

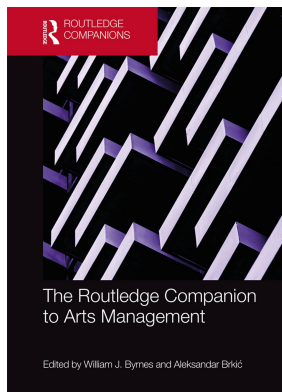
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15

THE ARTS FUNDING DIVIDE

Would ‘cultural rights’ produce a fairer approach?

Josephine Caust

Introduction

It seems that the funding of arts practice is always a contested domain, whatever political view or system is dominant. In some contexts, for example, there is no government support for the funding of arts practice, while in others there are different interpretations of what this entails. In most forms of government, several sectors of society (agriculture, mining, manufacturing and sport) receive government subsidies. In a capitalist state this is sometimes described as ‘welfare capitalism’. However, those opposed to the government funding of arts practice believe the arts should not be included in this framing because they are regarded as ‘non-essential’ (Bell and Oakley, 2015; Brabham, 2017; Brooks, 2001). Thus, in this framing the arts and cultural sector is not seen as a fundamental component of society and government support of the arts is seen as an indulgence and not a necessity.

Nevertheless, government funding of the arts occurs in many countries – sometimes as direct support and at other times indirect. In some instances, though, the cost involved in accepting government support can be challenging. For instance, in one party or autocratic states, government support is provided if the artist relinquishes the right to their freedom of expression. In the modern democratic state arts funding approaches arguably reflect less state intervention or censorship. However, there may still be a price to pay by the artist for that government support. The relationship between government and the arts is also often experienced as a legal transaction. This can mean that governments relate to the arts through regulations, tax concessions, censorship or even by acts within a nation’s constitution. It is this last framing that is of interest here.

In this chapter relationships between government and the arts are explored with a particular emphasis on the issue of ‘cultural rights’. This discussion encompasses what is understood by the term, how it might be realised within a national structure, the potential impact of its existence and how it might be applied in contemporary contexts.

Different approaches

It is difficult to get an accurate comparative picture of how much governments around the world spend on the arts because of different models of funding, different models of reporting and different ways of describing what is supported. While there is knowledge about how much

one country might give to the arts and cultural sector in direct support, this spending might relate to different areas. For example, it is recorded that in 2013 the US Federal government spent US\$6.13 per capita on the arts at a national level (The Statistics Portal, 2018). In the same year in Germany the per capita spending is recorded as around 117 Euros or around US\$ 145 per capita and in Sweden 278 Euros or around US\$344.93 per capita (Council of Europe, 2017). In Australia the amount spent directly on the arts at both state and federal level by government in the period 2015–16 was recorded as AUD\$106.33 per capita or around US\$80.17 (MCM, 2017). However, the combined total of all Australian government expenditure on arts and culture in 2015–16 was AUD\$243.97 per capita or US\$183.95 per capita (MCM, 2017). Thus, the amount nations spend per capita on the arts varies dramatically. But how the spending is framed also varies. There are caveats in doing direct comparisons because, as noted earlier, what is included and not included, may differ.

There are philosophical differences too in how governments approach the funding of the arts. While some countries believe that arts funding is part of a nation's identity and a fundamental government provision, other countries see arts funding as an area that they do reluctantly and with limited funds. Some governments directly fund the arts through a Ministry of Culture and others employ an 'arm's length' approach, such as the 'arts council' model, where funding is seen to be separate from political views/processes. Others believe that funding for the arts should be provided by the private sector through philanthropy, patronage and sponsorship. There are also views that the arts sector should be entirely dependent on the marketplace.

When John Maynard Keynes argued for the establishment of the Arts Council of Great Britain after World War II, he saw it as a necessity so that artists could make their work without the intervention of the state or the market place (Upchurch, 2004). In fact, it is noted that Keynes tried to ensure that governments had no direct role in decision making about arts funding by separating the allocation of money from the government of the day (Hetherington, 2015). This model of arts funding was replicated in other Commonwealth countries, including Canada and Australia. This framing of arts funding was known as 'arm's length' funding and usually involved a peer assessment system where arts funding was determined by a group of artists who were deemed 'peers' of the applicants. The notion of 'arm's length' was seen at the time as an important tenet of western democracy (Hillman – Chartrand and McGaughey, 1989). Cummings and Katz saw government support for the arts in the West as a continuation of a western tradition which 'encouraged the flowering of Western culture' (Cummings and Katz, 1987, p. 3).

In the 1980s the models of government engagement with the arts were described within four different framings. These were Patron, Facilitator, Architect and Engineer (Hillman – Chartrand and McGaughey, 1989). The Patron model is the arts council's model which provides funding at arm's length from government (e.g. the British, Australian and Canadian models). The Facilitator model is where various government 'tools' such as taxation and regulation are enabled to facilitate the donation of money for the arts through donation etc., but without direct engagement by government in the arts practice (the US model). The Architect model is where arts funding occurs through a Ministry of Culture with government bureaucrats tending to make the major funding decisions (the French model). The Engineer model is where arts funding is designed to directly further the ideas of the state and so the intent of the funding is more political rather than artistic (say the Chinese model). All these models of arts funding are imperfect in various ways. The delineation between them has also changed over the past few decades, with most states demonstrating aspects of each model in their approach.

More recently though the impact of a neoliberal ideology has had an effect internationally. It is argued within neoliberalism that every aspect of society is economic and because of this, should be in competition with each other (Monboit, 2016). A government's role in this

framing is to stay out of any activity that can be left to market forces. This is an extension of the facilitator model but with further caveats. In this model, the arts should be allowed to flourish or founder as they wish – but without the input of any government money (Cowen, 2000). If the marketplace determines that certain arts practices do not survive, it is argued that this is the natural order of things. Further there is a view that the arts should be in the private domain, not the public domain (Livingstone, 2017).

The funding of arts practice by government has been hotly disputed when religious and political overtones about arts practices are introduced. Some US politicians have argued for example for the total defunding of agencies such as the National Endowment for the Arts because they believe that they support left wing or alternative views that do not reflect what they believe are mainstream American values (Brooks, 2001; Kidd, 2012; Livingstone, 2017). This argument was evident in the United States through the 90s and again more recently (Kidd, 2012; Livingstone, 2017). In 2017 while President Trump recommended zero ongoing funding for the National Endowment for the Arts, both the House and the Senate ignored this and recommended a small budgetary increase. Nevertheless, President Trump has continued to recommend zero funding for the NEA in the 2019 budget (Johnson, 2018). Recent changes in US tax legislation passed in December 2017 are likely to significantly reduce the amount that is donated to charitable organizations, and thereby arts organizations, by American citizens across the country from 2018 (Rooney, 2017). In addition, the tax changes will affect how much corporate organizations are willing to give to get tax breaks (Rooney, 2017). Hence, philanthropy as the backbone of support for arts and cultural activity in the US will be severely undermined. If President Trump were to successfully defund the NEA in 2019, the situation for arts funding in the US is likely to be bleak.

Those that do not support direct arts funding by government are suspicious of the motives of governments that do provide arts funding. For example, they might argue that governments are providing arts funding to support information control or to subsidise arts practice that supports their government's point of view. In one-party governments for instance there is certainly a history of direct government intervention in arts and cultural practice to pursue political objectives (Chong, 2015; Wang, 2014). This has led to some arts practice being framed negatively and others lauded, depending on the way the practice is viewed by the political leaders. In a fascist state such as Nazi Germany books were burnt, pictures destroyed, and artists killed to support the views of those in power (Carey, 2005). Contemporary visual art in particular was seen as 'degenerate' during the Nazi period (Adam, 1992). In autocratic regimes every artistic activity is likely to be subject to some form of direct and indirect censorship, including self-censorship. Scripts are read before production, exhibitions vetted, and artists given official approval before they receive state support. In countries such as Turkey, Ethiopia, Egypt, Iran, Russia and China there have been several cases of individual artists being 'black listed' or even imprisoned because their work is deemed unacceptable to the state (Plipat, 2018). The work of female artists has been particularly targeted for example in the states of Iran, Saudi Arabia, Egypt, India and Pakistan (Plipat, 2018). It is observed in other cases that artists have been generously supported, if they toe the party line (Li, 2014).

The justifications for government funding of the arts in the West has changed much over recent periods of time. For example, Canada is a western democratic state that would be seen to have a relatively generous and benign arts funding system operating at both a national and regional level. Yet it is noted that

though the peer review process is supposed to be free of government influence, it continues to be shaped by the priorities of the government of the time.

(D'Andrea, 2017, p. 254)

Thus, the modern reality of government funding for the arts might suggest that whatever form of government exists, there is likely to be some form of direct or indirect influence in terms of funding priorities. The government provides the money, so it then expects its own priorities to be reflected in the giving. Governments do not necessarily equate the needs of their citizens with their own political ideologies or preferences. The concept that government money is really taxpayers' money is usually remote from the thinking of a government in power. Peer systems for decisions about arts funding are seen as providing an 'arm's length approach' that distances the giver from the receiver, but even so, there are likely to be restrictions already in place that ensure certain activities can be funded and others not. There are some attempts to change that relationship by distancing the process even more from the government of the day and encouraging policy and decision making from the 'bottom up' rather than the 'top down'. For example, the Croatian cultural network *Clubture* has tried to control funding to its members by creating a separate peer body within the Croatian Ministry of Culture (Višnić and Dragojević, 2008). Nevertheless, there is always likely to be tension between providers of funds and those wanting to use them.

It is well recognised that governments can and do insert their own agenda into the decision-making process (Caut, 2017; D'Andrea, 2017; Feder and Katz-Gerro, 2015). This agenda might be about meeting particular performance outcomes, or it might relate to the integration of particular government priorities in the activities to be funded. Governments expect their financial contribution to achieve 'outcomes' and 'targets' (Mirza, 2006; Protherough and Pick, 2002). Arts practice is there to deliver economic and political outcomes rather than artistic revelations (Belfiore, 2004; Gray, 2007). Holden observed how government intervention in the United Kingdom became entirely instrumental in its expectations of artists and arts organisations during the years of New Labour (Holden, 2004). In an 'instrumental' framing, arts as an independent activity has no value, unless it is contributing to the needs of the state or the funder.

Further while direct intervention is unusual in an arts council model, it does occur. In the Canadian example it is recorded that governments interfered in the arts decision process in 1979, 1984 and 1992 (D'Andrea, 2017). In Australia, which has a similar arts funding model to Canada, direct government intervention in arts funding decisions occurred as recently as 2015 (Caut, 2017). Usually direct intervention is connected with a change in political priorities, usually heralded by a change in government, but indirect intervention exists, as already noted in relation to economic, political and social priorities (Bertelli et al., 2014; Caut, 2003; D'Andrea, 2017).

What is funded?

In most national contexts the funding of large arts institutions is favoured over the funding of say community arts or individual artists. In addition, heritage arts practices are usually preferred over contemporary or newer arts practices. In the case of western democracies for example, which have had a long history of arts funding, such as the United Kingdom, Australia or Canada, the major proportion of funding generally goes to support heritage arts practices and very little proportionately is given to contemporary arts practice (Bertelli et al., 2014; Feder and Katz-Gerro, 2015; Getzner, 2015). This pattern is replicated in European countries such as Germany and France which have been traditionally generous in arts funding support. It seems that in all government arts financing models, in whichever way it is delivered (see the discussion earlier re the Hillman Chartrand models) most of the money goes to the arts heritage area and what might be regarded as the 'high' arts (Harvie, 2015).

There are issues around always seeing the arts in a hierarchical model. This then privileges the 'high' arts and frames arts practice as always engaged in a movement towards reaching a pinnacle exemplified by the 'high' arts. It is argued that this framing fails to understand the basis

of much contemporary or newer arts practice which is not driven by a desire to be part of an institutional framing or desirous of being accepted and lauded by an élite cognoscenti (Eltham and Verhoeven, 2015; Sparrow, 2015). The preferencing of heritage and the high arts seems to be also related to definitions of ‘art’ and the lack of recognition about the value or importance of arts practices in peoples’ daily lives.

An Australian survey published in 2017 observed that the arts play a role in the lives of 98% of the Australian population (Australia Council, 2017). That is, the majority of Australians from all walks of life – different ages, genders, cultures and backgrounds – say they participate and engage with the arts on some level (Australia Council, 2017). Thus, from this evidence it can be concluded that arts practice has general acceptance and support amongst the Australian population. The cultural economist David Throsby argues further that there is bi-partisan political support for funding arts practice in Australia, if the funding support refers only to the major national arts or cultural institutions (Throsby, 2018). In other words, both sides of the political fence support the funding of the major cultural institutions. It is other aspects of arts practice, such as contemporary or community arts, that demonstrate differences in the political approach, particularly, say, when notions of ‘excellence’ are introduced. For instance, conservatives might see the term ‘excellence’ as reflecting size and hierarchical position whereas those in the middle and on the left might see ‘excellence’ as reflective of any good arts practice wherever it originates (Eltham and Verhoeven, 2015). Thus, the term ‘excellence’ refers to the values of the user and not to something that is objective or fixed.

Nevertheless, it is also recorded in Australia that there has been an increase in ambivalence towards public funding of the arts. In 2013 around 13% of the Australian population were negative or ambivalent about public funding of the arts but this increased to 25% by 2016 (Australia Council, 2017). This changing perception is seen as possibly reflecting a particular framing of the ‘arts’ – that is, if the arts are interpreted only as the ‘high’ arts. Funding of the arts is seen then as rewarding élite arts practices. While it is evident that arts practice is generally embraced by the majority of the population, the ‘high’ arts are not necessarily understood as the kind of arts practice that the majority support (Australia Council, 2017). If this is the case, there may be a need for further work around how the ‘arts’ are defined, as well as more consideration of skewed funding patterns versus broader popular cultural preferences.

Another issue related to the distribution of arts funding is the lack of perceived equity in terms of class, ethnicity and region. For example, it has been noted that the challenges in making a living as an artist is compounded if the artists are new immigrants (Grant and Buckwold, 2013). This might mean that regions where new immigrants are living are likely to be less equipped with cultural facilities and other cultural resources, including the provision of arts funding. In a recent study undertaken by this researcher with others in the West of Sydney it was noted that there was a feeling of frustration and disappointment about the current lack of cultural facilities in the Greater West Sydney region (Stevenson et al., 2017). The Greater West houses more than 50% of the population of Sydney (which is currently about 4 million), but most of the present cultural facilities are located in the east or the north of the city. It is recorded for instance that in 2014 while the Greater West Sydney region’s population represents 30% of the state of NSW, it received only 5.5% of cultural funding allocated by the NSW Government (Psychogios and Artup, 2015). Further while housing 9.5% of the nation’s population, the region received only 1% of Federal arts funding (Psychogios and Artup, 2015). A visual artist noted,

the equity between how much funding the galleries and the institutions in Sydney get as opposed to Western Sydney – there’s quite a huge gap. A huge divide.

(Stevenson et al., 2017, p. 12)

In a response to the challenges present in the West of Sydney, activities are developing that are trying to address cultural, social and economic differences. One, which is designed particularly for women and children, is a bookstore founded in 2013 in Fairfield called *Lost in Books*. It stocks adults and children's books that are written in many different languages to reflect the diverse community that lives in the region. It also hosts artist in residency programmes that encourage activity that reflects other cultures and is hosting a festival that coincides with the UNESCO International Day of Mother Language to celebrate different languages within the community.

Lost in Books is a social enterprise structured around a principle of accessibility – a place for people to access books in their own language “without feeling shamed, without having money to spend.

(Convery, 2018)

However overall the challenges of Western Sydney (and other residential areas that are economically, socially and culturally deprived) demonstrate that social and political equity have not been comprehensively addressed in terms of arts funding distribution. Lack of access and provision of arts and cultural facilities does not allow large communities of people to express their arts practice or practice their culture in any meaningful way. This inequity in terms of funding and resources may relate to several issues. This may include artform, class, ethnicity and place of residence but it particularly seems to reflect economic differences. For example, it can be argued that at present the ratios of arts funding rewards the 'rich'. Yet the 'rich' are already privileged in terms of access to cultural facilities as well as in their economic capacity to participate. This is perhaps where the imbalance in arts funding, and the privileging of some sectors over others, is problematic, as it is clearly not democratic, equal or just. It is for this reason that it is important to consider how the introduction of the concept of 'cultural rights' might change how governments and communities address these issues.

What are cultural rights?

There has only been recent recognition that citizens of a country should have 'cultural' rights as much as they should have political or social rights (UNESCO, 2005). Cultural rights in this context are seen as basic human rights.

Cultural rights comprise an aspect of human rights in that they are universal in character and guarantee all persons the right to access their culture.

(Barth, 2008, p. 79)

Cultural rights can be a broad framing, but they do include the notion that all citizens should have access to and be able to participate in various forms of artistic and cultural practice of their choosing. It is also an acknowledgement that a community may have distinctive cultural practices based on cultural beliefs and traditions that define their community. Thus, ignoring or disregarding these practices potentially destroys the framework of that community. Further there is recognition that the protection of cultural rights is an important public interest issue which is in the long-term interest of humanity (Francioni, 2008). This is described also as an affirmation of one's own identity and need for autonomy (Barth, 2008, p. 80). It is noted within the theme of Cultural Rights and Ethics in the *Compendium of Cultural Policies and Trends in Europe*,

a web-based information and monitoring site, that cultural rights are seen as part of civil rights relating mainly to:

- freedom of expression;
- right to and responsibility for cultural heritage;
- right to free practice of art and culture and to creative work;
- right to protect the intellectual and material benefits accruing from scientific, literary and artistic production;
- right to participate in cultural life and right to equally accessible and available cultural, library and information and leisure services;
- right to choose one's own culture;
- right to the development and protection of culture;
- respect for culture and its autonomy and for cultural identity (Johnson ed., 2018).

At the international level, there have been three important conventions passed by the UNESCO to protect cultural practices and heritage. These are the:

- Convention concerning the Protection of the World Cultural and Natural Heritage (UNESCO, 1972)
- Convention for the Safeguarding of the Intangible Cultural Heritage (2003)
- Convention on the Protection and Promotion of the Diversity of Cultural Expression (2005)

In 2001 UNESCO passed its Universal Declaration on Cultural Diversity (UNESCO website). This declared that all peoples had the right to experience and practice their own cultures. In the 2003 Convention it was observed that intangible cultural heritage was 'a mainspring of cultural diversity' defining it as,

means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.
(UNESCO Article 2, 2003)

Further the 2005 UNESCO Convention recorded that cultural diversity is in the long-term interests of humanity and notes that achieving cultural diversity and the affirmation of cultural rights depends on freedom of expression being allowed and encouraged. Principle 1 of the Convention states,

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.
(UNESCO Article 2, 2005)

This recognition that cultural diversity and by direct association, cultural rights, are dependent on the recognition and guarantee of human rights, is critical to seeing what is required legally to ensure that these principles are applied. Further within the UNESCO convention is the recognition that to enable the enactment of cultural diversity requires equal access. Principle 7 notes therefore,

Equitable access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding.

(UNESCO Article 2, 2005)

Thus, unless a nation-state or nations combined, provide and allow equity of access, then the capacity to experience cultural diversity or express one's cultural rights is not possible. So, this suggests that legal intervention is necessary for cultural rights to be enacted. It is becoming recognised too that cultural rights are a basic human right that are critical if a society is to function in a free, just and democratic mode (Portolés and Šešić, 2017). This means that nations need to address constitutional issues that embrace human rights to allow for cultural rights. As Wang notes,

governments have a role to play in ensuring the production and circulation of a diversity of cultural products reflecting the different values and meanings comprising the makeup of civil society.

(Wang, 2014, p. 26)

This recognition has been embraced by the international organization United Cities and Local Governments (UCLG), a global network of cities, local and regional governments. Their Agenda 21 for Culture has 67 articles, divided into three sections: principles, undertakings, and recommendations (Agenda 21, 2008). The "Principles" include core values such as cultural diversity and human rights and culture itself is described as an essential part of constructing citizenship for people of all ages. The intent of this document and program is to embed principles for cultural development at the local level. This can be seen as a grassroots movement that may influence policies and programmes at the state and national level. It is noted in Agenda 21 that,

Cultural rights are an integral part of human rights. 'No one may invoke cultural diversity to infringe upon the human rights guaranteed by international law, nor to limit their scope.'

(Agenda 21, 2008, p. 5)

It is recorded on the UCLG website that by 2015 internationally over 500 local governments and regions had committed themselves to undertaking Agenda 21 for Culture in their locality.

In addition, some nations have also started this process. In Taiwan for example there has been an embrace by government of the need for a citizen's cultural rights (Hsin-Tien, 2015; Wang, 2014). When Taiwan had a national election in 2012, all the major parties addressed the need for cultural rights (Hsin-Tien, 2015). This has been an affirmation too of human rights. An important tenet of the approach in Taiwan is the recognition that governments should not be determining the kind of culture the community wants, but it should be an issue that is determined by the broader community. Taiwan has long had issues around cultural identity given its colonisation by Japan in the first part of the 20th century and its difficult ongoing relationship with mainland China. Hence Taiwanese identity has been a volatile and contested space over many years. The recognition of a citizen's cultural rights became a grassroots populist movement from the early 2000s. Power sharing with the community at large is a complicated mission for any governmentality and Taiwan is still challenged by many of the issues around this, but

nevertheless there has been much progress in acknowledging and reflecting the cultural rights of its citizens (Hsin-Tien, 2015).

Other nations have embedded cultural rights in their approach to cultural policy for many years. For example, it is noted that Sweden's

national cultural policy formulated in 1974 and reviewed in 1996 combine elements from several international human and cultural rights conventions. These aims also underpin the central cultural administration and the allocation of state subsidies.

(Koivunen and Marsio, 2007, p. 6)

Thus, Sweden has been allocating arts funding on the basis of cultural rights for many years. In 1999 Finland also embedded cultural rights into its constitution, referencing values such as 'equality, liberty, freedom of expression, freedom of religion and right to education' (Koivunen and Marsio, 2007, p. 6). Nevertheless, both countries have been challenged by definitions relating to culture and cultural identity as an outcome of the growth of nationalism. In the case of Sweden for example, traditional folk heritage, once the domain of the political left, has become a field for demonstrating 'Swedishness' by the nationalist right (Kaminsky, 2012).

Governments certainly have an obligation to ensure that their citizens are treated fairly and equitably. In addition, modern societies are complex, multi-layered and diverse. There is not a homogeneity of culture or monoculture that may have been evident or perceived within some nation states 100 years ago. Migration is now a reality for all countries, and this has ensured that many different cultural communities exist alongside each other. To assert therefore that there is a *homogenous* national culture is likely to be naïve, possibly élitist or reflects a nationalist/populist agenda. As new migrants bring different cultures and practices with them, there is a necessity to recognise that a cultural diversity exists. This diversity then needs to be acknowledged, celebrated and reflected in national approaches to culture and the arts. Schafer (2015) argues that 'culture' is the missing link to deal with the present complexity of our world. Thus, recognising a citizen's cultural rights is an acknowledgement of the importance of culture for our future.

How can cultural rights be applied – the Australian case?

When considering cultural rights in the context of western democracies there are several issues that arise. On an international level it can be argued that many western democracies are already in a privileged position economically. However, it is also true that within every nation-state there are significant gaps between the sectors of the population that are privileged and economically successful and most of the population who are likely to be less advantaged. As noted already in the Western Sydney example, whole sectors of a community can be disadvantaged, although it might seem that the country itself is prosperous. This ongoing social and economic inequity brings many outcomes that are not positive. While the introduction of cultural rights might seem a utopian concept, it does enshrine legally the importance of access to artistic and cultural expression for everyone. If cultural rights are a basic human right, they then cannot be ignored or treated as non-essential. In fact, it can be argued that they would then be seen as part of the human condition and resourced adequately.

In the case of Australia there are challenges for including 'cultural rights' in the constitution. Australia's constitution does not include a Bill of Rights as the United States does for example (see Australian Federal Register of Legislation). It should be noted though that the

American Bill of Rights while allowing for ‘freedom of expression’ does not refer to cultural rights (see The US Bill of Rights). The Australian Constitution focuses primarily on the structural arrangements between the Federal body and the states bodies, in terms of jurisdictions and decision-making responsibilities, as well as the powers of parliament. There is no mention of human rights within that document. However, there are Parliamentary Acts that cover aspects of human rights such as the Racial Discrimination Act of 1975. Through various Acts of Parliament, fairer and more equitable policies and legislation have been introduced over time that clarify the rights and responsibilities of Australian citizens.

In addition, there is the Australian Human Rights Commission which is a government statutory authority that reports to Parliament through the Attorney General (see Australian Human Rights Commission website). It was established on the 10th December 1986 (International Human Rights Day) and is there to support and review human rights in all aspects of Australian law and practice. The Australian Human Rights Commission notes that while there is no Bill of Rights in Australia, the Australian Government has agreed to uphold and respect many of the United Nations’ human rights treaties including the:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities

(Australian Human Rights Commission, 2018)

While it is acknowledged here that the Australian government has agreed to ‘uphold’ these conventions, there are many instances where Australian law is ‘lagging behind’ in terms of practice. In early 2017 for example there was a concerted attempt in the Australian Parliament by the government to modify the Racial Discrimination Act so that terms such as ‘insult’, ‘offend’ and ‘humiliate’ were replaced by the simple term of ‘harass’ in section 18C of the Act (McGhee, 2017). While the motion was defeated, the action demonstrates the vulnerabilities around human rights in the current legislation. In fact, the Australian Human Rights Commission argues that Australia should adopt a national human rights law (commonly called a charter of rights) as a means of addressing the anomalies and gaps that presently exist in the Australian Constitution and Acts of Parliament (Branson, 2010). The Commission notes further that at present Australia is the only Western democratic country that does not have a Bill or Charter of Rights. The Commission argues that if Australia had a Human Rights Act it would significantly improve the protection of human rights in Australia. An example they cite is that, ‘it would make public servants consider human rights when making decisions and delivering services’ (The Australian Human Rights Commission website). In addition, the Australian Human Rights Commission has produced a publication called the “Rights to Enjoy and Benefit from Culture” which outlines why cultural rights are an important aspect of human rights (see Australian Human Rights Commission website). However, as with many other aspects of human rights, the implementation of cultural rights as set out in the Commission document, is yet to be acted upon by the Government. If there was an Australian Bill or Charter of Rights that included cultural rights, then the enforcement of cultural rights would be more likely. Further

there would be the capacity to enforce greater equity in the distribution of arts funding, as well as the provision of cultural facilities currently provided by governments at all levels. While it is recognised that there are never any perfect answers for ensuring equity and fairness, the presence of a constitutional intervention might provide a greater incentive.

Final comments

It is evident that while many countries provide funding for the arts and support the construction of cultural facilities, the rationale, methods and distribution of this funding is usually based on historical precedence rather than social, economic or cultural equity. This means that the way arts funding is distributed does not reflect necessarily the best or most interesting arts practice, nor does it reflect population demographics, or economic and cultural needs. Instead it reflects a hierarchical approach based on several criteria such as government priorities, institutional framings and privileged cultural preferences. A legal intervention that might be effective in changing this approach is the introduction of a citizen's cultural rights.

Cultural rights are part of a larger framework of human rights that should be available to all citizens in the world. While there is much greater economic prosperity in the world than say, 50 years previously, there are also major inequities in the way that prosperity is distributed. This inequity is reflected both between different nations and within nations. UNESCO and other national and international bodies have recognised that cultural rights are a significant human rights issue. It is important that individual countries take on this issue within their own constitutions or alternatively through their Bill of Rights, if we are to see future global change. If this occurs, then it is likely that we could see a fairer approach to arts funding because it would be embedded within a 'citizen's cultural rights' in a national constitution, rather than reflect sectional or ideological interests.

While some countries such as Sweden, Finland and Taiwan have made progress towards the acknowledgement of a citizen's cultural rights, many have not. In the case of Australia there is, as yet, no Bill of Rights for its citizens, so the issue of cultural rights is not high on the national agenda. But there is plenty of evidence that the current approach to arts funding and provision of cultural facilities is out of date and does not reflect the artistic, economic and cultural needs of its population.

Recognition and discussion of this issue has been limited globally, and when occurring, has usually related to cultural identity. If the issue of cultural rights was embraced more broadly, then it is possible that the huge disparities that we see in terms of arts funding distribution and access to arts facilities and practice might change. If a citizen's cultural rights were embedded in a country's constitution, then it is more likely that governments and political parties would take notice. It is also likely that a fairer or more equitable distribution of arts funds could occur, because it would be a legal and human rights issue, rather than an issue related to artistic preference or political ideology.

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