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Discrimination and Cultural Policy: between Cultural Rights and Cultural Capital

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Abstract

Discrimination is often viewed as an individual attitude or a social issue, effectively addressed through the application of rights-based codes of conduct or a legal framework of rights implementation. Its 'cultural' dimension has often remained insignificant, secondary or just underexplored. This article proposes that discrimination should also be understood as a cultural phenomenon, a response to which should involve cultural policy. Such policy, it is argued, could enhance certain rights that, in turn, could become axiomatic for a fuller legal comprehension of discrimination. Iteratively, this could then form the basis for further policy-based responses. A secondary register of this article takes the form of a proposal that rights-based cultural policies, to be effective, require an attention to cultural capital. By interconnecting the (contested) concepts of cultural rights, discrimination, and cultural capital, we will propose how cultural rights-based policy can serve as a more strategic response to discrimination, advancing the current impasse in our policy understanding of the phenomenon. Drawing on the legal foundations of cultural rights as a dimension of human rights law, this study both challenges Pierre Bourdieu's conventional view of cultural capital and use it in a way that provides opportunity for the integration and coordination of human rights, anti-discrimination and cultural policies, strategically enhancing all these areas. The article's conceptual approach will hopefully also provoke a new theoretical and practical impetus to research rights-based cultural policy itself, which might facilitate a comprehensive response to discrimination beyond the current legal measures that promote diversity, equity and inclusion.

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1. Introduction

Non-Discrimination is a principle embodied in the 1948 *Universal Declaration of Human Rights* (hereafter UDHR) and all human rights treatises since; it is a principle acknowledged by every UN member state (internal to international human rights law). Today, however, cries of 'discrimination' are probably more common than ever. This article focusses on the problem of discrimination — a 'deep' problem insofar as it is, evidentially, not wholly understood. We will focus on the problem in terms of cultural rights – the human rights to culture. Conceptually, cultural rights is the subject of this article and discrimination is the object of analysis. The first sections of the article serve to clarify the meaning of these terms, embedded as they are in the historic evolution of human rights discourse.

Cultural rights 1[1] may not be an immediately familiar phrase, but in practice — as 'human rights applied to culture' — it can be described in terms of the normative dimension of democracy, or at least, democracy in its 'liberal' form (equality, representation, participation, inclusion and access). To that extent, this article's cultural policy-approach engages with the historical concerns of 'public' policies for culture – of culture 'as' democracy in practice (for cultural policy as a 'public' policy entails an access to public institutions, participation in culture, the enjoyment of the advancements and benefits of a society). Yet, while human rights principles are more commonly observed in liberal democracies than other political systems, this article begins with human rights law itself, detaching the issue of discrimination (a human rights principle) from its common iteration (and often misrepresentation) in democratic politics. Indeed, one immediate analytical problem with cultural rights is that assumptions given us by democratic political principles can immediately cloud the clarity of human rights law.

Similarly, discrimination is a phenomenon that presents itself as obvious and readily visible, but in reality, is less so. It is obviously a form of social behaviour, yet on closer analysis its manifestations are deeper as they are diverse. On the face of it, discrimination articulates an empirical state of affairs by which individuals or groups are prevented from fully exercising their cultural rights. However, the internal relation between culture and discrimination reveal that deeper dynamics are at work. On the face of it, at least in democratic countries, culture is a form of public service provision that ostensibly facilitates meaningful access, participation, and a range of facilities through which citizenship is exercised (O'Connor, 2024); and it is on this basis that discrimination is often be identified or phrased. An understanding of the application of cultural rights must obviously begin with this socio-political reality. But our line of argumentation will involve extending this; we will unpack the concept of discrimination so as to reveal something significant (cultural) in the formation of the 'human' rights-bearer, or human agent of rights (the individual person). We will endeavor to explain how we should comprehend discrimination as a cultural phenomenon, effectively mediated by the application of cultural rights through public policies for culture.

2. Cultural Rights

As a single concept, 'cultural rights' obviously

[1] An overview of current texts on cultural rights would include law and legal, policy and more broadly, cultural and humanities studies. For the first major document on the subject, see UNESCO (1968) 'Cultural Rights as Human Rights', Paris: UNESCO. Of the most comprehensive reference texts, a most outstanding volume is Joh, A., Chainoglou, K., Śledzińska-Simon, A. & Donders, Y. *Culture and human rights: The Wroclaw commentaries,* Berlin: De Gruyter. For a valuable collection of essays (albeit, focused on UNESCO), see Nieć, H. ed. (1998) *Cultural Rights and Wrongs: A collection of essays in commemoration of the 50th anniversary of the Universal Declaration of Human Rights*, Paris, France and Leicester: UNESCO and Institute of Art and Law. For other texts of research reference, see Fagan, A. (2017) *Human rights and cultural diversity: Core issues and cases*, Edinburgh: Edinburgh University Press; Belder, L. and Porsdam, H. (2017) *Negotiating Cultural Rights: issues at stake, challenges and recommendations*, Cheltenham, Glos.: Edward Elgar; Porsdam, H. (2019) *The Transforming Power of Cultural Rights: A Promising Law and Humanities Approach*, Cambridge: Cambridge University Press; and John Clammer's (2019) *Cultural Rights and Justice: sustainable development, the arts and the body*, Berlin: Springer.

combines two multifaceted and evolving terms — culture and human rights. As the seminal declaration of the human right to culture we refer to Article 27 of the UDHR, reiterated in subsequent treatises (noted below). The UDHR is emphatic on the fact that human rights are universal, and altogether assert an axiomatic (in some ways, meta-normative) principle of 'non-discrimination'. A notable scholar of cultural rights, Yvonne Donders (2015: 117), defined cultural rights as 'human rights that directly promote and protect cultural interests of individuals and communities and that are meant to advance their capacity to preserve, develop and change their cultural identity'. India-based sociologist John Clammer (2018; 2019: 3-4) more broadly defines it as 'the right to a culture, to cultural expression, to the free development of that culture from which one derives one's primary identity and to the right to defend that culture against its destruction or erosion'. Both of these definitions are true, and also raise questions: what is the status of a 'rights-holder' (is the 'right' a possession of an individual, or group, or not pre-given so much as asserted or 'expressed')? They further provoke a question on the intrinsic role — beyond the legal sphere of 'rights' — for community, place or context of *enabling conditions* (such as policy-directed resources). And so, cultural rights, we observe, involve a conceptually open-ended (or socio-politically evolving) triangulation between individual, collective and material environment (Cf. UNESCO, 2001: Article 5).

While an accurate definition of cultural rights will therefore always be multifaceted, it has evolved through the conceptual demands of international treatises and their resulting articles of law. But international law tends to be phrased generically, intentionally so, and so without direct reference to implementation (contexts or agencies involved, for example); and while some significant studies have emerged, and case law exists, the application of cultural rights remains variable and not subject to an in-depth jurisprudence, not in the field of human rights research nor in cultural policy research. So, while cultural rights is a dimension of the fundamental human rights as set out in the 1948 *Universal Declaration of Human Rights*, what it means in practice (in policy) is less obvious, or rather, in need of a perpetual iteration in specific contexts (Nieć, 1998; Stamatopoulou-Robbins, 2007; Vrdoljak, 2005).

But first let us consider the UDHR (UN GA, 1948) as it refers to cultural rights principally in its Article 27 (noting that the phrase 'cultural rights' itself was not actually used much in UN circles before the late 1960s):

> **Article 27-1**: Everyone 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.
>
> **Article 27-2**: Everyone 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 author.

Positing Article 27 as the cultural rights dimension of human rights (as a whole) must be qualified with an indication that (a) other UDHR articles also pertain to the cultural realm — Article 18 on freedom of thought, conscience and religion; Article 19 on freedom of opinion and expression, and so forth — and (b) Article 27 assumes some form of organised cultural community or infrastructure (even if intangible) and an economy in which principles of copyright are both intelligible and enforceable. Where 'culture' begins and ends is therefore an iterative, 'place-based' or policy matter, which, along with the inherent tension between the individual bearer of rights and the collective character of culture, has generated many issues of debate (Stamatopoulou, 2008: 11-35).

Such debates had an ineluctable political resonance during the Cold War (from the UDHR to 1991 and dissolution of the Soviet Bloc). This turned the efforts to legally codify the UDHR into a broader ideological struggle, the result of which was the separation of an *International Covenant on Civil and Political Rights* (ICCPR 1966) and an *International Covenant on Economic, Social, and Cultural Rights* (ICESCR, 1966). This two-treaty rights code was a legal dichotomy insofar as they both held a different status, until, that is, the early

1990s and the UN's World Conference on Human Rights, Vienna, June 1993. The 1993 Vienna conference revived the older phrase 'International Bill of Human Rights' and combined both treatises along with the UDHR, insisting on their cohesive integration.

Below is a list-based overview of human rights laws pertaining to culture — those that could be classified as cultural rights (as stated in the two 1966 covenants), along with laws pertaining to discrimination — as the relation between them is instructive. We emphasise [i.e. in italics] words and terms relevant to our study in this article.

Table 1. **Treatise and Articles** relevant to Cultural Rights (ICCPR 1966; ICESCR 1966)

Treatise	Articles
ICCPR (1966)	Article 20-2: Any advocacy of *national, racial or religious* hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Article 24-1: Every child shall have, *without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth*, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Article 26: All persons are equal before the law and are entitled *without any discrimination* to the equal protection of the law. In this respect, the law shall prohibit *any discrimination* and guarantee to all persons *equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*. Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, *in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language*.
ICESCR (1966)	Article 6-1: The States Parties to the present Covenant recognize *the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts,* and will take appropriate steps to safeguard this right. Article 12-1: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of *the highest attainable standard of physical and mental health*. Article 13-1: The States Parties to the present Covenant recognize the right of everyone to education. They agree that *education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*, and further the activities of the United Nations for the maintenance of peace. Article 15-1: The States Parties to the present Covenant recognize the right of everyone: (a) *To take part in cultural life;* *(b) To enjoy the benefits of scientific progress and its applications;* *(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author*. Article 15-2: The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include *those necessary for the conservation, the development and the diffusion of science and culture*. Article 15-3: The States Parties to the present Covenant undertake to respect *the freedom indispensable for scientific research and creative activity*. Article 15-4: The States Parties to the present Covenant *recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields*.

While both treatises (the ancient and politically neutral term 'covenant' was used) foreground 'self-determination' along with 'non-discrimination' as equal meta-normative

principles animating human rights law *in toto*, 'non-discrimination' prevailed as the stronger of the two. Historically, the two treatises are viewed as offering different sides on this: the ICCPR (UN GA, 1966a) can be characterised as amplifying an 'Individual freedom' dimension, i.e. and legal orientation to protection from the interference and infringement. Whereas the ICESCR (UN GA, 1966b) is more oriented towards social equality (in access to culture, at least), pointing towards the responsibility of states. The tension (often slippage) between individual and collective is inherent in the UDHR itself, and remains so, even though the relevance of a particular article to an individual or group tends to be semantic and empirically obvious. There is also a contrast in the modes of application assumed by the two treatises, at least in their traditional understanding: the ICCPR requires a direct response (as mostly 'negative' rights, or a legal refrain from breaching rights), and the ICESCR requires gradual and longer-term change (as 'positive' and, for the most part, aspirational). This distinction is also internal to cultural rights insofar as culture is not one stable sphere of actionable social life — it is variable, historical, pertains to specific groups, and not uniformly shaped by law or regulation. Culture cannot be enforced or policed like many other areas of human rights: some area of cultural life are inaccessible to law (like subcultures or exclusive belief-based groups), and some people do not want to participate in the culture of common life or the notional 'community' posited by the UDHR Article 27; people may be hostile or simply subject to social censure or disapproval on the part of their ethnic or religious group.

These differing inflections and orientations of 'culture as human rights' still remain even as the distinction between the two treatises is now denied as being legally substantive. The Vienna Declaration and Programme of Action (1993), issued after the UN's World Conference, celebrated the end of the Cold War by introducing a new multidimensional principle of human rights. This took the form of a statement on the integrated status of all treatise and articles, where all rights are equally 'universal, indivisible and interdependent and interrelated' (1993, Article 5). The three seminal texts together – UDHR, ICCPR, ICESCR (the International Bill) — now provide the conceptual foundation of human rights law today, and so cultural rights discourse generally.

In the absence of a large body of 'soft law' (declarations, recommendations, reports, commentary, and so forth) as well as case law, academic thinking on cultural rights retains a consistent proximity to the original text of the articles of law. This is not to say there is no significant soft law for cultural rights, indeed the history of UNESCO is a history of soft law evolution directly relevant to cultural rights (policy research, international dialogue and debate, research, evaluation, survey and publication all consistent with the UNESCO rights-based Constitution of 1948). The 1976 Recommendation on Participation by the People at Large in Cultural Life and Their Contribution (1976) and the Recommendation on the Status of the Artist (1980) are good examples of past soft law (if, at the time, underused), both now more relevant than ever in the justiciability of cultural rights. A cultural rights legal deliberation would also need to refer to other areas of 'hard' law that have a cultural dimension, such as the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD, 1965). This particular treatise serves as an example of an effective interface between the social and economic dimensions of, mostly, national cultures and human rights (Fagan, 2017: 17; Singh, 1998: 147). In fact, treatises on race, gender, family and children, communications and heritage, will involve a cultural dimension, even if the 'culture' is not mentioned as a specific object of law.

2. Cultural Rights Policy Discourse

It is a fact that (for these above reasons) cultural rights have not received as much attention as have the rights of the social, economic, civil and political (Jakubowski, 2016: 5). In its legal iteration (as articles of a treaty) the implementation of *culture as a right* has become more a matter of national policymaking than rights enforcement or litigation (not cultural policymaking so much as

policies for social, employment or political representation). And culture, in human rights law, is general or generic enough to be assumed to be satisfied by a general 'democratic' approach to public life (acknowledging equality or inclusion and so forth). And yet, democracies often have inherent limitations and assumptions, which is why human rights needs to remain distinct. Cultural rights have not attained to the condition of a distinct region of human rights, and so the problematic issue of implementation (people being awarded, or expressing, rights) is not altogether explicit. Moreover, culture is a realm of difference, particularity, history and place (i.e. features that are opposite of the abstract universality of law or its principles). Extra-Legal deliberation must therefore be assumed to be needed where 'culture' is pertaining to particular people — in the context of race, gender, family and children, community and minority groups. The need for deliberation is usually mediated by public policymaking of some kind; and it is the case that central areas of cultural rights — from cultural participation to the status of artists — are provided for by other areas of human rights law (on freedom of expression, information, association, and so on).

Referring to the 'deliberation' dimension of policy (using the term deliberation in a political rather than legal or court-based sense), we draw attention to how knowledge, information and political viewpoints form agendas that impact the way law is interpreted and applied. Of particular interest to us is 'policy discourse' *as* a form of deliberation, where a formal organisation of knowledge takes place within institutions, courts and policymaking projects, all coalescing as definite theoretical concepts and methodologies of application. The 'discourse' often features research, scholarly and scientific intervention, intergovernmental conferences, and advocacy groups, among many other actors and agencies. Many people may contribute to a soft law environment within which a definite agenda-setting, norm-forming, validation and advocacy of rights, takes place.

For our line of inquiry, an early policy discourse milestone was UNESCO's work in the 1960s, when the phrase 'cultural rights' first entered professional parlance. UNESCO's 1968 Paris-based seminars, which resulted in the publication 'Cultural Rights as Human Rights' (UNESCO, 1968), set out a series of conceptual understandings and policy implications that consolidated cultural rights as a substantive dimension of human rights law. While there followed many meaningful contributions to a growing policy discourse on rights, these decades (1960s to the late 1990s), saw UNESCO gradually (and sometimes uneasily) integrated into a new UN global development agenda. While this was not without its costs, it allowed cultural policy to become more visibly interconnected with the growing global influence of human rights. One notable milestone was (and remains) a report called *Our Creative Diversity* (1995), by the World Commission for Culture and Development. Emerging from a three-year study and chaired by former UN Secretary-General Javier Perez de Cuellar, the Commission and report heralded a new approach to cultural policymaking, connecting the generic global realm of the UN with regional and local challenges. *Our Creative Diversity* was launched as a central outcome of the broader UN World Decade for Cultural Development (1988–1997, under the joint auspices of the United Nations and UNESCO). Featuring many cultural events, intellectual and research activity on rights-based themes, the activity around *Our Creative Diversity* is worth highlighting, as it all signified a range of policy and political innovations now internal to the global level cultural policy discourse of today. In retrospect, academics and policymakers refer to this as the era of the 'new cultural policy' — i.e. leaving behind the post-War 'nation building' approach to cultural policy (where institutions and patrimony was central). This new era was post-colonial, global, and defined by a human rights-based politics of freedom and equality — and, significantly, through this we can re-frame national cultures. *Our Creative Diversity* registered the outcome of mass decolonisation, new technology and new pressures on democratic politics, propelling terms like multiculturalism, cultural pluralism, minority rights, and cultural diversity, into the central orbit of UN member

states national policy discourses (De Beukelaer & Pyykkönen, 2015; Donders, 2002; Jovanović, 2012; Kymlicka, 1995; McGoldrick, 2005; Nieć, 1998; Prott 1999; Vrdoljak, 2013; Xanthaki, 2010).

Three years later, emerging from UNESCO's *Intergovernmental Conference on Cultural Policies for Development* in Stockholm (1998), a published Action Plan made a similar impact. The Plan displayed a new sense of confidence in asserting the right of culture to be respected and play a role in the governance of democratic public life (UNESCO, 1998a; UNESCO, 1998b). While confidence grew throughout the new Millennium (the year 2000), the absence of a singular statement on cultural rights (as law) was inhibiting policymaking for culture. Such a statement emerged through a 'high-level' seminar on the role of cultural rights law (initially within Europe, but whose relevance swiftly expanded), convened by the Interdisciplinary Institute of Ethics and Human Rights at the University of Fribourg (Switzerland). Supported by the Council of Europe and UNESCO, the seminar resulted in the 'Fribourg Declaration on Cultural Rights' (2007), now a principal reference point within global policy discourse. Culture — always a blurred concept in global policy contexts — was made definite by its segmentation as heritage, communities, access and participation, education and training, information and communication, and cultural cooperation.

The Fribourg Declaration and its clear demarcation of these cultural policy areas would have probably gained a greater impact were it not for the growing discourse of cultural diversity. By 2005, the diplomatic conditions for a full UN agreement was fulfilled, and a *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (hereafter the 2005 Convention) was passed in the UN General Assembly. In a decade where Islamic terrorism was provoking suspicions of an irresolvable 'clash of civilisations' (Huntingdon, 1996), 'diversity' was becoming a more critical means of representing the universal rights to culture. This sense of diversity was not utopian but extended from the trade rights of cultural products (a consolidation of progress made in GATT, inherited by the WTO in 1995) to cultural particularism and minorities within national borders and to their rights to engage in international 'interculturalism'. The 2005 Convention affirmed 'the importance of cultural diversity for the full realisation of human rights and fundamental freedoms' (UNECSO, 2005: Preamble). Diversity became normative and not just descriptive or nominal, and generated a set of internationally recognised features (Joh et al., 2016: 130). This enabled mainstream human rights discourse to more easily incorporate cultural reference points and complexity into social or economic rights adjudications, as well as recognising culture as a missing dimension in global development (Jakubowski, 2016: 7; Stamatopoulou-Robbins, 2008: 3-4). The groundbreaking and radical 'Declaration on the Rights of Indigenous Peoples' (2007) was adopted in this context, and while completely independent, can be read as an extension of the principles of the 2005 Convention.

In 2009, the UN Human Rights Council appointed a Special Rapporteur in the field of Cultural Rights. As part of the Council's independent expert facility, the rapporteurs are principally advisors and researchers; the appointment, at this time, was a de facto recognition of the necessity of a formal incorporation of culture into the growing global discourse of human rights. The succession of rapporteurs — Farida Shaheed (2009-2015; Pakistan), Karima Bennoune (2015–2021; US-Algeria) and currently Alexandra Xanthaki (Greek, UK-based) — have together generated over 30 major research reports, country visits and UN presentations. The role is groundbreaking in many respects and has generated a specific conceptual infrastructure for UN-level policy discourse. Yet, it still remains a fact of the 1966 ICESCR that cultural rights, in the broad scheme of UN-level policy discourse, remains a subsidiary field to social and economic rights (Donders, 2002: 19-20; Nieć, 1998: 176-189). It could be argued that cultural rights continues to be 'willfully ignored' for political reasons (Nieć, 1998), or forever just lower down the scale of member state government priorities. The work of the Special Rapporteur, however, has demonstrated how cultural rights

reveals something inherent to human life, individual and collective; it is not just a minor sphere of human rights law.

3. Discrimination as Concept and Policy Object

Non-discrimination is a human rights principle essentially underpinned by the UN Charter of 1945 and the UDHR Article 2, whereby human rights must be asserted 'without distinction of any kind', and in Article 7, whereby 'All are equal before the law and are entitled without any discrimination to equal protection of the law'. The phraseology of non-discrimination was consolidated by the 1966 ICCPR Article 26 (previously cited), 'the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination…'. Henceforth, non-discrimination became a recognised principle of some importance (now 'customary' human rights law at UN-level, and in Europe, Africa and the Americas on a regional level).

Like the concept of a 'cultural rights', discrimination is a term both obvious and not. It is usually understood by its 'targets' — migrants, refugees, people with disabilities, those of a different race or ethnicity, indigenous groups, non-indigenous religious groups, those of a different sexual orientation or gender identity. All these groups have, through their rights-based discursive mediation, become a fulcrum of important policy-issues and symbolic markers of justice more broadly: (Chopin & Germaine, 2015; OHCHR & International Bar Association, 2003). Yet while discrimination is typically addressed in the academic disciplines of law, sociology, and psychology, there is no universally accepted definition that moves across these disciplines, other than generic reference to prejudicial or unfavourable treatment. Typically, examples of such range from social stigmatisation and stereotyping, group segregation or disadvantageous classification, the making of distinctions, enforcing limitations, validating exclusion, the denial of freedom, and many other phenomenon (Dovidio et al., 2010: 8-9; Fredman, 2022: 247-250; Government Equalities Office & Equality and Human Rights Commission, 2015; ICERD 1965: Article 1; Kohler-Hausmann, 2011; Oskamp, 2000). Discrimination today is often associated with the condition of 'personal' welfare, as determined by the role of the components of identity and social experience: as age, disability, gender, race, ethnicity, sexual orientation (or defined in terms of so called 'protected characteristics', as in the UK's Equality Act 2010, or the 'protected grounds' and 'prohibited grounds' of the Canadian Human Rights Act 1985, or the 'protected attributes' of Australia's federal Anti-Discrimination laws).

In policy as much as academic discussion, discrimination can be categorised into direct and indirect, individual and institutional, structural and societal, with soft law now recognising its 'intersectionality' (Campbell & Smith, 2023; Equality and Human Rights Commission, 2019; FRA & Council of Europe, 2018; Pincus, 1996; Dovidio et al., 2010; Hellman, 2008: 1; McColgan, 2014). Discrimination, however, remains problematic on account of it exceeding the established binaries of individual and group, personal and social, tangible impact and intangible perception, feeling and emotion. Different national legal regimes place differing weight on the 'lived experience', perception or emotional impact on the victim of discrimination, and the legal status of the complainant as victim is sometimes controversial or political in complexion. This is compounded by increasing research on the structural features of discrimination as shaping a range of social phenomenon, from international markets, local conflict, threats to social cohesion, limiting or truncating the opportunities provided by public policy, participation in educational, economic, and political institutions, and so forth (Fibbi et al., 2021: 66, 75). Accumulated and compounded discrimination we now know perpetuates structural inequalities, such as an unequal distribution of resources, which impacts the socio-economic stability of a city or whole society; this is also true of economic performance or prosperity more generally. And discrimination can also be motivated by prosperity — inequality and

instability are often instrumental in the maintenance of cheap labour. Either way, the accumulated experience of discrimination (whether systemic or incident-based) can jeopardise health and wellbeing and therefore economic performance as well as law-abiding social agency. There is now a convincing body of literature on the relation between discrimination, law-abidance, family stability and security, mental health and basic self-regard (Cormack et al., 2018; Jackson et al., 2019; Scott et al., 2022).

The UN system mandates that all UN agencies and projects implement various policy measures to mitigate against discrimination (from HR to project management). When assessing the practical effectiveness of anti-discrimination in the context of human rights, member states remain the primary 'duty bearers'. There are Regional courts, National Human Rights Institutions (NHRIs) in over 118 countries, government quangos and NGOs, civil society groups and professional associations of many kinds, all of whom may play a role in advancing anti-discrimination efforts and are often at the forefront of human rights activism (Friedlander, 2019: 222). But while the anti-discrimination legal infrastructure is substantial, its cultural dimensions are often ignored or at least are not comprehensively explored. This may be on account of the common assumption that the connection between discrimination and culture is either self-evident in its social expression, or that 'culture' is so fungible and open-ended, it is impossible to obtain the necessary legal clarity or evidential causality.

Without detracting from all this general wisdom on discrimination, we will argue that there are indeed depths to explore that can generate useful clarity. While we cannot do this in detail, we will indicate how discrimination can be understood as fundamentally 'cultural'. As compared to social conceptions of prejudice, stereotyping, and unfairness, a cultural understanding of the way 'victim' or 'victimised' groups bear the impact of discrimination, is as a greater phenomenon than the usual litany of attitudes and actions. Without implying a 'social psychology' that we cannot here unpack, our approach will allow us to assert that the identity of victim and victimised is something that involves a person's imagination (such as fear, intimidation, anticipation) and an experience of self, indeed, a cognitive facility for confidence in, and projection of, the self (either from within or as a part of a group). This is to say, that 'being discriminated against', even if it is just being ignored or passed over, has implications for the deeper senses and formation of the self and one's sense of a world within a self is located (even if only at the level of the instinct of self-preservation). Insofar as individual experience can be said to be a 'social construct', as 'social' it does not preclude the involvement of the personal; the crux, and our fundamental assertion, is that the 'personal' is always cultural and our routine academic notion of 'the social' is all too often used to encompass everything. This may appear like an assertion in need of a lengthy defence, which on one level it is, but it is also a basic empirical observation that there is no person lacking culture, if culture begins with a physiological articulation of a position in time and space, made cognitively aware through language, self-presentation, visual communication and human relations within an order of value. 'Culture', we hold, is required as a concept, as unlike other forms of self (identity, for example) culture is both prior to and mediating throughout, and like discrimination, is amorphous, dynamic, and not easily open to measurement or the analysis of metrics. Culture is historical and imaginary and a form of politics as it is permeated by power and the dynamics of representation. The multidimensional character of culture frustrates analytical attempts to devise theoretical models but whose reality can offer other forms of substantive meaning. Culture is an intersectional reality and bound up with the complexion of common experience (Pager & Shepherd, 2008: 182).

To continue with the conventional social discourse on discrimination, therefore, misses the dynamic, multidimensional and experiential impact (damage and often irrevocable change) that occurs with discrimination. Also missed is how discrimination can be so embedded in culture, that it is difficult to identify (and legal prosecution

so easily evaded).

Of course, more obvious is how, in social situations, certain acts of cultural expression may precede acts of discrimination (such as symbolic gestures, certain statements, the waving of a national flag, and so on). However, this *enrolment of culture within* acts of (social) discrimination is not what we are seeking to study here. The cultural dimension of discrimination we are interested in is where discrimination is experienced 'culturally'. It may be perpetrated by a group of majority cultural identities (characteristics) against groups with minority cultural identities, or vice versa; but what we wish to argue is that understanding 'culture', here specifically its iteration in the terms of cultural rights (as — 'freely to participate… to enjoy… benefit… [with] protection' (UDHR, Article 27) — is to begin to understand the constitution of something equivalent to the 'subjectivity' or a social agency of the personhood of an individual.

Terms like subjectivity, agency, personhood, individual, and so forth, are all theoretical concepts of which we make no specific claims. Our interest is in the generic level of human rights law and how we can phrase discrimination as a cultural phenomenon, to be effectively apprehended by cultural policies that impact actual social subjects or 'real' people. Central to understanding discrimination as a cultural phenomenon is comprehending the 'human' dimension of human rights — not just the negative freedoms of the 'freedom from' adverse treatment or conditions — a positive 'freedom to' be free, enjoy, benefit from, express and flourish. 'Culture', as a fundamental basis of anti-discrimination, as where social, economic, individual, collective, material and psychological, all intersect, and past tradition and present reality all meet in ways that enhance our notion of personhood. Culture embodies the hybrid complexity of life, with all the inherited, customary and past content and dynamics that make up social identity (often fractured or even dissolved by discrimination, not wholly open to explanation or making sense). Discrimination in cultural rights, therefore, not just limited opportunity for cultural participation, expression or benefit because of one's cultural identity — rather, identity itself may be symptomatic or by-products of discrimination, and important for the identification of discrimination by rights-holders or duty-bearers.

In the first section, we referred to discrimination as 'meta-normative', as it is not in itself an object of a right but an abstract value that instructs the interpretation of all rights. It is an orientation (in terms of the application of policy — i.e. with a view to impact or implications) and also a hermeneutic (a way of interpreting rights or policies based on rights). It is internal to the concept of a human right in general (which, by virtue of being 'human', is a universal condition of life itself and so inclusive of 'all' equally). Discrimination is more often defined by the mundane empirical reality of the nasty, unfair, marginalising, or disadvantageous identification of people on account of their difference, actual or perceived. To designate something 'unfair' is a judgement and evaluative of a state of inequality or an uneven distribution of something that may not exist as a policy reality (perhaps because of a social acceptance of poverty, as perhaps a general political incompetence in organising society). As a cultural phenomenon, however, we must descend to the *conditions* of such, the experiential formation of the self as discriminated against, as unfairness or disadvantage are simply terms that identify an apparent social situation but not the cultural reality. We are here indicating that there exists an *aesthetics* of discrimination. Indeed, a social situation in which 'the nasty, unfair, marginalising, disadvantageous', and so forth, are expressed, is a situation that is mediated by a multifaceted reality that shapes the victim or subject in more than just social insult, hurt or exclusion. Aesthetics concerns the realm of experience that actively forms a sensibility and sensory consciousness of the self in social life — the individual's constitutive value and self-regard within society that is actualised through communicative expression (i.e. must move from a social fact to a cultural expression). Aesthetics signifies a 'relational' and qualitative dimension of an individual's perception, understanding and

knowledge: it alerts us to the phenomenological coordinates of a social situation of discrimination.

We will not labour this point theoretically, only to emphasise that the original articulation of cultural rights, as — 'freely to participate… to enjoy… benefit… [with] protection' (UDHR, Article 27) indicates as much. The reality of discrimination may be observed as social, but for the person is a sensible damage and truncating of a level of human development required for a basic expression of human rights. This is the level of the aesthetic formation of individuality, which, empirically speaking, is actualised principally through culture.

This emphasis must be carried through cultural policymaking (as noted above, policy discourse is where the substantive claims of cultural rights emerge). In so doing, mindful of the aesthetics of culture, we will amplify the human dimensions of dignity-and of 'flourishing' (two terms important in 1948). This will preserve a sense that cultural rights is a response to the conditions of human development, of the individual's self-reflective experience, enabling the self-representation, identity formation, decision making and choices that form a distinctive and value-embedded pathway of life through a given social landscape.

Leaving the argument on discrimination as a cultural phenomenon, we must turn to what is its most immediate counter-argument. Countries that have adopted 'multiculturalism' as public policy or series of principles, will no doubt assert that *multiculturalism is precisely the anti-discrimination cultural rights framework we need, (or could conceivably ask for)*. Of specific relevance, is how multiculturalism has both enacted and obviated the implementation of cultural rights — often *as* a decisive public policy response to discrimination. Multiculturalism in the UK, for example, is widely regarded as the 'practice of the principle' of anti-discrimination. While there is no national political or public policy statement that would clarify the meaning of the term (problematic in itself), its assertion of non-discrimination has implications for a distinct and separate policy framework for cultural rights.

'Multiculturalism' has taken many forms. In North America it has a pre-history as 'cultural pluralism'; it gained a more explicit formulation in Australia in the early 1970s and then Canada in the early 1980s. Since then, the term has become a mutable if not vague term expressing a range of assumptions adopted by governments of differing political orientations and has functioned differently in in differing political contexts. To its detractors, it is a vacuous political ideology, to its supporters, multiculturalism is a benign mediator of human rights in an age of global mobility. Even so, multiculturalism is usually more often expressed in social, rather than cultural policies.

On the face of it, multiculturalism is descriptive of the multiplicity of a country's culture, or as an active rights-based framework, it can only but be prescriptive in facilitating the growth of a multiplicity or diversity in culture and so the ethnic and religious minorities that are the gift of immigration policies. As a public policy orientation, multiculturalism entails the abolition or changing of laws, policies and even traditional cultural practices where such prohibit, inhibit or denigrate a diversity of choice in cultural identity, belief, expression, allegiance and belonging. A nation's 'people' are no longer exclusively or dominantly the historical ethno-culture, monoculture, or even citizenry, by which it was formed. Multiculturalism is a rights-based assertion of liberty, identity and agency, where human rights (and not established place or polity) validate identity.

The UDHR did not mention 'minorities' as such, but its principle of non-discrimination was applicable beyond the scope suggested by the early iterations of human rights law. Before 1966 and the adoption of the two covenants, a resurgence of antisemitism in Germany, apartheid in South Africa, and the civil rights movement in the United States, provoked a more immediate need for the use of a rights-based prohibition on discrimination. This came in the form of the 1963 UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD: UN General Assembly, 1965). The emergence of a global policy discourse on race, minorities and the

multi-cultural, is instructive.

The ICERD of 1963 was probably less impactful at the time than it has been since. In the decades that followed (the years of decolonisation and the emergence of a plethora of new countries and UN members) 'race' emerged as a far larger rights-paradigm than the past category of 'minority'. The 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities served to emphasise the distinct concerns of race and of minorities within human rights discourse. As a declaration, it became a significant contribution to a growing soft law basis for multiculturalism, within which anti-racism was central and a growing force for change. In the intervening years, the African Charter on Human and Peoples' Rights (the regional human rights legal framework, adopted in 1981), exemplified with some conceptual sophistication the critical relation between race and human rights quite outside any concerns with minorities. The dissolution of the Soviet Bloc in the early 1990s and a growing mobility and mass migration across the world on account of economic globalisation, saw both race and minorities as challenging the epistemological hegemony of European political liberalism and its approach to human rights. A pivotal moment was the 2001 *World Conference against Racism* in Durban, South Africa, whose Declaration and Programme of Action articulated most concretely the internal interrelation of non-discrimination, racism and minorities. Point 61 of the Programme is one of many examples that 'Urges States to work to ensure that their political and legal systems reflect the multicultural diversity within their societies and, where necessary, to improve democratic institutions so that they are more fully participatory and avoid marginalization, exclusion and discrimination against specific sectors of society' (United Nations, 2002).

More than a matter of semantics, The Durban Programme positions race based anti-discrimination as the pathway to multiculturalism. Multiculturalism is not just descriptive of a culturally hybrid population, but is a fuller expression of a human rights-based society (a diverse humanity). A progressive prohibition of racist discrimination would see discrimination transcend its legal status as bound up with 'negative' human rights (an object of protection and of preventing rights violations) and became a provocation for 'positive' aspiration (of human dignity and flourishing) and so a paradigm of cultural rights. In any case, the old positive/negative legal distinction was made redundant by the 1993 Vienna World Conference and its principle of the 'interdependency' of all rights (UN General Assembly, 1993). The 'interdependency' of all human rights was important in making the otherwise vague policy concept of 'multicultural' both substantial and legally significant. The multicultural became a paradigmatic expression of the 'interdependency' of all human rights, and the meta-normative principle of non-discrimination found an political fulcrum in the matter of race.

Today, in Europe at least, multiculturalism (as anti-racism) permeates and shapes national identity and culture in many areas of public policy and also governance, political ideology and basic social values. Multiculturalism animates many vaguely defined policy motivations and has established within national identity and culture a permanent role for immigration and the social integration of foreign nationals, of refugees, exiles, asylum seekers, of diaspora communities and a plurality of religions. Yet, whatever the expectations on the civil virtues, ethics or eventual outcomes of socio-cultural diversity, there remains a paradox at the centre of multiculturalism that effectively places into jeopardy non-discrimination.

The admission of 'multi' cultures, makes the construction of a common cultural rights framework a fraught policy task. Moreover, the social reality of pre-modern, patriarchal community, hostile religions, traditional family structures, and so on, also challenges the assumptions on human rights law as being applied equitably and without discrimination. Indeed, etymologically, 'discrimination' is making distinctions, but where distinctions far outweigh or even prevent commonality, the application of

human rights can become practically fraught in its application across a society. The inherent tension within the UDHR between its ethical universality and its Eurocentric political liberalism becomes more apparent in multicultural societies, i.e. when faced with social subjects who find 'equal rights' incompatible with their historic and venerated values or communal sense of authority. This is perhaps, in part, why multiculturalism — one of the most significant rights-based policy discourses of the Twentieth Century — has not evolved much as a political philosophy, or a legal or human rights-based discourse (and not foregrounded a great deal at UN level). And with increasing global mobility and immigration, the term has become a site of political contestation and instability in nation states. This brings us to the concrete question of cultural policy and our main argument:

For cultural rights to be operationally effective in apprehending discrimination, it requires an inclusive cultural policy (not just the enforcement of laws); and for cultural policy to be operationally effective, this requires an attentiveness to the aesthetic formation (the human development) of the rights-bearer (and/or victim of discrimination). It must also be generic enough to be useful in a situation of incommensurable social diversity (if not interminable social division). The focus of the argument is therefore cultural policy and what form this may take. This brings us to the material reality of cultural capital — the condition and constitution of 'culture' in our society.

4. Cultural Capital?

The concept of cultural capital echoes a broad scholarly consensus that culture has been (re)defined by capitalism (by industrial modernity since the 18th Century). The term cultural capital is therefore a quintessentially modern term that assumes 'culture' has become *industrialised* or at least subject to the socio-economic re-organisation wrought by industrialisation. Consequently, culture is but one dimension of the broader phenomenon of 'capital' that structures a modern society (the dominant form of which is, of course, economic capital). Culture as 'capital' is an understanding first delineated by Pierre Bourdieu (1930-2002), who situates culture as *internal* (not the foundation or ground of) to the forces that make for a capitalist society. Culture is no longer the ethnocultural agrarian world of indigenous community, but one of the forms of 'capital' that make an economically structured and productive society (Bennett & Savage, 2004; Bourdieu, 2003 [1986]). Cultural capital as a concept allows us to see how creativity, expression and cultural experience is inseparable from labour, production and social organisation (and where all this is enmeshed in the historical evolution of social reproduction – how social structures, status, privilege and power all continue and even grow).

The concept 'cultural capital' was articulated in Bourdieu's seminal work *Distinction* (*La Distinction*, 1979; translated 1984), presented a sociology of culture, albeit that drew on Bourdieu's background in social anthropology (Bourdieu, 1993; Bourdieu, 1996 [1984]; Bourdieu, 2003 [1986]; Prieur & Savage, 2013: 246). In retrospect, Bourdieu could be understood as responding to the great 'paradox' of culture in French society in the 1950s and 1960s. This paradox was that despite the profound social and cultural changes in France at the time (on account of counterculture and politics, and radical cultural movements like New Wave cinema or Situationism), the role of culture in society was being *maintained and remained consistent*. Indeed, culture was 'deeper' and more structurally embedded in society than many of the forces for change currently animating the public realm. Bourdieu identified how culture was playing an intrinsic role in reproducing and reinforcing the structures and systems of behaviour responsible for both social development and social exploitation (inequality and injustice) and national identity. It was as if Bourdieu had to frame his studies as historical (about past periods of time) so as not to appear 'conservative'.

As Bourdieu demonstrated (empirically as well as theoretically) culture remains significant because it is *not* a realm of autonomous values and practices (against modernist aesthetics and art

history, and many political theories of art at the time and since). Culture, rather, is embedded in the forms of capital that structure society — it is a dynamic composite and not some essential substrate expressive of transhistorical identity or human essence (like creativity). Cultural capital has three dimensions, of *embodied*, *objectified*, and *institutionalised* (Bourdieu, 2003 [1986]: 17). The 'embodied' form of cultural capital involves internalised behaviours and aptitudes (skills, manners, dispositions, tastes, etc.) identified by language, cultural knowledge and sensibility; 'objectified' cultural capital refers to cultural production and products, works and markets, all produced and sustained by individuals who possess embodied capital; and 'institutionalised' capital indicates the way these both take social form, in institutions, scholarship and academic qualifications, social status and professional positions. Education is a principal area where institutionalised cultural capital is reproduced through tradition and historical narratives, codified values and standards of taste, as well as organisationally structured behaviours (Bourdieu, 2003 [1986]: 17-21).

It is not difficult to see how 'culture' in this context pertains to rights and all the social and economic barriers, systems and structures, through which discrimination is perpetuated. But, furthering our line of inquiry in this article, one critical failing of Bourdieu's concept of cultural capital is that it is defined as a structural feature of society over which culture itself has no agency — that culture's power of intellectual thought, historical resource, alternative values, creativity and production, and so forth, has little power *over* 'capital' and its socio-economic forces. Of course, to argue this would evoke modernist notions of autonomy obviated by Bourdieu's general theory of capital. And yet, a critical understanding of Bourdieu would detect a certain Marxist determinism that limits culture's valency and efficacy.

Yet, culture, in Bourdieu's schema, undertakes a significant *pre-social structuration of the human subject* (in family and community) necessary for the work of capital in the first instance. A critical approach to Bourdieu might observe that the eventual structure of cultural capital articulates a *pre-capital social human agency*. Bourdieu's concept of 'habitus' [*Distinction*, Chapter Three] – critical to the formation of human facility to function within a society structured by capital – as much as sets this out. While Bourdieu would maintain how even the private realm of familial life is structured by capital, it is perhaps his anthological origins that identifies another dimension of life. *Habitus* produces an individual's sensibility, sense of perception, distinction and taste, dispositions and capabilities, all essential to the perpetuation of capital through social reproduction, and do not themselves originate in capital (albeit being 'structured' by capital is not the same thing). Indeed, our reference to the 'aesthetic' substrate of culture is pertinent here — as within Bourdieu's fundamental concept of habitus, he identifies something paradoxical, like a 'social phenomenology' or human agency being shaped by value-laden experience and emotion within a family unit, community, school, and a broad lifestyle.

Indeed, cultural capital reveals the extent of exclusion as well as inclusion, in terms of whom has been formed and not by the processes of effective habitus. Again, Bourdieu always maintained the embeddedness of habitus within capital (Bourdieu, 2006/1997). We propose, however, that cultural capital can be extended to a theory of human agency and not just economy. It is through cultural capital that we can apprehend the inequities and exclusions that facilitate the human development of discriminatory victimhood. This is not a plea for a vague 'cultural democracy', or for a greater embedding of cultural capital within a state welfare system (Bourdieu would have been familiar of such options, writing through the years of André Malraux's cultural policy and its impact throughout the 1970s). Rather, a critical approach to cultural capital extends our framework of cultural rights (in apprehending discrimination). And this is, of course, notwithstanding how culture and capital have radically changed since the 1970s, now defined in response to gender, race, the dissolution of 'high' culture's

institutional dominance and canonical values; and how the digital has consolidated the synthesis of cultural and consumer sensibility, and so forth (Bennett & Silva, 2006: 5; DiMaggio, 1982; DiMaggio & Ostrower, 1992; Prieur & Savage, 2013: 262-263).

To argue, as we do, that cultural capital could play an 'internal' role in apprehending discrimination, we must begin by defining discrimination *in terms of* cultural capital, assuming that capital will necessitate a sphere of habitus that involves the deeper formation of the personhood of the social subject. For Bourdieu, the 'capital' is a dynamic and creative force that empowers individuals within social class-based groups, in embodied, objectified, and institutionalised ways. This involves individual capabilities, production and its spectrum of activities, and social institutions and the recognised spaces and places that make up our social order. Cultural capital thus offers an opportunity to 'map' the mutation of cultural experience, values, norms, roles and status, whereby discrimination is understood as a definable economy of culture. This 'economy' is, in an age of multiculturalism, a 'political economy', and it contextualises the complex character of discrimination, as outlined in the last section. It does this in ways that are concrete and open to shaping and calibration through cultural policy. The common legal definition of discrimination as attitudes and actions leading to exclusion and marginalisation, must be extended — to how an individual's *agency evolution* is mediated through a particular cultural political economy.

The scope of this article aims only for a policy-based means of apprehending discrimination through cultural rights mobilised by cultural capital. In accordance with the above, this can be phrased (following Bourdieu) in terms of a demand for (a) socially empowering individual capabilities (embodied); (b) production and/or ownership of cultural products, technologies and expressions of taste (objectified); and (c) skills, certification, membership and access to organisational and institutional spaces (institutionalised). While an optimum quantity of these would define a typical educated, professional, 'middle class' citizen, the usual ways of obtaining equality of all citizens (welfare 'statist' solutions for cultural democracy) is not what we are proposing. Our aim here is for an operationally effective cultural rights — that is able to cut across the already established forms of cultural capital, which are dynamic and changing within social reproduction and economy itself, and so would necessitate a re-scaling of 'culture' from within the social class system assumed by Bourdieu to a more pluralist local community-scale of life (shaped by multiculturalism).

Cultural capital, as a rights-based cultural policy, can be a normative project of social transformation – an actionable legal-political instrument for both unmasking discrimination and mediating the evolution of free human agency. Firstly, as noted, embodied capital suggests socially empowering individual capabilities: for Bourdieu, this was 'habitus' or the environmental osmosis of growing and cultivation (family, class context); for us, this can be shifted *from a private realm for the formation of fundamental dispositions and capabilities, to a realm of enforceable rights*. Understanding the matrix of dynamics within human development, through developmental psychology, social skilling, cultural knowledge and sensibility, the processes of habitus or embodied capital (particularly beginning with language, history and heritage, place and habitation) can through cultural policies, be cultivated from *within local socio-urban environments*. The social priority of the family, while important in other areas, should not embody cultural privilege (and obviate the need for a richer cultural environment in society more generally. What is required is local ecosystems of capability development. A local ecosystem, being a commons or space of collective benefit, can provide primary conditions for individual development, impacting the level of what we called a 'social phenomenology' (above).

Secondly, objectified capital can be phrased as production and/or ownership of cultural products, technologies and expressions of taste. As the above embodied capital must be shifted from

family to local community, *objectified capital must also be shifted from ownership (the 'property' model) to common resource (a rights-based model)*. While, obviously, private property ownership (books, devices, private collections) remains a social fact, objectified capital is situated within a cultural infrastructure. While this may seem more appropriate (or traditionally ascribed to) 'institutionalised' capital, it need not be. Local ecosystems of capability development can be resourced in ways that also provide objectified capital for individuals. Many local library systems used to operate on this de facto basis; and this does not involve an assumption of huge welfare subsidy or resource, but participation. In fact, positioning objectified capital within the social strata of the wealthy (or capital-rich), and not specifically calibrated as resource for place-based capability development, reduces the economic efficiency and sustainability of both. Objectified capital can begin simply with all public spaces, coordinated and calibrated more strategically according to rights-based aims.

Thirdly, is institutionalised capital — of skills, certification, membership and access to organisational and institutional spaces. This dimension of cultural capital is usually assumed to involve a policy-endorsed 'access' of a socio-physical nature — as if all of society are trying to get into museums were it not for the devious means of the educated classes keeping them out. This has never strictly been true, indeed, as Bourdieu would say, the social fact of cultural disenfranchisement is far deeper than a socio-physical presence or civic participation. *A right of access, rather, would be more an access 'through' than an access to — through the space of institutionalisation itself as dynamic forces of capital production*. Such institutionalisation is the intellectual-material-political means by which the organisational field of culture itself is created, managed and developed. As a subject of cultural rights, institutionalised capital involves education, recognition, experience and communication, collaboration and design, curation, governance and the intellectual formation of cultural knowledge (from both formal and informal, individual and collective, structural and process-based, historical and contemporary). Internal to this is human initiative, improvisation and imagination, of leadership and dissent and other mediations of individual agency. This requires the institutions and agencies that define the organisational field of cultural production itself 'democratise' in a rights-sense (by way of developing the facility for self-critical reform by involving those not so cultivated and rewarded by the processes of cultural capital).

5. A framework for apprehending Discrimination — through Cultural Capital within Cultural Rights

As we reach the summation of our study: the reader may be detecting an orientation towards a 'Capabilities Approach' to conceptualising cultural capital (in its original 'Human Development' context: Nussbaum, 2011; Sen, 1980 [1979]; Sen, 1993; Sen 2005; see also the innovative adaptation of human development to cultural policy in Gross & Wilson, 2020). A further line of inquiry would indeed not only revise the relation between rights, capabilities and established public policy approaches to capital (as resources and facilities in a welfare-state provision), but contextualise this in more detail within the ongoing UN policy discourse.

This article, however, more specifically aims for a policy-useful framework where discrimination is apprehended as a cultural phenomenon with a cultural rights-informed cultural policy. Bourdieu's cultural capital has enabled us to identify the material conditions and orientation of the forms of cultural development required to facilitate cultural rights. Our premise was that culture as rights cannot be enforced so much as facilitated through policy (where resources, institutions, social space, political representation and governance, are all connected). In other words, cultural rights should be embedded in the 'world' of the social subject, and world they need to be fully developed within, experientially so.

Our final aim for a cultural policy framework must not be understood in terms of documents and bureaucratic directives, but a means of cognitive

or 'epistemic governance' (shaping action through thought and knowledge production). It needs to inform an understanding of the necessary coordinates for a developmental environment, and do this identifying the dimensions of discrimination in terms of cultural rights. Its use can be to construct cultural policies of cultural capital formation (as amplified in the above section), where the dimensions of discrimination (the circles, below) are equivalent to areas of cultural rights. Rights are categorised as three areas (of law): 'cultural identity', 'cultural expression', and 'cultural accessibility'. Each category articulates a core policy value: diversity (ensuring cultural identity), freedom (ensuring cultural expression), and respect or fairness (ensuring cultural accessibility). We extend the facility of each for apprehending the social reality of discrimination as an interconnected or multifaceted reality.

As noted above, and from the perspective of cultural rights, discrimination is the limiting or denial of an individual's cultural identity, expression, or access to cultural capital. To be more specific, the following criteria are simply suggested as a policy-friendly means of identifying discrimination: whether one's existence has been allowed or not (cultural identity in diversity); whether one's voice has been heard or not (cultural expression for freedom); and whether one is with or without barriers (cultural accessibility for respect or fairness). The framework provides a policy cognition of the core components of cultural rights law – diversity, freedom, and respect – as they are manifest (being upheld or not) in the cultural environments of specific individuals in actual communities. (And, as with the three categories of cultural rights, the three forms of discrimination may be identified as mutually distinct but within cultural policy will be interconnected).

The practical implication of this framework, for, say, local authority policymakers, is that making cultural rights effective does not begin with law implementation or 'top down' enforcement. It begins with cognitive work in mapping discrimination, then working back to the legal iteration of rights. One significance of beginning with discrimination is that one begins outside the legal binaries that usually govern systems of policymaking (individuals vs groups; informal vs institutional, and so on).

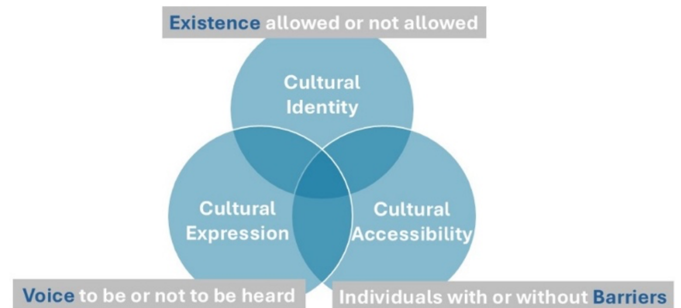

Figure 1. The Framework for Identifying Discrimination in the Cultural Rights Perspective
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7. Conclusion

This article examines cultural rights, as law, policy and discourse, and identifies how it intersects with our usual expectations of cultural policy in a democracy — for equality, representation, participation, inclusion and access. The problem is (and remains) discrimination, both a persisting social reality and also a central meta-normative aim embedded within human rights treatises and laws, ostensibly encompassed by the ideology of multiculturalism. Our proposed response to this situation begins with an understanding of the textual origins of human rights, the policy discourse formation of cultural rights, and the significance of a lack of progress in developing specific frameworks of 'cultural' rights implementation. This lack of progress is diagnostically apprehended as a policy failure to fully understand culture in terms of human development.

The international pervasiveness of multiculturalism as a policy ideology, obviously, requires a longer study; it serves here to denote the complexity of cultural rights as partially addressed in Western liberal democracies, but also serves to highlight the challenge of open-ended diversity. Multiculturalism has also arguably shifted the emphasis onto groups and

collective rights; while this favourably interconnects with the prevailing UNESCO discourse of cultural diversity (the 2005 UNESCO Convention as principal treatises purveyor of cultural rights globally); but it also takes our attention away from the original human rights investment in the individual (and the formation of individual self-determination).

The third section argues that soft law and policy discourse have proven more effective than traditional legal frameworks for advancing cultural rights implementation — and are not inhibited by the apparent binary of individual-collective. It takes section four to set out the full scope of discrimination as both a legal concept and social phenomenon. From direct and indirect discrimination, individual versus structural, discrimination nonetheless exceeds established binaries. The section argues that discrimination is fundamentally cultural in character, requiring understanding beyond social prejudice or stereotyping to encompass the complex interplay of individual and collective dimensions of social life. This allows for the use of Bourdieu's concept of cultural capital (commonly used in European cultural policy, critically revised in relation to cultural rights). As comprising embodied, objectified, and institutionalised forms, culture as capital today is awaiting a revised conceptualisation as a cultural policy of human developmental capabilities. This article's aims are more limited: we propose reconceptualising cultural capital from a descriptive sociology to a normative framework so as to shift embodied capital from family privilege to community-based capability development, objectified capital from private ownership to common resources, and institutionalised capital from simple access to dynamic participation in cultural production and governance. This framework positions cultural rights as an operational process of dismantling discrimination through cultural policy intervention, and so our framework provides the basic conceptual schema required to begin this line of policy thinking.

CRediT statement:

This article conveys the results of a protracted dialogue conducted in the context of Younggeon Byun's successful doctoral thesis (May 2025) with Vickery as supervisor. The 'Framework' of Section 6 (Fig. 1) and the huge empirical research from which it emerged, belongs to Younggeon Byun. The article comprises conceptual analysis and policy context, the writing of which was collaborative but with Dr Vickery leading on matters of human rights law and policy discourse, and the section arguments. The citation reference for this article sees Younggeon Byun as first author on account of the empirical research, model and tables, and the original line of inquiry on the significance of discrimination within cultural rights.

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Appendix 1: Selected legal instruments relevant to the evolution of Cultural Rights

(Adapted by Younggeon Byun from OHCHR Webpage; Stamatopoulou-Robbins, 2007; UNESCO Website; Vrdoljak, 2005)

Year	Agency	Title
1948	UN GA	Universal Declaration of Human Rights (UDHR)
1953	CoE	European Convention on Human Rights (ECHR)
1954	UNESCO	Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention
1965	UN GA	**International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**
1966	UNESCO	Declaration of the Principles of International Cultural Cooperation
	UN GA	**International Covenant on Economic, Social and Cultural Rights (ICESCR)**
	UN GA	**International Covenant on Civil and Political Rights (ICCPR)**
1969	IACHR	American Convention on Human Rights
1970	UNESCO	Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
1972	UNESCO	Convention Concerning the Protection of the World Cultural and Natural Heritage (UNESCO World Heritage Convention)
1974	UNESCO	Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms
1976	UNESCO	Recommendation on Participation by the People at Large in Cultural life and their Contribution to it
1978	UNESCO	Declaration on Race and Racial Prejudice
1979	UN GA	**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**
1980	UNESCO	Recommendation on the Status of the Artist
1981	UN GA	Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
1981	OAU	African Charter on Human and People's Rights
1989	ILO	Indigenous and Tribal Peoples Convention
	UNESCO	Recommendation on the Safeguarding of Traditional Culture and Folklore
	UN GA	**Convention on the Rights of the Child (CRC)**
1990	UN GA	**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)**
1992	UN GA	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
1993	World Conference on Human Rights	Vienna Declaration and Programme of Action (the conference endorsed by UN GA)
1994	CoE	Framework Convention for the Protection of National Minorities
2001	UNESCO	Universal Declaration on Cultural Diversity
		Convention on the Protection of Underwater Cultural Heritage
2003	UNESCO	Convention for the Safeguarding of the Intangible Cultural Heritage
2005	UNESCO	Convention on the Protection and Promotion of the Diversity of Cultural Expression
	CoE	Convention on the Value of Cultural Heritage for Society (Faro Convention)
2006	UN GA	**Convention on the Rights of Persons with Disabilities (CRPD)**
2007	UN GA	Declaration on the Rights of Indigenous Peoples
2008	UN GA	Optional Protocol to the ICESCR

* IACHR: Inter American Commission on Human Rights
* OAU: Organisation of African Unity. The African Union (AU) replaced the former OAU since 2001
* The Core International Human Rights Instruments were listed (**in bold**), except those with less relevant to Cultural Rights – Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT, 1984) and International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

Appendix 2: Selected Key events and publications supporting Cultural Rights

(Adapted by Younggeon Byun from Dessein et al., 2015; Duxbury et al., 2016)

Year	Agency	Event/Publication
1982	UNESCO	World Conference on Cultural Policies Mexico City (Mondiacult) Declaration on Cultural Policies
1995	UNESCO	World Commission on Culture and Development ‘Our Creative Diversity’ report
1998	UNESCO	Intergovernmental Conference on Cultural Policies for Development Action Plan on Cultural Policies for Development (Stockholm Declaration)
2001	UNESCO	Universal Declaration on Cultural Diversity
2004	UCLG	Adoption of ‘Agenda 21 for Culture’
2005	UNESCO	Convention on the Protection and Promotion of the Diversity of Cultural Expressions
2007	UN	Declaration on the Rights of Indigenous Peoples
2007	Fribourg group	Fribourg Declaration on Cultural Rights (supported by UNESCO)
2009	UN HRC	Established a post of Independent Expert in the field of Cultural Rights for a 3-year period (extended)
2010	UN GA	Resolution – culture and development
	UCLG	Resolution - ’Culture: Fourth Pillar of Sustainable Development’
2011	UNESCO	Adoption of new UNESCO Recommendation on the Historic Urban Landscape
2012	UN DESA	UN Conference on Sustainable Development
2013	UNESCO	International Congress - “Culture: Key to Sustainable Development” Hangzhou Declaration – “Placing Culture at the Heart of Sustainable Development Policies,”
	UNCTAD, UNDP, UNESCO	Creative Economy Report 3: Special Edition – Widening Local Development Pathways
	UN GA	Adoption of Resolution on Culture and Sustainable Development A/RES/68/223
	UN HRC	Release of the Special Rapporteur in the field of Cultural Rights, Farida Shaheed’s report - “The Right to Freedom of Artistic Expression and Creativity”
2014	UN GA	Debate on “Culture and Sustainable Development in the Post-2015 Development Agenda” (NYC)
	UNESCO	3rd UNESCO World Forum on Culture and the Cultural Industries “Culture, Creativity and Sustainable Development” Florence Declaration – “maximizing the role of culture to achieve sustainable development and effective ways of integrating culture in the Post-2015 Development Agenda”
2015	UN	Sustainable Development Goals (SDGs)
	UNESCO	Hangzhou Outcomes on Culture in Sustainable Cities
		Global Report – Re Shaping Cultural Policies (1)
		Global Report on the integration of Urban Heritage for Sustainable Cities (in preparation)
	UCLG	The First UCLG Culture Summit at Bilbao “Culture 21 Actions: Commitments on the role of culture in sustainable cities” approved
2016	UNESCO	Global Report on Culture for Sustainable Urban Development: Report for UN HABITAT III
	UN HABITAT	Publish of the World Cities Report 2016: The Value of Sustainable Urbanisation
2018	UNESCO	Global Report – Re Shaping Cultural Policies (2)
2019	UN GA	Resolution – Culture and Sustainable Development
	UNESCO	Culture 2030 Indicators
2020	UNESCO	Culture in Crisis: Policy Guide for a Resilient Creative Sector
	UN HABITAT	World Cities Report 2020: The Value of Sustainable Urbanisation
2021	UN, UNCTAD, UNESCO	International Year of Creative Economy for Sustainable Development
	G20	G20 Culture Ministers’ Meeting (The first meeting devoted to Culture in the history of G20) Rome Declaration
2022	UNESCO	Global Report – Re Shaping Cultural Policies (3)
	UNESCO	Mondiacult 2022 Mexico City World Conference on Cultural Policies and Sustainable Development
	UN HABITAT	World Cities Report 2022: Envisaging the Future of Cities

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