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Special Issue Introduction: **Cultural Rights and Global Development**

Jonathan Vickery

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Author

Dr Jonathan Vickery is director of the masters in Arts, Enterprise and Development in the Centre for Cultural and Media Policy Studies at the University of Warwick, UK. He is interested in local development in multicultural contexts and since 2016 is co-Editor in Chief of *The Journal of Law, Social Justice and Global Development*. J.P.Vickery@warwick.ac.uk

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In our age of huge religious, political and territorial conflict, the essential cultural dimension of place, identity, values, and governance, is all too easily ignored. This special issue is given to the social and developmental significance of culture and cultural policies in a Rights framework. Since the 1966 UN International Covenant on Economic, Social and Cultural Rights, how far has the concept of culture as a 'right' been developed? Since the debates surrounding the UNESCO sponsored 2007 Fribourg Declaration, to what extent are Cultural Rights now accepted as an essential dimension of Human Rights? Perhaps using Human Rights law to facilitate Cultural expression and participation has been problematic and other legal instruments are more effective (such as cultural policies on access and equality, or heritage protections, or international treaties like the 2005 UN Convention on the Protection and Promotion of the Diversity of Cultural Expressions). Or perhaps a sustained legal, social and development discourse on Cultural Rights by writers, research scholars and development agencies, has not been sufficiently consistent and robust in any area of development research and policy.

When this Special Issue was first envisaged, it was intended as a global forum for dialogue on how rights currently pertain to this journal's principle (and multidisciplinary) fields of legal, social and development research. It aimed to attract research papers on (but not limited to) the following topics:

- > Cultural Rights and Human Rights, international treaties and UN conventions.
- > Cultural Rights and Cultural Policies (particularly diversity, equality, gender and heritage policies).
- > The cultural conditions of the juridical interpretation and application of Human Rights.
- > Cultural Rights, multiculturalism and political pluralism.
- > Cultural Rights, mass immigration and diasporas. Cultural Rights in war and conflict zones.
- > Religion, faith communities and Cultural Rights. Cultural Rights, censorship and contemporary arts.

> Arts organisations, NGOs and development agencies that promote Cultural Rights.

I have reproduced this list from the original Call for Papers as it indicates the significant scope of relevance for this otherwise under-researched subject. This special issue attracted many contributions, not all of them could be published. The ones that were published adequately cover the first three bullet points; the rest will now feature in a broader research project, out of which will hopefully see forthcoming further thematic issues of this journal. This special issue therefore, did not succeed in defining the parameters of this subject, and for the most part remains focused on the legal emergence of culture as a concept in Human Rights and cognate areas of supra-national policy discourse. Nonetheless, we also broach other significant topics and issues: justice for cultural workers and artists, arts censorship, information and the political management of the media, and NGOs in a specific corner of the European region (Serbia).

This issue opens with an interview, on the occasion of the new Arts Rights Justice Academy (ARJ), whose opening in 2017 attracted the first UN Special Rapporteur in Cultural Rights, Ms. Farida Shaheed (2009-2015). The Academy project does not aim to create an education or training institution as such but more a dynamic and mobile space, where cultural practitioners, activists and researchers, policy, legal and social experts, can come together to discuss the pressing issues facing Rights today. The ARJ's approach is dialogic and structured around the sharing of experiences and intelligence -- and cultivate the various forms of solidarity and democratic agency that emerged in the face of the 'European migrant crisis' starting 2015. The reason this interview was positioned at the opening of this special issue is because questions of 'Rights' invariably revolve around the institution of law, local, regional and global, and the legal application of its statutes, conventions, treaties and protocols. However, as has been made apparent by both first and second UN Special Rapporteur in Cultural Rights – the second being Ms. Karima Bennoune (since 2015) – the translation, transmission and application of law

require as much (in the words of the ARJ mission statement) "to strengthen and expand structures for the promotion and protection of artistic freedom" and other kinds of cultural freedom. The value of the UN institutions of Human Rights (and their regional and national expressions) extends far beyond the law and its application – to education, cultural diplomacy, negotiation in peace and reconciliation, promoting gender equality and minority or indigenous expressions of cultural life, and of course engaging in protest against prohibitions and suppression of cultural expression (whether grounded in law or not). On this latter subject, I must make reference to two notable publications brought to my attention during seminars I delivered on Cultural Rights in Hildesheim (December 2017-January 2018): UNESCO's contribution to the 1995 UN Year for Tolerance – 'Violence' – a study of attacks on artist and writers in Algeria, and the recent Freemuse group's international survey of 2018, 'The State of Artistic Freedom 2018' (Copenhagen: Freemuse.org). Both are testament to an historical discourse that has remained once-removed from mainstream cultural policy debates as much as development studies. This marginalisation must not persist: matters of rights, justice, citizenship and representation, must become (as they were in in the 1960s and 70s) more central to how we understand the relation between culture, policy, community, development and the resources and opportunities of evolving global legal discourse.

Polish lawyer and international writer, Marcin Górski, entitles his article with the cryptic indictment of Jesus, beginning "And whosoever shall offend one of these little ones..?" (Gospel of Mark 9:42). His problematic is the concept of 'community standard', which at once identifies the boundaries of reason and acceptability in legal rulings on censorship, yet is deeply ambiguous. Górski, with a forensic approach and international reach, cites seminal legal frameworks and rulings that legal define artistic expression and its limits internationally. He challenges the basis, and variance in the use of the community standard and the many assumptions on the meaning and operation of "expression" in art and artistic production and display. While raising many questions pertinent to the discipline of

philosophical aesthetics, Górski maintains a focus on the legal articulation of his key concepts. And without contriving a judicial dialogue between the landmark differing interpretations of different courts he offers a full overview of legal practice internationally. His argument attends to the ambiguity – in part created by art's own "transgressive" character.

Legal scholar, Marcella Ferri (Italy), broadens our concerns from the concept of art to the concept of "culture" itself. She attends to the conceptual-legal architecture of Cultural Rights, as the concept emerged from the key UN conventions. She points out that while a political assumption on the semantics of the term "culture" has been maintained through the drafting of various UN conventions, the assumption conceals a range of meanings – each of which allowing for a range of legal applications of Cultural Rights. Our understanding of culture is invariably anthropological, ethnic, social and identitarian, but as a rigorous legal scholar will point out, a strict causal relation between the semantics and pragmatics of a term is necessary for legal rulings to harmonise, and the many articles of a declaration, convention or covenant to work together. With detailed precision, Ferri moves through the central legal frameworks for Cultural Rights, identifying the principal clauses in each, and forming a discussion around participation, the rights of children, and the judgement of the International Criminal Court in the "Al Mahdi case" (2016). The case is significant in its potential expansion of heritage, away from its traditional designation as property into realms of cultural identity, human development and community life.

Jordi Pascual (Spain), consultant, activist and academic, fleshes out what this might mean – and often it does mean for progressive cultural policies. He explains the various ways (organisations and their strategies) that Cultural Rights are practiced and how they are addressing central issues in cultural development, expressions of place, community and identity, and the sustainability of social life on local, regional and global registers. Pascual's experience at working in policy advocacy in these three registers are evident in his command of knowledge on how

major cultural policy frameworks articulate legal concepts of Rights, and moreover, how basic rights in participation, identity and historic cultural life, are interconnected with more contemporary practices of creative expression and the political fight for a more equitable society. Pascual's contribution stands as a significant summary overview of the relation between cultural policy and Cultural Rights, while underscoring the importance of NGOs and representative groups, like Agenda 21 for Culture – a pioneering venture of the civil society association, United Cities and Local Governments (UCLG). By way of conclusion, he offers six major steps forward in advancing Cultural Rights as cultural policy in practice.

The rest of this Special Issue features an approach to Cultural Rights in terms of critical contemporary issues – artistic production (Chinese opera; educational innovation with Syrian refugees), sustainability (in global development), information and media, and cultural NGOs in Serbia. The first of these, by notable China scholar Haili Ma (UK-China), is particularly interesting given the degree of field work in which her study is grounded (indeed, the scholar was once an opera singer). Moreover, both this contribution and that on information and media apprehend a central political dilemma – what do "rights" mean in a country whose legal system does not recognise an individual's separation (and even elevation over) the State. If the State is conceived as the collective expression of political will, then to posit an individual's will as somehow over the collective is nonsensical, notwithstanding that China has indeed positioned itself at the forefront of global cultural discourses of creative city urban development and cultural (indigenous and intangible) heritage.

Haili MA offers an outline of the rights issues at the basis of China's most traditional and common cultural expression (opera), yet entangled in political discourse and cultural policy developments. Chinese opera, once neglected (if not disdained as an improper expression of common sentiment) has recently become an object of political recognition, signifying both a crisis and an attempted renewal of political

legitimacy. MA unravels the political shifts animating the new profile of Chinese opera, and how historical conceptions of arts and artists are ever-framed by the strategic political relation of government and culture. The question of rights in this article emerges "immanently" – given how rights in China are indeed submerged in layers of political expediency. This means that rights identify a struggle for professional identity, artistic autonomy and the spaces of cultural expression. Indeed, in Ni Chen's article on the political management of the media in China, the issue of cultural self-determination is central.

As cultural economy scholar Ni Chen (UK-China) points out, "rights" as a legal concept assumes that individual agency possesses the capacity to exercise a right or to use a rights to their advantage or self-regard. Yet this cannot be assumed, at least in a nation vigorously attempting to re-invent nationalism through cultural self-determination. As a country, China is asserting its self-perceived national cultural rights, in terms of a need for coherence and assertive self-expression in media, education, communication and information. President Xi Jinping, while urbane and educated, has reinvigorated political control over the nation's media industries and the strategic representation of current affairs. Chen's cultural-historical approach offers a broad and critical view on the significance of the new nationalism as identified in the political management media and communications – framed in terms of the lesser-developed area of Cultural Rights, information. With reference to the freedom of the public realm, editorial values, differing viewpoints in the media, and the multi-faceted character of nationalism as a current political project, Chen argues that while older forms of oppression and censorship have gone, a new assertive national unity has set the parameters of meaning and individual expression in the public realm. The status of individual rights remain political relative and not self-evident as assumed by the terms of the relevant UN conventions.

Deniz Gürsoy's (Turkey) contribution demonstrates how a seemingly simple form of cultural provision for refugees (an "Ideas Box"),

can provide hope and empowerment to an otherwise dispossessed and often ignored condition. The condition of PRS or 'protracted refugee situations' is not new, but only recently understood at UN policy level and equally only recently an object of cultural intervention. Why – given the evident significance of diasporas, exiles and immigrants to the cultural history of many of our countries – are we slow in recognising how the condition of the refugee is a cultural one as much as a political or humanitarian one? Gürsoy presents a framework around which we need to formulate urgent questions for cultural policy.

Serbia is a singularly interesting case as a country – in terms of its recent and present battles with the political management of culture and the public realm. On the edges of Europe (have been engaged in EU accession negotiations since 2014), this once center of communist Yugoslavia has experienced radical shifts in constitutional law, the current adopted only in 2006. In this interesting picture of the country's legal attitude and political approach to Cultural Rights, Belgrade lawyer Miljana Jakovljević identifies the fault lines of culture and freedom with reference to cultural NGOs. Her premise is that the ability of cultural organisations (historic and contemporary) to carry out their work of advocacy, commissioning, events and the promotion of culture, is indicative as the measure of freedom and protection the law allows. Using a normative analysis of constitutional and domestic law and with reference to specific major legal acts, Jakovljević explains how the admirably clear legal articulation of Cultural Rights in Serbia is not adequate for the flourishing of contemporary culture or even a diffusing of the historic tension between culture and State actors.

This Special Issue concludes with internationally-renowned scholar on global development and sustainability, John Clammer (UK-India). His article title is phrased as a question – on the relation between Rights, Sustainability and Development (as proper nouns, each identifying a normative and institutionalised discourse on the aims of a equitable society and cooperative global order). Clammer argues that these normative discourses are essentially contiguous, even though the

current capitalist global order maintains vested interests in their separation. With a theoretically-informed exploration of their meaning and function in international development frameworks concerns most of the paper, the concluding six propositions are forceful as they are imaginative: his concluding statement is instructive: “The bottom line then is an expanded notion of human rights that not only includes cultural rights, but which sees the fulfillment or achievement of a rights-based world as constituting the nature of sustainability and the purpose or end of development. Social justice is the non-negotiable project, but in the recognition that social justice must now include both cultural and ecological justice in the recognition of development as a holistic and life-enhancing process.”

References

- Freemuse (2017) *The State of Artistic Freedom 2018* [Freemuse annual statistics on censorship and attacks on artistic freedom], Copenhagen: Freemuse.
- UNESCO & Federico Mayor (1995) *Violence*, Paris: United Nations Educational, Scientific and Cultural Organisation.

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