

Taking a rights approach to Scottish cultural policy

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1. INTRODUCTION

The Scottish Government has recently completed a consultation on the proposed Human Rights (HR) Bill,¹ designed to protect a range of economic, social and cultural rights. The Bill would incorporate into Scots law the UN's International Covenant on Economic, Social and Cultural Rights, as well as UN treaties on race (CERD), women (CEDAW) and disability (CRPD). It would also include environmental rights, rights for older people, and an equality clause, including provisions for LGBTI people.

Although the review covered cultural rights, including the right to participate in cultural life, relatively few cultural organisations responded directly to the consultation. Interviews conducted for this report suggest that while there is sympathy for a rights-based approach to cultural policy, the current Bill was not seen as a major opportunity for the sector. Given the timing, this was perhaps unsurprising. The cultural sector in Scotland, as in much of the UK, is facing a number of challenges, not least that of funding. During the period of the consultation on the bill, Creative Scotland, the country's cultural funding agency, confirmed a £6.6 million cut to its budget, 10 per cent of its overall funding.

A decade and more of austerity, which has had a severe impact on local authority funding, the continuing legacy of the Covid-19 pandemic and the high inflation rate, has left the cultural sector shattered and, in some cases, facing an existential crisis. At the same time, the sector itself remains fragmented and stratified by class, gender, ethnicity and disability both in terms of cultural consumption and

¹ The consultation closed on October 5th, 2023.

production.² The ‘creative economy’ model, which provided an economic rationale for public support for culture, is still enthusiastically promoted by policymakers, but for many in the cultural sector it represents a dead end, one which increases inequality through links to gentrification and a tendency to provide a few well-paid jobs and lots of low or unpaid work.

This crisis of funding is part of a wider, systemic crisis of public policy and the public realm, described by one group of academics as a time ‘when nothing works.’³ This includes apparent erosion in some of our democratic systems and structures and has also led to widespread feelings of disempowerment that affect not just the cultural sectors but all of us as citizens. Combined with concerns about the funding of the sector, therefore, it is perhaps not surprising that some interviewees expressed concern that cultural rights would be yet another thing that the sector would have to ‘deliver.’

It is unclear whether the Scottish Government’s current push for a rights-based approach will prove strong enough to dispel this sectoral apprehension. There is already legislation in Scotland that regulates local authority cultural provision, though there is little clarity on what ‘adequate cultural provision’ should mean.⁴ And the Scottish Government has, in the past, endeavoured to take this further, into the notion of cultural entitlement. In his famous St Andrews Day speech in 2003, Jack McConnell, the then First Minister, set out a vision of cultural rights, including the right to participate in cultural life, enjoy the arts and share in scientific advancement and benefits. In what was a radical move, that administration proposed that culture was placed ‘at the heart of government’, part of all policy frameworks, and promised to integrate cultural planning into the work of all local authorities. However, although the administration endorsed cultural rights and entitlements, it did not advocate enshrining them in legislation, and talk of cultural rights was de-emphasised in the Culture Bill that eventually emerged in 2007.

In December 2023, the Scottish Government refreshed its Action Plan for the Culture Strategy (originally launched in 2020), reinforcing the notion of ‘mainstreaming’ culture and emphasising its link with other public policy goals such as health and wellbeing. At the SNP’s autumn conference in October 2023,

² Brook, O, O’Brien, D and Taylor, M (2020) Culture is Bad For You. Manchester University Press.

³ Calafati, L, Froud, J, Haslam, C, Johal, S, and Williams, K (2023) When Nothing Works: From Cost of Living to Foundational Liveability. Manchester University Press.

⁴ Local Government and Planning (Scotland) Act 1982. Available at: <https://www.legislation.gov.uk/ukpga/1982/43/contents>.

the First Minister promised to double funding for culture over the next five years, an increase of £100 million and the first sign that the long funding squeeze may be ending. While there is undoubted scepticism in the sector, there is also some relief and anticipation. Any increased funding is likely to be met with increased expectations, particularly about the role that culture plays in wider policy aims. The danger is that the instrumentalisation of culture and its reduction to a specialised form of social policy may continue. Despite the reservations expressed, a human rights approach, which places the human need for personal and collective expression, autonomy, pleasure and knowledge at its centre, may actually prove helpful in moving us past this instrumentalist phase.

The legal issues and implications of enshrining cultural rights into Scots Law are covered elsewhere.⁵ My aim here is to consider how the ‘right to culture’ might be realised with respect to the cultural sector itself, that is, the arts, heritage and media. Background research for this paper consisted of a review of the relevant literature, including policy literature and, for further context, a small number of interviews. These took place with activists and cultural practitioners who either worked explicitly around human rights or had experience of policy and lobbying in this area. This paper is not intended as a comprehensive account of human rights and culture, which can be found elsewhere,⁶ but as an informed consideration of what problems a rights perspective might be able to address, how it might help tackle the intersectional inequalities that are manifest in the sector, and what new questions it may open up.

2. THE RIGHT TO CULTURE – BACKGROUND AND CONTEMPORARY APPROACHES

The right to participate in the cultural life of the community is a human right established by the UN’s 1948 Universal Declaration of Human Rights (UDHR) Article 27 and in the UN’s International Covenant on Economic, Social and Cultural Rights (ICESCR), where Article 15 enshrines ‘the right to take part in cultural life and enjoy the benefits of scientific progress.’ Unlike civil and political rights, enshrined in the other major UN treaty - the International Covenant on Civil and Political Rights (ICCPR) - social and economic rights are sometimes seen as

⁵ Mitchell, L, Webster, E and Camps, D (2023) Incorporating International Human Rights: The right to cultural life in Scotland. Human Rights Consortium Scotland.

⁶ See for example: Dugard, J (ed) (2020) Research Handbook on Economic, Social and Cultural Rights as Human Rights. Edward Elgar.

‘aspirational,’ to be advanced as fast as resources (and, realistically, politics) allow. In practice, this has meant that while the UN insists that both ICCPR and ICESCR are ‘universal, indivisible, interdependent and interrelated,’⁷ assessments of compliance or progress in both cases are treated rather differently. Civil and political rights are nearly always expected to be implemented in full, regardless of available resources, while full realisation of social, economic and cultural (ESC) rights are something that states can work towards progressively as the material situation allows.

Even within the category of ‘economic, social and cultural rights,’ cultural rights tend to be overlooked, and what cultural rights might look like in practice is rarely spelt out in legislation, the major exception being the right to education.⁸ Veal describes the right to cultural participation as ‘doubly neglected’ in the literature, as human rights literature tends to ignore the question of cultural participation, and the literature on cultural participation tends to ignore human rights.⁹ There is some truth to this, and it is reflected in the fact that the cultural sector itself tends to pay little attention to human rights discourse, even when lobbying governments for support, as we have seen in Scotland.

The perennial ‘what is culture’ question is dealt with via a broad and inclusive concept in Human Rights treaties rather than any attempt at definition. The UN’s Committee on Economic, Social and Cultural Rights characterises it as including:

- Ways of life – (sometimes referred to as an anthropological approach), which includes language, belief systems, rites and ceremonies, food, clothing and so on;
- Sport and games;
- Heritage and access to the natural and built environment;
- The arts (sometimes defined as oral and written literature, music and song), which is somewhat narrow – but elsewhere, including venues and institutions such as theatres, museums and galleries.¹⁰

In practice, most subsequent national legislation and implementation has focused on the very broad ‘ways of life’ notion, on the protection of minority languages

⁷ UN (1993) World Conference on Human Rights 1993 Vienna Declaration. United Nations.

⁸ Symonides, J (1998) Cultural rights: a neglected category of human rights, *International Social Science Journal* 50 (158), 559-571.

⁹ Veal, A. J. (2023) Cultural participation as a human right: holding nation states to account, *International Journal of Cultural Policy*, 29(6), 686-700.

¹⁰ UN Committee on Economic, Social and Cultural Rights (2009) General Comment No. 21. United Nations.

and the cultural practices of minoritised communities, and on heritage.¹¹ While these may be seen as existential rights and in greater need of protection, it is also true that the huge growth and vast importance of the global media sector, sports and popular culture have not featured prominently, if at all. Cultural rights are often spoken of as if they constitute a single right – the right to participate in cultural life, or the ‘right to culture,’ though in practice, there is no single right that can cover all the activities above, and instead cultural rights are often scattered across a range of legislation and policy.

This is the case with Scots law, which already protects some aspects of cultural rights, particularly those pertaining to language and education. The Gaelic Language Act of 2005 established Gaelic as the official language of Scotland, while the Education Act of 2016 imposes a duty on authorities to promote and support Gaelic Education. The UK’s Human Rights Act of 1998 embeds rights set out in the European Convention on Human Rights, and these include protection for freedom of expression and the right to religious practice.

While it is difficult to put cultural rights into practice, particularly once they are broadened to include the arts and heritage, the last 15 years or so have seen various attempts internationally to put them on a firmer conceptual footing. These include the Fribourg Declaration on Cultural Rights (2007),¹² which asserts the need to recognise individual and collective cultural identities and expression, Agenda 21 on Culture (2004), and the document Culture 21 Actions (2015). Agenda 21 is the name first given to an extensive UN Action Plan, launched in the wake of the 1982 Rio ‘Earth Summit’, and widely seen to have introduced the notion of ‘sustainability’, particularly into local government where the Agenda 21 plans were adopted. The majority of UK local authorities had an Agenda 21 plan by the late 1980’s focused on sustainability. The inclusion of culture as a central element of Agenda 21 did not happen until 2000, and alongside the Fribourg Declaration on Cultural Rights, helped to establish the idea of culture as an essential part of democratic citizenship.

The appointment in 2010 of Alexandra Xanthaki as UN Special Rapporteur for Cultural Rights has seen the development of an intersectional gender and

¹¹ See: Kraak, A (2017) Impediments to a human rights-based approach to heritage conservation: the case of Bagan, Myanmar, *International Journal of Cultural Policy*, 23:4, 433-445.

¹² Art27 Scotland (2023) The Fribourg Declaration. Available at: <https://art27scotland.org/the-fribourg-declaration/>.

disabilities perspective coming more forcefully into this work.¹³ This has included the publication of reports on the enjoyment of cultural rights by women on an equal basis with men¹⁴ and the impacts of fundamentalism on the cultural rights of women, as well as work on the importance of public space, artistic freedom and climate change.¹⁵ Xanthaki is a strong proponent of the idea of cultural rights, not just as part of the right to cultural consumption but as essential to the notion of full citizenship, an approach which, as discussed below, is becoming the standard for cultural rights thinking.

3. RECENT APPROACHES TO CULTURAL RIGHTS

In considering the possibilities for a human rights approach in Scottish cultural policy, there are several recent developments that may be drawn on. Barcelona, discussed later in this paper, demonstrates how far a rights-based approach might help re-imagine cultural policy.

The Porto Santo Charter, a result of Portugal's presidency of the EU in 2021,¹⁶ attempts to reset EU cultural policy in the wake of the Covid-19 pandemic. With its focus very firmly on the notion of citizenship, it seeks to steer a middle, or perhaps just different, way between ideas about the 'democratisation of culture' and 'cultural democracy'. While the former is seen as extending access to canonical culture – i.e., literature, film, and theatre widely deemed essential – the latter, 'cultural democracy', instead advocates for a more pluralistic, collaborative approach including greater stress on diverse, democratic production (as well as consumption) of culture. These distinctions, of course, have a significant historical lineage and are sometimes characterised as the differences between paternalistic approaches to society and 'bottom-up' ones, though this is something of a crude dichotomy which hides the sometimes-confused mix of both that characterises actual policy.

¹³ UN (2018) Report of the Special Rapporteur in the field of cultural rights. United Nations. Available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc3755-report-special-rapporteur-field-cultural-rights-note>.

¹⁴ UN (2023) Cultural rights of women. United Nations. Available at: <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/cultural-rights-women>.

¹⁵ UN (2023) Annual Reports: Special Rapporteur in the field of cultural rights. United Nations. Available at: <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/annual-reports>

¹⁶ NEMO (2021) Porto Santo Charter promotes the impact of culture in strengthening democracy. Network of European Museum Organisations. Available at: <https://www.ne-mo.org/news-events/article/porto-santo-charter-promotes-the-impact-of-culture-in-strengthening-democracy>.

The Charter's use of 'full cultural citizenship,' serves as an attempt to avoid the pitfalls of this dichotomy and find a middle ground. The limitations of 'access' alone to established culture have been thoroughly critiqued for several decades now, often in the belief that it results from a deficit model which sees citizens as in some way 'lacking' if they are unfamiliar with 'established' or 'elite' culture. However, while the Charter leans towards a cultural democracy line, reasonably asserting that it must, 'refuse stigmatizing hierarchies,' it is also wary of an approach that removes *any* notion of judgement, leading to 'a hyper valuation of local or specific cultural identities.'¹⁷ As such, it tries to speak up for some notion of common, shared or collective culture at a time of increased polarisation while also wanting to avoid the banality of the cliché that 'everyone/thing is creative.'

Art, of course, arises out of our ordinary lives, and the people who make it are ordinary – but doing an extraordinary thing. Recent attempts to measure, evaluate and define 'cultural value'¹⁸ have demonstrated how difficult it is to capture such a notion successfully. Perhaps the best that we can do is recognise the need for an ongoing social conversation about culture and that facilitating that conversation requires access to education in the broadest sense. We need spaces and places for it to happen and measures to ensure what Marks Banks describes as 'parity of participation'¹⁹ in that conversation.

The Rome Charter, which arose from the work of the World Organisation of United Cities and Local Governments (UCLG), was published in 2020, just as the Covid-19 pandemic took hold, and its language reflects the deep uncertainty of those times. Again, it is a charter rather than a set of policies, though it sees itself as a framework for cultural policies and planning and one that can be used in different national and urban contexts. Taking a capabilities approach, and thus heavily influenced by the work of Martha Nussbaum,²⁰ the charter seeks to promote culture's capacity to enable human wellbeing or flourishing.

Capabilities theory has been highly influential in thinking about cultural rights precisely because it considers human flourishing as the prime aim of society. Our 'capabilities' to imagine, think and reason, among other things, are the means of attaining that flourishing. These capacities are developed in part through cultural engagement or what Gross and Wilson call 'the substantive freedom to give form

¹⁷ The Porto Santo Conference (2021) The Porto Santo Charter: Culture and the Promotion of Democracy: Towards a European Cultural Citizenship.

¹⁸ See UKRI's AHRC Cultural Value Project, for example. Available at: <https://www.ukri.org/what-we-do/browse-our-areas-of-investment-and-support/ahrc-cultural-value-project/>.

¹⁹ Banks, M (2017) Creative Justice. Routledge.

²⁰ Nussbaum, M (2011) Creating Capabilities: the Human Development Approach. The Belknap Press.

and value to our experiences,' while recognising that those freedoms are hugely unequally distributed.²¹ Attempts to operationalise capabilities thinking have proved somewhat ineffective, for example, the use of 'wellbeing indices' by the UK Conservative government under David Cameron, which were coterminous with an austerity programme that systematically stripped away elements of people's wellbeing.

While Nussbaum's 'capabilities theory' states that human flourishing requires human agency or ability to pursue one's own notion of the good life, to do this in situations of poverty or severe insecurity is made far more difficult. Under such circumstances, questionnaires asking 'how you feel about life?' may seem rather beside the point. Therefore, her approach has been criticised for focusing too heavily on individual capabilities - whereas culture also requires collective capabilities which are built up through social relationships, community and place. Nussbaum does, however, recognise the importance of social institutions - from art galleries to nightclubs, faith communities to football grounds - that are central to the idea of cultural infrastructure. Together, capabilities theory and the idea of cultural infrastructure characterise what is distinctive about a rights-based approach to cultural policy.

The most comprehensive recent attempt to use cultural rights as the basis for actual cultural policy is that of Barcelona.²² Under the *Barcelona En Comú* administration headed by Mayor Ada Colau, the city produced a cultural rights plan, which is striking in its ambition and reach, touching on everything from culture and democracy to working conditions in the cultural sector and the collection policies of museums. The election of *Barcelona En Comú* in 2015, an organisation originating in the explosion of social movement politics that resulted from Spain's economic crisis in 2011/12, represented a break with cultural policy as usual. In a city undergoing a lengthy and unsustainable tourist boom, the exploitation of culture for economic and touristic purposes was recognised as problematic, and while serious curbs on tourism, beyond things like better regulation of Airbnb, would likely prove challenging, the decision was taken to re-focus cultural policy away from economic growth and onto community, the social economy and the cultural infrastructure.

²¹ Gross, J and Wilson, N (2020) Cultural democracy: an ecological and capabilities approach, *International Journal of Cultural Policy*.

²² See: Ajuntament de Barcelona (2022) *Fem Cultura: Barcelona Cultural Rights Plan*. Available at: https://www.barcelona.cat/aqui-es-fa-cultura/sites/default/files/2022-01/Pla%20Drets%20Culturals_Mesura_Pautes_AAFF_GB_0.pdf.

What is distinctive about the Barcelona plan is its focus on production as well as consumption such that the right to ‘participate’ becomes not just an ‘access’ concern but something that encompasses the right to create, to learn, to go out in the city and to produce culture, professionally or otherwise. When it talks about the necessity to ‘recognise and reinforce the cultural production fabric,’ it is not just referring to a new scheme for incubators or a ‘cultural hub,’ but to the sense that our collective social lives and experiences are where culture is ‘produced’ and defending one necessitates defending the other.

In addition to its stress on diversity and interculturality, protection of the Catalan language, commitment to decentralisation and the environment, the plan takes an explicitly feminist perspective or what it describes as ‘gender mainstreaming,’²³ declaring that: ‘public policies based on cultural rights must place explicit emphasis on gender equality, LGBTI rights and intersectional perspective.’²⁴ The policy proposed the creation of a gender mainstreaming unit in the ICUB, the main body responsible for cultural affairs; a training programme on gender mainstreaming in cultural management; the consideration of gender in all cultural funding; surveys of representation in the City Council workforce and protocols on sexual or gender-based harassment. Consistent with its focus on cultural infrastructure, a gender perspective was also extended to building and refurbishment regulation, stressing accessible design, as well as to the programming of performing arts, museum collections and even procurement policies.

With such an ambitious approach, it was perhaps inevitable that *Barcelona En Comú’s* plans ran into both disappointment and outright opposition. Changes, for example, in the leadership of major cultural institutions were slow, and there was disagreement about the *extent* to which a feminist perspective should take precedence over other concerns. In some cases, decentralising cultural institutions and handing them over to community management proved difficult, and there were conflicts between community managers and the professional expertise of curators or librarians. Some institutions, such as local libraries, which had been given over to community management, were returned to more traditional professional management.

²³ For further discussion see: Anna Villarroya & Marta Casals-Balaguer (2023) Feminist perspectives and cultural policies in Barcelona. *Cultural Trends*, 32:2, 155-170.

²⁴ Ajuntament de Barcelona (2022) *Fem Cultura: Barcelona Cultural Rights Plan*. Available at: https://www.barcelona.cat/aqui-es-fa-cultura/sites/default/files/2022-01/Pla%20Drets%20Culturals_Mesura_Pautes_AAFF_GB_0.pdf.

In 2023, *Barcelona En Comú* lost control of the city council in municipal elections, and it remains to be seen what will happen to the cultural plan it initiated. But it undoubtedly represents the most advanced attempt to use rights as the basis for all cultural policy rather than for discrete areas such as minority languages or migrant communities.

4. THE HUMAN RIGHTS BILL FOR SCOTLAND: CONSULTATION AND RESPONSES

The proposed Human Rights Bill for Scotland was published in June 2023, and the consultation closed in early October of the same year.²⁵ The Bill proposes a large number of additional rights that would have an impact on various areas of policy, including environmental policy, equality policy, housing, health, and education, as well as culture.

The Bill's broad aims are to:

- Build on existing human rights protections and incorporate into Scots law the ESC rights set out in the UN treaty ICESCR and three UN treaties on race (CERD), women (CEDAW) and disability (CRPD).
- Recognise and include the right to a healthy environment.
- Include a general equality clause aimed at providing equal access for everyone, including LGBTI people, to the rights in the Bill.
- Create and promote a multi-institutional approach so that Parliament, courts, and other public bodies work together to uphold a human rights culture.
- Ensure there are clear routes to remedy when people's rights have been infringed.

Central to these aims and a core principle of the Bill is the notion of human dignity, which is described in the consultation as the 'value that underpins all human rights.' As discussed above, while the consultation on the proposed HR bill produced a rich and interesting discussion, very little of that discussion focused on how this might affect cultural rights. The notion that all human beings should have the opportunity to live a life with dignity shows the influence of capabilities theory, and the Bill proposes using the concept of dignity as its 'key threshold' for determining that 'minimum core obligations (MCOs)' are met. As described above, ESR rights are generally treated somewhat differently from civil and political ones,

²⁵ Scottish Government (2023) A Human Rights Bill for Scotland: Consultation.

as states are expected to work towards full realisation, based in part on available resources. In the case of ESR rights, however, minimum core obligation sets the baseline – in essence, what states have to do if they are signatories, even if the hope and aim is that they will go beyond this.²⁶

Campaigners hope that once the right to participate in and contribute to cultural life is incorporated into Scottish law and turned into MCOs, they become the baseline, and citizens can ‘name and claim’ their rights from there on. What the idea of ‘dignity’ can mean in practice in terms of cultural policy is as yet unclear, but the right to a dignified life suggests one in which a person can exercise autonomy, choice and a sense of participation in society. The right to be treated with dignity by cultural institutions could help reframe ‘access’ debates, and the right to have one’s cultural heritage regarded with dignity might open up new possibilities for marginalised or minority cultural communities. As in the Barcelona case, operationalising these ideas has to be broad and could include training programmes for staff, consideration in funding, design and access to buildings and institutions, as well as considering the dignity of cultural workers.

Under the devolution settlement, the Scottish Government has the right to set its own human rights priorities in devolved areas, many of which, culture and education, for example, are included in the Bill. One major concern, however, is that equalities legislation derives from the UK Equality Act 2010, and that remains a power reserved to Westminster, and while the Scottish Government can go beyond Westminster in terms of promoting equal opportunities, it cannot change the definition of protected characteristics that applies. The omission of social class as a protected characteristic in the Equalities Act has often been seen as one of its major weaknesses, and is certainly a problem for cultural policy, as class is one of the strongest determining factors, both in terms of cultural participation and access to professional cultural work. While the Fairer Scotland Duty²⁷ does place a legal responsibility on public bodies in Scotland to consider socio-economic disadvantage alongside other sources of inequality, multiple barriers still remain, as we can see in the data on both cultural production and consumption.

The HR Bill consultation did not outline details and timings for implementation (though new reporting duties will be placed on the Government and other public

²⁶ Evans, A (2022) Economic, social and cultural rights and the proposed Human Rights Bill: SPICe Briefing. Available at: <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2022/3/16/fcf45055-9ebf-48ca-b2b6-11787fcb3232>.

²⁷ Scottish Government (2022) Fairer Scotland Duty: Guidance for public bodies. Available at: <https://www.gov.scot/publications/fairer-scotland-duty-guidance-public-bodies/pages/2/>.

bodies), and there is very little in the bill consultation on what new resources will be needed to support implementation. As discussed below, this could prove crucial. A reinforced duty on local authorities, for example, to support the right to ‘take part in cultural life’ will have major funding implications, particularly at a time when cultural budgets have been stripped or even eliminated.

A core element of a right-based approach is, of course, that individuals can seek help and demand legal redress when their rights are violated. At the moment, we are very far from knowing what sort of cultural rights might result from this – but it is plausible that rights might be violated if cultural venues are closed without proper consultation, or barriers such as entry charging are erected, or if physical access barriers fail to be removed, and in any of these cases or more there must be clear and straightforward avenues for people to seek redress.

The Human Rights Consortium of Scotland brought together a number of advocacy organisations to respond to the bill, many of which represent marginalised groups such as migrants, refugees, LGBTI groups, children and people with disabilities.²⁸ While welcoming the focus on human dignity in the Bill, the Consortium wants to see it strengthened, with courts not just being allowed, but *required* to consider dignity when interpreting these rights. It was also particularly concerned that the additional conventions on race (CERD), women (CEDAW) and disability (CRPD) that will be incorporated into the Act will not have sufficient stature in the legislation, which they argue needs not simply to recognise the additional needs of marginalised groups, but to bring about a significant change in their ability to lead a full and ‘dignified’ life. They also argued that LGTBI people, older people and care-experienced people should be specifically named as groups that require attention with the legislation.

5. THE CULTURAL SECTOR IN SCOTLAND

Before we consider what a rights-based approach could offer to Scottish cultural policy, it is important to look at the state of Scotland's cultural sector and the context in which any policy will take effect. Scotland's current cultural strategy (published in 2020) is only three years old,²⁹ but the tumult of the last few years in the cultural sector and beyond have necessitated an updating of the strategy,

²⁸ View submitted responses at: <https://consult.gov.scot/equality-and-human-rights/a-human-rights-bill-for-scotland-consultation/>.

²⁹ Scottish Government (2020) A Culture Strategy for Scotland. Available at: <https://www.gov.scot/publications/culture-strategy-scotland/>.

which is ongoing at the time of writing. The language of the strategy is broad and inclusive. It acknowledges the right to participate in cultural life as a guiding principle, celebrates the diversity of cultures within Scotland, and acknowledges the value of culture in and of itself, not simply as an input into economic strategy or social policy. Central to the policy is the idea of ‘mainstreaming’ culture, stressing ‘the need to forge better connections across government and improve links between culture and areas such as health, education, tourism, energy, community development, international relations, and the economy’³⁰ and it is linked to wider Scottish Government policies including Fair Work³¹ and the Wellbeing Economy.

As such, there is at least the potential to put culture at the heart of a rethinking of the economy and society, but many of the organisations I spoke to for this paper expressed some frustration with the practice of mainstreaming. When most of the public sector is under funding pressure, working together can often mean fighting for limited resources, and many question the capacity that public agencies have to carry out this kind of work in addition to their ‘core business.’

As suggested in the Introduction, one reason for the relatively low level of interest shown by cultural organisations in the Human Rights Bill consultation appears to be the state of siege in which the sector currently finds itself. In its pre-Budget scrutiny paper released in November 2023,³² the Scottish Parliament’s Culture, Constitution, Europe, External Affairs and Culture Committee referred to the ‘perfect storm’ of long-term budget pressures, reduced income generation, increased operating costs and workforce issues that the culture and heritage sectors have faced over the last decade. The primary cultural funder, Creative Scotland, has seen grant funding fall around 10 per cent between 2014-15 and 2021-22, while demand continues to vastly outstrip supply. Support for even regularly funded organisations (RFOs) has been held at a standstill, and Creative Scotland’s own budget submission indicated that a third of RFOs are at risk of insolvency and at least half are ‘financially weak.’³³ The news of the 10 per cent

³⁰ Ibid.

³¹ Scottish Government (2022) Fair Work Action Plan: Becoming a leading Fair Work Nation by 2025. Available at: <https://www.gov.scot/publications/fair-work-action-plan-becoming-leading-fair-work-nation-2025/>.

³² Constitution, Europe, External Affairs and Culture Committee (2023) Pre-Budget Scrutiny 2024-25: Funding for Culture. Scottish Parliament.

³³ Creative Scotland (2023) Response to the Constitution, Europe, External Affairs and Culture Committee’s inquiry: Budget Scrutiny 2024-25: Funding for Culture. Available at: https://www.creativescotland.com/_data/assets/pdf_file/0010/96247/Creative-Scotland-CEEAC-Budget-Scrutiny-2024-25-Submission.pdf.

cut to Creative Scotland's grant – some £6.6 million in the current budget – seemed to exemplify the problems of a sector already reeling from a series of bad news stories.

If the situation is bad at a national level, it is even worse at the local authority level. A decade and more of austerity has seen cuts falling disproportionately on culture and leisure services, spending on which has fallen by around a quarter since 2010, according to COSLA.³⁴ The reality of this is that just those areas in which cultural mainstreaming is meant to be most effective - community facilities, health and wellbeing, arts and leisure services - are those which are bearing the brunt of cuts. In the past, income from sport and leisure has helped cash-strapped local authorities subsidise other cultural services, but the impact of Covid-19 and high inflation has severely curtailed this. Under-resourcing mainstreaming work is noted as a key obstacle to its success by Engender, which points out the need for investment in and by public bodies to achieve more effective policy that tackles systemic inequalities, in this case within culture.³⁵

Research suggests that at least a quarter of Scottish adults are struggling financially, and two-thirds are worried about future finances.³⁶ Engender research demonstrates the disproportionate impact on women, particularly older women, disabled women, unpaid carers and Black and minoritised women.³⁷ Unsurprisingly, this has affected cultural participation outside the home, which has not yet recovered to pre-pandemic levels. People, of course, continue to engage in culture. They read and watch TV and listen to music and so on, but the retreat into the domestic sphere - supercharged by Covid-19 - has been reinforced by rising ticket prices, transport problems and the cost of food and drink – meaning that some 50 per cent of respondents have cut back on spending on arts and culture according to the Scottish Household Survey.

The Scottish Government set up a National Partnership for Culture to advise on delivering the Culture Strategy. In 2022, the Partnership, which is drawn from academics, cultural practitioners and other public agencies, produced a report of its recommendations to the Government³⁸ on the current redraft. Noting that the

³⁴ COSLA and Directors of Finance Section (2023) Submission to Inquiry into Budget Scrutiny 2024:25: Funding for Culture. Available at: <https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/correspondence/2023/65-cosla.pdf>.

³⁵ Engender (2020) What Works for Women: Improving Gender Mainstreaming in Culture.

³⁶ Engender (2022) Women & the Cost of Living: A Crisis of Deepening Inequality.

³⁷ Ibid.

³⁸ Scottish Government (2022) Independent report from the National Partnership for Culture. Available at <https://www.gov.scot/publications/independent-report-national-partnership-culture/>.

sector is in a very fragile state, the report calls for sustained and long-term investment. It particularly notes that improved cultural education for young people is vital, and that policy must prioritise equity of access through supporting local, grassroots cultural projects. Without this, it argues, attempts to improve the nation's wellbeing through cultural investment will only benefit the already advantaged, a well-known effect of increased cultural investment.

The recent announcement on cultural funding from the First Minister suggests that some of these pleas have been heard, and this is essential, as no policy approach, however well thought through, can succeed without increased public investment.

6. CONCLUSIONS - A HUMAN RIGHTS APPROACH FOR SCOTLAND?

Cultural rights perspectives are generally manifested in cultural policy via the notion of infrastructure. The term is perhaps unfortunate as it can lead to some rather banal readings of culture which present it as some sort of underlying service, like the motorway network, and fail to recognise its distinctive characteristics. But it is a useful idea for policymakers as it carries with it the notion of a set of conditions that make other conditions possible - the notion of culture as a capability - and ties into other contemporary progressive ideas such as universal wages or universal basic services. It also reinforces the nature of culture as a collective experience, not simply a set of goods and services available to the individual 'sovereign' consumer.

In terms of 'rights,' infrastructure is also a useful notion as it provides the idea of something to which rights can be given. In an interview with The Art Newspaper,³⁹ current UK Shadow Secretary of State for Culture, Thangam Debbonaire MP, proposed the idea of a national infrastructure plan for the arts. This would map cultural spaces across the UK, from theatres and museums to comedy clubs and upstairs rooms in pubs, as a way of protecting that physical infrastructure from the combined assaults of neglect and property development. Making such a map available to the cultural sector and its advocates would enable people to challenge cases where the decline of infrastructure threatened cultural rights. In

³⁹ Seymour, T (2023) Exclusive: UK shadow culture secretary to map out first national infrastructure plan for the arts. The Art Newspaper. Available at: <https://www.theartnewspaper.com/2023/10/09/exclusive-uk-shadow-culture-secretary-to-map-out-first-national-infrastructure-plan-for-the-arts>.

the current mood of ‘fiscal discipline’, the Shadow Minister proposed no extra funding for this infrastructure, but it would, of course, cost money. Justin O’Connor puts forward a better idea in his forthcoming book, ‘Culture is not an Industry’.⁴⁰ O’Connor suggests that an audit of cultural infrastructure should not just list faculties and organisations – important though that is – but look at it from the citizens’ point of view and attempt to map the extent to which we have access to the foundational services (especially education) and cultural infrastructures that we need to exercise our right to full participation in art and culture.

Such an approach, if feasible, would allow a more nuanced understanding of the barriers to cultural participation than we can get from surveys alone and might help determine where interventions are necessary. In Scotland, for example, younger age groups are noticeably more likely to attend a cultural event than older age groups,⁴¹ with attendance declining as age increases. This is a concern if older people are being deterred from cultural attendance by questions of cost, physical accessibility or being made to feel unwelcome. But if tastes change, or individuals who have been cultural consumers all their lives prefer to read rather than go to the cinema, this is not necessarily a concern for public policy. However, if, as is the case, cultural attendance is lowest among people with a long-term physical or mental health condition that caused reduced daily capacity, it seems likely that access concerns – broadly understood – need to be addressed, a clear policy aim.

Above all, taking advantage of cultural participation is strongly linked to education. The right of children to engage freely in cultural life and the arts is guaranteed under Article 31 of the UN Convention of the Rights of the Child, and cultural strategy in Scotland reinforces that message through its commitment to creative education. Yet research still suggests⁴² that competing priorities in the curriculum, lack of contact between schools and artists, and, of course, lack of resources – teachers sometimes spend their own money to buy materials – are barriers to education in the arts. All of this has clear implications for inequality – the extracurricular cultural activities that better-off parents and carers can provide for children are denied to the one in four children living in poverty in Scotland,

⁴⁰ O’Connor, J (2023) Culture is not an Industry. Manchester University Press.

⁴¹ Scottish Government (2022) Scottish Household Survey 2020 – telephone survey: key findings. Available at: <https://www.gov.scot/publications/scottish-household-survey-2020-telephone-survey-key-findings/pages/10/>.

⁴² Research Scotland (2022) Arts in Education: Review of Creative Scotland Research into Arts and Creativity in Schools in Scotland. Available at: https://www.creativescotland.com/_data/assets/pdf_file/0006/93444/Arts-in-Education-Final-Report-December-2022.pdf.

which makes the role of state education as crucial as it has ever been. Inequalities in arts education persist after school and into the labour market – children of professional and managerial class parents, a recent report notes, ‘make up over half’ of all applications, offers, and acceptances on creative courses, ‘while children from working-class backgrounds ‘have worse applications to offers and offers to acceptances ratios than any other social group.’⁴³

Inequalities of gender, class, ethnicity, and disability are well established as an element of cultural labour markets and acknowledged as such by the Scottish Government. Its response links the cultural sectors to the notion of ‘fair work’, the government’s core employment policy. While the Fair Work framework does contain policies that are designed to curb abuses – rates of pay guidance, guides to fair recruitment – and public cultural sector employers are required to ‘commit’ to Fair Work principles, there is a strong reliance on exhortation and positive rhetoric and very little on statutory requirements or legal remedy. The Government promotes Living Wage accreditation, for example, but does not require it.

The degree to which a rights-based approach can be taken into the labour market through the HR Bill is unclear, and there is no reason why it should be applied to cultural labour markets specifically rather than across the economy, but there is perhaps a case for thinking through a cultural rights perspective, particularly for those who work outside of organisations – freelance and precarious workers who make up a large part of the cultural sector. Better still, linking rights to a more democratic workplace brings into consideration policies to support co-operatives and workers-owned organisations in the cultural sector – where the voice of workers is an essential condition rather than an add-on requested of employers.

Finally, any idea of cultural infrastructure has to make way for a reinvigorated and properly funded local government. As the National Partnership has noted in its report, ‘there is currently significant disparity in the role culture plays within local authorities across Scotland, which is a significant barrier to realising the aspirations of the Culture Strategy across every part of Scotland.’ Austerity has not only diminished the ability of local government to fund culture, but also its own capacity to help plan, develop and work with the cultural sectors. The Partnership reports advocate the reinstatement of the role of Culture Co-ordinators or Creative Community Link posts as part of rebuilding local authority capacity. Beyond this, as my interviewees pointed out, there is a role for communities and third-sector

⁴³ Alice Kent (2023) Creative Diversity in Higher Education. Creative Industries Policy and Education Centre, Available at: <https://pec.ac.uk/blog/creative-diversity-in-higher-education>.

organisations to deliver cultural services and maintain cultural and social spaces. Community participation in, for example, budgeting, is not without challenge, and as the example of Barcelona shows, the cultural sector needs expertise as well as commitment, but a policy based on cultural rights cannot envisage citizens as simply recipients of services – the relationship has to go deeper than that, and the sector will have to take more risks.

When I asked interviewees for an example of positive policymaking in recent years, the example that many came back to was Scotland’s Land Reform Act of 2003, popularly known as the ‘right to roam,’ which provides for extensive right to access public land, including for recreation.⁴⁴ Long campaigned for, it does something more than merely provide legal access to the countryside; it encapsulates an idea that our natural landscape belongs equally to all of us and that, in its way, is as important as anything else it does. The same can be said of our culture.

ABOUT ENGENDER

Engender is Scotland’s feminist policy and advocacy organisation, working to secure women’s political, economic and social equality with men. Our aspiration is for a Scotland where women and men have equal access to and enjoyment of rights, resources, decision-making and safety.

ABOUT THE EQUAL MEDIA AND CULTURE CENTRE

The Equal Media and Culture Centre for Scotland provides research, monitoring and advocacy for gender equality in the media, creative and cultural industries across Scotland.

⁴⁴ It is perhaps worth noting that, despite this, Scotland still has one of the most unequal land distributions in Europe.