant discursive function within a matrix of other terms circulating within the evolving international (now global) discourse that is based on international treaties yet extend into media representation, national and local politics and so-called identity politics or the politics of recognition. These terms include diversity, equality, multiculturalism, and where the integration of culture will allow for the extension of the role of law in the broader political management of social life.

### The Sources and Conceptual Resources of Cultural Rights

The two UN covenants of 1966 – the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* (both ratified ten years later) – can be understood in a purely historical context as articulating a political aspiration animating increasing demands for civil liberties in the West and world decolonisation everywhere else. They embodied the emergence of a substantive Left (specifically Communist) critique of the Western individualism embedded in the 1948 UDHR. By the end of the 1970s, Cultural Rights was consolidated as a legal and policy concept (albeit understood largely as contingent upon civil, economic and social rights), but underlined how these different species of rights were “in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and Cultural Rights, as well as his civil and political rights” (ICESCR, preamble).

The function of “conditions” here remains imprecise, nonetheless it’s clear that, theoretically, economic, social, cultural, civil and political rights provide the material conditions (resource, labour, organisations, and so on) for the realisation of “human” rights, which as human (categorically distinct from the economic, social, cultural, civil and political) are consequentially elevated to a quasi-ontological or existential level (cf. Odello, and Seatzu, 2013; Giacca, 2014).

Two years later (July 1968) UNESCO convened a symposium, the report of which has become a seminal document in the field: ‘Cultural Rights as Human Rights’ (1970). Published as part of a visionary but truncated publication series (‘Studies and Documents on Cultural Policies’), it stated that (to quote an introductory passage) “Cultural Rights is a relatively new concept. Culture was, in the past, taken for granted. It was frequently discussed within the framework of individual political rights, religious liberty or the freedom of opinion and expression” (UNESCO, 1970: 9). However, as the report points out, there are new and major threats to the realisation of Cultural Rights. These can be paraphrased as follows, as they remain relevant almost half a century later: science and technology are fundamentally changing human mechanisms of understanding and communication, and even human experience itself; information and knowledge are becoming more complex; industrialisation and mechanisation are redefining what we mean by ‘culture’; poverty and inequality of resource can disempower culture; consumer society and consumer choice generates cultural homogenisation (and so does the centralisation of the State and the political force of nationalism). And the obsolescence of tradition and distinctions between groups remains a serious concern.

This list of issues were, then, basic observations on evolving modern society, indicating a huge dilemma. Culture was an effective register of these changes, yet did not (and still does not) possess either the means of participating in these changes or protecting itself against them. While acknowledging the historical ‘autonomy’ of artistic and intellectual traditions, it becomes obvious in the course of the report’s debates, that culture

itself is not autonomous in any meaningful sense of the term (i.e. as in a cultural polity, self-governance or cultural management of a cultural realm, at least outside specific institutions).

In 2010, in the first report of the new UN Special Rapporteur for cultural rights, Farida Shaheed stated that "There is no official definition of Cultural Rights" (UNHRC, 2010: 4). Notwithstanding the work of UNESCO since the post-war period, or the UN Millennium Development Goals (MDGs: 2000-2015) or current Sustainable Development Goals (2017-2032), culture has at no time been defined as a specific "goal" or discrete self-sustaining sphere of global development policy.

Yet, as we have noted, culture's multivalent permeability allows the Special Rapporteur to marshal a distinctive cultural analysis to diverse areas of social, institutional and economic life, for example, copyright, which (according to the website press release) "can have a profound effect on the lives of communities if not properly managed"; and also public space, as "Protecting Cultural Rights from excessive advertising: States should ... increase the space for not-for-profit expressions"; and also memorialisation processes in post-conflict societies – "the importance of culture in transitional justice" (UNHRC, 2018). The multivalent character of culture might mean methodological vagueness on one level but on another can also allow one to extend rights related to culture into all other spheres of social life. Indeed, a milestone project that resulted in the UNESCO sponsored Fribourg Declaration (UNESCO, 2007) served to redefine all standing Human Rights conventions in terms of their cultural content, and in so doing devise six principle spheres of "cultural" human rights (and therefore rights-based policy making): 1: identity and cultural heritage; 2: cultural communities; 3: access to and participation; 4: education and training; 5: information and communication; and 6: cultural cooperation. While these were already established areas of rights-based activity, and the Declaration equally notes that "Cultural Rights have been asserted primarily in the context of the rights of minorities and indigenous peoples and that it is essential to guarantee these rights in a

universal manner, notably for the most destitute" (UNESCO, 2007: 2), it also implicates more recent concerns over governance, economy and public administration.

Indeed, many Cultural Rights have been fulfilled by other means. Other social or development policies or other treaties, such as the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), can facilitate Cultural Rights. Where race inevitably involves culture, and culture is an indissoluble part of identity and belonging, communal conduct and tradition, Cultural Rights can be supported effectively (if inadvertently) (cf. Auweraert, Pelsmaeker, Sarkin and Vandelanotte, 2002).

It is a surprise to some that UNESCO possesses human rights violation complaints procedures, specifically with regard Cultural Rights (known as the '104 procedure' of 1978: UNESCO 2009). As Weissbrodt and Farley have noted, UNESCO's competence in Human Rights is extensive, yet has not evolved as the human rights system in general has evolved (Weissbrodt and Farley, 1994). Its Committee on Conventions and Recommendations (CR) is responsible in the first instance for processing complaints but the process there and thereafter quite deliberately uses confidentiality and privacy as a strategy – making its deliberations, actions and outcomes for the researcher difficult to evaluate. Its breadth of competency, on paper at least, is based on the UDHR 1948, for example, the right to education (Article 26 – and today, with the OHCHR, it is responsible for the world programme on human rights education, initiated by the UN General Assembly in 2004). It adjudicates in relation to rights to participate in cultural life and to share scientific advancement (UDHR Article 27), the Right to information, including freedom of opinion and expression (Article 19), the Freedom of thought, conscience and religion (Article 18) and the Right to freedom of association (Article 20).

The UNESCO Constitution of 1945 still remains a seminal document in the history of Cultural Rights. It is effectively a global cultural policy for Cultural Rights through intercultural dialogue and the promotion of peaceful coexistence. It famously begins: "That since wars begin in the minds of

men, it is in the minds of men that the defences of peace must be constructed", and where its diagnostic is articulated as "...ignorance of each other's ways and lives... of that suspicion and mistrust.. [of].. differences". UNESCO's traditional cultural policy fields evolved throughout the 1950s in terms of the institutions and the places of symbolic national traditional allegiance and identity (heritage, historical sites, museums, and so on). By the late 1960s its interests had extended to protections and regulations on trade; on conflict; copyrights and IPRs; cultural diversity and intercultural dialogue and its originary concern for International Cultural Relations (ICR). The policy area of Creative Economy (including an emphasis on digital and crafts) has hitherto become a central priority under the 2005 Convention, though previously charted by UNCTAD. Whatever the policy area, the "rights-based" approach animates all of them, including an explicit Gender Equality priority, which is a de facto Cultural Rights policy.

The seven UNESCO cultural conventions are well-known as distinct treatises, but can also be understood as significant historical-critical moments of an evolving political discourse on Cultural Rights. If considered in terms of rights, some important features stand out. The 1952 *Universal Copyright Convention* principally outlines "the rights of authors and other copyright proprietors"; the 1954 *Protection of Cultural Property in the Event of Armed Conflict*, asserts a "right" of cultural heritage itself as belonging to humankind, to be the object of protections, safeguards and respect. The 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, articulates the rights of places to be identified as the principle location of any given cultural heritage – of "origin, history and traditional setting". The 1972 *Protection of the World Cultural and Natural Heritage* ostensibly gives a right of heritage professionals and institutions to draw on international resources and challenge any force that prevents heritage capacity building; the 2001 *Protection of the Underwater Cultural Heritage* charters a new sphere of cultural policy: the geo-political geometry of territoriality, which is challenged as

to its assumption that territory is property – underwater heritage is a 'commons'. The 2003 *Safeguarding of the Intangible Cultural Heritage* is a recognition of the rights of non-professional, community, ethnic and religious cultural actors and agencies, often outside institutional frameworks or other legal protections; and lastly, the 2005 *Protection and Promotion of the Diversity of Cultural Expressions* defines the relation between culture and policy in a framework of economic globalization where rights are oriented to place-based cultural production.

We can also see that animating each of the seven UNESCO cultural conventions is a legal strategy in "protection", of which the sovereign member state is steward but also accountable. Culture is also a sphere of international cooperation, professional standards and mechanisms of reporting, assessment and accountability. While UNESCO's powers of sanction or intervention are weak, it does possess diplomatic influence (the 1960 Save the Monuments of Nubia campaign in the face of Egypt's Aswan Dam project remains its most famous triumph). As with its work in human rights, UNESCO's self-imposed principle of confidentiality is effective to the extent of the nature of member state cooperation and the promotion of rights through educational, informational and development projects (Mukherjee, 2009). Its organizational aims supplement its cultural diplomacy and are research, education, combatting discrimination, encouraging cooperation and promoting democracy. It remains a question, however, why UNESCO has not made more use of Cultural Rights as a sphere of the human rights system (promoted at the UNHRC), or played an increasing role now activated by the Special Rapporteur. Perhaps this is indicative of a realpolitik at the heart of UNESCO's "ethos" – articulated most explicitly perhaps in its 1966 *Declaration of Principles of International Cultural Co-operation* where (Article 1) stated that "Each culture has a dignity and value which must be respected and preserved". While on the level of political theory this may be subject to some critique, UNESCO seems to be reticent to impose a global value system that denigrates some cultures despite their pre-Enlightenment understanding of the social order,



gender, individuality and expression. Indeed, a global cultural view might understand rights as a legal term that appeals to a sphere of language, litigation and authority so often alien to the cultural realms of many countries in the Global South. In fact, to define cultural life at all in legal terms raises a range of questions on the autonomy of culture. This, for UNESCO, is an enduring socio-philosophical conundrum: how far can we assert cultural policies in the face of hostile or incompatible social, economic or religious belief systems?

As noted above, the legal specificity of Cultural Rights as human rights pertains primarily to individuals (as it the UDHR itself). This does not necessarily make rights hostile to so-called collectivist societies but can indeed make the assertion of rights problematic. While 'intersubjectivity' is a research thematic throughout the Humanities in the West, there is little theoretically-useful research on the impact of rights-based cultural policies on the realm of the subject – on the enduring collective identification of individuals in collectivist societies. How do we understand if cultural change generates alienation, existential confusion, or just social disharmony? Even in the 'individualist' USA, the divisive impact of the so-called "culture wars" were, and remain, notorious (Hartman, 2015). If the principal aims of Cultural Rights are identity, recognition and empowerment, then it remains an open question whether these can be achieved outside any substantive material conditions of change (i.e. society and its reproduction) but are relevant universally. Or, perhaps they may be achieved more effectively by informal means, not involving institutional means but local self-determination, sub-cultures, resistant or militant organisation, religion, or "underground" associations.

The UN *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005) is, for UNESCO, a central vehicle of Cultural Rights in its most expansive (non-specific) form – rights for cultural producers, for culture and heritage practices, for places and people groups, and for developing countries in the markets of international trade. Moreover, it extends legal

legitimacy to the concept of "cultural diversity" and "interculturality" as necessary expressions of the freedom defined by rights, and where the notion of "cultural expressions" is broad enough to encompass all or most of UNESCO's principle concerns, from "way of life" tradition and heritage to contemporary arts and creative industries. This coverage of course, is largely conceptual, as there are no direct mechanisms of implementation for the Convention outside member states' own systems of implementation, and accordingly rights do not explicitly feature as a clause or article of the Convention itself (Donders, 2015). This is registered by the Convention insofar as the Convention appeals primarily to economic interest, as in the adverse impact of economic globalisation on culture and the opportunities for cultural goods and trade within the new marketing opportunities offered by globalisation. Its central principle of "diversity" has an interesting provenance we cannot explain here, but at the time of the Convention's drafting was related to the emerging policy discourse (and ethical implications) of sustainability: Article 1 asserts "...cultural diversity is as necessary for humankind as biodiversity is for nature"; for diversity is a "common heritage of humanity". In the terms of the Convention, it exceeds previous heritage protections and requires "promotion" and not just protection. This promotion is, firstly, the assertion of human rights as proclaimed in the 2001 *Universal Declaration on Cultural Diversity*. Its general principle 1 asserts how it is "Committed to the full implementation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized legal instruments, such as the two International Covenants of 1966 relating respectively to civil and political rights and to economic, social and Cultural Rights" (cf., Article 2, principle 1 in the Convention).

The 2001 Declaration was, ostensibly, the origin of the 2005 Convention. While one expects revisions given the complex process of consensus required during any passage through the General Assembly, there arguably emerged a subtle shift in political orientation. In the Declaration, the first five articles are a veritable thesis on cultural policy

for an age of profound social complexity: the articles are entitled, Cultural Diversity: the Common Heritage of Humanity (Article 1); From Cultural Diversity to Cultural Pluralism (Article 2); Cultural Diversity as a factor in Development (Article 3); Human Rights as guarantees of Cultural Diversity (Article 4); and Cultural Rights as enabling environment for Cultural Diversity (Article 5). Article 7 posits culture as “well-spring” of creativity, generating unique form of economic goods and services (Article 8), and then Article 9 asserts that only Cultural Policies can act as catalysts of creativity.

The principle subject of the Declaration is the “culture” itself (and its inherent “diversity”), while asserting “pluralism” as the political discourse and governance practice most able to facilitate diversity. The concept of pluralism was a potentially powerful way out of the growing conundrum of multiculturalism (and the growing popular political objections and resistance to it) and the concurrent need for forms of government and governance able to facilitate an increasing social complexity in the face of dissolving national or colonialist monoculture (UNESCO, 1999). Moreover pluralism, as a cultural project, afforded cultural organisations and the arts a specific political mission and political agency – an agency whose parameters had arguably been defined in earlier landmarks of cultural deliberation, the 1996 Report of the World Commission for Culture and Development, *Our Creative Diversity* (UNESCO, 1995). The 2005 Convention, however, while significant in its own terms, shifted the legal axis of this discourse towards national (member state) policies for culture and creative industries (with particular attention to detail pertaining to international trade – a concern of the Convention’s sponsors). Cultural policies oriented to globalisation remain necessary; but all sense of explicit political agency for culture became weakened, and with it an explicit framework in which to work for Cultural Rights.

UNESCO’s central concept of “diversity” has remained emphatic, but to this day suffers from a lack of political agency in the organisations inclined to use it. This is perhaps apparent when situating cultural diversity as a policy concept in a

now well-known critique of global neoliberalism and the recent tendency to orient all social or cultural policies to the market, trade or any other economic context of meaning. In reading, for example, David Harvey’s *A Brief History of Neoliberalism* (Harvey, 2005; 2007), a paradox emerges whereby “diversity” in and of itself presents very conducive conditions for a society governed by market principles. After all, neoliberalism favours societies where culture and civil society provide the conditions for collective values and behaviour outside of the orbit and influence of the State; for individual liberty and freedom are a neoliberal political aim and virtue (expressed most powerfully in the individual consumer and actor in the free market), and a strong civil society independent of State can more easily favour private property rights and free trade protections. While the 2005 Convention is without doubt an attempt to assert policies for protection and promotion within this “marketisation” of society scenario (as civil society is arguably always dominated by the market and its ruling corporations), it is something of a rear-guard action. It is an attempt at protecting culture from something it tacitly endorses. The Convention is not an attribution of political agency to those actors (civil society and cultural organisations) that could effectively combat marketisation (as the market begins to affect governance over the institutions of society and culture themselves: see also O’Connor, 2016).

Neoliberalism is less an economic theory than a series of social theories on how the construction and imposition of ‘economic’ values on society and culture demonstrably affects a reduction in social and public values, projects and support systems. Public assets and goods pushed into the market, FDI (foreign direct investment) is prioritised, and the mediators of the ‘economic’ (whether bureaucrats or corporations) become more powerful actors than local government, and who assert the ‘rights’ of economy as fundamental (as the operational basis of) all other rights. Indeed, give how ‘the individual’ is the fundamental social category of human rights per se, it is not difficult to understand how human rights in themselves have not been a bulwark against neoliberalism – and its erosion of the

collective foundations of social life, which in turn promote and protect cultural diversity or the right to culture (cf. Peck, 2010).

By way of conclusion, as the International Bill of Human Rights (including the 1966 conventions) only tend to feature culture as a dimension of the civil, social and economic, the 2005 UNESCO Convention arguably remains the principle vehicle for the assertion of rights to culture. However, as noted, the articles of the Convention, while making explicit reference to cultural producers and civil society actors, are largely directed at 'sovereign' member states. The actual role of individuals and civil organisations in participation in the formation or implementation of cultural policies for promotion and protection of cultural diversity (Article 11) is vague – and so, the role of cultural self-determination and freedom in relation to a concurrent appeal to human rights, is not concrete. The right of each state to its own cultural policy (Article 6) is potentially at odds with the demand for international cooperation (Article 5); and lastly, the "dual nature" of cultural goods and services as both commodity (and export) and socio-ethnic media of identity and value (Article 1) only serves to acknowledge the expanse of the problem.

### Concluding Reflections and Implications for Cultural Policy Research

Cultural Rights as a legal concept emerged explicitly in the 1960s, but for reasons we discussed above was not implemented in ways that allowed for its extension in relation to a growing international human rights regime of law. The following historical shifts in the relation between the nation state and culture, national policy governance and economy, and the growing role of the UN forming a global discourse on development and rights, has made for a complex terrain of thought and action. While ostensibly the responsibility of UNESCO, an arguably greater advance in our comprehension (and thus strategic use of) Cultural Rights is the reporting of the UN Special Rapporteur for Cultural Rights. UNESCO uses 'rights' as the basis of all its work, but is not explicit in its contending for rights (except perhaps in the Gender Equality agenda). Diversity has

become a radical concept – but was separated from its origins in the emerging discourse (in the 1990s) on Pluralism and the political agency afforded by an international legal framework on pluralism.

It is a concluding contention of this article that while a sufficient conceptual apparatus exists in the legal sphere informing us on how human rights (or other kinds of right) are applied in a given cultural realm, we are lacking a theoretical discourse on how rights 'are' cultural (in an ontological but also epistemic sense), and can be defined and defended on cultural grounds by cultural actors (not on civil, social or economic grounds by parties who regard culture as one dimension of their political interests). This article, of course, cannot now begin to undertake that task. It will conclude, however, by indicating the areas or judicable spheres that Cultural Rights should operate within – and the issues that emerge from that and directly involve cultural policy.

The first is the matter of the ruling assumptions on the moral integrity of the arts, the otherwise benign character of all culture, and internally related to these assumptions, the persistent claim that the arts and culture are exempt from social norms of moral integrity, observance and offense. With some irony, the arts, historically, have arguably flourished more or as much under authoritarianism as liberalism (or earlier variants thereof), though this was in part as art is evidently stimulated by resistance to authority. Nonetheless, the arts also obviously involve hubris, individualism and intense competitiveness, and we might note how the arts tend to the realm of highly professional, education, specialised, by implication socially elite. It is not contentious to point out that artists, even today, tend to the necessarily single-minded, self-interested and self-absorbed, and other patterns of behaviour not associated with collective cooperation and consensus. Rather, challenging all consensus and socially binding norms – and in way that do not themselves make them obvious candidates for creating social cohesion – remind us of the historical exceptions that current rights discourse makes on behalf of culture (Ivey, 2008).

Cultural policy since the 1960s have largely bypassed the problem of art's intransigent individualism (or, rather, depicted it simply as a time-limited feature of European romanticism). French and British policy trends in 'cultural democratisation' (largely for widening participation and the means of production) and in 'cultural democracy' (largely for social access to arts and culture – to produce as well attend) did not generate substantive new conditions of artistic practice. With decades of economic and cultural policies (and not least public, community-based funding) the dominance of Western artistic individuals and policy trends for MOMAs, biennales and cultural festivals all celebrating the ascendant artistic ego, continues apace. Given how the UN promotes Western-style democracy as the basis of human rights, and with it, individualism per se is posited as the fundamental political category of human society, while non-individualist forms of cultural agency are not so easily acknowledged (Melzer, 1999; Smiers, 2003).

Second, the legal complexion of the social space of collective cultural self-determination is not easy to understand. Most of the time, cultural activity purposively avoids critical, confrontational or resistance positions against authority (at least where the 'authorities' in question are the funders of culture). Nonetheless, the legal sphere determining the boundaries of social representation and activity are contracting, and with it the spatial dimension of culture (places, actions and discourse). The laws of the land may now routinely include the following, all of which have implications for rights: Obscenity (all countries, most liberal of which are EU countries); Libel, Defamation and Slander (all countries); Offending the State (e.g. Turkey and many Middle East countries); Blasphemy (common to all countries where religion has constitutional political status); Offending the Church (e.g. Greece; Islam has its own version); Confidential information (e.g. state security and military); Theft or appropriation (e.g. Nazi confiscated art); Hate speech (EU; USA) and Terrorism offenses (that may include the nebulous actions of glorifying terror) (most countries have adopted these). Lastly, we may think of Copyright and IP laws as almost wholly benign but, as the case of Nadia

Plesner (above) illustrates, it can be motivated against, as well as for, creative freedom.

Thirdly, cultural organisations in Europe – particularly the UK – are very good at using the rhetoric of rights and justice (particularly access and participation – enforced by law, in the UK with the Equalities Act 2010, Human Rights Act 1998 and previous iterations of both these areas of law and policy), but they are arguably not so effective at understanding or challenging the political and legal powers that issue such legislation (the role of that rhetoric in ideology and formations of political discourse). Governments can use rights as a form of patronage and a discursive means of promoting political ideology, and this needs to become a subject of cultural analysis alongside the proposed research avenues on policy and Cultural Rights. In the UK, the incorporation of policy directives for citizen minorities in mainstream cultural life and institutions, the elimination of discrimination, and the recognition of interest groups, is conducted by political fiat of national, local government and funding bodies – not involving much public deliberation. Consequently, arts and cultural organisations are not actually involved in any deliberative thinking on rights – or indeed act as, in the UN's terms, Human Rights Defenders in the cultural sphere. What would it mean then for arts and cultural organisations to be activist or official Human Rights Defenders in culture?

By extension, Rights (as an individualisation of political behaviour and self-assertion) is instrumentally important to the global neoliberal order, which has arguably co-opted democracy and 'liberty' (as noted above, an appeal to the supremacy of civil society, access and participation as condition of free markets, the individual's right to choose fundamental to consumerism, and so on). Critical thinking needs to maintain a reflective apprehension on the way 'rights' based thought, legislation and activity, can serve, compliment or even provide the social conditions for greater economic interests.

We should not necessarily assume a harmony between Cultural Rights and the international human rights legal regime – even as the UN Special Rapporteur is currently fighting hard for



both, particularly in relation to women's rights, the specificity and autonomy of the cultural realm must be theorised and recognised – culture does not always provide for a harmonious or constructive society. Culture can be used for dissent and an attack on social assumptions, widely held values, taboos and collectively accepted political ideals or practice. An early study from 1974 by Hungarian Imre Szabó and entitled *Cultural Rights* suggested that the very philosophical conditions of human rights (individual, universal, inalienable and indivisible) can only be applied to culture by robbing it of its specificity, and moreover its agency for collective anti-individualism (Szabó, 1974). Following this, we may investigate how Human Rights could rob culture of its intellectual and social facility for opposing all authority and power (not as an old-style 'autonomy of art', or of the avant-garde even, but a contemporary policy theory of culture's autonomy from all institutionalised value systems). Cultural Rights may play a more effective role outside of human rights altogether, if its potential political agency is fully realised – a rights seized and deployed, not conferred and gratefully received (bottom-up, as the cliché goes).

Fourthly, the human rights regime inadvertently situates arts and cultural organisations as agents of the State, not simply clients or beneficiaries. Culture becomes another institutional means of State management, bureaucratisation, and the means by which the State (and its national agendas) finds moral legitimacy. Following this, research is needed on how states co-opt the ethics of human rights – the acknowledgement of the Other, of difference, of tolerance and respect, and so on – as internal to the political management of public discourse. We are all familiar with the character of overt censorship (from social intimidation to direct prohibition) but less so the self-censorship generated by a fear of offending or upsetting the individuals or state sponsored groups protected by special rights. More objectively, the rise of Hate speech and terrorism prevention laws have generated new claimants to the guardianship of public speech and expression – to which we all too easily assume a benign or necessary intent. There is all too little

cultural policy research representation in broader debates on security, extremism, fundamentalism (although Karima Bennoune has made that one of her areas of focus: UNCGR: 2017).

How both censorship and security permeate the strategic management of cultural funding systems (priorities, limits, conditions, paucity, competition) – as well as access to public space, to non-state actors (e.g. religious groups; NGOs; terror groups), market agencies (e.g. sponsors; distributors; landlords) is a topic directly related to how the arts define a discrete sphere of freedom that is identified as cultural. What this article has attempted to demonstrate above all is that the cultural sphere exceeds (cannot be comprehensively defined by) the legal terminology of rights, whether civil, social, economic, or even Human.

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