

Winston P. NAGAN*, Aitza M. HADDAD**

AESTHETICS AND HUMAN RIGHTS

Abstract: This paper is in part inspired by the comments of the participants in the WAAS February 2012 electronic seminar on individuality. In the paper prepared for that seminar, I suggested the possibility that there may be an aspect of aesthetics that is vested with fundamental human rights importance. I was challenged to develop this idea, and this paper is an initiation of this discourse, which I suspect will be continued. The paper introduces the reader to provisions in the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights. The articles in these instruments stress more generally the basic importance of cultural life as well as of the arts and sciences. The texts do not mention aesthetics. This is the challenge that we explore.

The paper starts with an effort to better understand the process of aesthetic experience. It provides a threshold clarification of two important views about the nature of artistic creativity itself. One view focuses almost exclusively on the individual, and it seeks to suggest that the value and meaning of art is to be found in the isolation of the artist. An alternative view suggests that art only captures meaning in the context of social life and therefore it can only be meaningfully understood contextually. The paper explores these themes in terms of a suggested dynamism between individuated subjectivity of the artist and the context within which art is created and communicated. It suggests that the outlines of modern communications theory provide us with a method of better understanding the inter-determination of personality and culture in the process of creating art of aesthetic value. The paper then looks at aesthetics as a social process involving artists, aesthetic interpretation, and community. In this context, an effort is made to develop the boundaries of aesthetics by examining the work of an Oxford Don, Walter Pater, who was a famous aesthete and who died in the late 19th century. Pater's view of creativity anticipates the Freudian tradition insights into creativity and the role of the unconscious and conscious ego inter-determined behavior. The paper then illustrates one of the complexities of the interpreter having the skills of artistic creativity, using the Mona Lisa and the interpretation by Pater of that painting, which represents almost a distinct work of art. The paper goes on to examine philosophical insights into aesthetics as a way of patching aesthetic insights into philosophical under-

* Levin College of Law, University of Florida, Director of the University of Florida Institute for Human Rights, Peace, and Development, Trustee, World Academy of Art and Science

** University of Florida Institute for Human Rights, Peace, and Development; WAAS fellow

standing. The paper then provides representative illustrations of conventional art and high art film, and how these forms of expression are loaded with value implications relevant to an aesthetic value implicated in human rights. The last part of the paper examines the development of human rights law and the protection of art and aesthetic values. It draws attention in particular to the work of UNESCO in seeking to clarify the human rights aspects of culture in terms of areas such as the intangible cultural heritage, the protection of living human treasures, and the recognition that participation and enjoyment in culture should not be confined to elites but to broadest level of democratic participation. And finally, UNESCO's development of the Masterpieces Project is another step in the direction of the protection of aesthetic values. The paper then explores the way in which cultural rights are protected by the Committee, seeking to give importance to Article 27 of the ICCPR. The paper examines the classifications of culture and suggests that aesthetics as a human right be focused on classical highbrow, elitist art. The paper explores the development of these ideas in the context of the Committee on CESC and UNESCO. It also references a number of other international agencies implicated in these developments. The last part of the paper examines human rights values in the context of the art/aesthetic process. In this part of the paper, we show that human rights aspects of aesthetics are implicated in one way or another in all the basic values behind the human rights principles in international law.

I CULTURE AND DIGNITY: THE AESTHETICS ELEMENTS OF HUMAN RIGHTS

The question implicit in the title of this paper is, whether the value of aesthetics may be translated to the idea of a fundamental human right. In the aggregate, human rights values constitute the overriding commitment to the principle of human dignity. It is therefore appropriate that in the consideration of the human rights aspect of aesthetics that we keep in mind the implication of aesthetics for the fundamental value of universalizable human dignity. The first difficulty that we have to confront is that the human rights instruments do not recognize a discrete category of value or right, which is to represent aesthetics. The closest we come to the recognition of such a right is in the Universal Declaration of Human Rights (UDHR), Article 27.² Article 27(1) says that “[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”³ This statement brings in the term “arts” along with the term “scientific” and implies that the term “cultural” is inclusive of both, aesthetic expression as well as scientific innovation. In this sense, it may be that the concept is perhaps too wide to be given a coherent framework of justifiable boundaries within which aesthetic values can be clarified for the determination of the reach and scope of human rights protections. Article 27(2) of the UDHR also says that “[e]veryone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the

² *Universal Declaration of Human Rights*, United Nations; Human Rights Division (November 2, 1998) – Article 27.

³ *Id.* paragraph 1.

author.²⁴ Here again the concept of aesthetics implicates, not only the arts and the sciences but also the literary aspect of the arts. Moreover, these concepts are understood in terms of the moral and material interests that they may represent. This statement is also complex, open-ended and suggests that the idea of an aesthetic value as a human right needs further extrapolation and clarification in order to provide the basic protections that the culture of human rights might generate. In Article 15 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the recognition of the literary and artistic values is set in the context of the right of everyone to take part in cultural life.⁵ In this sense, Denis Dutton's study in aesthetics and evolutionary psychology explains how the concept of art has evolved over time to include a more subjective meaning in which culture is taken into account. Dutton explains:

"In the twentieth century, particularly its second half, art theorists tended to shy away from theories that imply a fixed view of human nature, preferring instead so-called historicist accounts that interpret art in terms of the historical and cultural context of its production (Barkow et al. 1992). This widely held view of human intelligence regarded the mind as a content-free, so-called blank slate: human beings possessed a general capacity to learn all the divergent skills and values that different cultures can teach. At the same time that this theory of the mind held sway in psychology, mid-twentieth-century aesthetics tended to take a view of art consistent with it. Aesthetic values were regarded as whatever culture taught was aesthetically valuable; aesthetic values and meanings were considered without residue constructed by culture, and works of art were both created and appreciated within the norms and conventions of culture. "Cultural constructionism" in aesthetics entailed a relativism of aesthetic values, and a consequent denial of the kind of aesthetic universalism Aristotle or Hume would have advocated. Art was considered purely a determined product of culture, and there were as many kinds of art and artistic values as there were cultures."⁶

Dutton includes scientific progress and its applications as an aspect of culture, stresses the protection of the interests generated by scientific, literary, and artistic production, as well as the importance of conservation, the development, and the diffusion of science and culture, to explicitly recognize that freedom is indispensable to scientific research and creative activity and therefore to culture and human dignity. In our view, the human rights implications of the social process of aesthetics is intricately implicated in the broad scope of human rights values and therefore

⁴ *Id.* paragraph 2.

⁵ International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I. L. M. 360, 993 U. N. T. S. 3. (ICESCR) (1967) – The International Covenant on Economic, Social and Cultural Rights, was adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) on December 16, 1966 and entered into force on January 3, 1976, in accordance with article 27.

⁶ Denis Dutton, *Aesthetics and Evolutionary Psychology*, The Oxford Handbook for Aesthetics, edited by Jerrold Levinson (New York: Oxford University Press, 2003).

holds importance for a deeper clarification of the very idea of human dignity itself, which is a cornerstone value in international law and world order.⁷

II AESTHETICS, HUMAN DIGNITY AND CULTURE

Although the principle of human dignity is at the heart of the major international human rights instruments prohibiting practices such as torture, inhuman or degrading treatments, slavery, exploitative working conditions, discrimination, arbitrary arrests, and others, none of these instruments explicitly defines what exactly the concept of dignity means.⁸ However, they do provide valuable guidance for the understanding of the concept. The UDHR, for example, states that dignity is “inherent... to all members of the human family”⁹ and that all human beings are “free and equal in dignity and rights.”¹⁰ The Preamble of the International Covenant on Civil and Political Rights (ICCPR)¹¹ and the ICESCR both mention that, “these rights derive from the inherent dignity of the human person.”¹² In this sense, although the concept and principle of human dignity is not explicitly defined, there are written texts, which provide a guide as to how to protect it and enforce it. Roberto Adorno, examining the meaning and value of the notion of human dignity in the international norms to possibly clarify whether human dignity may be defined by law, explains how the ideas expressed in the above mentioned human rights instruments, may appear to be extremely vague, they offer a precious guidance for clarifying the meaning with which the notion of human dignity is used in international law. In short, Adorno explains:

- a. The term “inherent” means “involved in the constitution or essential character of something,” “intrinsic,” “permanent or characteristic attribute of something.” The idea expressed in this term, when it is accompanied by the adjective “human,” is that dignity is *inseparable from the human condition*. Thus, dignity is not an accidental quality of some human beings, or a value derived from some specific personal features such as the fact of being young or old, man or woman, healthy or sick, but rather an unconditional worth that everyone has simply by virtue of being human. The same idea can be expressed by saying that all human beings are “persons.” Indeed, the term “person” is not merely des-

⁷ See generally Harold Lasswell and Myers McDougal, *Human rights and world public order: The basic policies of an international law of human dignity*, Yale University Press (1980).

⁸ Roberto Adorno, *Human dignity and human rights as a common ground for a global bioethics*, UNESCO (2009)

⁹ UDHR *Supra* note 1 – Preamble.

¹⁰ UDHR *Supra* note 1 – Article 1.

¹¹ *International Covenant on Civil and Political Rights*, Dec. 16, 1966, S. Treaty Doc. No. 95–20, 6 I. L. M. 368, 999 U. N. T. S. 171 (ICCPR) (1967) – Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966 and entered into force 23 March 1976, in accordance with Article 49 – Preamble.

¹² ICESCR *Supra* note 4.

criptive or generic (like for instance “mammal”), but prescriptive, a *nomen dignitatis* (Spaemann, 1996, 13).

- b. The second important consequence of the meaning that “human dignity” bears in international law is that basic rights are *equal* for all: if human dignity is the same for all and the ground of human rights, then all human beings possess equal basic rights. This is the reason why discrimination, i. e. the unjust distinction in the treatment of different categories of people, is directly contrary to human dignity.
- c. The third statement of international law stressing that rights *derive* from human dignity, has also an important practical consequence: if basic rights are not given by authority, but are preexisting values which are inherent in every human being, then they cannot be legitimately taken away (Schachter, 1983, 853).¹³

Daryl Pullman (*Human Dignity and the Ethics and Aesthetics of Pain and Suffering*) following Kolnai’s idea that “to a large extent dignity enters into the category of the aesthetic”,¹⁴ explored the aesthetics of dignity by thinking of lived experience as an aesthetic project.¹⁵ Pullman, whose objective was to achieve a more comprehensive understanding of the concept of human dignity, explains how the principle of respect for human dignity, which is beginning to play a crucial role in the emerging global norms relating to bioethics, particularly in the UNESCO Universal Declaration on Bioethics and Human Rights,¹⁶ must be understood as a complex concept appealing to various dimensions.¹⁷ In this sense, he suggests that there are two main aspects: “basic dignity”, which refers to an inherent, universal and moral quality that applies to “each and every human person irrespective of rank, station, or any other contingent quality”,¹⁸ and “personal dignity”, which refers to a more particular, individualistic, and transient in nature quality that “is a socially referenced notion” “tied to personal goals and social circumstances [and] to a sense of who one is as an individual in the social world”.¹⁹ Additionally, and according to Pullman, “how we understand “personal dignity” is thus contingent upon how we understand the nature of personhood”,²⁰ because “[p]ersonally referenced notions of dignity, [...], tend more toward the aesthetical [and] [a]s such they are more subjective and contingent in nature”.²¹ In short, Pullman suggests that:

¹³ Roberto Adorno, *Supra* note 6.

¹⁴ Kolnai, A., *Dignity*, *Philosophy* 51, pp. 251–271 (1976).

¹⁵ Daryl Pullman, *Human Dignity and the Ethics and Aesthetics of Pain and Suffering*, *Theoretical Medicine* Vol. 23, pp. 75–94 (2002).

¹⁶ Roberto Adorno, *Supra* note 9.

¹⁷ Daryl Pullman, *Supra* note 8.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* citing Paul Ricoeur, *Oneself as Another*, University of Chicago Press (1992).

²¹ *Id.* citing Cassell, E., *The nature of suffering and the goals of medicine*, *New England Journal of Medicine*, Vol. 306 No. 11, pp. 639–645 (1982).

“the concept of human dignity emerges at the interface of the moral and the aesthetic. Thus it carries both moral and aesthetic connotations. In this respect our contemporary term “dignity” parallels the Greek “*tó kálon*” which conveys a sense of both the ethically good and the aesthetically beautiful. The term dignity covers a similar range of values. Hence the meaning attached to it will depend upon the emphasis given in any particular context.”²²

Mark J. Cherry (*Foundation of the Culture Wars*) suggests that “[t]he status of moral and religious diversity may only be affirmed as akin to variations in aesthetic taste; at best the expression of personal or group ideosyncrasy.”²³ In this sense, Adorno explains that, although “[t]here is no doubt that the concept of “dignity” is very close to that of “respect,” it would be a mistake to regard them as the same, “or to think that we can avoid the difficulties posed by the abstract notion of “dignity” just by replacing it with the more practical idea of “respect.””²⁴ In his opinion, doing so would be “a false solution because respect for persons is just the *consequence* of human dignity, not dignity itself.”²⁵ In this sense, Wairimu R. Njoya, explaining how Burke, Kant, and Schiller used aesthetic categories to connect politics with ethical ideals of sympathy, dignity, and freedom, and how they extended these ideals to all human beings regardless of sex, color, or nation, also explains how representations of human difference in the realm of aesthetics have, in practice, undermined the universal intent of their political philosophies suggesting that a new approach to aesthetics is needed in order to re-imagine difference from an ethical standpoint.²⁶ That ethical standpoint is the one that makes it possible to understand that in order to have rights there must be dignity, and in order to understand dignity, aesthetics must be taken into account. In this sense, Benjamin L. Powell explains that:

“We ascribe rights to human beings because human beings exhibit certain capacities of self-consciousness, rational choice and deliberation that make us human and so must be protected. It is the defense of these human capacities (or in other terms, human dignity) that justifies the primacy of the right over the good in the first place. Rights exist in order to protect and encourage the development of human potential; they protect our capacity to exercise choice. This is, in fact the definition of freedom that classical liberalism seeks to protect. But, as Taylor points out, a man whose foundation or horizon is so narrow as to render him incapable of conceiving ways to live other than his own, and for whom the very idea that *his* life is unique to *him* is unintelligible, is not, on this view, free. Nor is a man free who,

²² Daryl Pullman, *Supra* note 8.

²³ Mark J. Cherry, *Foundation of the Culture Wars: Compassion, Love, and Human Dignity*, Christian Bioethics Vol. 7, No. 3, pp. 299–316 (2001).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Wairimu R. Njoya, *Dignity amidst devastation politics, aesthetics and the slave sublime*, Dissertation submitted to the Graduate School-New Brunswick Rutgers, The State University of New Jersey (May 2010).

for whatever reason (hate, fear, racism), cannot imagine himself in the place of another or empathize with his situation. In short, the very qualities that make us human are not protected by rights alone. Human dignity is prior to rights. As Taylor puts it, "We cannot claim the morality of a truncated form of life for people on the ground of defending their rights."²⁷ (Citations omitted)

In this sense, we must effectively reconstruct, and develop these textual references to culture and art if we consider that there is a value in aesthetics that is fundamental to the experience of humanity, individually and culturally, and that this value challenges us to provide the strategies by which it is conserved, evolved, and shared, as a common individual and collective heritage of humanity.²⁸ An important insight into the ideas of dignity, personality, and aesthetics is the centrality of imagination – a process which is tied to thinking itself. For example, Harold Lasswell, a former President of the World Academy of Art and Science, insisted that a rational approach to problem solving would require an integration of a multitude of forms of thinking, which he called intellectual tasks.²⁹ He identified five discrete but interrelated thinking skills, which are preceded by a process of formulating specific value problems as outcomes of a relevant context. These included:

1. Goal thinking – Goal thinking is thinking in normative terms. It is thinking about the ought and the coherence of the language of expression, which is framed in terms of the ought.
2. Trend thinking – This is thinking in terms of the relevant trend in time in terms of how historically society has responded to the problem. This is a version of historical thinking.
3. Scientific thinking – Here the task is to understand the conditions that have influenced the relevant trend. This is thinking in terms of causes and consequences.
4. Projective thinking – From a given set of trends and conditions, what projections can be made into the future to enhance rational appreciation of the problem and a constructive solution. Projective thinking is about futuristic. It is usually done in the form of a developmental construct; What is the most optimistic projection into the future that approximates a desired value outcome? What is the most pessimistic projection that may be realized from the same set of trends and conditions?
5. Creativity – Creativity is crucial to the task of problem solving because it is the creative imagination that can provide us with the tools, the strategies and the

²⁷ Benjamin L. Powell, *Towards an American Aesthetic: Liberalism, Individualism, and the Resurrection of a National Identity*, Haverford College, Haverford Pennsylvania (April 19, 1993).

²⁸ See generally Hugo Anthony Meynell, *The Nature of Aesthetic Value*, SUNY Press (February 1, 1986).

²⁹ See generally Myres S. McDougal, Harold D. Lasswell and Lung-chu Chen, *Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry*, *The American Journal of International Law*, Vol. 63, No. 2, pp. 237–269 (Apr., 1969)

tactics that may permit us to realize a desirable future outcome and to avoid and undesirable one.³⁰

Lasswell described this form of thinking as configurative thinking. And as indicated, creativity was a critical part of it. It implied a technical skill to relate particulars to the comprehensive planetary context and to relate that comprehensive context to any particular circumstance. It also had a contemplative theoretical component, as well as a manipulative component, which required the discipline of practical application of generalized values to context-specific instances of particular application.

Another illustration of the innovations of new thinking, which incorporates the imagination explicitly, is reflected in the Club of Rome's Limits to Growth Report.³¹ The Club's theorists focus on the idea that the problem itself requires a form of thinking, which may be described as the "problematique," the response to the problem "resolutique," the creative element to give meaning to "resolutique" is the utilization of "imaginatique."³² Still the problem may not be adequately responded to and this implicates "irresolutique."³³ Critics of the Club have lamented the lack of emphasis on "imaginatique," in its otherwise impressive reports on the state of global political economy.³⁴

H. G. Wells, an imaginative cultural commentator, insisted that human consciousness had three distinguishable components: (1) observational consciousness, (2) reflective consciousness, and (3) imaginative consciousness.³⁵ Wells strongly believe that imaginative consciousness was a critical faculty in a context of human survival. In addition, Wells believed that imaginative consciousness would be increasingly reflected in human development and that it could culminate in the idea of a new man. What he saw was that in imagination there would be unleashed a new dimension of freedom.³⁶ This is essentially using imagination to break out of the prison of the body and the present, and to extend consciousness well beyond the present. These ideas of Wells were given a sharper understanding by G. Harry Jamieson. According to Jamieson, "[t]he power of imaginative consciousness is that it can visualize that which is absent, it can construct images which need bear no correspondence to external reality, it can see things as otherwise, and it can project itself to some future condition, at least an envisaged future condition... This is a powerful potential [humanistic] that can be enlisted for a variety of purposes, cultural, political or economic. It is a question to which persuasive communi-

³⁰ *Id.*

³¹ Donella H. Meadows, Dennis I. Meadows, Jorgen Randers, William W. Behrens III, *The Limits to Growth: A Report to The Club of Rome* (1972)

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Patrick Parrinder, *H. G. Wells: The Critical Heritage*, Psychology Press (Apr 3, 1997)

³⁶ *Id.*

cations, whether they be commercial in intent or propagandist, frequently address themselves.”³⁷

The philosopher Sartre confirms these insights by stressing that it is only through imagination that we can grasp the future.³⁸ It is through imagination that we psychologically project ourselves into the future and, in this sense, we reconceptualize who we are. In short, imagination permits us to better understand the being and the becoming of the essential “I” and the contingent “we.”

III THE PSYCHOSOCIAL PROCESS OF AESTHETIC EXPERIENCE

Oliver Wendell Holmes, a Justice of the U. S. Supreme Court, once indicated that “[a] word is not a crystal, transparent and unchanged, *it is the skin of a living thought* and may vary greatly in color and content according to the circumstances and the time in which it is used.”³⁹ In observing the conventional forms of creative expression, which trigger the interest of aesthetic appraisal, it is suggested that artistic and or musical expression may be the living expression of the creative aspect of generating beauty.⁴⁰ The human rights dimensions of an aesthetic value are not simple or self-evident. In part, this is because of the difficulty of understanding the creativity that generates the artistic product, which is a contender for the designation “beauty” or the “beautiful.”⁴¹ In part, the generation of such artistic creations is a psycho-socio process.⁴² With regard to the psychological aspect of creativity, aesthetic literature focuses on the idea that within the deeper recesses of the human personality are a vast repository of unconscious images, memories, and constructions of the imagination.⁴³ Some individuals can tap into this deeply internalized psychological process and repository of creativity and distinctive uniqueness. This focus suggested that aesthetics are appropriately studied in the context

³⁷ *Engendering 2052 through Re-imagining the Present; Review of 2052: a Global Forecast for the Next Forty Years as presented to the Club of Rome* (May 16, 2012) citing G. Harry Jamieson, *Communication and Persuasion* (1985)

³⁸ *Id.*

³⁹ Mr. Justice Oliver Wendell Holmes in *Noble State Bank v. Haskell* 219 U. S. 104 (1911).

⁴⁰ Chandrasekhar, S., *Truth and Beauty: Aesthetics and Motivations in Science*, *J. of Genet.* Vol. 68 No. 3, pp. 189–195 (1989); See generally Robert Wallace Olson, *The art of creative thinking*, HarperCollins (August 1, 1986); See also Stefan Morawski, *Expression*, *Journal of Aesthetic Education*, Vol. 8, No. 2, pp. 37–56 (April, 1974); See also Mednick, Sarnoff, *The associative basis of the creative process*, *Psychological Review*, Vol. 69(3), pp. 220–232 (May 1962).

⁴¹ *Id.*

⁴² Dutton *Supra* note 5; See also Tzu-Wei Tsai and I-Chia Tsai, *Aesthetic experience of proactive interaction with cultural art*, *International Journal of Arts and Technology*, Vol. 2 No. 1–2 (2009); See also György Lukács, *Aesthetic Culture*, *The Yale Journal of Criticism*, Vol. 11 No. 2, pp. 365–379 (1998); See also Wendell T. Bush, *Footnotes to Esthetics*, *The Journal of Philosophy*, Vol. 35, No. 5, pp. 113–127 (March 3, 1938).

⁴³ Wendell T. Bush, *Footnotes to Esthetics*, *The Journal of Philosophy*, Vol. 35, No. 5, pp. 113–127 (March 3, 1938)

of the individual creative actor.⁴⁴ This is a view that in its more conservative form stresses the idea that true art is “art for art’s sake.”⁴⁵ This would imply that artistic work is insulated from external influences and, as one theorist put it, “its value and meaning must attach to the *surface* constituents and *surface* structure of the work as grasped in *immediate* content.”⁴⁶ In this sense, aesthetics do not rely for their truth on real world relations. They have to be judged and appreciated only in their surface import, and in their fitness, congruity, or appropriateness within the work as a whole.⁴⁷

An alternative view, which in effect is a rejection of this isolationist view and which rejects the idea that art is completely separate and distinct from the rest of life, is the view that the meaning of art and aesthetics is to be elucidated contextually.⁴⁸ In this view, there is an integral and critical relationship between art and life. According to John Dewey, “art is the living and concrete proof that man is capable of restoring consciously, and thus on the plane of meaning, the union of sense, need, impulse and action, characteristic of a live creature.”⁴⁹ Andre Malraux expressed a similar view as follows, “all art is a means of possessing our destiny. And the cultural heritage does not consist in works of art that man should respect but rather in works of art that help them to live.”⁵⁰

The isolationist view, as applied to art, brings in the element of individuation.⁵¹ The artist as individual may be a natural outsider.⁵² He/she may be a person shut up or bound in its own private world of imagination, idiocentricity and indeed eccentricity. Images of the artist suggest that the isolation from society generates the impractical dreamer whose artistic expression contains its own self-fulfilling justification.⁵³ From the contextual perspective, the life given to art is generated by interpretation, which is itself a social activity.⁵⁴ Interpretation may well show that an artist’s work is within a historical chain of culturally transmitted traditions and the artist would not be an artist if those traditions did not exist. Without those traditions, the

⁴⁴ Melvin Rader, *Isolationist and Contextualist Aesthetics: Conflict and Resolution*, *The Journal of Philosophy*, Vol. 44, No. 15, pp. 393–407, pp. 394 (Jul. 17, 1947); See also Stephen J. Brown, *Two Views of the Function of Art*, *The Irish Monthly*, Vol. 52, No. 609, pp. 132–138 (March, 1924); See generally Bernard Bosanquet, *Three lectures on aesthetic*, Macmillan and Co., Limited, pp. 108 (1915).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ John Dewey and Jo Ann Boydston, *The Later Works, 1925–1953, Volume 10*, SIU Press, pp. 31 (1987)

⁵⁰ Andre Malraux, *The Cultural Heritage* (1936).

⁵¹ *Supra* note 33.

⁵² *Id.*; See also Melvin Rader, *The Artist as Outsider*, *The Journal of Aesthetics and Art Criticism*, Vol. 16, No. 3, pp. 306–318 (March, 1958).

⁵³ *Id.*

⁵⁴ *Supra* note 31.

artist would not be relevant. This paper bridges the divide between the isolationist and the contextualist using the tools and insights generated by the culture of human rights. It deliberately connects personality to culture in order to elucidate the idea of a social process of aesthetics to better appreciate its human rights dimensions.

Artistic creativity is an individual product generated by highly individualized subjectivities, unique to the personality of the artist.⁵⁵ The creative process is therefore, individuated and highly personalized.⁵⁶ There is a great deal of truth in this, but it is an incomplete truth. This truth must be supplemented by the idea that art is not produced in a vacuum. Some of the value, meaning, and appreciation of art, are rooted in the contextual reality within which it is transmitted to the relevant target audience. The real meaning of aesthetics requires the triggering of an artistic product by personality, but its durability, as an artistic product, to be culturally valued, rests on a social construction of ideal forms and ideal representations of “beauty” and the “beautiful.”⁵⁷ Contextuality is only relevant to aesthetics if personality generates art. What is commonly regarded as a culturally acceptable contribution of form and beauty requires an inter-stimulation of personality, individuation, and the communications linkages to culture and society.⁵⁸

IV AESTHETICS AND OTHER VALUES

These thoughts must be placed in the context of the most basic, accepted, and indeed recognized, human rights values. The important characteristic of the values abstracted from modern human rights is that the values may be socially constructed and understood when we identify the institutional forms, globally and cross-culturally, that are specialized to the promotion and defense of these values are identified.⁵⁹ The fundamental values of human rights are paired with the dominant institutional forms that give them contextual meaning. For example, power would institutionally be represented by the institutions of governance; wealth by wealth-generating institutions, such as corporations, partnerships; education and enlightenment by education-generating institutions, such as schools and uni-

⁵⁵ Christine Valters Paintner, *The Relationship Between Spirituality and Artistic Expression: Cultivating the Capacity for Imagining*, Vol. 3 No. 2 (January 2007); See also Anthony Storr, *Individuation and the Creative Process*. *Journal of Analytical Psychology*, 28: 329–343 (1983); See also Frank Barron, *Creative person and creative process*, Oxford, England: Holt, Rinehart, & Winston (1969).

⁵⁶ *Id.*

⁵⁷ Richard Shusterman, *Pragmatist aesthetics: living beauty, rethinking art*, Rowman & Littlefield (2000).

⁵⁸ *Supra* note 31 and 33.

⁵⁹ Myres S. McDougal, Harold D. Lasswell and Lung-chu Chen, *Human rights and world public order: The basic policies of an international law of human dignity*, Yale University Press (1980); See also Myres S. McDougal, Harold D. Lasswell and Lung-chu Chen, *Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry*, *The American Journal of International Law*, Vol. 63, No. 2, pp. 237–269 (April 1969).

versities; well-being by health institutions, such as hospitals and clinics; skill by skill-based institutions, such as labor unions and professional organizations; affection by micro-social and macro-social institutions that generate positive sentiment, such as the family and friendships and by those based on loyalty and patriotism; respect by the institutions that define social class or are based on prestige; and rectitude by institutions based on spirituality and rightness such as churches, temples and courts.⁶⁰ Aesthetics implicates all eight (8) values that lie behind the modern idea of human rights and leaves a discrete residue vested with fundamental salience for human rights and human dignity.

The problem with the value of aesthetics is that there is not one dominant institutional form specialized to the production and distribution of the aesthetic value. As a consequence, some thought must be given to the idea that contextualizing aesthetics must identify some practical institutional forms that give it social relevance and meaning. The problem that we have to unravel is that every value may have an aesthetic aspect and the institutional form related to that value may have some relevance to the production and distribution of aesthetics. For example, it could be argued that power may have an important aesthetic implication and the institutions of power may therefore, directly or indirectly, encourage or depreciate aesthetics. Moreover, it is possible that artistic representations of power could have functional consequences that may directly affect power itself. In this sense, art may be a functional tool of political resistance⁶¹ or political solidarity.⁶² Indeed, an artistic representation of power may generate a form of art in which power is idealized, and the aesthetic quality of such a representation may serve as an independent justification for the uses of power. The importance of wealth and the institutions specialized to the production and distribution of wealth could be explored. At the very minimum, an artist will need material sustenance to produce art. The artist may in fact be dependent on a benefactor to sustain him in his work. The artist may have to market his art and may require market specialists to facilitate the marketing of aesthetics. Aesthetics is implicated in all the other human rights values and institutions. However, notwithstanding the complexity of seeing aesthetics implicated in all the major value institutional processes, there is the issue of art and communication. Artwork is a method of communicating sign, symbol, and emotion. The critical question then is if there is a general model of communications that is appropriate to the art-aesthetic process.

⁶⁰ *Id.*

⁶¹ David Darts, *Visual Culture Jam: Art, Pedagogy, and Creative Resistance*, Studies in Art Education Vol. 45, No. 4, pp. 313–327 (Summer, 2004); See also Murray Edelman, *From Art to Politics: How Artistic Creations Shape Political Conceptions*, University of Chicago Press (October, 1996).

Aleksandr Solzhenitsyn, *The Gulag Archipelago* (Russian: Архипелаг ГУЛАГ, Arkhipelag GULAG) (1973); See also Boris Pasternak, *Dr. Zhivago* (1957) – Illustrate art as a political resistance.

⁶² Leni Riefenstahl, *Triumph of the Will* (based on the 1934 Nazi Party Congress in Nuremberg) (1935) – Presents a powerful aesthetic idealization of Nazi power in Germany.

General communications theory stipulates that the artists, or the aesthetic appraisers, are in effect, the players identified as the “Who” in the communications process.⁶³ The questions that emerge are: what protections can human rights provide to these communicators what is the importance of the freedom to communicate in the social processes of the aesthetic value and what is communicated by either the artist or the aesthetic appraiser? Additionally, we may ask at which point does art become vulgarized by commerce, or political propaganda, or depreciated by censorship or punishment? The next question would be through what channel. These questions focus on the rights of access to the specialized channels through which artistic expression is directed. Here again, the questions may well be; are the channels adequate; may they be improved; how and by whom; how inclusive or exclusive are the channels relevant to artistic expression? The next questions refer to the target audience: what is filtered, suppressed, or modified so that the target audience does not have adequate access to the artistic product? Finally, the basic question is; what are the results, effects, and appraisals of the aesthetic quality of the production and distribution of artistic products vested with aesthetic value?

V PERSONALITY, HUMAN SUBJECTIVITY AND AESTHETICS

Thus far, a general orientation to the relationship between basic human rights values, human institutions, personality dynamics, and aesthetics has been provided. The central insight is that aesthetics is implicated in the dynamic relationship of personality and culture. This is an essential focus for aesthetics as a personality/social process and its human rights dimensions in terms of problems and human rights preferred solutions. The focus on personality and culture implicates an aspect of art that has its focus on understanding “opposites” in aesthetic processes.⁶⁴ Art itself frequently emerges as a contribution to the integration and reconciliation of opposites as it reproduces artistic outcomes in a unique psychological state, which includes artists/creators, other stakeholders, and participants in the experience of art.⁶⁵ Early philosophers described this phenomenon as an indication of catharsis; the apparent conflict implicated in opposites results in a purge of internal emotional turmoil, reflected in arts capacity for emotional integration and reconciliation.⁶⁶ Freud’s description of art has an affinity with this idea.⁶⁷ From Freud’s

⁶³ Winston P. Nagan and Craig Hammer, *Communications Theory and World Public Order: The Jurisprudential Foundations of International Human Rights*, 47 Va. J. Int’l L. 725 (2007).

⁶⁴ *Supra* note 7; See also generally Howard Gardner, *The arts and human development: a psychological study of the artistic process*, Basic Books (November 9, 1994).

⁶⁵ *Id.*; See also Pitirim Aleksandrovich Sorokin, *Social and cultural dynamics: a study of change in major systems of art, truth, ethics, law, and social relationships*, Transaction Publishers (1957).

⁶⁶ *Id.*

⁶⁷ Lawrence Friedman, *Fact and Value: New Resources for Esthetics*, *Psychoanalytic Review*, 52 A: 117–129 (1965)

perspective, art is a function of an inter-determining personality process between the conscious and the unconscious.⁶⁸ For example, a dream may be a product of the unconscious. That dream, when inserted into waking consciousness, may emerge as art. Psychoanalytical literature has been especially rich in developing these themes.⁶⁹ These developments retain the fundamental insight of Freud. It confirms his view and explores the more precise causes generating the link between the unconscious and ego-consciousness, which appears to clarify the idea that creative form, which emerges largely from the unconscious, is given meaning by ego-consciousness. Moreover, the complex of emotions, dimly formed signs and symbols, and possibly confusing images that emerge from the unconscious, is, via the processes of conscious interpretation, given meaning and thus, is a component of a comprehensive aesthetics theory.⁷⁰ From a human rights perspective, what emerges from the unconscious is pregnant with value-questions and value-concerns. These concerns confront the ego and in a larger sense, confront the community of specialists and the larger community of stakeholders, which suggests that the conceptualization of the inter-determination of personality and culture are important guidelines for orienting inquiry in this context.⁷¹

VI AESTHETICS EMERGING AS A SOCIAL PROCESS IMPLICATING PERSONALITY AND CULTURE

The discourse now moves into the complex and treacherous terrain of the specialists in aesthetics. Walter Pater, a Brasenose College Oxford Don, established a distinctive reputation as a leading aesthete and scholar in the late 19th century.⁷² Pater, although a highly respected figure, never received a Chair in the University of Oxford. Although he was highly respected, he was not destined to be given a Chair, which on purely academic grounds, would have been justified. There were always questions in the highest circles of Oxford about the possible undesirability of a Chair-holder having an alternate gender orientation.⁷³ In a sense, this made

⁶⁸ Sigmund Freud, translated and edited by David McLintock, Hugh Haughton, *The uncanny*, Penguin (September 30, 2003); See also Sigmund Freud, *The Interpretation of Dreams*, Plain Label Books (1950).

⁶⁹ *Supra* note 18.

⁷⁰ *Id.*

⁷¹ See generally *The Impact of Culture on Creativity*, A Study prepared for the European Commission (Directorate-General for Education and Culture) (June 2009); See also Peijia Zha, Jeffrey J. Walczyk, Diana A. Griffith-Ross, Jerome J. Tobacyk and Daniel F. Walczyk, *The Impact of Culture and Individualism-Collectivism on the Creative Potential and Achievement of American and Chinese Adults*, *Creativity Research Journal*, Vol. 18 No. 3, 355–366 (2006).

⁷² Michael Levey, *The Case of walter Pater*, London (1978).

⁷³ Indirect evidence emerged from a contact he had with an undergraduate from Baliol College named William Money Hardinge, who had been sent down from “unnatural behavior”. Pater had written some letters to Hardinge that would compromise him, and which had

him something of an outsider, persecuted, perhaps for his orientation, but also for the implication, his orientation might hold for his professional work. Pater's work was complex in the sense that he was a critic, an appraiser, and an artistic contributor. However, his apparent gender orientation generated an outsider's view of unfair discrimination. He was identified with the idea that creative art is not a confirmation of the humdrum past, which reifies convention. Crook, a contemporary Brasenose fellow, describes the thrust of Pater's contributions by describing Pater as "one of the most remarkable stylists in the history of the English language." Crook continues, "here was writer who would begin by exploring the origins of renaissance painting and end by revolutionizing our understanding of artistic perception. That meant, first of all, a disentangling Ruskin's confusion of art and morality, ethics and aesthetics. Then it insists on abandoning the conventions of pictorial analysis, by translating narrative images into sequential impressions... He would lay the foundation - ... - for a modern theory of abstract art."⁷⁴ He was in effect cast in the role of a fighter confronting and trying to defeat reactionary cultural forces. One of the difficulties of using Pater, as an anchor of aesthetics, as a discipline, is that, as a critic, he consistently produces disturbing and far-reaching insights. It is not easy to place his work in doctrinal bright lines. To illustrate, Pater once said, "[a]ll art aspires to the condition of music."⁷⁵ In this sense, Pater's insight, that the condition of music was the only art in which the subject and the form were indistinguishable, suggests that other forms of art could only aspire to this condition.

Two themes appeared to influence Walter Pater as an aesthete. The first was the idea that social and biological processes were in constant movement.⁷⁶ If art freeze a knife-edge instant of this flux, it only suggested that stability is an exception, and the flux of instability may be the rule.⁷⁷ It was in this context that personality, in the creative process, makes its contribution. Here, Pater's precocious insight, which appeared to anticipate Freud, was that the unconscious (mind) was a "whirlpool" that is also in rapid motion. It was a flow with identifiable elements, emotions, memories, perceptions, impressions, which were often inconstant, flickering, and unstable and which are cabined in "that thick wall of personality."⁷⁸ Pater recognized that many of these elements often dissolved themselves; they vanished in a strange

been disclosed. See Crook, *Brasenose: The Autobiography of an Oxford College*, Oxford University Press 2nd Ed., pp. 281–282 (2009).

⁷⁴ See Crook, *Id.* pp. 246–247.

⁷⁵ Pater's most quoted maxim is contained in an essay on 'The School of Giorgione' (Fortnightly Review, 1877), added to the third edition (1888).

⁷⁶ Oscar Wilde's tribute to Walter Pater, *The Critic as Artist* (1891)

⁷⁷ Wolfgang Iser, *Walter Pater: The Aesthetic Moment*, Cambridge University Press (February 17, 2011); See also R. M. Seiler, *Walter Pater: the critical heritage*, Psychology Press (March 5, 1996); See also Milton Millhauser, *Walter Pater and the Flux*, *The Journal of Aesthetics and Art Criticism*, Vol. 11, No. 3, pp. 214–223 (March, 1953)

⁷⁸ *Id.*; See also Wendell V. Harris, *Arnold, Pater, Wilde, and the Object as in Themselves They See It*, *Studies in English Literature, 1500–1900* Vol. 11, No. 4, *Nineteenth Century*, pp. 733–747 (Autumn, 1971)

movement that weaves and unweaves in the mind where external reality and the mind were in continual flux.⁷⁹ The challenge for the artist and the discriminating aesthete was to learn the technique of “sharp and eager observation”: “every moment some form grows perfect in hand or face; some tone on the hills or the sea is choicer than the rest; some mood of passion or insight or intellectual excitement is irresistibly real and attracted for us, – for that moment only.”⁸⁰ The creative expression involved the skill to observe “as many pulsations as possible into a given time”: “to burn always with this hard gemlike flame, to maintain this ecstasy, is success in life.”⁸¹ The alternative was functioning according to habit and reified tradition. Pater saw the danger in conventional stereotypical conformity:

“While all melts under our feet...” “we may well catch at any exquisite passion, or any contribution to knowledge that seems by a lifted horizon to set the spirit free for a moment, or any stirring of the senses, or work of the artist’s hands. Not to discriminate every moment some passionate attitude in those about us in the brilliancy of their gifts is, on this short day of frost and sun, to sleep before evening.” The resulting “quickenened, multiplied consciousness” counters our insecurity in the face of the flux.⁸²

The momentary glimpses that the artist captures from the unconscious may be that:

“[a] sudden light transfigures a trivial thing, a weathervane, a windmill, a winnowing flail, the dust in the barn door; a moment – and the thing has vanished, because it was pure effect; but it leaves a relish behind it, a longing that the accident may happen again.”⁸³

A visionary moment may also merge from intellectual stimulation in science, philosophy or the arts. Pater suggested that we should “be forever testing new opinions, never acquiescing in a facile orthodoxy” and the emotional drive for the arts, which implicates “a desire of beauty,” has “the greatest potential for staving off the sense of transience, because in the arts the perceptions of highly sensitive minds are already ordered; we are confronted with a reality already refined and we are able to reach the personality behind the work.”⁸⁴ Pater provided a summary of his aesthetic views in the Westminster Review in the following terms:

“One characteristic of the pagan spirit... [is] the desire of beauty quickened by the sense of death... Not the fruit of experience [therefore] but experience itself is the end [of our existence]. A counted number of pulses only is given to us of a variegated dramatic life. How many we see in them all that is to be seen in them

⁷⁹ *Id.*

⁸⁰ Walter Pater, *The Renaissance, Studies in Art and Poetry*, Brasenose College (1901)

⁸¹ Quotations from Walter Pater, ‘Conclusion’ to *Studies in the History of the Renaissance* (London, 1873)

⁸² Walter Pater, *The Renaissance, Supra* note 27.

⁸³ Walter Pater, Harold Bloom, *Selected writings of Walter Pater*, Columbia University Press (1974)

⁸⁴ Jennifer Uglow, Introduction to *Walter Pater: Essays on Literature and Art*, Everyman Library, Dent, London, p. 10 (1973)

by the finest senses?... To burn always with this hard gem-like flame, to maintain this ecstasy, is success in life... While all melts under our feet, we may well catch at any... stirring of the senses... Not to discriminate every moment some passionate attitude... [some] brilliance... is on this short day of frost and sun, to sleep before evening, We are all under sentence of death... Some spend this interval in listlessness, some in high passions, the wisest... in art and song.”⁸⁵

A. Art, Form and Interpretation

From Pater’s, we may discern the important role of personality and the distinctive role of culture, which provides for the skilled appraiser of the artistic product.⁸⁶ This role has had an important impact on literary criticism. The central focus on the subjectivity of the creator artist and on the relative autonomy of the appraiser has established a justifiable structure for better understanding the interplay of creative personality dynamics and independent appraisal by the autonomous appraiser. On the other hand, there is implicit in Pater’s work an element of ambiguity between the appraiser and the creator. Pater was himself a creative appraiser. Indeed, his now classical appraisal of Leonardo da Vinci’s *Mona Lisa* stands as a work that is almost an autonomous work of art on its own:

“Hers is the head upon which all “the ends of the world are come”, and the eyelids are a little weary. It is a beauty wrought out from within upon the flesh, the deposit, little cell by cell, of strange thoughts and fantastic reveries and exquisite passions. Set it for a moment beside one of those white Greek goddesses or beautiful women of antiquity, and how would they be troubled by this beauty, into which the soul with all its maladies has passed? She is older than the rocks among which she sits; like the vampire, she has been dead many times, and learned the secrets of the grave; and has been a diver in deep seas, and keeps their fallen day about her; and trafficked for strange webs with Eastern merchants: and, as Leda, was the mother of Helen of Troy, and, as Saint Anne, the mother of Mary; and all this has been to her but as the sound of lyres and flutes, and lives only in the delicacy with which it has moulded the changing lineaments, and tinged the eyelids and the hands.” – Walter Pater’s *Mona Lisa*⁸⁷

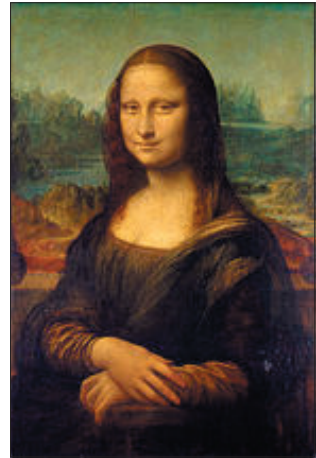


Figure 1: Leonardo da Vinci’s *Mona Lisa*

⁸⁵ Pater, W., *Poems by William Morris*, Westminster Review, pp. 302–312 (October 1868) cited in Crook *Supra* note 25.

⁸⁶ *Supra* note 43.

⁸⁷ *Supra* note 31.

Pater's exploration of human subjectivity, as essential for an understanding of the creative process, was in many ways a post-modernist insight. It is possible to read into Pater the particular importance of the individual in the construction of beauty,⁸⁸ and this seems to imply that some credence must be given to the moment in the flux of mind and environment, which is captured by art as an enduring monument to beauty.⁸⁹ Pater focuses on the continuum that moves from personality to culture a leaning on the side of personality in its importance. On the other hand, his insistence on the autonomy of the specialist appraiser focuses on culture, but in a manner filtered by the unique craft skills (perceptual, intellectual, and creative empathy) of the appraiser. This qualification, basing the foundations of aesthetics in terms of personality, appraiser, and culture, represents a more complete formulation of its outer boundaries.

B. Philosophical Perspectives on Aesthetics

The consideration of Pater's foundation of aesthetic experience is deepened by drawing in insights from philosophy. Philosophers recognize that the isolationist perspective of the artist focuses on an important condition of creativity.⁹⁰ That condition is the uniqueness or essence of art which distinguishes art from other human actions. The contextualist aspect of aesthetics seeks to connect art to the broader framework of human experience and human values.⁹¹ Human rights aspects of aesthetics are certainly important for the connection of art to the basic human values of social life. Philosophers maintain that both these perspectives are crucial to an understanding of aesthetics.⁹² Art integrates the unique and the generic, the isolated and contextual. The unique aspect of art is located in the specific image "in its creation, contemplation, and intrinsic content."⁹³ The artistic image captures the attention because it is clear, vivid, only when seen in isolation. The image requires a moment in the flux (Pater's idea) of mind and experience in which the image removed from that flux is isolated and made vivid. What comes next is the triggering of context to give it meaning via interpretation. The effect of meaning is essentially to connect the vivid representation to the larger target audience. Art integrates the image and meaning. The image is normally explicit; the meaning has to be teased out of the image. Meaning has generic features, which implicate generic values, and connects art to those values.⁹⁴ One distinguished philosopher building on this model stated that art is:

⁸⁸ *Id.*; See also *Supra* note 24.

⁸⁹ *Id.*

⁹⁰ *Supra* note 7.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See also George N. Belknap, *The Commensurability of Values*, *The Journal of Philosophy*, Vol. 30, No. 17, pp. 458–464 (Aug. 17, 1933)

“the expression of values: the deepening and clarifying of intrinsic values by imaginative expression. The values expressed in a work of art, moreover, are partly unique, and, as unique, they do not even exist until they are expressed; but they also fall within a genus, and thus have a universal character. Artistic expression means the creation of a *specific* variant of some *generic* value. The specificity is the basis of the isolationist theory, the generality is the basis of the contextualist theory.”⁹⁵

The salience of values to art and existential experience was affirmed by Melvin Rader:

“Experience of this sort, in which values are inextricably fused with specific qualities, is characteristic of all life in its presentational immediacy, before analysis has done its work of dividing and abstracting. Esthetic experience is experience *at this level*. The artist creates a work of art which transmits this sort of experience.”⁹⁶

A work of art may represent important subliminal values that express and excite the interest of the artist. These values are put in the form of a concrete image. That image may be a way of grounding important values or enhancing and deepening our understanding of those values. Art and beauty capture the foundations of ethical experience in terms of the interplay of personality, values, and culture. These philosophical perspectives, which clarify the value cultural context of art, provide an important place for the aesthetic process in the clarification and grounding of human rights values.

C. Representative Illustration: Conventional Art and Values

Representative illustrations of artistic image and its contextual relevance in the context of the fundamental values of social organization follow. A painting produced by Pablo Picasso immediately upon hearing of the bombing of an undefended city by allies of the fascist dictator, Francisco Franco follows:

This painting was about the aerial bombing of the city of Guernica.⁹⁷ The representation of the event was not done in a form of literal artistic expression, but was done in the form of symbols and the form of the art really had these symbols falling over each other to represent the chaos and the anarchy non-human life forms as well of the emotional experience on the ground. The painting goes further because it includes. Most riveting were the images given prominence to two animals; namely the horse and the bull. It represented the complete incomprehension of the horse as it experienced the epitome of terror and the bull, standing over the grieving women and the dead child, was in effect a dumb witness to the atrocity, but like the horse, without a comprehension of modern war. Picasso’s own comments on this were insightful;

“...this bull is a bull and this horse is a horse... If you give a meaning to certain things in my paintings it may be very true, but it is not my idea to give this meaning.

⁹⁵ *Id.*; See also *Supra* note 7.

⁹⁶ *Id.*

⁹⁷ Guernica by Pablo Picasso (1937)

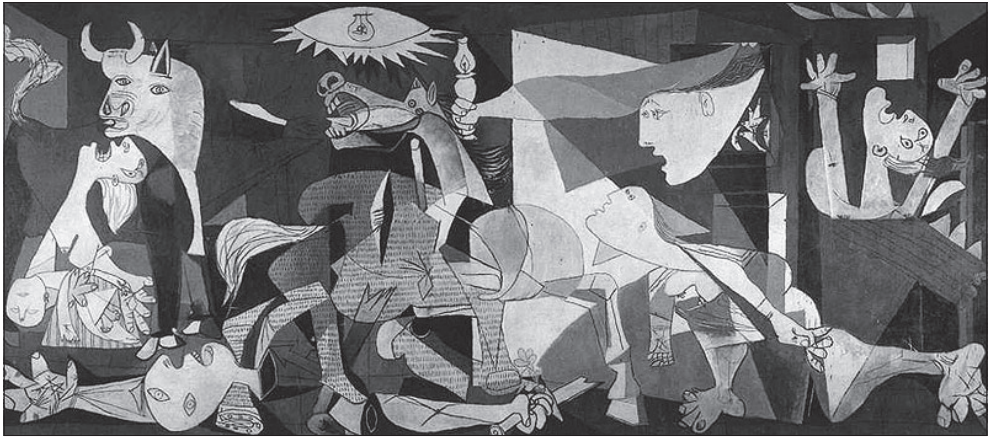


Figure 2: Guernica by Pablo Picasso

What ideas and conclusions you have got I obtained too, but instinctively, unconsciously. I make the painting for the painting. I paint the objects for what they are.”⁹⁸

Picasso also indicated that his artistic work was in part an artistic response to the struggle of the people in the Spanish Civil War;

“The Spanish struggle is the fight of reaction against the people, against freedom. My whole life as an artist has been nothing more than a continuous struggle against reaction and the death of art. How could anybody think for a moment that I could be in agreement with reaction and death? ... In the panel on which I am working, which I shall call Guernica, and in all my recent works of art, I clearly express my abhorrence of the military caste which has sunk Spain in an ocean of pain and death.”⁹⁹

Human beings may understand terror, even if they do not like it; but the horse, is sheer terror. This represents the way in which terror can be inflicted in a mechanistic way and one which assumes a complete blindness about the destructiveness of mechanistic aerial warfare targeting everything within its sights. In this sense, the portrait of suffering and dying, in which the images cut across each other, represents a moment abstracted out of the flux of war, and represents that moment as an artistic memorial of the terrors of modern warfare. The values implicated here are some of the most important values about the conduct of war: the *ius in bello*. This is a form of war that ignores the principle of necessity, the principle of proportionality, and the principle of humanity.

⁹⁸ ... *questions of meaning*, part of a series of web pages on Guernica in PBS’s Treasures of the World series (Accessed March 6, 2012)

⁹⁹ Eugene B. Cantelupe, *Picasso’s Guernica*, Art Journal, Vol. 31, No. 1 (Autumn, 1971), pp. 18–21

D. Aesthetics in the Non-Western Tradition

A reference should be made to at least one non-Western cultural context. Probably the richest tradition, which makes aesthetics a fundamental expectation of culture and experience, is in the tradition of Japanese aesthetics. It is generally thought that the Heian period provided a critical place for the fundamental position of aesthetics in Japanese culture. During this period, respect and social status depended on the aesthetic skills of social participants. Ability in music, poetry or protocol or the attainment of a highly refined sense of elegance or grace (*miyabi*) became the indicators of optimal social achievement. We will use one illustration indicating the richness and depth of Japanese aesthetics: the art of *Yohaku*.¹⁰⁰ The art or *Yohaku* requires an artistic product, which is essentially a white space and nothing more.¹⁰¹ This space, however, is deliberately without a dormant because it is a space that is left for the person to enter. It is a space that facilitates going within oneself to the core. Here, the person can enter a world that isn't flooded with the flow of symbols of intensive action from the social context. Entering into the space of *Yohaku* provides the individual with an aesthetics space in which the individual may better understand its relationship to those significant others in its life. The aesthetics of *Yohaku* directs its beauty to the narrative life of the person in aesthetics terms. In this sense, the body, the mind, and the spirit are the sacred temple of being and becoming. *Yohaku* provides the space for the balance of these components of being. In a sense, *Yohaku* is a way of controlling and managing time. Time does not move beyond the person, but as balanced in a way that enhances psychic energy, reduces stress, engages simplicity, and culminates in an aesthetic harmony. In this sense, life is an aesthetic narrative, which is facilitated by the creation of *Yohaku*. And the object of such an aesthetic experience is to generate happiness, harmony and the idea that life may be better appreciated and enjoyed. As one author put it, the salience of the aesthetic in the end of our days "is not the material things that remained but the memories of those special moments we enjoy in our lives."¹⁰²

E. High Art in Films and its Human Rights Values

We move from paintings and spaces to the salience of modern film as an art form implicating both aesthetics and basic values. We start with Sergei Eisenstein's silent film *Battleship Potemkin*.

Eisenstein made *Battleship Potemkin* in 1925. It represented the 1905 mutiny on board the battleship *Potemkin*.¹⁰³ The mutiny coincided with strikes, protests and resistance marches to Tsarist regime. Eisenstein weaves the pictorial narrative to include the people's participation in protest and resistance. The film does not

¹⁰⁰ Richard B. Pilgrim, *Intervals ("Ma") in Space and Time: Foundations for a Religious Aesthetic Paradigm in Japan*, *History of Religions*, Vol. 25, No. 3, pp. 255–277 (Feb., 1986)

¹⁰¹ *Id.*

¹⁰² Caro Boggs, *Chronicles of a Priestess: The Art of Yohaku* (April 17, 2011)

¹⁰³ Eisenstein, Sergei, *The Battleship Potemkin* (Book) (1984)

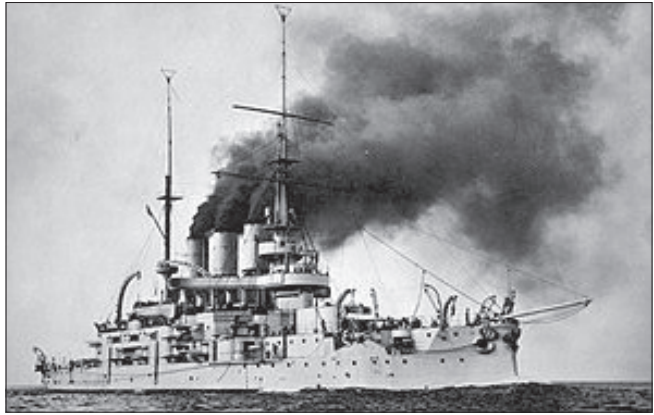


Figure 3: Battleship Potemkin

contain any particular individual hero or heroine. The illustrations of terror and suffering are effectually representations of collective loss and suffering. This film succeeds in making “the people” the hero. Heroism is in effect a collective people’s effort in its forms of resistance and collective courage. The film also symbolizes the critical role of the armed forces as a potential resource for revolutionary activism.

From the point of view of values, the role of the state and its indifference is reflected in the manner in which the sailors in the armed forces are treated. A triggering matter is the issue of feeding the crew meat infected with maggots. The film then represents the idea of proactive resistance to injustice. The fact that the crew has the support of the civil community in Odessa is an important indicator of people's expectations about elementary justice. The role of the state in overreacting and being ruthless and indiscriminate in its repression is an example of the states' valuation of negative values. This reminds us of Syria today.

Eisenstein made this historical movie, *Alexander Nevsky*, in 1938.¹⁰⁴ It was a work of art and a work of patriotism. What is remarkable in this film is the way in which Eisenstein depicts the imperialistic invading Teutonic knights. When imag-



Figure 4: Alexander Nevsky

¹⁰⁴ Eisenstein, Sergei, *Alexander Nevsky*, D Vasil'ev, È Tisse, NK Cherkasov, RCA Victor Red Seal 1994 ed. (1938)

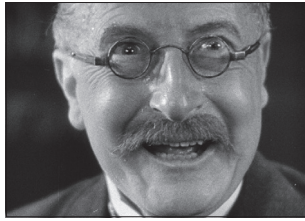


Figure 5: All Quiet on the Western Front

es of the knights are set in motion and accompanied by Sergei Prokofiev's music the image has an unmistakable resonance with modern mechanized warfare in terms of both image and motion. Here modern mechanized warfare means invasion led by tanks or panzer armies. The Teutonic knights covered as they are in steel helmets are almost like the invading tank armies that in 1941 invaded the Soviet Union. The values are clearly the values that repudiate imperialism and support the values of patriotic resistance to imperial conquest.

The film, *All Quiet on the Western Front*, was a major achievement in the art of the cinema. It is a film that is superior to the book upon which it is based.¹⁰⁵ The story begins with our hero, Paul Bauman, in high school, persuaded to volunteer to serve in the armed forces of Germany. After training, he and his classmates are sent to the front where the experience of war and death are far from the propaganda of the stay at home professionals and intellectuals. It is a complete and utterly independent reality. In the first picture we see the professor who is the biggest war recruiter of Cannon Fodder. He has absolutely no idea of what life is on the front. Below the professor is the former postmaster, a lower class arrogant German who gets class revenge on the young recruits and who it turns out is a coward. The two pictures on the last are depictions of life and action in the trenches. The genius of the film is the technical way it can bring the reality of battle experience home to the audience in an art form. The visual innovations of the film required the director to attempt to give a visual and riveting form to the actual combatants. To achieve this cinematically the artists used a charcoal mixture, spread over the film, which could graphically accentuate the form of the figures as they went over the top in attack and retreat between the trenches in defense. The picture below is a graphic illustration of a soldier killed, in no man's land, clinging to barbed wire. The picture captures the types of bonding that can only happen in war among different classes of man. The picture on the right shows a veteran from the lower classes bonding with the young hero Paul. Killing on a personalized basis is a complex emotional experience; in the picture on the left, the hero has killed a French soldier and he finds in the French soldiers' personal effects a picture of his child and his wife. For a moment, the idea that the Frenchman is an enemy is destroyed. The soldier in the field finds compassionate identity and remorse. The enemy is simply a common man. The final picture is a picture of the young men who went to war in the beginning and died. There is a background of crosses symbolizing the price of conflict. In some measure, art has to capture as Pater put it, that knife-edge instant in the flux of time and mind. It is impossible to feel the emotionalized behaviors of actual battlers synthetically. It is rare, indeed, for a film to capture the complexity of the emotionalized dynamics in the context of action, death, and dying. This film has been held as the ultimate artistic expression of the antipathy to war, and an assertion of its futility.

¹⁰⁵ Eric Maria Remarque, *All Quiet on the Western Front*, trans, Brian Murdoch, London: Vintage, 1996 (1929)

F. Propaganda: Enhancing the “Self” and Demonizing the “Non-Self Other”

In this section, we introduce more explicitly the problem of using art and aesthetics as a tool for demonizing whole populations of “non-self others”. This was an issue elucidated during early phases of Nazi rule by the political psychologist, Harold Lasswell. It was in 1933 that Harold Lasswell did an appraisal of the emergent Hitlerism in Germany. In this study, which he titled, *The Psychology of Hitlerism*, Lasswell identified a key level of social stratification to which Hitler could appeal to strengthen the political basis of Nazism.¹⁰⁶ This level of society he identified as the lower middle classes. This social class suffered significantly from the humiliation of Germany’s defeat and suffered disproportionately from the economic deficits that resulted from the Treaty of Versailles.¹⁰⁷ Hitler was able to drive a wedge between the lower middle classes and the proletariat. The latter would identify with communism and thus became a class enemy of the German lower middle class. Additionally, while the lower middle class accepted criticisms of the profit system of the economic order they nonetheless sought to protect it. An important aspect of the lower middle class pattern of identification was the strong feeling of humiliation. It was therefore important that Hitler target them with a renewed sense of “Germaness”.¹⁰⁸ Given the deprivations they experienced in the economic system, the ability to excoriate humiliation and cultivate a form of national resurrected pride in being German became a significant tool in how Hitler projected the symbols to influence this class.

One important tool of Germaness was an appeal to German nationalism, which for Hitler implicated an ethnocentric dimension. This appeal was strengthened by the claim which he promoted that Germany’s humiliating defeat was the result, not of battlefield losses, but the result of a fifth column in Germany which plotted the victory of the Allies. Hitler promoted the idea that fifth column traitors were largely Jewish. Thus, Germany’s defeat could be ascribed to Germany’s Jewish minority. Having absolved German nationalism of responsibility for the loss of the war and having placed the blame on Germany’s Jewish minority, Hitler had cleverly adopted the political rhetoric of the time with racially toned nationalism and anti-Semitism. According to Lasswell “nationalism and anti-Semitism were peculiarly fitted to the emotional necessities of the lower bourgeoisie.”¹⁰⁹ This was a class that required new objects of devotion and new targets of aggression. To quote Lasswell “anti-Semitism provided a target for the discharge of resentments arising from damaged self-esteem; and since the scapegoat was connected with the older Christian tradition, guilt feelings arising from lack of personal piety could be expiated by attacking the Jew”.¹¹⁰ Additionally, anti-Semitism also performed an interesting

¹⁰⁶ Lasswell, H., *The Psychology of Hitlerism*, Political Quarterly 4 pp. 373–384 (1933)

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

ideological function. It was an alternative to the attacks on capitalism generated by proletarian socialists. At this time the proletarians were praising the workers and insulting all segments of the bourgeoisie. The national socialists were successful in diverting the most trenchant critics of capitalism coming from the left by substituting for capitalism the idea that “Jewish proletarianism ... was the root of all modern evils.”¹¹¹ Additionally, Jewish connections to international finance were used to demonstrate that international finance, allegedly Jewish controlled, was irreconcilable with strident German nationalism. In short, “the crusade against the Jew became a legitimate act of devotion to the idols of Germanism”.¹¹² In short, the Nazi propaganda machine promoted a virulent form of anti-Semitism, which described persons of Jewish ethnicity as “germs”, “pests”, “not human”, “parasitic”, “evil doers” and “sources of disease”. As a group they had to “be destroyed in the interest of mankind [sic]”. In the leading Nazi propaganda sheet, *Der Stuermer*, of 1939 the newspaper proclaimed:

“A punitive expedition must come against the Jews in Russia. A punitive expedition which will provide the same fate for them that every murderer and criminal must expect. Death sentence and execution. The Jews in Russia must be killed. They must be exterminated root and branch.”

Hitler’s promotional anti-Semitism as a tool of political mobilization also strengthened political cooperation between the lower middle class and the aristocracy. The aristocracy still admired the idea that old-fashioned moneymaking was somewhat degenerate. The aristocracies’ dislike of modern capitalism was in turn displaced on a dislike of Jews, the moneylenders of tradition. In this sense, the aristocratic dislike of Jewish capitalists permitted it to displace its hostility to capitalism on the Jews and at the same time co-operate with the non-Jewish capitalists. What were established between the lower middle class and the aristocracy were the emergence of a common solidarity with Germanism and a common hatred of Semites.

The role of the intellectual class in the strengthening of anti-Semitism in Germany is also important. Intellectuals are specialists in the invention and communication of political symbols that touch on history, morals, law, philosophy, and in the construction of cultural legends and myths. Weimar, Germany had abolished limitations on access to German universities. German universities produced an abundance of talent, which the market could not absorb. Included in this universe of talent were Jews who were prominent in law, medicine, the arts, literature, journalism, and science. This critical mass was providing competitors with rival intellectuals. Their position made them vulnerable to intellectual assault. Jews, less entangled by localized traditions, began to cater to the entire German market and to generate symbols that could appeal to Germans everywhere. This success became an instrument to reinforce anti-Semitism against the allegedly urbanized intellec-

¹¹¹ *Id.*

¹¹² *Id.*



Figure 6: Nazi Propaganda for enlarging self-esteem and German ethnic identity.

tual, Marxist-Jew. The creativity of Jewish intellectuals and scientists could be distorted as impure contributions to German culture imputed to foul Jewish intellectuals. Thus, for Hitlerites the German race needed to be protected from contamination by disapproved races. And the purity of German blood would be a cornerstone of the new Germanism. Lasswell put it in these terms: “the alien Jewish cankers” were traitors and they were not to go unpunished;

“The dawning day of resurrection is nigh. The organized might of German manhood shall rise to purify the state and to recover the honor of Germany in the field of battle. Our blood shall not have been shed in vain. The flesh of our flesh shall not decay; it shall live in the glories of immortal Germany”.¹¹³

¹¹³ *Id.*



Figure 7: Nazi propaganda for demonizing Jewish identity.

Lasswell also provides the following insight into the effect of Hitler's propaganda; "You are not to blame for the disaster to your personality involved in the loss of the war. You were betrayed by alien enemies in our midst." The self-accusations which signify that aggressive impulses are turned against the self are thus no longer necessary; not the "sacred ego," but the Jews are [?] to blame. By projecting blame from the self upon the outside world, inner emotional insecurities are reduced. By directing symbolic and overt attacks against the enemy in our midst, Hitler has alleviated the anxieties of millions of his fellow Germans (At the expense of others)."¹¹⁴

Hitler's political success in consolidating his rule during the pre-war period lay in his ability in consolidating many other segments of German society, which ap-

¹¹⁴ *Id.*

peared to condone his excesses and did not oppose the centralization of authority inspired by his national associates. Culturally Germans were used to being submissive within the hierarchy of the family, the army, the bureaucracy, and political parties. Thus, Hitlerism triumphed in the name of freedom socialism and nationalism. In this contribution, Lasswell provided important insights into the role of anti-Semitism in the consolidation of Hitler's control of the German state.¹¹⁵ In particular, the way in which Hitler was able to mobilize the symbols of solidarity, on the one hand, and anti-Semitism, on the other, provide a compelling insight into the manipulation of the emotional predispositions, loyalties, and hatreds of the German people.¹¹⁶

Hitler's propaganda war against the Jewish people is a strong example of the role of aesthetic in reinforcing negative sentiment and in the management of emotions that essentially generate negative and destructive consequences for the victims of such sentiment.¹¹⁷ These complex processes clearly led to the criminal tragedy of the Holocaust.¹¹⁸ However, it is by no means clear that even these interested observers could have predicted the decisions and the implementation of those decisions relating to the extermination of whole races of people with the Jews at the top of the list of candidates for extinction. This section is meant to underscore the problematic line between legitimate aesthetics used for the enhancement of the common interest in all the social values and the deployment of artist and aesthetic tools for the promotion of racial hatred.

VII HUMAN RIGHTS LAW AND THE PROTECTION OF ART AND AESTHETIC VALUES

Aesthetic values, in the context of human rights law, come in texts that seek to protect the cultural patrimony of a community. Consequently, there have been developments that are focused, in part, on the protection of folklore and culture of indigenous communities. However, these developments may have general applicability as a touchstone to further developments in human rights law. It would be useful to begin our analysis with reference to both Article 27 of the UDHR¹¹⁹ and Article 15 of the ICESCR.¹²⁰ Both of these human rights standards connect art to the concept of culture. The initial problem that we confront with trying to give a specif-

¹¹⁵ *Id.*

¹¹⁶ *Id.*; See generally Michael Mack, *German idealism and the Jew: the inner anti-Semitism of philosophy and German Jewish responses*, University of Chicago Press (2003)

¹¹⁷ See generally Hilmar Hoffmann and John Broadwin, Volker R. Berghahn, *The triumph of propaganda: film and national socialism, 1933–1945*, Berghahn Books (1997); See also George L. Mosse, *Fascist Aesthetics and Society: Some Considerations*, *Journal of Contemporary History*, Vol. 31, No. 2, Special Issue: The Aesthetics of Fascism, pp. 245–252 (April, 1996)

¹¹⁸ Henry Friedlander and Johnpeter Horst Grill, *The Origins of Nazi Genocide: From Euthanasia to the Final Solution*, *History: Reviews of New Books*, Vol. 25, No. 1 (2010)

¹¹⁹ UDHR *Supra* note 1.

¹²⁰ ICESCR *Supra* note 4.

ic meaning to culture is that the meaning may be over or under inclusive. We start with the effort to develop a clarified meaning of art and culture by examining the international effort to prescribe standards for the international safeguarding of the intangible cultural heritage (ICH). In the 1970's the international community began to consider the idea of expanding the meaning of culture beyond the reference to tangible products. The implications of this were that culture implicated spiritual values, which could be seen as an aspect of art as well. The perspectives of various stakeholders from Africa, Asia, and Latin America added to this discourse the idea that culture including the intangible aspect of it was essentially a matter of accounting for living tradition.¹²¹ These discourses led to the Mexico City Declaration on Cultural Policies (1982), which provided a comprehensive and holistic explanation of culture.

“The whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs.”¹²²

Cultural tradition is therefore, a peoples' cultural inheritance. This inheritance includes “both tangible and intangible works through which the creativity of that people finds expression: languages, rites, beliefs, historic places and monuments, literature, works or art, archives and libraries.”¹²³ The sum total of creation based on tradition, it was, subsequently recognized, reflected co-expectations in the community and were a critical cluster of symbols of community solidarity and correspondingly of community identity.¹²⁴ In 1989, the UNESCO General Conference adopted a specific international legal instrument on the ICH. This was the Recommendation on the Safeguarding of Traditional Culture and Folklore (RSTCF).¹²⁵ The RSTCF articulated principles for facilitating conservation, preservation, distribution, and the legal protection of folklore. ICH remained on UNESCO's agenda and was subject to further action on the part of UNESCO. Further action included, inter alia, an initiative under the title, Living Human Treasures.¹²⁶ This initiative focused on states to grant official recognition of uniquely talented traditional transmitters of arts and crafts. These transmitters were to be identified as hav-

¹²¹ Federico Lenzerini, *Intangible Cultural Heritage: The Living Culture of Peoples*, The European Journal of International Law, Vol. 22 no. 1 (2011)

¹²² See UNESCO, *Declaration on Cultural Policies*, World Conference on Cultural Policies, Mexico City (July 26 – August 6, 1982)

¹²³ *Id.* at paragraph 23.

¹²⁴ *Supra* note 49.

¹²⁵ *Recommendation on the Safeguarding of Traditional Culture and Folklore*, adopted at the twenty-fifth session of the General Conference of UNESCO (1989)

¹²⁶ Proposed by the Executive Board of UNESCO in 1993 as a means of implementing the 1989 Recommendation. See *Decisions Adopted by the Executive Board at its 142nd Session* [UNESCO Doc. 142 EX/Decisions, 10 Dec. 1993] and the Guidelines – Living Human Treasures sent to Member States by UNESCO on 16 Sept. 1998.

ing an elevated level of knowledge and skill for the creation of ICH. The program was also designed to stimulate the transmission of such knowledge and skills to the younger generation.

In 1996, important insights were generated in the Report of the World Commission on Cultural Development.¹²⁷ Among the insights was the challenge that only elitist contributions would be given preference. In short, there was a concern that art and culture be more democratic and more inclusive:

“[d]evelopments presents new challenges for heritage conservation. Not only is there a huge gap between means ad ends but our definitions are still too narrow. They are biased towards the elite, the monumental, the literate and the ceremonial. There is a need to reassess such conceptions as well as to develop better methods of identifying and interpreting our heritage. It is essential to understand the values and aspirations that drove its makers, without which an object is torn from its context and cannot be given its proper meaning. The tangible can only be interpreted through the intangible.”¹²⁸

In 1997, the UNESCO General Conference adopted a resolution to underscore the importance of ICH for peoples and nations. The Resolution essentially required proclaiming forms of cultural expression as recognized as part of “the oral heritage of humanity”.¹²⁹ The UNESCO Executive Board also launched in 1998 The Program for the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity.¹³⁰ The primary objective of this initiative was to identify and recognize the most outstanding expressions of ICH. The process envisioned nominations by member states of UNESCO. It provided a wider definition of ICH:

“[t]he oral and intangible heritage has gained international recognition as a vital factor in cultural identity, promotion of creativity and the preservation of cultural diversity. It plays an essential role in national and international development, tolerance and harmonious interaction between cultures. In an era of globalization, manu forms of this cultural heritage are in danger of disappearing, threatened by cultural standardization, armed conflict, the harmful consequences of mass tourism, industrialization, rural exodus, migration and environmental deterioration.”¹³¹

The masterpieces project, which required an appraisal of outstanding value, required criteria of appraisal, which would appear to be at least implicitly informed by the intellectual culture of aesthetic appraisal. These works have to be considered masterpieces of human genius and of enduring value. There is ongoing research about the nature of ICH and the problems of characterizing its intrinsic and dura-

¹²⁷ *Our Creative Diversity*, Report of the World Commission on Cultural Development, Paris, UNESCO, 1995 (Revised edition 1996)

¹²⁸ See J. Perez de Cuellar, et al., *Our Creative Diversity* (1996)

¹²⁹ The Oral Heritage of Humanity, Res. No. 23 of November 12, 1997.

¹³⁰ *Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity*, The Regulations relating to the Proclamation were adopted by the Executive Board at its 155th session (Decision 155 EX/3.5.5) in 1998

¹³¹ *Supra* note 49.

ble value. Some of these issues capture the tension between the subjective creative orientation and the more objective appraiser evaluator role. These are matters that continue to be discussed, and developed, in UNESCO circles.

The specific connection of ICH to human rights is that the protection of cultural rights is also connected, in this instance, with religious or confessional beliefs. Thus, the right to freedom of thought, conscience, and religion (Article 18 of the UDHR and Article 18 of the International Covenant on Civil and Political Rights (ICCPR)¹³²) are implicated. The Human Rights Committee (HRC) comment on Article 18 clarifies;

“[t]he freedom to manifest religion or belief in worship, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as *various practices integral to such acts*, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.”¹³³

The scope of cultural rights, which implicate religion, also falls within the compass of Article 27 of the ICCPR. Article 27 stipulates “in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be deny the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.”¹³⁴ The HRC has clarified Article 27 suggesting that “positive measures by states may... be necessary to protect” the minorities’ enjoyment of cultural rights.¹³⁵ Article 27 is reproduced in Article 30 of the International Convention on the Rights of the Child (ICRC), which requires education to enhance the cultural identity, language, and values of the child from which community it emerges.

We now shift our analysis from ICH to the concept of culture, conventionally used. This requires as well that we examine artistic values from the perspective of Article 15(I)(A) of the ICESCR.¹³⁶ In this treaty, states recognized the right of everyone to take part in cultural life, which includes art. Scholars have identified at least three overlapping concepts of culture. These are as follows;

¹³² *Supra* note 8, Article 18

¹³³ Human Rights Committee, General Comment 22, Art. 18 (Forty-eight session, 1993), UN Doc. HRI/Gen/1/Rev. 1 at 35 (1994) paragraph 4 (emphasis added)

¹³⁴ *Supra* note 60 Article 27.

¹³⁵ Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U. N. Doc. HRI/GEN/1/Rev. 1 at 38 (1994).

¹³⁶ ICESCR *Supra* note 4 Article 15(I)(A).

1. "culture" in the classic highbrow sense, meaning the traditional canon of art, literature, music, theater, architecture, and so on;
2. "culture" in a more pluralist sense, meaning all those products and manifestations of creative and expressive drives, a definition which encompasses not only "high" culture but also more mass phenomena such as commercial television and radio, the popular press, contemporary and folk music, handicrafts and organized sports; and
3. "culture" in the anthropological sense, meaning not simply the products or artefacts of creativity and expression (as envisaged by the first two definitions) but, rather, a society's underlying and characteristic pattern of thought – its "way of life" – from which these and all social manifestations spring.¹³⁷

In reviewing these three categories, which are implicated in the concept of culture in Article 15, we would suggest that the first category, namely the high culture category, is the one that approximates the idea of a human right to protect and promote aesthetics. We would suggest that to regard a work of art as falling within the compass of a fundamental human right requires that its representation be of deep cultural salience, that its values partake of a universalistic dimension and that its quality as a work of art has indefinite endurance. The other categories would seem to us not to be as fundamental. Here we are dealing with interests of social and community importance but on the scale, that elevates it to a high aesthetic stature. These forms of interests may be easily protected by ordinary common law or civil law concepts, or by ordinary legislation within the state or by recourse to the basics of state constitutional law.

The scope of Article 15 implicates the prohibition of discrimination from the right to participate in culture and it also imposes a positive obligation on the part of the state to promote participation in culture and the arts, this includes not only the enjoyment of cultural creativity but also the right to be a creator of such products.

Other human rights implications, therefore, of Article 15 include the obligation on the part of the state to fund culture, the obligation to protect and support the freedom of creative activity as well. The drafters of Article 15 appeared to have been partial to the issue of highbrow culture and, therefore, reflected a partiality to the intellectual elitism reflected in the critical aesthetic tradition. UNESCO has attempted to soften the distance between highbrow culture and popular culture. The assumption behind this seems to be that the democratization of culture is a good thing. It also carries the implication, perhaps, that the trend toward democratization is a trend that is more compatible with the foundations of human rights values. UNESCO suggested in its recommendation on participation in cultural life in 1976 the following:

¹³⁷ Roger O'Keefe, *The "Right to Take Part in Cultural Life" under Article 15 of the ICESCR*, *The International and Comparative Law Quarterly*, Vol. 47, No. 4, pp. 904–923 (October 1998)

“culture is not merely an accumulation of works and knowledge which and elite produces, collects and conserves in order to place it within the reach of all...¹³⁸ [Rather], the concept of culture has been broadened to include all forms of creativity and expression of groups or individuals.”¹³⁹

The issue of human rights and the popularization of culture have been an important part of the agenda and discourse of the Committee on Economic, Social, and Cultural Rights (CESCR) as well, which is also inclined to a less elitist approach to culture and art.¹⁴⁰ The activity of UNESCO and the CESCR has slowly grounded the principle that the human right to take part in cultural life is established. The critical question remains, what precisely the scope of this right is as an international standard of global reach. We conclude this paper by reference to other areas in which parallel developments had occurred in the context of international human rights law. First, it has been the practice to now recognize that there is a category of culture that is described as traditional knowledge.¹⁴¹ Traditional knowledge implicates science and the arts. In both of these areas, traditional knowledge also implicates intellectual property.¹⁴² In the context of arts, it would be the question of the appropriation of forms of art for which at least in theory there would be a copyright pecuniary interest. With regard to traditional knowledge in areas of plants and genetic resources, the question would be, whether these are forms of intellectual property that should be protected under World Intellectual Trade Organization (WIPO) and the TRIPS agreement.¹⁴³ If, as is now the case, there are not covered by a reading of these instruments, should these instruments be revised to ensure that the economic rights of the originators of this knowledge is given a degree of protection in these specialists regimes. The specific human rights instruments of relevance are Article 15(A) and 15(C) ICESCR and Article 27 ICCPR. In addition, there are a number of international instruments and institutions that implicate the property aspect of cultural and intellectual property, at least of indigenous

¹³⁸ *Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It; Preamble subparagraph (c)*, UNESCO General Conference, meeting in Nairobi from 26 October to 30 November 1976, at its nineteenth session.

¹³⁹ *Id.* paragraph 3(a).

¹⁴⁰ The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

¹⁴¹ Hans Morten Haugen, *Traditional Knowledge and Human Rights*, *The Journal of World Intellectual Property* (2005)

¹⁴² *Id.*

¹⁴³ *Agreement on Trade-Related Aspects of Intellectual Property Rights – The TRIPS Agreement* is Annex 1 C of the Marrakesh Agreement Establishing the World Trade Organization (WTO), signed in Marrakesh, Morocco on 15 April 1994.

people. These include: the United Nations Environmental Program,¹⁴⁴ the Convention on Biodiversity,¹⁴⁵ the Food and Agriculture Organization of the United Nations,¹⁴⁶ the United Nations Working Group on Indigenous Populations,¹⁴⁷ United Nations Educational, Scientific and Cultural Organization,¹⁴⁸ the International Labor Organization,¹⁴⁹ the World Health Organization,¹⁵⁰ the United Nations Conference on Trade and Development,¹⁵¹ the World Trade Organization,¹⁵² the United Nations Development Program,¹⁵³ Open-Ended Ad Hoc,¹⁵⁴ Intergovernmental Panel on Forests,¹⁵⁵ and the World Intellectual Property Organization.¹⁵⁶ This suggests that the fullest exploration of the idea of an aesthetic value sustained by human rights requires a great deal more working effort in a wide range of contexts and institutions before we can complete the story.

VIII HUMAN RIGHTS VALUES AND THE ART/AESTHETIC PROCESS

According to Huijer, in Foucault's view, an aesthetics of existence differs from an ethics that is focused on chastity and purity, in the sense that the social process of an aesthetics of existence involve:" (1) determining the part of oneself that requires an ethical attitude, (2) establishing one's relation to the prescription of an aesthetics of existence, (3) a critical, active and 'experimental' attitude towards

¹⁴⁴ *The United Nations Environmental Program (UNEP) Organization Profile*, (1992) <http://www.unep.org/PDF/UNEPOrganizationProfile.pdf>

¹⁴⁵ *Convention on Biological Diversity (CBD)* (1992) <http://www.cbd.int/doc/legal/cbd-en.pdf>

¹⁴⁶ *Food and Agriculture Organization of the United Nations (FAO)* (1945) <http://www.fao.org/about/en/>

¹⁴⁷ *United Nations Working Group on Indigenous Populations (WGIP)*, subsidiary body within the structure of the United Nations (1982) <http://www2.ohchr.org/english/issues/indigenous/groups/groups-01.htm>

¹⁴⁸ *United Nations Educational, Scientific and Cultural Organization (UNESCO)* (1921) <http://www.unesco.org/new/en/unesco/>

¹⁴⁹ *International Labor Organization (ILO)* (1945) <http://www.ilo.org/global/lang-en/index.htm>

¹⁵⁰ *World Health Organization (WHO)* (1948) <http://www.who.int/en/>

¹⁵¹ *United Nations Conference on Trade and Development (UNCTAD)* (1964) <http://www.unctad.org/en/Pages/Home.aspx>

¹⁵² *World Trade Organization (WTO)* (1995) <http://www.wto.org/>

¹⁵³ *United Nations Development Program (UNDP)* (1965) <http://www.undp.org/content/undp/en/home.html>

¹⁵⁴ *Open-Ended Ad Hoc*, <http://www.un.org/en/ga/about/subsidiary/other.shtml>

¹⁵⁵ *Intergovernmental Panel on Forests and Intergovernmental Forum on Forests (IPF/IFF)* (1995–2000) http://www.un.org/esa/forests/ipf_iff.html

¹⁵⁶ *World Intellectual Property Organization (WIPO)* (1967) <http://www.wipo.int/portal/index.html.en>

oneself, and (4) a striving to transform life into a work of art.¹⁵⁷ In short, the social process of an aesthetics of existence can be summarized in the following four prongs;

1. Problematization
2. Mode of subjection
3. Working on oneself
4. Focus on an aesthetics of existence¹⁵⁸

Foucault's view as summarized above is essentially consistent with the effort to develop a social process of aesthetics that is more amenable to an appreciation of the important human rights values that are implicated in it.

In the introduction to this paper, we suggested that the model of communications theory might facilitate our appreciation of the human rights dimensions of aesthetics as a human rights value. The model poses a series of questions, each of which directs us to issues of normative importance. For example, we initiate a consideration of the model with the question of who the communicators are. Here, the focus on who the communicators are implicates a clarification of the important stakeholders and the questions of the right to participate in the creation, appraisal, and distribution of art and aesthetics. Since art and aesthetics are integral to communication a further critical question would be, through what channels are art and aesthetics communicated. This raises the question of access to the channels, restraints on access to the channels, the nature and extent of the channel, as a communications device, and the normative implications of distribution via a channel. The communication will also target an audience, and the question then becomes, what right of access does the target audience has to the art and aesthetics that have been communicated by the communicators, through distinctive channels, to the larger target audience. Finally, it would be appropriate to understand the effects of art and aesthetic communication on the target audience and its influence on other values of social importance to the community. From this initial model we can then look at the way in which the other values that are implicated in human rights have an influence on the idea of the human rights implicated aesthetic values.

A. Rectitude and Aesthetics

We start with the human rights value of rectitude.¹⁵⁹ Article 18 of the UDHR stipulates that “[e]veryone has the right to freedom of thought, conscience and religion”.¹⁶⁰ In that same way, Article 18 of the ICCPR stipulates that “[e]veryone shall have the right to freedom of thought, conscience and religion”.¹⁶¹ We stress

¹⁵⁷ Marli Huijter, *The aesthetics of existence in the work of Michel Foucault*, *Philosophy & Social Criticism*, Vol. 25 No. 2, pp. 61–85 (1999) – citing Foucault, 1984 c, DE IV: 383–411

¹⁵⁸ *Id.*

¹⁵⁹ McDougal, Lasswell and Chen *Supra* note 48.

¹⁶⁰ UDHR *Supra* note 1, Article 18.

¹⁶¹ ICCPR *Supra* note 9, Article 18.

the relation between this value and aesthetics because thought and conscience and/or religious orientation are frequently fertilized in the unconscious process of the artist and aesthete.¹⁶² In this sense, this is a freedom that is absolutely indispensable to the element of creativity which may be expressed ultimately as art, beauty, and artistic experience. It is therefore so fundamental to the idea of being human, that it is impossible to imagine human creativity happening if this freedom is destroyed or disparaged. In this sense, the freedom of conscience and thought is the characteristic that distinguishes humanity and therefore it connects art and aestheticism as a foundation of individual and collective coexistence.¹⁶³ This freedom may also be joined with the freedom expressed in Article 19 of the UDHR. Article 19 states that “everyone has a right to freedom of opinion and expression”.¹⁶⁴ This includes the right to receive and impart information and ideas through any channel regardless of boundaries. These articles provide a central normative guideline for the communications theory approach outlined above in relation to the human rights value of rectitude.

B. Power and Aesthetics

We now come to the human rights values implicated in the value of power.¹⁶⁵ The text of the UDHR,¹⁶⁶ ICCPR,¹⁶⁷ and the ICESCR¹⁶⁸ lists an ample range of articles as implicated in the human rights dimensions of power. The issues, which implicate artistic creativity and aesthetics, involve the use of power to sustain or undermine participation on these processes.¹⁶⁹ In this sense, Marli Huijer, studying

¹⁶² See generally Booth, W., *Why Banning Ethical Criticism is a Serious Mistake*, Philosophy and Literature (Vol. 22, 1998); See generally Beardsmore, R. W., *Art & Morality*, London: Macmillan (1971); See generally Beardsley, M. C., *Aesthetics: Problems in the Philosophy of Criticism*, New York: Harcourt, Brace & World, Inc. (1958)

¹⁶³ *Id.*; See generally John Bagnell Bury, H. J. Blackham, *A History of Freedom of Thought*, IDEA (July 1, 2007)

¹⁶⁴ UDHR *Supra* note 1, Article 19.

¹⁶⁵ McDougal, Lasswell and Chen *Supra* note 48.

¹⁶⁶ UDHR *Supra* note 1, Article 7, 8, 9, 10, 11, 13, 14, 15, and 21.

¹⁶⁷ ICCPR *Supra* note 9, Article 1(1) and (3), 2(2) and (3), 9, 11, 12, 13, 14, 15, 24(2) and (3), 25, 27

¹⁶⁸ ICESCR *Supra* note 4, Article 1(2) and (3)

¹⁶⁹ The targeting of artists in the USSR, See *Supra* note 14 – It may also be noted that during the period of political notoriety in the US led by Senator McCarthy, a campaign of political correctness targeted artists and intellectuals nationwide. Among the most notorious legacy was the blacklisting of Hollywood artists and writers. See generally Barzman, Norma, *The Red And The Blacklist: The Intimate Memoir of a Hollywood Expatriate*, New York: Thunder's Mouth/Nation Books (2004); See also Schrecker, Ellen, *The Age of McCarthyism: A Brief History with Documents*, New York: Palgrave (2002); See also Fried, Albert, *McCarthyism, The Great American Red Scare: A Documentary History*, New York and Oxford: Oxford University Press (1997)

Foucault's analysis of an aesthetic of existence, summarized Foucault's idea of power and its relation to aesthetics as follows:

"[P]ower [i]s a wide range of links among forces that are ever-present and come from all over: 'Omnipresence of power ... because it is produced at every moment in time, at every point or rather in every relation from one point to another. Power is all over, which does not mean that it contains everything, but that it comes from everywhere. Power is non-subjective, is not linked to a person or institution, cannot be personified in a figure like the monarch or the father, and has no hold on subjects. Power is not a property or possession, but a plurality of intentions that perpetually clash and struggle, so that changes continually occur. They are actions that provoke reactions: changes, differentiations, reversals, reinforcements, subjugations or resistances. Power conceived as power relations does not have the negative connotation of domination or oppression that is to be combated in the name of humanity.

In the play of power relations, there are simultaneous and ubiquitous resistances that are focused on transforming the power relations. Resistances can weaken, sabotage or undermine power relations or have them change their direction. As 'opponent', resistance can be seen as a form of freedom: not a freedom the subject would possess in order to exert power or offer resistance, but a 'freeness' as opposed to power. Freedom in the form of resistance is a condition for exerting powers. Without resistance, power relations would have the connotation not of forces, but of domination. Since power relations come up against resistances, there is some manner of 'agonism': a heated struggle in which freedom and power provoke and incite each other."¹⁷⁰ (Citations Omitted)

In this sense, artists and aesthetes, individually, do not represent significant social power. They therefore require associational freedoms to support their, often misunderstood, contributions to culture. Central to the issue of power and aesthetics is the importance of the individual perspectives of the participators. These perspectives require the capacity of the participants to discover and develop latent artistic and aesthetics capabilities. These, therefore, implicates the right to acquire and use artistic capability. The freedom of movement may be a vital right for the artist and aesthete, to experience and share these values cross-culturally and globally. The value of power is challenged by the ethic of democracy. The critical question is, whether art and aesthetics are factors in promoting, sustaining, and preserving democracy.¹⁷¹ The institutional forms of artistic association or aesthetic community remain small and fragmented but the institutionalization of peer groups are a critical power dimension for the protection of the integrity of artistic creativity and aesthetic appreciation. When the creative arts are under siege, it is important for artists and aesthetes to mobilize other values as basis of power in the defense of artistic integrity. This requires artists and aesthetes to be sensitive to the strategic value of creativi-

¹⁷⁰ Huijter *Supra* note 142.

¹⁷¹ Jason Frank, *Aesthetic Democracy: Walt Whitman and the Poetry of the People*, *The Review of Politics* 69, 402–430 (2007)

ty and aesthetic appraisal in order to generate non-coercive limits on the possibility that their work will be repressed. A central aspect of the relationship of power to art and aesthetics is the ability of aesthetics and art to carve out a zone of civic order as an aspect of a recognized domain of civil society. The importance of this zone of civil society is that it serves as a structural limitation on the power of the state to censor, repress, and victimize the stakeholders in the artistic and aesthetic community.

C. Enlightenment and Aesthetics

Another important value of central importance to art and aesthetics is the human rights value of enlightenment.¹⁷² Enlightenment is also textually implicated in some of the articles of the UDHR,¹⁷³ ICCPR,¹⁷⁴ and the ICESCR¹⁷⁵ as well. One of the most foundational contributions that art and aesthetics make to the human prospect is that it illuminates the deepest structure of human value and human experience in a form that is universalistic and represents a memorial to endurance. In this sense, we can draw attention to Kant's famous definition of Enlightenment:

"Enlightenment is man's release from his self-incurred tutelage. Tutelage is man's inability to make use of his reason without direction from another. Self-incurred is this tutelage when its cause lies not in lack of reason but in lack of resolution and courage to use it without direction from another. Sapere aude! "Have courage to use your own reason!" – that is the motto of enlightenment."¹⁷⁶

In this sense, art and aesthetics states a critical claim to its outcomes, which contribute to optimizing the shaping and the sharing of enlightenment. In short, Enlightenment offers many useful tools for the individual's possibilities to effect changes in his/her self as well as in his/her historical situation.¹⁷⁷ This, therefore, represents an important value relating to participating in both the generation and receipt of enlightenment. The universalistic nature of this kind of contribution would therefore oppose restrictions based on invidious discriminations based on race, religion, gender orientation, lineage, etc. The perspectives of enlightenment provide an additional justification for creative art and its aesthetics appreciation. In the context of social practice there is an attractive connection between the institutions of education and enlightenment and the processes of art and aesthetics. However, there are institutions outside of formal education that are important to the generation of enlightenment as well. It is important that when artists and aesthetes consider threats to enlightenment, they are able to mobilize other value institutional processes to defend the enlightenment function of art and aesthetics. Finally, the strategies of enlightenment in the context of art and aesthetics give great

¹⁷² McDougal, Lasswell and Chen *Supra* note 48.

¹⁷³ UDHR *Supra* note 1, Articles 19, 22, 26 and 27.

¹⁷⁴ ICCPR *Supra* note 9, Article 19 and 20.

¹⁷⁵ ICESCR *Supra* note 4, 13, 14, and 15.

¹⁷⁶ Immanuel Kant, *Practical Philosophy*, ed. and translated by Mary J. Gregor, New York: Cambridge University Press, p. 7. (Translation has been altered) (1996)

¹⁷⁷ Anita Seppä, *Foucault, Enlightenment and the Aesthetics of the Self* (2004)

importance to all forms of communication that are relevant to the promotion and defense of enlightenment values in society.¹⁷⁸

D. Wealth and Aesthetics

We now come to the implications of wealth for the artistic and aesthetic process.¹⁷⁹ The textual basis for the value of wealth in the human rights context is found in UDHR,¹⁸⁰ the ICCPR,¹⁸¹ and the ICESCR¹⁸² as well. Artists and aesthetes require a material foundation for them to perform their work of produce and creating art and providing aesthetic appraisal of it. It is, therefore, appropriate that the material basis of this form of social activity receives, at the very minimum, basic access to income, social security, and an alleviation of poverty.¹⁸³ Additionally, there is the issue of being justly rewarded for meritorious contributions. It is recognized that if there is a right to culture, it may be that those who participate in this process should received material sustenance from the market and for those who have not access the market, there should be some mechanism for the state to support meritorious arts and artists. A problem in industrialized societies is the impact of commercialization on art.¹⁸⁴ At which point does the influence of commercialization change the focus and integrity of both the artist and the aesthete. For example, it is possible that modern techniques of marketing use artistic creativity but then shade its orientation to the priority of marketing goods for profit. Here, art may therefore be in a sense subverted to trigger the emotions directed at instant gratification of the consumer. In this sense, when art send out such powerful signals it in effect makes the autonomous individual now subject to the compulsions of gratification.¹⁸⁵ In today's society, where the channels of communication have been revolutionary, we have to work through the consequences of art, mass communications, and the defense of basic human rights values.

E. Well-Being and Aesthetics

We now come to the human rights values implicated in well-being.¹⁸⁶ Well-being values are also textually grounded in the UDHR,¹⁸⁷ the ICCPR,¹⁸⁸ and the ICE-

¹⁷⁸ *Id.*; See also Michael A. Peters, *Education, Creativity and the Economy of Passions: New Forms of Educational Capitalism*, Thesis Eleven 96: 40 (2009)

¹⁷⁹ McDougal, Lasswell and Chen *Supra* note 48.

¹⁸⁰ UDHR *Supra* note 1, Articles 4, 17, 22, 23, and 27(1).

¹⁸¹ ICCPR *Supra* note 9, 1(2) and 8.

¹⁸² ICESCR *Supra* note 4, Articles 6, 7, 8, 9 and 10.

¹⁸³ Punabantu, Siize, *The Origin of Wealth*, MPRA Paper No. 24730, posted 03 (September 2010)

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ McDougal, Lasswell and Chen *Supra* note 48.

¹⁸⁷ UDHR *Supra* note 1, Articles 3, 5, 22, 24, and 25.

¹⁸⁸ ICCPR *Supra* note 9, Articles 6, 7, and 10.

SCR.¹⁸⁹ The issues of well-being implicate the rights of artists and aesthetics, as well as the impact of art and aesthetics, on the larger community.¹⁹⁰ For example, because art and aesthetics often undermines convention, humdrum, and tradition, it is exposed as representing something that deviates from the stability of expected patterns of cultural orientation. This suggests that artists and aesthetics are, sometimes, represented as a vulnerable and suspect class. Hence, there would be a concern that the well-being of this class receives special human rights consideration in terms of life, safety, comfort, and health. Additionally, artistic work may be an important factor, which contributes to somatic development as well as healthy psychological progress in society. Artists and aesthetes, therefore, have an interest in the way in which well-being secures their bodily integrity and mental health and their ability evolve and thrive artistically.

F. Skill and Aesthetics

The next important human right value is the one implicated in skill.¹⁹¹ The human rights dimensions of this value are also to be found in the text of the UDHR,¹⁹² and the ICESCR.¹⁹³ The value of skill, as a human right, rests in the demand for the optimal acquisition of artistic and aesthetic skills.¹⁹⁴ In this sense, Jerome Stolnitz, in his work titled *The Artistic and the Aesthetic "in Interesting Times"*, explains the following about the value of skill:

“Questions of the nature, purpose, and value of skill have long been contentious but the adversaries have agreed that skill is integral to art, that art without skill is not thinkable. This certitude goes as far back as the Greek concept of *technē*. To give up this certitude would render our idea of art unrecognizable.”¹⁹⁵

This statement implicates the rights to participate in processes by which artistic and aesthetic skill may be acquire the social conditions necessary to nurture and encourage the outcomes of latent talent and to ensure that there is no denial of capability skills by processes of invidious discrimination. In general, skills are one of

¹⁸⁹ ICESCR *Supra* note 4, Articles 7, 10, 11, and 12.

¹⁹⁰ See generally Birgit Cold, *Aesthetics, well-being and health (essays within architecture and environmental aesthetics)* (2001); See also Tereso, Susana, *Environmental education through art*, International Journal of Education Through Art, Volume 8, Number 1, 28, pp. 23–47(25) (February 2012); See also Eric Evans, *Inquiry, Art and Consummatory Experience: A Deweyan Account of the Instrumental and Aesthetic Modes in Human Well-Being*, Open Access Theses and Dissertations from the College of Education and Human Sciences, Paper 128 (December 2011)

¹⁹¹ McDougal, Lasswell and Chen *Supra* note 48.

¹⁹² UDHR *Supra* note 1, Article 27.

¹⁹³ ICESCR *Supra* note 4, Articles 6(2) and 13(2)(b).

¹⁹⁴ Sophia S. M. Law, *An Interdisciplinary Approach to Art Appreciation*, New Horizons in Education, Vol. 58, No. 2 (October 2010); See also Jerome Stolnitz, *The Artistic and the Aesthetic "in Interesting Times"*, The Journal of Aesthetics and Art Criticism, Vol. 37, No. 4, pp. 401–413 (Summer, 1979)

¹⁹⁵ Jerome Stolnitz, *id.*

the most important values that develop the capability skills of the human being, and this is particularly so for artistic and aesthetic skills; it is therefore, an important opportunity and capability skill that is central to the artists' aesthetic process and its intergenerational transmittal.

G. Respect and Aesthetics

Another important human rights value that will influence the scope of art and aesthetics as a human right value is the value of respect.¹⁹⁶ Respect is given textual expression in the UDHR,¹⁹⁷ the ICCPR,¹⁹⁸ and the ICESCR¹⁹⁹ as well. The most foundational aspect of the respect value is that individual artists and aesthetes are given, as a human right, the fundamental freedom of choice to participate in the artistic/aesthetic social process and as well to participate with optimum freedom of choice in the other value processes that serve to sustain the role of artists and aesthetes.²⁰⁰ Freedom of choice of also assumes equality of opportunity in the shaping and sharing of all values and an extinction of unfair discrimination for reasons irrelevant to opportunity and capability freedoms. Respect is also a value that incorporates deference as a human right. Deference here means that meritorious work would receive recognition, will be honored, and the individual will have a reputation that receives community wide respect. Art does not thrive when respect is depreciated by discrimination, political tyranny, and repression. In contexts where opportunity freedoms are obliterated, respect is correspondingly diminished. Needless to say, stakeholders in art and aesthetics must be particularly skilled in utilizing all basis of power and authority to enhance respect in general and to specifically enhance respect for the class of artists and aesthetes. Some forms of art may debase the value of respect. This includes the generation of race hatred, or group hatred, symbols, which demonized vulnerable out-groups or others. It is therefore an important human rights concern that the freedom of choice implicated in respect will not be used to destroy this very value.

H. Affection and Aesthetics

We now come to the final basic value to complete the human rights picture. This is the value of affection.²⁰¹ It is also textually expressed in the UDHR,²⁰² the

¹⁹⁶ McDougal, Lasswell and Chen *Supra* note 48.

¹⁹⁷ UDHR *Supra* note 1, Articles 1, 2, 4, 6, 7, and 12.

¹⁹⁸ ICCPR *Supra* note 9, Articles 2(1), 3, 4(1), 7, 8, 16, 17, 24(1), 25, 26, and 27.

¹⁹⁹ ICESCR *Supra* note 4, Articles 2(2) and (3) and 3.

²⁰⁰ See generally Heather Lea Wainwright, *New paradigms in aesthetics: The challenge of environmental art*, ProQuest (2006); See also Donald Arnstine, *Art Education and the Economic Transformation of the Future*, Journal of Aesthetic Education, Vol. 13, No. 2, pp. 83–101 (April, 1979)

²⁰¹ McDougal, Lasswell and Chen *Supra* note 48.

²⁰² UDHR *Supra* note 1, Article 16.

ICCPR,²⁰³ and the ICESCR.²⁰⁴ There are many dimensions to the value of affect. Affect may be implicated in the issue of loyalty and solidarity, it may be implicated more generally as an important psycho-socio outcome of positive sentiment, and it may be a critical emotional state in micro-social relationships implicating a more intense emotionalized version of affect, which is conventionally called “love”. Artists and aesthetes are often inspired by the idealization of love; and it has long been a theme of important and noble artistic expression. The central truth behind the affection value is that it is a value that implicates emotion and seems to give it a direction or orientation of normative salience. Let us for a moment consider the opposite value of affection in terms of emotion. We would be considering hate and related forms of negative sentiment. This suggests that emotion has large-scale political implications. In a nutshell, it is hard to conceive of the scale of gross human rights violations if those violations were not fed by negative sentiment, and reproduced in society as important outcomes of the social process. On the other hand, the commitment to a human rights oriented social process is also dependent in part on emotion, positive sentiment, a version of affection. When ordinary people establish an empathy, and a compassion that is global in its reach, it is a process which is sustained by positive sentiment. The critical insight is that art and aesthetics do have appeals to deeper emotional states. Thus, art may be a critical foundation for an approach to social process that is fed by positive sentiment and is therefore human rights centered. On the other hand, it is possible that some forms of art may be conditioned by negative sentiment and generates emotionalized sentiments that are human rights denying.

In the context of the stakeholders in art and aesthetics, the issue of affection, positive sentiment, and the idealization of love, may well be issues of great and fundamental importance. It is said that artists and aesthetes are highly sensitive and observant social participants. This sensitivity may emerge with a certain fragility in the structure of personality. In such a circumstance, such a personality does require the nurturing of relations, in micro-social settings, that provide for stability and for stronger emotional growth. In this sense, affection may be important to the personality stability of the stakeholders and which in turn may contribute to the forms of art that celebrate the dignity of the human being and the human community. The human rights preference given to the value of affection and its importance for aesthetic values is that individually and contextually we envision an improve human prospect if we work toward a society that optimally produces and optimally distributes the affection value.

IX Conclusion

This article has sought to contribute to a better understating of the relationship between aesthetics and fundamental human rights. The initial challenge was

²⁰³ ICCPR *Supra* note 9, Article 23.

²⁰⁴ ICESCR *Supra* note 4, Article 10(1)

to develop a more clarified conception of aesthetics as a social process in order to better mark those aspects of aesthetics that have clear human rights implications. This required us to contextualize the aesthetics process in terms of the generally accepted model of communications theory, and then to deepen the inquiry using this model as the broad architectural foundation for unpacking the social process of aesthetics. These ideas were put into the context of significant contributions from the specialists in this field to deepen the understanding of the nature of the social process of aesthetics. We saw in the literature the importance of personality, including both conscious and unconscious components of personality orientation. This stressed the uniqueness and individuation as well as creativity of aesthetics rooted in individual creativity. This initial step was then placed into the context of the autonomous appraiser of art, which process is an important part of the social construction of the meaning of artistic contribution. Therefore, the process of aesthetics involves an inter-determining relationship between the individual creator, the autonomous appraiser, and the larger cultural context. The foundation of the social process is essentially the interrelationship between personality and culture. References to such figures, as Pater and Freud, provide us with a deeper explanation of the psycho-socio dimensions of this process. It became apparent, therefore, that placing the social process in the context of the fundamental values behind modern human rights implied complexity in attempting to isolate a discrete aesthetic (as value)/institutional process specialized to the promotion of this value. Rather, an understanding of aesthetics as a value requires an integration of components and institutions of all the human rights values. We demonstrate toward the end of the article what such an approach might look like.

The article also contains concrete examples of the contextual reality of artistic representation and the values it implicates. We have drawn on the works of Picasso as well as the classical works of high quality film. These were used to illustrate the ubiquity of value implications in aesthetics. We have also drawn on efforts to drive aesthetics into political propaganda, and the dangers that this poses for human rights and human dignity. The last part of the article provides a survey of activity in international decision-making fora in seeking to clarify and ground the values of culture and the arts in concrete institutional decision-making. This development underlines that the agenda reminds a largely unfinished one. The article concludes by providing a provisional value-by-value explanation of the relationship of aesthetics to all the principal human rights values, that in the aggregate establish the idea of universal human dignity. We would submit that our article represents only an initial step in the full exploration of this challenging issue and we hope that other scholars will be attracted to this issue as an important matter for fuller, interdisciplinary, scholarly exploration.

