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Arts Rights Justice: protecting and promoting artistic freedom – an interview with Daniel Gad

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Abstract

The University of Hildesheim (Germany) is a leader in both arts education and research in cultural policy and management. They have a new innovative focus on social justice for artists and writers, and the policy implications and implementation of Cultural Rights for activists and NGOs. For the opening of this special issue, the journal Co-ed-in-Chief, Dr Jonathan Vickery, interviews Dr Daniel Gad on his new interests and the parameters of Rights as applied to culture and the arts.

Author

Daniel Gad is managing director of the UNESCO Chair (Professor Dr Wolfgang Schneider) in Cultural Policy for the Arts in Development at University of Hildesheim since 2012. He is head of the Arts Rights Justice Program, which apart from a broad research stream, is organiser of the annual Arts Rights Justice Academy at the Hildesheim Kulturcampus. Since 2017, he is representing the University of Hildesheim on the Steering Committee of the Hildesheim bid for European Capital of Culture 2025.

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You are the manager of the UNESCO Chair in Cultural Policy for the Arts in Development at the Department of Cultural Policy, University of Hildesheim (Germany). Recently you and the Chair (Professor Dr Wolfgang Schneider) innovated a new educational forum, called the Arts Rights Justice Academy. Please explain your rationale.

It is vital that the rights of the artists and the protection of artistic freedom are recognised as an integral part of the international human rights frameworks -- and that States deliver on their obligations to uphold them. The aim of the ARTS RIGHTS JUSTICE PROGRAM [The ARJ programme] is to strengthen and expand structures for the promotion and protection of artistic freedom. To this end, we seek to disseminate and professionalise skills, ensuring that the exchange of knowledge and build expertise on the subject.

The ARJ PROGRAM was developed in cooperation with 30 international expert institutions with the support of the German Foreign Office and the International Cities of Refuge Network (ICORN). Mary Ann DeVlieg and Julia Farrington, of International Artists Rights Advisors (IARA), along with Todd Lanier Lester, acted as consultants to the program. It is further informed through exchange with specialist organisations such as FREEMUSE, PROTECT DEFENDERS and other significant agencies and actors.

In terms of content, The ARJ ACADEMY invites 30 young professionals to join a group of international experts in the field for a program of workshops, discussions, teamwork, presentations and individual consultancy. All participants in the ARJ ACADEMY are and will be practitioners in cultural policy-related work, arts or cultural management practice, free expression advocacy, human rights defense, or related areas.

We are committed to bringing together participants from as wide a range of places and regions of the world as possible, to create a peer-to-peer learning ambiance based on dialogue, learning and exchange. In focus, for us, are young professionals and practitioners of all nationalities working within 'artists at risk' residencies, arts and cultural project managers, artists, lawyers, jurists

or further related area with working experience in a field related to human rights, cultural rights, cultural policy, freedom of expression and artistic freedom, artist mobility, arts or social development. *The specific topics under scrutiny can be identified as* (i) the fundamentals of freedom of expression; (ii) understanding freedom and threat: censorship and policy structures; (iii) legal frameworks and artists' rights; (iv) advocacy & campaigning: creating the conditions for free expression to thrive; (v) working with artists: training, protection, visas, relocation; and (vi) funding & networking.

Cultural Rights are effectively a minor sub-section of Human Rights. They have maintained a low profile, despite the fact that "culture" is intrinsic to the 1948 Universal Declaration of Human Rights, and also it is one of the three principle terms of the 1966 International Covenant on Economic, Social and Cultural Rights [the ICESCR]. Why is Cultural Rights an important area for you now, and how does it intersect with the arts on the one hand, and justice activism on the other?

Human rights and fundamental freedoms are interrelated, and are regarded by us as prerequisites for a sustainable society -- meaning, a society that facilitates diverse participation in its prosperity and in its general aims of promoting a fulfilled life for its members. Following this, human rights and fundamental freedoms are also a prerequisite for artistic creation -- in the context of the potential diversity of cultural expressions in general. But, the question arises, why is it necessary to protect and promote artistic freedom? Why is this so at the beginning of the 21st century? And how, or what means or ways are there to engage in activities of protection and promotion?

Art cannot be said to be functionally good or useful for a society per se, and it is not necessary to argue that it is important for shaping a society into something more positive or better. Art, rather, possesses a facility to question society, to understand it anew, and to engage in a "re-think", and in a "language" that allows many different and parallel activities and approaches, far beyond

the direct spoken word. Artistic freedom allows us to operate outside the constriction of existing conventions, to question things and to "pronounce" the "how would it be different?" Freedom for art is expansive, and entails an acceptance of diversity, of perpetual change, and many other forces that are the opposite of homogeneity and an assumption that a society can cultivate a seamless continuity in its history. But freedom also has its limits, and not everything that is conceivable is immediately feasible or, in specific social contexts, tolerable. Freedom may certainly shake what is important and "holy" to us or our group, and can put into question our very identity. But freedom claims by us is on condition of us accepting the freedom of others; in this sense, freedom is not synonymous with abandonment and loss.

When considering social ills, it is inevitable that there are a range of different perspectives on whether something is genuinely wrong or a malady. An open, mutually appreciative, dialogue, is therefore a condition of a full understanding. It is a basic requirement for pursuing the idea of justice through an engagement with as many parts of the world as possible. Mutual dialogue is internal to the ethical comprehension manifest in the Universal Declaration of Human Rights of 1948.

For a number of years now, the Department of Cultural Policy at the University of Hildesheim has been promoting the concept of artists and cultural workers as "change agents" -- particularly in the realms of arts education, policy activism and local cultural enterprise (like arts centers). Yet, arguably, artists are historically defined by their introspection, focus and withdrawal from public life. How do you see the artist playing a more active role in shaping of social transformation processes?

In our experience, more and more artists through their artistic work are finding more effective ways at shaping processes of social transformation, and understanding art as a socially transformative activity (not just a work of art to "view" or passively gaze at). Yet, this introduces another dimension of work and vulnerability for the artist - artists can find themselves under threat very

quickly. Artists are often referred to as a kind of "seismograph" or watchdog in the context of social change, social dilemmas, political ideals and beliefs, and the constructs of social identity. They are an "early detection" of social earthquakes, although, I am not sure these terms are helpful or if they do they must remain open. From a scientific-analytical viewpoint, arguments can be made that would generically designate artists as this, but whether they, as so-called agents of change, are really entrusted or empowered with such a social role or set of socio-political tasks, is counter-intuitive. Artists are not generically so entrusted or empowered, and furthermore, it could run counter to the conditions of artistic freedom (particularly with regards the creation of art). Historically, it seems that it is usually only possible to assert whether a given work of art or artist has social significance in retrospect, and particularly so in relation to whether this significance was conducive and contrary to a desired social change. Importantly, it should be recognised that historically it is not artistic works so much as artistic movements and currents that have an influence on social processes.

In this sense, artistic freedom is not a fundamental value because it somehow awards an artist a license to do anything imaginable. The offensive aspects of Russia's Pussy Riot performances, as well as the scandalous poem by Jan Böhmermann, raises an explicit dilemma on how to discuss (not least define) boundaries¹. A part of this concerns how important it is that boundaries, conventions or borders can be crossed so as to shed light on established power structures, or on the role of social convention, stigmatism or taboo. Art can, and does, break them down in the cause of social change, which is something that coheres with the basic understanding of universal human rights.

In what context are we speaking? It is assumed that Rights, being universal and a feature of global governance -- the UN system -- that somehow they are guaranteed or absolute. However, even with regional courts (like the ECHR), rights have to be worked out "on the ground" and in the course of everyday social and cultural life, right?

One of the significant aspects of rights, and the discussions that follow, is that you have to range between universal and particular -- general concepts and statutes and specific cases or instances. The artist Jan Böhmermann, for example, is a specific case whereby his individual context is the legal system of the Federal Republic of Germany. General cultural policy in Germany adheres to the principle of framework provision for the freedom of artistic creation. In a similar way, our conception of state "police" is not as opponent but as protector of the individual, again a generic concept. Other countries have a similar framework for implying the legitimate role of state or public agency, but in all too many instances, a principle of State as protector is almost completely absent or cannot be relied on by artists (or others).

In the context of the United Nations, and UNESCO in particular, there have been many efforts to persuade and enable member states to ratify and implement the contents of the Universal Declaration of Human Rights into existing and practiced law. This requires some "translation" of universal precepts into specific national domestic laws. With regard to artistic freedom, the so-called social pacts of 1966 (the ICCPR and ICESCR), the "Recommendation on the status of the artist" of 1980, the UNESCO Convention on the Protection and Promotion of Artistic Expressions of 2005, and the UN report "The right to freedom of artistic expression and creativity" of 2013, all provide valuable legal assistance and evidence for the construction of protection and support mechanisms within domestic legal and security systems.

And yet, so much of the documentation and supporting agreements seem to end up in the "ether" of diplomacy. The interconnection of formal legislation and lived life is not inevitable, and a right in one place may be relative and elsewhere considered irrelevant. The *Lèse-majesté* is an example here (the law prohibiting the insulting of dignitaries of State or monarchy -- abolished in Germany in 2017): it is common around the world to find that artistic freedom is not directly opposed but relative to so-called

higher social interests, which can effectively impact on its preservation.

This raises the question of practice. As John Clammer points out in his article for this special issue, a Right to Culture is an odd concept, as human beings are cultural beings, already inseparable from culture. Yet, in terms of the arts, Rights become very specific to social contexts, often in unpredictable ways (in relation to unexpected public outrage, for example)?

To shape society in a way that increases tolerance and an appreciation of diversity is not something that cannot be left to chance, even with the legal establishment of general freedoms. Managing freedom in social (and often local) contexts, and the consequent challenges for each individual, demands a perpetual and dialogue on agency and structure, freedoms and boundaries, and that should never be a linear process. The case of the German comedian Jan Böhmermann -- where his poem "Schmähkritik" ("abusive criticism" of the Turkish Prime Minister Recep Tayyip Erdogan) read as part of his satirical TV show *Neo Magazin Royale* on Germany's public ZDF channel in March 2016 -- demonstrates how in the Federal Republic of Germany the physical well-being or protection of the artist is categorically separate from (not contingent upon) the question of whether their artistic work or action was a criminal offense (under the now abolished principles §103 and §104 of the German national penal code or *Strafgesetzbuch*).

Böhmermann could rely on fair legal procedures, during which he was offered police protection. This categorical division illustrates a protective mechanism, as it has long been defined according to international legal concepts, but not universal and in places legal accepted but implemented with difficulty. In many parts of the world, artists can find themselves confronted with sometimes obvious, sometimes deliberately obscure, threats to their person or physical well-being as a result of their artistic work or perceptions on the meaning of their work. The result is that a preemptive understanding of their work, or what it purportedly represents, prevents them from

undertaking artistic work. Despite the comprehensive protective measures with the case of the comedian Böhmermann, the outcome of the assessment remained open to the charge of criminal offense. Central to this was a procedure that necessitated the evaluation of the artistic work by the State, and which had four implications:

First, this case was subject to legal assessment on the basis of existing legislation -- that was interrelated with the defendants' existing fundamental rights. Secondly, the action in question led to the German Bundestag (the federal parliament) to question and reconsider the relevant laws, specifically the relevance of Article 103, the so-called Majestätsbeleidigungsparagraph (Lamentation of Majesty Paragraph, or *Lèse-majesté*). It was, as I noted, deleted from the Criminal Code. The actions of Böhmermann and subsequent legal discussion at a national political level, illustrates the complexity of the respective context, illustrating why the evaluation of art must always be considered intrinsically difficult, contested, and always open to all factors in the context of a general understanding of justice.

Thirdly, the outcome, where Böhmermann was ultimately protected by another section of the legal system, the Section 5, Paragraph 3, of the constitution, or German Basic Law (*Grundgesetz für die Bundesrepublik Deutschland*). This explicitly sets out a protection and freedom for art. Nonetheless, it remains a notable fact that the public service broadcaster (of the comedian's TV programme) deleted the routine video recording of the programme from its online library, despite internal advocates who wanted to keep it accessible because of the ignited debate. Inevitably, the deleted video went viral through various Internet platforms and circumvented the self-imposed censorship of the broadcaster.

Fourthly, Böhmermann's artistic work demonstrates the velocity and level on which art can spark a debate on relevant social issues as much as the legal system. It also shows that as a public issue and debate need not inevitably and immediately play out in a certain direction, but will remain largely uncontrollable. A work of art or

the actions of artists should not be determined purely by a legal understanding and the values that flow from this, nor purely in terms of national boundaries.

Cultural Rights involves more people -- more change agents -- than artists or cultural workers. What about the role of about civil society?

Artist are not the only significant group of change agents or actors in social transformation. It is obvious that civil society is of an enormous significance in protecting artists and promoting the existence, distribution and access to their works. We must not think of rights merely as what a State can confer, or what a law protects. Rights are active, and the subject of artistic freedom exemplifies this. After more than a decade trying to implement the objectives of the 2005 UNESCO Convention (on cultural diversity), the limits of influence and cultural management on behalf of States and their public institutions in so many countries of the world is plainly evident.

However, to practice the art of criticism, and allow a freedom of expression in relation to a critique of maladministration in the implementation of cultural conventions, is not something that would be tolerated the established system of international diplomacy.

This is where a civic initiative can play a significant role, and work in parallel with existing State procedures, working to implement the objectives of a convention. But, this remains a tentative suggestion as for this to happen in its full sense, a drastic increase in the willingness to assume responsibility within civil societies worldwide, would be needed. We have not fully begun to even explore ways of implementing this.

What specific forms of support for endangered artists or cultural workers can civil society perform -- even supporting the self-protection of artists?

Motivated by the case of British Indian novelist Salman Rushdie, and the violent reactions in the years following his 1988 novel *The Satanic Verses*, various models and strategies of support for endangered artists were created. The models range from temporary financial support programs

(with assistance in the country of origin, or at least the region), to long-term residential, or even resettlement programs. With the increase in repressive regimes in recent years, it is noticeable that the number of support programs is increasing. However, the range of funding available to artists in need is far from being enough, particularly given the diversity of circumstances in which artists can find themselves. It is important -- at least as a guiding principle -- to remain ready both to combat the causes of threats to freedom, with the practical measures to protect and promote art and the artist. This is part of the understanding that sees cultural policy as a social policy.

And for the broader public sphere -- what Cultural Rights issues should we be debating in public, exposing to the media, and foregrounding with consciousness-raising events?

It is necessary to make abuses of freedom visible and the meaning of the preservation of artistic freedom transparent and evident in the public realm. To discuss and debate issues in public is also a way of promoting a consciousness of the plurality of freedom and the complexity of its legal designations. Moreover, artists and institutional players in the cultural landscape themselves need to be sensitized to these issues, and coordinate their concerns where regional and international networking can be strategic. We are still a long way off in understanding artistic freedom, and the relation between the law, society and culture. Similarly, we are a long way from comprehending the complex nature and variety of forms of censorship, as well as the range of strategic approaches that could be innovated in promoting and protecting artistic freedom. In conclusion, it must also be mentioned that according to the current annual report of the Freemuse organisation – ‘The State of Artistic Freedom 2018’ -- documents 553 cases of violations in 78 countries, observing that this is, nonetheless, “a big tip of a big iceberg”. More than 1,000 artists were explicitly threatened, a well-existed dark figure of unclear size not included. Not infrequently, artists are deprived of their livelihood, many are imprisoned or forced to go

into exile. This fact should be more visible in the cultural public sphere than it is.

Notes

1. Vgl. <http://verfassungsblog.de/erlaubte-schmaehkritik-die-verfassungsrechtliche-dimension-der-causa-jan-boehmermann/>)

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