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The Status of the Artist, Cultural Rights and the 2005 Convention: a tribute to Professor Milena Dragičević Šešić'

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Abstract

This article is written in the spirit of a *festschrift*, in honour of recently retired Professor Milena Dragičević Šešić. Once Rector of the University of Arts, Belgrade, and the UNESCO Chair in Cultural Policy and Management, Professor Milena's work and personal charisma have made a European-wide impact on both students and scholars, artists and activists. Her example is one of a university academic who is socially-engaged, politically astute, and who possesses the communication skills that have enabled her to participate in cultural politics at the highest level. Her contribution towards cultural thought and freedom of expression in her own country of Serbia (Yugoslavia until the early 1990s) will offer an important intellectual legacy. The aim of this article is to contribute to the emergence of this legacy by discussing our current policy understanding of artistic freedom in a way that amplifies its intellectual complexity as well as its policy necessity. I argue that cultural policy has struggled to defend, artistic freedom, despite many relevant intellectual resources provided by UNESCO; however, there remains hope in the form of a critical attention to the terms of the 2005 Convention and the historical discourse of culture and development from which it emerged.

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Introduction

The numerous publications of Professor Milena Dragičević Šešić, her public speaking, commitment to teaching and students, her institutional leadership — in Europe and for development in Cambodia, and her work for UNESCO — were consistently characterised by an appeal for *cultural freedom*; and her research was consistently concerned with the political and policy conditions of cultural freedom (Dragičević Šešić, 2006; 2014). However, this article is not simply a celebration of this dimension of her work, but, in the spirit of her express intellectual motivations, I will attempt to amplify what we mean, and what can be meant, by the concept of cultural freedom today.¹

We need to be careful contextualising ‘freedom’ in the light of its recent co-option by neoliberal or free-market policies along with more recent Right populists in their defence of the individual against any form of collective responsibility, welfare economics or redistribution (Dragičević Šešić and Vickery, 2018). ‘Freedom’ is also problematic for the international Left insofar as it has been largely supplanted by ‘equality’ as the primary aim of progressive politics and virtuous government. Indeed, given the rising globalisation of digital media surveillance and our pandemic-era normalisation of mass social control, re-asserting the normative content of human freedom is an urgent task. In this article, in honour of Professor Milena’s example, I am going to identify the current conditions of artistic freedom in a way that amplifies its intellectual complexity along with its cultural policy significance. I focus on cultural policy’s historical interconnection with artistic individuality and aesthetic autonomy in the face of both Right and Left failure to full manage what I see as a central

impact of globalisation — the condition of cultural diversity through the increasing expression of human rights and concomitant demand for group and individual self-determination (cf. Dragičević Šešić et.al. eds., 2017). I will do this with reference to a discourse in which we both share intellectual interests, albeit one that is neglected by cultural scholarship — this is the UNESCO discourse on culture, development and human rights. It is a hybrid discourse, where policy, international law and development strategy, intersect; nonetheless it is arguably a cohesive discourse and requires a more consistent attention by scholars from across the arts and humanities.

Section 1: The state of the Artist

The historical traditions of the ‘fine arts’ in Europe have obviously played a major role in the formation of our policy concept of ‘culture’ more broadly (and regrettably why many in the Global South still see UNESCO as a ‘European’ cultural institution). One significant dimension of culture as a policy concept is its enduring interconnection with individual subjectivity (culture as the free expression of innate human propensities for invention). European Romanticism’s enduring impact is such that collective or social-based art movements (from Russian or Czech Constructivism to the German Bauhaus) did not endure in influence for subsequent generations of art students. For the primacy of the individual artist, the singularity of the artistic vision and the privileged status of the individual ‘work of art’, remained and remains paradigmatic. Furthermore, the American co-option of European modernism after World War Two (Gilbaut, 1983) somewhat preserved this principal focus for art history and theory scholarship (and so the pedagogic and philosophical conditions for artistic practice). An emphatic regard for creative individuality as prime mediator of historical cultural change was inextricably tied to assumptions on freedom of expression — of which ‘stylistic innovation’ more than the art movements (i.e. social formations) that generated it, remained the central signifier of art’s cultural value. What Robert Hughes famously called ‘the shock of the new’ (Hughes, 1991) was indicative of

¹ This essay draws on previous research, principally the historical narratives of UNESCO and Cultural Rights as accounted in Vickery, J. (2018) ‘Cultural Rights and Cultural Policy: identifying the cultural policy implications of culture as a human right’, *Journal of Law, Social Justice and Global Development* (Special Issue, ‘Cultural Rights and Global Development’, ed. Jonathan Vickery), Issue 22: 128-150; and Vickery, J. (2018) ‘Creativity as Development: discourse, ideology and practice’ in Martin, L. and Wilson, N. eds. (2018) *The International Handbook of Creativity at Work*, Basingstoke: Palgrave: 327-359.

a vague social psychology at the heart of all European art history scholarship (i.e. art's history is recounted in terms of a series of individual responses to individual works of art, which in turn is generally assumed to represent a symptomatology of profound social change). Yet, however significant art was as register of such contemporary sensibility, and however pivotal was the role of the artist (as exemplar of their own culture's ingenuity and fecundity alike), the modes of such individuality and their social function was rarely the object of study at all — i.e. among the panoply of theories and philosophies of art there are few theories and philosophies of *the artist*. In fact, creative individuality, (unprotected by philosophical defences and their institutional supports) was easily co-opted by national ideologies of all sorts (from American individualism to European models of citizenship). While it seemed obvious that artistic freedom continued to celebrate non-conformist expressions of individuality — continuing to create extraordinary expressions of meaning, emotion and communication (contemporary art since the 1960s has remained prodigious) — the intellectual life and modes of artistic community of successive generations of individual contemporary artists since the 1950s have failed to secure real material conditions for *social* change. Art, in the West, has remained dominated by powerful individuals, who, for the most part, have not been invested in community-building or even art 'movement'-forming.

Our concept of artistic freedom, I therefore argue, remains in a contradictory state of being irrevocably tied to individual social agency yet rejecting collective social agency — specifically, the philosophical grounding in historical senses of artistic 'autonomy' that might have furnished it with a *collective* conception of freedom (of an interconnected sense of art's value, meaning and creative community and therefore socially-oriented policy aims). Postmodernism's critical engagement with 'the social' or mass culture and everyday life (from Pop art to Jeff Koons) arguably did not generate any form of significant policy discourse (or agenda for social change). It is true, that aesthetic autonomy is all too often associated with post-Kantian modernism, which, as a matter

of doctrine resisted any form of deep social engagement (on account of preserving a quasi-ethical sphere of enlightened sensibility, or whatever its rationale was at any given place and time). The postmodernist attacks on modernism in the 1980s (when 'autonomy' was ineluctably associated with American abstract art and the 'formalism' of dominant New York art critic Clement Greenberg and so an anachronistic feature of Germano-English philosophical romanticism) was in many ways a valid political indictment of a perceived passivity and social indifference. The much publicised intellectual battle that was played out in New York between critics, art historians and 'theorists' (ironically across the private, not public, gallery circuit) led to a decisive rejection of art's 'autonomy' across the influential art institutions of the English speaking world. The rationale was that the separation of art from social life more broadly (even the perceived economic functionalism of 'mass' culture or world of consumer pleasures) would come at the cost of political engagement, or the ability of art to generate forms of social critique, resistance and change. A disdain for the perceived romanticism of aesthetic autonomy in all its forms (however vaguely conceived) pervaded most European as well as American art schools since. But this came at the unseen cost of a contradiction that remains to this day (at least, in the 'undecolonised' West) — the enduring dominance of singular artistic subjectivity (cultural individualism) but with no emphatic concept of art's social autonomy or experiential power to underpin it, and from which to argue policy aims. A policy concept of artistic autonomy is still needed if we are to construct policy frameworks facilitating the aesthetic agency of art in relation to the social collective of citizens, public sphere, political power and new emerging social relations (actual and potential, that in a time of aggressive economic globalisation are finding no space for exploration or expression).

However pervasive this contradictory state of affairs, there remains another, global, sphere of cultural discourse not so determined. From the Post-World War Two era a new form of institutional agency inserted itself between the realm of artists (and arts academies) and the mass market (or realm of private interests): it

questioned the the meaning of 'culture' and the central role of culture in the carnage of the War; and importantly for us, it forged a new ethico-political discursive space that was not entangled in the fate of Western artistic subjectivity.

The Constitution of UNESCO, signed in London on the 16th of November 1945, 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" (UNESCO, 1945, Preamble). And responsibility for this state of affairs is "ignorance of each other's ways and lives". The Constitution was essentially a new framework of international cultural relations, where culture became a non-politically partisan means of cross-border allegiance and transnational collaboration. But UNESCO's formative vision was more than this: 'the cultural' was both inscribed in the social, economic and political spheres of life, yey set apart as the 'human' substrate of a life we all shared, whatever culture or country we belonged to. This concept of culture was general and philosophical and yet specific enough to be operationalised as radical cultural policies in all countries, rich or poor. A new conception of intellectual subjectivity emerged ("the minds of men", gender politics notwithstanding) and whose corollary was new forms of international "intellectual and moral solidarity" (the conditions for peaceful coexistence, the ultimate aim of the nascent United Nations). In the aftermath of World War Two, culture was tacitly identified as a principal media of nationalism and a stimulus of self-assertion, antagonism and hubris; but it was also the malleable foundation for the evolution of a human identity and meaning that attempted to obviate the fate of European culture, post—War reconstruction notwithstanding. A new socio-anthropological vision of a culture of the 'human' was understood by UNESCO as the means of manifesting the "democratic principles of the dignity, equality and mutual respect" and maintaining "full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge" (UNESCO, 1945, Preamble and Article 1). While these formative aims seem benign and even utopian today, the discursive pathway to their realisation remains a challenge

to us, and to a contemporary response to current contradiction of artistic creativity (a contradiction that was 'universalised' in the 1990s by the global economy of art markets, MOMAS and MOCAS, biennales and art fairs).

The Charter of the United Nations (1945), contemporaneous with UNESCO's constitution, while using the term 'culture' nonetheless did not lend it great weigh. Culture emerges in Article 1, clause 3, with the aim "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character..." (United Nations, 1945). The Universal Declaration of Human Rights (UDHR: December 1948) similarly took as the basis of human existence the preservation of life, liberty, property and mobility, and where culture only emerged in these terms. It was only with the *International Covenant on Economic, Social and Cultural Rights* (ICESCR: adopted December 1966 and later forming part of the Bill of Rights) that 'culture' is instated as a legally defensible term (United Nations, 2003). While it was the first attempt at an international consensus on the social and democratic function of culture, its role is only great by implication that an international rights regime now protects us to "freely pursue... cultural development" (Article 1), and further protects the "enjoyment" of culture (Article 3) and insists on requiring "technical and vocational guidance and training programmes, policies and techniques" to achieve this (Article 6).

ICESCR Article 15 is the crucial statement on culture, echoing the Universal Declaration of Human Rights and its three-fold fundamental right to culture: to "take part in cultural life" [membership of local or national community], "To enjoy the benefits of scientific progress and its applications" [the right of access to collective benefits], and "To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author" [authorship, ownership and copyright]. Where in the 1950s, UNESCO was preoccupied by education and literature (largely through science and philosophy, heritage and history) the 1960s saw a significant advance in the conceptualisation of culture as a public policy (in

part stimulated by the expanding landscape of political decolonisation and rise in new independent member states). A new publication series emerged, initiated at the Fifteenth UNESCO conference in 1968 (and following a research symposium in Monaco the year before), the primary document of which was *Cultural Policy: a preliminary study* (UNESCO, 1969b). It theoretically asserted that the agency of the artist was much more than an individual creative producer or a labourer in state sponsored cultural production. Lacking in theoretical detail but forceful in its implications, this still-relevant statement of policy theory indicates how 'the artist' is a potentially pivotal mediator of the relation between the public need for culture and the difficult socio-political conditions that inhibit cultural production. The artist is a cultural mediator of 'society-building'.

The document series of which this 1969 text was a part — 'Studies and documents on cultural policies', 1969-1987 (UNESCO, 1969a) — is a formative (if largely forgotten) stage in the new discipline of cultural policy studies. As a research project, a range of member states were subject to systematic questions on how culture was framed and positioned in relation to both their government and its international affairs, and internally within their economies. By implication, cultural policy was elevated above the usual level of arts policies or the spectrum of policies adopted across Europe on the institutions of national patrimony and traditions of fine arts or crafts. While post-War European cultural policy was indeed 'society building' (or, after the War, a re-building), their attention to internationalisation as well as the role of the artist, was arguably lacking. "...the basic problem to be solved", rather, "is how to secure the freedom of the creative artist, while at the same time giving him the place he should have in economic and social life." (UNESCO, 1969b, p.18).

The 1960s provoked debates within UNESCO circles that effectively determined the axiomatic conditions for an agenda that lasts to the present (albeit in muted form). While the artist did not become an exclusive object of attention until over a decade later — with the 1980 'Recommendation

concerning the Status of the Artist' — there here emerged a twin concern with the inherent power of the creative process and the need for social change and development. Starting with Venice in September 1970, UNESCO convened a series of intergovernmental conferences on cultural policies foregrounding the relation between creativity and social change, and within which the artist was gaining an increasing recognition as (in today's terms 'a change agent'). The subsequent conferences in Mexico City in July 1982 and in Stockholm in March 1998 established these often meandering and idealistic debates within a broader and urgent UN concern for a symbiotic relation between development and democracy. Between Mexico and Stockholm, UNESCO managed a UN 'World Decade for Cultural Development' (1988-1997) and saw numerous artistic commissions, culminating in a new World Commission on Culture and Development and a impassioned statement. Entitled 'Our Creative Diversity' (UNESCO, 1995), this policy statement incorporated the role of artists, culture in national public policies, creativity and social change, cultural producers and their conditions of practice, all within a politically motivated if not radical agenda for social development and political self-determination. The concept of 'creative diversity' signified how terms and phrases traditionally used in relation to art were being used (echoing avant-garde art half a century before) as a new vision of society, where economic productivity and prosperity emerged in an equitable and sustained way through the creative potential of the people. Culture is a realm for social participation, a means of promoting human rights and gender empowerment, a global media of communication, an even an approach to nature and the environment, and most of all, cultural policies maintain an inherent facility to create trans-societal solidarity and commitment to peaceful coexistence.

'Our Creative Diversity' spoke of culture mediating a new "global ethics" of coexistence and governance, where cultural policies could register "key world issues" (UNESCO 1995, p.289). Indeed, a fully developed cultural policy would facilitate a new politics of governance — where "diversity" and "pluralism" were the two axes of social

development creating a resilience against the oncoming onslaught of economic globalisation and market domination. 'Our Creative Diversity' is arguably the pivotal moment on the trajectory from UNESCO's 1945 Constitution to the Universal 'Declaration on Cultural Diversity' in 2001, where the latter emerged as a response to increasing neoliberal notions of globalisation as a violent 'clash' of civilisations (cf. Huntington, 1992). Rather, diversity and pluralist forms of governance would obviate any clash through mutual recognition and dialogue, and cultural policies could be the primary vehicle of this mediation.

There is another discursive train critical to our subject: in 1970, the 'Studies and documents on cultural policies' series also produced 'Cultural Rights as Human Rights' (UNESCO, 1970). As probably the most significant theoretical underpinning of the 1980 'Recommendation concerning the Status of the Artist' (apart of the UDHR itself) it was also the inspiration behind the 1976 'Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It' (UNESCO, November 1976) with its section on artistic creation and the work of artists. This trio of texts form what remains an essential concept of artistic freedom: whether through "rebellion" or innovation, the artist facilitates *a creative process that is formative of a form of socio-political development; this 'development', in turn, is critical to the civil, public and participatory processes of education and communication that are internal to a society resilient to economic instrumentalism as much as political authoritarianism (and the sectarian monoculture that results from both).*

The 1980 'Recommendation concerning the Status of the Artist' remains as an ongoing policy evaluation for a periodic Consolidated Report on its implementation by member countries and as a standing item for the annual Global Report of the 2005 'Convention for the Protection and Promotion of the Diversity of Cultural Expressions'. Encompassing a range of protections and demands for the recognition of artistic work as a form of productive 'labour' (whether formalised as such or not), it enables UNESCO to evoke the 1966 International Covenant on

Economic, Social and Cultural Rights as well as other Human Rights instruments in its preservation of artistic freedom. While the 2005 Convention has not become the force for cultural justice that it perhaps envisaged (it instituted Articles 7–10 of the 'Universal Declaration on Cultural Diversity', largely to do with economic production and international trade), the many technical advisors to the Convention have individually ensured that, in the words of the 1980 Recommendation (Guiding Principle no. 3), "... recognizing the essential role of art in the life and development of the individual and of society, accordingly have a duty to protect, defend and assist artists and their freedom of creation... by adopting measures to secure greater freedom for artists, without which they cannot fulfil their mission... secure increased participation by artists in decisions concerning the quality of life. By all means at their disposal, Member States should demonstrate and confirm that artistic activities have a part to play in the nations' global development effort to build a juster and more humane society and to live together in circumstances of peace and spiritual enrichment." (UNESCO, 1980b, p. 149)

Section 2: Rights and the nature of Freedom

Of course, a superficial reading of UNESCO's evolving discourse might give the impression that individual artists should simply cooperate with broad normative policy aspirations and become part of an ideal spectrum of cultural expressions all harmoniously contributing to the development of an ever-prosperous society. Yet, artistic freedom is not necessarily cooperative, nor wholly 'positive' (Dragičević Šešić and Tomka, 2016; Dragičević Šešić, 2016); artistic autonomy is often outside value consensus or collectively accepted social norms. A significant early study from 1974 by Hungarian Imre Szabó and entitled *Cultural Rights*, asserted that while 'rights' are often necessary for the protection of artists, the philosophical conditions of human rights as codified law (as individual, universal, inalienable and indivisible) is not exclusive of but is essentially at odds with artistic autonomy; while legal 'rights' applied to culture is necessary, artists do act against institutional forces that risk divesting art

of its inherent specificity and difference to social conventions and their reigning norms of expression (Szabó, 1974).

Nonetheless, it is a fact how contemporary art has become helpless in its critical solitude, and without a defence against huge waves of legal and social restriction on free expression. This is where we need to consider the concept of a Cultural Rights as internal to any politically substantive cultural policy notion of artistic freedom. A Cultural Rights approach to artistic freedom is arguably valuable for cultural policy's approach to the contemporary artist — in both providing a policy context of defense and in preventing the political co-option of art into official or institutionalised 'development' projects. The latter is evidently less of a problem than the former. That is, there is an ever-growing level of 'objective' suppression experienced by artists, even within Europe. A recent report of 'watchdog' NGO Freemuse — 'Security, Creativity, Tolerance and their Co-Existence' (2020) — surveyed an increasing complex social landscape for free artistic expression (Freemuse, 2020). While the report uses empirical data to map and quantify objective forms of (often State) repression and censorship, it also conveyed a picture of a fragmented global civil sphere in which popular political ideologies, religious beliefs, cultural values and national identity, are adversely motivating fundamental norms (such as trust, civil cooperation, respect for authority or reverence for the symbolic orders of national identity). Extending the category of 'objective' oppression to censorship, the situation becomes more complex. At the beginning of 2020, the UK's leading arts sector publication, *Arts Professional*, released a pioneering 'Freedom of Expression' report (Arts Professional, 2020). Its survey of arts workers in the UK, illustrated a working environment fear and exasperation in the arts sector nationally; legal and social censure is now endemic to the sector, provoking systematic (and deceptively complex) forms of self-censorship.

A less common form of objective suppression, though nonetheless artistically significant, is the rise of corporate power, particularly in the realm of institutional and exhibition funding with its

range of 'official' cultural stakeholders. Many public galleries have incorporated into their programme management and even curatorial practices the often-imagined anticipated responses of public or stakeholders — safely avoiding difficult exhibition content, artistic statements or controversial works of art. In terms of art, the exploration of popular culture or the use of media imagery in relation to political commentary, has become difficult. From avant-garde 'readymade' or use of everyday objects, to Pop Art's referencing and quotation of pop culture imagery and iconography, to Postmodern 'appropriation' and institutional critique — today are all legally problematic and not often seen. Ironically, Intellectual Property Rights are often a realm of non-artistic yet creative rights that can limit an artist's exploration even more than censorship. The case of Danish artist Nadia Plesner is a case in which some interesting documentation remains easily available online (cf. UNHRC, 2013: p.12).

The object of contention in this case was unlikely — a Louis Vuitton Audra handbag (often sported by media celebrity Paris Hilton), and of the type displaying the 'Multi colore Canvas Design' by Japanese designer Takashi Murakami. The occasion was an exhibition of art, where artist Plesner combined the handbag with a figure of a starving Sudanese child, an image repeated on T-shirts sold as ancillary merchandise to the art project and subsequent exhibitions. An imitation of Hilton, and an obvious appropriation of an existing Louis Vuitton luxury product, Plesner considered the work a comment on the Darfur genocide accompanied by the raising of funds. However, art, aesthetics and global justice aside, Louis Vuitton initially succeeded in the legal action for IP misuse (or 'Community Design right': the right of use of a design), and by the Tribunal de Grande in Paris in 2008, Plesner was fined a subsequent €5000 a day if she continued exhibiting. Plesner stated, "[t]he point was never originally about Louis Vuitton ... [it] was about celebrity obsession at the expense of things that matter" (Plesner, 2018). T-shirts and posters accompanying the art exhibitions and paintings were, of course, "retail", however many funds

were donated to the activist NGO, Divest for Darfur.

Plesner took her case to the Court of the Hague, and on May 2011 the case was heard as Louis Vuitton improvised a different basis for a charge, referring to Article 1 (1stProt) of the European Convention on Human Rights (ECHR), the right to property. Plesner's legal defence appealed to ECHR Article 10 – the right to artistic freedom. The Court's deliberation was fascinating; given Louis Vuitton's corporate concerns being (technically) legitimate, the ruling emerged with a profound verdict in favour of the rights of art, including the statement "...the fundamental right of Plesner that is high in a democratic societies' priority list to express her opinion through her art", and continuing "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 cited a previous ruling in which the rights of an artist to offend was affirmed as inviolable: cf. European Court of Human Rights, January 2007]. (Court of the Hague, 2011: p. 8). The Hague court ruling, rather than effecting a 'balancing' of the interests of the two contending parties, articulated a political order of priority: whatever the infringement on other liberties (such as a right to property) the right to artistic freedom was of a higher order (i.e. constitutive of the social order *per se*). While this may seem idealistic or a form of 'legal activism' that subverts the right to property and IP, it quite literally (and correctly) repeats the primacy of constitutional level law in Europe, where the artist as 'society-builder' reemerges.

However, the problem we face is that such admirable court-based jurisdiction is becoming a less active condition of artistic freedom than the actions of police, security forces or radical civil actors. The last of these stand at one extremity, albeit the new phenomena of global religious outrage is significant. Belief-based threats to freedom of speech (or what we thought this was) has manifested itself on the streets through both popular protest and physical threat. From British author Salman Rushdie's novel *The Satanic Verses* (1988) — of Iranian state-sanctioned execution in the form of Islamic fatwa — to the physical

threats that persisted following the later *Jyllands-Posten* Muhammad cartoons (September 2005). The appalling terrorist attack on the French satirical weekly newspaper *Charlie Hebdo* in Paris in January 2015, exemplifies the ongoing implications of such invasion into a public sphere governed by increasingly insubstantive civil and cultural assumptions on trust and cooperation over shared political values. The symbolic violence and cultural impact of this new form of radical civil action has hardly at all become a subject of cultural policy study. Of the *Charlie Hebdo* disaster — a disaster as what was at stake was free cultural expression (however distasteful) — 12 people were killed and 11 injured, and in France and across Europe today the ensuring fear of any form of critique of Islam only grows.

This, as stated, remains at one extremity of our subject. The role of domestic police and security forces are another distinctive set of issues on our spectrum of freedom suppression. In the UK, a country that historically pioneered civil liberties and rights to cultural expression, the 'layering' and complexification of legal restrictions on speech and action is considerable and socially substantive. Across Europe and the world we face a layering of legal regulation (facing one law after another, and of increasing risk as offences are increasingly a matter of interpretation on the part of an injured party, particularly if the 'injured' party is an organisation or the State itself and not an actual person or social group). Some offenses are historic and obvious, such as Obscenity, but some are new and more complex, like Hate speech or terrorist incitement offences. Artists across Europe tend now to routinely avoid these areas despite the fact that each of these areas of legal restriction contain critical issues for both freedom and cultural inquiry and expression: these can be listed as follows — *Obscenity* (e.g. pornography: all countries though less so in the EU); *Libel, Defamation and Slander* (all countries); *Offending the State* (e.g. Turkey and many others); *Blasphemy* (many Islamic countries; traditional Christian countries); *Offending the Church* (e.g. Greece); *Confidential information* (e.g. state security; military: all); *Theft* or appropriation (e.g. Nazi confiscated art; inconsistent); *Hate speech* (EU; USA); *Terrorism* offenses (e.g. glorifying

terror; incitement to terrorist or supporting activity; most countries); *Copyright/IP* – national and international (all UN member states), and so on (Cf. my statement on this in Vickery, 2020; a further study on this list in relation to rights was elaborated in Vickery, 2018).

Artists are often lone and financially vulnerable social actors, and face an increasing litigious, security-oriented and police-monitored cultural realm. Where, since the 1960s across Europe, it was taken for granted that there persisted a diversity of local and civil tradition, where minorities and sub-cultures were generally recognised as possessing their own peculiarities, values and ethical commitments, today a new homogenous regime of moral norms has emerged. While we cannot lament the decline of patriarchal or other authoritarian moral community, fundamental political assumptions on social autonomy have dissolved. Of course, it has not emerged uniformly — from the ‘politically correct Left’ West to the populist Right of the East. But the implications for artistic freedom are nonetheless consistent — offending someone can get you into untold trouble. Indeed, an *actual* diversity of thought (intellectual, ethical or moral diversity) can stimulate all forms of insecurity for the media, authorities, or even lobby groups, and dissenters from the mainstream can attract charges of disloyalty, bigotry or even ‘extremism’.

What is confusing, is that diversity and dissent have *de facto* become celebrated to the extent of generating a new (if paradoxical) cultural ideology. In the UK, the Human Rights Act of 1998 and UK Equalities Act 2010, both drew on international human rights law and attempted a significant national promotion diversity and inclusion as cultural values. Yet, arguably, this has not cultivated a heterodoxy, pluralism or a divergence of lifestyles, cultural expressions, views and perspectives. Where once arts and cultural institutions were expected to cultivate their own norms and values (a legacy of the philosophy of aesthetic autonomy), they are now beholden to a ‘values regime’ with its stock of rights and legal threats to which every organisation must comply: such compliance must be registered within employment, ‘widening access’ policies,

education, outreach or community engagement, disability policy, and more. There are, of course, few grounds on which to object against the new values regime without lending credence to the populist Right or traditionalist constituencies calling for rigorous moral censorship. But currently, the role of rights-based policy in the evolution of historic discourses of art, aesthetics and the public sphere, is little researched or placed under critical scrutiny. Often enforced by political agencies, stakeholders or funders, the rights regime within the cultural realm across Europe is more a repository of political commitments and not an organ or medium of cultural autonomy. Since Bourdieu’s cultural sociology of French society (Bourdieu, 1979/1984) — establishing the now-accepted axiomatic truth that culture is capital and hence can enhance or inhibit social mobility and economic opportunity — neoliberals and post-marxists alike are united in their demand for more rights-based cultural governance. This has, in many places, demanded a new sophisticated cultural populism of taste and values, promoted principally by the agencies of museums and galleries closest to the perceived public — marketing, education, ‘outreach’ or ‘audience development’ (e.g. Arts Council England, 2018).

While the public cultural realm the world over has become politically and legally complex, this very complexity amplifies the necessity for an increasing cultural policy model of artistic freedom. Such a model should take into account the recent experience of artists. One significant case is the ongoing vulnerability of notable Bangladeshi photographer, curator and writer, Shahidul Alam. Global news media alerted many in Europe to how he was arrested on the 5th August 2018 and interned for over 100 days on non-specific charges. He was not arrested on account of his art or artistic statements *per se*, but for political statements. In other words, his exercise of his own artistic freedom (across many international spheres and many years) enabled him to develop a recognised voice and political agency. *Artistic freedom was instrumental in his evolving political agency as much as his artistic sensibility:* for anyone who knows Alam’s work, they are inseparable. Artistic freedom, to extrapolate, is

not simply a lack of restriction on content or expression, but a condition of an artist developing a distinctive form of political agency in society.

Section 3: the challenge of 'art rights'

As indicated in the latter part of Section 1, the cultural policy discourse that emerged out of the first three decades of UNESCO's evolution allows us to conceive of the artist in terms of an artistic individual with a broader sense of social mission and so public policy function. As Section 2 asserted, the situation we find ourselves today is as ambiguous as it is complex in relation to the conditions of freedom — of speech as much as art and affecting all forms of cultural production. We now need to consider why, while human rights law has ascended to the highest levels of global policy making and provided certain conditions for international solidarity, a proportionate significance has not been awarded to Cultural Rights — the human rights internal to art, artists and culture. Where conventional human rights are defined by clear objects of legal analysis — legal instruments of international treaties and their discrete articles — Cultural Rights remain an object of speculation and contestation (often most effectively adjudicated outside of cultural policies altogether, such as in anti-discrimination laws, or laws for IP, market or consumer activity).

This brings to mind how the interrelation between 'human' and 'right' is not self-evident or can be taken for granted. In need, the former can be eclipsed by the latter (defining the 'human' in terms of culture was an early UNESCO achievement). Where 'rights', while seemingly absolute and transparent, requires mediation and agency (organisations, using a compelling language, established interpretative methodologies, narratives, expressions and insights, and so on). Art and artists, while evidently successful in stimulating the formation of civil institutions, historical scholarship, wealthy markets and an accompanying financial elite, have fallen foul of what Jack Donnelly (2007) called the "relative universality" of rights, and what Kirsten Hastrup (2003) identified as the "the limits of legal language". Effective forms of social agency (institutions, scholarship, markets and finance)

can deceive one into thinking that the art and artists have some substantive role in the political economy of society-building when they do not. They have, for sure, stimulated a whole realm of fascinating and inspiring cultural activity, in the West and now globally, but this has remained outside the limits of 'legal language' and remained in the realm of the 'relative universality' of all 'rights'-based discourse. In other words, while all human rights appeals to absolutes and ethically universal or normative realities that are ultimately impossible to substantiate, they do become substantive through public and development policy making on a global level. Human rights generally has become highly successful in inserting itself as an agency within global political consciousness (primarily through the UN obviously, but not exclusively). The arts and culture by and large tend to survive through patronage, goodwill or extensive advocacy — but not by right.

While UNESCO have played a central role in asserting the rights of the arts and culture globally, it arguably remains marginal to the central legal discourses of the emergent global political consciousness of human rights. This is, as the first sections of this paper indicated, less to do with UNESCO than the way in which the arts and culture (particularly what we now refer to as the international art world) developed forms of agency that did not pertain to any influential role in the evolving global political consciousness. Artists have remained inspired individuals without any substantive political community or social agency that would use the 'autonomy' of art as a globally collective force for good. UNESCO's policy development revealed an opportunity, whereby the 'human' content of human rights is indissolubly (socially and politically) interconnected with artistic freedom (Cf. The Wroclaw Commentaries; Vickery, 2018). UNESCO's actual work and role in human rights advocacy and policy development operates quietly (under the 'Procedure 104'). To be sure, throughout their history (see the *UNESCO Courier* 1951, 1968 and 2018) human rights has remained a legal substrate of all policy development and not just advocacy or defence of artists, writers, musicians, and so on (cf. the UNESCO Strategy on

Human Rights of 2003), and this is particularly true of the 2005 'Convention on the Protection and Promotion of the Diversity of Cultural Expressions' (UNESCO, 2005) – the last UNESCO-managed UN cultural convention. However, while the odd publication appears from time to time, UNESCO's human rights advocacy adheres to an old UN principle of member state confidentiality, and is not generally open to public scrutiny not plays a visible role in global political discourse.

In one, literal, legal sense, the concept of artistic freedom is associated with the Articles 18 and 19 of the original UDHR and the same articles in the ICCPR of 1966 (and ironically, not repeated in the ICESCR as a 'cultural' right). These are the articles on freedom of thought, conscience, belief, opinion and expression, which though they pertain to all public expression or communication, they tend only to be related to the *content* of artistic works (and as expressed by an individual artist), rather than the civic and public role of art in societal development. In other words, if a major case or dispute emerges, the issues tend to gather around a dispute on content, and matters of social environment or culture *per se* are rarely considered. There is an absence of a reference to the arts or artistic freedom *per se* in the two 1966 conventions, even though 13 of the 30 articles of the UDHR have been used by UNESCO in various parts of their seven cultural conventions and appealed to explicitly in the UNESCO 1980 Recommendation, which, as noted in Section 1, remains a work in progress. It is the 1980 Recommendation that is significant for an articulation of how rights pertain to artistic freedom — how the artist is not a lone creative individual but a social agent operating in a broad socio-economic environment with inherent enabling and disabling factors for creative expression.

The 1980 Recommendation, implemented most visibly by Canada, provides a supplement to the ICESCR (1966) and for us is oriented in a relevant direction: artists are hybrid citizen-workers inhabiting while shaping a complex economy of culture. Indeed, Article 1 of the ICCPR (1966) posits self-determination as an elemental feature of a rights-governed society: and if, in the spirit of

the 1980 Recommendation we understand the artist as a 'citizen-worker' then [we can quote that] "By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." The obvious historical meaning of this aside (that artists should be allowed to pursue their artistic interests, including taxation status, unionisation, standards in working conditions, and so on) then the notion of a specific order of social representation for artists is something little explored by cultural policy researchers. The Council of Europe's European Cultural Parliament (est. 2001) is a gesture in this direction, but civic solidarity and political representation remains weak for artists all over the world, including Europe.

To advance both legal and policy knowledge on the relation between rights and culture, in United Nations Human Rights Council UNHRC in 2009 established the role of Special Rapporteur in Cultural Rights (the so-called 'special procedures' or independent human rights experts), with Pakistan sociologist Farida Shaheed being the first. Her later report 'The Right to Freedom of Artistic Expression and Creativity' (March 2013) was a landmark on the subject but also reinforced critical ambiguities on the aims and parameters of a rights-approach to artistic freedom and culture *per se* — not least whether a 'human rights approach' to culture is simply equivalent to a Cultural Rights as a statutory category. The critical ambiguities reinforced arguably emerge from a retro-fitting of the arts and culture into a new highly developed and established global institution of human rights law. As Imre Szabó well explained, culture tends not to lend itself to representation by established rights frameworks (Szabó, 1974).

But who advocates for culture in working through these legal, artistic and policy issues? Does the artist defend their own rights, and through their art, and how and to what legal effect might this take? Artists... are, or can be, Human Rights Defenders' Shaheed states [Point 35: p.8]. A more recent report of the second Special Rapporteur, Arab-American Karima Bennoune, is on the subject of Human Rights Defenders (HRDs). The

lack of reference to cultural sectors worldwide in the report is indicative of how artists or cultural workers have little agency in defending or affecting their own freedoms or rights (UNHRC, 2020); artists or cultural workers tend to remain positioned as vulnerable or potential victims, and in this position there are few examples of strategic rights-based agency emerging from the arts sphere is bringing itself to the attention of the UN human rights establishment. But what both Shaheed and Bennoune have correctly asserted is that artistic freedom is not simply the absence repressive limits on an individual's powers of expression. Freedom involves the political agency of art as transcending the individual artist through a political economy of a public realm. An 'Art rights' cannot be fully represented by the 'right' (of law, expert lawyers, State or judicial patronage) but by the 'cultural' as defining certain conditions for building a free and just society, or at least identifying the social conditions of freedom and dignity (cf. strategic objective 8 in the current UNESCO Medium Term Strategy, 2014-21).

Conclusion: finding Freedom in the 2005 Convention

The much neglected UNESCO 2001 'Declaration on Cultural Diversity' should have become the most cogent framework on culture as a space of free expression, with normative force and social impact. It demanded a way of understanding the social organisation of culture that required pluralism in governance, cultural rights in law, special cultural categorisations and public protections in the realm of trade, and many other conditions that would have secured the freedom of artists while collectively setting forth a social function (UNESCO, 2005; De Beukelaer, M. Pyykkönen, and J. P. Singh eds., 2015). Its legal manifestation as the 2005 Convention is oriented to international trade and not directly to the freedom of diversity through the public governance of culture (and moreover, it is not singularly thought-of as a mechanism for securing freedom and cultural rights: see Donders, 2015).

A cultural policy exposition of the Convention can nonetheless yield far more than it has. While to be

sure, the freedom of the artist has been a consistent theme of events surrounding the Convention, and of the Convention's own appeal to fundamental human rights (cf. its opening series of 'references'), there remains all too little policy theory on the Convention that would open further insights into its potential for asserting freedom and cultural rights. Inspired by the work of Professor Milena Dragičević Šešić as longtime technical advisor to the 2005 Convention, we must surely address the ambivalent, overly-complex historical, legal- political conditions of the contemporary artist — through the 2005 Convention's articulation of the state of 'diversity'.

I will conclude this article by setting out an opening framework for a critical project inspired by Professor Milena's work. This proposal begins with the observation that a much more resolute and expansive conception of artistic freedom can be had by taking the succinct legal components of the Convention.

If we understand the Convention rhetorically, as three interlocking 'spaces' of the historical discourse we considered above — its emergence from the above historic intellectual discourse of culture, development and human rights — then we can visualise these overlapping spaces in terms of a cultural political imaginary. Each of these 'spaces' are discursive spaces (are flows of knowledge through constructed representations of our past discourse) and add up to a coherent agenda for effecting change through cultural diversity. The cultural political imaginary is a way of conceptualising the artistic autonomy we might have had but for the 'individualisation' of artistic production and the establishment of such through education, public institutions and markets. The imaginary is a means of conceiving of a state of autonomy whereby cultural creativity is protected and defended by the right to be fundamentally creative, i.e. possess a social agency in 'creating' (or not being determine by the already extant or merely supplementing other means of social agency). The recognition of artistic autonomy that a fully expanded cultural rights could afford, in developing a legal as well as new philosophical language for the rights to re-create society anew. This is not political-utopian but social-

development-oriented, and this proposed project will primarily explore the diversity of the conditions of 'the human' we all share and in each of our countries register how the Convention demands cooperation from member state signatories in facilitating this (whose role is set out specifically in the Convention's Section IV, 'Rights and Obligations of Parties') and should be held to account for such.

Our three interlocking 'spaces' can be articulated (cf. the Convention's Objectives and Guiding Principles) as of (i) *the intercultural* — through active dialogue between 'cultures', through which we discover how to articulate the conditions of communication and cooperation available within a substantive transcultural state of 'diversity'; (ii) *policy intervention* — through the creation of new expressions, interactions and forms of value we can use the terms of the Convention to transform existing cultural policies and all other policies that involve the fundamental social reality of diversity; and (iii) *participatory internationalism* creating a global cultural public sphere (originally anticipated, of course, by the UNESCO Convention of 1945). Each of these discursive 'spaces' are so defined where the historical and the contemporary can be co-joined in imagining pragmatically new conditions for autonomous creativity.²

This is the schematic proposal. This article as a whole has served to honour Professor Milena Dragičević Šešić and her intellectual significance as a central figure in European cultural policy studies (in part through her role in this discourse and UNESCO's 2005 Convention). I began by expanding on an historical observation, that artists are rarely the subject of sustained study, and further, contemporary artists today remain positioned in an historical discourse of art that invests value in individual creative expression over collective or socially-embedded artistic activity. Compounded by the decline of philosophical

² This proposal and its theoretical assertions is drawn from a paper presented on the last time I shared a conference podium with Professor Milena: the event was the Global Management Forum (Shanghai Jiaotong, December 2019), and the paper was 'Cultural management: a historical dilemma', found at: <http://wrap.warwick.ac.uk/131177/>

aesthetics and its claims to aesthetic autonomy, the artist, reaching the Twenty-First century, is vulnerable to an intensifying cultural environment of legal-political contestation. While the dominant discourse of art celebrates the free expression of innate human propensities for artistic innovation, such 'freedom' is subject to an increasing matrix of conditions (and, it must be said, resulting in forms of self-censorship and a strategic avoidance of many of the most pressing issues facing democratic societies). This paper therefore explores the emerging if muted discourse cultural rights, and looking to the 2005 Convention as a principle legal framework, it asserts the following: that an artistic freedom fully empowered by a cultural right to creativity and exploration, can uniquely co-join a deepening expression of 'the human' — through which it can stimulate a growing transnational cultural allegiances, whereby new practices of diversity can counter the many anti-social trends of authoritarian development that has characterised globalisation.

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